

**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/
TRIBUNAL CANADIEN DES DROITS DE LA PERSONNE

HEARING HELD IN HEARING ROOM NO. 1 OF THE CANADIAN HUMAN RIGHTS
TRIBUNAL, 11TH FLOOR, 160 ELGIN STREET, OTTAWA, ONTARIO, ON
THURSDAY, MAY 10, 2007, AT 9:30 A.M. LOCAL TIME

CASE FOR HEARING

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

APPEARANCES/COMPARUTIONS

Giacomo Vigna	on behalf of the Canadian Human Rights Commission
Barbara Kulaszka	for the Respondent
Alicia Davies	for the Attorney General of Canada
Paul Fromm	for the Canadian Association for Free Expression

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1 Ottawa, Ontario

2 --- Upon resuming on Thursday, May 10, 2007

3 at 9:30 a.m.

4 THE CHAIRPERSON: Good morning.

5 Are there any preliminary matters?

6 MR. FROMM: In light of yesterday's
7 anticlimax in terms of the witness, I perhaps am seized
8 of an artsman's imagination, but I really thought,
9 "What would be so distinctive?"

10 I imagined, perhaps, a Black woman
11 with a flaming green Mohawk and one leg. Something
12 like that would be really distinctive.

13 In fact, what we had as the witness
14 yesterday was a person who, I think, was pretty
15 ordinary, like most of us are, and I don't think
16 recognizable, particularly on any crowded Ottawa street
17 or store.

18 I am wondering, in light of that, if
19 you might revisit your decision about excluding the
20 public, particularly considering that this is not the
21 first time the Tribunal has been misled in security
22 matters about great danger when, in fact, I don't think
23 that Ms Rizk was particularly distinguishable.

24 THE CHAIRPERSON: I hear you, Mr.

25 Fromm, on that point. I am not unprepared to revisit

1 my opinion, but I don't want to do it unnecessarily.

2 Let's hear from the Commission.

3 MR. VIGNA: Mr. Chair, for the next
4 witness it applies even more than the witness of
5 yesterday. It will be apparent when the witness comes
6 into the hearing room.

7 THE CHAIRPERSON: All right.

8 MR. VIGNA: Secondly, I don't think,
9 with respect to Mr. Fromm, that you need to have a
10 Mohawk --

11 THE CHAIRPERSON: I'm sorry?

12 MR. VIGNA: I don't think it needs to
13 be someone who is extraordinarily visible and has
14 particular traits, such as those he mentioned.

15 THE CHAIRPERSON: I want to back up.
16 I have not issued the directive with respect to how a
17 person could be described.

18 You remember that, Mr. Fromm. The
19 issue about description, that doesn't necessarily
20 apply.

21 The conduct of the hearing to be held
22 in camera, is it still an issue for the Commission?

23 MR. VIGNA: It is, Mr. Chair,
24 particularly for the next witness. It may not be as
25 much of an issue for the last witness.

1 THE CHAIRPERSON: Yes, I understand
2 that his photograph is already on the internet.

3 MR. VIGNA: But, for the next
4 witness, I think it is extraordinarily important.

5 Just for your information -- and we
6 asked for accommodation -- he is visually impaired.

7 THE CHAIRPERSON: I have been
8 informed of that. I just heard about it in the
9 hallway.

10 MR. VIGNA: I believe that there
11 would be a greater concern for him because of that,
12 also.

13 He is not able to see what is coming
14 at him, and there are, obviously, consequences to his
15 appearing.

16 THE CHAIRPERSON: I understand. I
17 heard the representations yesterday, and I went with
18 that, agreed, but there haven't been a thousand people
19 at the door trying to get in.

20 I understand that there was one
21 individual who asked to sit in on the hearing
22 yesterday -- some gentleman. It was nothing special.
23 I was told that someone came to the front door and
24 asked if he could attend, because he thought it was a
25 public hearing. He was told that it was being held in

1 camera, and he left.

2 I don't know how serious the risk is
3 with regard to removing the in camera order.

4 I will keep the cameras out. That
5 doesn't trouble me at all. It is the in camera -- the
6 "huit clos" as we say in French.

7 MR. VIGNA: It is, at least for the
8 next witness, Mr. Chair --

9 THE CHAIRPERSON: For the next
10 witness.

11 MR. VIGNA: For the last witness it
12 might not be as problematic.

13 THE CHAIRPERSON: All right. That is
14 a compromise that perhaps we could go with.

15 I don't want to revisit the point. I
16 heard you, Mr. Fromm, and you can make arguments at the
17 end.

18 MR. VIGNA: The hearing will be
19 public anyways, in terms of the decision.

20 THE CHAIRPERSON: The hearing is
21 public, and that is precisely why there is some
22 rationale to what is being said.

23 There aren't hordes of people at our
24 doors trying to get in; not even press, from what I
25 understand.

1 MR. VIGNA: But it is better to be
2 prudent, Mr. Chair.

3 THE CHAIRPERSON: There is no one
4 outside who wants to come in anyways.

5 MR. FROMM: Just a slight correction;
6 there was a member of the press here yesterday.

7 THE CHAIRPERSON: Yes, but that was
8 yesterday. Today, I am not familiar with anybody being
9 here.

10 We will proceed in the same fashion
11 today. Tomorrow --

12 I like people to buy into these
13 things, especially if I have agreement from everyone.
14 I don't think there is a reason for us to hold the
15 hearing in camera tomorrow. The whole reason behind it
16 was the issue of the person's image, and I understand
17 that the image of the third witness is already out
18 there.

19 So the foundation for the in camera
20 directive will not be there, so, in my view, we can
21 proceed tomorrow publicly. I think we can say that
22 right now.

23 MR. VIGNA: Unless, when I come in
24 the morning, if I see a particular situation --

25 THE CHAIRPERSON: If there is a

1 situation that is of concern, that is why we have
2 security here, and our Registry Officer is here to take
3 care of such things.

4 I haven't seen a single situation yet
5 of that sort.

6 I will issue the order right now.

7 At this moment, I am saying that with
8 the third witness the proceedings will proceed
9 normally. However, I will maintain the signage at the
10 entrance for cameras, and my little yellow sticker over
11 my laptop camera.

12 That's it. Okay?

13 MR. VIGNA: Yes.

14 We left off yesterday with the
15 witness having to produce a memo, which I have provided
16 to the parties.

17 THE CHAIRPERSON: Remind me of which
18 memo that was.

19 MR. VIGNA: April 21st, 2005. I will
20 produce it.

21 Is that what the parties want?

22 MS KULASZKA: Yes.

23 THE CHAIRPERSON: For convenience,
24 since it relates to her memo, should we put it into the
25 tab of the respondent, even though you are providing

1 it, Mr. Vigna?

2 Do you have any objection to that?

3 MR. VIGNA: No.

4 THE CHAIRPERSON: We will put it at
5 the last page.

6 MS KULASZKA: It will be Tab 15 of
7 R-17, page 44.

8 THE CHAIRPERSON: And it is dated
9 April 21st, 2005.

10 There was testimony with regard to
11 this conversation yesterday from the witness. Right?

12 MS KULASZKA: Yes.

13 MR. VIGNA: Mr. Chair, there was a
14 clarification -- I believe at the end of the day
15 yesterday there was a question from Mr. Fromm with
16 respect to whether the witness had worked on the
17 Winnicki file. She wasn't too sure, and she
18 verified --

19 THE CHAIRPERSON: Yes, there was a
20 bit of an involvement she said.

21 MR. VIGNA: Yes.

22 She worked on the retaliation part of
23 that file; not only the retaliation complaint, but she
24 worked on the retaliation under 14.1.

25 She also worked, in a very limited

1 capacity, on the Tremaine file. She viewed the
2 information on the website, but she did not prepare the
3 investigation report.

4 The witness, honestly, didn't
5 remember, and she basically reviewed her caseload and
6 was able to bring this information to me this morning.

7 I am relaying the information on
8 behalf of the witness, but I think it was understood
9 that that verification would be made.

10 THE CHAIRPERSON: To put them all
11 together, then, she has worked on the sum of the files
12 related to this complaint, including the one of Mr.
13 Harrison, and a bit on the Winnicki file, related to
14 retaliation, and somewhat on the Tremaine file.

15 MR. VIGNA: Yes. In Tremaine, she
16 just looked at the website, but she didn't prepare the
17 investigation report. She wasn't the main
18 investigator.

19 MR. LEMIRE: She did work on one
20 other file, too. She worked on the Ukrainian Archive
21 and Prytulak.

22 THE CHAIRPERSON: Yes, I have that.

23 MR. VIGNA: I think she mentioned
24 that.

25 THE CHAIRPERSON: She mentioned

1 Prytulak.

2 Yes, I have it marked here somewhere.
3 I know that I wrote it down.

4 I misspelled it, but it's here.

5 MS KULASZKA: Could I ask Mr. Vigna:
6 Did she review the files yesterday to get that
7 information, or did you do it?

8 MR. VIGNA: With respect to the
9 Winnicki file, she was given the actual physical file.
10 With respect to Tremaine, I think she
11 looked on the computer. I am not sure if she looked at
12 the physical file, but I know that she looked at the
13 physical file in Winnicki.

14 She actually looked at the physical
15 file to refresh her memory, and when she saw the 14.1
16 complaint, then she realized that that was the part she
17 had worked on.

18 The file was given to her by my
19 assistant, and she saw it in front of me.

20 Section 14.1.

21 THE CHAIRPERSON: It's retaliation.

22 MR. FROMM: Through you to Mr. Vigna,
23 by way of clarification about the Tremaine file, he
24 said that she had looked at the website. I am
25 wondering if she looked at his postings, because he was

1 mostly accused of a series of postings on Stormfront,
2 not another website, as I recall.

3 THE CHAIRPERSON: All right. Thank
4 you for the clarification, but I don't know if anything
5 much turns on that.

6 MR. VIGNA: Mr. Chair, may I call the
7 next witness?

8 THE CHAIRPERSON: Yes, but it is not
9 your witness.

10 Please, invite him in.

11 Pursuant to our discussions going way
12 back to the conference call prior to the commencement
13 of the hearing, this is sort of an examination on the
14 affidavit, which I directed Ms Kulaszka to conduct
15 during the hearing.

16 Is that right, Ms Kulaszka?

17 It is a cross-examination on the
18 affidavit.

19 Is that right?

20 MS KULASZKA: What happened was, I
21 had asked the Commission whether they were going to
22 call someone from the Commission, such as Dean Steacy
23 or Harvey Goldberg, because we have all of these
24 disclosure documents from the Commission, and, as well,
25 there are other documents that I had in my possession,

1 and I wanted someone from the Commission to come to
2 testify about them.

3 That was earlier. Then we had that
4 motion, and two affidavits were filed, and I wanted to
5 cross-examine, and you said: No, but if you want to
6 call them, you can do that at the hearing.

7 THE CHAIRPERSON: You don't consider
8 this to be a cross-examination on the affidavit?

9 MS KULASZKA: It is a
10 cross-examination on the affidavit, and, as well, I am
11 going to be referring him to documents and asking him
12 questions about them.

13 THE CHAIRPERSON: All right. I make
14 the point because I thought it would be important for
15 me to find the affidavit in my materials.

16 Will you be producing the affidavit?

17 MS KULASZKA: The affidavit is in the
18 materials.

19 THE CHAIRPERSON: It has already been
20 produced?

21 All right. I was going to look
22 through my personal file.

23 MS KULASZKA: It is at R-17, Tab 1.

24 THE CHAIRPERSON: That's great. I
25 won't have to hunt for it. Thank you.

1 AFFIRMED: DEAN STEACY

2 THE CHAIRPERSON: Good morning, Mr.
3 Steacy.

4 MR. STEACY: Good morning.

5 THE CHAIRPERSON: I am Mr. Hadjis. I
6 am the Presiding Member of the Tribunal for this
7 hearing.

8 I see that there is a person seated
9 next to you. This person assists you to read
10 materials?

11 MR. STEACY: Yes, she is my
12 assistant, Lilly Luan.

13 MR. VIGNA: I don't know if we have
14 to swear in the person assisting Mr. Steacy.

15 THE CHAIRPERSON: Do we do that with
16 interpreters?

17 THE REGISTRAR: No, Mr. Chair.

18 THE CHAIRPERSON: All right.

19 They do in some courts, but --

20 MR. VIGNA: Do we have to provide the
21 name?

22 THE CHAIRPERSON: I think that would
23 be appropriate.

24 MS LUAN: I am Lilly Luan. I am Mr.
25 Steacy's assistant.

1 MS KULASZKA: Just for the record,
2 could you say what type of assistance you will be
3 giving the witness?

4 MS LUAN: I will be reading documents
5 to him.

6 If he has to go through documents, I
7 will read them to him.

8 THE CHAIRPERSON: If counsel directs
9 us to where we are to look, could that occur in lieu of
10 your reading to him, or is it absolutely necessary?

11 MR. STEACY: That's fine.

12 THE CHAIRPERSON: Our experience from
13 the witness yesterday was that counsel would read a
14 passage to the witness, and the witness would testify.

15 If that is acceptable to you --

16 MR. STEACY: That is acceptable, as
17 well.

18 However, if you are asking me to
19 identify -- in the book here, if there is a document
20 that needs to be identified, I can't --

21 There seem to be hundreds of pages
22 here, sir; I can't identify it, somebody has to --

23 In the course of my job, she does
24 that for me.

25 THE CHAIRPERSON: I understand.

1 MR. STEACY: She reads the document,
2 and if I am looking for something in a file, I know
3 where it is, because she finds it for me.

4 THE CHAIRPERSON: That's fine.

5 We will see how it goes, Ms Kulaszka.

6 MS KULASZKA: Yes, let's see how it
7 goes.

8 THE CHAIRPERSON: Ms Luan, I would
9 ask that you move the microphone between you and the
10 witness, because we are going to have to record your
11 statements to the witness, just to ensure that
12 everything is on the record and nothing is stated that
13 is not on the record.

14 MR. VIGNA: Ms Luan, when the witness
15 is referred to a document in the binder, look at the
16 tab and you can follow along.

17 MS KULASZKA: Mr. Chair, we have an
18 updated version of R-16, which I would like to file and
19 go over with the witness.

20 THE CHAIRPERSON: Is that a loose
21 document?

22 MS KULASZKA: It is the summary of
23 past Tribunal decisions. It is a loose document.

24 THE CHAIRPERSON: Ms Kulaszka, are
25 you replacing the existing R-16 with this document?

1 MS KULASZKA: Yes.

2 THE CHAIRPERSON: Have you seen it,
3 Mr. Vigna?

4 MR. VIGNA: I haven't had a chance to
5 read it, because it was given to me this morning.

6 All I want to say is, if it is
7 produced through this witness, we have to make it clear
8 that it is not this witness who is related to the
9 document.

10 THE CHAIRPERSON: I understand.

11 MR. VIGNA: I recall it being a
12 document which was produced by Mr. Fromm.

13 MS KULASZKA: Yes, it was produced by
14 Mr. Fromm.

15 It is a summary, and basically it can
16 be used during Mr. Steacy's testimony, as well as Mr.
17 Goldberg's.

18 It is a summary, which I think would
19 be handy for the Tribunal.

20 THE CHAIRPERSON: I remember this.

21 Is there any editorial comment in
22 here to which the Commission objects, or is it just
23 straightforward?

24 MS KULASZKA: There is no editorial
25 comment.

1 THE CHAIRPERSON: It is an update?

2 MS KULASZKA: It shows the total
3 Tribunal hearings.

4 That is on the right-hand side.

5 THE CHAIRPERSON: I remember it now,
6 but what is the update that has been done?

7 MS KULASZKA: That's the update.

8 THE CHAIRPERSON: At the bottom?

9 MS KULASZKA: On the right-hand side
10 you will see a big "1" and a big "2".

11 You will see the total Tribunal
12 hearings.

13 THE CHAIRPERSON: On the left side
14 you mean.

15 MS KULASZKA: Oh, the left side.

16 I don't know what happened. I do
17 that all the time.

18 MR. LEMIRE: Also, two cases were
19 added.

20 THE CHAIRPERSON: Which ones?

21 MR. LEMIRE: The ones on page 3 of
22 11.

23 These were two given to me by the
24 Tribunal.

25 THE CHAIRPERSON: Which ones?

1 MR. LEMIRE: Kevin Lew and Knights of
2 the Ku Klux Klan. Those are the two.

3 Where it says "No CHRT hearings,"
4 those two were added as a result of Access to
5 Information requests which were provided to the
6 Tribunal.

7 THE CHAIRPERSON: The two rows on
8 page 3 of 11, at the top, are new.

9 MR. LEMIRE: Yes.

10 THE CHAIRPERSON: The two rows:
11 Knights of the Ku Klux Klan and Kevin Lew.

12 MR. LEMIRE: Yes.

13 MS KULASZKA: Hopefully, we will be
14 going through this with either Mr. Steacy or Mr.
15 Goldberg.

16 THE CHAIRPERSON: The remainder is
17 unchanged from the original R-16?

18 MS KULASZKA: Yes.

19 THE CHAIRPERSON: Mr. Vigna, take a
20 look at it at some point. If you see any discrepancies
21 between the original R-16 --

22 MR. LEMIRE: There is one addition,
23 which is a case by Mr. Warman that just came out,
24 because he posted the contents of it. That is the one
25 against --

1 It's not even on here. Never mind.

2 THE CHAIRPERSON: I'm sorry?

3 MR. LEMIRE: There was one additional
4 case that we just heard about --

5 THE CHAIRPERSON: Okay, but it's not
6 on here.

7 MR. LEMIRE: It just came out two or
8 three days ago.

9 THE CHAIRPERSON: There was a
10 decision recently, yes.

11 I will toss back the original R-16.
12 I don't think I have any annotations on it.

13 I have the new version of R-16, and I
14 am putting it in my file.

15 Mr. Vigna, take a look at it at some
16 point. If there is an issue, you can tell me.

17 I remember when this was produced.
18 You made some comments at the time, I remember.

19 MR. VIGNA: I would just make the
20 comment that this is also a summary of the decisions,
21 and the Tribunal will have to rely on the decision
22 itself, obviously.

23 THE CHAIRPERSON: Of course. It is
24 to assist us.

25 MS KULASZKA: Yes, it is to assist

1 the Tribunal.

2 MR. LEMIRE: That case is, actually,
3 on page 11 of 11.

4 The last two cases, actually: Jason
5 Ouwendyk and Northern Alliance.

6 THE CHAIRPERSON: These are new
7 files. There have been no decisions issued by the
8 Tribunal on these; right?

9 MR. LEMIRE: They were just referred
10 to the Tribunal.

11 THE CHAIRPERSON: They were just
12 referred to the Tribunal. All right.

13 Will we be using R-16 today?

14 MS KULASZKA: Perhaps.

15 THE CHAIRPERSON: I will keep it out
16 then.

17 MR. VIGNA: Mr. Chair, if you look at
18 the last page, page 11 of 11, the two last cases that
19 are mentioned, are those cases that have just been
20 referred to the Tribunal?

21 THE CHAIRPERSON: That is what Mr.
22 Lemire just said, yes.

23 MR. VIGNA: It says, "Financial
24 Status of Respondent: Poor."

25 We have no evidence of that.

1 THE CHAIRPERSON: That I would
2 qualify as an editorial comment.

3 We have no evidence on that. Mr.
4 Fromm testified about earlier cases and gave his
5 opinion on their financial status.

6 MS KULASZKA: Yes. Mr. Fromm knew
7 these people, and that is how he gave his testimony.

8 THE CHAIRPERSON: On the other ones,
9 but I didn't hear anything about these two.

10 MS KULASZKA: On the other ones, but
11 there has been no testimony about these two, obviously.

12 THE CHAIRPERSON: I am going to make
13 an annotation -- I will even strike them out.

14 MS KULASZKA: Let's just strike them
15 out for now, yes.

16 They would be the last two --

17 THE CHAIRPERSON: We don't have any
18 evidence about the race of the respondent, either.

19 MR. VIGNA: Nor the age.

20 THE CHAIRPERSON: I can't take any
21 knowledge whatsoever of that at this point, Ms
22 Kulaszka.

23 MS KULASZKA: All right, so we will
24 strike them --

25 THE CHAIRPERSON: I am striking them

1 off, and I would ask the Registry Officer to do it, as
2 well.

3 Perhaps afterwards we can do it with
4 white-out or something, so it is clear that there isn't
5 any trace of that information.

6 MR. VIGNA: In a nutshell, Mr. Chair,
7 in relation to this document what I would say is, when
8 it comes to the issue of what is being put forth -- the
9 age or the financial status -- I think you should rely
10 on the decision and the evidence that was put
11 forward --

12 THE CHAIRPERSON: That is obviously
13 the best source.

14 And I have the evidence of a witness
15 who was cross-examined, with all of the limitations
16 that are related to one witness' opinions, of Mr.
17 Fromm.

18 He did note that he knew some of the
19 people personally, and the extent to which he was able
20 to comment on their financial ability, he gave the
21 basis on which he drew those conclusions. It was his
22 evidence.

23 MR. VIGNA: That's it. I will argue
24 the probative value of that evidence.

25 THE CHAIRPERSON: Yes, it goes to the

1 probative value of that information.

2 But some of it is apparent from the
3 decisions themselves. Right?

4 MR. VIGNA: If it's apparent, I won't
5 have any --

6 THE CHAIRPERSON: Certainly, when it
7 comes down to the award of a penalty, a factor that is
8 taken into account is the financial means of the
9 respondent, and that is often discussed by the
10 Tribunal. Those are things that could be noted.

11 MR. VIGNA: Yes.

12 MS DAVIES: Good morning, Mr. Chair.
13 I would just like to reiterate the Attorney General's
14 position that, on the constitutional question, the
15 jurisdiction of the Tribunal is derived from the
16 specific complaint before it.

17 So, as far as the effects of section
18 13 are concerned, our position is that these are
19 restricted to the effects in the case of Mr. Lemire
20 only.

21 THE CHAIRPERSON: Right.

22 All right, Ms Kulaszka.

23 CROSS-EXAMINATION ON THE AFFIDAVIT OF DEAN STEACY BY MS
24 KULASZKA

25 MS KULASZKA: Mr. Steacy, I would ask

1 you to look at R-17, Tab 1. This is the affidavit
2 which you filed in this case, and it was sworn on
3 January 12th, 2007.

4 Do you remember that affidavit?

5 MR. STEACY: Yes, I do.

6 MS KULASZKA: It states in the first
7 paragraph:

8 "I am employed as investigator
9 with the Canadian Human Rights
10 Commission (the `Commission'),
11 and as such, have knowledge of
12 the facts to which I hereinafter
13 depose."

14 What kind of work is entailed in your
15 work as an investigator?

16 MR. STEACY: I have been
17 investigating at the Commission since 1997, and as an
18 investigator my job is to investigate cases of
19 discrimination that are put before me, based on the
20 grounds that are outlined in the Act.

21 MS KULASZKA: How many section 13
22 cases have you done?

23 MR. STEACY: Off the top of my head,
24 I can't really tell you.

25 I have done at least 25 or 30.

1 MS KULASZKA: Your primary work at
2 the Commission is doing section 13 cases?

3 MR. STEACY: It is one of the primary
4 pieces of work that I do at the Commission, yes.

5 MS KULASZKA: Are you a member of the
6 Hate Team?

7 MR. STEACY: Yes, I am.

8 I am also a member of the Race,
9 Colour, Religion and National Ethnic Origin Team, which
10 we call "Team X".

11 MS KULASZKA: Anything else?

12 MR. STEACY: Presently I am on
13 assignment at Resolution Services as an acting manager.

14 MS KULASZKA: What do you do there?

15 MR. STEACY: I am one of the managers
16 for one of the two teams in Resolution Services, which
17 is basically the front end of people trying to resolve
18 disputes at the Commission.

19 MS KULASZKA: What would that be,
20 mediation, conciliation?

21 MR. STEACY: Basically, if an
22 individual calls and they have a dispute, the new
23 process that the Commission has is, we are going to try
24 to resolve the potential complaint before it becomes a
25 signed complaint and gets into the system.

1 We are in the process of trying to
2 set that up, so that the majority of individuals
3 calling, we can try to resolve --

4 What came in previously used to be
5 signed complaints; now we are going to try to resolve
6 them without having them become signed complaints.

7 MS KULASZKA: Is this a full-time job
8 for you now?

9 MR. STEACY: Yes.

10 MS KULASZKA: You are not involved in
11 section 13 complaints any more?

12 MR. STEACY: Section 13 complaints
13 could be part of what comes in at Resolution Services,
14 but I still have my caseload as an investigator,
15 because the assignment is only for four months.

16 MS KULASZKA: Who else is on the Hate
17 Team?

18 MR. STEACY: There are other
19 investigators, and there are members from our Policy
20 unit and Legal Services.

21 MS KULASZKA: How many members?

22 MR. STEACY: Five.

23 MS KULASZKA: Who are they?

24 MR. STEACY: There is myself, Sandy
25 Kozak is the other investigator, John Chamberlin is the

1 manager, Harvey Goldberg is our policy advisor, and
2 presently Patrick O'Rourke is our legal advisor.

3 MS KULASZKA: These would be the five
4 people who would do all of the section 13 work.

5 MR. STEACY: Yes.

6 MS KULASZKA: Can you tell me what
7 training you received to do the section 13 work?

8 MR. STEACY: Basically, most of the
9 training I received was on-the-job training, and I have
10 received some training through computer courses with
11 the Canadian Police College.

12 MS KULASZKA: Did Mr. Warman give you
13 any classes?

14 MR. STEACY: Mr. Warman has never
15 given me any classes, or helped me, or taught me
16 anything about investigating hate on the internet.

17 MS KULASZKA: Did he teach you any of
18 the other ones?

19 MR. STEACY: If he has, I am not
20 aware of it.

21 MS KULASZKA: How long was the course
22 at the Police College?

23 MR. STEACY: It was a computer-based
24 learning course. My recollection is that it was done
25 over a four or five-week period. It was sort of a

1 take-home correspondence type of course which you did
2 on the computer, and you had modules to complete.
3 Module "A" had to be completed between a period -- the
4 beginning of one week to the next week, and then you
5 had sort of an exam on that, and it progressed that
6 way.

7 I believe it was four or five weeks.

8 MS KULASZKA: That taught you
9 techniques concerning what?

10 MR. STEACY: It taught me
11 investigative techniques on the computer.

12 MR. VIGNA: Mr. Chair, I would make
13 an objection under section 37 with respect to the
14 specific techniques that may be used.

15 I don't think my colleague has gone
16 to that extent yet, but I see her coming close to it.

17 THE CHAIRPERSON: Just so we are all
18 mindful, if we are going to talk about things like I
19 heard yesterday, which are available by typing
20 "www.something" on the internet, like "WHOIS" --

21 MR. VIGNA: I understand your point,
22 Mr. Chair. Things are available on the website, it is
23 not a big secret, and I will be mindful of that.

24 If I see her coming close --

25 THE CHAIRPERSON: We are not there

1 yet, though.

2 MS KULASZKA: This course, was it
3 written by the Edmonton Police?

4 Do you know?

5 MR. STEACY: All I can tell you is
6 that it was provided by the Canadian Police College. I
7 don't know who authored it, other than it was made
8 available by the Canadian Police College.

9 MS KULASZKA: The police themselves
10 would take this course as part of their courses?

11 MR. STEACY: I would assume so.

12 MS KULASZKA: Without telling me the
13 techniques you would use, what were you learning to do
14 on the internet?

15 MR. STEACY: How to investigate
16 substantive -- looking for substantive material and
17 identifying different pieces, and how to verify them.

18 MS KULASZKA: Who was the instructor?

19 MR. STEACY: There was no specific
20 instructor. As I said, it was computer-based, like an
21 e-learning type of course. You would get the module,
22 and you would go through the module, and you would use
23 your computer to follow the instructions.

24 Using the example of a better "WHOIS"
25 search, how you would do that.

1 Some of it was very basic, doing
2 domain searches, or learning how to do advanced
3 searches on Google or Alta Vista or Bigfoot or any of
4 the many types of search engines out there, and then it
5 got into more specific -- each module gave you more
6 specific information and more specific things that you
7 had to use to investigate -- or to look for on the
8 computer.

9 MS KULASZKA: Do you know whether
10 Sgt. Stephen Camp wrote that program?

11 MR. STEACY: I have no idea.

12 MS KULASZKA: This was a program that
13 you actually did when you were in Ottawa, and you just
14 did it through the computer.

15 Is that right?

16 MR. STEACY: That's correct.

17 MS KULASZKA: What were you taught
18 about such tools as "WHOIS" and their reliability?

19 MR. STEACY: I wasn't taught anything
20 about "WHOIS" specifically. In using it, I found that
21 it was a fairly accurate tool to identify the domain
22 and the individuals who were responsible for the
23 specific websites.

24 MS KULASZKA: That is the extent of
25 your knowledge, essentially, that you would use on a

1 day-to-day basis.

2 MR. STEACY: I don't use it on a
3 day-to-day basis, but that is the extent of my
4 knowledge, yes.

5 MS KULASZKA: Is that the only course
6 you have had in computer investigative techniques?

7 MR. STEACY: No.

8 MS KULASZKA: What other courses have
9 you had?

10 MR. STEACY: I have had other
11 investigative courses that have been provided by the
12 Commission on investigating discrimination.

13 MS KULASZKA: On the computer?

14 MR. STEACY: I'm not sure that I
15 understand. Do you mean specifically to hate, or in
16 relation to investigating --

17 MS KULASZKA: Section 13.

18 MR. STEACY: That is the only course
19 specifically that I have taken from an outside
20 organization, yes. The rest of it has been
21 self-taught.

22 MS KULASZKA: When you do your work
23 on the computer, what software are you using so that
24 you know what the computer says?

25 MR. VIGNA: Section 37, Mr. Chair. I

1 don't think the software is relevant. Anyways, it is
2 information that could compromise our operations.

3 THE CHAIRPERSON: There is another
4 thing, too, Ms Kulaszka. All of your questions before,
5 I see how they pertain to the point that I think you
6 are going to be making with all of this information,
7 but how would it make a difference to me to know what
8 kind of software he is using?

9 MS KULASZKA: Without telling me the
10 software, does it read it back to you?

11 MR. STEACY: No, it doesn't.

12 MS KULASZKA: You participated in a
13 conference call on September 8, 2007.

14 Do you remember that?

15 MR. STEACY: Yes, I do.

16 MS KULASZKA: The issue in that call
17 was with respect to letters which had been sent to ISPs
18 concerning allegedly offensive material on the
19 internet.

