

**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

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CANADIAN HUMAN RIGHTS TRIBUNAL/
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HEARING HELD IN THE HOLIDAY INN SELECT,
2525 WYECROFT AVE., OAKVILLE, ONTARIO
ON WEDNESDAY, JUNE 27, 2007 AT 9:30 A.M. (LOCAL)

CASE FOR HEARING

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

APPEARANCES/COMPARUTIONS

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

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1 Oakville, Ontario

2 --- Upon resuming on Wednesday, June 27, 2007

3 at 9:30 a.m.

4 THE CHAIRPERSON: Good morning,

5 Mr. Goldberg. How was the event?

6 MR. GOLDBERG: It was very nice,

7 thank you.

8 THE CHAIRPERSON: So are you ready to

9 proceed?

10 PREVIOUSLY SWORN: HARVEY GOLDBERG

11 CROSS-EXAMINATION BY MS. KULASZKA

12 MS. KULASZKA: Yes, I'm ready.

13 Mr. Goldberg, we'll go back to the

14 big volume, R-17. I think it's the big white one in

15 front of you.

16 MR. GOLDBERG: Yes.

17 MS. KULASZKA: We'll go to tab 4, and

18 Mr. Christie was going through these e-mails. This tab

19 was disclosed by the Commission. I think we got up to

20 page 20. Look at the bottom of the page and you'll see

21 the numbers.

22 MR. GOLDBERG: Yes.

23 MS. KULASZKA: This is an e-mail from

24 you and the subject, "It's not Karsh." What does that

25 mean?

1 MR. GOLDBERG: Karsh was a famous
2 photographer in Canada. The picture I sent was not
3 sent to this person, was not an example of Karsh's
4 work.

5 MS. KULASZKA: You sent this person a
6 picture of yourself?

7 MR. GOLDBERG: I sent him a picture
8 that we had taken at a meeting that we had had
9 together.

10 MS. KULASZKA: And did this ever
11 appear on the Internet?

12 MR. GOLDBERG: No, it did not.

13 MS. KULASZKA: Then you state,
14 "A statement by the Commission
15 on your website might raise an
16 issue of perceived bias."

17 Why was that?

18 MR. GOLDBERG: They were asking us
19 to -- the -- I believe this was in relation to the --
20 well, one of the previous e-mails.

21 The organization was asking that we
22 put a statement on our website -- they wanted us to put
23 a statement on their website about filing complaints
24 under Section 13, and I was advising them that that
25 would not be appropriate because it might -- if that

1 organization were at sometime or at the present time to
2 file an complaint, that it might be perceived as bias
3 for us to have a statement on their website.

4 MS. KULASZKA: So you are concerned
5 about bias?

6 MR. GOLDBERG: We certainly are
7 concerned about bias. We are a quasi-judicial agency
8 and we have to be certain with bias, absolutely.

9 MS. KULASZKA: The fact that Richard
10 Warman was an employee of the Commission for years, did
11 you concern the Commission when he started laying
12 complaints?

13 MR. GOLDBERG: I had no supervisory
14 responsibility over Mr. Warman. I have no idea whether
15 there were discussions of that nature or not in other
16 sectors of the Commission.

17 MS. KULASZKA: But you are a policy
18 analyst and it would be a matter of policy whether an
19 employee of the Commission would be allowed to start
20 using the Act in the way he was?

21 MR. GOLDBERG: No, it would not be
22 matter a policy. It would be a matter of human
23 resources and conflict of interest. I don't have any
24 involvement in those areas.

25 MS. KULASZKA: So you knew of no

1 discussions regarding that?

2 MR. GOLDBERG: I think I knew --
3 anything I would have to say would just be hearsay. I
4 can't say. I don't know of any discussions, no.

5 MS. KULASZKA: Were you aware that
6 complaints were made about Richard Warman laying
7 complaints and it should be the Commission itself that
8 should be laying the complaints, not one of its
9 employees?

10 MR. GOLDBERG: No, I was not aware of
11 that. I would point out there's nothing in the
12 Canadian Human Rights Act that prevents an employee to
13 file a complaint. In fact, other employees have filed
14 complaints in the past.

15 MS. KULASZKA: Under Section 13?

16 MR. GOLDBERG: Not under Section 13,
17 but under the Canadian Human Rights Act.

18 MS. KULASZKA: And what would that be
19 concerning?

20 MR. GOLDBERG: Any number of matters.

21 MS. KULASZKA: Basically they would
22 be discriminated against for some reason by the
23 Commission?

24 MR. GOLDBERG: Some, yes, but I think
25 people may have filed other complaints against other

1 organizations. I don't really recall the details, but
2 I do know that it has happened on several occasions, if
3 not more.

4 MS. KULASZKA: Well, you sit on the
5 hate team and you're basically vetting these reports
6 before they go to the Commission. There can't be any
7 other reason for this hate team, can there?

8 MR. GOLDBERG: Any other reason than
9 what?

10 MS. KULASZKA: Well, if you testified
11 that it is the investigator's responsibility to do the
12 investigation and write a report, and the Commission's
13 responsibility is to make a decision as to whether to
14 proceed or not. So what is the purpose of this team?

15 MR. GOLDBERG: I believe in the work
16 you've done, you've seen investigative files. The
17 Commissioners have a mandate to make decisions on a
18 hundred cases a year.

19 We obviously cannot dump in front of
20 them five volumes of investigative files. The purpose
21 of the investigators and staff, in addition to doing
22 the investigations, is to boil down the investigation
23 results into a format that the Commissioners can use in
24 order to make their statutory decisions under the
25 Canadian Human Rights Act.

1 MS. KULASZKA: Have you ever dealt
2 with the fact that many of these complaints by Richard
3 Warman are being used by him for a political purpose.
4 You must know that?

5 MR. GOLDBERG: Most things in life
6 are political, in my opinion. If you mean that Mr.
7 Warman is dedicated to something that he feels
8 important and he is using the Canadian Human Rights Act
9 in order to further his -- names as a Canadian citizen,
10 then, yes, I guess you're right, that he is doing it
11 for political motives.

12 MS. KULASZKA: And you are aware that
13 it's a means of destroying his enemy. He ties them up.
14 They are so busy defending themselves, they can't do
15 anything else. You are aware of speeches he's given to
16 that effect?

17 MR. GOLDBERG: I'm aware of speeches
18 where he said that. That's not the view of the
19 Commission.

20 MS. KULASZKA: Why isn't that
21 vexatiousness?

22 MR. GOLDBERG: It's not vexatiousness
23 because the Commission was mandated by Parliament to
24 oversee the administration of the Canadian Human Rights
25 Act. The Canadian Human Rights Act provides that

1 anybody resident in Canada can file a complaint under
2 Section 13. The Commission is statutorily bound to
3 accept such complaints and to proceed with them using
4 its discretionary powers, and that is what it has done.

5 MS. KULASZKA: Yet, you've been
6 involved in rejecting many cases now by people who were
7 laying complaints against Richard Warman or CAIRS, and
8 in fact in the CAIRS case it was found by the
9 investigator that CAIRS was violating the Act and yet
10 the complaint was dismissed as vexatious.

11 MR. GOLDBERG: First of all, I would
12 point out that a recommendation from investigator is
13 just that, a recommendation to the Commission.

14 The Commission has absolute
15 discretion in deciding how to dispose of a case before
16 it. Absolute discretion, subject to the provisions of
17 the Canadian Human Rights Act. It does not at all
18 unusual for the Commission to arrive at a decision
19 which is contrary to the recommendation of the
20 investigator.

21 MS. KULASZKA: In Section 13 cases?

22 MR. GOLDBERG: That I'm not -- I
23 really don't know. But I know in cases --

24 MS. KULASZKA: Well, we're talking
25 about Section 13 cases. I realize that 99 percent of

1 the work of the Commission is not Section 13. But
2 we're talking about Section 13 cases right now.

3 MR. GOLDBERG: You have just pointed
4 out in at least one of the 50 approximately -- between
5 50 and 60 cases of the Commission has considered that
6 it made a decision other than what was recommended by
7 the investigator.

8 MS. KULASZKA: What cases?

9 MR. GOLDBERG: The case you just
10 mentioned. You said that the investigator made a
11 recommendation and the Commission decided otherwise.

12 MS. KULASZKA: No, the Commission did
13 not proceed.

14 MR. GOLDBERG: Yes, the -- excuse me.
15 The investigator recommended that the Commission --
16 from what you said, I took it to mean that the
17 investigator recommended that the complaint proceed.

18 MS. KULASZKA: No, the recommendation
19 was that it not proceed on the grounds a complaint was
20 trivial, frivolous, vexatious and made in bad faith.
21 And that it did not proceed, Commission made that
22 decision.

23 THE CHAIRPERSON: I'm not quite sure
24 about the hypothesis. In the prior question you
25 suggested to the witness the investigator said the

1 complaint proceed, but the Commission, in turn, opted
2 to not proceed on those grounds.

3 MS. KULASZKA: I apologize if I
4 misstated. Obviously the recommendation was that the
5 complaint not proceed on the grounds that it was
6 trivial and vexatious, and that was accepted by the
7 Commission.

8 THE CHAIRPERSON: So it wasn't a he
9 reversal of what the investigator said.

10 MS. KULASZKA: No.

11 THE CHAIRPERSON: That's what you
12 gave us to understand.

13 MS. KULASZKA: I'm sorry, I've
14 misspoken.

15 Do you remember the CAIRS case? It's
16 just -- it was decided just this year not to proceed.
17 So you must have dealt with this -- we'll just look at
18 the complaint. I'll get the date.

19 It was October 2006 that Dean Steacy
20 filed his Section 40, 41 analysis report. That's just
21 last fall. Do you remember that case?

22 MR. GOLDBERG: I do not remember the
23 case in specific, but I remember having discussions of
24 these type of cases, yes.

25 MS. KULASZKA: Do you understand how

1 people can start to have contempt for the Commission
2 because of this type of perceived bias on the part of
3 the Commission?

4 MR. GOLDBERG: No, I do not. I
5 should say there is no bias on on the part of
6 Commission.

7 MS. KULASZKA: You don't recognize
8 that there is bias?

9 MR. GOLDBERG: There is no bias. The
10 Commission is following its statutory mandate.

11 THE CHAIRPERSON: Ms. Kulaszka, do
12 you expect him to say there is bias? Do you honestly
13 expect -- where are you going with these questions?

14 MS. KULASZKA: In this e-mail he's
15 concerned about the perceived bias of the Commission,
16 so I'm wondering if he's concerned about how people are
17 perceiving these decisions.

18 MS. KULASZKA: Do you monitor at all
19 how the Commission is perceived on the Internet by
20 people discussing these cases?

21 MR. GOLDBERG: No, we do not.

22 MS. KULASZKA: So you monitored Ernst
23 Zundel and Holocuast denial but today you don't monitor
24 how people are perceiving the Commission?

25 MR. GOLDBERG: I never testified that

1 I monitored Ernst Zundel or any other website.

2 MS. KULASZKA: I think the documents
3 show you were.

4 MR. GOLDBERG: The documents show
5 that I visited websites on occasion for research
6 purposes. In my mind, monitoring means you do
7 something on an ongoing basis, that you have some sort
8 of periodic system of looking at sites and that you do
9 that on -- in an ongoing way, and I have never done
10 that.

11 MS. KULASZKA: I'll give you an
12 example. We'll go to -- we'll go to -- what is this,
13 R-19, let's just look at that for a minute.

14 MR. GOLDBERG: R-19, which is R-18.

15 MS. KULASZKA: Is yours misfiled?
16 Let's go to tab 9.

17 MR. GOLDBERG: Yes.

18 MS. KULASZKA: Now, we won't go
19 into -- this is a complaint that's been recently laid
20 under Section 13 by Harry Abrahms and B'nai Brith
21 against a website in B.C. It's called Peace, Earth and
22 Justice.

23 THE CHAIRPERSON: He hasn't found it
24 yet.

25 MR. GOLDBERG: You said R-9?

1 MS. KULASZKA: Sorry, tab 9.

2 THE CHAIRPERSON: Tab 9 or 8?

3 MS. KULASZKA: Tab 9.

4 MR. GOLDBERG: What I have is
5 something called --

6 MS. KULASZKA: Chris Cook. "Getting
7 with the program"?

8 MR. GOLDBERG: Yes. Programme.

9 MS. KULASZKA: We won't get into the
10 merits of that complaint obviously, but what is at tab
11 9 are a whole series of articles on the Internet
12 concerning this complaint.

13 Chris Cook apparently is one of the
14 respondents. He talks about the fear that has been
15 engendered by this complaint. The next article is,
16 "Loonies tune out. B'nai Brith
17 shuts down peace activists in
18 Canada."

19 The next article -- and there's a lot
20 of comments so people are talking about what the
21 Commission is doing.

22 The next article,
23 "When monopolization of the
24 media fails that squash freedom
25 of speech, Canadian Zionists

1 area?

2 MR. GOLDBERG: Look into what area?

3 MS. KULASZKA: What is happening to
4 the reputation and legitimacy of the Commission as a
5 result of these complaints under Section 13?

6 MR. GOLDBERG: I would answer that in
7 two ways: First of all, the Commission has no option
8 except to pursue complaints that are properly filed
9 under Section 13.

10 To repeat again, we are a statutory
11 body. We are governed by the Canadian Human Rights
12 Act. The Canadian Human Rights Act allows for people
13 resident in Canada to file complaints. They can file
14 complaints under Section 13. If the Commission
15 receives a complaint, it has to investigate the
16 complaint.

17 The first part of your question, are
18 we concerned with our legitimacy? Yes, of course we
19 are concerned about our legitimacy. But we maintain
20 our legitimacy by carrying out the mandate given to us
21 by Parliament, the courts and the Tribunal to the best
22 of our ability.

23 We cannot, and it would be
24 inappropriate for us to be swayed by public opinion.
25 That is not the mandate that was given to us by

1 Parliament.

2 If members of the public are
3 concerned about the way the Commission is administering
4 the Canadian Human Rights Act, they can speak to their
5 members of Parliament and make those concerns known.
6 The members of Parliament, in its wisdom, can decide
7 whether it's necessary or not to amend the Canadian
8 Human Rights Act.

9 MS. KULASZKA: Well, I guess that's
10 what we're here for, to decide about this law.

11 I would like to produce those
12 articles because I will be using that in argument. They
13 are very interesting articles about discussion about
14 that -- about the Commission and it goes to Canadian
15 values.

16 THE CHAIRPERSON: Can you tell me
17 where their origin is? Can you tell me how you came
18 about getting them?

19 MS. KULASZKA: I printed them off the
20 Internet.

21 THE CHAIRPERSON: You printed them
22 off the Internet. Can you give us some dates here? I
23 say May 31st, 2007 at the bottom right-hand corner of
24 the first one.

25 MS. KULASZKA: They are PDFs and the

1 date they are created and printed is on date on the
2 bottom.

3 MR. GOLDBERG: Perhaps out of an
4 excess of caution, could I just say something further?

5 THE CHAIRPERSON: Yes.

6 MR. GOLDBERG: Ms. Kulaszka said,
7 we'll take it for granted these are not right-wing
8 websites. I have no knowledge whether they are or are
9 not.

10 MS. KULASZKA: And that's not
11 evidence. Are you aware of any of those websites,
12 Palestine Chronicle, Dissident Voice?

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

14 MS. KULASZKA: What websites do you
15 look at on a fairly regular basis?

16 THE CHAIRPERSON: We haven't resolved
17 the issue, Ms. Kulaszka.

18 MS. KULASZKA: I'm sorry.

19 THE CHAIRPERSON: What do the others
20 have to say?

21 MR. FOTHERGILL: I'm not aware of
22 these websites either. They don't really fall into the
23 same bracket as, for example, a Globe and Mail article
24 of a National Post article. I don't think we have in
25 knowledge of how legitimate these websites are. They

1 could certainly be admitted for what they are, which is
2 to say printouts from websites of uncertain origin or
3 legitimacy. But what use could then be made of them?
4 I don't know.

5 THE CHAIRPERSON: So it's sort of --
6 again, you are acknowledging the genuineness of the
7 printout. You are not questioning Ms. Kulaszka's --

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

9 THE CHAIRPERSON: -- assertion that
10 she found these on the Internet from these URLs that we
11 see at the top and that she printed them.

12 MR. FOTHERGILL: But these are not
13 the kinds of publications that the Tribunal could take
14 judicial notice of of being in any way representative
15 of what I might term mainstream thinking.

16 THE CHAIRPERSON: That would be an
17 argument that you would make.

18 MS. BLIGHT: Nor, of course, are they
19 evidence of any significant public outcry or
20 dissatisfaction about the Commission.

21 THE CHAIRPERSON: That would be a
22 point you would raise in argument. But you don't
23 question the genuineness. The standard I've been going
24 on in terms of allowing exhibits to be filed or
25 produced, has not been to determine the veracity of

1 what's being said. Simply that this is a genuine
2 document, then you can argue furthermore on its
3 probative value.

4 You are saying it has virtually no
5 probative value.

6 MS. BLIGHT: We accept it's a
7 printout from the Internet.

8 THE CHAIRPERSON: To that extent,
9 then, it's produced.

10 MS. KULASZKA: You had testified
11 before you do go to the freedomsite.org and look at it
12 once in a while. What other websites do you look at?

13 MR. GOLDBERG: Well, actually, the
14 number of websites I look at at work, it's quite
15 limited. I do occasionally, just to understand what's
16 happening, look at websites that have been identified
17 in the past or currently. For example, as you are well
18 aware, Simon Wiesenthal Centre each year puts out a CD
19 on hate and terrorism websites. And I look at that CD,
20 sometimes I actually go on-line to see those websites
21 live.

22 Also, of course, I look at websites
23 that are dedicated to fighting anti-racism websites and
24 sites doing research on hate on the Internet and
25 sometimes those sites will themselves have information

1 about the websites that they're studying, et cetera.

2 MS. KULASZKA: Let's go onto page 21.

3 THE CHAIRPERSON: Of what?

4 MS. KULASZKA: Sorry, to tab 4 of
5 R-17.

6 Now, with respect to the e-mail on
7 page 20, what organization was that?

8 MR. GOLDBERG: I believe it was the
9 Canadian Jewish Congress.

10 MS. KULASZKA: Did they subsequently
11 put a link to the Commission website up?

12 MR. GOLDBERG: A link to the
13 Commission website?

14 MS. KULASZKA: Yes, I think you
15 suggested that. However, you could certainly include a
16 link to the CHRC website.

17 MR. GOLDBERG: I don't know if they
18 did.

19 MS. KULASZKA: Turning to page 21.
20 What is the International Network Against Cyber Hate?

21 MR. GOLDBERG: It's an
22 organization -- it's a worldwide NGO that consists of
23 various governmental and nongovernmental agencies in I
24 think about 20 countries that exchange information
25 about hate on the Internet.

1 MS. KULASZKA: Is Richard Warman a
2 director?

3 MR. GOLDBERG: I have no idea.

4 MS. KULASZKA: You don't know who the
5 Canadian representative is?

6 MR. GOLDBERG: No, I do not. Well,
7 actually, excuse me. I believe that Mr. Dutton was
8 associated with it, and I do recall some -- something
9 about Mr. Warman having some association with it, but I
10 don't know if he's on the Board of Directors.

11 MS. KULASZKA: So Alan Dutton is the
12 director?

13 MR. GOLDBERG: I said I recall
14 hearing something. I don't know if that's accurate or
15 not but I think -- I just recall there was some comment
16 that he might be involved with it.

17 MS. KULASZKA: And who is the
18 representative who appeared at the hate on the Internet
19 conference from that organization?

20 MR. GOLDBERG: I'm sorry, I don't
21 recall her name. She's from The Netherlands, and it's
22 not coming to my mind right now.

23 MS. KULASZKA: This was not a secret
24 hearing, was it? Secret conference?

25 MR. GOLDBERG: It was not secret, it

1 was by invitation.

2 MS. KULASZKA: It was open to the
3 public?

4 MR. GOLDBERG: No, it was not open to
5 the public.

6 MS. KULASZKA: And you published the
7 proceedings?

8 MR. GOLDBERG: We published a
9 selection of papers produced by people who were at the
10 conference.

11 MS. KULASZKA: Who was the director
12 of investigations that moderated the panel?

13 MR. GOLDBERG: I believe --

14 MS. BLIGHT: Mr. Chairman, that name
15 has been -- public interest objection has been made
16 with respect to that name.

17 THE CHAIRPERSON: It's -- public
18 interest exception has been able the respect to the
19 release of the director of investigations of the
20 Canadian Human Rights Commission?

21 MS. BLIGHT: It's a matter of
22 personal security.

23 THE CHAIRPERSON: My problem with
24 this is, what's going on here, I believe, if I go on
25 service call GEDS, I can get that name right now. I

1 can go on my computer and probably get that, right?

2 MS. BLIGHT: I'm not aware of that.

3 THE CHAIRPERSON: Government
4 Electronic Directory Service. Is the reference there
5 to the director of investigations of the Commission?

6 MR. GOLDBERG: Yes, it is.

7 THE CHAIRPERSON: Even if the name
8 was there, Ms. Kulaszka, I wouldn't know what I would
9 make of it anyway. It's the director of investigations
10 of the Commission.

11 MS. KULASZKA: Okay, Mr. Goldberg,
12 turn to page 22. This appears to be a series of
13 e-mails about a meeting with the Canadian Association
14 of the Internet Providers which you attended; is that
15 right?

16 MR. GOLDBERG: That's what it appears
17 to be, yes.

18 MS. KULASZKA: Did the secretary
19 general attend with you?

20 MR. GOLDBERG: Yes, he did.

21 MS. KULASZKA: And how long was that
22 meeting?

23 MR. GOLDBERG: Couple of hours
24 probably. Well, it says from 1:30 to 2:30.

25 MS. KULASZKA: What was the purpose

1 of the meeting?

2 MR. GOLDBERG: Purpose of the meeting
3 was to discuss our common interest in the ensuring that
4 the Internet was used in a way that insured that the
5 laws of Canada were abided by.

6 MS. KULASZKA: Could you speak into
7 the mic, just hold it up close.

8 MR. GOLDBERG: The purpose of the
9 meeting was to discuss with the Canadian Association of
10 Internet Providers -- in fact, as I recall this
11 meeting -- in fact, I'm certain this meeting was held
12 at their request because they wanted to discuss with
13 us, further to our previous discussions, ways that
14 Internet service providers, members of their
15 organization, could cooperate and work together to make
16 sure that the Internet was -- that their services
17 operated in a way that was consistent with the laws of
18 Canada, including the Canadian Human Rights Act.

19 MS. KULASZKA: You said, "ways they
20 could cooperate". So what ways did you discuss?

21 MR. GOLDBERG: I believe we discussed
22 things like acceptable use policies, things such as
23 them -- they had already done work with regard -- they
24 had their own website from the Canadian Association of
25 Internet providers that had information about the safe

1 use of the Internet: Advice for parents, advice for
2 regular users, how to avoid illegal activity on
3 Internet such as fraud and child pornography and child
4 sexual exploitation, as well as some information about
5 hate on the Internet.

6 We discussed with them whether we
7 might work with them to perhaps do some joint education
8 initiatives or to -- they might wish to appear,
9 participate in work we were doing or we could
10 participate in work they were doing. We talked about
11 internal complaints processes.

12 I don't recall the exact specifics,
13 but from my recollection these are the kind of matters
14 that were discussed at that meeting.

15 MS. KULASZKA: That series of e-mails
16 seems to go from 22 over to 23 to 24. You are just
17 setting dates. 25, 26, we'll go to 27. It appears the
18 board meeting is scheduled October 4th or 5th in
19 Ottawa. You are still trying to set dates. It starts
20 off,

21 "Hi, Harvey. Out of scope. I
22 met today with the CAIP content
23 committee and they agreed it
24 would be a good idea for the
25 Commissioner to present at the

1 next CAIP board of directors
2 meeting. I said he would be
3 talking about the Commission
4 strategies with regard to hate
5 and terrorism content on the
6 Internet as well as the desire
7 for collaboration partnership
8 with CAIP to proactively deal
9 with this issue. I hope I
10 represented your intent
11 accurately."

12 Did he represent your intent
13 accurately?

14 MR. GOLDBERG: With the exception of
15 the reference to terrorism, yes.

16 MS. KULASZKA: What is the CAIP
17 Content Committee?

18 MR. GOLDBERG: I assume that it's a
19 committee of the Canadian Association of Internet
20 Providers that deals with content. That's all I know.

21 MS. KULASZKA: And the Commission's
22 desire to "proactively deal with hate on the Internet".
23 What does "proactively" mean?

24 MR. GOLDBERG: Not reactively, in
25 furtherance of its powers under 27(H) of the Canadian

1 Human Rights Act.

2 MS. KULASZKA: So you want to deal
3 with it before it reaches a judicial stage?

4 MR. GOLDBERG: Before it reaches a
5 complaint, yes.

6 MS. KULASZKA: To the Commission, you
7 mean?

8 MR. GOLDBERG: That's correct.

9 MS. KULASZKA: Over on page 28 --
10 Section 27,

11 "It was good meeting with you on
12 July 29th. The Commission looks
13 forward to working with CAIP on
14 this important issue."

15 And what was the issue? Was this a
16 series -- is this -- is this another series or is this
17 a different e-mail?

18 MR. GOLDBERG: Don't know. I don't
19 see any date on it, so I can't really locate it. Oh,
20 okay, for the rest of August. I'm not sure
21 particularly which meeting this is referring to. As
22 I've already testified, there was several meetings.

23 MS. KULASZKA: 28, it appears there's
24 large sections taken out. Section 37, all page 29 and
25 all of page 30.

1 Could I just ask the Commission
2 counsel just to confirm what the specific -- specified
3 public interest is that's involved in these e-mails
4 from page 28, 29 to 30?

5 MS. BLIGHT: Mr. Chairman, may I
6 comment on that perhaps after the break when I have an
7 opportunity to look for and verify the original? I
8 can't recall right now.