20 Do you remember that?

21 MR. STEACY: Yes, I do.

22 MS KULASZKA: At Tab 1 of the same
23 volume, if you look at page 6, there is an excerpt from
24 the transcript of that call.

25 I will read it:

1 "MR. VIGNA: We provided
2 basically a letter that we sent
3 to providers, a sample letter,
4 because we have issues with
5 [s]ending the specific letters
6 to specific files that relate to
7 specific other cases. We sent a
8 sample letter which basically is
9 sent out to ISP providers to
10 tell them about a certain web
11 site."

12 Were you involved in the work of
13 sending such letters to ISPs?

14 MR. STEACY: Yes.

15 MS KULASZKA: For how long?

16 MR. STEACY: As part of my duties as
17 an investigator, among all of the complaints that I
18 have investigated, I have been investigating hate
19 since, roughly, 1998-1999.

20 MS KULASZKA: Okay. We will talk
21 about two different things here. One might be letters
22 which relate to a file where a complaint has been laid.
23 The second part is a case where no complaint has been
24 laid, but a letter has been sent to an ISP or a
25 webmaster, for instance.

1 Have you been involved in both types
2 of letter-writing?

3 MR. STEACY: Yes, I have.

4 MS KULASZKA: For how long?

5 MR. STEACY: Again, since 1998-1999
6 to the present.

7 MS KULASZKA: The letters that are
8 sent to ISPs where no complaint has been filed, where
9 are you getting the websites? Are you monitoring
10 websites? Are you getting tips from people?

11 How do you come up with these
12 websites?

13 MR. STEACY: Generally, they have
14 been when we have had an individual call and say they
15 have been on the website -- or they were on a website
16 and they came across a piece of information, and they
17 came to us and said that they wanted to put a complaint
18 in against a specific website.

19 Part of our Act -- section 27 of our
20 Act allows us to be proactive in an educational manner,
21 and in some cases, when we were viewing the
22 information, because of jurisdictional issues, or
23 because of many other aspects, it was determined that
24 it might be proactive to try to ask that the
25 information the caller was complaining of be removed

1 from the website.

2 MS KULASZKA: How many people would
3 complain to you --

4 Of all the letters you have sent --

5 How many letters like that would you
6 have sent where, in fact, no complaint was made, but
7 you sent a letter to an ISP?

8 How many letters like that have you
9 sent?

10 MR. STEACY: Myself? I think I have
11 sent two or three.

12 MS KULASZKA: In total, do you know
13 how many letters have been sent?

14 MR. STEACY: My recollection is that
15 it would be under ten.

16 MS KULASZKA: In all of those cases,
17 did someone call the Commission and complain about a
18 website?

19 MR. STEACY: Yes.

20 MS KULASZKA: In the other cases, as
21 well?

22 MR. STEACY: How do you mean, the
23 other cases?

24 Do you mean the investigation cases?

25 MS KULASZKA: The letters that you

1 did not send.

2 MR. STEACY: Yes.

3 MS KULASZKA: You are certain about
4 that?

5 MR. STEACY: Yes.

6 MS KULASZKA: So you do not troll the
7 internet using keywords or key names?

8 MR. STEACY: There is nobody that I
9 am aware of at the Commission, as a Commission staff
10 person, that is on the internet, surfing the internet
11 to look for hate sites.

12 MS KULASZKA: If the website is in
13 the United States or some other jurisdiction, do you
14 still send a letter?

15 MR. STEACY: Yes, we have.

16 MS KULASZKA: Why?

17 MR. STEACY: As I said, part of our
18 Act allows us to be proactive and educative, and
19 because the websites -- regardless of where they are
20 emanating from, the information is available in Canada,
21 and if the individuals that have come to us to complain
22 have felt that it meets section 13(1), in order to try
23 to be proactive, we have asked organizations that are
24 outside Canada to look at their website and to look at
25 their policies, and if the information violates their

1 internal policies, then we would ask them to deal with
2 it.

3 MS KULASZKA: Why were complaints
4 never filed in these cases?

5 MR. STEACY: To the best of my
6 recollection, it was probably because it was a
7 jurisdictional issue.

8 MS KULASZKA: In fact, you have no
9 jurisdiction over websites outside Canada.

10 MR. VIGNA: Mr. Chair, I object on
11 the ability of this witness to testify on what would be
12 a legal point.

13 THE CHAIRPERSON: Ordinarily, yes,
14 but this person is involved in the Commission. His
15 understanding with respect to the Commission's
16 jurisdiction may be relevant to this discussion.

17 I realize that it is not coming from
18 an independent juridical source, but I think it is
19 relevant.

20 What is your understanding?

21 MR. STEACY: My understanding is,
22 just because it emanates outside Canada -- if the ISP
23 or the website is emanating outside Canada, that does
24 not preclude the Commission from having jurisdiction
25 over that website.

1 It would depend on where the control
2 of the website comes from, and where the information is
3 emanating from, not where it is broadcasting from.

4 MS KULASZKA: In other words, if you
5 have a person who controls it in Canada, you have
6 jurisdiction.

7 MR. STEACY: Yes.

8 MS KULASZKA: What happened in the
9 cases where you sent these letters?

10 MR. STEACY: I don't know.

11 MS KULASZKA: Did the ISP respond to
12 your letters?

13 MR. STEACY: I am aware of one or two
14 cases where the ISP responded. In other cases, I am
15 not aware of whether the ISP responded or not, because
16 I wasn't the author of the letter -- or I wasn't the
17 signatory of the letter.

18 MS KULASZKA: Were any websites or
19 any other material, to your knowledge, taken down as a
20 result of the letters?

21 MR. STEACY: I don't know.

22 MS KULASZKA: Do you not follow up on
23 the file?

24 MR. STEACY: If it is my file, yes;
25 but if it is not my file, no, I don't.

1 MS KULASZKA: You said that you sent
2 two or three letters. Do you know what the results
3 were of those letters?

4 MR. STEACY: I believe that in one
5 case the information was removed, and in another case
6 the information wasn't removed.

7 MS KULASZKA: Was there a third case?

8 MR. STEACY: The third case had to do
9 with a complaint.

10 MS KULASZKA: The material that was
11 removed, where was it located?

12 MR. STEACY: My recollection is that
13 the ISPs -- two of them were in the States.

14 MS KULASZKA: And what kind of
15 material was removed?

16 MR. STEACY: It would have been
17 information that we considered was --

18 If a person had been complaining of
19 the information in Canada, it would have met the
20 section 13(1) test, as set out in the Act.

21 MS KULASZKA: Who would determine
22 that at the Commission?

23 Would it be you?

24 MR. STEACY: I would be one person,
25 yes.

1 MS KULASZKA: Who else?

2 MR. STEACY: It would depend on the
3 information, but, in most cases, as an officer, I have
4 the discretion to look at it. If I wasn't sure, it
5 would go to the Anti-hate Team, and we would discuss it
6 and make the determination at the Anti-hate Team.

7 But, as the officer assigned to the
8 case, I would be responsible for following it up.

9 MS KULASZKA: But you have the power,
10 if you see a website that you think is offensive, to
11 simply write a letter to the ISP.

12 MR. STEACY: No. It would have to be
13 predicated on an individual having come to us.

14 As I said, we don't surf the internet
15 looking for any website.

16 MS KULASZKA: Who has made these
17 complaints? Are they individuals, organizations?

18 MR. STEACY: Both.

19 MS KULASZKA: Was Richard Warman one
20 of them?

21 MR. STEACY: Mr. Warman has made
22 complaints to the Commission under section 13(1), yes.

23 MS KULASZKA: But has he made
24 complaints that resulted in the letters being written
25 that we are talking about?

1 MR. STEACY: No, not to my
2 recollection.

3 MS KULASZKA: Now, you know that the
4 Canadian Jewish Congress and the League for Human
5 Rights of B'Nai Brith both have facilities on their
6 websites where someone can report what they believe to
7 be hate material on the internet?

8 MR. STEACY: Yes, I am aware of that.

9 MS KULASZKA: Have you received any
10 tips or complaints or information garnered by those
11 organizations as a result --

12 MR. VIGNA: Mr. Chair, I object,
13 based on section 37, if there is any information that
14 was given and it is part of the investigation
15 techniques.

16 THE CHAIRPERSON: I know section 37,
17 but the question was simply: Have any of the tips come
18 from B'Nai Brith or the CJC's tip line.

19 That is an investigation technique?

20 MR. VIGNA: If it is limited to that,
21 I will withdraw my objection.

22 THE CHAIRPERSON: That's what I
23 thought the question was.

24 MR. VIGNA: If it is limited to that,
25 I won't object. But if it goes any further --

1 THE CHAIRPERSON: Perhaps I
2 misunderstood the question, Mr. Vigna.

3 MS KULASZKA: The question is --
4 There are these hotlines or tip lines
5 that you can go to on these websites. As a result,
6 have you received any information from those two
7 organizations?

8 MR. STEACY: We have received
9 complaints from the Canadian Jewish Congress. I don't
10 know if they were predicated from what they received on
11 their hotline or not, but we have received complaints
12 from other organizations and other individuals on
13 section 13(1).

14 MS KULASZKA: What I am trying to get
15 at is, we are not talking about complaints, per se,
16 that have gone to a tribunal or gone to the Commission,
17 a formal complaint, I am just referring to information
18 that comes from these kinds of hotlines. Is it given
19 to the Commission?

20 MR. STEACY: You mean, basically,
21 they would come to us and say, "Here is something. Go
22 look at it"? No, they don't do that.

23 Our process is, if somebody --
24 because our process right now is a complaint-based
25 process, the system is that somebody has to phone us to

1 initiate -- saying that they have a potential
2 complaint, and then we look into it. But we don't take
3 information from any individual or an organization who
4 says, "We want you to start surfing the net to look at
5 this." We don't do that.

6 THE CHAIRPERSON: Is the rest of Tab
7 1 the transcript?

8 MS KULASZKA: I am still going
9 through it.

10 THE CHAIRPERSON: All right, but
11 let's get it over with now.

12 This is straight from the Tribunal's
13 transcript and the affidavit that was filed as part of
14 the Commission's reply to your motion.

15 Right, Ms Kulaszka?

16 MS KULASZKA: Yes, there are the
17 affidavits of Dean Steacy and Harvey Goldberg and the
18 conference call transcript.

19 THE CHAIRPERSON: Are both affidavits
20 here?

21 MS KULASZKA: Yes, they are both
22 there.

23 THE CHAIRPERSON: All right. The
24 whole tab is produced.

25 Go ahead.

1 MS KULASZKA: If we could go to Tab
2 12, we will have a look at what we have been
3 discussing. The "Stop Internet Hate" kind of reporting
4 system on the CJC website is at page 2 of that tab.

5 Have you visited the CJC website to
6 have a look at that function on their website?

7 MR. STEACY: No, I have not.

8 MS KULASZKA: So you can't really
9 give us any information about that.

10 MR. STEACY: No, I can't.

11 MS KULASZKA: All right. We will go
12 back to Tab 1.

13 THE CHAIRPERSON: I don't consider it
14 produced at this point, Ms Kulaszka.

15 MS KULASZKA: No.

16 I am going back to the transcript of
17 the conference call. The discussion was about how much
18 time was needed to produce these letters.

19 "MR. VIGNA: How much time,
20 Dean, Mr. Steacy and Mr.
21 Goldberg, because how many files
22 are involved, approximately,
23 that we will need to go through
24 in order to get that?
25 Approximately."

1 THE CHAIRPERSON: Slow down a second,
2 I haven't found the page.

3 MS KULASZKA: It's at page 11 of Tab
4 1. Page 11, at the bottom.

5 THE CHAIRPERSON: Perhaps you should
6 read it a little slower, Ms Kulaszka.

7 MS KULASZKA: I am starting at line
8 7.

9 THE CHAIRPERSON: Just read it slow
10 for the witness and myself, please.

11 MS KULASZKA: "MR. VIGNA: How much
12 time, Dean, Mr. Steacy and Mr.
13 Goldberg, because how many files
14 are involved, approximately,
15 that we will need to go through
16 in order to get that?
17 Approximately.

18 MR. STEACY: It's Dean Steacy
19 speaking again.
20 Approximately --

21 THE CHAIRPERSON: We are only
22 talking about section 13
23 complaints here. Right?

24 MR. STEACY: Yes. Probably --

25 MR. VIGNA: Section 13

1 complaints.

2 MR. STEACY: Section 13
3 complaints, I would think it is
4 200 or 300.

5 THE CHAIRPERSON: All right. I
6 realize it may take some time.

7 MR. STEACY: Off the top of my
8 head, I can't give you an idea
9 how long that will take.
10 Certainly it will take a couple
11 of months."

12 What files were you referring to?

13 MR. STEACY: I was referring to our
14 electronic files and the files that we have at the
15 Commission.

16 MS KULASZKA: With respect to section
17 13?

18 MR. STEACY: Yes, in the sense that I
19 would have to go through all of the files to see which
20 ones were section 13s, or which involved section 13(1)
21 complaints.

22 MS KULASZKA: So when you talked
23 about 200 to 300 files, what were you talking about?

24 MR. STEACY: I was talking about what
25 is on our electronic file system, that I would have to

1 search through that to determine which ones were
2 section 13(1) complaints.

3 THE CHAIRPERSON: I just want to be
4 clear on that answer, sir. Are you saying that, when
5 you made your estimation here of 200 to 300, what you
6 were meaning was that you expected to find 200 or 300
7 out of the mass of files at the Commission, or that the
8 Commission has a total of 300 files in its file room
9 with regard to all complaints?

10 We were referred 130 complaints last
11 year alone.

12 MR. STEACY: I was referring to our
13 electronic file system. I would have had to go through
14 that file system, and within the file system that we
15 have electronically, there would be file folders that
16 we would have to go through to match up to see which
17 ones might pertain to section 13(1) complaints.

18 When I answered the question, I
19 didn't -- our filing system is not necessarily
20 straightforward to somebody who hasn't worked at the
21 Commission. I wasn't trying to mislead anybody, it is
22 just that I knew what we would have to look at, and my
23 recollection is that, in doing that, there would be --

24 Like, we have an "H" Drive, a "J"
25 Drive, and there are file folders within them, and I

1 would have to look through those file folders, and
2 anything that matched, I would then have to look at it
3 electronically and then get it in paper, or get the
4 actual file folder from our Records unit.

5 THE CHAIRPERSON: What I am trying to
6 understand is, would you have had to go through 200 to
7 300 folders to find how many complaints you had?

8 One reading I have of what you had
9 said to me is that, in all of these files and folders,
10 you would come up with, maybe, 200 or 300 section 13
11 complaint files.

12 Is that an accurate understanding or
13 an inaccurate understanding?

14 MR. STEACY: The first part is more
15 accurate.

16 THE CHAIRPERSON: The first part --

17 MR. STEACY: That I would have to
18 look through 200 to 300 electronic file folders to see
19 if there was anything in that specific file folder that
20 would be a hate complaint, or have something in
21 reference to --

22 THE CHAIRPERSON: Does each folder
23 contain more than one file?

24 MR. STEACY: Yes.

25 THE CHAIRPERSON: More than one

1 complaint file?

2 MR. STEACY: In "H" Drive, there is a
3 folder that is 2001, and then there is a folder that is
4 2002, 2003, 2004, and within that folder there are
5 sub-folders. Like, 2001 would have every complaint
6 that made it to complaint or even didn't make it to
7 complaint. So 2001 would be a sub-folder -- 2001.001,
8 and so on.

9 We would have to look through that
10 electronically. And if, in the search, something came
11 up saying that there was something hate-related, then I
12 would have had to look at that specific sub-folder or
13 sub-sub-folder.

14 But I would have had to go through --
15 in "H" and "J", there would be at least 200 to 300 file
16 folders that I would have had to look through.

17 MS KULASZKA: How many section 13
18 files have there been since around 2000?

19 MR. STEACY: I am not sure, off the
20 top of my head.

21 You mean presently active, or that we
22 have dealt with since 2000?

23 Probably, I would think, somewhere in
24 the nature right now -- we have dealt with, since 2000,
25 probably 50 files specific to section 13.

1 MS KULASZKA: If you go to your
2 affidavit, at page 2 of the same tab, at paragraph 5 of
3 your affidavit you state:

4 "From 2001 to the present, the
5 Commission has accepted
6 approximately 55 section 13
7 complaints in respect to hate on
8 the Internet. Of these,
9 approximately 25 have been
10 referred to the Tribunal and/or
11 Conciliation."

12 Did you write that?

13 MR. STEACY: Yes, I did.

14 MS KULASZKA: Where did you get that
15 information?

16 MR. STEACY: I got that off our Case
17 Management System.

18 MS KULASZKA: What does your Case
19 Management System tell you?

20 MR. STEACY: The Case Management
21 System is the system that controls -- it basically
22 regulates the documents that we put in in the activity
23 log and the history of each specific file that is an
24 actual complaint.

25 MS KULASZKA: So if you received a

1 complaint about a website that was located in the
2 United States, and no complaint could be laid because
3 the person who controlled it was also in the United
4 States, would a file be opened?

5 MR. STEACY: No.

6 MS KULASZKA: If you sent a letter to
7 an ISP to complain --

8 MR. STEACY: It would go into what we
9 call our General Correspondence file. It would not get
10 a file number assigned to it.

11 So it wouldn't be in the system. It
12 wouldn't be in the CMS system, but there might be a
13 record of it electronically in the General
14 Correspondence electronic record.

15 MS KULASZKA: Where would this letter
16 be filed?

17 MR. STEACY: In our General
18 Correspondence area.

19 MS KULASZKA: And how is it
20 organized?

21 MR. STEACY: Alphabetically.

22 MS KULASZKA: Did you make a search
23 through those files for the letters?

24 MR. STEACY: Electronically, yes. I
25 didn't go to the physical file, because we only keep at

1 the Commission, in our file room that I have access
2 to -- the General Correspondence files, we only keep
3 one year's files present in the room. The other files
4 are kept electronically for a couple of years.

5 MS KULASZKA: So that letter
6 definitely would have been put into the electronic
7 file, as well.

8 MR. STEACY: Yes.

9 MS KULASZKA: And that's what you did
10 a search of.

11 MR. STEACY: Yes.

12 THE CHAIRPERSON: As a result of the
13 conversation that we had during the conference call.

14 When you say that you did the
15 electronic search --

16 MR. STEACY: Yes, sir.

17 MS KULASZKA: If a reply is received
18 from the ISP, where is it filed?

19 MR. STEACY: It would have been
20 attached in paper to the General Correspondence file.

21 MS KULASZKA: To the original letter.

22 MR. STEACY: Yes. It would have been
23 attached within that file, yes.

24 MS KULASZKA: You said that in one of
25 the letters you wrote the material was actually

1 removed. Did the ISP write a letter to you informing
2 you of that fact?

3 MR. STEACY: I have to think, because
4 I have dealt with so many files in the last little
5 while.

6 I believe, yes, that they wrote a
7 letter and advised us that, based on their acceptable
8 use policies, they would remove that information.

9 MS KULASZKA: Do you know what year
10 that would have been written?

11 MR. STEACY: No.

12 MS KULASZKA: Was it recently?

13 MR. STEACY: It would have been
14 within the last two years.

15 MS KULASZKA: And would that letter
16 be destroyed by now?

17 MR. STEACY: I don't know.

18 MS KULASZKA: Since 2001, you stated
19 that the Commission has accepted approximately 55
20 section 13 complaints in respect of hate on the
21 internet. Of those, can you tell me how many were laid
22 by Richard Warman?

23 MR. STEACY: Not off the top of my
24 head, no.

25 MS KULASZKA: Does 26 sound familiar?

1 MR. STEACY: That could be.

2 I don't have time to keep track of
3 any specific complainant or any specific respondent and
4 the number of complaints that are being dealt with. I
5 have to deal with my caseload that is assigned to me.

6 I pay attention to that caseload, I
7 don't pay attention to what is assigned to other
8 officers.

9 MS KULASZKA: Would there be anybody
10 at the Commission who does keep track of that
11 information?

12 MR. STEACY: You mean specifically
13 how many complaints have been filed by a specific
14 individual?

15 MS KULASZKA: Just for an information
16 base, certainly: who is laying complaints; how many
17 complaints have been received --

18 MR. STEACY: Generally, if somebody
19 was to call me on the phone and asked, "How many
20 complaints has Mr. Warman filed," or Mr. John Smith
21 filed, if it was in the complaint process system, we
22 wouldn't provide that information, because when a
23 complaint is filed, during that process, we don't give
24 that information out.

25 The only time we acknowledge that

1 there is any type of complaint is once the complaint
2 has been referred to Tribunal.

3 MS KULASZKA: Are you aware that
4 there are many complaints filed on the internet by Mr.
5 Warman, on "recomnetwork.org", before they go to
6 Tribunal?

7 MR. STEACY: I am aware that Mr.
8 Warman -- or that there have been complaints made that
9 Mr. Warman has placed information on that website, yes.

10 MS KULASZKA: Were you aware of that
11 yourself?

12 MR. STEACY: I wasn't aware of it
13 until it became the subject of a complaint.

14 MS KULASZKA: Who complained?

15 MR. STEACY: We had a complaint from
16 Mr. Andrew Guille concerning "recomnetwork", and I
17 believe, as well, there was a complaint from Mr. Alexan
18 Kulbashian concerning "recomnet".

19 MS KULASZKA: Did you investigate
20 whether that was true; whether, in fact, Mr. Warman had
21 posted those complaints on the website?

22 MR. STEACY: I was the officer who
23 investigated Mr. Guille's complaint, yes.

24 MS KULASZKA: Did Mr. Warman post
25 those complaints on that website?

1 MR. STEACY: The evidence that I came
2 up with shows that there were -- the complaints that
3 Mr. Warman had posted were on "recomnet".

4 MS KULASZKA: Do you know who posted
5 them?

6 MR. STEACY: Mr. Warman.

7 MS KULASZKA: You are certain of
8 that?

9 MR. STEACY: From the information
10 that I gathered during the investigation, yes.

11 MS KULASZKA: Did you ask Mr. Warman
12 whether he had posted those complaints?

13 MR. STEACY: Yes.

14 MS KULASZKA: And he said that he
15 had?

16 MR. STEACY: Yes.

17 MS KULASZKA: In fact, in your
18 investigation report, you actually did say that. You
19 said:

20 "As well, the site has examples
21 of complaints concerning hate on
22 the Internet filed by Mr.
23 Richard Warman."

24 MR. STEACY: Yes.

25 MS KULASZKA: Did you warn Mr. Warman

1 not to do so any further?

2 MR. STEACY: I don't remember if I
3 specifically warned Mr. Warman to do anything.

4 MS KULASZKA: Is the Commission
5 troubled when complaints are posted on the internet
6 prior to the matter going to Tribunal?

7 MR. STEACY: You are asking me to
8 provide an answer for the Commission, and I don't know
9 that I can really do that.

10 I know that the Commission -- when we
11 are talking to respondents and complainants, we do ask
12 the parties to keep the information confidential while
13 the investigation process is ongoing, but there is
14 nothing in our statute that specifically prohibits a
15 complainant and/or a respondent from making the fact
16 that there is a complaint public.

17 We do ask them not to do that.

18 MS KULASZKA: If we could go back to
19 your affidavit at Tab 1, page 1, paragraph 4 states:

20 "I have reviewed all the
21 Commission files that I am aware
22 of relating to section 13 hate
23 on the Internet. I am confident
24 that I have provided a complete
25 disclosure of the correspondence

1 that has been sent to ISPs and
2 that remains in the Commission's
3 possession. In this regard,
4 there are letters which have
5 been destroyed due to the
6 passage of time, in accordance
7 with the Treasury Board
8 retention policy."

9 Do you know what that retention
10 policy is?

11 MR. STEACY: Yes, in an overall
12 sense, the retention policy for general correspondence
13 is that it is kept for a couple of years, and anything
14 that is specific to a complaint could be kept for five
15 years. Depending on whether it has historical value,
16 it could be kept indefinitely.

17 Once I am done with a file, it goes
18 to our Records Management, and they control it.

19 MS KULASZKA: How did you inform
20 yourself when you wrote this paragraph in your
21 affidavit?

22 MR. STEACY: I spoke to our Records
23 Information Management manager.

24 MS KULASZKA: What did they tell you?

25 MR. STEACY: What is in my affidavit.

1 The requests had been for
2 documentation going back to 1993, and there were no
3 electronic files on our system dating back to 1993. So
4 I went and asked them why not, and that is the
5 information that they provided me.

6 MS KULASZKA: Let's turn to Tab 2.
7 Tab 2 consists of a series of letters written to ISPs
8 that were produced by the Commission.

9 Were you the person who obtained
10 those documents for disclosure?

11 MR. STEACY: Yes.

12 Not specifically just me, but I am
13 the one who gathered them and provided them to Mr.
14 Vigna.

15 MS KULASZKA: If Mr. Vigna could
16 review them, then perhaps we could produce the whole
17 tab.

18 THE CHAIRPERSON: Okay. Take a look,
19 Mr. Vigna.

20 --- Pause

21 THE CHAIRPERSON: I like how you have
22 used 37 in the photocopies. Whenever anything has been
23 deleted, there is "37" written.

24 Who has added that?

25 MR. LEMIRE: That's the way it came.

1 And it wasn't blacked out, it was
2 whited out.

3 THE CHAIRPERSON: All right. So the
4 response, where it has been whited out, "section 37"
5 has been written in.

6 MS KULASZKA: Yes. These are exact
7 copies of what we received.

8 THE CHAIRPERSON: Yes. Section 37 of
9 the Canada Evidence Act -- "CEA".

10 MR. VIGNA: I don't have a problem
11 with putting them in evidence, Mr. Chair. I just want
12 to make sure that, when we go through the documents,
13 the witness, through the aid of the assistant, should
14 be described the document itself, because not all of
15 them are directly related to him.

16 I am confident that he gathered them,
17 but at least he should know what is being referred to.

18 I don't have any problem with them
19 being put in evidence. They emanate from the
20 Commission. I just want to make sure that he doesn't
21 make comments that are not to his personal knowledge in
22 regards to a particular document.

23 THE CHAIRPERSON: All right. So the
24 tab is produced.

25 MS KULASZKA: The first letter, Mr.

1 Steacy, appears to be some sort of form letter. It
2 states:

3 "Further to our recent
4 discussions, it is suggested
5 that the letter to the ISP be
6 along the lines of the
7 following:

8 It appears that your
9 organization is the Internet
10 Service Provider for
11 the...website (www....).
12 Material appearing on that
13 website has recently been noted
14 by the Canadian Human Rights
15 Commission (the Commission).
16 Given the nature of that
17 material, the Commission now
18 brings this matter to your
19 attention. For ease of
20 reference, attached please find
21 a copy of a number of
22 illustrative web pages.

23 The purpose of the Commission
24 raising these issues with you,
25 is to request that you review

1 the enclosed materials, as well
2 as any other such materials
3 contained on the above-noted
4 website. It is hoped that you
5 will give appropriate
6 consideration to this matter and
7 then take whatever action, if
8 any, you deem appropriate.

9 Please do not hesitate to
10 contact the undersigned in the
11 event that the Commission might
12 be of any assistance.

13 Thanking you in advance, I
14 remain..."

15 Are you familiar with that document?

16 MR. STEACY: I am familiar with that
17 letter, yes.

18 MS KULASZKA: Who drafted that?

19 MR. STEACY: It wasn't one
20 individual. I think it was several individuals.

21 MS KULASZKA: Who?

22 MR. STEACY: Myself, the director at
23 the time, Sherri Helgason, and --

24 We worked on, I guess, the body of
25 the letter, and then, before it was agreed that we were

1 going to use that as the body of the letter, it went to
2 somebody in Legal Services, and I can't tell you who
3 that was.

4 Then, when everybody was comfortable
5 with it, that was what was decided would be used as the
6 template letter, or the basis for the letter if we
7 received complaints concerning 13(1) that were outside
8 our jurisdiction.

9 MS KULASZKA: What year was this
10 drafted?

11 MR. STEACY: 2000-2001, I think.

12 MS KULASZKA: What compelled the
13 Commission to draft such a letter?

14 MR. STEACY: We received a complaint
15 from an individual about a potential 13(1) complaint,
16 and upon looking at the information and the
17 documentation, we were able to determine that we didn't
18 have jurisdiction.

19 MS KULASZKA: Because...?

20 MR. STEACY: Because the
21 information -- everything that we could find showed
22 that control of the website and the information on the
23 website was from outside Canada.

24 MS KULASZKA: Where was the ISP?

25 MR. STEACY: I don't remember.

1 MS KULASZKA: What countries have you
2 written this type of letter to?

3 MR. STEACY: Mostly the United
4 States.

5 MS KULASZKA: Any outside the United
6 States?

7 MR. STEACY: I am trying to remember,
8 but to the best of my recollection, I would have to say
9 the United States.

10 MS KULASZKA: If you could turn to
11 page 2, this is a document which is undated. It is
12 signed by Richard Tardif, Deputy Secretary General,
13 Case Resolution Directorate.

14 Who is he?

15 MR. STEACY: He is the Director
16 General of our --

17 The Commission has undergone a little
18 bit of a reorganization and the names of departments or
19 branches have changed. Presently he is the Deputy
20 Secretary General of the Commission, which would be, I
21 guess, the equivalent of the Director General of our
22 Operations sector.

23 MS KULASZKA: So he is Deputy
24 Secretary General today.

25 MR. STEACY: Yes.

1 MS KULASZKA: Is he the person who
2 would always send these letters out?

3 MR. STEACY: No.

4 MS KULASZKA: Who would send them
5 out?

6 MR. STEACY: As I said earlier, I had
7 sent a couple, the Director of Investigations had sent
8 a couple, the previous Director General of -- the
9 present Dispute Resolution, but the previous Director
10 General, she had sent one, and then Mr. Tardif had sent
11 one.

12 At least those are the letters that I
13 am aware of.

14 I also believe that the manager of
15 the Intake Services unit had sent one. Her name is
16 Suzanne Best.

17 MS KULASZKA: Did you help draft this
18 template?

19 MR. STEACY: I had some input, yes.

20 MS KULASZKA: What did you suggest?

21 MR. STEACY: I don't recall
22 specifically what I suggested. It was over a
23 conversation of the process that we should follow and
24 what we should say.

25 Basically, again, section 27 of our

1 Act allows us to be proactive and educative, and using
2 that section and our mandate we came up with what is in
3 the letter.

4 I can't tell you specifically what
5 words I suggested, it was quite a while ago.

6 MS KULASZKA: In the second
7 paragraph -- this appears, simply, to be a template
8 again, but in the second paragraph, the last sentence
9 reads:

10 "It is hoped that you will give
11 appropriate consideration to
12 this matter and then take
13 whatever action, if any, you
14 deem appropriate."

15 What were you trying to suggest to
16 ISPs?

17 MR. STEACY: Exactly what it says in
18 the letter.

19 MS KULASZKA: What did you have in
20 mind?

21 MR. STEACY: That they take the
22 action necessary.

23 MS KULASZKA: Which would be what,
24 taking the material down?

25 MR. STEACY: I guess that could be

1 one of the results, or that they look at their
2 policies.

3 We weren't specifically directing
4 them to do anything other than take the appropriate
5 action that they felt they could take.

6 We don't have the mandate to tell an
7 American organization or a German organization to
8 remove something from their websites. We don't have
9 the jurisdiction.

10 MS KULASZKA: Have you written a
11 letter to Germany?

12 MR. STEACY: I am just using Germany
13 as an example of an outside jurisdiction to Canada.

14 MS KULASZKA: You would agree that
15 this letter is not very educational, would you not?

16 It says:

17 "Material appearing on that
18 website has recently been noted
19 by the Canadian Human Rights
20 Commission....Given the nature
21 of that material, the Commission
22 now brings this matter to your
23 attention."

24 You attach some of the web pages.
25 You ask them to review the material and take

1 appropriate action, and you thank them for their
2 assistance.

3 You are not giving them any kind of
4 education here, are you?

5 MR. STEACY: I think that we are
6 advising them that the Commission finds that the
7 information that is on their website is inappropriate.

8 MS KULASZKA: But you don't tell them
9 why.

10 MR. STEACY: Again, we don't have --
11 You are asking me to provide an
12 answer to a question that I can't really answer. I am
13 not the one who makes the decision as to what is or
14 isn't going to be put specifically in a letter that is
15 signed by a Director General.

16 MS KULASZKA: I just ask because you
17 keep referring to section 27 and your educative
18 functions. I am just trying to ask what is in that
19 letter that falls within that function.

20 MR. STEACY: I can't quote it
21 verbatim, but it is fairly broad, and it allows us to
22 make people aware of things that we believe violate the
23 Canadian Human Rights Act, and it also goes on to say
24 by any means necessary.

25 In senior management's view, that is

1 the letter that they agreed was appropriate, and it
2 goes as far as, I guess, the Commission believes it can
3 go.

4 MS KULASZKA: I would ask you to turn
5 to Tab 23 of the same volume.

6 This is a printout from the website
7 of the Canadian Jewish Congress, and it is from a
8 section called "CJC in the NEWS", where they reproduce
9 an article from the CanWest News Service of May 12th,
10 2003. It is entitled: "A large U.S. Internet service
11 provider hosting Ernst Zundel's Web site has pulled the
12 plug on the controversial site."

13 I will read the first few relevant
14 paragraphs for you:

15 "TORONTO - A large U.S. Internet
16 service provider hosting Ernst
17 Zundel's Web site has pulled the
18 plug on the controversial site
19 after being told of a Canadian
20 Human Rights Tribunal ruling
21 that some content is deemed hate
22 literature.

23 The commission sent a letter
24 dated March 27 to the chief
25 executive officer of QWest

1 Communications, a massive
2 Denver-based company with 25
3 million customers, bringing the
4 Internet giant's attention to
5 material on the Zundel site.

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

18 Daniel Lavoie, spokesman for
19 the commission, said Zundel's
20 return to Canada in February,
21 after his deportation from the
22 United States, revived the
23 commission's interest in the
24 ruling that the Zundel site was
25 spreading material inciting

1 hatred against Jews, a violation
2 of the Canadian Human Rights
3 Act.

4 The site, however, re-emerged
5 on Monday on another U.S. host
6 server."

7 Can you tell me whether you produced
8 that letter in the disclosure materials?

9 MR. STEACY: I did not.

10 MS KULASZKA: Does it exist?

11 MR. STEACY: I would assume that it
12 does. It may be one of the letters that is in the
13 disclosure.

14 MS KULASZKA: Perhaps I could ask Mr.
15 Vigna to assist and point that letter out.

16 All of the letters are attached at
17 Tab 2.

18 THE CHAIRPERSON: Tab 2 contains
19 everything that was disclosed --

20 MS KULASZKA: Yes, these are all of
21 the letters --

22 THE CHAIRPERSON: We went through
23 them earlier.

24 MS KULASZKA: We haven't gone through
25 them all, but maybe Mr. Vigna could point that letter

1 out.

2 MR. VIGNA: Tab 2?

3 MS KULASZKA: Tab 2 contains all of
4 the letters disclosed by the Commission which were
5 written to ISPs.

6 --- Pause

7 MR. VIGNA: Mr. Chair, what I
8 understand from the article at Tab 23, when I read
9 it -- and I don't know if I have the correct
10 understanding. I think there is a little bit of a
11 difference, because it seems like there was a decision
12 rendered by the Tribunal, and the letter was sent
13 afterwards by the Commission, as the result of a
14 Tribunal decision, which is a bit different from when
15 there is no Tribunal decision.

16 That is the way I read the article in
17 question. I don't know if I am getting --

18 THE CHAIRPERSON: The article seems
19 to suggest that it came about as a result of a Canadian
20 Human Rights Tribunal ruling. The ruling in the case
21 involving Mr. Zündel, I believe, was released in 2001.

22 Mr. Fromm, you were there?

23 MR. FROMM: February 2002.

24 THE CHAIRPERSON: 2002.

25 MR. FROMM: So there is quite a gap

1 here.

2 The decision in the Zündel case was
3 released in February 2002, and Mr. Zündel was deported
4 back to Canada in February 2003, so there does seem to
5 be a very considerable gap here.

6 THE CHAIRPERSON: There is mention
7 here about the return to Canada, so I understand that
8 it was after his return to Canada.

9 MR. FROMM: Actually, the chart,
10 R-16, indicates that it was 13 January 2002 --

11 THE CHAIRPERSON: The release of the
12 decision.

13 MS KULASZKA: Yes. In fact, the
14 website is in the United States and, as such, there is
15 no jurisdiction over it.

16 MR. VIGNA: What I understand is that
17 the letters referred to at Tab 2, they seem to be more
18 in relation to potential complaints or situations being
19 brought to the attention of the Commission, and the
20 situation exposed at Tab 23 seems to be as a result of
21 a Tribunal hearing, and afterwards there was follow-up.

22 Was it done by the investigators or
23 the lawyers, I don't know.

24 THE CHAIRPERSON: Let me put a
25 question to the witness.

1 When you did the search after the
2 conference call that you participated in, Mr. Steacy,
3 to what extent did you search for those types of
4 letters? Did you limit yourself to what you described
5 earlier as non-complaint complaints, if I could use
6 that term, or did you expand your search to the point
7 of even looking for letters that were sent to ISPs
8 after decisions had been issued regarding websites?

9 MR. STEACY: I didn't include in the
10 search letters to organizations after a Tribunal
11 decision had been rendered. My search was specific, in
12 the sense that it was looking for, as you said,
13 complaint-complaints, individuals that had complained
14 about specific websites, in that sense.

15 MS KULASZKA: The order was August
16 16th, 2006, and unfortunately we don't have it, but
17 maybe --

18 Oh, my client has it.

19 THE CHAIRPERSON: I could pull it up
20 in my file, too, which I have somewhere.

21 MS KULASZKA: That is probably the
22 best thing to do.

23 I think it was a very general order
24 for all correspondence with ISPs.

25 THE CHAIRPERSON: Could you give me

1 the date again?

2 MS KULASZKA: August 16th, 2006.

3 THE CHAIRPERSON: That's my ruling.

4 MS KULASZKA: Yes, that's your

5 ruling.

6 It is near the end of the ruling.

7 THE CHAIRPERSON: At paragraph 43 I

8 wrote:

9 "On the other hand, I accept
10 that the requests in items (j),
11 (l) and (m) are arguably
12 relevant and are not
13 overreaching or ambiguous."

14 And the description of (j), (l) and

15 (m) are --

16 Item (j), I think, is the one that is

17 in play here:

18 "All documents relating to the
19 Commission's relations with
20 Internet Service Providers,
21 including attempts to pressure
22 ISPs to shut down websites or
23 remove them."

24 It's broad.

25 MS KULASZKA: Very broad.

1 THE CHAIRPERSON: It would have
2 encompassed what Mr. Vigna just described.

3 MS KULASZKA: Yes, I think so.

4 THE CHAIRPERSON: But it would also
5 explain why it is not there at this point, given the
6 answer of the witness.

7 MS KULASZKA: I would ask if those
8 documents could be produced.

9 THE CHAIRPERSON: Is there a way, Mr.
10 Steacy or Mr. Vigna, for the search to be completed by
11 looking also at material --

12 The order said any correspondence
13 with foreign -- with ISPs, not just foreign ISPs.
14 Right?

15 MS KULASZKA: Any ISP.

16 THE CHAIRPERSON: Any ISP.

17 MR. STEACY: I guess that I could go
18 back through the system and look for it.

19 MR. VIGNA: Mr. Chair, we could
20 undertake to try to locate it. The problem is, I don't
21 know if I will be successful.

22 I will bring this document back to
23 the office to see --

24 THE CHAIRPERSON: You could contact
25 them now, even. Maybe we will take a break at this

1 point, because we are due for one, and maybe you could
2 ask --

3 MS KULASZKA: I should note for the
4 record that this was brought up at a conference call,
5 and I even quoted one of these articles --

6 THE CHAIRPERSON: Yes, I remember you
7 mentioning that.

8 We have been discussing that from
9 early on, the fact that you had in your possession
10 contradictory statements from the press. You mentioned
11 that.

12 There is an explanation here, though.
13 I don't want to get too much into finger pointing. We
14 have an explanation. Perhaps there was an innocent
15 error, but the point is, the respondent wants to have
16 that information in front of the Tribunal when they
17 make their ultimate arguments on the constitutional
18 issue.

19 Is that correct, Ms Kulaszka?

20 MS KULASZKA: Yes, and I would like
21 to have it when Mr. Steacy is here and Mr. Goldberg --
22 they, obviously, are the crucial witnesses -- so that I
23 could ask them about it.

24 THE CHAIRPERSON: Let's be realistic.
25 We know it exists. We need to know how many more

1 perhaps, and Mr. Vigna can find out, but could you not
2 ask questions about how this letter came about?

3 Whatever the circumstances are of the
4 letter that you want to get to, could you not ask them
5 just on the basis of the material you have in front of
6 you?

7 MS KULASZKA: I can try, but
8 certainly it shouldn't be that hard. The Zündel file
9 must be --

10 Mr. Steacy, the Zündel file would
11 still be in existence?

12 MR. STEACY: If it is, it would be in
13 our archives. It would be with the National Archives,
14 because it is not an active file, and what is there, I
15 have no idea.

16 We would have to request it from
17 National Archives, and it could take several days to
18 get it.

19 MS KULASZKA: But you are not certain
20 about that.

21 MR. STEACY: I can't answer the
22 question, it's --

23 THE CHAIRPERSON: Ms Kulaszka, all I
24 would ask is, in the interests of trying to move it
25 along, make your best efforts to get what you think you

1 need to get with the witness now, and once the material
2 is traced, if it exists -- because we do have some
3 evidence that there are some documents that are
4 destroyed from time to time at the Commission. If it
5 is ultimately produced, then you can look at it and see
6 if it somehow has a bearing on your ability to make
7 your arguments ultimately on this issue.

8 MS KULASZKA: I would like Mr. Vigna
9 to give an undertaking --

10 THE CHAIRPERSON: Right now.

11 MS KULASZKA: -- to find that
12 information.

13 THE CHAIRPERSON: I am going to
14 request that right now of him.

15 MR. VIGNA: I will look --

16 What I would like, Mr. Chair, is to
17 send this document by fax from the Tribunal.

18 THE CHAIRPERSON: We have a fax
19 machine that you can use.

20 MR. VIGNA: I will call certain
21 individuals to see if we can track it down.

22 I understand that it would be a
23 letter dated March 27th.

24 THE CHAIRPERSON: Does it actually
25 say that in the CanWest article?

1 MR. VIGNA: It says March 27 in the
2 second paragraph.

3 What year would that be?

4 THE CHAIRPERSON: Tell them to look
5 around March --

6 MS KULASZKA: It was dated March 27,
7 2003.

8 THE CHAIRPERSON: It is right there.
9 Was this CJC article disclosed to the
10 other side, Ms Kulaszka?

11 Did you bring it to their attention?

12 MS KULASZKA: I think this was
13 disclosed, this article that we are looking at here
14 from the CJC.

15 THE CHAIRPERSON: When you identified
16 the problem, did you send it to them and say, "Look,
17 there has to be one for March 27th"?

18 MS KULASZKA: I read it to them, and
19 Mr. Vigna seemed to be perfectly aware of it.

20 He didn't ask for a copy --

21 THE CHAIRPERSON: I don't want to
22 play cat and mouse games. We just want to get the info
23 out there, and then you can argue.

24 MR. VIGNA: If they had specifically
25 said that the letter related to this, that would have

1 been very clear.

2 MS KULASZKA: I am absolutely certain
3 that the CJC was disclosed to them months ago.

4 THE CHAIRPERSON: Yes, but did you
5 bring it to their attention, "Hey, this is what our
6 beef is"?

7 I remember, on the phone you said, "I
8 have an article that says that there was a letter
9 sent -- "

10 MS KULASZKA: Mr. Chair, I brought
11 numerous motions trying to get these documents. I
12 asked for stays. I asked for the case to be dismissed
13 because they weren't producing the documents.

14 THE CHAIRPERSON: All right. But the
15 March 27th date would have been helpful, I think, in at
16 least prompting him to go one step further.

17 Anyway, let's get it now.

18 MR. LEMIRE: It was part of our
19 motion.

20 MS KULASZKA: It may have been part
21 of a motion.

22 THE CHAIRPERSON: And the March 27th
23 date was told to them?

24 MS KULASZKA: Yes, it would have been
25 in that article.

1 THE CHAIRPERSON: All right. Fine.

2 Are there any more?

3 Before I send Mr. Vigna out to speak
4 to his people, are there any more documents of a
5 similar nature that you have specific dates for?

6 MS KULASZKA: I think Mr. Fromm is
7 aware of more.

8 MR. VIGNA: Mr. Chair, if there are,
9 I would like to be made aware of them.

10 MS KULASZKA: I think in a Tribunal
11 decision they talked about a letter that was going to
12 be written.

13 MR. LEMIRE: It was in the decision
14 on Kyburz.

15 THE CHAIRPERSON: I don't know
16 anything about it.

17 MR. LEMIRE: It is in the decision on
18 Kyburz. It says that the Commission was sending a
19 letter about it.

20 MR. FROMM: It is on page 12 of the
21 Kyburz decision.

22 THE CHAIRPERSON: What does it say?

23 MR. LEMIRE: It says that the
24 Commission is sending a letter to one of the ISPs -- to
25 Fred Kyburz's ISP.

1 That's another one we wanted.

2 THE CHAIRPERSON: Try that one, Mr.
3 Vigna.

4 Anything else?

5 I could take a break and let you
6 discuss it, but I would rather get it on the record
7 right now, if you have it.

8 MR. FROMM: You want it on the
9 record?

10 THE CHAIRPERSON: Which ones you
11 have --

12 MR. FROMM: I actually have a letter
13 sent to the Executive Officer of Verio in regards to
14 B.C. White Pride.

15 THE CHAIRPERSON: Verio?

16 MR. FROMM: The ISP would appear to
17 be called Verio -- V-E-R-I-O.

18 THE CHAIRPERSON: Do you have a date?

19 MR. VIGNA: That was disclosed.

20 THE CHAIRPERSON: Oh, that has been
21 disclosed. All right.

22 MR. FROMM: I got this myself, in
23 another case.

24 THE CHAIRPERSON: But Mr. Vigna says
25 that it is in Tab 2.

1 MS KULASZKA: What page would that
2 be, Mr. Vigna?

3 MS DAVIES: I think it is page 8, Mr.
4 Chair.

5 MR. VIGNA: It is page 8.

6 THE CHAIRPERSON: All right. We are
7 not trying to catch anyone at this point, I just want
8 to make sure that we get all of the documents in front
9 of me.

10 We have the one regarding QWest, and
11 the one that followed up the Kyburz case. That's two.

12 Is there anything else, Mr. Fromm, Ms
13 Kulaszka or Mr. Lemire?

14 MS KULASZKA: No, I don't know of any
15 others.

16 THE CHAIRPERSON: To your knowledge.

17 MR. FROMM: Yes, in the Winnicki case
18 there was a letter sent to Winnicki's then ISP, which
19 was Bell Canada.

20 The reference to that is actually an
21 article in the London Free Press of September 2003 --
22 September 15, 2003. It is a story about the complaint
23 against Tomasz Winnicki, and it indicates that a letter
24 had been sent to Bell Sympatico to remove the material
25 from Mr. Winnicki's website.

1 MR. VIGNA: Isn't that at pages 9 and
2 10 of Tab 2?

3 MR. FROMM: Well, I don't know. With
4 these things so heavily section 37'd, it is really hard
5 to know.

6 THE CHAIRPERSON: Mr. Vigna, that's
7 true.

8 MR. FROMM: There is no date, no
9 name --

10 THE CHAIRPERSON: How could they
11 know?

12 There is a date -- October 24, 2003,
13 in reference to another letter.

14 MR. FROMM: This would probably not
15 be it, because the London Free Press article is
16 September 15th, 2003, referring to complaints that had
17 already been made to Bell Sympatico, and this is dated
18 somewhat after that.

19 THE CHAIRPERSON: Yes, it is. It
20 would appear to be.

21 It would have to be after November
22 10th, 2003.

23 "As agreed on November 10, 2003," it
24 says.

25 Whatever -- as long as we know of the

1 three cases, at least, that we are familiar with.

2 Mr. Vigna, could you have your people
3 try to research any contact with ISPs made pre-formal
4 complaint, post-formal complaint, and
5 post-referral/post-decision?

6 I can certainly see that there may be
7 some distinction in terms of the bigger argument that
8 will be made about letters that come after a Tribunal
9 decision and before a Tribunal decision, but that is
10 not the point. My order did say any communications
11 with ISPs.

12 MR. VIGNA: What I am thinking,
13 logistically, in terms of what could happen after a
14 decision, is that, if it is in the litigator's file, he
15 may have carriage of it. If it was filed and it is
16 several years down the line, it could be archived or
17 maybe destroyed. It would not be, necessarily, within
18 the electronic --

19 THE CHAIRPERSON: My question is
20 this, Mr. Vigna --

21 MR. VIGNA: But if we can get it --

22 THE CHAIRPERSON: Why should the
23 Access to Information process have greater weight than
24 I have as a Tribunal Member issuing orders?

25 If someone had made an Access to

1 Information request and had sought all of this
2 material, you would have given it to some staffer and
3 they would have hunted high and low to find it, because
4 they are obliged to under the Act.

5 I issue an order saying, "Give me all
6 of this documentation," in the context of a Tribunal
7 case, and we don't get the same kind of compliance it
8 seems.

9 MR. VIGNA: I am not saying that, Mr.
10 Chair --

11 THE CHAIRPERSON: I am not saying
12 that it is deliberate, I just want it taken care of.

13 Perhaps this entire cross-examination
14 could have been avoided had that material been
15 disclosed. That's what triggered it all, if I
16 remember.

17 They had this QWest thing in their
18 hands, and they didn't find it in the material that was
19 disclosed. It was a provocation, almost.

20 MR. VIGNA: I wouldn't say it was a
21 provocation, Mr. Chair.

22 THE CHAIRPERSON: It provoked it.
23 Not a provocation, it provoked it.

24 It caused it.

25 MR. VIGNA: If Ms Kulaszka had told

1 me, "This specific letter from this specific article,"
2 that --

3 THE CHAIRPERSON: Yes, that would
4 have been helpful, too.

5 MR. VIGNA: We could have been more
6 directed in the specific search.

7 THE CHAIRPERSON: Sometimes we have
8 achieved a great spirit of cooperation, and sometimes
9 we haven't. Perhaps it is all understandable.

10 I am going to take a break now. See
11 if you can communicate with the Commission, Mr. Vigna,
12 with respect to this issue. We have a fax machine, so
13 you can send it to them.

14 I will make it a longer break to
15 enable you to do that. I will say 25 minutes. Do you
16 think that will be enough?

17 MR. VIGNA: Yes.

18 THE CHAIRPERSON: All right. We will
19 come back at 11:40 and we will sit for about an hour
20 before the lunch break.

21 --- Upon recessing at 11:15 a.m.

22 --- Upon resuming at 11:50 a.m.

23 THE CHAIRPERSON: Mr. Vigna?

24 MR. VIGNA: I faxed the document, Mr.
25 Chair, and I spoke with people at my office. What I

1 would suggest is, they are looking into it, and I was
2 going to go there at the lunch break in person --

3 THE CHAIRPERSON: You are going to do
4 what, sorry?

5 MR. VIGNA: I will go at the lunch
6 break in person to the office, while my colleagues are
7 looking into it, to see what I can gather.

8 Just to be clear, there is the letter
9 of March 27, 2003, which would have been sent to QWest,
10 which is based on Tab 23 --

11 THE CHAIRPERSON: Yes, which, by the
12 way, I am going to consider produced. I know that this
13 witness perhaps hasn't seen the CJC article, but it
14 looks like it is an extract from an article of a
15 newspaper, so I don't think there is anything in
16 dispute there, is there?

17 MR. VIGNA: No, I don't have a
18 problem.

19 THE CHAIRPERSON: What else was
20 there?

21 MS KULASZKA: There is a second
22 article from the Canadian Jewish News, and it's about
23 the same topic. It is just a media article.

24 MR. VIGNA: I don't have a problem
25 with it.

1 THE CHAIRPERSON: Yes, it all looks
2 genuine.

3 The whole tab will be produced.

4 MR. VIGNA: Then there was a letter
5 that Mr. Fromm gave me, dated October 21st, 2004, from
6 Verio. I believe we clarified that that letter is in
7 Tab 2.

8 THE CHAIRPERSON: Just to be clear,
9 which letter is that?

10 MR. VIGNA: It is at page 8.

11 THE CHAIRPERSON: That is the one
12 that has no names on it.

13 Oh, "Verio", yes.

14 MR. VIGNA: Mr. Fromm even has the
15 one with the names, because he was involved in the file
16 in which the action took place.

17 The one he provided me has the names.

18 THE CHAIRPERSON: Verio relates to
19 which complaint?

20 MR. FROMM: B.C. White Pride.

21 Could I submit the uncensored letter,
22 which I have?

23 THE CHAIRPERSON: It's in your
24 possession --

25 MR. FROMM: It would be in place of

1 page 8, as better evidence.

2 MS KULASZKA: Instead of in place of,
3 maybe we could add it.

4 THE CHAIRPERSON: Yes, I see the
5 significance of what you are saying, Ms Kulaszka.

6 I would add it, rather than --

7 MR. LEMIRE: It could be 8A, maybe?

8 THE CHAIRPERSON: Yes, 8A is a good
9 idea.

10 We are inserting this letter in
11 between pages 8 and 9 of Tab 2, as 8A.

12 Go ahead, Mr. Vigna. What is the
13 next one?

14 MR. VIGNA: The next one is not
15 clear, because Mr. Fromm mentioned page 12 of the
16 Kyburz decision, and I read here --

17 Is it paragraph 1 that you are
18 referring to, Mr. Fromm?

19 MR. FROMM: It is paragraph 35, on
20 page 12.

21 Mr. Warman testified that in March of
22 2001 he became aware of the "Patriots on Guard" website
23 through his involvement in his Human Rights work. He
24 contacted Mr. Kyburz's Internet Service Provider,
25 alerting it to the nature of the content of the site.

1 MR. VIGNA: That's the whole point --

2 THE CHAIRPERSON: That's Mr. Warman.

3 MR. VIGNA: Yes, it's Mr. Warman,
4 it's not --

5 MR. FROMM: But at that point he was
6 working for the Canadian Human Rights Commission.

7 THE CHAIRPERSON: But we have also
8 had evidence that he did things on his own.

9 What is the position of the
10 Commission?

11 MR. VIGNA: If it exists, I will try
12 to locate it. But, from what I read, it doesn't seem
13 obvious --

14 MR. STEACY: I was the investigator
15 on the Kyburz file. The only involvement that Mr.
16 Warman had in that complaint was as the complainant.
17 He had no involvement in that file in any form of
18 investigation.

19 I called the office, and we went
20 through the electronic file for Mr. Kyburz, and there
21 is no specific letter that I wrote as the investigator,
22 or that is in the system, to the ISP, specifically from
23 the Commission, that we could find.

24 THE CHAIRPERSON: All right. You
25 don't know whether Mr. Warman communicated personally,

1 but your understanding is that the Commission has not
2 communicated with that ISP, as indicated in the
3 decision of Kyburz.

4 MR. STEACY: That's correct.

5 MR. VIGNA: I will see what the
6 situation is, but it doesn't seem obvious that --

7 THE CHAIRPERSON: Did you communicate
8 just now, during the break, Mr. Steacy?

9 MR. STEACY: Yes, sir. I phoned the
10 office and spoke to a colleague and asked the colleague
11 to go onto the electronic file, and for every document
12 that was on the electronic file, the title of the
13 document was read to me, and there is no indication --

14 I asked for a couple of documents to
15 be opened, just to ensure that they weren't letters to
16 the ISP, and there is no document in the electronic
17 file.

18 Now, that doesn't mean that there is
19 not something that was written by a Commission person
20 and put on the actual physical file, and it wasn't,
21 unfortunately, saved to the proper file, but because
22 that is an older file, it would not be at the
23 Commission, it would be at archives.

24 As well, I had the electronic file
25 for Zündel -- I asked to have that looked for, and

1 there is no electronic file for Zündel on the
2 Commission's system.

3 It's an older file, as well, so it
4 would have been removed.

5 THE CHAIRPERSON: So the QWest letter
6 is in the physical file that has been archived.

7 MR. STEACY: That I don't know, but I
8 would assume so. We would have to get the physical
9 file and look.

10 That's why it wouldn't have been put
11 in the package, because it didn't come up.

12 I didn't look specifically for it,
13 but it wouldn't have come up in the search because the
14 Zündel file is not even on our electronic file.

15 THE CHAIRPERSON: All right. What
16 about the Winnicki file?

17 Does anyone know anything about that?

18 MR. VIGNA: I don't know yet, but I
19 just wanted to be sure, in terms of the information we
20 have with regards to that, that it is just the comment
21 that --

22 The third-last of your documents, Mr.
23 Fromm --

24 MR. FROMM: The article from the
25 London Free Press?

1 MR. VIGNA: Yes.

2 It says:

3 "In his Human Rights claim,
4 Warman details three separate
5 efforts in August and September
6 to get Bell Sympatico to remove
7 the material from Winnicki's web
8 site."

9 Is it in relation to that comment?

10 MR. FROMM: Yes, that's correct.

11 THE CHAIRPERSON: August and
12 September of what year?

13 MR. FROMM: 2003.

14 MR. VIGNA: It doesn't say, but I
15 will base myself on -- the top of the letter says 2003,
16 so I guess it would be around that period.

17 THE CHAIRPERSON: When was the
18 Winnicki decision issued?

19 It was much more recently.

20 So this was before the complaint was
21 heard by the Tribunal.

22 MR. FROMM: Yes.

23 Actually, it was at the beginning of
24 the complaint process.

25 THE CHAIRPERSON: Again, it is a

1 statement from Mr. Warman, so that doesn't mean
2 anything, necessarily, with regard to the Commission.

3 If you could make your best efforts,
4 Mr. Vigna, to look those up --

5 At this point we can confirm that
6 there are two letters that have not been previously
7 disclosed which were sent by the Commission to ISPs,
8 and those are the QWest letter, which may be in the
9 physical file --

10 There is a clear indication that
11 there was some communication on a specified date from
12 the Canadian Jewish News article.

13 And the Verio letter we have already.

14 MR. VIGNA: That was already
15 disclosed.

16 THE CHAIRPERSON: That was disclosed,
17 yes.

18 MR. VIGNA: It is just that he
19 provided the one that --

20 THE CHAIRPERSON: Perhaps Mr. Fromm
21 would have been able to recognize it, but I couldn't
22 recognize it because it was all blanked out.

23 But now I have a copy of the
24 original.

25 Ms Kulaszka, with that information,

1 can you proceed?

2 MS KULASZKA: Also, the Kyburz
3 decision states the following:

4 "The Commission also asked that
5 the Tribunal order Mr. Kyburz to
6 contact 'Archive.org' in order
7 to have the 'Patriots on Guard'
8 web site material removed."

9 I guess he was ordered to do that.
10 Do you know, did he ever do that?

11 MR. STEACY: I don't know.

12 MS KULASZKA: Was he the respondent?

13 MR. STEACY: Yes, he was the
14 respondent.

15 MS KULASZKA: Would the Commission
16 have any record of that letter?

17 MR. STEACY: I would think that would
18 be a letter from the Tribunal.

19 MS KULASZKA: No, the Tribunal
20 ordered the respondent to contact "Archive.org" in
21 order to have the "Patriots on Guard" website material
22 removed from that website.

23 "We have concerns about the
24 enforceability of such an order..."

25 MR. STEACY: I can't answer the

1 question.

2 MS KULASZKA: Okay.

3 Did the Commission in that case ever
4 write to "Archive.org" to have that website removed?

5 MR. STEACY: I don't believe we did.

6 MS KULASZKA: Were you involved in
7 that case?

8 MR. STEACY: I investigated Mr.
9 Kyburz's complaint, yes -- or the complaint against Mr.
10 Kyburz.

11 MS KULASZKA: Let's go back to Tab 2,
12 page 2. This is the template letter.

13 Was this letter ever sent to ISPs in
14 Canada -- this type of template letter?

15 MR. STEACY: I am not sure. I don't
16 believe so.

17 MS KULASZKA: I am going to suggest
18 to you that the nature of this letter, actually, is not
19 educational, it's intimidation, is it not?

20 MR. STEACY: Are you asking my
21 opinion?

22 MS KULASZKA: Yes. That's the
23 purpose of this letter.

24 MR. STEACY: I don't believe it is
25 intimidation.

1 MS KULASZKA: But you can't point to
2 anything educational in that letter, can you?

3 Is there anything educational in that
4 letter?

5 MR. STEACY: I believe they are
6 trying to make people aware of something that is
7 inappropriate, and asking them to review it could be a
8 form of awareness, which could be, if they make
9 themselves aware, educational.

10 MS KULASZKA: Let's turn to page 3.
11 This appears to be an e-mail to "security@mci.com". It
12 was in 2004. The heading is "Acceptable Use Policy".