9 THE CHAIRPERSON: Is that fair?

10 MS. KULASZKA: Yes, that's fair.

11 Turn to page 31. Mr. Goldberg, when
12 you have these meetings with various people who do you
13 report to?

14 MR. GOLDBERG: At the time I was
15 reporting to the secretary general.

16 MS. KULASZKA: Who would that be?

17 MR. GOLDBERG: It was Mr. Bob Ward.

18 MS. KULASZKA: Are any of these
19 e-mails so far reports to Mr. Ward about your meetings?

20 MR. GOLDBERG: I don't know. Seeing
21 that the two portions of the e-mails have been redacted
22 so I can't say with certainty, but I certainly know I
23 either reported via memo, conversation, telephone call
24 or e-mail to Mr. Ward on the upcoming of thse meetings.

25 MS. KULASZKA: Something to do with

1 CAIP. It's quite important, is it not, to your work?

2 MR. GOLDBERG: Yes, it is.

3 MS. KULASZKA: So would it be simply
4 by telephone?

5 MR. GOLDBERG: Mr. Ward and I had a
6 very -- I reported directly to him. We had a close
7 working relationship. I met with him just for a
8 regular weekly meeting at least -- excuse me, we met at
9 least every two weeks. We met sometimes several times
10 during the day. We had lots of conversations. He
11 encouraged us to give him oral briefings.

12 MS. KULASZKA: But for -- I mean, Mr.
13 Ward could drop dead tomorrow of a heart attack and
14 there has to be some sort of record, written record or
15 a file just to know what work has gone on, what
16 meetings have taken place, what was discussed. Would
17 that be by e-mail?

18 MR. GOLDBERG: I just testified the
19 ways that the information could be conveyed to Mr.
20 Ward.

21 MS. KULASZKA: Well, with respect to
22 these series of meetings with CAIP, how did you report?

23 MR. GOLDBERG: I just testified that
24 there could have been a number of ways I reported. I
25 don't recall whether I wrote -- first of all, I can't

1 identify from these e-mails which meetings were which
2 meetings, and I certainly can't remember if I wrote a
3 memo to the secretary general on this meeting or on
4 another meeting. I certainly -- as I said, I certainly
5 briefed him, certainly sent e-mails to him, certainly
6 wrote memos to him.

7 MS. KULASZKA: But you did a search
8 of your documents and e-mails, so you know what you've
9 disclosed?

10 MR. GOLDBERG: That's correct.

11 MS. KULASZKA: We'll go to the end of
12 the e-mails but I would like you to keep that question
13 in mind and just point out the e-mail or the memo where
14 you report to Mr. Ward.

15 MR. GOLDBERG: I just testified that
16 I do not have a recollection of exactly which method I
17 used. I also testified yesterday that I searched my
18 files personally looking at each electronic file I had
19 and all the e-mails that I thought were relevant, and
20 that I provided all that information, to the best of my
21 ability, the best of my knowledge, to Mr. Vigna.

22 THE CHAIRPERSON: In your absence we
23 addressed that issue, and I think Commission counsel
24 will be speaking to you eventually on something
25 additional that they need to be required on that front.

1 I think the question was more, if I
2 understand correctly, Ms. Kulaszka, as we proceed
3 through the balance of the e-mails in this tab, if you
4 happen to see one that fits into the category of that
5 last question, then identify it for us.

6 MR. GOLDBERG: Absolutely.

7 THE CHAIRPERSON: That's what she's
8 saying.

9 MS. KULASZKA: If we can look at page
10 31, a representative of CAIP did participate in the
11 Commission's conference on hate on the Internet?

12 MR. GOLDBERG: That's correct.

13 MS. KULASZKA: And who was that?

14 MR. GOLDBERG: I believe it was
15 Mr. --

16 MS. BLIGHT: Just a moment. I do
17 believe there has been a claim for section -- an
18 objection made under Section 37 of the Canada Evidence
19 Act with respect to the identity of individuals
20 representing CAIP, and that would be a matter of
21 personal security.

22 In any event, it's irrelevant to know
23 who was there. We do know the representative did
24 assist.

25 THE CHAIRPERSON: There is a Section

1 27 objection. The legislation doesn't speak only of
2 documents. It also speaks of information, including
3 testimony.

4 However, in any event, I think the
5 last point is well taken, Ms. Kulaszka. I wouldn't
6 know the person anyways. We know that a CAIP
7 representative was there, right?

8 MS. KULASZKA: If you could turn to
9 page 32. Just before the Section 37 claim in middle of
10 page it says,

11 "Please note CCTA will be unable
12 to send a representative."

13 Who is the CCTA?

14 THE CHAIRPERSON: Where is that?

15 MS. KULASZKA: There's a blank spot
16 in the middle of the page. The paragraph above that.
17 It says,

18 "Please note CCTA will be unable
19 to send a representative."

20 MR. GOLDBERG: I honestly cannot
21 remember what the acronym stands for. I do know what
22 it is. It's -- the Canadian Association of Internet
23 Providers is part of a broader organization of high
24 technology, telecoms and other companies, and this is
25 their industry organization. And they provide the

1 staff support and offices for the Canadian Association
2 of Internet providers.

3 MS. KULASZKA: And they sent a
4 representative?

5 MR. GOLDBERG: According to this,
6 they were not able to send a representative, except for
7 part of the time I understand.

8 MS. KULASZKA: At the bottom there's
9 an e-mail from you. The last paragraph it states,
10 "With respect to the conference
11 we would like to invite a
12 representative of CAIP to
13 participate on a panel on civil
14 society approach as to
15 combatting hate on the
16 Internet."

17 What do you define as civil society
18 approaches?

19 MR. GOLDBERG: Civil society is that
20 sector of public activity which is outside of the
21 government sector of public activity. So it's
22 nongovernmental organizations, citizens, et cetera.

23 MS. KULASZKA: Why are you constantly
24 using words which are associated with hate and
25 violence, war, such as "combatting", "fighting"? You

1 even address one e-mail "Dear hate fighters". Why do
2 you use these types of words?

3 MR. GOLDBERG: The Canadian Human
4 Rights Act, Section 13, makes reference to hate
5 messages.

6 MS. KULASZKA: I'm talking about the
7 words "combatting", "fighting". We'll come along to
8 more. This kind of war-like, warrior-like language?

9 MR. GOLDBERG: I consider it in the
10 same context as when we say, the police are fighting
11 crime, or we're fighting a war against illicit drug use
12 or we're fighting a war against smuggling. Those
13 are -- I agree they're not precise legal terms, but
14 they are generally used in Canadian society to talk
15 about enforcement agencies which are fulfilling their
16 mandate under their legislation to pursue various types
17 of activities which were considered by Parliament to be
18 inappropriate for Canadians to be involved in.

19 MS. KULASZKA: Do you ever the use
20 the word ameliorate?

21 MR. GOLDBERG: Yes, I've used the
22 word ameliorate often.

23 MS. KULASZKA: You can point that out
24 in your e-mails as we go along.

25 Now, in the overview which you erote

1 and which appears on the Commission website, we went
2 over that yesterday, it's at tab 21, you stated and
3 wrote that the anti-hate team has special expertise. Do
4 you remember that?

5 MR. GOLDBERG: Yes, I do.

6 MS. KULASZKA: In fact, when you were
7 monitoring Ernst Zundel, you in fact, or some threads
8 I think it was on Freenet, you sent to Mr. Bill Pentney
9 some of that material. You asked for a legal opinion
10 on whether it could possibly a contravention of Section
11 13. Do you remember that?

12 MR. GOLDBERG: I do remember that but
13 I never testified that I was monitoring Mr. Zundel.

14 MS. KULASZKA: Then how do you expect
15 Internet service providers to know what constitutes
16 hate on their website, or their websites?

17 MR. GOLDBERG: By reading the Supreme
18 Court decision in the Taylor case.

19 MS. KULASZKA: You think that's
20 enough?

21 MR. GOLDBERG: I believe with the
22 assistance of their legal advisors and these companies
23 to my understanding, all have the resources in which to
24 assist able, legal counsel that reading the Taylor
25 decision and other decisions of the Honourable

1 Tribunal, they would have a very in depth understanding
2 of what constitutes hate in the meaning of the Canadian
3 Human Rights Act.

4 MS. KULASZKA: So they would have to
5 have lawyers?

6 MR. GOLDBERG: I wouldn't say that
7 they would have to have lawyers, but the lawyers could
8 be of assistance to them, yes.

9 MS. KULASZKA: Haven't you testified
10 that it all depends on context whether something is
11 hatred?

12 MR. GOLDBERG: Yes, context is a
13 consideration of whether something is hatred.

14 MS. KULASZKA: Isn't hatred
15 subjective?

16 MR. GOLDBERG: I don't believe so. I
17 believe the Supreme Court has set out criteria for
18 determining what is hatred. As you well know, the
19 Supreme Court made it very clear that people can say
20 things that are very distasteful, that people don't
21 like, that people object to, that people find very
22 annoying, troublesome et cetera, et cetera, et cetera.

23 But the court did say that at a
24 certain level that hatred reaches the point where it
25 infringes upon the right of a person to be free from

1 hatred. And I believe, if I recall correctly, they
2 used the wording, "extreme feelings of detestation and
3 culmony."

4 MS. KULASZKA: So, in essence, we
5 don't need Tribunals really, do we?

6 MR. GOLDBERG: We certainly need
7 Tribunals.

8 MS. KULASZKA: Why?

9 MR. GOLDBERG: The purpose of a
10 Tribunal, as you well know, is to look at a specific
11 case in the context of the statute, the juris- -- the
12 jurisprudence of the Tribunal and the jurisprudence of
13 the courts. And on that basis, on the basis of the
14 evidence put before it, make a decision as to whether
15 the Canadian Human Rights Act has been breached.

16 MS. KULASZKA: Do you see the
17 inconsistency in your testimony?

18 MR. GOLDBERG: No, I see no
19 inconsistency whatsoever in my testimony, no more than
20 I see the inconsistency of why we need courts. If we
21 know it's illegal to rob banks, why do we need courts
22 to determine if somebody has robbed a bank.

23 MS. KULASZKA: How about small ISPs
24 who don't have money for lawyers?

25 MR. GOLDBERG: What about them?

1 MS. KULASZKA: Well, your testimony
2 is that ISPs will have lawyers who can tell them what's
3 hate.

4 MR. GOLDBERG: I said that that could
5 be helpful to them. The Commission does not run the
6 court system, as you well know. Various organizations
7 and individuals with various financial resources find
8 themselves in front of courts in Canada. Some of them
9 can get assistance through Legal Aid, some of them
10 can't. That's the situation that occurs in all court
11 proceedings.

12 MS. KULASZKA: Mr. Goldberg, what
13 you're really meaning with CAIP for is to avoid
14 complaints and avoid the Tribunal. You want systems
15 set up to avoid complaints. That's what you testified.

16 MR. GOLDBERG: That's correct.

17 MS. KULASZKA: So you're looking at
18 ways where basically websites and material can be taken
19 down without complaints, without going before a
20 Tribunal?

21 MR. GOLDBERG: I will repeat again:
22 The Commission has a mandate by persuasion, publicity
23 or any other means it considers appropriate to
24 discourage and reduce discriminatory practices.

25 We talked to all sorts of

1 organizations with regards to all sorts of
2 discrimination, disability discrimination, sexual
3 harassment, racial discrimination, family status
4 discrimination.

5 We talk to them, we work with them in
6 order to assist them in either avoiding situations
7 which could result in complaints or putting in places
8 mechanisms where they can resolve complaints themselves
9 without redress to the Commission.

10 So, yes, one of our objectives in
11 talking to Internet service provider is certainly, if
12 at all possible, to reduce the number of complaints
13 that are filed with the Commission and the number of
14 complaints that go to Tribunal.

15 The Commission firmly believes that
16 is in the public interest of Canada. I should point
17 out, however, that the Commission is statutorily bound
18 to take any complaints that are filed with it and to
19 proceed in accordance with the law.

20 MS. KULASZKA: Turning to page 33.
21 This is a letter from someone at CAIP, thanks you for
22 the --

23 MR. GOLDBERG: Where?

24 MS. KULASZKA: We're just continuing
25 on with the e-mails.

1 THE CHAIRPERSON: Still at tab 4.

2 MR. GOLDBERG: 33, you said?

3 MS. KULASZKA: Page 33. Yes.

4 And you had a closed door meeting
5 with members of the CAIP and CCTA?

6 MR. GOLDBERG: I don't recall whether
7 the door was closed or not. I'm sorry.

8 MS. KULASZKA: You indicated that you
9 were planning to host a one-day conference in Ottawa in
10 December.

11 "Following a conversation with
12 the CCTA, we would like to
13 suggest that at the same time a
14 scheduled closed door round
15 table involving certain CAIP and
16 CCTA members and other directly
17 affected parties to be mutually
18 identified to facilitate an open
19 and frank discussion of the
20 issues, possibilities and
21 challenges associated with
22 addressing on-line hate
23 messaging."

24 Correct?

25 MR. GOLDBERG: Yes.

1 MS. KULASZKA: Do you have a closed
2 door meeting?

3 MR. GOLDBERG: We had a meeting, yes.

4 MS. KULASZKA: Is this a separate
5 meeting from the meetings with the board of directors,
6 obviously. This is a further meeting?

7 MR. GOLDBERG: I believe so, yes.

8 MS. KULASZKA: Do you have a memo
9 concerning the results of that meeting?

10 MR. GOLDBERG: I don't recall if I
11 wrote a specific memo on that meeting.

12 MS. KULASZKA: Who went to the
13 meeting with you from the Commission?

14 MR. GOLDBERG: I believe there were a
15 number of representatives from the Commission. I
16 believe that the secretary general was there. I think
17 there was -- one of our legal officers was there, I was
18 there, I can't really recall who else was there.

19 MS. KULASZKA: Was Richard Warman
20 there?

21 MR. GOLDBERG: Definitely not.

22 MS. KULASZKA: Now, these meetings,
23 ongoing meetings with CAIP, is some report being made
24 to someone higher up in Parliament?

25 MR. GOLDBERG: No.

1 MS. KULASZKA: How you were going to
2 discuss issues, possibilities and challenges. What
3 were the challenges that concerned CAIP?

4 MR. GOLDBERG: Well, as is very clear
5 from the evidence that we've been discussing over the
6 last three days, the whole issue of how to operate
7 Internet services in a way that they provide a safe and
8 lawful place for people to exchange information is a
9 very complicated and multi-faceted issue and those are
10 the kinds of challenges that would be faced.

11 MS. KULASZKA: Did they mention
12 on-line bulletin boards, message boards at all?

13 MR. GOLDBERG: I don't recall.

14 MS. KULASZKA: Turning to page 34.
15 You often use the word "stakeholders". Who do you
16 define as stakeholders?

17 MR. GOLDBERG: Stakeholders are
18 generally any group or individuals in the Canadian
19 public that have an interest in the mandate and
20 operations of the Canadian Human Rights Commission and
21 whom it would be beneficial for the Commission to
22 exchange views and to work with.

23 MS. KULASZKA: Turning over several
24 pages. These are just several personal e-mails about
25 meetings. If you could turn to page 39?

1 THE CHAIRPERSON: Page 39?

2 MS. KULASZKA: Page 39. You're
3 replying to an e-mail from someone from the secretary
4 of the Internet governmental working group. Did you
5 have any further correspondence with him?

6 MR. GOLDBERG: I'm sorry, this is
7 page 39?

8 MS. KULASZKA: Page 39.

9 MR. GOLDBERG: Talking about the
10 document at page 39. Where is this reference?

11 MS. KULASZKA: Series of e-mails. I
12 think it starts on page 41.

13 MR. GOLDBERG: Where is the reference
14 to the inter-departmental?

15 THE CHAIRPERSON: I see it in the
16 paragraph near the bottom. I don't know if it's
17 mentioned.

18 MS. KULASZKA: "Dear Mr. Goldberg."
19 This is on page 39. "Thank you for your note below."
20 He wants to apologize.

21 MR. GOLDBERG: Okay. Yes. What is
22 your question?

23 MS. KULASZKA: What is the secretary
24 of the inter-governmental working group. So you were
25 the one who sent the initial e-mail to him?

1 MR. GOLDBERG: That's correct.

2 MS. KULASZKA: And was this the only
3 series of e-mails you exchanged with each other?

4 MR. GOLDBERG: To the best of my
5 recollection, yes.

6 MS. KULASZKA: So you sent a link to
7 your website and that was the end of the
8 correspondence?

9 MR. GOLDBERG: I sent a link to my
10 website?

11 MS. KULASZKA: To the Commission
12 website. That's at the top of page 39. I think these
13 e-mails are replying to each other, so the last one is
14 first.

15 MR. GOLDBERG: Yes, I sent a link
16 with -- a link to it appears the speech of the Chief
17 Commissioner to the December 2005 conference.

18 MS. KULASZKA: Was this the only
19 e-mail correspondence you had with this person?

20 MR. GOLDBERG: I can't really say. I
21 don't recall others, but there may be.

22 MS. KULASZKA: Turning to page 43. I
23 think up to that point it just seems to be a series of
24 e-mails concerning that matter.

25 So turning to page 43. This is an

1 e-mail from you with respect to a visit to Toronto and
2 you were going to meet with the Canadian Jewish
3 Congress, B'nai Brith and the CRRF. Could you tell me
4 what CRRF is?

5 MR. GOLDBERG: Canadian Race
6 Relations Foundation.

7 MS. KULASZKA: And who did you meet
8 with?

9 MS. BLIGHT: Mr. Chair, the name of
10 the representative has been expunged in accordance with
11 Section 37 of the Act. It's a matter of personal
12 privacy, security and protecting the relationship
13 between the Commission and stakeholders.

14 MS. KULASZKA: I would like the
15 answer to this question because I think at that time
16 Karen Mock was the head of that foundation and we --

17 MR. GOLDBERG: At the time Karen Mock
18 was not the head of the Canadian Race Relations
19 Foundation.

20 MS. KULASZKA: So did you not meet
21 with her?

22 MR. GOLDBERG: I did not meet with
23 Karen Mock.

24 MS. KULASZKA: What was the purpose
25 much these meetings?

1 MR. GOLDBERG: The purpose of the
2 meetings was in furtherance of Section 27(H) of the
3 Canadian Human Rights Act.

4 "The Canadian Race Relations
5 Foundation was established by
6 Parliament of Canada to do
7 research in the area of race
8 relations pursuant to the
9 settlement agreement concerning
10 the detention of Japanese,
11 Canadians and immigrants during
12 the Second World War. I would
13 point out that one of the
14 provisions of Section 27 is the
15 Commission shall undertake or
16 sponsor research programs
17 relating to its duties and
18 functions under the Act."

19 And under 27(C),

20 "We shall maintain close liaison
21 with similar bodies."

22 That's what we were doing in meeting
23 with the Canadian Race Relations Foundation.

24 MS. KULASZKA: You've given me your
25 statutory authorization. I just want to know what the

1 purpose of the meetings were?

2 MR. GOLDBERG: The purpose of the
3 meeting was to discuss issues of common interest, such
4 as race relations, hate on the Internet and other
5 similar issues.

6 MS. KULASZKA: What were the concerns
7 of the Canadian Jewish Congress about hate on the
8 Internet?

9 MR. GOLDBERG: I think I testified to
10 that yesterday but I'll do so again.

11 We discussed with them -- I updated
12 them on the work that the Commission was doing with
13 respect to its overall strategy on the hate on the
14 Internet; sought their views on whether they thought --
15 what they thought about Section 13 and how the
16 Commission was proceeding with Section 13 cases.

17 MS. KULASZKA: And the Canadian
18 Jewish Congress, is not happy with Section 13, is it?

19 MR. GOLDBERG: Yesterday I testified
20 to the best of my knowledge that they are quite happy
21 with Section 13.

22 MS. KULASZKA: If you could look at
23 R-19. I added some articles at the end I would like
24 you to look at. One is called,

25 "Proposal wants ISPs to have

1 power to monitor effects of
2 websites."

3 THE CHAIRPERSON: I haven't -- what
4 page are you at?

5 MS. KULASZKA: Tab 15.

6 THE CHAIRPERSON: Tab 15 of R-19.
7 Okay.

8 MS. KULASZKA: You seem to have a
9 problem with the numbering.

10 MR. GOLDBERG: You said 15?

11 MS. KULASZKA: Tab 15.

12 THE CHAIRPERSON: This is the article
13 of Canada.com?

14 MS. KULASZKA: Yeah, it's an article
15 from Canadian.com. "Proposal wants ISPs to have power
16 to monitor offensive websites."

17 And this was from June of 2006. And
18 Bernie Farber of the Canadian Jewish Congress had met
19 with senior managers from such major Internet providers
20 as Rogers, Cogeco and Sympatico and the proposal was to
21 give Internet service providers the powers to shut down
22 hate mongering or pornographic websites.

23 It received an enthusiastic response.
24 I'll just read from it.

25 "Farber proposed that major

1 Canadian Internet providers
2 devise a protocol based on
3 existing laws that would allow
4 them to remove hateful or
5 pornographic material at their
6 own discretion. It doesn't take
7 a lot to discern what is
8 pornographic and what is hate,
9 Farber said, as long as the
10 context is there, they have some
11 expertise to make those
12 decisions."

13 End of quote.

14 "Farber said, 'While his
15 proposal was very well received
16 there was some concern about how
17 customers would react if certain
18 content were filtered or
19 removed. My response is, let
20 them sue you', Farber said,
21 'this is a commercial business.'
22 A newspaper has to accept every
23 letter to the editor and an ISP
24 doesn't have to accept everybody
25 as a customer if they choose not

1 to."

2 Were you aware of that proposal put
3 forward by Mr. Farber?

4 MR. GOLDBERG: Yes, I was.

5 MS. KULASZKA: And have you discussed
6 that proposal with him?

7 MR. GOLDBERG: I believe in one of
8 our meetings he discussed with me what had transpired
9 at this conference that's referred to in the article. I
10 would point out the article makes no reference
11 whatsoever to Section 13.

12 MS. KULASZKA: So you've spoken to
13 him about it?

14 MR. GOLDBERG: Yes.

15 MS. KULASZKA: And does that
16 accurately represent what the Canadian Jewish Congress
17 is working towards?

18 MR. GOLDBERG: I don't know. I can't
19 vouch for the accuracy of the article. I can testify
20 Mr. Farber had told me that he had been at a meeting,
21 very higher level meeting with CEOs of telecom
22 companies, that he and some of his associates had
23 discussed with ISPs some system for them to voluntarily
24 remove material that was child pornography or could
25 constitute hate, and that he told me he had received a

1 good reception from these CEOs.

2 MS. KULASZKA: Have you worked with
3 the Canadian Jewish Congress on that procedure or that
4 proposal?

5 MR. GOLDBERG: No, I have not.

6 MS. KULASZKA: When you met with the
7 Canadian Jewish Congress, was that one of the things
8 you spoke about?

9 MR. GOLDBERG: I just testified that
10 Mr. Farber told me about it.

11 MS. KULASZKA: But I'm just asking,
12 was this a personal phone call or personal meeting or
13 was it the meeting that --

14 MR. GOLDBERG: When I met with him he
15 discussed this with me.

16 MS. KULASZKA: Now, what he is
17 proposing, is this very similar to what Clean Sweep is?

18 MR. GOLDBERG: Clean Feed?

19 MS. KULASZKA: Clean Feed.

20 MR. GOLDBERG: Yes, it seems somewhat
21 similar, yes.

22 MS. KULASZKA: Do you know what Clean
23 Feed is?

24 MR. GOLDBERG: I testified to what
25 Clean Feed was earlier in this proceeding.

1 MS. KULASZKA: Are you in contact
2 with people who operate that system?

3 MR. GOLDBERG: I have met with the
4 people who run cybertip.ca at their offices in
5 Winnipeg. Child Find Manitoba, yes. At the time I met
6 with them, they did not discuss with me Clean Feed.

7 As far as I know, it hadn't even been
8 developed at that time. This was about 18 months or
9 two years ago that I met with them. Apparently this is
10 development since then, but I'm aware of what it is
11 because of research that I did.

12 MS. KULASZKA: You are aware of it?

13 MR. GOLDBERG: I testified during
14 these proceedings that I'm aware of it and I explained
15 what it was.

16 MS. KULASZKA: I'm sorry, I just have
17 a hard time hearing you at times.

18 MR. GOLDBERG: I testified during
19 these proceedings what Clean Feed was. I was asked to
20 explain what Clean Feed was and I did so in some
21 detail. I could do so again, if you wish.

22 MS. KULASZKA: Do you support
23 websites being added to Clean Feed that allegedly
24 contain hate material?

25 MR. GOLDBERG: Do I support --

1 MS. KULASZKA: As the policy analyst
2 of the Commission, not you personally.

3 MR. GOLDBERG: I don't think that the
4 position -- that the Commission has a considered
5 position on this specific proposal as I've already
6 testified.

7 The Commission has encouraged by ISPs
8 to take steps consistent with Canadian law to ensure
9 that they operate in a manner that would be consistent
10 with Section 13, whether that -- I would have to do
11 more research on what they are proposing to know
12 whether or not that would be consistent.

13 MS. KULASZKA: Why did you meet with
14 them two years ago?

15 MS. KULASZKA: I met with them
16 because the Government of Canada, in its action plan
17 against racism, had proposed the establishment of a tip
18 line for I believe they called it hate -- yes, they
19 just called it hate on the Internet.

20 After discussions with officials in
21 the Department of Justice, I was informed that this
22 proposal and the action plan was based on the existing
23 system set up by Child Find Manitoba to deal with child
24 sexual exploitation and child pornography.

25 And I spoke to the director of that

1 organization on the phone several times and then I met
2 with them in Winnipeg to find out more about how their
3 operation operated.

4 MS. KULASZKA: We'll go back to the
5 e-mails at tab 4 in the other volume, page 44.

6 And page 44, it's an e-mail
7 concerning meetings, that you are going to meet with
8 Congress Jewish Congress, B'nai Brith, possibly CRRF to
9 brief them on our work on hate on the Internet. Do you
10 regularly brief these organizations on your work?

11 MR. GOLDBERG: Part of the
12 strategy -- the comprehensive Commission strategy on
13 hate on the Internet was to meet with the stakeholders
14 that were concerned with Section 13.

15 MS. KULASZKA: What other
16 organizations would you regularly brief as part of that
17 comprehensive strategy?

18 MR. GOLDBERG: It's an ongoing
19 strategy, so we intend to meet with many groups. We
20 met with Canadian Jewish Congress, B'nai Brith, the
21 Canadian Race Relations Foundation, the Canadian Arab
22 Federation, the Equality for Gays and Lesbians
23 Everywhere. I believe an organization called the
24 Muslim Council of Canada.

25 We've met -- those are the ones that

1 come to mind. There may be others.

2 MS. KULASZKA: Turning to page 45.
3 The subject is the B'nai Brith press conference. It
4 appears to be a reply to you.

5 You sent a letter to somebody where
6 you report, "Last week I met with officials of B'nai
7 Brith."

8 Would this be the report on the
9 meeting or is this just an e-mail about press
10 conference.

11 MR. GOLDBERG: Appears to be an
12 e-mail about the press conference.

13 MS. KULASZKA: Turning to page 46.
14 This is an e-mail from you. It's from July of 2006.
15 It's sent to EGALE. It starts off,

16 "As we discussed, the Commission
17 would appreciate an opportunity
18 to meet with representatives of
19 EGALE to discuss with tyou the
20 Commission's work regarding hate
21 on the Internet."

22 Had you met before with this
23 organization?

24 MR. GOLDBERG: No, I believe this was
25 the first meeting.

1 MS. KULASZKA: And how many meetings
2 have you had with them?

3 MR. GOLDBERG: I believe that one
4 meeting so far.

5 MS. KULASZKA: You talk about Section
6 13 hate messages. And several of these have involved
7 messages relating to the sexual orientation of
8 individuals or groups. What was the purpose of this
9 meeting?

10 MR. GOLDBERG: The purpose of the
11 meeting was to talk to them about Section 13 of the
12 Canadian Human Rights Act.

13 MS. KULASZKA: Did you want to
14 encourage EGALE to lay complaints, be aware that they
15 could lay complaints?

16 MR. GOLDBERG: We don't encourage
17 anybody to lay complaints. As part of our function
18 under 27, and I'll spare the Tribunal repeating it
19 again, part of our mandate is to educate and inform the
20 public about the duties and mandates of the Canadian
21 Human Rights Commission.

22 Part of that is the ability of
23 Canadians to use the Human Rights Commission to file
24 complaints alleging that a discriminatory act has
25 occurred.

1 MS. KULASZKA: So you're letting them
2 know the Act exists and they can lay complaints, they
3 can use it?

4 MR. GOLDBERG: Yes, absolutely.

5 MS. KULASZKA: Did you encourage
6 EGALE to provide information on possible hate sites to
7 the Commission?

8 MR. GOLDBERG: No, we did not.

9 MS. KULASZKA: Has EGALE laid any
10 complaints under Section 13?

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

12 MS. KULASZKA: Turning to the next
13 page, 47. This is an e-mail regarding a meeting with
14 Canadian Arab Federation.

15 "Thank you for meeting with me
16 last week in Toronto. As we
17 discussed, the Commission is
18 very interested in working with
19 any group of Canadians who may
20 be the victims or potential
21 victims of hate on the Internet.
22 As we discussed, the Commission
23 would be pleased to meet with
24 representatives of your
25 organization to brief them on

1 Section 13."

2 I gather from this e-mail you met
3 with someone from the Canadian Arab Federation?

4 MR. GOLDBERG: Yes, I did.

5 MS. KULASZKA: Did you later meet
6 with representatives of the organization itself?

7 MR. GOLDBERG: That has not occurred
8 yet, no.

9 MS. KULASZKA: So this was more like
10 a personal meeting with someone from the organization?

11 MR. GOLDBERG: I don't know what you
12 mean by "a personal meeting". I was meeting them in my
13 official capacity. He was meeting me in his official
14 capacity.

15 MS. KULASZKA: So he was sent to talk
16 to you by the organization itself?

17 MR. GOLDBERG: He was a senior
18 officer of the organization, yes.

19 MS. KULASZKA: Have they ever
20 contacted you again after this meeting?

21 MR. GOLDBERG: As a matter of fact,
22 I've bumped into this individual at several meetings
23 over the last year, and he's said hello and said he
24 still wants to pursue this, but I guess because of
25 other -- I don't know what his contingencies are, but

1 it hasn't happened yet.

2 MS. KULASZKA: Did you initiate this
3 meeting?

4 MR. GOLDBERG: Yes, I initiated the
5 meeting.

6 MS. KULASZKA: How did you do so?
7 There's no e-mail. Did you phone him?

8 MR. GOLDBERG: Presumably so, yes.

9 MS. KULASZKA: I'm very serious. You
10 are here to answer questions. Can you remember how you
11 contacted him? I would think meeting with this
12 individual --

13 MR. GOLDBERG: To the best of my
14 recollection, I phoned him.

15 MS. KULASZKA: You phoned him?

16 MR. GOLDBERG: That's correct.

17 MS. KULASZKA: Have you received any
18 complaints from the Canadian Arab Federation?

19 MR. GOLDBERG: No, we have not. I
20 could point out that -- not with regard to the Canadian
21 Arab Federation in particular, but one of the reasons
22 that we wanted to meet with the Canadian Arab
23 Federation was because there had been considerable
24 comment in the media, especially post 2001, of possible
25 hateful activities aimed at Canadians of the Muslim

1 faith or of Arabic origin, and we were wanting to
2 ensure that those citizens of Canada were aware of the
3 Canadian Human Rights Act and what the mandate of the
4 Commission was.

5 MS. KULASZKA: And that was at
6 Ryerson?

7 MR. GOLDBERG: I'm not talking about
8 a particular incident. I'm just talking about concerns
9 that were raised by representatives of Arab Canadians
10 and Muslim Canadians, that they had been subject to
11 discrimination and prejudice.

12 MS. KULASZKA: In the general news
13 media?

14 MR. GOLDBERG: Yes.

15 MS. KULASZKA: Not to the Commission?

16 MR. GOLDBERG: Not to the Commission,
17 no.

18 MS. KULASZKA: Turning to page 48.
19 This is an e-mail from 2006 about the Winnicki case. Do
20 you realize some of your e-mails have been reproduced
21 on recomnetwork.org?

22 MR. GOLDBERG: Yes, I'm aware of
23 that.

24 MS. KULASZKA: Do you post them?

25 MR. GOLDBERG: I do not post them.

1 MS. KULASZKA: Do you know who posts
2 them?

3 MR. GOLDBERG: I do not know who
4 posts them.

5 MS. KULASZKA: How are they getting
6 them?

7 MR. GOLDBERG: As I testified, I have
8 an e-mail list. Subsequent to the conference that we
9 had in December 2005, I asked people whether they would
10 like to give me their e-mail addresses for the purpose
11 of me sending them current information about decisions
12 in the Canadian Human Rights Tribunal, or press
13 clippings that I thought would be of interest to them.

14 MS. KULASZKA: And so you send this
15 out and somebody on that list is posting your e-mails?

16 MR. GOLDBERG: I presume so. I have
17 no knowledge of that. That sounds like a logical
18 explanation of how it would get there.

19 I would point out that the only
20 things I send out on the list are publically available
21 documents, such as newspaper clippings or decisions of
22 the Canadian Human Rights Tribunal.

23 MS. KULASZKA: Yes. And an example of
24 that is further along in this tab, page 111. It's
25 right near the end of the tab. And you'll see one of

1 your e-mails. It's a Google cache of that page because
2 the website apparently cannot be directly accessed.

3 Do you know what Reconnetwork is.

4 MR. GOLDBERG: Not really, no.

5 MS. KULASZKA: Could you look at that
6 e-mail. It goes from 1111 to 112, 113, 114, to 115,
7 116, just at the end of it.

8 Could you just confirm that those are
9 in fact the e-mails that you have sent out to your
10 list?

11 MR. GOLDBERG: Yes, they appear to
12 be.

13 MS. KULASZKA: Going back to page
14 48 -- 48/49. The list you spoke about, is Richard
15 Warman on that list?

16 MR. GOLDBERG: I don't believe that
17 he's on the list. I'm 99 percent certain he's not on
18 that list.

19 MS. KULASZKA: Is Alan Dutton on the
20 list?

21 MR. GOLDBERG: That I can't recall.
22 The list consists now of about a hundred or so names.

23 MS. KULASZKA: The next here is an
24 e-mail. It starts at 50 and it concerns an
25 inter-departmental briefing on the Canadian Human

1 Rights Commission's role, mandate and activities with
2 regard to hate on the Internet.

3 And you sent out a series of letters
4 inviting people to come to this meeting, and that is
5 what that e-mail is on page 50?

6 MR. GOLDBERG: That is correct.

7 MS. KULASZKA: You say in that e-mail
8 on page 51, the first full paragraph,

9 "Since 2001 the Commission has
10 received approximately 25
11 complaints alleging a breach of
12 Section 13 by the posting of
13 hate messages on the Internet."

14 I think you'll agree most of those
15 have been filed by Mr. Warman, correct?

16 MR. GOLDBERG: Yes.

17 MS. KULASZKA: Has the Commission
18 undertaken any kind of discussion about why Canadians
19 aren't using Section 13?

20 MR. GOLDBERG: No.

21 MS. KULASZKA: What was discussed at
22 these inter-departmental meetings? Did you just do a
23 presentation?

24 MR. GOLDBERG: Yes.

25 MS. KULASZKA: And the purpose was

1 just to inform?

2 MR. GOLDBERG: To inform and to find
3 out what these other agencies that have interests in
4 hate activeity or law enforcement, what they were doing
5 with regard to this or related issues.

6 MS. KULASZKA: So the last paragraph,
7 you wanted representatives from Justice, Canadian
8 Heritage, RCMP, Public Safety and Emergency Preparedness
9 and Industry Canada?

10 MR. GOLDBERG: That's correct.

11 MS. KULASZKA: And did they all
12 attend?

13 MR. GOLDBERG: Most of them did. I
14 can't remember exactly who, but we had a pretty good
15 turnout for the briefing, yes.

16 MS. KULASZKA: Turning to page 55.
17 You met with someone who accepted the award from the
18 Simon Wiesenthal Centre on behalf of CAIP. And I think
19 that was publicized, was it not, in the Simon
20 Wiesenthal --

21 MR. GOLDBERG: Yes, it was.

22 MS. KULASZKA: And was that Paul
23 Copeland?

24 MR. GOLDBERG: I'm sorry?

25 MS. KULASZKA: Was that Paul Copeland

1 who accepted --

2 MR. GOLDBERG: No, it wasn't.

3 MS. KULASZKA: Who was it?

4 MR. GOLDBERG: Tom Copeland.

5 MS. KULASZKA: Tom.

6 MS. KULASZKA: Are you aware that in
7 has been some controversy about some of the websites
8 included in the Simon Wiesenthal Centre disk on hate
9 sites?

10 MR. GOLDBERG: No, I wasn't aware
11 there was controversy. I can certainly understand why
12 some people would -- it's a judgment decision that's --
13 well, first of all, the Simon Wiesenthal Centre, of
14 course, is not using the criteria of the Canadian Human
15 Rights Commission uses.

16 I'm not sure what criteria they use.
17 I wouldn't be at all surprised if some people think
18 some websites shouldn't be there and others should be.

19 MS. KULASZKA: What criteria are they
20 using?

21 MR. GOLDBERG: I'm not aware of the
22 criteria they use.

23 MS. KULASZKA: Do you know why CAIP
24 received this award?

25 MR. GOLDBERG: As I remember, they

1 received the award because the Simon Wiesenthal Centre
2 wanted to commend them on the actions they were taking
3 to ensure that the Internet was a safe place for
4 Internet users.

5 MS. KULASZKA: Would you include hate
6 messages within the word "safe"?

7 MR. GOLDBERG: Yes, absolutely.

8 MS. KULASZKA: So you regard hate
9 messages as being very dangerous?

10 MR. GOLDBERG: Again, I wish I had
11 the quotes with me. But the Chief Justice of the
12 Supreme Court of Canada in the decision in Taylor, in
13 very moving words pointed out that hate is antithetical
14 to Canadian values, it that undermines dignity and
15 worth of citizens of Canada and, therefore, it is
16 something that all Canadians shouldn't abhor.

17 MS. KULASZKA: There's a whole series
18 of e-mails from there on that are basically repetitious
19 so we'll keep over to page 67.

20 Can you tell me what this series of
21 e-mails is about? Who were you trying to meet?

22 MR. GOLDBERG: I would have to take a
23 look at these, please.

24 MR. GOLDBERG: I believe that was a
25 question established by the Government of Ontario with

1 regard to hate activities. It was a committee that was
2 set up to advise I believe the solicitor general or the
3 minister of justice.

4 MS. KULASZKA: Did you attend that
5 meeting?

6 MR. GOLDBERG: Yes, I did.

7 MS. KULASZKA: What was your input?

8 MR. GOLDBERG: My input was to
9 provide them with information about the Commission's
10 mandate and activities under Section 13 of the Canadian
11 Human Rights Act.

12 MS. KULASZKA: Now, turning to page
13 70. This is with respect to the B'nai Brith Human
14 Rights Conference. Now, you acted on a board or on
15 that --

16 MR. GOLDBERG: I testified yesterday
17 I was a member of the advocacy committee.

18 MS. KULASZKA: And --

19 THE CHAIRPERSON: I missed that
20 answer.

21 MR. GOLDBERG: I testified yesterday
22 that I was a member of the advisory committee that was
23 organizing this conference.

24 MS. KULASZKA: What role did you play
25 in that capacity?

1 MR. GOLDBERG: I was involved in
2 teleconference calls, perhaps two or three, at which
3 the agenda was discussed.

4 MS. KULASZKA: So you suggested names
5 of people?

6 MR. GOLDBERG: Yes, I suggested names
7 of people.

8 MS. KULASZKA: Look at tab 11, page
9 18. States,
10 "Bringing together the words on
11 leading specialists encountering
12 web-based hate and extremeism."

13 THE CHAIRPERSON: Sorry?

14 MS. KULASZKA: That's the cover page,
15 Hate on the Internet, and it's September 11 to 12,
16 2006, was held in North York Memorial Hall.

17 Turning to page 19 of that tab there
18 is a conference advisory board. You're noted near the
19 middle. Human Rights Commission. Was there anybody
20 else from the Commission?

21 MR. GOLDBERG: Yes, there was several
22 people.

23 MS. KULASZKA: Did they give
24 presentations?

25 MR. GOLDBERG: I believe one other

1 person gave -- I'm trying to remember. Well, Mr.
2 Landry (ph) gave a speech and, well, I guess you would
3 have to check the program to confirm whether anybody
4 else from the Commission spoke. I know there were
5 discussions with somebody, but I can't remember whether
6 they actually spoke or not.

7 MS. KULASZKA: If you could just look
8 through those pages. Did you see this at the time?

9 MR. GOLDBERG: Yes, I did.

10 MS. KULASZKA: This is the agenda?

11 MR. GOLDBERG: Yes.

12 MS. KULASZKA: I think Mr. --

13 MR. GOLDBERG: Yes, there was another
14 person from the Commission.

15 THE CHAIRPERSON: Person from the
16 Commission doing what?

17 MR. GOLDBERG: Doing at presentation.

18 MS. KULASZKA: Mervin Whitter gave a
19 presentation, did he, or he was the moderator?

20 MR. GOLDBERG: Yes, that's right.
21 Mervin Whitter was the moderator.

22 THE CHAIRPERSON: Where is that name?
23 Oh, just a second, so I can see the spelling.

24 MS. KULASZKA: That appears on page
25 27, just at the top.

1 MR. GOLDBERG: And I believe also --
2 I believe there was also another person from the
3 Commission.

4 MS. KULASZKA: Karen Izzard?

5 MR. GOLDBERG: That's correct, Karen
6 Izzard.

7 MS. KULASZKA: And her name appears
8 on page 24, right at the bottom. Karen Izzard, senior
9 policy advisor, policy and regulatory affairs division.
10 Do you work with her?

11 MR. GOLDBERG: She's a colleague. I
12 work with her on occasion, yes.

13 MS. KULASZKA: Do you know that the
14 Commission helped fund this symposium?

15 MR. GOLDBERG: The Commission did not
16 help fund it. The Commission has no authority to make
17 contributions to organizations.

18 MS. KULASZKA: Perhaps I could just
19 produce that part. It's starting at page 18 going to
20 page 29.

21 THE CHAIRPERSON: 18 to 29. Produced.

22 MS. KULASZKA: Turning to page 71.

23 THE CHAIRPERSON: Back at tab 4.

24 MS. KULASZKA: We're just going to
25 complete the tab. Going back to page 71.

1 This is an e-mail from you, stated,
2 "Dear fellow hate fighters. I
3 have prepared a deck."

4 That's a Power Point presentation?

5 MR. GOLDBERG: Yes.

6 MS. KULASZKA: Who are your fellow
7 hate fighters?

8 MS. BLIGHT: Mr. Chair, the
9 circulation list of that e-mail has been excised on the
10 basis of a public interest objection under Section 37
11 of the Canada Evidence Act.

12 MS. KULASZKA: Would you turn to page
13 72. This is with respect to hate crimes forum in
14 Edmonton?

15 MR. GOLDBERG: Yes.

16 MS. KULASZKA: That's criminal hate
17 law, correct?

18 MR. GOLDBERG: I don't know. Well,
19 hate crimes would be criminal law, yes.

20 MS. KULASZKA: You didn't attend it?

21 MR. GOLDBERG: I did not attend it.

22 As I recall, in the event was either -- it was either
23 cancelled or postponed, but I stand to be corrected on
24 that. But I was not intending to go.

25 MS. KULASZKA: Would you turn to page

1 73. This is e-mail from the Canadian Jewish Congress,
2 subject is Foreign Internet hate sites.

3 MR. GOLDBERG: Yes.

4 MS. KULASZKA: They wish to have a
5 discussion with you regarding the issue of foreign
6 Internet hate sites; is that right?

7 MR. GOLDBERG: That's correct.

8 MS. KULASZKA: What was discussed?

9 MR. GOLDBERG: That's what I
10 testified yesterday when I met with Canadian Jewish
11 Congress and they presented to us the idea based on
12 Clean Feed as a way that the Internet Service Providers
13 might be able, on a voluntary basis, to block hateful
14 material from coming into their systems.

15 MS. KULASZKA: And who would advise
16 Clean Feed about websites that were potentially hate
17 sites?

18 MR. GOLDBERG: Well, that was exactly
19 the issue that I discussed yesterday in my testimony.
20 They -- in fact, had one point it had been suggested
21 that cybertip.ca take on this responsibility.

22 It's my understanding that
23 cybertip.ca was not interested in doing, so the
24 situation was if they were going to set up a system
25 similar to what cybertip.ca does they would need some

1 organization separate from the ISPs and the NGOs to
2 make a determination of whether this material might
3 contravene Section 13 of Canadian Human Rights Act.

4 And the Canadian Jewish Congress, as
5 I testified yesterday, made a proposal to the
6 Commission that the Commission take on this role, and
7 the Commission declined to do so.

8 MS. KULASZKA: Is there already an
9 agreement with ISPs to comply with filters?

10 MR. GOLDBERG: There is no agreement
11 with ISPs to comply with filters.

12 MS. KULASZKA: So what are the plans
13 of the CJC that they have divulged to you? Are they
14 going to try to set up some sort of governmental
15 separate agency? Are they going to lobby for such a
16 agency?

17 MR. GOLDBERG: I don't know what
18 their current plans are. As I testified, they
19 approached us with this proposal.

20 I believe, if I recall the chain of
21 events, I met with representatives of the Canadian Jewish
22 Congress, they discussed this proposal with me. I gave
23 them no commitment. I said I would discuss it with my
24 superiors.

25 I returned to Ottawa. We had

1 internal discussions. I wrote a memo. Canadian Jewish
2 Congress then wrote a letter to -- either I think it
3 was Mr. Langtree, putting forward this proposal.

4 After internal discussions at the
5 Commission, we decided that this would not be
6 appropriate or -- consistent with our mandate to get
7 involved in this kind activity. And the either the
8 Chief Commissioner or Mr. Langtree -- it was Mr.
9 Langtree wrote a letter to the Canadian Jewish
10 Congress -- excuse me, I forgot one step. The Canadian
11 Jewish Congress came and met with Mr. Langtree, and the
12 secretary general of the Commission. I was not present
13 at that meeting.

14 And subsequent to that meeting Mr.
15 Langtree wrote back to the Canadian Jewish Congress and
16 said the Commission -- was not possible for the
17 Commission to be involved in this initiative.

18 MS. KULASZKA: Where did those
19 letters and documents disclosed by you to Mr. Vigna?

20 MR. GOLDBERG: I don't know. I don't
21 recall. Actually -- no, I don't recall. Some of them
22 may have been -- some of them may have been produced
23 after the order for disclosure. I can't recall.

24 MS. KULASZKA: Mr. Chairman, I have a
25 request those documents be disclosed. We've received

1 none of them.

2 THE CHAIRPERSON: Maybe you didn't
3 deserve to receive them. Let me look at my ruling.

4 Item L,

5 "-- networking in consultation
6 with any group representing any
7 of the groups protected from
8 discrimination under the
9 Canadian Human Rights Act
10 relating to hate on the
11 Internet."

12 So maybe it's been disclosed and lost
13 in the CD, which has happened with other documents. But
14 it would appear it falls into that category based on
15 what we've heard, no?

16 MS. BLIGHT: I can't speak to it
17 right now. We'll look into it.

18 THE CHAIRPERSON: She'll look into
19 it. If those documents are already disclosed or, if
20 not, that they will be disclosed?

21 MS. BLIGHT: I don't know what the
22 documents are, where they are. I don't know if they
23 have or have not been disclosed. If they have not, I
24 don't know why, and so I will need to ascertain all
25 that and obtain instructions.

1 MS. KULASZKA: It falls directly
2 within the order and they should be produced.

3 THE CHAIRPERSON: And if it's
4 produced, Ms. Kulaszka, it will be produced in a way
5 you can then use it for argument in the same manner as
6 the other documents.

7 MS. KULASZKA: I wonder if Ms. Blight
8 could contact the Commission at lunch or a break?

9 THE CHAIRPERSON: Just to specify
10 again, we're talking about exchange of documents with
11 the CJC where it was proposing that the Commission
12 undertake that role that cybertips was unwilling --

13 MR. GOLDBERG: That's correct.

14 THE CHAIRPERSON: That's the general
15 definition.

16 And just to help Ms. Blight in her
17 search, that correspondence would have been likely
18 between which department, sir? Would it be a division
19 or department.

20 MR. GOLDBERG: Pardon me?

21 THE CHAIRPERSON: Would there have
22 been a division or department that would have dealt
23 with that?

24 MR. GOLDBERG: I would have dealt
25 with it.

1 THE CHAIRPERSON: It would not even
2 correspond with anybody else in the matter.

3 MR. GOLDBERG: I don't recall. As I
4 testified previously, I produced documents at the time
5 that I was asked to produce documents. I obviously
6 could not produce documents that did not -- had not
7 been created yet.

8 THE CHAIRPERSON: There's no blame
9 here. We're talking large amounts of information
10 obviously. Things get missed. It may have been that
11 your understanding of what needed to be found, based on
12 information you were given, without any malice on
13 anybody's part was -- did not necessarily reflect the
14 order.

15 All we're doing is rectifying the
16 situation, that's all.

17 MS. KULASZKA: And I think he stated
18 there was a letter back and forth with the secretary
19 general?

20 MR. GOLDBERG: I believe there was a
21 briefing note either to the secretary general or
22 Commission.

23 THE CHAIRPERSON: But it would have
24 been through you?

25 MR. GOLDBERG: I would have been

1 involved in developing it.

2 THE CHAIRPERSON: It reached the
3 level of the secretary general. So perhaps some
4 research at the secretary general level would be
5 required. That's what I was wanting to establish.

6 It's been about an hour and 45
7 minutes since we began, so perhaps we should have a
8 break.

9 --- Recess taken at 11:05 a.m.

10 --- Upon resuming at 11:16 a.m.

11 MS. BLIGHT: Mr. Chairman, I'm
12 advised that the documents for which disclosure has now
13 been requested are documents that came into existence
14 after the disclosure order was fulfilled by the
15 Commission, so they are new documents. They will be
16 disclosed subject to Section 37, and any other scope
17 issues, we will be providing those.

18 THE CHAIRPERSON: By when?

19 MS. BLIGHT: I can't tell you exactly
20 when. I have not been able to discuss that with Mr.
21 Goldberg or locate the documents, but we can --
22 promptly.

23 THE CHAIRPERSON: Promptly, as soon
24 as possible. That's the word I want from you.

25 MS. BLIGHT: Now, there are a couple

1 of other issues upon which I can report, though I
2 haven't located all the documents yet, that I was
3 attempting to locate at your request.

4 There is a document which is located
5 at tab 2, page 12 of Exhibit R-17.

6 THE CHAIRPERSON: Give me a moment.
7 Yes.

8 MS. BLIGHT: You'll see it's a letter
9 to AOL Canada Inc. stamped October 6, 2005, and there
10 was a list of -- on page 2, paragraph --

11 "Furthermore, we would
12 appreciate receiving by
13 November 21 your position
14 regarding the allegations,
15 including but not limited to the
16 following."

17 That was -- this is a letter
18 generated in the context of the complaint. And you had
19 asked, Mr. Chairman, whether the Commission would be
20 prepared to put a statement on record with respect to
21 the general nature of that -- the information that was
22 being requested.

23 And I have instructions to tell you
24 that these are questions about -- specific questions
25 about -- to AOL about the administration of its system

1 and of particular accounts, all in the context of a
2 complaint filed with the Canadian Human Rights
3 Commission.

4 MS. KULASZKA: If I could just repeat
5 that, it dealt with particular accounts on the AOL
6 system?

7 MS. BLIGHT: Specific questions about
8 the administration of AOL system and of particular
9 accounts, user accounts.

10 THE CHAIRPERSON: So it's not as
11 perhaps I erroneously interpreted the itemization here,
12 as being a restatement of the allegations in the
13 complaint, because that's sort of how I read it. When
14 it says, at the top of page 13, which is page 2 of the
15 letter,

16 "We would appreciate receiving
17 by said date your position
18 regarding the allegations
19 including, but not limited to
20 the following."

21 MS. BLIGHT: No, they are very
22 specific questions, in the context of the --

23 THE CHAIRPERSON: They're questions,
24 not a recitation of the allegations.

25 MS. BLIGHT: Not a recitation of the

1 allegations.