13 It states:

14 "The Canadian Human Rights
15 Commission is empowered by the
16 Canadian Human Rights Act to try
17 to resolve and to investigate
18 allegations of discrimination in
19 employment and in the provision
20 of services, within federal
21 jurisdiction, on eleven
22 prohibited grounds of
23 discrimination, including
24 religion, race, colour, national
25 or ethnic origin and sexual

1 orientation.

2 The Commission has been made
3 aware of certain communications
4 via a website that it appears
5 your organization (UUNET
6 Technologies) is the Internet
7 Service Provider for, the
8 website is....Material appearing
9 on that website has recently
10 been noted by the Canadian Human
11 Rights Commission. Given the
12 nature of that material, the
13 Commission now brings this
14 matter to your attention.

15 We would ask that you review
16 the materials contained on the
17 above-noted website. It is
18 hoped that you will give
19 appropriate consideration to
20 this matter and then take
21 whatever action, if any, you
22 deem appropriate.

23 Please do not hesitate to
24 contact the undersigned in the
25 event that the Commission might

StenoTran

1 be of any assistance."

2 Are you familiar with that letter?

3 MR. STEACY: I was not the author of
4 that letter.

5 MS KULASZKA: Were you the person who
6 obtained this letter for disclosure?

7 MR. STEACY: Yes.

8 MS KULASZKA: And was that a website
9 located in a jurisdiction outside Canada?

10 MR. STEACY: I don't know.

11 MS KULASZKA: You will agree that
12 this letter is not like the template letter?

13 MR. STEACY: It is a bit different,
14 yes.

15 MS KULASZKA: It states:

16 "The Commission has been made
17 aware of certain
18 communications..."

19 Do you know how the Commission became
20 aware of the communications?

21 MR. STEACY: I was not involved in
22 that file.

23 MS KULASZKA: What assistance would
24 the Commission provide to an ISP if the ISP responded
25 to this letter?

1 You will notice that the last
2 paragraph states:

3 "Please do not hesitate to
4 contact the undersigned in the
5 event that the Commission might
6 be of any assistance."

7 MR. STEACY: If the ISP disagreed
8 with what was in the documentation that had been sent
9 and they wished to discuss it with us, we would enter
10 into discussions with them and advise them of why we
11 felt it was a possible violation of section 13(1).

12 MS KULASZKA: Would you advise them
13 that, in fact, you had no jurisdiction over the
14 website?

15 MR. STEACY: Yes.

16 MS KULASZKA: Therefore, it is not a
17 violation of section 13, is it?

18 MR. STEACY: I didn't say it was a
19 violation of section 13, I said that it was a potential
20 violation of section 13(1).

21 But it would be a violation if we had
22 jurisdiction.

23 MS KULASZKA: But that is circular
24 thinking, isn't it?

25 If the web page is in the United

1 States, for example, and the webmaster is in the United
2 States, you have virtually no jurisdiction over that
3 material.

4 MR. STEACY: That is not necessarily
5 the case. If the control of the website was Canadian
6 and the author of the information was Canadian, and
7 there was Canadian content or control by a Canadian, we
8 would have jurisdiction.

9 MS KULASZKA: Are you limiting these
10 letters to websites where that is the case?

11 MR. STEACY: Are we limiting it to --

12 MS KULASZKA: Are you limiting these
13 letters being sent to ISPs where, in fact, the
14 webmaster is in Canada, the author is in Canada?

15 MR. STEACY: No. Those letters were
16 sent based on individuals that had called the
17 Commission and had found information on the web, and
18 came to us and complained, and the decision was made to
19 contact the ISPs and try to get their cooperation to
20 have that information removed.

21 MS KULASZKA: You did so, even though
22 there was no Canadian content, no Canadian webmaster,
23 no Canadian author of the material.

24 MR. STEACY: Yes.

25 MS KULASZKA: Do you work with ISPs

1 in respect of acceptable use policies?

2 MR. STEACY: Not specifically I
3 don't. The Commission has had contact with the
4 Canadian Association of Internet Providers.

5 MS KULASZKA: Who at the Commission
6 does that work?

7 MR. STEACY: Mr. Goldberg.

8 MS KULASZKA: Have you ever done that
9 work?

10 MR. STEACY: During the complaint
11 process, yes.

12 MS KULASZKA: What would you do in
13 that case?

14 MR. STEACY: In that case we had a
15 discussion with the specific ISP about what they should
16 be looking at or putting in their acceptable use
17 policies, or what they should be looking for as a good
18 corporate citizen to make sure that inappropriate
19 material is not on their website.

20 MS KULASZKA: Have you had meetings
21 with ISPs? Have you attended meetings with ISPs?

22 MR. STEACY: I have had telephone
23 conversations with the specific respondent at the time,
24 but I haven't attended a specific meeting with the
25 Canadian Association of Internet Providers on that

1 specific subject.

2 MS KULASZKA: So you are talking with
3 these ISPs by telephone?

4 MR. STEACY: It was in one case that
5 I was involved as an investigator.

6 MS KULASZKA: Was the ISP the
7 respondent?

8 MR. STEACY: Yes.

9 MS KULASZKA: What case was that?

10 MR. STEACY: It was against AOL
11 Canada.

12 MS KULASZKA: What website was that?

13 MR. STEACY: It wasn't specifically a
14 website, it was specifically information that was
15 posted on bulletin boards.

16 MS KULASZKA: How had that
17 information come to your attention?

18 MR. STEACY: By an individual.

19 MS KULASZKA: Was that Mr. Warman?

20 MR. STEACY: No, it was not.

21 MS KULASZKA: So they complained
22 about material on a bulletin board on a website?

23 MR. STEACY: There was information
24 posted on several of AOL Canada's bulletin boards, and
25 it was concerning the same-sex marriage debate, and a

1 user of that bulletin board complained to AOL about
2 information that was being posted on the bulletin
3 boards, and the complainant wasn't satisfied with the
4 action that the ISP took to remove -- or not remove the
5 information.

6 MS KULASZKA: So did he lay a
7 complaint?

8 MR. STEACY: Yes, he did.

9 MS KULASZKA: Did it ever go to a
10 tribunal?

11 MR. STEACY: No.

12 MS KULASZKA: Why not?

13 MR. STEACY: The case was dismissed
14 because the ISP took the appropriate action to rectify
15 the situation.

16 MS KULASZKA: So a complaint was laid
17 against AOL --

18 MR. STEACY: -- Canada, yes.

19 MS KULASZKA: And it simply removed
20 the postings.

21 MR. STEACY: No, it did more than
22 simply remove the postings.

23 MS KULASZKA: What did it do?

24 MR. STEACY: It changed its
25 acceptable use policies. They put keyword filters on

1 and simplified the process for an individual to
2 complain about what was on AOL's bulletin boards.

3 MS KULASZKA: So it took remedial
4 steps.

5 MR. STEACY: Yes, it did.

6 MS KULASZKA: At what point was the
7 complaint dismissed?

8 Did it go to the Commission?

9 MR. STEACY: Yes, it did.

10 MS KULASZKA: And the Commission
11 decided to dismiss it?

12 MR. STEACY: The Commissioners made
13 the decision to take no further proceeding with the
14 complaint.

15 MS KULASZKA: Did you recommend that?

16 MR. STEACY: Yes, I did.

17 MS KULASZKA: Why?

18 MR. STEACY: Because, through the
19 investigation process, it was clear that AOL, when
20 advised, took appropriate measures to fix the situation
21 and try to ensure that the situation didn't occur
22 again.

23 MS KULASZKA: What if there was a
24 case where the postings on the bulletin board
25 complained about -- where the evidence showed that, in

1 fact, the bulletin board had already been removed?

2 Would that be a similar situation?

3 MR. STEACY: It would depend on more
4 than just that.

5 MS KULASZKA: What else would it
6 depend on?

7 MR. STEACY: It would depend on the
8 nature of the whole website or the nature of the whole
9 ISP and what was being complained of, what had been
10 removed, and what the issue of the complaint by the
11 complainant was.

12 MS KULASZKA: Assume that most of the
13 complaint concerns postings on a bulletin board.
14 Basically 98 percent of the complaint.

15 MR. STEACY: It would, again, depend
16 on what remedial action the respondent took and what
17 they were prepared to do to monitor the bulletin board
18 and what they were prepared to do as a website or as an
19 ISP to continue to monitor the situation.

20 MS KULASZKA: But if the bulletin
21 board had in fact been removed, and there was nothing
22 left to monitor...?

23 MR. STEACY: It would depend on
24 exactly --

25 You are asking me a "what if" and I

1 can't really specifically give you an answer to a "what
2 if". Every case is case-by-case. It is dependent on
3 what is being alleged by the complainant and what is
4 done by the respondent.

5 MS KULASZKA: What difficulties have
6 been noted on bulletin boards, in your experience?

7 MR. STEACY: From my experience,
8 everything from language to video clips to pictures --
9 the whole gamut of what can be on the internet.

10 MS KULASZKA: How many cases -- we
11 will say how many files -- we will make it broader --
12 how many files have you dealt with that have concerned
13 matter posted on bulletin boards?

14 MR. STEACY: Roughly 15, maybe.

15 MS KULASZKA: Fifteen cases.

16 These are like message boards,
17 bulletin boards --

18 MR. STEACY: The majority of them
19 were AOL, and the individual made complaints against
20 the individual posters of the information on the AOL
21 bulletin boards.

22 MS KULASZKA: As well as AOL.

23 MR. STEACY: Yes. AOL was the
24 corporate respondent, and the individual made
25 complaints against the individuals.

1 MS KULASZKA: Did these go to
2 Tribunal?

3 MR. STEACY: Some did; some didn't.

4 MS KULASZKA: The ones that went to
5 Tribunal, could you name those cases?

6 MR. VIGNA: I object, Mr. Chair. I
7 am aware that there are even some cases before the
8 Tribunal where there is a whole debate on whether the
9 identity of the complainant should be disclosed.

10 So I would object under section 37,
11 in addition to the other objections.

12 To the identity -- I don't see, first
13 of all, any relevance, but I am objecting under section
14 37, particularly that this debate is even before the
15 Tribunal in some of these cases.

16 MS KULASZKA: Are there any decisions
17 in these cases?

18 That would be public.

19 THE CHAIRPERSON: Yes.

20 MR. STEACY: I don't know. I think,
21 yes, that there have been a couple of decisions.

22 MS KULASZKA: Do you know what those
23 are?

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

25 MS KULASZKA: But you worked on the

1 cases?

2 MR. STEACY: Yes.

3 MS KULASZKA: Is AOL a respondent in
4 those cases?

5 MR. STEACY: No.

6 MS KULASZKA: Why not?

7 MR. STEACY: Because the system
8 allows for an individual to make a complaint against an
9 individual or a corporate respondent, and the corporate
10 respondent's case was dismissed, so the cases against
11 the individuals went on.

12 The complaints didn't jointly name
13 the individual and AOL, they just named the
14 individuals.

15 MS KULASZKA: I see. So once AOL, in
16 these 15 cases, put these remedial provisions on their
17 bulletin board or their message board, then the case
18 against them was dismissed.

19 MR. STEACY: The AOL case was the AOL
20 case, and then there were eight other individual cases,
21 so that would be considered nine cases. Probably some
22 of the other files that I dealt with also dealt with
23 information on bulletin boards, but specifically, of
24 the AOL ones, some of those files went to Tribunal --
25 or have been referred to Tribunal.

1 MS KULASZKA: Just to be clear, AOL
2 never went to Tribunal, because the Commission
3 dismissed the complaint against AOL.

4 MR. STEACY: That's correct.

5 MS KULASZKA: Just to be clear, it
6 was because they took remedial provisions about people
7 being able to complain and filters.

8 Is that right?

9 MR. STEACY: It was more than that.
10 They took remedial action to fix the situation. They
11 took steps to filter, so that the information couldn't
12 be posted, so that people couldn't post the information
13 that was complained of, as well as other information
14 that might be considered to be offensive by users, and
15 they simplified the complaint process.

16 MS KULASZKA: How does the filter
17 work?

18 Do you know?

19 MR. STEACY: My understanding is that
20 it is based on keywords, so that when people are
21 posting information on the bulletin board, if the
22 language used violates the keyword protection they had,
23 the person is not able to post it.

24 As well, within that, I think in
25 their acceptable use policy, they have made it more

1 clear that that type of activity won't be tolerated,
2 and they will cut the user off from their AOL account,
3 and it goes through and details of how that will
4 happen.

5 MS KULASZKA: What timeframe would
6 those cases be?

7 MR. STEACY: They were done within
8 the last year and a half to two years.

9 MS KULASZKA: It's not Terry
10 Tremaine, is it?

11 MR. STEACY: No, it's not.

12 MS KULASZKA: Glenn Bahr?

13 MR. STEACY: No, it's not.

14 MS KULASZKA: Peter Kouba?

15 MR. STEACY: No, it's not.

16 MS KULASZKA: Winnicki?

17 MR. STEACY: No.

18 MS KULASZKA: Harrison?

19 MR. STEACY: No.

20 MS KULASZKA: Eldon Warman?

21 MR. STEACY: No.

22 MS KULASZKA: Kulbashian?

23 MR. STEACY: No.

24 MS KULASZKA: Another case you were
25 involved in that dealt with a bulletin board was the

1 CAERS decision?

2 MR. STEACY: Yes.

3 MS KULASZKA: What was that complaint
4 about?

5 MR. STEACY: The complaint that was
6 lodged by Mr. Guille -- his complaint was basically
7 that he complained that the complaint forms from Mr.
8 Warman had been posted on its site, as well as their
9 bulletin boards had information -- or it had postings
10 on it that he believed violated section 13 of the Act.

11 MS KULASZKA: You said before that
12 you checked with Mr. Warman and he, in fact, had posted
13 those complaints on the website. Correct?

14 MR. STEACY: Yes, that's correct.

15 MS KULASZKA: Did you ever check that
16 website to confirm that he had posted those complaints?

17 MR. STEACY: Yes, I did.

18 MS KULASZKA: How did he post those
19 complaints?

20 MR. STEACY: The website had the
21 complaint form that was filed with the Commission. It
22 was posted on the website.

23 MS KULASZKA: Did Mr. Warman use his
24 real name to post those --

25 MR. STEACY: They were posted

1 verbatim as he had filed them with the Commission.

2 MS KULASZKA: Was it obvious from the
3 website that he had posted those complaints?

4 MR. STEACY: I don't know that I
5 would say it was obvious that he had posted them, but
6 it was obvious that they were his complaints and that
7 he had provided them to CAERS to have them placed on
8 their website.

9 MS KULASZKA: For instance, I think
10 in some of these posts it says that they were posted by
11 Gabriel.

12 Did he use the name "Gabriel"?

13 MR. STEACY: I don't know.

14 MS KULASZKA: You didn't ask him?

15 MR. STEACY: No, I did not.

16 MS KULASZKA: We will come back to
17 that case, but we may as well continue with Tab 2.

18 I think we were at page 3.

19 When Mr. Warman worked at the
20 Commission --

21 Does he still work at the Commission?

22 MR. STEACY: No, he does not.

23 MS KULASZKA: Does he do consultant
24 work for the Commission?

25 MR. STEACY: Not that I am aware of.

1 MR. VIGNA: Mr. Chair, I don't think
2 that is relevant, and it would not be within the
3 knowledge of the witness.

4 THE CHAIRPERSON: I didn't hear the
5 second question.

6 MS KULASZKA: I am asking if he does
7 consultation work for the Commission.

8 Any kind of consulting work for the
9 Commission.

10 MR. STEACY: I can't answer that
11 question.

12 MS KULASZKA: You don't know.

13 MR. STEACY: I don't know.

14 THE CHAIRPERSON: There is your
15 answer, Mr. Vigna.

16 MS KULASZKA: When Mr. Warman worked
17 at the Commission, was it part of his employment duties
18 to give training to investigators at the Commission?

19 MR. STEACY: No, it was not.

20 MS KULASZKA: Did he give training in
21 computer techniques to investigators?

22 MR. STEACY: I wasn't aware of any.

23 MS KULASZKA: Did he give computer
24 training to Human Rights Officers?

25 MR. STEACY: I don't know. He didn't

1 give any to me.

2 MS KULASZKA: Do you know of anyone
3 who received such training from Mr. Warman?

4 MR. STEACY: No.

5 MS KULASZKA: Do you know what his
6 duties were at the Commission?

7 MR. STEACY: Yes. He was hired
8 initially to investigate and to --

9 He started off at our Intake
10 Services, preparing complaints, and then he went to
11 Investigations and he investigated, and while he was
12 there he also worked in our Legal Services branch,
13 helping out, I believe, in pay equity complaints.

14 MR. VIGNA: Mr. Chair, I object to
15 the further questioning on Mr. Warman's professional
16 career. I don't see the relevance whatsoever to the
17 constitutional issue or the merits.

18 I allowed a few questions, not to be
19 overzealous --

20 THE CHAIRPERSON: I think the earlier
21 part related to the evidence of yesterday, so that's
22 fine.

23 MS KULASZKA: Does the Commission, to
24 your knowledge, outsource monitoring of the internet to
25 independent contractors?

1 MR. STEACY: No, we do not.

2 MS KULASZKA: When the respondent got
3 the disclosure from the Commission, there was a very
4 large document, which was a list of alleged hate sites.

5 Do you know what that document was?

6 MR. STEACY: You need to be more
7 specific, please.

8 MS KULASZKA: Maybe we will come back
9 to that after lunch. I will try to get the title of
10 it.

11 Do you ever obtain lists of alleged
12 hate sites from any source?

13 MR. STEACY: You mean did I go and
14 ask an organization to provide me with a list of hate
15 sites?

16 No, I didn't, but I do know that the
17 Simon Wiesenthal Foundation does have a list, and it is
18 on their CD that they provide.

19 I know that there are organizations
20 out there that have those lists, yes.

21 MS KULASZKA: Do you use those lists?

22 MR. STEACY: No.

23 MS KULASZKA: Have you examined the
24 CD that is produced by the Simon Wiesenthal Center?

25 MR. STEACY: Yes, I have.

1 MS KULASZKA: About how many websites
2 are contained on that disk -- say the 2006 version.

3 MR. STEACY: I didn't examine the
4 2006 version. The version that I specifically looked
5 at, I think, was 2003 or 2004.

6 MS KULASZKA: Can you remember how
7 many websites were on that disk?

8 MR. STEACY: No, I can't.

9 MS KULASZKA: Could you turn to page
10 5 of Tab 2?

11 This is an e-mail from MCI Internet
12 Abuse Investigations, and the subject is "Acceptable
13 Use Policy".

14 It says:

15 "Greetings,

16 Thank you for taking the time to
17 submit your message..."

18 I won't read it. It appears to be an
19 answer to the letter which was written by the
20 Commission on page 3.

21 Are you familiar with this document?

22 MR. STEACY: Only that it would have
23 been in the package of disclosure.

24 MS KULASZKA: How often are letters
25 from the Commission sent by e-mail?

1 MR. STEACY: It would be considered
2 to be a rare occurrence that we have sent something by
3 e-mail.

4 MS KULASZKA: Do you know how many
5 times that has happened?

6 MR. STEACY: No, I don't.

7 It is not part of our normal policy
8 and our practice to send letters by e-mail. We do it
9 only in exceptional cases.

10 MS KULASZKA: We have heard testimony
11 that Commission employees are instructed not to use the
12 e-mail which they are assigned at the Commission, they
13 are to use another e-mail. Do you know the reason for
14 that policy?

15 MR. STEACY: I am not aware of that
16 policy.

17 MR. VIGNA: Perhaps the question
18 could be put more in context. I don't think it was
19 that clear.

20 THE CHAIRPERSON: I can't hear you.

21 MR. VIGNA: I think the question is
22 not all that clear, the way it's framed.

23 I understand there was a connection
24 with --

25 MS KULASZKA: I will try to make it

1 more clear.

2 If you were doing an investigation on
3 the internet and it was required, for some reason, that
4 you enter an e-mail in order to obtain information,
5 would you use your Commission e-mail?

6 MR. STEACY: No, I wouldn't.

7 MS KULASZKA: What e-mail would you
8 use?

9 MR. VIGNA: Objection --

10 MS KULASZKA: I am not asking for --

11 THE CHAIRPERSON: Not the detail, but
12 what type.

13 MS KULASZKA: What type of e-mail
14 would you use?

15 MR. STEACY: I would use an outside
16 e-mail account.

17 MS KULASZKA: So you would set up a
18 specific account for --

19 MR. VIGNA: Section 37, Mr. Chair.
20 These are investigation techniques, and I invoke
21 section 37.

22 MS KULASZKA: I don't think I even
23 got a question out.

24 THE CHAIRPERSON: Hold on a second.

25 The evidence was that he would use an

1 outside e-mail account. You don't want him to go any
2 further than that.

3 I understand "outside e-mail account"
4 to mean the use of something other than the CHRC's
5 e-mail accounts.

6 Do you have any objection if I ask
7 that question, Mr. Vigna?

8 MR. VIGNA: No.

9 THE CHAIRPERSON: From another source
10 where it would be "at" something other than CHRC.

11 Is that correct, sir?

12 MR. STEACY: That's correct, sir.

13 THE CHAIRPERSON: We know how they
14 work, Ms Kulaszka. We have evidence from Mr. Warman
15 and others on how accounts can be set up.

16 MS KULASZKA: Do you have your own
17 choice of how you set up an alternate e-mail account,
18 or are you directed to set up an e-mail account with a
19 specific server?

20 MR. VIGNA: I have the same
21 objection, Mr. Chair. It still relates to the same
22 subject area.

23 THE CHAIRPERSON: Section 37 -- I
24 don't know what the subject is.

25 How is that public security?

1 MR. VIGNA: They are trying to find
2 out how we go about, in terms of doing --

3 THE CHAIRPERSON: I'm sorry?

4 MR. VIGNA: The questions that are
5 being asked are basically in terms of investigation
6 techniques. I don't see how it is related to the
7 merits or the Constitution.

8 On top of that, it is related
9 directly to investigation techniques. They are just
10 referring differently to try to get information
11 indirectly.

12 THE CHAIRPERSON: Does it serve
13 another purpose than investigation technique fishing,
14 Ms Kulaszka?

15 MS KULASZKA: It is related to the
16 testimony given by Ms Rizk yesterday. They are told
17 not to use the Commission e-mail, and this was a
18 policy, but Mr. Steacy isn't aware of the policy, and
19 yet he does set up a separate e-mail account --

20 THE CHAIRPERSON: The first answer
21 that he gave on the policy, the question was broad, and
22 you narrowed it down. I don't have an answer on
23 knowledge --

24 MS KULASZKA: Maybe I will ask him
25 the same thing that I asked Ms Rizk.

1 THE CHAIRPERSON: Now that it has
2 been narrowed down, yes.

3 MS KULASZKA: Were you told not to
4 use your Commission e-mail in your investigative
5 techniques?

6 MR. STEACY: Yes.

7 THE CHAIRPERSON: All right. There
8 is an acknowledgement.

9 MS KULASZKA: To your knowledge, does
10 the Commission monitor "Stormfront.org"?

11 MR. VIGNA: Mr. Chair, I would raise
12 an objection, again, in terms of the relevance, and
13 also under section 37. This is an ongoing
14 investigation, so section 37 would be --

15 THE CHAIRPERSON: There is one
16 problem. The respondent has been accused of having
17 posted on "Stormfront.org". It's not an outside
18 investigation, it is this complaint.

19 MR. VIGNA: The question was framed
20 more broadly, though, and it's not in relation to this
21 complaint directly.

22 THE CHAIRPERSON: How do I know that,
23 at this point?

24 MR. VIGNA: The way the question was
25 framed, it seems to be pretty broad.

1 Unless Ms Kulaszka wants to rephrase
2 her question...

3 MS KULASZKA: I don't think that
4 question in any way threatens the Commission.

5 THE CHAIRPERSON: No, it doesn't.

6 I am going to allow that question.
7 If there is a problem with that, ask somebody upstairs.

8 Go ahead.

9 MS KULASZKA: To your knowledge, does
10 the Commission monitor "Stormfront.org"?

11 MR. STEACY: It depends on what you
12 mean by monitor "Stormfront.org".

13 MS KULASZKA: Just let us know, what
14 involvement does the Commission have with
15 "Stormfront.org"?

16 THE CHAIRPERSON: In terms of viewing
17 it?

18 Is that what you mean, Ms Kulaszka?

19 MS KULASZKA: Yes.

20 MR. STEACY: It would depend on
21 whether there is a complaint about something that is on
22 "Stormfront.org", or whether or not an individual has
23 posted information on "Stormfront.org".

24 MS KULASZKA: Would the viewing alone
25 of "Stormfront.org" be driven by complaints?

1 MR. STEACY: Yes.

2 MS KULASZKA: So somebody would have
3 to complain about something on "Stormfront.org".

4 MR. STEACY: Yes.

5 MS KULASZKA: Apart from viewing,
6 does the Commission participate on "Stormfront.org"?

7 MR. VIGNA: I can't understand the
8 exact intent of the question. Does the Commission
9 participate on "Stormfront.org", I don't know --

10 MS KULASZKA: Do any investigators
11 post on "Stormfront.org"?

12 MR. VIGNA: Mr. Chair, I would object
13 based on section 37. It's investigation techniques.

14 MS KULASZKA: I am not asking for
15 specific e-mails, or what their names are, nothing that
16 would threaten the Commission.

17 THE CHAIRPERSON: He has invoked
18 section 37, Ms Kulaszka -- investigative techniques;
19 public security.

20 MS KULASZKA: Were you involved as an
21 investigator in the Jessica Beaumont case?

22 MR. STEACY: It was initially
23 assigned to me, but due to my caseload it was
24 transferred to another officer.

25 MS KULASZKA: That case involved a

1 posting on "Stormfront", did it not?

2 MR. STEACY: I believe so.

3 MR. VIGNA: Mr. Chair, what is the
4 relevance of another case that deals with --

5 THE CHAIRPERSON: Let's hear the next
6 question.

7 I don't know. Right now it
8 doesn't --

9 MS KULASZKA: I would ask you to turn
10 to Tab 18. This is an excerpt from the transcript of
11 the Beaumont case.

12 Do you know what investigator took
13 over that case from you?

14 MR. STEACY: Yes, I do.

15 MS KULASZKA: Who was that?

16 MR. STEACY: Ms Sandy Kozak.

17 MS KULASZKA: This is a transcript
18 excerpt. If you look at page 2, I will read from it.

19 There was a document that was being
20 entered by the Commission. Mr. Fromm was the person
21 acting for Jessica Beaumont.

22 "MR. FROMM: Yes. To the one we
23 were given yesterday, one of
24 three, where it says across the
25 top, 'Welcome, Jadewarr.' Do

1 you see that, Mr. Warman?
2 MR. WARMAN: I do.
3 MR. FROMM: Can you explain what
4 that is, 'Welcome, Jadewarr'?
5 MR. WARMAN: It appears to be a
6 name that was logged in under.
7 MR. FROMM: By whom?
8 MR. WARMAN: I'm sorry, I don't
9 know.
10 MR. FROMM: Would that not have
11 to have been by you?
12 MR. WARMAN: No, it would not.
13 THE CHAIRPERSON: Because you
14 indicated earlier that this was
15 not a copy that you had printed
16 out.
17 MR. WARMAN: That I produced,
18 no. The second copy is the one
19 that I produced.
20 THE CHAIRPERSON: Does your name
21 appear on this one?
22 MR. WARMAN: The second copy was
23 printed off in my presence.
24 THE CHAIRPERSON: It was printed
25 off.

1 MR. FROMM: Then who is
2 Jadewarr?
3 MR. WARMAN: I'm sorry, it's not
4 my document.
5 MR. FROMM: But it was produced
6 in your presence?
7 MR. WARMAN: No, the second
8 document I printed off.
9 MR. FROMM: The second document,
10 which is the clear copy, says
11 `Italy for Italians' at the top.
12 You can see that. Is that the
13 one?
14 MR. WARMAN: It does, yes.
15 MR. FROMM: The other one, the
16 one that was given to us
17 yesterday, which is much less
18 clear and says to Der Totenkopf,
19 but at the top it says `Welcome,
20 Jadewarr...' you say that was
21 printed off in your presence?
22 MR. WARMAN: No, it was not.
23 MR. FROMM: It was not. Then
24 what's the origin of it?
25 MR. WARMAN: I don't know.

1 THE CHAIRPERSON: You don't know
2 now but you mentioned earlier
3 that it was from the Commission.
4 That's what I heard you say.

5 MR. WARMAN: It originates in
6 the broadest sense with the
7 Commission.

8 THE CHAIRPERSON: So the
9 Commission had produced this
10 photocopy?

11 MR. WARMAN: Yes, but in terms
12 of its specific origins, I have
13 no idea.

14 MR. FROMM: Is it your
15 testimony, then, that it's a
16 Commission document?

17 MR. WARMAN: It originates with
18 the Commission. I do not know
19 its providence."

20 MR. VIGNA: Before I object under
21 section 37, I would object, first, on the relevance,
22 because I don't see the relevance to this case, the
23 constitutional argument --

24 THE CHAIRPERSON: I think I do, but I
25 will ask Ms Kulaszka if she wants to elaborate on the

1 relevance.

2 MS KULASZKA: Jadewarr, of course, is
3 a poster on "Stormfront" --

4 I would ask that Mr. Steacy be
5 excluded, if that is possible.

6 THE CHAIRPERSON: All right.

7 --- The Witness Withdrew

8 MS KULASZKA: It goes to the
9 constitutional argument. What is happening is, in the
10 Beaumont case they produced a posting from Jadewarr.
11 Jadewarr is obviously a Commission employee. That's
12 how --

13 THE CHAIRPERSON: How do you know
14 that?

15 MS KULASZKA: Because it said
16 "Welcome, Jadewarr," so Jadewarr has to be --

17 That is the pseudonym used on
18 "Stormfront".

19 Whoever Jadewarr is, they sign in,
20 and when he prints off the document, it says "Welcome,
21 Jadewarr" at the top.

22 Say that I was a poster -- "Barbara
23 Kulaszka" -- it would say "Welcome, Barbara" at the
24 top, if I used my real name.

25 THE CHAIRPERSON: Okay.

1 MS KULASZKA: So Jadewarr is --

2 THE CHAIRPERSON: So since Mr. Warman
3 was in the presence of a Commission employee when it
4 got printed off, and it wasn't him who was logging in,
5 it had to have been the Commission employee.

6 Is that what you are saying?

7 MS KULASZKA: Yes. I would assume
8 that Mr. Warman knew that, so he was very careful. He
9 said: It originates with the Commission, but I didn't
10 print it off.