2 Finally, for the moment, I have the
3 information now to disclose about the total fees and
4 expenses paid by the Canadian Human Rights Commission
5 to Karen Mock. And those --

6 THE CHAIRPERSON: You are not going
7 to put them on the record now, are you.

8 MS. BLIGHT: Well, I was prepared to
9 put them on the record.

10 THE CHAIRPERSON: I think the request
11 was for disclosure of those documents. I don't think
12 it was for production yet.

13 MS. BLIGHT: No, and -- well, it was
14 for disclosure of the contract, which I will be
15 disclosing, and the total fees and --

16 THE CHAIRPERSON: Yes, but I think we
17 should just go straight to the parties.

18 MS. BLIGHT: Okay, that's fine. I --

19 THE CHAIRPERSON: If they want to use
20 it to put it on the record, that's fine. But it's not
21 necessarily part of the record unless Ms. Kulaszka
22 wants to make it part of the record, or you, or
23 whomever.

24 MS. BLIGHT: I'm content to do that
25 but it's information that's not found in a document, so

1 I have total fees and expenses.

2 THE CHAIRPERSON: Oh. Okay, so then
3 if you would rather just get it over with by putting it
4 on the record, if Ms. Kulaszka was going to put it on
5 the record, then not a problem. Ordinarily,
6 disclosure --

7 MS. KULASZKA: I don't know if Ms.
8 Blight is aware of it, but we already have her
9 contract. I just blanked out the amount.

10 THE CHAIRPERSON: So she has the
11 information to provide you then? I'm the one that
12 doesn't know that. You have the contract.

13 MS. KULASZKA: Well, I think she was
14 under the impression we didn't have the contract. But
15 Mr. Biggs did give it to us. He just blacked out the
16 amount.

17 THE CHAIRPERSON: All right, so let's
18 get it on the record and get it over with then.

19 MS. BLIGHT: The information I'm
20 about to provide you on record is not found on the
21 contract documents. It's -- the total amounts paid,
22 including GST, is \$20,771.16.

23 THE CHAIRPERSON: \$20,700 --

24 MS. BLIGHT: \$71 and \$0.16, the fees
25 of which total \$20,000, and the remainder being

1 expenses. I have a further version of the contract.

2 THE CHAIRPERSON: So sorry, this
3 includes GST, so the fees of \$20,000 include GST; would
4 that be correct.

5 MS. BLIGHT: That's right, with
6 whatever GST is applicable.

7 THE CHAIRPERSON: Okay, because you
8 said "plus expenses". I was wondering if you meant --

9 MS. KULASZKA: Just so I'm clear, the
10 20,000 includes GST?

11 MS. BLIGHT: I can't tell you what
12 the rules are about GST chargebles to government
13 agencies. But to the extent there is a requirement,
14 these are all inclusive of any taxes that may be
15 payable.

16 I have a further version of the
17 contracts with the -- certain parts that had been
18 redacted in previous versions now revealed, that I will
19 be giving to my friend over the lunch break.

20 THE CHAIRPERSON: Okay.
21 Ms. Kulaszka, are you ready to proceed?

22 MS. KULASZKA: Mr. Goldberg, we were
23 at tab 4, page 73?

24 MR. GOLDBERG: Yes.

25 MS. KULASZKA: Who were you in

1 contact with regard to Clean Feed, the proposal from
2 the CJC? Who were you in contact with? Would that be
3 Bernie Farber.

4 MR. GOLDBERG: Yes.

5 MS. KULASZKA: And anyone else from
6 the organization?

7 MS. BLIGHT: Mr. Chair, we have
8 fairly consistently objected to individuals names being
9 disclosed. The important element of this being that
10 consultations and discussions are with representatives
11 of certain organizations, and the individual name
12 doesn't matter, so it's irrelevant. And secondly, the
13 objection has been made under Section 37 of the Canada
14 Evidence Act.

15 THE CHAIRPERSON: Ms. Kulaszka, I
16 know you're upset that they have used 37 extensively,
17 and I know you have tried to push back on that, but if
18 it doesn't make a difference for me to know if it was
19 Mr. Farber or Mr. X or his secretary who was there,
20 don't keep pushing. It just delays for nothing. They
21 get up and they make the objection, and it doesn't mean
22 anything.

23 MS. KULASZKA: You know, if Mr.
24 Farber is the one whose name appears in the --

25 THE CHAIRPERSON: Right.

1 MS. KULASZKA: So he's the one --

2 THE CHAIRPERSON: You've got the
3 answer on Farber. I mean, Mr. Farber has been in this
4 room.

5 MS. KULASZKA: Yes, so that's what I
6 was trying to establish, that he is the main one who is
7 also approaching the Commission. That is important.

8 THE CHAIRPERSON: Yes, you got that.
9 That wasn't objected to. You wanted more names in your
10 next question, wasn't it? Did I read it right.

11 MS. KULASZKA: Yes, but the Canadian
12 Jewish Congress is not -- it is not secretive about its
13 activities.

14 THE CHAIRPERSON: My concern, Ms.
15 Kulaszka, is not to make little brownie points here. My
16 concern is that we move the case along. If I don't
17 need it for the case, for me to know how many junior
18 employees of the CJC were meeting with the
19 Commission -- if what's the big issue for you is that
20 the Canadian Jewish Congress was meeting with the
21 Commission, leave it at that, so we don't waste our
22 time with these little fights. All you have to do is
23 build up more items that you have to bring before the
24 Federal Court on Section 37 challenges, if you make
25 them. What's the point?

1 MS. KULASZKA: Now, what was the
2 concern and the discussion about pornography Internet
3 hate sites. Was this part of the Clean Feed
4 discussion?

5 MR. GOLDBERG: Yes.

6 MS. KULASZKA: And Clean Feed would
7 be able to exclude foreign sites, websites?

8 MR. GOLDBERG: From my understanding
9 of what's -- the Clean Feed proposal with regard to
10 cybertip.ca is, yes, that's what the Internet service
11 provider undertook to do.

12 MS. KULASZKA: Do you know how it
13 works?

14 MR. GOLDBERG: I have no idea
15 whatsoever at how it works.

16 MS. KULASZKA: Now, the Commission
17 was approached to undertake the work that you testified
18 about, and it decided it was not within its mandate.
19 Do you know the reasons for that decision?

20 MR. GOLDBERG: The reasons for that
21 decision was because it would potentially put us in a
22 conflict of interest if people in the Commission were
23 making determinations outside the complaints process on
24 what might or might not constitute Section 13, and then
25 the same matters could conceivably be brought before

1 the Commission, or matters related to it could be
2 brought before the Commission.

3 So the Commission decided that it was
4 not consistent with its mandate, nor did we have the
5 resources to carry out -- to participate in such an
6 activity.

7 MS. KULASZKA: If you can turn to
8 page 75, these -- 75 and 76. These are two e-mails,
9 the first e-mail is,

10 "Harvey, thanks very much for
11 the clarification. Had
12 mentioned to some of us that
13 some media outlets did not fully
14 appreciate, understand the
15 decision with regards to the
16 limited exception. Having your
17 confirmation of what we believed
18 was correct is very reassuring."

19 And he has reproduced the e-mail that
20 he is replying to, which is from you. But there's no
21 initial e-mail from this person. Was there an initial
22 e-mail from this person that's about the Kulbashian
23 case?

24 MR. GOLDBERG: I don't recall. I
25 don't believe there was, no.

1 MS. KULASZKA: They had called you?

2 MR. GOLDBERG: I don't think they
3 called me, no.

4 MS. KULASZKA: In your e-mail -- and
5 this is obviously to someone from the Canadian
6 Association of Internet service provider, right -- this
7 is an exchange between you and someone from CAIP?

8 MR. GOLDBERG: That's correct.

9 MS. KULASZKA: And it's concerning
10 the Kulbashian case, and the last paragraph, "In the
11 case" -- on page 75,

12 "In the case decided by the
13 Tribunal, one of the named
14 respondents was a small Internet
15 provider. Evidence showed that
16 this IP was owned and operated
17 by one of the individuals named
18 as a respondent, and that he
19 made available for the
20 dissemination of hate messages,
21 in the meaning of Section 13.
22 Consequently, the Tribunal ruled
23 that the IP was not simply
24 acting as a common carrier, but
25 was itself involved in the

1 alleged discriminatory
2 activities. Consequently, the
3 Tribunal found that the IP was
4 in violation of Section 13. It
5 is the Commission's view that
6 this is a limited exception to
7 Section 13."

8 Had someone from CAIP expressed their
9 concerns about the Kulbashian case to you?

10 MR. GOLDBERG: No.

11 MS. KULASZKA: Why are you sending
12 this decision -- or this e-mail?

13 MR. GOLDBERG: Because this -- as is
14 very clear from the documents that we've discussed
15 today, the Commission had an ongoing, and has an
16 ongoing dialogue with the Canadian Association of
17 Internet Providers on issues that are of interest to
18 them and to us. Obviously, a decision of the Canadian
19 Human Rights Tribunal that touched upon the issue as to
20 whether an Internet Service Provider had any kind of
21 liability under Section 13 would be of interest to
22 them.

23 MS. KULASZKA: Yes, that's what I'm
24 trying to get at. It just seems -- someone has raised
25 a concern with you, you are obviously replying to them.

1 You're saying, "as you probably know."

2 MR. GOLDBERG: I testified that I
3 don't recall that they e-mailed me or called me.
4 However, as I just said, we had an ongoing dialogue. As
5 you can see, there were exchanges of information over a
6 period of time with the Canadian Association of
7 Internet Providers, and given this Tribunal decision,
8 based on our past communications and past discussions,
9 I thought that it would be appropriate to advise them
10 of this decision and the Commission's views on the
11 decision.

12 MS. KULASZKA: If you could turn to
13 page 77. This is an e-mail from 2004, and it's
14 concerning a meeting with CAIP, correct.

15 MR. GOLDBERG: That's correct.

16 MS. KULASZKA: Is this a report to a
17 senior at the Commission?

18 MR. GOLDBERG: Appears to be, yes.

19 MS. KULASZKA: The next several pages
20 are further meetings, and then on page 80, it's about a
21 meeting thanking -- or an e-mail thanking you for
22 meeting with the CAIP board last week, that was 2005.
23 How many meetings do you think you had with CAIP or --
24 so far?

25 MR. GOLDBERG: Three, possibly four.

1 MS. KULASZKA: The next several
2 e-mails go over to page 86. This is -- these seem to
3 be a series of e-mails again about a meeting with CAIP.
4 This is in December of 2005, and it names --

5 "The following industry reps
6 will participate in our closed
7 door round table."

8 I think we've had other e-mails
9 concerning this. Let's see if we can get to some kind
10 of report. We're still looking for a report about this
11 meeting. Turn to page 87. This is an e-mail from you,
12 dated May 24th, 2006. It's regarding a May 10th
13 article in the National Post. And this is to someone
14 from CAIP. And you thanked this person for,

15 "your positive comments in the
16 National Post article with
17 regard to the responsibility of
18 IPs to deal with hateful
19 material on the Net. You made
20 it very clear that IPs
21 appreciate the problem, know the
22 law and are willing to cooperate
23 with authorities."

24 MR. GOLDBERG: Sorry, for your
25 assistance, we -- this was -- same e-mail was presented

1 to me yesterday, and we discussed it, and it's on the
2 record.

3 MS. KULASZKA: Okay, so it appeared
4 previously?

5 MR. GOLDBERG: I don't recall where
6 it appeared, but either you or Mr. Christie asked me
7 about this e-mail yesterday. It must've appeared at
8 another place in the documents, or Mr. Christie asked
9 me about the same e-mail. But it's on the record
10 already. I can -- if you would like me to repeat what
11 I said about it, I would be glad to.

12 MS. KULASZKA: That was dated May
13 24th, 2006. Have you entered into the MOU on
14 cooperation yet?

15 MR. GOLDBERG: No, we have not.

16 MS. KULASZKA: Look at page 91. Now,
17 is this the list you've been referring to? You are
18 talking about people who register for the Commission's
19 conference, and "this list will be available as a means
20 of exchange and information among people interested"?

21 MR. GOLDBERG: That's correct.

22 MS. KULASZKA: You still use that
23 list today?

24 MR. GOLDBERG: The list has grown
25 since that time. But yes, I still have the list.

1 MS. KULASZKA: And on that list, do
2 you have any kind of civil liberties organizations?

3 MR. GOLDBERG: Yes, I consider
4 organizations like B'nai Brith, Canadian Jewish
5 Congress, the Canadian Race Relations Foundation,
6 organizations like that to be civil liberties
7 organizations. Yes, we have a number of those on the
8 list.

9 MS. KULASZKA: Actually, I was
10 thinking more in lines of something like the Canadian
11 Free Speech League or the Canadian Association for Free
12 Expression, both of which are parties here, the BC
13 Civil Liberties Association, and Alan Borovoy's
14 organization, which used to be active, whose name
15 escapes me for --

16 MR. GOLDBERG: If Mr. Borovoy asked
17 to be included on the list as a civil liberties
18 organization, I certainly would be pleased to include
19 him. I don't know if I would consider including
20 organizations which were antithetical to the purposes of
21 the Canadian Human Rights Act.

22 MS. KULASZKA: Will you turn to page
23 92? This appears to be a draft speech, which is
24 attached to that e-mail. It goes onto several pages, I
25 think 103?

1 MR. GOLDBERG: Yes.

2 MS. KULASZKA: And you wrote this
3 speech, which the chief Commissioner gave at the -- on
4 the Internet conference?

5 MR. GOLDBERG: That's correct.

6 MS. KULASZKA: Was the speech
7 changed?

8 MR. GOLDBERG: Well, this says "draft
9 one, November 30th, 2005", and the conference occurred
10 on December 14th, I believe. In my experience in the
11 public service, for something to remain unchanged for
12 that period of time is almost impossible.

13 MS. KULASZKA: If you could just turn
14 to page -- or to R-20, I believe. It's the
15 conference --

16 MR. GOLDBERG: Yes.

17 MS. KULASZKA: If you could look at
18 page 4.

19 MR. GOLDBERG: Yes.

20 MS. KULASZKA: Is that the address?

21 MR. GOLDBERG: Yes, that's what it --
22 that's the address the chief Commissioner gave.

23 MS. KULASZKA: Now, if you look at
24 page 98 of your initial draft, the second paragraph
25 states,

1 "In the early days of the
2 Internet hate phenomenon, it was
3 predicted that the Internet
4 would provide a boon to those
5 seeking to recruit the young and
6 disaffected to their cause.
7 Thankfully, the most dire
8 predictions have so far not come
9 true. Based on the intelligence
10 available, there does not appear
11 to be a significant growth in
12 the number of active members of
13 hate groups."

14 Did you write that?

15 MR. GOLDBERG: As I recall, I wrote
16 that, yes.

17 MS. KULASZKA: And that's consistent
18 with the research the Commission has done?

19 MR. GOLDBERG: I believe so, yes.

20 MS. KULASZKA: Turning to page 104,
21 this is a memorandum from you to Ian Fine, Director
22 General of the Knowledge Centre. This was a report on
23 meetings in Toronto June 29 to 30th, 2006. Is Mr. Fine
24 the person you directly report to?

25 MR. GOLDBERG: Yes. Well, my

1 reporting relationship changed over time. But at that
2 time and today, yes, I reported to Mr. Fine.

3 MS. KULASZKA: And today you would as
4 well?

5 MR. GOLDBERG: I would today as well.

6 MS. KULASZKA: So this appears to be
7 report about your meetings with the Canadian Arab
8 Federation, Canadian Jewish Congress and Ontario
9 Government Hate Crimes Community Working Group?

10 MR. GOLDBERG: That's correct.

11 THE CHAIRPERSON: Sorry, where is the
12 list of those groups? Where is the list of those
13 groups that you met with? Oh, it's here, it's at the
14 bottom of page 105.

15 MS. KULASZKA: It goes to the end of
16 106. Now, with the Canadian Arab Federation, you
17 report that you met with the Federation to -- someone
18 from the Federation to brief him on the work the
19 Commission is doing with regard to Section 13.

20 "I gave him a copy of the Hate
21 on the Internet magazine, and a
22 deck explaining our work,
23 pursuant to Section 13. He
24 welcomed the Commission's
25 outreach on this issue, noting

1 that the Canadian Human Rights
2 Commission had been active on--"

3 MR. GOLDBERG: Excuse me, that's the
4 Ontario Human Rights Commission.

5 MS. KULASZKA:

6 "The Ontario Human Rights
7 Commission had been active on
8 issues regarding anti-Arab and
9 anti-hate issues. But that he
10 felt the Canadian Human Rights
11 Commission had been quite" --

12 MR. GOLDBERG: Should say "quiet":

13 MS. KULASZKA: "Quiet until now".

14 THE CHAIRPERSON: I'm sorry, I
15 haven't followed you. I'm going back and forth here.

16 MS. KULASZKA: That's on page 106,
17 and there's a paragraph 6 there with the heading,
18 "Canadian Arab Federation".

19 THE CHAIRPERSON: Okay.

20 MS. KULASZKA: And it's that first
21 paragraph under that heading.

22 MS. KULASZKA:

23 "He asked for the Commission to
24 provide a section on Section 13
25 for the organization."

1 And that meeting hasn't taken place,
2 correct?

3 MR. GOLDBERG: Pardon me.

4 MS. KULASZKA: That meeting has not
5 yet taken place.

6 MR. GOLDBERG: It has not yet taken
7 place.

8 MS. KULASZKA: Now, page 107 seems to
9 be a reproduction of a Toronto Star article?

10 MR. GOLDBERG: That's correct.

11 MS. KULASZKA: Does the Commission
12 maintain a kind of media service where --

13 MR. GOLDBERG: Yes, we do.

14 MS. KULASZKA: And it monitors media?

15 MR. GOLDBERG: Yes, it does.

16 MS. KULASZKA: Is it just published
17 media like newspapers and TV?

18 MR. GOLDBERG: Yes, it is.

19 MS. KULASZKA: So you don't monitor
20 the Internet?

21 MR. GOLDBERG: We do not monitor the
22 Internet.

23 MS. KULASZKA: That might be an idea,
24 don't you think?

25 MR. GOLDBERG: All sorts of ideas.

1 MS. KULASZKA: Now, on page 108,
2 there's another memo. This one is from you to Bob
3 Ward, Secretary General?

4 MR. GOLDBERG: Yes.

5 MS. KULASZKA: Do you know what date
6 this memo would be?

7 MR. GOLDBERG: I would suspect that
8 it was shortly after September 15th, 2004. I tend to
9 try and report on meetings soon after they occur.

10 MS. KULASZKA: Now, this is the 2004
11 exploratory meeting with CAIP; is that right?

12 MR. GOLDBERG: That's what it says,
13 yes.

14 MS. KULASZKA: And at that time, you
15 reported to Mr. Ward and not to Mr. Fine?

16 MR. GOLDBERG: That's correct.

17 MS. KULASZKA: It says that you
18 "briefed CAIP on the Commission's change agenda."
19 What's the change agenda.

20 MR. GOLDBERG: I testified with
21 regard to that previously, but I will do so again if
22 you wish. In 2002, 2003, a new chief Commissioner was
23 appointed. The secretary general was appointed.

24 They decided that the Commission
25 needed to do a very careful re-examination of how we

1 did our business in order to serve Canadians better. We
2 call that the change agenda or the quantum initiative,
3 and that was an ongoing process that went on for
4 several years. It included virtually all aspects of
5 the Commission's operations.

6 MS. KULASZKA: Now, it says in the
7 next paragraph that the,

8 "CAIP was going to be pleased to
9 work with the Commission. CAIP
10 has done a considerable amount
11 of work with regard to issues
12 relating to illegal and unlawful
13 content on the Internet."

14 Do you know who else CAIP works with,
15 as far as government departments are concerned, on
16 this -- on these issues?

17 MR. GOLDBERG: No, I do not.

18 MS. KULASZKA: Okay, that seems to go
19 on for several pages. We come to page 110. This is a
20 2005 meeting the next year. Most of that page has been
21 blacked out, blanked out. Did you produce a memo for
22 that meeting like the one that we just looked at for
23 2004?

24 MR. GOLDBERG: I don't recall.

25 MS. KULASZKA: Certainly, no memo was

1 disclosed to us, and I would like Miss Blight to
2 undertake to see whether such a memo exists, and if
3 they could produce that.

4 MS. BLIGHT: Mr. Chair, it's my
5 understanding that this is an agenda that -- items
6 which are out of scope have been removed, and what it
7 demonstrates is that there was a presentation by the
8 secretary general of the Human Rights Commission. The
9 deck of that presentation has been disclosed and that
10 is -- the documentation relating to this.

11 THE CHAIRPERSON: The reasons --
12 because there's no mention here, interestingly, as
13 compared to other documents of the grounds on which the
14 deletions were made. It seems that -- you know, it
15 doesn't say "out of scope". You say it's out of scope,
16 but I don't see an "out of scope".

17 MS. BLIGHT: No, I understand. In
18 the first round of disclosure, the excisions were made
19 without the indications of the basis, on the documents
20 themselves.

21 However, I can advise you this is an
22 agenda, and the -- I suppose idea is -- it may contain
23 information about the identities of individuals who
24 were present at the meeting, but the only pertinent
25 agenda item was the presentation by the secretary

1 general.

2 THE CHAIRPERSON: And the
3 remaining -- because I see it's the CAIP Advisory Board
4 meeting, so they would have had items of their own on
5 the agenda.

6 MS. BLIGHT: Their other agenda
7 items.

8 THE CHAIRPERSON: And that's why
9 they've been excised. Okay.

10 MS. BLIGHT: And the deck has been
11 produced.

12 THE CHAIRPERSON: The deck was
13 produced.

14 MS. BLIGHT: Disclosed, I'm sorry.

15 THE CHAIRPERSON: Disclosed? Well,
16 maybe it's been produced, I don't know. I mean, is it
17 in evidence, the deck?

18 MS. KULASZKA: Yes, the deck has been
19 disclosed.

20 THE CHAIRPERSON: Disclosed? All
21 right, now we're all confused. We've been functioning
22 on the basis of disclosure, production.

23 MS. KULASZKA: Yes, actually I wasn't
24 really referring to this page. I was asking Mr. --

25 THE CHAIRPERSON: You were wondering

1 if there's a memo that was -- a follow-up memo.

2 MS. KULASZKA: I thought that he
3 understood.

4 THE CHAIRPERSON: Do you remember if
5 there was a follow-up memo, sir?

6 MR. GOLDBERG: Now, there was -- the
7 clarification of what this event was. I'm 99 percent
8 certain there wasn't a memo because as it indicates,
9 this was a presentation of the secretary general to a
10 board meeting. As I recall, I attended that meeting.
11 It was -- as it's shown there. Okay, I'm not sure
12 whether the presentation occurred during the lunchtime
13 or not, but it was a short presentation.

14 It was the deck that's already been
15 mentioned. There wouldn't have been any need for me to
16 brief the secretary general, seeing that he was at the
17 meeting. So I presume that I did.

18 THE CHAIRPERSON: Okay, Ms. Kulaszka,
19 you have it there, so -- that's okay.

20 MS. KULASZKA: When was the
21 closed-door meeting, the round table discussion with
22 CAIP. Was that 2006?

23 MR. GOLDBERG: No, that would have
24 been December of 2005.

25 MS. KULASZKA: And we've gone all

1 through this tab, which was your e-mails and memos.
2 There's -- did you see a memorandum, a follow-up
3 memorandum regarding that meeting, in this material?

4 MR. GOLDBERG: No.

5 MS. KULASZKA: Do you know whether
6 you wrote one?

7 MR. GOLDBERG: I'm sorry, following
8 which meeting.

9 MR. GOLDBERG: The closed-door
10 meeting with CAIP?

11 MR. GOLDBERG: I don't recall whether
12 I wrote one or not. I'm again 99 percent certain that
13 I would not have, because all the principal parties
14 from the Commission were at the meeting. Unless there's
15 something very, very important about the meeting, I
16 generally do not report on meetings to people that are
17 at the meetings. Everybody takes their own notes and
18 that's how we proceed.

19 MS. KULASZKA: If you look at the
20 last -- other pages. If you look up the last page of
21 that tab, which is 117. Do you recognize that article?

22 MR. GOLDBERG: Yes, I recognize that
23 article.

24 MS. KULASZKA: And you -- it was just
25 kind of a PR thing, was it? The Commission -- you got

1 your picture taken accepting the disk?

2 MR. GOLDBERG: That's correct.

3 MS. KULASZKA: Can I produce that
4 entire tab?

5 THE CHAIRPERSON: We've been through
6 every page, so I guess -- what are we going to do? It's
7 produced. So you're accepting the CD; is that it?
8 Copy -- copy of the CD.

9 MR. GOLDBERG: Yes.

10 MS. KULASZKA: If we could just look
11 at that last page again, 117, on the right-hand side.

12 MS. KULASZKA: It says, "What you can
13 do. Anyone who comes across a website which they
14 believe promotes terrorism or hate is invited to send
15 the URL to a new e-mail address,
16 digitalhate@wiesenthal.net, which is monitored directly
17 by the FSWC researchers.

18 Law enforcement officials can contact
19 FSWC in Toronto directly." Does anyone from the
20 Commission, do you know -- have they contacted that
21 group directly.

22 MR. GOLDBERG: I don't know. I
23 haven't contacted them directly. Well, I -- I've had
24 contact with the Simon Wiesenthal Centre, but I've
25 never used that e-mail address.

1 MS. KULASZKA: Do you know how many
2 IPs have been named in complaints under Section 13?

3 MR. GOLDBERG: No, I do not know.

4 MS. KULASZKA: Are you familiar with
5 the AOL case?

6 MR. GOLDBERG: I think I've already
7 testified that I knew there was a case against AOL, but
8 I don't recall the details.

9 MS. KULASZKA: Are you aware that the
10 complaint was dismissed after AOL agreed to put in
11 filters for specific keywords?

12 MR. GOLDBERG: No, I wasn't aware of
13 that. Perhaps I should say I don't recall that. I may
14 have been aware of it at some time, but I don't recall
15 it.

16 MS. KULASZKA: If you could turn to
17 tab 6.

18 THE CHAIRPERSON: Of R-17.

19 MS. KULASZKA: Yes, of R-17. Do you
20 recognize this document.

21 MR. GOLDBERG: No.

22 MS. KULASZKA: It was written in
23 1995, and it concerns a request from CBC TV concerning
24 hate propaganda and the Internet, and the reporter was
25 Neil MacDonald. Does that sound familiar to you?

1 MR. GOLDBERG: I don't have -- I
2 certainly know who Neil MacDonald is. I --

3 MS. KULASZKA: As I said, they wanted
4 to do an interview with you?

5 MR. GOLDBERG: They wanted to do an
6 interview with me.

7 MS. KULASZKA: Yes, on page 3 of that
8 memo, if you just turn over, one of the things we
9 discussed,

10 "Do you have a problem with
11 having the CBC interview Harvey
12 Goldberg, if I ensure that the
13 questions he is asked deal only
14 with his research and not with
15 the law, Commission policy, or
16 response to complaints"?

17 MR. GOLDBERG: I have no recollection
18 of that.

19 MS. KULASZKA: What research would
20 you have been doing at that time?

21 MR. GOLDBERG: This was in the period
22 of 1995. It would be the research that I testified to
23 earlier in these proceedings. It was at the early
24 stages of the Commission's interest and on hate on the
25 Internet, and we were doing research to find out the

1 extent of the problem and whether it might be covered
2 by Section 13 of the Canadian Human Rights Act.

3 MS. KULASZKA: Can you tell me who
4 Donna Balkan was?

5 MR. GOLDBERG: It says on the memo
6 she's Chief of External Relations.

7 MS. KULASZKA: You don't know
8 anything else about her at the time, you didn't know
9 her?

10 MR. GOLDBERG: Yes, I certainly knew
11 her.

12 MS. KULASZKA: Turning to page 4.

13 THE CHAIRPERSON: What do we do with
14 the letter.

15 MS. KULASZKA: I would like to enter
16 it. It's a letter which was received under an Access
17 to Information request from the Commission in 1996, if
18 my friends don't have any objection to it.

19 MS. BLIGHT: I don't really
20 understand to which issues in the proceeding it could
21 possibly be relevant.

22 MS. KULASZKA: Maybe I could go
23 through it.

24 THE CHAIRPERSON: No, no. I do. I
25 do know the relevance. It's the same line of -- that

1 was discussed. Mr. Goldberg himself referred to his
2 previous evidence, the research that he was doing, what
3 research had the Commission been doing with the issue,
4 and from when and what's involved, and are they
5 monitoring, all that. So it was -- will be produced.

6 MS. KULASZKA: Mr. Goldberg, if you
7 could just look at the first page of that memorandum.
8 It states, "In addition, Neil was aware that Harvey
9 Goldberg has been doing research on the issue of
10 electronic hate messages, and had posted a message on
11 the Internet, asking for information from Internet
12 users.

13 Harvey was looking into the issue in
14 response to comments by Sigmund Reeser at the December
15 Commission meeting. As you may remember, we, sir,
16 expressed concern about the use of the Internet to
17 disseminate hate propaganda." And I think we've -- we
18 discussed that. Those were the e-mails which we have
19 seen at -- what we talked yesterday, correct? You had
20 put an e-mail out --

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

22 MS. KULASZKA: It was on
23 alt.revisionism, correct.

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

25 MS. KULASZKA: And why did you do

1 that? Is that in fact true that one of the
2 Commissioners, Mr. Reeser, had asked you to do that?

3 MR. GOLDBERG: I do not recall that,
4 but that certainly seems like a possibility, yes.

5 MS. KULASZKA: Bottom paragraph, it
6 states,

7 "At the same time, we all
8 acknowledge, at least privately,
9 that is a more difficult issue
10 to deal with than telephone hate
11 messages. The Internet is
12 totally unstructured, it is
13 essentially a network of
14 networks with nobody in charge.
15 Messages come in from all over
16 the world. People often use
17 aliases and are difficult to
18 trace and so on. And although
19 community internet access
20 providers like National Capital
21 Freenet are structured, with a
22 Board of Directors and policies
23 on various matters, they say
24 they cannot control the kinds of
25 messages that are posted by

1 individual Freenet users. This
2 was demonstrated during the
3 publication ban of the Karla
4 Homolka trial. While Freenet
5 and other Canadian access
6 providers tried to keep
7 information about the trial off
8 the local network for fear of
9 prosecution, some information
10 did get through to Freenet users
11 from American sources."

12 Does that accurately reflect the type
13 of discussions that were ongoing at the Commission at
14 the time?

15 MR. GOLDBERG: Yes.

16 MS. KULASZKA: The next paragraph,
17 "Moreover, there is resistance
18 among both access providers and
19 many Internet users to any
20 attempt to censor or control the
21 Internet. While this sounds
22 like the argument used by the
23 Globe and Mail and other "free
24 speech" advocates to criticize
25 our work on telephone hate

1 lines, the opposition is more
2 vociferous when it relates to
3 the Internet. Because the
4 Internet is an interactive
5 medium which users can and do
6 respond to each other's comments
7 with counter comments, the
8 feeling is that it is
9 effectively self-policing, it
10 does not require any kind of
11 regulation?"

12 Does that also reflect the kind of
13 discussions that were ongoing at the Commission at the
14 time?

15 MR. GOLDBERG: I don't think that it
16 reflects the discussions, it reflects a point of view
17 that was being expressed by a certain segment of
18 Canadian society.

19 MS. KULASZKA: That the Commission
20 was aware of?

21 MR. GOLDBERG: Obviously.

22 MS. KULASZKA: It appears there was a
23 complaint regarding a bulletin board in Montreal.
24 That's two paragraphs from where I was reading. And it
25 states,

1 "But it was decided to take no
2 further proceedings because the
3 bulletin board was no longer
4 operating."

5 Do you know anything about that?

6 MR. GOLDBERG: No, I do not.

7 MS. KULASZKA: If we turn to page 4
8 in that tab, this was a document produced by the
9 Commission -- not produced but disclosed by the
10 Commission. These are letters regarding a special
11 edition of "Canadian Issues Hate on the Internet", and
12 who they were sent to?

13 MR. GOLDBERG: That's correct.

14 MS. KULASZKA: And to your knowledge,
15 was that issue sent to all those people listed?

16 MR. GOLDBERG: Yes, it was.

17 MS. KULASZKA: Do you know why they
18 would be sent to judges?

19 MR. GOLDBERG: These are concerned --
20 it's a matter of Canadian law the judges would be
21 interested in.

22 MS. KULASZKA: If you could turn to
23 page 6. This is a document which the respondent has
24 produced, dated 1995. It comes from an Access to
25 Information request made in 1996. This is a letter

1 signed by you. You can see that on page 8?

2 MR. GOLDBERG: It's a memorandum
3 signed by me.

4 MS. KULASZKA: A memorandum? And
5 what does this memorandum concern.

6 MR. GOLDBERG: It -- it concerns a
7 motion in Parliament, by a member of Parliament with
8 regard to hate on the Internet -- with regard to the
9 Internet and hate propaganda.

10 MS. KULASZKA: And what happened to
11 that initiative?

12 MR. GOLDBERG: I would have to read
13 the memo, if I could have a minute? What happened to
14 the motion? I can't say with certainty, but I say in
15 the memo that it was not a voteable motion, so what
16 happens with nonvoteable motions is, they are debated,
17 and that's it.

18 MS. KULASZKA: Could you look at page
19 7 of that memo? The fourth paragraph down, starts,
20 "I will defer to advice from
21 Bill Petney, but in my opinion,
22 the assertion that Section 319
23 could be used to curb hate
24 propaganda on the Internet is
25 mistaken."

1 You didn't believe that section 319
2 would apply to the Internet?

3 MR. GOLDBERG: At that time, I did
4 not believe it would apply to the Internet or that --
5 at least, that it was not an effective tool for dealing
6 with hate on the Internet.

7 MS. KULASZKA: But it has
8 subsequently been used. Section 319 has been used
9 against --

10 MR. GOLDBERG: Yes, it has in recent
11 years.

12 MS. KULASZKA: -- website postings?
13 Okay, on page 9 of that tab, this is another memorandum
14 from you regarding the same motion?

15 MR. GOLDBERG: Yes. Oh, I see I was
16 wrong. The motion was adopted by unanimous consent.

17 MS. KULASZKA: If I could produce
18 that tab.

19 THE CHAIRPERSON: The entire tab?
20 Page nine was a letter, again, from Mr. Goldberg.

21 MS. KULASZKA: Yes.

22 THE CHAIRPERSON: Okay, yes.

23 MS. KULASZKA: Okay, Mr. Goldberg, if
24 you could go onto the next tab, tab 7. This is a
25 document from the Policy and Planning Branch, which was

1 produced by the respondent. It was disclosed in an
2 Access to Information request in 1996. Do you
3 recognize this document?

4 MR. GOLDBERG: Yes, I do.

5 MS. KULASZKA: Did you write it?

6 MR. GOLDBERG: I probably did, yes.

7 MS. KULASZKA: What is it.

8 MR. GOLDBERG: A point by point
9 discussion of the prohibition of hate messages under
10 the Canadian Human Rights Act. This may have actually
11 been before PowerPoints existed. I don't recall.

12 MS. KULASZKA: Before what?

13 MR. GOLDBERG: Before PowerPoint
14 existed, before decks were used.

15 MS. KULASZKA: That's probably why
16 it's more understandable.

17 THE CHAIRPERSON: There's a whole
18 theory of expertise in the area of proper PowerPoint
19 presentations. Not too much, not too little, just
20 right.

21 MS. KULASZKA: Now, on page 5 of that
22 memorandum, it talks about the Internet?

23 MR. GOLDBERG: Yes.

24 MS. KULASZKA: "What is the
25 Internet?", and it states "30 million users in 54

1 countries". Do you know how many users there are of
2 the Internet today.

3 THE CHAIRPERSON: I'm sorry, I missed
4 the page.

5 MS. KULASZKA: That's page 5 of the
6 same document.

7 THE CHAIRPERSON: Yes, sorry. So the
8 question is, how many users are there.

9 MS. KULASZKA: Yes, it states that
10 "in 1995, there's 30 million users in 54 countries". Do
11 you know what the statistics would be today?

12 MR. GOLDBERG: No, I don't, but I'm
13 sure that it's a magnitude of tens, if not hundreds, of
14 times -- well, not hundreds, but certainly in the
15 hundreds of millions of people use it.

16 MS. KULASZKA: And it states, "the
17 Internet runs primarily on telephone lines". Is that
18 true today?

19 MR. GOLDBERG: No, it is not true
20 today.

21 MS. KULASZKA: What does it run on?

22 MR. GOLDBERG: Runs on fiberoptics,
23 it runs on wireless networks, it runs on cable
24 television systems, it runs on DSL lines. There's many
25 ways you can get access to the Internet now.

1 MS. KULASZKA: And going over to page
2 7, you state "talks initiated with National Capital
3 Freenet on how to deal with messages communicated on
4 their system may set pattern for further actions." And
5 that's true, that has been the pattern for further
6 actions, isn't it.

7 MR. GOLDBERG: I don't know if I --
8 well, yes, okay, the discussions we had in the mid
9 1990s with the National Capital Freenet, in the broad
10 sense, set the pattern for later discussions with other
11 Internet service provider with regard to seeking their
12 cooperation in ensuring that the laws of Canada were
13 complied with.

14 MS. KULASZKA: Now, problems in
15 enforcing Section 13, "cannot control messages posted
16 from outside Canada." Is that still true?

17 MR. GOLDBERG: Yes.

18 MS. KULASZKA: "Difficulty in
19 identifying respondents", is that still true?

20 MR. GOLDBERG: Somewhat less true.
21 It's -- there's more investigative tools that we can
22 use now to identify respondents, but it sometimes is an
23 issue.

24 MS. KULASZKA: And do members of the
25 Commission take courses from the Canadian Police

1 College, to help them identify respondents?

2 MR. GOLDBERG: I believe that some
3 members of the Commission staff have taken such
4 courses, yes.

5 MS. KULASZKA: Let's just have a look
6 at the other volume for a minute. Yes, that's right.
7 And it's I think it's R-20 -- no, R-19. And look at
8 tab 7, just for a minute?

9 MR. GOLDBERG: I'm sorry, I'm getting
10 confused here. We were -- that's the volume we were
11 in, isn't it.

12 MS. KULASZKA: No, it's R-19.

13 MR. GOLDBERG: Yes, you said, "look
14 at the other volume", and it's the same volume.

15 MS. KULASZKA: No, there should be
16 another -- you were on R-17, and this would be R-19. Is
17 there a tab 7? Try the black one.

18 MR. GOLDBERG: Okay, which tab.

19 MS. KULASZKA: Tab 7.

20 MR. GOLDBERG: Oh, I'm sorry. Yes.

21 MS. KULASZKA: And these are PDFs
22 from the website of the Canadian Police College?

23 MR. GOLDBERG: Yes.

24 MS. KULASZKA: And it describes some
25 courses, and the first page is the availability of

1 positions, candidates, eligibility, how you get to take
2 the course, and if you look four pages on, there's the
3 course, "Internet Searching Techniques, Basic"?

4 MR. GOLDBERG: Yes.

5 MS. KULASZKA: And then
6 "Intermediate". Are those the courses the Commission
7 employees are taking?

8 MR. GOLDBERG: I don't know.

9 MS. KULASZKA: You haven't taken any
10 of these courses, I gather.

11 MR. GOLDBERG: I certainly have not.

12 MS. KULASZKA: Okay, go back to the
13 other volume, just where we were, the white one. Oh,
14 yes, could I -- do my friends have any problem with
15 that being produced? Dean Stacy brought this up and
16 stated that courses were taken at the Canadian Police
17 College. We don't know what courses they are taking,
18 however. That's the problem.

19 THE CHAIRPERSON: You printed this
20 off? Who printed this off.

21 MS. KULASZKA: I printed that off.

22 THE CHAIRPERSON: June 23rd, 2007.

23 MS. KULASZKA: Yes, it was -- I
24 printed it off after Dean Stacy's testimony, to see
25 what kind of courses were being offered.

1 THE CHAIRPERSON: Any objection, for
2 the veracity of the document.

3 MS. BLIGHT: It's being produced as a
4 printoff from the Internet? I have no objection to
5 that.

6 THE CHAIRPERSON: Yes, a printoff
7 from the Internet. That appears to be what it is.

8 MS. KULASZKA: Going back to R-17,
9 just where you are. We'll go to the third problem of
10 "enforcing Section 13, resistance by many Internet
11 users to limitations on freedom of expression." Is
12 that still true today?

13 MR. GOLDBERG: I would say it's less
14 so, but it -- certainly Internet service provider, like
15 all Canadians, including the Commission, are cognizant
16 of the need to balance freedom of speech or freedom of
17 expression with freedom from hatred, so I would expect
18 that it is certainly a concern of Internet service
19 provider today.

20 MS. KULASZKA: It's a concern of
21 what?

22 MR. GOLDBERG: That it is still a
23 concern of Internet service provider.

24 MS. KULASZKA: No, it's talking about
25 Internet users.

1 MR. GOLDBERG: Oh, I would think that
2 many -- yes, I would think that many Internet users
3 have concerns about freedom of expression, yes.

4 MS. KULASZKA: If you could turn to
5 the next page, 8. Do you what this document is? I
6 think it deals with hate on the Internet on page 10?

7 MR. GOLDBERG: If I recollect
8 properly, it appears to be one of -- I would
9 periodically produce updates on what the branch I was,
10 at that time responsible for, was doing, and this
11 appears to be one of those.

12 MS. KULASZKA: Would that be a
13 regular thing you would still do today?

14 MR. GOLDBERG: No.

15 MS. KULASZKA: With respect to the
16 work of the anti-hate team or the Section 13hate team,
17 do you make regular presentations about your work to
18 the Commission?

19 MR. GOLDBERG: No.

20 MS. KULASZKA: Going onto page 12,
21 this again is a kind of summary of prohibition of hate
22 messages under the Canadian Human Rights Act. I think
23 it's a different date. The first one was March 14th,
24 1995. This is May 30th, 1995. Was --

25 MR. GOLDBERG: I'm sorry, what page

1 are we at now?

2 MS. KULASZKA: It's page 12 of the
3 same tab.

4 MR. GOLDBERG: Oh, I'm sorry, I --

5 MS. KULASZKA: And if you look at the
6 date on the bottom, this one is May 30th, 1995. We
7 just looked at a similar one but it was dated March
8 14th, 1995. Are these --

9 MR. GOLDBERG: I'm sorry, I've lost
10 my place. Could you just --

11 MS. KULASZKA: Oh, sorry, it's tab 7.

12 MR. GOLDBERG: Tab 7, page.

13 MS. KULASZKA: 12.

14 MR. GOLDBERG: Okay, yes, thank you.

15 MS. KULASZKA: So was this type of
16 thing produced on a monthly basis?

17 MR. GOLDBERG: I would say that it
18 was produced on an "as needs" basis, as -- that it
19 would probably be updated, depending on the audience,
20 depending on whether there have been further
21 developments, depending on whether I thought there was
22 something that should be added --

23 MS. KULASZKA: And that's
24 something --

25 MR. GOLDBERG: -- what you might call

1 an evergreen document.

2 MS. KULASZKA: What is an evergreen
3 document?

4 MR. GOLDBERG: A document that you
5 keep up-to-date so that it's current.

6 MS. KULASZKA: Okay, turning to page
7 19, this is an issues update, dated December 12, 1995.
8 Did you write this?

9 MR. GOLDBERG: Probably, yes. Yes,
10 I -- I likely did write it.

11 MS. KULASZKA: Would this describe
12 the work that you did at the time?

13 MR. GOLDBERG: That's what it appears
14 to do, yes.

15 MS. KULASZKA: If I could produce
16 that entire tab.

17 THE CHAIRPERSON: Okay, and we've
18 been through it all, and it's been identified by the
19 witness.

20 MS. KULASZKA: Pardon?

21 THE CHAIRPERSON: It's been
22 identified by the witness, so that's fine.

23 MS. KULASZKA: Just for the record,
24 that entire tab, those documents were all produced by
25 the respondent.

1 THE CHAIRPERSON: Disclosed by the
2 respondent.

3 MS. KULASZKA: Disclosed by the
4 respondent, and were not disclosed by the Commission.

5 MS. BLIGHT: That is not correct, Mr.
6 Chair. I recognize at least one of the documents.

7 MS. KULASZKA: I would appreciate it
8 if Miss Blight could tell me which ones.

9 THE CHAIRPERSON: At a later point.
10 Let's move on.

11 MS. KULASZKA: Okay, I believe tab 8
12 has been produced.

13 THE CHAIRPERSON: Yes, it has. Tab 9
14 as well, I believe, most of it.

15 MS. KULASZKA: Okay, we'll go to tab
16 11. Here's the first two pages. Is this an example of
17 Parliament of a deck?

18 MR. GOLDBERG: That's correct.

19 MS. KULASZKA: This would be a
20 presentation you would give to various people?

21 MR. GOLDBERG: That's correct.

22 MS. KULASZKA: Turning to page 3 of
23 that tab. I'll go back to page 2. Parliament of this
24 deck is that -- you state that the law -- you're
25 referring to Section 13 of the Canadian Human Rights

1 Act?

2 MR. GOLDBERG: That's correct.

3 MS. KULASZKA: You say "it's unique
4 in Canada, and unique in the world." Why is that?

5 MR. GOLDBERG: Because it's a human
6 rights approach to hate on the Internet, and it's a
7 specific provision in a human rights law with regard to
8 the transmission of the hate messages. There are other
9 Human Rights Commission's, for example, the Australian
10 Commission, that has dealt with issues relating to hate
11 on the Internet, but -- I stand to be corrected on
12 this -- as far as I know, their law don't make any
13 specific reference to hate messages on the Internet.

14 MS. KULASZKA: Turning to page 3,
15 this appears to be an agenda on the investigation of
16 hate on the Internet cases. Was this just a meeting of
17 people within the Commission?

18 MR. GOLDBERG: No, this is the
19 meeting that I provided the testimony on earlier in
20 these proceedings, with representatives of police
21 services.

22 THE CHAIRPERSON: Of the.

23 MR. GOLDBERG: Police services and
24 other organizations that are interested in the
25 investigation of hate on the Internet.

1 MS. KULASZKA: At the bottom of the
2 page, there's open discussions of Criminal Code and the
3 Canadian Human Rights Commission, how to use them
4 effectively. What kind of issues would be canvassed in
5 that discussion?

6 MR. GOLDBERG: The obvious issue that
7 there are provisions -- actually, as I recall, in the
8 same legislation, the Anti-HateTerrorism Act, Bill
9 C-36, which was passed in December of 2001, on the part
10 of Canada amended the Canadian Human Rights Act to make
11 it clear that Section 13 included hate messages
12 transmitted via the means of inter-connected computers.

13 At the same time, they added
14 provisions to the Criminal Code. With regard to
15 material on a hate site being considered in a similar
16 manner to printed hate propaganda. So -- and as well,
17 there were existing provisions of the Criminal Code
18 with regard to the promotion of hatred and the
19 promotion of genocide, those would all be matters of
20 common interest to both police services and the
21 Commission.

22 MS. KULASZKA: Okay, and turning the
23 page, there was a discussion of how we can improve
24 inter-agency communication and mutual assistance. What
25 kind of mutual assistance do you have with police

1 services agencies?

2 MR. GOLDBERG: Within the limits of
3 our respective laws, mandates and responsibilities, we
4 exchange information about matters that are of interest
5 to us.

6 MS. KULASZKA: So an example would
7 be -- say, the investigation of Andrew Gill by Mr.
8 Stacy, where he phones up police in London and obtains
9 personal information about Mr. Gill?

10 MR. GOLDBERG: I have no knowledge
11 about that.

12 MS. KULASZKA: You weren't on the
13 team that considered that report?

14 MR. GOLDBERG: I was on the team that
15 considered that report. I've no recollection -- to the
16 best of my recollection, I don't recall being involved
17 in any discussions where that -- where contact with
18 police forces was discussed. I'm aware of at least one
19 matter that came before this Tribunal that a police
20 officer was subpoenaed as a witness, but I'm not aware
21 of contacts with Mr. Stacy -- let me rephrase that.
22 I'm aware that Mr. Stacy and other investigators may,
23 over time, have talked to police officers in
24 conjunction with the investigations they were carrying
25 out, but I'm not aware of what the content of those

1 discussions were.

2 MS. KULASZKA: If we turn to page 6,
3 this is another policy and planning document from 1995.
4 This appears to be another updated version of that
5 other document. Do you recognize this document?

6 MR. GOLDBERG: On page 5.

7 MS. KULASZKA: 6.

8 MR. GOLDBERG: 6.

9 THE CHAIRPERSON: Does it begin at
10 page 5? Oh, no, it's not.

11 MS. KULASZKA: No, it starts at page
12 6.

13 THE CHAIRPERSON: Okay.

14 MR. GOLDBERG: Yes, I accept that I
15 wrote that document.

16 MS. KULASZKA: Do you recognize it?

17 MR. GOLDBERG: I don't -- I don't
18 have a recollection of it, but it looks like something
19 that I wrote, yes.

20 MS. KULASZKA: On page 7, you report
21 that,

22 "The Simon Wiesenthal Centre was
23 calling for controls on the
24 Internet, and that the Canadian
25 Human Rights Commission extended

1 its authority to the Internet
2 using the existing powers under
3 Section 13."

4 Is that right."

5 MR. GOLDBERG: Yes.

6 THE CHAIRPERSON: Where does it say
7 that.

8 MS. KULASZKA: It's on page 7, under
9 B, "Position of the Simon Wiesenthal Centre", and the
10 third paragraph, "among other recommendations, the
11 Simon Wiesenthal Centre ask that".

12 MS. KULASZKA: So this has been a
13 consistent position of the Simon Wiesenthal Centre; is
14 that right.

15 MR. GOLDBERG: I couldn't testify to
16 that. I don't know.

17 MS. KULASZKA: If you turn to page 8.
18 This is a report on discussions with Internet providers
19 that the Commission met in 1995, February, with
20 representatives of the National Capital Freenet, to
21 discuss with them the voluntary adoption of a policy on
22 permissible use of the NCF system. This seems to be a
23 report on those discussions; is that right?

24 MR. GOLDBERG: Yes.

25 MS. KULASZKA: It says a point 4 at

1 the top of 9.

2 "If the NCF is unwilling or
3 unable to control use of their
4 system for purposes contrary to
5 Section 13" -- and of course,
6 this was after they'd been given
7 notice of alleged hate messages
8 on their system --

9 "the Commission will accept the
10 formal complaints and proceed
11 with it in the usual manner."

12 Would -- was NCF told that they would
13 be included in the complaint.

14 MR. GOLDBERG: Not to my
15 recollection, no.

16 MS. KULASZKA: Do you remember?

17 MR. GOLDBERG: I just testified to my
18 recollection, I don't recall.

19 MS. KULASZKA: You don't recall what
20 was said to them?

21 MR. GOLDBERG: I don't recall
22 whether -- whether we said to them that they would be
23 included in the complaint. I don't believe that we
24 would have said that, seeing that certainly at the
25 Act -- at the time, the Act -- well, still to this day,

1 the Act has a common carrier exclusion, so I doubt that
2 we would have said that the National Capital Freenet
3 would be a respondent.

4 MS. KULASZKA: Is the operator of a
5 bulletin board a common carrier?

6 MR. GOLDBERG: I don't believe that
7 they are a common carrier in the meaning of the
8 Canadian Human Rights Act, no.

9 MS. KULASZKA: But what was the
10 Freenet? Was it not the operator of a very large
11 message board?

12 MR. GOLDBERG: It was an operator,
13 and still is, an operator of an Internet service.

14 MS. KULASZKA: But it was a large
15 message board, a bulletin board. That's what it was.

16 MR. GOLDBERG: In the -- in the early
17 period of the Internet, that's what most use of the
18 Internet concerned, message boards, that's correct.

19 MS. KULASZKA: And you reproduced
20 threats, conversations off that Freenet?

21 MR. GOLDBERG: That's correct.

22 MS. KULASZKA: That's basically what
23 it was; it wasn't a website, per se. It was a message
24 board.

25 MR. GOLDBERG: As I recall, it

1 preceded the Web -- the graphic web format that we're
2 used to today.

3 MS. KULASZKA: So your position --
4 the Commission's position at the time was that the
5 operator of a large message board like that, or any
6 message board, would be a common carrier?