11 If you look at page 5, you can see
12 that this was printed off from "Stormfront", and you
13 can see on the right-hand side, "Welcome, Marc Lemire".

14 This is the way it works, "Welcome,
15 Marc Lemire," and this is a view profile of "Jadewarr".

16 That shows that Marc Lemire is signed
17 onto --

18 THE CHAIRPERSON: Yes, I understand.

19 MS KULASZKA: And this is a profile
20 of Jadewarr. It shows the activity of Jadewarr, and
21 the last activity was --

22 You will see it at the right-hand
23 side --

24 THE CHAIRPERSON: Of this single
25 page?

1 MS KULASZKA: Yes. You will see
2 "Last Activity: 12-08-2006," and that was printed off
3 by Mr. Lemire, and you will see at the bottom that it
4 was printed off this year on March 25, 2007.

5 THE CHAIRPERSON: Yes.

6 MS KULASZKA: Then, when you look at
7 the date of the transcript, you will see that all of
8 this discussion took place in 2006, December 12th.

9 THE CHAIRPERSON: I remember, I was
10 there.

11 MS KULASZKA: So Jadewarr's last
12 entry was four days before, and he never signs on
13 again.

14 So it is going to be the argument of
15 Mr. Lemire, basically, that through an inadvertent
16 disclosure, the Commission reveals that one of its
17 investigators or employees is Jadewarr. Jadewarr never
18 comes back to "Stormfront" once that is revealed, and
19 that is the end of his postings.

20 The trouble is, Jadewarr tries to
21 talk to Marc Lemire on "Stormfront". He responds to
22 postings.

23 He also has correspondence with
24 another poster called "Fenrisson", and Fenrisson is
25 very crucial, because Fenrisson is another poster to

1 "Stormfront", and his postings have been used by the
2 Commission to dismiss all sorts of complaints.

3 So Jadewarr is very active.

4 What are they trying to do?

5 It goes to: What is the Commission
6 doing?

7 They are going onto "Stormfront". It
8 is obviously not just to investigate identities, they
9 are interacting with people.

10 What are they trying to do?

11 THE CHAIRPERSON: In your submission,
12 it is not complaint driven. The involvement is not one
13 of verifying what has been written up on a Human Rights
14 complaint, but actual proactive involvement.

15 MS KULASZKA: Very proactive, with
16 Mr. Lemire.

17 MR. VIGNA: Mr. Chair, based on what
18 Ms Kulaszka is saying, I will invoke section 37.

19 THE CHAIRPERSON: I can't hear you,
20 Mr. Vigna.

21 MR. VIGNA: Based on what Ms Kulaszka
22 is saying, I will invoke section 37. It directly
23 relates to investigation techniques.

24 THE CHAIRPERSON: Everything she just
25 said is in the public record, or documents that she

1 picked up on her own.

2 She can make this argument right now,
3 without even asking a single question --

4 MR. VIGNA: Yes, but she wants to go
5 further, in terms of identity and all of that.

6 What she has I can do nothing about.

7 THE CHAIRPERSON: I don't think that
8 we need to know the identity of the person involved.

9 MS KULASZKA: No, I don't want to
10 know the identity --

11 THE CHAIRPERSON: I think, though,
12 that she has a proposition that she wants to put to the
13 witness, and the witness may acknowledge it or not.

14 MS DAVIES: Mr. Chair, my
15 understanding was that the witness, actually, was not
16 on the investigation of Jessica Beaumont after the
17 beginning. I just wanted to make sure that was clear
18 for the record.

19 THE CHAIRPERSON: Yes, I remember
20 that he was not involved. He gave the name of another
21 investigator.

22 MR. VIGNA: If the question is not
23 put explicitly, as to who the person is, but is put
24 indirectly, and we are trying to find the identity in a
25 general sense, I would still have an objection based on

1 section 37.

2 THE CHAIRPERSON: I don't think they
3 want to find out the identity.

4 What they want to establish, it seems
5 to me, is that this pattern of conduct has occurred,
6 and then argue that it means something in the
7 constitutional sense.

8 I am not deciding that at this
9 moment, but --

10 MR. VIGNA: I will wait for the next
11 question, but I will keep in mind where --

12 THE CHAIRPERSON: Ms Kulaszka, you
13 are not trying to establish who this person is, are
14 you?

15 Do you care?

16 It is not this individual. He told
17 you that he is not involved.

18 Or it might be this individual?

19 MS KULASZKA: We don't know who
20 Jadewarr is at the Commission.

21 THE CHAIRPERSON: How is that
22 relevant?

23 MS KULASZKA: It's a Commission
24 employee, obviously. The exact identity --

25 MR. VIGNA: I didn't hear anything

1 about it being a Commission employee, other than Ms
2 Kulaszka mentioning that.

3 In terms of the evidence --

4 THE CHAIRPERSON: I'm sorry?

5 MR. VIGNA: I haven't heard any
6 evidence in terms of it being a Commission employee,
7 other than Ms Kulaszka mentioning it, unless I don't
8 recall --

9 THE CHAIRPERSON: No, she has
10 surmised that from Mr. Warman's answers at the other
11 hearing.

12 MR. VIGNA: Yes.

13 THE CHAIRPERSON: The document had to
14 have been printed by the person who went by that
15 pseudonym, and Mr. Warman said that it was printed off
16 at the Commission's offices in his presence.

17 MS KULASZKA: He acknowledges that it
18 is a Commission document. It says "Welcome, Jadewarr",
19 and, obviously, it was inadvertently disclosed, because
20 then they file another one.

21 THE CHAIRPERSON: That is your
22 conclusion.

23 MS KULASZKA: That will be the
24 argument.

25 The problem is, Jadewarr engages Mr.

1 Lemire in conversation. Why are they doing this? What
2 are they trying to find out?

3 The trouble is, you have these
4 retaliation provisions in the Act, and sometimes -- not
5 in this particular case, but in some instances it is
6 almost like they are trying to goad people into saying
7 something. In this case it would be about Mr. Warman,
8 or whoever the complainant is.

9 THE CHAIRPERSON: That is part of
10 your larger argument that you have been trying to make
11 from the beginning on the Charter.

12 MS KULASZKA: Yes.

13 THE CHAIRPERSON: Mr. Fromm?

14 MR. FROMM: Sir, you mentioned a few
15 moments ago that the poster might be being proactive,
16 whatever that means.

17 In fact, it is not being proactive,
18 it is really trying to stir the pot, create mischief,
19 put ideas out there, as we have seen in other cases,
20 which Mr. Warman did -- and this is in evidence -- on a
21 website called "VNN", where he took on the role of a
22 pro-neo-Nazi and was making comments very much in
23 favour of a very, very extreme individual, which stirs
24 the pot and presumably draws people --

25 THE CHAIRPERSON: I have discussed

1 that myself in some of my earlier rulings. I perceived
2 that as one of your arguments.

3 MR. FROMM: If, indeed, this is so,
4 this would seem to be real mischief-making on the part
5 of the Commission, and I think that it would be very
6 helpful in the constitutional argument --

7 THE CHAIRPERSON: I understand.
8 There are three levels of activity,
9 if you will.

10 When I used the term "proactive"
11 earlier, I meant it as opposed to being reactive to a
12 complaint.

13 Proactive, I guess, would be -- one
14 level would be simply looking at websites without a
15 complaint having been filed, and your submission now is
16 that there is even an additional level, where someone
17 logs on and starts participating in websites.

18 I still don't know what question is
19 being asked that you are invoking section 37 on, Mr.
20 Vigna. What if this proposition that is being
21 presented here is being put to Mr. --

22 MR. VIGNA: The questions being asked
23 regarding Jadewarr are the ones that I am objecting to,
24 in relation to who is Jadewarr and what purpose --

25 Anything related to Jadewarr I am

1 invoking section 37 on, as investigation techniques.

2 THE CHAIRPERSON: You invoke section
3 37 with regard to the identity of Jadewarr?

4 MR. VIGNA: Anything in relation to
5 Jadewarr I am invoking, not just the identity.

6 THE CHAIRPERSON: So you don't want
7 this proposition to be put to this witness.

8 He may answer no.

9 They are going to make this argument
10 anyways, and it is pretty interesting what is being
11 presented here.

12 Don't you want that to be put to the
13 witness?

14 MR. VIGNA: No, Mr. Chair, I want to
15 invoke section 37.

16 THE CHAIRPERSON: I will let the
17 witness come back in. The topic is not off limits.
18 The top is on limits. I will let you ask any question
19 you want, Ms Kulaszka. You have heard what Mr. Vigna
20 has said, and we will see how he will choose to invoke
21 section 37 of the Canada Evidence Act along the way.

22 MS KULASZKA: I think that is more
23 appropriate, especially if we go to Federal Court. I
24 need a question, and then he needs the certification --

25 THE CHAIRPERSON: I would love to

1 have some direction from the Federal Court on all of
2 this.

3 MR. LEMIRE: Ask about expedited
4 transcripts.

5 MS KULASZKA: Mr. Lemire would like
6 to know if we could have expedited transcripts of these
7 three days.

8 THE CHAIRPERSON: Is that possible?

9 MS KULASZKA: Is it possible, because
10 we have a ten-day deadline.

11 THE CHAIRPERSON: Let me get some
12 instructions from the office, and I will have to speak
13 to the court reporter.

14 There may be some technical issues.

15 Would this be an appropriate point to
16 take the lunch break, rather than asking the witness to
17 come back?

18 MS KULASZKA: Maybe we should break
19 for lunch.

20 THE CHAIRPERSON: Yes. That's what
21 we will do.

22 We will come back at two o'clock.

23 --- Upon recessing at 12:50 p.m.

24 --- Upon resuming at 2:00 p.m.

25 THE CHAIRPERSON: Mr. Vigna, did you

1 go back to your office?

2 MR. VIGNA: Yes. We found a letter
3 that relates to March 27, 2003. It was sent by a
4 lawyer who doesn't work at the Commission any more,
5 Céline Harrington. I provided a copy to the
6 Respondent, and I suspect they would want to put it in
7 evidence.

8 It is not directly related to this
9 witness, but I don't have a problem with producing it.

10 THE CHAIRPERSON: It was related to
11 which tab?

12 MS KULASZKA: Tab 2.

13 MR. VIGNA: Like I suspected, it was
14 a letter sent post the decision, actually, after the
15 Federal Court endorsed --

16 The letter speaks for itself, but I
17 guess that is the reason --

18 THE CHAIRPERSON: Maybe I should look
19 at, just to acquaint myself with it.

20 --- Pause

21 THE CHAIRPERSON: All right. I have
22 read it.

23 We will put it at the end?

24 MS KULASZKA: If we could put it at
25 the end, it will be pages 17 and 18 of Tab 2.

1 THE CHAIRPERSON: Tab 2 of R-17.

2 MR. VIGNA: There is another
3 administrative matter. Ms Kulaszka reminded me this
4 morning that the Karen Mock report -- there was a part
5 that we agreed would be obliterated, which refers to
6 the FreedomSite. I don't know if you recall that, it
7 was at the bottom of the page.

8 THE CHAIRPERSON: Vaguely.

9 MR. VIGNA: I believe there was an
10 undertaking, or at least a commitment that we would
11 give you an edited version.

12 It was already agreed that you would
13 not consider it, but I contacted Dr. Mock and she will
14 send me an edited version, minus the part that we have
15 already agreed upon. Hopefully, I will be able to do
16 that tomorrow morning.

17 THE CHAIRPERSON: Excellent.

18 Ms Kulaszka?

19 RESUMED: DEAN STEACY

20 CROSS-EXAMINATION BY MS KULASZKA, Continued

21 MS KULASZKA: Mr. Steacy, let's go
22 back to Tab 2. These are the letters sent to ISPs. We
23 will go to page 6.

24 This is a letter to Administrative
25 Services, Moniker Online Services, in Pompano Beach,

1 Florida.

2 Would you be familiar with that
3 letter?

4 MR. STEACY: I am not sure if I
5 authored that letter or not.

6 MS KULASZKA: It has been signed by
7 an investigator, but of course that has been taken out.

8 I will read the first paragraph:

9 "It appears that your
10 organization is the Internet
11 Service Provider for
12 the...website...which appears to
13 be owned or operated
14 by....Material appearing on that
15 website appears to contravene
16 section 13(1) of the Canadian
17 Human Rights Act."

18 Does that sound familiar?

19 MR. STEACY: It sounds like the
20 template letter.

21 MS KULASZKA: But you are not sure
22 whether you --

23 MR. STEACY: It's a possibility.

24 MS KULASZKA: If you turn to the next
25 page, the second page of the letter says:

1 "Given the nature of the
2 material on the above website,
3 we are seeking your
4 cooperation..."

5 And there is a huge blank at that
6 point that has been removed.

7 "The purpose of the Commission
8 raising these issues with you,
9 is to request that you also
10 review the material on the
11 website in order to ensure that
12 it is in keeping with your
13 internal policies on rules of
14 user conduct. In that your
15 rules of user conduct, you have
16 the discretion to remove any
17 content that does not comply and
18 or is otherwise harmful,
19 objectionable, or inaccurate or
20 in that the material posted
21 would otherwise might to the
22 victimization, harassment,
23 degradation, or intimidation of
24 an individual or group. It is
25 hoped that you will give

StenoTran

1 appropriate consideration to
2 this matter and then take
3 whatever action, if any, you
4 deem appropriate."

5 THE CHAIRPERSON: I think it is
6 important to say that those errors in syntax were as
7 written.

8 MS KULASZKA: And the title of the
9 person who signed this is "Investigator".
10 Did you write that letter?

11 MR. STEACY: I don't remember. I
12 would need to know who the letter was written to.

13 MS KULASZKA: I can't tell you that.
14 That has been excluded.

15 THE CHAIRPERSON: No, it says to whom
16 it has been written.

17 MS KULASZKA: I'm sorry, Moniker
18 Online Services.

19 MR. STEACY: I don't recall writing a
20 letter to that ISP, but I could have.

21 I deal with many, many files and I
22 don't necessarily have the time to remember exactly
23 what I wrote in every file with every case.

24 MS KULASZKA: A large part of this
25 letter has been excluded, but in this typical type of

1 letter, would you be asking the ISP who the person was
2 who owned a website?

3 MR. STEACY: No.

4 MS KULASZKA: You would never ask
5 that?

6 MR. STEACY: No, I would not.

7 MS KULASZKA: Does the Commission
8 send this type of letter, even though it is not sure if
9 the ISP actually hosts the site?

10 MR. STEACY: Before we would send
11 that letter, we would try and verify that that is the
12 proper ISP.

13 MS KULASZKA: How would you do that?

14 MR. STEACY: Usually through better
15 "WHOIS", as the domain search.

16 MS KULASZKA: As a regular feature of
17 these letters, would you attach portions of the website
18 which you find objectionable?

19 MR. STEACY: Yes.

20 MS KULASZKA: I think I have asked
21 you, "Do you follow up on whether the material is
22 removed or not," and your answer is that you don't.

23 MR. STEACY: That's correct.

24 MS KULASZKA: If you could turn to
25 page 8, this is a letter sent to the President and

1 Chief Executive Officer of Verio, Inc. It is located
2 in Englewood, Colorado, U.S.A.

3 Can you recall whether you wrote that
4 letter?

5 MR. STEACY: I wrote that letter.

6 MS KULASZKA: The purpose that you
7 wrote the letter, according to the second paragraph,
8 is:

9 "The purpose of the Commission
10 raising these issues with you is
11 twofold. First, we ask that you
12 review the enclosed materials,
13 as well as any other such
14 materials contained on the
15 above-noted website. It is
16 hoped that you will give
17 appropriate consideration to
18 this matter and then take
19 whatever action, if any, you
20 deem appropriate. Secondly..."

21 What was the second purpose?

22 MR. STEACY: Off the top of my head,
23 I can't remember.

24 MS KULASZKA: Would it be to find out
25 who owned the site?

1 MR. STEACY: I don't believe so.
2 We don't normally ask the ISP unless
3 it's a matter of an investigation who owns the website.
4 MS KULASZKA: Do you remember who
5 made the complaint regarding this website?
6 MR. STEACY: I believe Mr. Warman
7 made that complaint.
8 MS KULASZKA: And what was the
9 website being complained about?
10 --- Pause
11 MR. STEACY: No, I'm sorry, it was
12 not Mr. Warman who made the complaint, it was another
13 organization.
14 MS KULASZKA: What organization was
15 it?
16 MR. STEACY: I am not sure what the
17 acronym stands for. It's an organization in Montreal,
18 headed by an individual --
19 MS KULASZKA: International Network?
20 MR. STEACY: No. I'm sorry, I can't
21 remember what the acronym stands for.
22 MR. VIGNA: Mr. Chair, if I could
23 help, I think the actual letter was posted by Mr.
24 Fromm.
25 THE CHAIRPERSON: Oh, yes. This was

1 8(a), that's right.

2 It still doesn't show who filed the
3 complaint, but the witness just said the name of the
4 individual who filed the complaint.

5 MR. VIGNA: You can mention it if you
6 want, Mr. Chair. I know that it is before the
7 Tribunal.

8 THE CHAIRPERSON: It is before the
9 Tribunal.

10 The complaint has been filed by the
11 organization CRARR.

12 Is that correct?

13 MR. STEACY: Yes, CRARR.

14 THE CHAIRPERSON: Yes. I am aware
15 that this is a case that has already started its
16 hearings.

17 MR. STEACY: I can't remember if it
18 is Canadian Alliance of Race --

19 I can't remember what the actual
20 acronym stands for.

21 MS KULASZKA: How would such a
22 complaint be received? Do they write a letter to the
23 Commission, or phone?

24 MR. STEACY: It could be both. A
25 person could phone or they could write a letter to us.

1 Either way, depending on the initial information that's
2 provided, the intake officer will go through some
3 information with them and ask them to provide
4 information, and they will complete an intake kit and
5 guide, and then they will submit a complaint form, and
6 that will be processed through the system.

7 MS KULASZKA: In this case it states:

8 "Secondly, would you please
9 inform the website operator that
10 we are trying to locate him or
11 her and that I would like him or
12 her to contact the undersigned
13 as soon as possible."

14 Is that something that you would
15 regularly do in this situation?

16 MR. STEACY: If it is involved in an
17 investigation, that could be something I would do, yes.

18 MS KULASZKA: Has anyone contacted
19 you as a result of the ISP telling the owner to do
20 that?

21 MR. STEACY: No. To the best of my
22 recollection, that didn't happen with "bcwhitepride".

23 MS KULASZKA: In this case a
24 complaint was laid, was it not?

25 MR. STEACY: With "bcwhitepride"?

1 Yes, a complaint was filed.

2 MS KULASZKA: When was this letter
3 written? Was it before a complaint was filed or after?

4 MR. STEACY: That letter, most
5 likely, would have been written after the complaint was
6 filed.

7 MS KULASZKA: Is it normal for the
8 Commission to accept complaints against a non-person?

9 MR. STEACY: Most complaints, in a
10 sense, are accepted against a non-person. The
11 respondents are federally regulated organizations.

12 So Department X is a non-person, but
13 there is a person responsible for that organization,
14 and the complaints would go to that person.

15 MS KULASZKA: Maybe you misunderstood
16 or I misstated.

17 "bcwhitepride.org" isn't a person, is
18 it?

19 MR. STEACY: It's a website.

20 MS KULASZKA: It's a website. It is
21 not a corporate person and it's not a living person.

22 MR. STEACY: No, but there is a
23 person who would be responsible for the maintenance of
24 that website.

25 MS KULASZKA: But you would agree

1 that a URL is not a party. It is not a person who can
2 respond.

3 MR. STEACY: If we don't know who the
4 individual is, at a certain point, who is responsible
5 for the website, we notify the website in order to try
6 and determine who is running the website.

7 MS KULASZKA: Why don't they just
8 issue a complaint against John Doe?

9 MR. STEACY: Because it is not the
10 Commission's policy or practice right now that we issue
11 complaints against John Doe. We try to ascertain who
12 is behind the website.

13 MS KULASZKA: Say that someone comes
14 to you with a complaint about a website or some sort of
15 posted material and they don't really know who is
16 behind it. The Commission, itself, will undertake to
17 find out who posted it?

18 MR. STEACY: Yes.

19 MS KULASZKA: As part of the
20 complaint process?

21 MR. STEACY: Yes.

22 MS KULASZKA: Has the Commission used
23 search warrants?

24 MR. STEACY: We have used the powers
25 under our Act to have individuals provide information,

1 yes.

2 MS KULASZKA: Have you worked with
3 police forces to obtain information on the identities
4 of individuals?

5 MR. VIGNA: Mr. Chair, I would raise
6 section 37. It is part of investigation techniques,
7 and I don't see the relevance on top of that.

8 THE CHAIRPERSON: Let me catch up on
9 some of these answers, and I will address that in a
10 second.

11 --- Pause

12 THE CHAIRPERSON: Which is the
13 specific question you are objecting to?

14 MR. VIGNA: If the Commission uses
15 police as part of an investigation, from what I
16 understand.

17 THE CHAIRPERSON: Was that your
18 question, Ms Kulaszka?

19 MS KULASZKA: Yes. Do they cooperate
20 with police in obtaining information about complaints.

21 THE CHAIRPERSON: You are objecting
22 to that, Mr. Vigna? You are invoking section 37?

23 "Do you cooperate with police."

24 MR. VIGNA: If it is limited to that,
25 I won't. But if it goes any further, I will.

1 MS KULASZKA: You can answer that
2 question, Mr. Steacy.

3 MR. STEACY: Am I being instructed to
4 answer that question?

5 THE CHAIRPERSON: Yes, you may answer
6 it.

7 MR. STEACY: Yes, we do.

8 MS KULASZKA: Are you aware that Mr.
9 Warman has made that public in the B'Nai Brith report
10 that he wrote in a couple of years ago?

11 MR. STEACY: No, I wasn't aware of
12 that.

13 MS KULASZKA: In several cases the
14 Commission has used evidence obtained by police during
15 raids on the homes of respondents in Human Rights
16 complaints. Are you aware of that?

17 MR. STEACY: Yes, I am.

18 MS KULASZKA: And what cases are
19 those?

20 MR. STEACY: The ones that I am aware
21 of are Alexan Kulbashian, James Scott Richardson,
22 Tri-city Skins and Canadian Ethnic Cleansing Team, as
23 well as Bahr and -- there is another one, the name of
24 which escapes me at the moment.

25 MS KULASZKA: Mr. Kouba?

1 MR. STEACY: Yes.

2 MS KULASZKA: Jessica Beaumont?

3 MR. STEACY: I don't know.

4 THE CHAIRPERSON: Mr. Vigna?

5 MR. VIGNA: It's only that the cases
6 that have been mentioned were before the Tribunal, so
7 they have been decided --

8 THE CHAIRPERSON: In the first one, I
9 know intimately what the evidence was. I decided that
10 case.

11 MR. VIGNA: I was wondering if it was
12 going any further.

13 If they are not before the Tribunal
14 or in the public domain, I would have an objection.
15 But what has been mentioned so far --

16 THE CHAIRPERSON: They are all
17 decisions that have already been issued.

18 MS KULASZKA: In the Kulbashian case,
19 would you agree that a police officer named Terry
20 Wilson gave testimony?

21 MR. STEACY: Yes.

22 MS KULASZKA: And he introduced
23 material seized in police raids on Mr. Kulbashian's
24 home?

25 MR. STEACY: Yes.

1 MS KULASZKA: And in the Glenn Bahr
2 case, a police officer named Stephen Camp testified at
3 the hearing?

4 MR. STEACY: I wasn't involved in
5 investigating that file, so I can only answer what I
6 know, that Mr. Camp was at Tribunal, but I don't know
7 what his involvement was in the case.

8 MS KULASZKA: And at the hearing of
9 Peter Kouba's case, police officer Stephen Camp also
10 testified at that hearing?

11 MR. STEACY: Yes.

12 MS KULASZKA: Did the police analyze
13 the evidence in the Kulbashian case?

14 MR. STEACY: The evidence that they
15 provided during the investigation --

16 THE CHAIRPERSON: I would like some
17 clarification on your question, Ms Kulaszka. Do you
18 mean did the police analyze the evidence that came up
19 during the hearing, that is, the Human Rights complaint
20 hearing, the one that I heard, or are you asking did
21 the police analyze the evidence that they collected
22 prior to the complaint being heard?

23 MS KULASZKA: At the hearing.

24 THE CHAIRPERSON: After the evidence
25 was heard, did the police analyze it thereafter?

1 Is that what your question is?

2 MS KULASZKA: Yes. Police Officer
3 Terry Wilson testified at the hearing.

4 THE CHAIRPERSON: Yes.

5 MS KULASZKA: And I am just asking,
6 did he analyze the evidence in his testimony that they
7 seized at the Kulbashian home.

8 MR. STEACY: Did I analyze it?

9 MS KULASZKA: No, Police Officer
10 Terry Wilson.

11 THE CHAIRPERSON: I think the
12 decision speaks for itself. The record is there.

13 I sat on that case, Ms Kulaszka, and
14 this man was not there, I can tell you that much.

15 MS KULASZKA: Okay.

16 Were you the investigator in the
17 Kulbashian case?

18 MR. STEACY: Yes.

19 MS KULASZKA: How did you obtain this
20 evidence from Police Officer Terry Wilson?

21 MR. VIGNA: Mr. Chair, unless it is
22 part of the record or was in evidence at the Tribunal
23 at the time, as part of the decision, I would have
24 objections to the information that is being asked,
25 based on section 37, unless it is something that has

1 already been part of the public knowledge.

2 If that is the case, maybe Ms
3 Kulaszka could refer to the exact portion of the
4 decision or transcripts.

5 MS KULASZKA: Are you familiar with
6 the hearing, Mr. Steacy, and what happened?

7 MR. STEACY: I know that the hearing
8 happened, and I have read the decision, but I am not
9 intimately familiar with what happened during the
10 Tribunal process, no.

11 MS KULASZKA: Are you aware that -- I
12 should say, in Kulbashian, Bahr, Kouba, Beaumont and
13 Donnelly, was Mr. Warman the complainant in all of
14 those cases?

15 MR. STEACY: I believe so, yes.

16 MS KULASZKA: Are you aware that Mr.
17 Warman follows a set procedure? He lays a complaint
18 under the Canadian Human Rights Act, section 13, and at
19 the same time he goes to the police and he tries to
20 have criminal charges laid.

21 MR. STEACY: I am not aware that he
22 does that, I am just aware of the fact, if it becomes
23 my case, that he has filed a complaint.

24 MS KULASZKA: Do you know who laid
25 the charges against Mr. Kulbashian justifying the raid

1 on his house by police?

2 MR. VIGNA: Mr. Chair, I don't know
3 if that is part of the criminal process or part of the
4 civil process.

5 THE CHAIRPERSON: There is a lot of
6 evidence in the record. I could pull up my decision.
7 I don't remember if I wrote it down. I think I heard
8 who had laid the complaint, but I don't recall at this
9 very moment.

10 I think it was part of the public
11 record.

12 Can you advise us, Ms Kulaszka? Have
13 you looked at the transcript?

14 MS KULASZKA: I have looked at the
15 transcript, and they obtained considerable evidence
16 from the police.

17 THE CHAIRPERSON: Who did?

18 MS KULASZKA: The Commission.

19 THE CHAIRPERSON: Yes, but your
20 question was who filed the criminal complaint.

21 MS KULASZKA: Yes. I am interested
22 in knowing whether Mr. Steacy knows whether Mr. Warman
23 laid criminal charges against Mr. Kulbashian.

24 MR. STEACY: I don't know.

25 THE CHAIRPERSON: He doesn't know.

1 Mr. Vigna had gotten up to object,
2 but the witness says that he doesn't know.

3 I don't know if that was in the
4 evidence. That's what I am saying, it might have been
5 in the evidence that I heard in that case, Ms Kulaszka.

6 MS KULASZKA: If someone is a
7 respondent at a hearing, in a complaint before the
8 Commission, and they are also the subject of either a
9 criminal charge or a search warrant, do you have an
10 arrangement with the police to exchange information
11 regarding that person?

12 MR. VIGNA: Mr. Chair, I object to
13 the question.

14 THE CHAIRPERSON: Why?

15 MR. VIGNA: Unless the question is
16 made more clear, because I don't quite understand --

17 Maybe the question could be better
18 specified. Then I wouldn't have a need to object.

19 MS KULASZKA: It is clear that in
20 several of these cases this is to be remedial
21 legislation. It is to ameliorate discrimination, and
22 yet, when we look at these cases, very often police
23 officers are being called to testify, and they are
24 using evidence that police powers have been used to
25 garner, and this evidence is being put forward in front

1 of hearings to do with remedial legislation.

2 So I am trying to get at: What is
3 the relationship between the police and the Commission
4 in these cases.

5 THE CHAIRPERSON: Right. So let's
6 hear your question.

7 MS KULASZKA: That's my question.
8 What is the relationship between the police and the
9 Commission in these types of cases?

10 MR. VIGNA: Mr. Chair, I would object
11 under section 37, in terms of information that is
12 provided as part of the investigation.

13 It is known to the Tribunal, as part
14 of several hearings, that police officers were called
15 in Tribunal hearings. I don't think we need to know
16 more than that.

17 In any civil proceeding, it doesn't
18 impede a police officer, as a witness of certain facts,
19 to be called before the civil proceeding, also.

20 But if we go further than that, in
21 terms of trying to find out about investigation
22 techniques, and what has been said between the police
23 and --

24 THE CHAIRPERSON: I think what is
25 being alluded to, if I understood Ms Kulaszka's

1 comments just before the question, is whether some sort
2 of protocol exists, or an understanding, between these
3 two actors on this stage, if I could use the term.

4 I think that is the point of her
5 question.

6 Is that correct, Ms Kulaszka?

7 MS KULASZKA: Yes.

8 THE CHAIRPERSON: I don't know to
9 what extent --

10 Let me back up a bit. That would
11 also, for them, be part of their ultimate submissions
12 on the larger question.

13 That is the specific question, Mr.
14 Vigna. Are you invoking section 37 to prevent this
15 witness from telling us if there is some sort of
16 understanding in place between police forces in Canada
17 and the Commission on the exchange of information?

18 Would that be the question, Ms
19 Kulaszka?

20 MS KULASZKA: Yes, the exchange and
21 use of information.

22 THE CHAIRPERSON: That is the
23 question.

24 Are you objecting under section 37,
25 Mr. Vigna?

1 If you are, I would ask you to
2 specify to me the specific public interest being
3 invoked.

4 MR. VIGNA: If the question is
5 limited to only that specific question, but not to go
6 any further into the details, I will not object. But
7 if it goes further, I will object based on public
8 interest and investigation techniques.