7 MR. GOLDBERG: I can't really recall
8 what our position was at the time. I know that there
9 was, and still is, an issue in the posting of messages
10 which may be prohibited under Section 13 of the Canadian
11 Human Rights Act.

12 There are several entities or
13 individuals which may be involved. One may be the
14 person who has -- has paid to post a website on the
15 service of an Internet service provider. For example,
16 on many -- with many Internet service provider, you're
17 given web space. That could be -- one person could be
18 involved in the complaint.

19 Another entity that could conceivably
20 be involved in a complaint is an Internet service
21 provider, if the Internet Service Provider has control
22 over the content of the information appearing on its
23 website.

24 So there are a number of entities
25 that could be involved. As I already testified earlier

1 this morning, to the best of my knowledge, there has
2 only been one case where an Internet Service Provider
3 has actually been -- excuse me, that's not correct.

4 There have been a couple of cases
5 where Internet service provider have been named as
6 respondents, but that's particular to the evidence that
7 was available to the Commission.

8 I would point out that Section 13,
9 the subsection that deals with the undertakings of
10 telecommunication undertaking, subsection 3 states,

11 "For the purposes of this
12 section, no owner or operator of
13 a telecommunications undertaking
14 communicates or causes to be
15 communicated, any matter
16 described in section one, by
17 reason only that the facilities
18 that a telecommunication
19 undertaking owned or operated by
20 that person are used by other
21 persons in the transmission of
22 that matter."

23 I do not give legal opinions, but I
24 would point out that that section of the Act was in the
25 original legislation dealing with Section 13, when it

1 dealt with the -- exclusively with the repeated
2 telephonic communication of messages, and that in -- I
3 believe if you read the legislative history, you'll
4 find the reason for that was to avoid the possibility
5 that the Manitoba Telephone System or Bell Canada would
6 be found liable because somebody unknown to Bell Canada
7 and impossible for Bell Canada to know, had told people
8 to phone a telephone number where they could hear a
9 hate message.

10 That is not exactly the same
11 situation as pertains today with regard to hate on the
12 Internet, because in fact, Internet service provider,
13 even Bell Canada today -- although there are problems
14 with the extent to which they can control what passes
15 through their Internet systems, they do have the
16 ability to control information that passes through it.

17 To cite an example, they comply with
18 the laws of Canada with regard to child sexual
19 exploitation and child pornography. They do, to the
20 best of their ability, monitor their operations to
21 ensure that material which may contravene the Criminal
22 Code is not transmitted on their systems.

23 So although it has not been
24 determined by this Tribunal or a court yet, I think
25 that there has to be -- there is perhaps law that has

1 not yet been determined with regard to whether a
2 telecommunication undertaking, when it is conducting
3 its business as an Internet Service Provider, is or is
4 not in -- and depending on the circumstances, acting as
5 a common carrier.

6 THE CHAIRPERSON: All that being
7 said, it's one o'clock and it will be an appropriate
8 time for us to take a break, I think, for lunch. I
9 would like to keep it short. How are we doing on your
10 time? Because you have to -- I need time after --

11 MS. KULASZKA: How about 2:00?

12 THE CHAIRPERSON: 2:00, to return?
13 And when will you be done, because I want time
14 allocated for the other time, and Mr. Fromm as well.

15 MS. KULASZKA: How about 4:00?

16 THE CHAIRPERSON: You'll be done at
17 four?

18 MS. KULASZKA: Gives them an hour.
19 Mr. Fothergill didn't think he'd take much more than --

20 THE CHAIRPERSON: How about 3:30?
21 That's fair, because I want Mr. Fromm -- and I want the
22 others, and I have to catch a plane.

23 When you see your witness going off
24 and on, and you don't need that information, maybe --

25 MS. KULASZKA: Then I would be

1 accused of interfering with the witness.

2 MR. FOTHERGILL: Before we go, I
3 should mention that -- and I are scheduled to fly back
4 to Ottawa at 6:10, and on the advice of the hotel,
5 we've booked ourselves a taxi for four.

6 I can discuss with Miss Blight over
7 the lunch break whether the things that perhaps -- we
8 wish to canvas with the witness, and perhaps we can
9 just have one person conduct the re-examination, so we
10 may take our leave at 4:00.

11 But if there are any housekeeping
12 matters for which my presence might be required, if we
13 could deal with that directly after the lunch break, I
14 would appreciate it.

15 THE CHAIRPERSON: Have you all had a
16 chance to speak to your respective friends about
17 availability?

18 MS. KULASZKA: Mr. Christie travels
19 all the time, and I would prefer a conference call,
20 where all the parties can be present. I feel very
21 uncomfortable where I'm supposed to contact other
22 people and --

23 THE CHAIRPERSON: I'm not adverse to
24 that because -- it's better for us too, from the
25 Tribunal perspective, to not have to work off my little

1 laptop here, in terms of setting dates. So we can put
2 something together. But I will need you all to be very
3 flexible on your availabilites for the telephone call.
4 Okay, let's come back at 2:00, and we'll continue at
5 that point.

6 --- Recess taken at 12:45 p.m.

7 --- Upon resuming at 2:00 p.m.

8 MS. KULASZKA: I wonder if the
9 witness could just be excluded for 5 minutes.

10 THE CHAIRPERSON: Okay.

11 MR. GOLDBERG: (Witness leaves room).

12 MS. KULASZKA: Just for the record, I
13 do want to object to this kind of deadline that's been
14 imposed on the respondent for this examination and
15 cross-examination. The trouble is the witness knows
16 there's a deadline. He keeps, just as you said before
17 the lunch break --

18 THE CHAIRPERSON: I've seen witnesses
19 do that, Ms. Kulaszka. He's not doing that. Let's
20 just move on. Don't even waste time right now. Let's
21 just go on. I've gotten to understand what a
22 reasonable time for any witness is. Trust me with my
23 experience. We don't need to go beyond three days
24 total for this witness. No way. A lot of this stuff is
25 repetitious. You could just end it right here with

1 this witness, and I've got all the information I need
2 for you to make that argument that you want to make.
3 You've got it all, and it's in the documents, and we --
4 a lot of this documentation is poor government Access
5 to Information stuff that won't be objected to.

6 You can just put it to me and make
7 your arguments. Putting it to the witness to get the
8 same answers over and over, what does that get us? But
9 if you want to, go ahead. But you are going to stop at
10 3:30. That's all.

11 MS. KULASZKA: And I would like to
12 raise the matter that -- this is an awkward situation,
13 being an examination and a cross-examination.

14 But Miss Blight was talking to the
15 witness extensively, and I would just like to know --
16 and get her undertaking that they were not discussing
17 this examination.

18 MS. BLIGHT: I've had discussions
19 with the witness about his flight schedule, I've not
20 had any discussions with the witness about his
21 evidence, and I'm happy to state that for the record,
22 without prejudice to whatever the Commission's position
23 might be with respect to what communications are proper
24 or improper.

25 THE CHAIRPERSON: Right, because

1 technically it's an examination -- half examination,
2 half cross-examination, and I think no one has been
3 objecting to your following an approach, in the recent
4 hours, Ms. Kulaszka, which resembles that of a
5 cross-examination. But I think it's fine, given where
6 this witness is coming from. You've been careful about
7 that, but still you've used the style of cross.

8 MS. BLIGHT: I also asked the witness
9 whether he had enjoyed his event yesterday, which is
10 something different maybe than the --

11 THE CHAIRPERSON: I, in fact, did the
12 same when I came in.

13 MS. BLIGHT: -- his travel schedule,
14 but there has been no discussion of his evidence.

15 THE CHAIRPERSON: I think, for the
16 record, we should point out, the only access out of
17 this downstairs location is through an elevator. So
18 I -- there are no stairs, to my knowledge, that are
19 open to the public, so I've had occasion to be in the
20 elevator with one of the gentleman who is in the room
21 at the back, who has been coming regularly. And on one
22 occasion, I was with the witness, coming down from the
23 lobby to lobby.

24 THE CHAIRPERSON: , and I asked him,
25 "So which event are you going to? What award did your

1 son win?" And he told me, "A scholarship", that was
2 it, and I got in the elevator --

3 MS. KULASZKA: No, I'm not raising
4 any -- any concern with the Tribunal.

5 THE CHAIRPERSON: No, I know, but I
6 mean, we've all had that incident occur here. I mean,
7 it inevitably happens when we're in a situation where
8 there's elevators in a hotel. Sir?

9 MR. FROMM: I'd just also like to
10 support what Ms. Kulaszka said. The respondent has few
11 enough advantages in these proceedings, and that -- the
12 time limit, I think, imposes a heavy burden on Ms.
13 Kulaszka, and I don't think it's fair. And especially
14 given the outrageous Section 37. On some pieces of
15 paper, there's more Section 37 than their are --

16 THE CHAIRPERSON: Things go both
17 ways, Mr. Fromm. I recall a situation where Mr.
18 Christie ran the clock and the Attorney General did not
19 have a single chance to ask a single question that day.
20 So I believe 3:30 is a good time.

21 MS. BLIGHT: For the sake of
22 completeness, I also now recall that Mr. Goldberg did
23 mention to me during the first break this morning that
24 the documentation, production of which was being
25 sought, was recent documentation which had come in to

1 existence after the disclosure had been made.

2 THE CHAIRPERSON: Okay, but that
3 would have been pursuant to the request we made of you
4 to find out more information about those documents. Is
5 that what you are talkign about.

6 MS. BLIGHT: That's correct.

7 MS. KULASZKA: Could I ask whether
8 the Commission has told you when they could produce
9 these documents?

10 THE CHAIRPERSON: Did they give you a
11 time frame.

12 MS. BLIGHT: I have not spoken with
13 the Commission again since the break this morning.
14 Obviously, Mr. Goldberg is going to have to be involved
15 in that disclosure. I know that one of the legal
16 counsel has some holidays booked in July, and I know
17 that the attempt will be made to do the disclosure
18 before she goes on holidays. I don't know if they will
19 be able to meet that time frame, but we will -- I will
20 impress upon the Commission the need to produce the
21 remaining documents as soon as possible.

22 I know that the additional disclosure
23 that we discussed yesterday vis-a-vis communications
24 with ISPs is now in course of being reviewed, and that
25 files are now today being reviewed for that purpose.

1 THE CHAIRPERSON: They are being
2 reviewed, as we speak.

3 MS. BLIGHT: As of this morning at
4 the break, files were already under review.

5 THE CHAIRPERSON: Okay, good.

6 (Witness returns)

7 THE CHAIRPERSON: Thank you, Mr.
8 Goldberg. I would ask, Mr. Goldberg -- we're pressed
9 for time, we've had -- an issue of time has come up.
10 I'm going to ask you to be short and sweet to your
11 questions. Doesn't recite to me 27 again. Just make
12 your point and move on.

13 MR. GOLDBERG: Sure .

14 MS. KULASZKA: Okay, Mr. Goldberg, if
15 we could go back to where we left off. It will be tab
16 11, page 12?

17 MR. GOLDBERG: Yes.

18 MS. KULASZKA: If you could just look
19 at this document and tell me if you are familiar with
20 it?

21 MR. GOLDBERG: It appears to be an
22 outline for a section of the annual report. I don't
23 recall this document, but that's what it appears to be,
24 and I don't know if I wrote it, but I accept that it's
25 probably written by me or somebody else associated with

1 me.

2 MS. KULASZKA: Bill C-41, the third
3 paragraph, it says that "in 1996, the Canadian Centre
4 for Police Race Relations convened a meeting aimed at
5 establishing a National network of police community
6 associations and other interested bodies, to coordinate
7 a National response to hate-motivated activities", and
8 it notes that Harvey Goldberg participated in that
9 hearing. Do you remember that meeting?

10 MR. GOLDBERG: No, I don't remember
11 that meeting, but it says I was there, so I'm sure I
12 was.

13 MS. KULASZKA: Then at -- the next
14 matter is the B'nai Brith audit, and you'll see the
15 second bullet underneath, states that "the B'nai Brith
16 audit of Anti-Semitic incidences in Canada is of
17 dubious scientific validity, being based on voluntary
18 reporting."

19 Was that the opinion of the
20 Commission regarding the audit.

21 MR. GOLDBERG: I can't say whether it
22 was the position of the Commission, but that actually
23 is a statement of fact. That's how the audit is done.
24 I don't think B'nai Brith would differ with that.

25 MS. KULASZKA: Just on that topic,

1 maybe we could go over to the next tab. Keep a place
2 there, but go to the next tab, 12, go to page 4.

3 MR. GOLDBERG: Yes.

4 MS. KULASZKA: You'll see a letter
5 dated March 14th, 1995. And if you turn the next page,
6 that page actually is out of order. This letter
7 continues on -- actually on page 6 and page 7. This was
8 a letter written by you. Do you recognize that?

9 MR. GOLDBERG: It's a memorandum
10 written by me. I don't recall it, but I accept that I
11 wrote it.

12 MS. KULASZKA: On the first page of
13 that memorandum, about the fourth paragraph down, you
14 also state, "despite its questionable validity the
15 audit receives." And that is about the audit of B'nai
16 Brith Canada. Was that your opinion of the audit?

17 MR. GOLDBERG: Yes.

18 MS. KULASZKA: Let's go back to the
19 first -- the tab we were just at, it's tab 11. Okay,
20 we'll turn to page 15. It's a document dated September
21 21st, 1995, that states that an ad hoc committee had
22 been formed. You were one of the listed members, "has
23 been established to monitor and coordinate the
24 Commission activity on the issue of the Internet."

25 Would that be one of the first steps

1 taken at the time, concerning the Internet.

2 MR. GOLDBERG: Yes.

3 MS. KULASZKA: Was it because you --
4 because the Commission has received these two
5 inquiries?

6 MR. GOLDBERG: I -- I don't recall. I
7 presume that that was related to it, yes.

8 MS. KULASZKA: Turning to page 16.
9 This is a memorandum with a copy of a B'nai Brith
10 pamphlet, which Mr. Reeser recently brought to the
11 Commission's attention. The pamphlet talks about the
12 establishment of a telephone hotline which the people
13 across the country could use to report hate-based
14 violence and propaganda. And attached to page 17 is
15 that portion, that page. Were you familiar with this?

16 MR. GOLDBERG: I'm sure I was
17 familiar with it at the time. I don't recall it, no.

18 MS. KULASZKA: And I think the rest
19 of the tab we've already gone through. If I could
20 produce that tab, tab 11.

21 THE CHAIRPERSON: I think we've been
22 through all of it, haven't we.

23 MS. KULASZKA: Yes.

24 THE CHAIRPERSON: Yes.

25 MS. KULASZKA: Mr. Goldberg, is

1 that -- this Canadian Issues magazine regarding hate on
2 the Internet, is that available to all members of the
3 public?

4 MR. GOLDBERG: Certainly.

5 MS. KULASZKA: Free?

6 MR. GOLDBERG: Absolutely. As long
7 as supplies last.

8 THE CHAIRPERSON: From whom is it
9 available? Is it available from the Commission, or is
10 it available from ACS.

11 MR. GOLDBERG: It's available from
12 both. You can order a copy of it from our -- the
13 Commission website. Actually, a copy of it is actually
14 on the Commission website as well.

15 MS. KULASZKA: With respect to tab
16 12, the first document is a letter. I believe it would
17 be the chief Commissioner?

18 MR. GOLDBERG: Mary Viselow was the
19 Commissioner, that's correct.

20 MS. KULASZKA: And she's writing to
21 the Canadian Jewish Congress, congratulating it "for
22 hosting a conference on maintaining civil discourse in
23 Canada in the face of international instability."

24 Did any member of the Commission
25 attend that conference?

1 MR. GOLDBERG: Yes.

2 MS. KULASZKA: Did you?

3 MR. GOLDBERG: No, I did not.

4 MS. KULASZKA: Did it deal with any
5 matter concerning Section 13?

6 MR. GOLDBERG: Not -- that wasn't the
7 issue of the conference. Section 13 may have been
8 mentioned.

9 MS. KULASZKA: Going onto page 2, I
10 think I've reviewed this document with you. This is
11 from the CJC website, "Hate on the Internet"?

12 MR. GOLDBERG: Yes.

13 MS. KULASZKA: You've seen that. I
14 think we talked about that?

15 MR. GOLDBERG: Yes.

16 MS. KULASZKA: And we just looked at
17 the letter on page 4, and it goes over to page 7. Okay,
18 at page 8, do you see an article, "CJC to Choose New
19 Leader"?

20 MR. GOLDBERG: Yes.

21 MS. KULASZKA: The righthand column,
22 almost at the bottom, it states,

23 "...being invited to address the
24 prestigious Canadian Telecom
25 Summit, which brings together

1 the world's largest telecom
2 companies, and Internet -- on
3 Internet hate and terrorism was
4 another step taken under Morgan.
5 'We're trying to put together a
6 committee of Internet service
7 provider to develop protocols to
8 address hate and terrorism that
9 is promulgated on the Internet',
10 Farber said."

11 Is that the same protocol you were
12 talking about earlier, Clean Feed?

13 MR. GOLDBERG: No.

14 MS. KULASZKA: What is this?

15 MR. GOLDBERG: I don't know.

16 MS. KULASZKA: This is an article
17 dated -- in April, 2007, so it's just several weeks
18 ago.

19 MR. GOLDBERG: Excuse me, I shouldn't
20 say I -- I don't know. It may have some relevance to
21 Clean Feed, but I really don't know if it -- based on
22 this article, I really don't know what they are talking
23 about.

24 MS. KULASZKA: Were you at that
25 conference, the Canadian Telecom Summit?

1 MR. GOLDBERG: I testified earlier
2 today I was not at that conference.

3 MS. KULASZKA: If I could produce
4 that tab.

5 THE CHAIRPERSON: Well, all right. It
6 includes this newspaper article which the witness
7 doesn't know very much about, but it appears to emanate
8 from Canadian Jewish News.

9 MS. BLIGHT: We have no objection to
10 it being produced as being a newspaper article.

11 THE CHAIRPERSON: Okay, then.

12 MS. KULASZKA: To your knowledge, are
13 these private organizations, such as the Canadian
14 Jewish Congress, working a great deal behind the scenes
15 with IPs concerning filters or possible protocols to
16 block websites?

17 MR. GOLDBERG: Not to my -- to my
18 knowledge -- no, I don't have any knowledge of that,
19 other than what I've already testified to in that. In
20 discussions that the Commission had with Canadian
21 Jewish Congress, they informed us that they had had
22 meetings with Internet service provider, that they had
23 attended this telecom meeting. That's all I know about
24 their discussions with them.

25 MS. KULASZKA: Now, if I could just

1 check with Miss Joyal, I think 14 is produced, tab 14.
2 Tab 15.

3 THE REGISTRAR: Not all of it. Some
4 pages have not been produced.

5 THE CHAIRPERSON: Would you like to
6 know which pages have not been produced, Ms. Kulaszka.

7 MS. KULASZKA: Yes, could you just
8 tell me which pages of tab 15 have not been produced?

9 THE CHAIRPERSON: Have not been?
10 Okay.

11 THE REGISTRAR: Yes. Have not been,
12 6, 7, 8, 10, 11, 12, 13, 14, 22, 23 and 34.

13 MS. KULASZKA: I'm not sure about 6,
14 7 and 8 because -- and 9. These are photocopies of the
15 disclosure CDs produced by the Commission.

16 THE REGISTRAR: Nine has been
17 produced.

18 THE CHAIRPERSON: Entered into
19 evidence? I have the CD in my material.

20 (DISCUSSION OFF THE RECORD)

21 THE CHAIRPERSON: Is this a photocopy
22 we're talking about or the CD itself.

23 MS. KULASZKA: No, just the
24 photocopy. Would the Commission have any objection to
25 these photocopies being put in? One of them is --

1 THE CHAIRPERSON: Incidentally, I've
2 also marked off page nine as -- the photocopy has been
3 viewed by --

4 MS. KULASZKA: So page 9 has been
5 produced?

6 THE CHAIRPERSON: Yes.

7 MS. KULASZKA: Yes. Does the
8 Commission have any objection to these going in?

9 THE CHAIRPERSON: It's from the
10 Commission.

11 MS. KULASZKA: It's from the
12 Commission, yes.

13 MS. BLIGHT: I fail to understand the
14 pertinence, and I don't understand whose note is on the
15 photocopy of the CD case. I don't believe that to be a
16 note by the Commission.

17 MS. KULASZKA: That's a note written
18 by myself; it's when the Commission disclosed the CD.

19 THE CHAIRPERSON: I guess, so the
20 relevance is because we're here in Parliament on the
21 issue of disclosure, the affidavit and so on, and you
22 had put these together to demonstrate the dates when
23 you received the documentation. Is that why.

24 MS. KULASZKA: Yes, I actually
25 thought we had produced them during Miss Risk's

1 testimony, but it appears only one of them was
2 produced.

3 MS. BLIGHT: I'm in a bit of a
4 difficult situation, because I can't, at this point,
5 confirm or deny when the CDs were disclosed.

6 THE CHAIRPERSON: Well, these are
7 photocopies of the CD as they -- this witness' comment
8 has been made by Ms. Kulaszka.

9 MS. KULASZKA: Well, I acknowledge
10 that was -- the note on the bottom on the case, that --
11 I wrote that.

12 THE CHAIRPERSON: Okay, so then we
13 can just not consider it, and ask for -- when
14 communication would have taken place, there must be a
15 document.

16 MS. KULASZKA: Yes, should be.

17 THE CHAIRPERSON: If it becomes a
18 matter of issue, the Commission is going to have its
19 postal receipt or whatever when they sent it over,
20 right? I don't think it's an issue. I suppose what's
21 right -- well, the -- I can see where it looks odd, the
22 document says 11th October 2004, and then it says it's
23 been disclosed on January 8th.

24 MS. BLIGHT: Well, it says it's been
25 created on January 5th.

1 THE CHAIRPERSON: On the one of them,
2 a different one. I'm looking at page 6. Look, they're
3 just photocopies of these things. Probably nothing is
4 going to come of it. Let's -- with the proviso that
5 the handwriting on it is Ms. Kulaszka's personal
6 commentary. Ordinarily, when disclosure occurs, we
7 receive big lists. At the Tribunal as well, we're CC'd
8 on the list of contents, without the actual exhibits
9 themselves.

10 Given that we're doing it
11 electronically here, it's less evident than it would be
12 ordinarily in the Tribunal's own file. So this would
13 not have probably been an issue, had it been -- you can
14 also check through the Tribunal's correspondence.

15 MS. BLIGHT: Thank you, Mr. Chairman.
16 I'm really not familiar with any of that. Thank you
17 for the clarification.

18 THE CHAIRPERSON: It's not important
19 to be familiar with it.

20 MS. KULASZKA: Now, pages 10 to 14
21 are from the transcript. I think portions of those
22 were put to Miss Risk. You know, if you just want to
23 make it complete, we can put them in as part of the
24 tab. But they are the transcripts of the hearing.

25 THE CHAIRPERSON: It was put to her,

1 but I don't think we have to produce the transcript.

2 MS. KULASZKA: No, we don't have to.

3 THE CHAIRPERSON: Can we just remove
4 those pages?

5 MS. KULASZKA: Yes, we can just
6 remove them.

7 THE CHAIRPERSON: So we are removing
8 pages 0 to 14.

9 MS. KULASZKA: I believe the rest of
10 the tab should have been produced?

11 THE REGISTRAR: I have 22, 23 and 34
12 not produced.

13 THE CHAIRPERSON: 22 -- 34 has been
14 produced.

15 MS. KULASZKA: Yes, I thought it had
16 been produced. So that leaves -- the only pages left
17 are 22 and 23?

18 THE CHAIRPERSON: Yes.

19 MS. KULASZKA: We'll just leave it
20 then.

21 THE CHAIRPERSON: If I have no
22 evidence related to this document --

23 MS. KULASZKA: Yes, there's no
24 evidence relating to them.

25 THE CHAIRPERSON: So I'll remove

1 pages 22 and 23.

2 MS. KULASZKA: I'm quite certain we
3 asked questions about it because at the top, there is
4 no URL, and we had asked her -- and then she remembered
5 that it was copied down to a disk, and then she ran it
6 off. I can remember those questions, but I can't
7 exactly remember which --

8 THE CHAIRPERSON: I remember seeing
9 stuff with pages where Ms. Risk had written in the
10 lower corner.

11 MS. KULASZKA: Yes, and then she --

12 THE CHAIRPERSON: Was this the only
13 one like that? I certainly remember seeing a page
14 where she had put these little comments in the corner.

15 MR. FOTHERGILL: The Stormfront
16 posting is the other one.

17 THE CHAIRPERSON: Look, I don't want
18 to waste time. I won't officially remove it. We'll
19 just set it aside or leave it in there, or we can get
20 it --

21 MR. FOTHERGILL: -- indicated pages 22
22 and 23 were produced. And we have no objection to them
23 being produced.

24 THE CHAIRPERSON: Fine, they are in.

25 MS. KULASZKA: Okay, produced.

1 THE CHAIRPERSON: This can happen.
2 That's why there will be a final exchange at some point
3 at the very end, and you are to indicate to us where
4 your notes would suggest otherwise, and we'll work it
5 out. I don't have a problem. I seem to remember
6 something with that type of handwriting in it.

7 THE CHAIRPERSON: So what's the next
8 tab at this point.

9 MS. KULASZKA: I believe 21 has been
10 produced.

11 THE CHAIRPERSON: Pages.

12 MS. KULASZKA: No, tab 21. That
13 leaves tab 20. And I wrote Mr. Vigne about this, and
14 I'm not too sure he understood what I meant. And these
15 were documents which I had asked whether the counsel
16 would approve of them going in. These are documents
17 received under Access to Information from the Justice
18 Department.

19 You can see that on page 5. These
20 are -- this was the genesis of Section 13. These are a
21 series of letters written in 1975, and if there's no
22 dispute about their authenticity, I would like these
23 entered.

24 THE CHAIRPERSON: So you are saying
25 these documents were obtained pursuant to an Access to

1 Information request at page 5.

2 MS. KULASZKA: Yes, so if you look at
3 page 5, you'll see it's the Department of Justice, the
4 date is 1997, it was an access request concerning
5 information related to Section 13 of the Canadian Human
6 Rights Act.