9 THE CHAIRPERSON: I am going to ask
10 you to specify that every time from now on, just so it
11 is clear on the record.

12 You heard the question, sir?

13 MR. STEACY: Yes, I think I am clear.

14 We don't have any specific written
15 agreements with any police forces on the sharing of
16 information.

17 MS KULASZKA: Is there any kind of
18 oral agreement?

19 MR. STEACY: Yes.

20 MS KULASZKA: What is that?

21 MR. VIGNA: I object, Mr. Chair, on
22 the grounds that I mentioned earlier, investigation
23 techniques and the public interest.

24 MS KULASZKA: The question is the
25 same, except, is it written or oral?

1 He said there was no written. I
2 asked was there oral, and he said yes.

3 So it's the same question.

4 MR. VIGNA: But she is asking
5 further, in terms of what the agreement is.

6 THE CHAIRPERSON: Are you invoking
7 section 37 of the Canada Evidence Act, that the
8 information should not be disclosed on the grounds of a
9 specified public interest?

10 And that specified public interest
11 is...?

12 MR. VIGNA: Jeopardizing the
13 investigations and the operations of the Commission, as
14 well as potential criminal investigations.

15 THE CHAIRPERSON: That is the answer.
16 They have invoked section 37. You will have it on the
17 transcript, Ms Kulaszka.

18 MS KULASZKA: You were the
19 investigator on a complaint filed by Andrew Guille
20 against an Alan Dutton, were you not?

21 MR. STEACY: Yes, I was.

22 MS KULASZKA: During the course of
23 writing your report you contacted the police in London,
24 did you not?

25 MR. STEACY: Yes, I did.

1 MS KULASZKA: I will read from your
2 investigator's report.

3 For the Tribunal, that is found in
4 R-3, at Tab 3. The pages aren't numbered, but the
5 investigator's report is four pages from the back.

6 Mr. Steacy, I am going to read from
7 paragraph 10 of your investigator's report. It is
8 found at page 3 of 5.

9 THE CHAIRPERSON: This is the
10 investigation report in the Andrew Guille file.

11 MS KULASZKA: That's right.

12 This was a complained filed by Andrew
13 Guille against Mr. Dutton. Right?

14 MR. STEACY: I believe it was
15 actually against "recomnet".

16 Mr. Dutton is the Executive Director
17 of the organization that runs that website.

18 MS KULASZKA: I am looking at page 1,
19 which is the actual complaint, and the respondents were
20 Alan Dutton, Helmut-Harry Loewen, Dale Cornish and
21 Analogue Echo.

22 MR. STEACY: I believe that Analogue
23 Echo was taken out of the actual complaint.

24 The rest of what you have there
25 sounds correct.

1 MS KULASZKA: At paragraph 10 of your
2 investigator's report you wrote:

3 "On July 13, 2006, the
4 investigator interviewed Sgt.
5 Don McKinnon of the London
6 Police Force. He indicated that
7 Mr. Guille's contention that he
8 is not a member of any white
9 supremacist or neo-Nazi
10 organization is technically
11 correct because none of these
12 organizations compile membership
13 lists. However, he advised that
14 Mr. Guille is known by the
15 police to be closely associated
16 with white supremacist
17 organizations in the
18 southwestern Ontario region. He
19 indicated that he also has
20 pictures of Mr. Guille partying
21 with white supremacists at
22 several different rallies that
23 they have held in southwestern
24 Ontario."

25 To get that information did you just

1 call up Sgt. McKinnon?

2 MR. STEACY: Yes.

3 MS KULASZKA: And he freely gave you
4 this information?

5 MR. STEACY: Yes.

6 MS KULASZKA: Is he a member of the
7 Hate Crimes Unit down there?

8 MR. STEACY: I believe so.

9 MS KULASZKA: Is it understood,
10 basically, that if you need information, they will
11 freely give that information to you concerning people
12 of interest?

13 MR. STEACY: I wouldn't characterize
14 it that they would freely give me any information.

15 MS KULASZKA: Are there any rules
16 about confidentiality of this type of information that
17 the police may have on people?

18 MR. STEACY: You would have to ask
19 the police.

20 MS KULASZKA: But as far as your
21 experience at the Commission is concerned, they will
22 basically give you any kind of information you want
23 about someone?

24 MR. STEACY: No, that's not correct.

25 MS KULASZKA: Have you been refused

1 information?

2 MR. STEACY: Yes.

3 MS KULASZKA: What kind of
4 information?

5 MR. VIGNA: Objection, Mr. Chair.
6 Section 37. What kind of information is being obtained
7 or refused, I think it would be part of the
8 investigative privilege.

9 THE CHAIRPERSON: Say that again?

10 MR. VIGNA: Section 37. Public
11 interest. The information that would be disclosed or
12 not disclosed, I think, would be all part of the same
13 privilege, the public interest privilege, that this
14 type of information does not need to be put in the
15 public domain.

16 THE CHAIRPERSON: Okay. You have
17 mixed up the terms, but I gather you are invoking the
18 exact same reasons that you just invoked earlier,
19 section 37?

20 MR. VIGNA: Yes.

21 THE CHAIRPERSON: It is noted for the
22 record.

23 Ms Kulaszka?

24 MS KULASZKA: How often do you think
25 you would use the police as a source of information in

1 doing your investigations?

2 MR. STEACY: It would depend on the
3 case.

4 MS KULASZKA: Is it a regular feature
5 of your investigations?

6 MR. STEACY: Again, it would depend
7 on the case.

8 MS KULASZKA: What would it depend
9 on?

10 MR. STEACY: It would depend on the
11 information that was gathered during the investigation
12 process.

13 In the normal course, I don't pick up
14 the phone and call any police department on a section
15 13 complaint.

16 MS KULASZKA: Why did you call police
17 in this instance?

18 MR. STEACY: Based on the information
19 that was put forward by the respondent, and the fact
20 that they had, in their documentation, intimated that
21 Mr. Guille was involved with white supremacist
22 organizations, and Mr. Guille had said no, that he
23 wasn't, basically the information in the file came back
24 that -- I was sort of in the situation where I had
25 one -- it was a "he said/he said" sort of situation,

1 and I attempted to verify the validity of the
2 statements.

3 MS KULASZKA: What did it matter who
4 Mr. Guille was?

5 MR. STEACY: It mattered in the sense
6 that the respondent had raised it as an issue to the
7 veracity of the complaint.

8 MS KULASZKA: The veracity of the
9 complaint?

10 MR. STEACY: Basically they were
11 alleging that the complaint was trivial or frivolous,
12 vexatious, and made in bad faith.

13 MS KULASZKA: In fact, you found that
14 there had been a violation of section 13 on that
15 website.

16 It was "recomnetwork", was it not?

17 MR. STEACY: Yes. I found that there
18 had been a technical violation of section 13.

19 MS KULASZKA: In fact, there were
20 many postings on that website that were quite racist,
21 were there not?

22 MR. STEACY: There were postings on
23 the website that would have fallen within the test of
24 13(1), yes.

25 I don't remember the exact number.

1 THE CHAIRPERSON: Did you just say
2 that you made a finding that there was a technical
3 violation of section 13?

4 MR. STEACY: Yes, sir.

5 THE CHAIRPERSON: But your ultimate
6 recommendation, as I read it here, was that the
7 complaint be dismissed. Right?

8 MR. STEACY: Yes.

9 MR. VIGNA: I would refer you to
10 paragraph 22, Mr. Chair.

11 THE CHAIRPERSON: I see. The summary
12 is there.

13 MS KULASZKA: Yes, it starts at
14 paragraph 21, which states:

15 "In this context, CAERS appears
16 to have technically violated
17 section 13 of the Act by
18 allowing postings containing
19 hatred to appear on its website.
20 As well, CAERS allowed many of
21 the links to neo-Nazi and white
22 supremacist organizations
23 contained within Mr. Warman's
24 complaints to remain active,
25 thereby allowing Internet users

1 to directly access the potential
2 hate websites. During the
3 course of investigation, Alan
4 Dutton, Director of CAERS,
5 stated in an interview with the
6 investigator that he was not
7 aware that the hyperlinks were
8 active. He also stated that as
9 for the postings, these were
10 being placed on Recomnetwork.org
11 in order to embarrass CAERS and
12 prevent them from carrying out
13 their anti-racist work. He then
14 stated that Recomnetwork.org was
15 taking steps to install filters
16 that would prevent these
17 harassing postings."

18 Is that correct?

19 MR. STEACY: Yes.

20 MS KULASZKA: So your summary was
21 that, although section 13 had been violated, CAERS had
22 taken steps to prevent individuals from posting
23 material that could be considered offensive and/or
24 hateful and had reorganized its website so that
25 postings could not occur without being monitored.

1 Is that right?

2 MR. STEACY: Yes. As well, they
3 killed the hyperlink, so that if you clicked on it you
4 couldn't go to the link.

5 MS KULASZKA: Your recommendation was
6 that the Commission shouldn't deal with the complaint,
7 and one of the reasons was that the matter had been
8 redressed.

9 MR. STEACY: Yes.

10 MS KULASZKA: Is this a typical
11 procedure for the Commission, that if the respondent
12 has redressed the situation complained of, and the
13 material is removed, that, in fact, the recommendation
14 is that the matter not go to a tribunal?

15 MR. STEACY: Typical? Again, it will
16 depend on all of the facts of the case.

17 MS KULASZKA: I have just given you
18 the facts.

19 MR. STEACY: Based on the facts that
20 I put in that investigation report, I made a
21 recommendation.

22 MS KULASZKA: Yes, and that is what I
23 am saying to you. The matter had been redressed. They
24 had removed the hyperlinks. They had reorganized their
25 website to make sure that the postings couldn't appear,

1 or they were removed --

2 Were they removed?

3 MR. STEACY: The postings were
4 removed, yes.

5 MS KULASZKA: Would it be the policy
6 of the Commission that, at that point, the complaint
7 should not go to a tribunal?

8 That would be your recommendation?

9 MR. STEACY: On this case, yes.

10 MS KULASZKA: What kind of directions
11 are you given in these matters?

12 Are you given guidelines about the
13 kinds of actions that you would recommend, given what a
14 respondent has done?

15 MR. STEACY: What would happen is,
16 once I completed my investigation report, the report
17 would be submitted to the Anti-hate Team, and it would
18 be discussed, and if everybody on the team was in
19 agreement with the appropriateness of the report, it
20 would then be disclosed to the complainant and the
21 respondent.

22 If, during the discussion of the
23 Anti-hate Team, members felt that something more was
24 needed, or they didn't necessarily agree with the
25 recommendation, it would be discussed and it could

1 involve more investigation or it could involve that the
2 investigation report would then be sent on to our Case
3 Support Committee for review.

4 In this case it was determined that
5 the team felt that CAERS had taken the appropriate
6 steps to try to resolve the issues that were being
7 complained of.

8 MS KULASZKA: When you started doing
9 section 13 complaints, what kind of training were you
10 given?

11 MR. STEACY: I wasn't given any
12 specific training, other than the investigative
13 training that I had received at the Commission.

14 MS KULASZKA: What about identifying
15 hate material?

16 MR. STEACY: I wasn't given any
17 specific training by an outside organization or another
18 organization on hate material.

19 MS KULASZKA: What about within the
20 Commission itself?

21 MR. STEACY: It was on-the-job
22 training.

23 MS KULASZKA: So what kind of
24 training were you given?

25 MR. STEACY: I learned on the job. I

1 learned through what was at the Tribunal with the
2 Zündel case and what had been put forward in Nealy and
3 Taylor. This was the basis for what hatred and the
4 elicitation of hatred and contempt should be.

5 MS KULASZKA: Are you given any kind
6 of policy guidelines that you must follow during an
7 investigation -- general policy guidelines in handling
8 an investigation?

9 MR. STEACY: Yes, we have our
10 Policies and Procedures Manual.

11 MS KULASZKA: In that manual, are you
12 given any direction about what action you should take
13 when a respondent takes down the offensive material?

14 MR. STEACY: I don't believe there is
15 anything specific about that in the manual.

16 MS KULASZKA: Did you speak with Alan
17 Dutton during this investigation?

18 MR. STEACY: Yes.

19 MS KULASZKA: On the telephone?

20 MR. STEACY: Yes.

21 MS KULASZKA: In those telephone
22 conversations, you made him aware of your concerns?

23 MR. STEACY: Yes, I did.

24 MS KULASZKA: And asked him how he
25 could redress the situation?

1 MR. STEACY: Yes, I did.

2 MS KULASZKA: How many conversations
3 do you think you had?

4 MR. STEACY: I had a couple of
5 conversations with him.

6 MS KULASZKA: Did he send you letters
7 indicating what progress was being made to redress the
8 situation?

9 MR. STEACY: I was provided
10 correspondence, yes.

11 MS KULASZKA: Your goal as an
12 investigator under section 13 is what?

13 MR. STEACY: As in any investigation,
14 it is to gather the facts presented by the complainant
15 and the respondent and write a report, so that the
16 facts are before the commissioners, so the
17 commissioners can make a decision.

18 MS KULASZKA: But in this case you
19 went beyond that, didn't you? You actually talked to
20 Alan Dutton and you expressed your concerns.

21 You have a conversation, isn't that
22 right, and he determines how he can have this complaint
23 dismissed?

24 MR. STEACY: The Act allows, at any
25 time during the course of a complaint process, the

1 Commission to attempt to settle the case.

2 MS KULASZKA: Is that what you were
3 doing?

4 A. Yes, I guess.

5 One of the things we ask a
6 complainant in the complaint process -- in the
7 process -- is what they are looking for to resolve the
8 complaint.

9 As you have stated, our Act is
10 remedial.

11 We ask all complainants what they are
12 looking for to resolve the complaint, and Mr. Guille
13 had outlined that in his correspondence, and it was
14 apparent from the information that had been provided by
15 Mr. Dutton that there appeared to be a possibility of
16 rectifying the complaint through settlement.

17 However, that didn't sort of come to
18 fruition, so there is not a settlement document, there
19 is an investigation report, which sort of outlines the
20 steps that happened -- or what happened, and the
21 recommendation.

22 MS KULASZKA: There are sort of two
23 ways that things can go.

24 The parties can agree to mediate, the
25 Commission can order conciliation, and the third way is

1 through the investigator. The investigator can contact
2 the respondent and let them know what needs to be done
3 to have the matter resolved, which is what you did.

4 MR. STEACY: In essence, yes.

5 That is a generalization, but, yes.

6 MS KULASZKA: In the Guille case, as
7 well, you state at paragraph 23:

8 "The investigator reviewed the
9 material on CAERS' website and
10 it would appear that the
11 documents are the actual
12 complaint forms made by Richard
13 Warman. As such, the
14 reproduction of the said
15 material has been used for
16 educational purposes and not to
17 elicit hatred and/or contempt
18 within the ambit of section 13
19 of the Act."

20 Of what relevance is why the material
21 was posted?

22 Say that it was for educational
23 purposes. Is intent relevant under this Act?

24 MR. STEACY: No.

25 MS KULASZKA: So why did you even

1 include this in your report?

2 MR. STEACY: It's context. It's the
3 context of what and why the information was on that --

4 MS KULASZKA: You are speaking about
5 intent, Mr. Steacy, not context.

6 MR. STEACY: No. If intent -- if it
7 was otherwise, the recommendation would have been to
8 dismiss without the proviso that there had been a
9 technical violation.

10 MS KULASZKA: So you are looking at
11 motivation -- intent.

12 MR. STEACY: No.

13 MS KULASZKA: So if your motivation
14 is for education, and your motivation isn't hostile,
15 that makes all the difference to you.

16 MR. STEACY: I wouldn't paraphrase it
17 like that, no.

18 I don't look at motivation, and I
19 don't look at intent, I look at the facts of the case
20 that are presented by both parties, and, as our Act is
21 remedial, if there is a way to resolve the issues that
22 are being complained of for both the respondent and the
23 complainant, then, as an investigator, I will try to
24 pursue that in any case. If I can resolve it that way,
25 then I do that. If I can't, I can't.

1 It's a matter of the facts that are
2 presented by the parties in the case.

3 I don't look at motivation or intent.

4 MS KULASZKA: In this case, the
5 material was reproduced, and you said that it has been
6 used for educational purposes and not to elicit hatred.
7 That goes to the intent of using the information.

8 MR. STEACY: That is the position of
9 the respondent, that that is the reason they had it on
10 the website.

11 MS KULASZKA: So you really don't
12 have any problem with racist material being posted, as
13 long as it is for a good purpose.

14 MR. STEACY: I can't answer that
15 question.

16 It is not my job as a civil servant
17 to have problems with or not problems with anything
18 that is posted on any website. If somebody complains
19 that there is a violation of section 13(1), I am given
20 a file and I process that file regardless of who the
21 complainant is or who the respondent is.

22 I do the same thing with any file
23 that I get. If it's a complaint on religion, colour,
24 national or ethnic origin, disability, I process the
25 file and the complaint that is given to me. It is not

1 my job to say who is right or who is wrong. It is not
2 my job as an investigator to do that. I gather facts,
3 provide the information in a report, and, yes, there is
4 a recommendation for the commissioners, but the
5 commissioners make the ultimate decision, not me.

6 MS KULASZKA: But you would agree
7 that this complaint included such things as this
8 posting:

9 "Lousy kikes. They are always
10 bitching about the holohoax.
11 Hitler should have gassed them
12 all and we shouldn't have this
13 problem. The same with the
14 worthless gypsies."

15 It was that kind of thing, wasn't it?

16 MR. STEACY: Pardon me?

17 MS KULASZKA: It was those kinds of
18 postings.

19 THE CHAIRPERSON: Where are you
20 reading from?

21 MS KULASZKA: I am reading from the
22 actual complaint.

23 It is the same tab, and it is the
24 third page from the front.

25 MR. STEACY: That was what was being

1 complained of by Mr. Guille in his complaint. Those
2 are his allegations as to what was there.

3 MS KULASZKA: Did you view that
4 online?

5 MR. STEACY: I am trying to remember
6 now. I don't recall if I viewed that specific posting,
7 but when I went in and looked at the website, there
8 were postings, yes.

9 MS KULASZKA: In this complaint,
10 CAERS said that the matter was trivial, frivolous,
11 vexatious or in bad faith, and they provided you with a
12 posting from Stormfront.org. It was by a user with the
13 pseudonym Fenrisson. Correct?

14 MR. STEACY: Yes.

15 MS KULASZKA: You talk about that at
16 paragraph 7 of your report, and you quote from the
17 Fenrisson post that had been provided to you by CAERS,
18 and the post says:

19 "For the rest of us we can use
20 the CHRC to our advantage. As
21 it costs no more than the price
22 of an envelope you can file a
23 claim against someone without
24 fear of legal retaliation as you
25 are protected by the CHRC from

1 such. Should someone who comes
2 after our own say or do
3 something that even remotely
4 contravenes the rules of the
5 commission...they may find that
6 they are suddenly swamped with
7 dozens of claims against them.
8 If nothing else it bogs down an
9 already stressed system designed
10 to destroy us, all for the price
11 of a letter."

12 Did you ask Mr. Guille if he had
13 written that post?

14 MR. STEACY: I believe I asked him if
15 he was aware of the post when I sent him the
16 respondent's summary of the information that they
17 provided. I don't recall if I asked him if he wrote
18 that, but I do recall asking him if he was aware of it.

19 MS KULASZKA: And was he?

20 MR. STEACY: He indicated that he
21 wasn't.

22 MS KULASZKA: The Fenrisson post is
23 located at Tab 17 of the large binder, which is R-17.
24 It is page 5, at the bottom.

25 Perhaps your assistant could give you

1 an idea of what that posting is, so you could identify
2 it.

3 Were you given a copy of the entire
4 posting?

5 --- Pause

6 MR. STEACY: Could you repeat the
7 question, please?

8 MS KULASZKA: I just wanted you to
9 identify the posting as the one that you were given by
10 CAERS.

11 MR. STEACY: Yes.

12 MS KULASZKA: That is the posting?

13 MR. STEACY: Yes.

14 MS KULASZKA: I would like to produce
15 that posting.

16 THE CHAIRPERSON: Just page 5?

17 MS KULASZKA: I think we could just
18 produce pages 5 and 6. The rest of it really isn't
19 necessary.

20 THE CHAIRPERSON: But is it a
21 continuum?

22 MS KULASZKA: It is part of a whole
23 thread that this Fenrisson --

24 Unless you want the whole thread --

25 THE CHAIRPERSON: I am a little

1 concerned when we don't include the whole thread,
2 because it may become an issue as to what date it was,
3 or whatever, and you are able to see that from the
4 front page and so on.

5 MS KULASZKA: Then, could we produce
6 the whole thread?

7 THE CHAIRPERSON: Is there an
8 objection?

9 MR. VIGNA: No, I don't have an
10 objection, but it is not related to this witness,
11 obviously.

12 THE CHAIRPERSON: All right. We will
13 produce the whole tab.

14 MS KULASZKA: Mr. Steacy, do you have
15 any proof that Mr. Guille wrote that posting?

16 MR. STEACY: I never indicated in the
17 report that he did write that posting.

18 MS KULASZKA: And you had no proof
19 that he was aware of it?

20 MR. STEACY: He indicated that he had
21 no awareness of it.

22 MS KULASZKA: Do you know who
23 Fenrisson is?

24 MR. STEACY: I have an idea of who he
25 is.

1 MR. VIGNA: Mr. Chair, I object to
2 speculation on matters that Mr. Steacy doesn't know
3 anything about.

4 THE CHAIRPERSON: He just said that
5 he has an idea of who it is. Perhaps he knows.

6 MR. STEACY: In stating that I have
7 an idea of who he is, I haven't gone into any great
8 detail to track down who specifically, to make sure
9 that what I found --

10 I haven't verified it. So for me to
11 say that it is specifically an individual, I can't do
12 that because I haven't verified it.

13 THE CHAIRPERSON: So your concern is
14 that you would be --

15 MR. STEACY: Saying that I know who
16 it is, when it isn't that person, because I haven't
17 taken the steps to determine if it is that individual.

18 THE CHAIRPERSON: Is it really
19 relevant, Ms Kulaszka?

20 MS KULASZKA: No. I don't want him
21 naming somebody if he doesn't --

22 THE CHAIRPERSON: It might be a false
23 accusation.

24 MS KULASZKA: No, I don't want that.
25 What steps would you take to identify

1 who Fenrisson is?

2 MR. VIGNA: Mr. Chair, I don't think
3 that is relevant. Indirectly, it goes, again, to
4 investigation techniques.

5 But, even before that, what is the
6 relevance of finding out what the steps are to find out
7 who Fenrisson is in terms of the constitutional
8 argument or even the case on the merits?

9 THE CHAIRPERSON: Do you need the
10 steps themselves, Ms Kulaszka?

11 We have heard a lot about these steps
12 already, haven't we?

13 MS KULASZKA: It would show the
14 extent to which they can identify somebody making these
15 postings.

16 THE CHAIRPERSON: And then what?

17 The purpose being?

18 Is there a broader purpose?

19 MS KULASZKA: Yes, there is a broader
20 purpose that I would like to base an argument on.

21 THE CHAIRPERSON: Go on. You are
22 afraid to say --

23 MS KULASZKA: My concern is that the
24 postings by Mr. Warman were made under the pseudonym
25 "Axe to Grind" --

1 THE CHAIRPERSON: Yes.

2 MS KULASZKA: -- and was there any
3 way they could find out who was making those postings.

4 Did they realize it was Mr. Warman?

5 Did you know that Mr. Warman was
6 making posts on Stormfront.org?

7 THE CHAIRPERSON: We are on a
8 different line now.

9 MR. STEACY: No, I didn't become
10 aware of it until it was in the Tribunal documentation.

11 MS KULASZKA: Did you know that he
12 made posts on VNN?

13 MR. STEACY: No, I did not.

14 MS KULASZKA: Were complaints
15 subsequently made about those postings?

16 MR. STEACY: There is a complaint in
17 process right now, yes, from Mr. Lemire about Mr.
18 Warman's postings.

19 MS KULASZKA: Mr. Kulbashian, did he
20 lay a complaint?

21 MR. STEACY: Mr. Kulbashian has put
22 in several complaints.

23 MS KULASZKA: Okay. Let's go back to
24 the Fenrisson post. How did you use the Fenrisson post
25 in the Andrew Guille complaint?

1 MR. STEACY: It was part of what was
2 provided by the respondent in their defence as to what
3 was happening with the complaint.

4 MS KULASZKA: Did you rely on the
5 Fenrisson post for any of your findings and
6 recommendations?

7 MR. STEACY: No.

8 MS KULASZKA: Why did you find the
9 complaint to be frivolous?

10 MR. STEACY: Based on the definition
11 and the policy and procedure guidelines that the
12 Commission has under that section, that is sort of
13 where it fell.

14 MS KULASZKA: Why?

15 MR. STEACY: Because the complainant,
16 in pursuing the complaint, had suggested -- or in his
17 documentation said that he was looking for a specific
18 remedy, and when the respondent covered that or
19 decided -- agreed that they would fix what he was
20 complaining of, he continued with the complaint.

21 MS KULASZKA: Does that make it
22 vexatious?

23 MR. STEACY: It would depend on all
24 of the specifics of the case.

25 MS KULASZKA: But, in this case, you

1 did recommend that the complaint was vexatious.

2 MR. STEACY: I think my
3 recommendation is the specific section of the Act, and
4 those are the --

5 We have certain prescribed --

6 When we make a recommendation, we
7 have prescribed recommendation wording that the
8 Commission requires we use.

9 THE CHAIRPERSON: Ms Kulaszka, I want
10 to be fair to this witness, who cannot read the text at
11 this time. I think it would be fair to let him read
12 the exact statement that is made at paragraph 27.

13 MS KULASZKA: Yes. Paragraph 27
14 states:

15 "It is recommended, pursuant to
16 paragraph 41(1)(d) of the
17 Canadian Human Rights Act, that
18 the Commission not deal with the
19 complaint because:

20 - The complaint is trivial,
21 frivolous, vexatious, and/or
22 made in bad faith and;
23 - The matter has been
24 redressed."

25 THE CHAIRPERSON: Let's even put the

1 punctuation in here. I think it's important:
2 "...trivial, frivolous, vexatious, and/or made in bad
3 faith and;..." -- the next line -- "The matter has been
4 redressed."

5 MR. STEACY: The first part of that,
6 preceding "The matter has been redressed" -- the first
7 part of that is the wording from the Act, and it is
8 required wording that I, as an investigator, have to
9 us, or that any other investigator has to use under
10 that section of the Act.

11 MS KULASZKA: You have in paragraph
12 25 of your report:

13 "Mr. Guille would like CAERS to
14 remove the hate messages from
15 its website and an undertaking
16 by CAERS to prevent future
17 publication of hate messages on
18 its website. He would also like
19 CAERS to issue a public apology
20 and is seeking \$5,000 in
21 damages."

22 Is that right?

23 MR. STEACY: Yes, that's what he
24 indicated he was seeking.

25 MS KULASZKA: That is what Mr. Guille

1 wanted. He wanted it to go to a tribunal, and those
2 were the remedies he wanted.

3 MR. STEACY: Yes.

4 MS KULASZKA: In that investigation,
5 at paragraph 11, you stated that you also interviewed
6 Matthew Lauder.

7 Is Matthew Lauder a regular
8 consultant for the Commission?

9 MR. STEACY: He is not a consultant
10 for the Commission.

11 MS KULASZKA: Is he someone who you
12 would consult with on an informal basis?

13 MR. STEACY: As I said, he is not a
14 consultant. We don't have consultants, per se, like
15 that.

16 MS KULASZKA: Is he someone you would
17 phone for information?

18 MR. STEACY: Not on a regular basis.
19 This is the first time he has ever been spoken to as a
20 witness in a case.

21 MS KULASZKA: Why did you phone him?

22 MR. STEACY: Because there had been
23 some indication within the documentation I received in
24 the file that Matthew Lauder was aware of who Mr.
25 Guille was, and it was done in an attempt to verify the

1 position of the respondent, or not verify the position
2 of the respondent.

3 MS KULASZKA: In essence, you did a
4 very large investigation of the complainant in this
5 case.

6 You go to the police, you go to
7 Matthew Lauder -- correct?

8 MR. STEACY: I wouldn't characterize
9 it as a large investigation on the complainant.
10 Certain issues were raised about the complainant, and
11 if those issues had been raised about the respondent, I
12 would have done the same thing to verify that
13 information.

14 It was done in the process of
15 verifying facts.

16 MS KULASZKA: In the case of Mr.
17 Warman, he has laid many complaints with the Commission
18 under section 13, and you must be aware that he has
19 given a speech to the ARA, and probably elsewhere,
20 about how he is using these complaints to disrupt his
21 opponents. Maximum disruption he calls it. It keeps
22 them busy. They are so busy defending themselves that
23 they haven't got time to do anything else.

24 Have you ever investigated Mr. Warman
25 for how he is using these complaints?

1 MR. STEACY: I am aware of what has
2 been in the press about him and what he has said in the
3 press, and in investigation reports there is
4 information about Mr. Warman and his activities.

5 MS KULASZKA: Have you ever
6 investigated his activities?

7 MR. STEACY: Specifically, I have
8 never investigated Mr. Warman's activities. It's not
9 my job to investigate Mr. Warman's activities.

10 MS KULASZKA: But if a future
11 complaint is made by Mr. Warman and the respondent
12 gives you this type of information and says that it is
13 frivolous and vexatious, you would investigate that,
14 would you not?

15 MR. STEACY: Yes, I would.

16 MS KULASZKA: The Fenrisson post came
17 up in another one of your investigations, did it not?

18 MR. STEACY: I don't believe so. I
19 know that it was referred to in another investigation,
20 but I don't believe that I was the investigator in that
21 case.

22 MS KULASZKA: Do you know who that
23 was?

24 MR. STEACY: My recollection is that
25 it was probably Sandy Kozak.

1 MS KULASZKA: Why would the Fenrisson
2 post be relied upon to dismiss a complaint?

3 MR. STEACY: I didn't investigate
4 that case. You would have to speak to Ms Kozak.

5 MS KULASZKA: When a complaint is
6 received, there is a form letter that is sent to the
7 respondent, and a number of things are asked for.

8 We will go to that form letter so
9 that we can see exactly what it is.

10 You are familiar with that letter?

11 MR. STEACY: Yes. It is generally
12 called our notification letter.

13 MS KULASZKA: An example in this case
14 is at Tab 1 of R-1.

15 Page 1 of 2 is what you would call
16 the notification letter?

17 Did you do any work on the Marc
18 Lemire case?

19 MR. STEACY: Against FreedomSite?

20 MS KULASZKA: Any work on this case,
21 yes.

22 MR. STEACY: FreedomSite, no, I did
23 not.

24 I was away on leave when this case
25 was investigated.

1 MS KULASZKA: Page 2 of the
2 notification letter states as follows:

3 "At this time, I would
4 appreciate received by March 9,
5 2004 your position regarding the
6 allegations including, but not
7 limited to, the following:
8 1. Do you own and/or control
9 the www.freedomsite.org and
10 http://chat.freedomsite.org
11 websites? If not, who owns
12 and/or controls these websites?
13 What is..."

14 I won't repeat the URLs. They give
15 the two URLs:

16 "...present Internet address
17 (URL)?
18 2. What is the purpose of the
19 www.freedomsite.org?
20 3. What is the intent of the
21 information/documentation posted
22 on the websites?
23 4. Who is responsible for
24 editing and/or posting the
25 content of the

1 information/documentation on the
2 websites?

3 5. How are the documents (e.g.)
4 being posted on the
5 www.freedomsite.org and..."

6 I will just say "freedomsite.org
7 websites."

8 "6. Who is your present
9 Internet Service Provider (ISP)?
10 Where is it located? Please
11 provide a copy of the ISP's
12 arrangement. Please provide a
13 copy of the agreement with ISP."

14 We will go back to these questions.
15 What is the purpose of Point 3, which
16 is:

17 "What is the intent of the
18 information/documentation posted
19 on the websites?"

20 MR. STEACY: The question is being
21 asked to determine the purpose of the website.

22 MS KULASZKA: And why would you ask
23 that?

24 MR. STEACY: I guess that it was
25 asked to determine whether it was structured to elicit

1 hatred and/or contempt and possibly violate section 13
2 of the Act.

3 MS KULASZKA: But isn't that your job
4 as an investigator?

5 MR. STEACY: Is it my job as an
6 investigator to make that determination?

7 MS KULASZKA: Yes. Isn't it your job
8 to --

9 MR. STEACY: Yes, but I have to
10 gather information from both parties. I can't just
11 say, "Oh, there it is...", without understanding the
12 nature of the information or why that information was
13 posted.

14 As an investigator you are gathering
15 facts, and both parties have a right to provide a
16 position.

17 MS KULASZKA: Why do you ask who the
18 ISP is?

19 MR. STEACY: We want to know who the
20 ISP is in order to determine, in some cases,
21 jurisdiction. As well, if there is information that
22 could be deemed in violation of section 13, and we
23 can't get the cooperation of the parties to have that
24 information removed, one thing we could do is go to the
25 ISP and ask them to remove it.

1 That would be done, obviously, well
2 after the complaint has been heard by the Commission
3 and/or the Tribunal.

4 MS KULASZKA: But, in some instances,
5 like the B.C. White Pride case, there was no decision.
6 In fact, that letter was written before there was any
7 kind of decision by the Tribunal.

8 MR. STEACY: That could be done.

9 As I said, the investigative powers
10 that we have are fairly broad, and it depends on the
11 nature of the case.

12 MS KULASZKA: What do you mean by the
13 ISP's arrangement?

14 MR. STEACY: The service contract
15 that the individual has with their ISP.

16 MS KULASZKA: What are you looking
17 for in that arrangement?

18 MR. STEACY: To see if the ISP
19 contract has a statement about what an individual can
20 or cannot present on their website.

21 MS KULASZKA: Would that be called an
22 Acceptable Use Policy?

23 MR. STEACY: It might be.

24 MS KULASZKA: If someone did provide
25 you with that agreement or arrangement, and you found

1 that there was no Acceptable Use Policy in it, would
2 you contact the ISP and ask them why they don't have
3 such a clause?

4 MR. STEACY: We might.

5 MS KULASZKA: Have you done that?

6 MR. STEACY: I haven't.

7 MS KULASZKA: To your knowledge, have
8 other people at the Commission?

9 MR. STEACY: I don't know.

10 MS KULASZKA: Would you like to take
11 a break at this time?

12 THE CHAIRPERSON: That would be fine.

13 MR. VIGNA: I was wondering about Mr.
14 Goldberg and what time I should tell him to be here
15 tomorrow, because, for sure, he will not be needed
16 today.

17 THE CHAIRPERSON: I think it is quite
18 clear that he will not be needed today.

19 MR. VIGNA: I will call him at the
20 break, if that is agreeable.

21 MS KULASZKA: That's agreeable.

22 --- Upon recessing at 3:20 p.m.

23 --- Upon resuming at 3:50 p.m.

24 MS KULASZKA: Mr. Steacy, you were
25 talking before about context and how important it is

1 when you do your investigation. What value do you give
2 freedom of speech when you investigate one of these
3 complaints?

4 MR. STEACY: Freedom of speech is an
5 American concept, so I don't give it any value.

6 MS KULASZKA: Okay. That was a clear
7 answer.

8 MR. STEACY: It's not my job to give
9 value to an American concept.

10 MS KULASZKA: I will give you an
11 example. The AOL complaints you spoke about earlier
12 and you said that they dealt with postings about the
13 same-sex marriage debate.

14 Is that right?

15 MR. STEACY: Yes.

16 MS KULASZKA: Did you give any kind
17 of consideration to the fact that people were
18 participating in a political debate at the time?

19 MR. STEACY: Yes.

20 MS KULASZKA: How did you do so?

21 MR. STEACY: In evaluating the
22 information or the postings that were given by the
23 posters, what was looked at were the arguments that
24 were being made by the complainant and/or the
25 respondent, and basically the positions of the parties.

1 In one case, one of the respondents
2 put the issue forward of freedom of expression. That
3 was part of his defence, and what he had posted was
4 what he had posted. That information was provided to
5 the complainant for his comment, and, again, based on
6 the facts raised or the information provided by both
7 parties, that is what was presented in the
8 investigation report.

9 I didn't make a value judgment as to
10 whether or not the complainant or the respondent --
11 that the positions they were taking were right or
12 wrong, I presented both parties' positions.

13 My job is not to evaluate the intent
14 or the reasons why the individual posted what he
15 posted, or evaluate the reasons why the complainant is
16 complaining. He has made an allegation and my job is
17 to investigate whether it happened and, based on the
18 pertinent facts, I come up with a recommendation, and
19 that recommendation is presented to the Commission and
20 the Commission makes the decision to deal with it or
21 not to deal with it, and it recommends what it is
22 allowed to recommend.

23 MS KULASZKA: Do you take into
24 account, for instance, in that case, that there is a
25 political debate, it is very heated, and that people

1 might get emotional about it?

2 MR. STEACY: Yes, that was one of the
3 factors that was taken into account in one of the
4 cases.

5 But, at the same point in time, the
6 comments and how far they went, and where they went,
7 and the level of the intensity that they went, was also
8 factored into the position of the parties.

9 MS KULASZKA: So if someone claims
10 freedom of speech for what they said, it is rejected
11 out of hand?

12 MR. STEACY: If somebody is claiming
13 freedom of expression, it is not rejected.

14 As I said, freedom of speech is an
15 American concept, it is not a Canadian concept. If
16 somebody said, "I am doing this because of freedom of
17 speech," I would equate that to somebody raising a
18 freedom of expression concept.

19 MS KULASZKA: But you do realize that
20 freedom of expression is protected under the Charter of
21 Rights in Canada.

22 MR. STEACY: To a point it is.

23 MS KULASZKA: Yes, so I am asking you
24 if you try to balance these values, these rights, in an
25 investigation of section 13.

1 MS DAVIES: Mr. Chair, is the witness
2 being asked to do a constitutional analysis?

3 It is not his job to determine
4 whether section 13 is constitutional, he just applies
5 it.

6 THE CHAIRPERSON: Yes, I understand
7 that. That is clear, but I think it is important to
8 understand how the Commission undertakes its
9 investigations.

10 I think that is what is being asked
11 for here, on what basis does he exercise his duties to
12 make recommendations.

13 That's understood.

14 It is certainly quite enlightening to
15 hear what he is saying. Go ahead.

16 MR. STEACY: What specific type of
17 language am I allowed to use?

18 THE CHAIRPERSON: You are free to use
19 any language you want.

20 MR. STEACY: I mean profane language.

21 THE CHAIRPERSON: Oh, it's
22 permissible, given the nature of the subject matter.
23 You may use profane language.

24 MR. STEACY: If, for example, a
25 posting says, "Every gay person should be taken out and

1 whacked because they are butt fuckers," like was in
2 some of the postings, in my interpretation, in the
3 training I received, that goes beyond what is
4 allowable.

5 If somebody writes in a posting, "I
6 disagree with gay marriages because my religious
7 beliefs tell me that it's against my religion," that's
8 freedom of expression.

9 MS KULASZKA: Do you take into
10 account on message boards that people are sitting in
11 their homes and they perceive message boards as being a
12 private space?

13 MR. STEACY: No.

14 MS KULASZKA: Do you take into
15 account the fact that they believe they are conversing
16 with other people?

17 MR. STEACY: Yes, I do.

18 MS KULASZKA: How do you take that
19 into account?

20 MR. STEACY: Regardless of the fact
21 that you are conversing with somebody else, you don't
22 have the right to say absolutely anything you desire,
23 especially when it's in a written format.

24 MS KULASZKA: Would you agree that a
25 lot of this material, like the example you just gave,

1 is almost barroom talk?

2 If you were in a bar, you could hear
3 this kind of talk.

4 MR. STEACY: Yes, but that doesn't
5 mean it's acceptable.

6 MS KULASZKA: No, it doesn't mean
7 that it's acceptable, but it is the equivalent, isn't
8 it?

9 MR. STEACY: No.

10 MS KULASZKA: Except one is written
11 and one is oral.

12 MR. STEACY: Yes.

13 MS KULASZKA: I am going to give you
14 an example. This is something from my personal
15 experience. This is a friend who had retired and her
16 husband was driving her crazy, because he had retired,
17 too, and she was complaining to someone I know about
18 it, and she said, "You know, I think I'm going to have
19 to shoot the bugger." She was talking about her
20 husband, because he kept following her around their
21 apartment.

22 In an oral conversation it's
23 humorous, but what if she had put that on a message
24 board?

25 MR. STEACY: I would think that the

1 police might think there had been a death threat made.

2 MS KULASZKA: That's right. It would
3 stop being funny. It would stop being a little
4 profane, but funny, a bit of a joke, and it would
5 become quite serious, simply because it's written.

6 Is that right?

7 MR. STEACY: Yes.

8 MS KULASZKA: Do you ever take into
9 account that context?

10 MR. STEACY: Yes, I do, and I have.

11 MS KULASZKA: Do you take into
12 account the fact that people who post on a message
13 board are not part of a large-scale scheme to promote
14 hatred?

15 MR. STEACY: Again, it depends on the
16 case. It depends on what was posted on the board. It
17 depends on what the allegations of the complaint are.

18 MS KULASZKA: But you are aware that,
19 in the Taylor case, John Ross Taylor had a party called
20 The Western Guard Party and that taped telephone
21 messages were part of their outreach program?

22 It was an outreach program. It was
23 regular. It was organized. It was a campaign to reach
24 the public, wasn't it?

25 MR. STEACY: I am historically aware

1 of what went on. I am also aware that the Court found
2 that it violated the law.

3 MS KULASZKA: Yes, but you are
4 familiar with the Taylor case just by the fact that you
5 do section 13 investigations.

6 MR. STEACY: That's correct.

7 MS KULASZKA: And you are aware that
8 the Supreme Court held that it had to be part of a
9 large-scale scheme in the public?

10 MR. STEACY: I am not specifically
11 aware that it said it that way, but I will take your
12 word for it, if that's what was written.

13 MS KULASZKA: How many cases that you
14 have done have dealt with bulletin boards or message
15 boards?

16 MR. STEACY: I would say no more than
17 15.

18 MS KULASZKA: Out of how many?

19 MR. STEACY: Out of, probably, 30.

20 MS KULASZKA: So half?

21 MR. STEACY: I wouldn't say it was
22 half, because one case involved nine -- it was what we
23 call a combined complaint, so it would be one. There
24 was one complainant against AOL, plus eight other
25 conjoined respondents.

1 They were the individuals who had
2 been posting on the AOL bulletin board.

3 MS KULASZKA: In your policy
4 guidelines that you referred to, is there any mention
5 of freedom of speech or how it should be taken into
6 account in section 13 investigations?

7 MR. STEACY: I don't recall. I would
8 have to review it again.

9 MS KULASZKA: Is there any mention of
10 freedom of conscience?

11 MR. STEACY: No.

12 MS KULASZKA: I want to go to R-3,
13 which is the small binder, at Tab 1, the fourth page.

14 Mr. Steacy, this is a letter signed
15 by you, which is dated May 17, 2006, and it is with
16 respect to a complaint that was laid by the respondent
17 in this case, Marc Lemire.

18 It is about complaints against the
19 Peel Regional Police, the Canadian Broadcasting
20 Corporation and the Bell Globemedia Publishing company.

21 Do you remember that complaint?

22 MR. STEACY: Yes, I do.

23 MS KULASZKA: It says under "The Peel
24 Regional Police," at the bottom of the first page of
25 the letter:

1 "You allege that the Peel
2 Regional Police is
3 discriminating against First
4 Nations peoples and White people
5 by repeatedly sending emails via
6 their computer systems, which
7 would likely contravene section
8 13 of the CHRA.

9 It would appear that this was
10 a private email that was sent by
11 employees of the Peel Regional
12 Police to employees of the Royal
13 Canadian Mounted Police. As
14 such, the sending of the said
15 email would constitute private
16 communication. In *Canada (Human*
17 *Rights Commission) v. Taylor*,
18 the Supreme Court of Canada
19 explored the purpose of s. 13
20 stating that by focussing upon
21 `repeated' telephonic messages,
22 s. 13(1) directs its attention
23 to public, larger-scale schemes
24 for the dissemination of hate
25 propaganda. You did not provide

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1 any documentation or evidence
2 that would indicate that this
3 email was disseminated to the
4 general public or was made
5 accessible to the general public
6 by the Respondent.
7 Consequently, it does not appear
8 that your complaint falls under
9 s. 13 of the *Canadian Human*
10 *Rights Act.*"

11 Do you remember writing that?

12 MR. STEACY: Yes, I do.

13 MS KULASZKA: So in that paragraph
14 you do refer to Taylor, and that what is required is a
15 public, larger-scale scheme for the dissemination of
16 hate propaganda.

17 MR. STEACY: Yes.

18 MS KULASZKA: You would agree that
19 these were e-mails, or a private e-mail, and it was
20 about ethnic jokes, was it not?

21 MR. STEACY: My recollection of the
22 e-mail is that it was lyrics of a song, or portions of
23 lyrics of a song that had been passed in an e-mail.

24 MS KULASZKA: I think it was a series
25 of jokes about Indians. Whether there were lyrics, I

1 don't know. I think it was jokes.

2 The police were sending this joke
3 around their e-mail systems. Right?

4 MR. STEACY: That's what Mr. Lemire
5 indicated or alleged.

6 MS KULASZKA: How does that compare
7 to a message board where you actually have to sign in
8 or log in to get into the message board?

9 MR. STEACY: The difference is that
10 anybody could log in or sign into the message board,
11 where the Peel Regional Police is restricted by the
12 Peel Regional Police and its IT and its scope of
13 business.

14 MS KULASZKA: But you realize that
15 the e-mails weren't restricted to the Peel Police, they
16 had sent it to the RCMP. They had friends in the RCMP
17 and beyond.

18 MR. STEACY: Mr. Lemire indicated
19 that it had been forwarded through e-mail, yes.

20 MS KULASZKA: So it wasn't restricted
21 to Peel.

22 MR. STEACY: It was restricted within
23 an e-mail and not just --

24 The general public, in that sense,
25 didn't have access to those e-mails.

1 MS KULASZKA: A message board is
2 really the same thing, it's a private space for the
3 people who join that message board.

4 MS DAVIES: Mr. Chair, I think that
5 is argument, not a question.

6 THE CHAIRPERSON: Yes, it was sort of
7 argument.

8 Could you make it more of a question,
9 Ms Kulaszka?

10 MS KULASZKA: Would you not agree
11 that a bulletin board or a message board, where you
12 actually have to join, open an account, or sign in, is
13 essentially the same as an e-mail system?

14 MR. STEACY: No, I wouldn't agree.

15 MS KULASZKA: Why not?

16 MR. STEACY: Because an e-mail
17 system, such as the RCMP or the Peel Regional Police
18 would have, would be something that you are given
19 access to through a required worksite, and it is
20 restricted within that worksite; whereas a message
21 board can be open to, and is often open to anybody who
22 wishes to join.

23 There is a difference. I believe
24 there is a difference in access and requirement of
25 access and restriction of access.

1 MS KULASZKA: But you would agree
2 that access is restricted.

3 MR. STEACY: It is more restricted in
4 e-mail and who has the ability to have access to e-mail
5 or an internal work e-mail than an external bulletin
6 board that is put on an internet website.

7 MS KULASZKA: So even though access
8 to a bulletin board is restricted, you still contend
9 that it is a public, large-scale scheme for the
10 dissemination of hate propaganda.

11 MR. STEACY: Yes.

12 MS KULASZKA: In that same letter you
13 talk about the media organizations and their websites,
14 and you state:

15 "In regards to your complaints
16 against the media organizations
17 and their websites, it would
18 appear that the information on
19 the media websites is a fair and
20 accurate report of events."

21 Is that right? You said that?

22 MR. STEACY: That's correct.

23 MS KULASZKA: And those media reports
24 reproduced the jokes.

25 MR. STEACY: I believe so.

1 MS KULASZKA: So we are back, again,
2 to what you call context.

3 Is that right?

4 MR. STEACY: We are back to the end
5 use of what was on the websites of the media.

6 MS KULASZKA: That's right. The
7 jokes were reproduced in the article, and on their own
8 they contravene section 13.

9 Would you think that?

10 MR. STEACY: If they were standing on
11 their own, yes, they would contravene section 13.

12 MS KULASZKA: But because they were
13 included in a report in a newspaper, instead you said
14 that it was okay because it was a fair and accurate
15 report of events.

16 MR. STEACY: They weren't put on
17 there to elicit hatred and/or contempt.

18 MS KULASZKA: So the intent was not
19 to incite hatred.

20 MR. STEACY: They weren't there to
21 elicit hatred and/or contempt.

22 MS KULASZKA: Do you think that makes
23 a difference to an Aboriginal person reading those
24 jokes?

25 MR. STEACY: I can't really answer

1 that question.

2 MS KULASZKA: Wasn't that the point
3 of section 13, that the intent didn't matter, that the
4 harm was already there, no matter what the intent was?

5 MS DAVIES: Mr. Chair, I don't think
6 the witness can speak to legislative intent.

7 MS KULASZKA: I am trying to get at
8 how this investigation was handled, and exactly how the
9 Commission is handling these things.

10 I think that, over and over, they are
11 looking at intent.

12 THE CHAIRPERSON: I know, but the
13 last question was a bit more argument.

14 It is something, I am sure, that you
15 can raise in your arguments, Ms Kulaszka. I don't know
16 whether this witness could provide an answer to your
17 question.

18 MS KULASZKA: Okay. Your letter goes
19 on:

20 "Therefore, it does not appear
21 that the information on the
22 media websites constitutes the
23 communication of hate messages
24 under the *Canadian Human Rights*
25 *Act* as it was merely posted to

1 report the news."

2 You wrote that.

3 MR. STEACY: Yes.

4 MS KULASZKA: "In this context,
5 the media organizations which
6 you have cited within your
7 letter would be considered
8 broadcasting undertakings and
9 therefore, would be exempted
10 pursuant to s. 13(2) of the
11 CHRA..."

12 I won't read that whole section, but
13 the very last part of that provision says that
14 subsection 13(1) does not apply in respect of a matter
15 that is communicated in whole or in part by means of
16 the facilities of a broadcasting undertaking.

17 What kind of definition of
18 "broadcasting undertaking" is the Commission using?

19 MR. VIGNA: Mr. Chair, here again we
20 are asking for almost a legislative interpretation.

21 THE CHAIRPERSON: There is another
22 thing, too. I don't want us to get into a judicial
23 review of this decision, as well.

24 I don't know if you have or have not
25 reviewed it, but I won't be judicially reviewing the

1 decision not to deal with the complaint here.

2 MS KULASZKA: I will ask another
3 question.

4 THE CHAIRPERSON: Broadcasting
5 undertaking, I mean --

6 MS KULASZKA: Why is a website by a
7 newspaper or the CBC a broadcasting undertaking?

8 There is virtually no difference
9 between websites. A blog, the website of the Globe and
10 Mail, they are all on the internet and they are all
11 viewed through exactly the same protocols.

12 MR. STEACY: If the information, per
13 se, had been on a blog or on a bulletin board site and
14 had been posted that way, and it had not been removed,
15 or it was still there, in that sense, in our process,
16 we would have taken a complaint against that portion of
17 the website.

18 And we have entertained complaints
19 against media broadcasting organizations that have
20 dualfold websites, where they have their news/media
21 portion of the website and an area where they entertain
22 chat room/bulletin board facilities.

23 So if the information had been there,
24 and that's what had been complained of, we probably
25 would have taken a complaint under section 13.1. But

1 this was in their media broadcasting area.

2 MS KULASZKA: But you would agree
3 that a website put up by the CBC or the Globe and Mail
4 uses the same software and the same protocols that any
5 other website in the world would use.

6 MR. STEACY: I don't know what they
7 use to put up their website, but I would assume that it
8 is similar to most any other website.

9 MS KULASZKA: Is it your evidence to
10 me that, so long as it is the CBC, the Globe and Mail,
11 the National Post, basically they can put up anything
12 they want and you are never going to say that section
13 13 applies to them?

14 MR. STEACY: That's not correct, no.

15 MS KULASZKA: What if they put up a
16 very outrageous article on what you call their
17 broadcasting portion of their website?

18 MR. STEACY: It would depend on what
19 they put on it, and it's not my decision to determine
20 whether or not we would take a complaint. Somebody
21 would have to come to us and say, "I want to make a
22 complaint."

23 MS KULASZKA: But you understand what
24 I am asking you. You say that you applied an
25 exemption. Once the exemption applies, then section 13

1 doesn't apply. It doesn't matter what the material
2 constitutes.

3 MR. STEACY: It is to that specific
4 portion of the website.

5 We have other respondents in other
6 portions of the Act where part of the respondent is
7 federally regulated and part of the respondent is
8 provincially regulated. So if somebody was to complain
9 about something on the portion that is provincially
10 regulated, we can't take a complaint against that
11 portion of the respondent that is provincially
12 regulated. But if someone was to complain about the
13 federal regulation portion of the organization, we
14 would take a complaint.

15 MS KULASZKA: But your jurisdiction
16 doesn't come from that, it comes from the fact that the
17 internet is being used.

18 MR. STEACY: But, also, there is an
19 exemption for 13(2). The broadcasting of their website
20 is exempt.

21 MS KULASZKA: How do you tell the
22 difference?

23 MR. STEACY: Generally, it is pretty
24 obvious what the difference is. You can tell that it
25 is the portion -- because it is usually a rebroadcast

1 of a news program that had been on television or on the
2 radio.

3 MS KULASZKA: What if, say, in this
4 case, the jokes were not rebroadcast on the radio?

5 MR. STEACY: And they were on another
6 portion of the website? We would probably take a
7 complaint.

8 THE CHAIRPERSON: I would like to get
9 a clarification, Mr. Steacy. This letter came after a
10 full investigation on your part, or was it at some sort
11 of preliminary stage?

12 MR. STEACY: It was more at a
13 preliminary stage. Mr. Lemire had contacted the
14 Commission, saying that he wanted to file a complaint
15 at what we call the intake stage, and it was assigned
16 to me to deal with, and through the analysis portion of
17 what we do to determine whether or not it is a
18 complaint, it was determined, based on the information
19 provided in the letter, that it was not.

20 THE CHAIRPERSON: So had your
21 findings been different -- I am trying to get the
22 procedure straight in my mind -- had your findings been
23 different, you would have sent one of the intake kits
24 to the complainant?

25 MR. STEACY: That's correct.

1 THE CHAIRPERSON: The proposed
2 complainant.

3 MR. STEACY: He would have been sent
4 an intake kit, and a signed complaint would then have
5 been processed.

6 THE CHAIRPERSON: In one of the
7 examples that you gave earlier of the
8 federal-provincial situation, if someone wanted to file
9 a complaint against his local supermarket, you would
10 immediately recognize that it was not a federal matter,
11 and this would be the type of letter that would go out.
12 Right?

13 MR. STEACY: That's correct.

14 For example, not that I want to
15 really name a respondent --

16 THE CHAIRPERSON: No.

17 MR. STEACY: Hydro, for example. I
18 think it is called Ontario Power Generation. If
19 somebody was complaining about the local hydro
20 switching station, that would be provincial
21 jurisdiction. But if they were talking about Chalk
22 River or if they were talking about Bruce or any of the
23 nuclear power stations, nuclear power falls under
24 federal regulation, so we would entertain a complaint.

25 THE CHAIRPERSON: I understand.

1 MS KULASZKA: In determining if
2 something is a hate message, do you take into account
3 what is accepted generally in the community for
4 statements?

5 I am going to give you an example. I
6 would ask you to look at R-17, Tab 22.

7 I am going to read some portions of
8 this article.

9 "Canadian politicians,
10 weak-kneed and quivering as
11 always, will continue to pander
12 to vocal minorities until such
13 time as the silent majority
14 awakens from its deep winter
15 slumber. Democracy is meant to
16 serve all, not just those who
17 endlessly demand that their
18 rights supersede the rights of
19 all others."

20 THE CHAIRPERSON: Ms Kulaszka, you
21 should point out for the witness that this appears to
22 be an excerpt from the editorial page, or "Letters to
23 the Editor", of the National Post of Monday, April 23,
24 2007.

25 MS KULASZKA: Yes, I was going to do

1 that.

2 THE CHAIRPERSON: I'm sorry. I think
3 the witness should know that before you read it to him.
4 I think that's fair.

5 The rest of us can identify the fact
6 that it is an editorial letter.

7 MS KULASZKA: What I am reading from
8 is the National Post of April 23rd of this year. It is
9 the letters section. An article had been written about
10 how easy it was for natives to break the law, and it
11 was written by Lorne Gunter. These are two letters in
12 response to his article.

13 The second letter says:

14 "After having read Lorne
15 Gunter's article, I can't help
16 but wonder: Who is actually in
17 support of these criminals?
18 This whole railroad-blockade
19 fiasco is about money, not land.
20 All one has to do is drive by
21 the nearest reserve and see the
22 condition of the properties:
23 You quickly realize that the
24 residents are a far cry from
25 their Earth-worshipping

1 ancestors. In many cases, they
2 turn land into garbage dumps.
3 If they truly cared about the
4 land, they would tend it
5 properly.

6 I wonder where native
7 protestors think they will get
8 their handouts from when the
9 economy slows thanks to the
10 blockage of major trade
11 arteries.

12 It seems to me that we the
13 taxpayers are victims at the
14 hands of a bunch of weaklings in
15 government. I shouldn't have to
16 work so that an able-bodied
17 native can sit on the side of a
18 railway track, disrupt society
19 and collect a free cheque from
20 me."

21 That is accepted in the marketplace
22 in the Canadian community. It is a letter published in
23 a newspaper, with mass circulation --

24 MR. VIGNA: Mr. Chair, I object to
25 the statement, in terms of whether it is accepted in

1 the community or not.

2 THE CHAIRPERSON: I take Ms
3 Kulaszka's question as meaning that this managed to get
4 into the National Post --

5 MS KULASZKA: With a huge
6 circulation.

7 MR. VIGNA: That doesn't mean,
8 necessarily, that it is exempt from liability.

9 THE CHAIRPERSON: You may have a
10 point there.

11 I think your question should be more
12 specific, Ms Kulaszka.

13 MS KULASZKA: I think my point to you
14 is, a national newspaper prints this type of letter,
15 and so far it hasn't been charged. It has passed
16 without any kind of legal repercussions.

17 Say that someone posted these letters
18 on a message board. Would you find them to be contrary
19 to section 13?

20 MR. STEACY: I am not sure.

21 MS KULASZKA: Would it depend if it
22 was on a website like Stormfront?

23 MR. STEACY: What is there is
24 obviously an opinion, but it would depend on what that
25 opinion is trying to achieve. If that opinion is

1 trying to achieve the elicitation of hatred or contempt
2 and an individual has come to the Commission and has
3 made that as an allegation, we would have to
4 investigate. That's what the Act says.

5 MS KULASZKA: So who actually posts
6 the material, the type of website is very, very
7 important to the Commission, isn't it?

8 MR. STEACY: No. If somebody comes
9 to us and says, "This is on a website," and we believe
10 that it meets the test of 13(1), we will look at it to
11 see if it falls within that. It doesn't matter what
12 the website is or who is running the website at the
13 initial stage.

14 MS KULASZKA: It mattered in the
15 CAERS case, didn't it?

16 MR. STEACY: No, it didn't. We took
17 a complaint against CAERS. If it had mattered the way
18 you have characterized it, we wouldn't have taken a
19 complaint.

20 MS KULASZKA: You took the complaint,
21 but then you recommended that it not be dealt with, and
22 it wasn't.

23 MR. STEACY: I recommended that it
24 not be dealt with because what Mr. Guille was looking
25 for to fix the situation had been done by the

1 respondent.

2 MS KULASZKA: But it wasn't, Mr.
3 Steacy. He wanted \$5,000 in damages. He wanted an
4 apology. He wanted an undertaking that they wouldn't
5 do it again.

6 MR. STEACY: They did the majority of
7 what Mr. Guille asked for, and in the judgment of the
8 Anti-hate Team, when we were going through what was
9 there, what Mr. Guille was asking for had been
10 accomplished by the respondent.

11 If the Commission had decided to
12 recommend conciliation or tribunal, that was their
13 decision.

14 MS KULASZKA: To your knowledge, has
15 the Commission ever not accepted the recommendation of
16 the investigator in a section 13 case?

17 MR. STEACY: Yes.

18 MS KULASZKA: What case would that
19 be?

20 MR. STEACY: Several of the
21 individual complaints against individuals that were
22 involved surrounding the AOL case.