7 THE CHAIRPERSON: Now, is this
8 referring back to pages 1 through 5?

9 MS. KULASZKA: Yes, all these
10 documents.

11 THE CHAIRPERSON: And all subsequent
12 documents as well.

13 MS. KULASZKA: Yes.

14 THE CHAIRPERSON: Received
15 September --

16 MS. BLIGHT: Mr. Chair, may we have
17 an indication as to whether this is the complete
18 response to the access request, or whether this is a
19 selective or partial response?

20 MS. KULASZKA: I believe I disclosed
21 the entire disclosure on CD, but this is a selection.
22 These are simply the letters that are the genesis of
23 the provision.

24 THE CHAIRPERSON: But everything that
25 you received, or that -- who made the request, Mr.

1 Vigne made the request.

2 MS. KULASZKA: No, I made the request
3 in 1997.

4 THE CHAIRPERSON: Okay, so the
5 request from 1997, everything you received in reply
6 from Justice has been disclosed on a CD.

7 MS. KULASZKA: On a CD.

8 MR. FOTHERGILL: Do we have here
9 everything received in relation --

10 MS. KULASZKA: No, this is just the
11 series of letters that is the genesis of -- if you look
12 at the CD, they also disclosed a lot of various drafts,
13 first drafts of Section 13, memorandums and things like
14 this and -- this is what we've chosen to put in. There
15 were two versions of Section 13 produced.

16 THE CHAIRPERSON: Would the other
17 parties have any issue with -- if it appears to be --
18 again, genuine documentation that would have been sent
19 in 1997 through the Access to Information request,
20 subject to your reviewing the disclosures to ensure
21 that --

22 MR. FOTHERGILL: To see if there's
23 anything more to make --

24 THE CHAIRPERSON: -- if there's
25 anything more, you can complete the record at that

1 point.

2 MR. FOTHERGILL: This could be
3 produced, from our perspective.

4 THE CHAIRPERSON: I actually stood in
5 for one of the parties, now that I think about it,
6 Attorney General. So will you --

7 MS. BLIGHT: On the basis that any
8 additional material that was disclosed and is also
9 relevant can be introduced --

10 THE CHAIRPERSON: Relevant, can be
11 introduced without objection from the other side.

12 MS. KULASZKA: No, there's no
13 objection.

14 THE CHAIRPERSON: Okay, sure. When
15 I -- when you show up at final submissions, and say
16 there is this other document which is in the
17 disclosure, that was never produced but relates to
18 these documents, you can just use it for your argument
19 sake, without calling a witness to do it, okay? So
20 then tab 20 is produced.

21 THE REGISTRAR: At tab 18, I have
22 pages 18 and 19 that aren't produced.

23 MS. KULASZKA: No, we can just remove
24 those.

25 THE CHAIRPERSON: The entire tab 18?

1 MS. KULASZKA: No, page 18 and 19.

2 THE CHAIRPERSON: Of tab 18.

3 THE REGISTRAR: And tab 19?

4 MS. KULASZKA: Unless -- we did ask
5 for a subpoena for this but --

6 THE CHAIRPERSON: Yes, well that --
7 that's the object of that ruling that we made on
8 Section 37, right.

9 MS. KULASZKA: Right.

10 THE REGISTRAR: And tab 19.

11 MS. KULASZKA: Tab 19 is what the
12 Commission provided, was a list of documents over which
13 they were claiming privilege.

14 THE CHAIRPERSON: It's not relevant
15 to anything we are dealing with today, Ms. Kulaszka.
16 Would this have been something that would have been
17 filed with me at the time.

18 MS. KULASZKA: Yes, it would have
19 been filed with you. I think it must have been filed
20 with you because have to certify to you under Section
21 37.

22 THE CHAIRPERSON: Is it serving any
23 purpose here today? I don't want to clog up the record
24 with things that may not be relevant. Let's not waste
25 time. It appears to be the list of privileged

1 documents that the Commission -- is it the
2 Commission's.

3 MS. KULASZKA: The Commission's.
4 Could we produce that?

5 THE CHAIRPERSON: For whatever
6 reason? It's attached a letter that I have somewhere
7 in my four binders of this file that I have back at the
8 office. Yes, fine.

9 MS. KULASZKA: Is that it?

10 THE REGISTRAR: Yes.

11 THE CHAIRPERSON: Are we turning to
12 the black volume now.

13 MS. KULASZKA: If we could --

14 THE REGISTRAR: Oh, tab 3.

15 THE CHAIRPERSON: Tab 3 of the white
16 volume, of --

17 MS. KULASZKA: Are we going back to
18 R-17?

19 THE CHAIRPERSON: R-17? We're fine.

20 MS. KULASZKA: It's up to tab 22, 23.

21 THE CHAIRPERSON: 24?

22 THE REGISTRAR: I have nothing under
23 24 and 25.

24 THE CHAIRPERSON: I have no sheets of
25 paper attached.

1 MS. KULASZKA: Okay, if we could turn
2 to R-19. I think everything has been produced up to
3 tab 7 or sorry, tab 8.

4 THE CHAIRPERSON: Certainly, I think
5 we dealt with -- we did all the annual reports at tab
6 5, yes.

7 THE REGISTRAR: In tab 6, I think we
8 only referred to the first page.

9 THE CHAIRPERSON: I think that's
10 correct. We've only referred to the first page only,
11 Ms. Kulaszla.

12 MS. KULASZKA: Okay, the next few
13 pages are access requests and the response. These were
14 a series of access requests made by Mr. Lemire, for a
15 total amount of monies paid to Richard Warman for
16 various hearings, where he appeared as the witness as
17 well as the complainant. And the reply was that he
18 would not get any of the information.

19 THE CHAIRPERSON: This witness can't
20 help us on this.

21 MS. KULASZKA: No.

22 MS. BLIGHT: I would also question
23 the relevance.

24 MS. KULASZKA: Well, the relevance,
25 for people who are on the other side of this case, is

1 that most of the complaints being laid by Richard
2 Warman. He's a former employee. He is not only the
3 complaint, he comes as a witness here.

4 As soon as he's not paid as a witness
5 anymore, he simply leaves the hearings, which he has
6 done in this case. And then when you try and find out
7 what kind of monies he's being paid, then you can't get
8 any of the information.

9 THE CHAIRPERSON: It's consistent
10 with some of the other arguments you've made before in
11 this hearing. No, there's enough -- there is enough
12 there for me to accept it. But the --

13 MS. BLIGHT: The Commission
14 administers a statute related to privacy.

15 MS. KULASZKA: They would not confirm
16 or deny the existence of the information pursuant to
17 Section 10(2), so it was not privacy they were
18 claiming.

19 THE CHAIRPERSON: I'm just looking at
20 the document. I'm trying to go beyond the document at
21 this point. Is this -- this is a document that
22 emanates from the Commission, as we're following,
23 right? I mean, I haven't read it yet.

24 MS. KULASZKA: It comes from The
25 Secretary General of the Canadian Human Rights

1 Commission.

2 THE CHAIRPERSON: Acting.

3 MS. KULASZKA: The acting.

4 THE CHAIRPERSON: It doesn't say much
5 though, Ms. Kulaszka.

6 MS. BLIGHT: Mr. Chairman, this is a
7 document generated by the Commission in the
8 administration of a totally different -- its
9 administration of a totally different statute. If
10 there are remedies to be had in respect of an error
11 made under that statute, that would be pursued in
12 another forum.

13 THE CHAIRPERSON: It's the bigger
14 things. There's other arguments that have been made
15 with respect to Mr. Warman's participation in the
16 hearing, and the relationship that he may have, in the
17 larger sense, with the Commission.

18 These are the arguments that have
19 been made from time to time throughout the course of
20 this hearing. I understand. However, that doesn't
21 tell me much, because they were not -- were unable to
22 answer your questions.

23 MS. KULASZKA: Yes, it doesn't tell
24 us anything, that's what we're showing. I mean, one of
25 our arguments is that under other provisions, certainly

1 if you were affected personally, that's one thing, but
2 Mr. Warman isn't affected. He's simply using this --
3 and it's obvious -- for political purposes. Mr.
4 Goldberg has even said that.

5 THE CHAIRPERSON: I'm familiar with
6 all those arguments. Look, it appears to me to be the
7 genuine request that Mr. Lemire made, and that clearly
8 appears to be a document that was sent from the
9 Commission. I'll allow it to be entered. Its
10 probative value is another matter.

11 MS. BLIGHT: Particularly, Mr.
12 Chairmam, when Mr. Warman testified and was not asked
13 any of these questions.

14 THE CHAIRPERSON: Depends how it's
15 used.

16 MS. KULASZKA: Going onto tab 8, this
17 is problematic. It's from the Law Society of Upper
18 Canada, a member directory. It was printed off in
19 2006, showing Mr. Warman works for the Department of
20 National Defence.

21 THE CHAIRPERSON: Why is that
22 relevant.

23 MS. KULASZKA: I should have put it
24 to Mr. Warman.

25 THE CHAIRPERSON: You should have.

1 MS. KULASZKA: Next hearing.

2 THE CHAIRPERSON: We've established
3 what his work past was, Ms. Kulaszka.

4 MS. KULASZKA: Tab 12, I've included
5 this because it's not clear whether this would be
6 considered part of the record for the hearing. These
7 12 and 13 are responses by the Commission to motions,
8 which I would like to rely on in argument. And I'm not
9 sure of the practice of the Commission.

10 Would you require this to be entered
11 as an exhibit or -- with the binders, or would it
12 simply be considered part of the record?

13 THE CHAIRPERSON: Oh, because it was
14 in this case? These are --

15 MS. KULASZKA: Yes, this is this
16 case.

17 THE CHAIRPERSON: Who do you intend
18 to --

19 MS. KULASZKA: I wasn't sure and so I
20 thought I would include it in the binder.

21 THE CHAIRPERSON: It makes it easier
22 for us to locate it. As I say -- I said before, we
23 don't have an official docket when it comes to the
24 Tribunal, so perhaps this might be a more sound way of
25 ensuring that it's in front of the Tribunal and part of

1 the record, that progresses afterwards.

2 MS. KULASZKA: Yes, I wasn't sure, so
3 they are included. That would be tab 12 and 13.

4 THE CHAIRPERSON: That's fine. These
5 are all documents that we've all seen.

6 MS. KULASZKA: I'm not sure about tab
7 15. I think I showed Mr. Goldberg the first article.

8 THE CHAIRPERSON: Yes, we've seen the
9 first article.

10 MS. KULASZKA: Mr. Goldberg, if you
11 could go to the second article, and this is the last
12 tab of that volume, tab 15.

13 MR. GOLDBERG: Yes.

14 MS. KULASZKA: It appeared apparently
15 in the Montreal Gazette, "Taking a Bite Out of Hate".
16 Are you familiar with this article?

17 MR. GOLDBERG: I may have read it. I
18 don't recall.

19 MS. KULASZKA: It's about the CRTC
20 jurisdiction, the role of ISPs --

21 MR. GOLDBERG: Yes.

22 MS. KULASZKA: -- and the Human
23 Rights Tribunal. Have you seen the article?

24 MR. GOLDBERG: I just testified I
25 don't recall seeing this article, but I may have seen

1 it.

2 THE CHAIRPERSON: What's the
3 probative value of this? What's the relevance of this.

4 MS. KULASZKA: Actually, I was going
5 to ask Mr. Goldberg some questions about it, but he
6 doesn't seem to know about the case.

7 THE CHAIRPERSON: In that case, can
8 we remove it?

9 MS. KULASZKA: I would like to
10 produce it because it contains quotes from Tom Copeland
11 about the Canadian Association of Internet Providers,
12 their position.

13 THE CHAIRPERSON: Yes, but that would
14 be an attempt to demonstrate the truth of what they
15 have said, or that they actually said that, and I can't
16 rely on that. In fact, this is even a hearsay in terms
17 of the -- of a newspaper article, it's CJC's copy of
18 the Montreal Gazette.

19 MS. KULASZKA: Yes, CJC keeps an
20 archive of where they appear in the news.

21 THE CHAIRPERSON: They may, but I
22 have some issues -- if that's the purpose for which you
23 want to use it, I have some issues with it. Just
24 because the newspaper reports that this person said
25 this, doesn't make it so.

1 MS. KULASZKA: Could we enter it
2 simply as evidence this type of discussion is going on
3 in the media, concerning that issue? Goes to the
4 community standard. Do my friends have any problem
5 with it?

6 THE CHAIRPERSON: To that extent?
7 That was a matter that was discussed by the witness at
8 one point.

9 MR. FOTHERGILL: Subject to argument,
10 it could be produced. I wouldn't concede that it is
11 actually evidence of community standards, or
12 representative of debates that are occurring. But it
13 can be produced as an example.

14 THE CHAIRPERSON: Do you agree.

15 MS. BLIGHT: I have no objection with
16 it being produced as a newspaper article that was
17 published.

18 THE CHAIRPERSON: Right. I'm not
19 going to take it -- demonstrate that this is exactly
20 why Mr. Wynicki or whomever is (INAUDIBLE) or whomever
21 else is being interviewed here, believed.

22 MS. KULASZKA: Mr. Goldberg, if you
23 could go to tab 10; this is a series of entries from a
24 website, ynet.co.il. Are you familiar with that
25 website?

1 MR. GOLDBERG: No, I am not.

2 MS. KULASZKA: You are?

3 MR. GOLDBERG: No, I am not.

4 MS. KULASZKA: The reason this is
5 reproduced is because it was an example of a website
6 and a bulletin board which contains backboard
7 conversation about various topics which might be
8 considered, if they were in Canada, to be contrary to
9 Section 13. What is your position with blocking a
10 website like "ynet" coming into Canada, if it contains
11 this type of material?

12 MR. GOLDBERG: I don't believe the
13 Commission would have a position with regard to matters
14 that don't come within our jurisdiction, at least I'm
15 not aware of a position.

16 MS. KULASZKA: Well, it's hard for me
17 to produce the tab if he's not familiar with "ynet".

18 THE CHAIRPERSON: And his views on
19 this too, I mean, they're limited in scope. I think
20 it's leading to argument, Ms. Kulaszka. We can work on
21 the assumption that a website may exist or does exist
22 outside this country that may or may not -- would have
23 been in breach if it was in this country. I think it's
24 a given.

25 MS. KULASZKA: Can I produce it for

1 the reason for argument, or would you prefer I just put
2 it into --

3 THE CHAIRPERSON: We can work on a
4 hypothetical.

5 MS. KULASZKA: Okay, I'm agreeable to
6 that. I think that's the entire volume then.

7 THE CHAIRPERSON: So I'm going to
8 remove this tab, Ms. Kulaszka. As I say, we can work
9 in the hypothetical.

10 THE REGISTRAR: Is that tab 11?

11 THE CHAIRPERSON: That's tab 11. No,
12 10. I didn't say 11. We haven't produced tab 11, Ms.
13 Kulaszka.

14 MS. KULASZKA: Mr. Goldberg, have a
15 look at tab 11. It's an article from the Guardian,
16 "On-line Freedoms Under Threat, says Amnesty". And
17 this just came --

18 MR. GOLDBERG: Excuse me, what page
19 is it?

20 MS. KULASZKA: It's tab 11.

21 MR. GOLDBERG: Yes.

22 MS. KULASZKA: It's headlined,
23 "On-line Freedoms Under Threat, says Amnesty". It's
24 Dated June 6, 2007, just a few weeks ago. And Amnesty
25 had come up with a new report about Internet

1 repression. Were you familiar with that report?

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

3 MS. KULASZKA: Would this not be
4 Parliament of your monitoring of what's going on on the
5 Internet?

6 MR. GOLDBERG: I guess I missed it.

7 MS. KULASZKA: Do you monitor what
8 organizations like Amnesty International are saying on
9 the issue of hate on the Internet?

10 MR. GOLDBERG: Yes, I do.

11 MS. KULASZKA: Well, since he's not
12 familiar with it, Mr. Chair, I won't enter that.

13 THE REGISTRAR: Referred to tab 14,
14 but was it produced.

15 THE CHAIRPERSON: What about the rest
16 of tab 11.

17 MS. KULASZKA: I thought that was
18 produced, tab 14. It was the chart.

19 THE REGISTRAR: Yes, but I don't
20 know.

21 THE CHAIRPERSON: We've dealt with it
22 extensively. I consider it as -- it's produced. I may
23 not have actually formally said it, but I don't have
24 any questions. But what about the rest of tab 11?
25 Have we read the whole of tab 11? It's all one piece.

1 MS. KULASZKA: Yes, that could be
2 removed.

3 THE CHAIRPERSON: Okay. So tab 11 is
4 empty, but tab 14, the one we just referred to, the
5 entire tab is produced, yes.

6 MS. KULASZKA: Those are my
7 questions.

8 THE CHAIRPERSON: Thank you, Ms.
9 Kulaszka.

10 Now, again, in terms of sequence, I'm
11 just thinking that the sequence should flow from the
12 left to the right here, so Mr. Fromm, would you like to
13 ask your questions at this point, if you have any.

14 CROSS-EXAMINATION BY MR. FROMM

15 MR. FROMM: Mr. Goldberg, I was
16 wondering if you could take a look at volume 17.

17 THE CHAIRPERSON: R-17.

18 MR. FROMM:: R-17, yes.

19 MR. GOLDBERG: Yes.

20 MR. FROMM: And it should be tab 21.
21 I think earlier, you testified that you had produced
22 this question and answer document?

23 MR. GOLDBERG: Yes.

24 MR. FROMM: That appears on the
25 website of the Canadian Human Rights Commission?

1 MR. GOLDBERG: Yes.

2 MR. FROMM: Okay, on the third page
3 of that, there's reference at the first bullet,
4 "Assignment of all Section 13
5 cases to the anti-hate team,
6 which includes investigators,
7 which -- with specialized
8 expertise in the investigation
9 of hate on the Internet."

10 You recognize that, do you.

11 MR. GOLDBERG: Yes.

12 MR. FROMM: You had discussed that
13 with Ms. Kulaszka, and probably with Mr. Christie, to
14 some degree?

15 MR. GOLDBERG: I believe so.

16 MR. FROMM: There's something that
17 puzzles me, and perhaps you can help. You testified
18 that the statute mandates the investigator to
19 investigate a complaint and make a report to the
20 Commission; is that correct.

21 MR. GOLDBERG: That's correct.

22 MR. FROMM: And then the Commission
23 must make a decision as to what will happen to the
24 complaint?

25 MR. GOLDBERG: That's correct.

1 MR. FROMM: It was also your
2 testimony that, was it not, that the anti-hate team
3 does not make recommendations to the investigator?

4 MR. GOLDBERG: We make suggestions,
5 we discuss how a report should be written. There
6 certainly are no formal recommendations, there's no
7 minutes. As I testified, there's no votes. There's no
8 saying to somebody, "You must do this." We have a
9 discussion.

10 MR. FORMM: I think what Ms. Kulaszka
11 mentioned this morning, you talked about shaping the
12 reports in such a way that it would be -- they would be
13 easier for the Commission to deal with because they
14 have so many reports from -- many complaints?

15 MR. GOLDBERG: That's correct.

16 MR. FROMM: So is it -- I'm just
17 trying to understand. Is the function of the anti-hate
18 team essentially that of an editing body?

19 MR. GOLDBERG: To some extent that's
20 true, yes.

21 MR. FROMM: Or are you giving
22 direction to the investigator, and to some degree, are
23 you not usurping the investigator's role under the
24 statute?

25 MR. GOLDBERG: I don't believe that

1 the statute implies that the investigator is the only
2 person that can be involved in the investigation of a
3 complaint. The Commission's practice over a number of
4 years has been that complaints are assigned to
5 investigators, and certainly the investigators have
6 supervisors, supervisors have supervisors, and they all
7 have an input into both the process of developing
8 investigation reports, and in the content of
9 investigation reports. MR. FROMM: But it was your
10 testimony that it was the -- ultimately, it's the
11 investigator who must make a recommendation which gets
12 sent to the Commission?

13 MR. GOLDBERG: That's what the
14 statute says.

15 MR. FROMM: And it's the
16 investigator, not a committee?

17 MR. GOLDBERG: The -- to be perfectly
18 honest, at this -- at one time, and it may still be
19 true today, the investigator actually assigned the
20 investigation report, and it was also countersigned by
21 one of his or her supervisors. I don't know if that's
22 still the practice. I haven't seen a final
23 investigation report for a number of years.

24 MR. FROMM: Okay, on the same page,
25 and the next slug, your report indicated,

1 "ongoing staff training to
2 broaden knowledge about the
3 nature of hate activity, its
4 consequences, and how to combat
5 it."

6 Could you elaborate on what this
7 ongoing staff training consists of, and who provides
8 it.

9 MR. GOLDBERG: I am not directly
10 involved in the provision of staff training, but I have
11 some knowledge of it. It would include training by
12 conditioned legal counsel who have dealt with hate on
13 the Internet cases before this Tribunal, before the
14 Federal Court, it would include experts on hate
15 activity, who have come and given briefings, it would
16 include attendance at conferences.

17 As we discussed earlier today, it
18 might include training on technology --
19 technology-based systems for identifying who are behind
20 Internet sites.

21 MR. FROMM: And the staff you are
22 talking about there would be the investigators; is that
23 correct.

24 MR. GOLDBERG: Primarily the
25 investigators, yes.

1 MR. FROMM: So I wonder if you could
2 turn to tab 4, in the same exhibit.

3 THE CHAIRPERSON: Big tab, Mr. Fromm,
4 which page?

5 MR. FROMM: Yes, well, fortunately we
6 don't have to go too far, page 1 and 2. You recognize
7 this as the draft of an opt-ed piece that you wrote
8 after the Zundel decision; is that correct.

9 MR. GOLDBERG: That's correct.

10 MR. FROMM: As far as you can recall,
11 it wasn't actually published anywhere?

12 MR. GOLDBERG: That's correct.

13 MR. FROMM: I just would like to call
14 your attention to the -- paragraph two on the first
15 page.

16 "Today, according to groups that
17 monitor the Internet, there are
18 hundreds of Internet sites
19 devoted to white racial
20 superiority, homophobia and
21 immigration and a variety of
22 other supremacist ideologies.
23 Unfortunately, not a few of
24 these originate in Canada."

25 Was your purpose in mentioning those

1 political views to indicate that those would be subject
2 to section 13(1)?

3 MR. GOLDBERG: No.

4 MR. FROMM: What was the purpose of
5 including them then?

6 MR. GOLDBERG: Actually it says, if
7 you read the sentence, "according to groups that
8 monitor the Internet." I wasn't stating an opinion. I
9 was reflecting findings of groups that monitor the
10 Internet.

11 MR. FROMM: What groups would those
12 be?

13 MR. GOLDBERG: I don't recall what
14 information was based on, but certainly, there were a
15 number of groups like the Simon Wiesenthal Centre, like
16 Hate Watch in the United States, like the various
17 organizations -- I can't recall specifically right
18 now -- that were reporting on the growing prevalence of
19 sites which they said expressed these views.

20 MR. FROMM: Your conclusion on page
21 2, though, the final paragraph, is so --

22 "So for the Commission, our
23 course is clear. With new tools
24 in hand, we will continue to
25 battle the Hydra of hate

1 wherever it raises its head in
2 Canada."

3 So is it your testimony that a
4 website that's, say, highly critical of same-sex
5 marriage would not come within your purview.

6 MR. GOLDBERG: Could you repeat the
7 question, please.

8 MR. FROMM: Well, you're building
9 your case in paragraph two, of some of the things some
10 groups have complained about on the Internet. And you
11 say, unfortunately not a few of these originate in
12 Canada. That seems to be a concern.

13 And you concluded that the
14 Commission,

15 "Its course is clear. With the
16 new tools in hand, we will
17 continue to battle the Hydra of
18 hate wherever it raises its head
19 in Canada."

20 So my question to you, just taking
21 the term "homophobia", is strong option to same-sex
22 marriage, in your opinion, as it appears on the
23 Internet, is that subject to Section 13(1)?

24 MR. GOLDBERG: As a general
25 proposition, no, it would not be.

1 MR. FROMM: It would not be? Okay.
2 And then the next phrase there, you --
3 Anti-Hateimmigration. Would strong opposition to
4 Canada's present immigration policies be subject to
5 13(1)?

6 MR. GOLDBERG: Only if you exposed
7 people to hatred and contempt, as provided for under
8 Section 13.

9 MR. FROMM: Perhaps you can help me
10 again with the final Parliament of that sentence.
11 Listing what you seem to find undesirable sites, is --
12 "and a variety of other supremacist ideologies." What
13 did you mean by that?

14 MR. GOLDBERG: If you look at
15 organizations like -- sorry, the name of the
16 organization is slipping my mind right now. It's in
17 Montgomery, Alabama. It monitors extreme right-wing
18 activity in the United States, and if you look at the
19 reports that they put out, you'll be aware that there
20 is hundreds of varieties and strains of these various
21 ideologies, and that's what I was referring to.

22 MR. FROMM: Would you mean the
23 Southern Poverty Law conference, Morris Dees's --

24 MR. GOLDBERG: That's correct.

25 MR. FROMM: So would you agree what

1 you seem to be focusing on there, are a series of
2 political or ideological opinions that you don't
3 particularly like?

4 MR. GOLDBERG: I wouldn't consider
5 them political, while both political and ideology have
6 very broad meanings. In the broadest scope of things,
7 yes, they're ideologies or political views.

8 MR. FROMM: Which, would you agree,
9 could come under Section 13(1), at least what you're --

10 MR. GOLDBERG: The ideologies
11 themselves.

12 MR. FROMM: Yes.

13 MR. GOLDBERG: No, the ideologies
14 themselves would not come under Section 13(1). Section
15 13(1) only deals with the repeated communication of
16 messages likely to expose people to hatred and
17 contempt.

18 MR. FROMM: On the Internet?

19 MR. GOLDBERG: On the Internet, or by
20 means of -- by the telephone system.

21 MS. KULASZKA: Okay, then I'd like to
22 draw your attention to tab 3. Now, I'm not sure
23 whether this -- oh, yes, tab 3, pages 4 and 5.
24 Actually, there's the old version, and the new and
25 improved version, so maybe 5-A, 5-B.

1 THE CHAIRPERSON: 5-A or 5-B.

2 MR. FROMM: 5-B.

3 MR. GOLDBERG: I'm sorry, what tab is
4 this?

5 MR. FROMM: It's tab 3.

6 MR. GOLDBERG: I don't have a 5-B.

7 THE CHAIRPERSON: Yes, it's coming. I
8 think after you left yesterday, we were provided with
9 the unedited version.

10 MR. GOLDBERG: Thank you.

11 MR. FROMM: And I guess, going back
12 to the long page of 5-A.

13 "In order to facilitate the
14 processing of Section 13
15 complaints, the Commission has
16 launched several initiatives" --
17 and it lists those initiatives.

18 And what I would like to draw your
19 attention to is the second slog or bullet on page 5-B.
20 And that's discussion which have begun with Internet
21 service provider and other stakeholders. You were asked
22 about stakeholders this morning; do you recall?

23 MR. GOLDBERG: Yes, I do.

24 MR. FROMM: Would you not agree
25 that -- sorry, in the drafts of several of the speeches

1 that you -- you've authored over the years, you did
2 mention that the Supreme Court had recognized that
3 they -- that it was involved in a delicate balancing
4 Act between freedom of expression and the right of
5 groups not to be exposed to hate. Do you recall that?

6 MR. GOLDBERG: Yes, I do.

7 MR. FROMM: So would you agree that
8 some of the groups that you have sought out as
9 stakeholders are groups that have perceived themselves
10 as being objects of hate, groups like EGALE?

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

12 MR. FROMM: Canadian Jewish Congress
13 maybe?

14 MR. GOLDBERG: That's correct.

15 MR. FROMM: B'nai Brith maybe?

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

17 MR. FROMM: And --

18 MR. GOLDBERG: I wouldn't say the
19 groups have seen themselves as the object of hate, but
20 certainly the people they represent have seen
21 themselves as the object of hate, yes.

22 MR. FROMM: Rightly or wrongly, but
23 that's the position they take?

24 MR. GOLDBERG: Well, actually, as
25 determined by this Tribunal on numerous occasions,

1 correctly so --

2 MR. FROMM: In the case of B'nai
3 Brith and the Canadian Jewish Congress and the
4 Wiesenthal Centre, you've testified that they have
5 pressed for more controls over expression on the
6 Internet, have they not?

7 MR. GOLDBERG: I don't recall if I
8 said that specifically, but I agree that's certainly
9 their view that they would like to see greater
10 controls, yes.

11 MR. FROMM: So the four groups that
12 we've mentioned, these would represent certain
13 stakeholders who have an interest in restriction of
14 speech on the Internet. Would you agree?

15 MR. GOLDBERG: No, I would not agree.

16 MR. FROMM: Open-ended speech on the
17 Internet?

18 MR. GOLDBERG: No, I wouldn't agree
19 with that either.

20 MR. FROMM: But you did agree that,
21 not speaking about EGALE, but the other three, have
22 taken stands in favor of restricting expression on the
23 Internet?

24 MR. GOLDBERG: I don't consider that
25 freedom to express view -- excuse me, not what I

1 consider. My understanding of the jurisprudence is
2 that the court have determined that messages that are
3 likely to expose people to hatred and contempt --

4 MR. FROMM: No, we are not arguing
5 the jurisprudence. I'm simply asking, do those groups
6 support restrictions on expression on the Internet?

7 MR. GOLDBERG: They support
8 restricting forms of expression which have found by the
9 courts to be impermissible in Canada, or they seek
10 to -- for Parliament to change the law to expand the
11 restrictions that they may feel are necessary.

12 MR. FROMM: In other words, yes? So
13 having had input from stakeholders who want
14 restrictions on expressions on the Internet, have you
15 sought to have any participation from those who believe
16 in freedom of expression, which the Supreme Court,
17 according to you, said wasn't part of the balance,
18 freedom, yes, but also freedom from hate?

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

21 MR. FROMM: Well, you did agree with
22 me that the Supreme Court, in Taylor and in other
23 decisions, had said that they were involved in a
24 balancing Act, that when --

25 MR. GOLDBERG: That's correct.

1 MR. FROMM: So you have stakeholders
2 who support restrictions, serious restrictions on
3 expression on the Internet. Have you sought out the
4 views of groups who are in favor of freedom on the
5 Internet?

6 MR. GOLDBERG: No, we have not.

7 MR. FROMM: You've never contacted,
8 for instance, the Electronic Frontier folks?

9 MR. GOLDBERG: I have had some
10 contacts with them, yes, in the early -- the early
11 years.

12 MR. FROMM: Have you ever invited
13 them for a consultation with you?

14 MR. GOLDBERG: Not that I recall.

15 MR. FROMM: To your knowledge, have
16 you --

17 MR. GOLDBERG: To my knowledge, they
18 have never asked to meet with us either.

19 MR. FROMM: Did the Muslim groups ask
20 to meet with you?

21 MR. GOLDBERG: No, they did not.

22 MR. FROMM: It was your testimony
23 this morning that you had sought them out?

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

25 MR. FROMM: You couldn't quite

1 remember whether it was by phone or -- but in some way,
2 you had made the approach to them?

3 MR. GOLDBERG: That's correct.

4 MR. FROMM: Have you ever made a
5 similar approach to a group like the Canadian Free
6 Speech League?

7 MR. GOLDBERG: As I testified this
8 morning, I don't think it would be consistent with our
9 mandate to seek out and consult with groups which we
10 have reason to believe are antithetical to the mandate of
11 the Canadian Human Rights Commission.

12 MR. FROMM: Do you mean
13 "antithetical"?

14 MR. GOLDBERG: Antithetical, thank
15 you for correcting me.

16 MR. FROMM: That's what I think it
17 should be. So just to complete the question, I take it
18 you've never sought out, for consultation, the Canadian
19 Association for Free Expression?

20 MR. GOLDBERG: No, we have not.

21 MR. FROMM: And so it's your position
22 that freedom is antithetical to the Canadian Human
23 Rights Act?

24 MR. GOLDBERG: Absolutely not.

25 MR. FROMM: But groups that have

1 taken a public stand in favor of that are not ones you
2 wish to consult, among all the others.

3 MR. GOLDBERG: Have taken a public
4 stand --

5 MR. FROMM: If favor of freedom of
6 speech on the Internet.

7 MR. GOLDBERG: I'll repeat myself
8 again. The --

9 MR. FROMM: No, just yes or no,
10 please.

11 MR. GOLDBERG: Pardon me.

12 MR. FROMM: Just yes or no.

13 MR. GOLDBERG: Repeat the question,
14 please.

15 THE CHAIRPERSON: I think we've had
16 the question --

17 MR. FROMM: Thank you. Those are my
18 questions.

19 THE CHAIRPERSON: You didn't have
20 another question? You had no other question after
21 that? No.

22 MR. FROMM: No.

23 THE CHAIRPERSON: Okay.

24 MR. FROMM: Those are my questions.

25 THE CHAIRPERSON: Okay. So is there

1 enough time for Mr. Fothergill to ask questions, too.

2 MR. FOTHERGILL: Yes, but I've
3 consulted with Ms. Blight, and she will be the only
4 questioner on perhaps this side of the room.

5 THE CHAIRPERSON: Would you be able
6 to look at the -- well, we can take a small break at
7 this point, and we can set on your side, if you'd --
8 would you rather make your questions while seated?

9 MS. BLIGHT: I wouldn't mind having 5
10 minutes. I'm happy to make submissions from -- ask my
11 questions from here.

12 THE CHAIRPERSON: It seems that
13 microphone is working the best of all. We'll take
14 five-minute break.

15 --- Recess taken at 3:15 p.m.

16 --- Upon resuming at 3:25 p.m.

17 REPLY BY MS. BLIGHT

18 MS. BLIGHT: Mr. Goldberg, it's now
19 3:25?

20 MR. GOLDBERG: Yes, it is.

21 MS. BLIGHT: We'll try to have you
22 out on time. I just have a couple of areas to cover
23 with you. The first one has to do with -- originates
24 with some of the material that was covered with you
25 today from the mid-1990s.

1 And I take it that you would agree
2 with me that since your initial explorations of the
3 Internet, so-to-speak, in 1994 and 1995, there's been a
4 considerable evolution in terms of the Internet itself.

5 MR. GOLDBERG: Absolutely.

6 MS. BLIGHT: The computer technology
7 has evolved?

8 MR. GOLDBERG: Certainly.

9 MS. BLIGHT: The speed at which
10 Internet connectivity is available to computer users?

11 MR. GOLDBERG: Absolutely.

12 MS. BLIGHT: And the number of people
13 who regularly access the Internet?

14 MR. GOLDBERG: Yes, by --

15 MS. BLIGHT: The ease at which
16 material is distributed on the Internet?

17 MR. GOLDBERG: Certainly.

18 MS. BLIGHT: And the form in which it
19 is now available graphically is much more pleasing than
20 it was in the mid-1990s?

21 MR. GOLDBERG: Yes, absolutely.

22 MS. BLIGHT: It's much easier for an
23 ordinary person to navigate the information that's
24 available on the web now than it was in 1995?

25 MR. GOLDBERG: Absolutely.

1 MS. BLIGHT: I take it also that you
2 would be aware that the legislation, your legislation,
3 insofar as it deals with hatred, has evolved since the
4 mid-1990s as well?

5 MR. GOLDBERG: Absolutely.

6 MS. BLIGHT: Not only has the
7 legislation been amended, but there has been a
8 considerable development in the jurisprudence?

9 MR. GOLDBERG: Yes.

10 MS. BLIGHT: And would you say that
11 there has been a similar evolution in the Commission's
12 approach to dealing with its mandate with respect to
13 hate?

14 MR. GOLDBERG: Certainly.

15 MS. BLIGHT: Can I ask you to turn to
16 tab 14 in the R-17, Exhibit R-17 binder?

17 MR. GOLDBERG: Yes. Tab --

18 MS. BLIGHT: Tab 14.

19 MR. GOLDBERG: Yes.

20 MS. BLIGHT: This starts with some
21 excerpts from an e-mail chain, in which you
22 participated in 1994 and 1995?

23 MR. GOLDBERG: That's correct.

24 MS. BLIGHT: When you ventured out
25 into the Internet as it then was, in order to canvas

1 what Internet users were thinking about controlling
2 hate on the Internet?

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

4 MS. BLIGHT: Has your approach to
5 researching the use of the Internet evolved since the
6 posting of this e-mail -- or the posting of this
7 message in 1994?

8 MR. GOLDBERG: Certainly, it has.

9 MS. BLIGHT: And could you perhaps
10 just provide a general description of some of the
11 changes to your own approach to research that have
12 occurred since then?

13 MR. GOLDBERG: Well, in 1994, I was a
14 novice at the Internet. My first exposure to it, as I
15 recall, was becoming a member of the National Capital
16 Freenet, and beginning to explore a system which at
17 that time required -- was not at all user-friendly.

18 You really had to know a fair amount
19 about how to find things, and how to navigate your way
20 around the Internet. I was also very naive about
21 opinions people had about control, or whether the
22 Internet should be controlled or not controlled, et
23 cetera.

24 Since then, my understanding of the
25 Internet, both its benefits and potentials, and with

1 the evolution of the Internet itself, have changed a
2 great deal.

3 I'm much more aware of the views of
4 people that both support more control of Internet
5 content and people that support less control. I'm more
6 aware -- obviously, there's been, as we already
7 mentioned, evolving legislation, evolving
8 jurisprudence, evolving discussion by academics, by
9 international organizations.

10 All of that has Federal into -- to my
11 understanding of the Internet and hate on the Internet,
12 and through me, the Commission's understanding of those
13 issues.

14 MS. BLIGHT: Now, getting back then
15 to this e-mail chain at tab 14, when you kind of went
16 out and posted a general inquiry, is that something
17 that you would do today?

18 MR. GOLDBERG: Within about two days
19 of my posting this message on the Internet, I realized
20 that I had probably not approached it in the most
21 efficacious way, and I certainly -- I think at the time
22 they call these "flame wars", and.

23 THE CHAIRPERSON: What.

24 MR. GOLDBERG: Flame wars.

25 THE CHAIRPERSON: Flame?

1 MR. GOLDBERG: Flame wars, flames,
2 people are exchanging nasty exchanges on the Newsnet.
3 And I was certainly burnt.

4 MS. BLIGHT: I would like to move in
5 this document, to take you to tab -- same R-17, to take
6 you to tab 8, page 9?

7 MR. GOLDBERG: Yes.

8 MS. BLIGHT: Just to remind you of a
9 procedure that was under discussion between the
10 Commission and Freenet of Ottawa in 1995, you'll see
11 the four elements of that procedure under discussion are
12 set out on this page here?

13 MR. GOLDBERG: Yes.

14 MS. BLIGHT: Now, it's my
15 understanding that the Freenet was the only Internet
16 Service Provider with whom this particular approach was
17 discussed, correct.

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

19 MS. BLIGHT: What I read in this
20 document is that what was under discussion was
21 essentially the establishment of a threshold for the
22 Commission accepting Section 13 complaints, and that
23 only if the NCF, at number four, if the NCF is
24 unwilling or unable to control use of their system, it
25 would be only at that point that the Commission would

1 accept a complaint?

2 MR. GOLDBERG: That's correct.

3 MS. BLIGHT: Does that -- and I also
4 understand, based on your testimony over the past few
5 days, that it's your current understanding that when an
6 individual wishes or insists on filing a complaint, the
7 Commission must, under its statute, accept and deal
8 with the complaint?

9 MR. GOLDBERG: Yes, that's my
10 understanding of the law.

11 MS. BLIGHT: So it seems to me, and I
12 wonder if you will agree with me, that what was being
13 discussed with NCF at the time in 1997, is inconsistent
14 with the manner in which the Commission now understands
15 its statutory responsibility vis-a-vis complaints?

16 MR. GOLDBERG: I'm not sure that it
17 wasn't -- that there was any conflict at the time
18 either. The underlying -- because of the statute, the
19 underlying assumption is always that if somebody files
20 a formal complaint, the Commission has to deal with it.
21 I believe that has always been the case.

22 So any procedure that was proposed on
23 a hypothetical basis for consideration would be subject
24 to that understanding, that the Commission is
25 statutorily bound to deal with complaints that it

1 receives.

2 MS. BLIGHT: And it was your
3 understanding, back in 1995, that that was the case?

4 MR. GOLDBERG: Yes.

5 MS. BLIGHT: So then you'll agree
6 with me that this document doesn't really set that out
7 very clearly?

8 MR. GOLDBERG: No, it doesn't.

9 MS. BLIGHT: Now, you've already
10 confirmed that this particular procedure was discussed
11 with -- only with the Ottawa Freenet folks, and with no
12 other Internet Service Provider?

13 MR. GOLDBERG: To the best of my
14 recollection, yes.

15 MS. BLIGHT: Behind tab 2 of R-17.

16 THE CHAIRPERSON: Did you say "behind
17 tab 2".

18 MS. BLIGHT: At tab 2, behind the tab
19 itself, I understand this is the letter that the
20 Commission now uses in its communications with Internet
21 service provider, outside of the complaint process, in
22 order to bring to the attention of an ISP that there
23 may be questionable material.

24 MR. GOLDBERG: I think I testified
25 that I had no personal -- I'd never seen this one at

1 tab 2 before but it appears to be, at least while it is
2 a draft, of a proposed letter to ISPs, yes.

3 MS. BLIGHT: And you've seen in the
4 material that that draft has been addressed to ISPs in
5 the recent times?

6 MR. GOLDBERG: Yes, at least a letter
7 that's very similar to this one, yes.

8 MS. BLIGHT: Now, would you agree
9 with me, based on the contrast between the approach
10 taken with respect to the Freenet and the approach that
11 is demonstrated in the more current communications with
12 Internet service provider, that the Commission's
13 approach to dealing with Internet service provider has
14 evolved?

15 MR. GOLDBERG: Absolutely, certainly.

16 MS. BLIGHT: And that the basis of
17 the Commission's approach to dealing with Internet
18 service provider outside the complaint process has, in
19 the last several years, been one based on cooperation?

20 MR. GOLDBERG: Absolutely, yes.

21 MS. BLIGHT: And that the Commission
22 has never sought to approach Internet service provider
23 with any kind of threat?

24 MR. GOLDBERG: No, I don't believe
25 that we ever -- we threatened the National Capital

1 Freenet in 1995, and I don't believe we've ever
2 threatened any Internet Service Provider, and I don't
3 believe that any Internet Service Provider has ever had
4 a perception that they were being threatened by the
5 Commission.

6 MS. BLIGHT: Intimidation?

7 MR. GOLDBERG: Absolutely not.

8 MS. BLIGHT: Heavy-handedness?

9 MR. GOLDBERG: Well, some people --
10 when you come from the Canadian Human Rights Commission
11 and say, "We're here to help you", some people do not
12 take that in the spirit that it's meant, but I don't
13 think we've been heavy-handed.

14 MS. BLIGHT: You talked about the
15 spirit in which you have approached ISPs. You said
16 that it's intended to be a helpful one?

17 MR. GOLDBERG: Absolutely.

18 MS. BLIGHT: And it's not intended to
19 be heavy-handed or intimidating?

20 MR. GOLDBERG: In no way.

21 MS. BLIGHT: And that, to your
22 knowledge, it is not -- your interventions have not
23 been perceived by ISPs as being intimidating?

24 MR. GOLDBERG: I've only had positive
25 feedback from the ISPs that I've dealt with.

1 MS. BLIGHT: No representative of any
2 ISP that you have dealt with has ever suggested to you
3 that the Commission's approach is intimidating?

4 MR. GOLDBERG: No ISP has ever made
5 that allegation to me, or to my knowledge, to any
6 representative of the Commission.

7 MS. BLIGHT: Or for that member,
8 heavy-handed?

9 MR. GOLDBERG: Or heavy-handed.

10 MS. BLIGHT: You were asked some
11 questions, and you gave some testimony about the
12 relevance of a respondents intention, in terms of a
13 breach of Section 13, with respect to hate on the
14 Internet?

15 MR. GOLDBERG: Yes.

16 MS. BLIGHT: And I believe it was
17 your testimony that if a matter is likely to expose a
18 person or persons to hatred or contempt by reason of
19 those persons being members in a -- being identifiable
20 on the basis of a prohibited ground, that that is the
21 end of the inquiry, and the intention of the respondent
22 is not relevant?

23 MR. GOLDBERG: That's correct.

24 MS. BLIGHT: You will agree with
25 me -- or will you agree with me that the intention of a

1 respondent could, however, be properly considered in
2 terms of remedial issues?

3 MR. GOLDBERG: Well, the Commission
4 itself doesn't really accept in -- before the Tribunal
5 get involved in remedial issues, but yes, I agree.

6 MS. BLIGHT: Those are all my
7 questions. Thank you.

8 THE CHAIRPERSON: Thank you. And I
9 understood again, Mr. Fothergill, there are no
10 questions from the Attorney General?

11 MR. FOTHERGILL: That's correct.

12 THE CHAIRPERSON: Any redirect? REPLY
13 BY MS. KULASZKA

14 MS. KULASZKA: Mr. Goldberg, you were
15 asked about the ISPs, and whether they were
16 intimidated. Do you know what happened to an ISP in
17 British Columbia that was run by Bernard Klatt.

18 MS. BLIGHT: I rise to object.
19 Evidence in reply may only be tendered with respect to
20 subjects that arose for the first time in
21 cross-examination. And Ms. Kulaszka is raising a
22 matter by way of reply that was canvassed in-chief.

23 THE CHAIRPERSON: You brought it up
24 just now. It was touched upon originally.

25 MS. KULASZKA: I don't think I ever

1 mentioned Bernard Klatt to --

2 THE CHAIRPERSON: No, no,
3 intimidation of ISPs. I think that's what she's
4 talking about.

5 MS. KULASZKA: Well, she -- I don't
6 think I asked about his knowledge of whether they were
7 intimidated.

8 THE CHAIRPERSON: I think that's
9 fair. You know, the way you approached it struck me as
10 new, to the point that I took some detailed notes on
11 it, Miss Blight. So I'm going to allow it, because you
12 took a different approach to the matter than it was
13 dealt with earlier. I know the -- the talk about
14 intimidation has come up, but -- in the manner in which
15 you presented it, which was interesting, I think it
16 wasn't dealt with that way earlier. So I'll allow Ms.
17 Kulaszka to ask her question, okay.

18 MR. GOLDBERG: Can you repeat the
19 question?

20 MS. KULASZKA: Do you have any
21 knowledge of what happened to an ISP in British
22 Columbia run by a man named Bernard Klatt?

23 MR. GOLDBERG: I recall from media
24 reports that situation, yes.

25 MS. KULASZKA: What happened?

1 MR. GOLDBERG: I don't recall the
2 details. I know that there was some allegation that he
3 was writing an Internet Service Provider that hosted
4 sites which other people thought were hateful, and that
5 in the end, he stopped doing that. I think that's all
6 I can remember. I don't believe there was a matter
7 that came before the Canadian Human Rights Commission,
8 but I might be wrong.

9 MS. KULASZKA: What was the
10 organization that was involved in that matter; do you
11 remember?

12 MR. GOLDBERG: I believe it was a
13 local Anti-Hateracism committee. I don't recall the
14 name of it.

15 MS. KULASZKA: Do you remember the
16 Simon Wiesenthal Centre?

17 MR. GOLDBERG: Pardon me.

18 MS. KULASZKA: Do you remember the
19 Simon Wiesenthal Centre being involved?

20 MR. GOLDBERG: No, I can't say that I
21 do.

22 MS. KULASZKA: You testified that you
23 were "burnt". What did you mean by that?

24 MR. GOLDBERG: I meant that after I
25 put what I thought was an innocent question on the

1 Usenet group, and got a hundred or whatever responses,
2 that I was very surprised, and realized, as I just
3 testified, that perhaps, that wasn't the best way to
4 proceed.

5 MS. KULASZKA: Thank you.

6 THE CHAIRPERSON: All right. Thank
7 you, Mr. Goldberg. So I guess that brings these
8 proceedings to an end. We have discussed the -- is
9 there anything you wish to discuss, Ms. Blight.

10 MS. BLIGHT: I have been trying
11 during the breaks, et cetera, to do the documentary
12 verification that I had agreed on the record to do.
13 I've not been able to complete that, so I will do so in
14 writing and circulate those answers to the parties, and
15 I believe it would be appropriate, in view of the
16 matter having been discussed on the record, that I also
17 provide that correspondence to you, Mr. Chairman.

18 THE CHAIRPERSON: Yes, yes, please
19 do.

20 THE CHAIRPERSON: I'm accustomed to
21 being -- every so often, Ms. Joyal approaches my
22 office. I go, "What is it now?"

23 MS. BLIGHT: All right. I'll address
24 it to you and copy the parties.

25 THE CHAIRPERSON: You can do that.

1 What's been the practice in the past? You may do it
2 either way. You may just address the other parties
3 and.

4 THE CHAIRPERSON: Us. That may be
5 the -- actually, that might be the more appropriate
6 way.

7 MS. KULASZKA: Could we set a date
8 for disclosure, given you've already set the dates in
9 September for final argument?

10 THE CHAIRPERSON: Why did I mention
11 Friday, the other day? For what document was the
12 Friday --

13 MS. KULASZKA: For a motion by me
14 for --

15 THE CHAIRPERSON: No, no, even this
16 Friday.

17 MR. FOTHERGILL: That was for the
18 contracts.

19 MS. BLIGHT: And I have that ready to
20 disclose. I do believe you also asked me to get back
21 to you by Friday with respect to the matter that I did
22 get back to you on today, that have been -- the
23 questions asked.

24 THE CHAIRPERSON: That's been dealt
25 with, okay. Do you think by the other Friday, you'll

1 be able to get all this disclosure material that we're
2 talking about.

3 MS. BLIGHT: I don't know, but I do
4 know that we are going to have a conference call set up
5 in order to deal with scheduling matters.

6 THE CHAIRPERSON: Yes, it will. I
7 don't know --

8 MS. BLIGHT: So I would propose that
9 if the additional disclosure has not been done by then,
10 we address it during that conference call. We'll
11 just --

12 THE CHAIRPERSON: Okay, well, I would
13 help -- your undertaking as soon as possible,
14 probably. I don't know what the actual --

15 MS. BLIGHT: The intervening factor
16 may be people's holiday schedules, who actually need
17 to --

18 THE CHAIRPERSON: What I'm going to
19 do is, I'm going to be flexible, but I'm going to save
20 the other Friday, the same Friday that Ms. Kulaszka
21 will be well into her motion, Ms. Kulaszka will be
22 filing her motion as the date. If that poses a
23 problem, you advise us, but that's the date that I'm
24 putting down as the default date. July something, July
25 6.

1 MS. BLIGHT: If, by July 6, the
2 disclosure and the response has not been provided, I
3 will ask you for more time, Mr. Chairman.

4 THE CHAIRPERSON: And with an
5 explanation.

6 MS. BLIGHT: With an explanation.

7 THE CHAIRPERSON: Or at least a
8 partial one. Can you ask people at the Commission to
9 at least, if they've -- we've listed a number of things
10 to be disclosed. If they get, you know, 75 percent of
11 the job done, send it over immediately and just say the
12 rest is coming. That's fair.

13 Okay, Ms. Kulaszka? And hopefully,
14 by the date, you'd issue -- you'd make your motion to
15 have that material.

16 MS. KULASZKA: Yes, I was thinking
17 about these e-mails, and it certainly -- they are
18 simple -- a very simple search would be simply all
19 e-mails back and forth between an ISP and Mr. Goldberg.
20 There's another easy way to generate these e-mails.

21 THE CHAIRPERSON: Well, we went
22 through the discussion yesterday. If you want to
23 discuss amongst yourselves, whether there's an easier
24 way that -- I can clue you to it.

25 But I mean, let's not rehash those

1 Boolean search terms again. You know that conference
2 call may pose a slight problem. It means, I only will
3 be away after next week. I will be back -- I will be
4 there next week.

5 So maybe, we'll try to figure out the
6 column during the course of next week. It might be
7 difficult, I know. In the worse case scenario, I'll
8 just call in from wherever I am, okay? Don't worry, I
9 go above and beyond the call of duty for this job.
10 Won't be a problem.

11 All right then, then we'll just leave
12 it at that, and wish you all -- if there's any
13 holidays, happy holidays, good Canada Day. That's
14 coming up this weekend.

15 --- Whereupon the hearing was adjourned

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I hereby certify the foregoing
taken before me and transcribed
to the best of my skill and
ability this 27th day of June,
2007.

Sandra Brereton
Certified Shorthand Reporter
Registered Professional Reporter

StenoTran