23 MS KULASZKA: So the investigator
24 made a recommendation and the commissioners didn't
25 accept it.

1 MR. STEACY: They switched the
2 decision, yes.

3 MS KULASZKA: Do you remember the
4 names of those decisions in that case?

5 MR. STEACY: I'm sorry, I am not
6 prepared to give names --

7 MR. VIGNA: I object to the relevance
8 of the names of the complainants that are not
9 relevant --

10 MS KULASZKA: I am asking about the
11 ones that went to the Tribunal.

12 THE CHAIRPERSON: The ones that are
13 public?

14 MS KULASZKA: The ones that are
15 public.

16 We are trying to keep tabs on these
17 cases.

18 THE CHAIRPERSON: I have one concern
19 if they are going to the Tribunal. As I have indicated
20 before, Commission reports --

21 MS KULASZKA: Oh, I thought he said
22 that they had made decisions, that there had been two
23 decisions.

24 THE CHAIRPERSON: Did he say that
25 they were actually final decisions?

1 MS KULASZKA: Were they final
2 decisions, Mr. Steacy?

3 MR. STEACY: The Commission had made
4 decisions that -- in one case I recommended dismissal,
5 and they recommended conciliation/tribunal.

6 They changed my decision.

7 THE CHAIRPERSON: So they are
8 Commission decisions that you are talking about.

9 MR. STEACY: Yes.

10 THE CHAIRPERSON: My concern, Ms
11 Kulaszka --

12 MS KULASZKA: Yes, I thought they
13 were Tribunal decisions.

14 THE CHAIRPERSON: It is not normally
15 in the record, in front of a tribunal, what the
16 Commission's findings or reports are. Until the case
17 is final, it is not appropriate that it be released.
18 It only comes into evidence for another reason, as I
19 have told you before.

20 MS KULASZKA: Okay. Just to clarify,
21 two of them have gone to a tribunal, but there is no
22 decision.

23 MR. STEACY: No, that's not what I am
24 saying.

25 What I am saying is, there was a

1 recommendation that I made, which was to dismiss, and
2 the Commission, when they met, changed my
3 recommendation to their decision, which was to send it
4 to conciliation and/or a tribunal.

5 MS KULASZKA: Have any gone to a
6 tribunal?

7 Do you know?

8 MR. STEACY: The ones in that group
9 of files that I recommended go conciliation/tribunal,
10 my understanding is that they have been referred. I
11 don't know if they have been heard by the Tribunal or
12 not.

13 MS KULASZKA: If you go to Tab 2 of
14 R-3, which is the small binder --

15 THE REGISTRAR: Are we producing Tab
16 22?

17 MS KULASZKA: Yes, I would like to
18 produce Tab 22.

19 THE CHAIRPERSON: Yes, all right.
20 The National Post has a website,
21 doesn't it?

22 MS KULASZKA: The National Post has a
23 website.

24 THE CHAIRPERSON: But this is from
25 the newspaper.

1 MS KULASZKA: This is from the
2 newspaper.

3 THE CHAIRPERSON: But it might have
4 been on the website, too.

5 MS KULASZKA: It might have been on
6 the website. They put a few letters up, but I don't
7 know whether --

8 THE CHAIRPERSON: All right. Go on.
9 This is Tab 2 of R-3?

10 MS KULASZKA: Tab 2 of R-3.

11 Mr. Steacy, this is a letter by
12 Kathryn Lavery. She is an Intake Officer.

13 This was a complaint laid by Glenn
14 Bahr, and it was against Sgt. Stephen Camp of the
15 Edmonton Police Service.

16 Do you know who he is?

17 MR. STEACY: Yes, I do.

18 MS KULASZKA: Have you ever had any
19 contact with him?

20 MR. STEACY: I have spoken to him on
21 the phone, and I have met him.

22 MS KULASZKA: Were you aware of this
23 complaint?

24 It had to do with postings he made on
25 Stormfront.org under the pseudonym "Matt" or "Estate".

1 MR. STEACY: I am aware of that
2 letter, yes.

3 MS KULASZKA: The complaint was not
4 accepted on the grounds of various sections of the
5 Criminal Code -- section 25(1).

6 Are you aware of this letter?

7 MR. STEACY: Yes, I am aware of the
8 letter.

9 MS KULASZKA: Do you know why the
10 Commission would not open a complaint process to, at
11 least, determine whether Sgt. Camp was required to post
12 the postings he did as part of his job?

13 MR. VIGNA: Mr. Chair, I am not quite
14 sure that I understand the question.

15 THE CHAIRPERSON: Perhaps it is in
16 the context of the provision of the Criminal Code that
17 you are referring to, Ms Kulaszka?

18 MS KULASZKA: Yes. I am asking why
19 they would not have, at least, sent the complaint to an
20 investigator, so that he could investigate whether, in
21 fact, what Sgt. Camp posted was necessary as part of
22 his duties as a peace officer.

23 MR. VIGNA: Mr. Chair, this witness
24 didn't deal with the specific complaint and he would be
25 speculating to advance a response to the question that

1 is being asked.

2 THE CHAIRPERSON: Unless he has
3 personal knowledge. We can figure that out.

4 If that is the case, he can say that
5 he has no personal knowledge.

6 Do you have any personal knowledge to
7 be able to answer the question?

8 MR. STEACY: I consulted with Ms
9 Lavery on the situation, to the extent that she asked
10 me to review the letter, when she had written it, and
11 she explained the situation to me. But I didn't have
12 any specific input into the Bahr file or the
13 information that came in, per se, to determine whether
14 or not the complaint would have been or would not have
15 been accepted.

16 It was merely to review the content
17 of her letter, to make sure that it made sense.

18 MS KULASZKA: Would that be done as
19 part of the review process, which you talked about, by
20 the Hate Team?

21 MR. STEACY: Yes, and it was also
22 part of my duties as one of the investigators whose
23 primary function is to deal with hate.

24 In this case it came to me, but it
25 could have gone to another investigator.

1 MS KULASZKA: Okay. I would ask you
2 to go to the next tab, Tab 4. This is a complaint by
3 Alex Kulbashian against Richard Warman. On page 4 of
4 the investigator's report -- and the investigator in
5 this case was not you, I don't think, it was Sandy
6 Kozak.

7 On page 4 of the investigator's
8 report, paragraph 15 states:

9 "Mr. Kulbashian's complaint
10 arises from material posted on
11 VNN and Stormfront forums.
12 During this analysis, copies of
13 recent posts from the Stormfront
14 forum were provided to the
15 investigator. The posts, both
16 authored by a person using the
17 pseudonym 'Fenrisson', are as
18 follows:..."

19 On the next page there are a couple
20 of posts by Fenrisson, which again deal with legal
21 guerilla warfare, and that we have to use the Canadian
22 Human Rights Commission to our advantage, and to stress
23 the system with more complaints.

24 Those postings were cited in the
25 analysis at paragraph 20:

1 "Recent postings found on the
2 forum of the white supremacist
3 website `Stormfront' support
4 that the motive behind filing
5 complaints such as this one are
6 without legitimate foundation,
7 are for an improper purpose and
8 involve a sinister motive."

9 That is the Fenrisson posting.
10 Do you have any knowledge of this
11 case?

12 MR. STEACY: I didn't investigate
13 that case.

14 MS KULASZKA: You stated that you
15 thought you knew who Fenrisson was, so you have been
16 investigating who Fenrisson is.

17 MR. STEACY: I didn't investigate
18 Fenrisson, specifically, in the context of those
19 postings or any other postings.

20 MS KULASZKA: Then how do you know
21 who he is?

22 MR. STEACY: Because when we got the
23 first posting, we were able to determine who we thought
24 it was from the posting.

25 MS KULASZKA: Getting back to

1 Jadewarr, do Commission employees sign up accounts on
2 Stormfront under pseudonyms such as "Jadewarr"?

3 MR. VIGNA: Mr. Chair, I invoke the
4 same thing as I did this morning on this specific
5 question, section 37, and I base myself on the public
6 interest and the jeopardizing of investigation
7 techniques.

8 THE CHAIRPERSON: You have to give me
9 a specified public interest under the Act.

10 MR. VIGNA: Jeopardizing
11 investigation techniques.

12 THE CHAIRPERSON: Jeopardizing...?

13 MR. VIGNA: Investigation techniques
14 and Commission operations.

15 MS KULASZKA: Do you know who
16 Jadewarr is?

17 MR. VIGNA: Mr. Chair, I just
18 objected to the same question.

19 THE CHAIRPERSON: The first question
20 was what, exactly?

21 MS KULASZKA: I asked if Commission
22 employees signed up accounts on Stormfront using
23 pseudonyms.

24 THE CHAIRPERSON: So you have invoked
25 section 37, Mr. Vigna, saying that the disclosure of

1 that information -- that the information cannot be
2 disclosed on the ground of the specified public
3 interest of jeopardizing investigation techniques by
4 the Commission.

5 Is that what you are saying?

6 MR. VIGNA: Exactly, and Commission
7 operations.

8 MS KULASZKA: My second question was:
9 Do you know who Jadewarr is?

10 MR. VIGNA: Mr. Chair, it is the same
11 objection.

12 THE CHAIRPERSON: You are going to
13 have to make it each time, Mr. Vigna.

14 MR. VIGNA: The same objection as the
15 previous one. I object on --

16 THE CHAIRPERSON: I won't make you
17 repeat it.

18 You are making the same objection.

19 MR. VIGNA: The same exact
20 objection --

21 THE CHAIRPERSON: That I just cited
22 back.

23 THE CHAIRPERSON: -- that you just
24 cited for the previous question.

25 And I make this objection for all

1 questions regarding the subject --

2 THE CHAIRPERSON: I am not going to
3 let you make a blanket objection. We are going to hear
4 each question.

5 Yes, Mr. Fromm.

6 MR. FROMM: In the context of at
7 least former Canadian Human Rights employee Richard
8 Warman, it has already been established that he engaged
9 in behaviour like this.

10 I don't know if you have the power to
11 reject a section 37 assertion, but this is not a
12 fishing expedition.

13 THE CHAIRPERSON: I understand that
14 we have established it with Mr. Warman, although, from
15 the evidence we have heard, he wasn't ever functioning
16 as a Commission investigator on section 13 complaints.

17 I gather that the questions are being
18 directed now to a section 13 investigator of the
19 Commission. That is perhaps a distinction that should
20 be made.

21 All right. The first question was,
22 "Does the Commission engage in pseudonyms," on which
23 section 37 has been invoked.

24 "Do you know who Jadewarr is?"

25 Section 37 has been invoked.

1 Go ahead.

2 MR. VIGNA: Mr. Chair, for the
3 record, in addition to the objections I have made, I
4 also would like to object, for the record, to the
5 relevance of these questions.

6 I have raised the primary objection
7 as section 37, but the issue of relevance would also
8 be --

9 THE CHAIRPERSON: I think the
10 relevance we know.

11 I know you disagree. Both sides
12 disagree on the relevance of what the Commission does
13 pursuant to its authority under the Act, and
14 specifically sections 13 and 27 of the Act.

15 Section 13 is the key provision,
16 obviously.

17 The respondent is of the view that
18 section 13 creates an environment that leads to all
19 sorts of conduct on the part of the Commission and
20 other actors in society that throws the balance under
21 our Charter, which was referred to in Taylor, in a
22 different direction, such that perhaps a different
23 conclusion should be drawn today.

24 That is where it is going. We have
25 been through that from moment one in this file; that's

1 where it is going.

2 MS DAVIES: I would just add, Mr.
3 Chair, that section 27 is not in issue in this case.

4 THE CHAIRPERSON: No, of course it is
5 not in issue, but the response is 27 on the part of the
6 Commission.

7 My mind was thinking faster than my
8 mouth at that point.

9 The response on the part of the
10 Commission is, "We are just doing our job, as per 27,"
11 but 13 is what is in issue, yes.

12 MR. VIGNA: It is a double objection,
13 but I raised section 37 --

14 THE CHAIRPERSON: I understand.

15 With respect to the second objection,
16 I don't accept the objection. I think the question is
17 relevant, but you have invoked section 37, and as I
18 read section 37, only the Federal Court can address it.

19 MS KULASZKA: To your knowledge, is
20 Jadewarr a Commission employee?

21 MR. VIGNA: Mr. Chair, it is the same
22 question --

23 THE CHAIRPERSON: You will have to
24 explain it each time.

25 MR. VIGNA: Mr. Chair, it is the same

1 exact question, rephrased slightly differently, and I
2 have the same objection.

3 THE CHAIRPERSON: It is similar, yes.

4 MR. VIGNA: Similar rationale, public
5 interest, investigation techniques, Commission
6 operations.

7 THE CHAIRPERSON: Thank you.

8 We are going down the same path. Ms
9 Kulaszka, if you want to make a complete record on this
10 point, go ahead, but we will be getting the same
11 objection each time from Mr. Vigna.

12 MS KULASZKA: I know, but that is
13 really the only thing I can do.

14 THE CHAIRPERSON: Yes, I know.

15 I think it is only fair to the
16 process that we start getting specific about these
17 things. That is why I am asking Mr. Vigna to make his
18 objection to each question. If you feel that you have
19 to ask each question, go ahead, I won't stop you.

20 MS KULASZKA: As part of your duties,
21 have you ever signed up with a message board and made
22 postings?

23 MR. VIGNA: Mr. Chair, I object
24 again, based on section 37, on the grounds of public
25 interest and jeopardizing investigations, as well as

1 Commission operations.

2 MR. FROMM: Sir, the question was to
3 past activities, nothing that is ongoing. It was: Did
4 you, in the past, ever do this.

5 THE CHAIRPERSON: Your point is well
6 taken, sir, but I don't know if I can do anything.

7 MS KULASZKA: To what extent is the
8 special mandate of the Canadian Human Rights Commission
9 interpreted as assisting police in prosecutions under
10 section 319(2) of the Criminal Code?

11 THE CHAIRPERSON: I don't know if I
12 understood the question.

13 You read it, Ms Kulaszka, very
14 clearly, but could you say it again?

15 MS KULASZKA: To what extent is the
16 special mandate of the Canadian Human Rights
17 Commission -- and, in that case, it is referring to
18 section 27 and to section 13 -- interpreted as
19 assisting police in prosecutions under section 319(2)
20 of the Canadian Criminal Code?

21 THE CHAIRPERSON: Interpreted by
22 whom?

23 MS KULASZKA: By the Commission.

24 MR. VIGNA: I don't know if Mr.
25 Steacy can answer a question --

1 THE CHAIRPERSON: Yes, I don't know
2 if he could answer that question, either. It sounds as
3 if you are asking him a legal question.

4 Is that what you are asking?

5 MS KULASZKA: Yes, I would be asking
6 him whether, to his knowledge, he or others at the
7 Commission have used section 27 as giving them a
8 mandate to cooperate with police in prosecutions under
9 section 319 of the Criminal Code.

10 MS DAVIES: Again, Mr. Chair, section
11 27 is not at issue in this proceeding.

12 MS KULASZKA: No, but section 13 is,
13 and obviously section 27 has to be taken into account.

14 THE CHAIRPERSON: Yes, and it will be
15 taken into account because it also forms, as I just
16 indicated, part of their defence.

17 The answer to the 13 discussion is:
18 This is what we can do under 27.

19 I think it's relevant.

20 I don't think it falls under
21 investigative techniques, before you get up, Mr. Vigna.

22 Is it your understanding, sir, under
23 section 27, that the Commission is entitled to
24 cooperate with criminal prosecution -- criminal police
25 authorities?

1 What was the language you used
2 exactly, Ms Kulaszka?

3 MS KULASZKA: Whether they would
4 assist the police in prosecutions under section 319 of
5 the Criminal Code.

6 MR. STEACY: I would have to say that
7 section 27 allows us to assist with any government
8 organization, if it is the police or any other body
9 that has the power to invoke 319 of the Criminal Code.

10 MS KULASZKA: To your knowledge, have
11 they done so?

12 MR. STEACY: I don't know. I don't
13 think we have, but I don't know.

14 MS KULASZKA: Would that extend to
15 CSIS, as well -- the Canadian Security Intelligence
16 Service?

17 MR. VIGNA: Mr. Chair, when it comes
18 to CSIS, just when I hear the name --

19 THE CHAIRPERSON: It has the word
20 "investigation" in it, that's true.

21 Doesn't it?

22 MR. VIGNA: I would invoke section 37
23 for anything relating to CSIS; not only for
24 investigation techniques, but I would go as far as
25 saying national security, in the sense that CSIS deals

1 with those kinds of matters.

2 THE CHAIRPERSON: Even before you
3 make your objection; Ms Kulaszka, I didn't quite
4 understand your question. When you say "Does that
5 apply to," does what apply to?

6 MS KULASZKA: The same question.

7 THE CHAIRPERSON: Yes, but there were
8 two questions, so I want to be clear on your question.

9 Does it apply that --

10 He answered that he thought 27
11 allowed him to work with the organization. He also
12 said, "I don't know if the Commission has done so."

13 MS KULASZKA: Right.

14 THE CHAIRPERSON: So what is your
15 question?

16 MS KULASZKA: He testified that, yes,
17 it did extend to assisting the police, and I am asking
18 him does it extend to assisting CSIS, as well.

19 THE CHAIRPERSON: It's his
20 interpretation of 27 again, Mr. Vigna, not whether it
21 has or it hasn't.

22 MR. VIGNA: Even then, Mr. Chair, he
23 is not a lawyer --

24 THE CHAIRPERSON: I understand.

25 MR. VIGNA: -- and he is not in a

1 capacity to give an interpretation of section 27. We
2 are soliciting an opinion from a Commission employee
3 who cannot answer that kind of question.

4 THE CHAIRPERSON: That is going far
5 afield, Ms Kulaszka. He is not a lawyer.

6 To whatever extent that I can do a
7 review of this -- and I don't know if I can -- I will
8 look at 27 and see how it interacts with the Criminal
9 Code.

10 MS KULASZKA: I was wondering if we
11 could produce the Jadewarr postings which are in the
12 transcript from the Beaumont case. That is Tab 18.

13 THE CHAIRPERSON: I would like to see
14 it again.

15 MS KULASZKA: There are a few pages
16 from the transcript of the Beaumont case, and there are
17 several pages from Stormfront.

18 There is the profile of a forum
19 member named "Jadewarr", and then there is a thread,
20 which starts with Marc Lemire and ends with Jadewarr
21 replying to that posting by Mr. Lemire.

22 It goes to page 11.

23 Then there is another posting by
24 Jadewarr at page 12.

25 Then Jadewarr has a back-and-forth

1 with Fenrisson. Jadewarr is very interested in
2 Fenrisson, and starts engaging him in conversation.

3 That goes to page 17.

4 This is talking about the stress --
5 Fenrisson says that we should stress the Canadian Human
6 Rights Commission, and Jadewarr says, "How can we do
7 this? Do you have a copy of a letter I can send?"

8 Page 18 is a "WHOIS" search. It is
9 on an IP addressed based in Ottawa.

10 THE CHAIRPERSON: The "WHOIS" search
11 I have some concern about. This is just gobbledegook
12 and no one is here to testify as to what it all means.

13 MS KULASZKA: No.

14 THE CHAIRPERSON: I don't know if I
15 can even look at that, unless we can get consent.

16 There are three different things,
17 essentially. First, we have the transcript from the
18 case that I sat on, Beaumont -- Richard Warman v.
19 Jessica Beaumont.

20 Second, there are Stormfront threads.
21 We have a whole bunch already. Is there any objection
22 to these Stormfront threads?

23 MR. VIGNA: I won't object to their
24 production, but I will argue relevance at the end.

25 THE CHAIRPERSON: I anticipated that.

1 What about the "WHOIS" search?

2 MS KULASZKA: Page 18 is almost
3 meaningless.

4 THE CHAIRPERSON: We will remove it.
5 I am looking at it and, off the top
6 of my head, I can't figure out what this is about.

7 I think the only way that this could
8 properly be --

9 I can decipher what the Stormfront
10 threads are. I have seen enough of them in this case
11 and in other cases that I can figure that out. But the
12 "WHOIS" thing, it is nothing like what I have seen
13 before, to my knowledge.

14 MS KULASZKA: If we could just
15 produce to page 17 now --

16 THE CHAIRPERSON: All right, pages 1
17 through 17.

18 MS KULASZKA: Could I have a moment?

19 THE CHAIRPERSON: Sure.

20 --- Pause

21 MS KULASZKA: Those are my questions.

22 THE CHAIRPERSON: Thank you.

23 Mr. Fromm, do you have any questions?

24 CROSS-EXAMINATION BY MR. FROMM

25 MR. FROMM: Mr. Steacy, you indicated

1 that you had an idea of who Fenrisson might be. Is
2 that so?

3 MR. STEACY: Yes, I stated that.

4 MR. FROMM: Without identifying your
5 idea by name, did you believe that Fenrisson would be
6 what might be loosely called a "White nationalist"?

7 MR. VIGNA: Mr. Chair, I don't see
8 the relevance of the question, and at the same time,
9 other than relevance, we are going indirectly to try to
10 find out some form of identity.

11 THE CHAIRPERSON: I don't want the
12 witness to --

13 My concern is, if the witness
14 actually knew 100 percent who it was and had proof, it
15 might be a little different, but he is not sure, and I
16 am not going to start putting names on the record of
17 people we don't know.

18 MR. FROMM: I didn't ask for a name.

19 THE CHAIRPERSON: What you are saying
20 is, did he assume that he was a White nationalist.

21 MR. FROMM: I am putting two
22 possibilities.

23 From what you believe, was the
24 character Fenrisson a White nationalist or somebody who
25 might be considered an antiracist?

1 THE CHAIRPERSON: That's fine. I
2 don't quite know what the relevance would be in the big
3 picture, but I will allow it.

4 MR. STEACY: I didn't go that far in
5 making an assumption about his character. I was more
6 interested in (a) trying to determine, in the context
7 of an investigation, at the time -- to try to find out,
8 to the extent that I could, who he was and, more
9 potentially, to determine if he was one of the
10 respondents at the time.

11 MR. FROMM: Tab 22 has already been
12 brought to your attention. That is the letter that was
13 in the National Post, which was quite forceful about
14 native people, saying things -- for instance:

15 "It seems to me that we the
16 taxpayers are victims...of a
17 bunch of weaklings in
18 government. I shouldn't have to
19 work so hard that an able-bodied
20 native can sit at the side of a
21 railway track, disrupt society
22 and collect a free cheque from
23 me."

24 In your section 13 investigations, do
25 you recognize that maybe class and education might

1 determine the sort of language a person might use?

2 MR. STEACY: It is not necessarily a
3 factor that I use in determining what was put on the
4 internet.

5 MR. FROMM: But would you agree that
6 a person's educational background, and perhaps even
7 class, might determine the language that person might
8 use?

9 MR. STEACY: I am sorry, but I have
10 to ask you to define "class".

11 MR. FROMM: At the risk of
12 stereotyping, let's say that a truck driver with a
13 Grade 11 education, chatting informally with his
14 friends, might use language that is considerably more
15 salty than Mr. Dan Gallagher did here.

16 MR. STEACY: Again, it would depend
17 on what the person or the individual types or posts.

18 I, personally, don't look -- I can't
19 tell, necessarily, what a person's class is from what
20 they post on the internet. I might be able to garner
21 what their education level is, but that doesn't tell me
22 what their class is, using your definition.

23 If somebody, in posting, uses salty
24 language, salty language is salty language. If
25 somebody is using racially derogatory language, it's a

1 different thing.

2 MR. FROMM: In the context of a chat
3 room, though, I think you agreed that people have the
4 feeling that they are chatting informally with others.

5 Was that your testimony?

6 MR. STEACY: I don't believe I said
7 they were chatting informally with others. I don't
8 recall how I exactly said it, but chat room people are
9 chatting to each other.

10 MR. FROMM: From what you have
11 observed on the forums that you have investigated,
12 would you not agree that there is a certain informality
13 of people chatting back and forth with people who, in
14 many cases, they have chatted with before?

15 MR. STEACY: Yes.

16 MR. FROMM: Would you, therefore,
17 agree that the level of language might be less careful
18 and formal than that of a Mr. Dan Gallagher?

19 MR. STEACY: I have seen all levels
20 of informality to formality in postings, on chat and in
21 what is on the internet, in a different variety of
22 complaints.

23 MR. FROMM: In assessing whether a
24 communication is likely to have breached section 13(1),
25 do you take into account the level of language used by

1 the person?

2 MR. STEACY: I take into account what
3 is written, or what has been posted, not whether or not
4 the person has put an expletive in between something
5 else. It is what the context of that whole message is,
6 and if the message ends up violating -- or is eliciting
7 hatred and/or contempt, then, generally, it is what the
8 complainant is complaining about, and that is what is
9 looked at.

10 If the message is there and it
11 doesn't, then it doesn't.

12 What is written is what is germane
13 when we are looking at it, not who, necessarily, posted
14 it. Their education level, their class or how well
15 they write -- their grammar, their spelling -- that is
16 not part of what I am looking at in the postings, it's
17 what is there.

18 MR. FROMM: You did testify, though,
19 that context is important. Did you not?

20 MR. STEACY: In the example that I
21 used before, if somebody is writing -- if they are
22 expressing an opinion, that's fine, but it depends on
23 how far they go in the specific words that they use to
24 express that opinion.

25 If that opinion is put down -- if the

1 intent is to elicit hatred and/or contempt, and that is
2 what the complainant is alleging, we accept the
3 complaint, and that is what is shown in the
4 investigation report.

5 MR. FROMM: How can you determine
6 what a person's intent is from a couple of postings if
7 the person doesn't say, "I want you people to hate
8 such-and-such a group"?

9 MR. STEACY: No, but if a person is
10 writing that he wants all people of colour to be
11 killed, or that people with disabilities should be
12 euthanized, I think the message is fairly clear that
13 they are not trying to garner expression about a
14 certain subject, versus somebody who is saying, "I am
15 not happy with the way the government is putting
16 forward a piece of legislation. Write your MPs and say
17 you are displeased."

18 I think there is an obvious
19 difference, and the Taylor test is fairly specific in
20 how it sets out what that is, and that is what we use
21 in applying what is posted on a website or what is
22 posted on a bulletin board.

23 MR. FROMM: Back to the letter from
24 Mr. Gallagher -- I am going to read the last paragraph,
25 which I have read before, and I will give you another

1 version.

2 Mr. Gallagher wrote in the National
3 Post:

4 "It seems to me that we the
5 taxpayers are victims...of a
6 bunch of weaklings in
7 government. I shouldn't have to
8 work so that an able-bodied
9 native can sit on the side of a
10 railway track, disrupt society
11 and collect a free cheque from
12 me."

13 Supposing that Mr. Gallagher were to
14 post that paragraph, but perhaps he is not so delicate
15 with the English language, perhaps because of his
16 background -- supposing he were to write the same
17 thing, but instead of calling the politicians a "bunch
18 of weaklings" he puts in the "F" word -- "a bunch of
19 fucking weaklings" -- and instead of talking about an
20 able-bodied native sitting on the railway track, he
21 uses one of the common pejorative terms for natives,
22 let's say "chug".

23 Now we have a stronger, opinionated
24 sort of expression that might be in keeping with this
25 person's class background.

1 Would you take that into
2 consideration?

3 MR. STEACY: First off, politicians
4 aren't a ground under the Act, and they are not one of
5 the prohibited groups, so people can write what they
6 want about politicians and we wouldn't be able to take
7 a complaint. If the individual --

8 MR. FROMM: Okay. Let's put the
9 "fucking" word in front of "native".

10 MR. STEACY: It would depend on what
11 the nature of the whole posting would be. If it was
12 just that one instance, where they have used, as you
13 said, "fucking native" or "chug", we might take the
14 opportunity to speak to the individual and advise them
15 that they could be the subject of a potential
16 complaint.

17 But if it was just that one instance,
18 I doubt that we would take a complaint.

19 MR. FROMM: Do you think people
20 should be penalized for expressions on the internet,
21 people who perhaps just have not had the benefit of a
22 genteel upbringing, or people who perhaps use forceful
23 and salty language?

24 MS DAVIES: Mr. Chair, is he being
25 asked for his opinion? He is a factual witness.

1 THE CHAIRPERSON: He is. The only
2 distinction being that his professional role is to make
3 these assessments in his recommendations to the
4 Commission.

5 MS DAVIES: That's right, Mr. Chair,
6 but he is talking more generally about his opinions
7 about the internet now.

8 THE CHAIRPERSON: I thought it was in
9 the context --

10 MR. FROMM: In the context of
11 investigations.

12 MR. VIGNA: It is kind of
13 argumentative, the way it is phrased.

14 THE CHAIRPERSON: Perhaps. Perhaps
15 the way it was phrased.

16 MR. FROMM: I will move on.

17 After the several postings on
18 Stormfront that we have been referred to by this person
19 Fenrisson, was the Canadian Human Rights Commission
20 flooded with complaints?

21 MR. STEACY: No.

22 MR. FROMM: Those are my questions.

23 THE CHAIRPERSON: All right.

24 Mr. Vigna?

25 RE-EXAMINATION BY MR. VIGNA

1 MR. VIGNA: Mr. Steacy, as an
2 investigator, you mentioned in response to questions
3 from Ms Kulaszka that your role is to gather evidence
4 and to put it forth in the form of an investigation
5 report to the Commission for a decision ultimately.

6 Is that what I understood?

7 MR. STEACY: That's correct.

8 MR. VIGNA: In terms of your
9 recommendation, you were asked several questions about
10 what kind of information you gather, and you mentioned
11 that context was one of the things you looked at.

12 In terms of the Canadian Human Rights
13 Act, when the Commission has to make a decision to
14 refer the complaint, are you familiar with the wording
15 of section 44 and what kind of information it looks at
16 in terms of --

17 MR. STEACY: I'm sorry, 44 or 34?

18 MR. VIGNA: Section 44.

19 MR. STEACY: My recollection is, that
20 is the section of the Act that talks about an
21 investigator's report.

22 MR. VIGNA: It says:

23 "On receipt of a report referred
24 to in subsection (1), the
25 Commission..."

1 This is 44(3):
2 "...may request the Chairperson
3 of the Tribunal to institute an
4 inquiry under section 49 into
5 the complaint to which the
6 report relates, if the
7 Commission is satisfied that,
8 having regard to all of the
9 circumstances of the complaint,
10 an inquiry into the complaint is
11 warranted."

12 The key words are "having regard to
13 all of the circumstances of the complaint."

14 In terms of information gathering,
15 when you write the report, do you take that into
16 account?

17 MR. STEACY: Yes, I do.

18 MR. VIGNA: What type of information
19 do you gather in order to make the link with that
20 phrase in section 44?

21 MR. STEACY: We take the complaint
22 form, we take the positions of both parties, we take
23 the positions of people that we interview, witnesses to
24 the complaint, and as investigators we gather those
25 facts along with -- during the process of interviewing

1 or research into any issue, and that is presented as
2 part of the report.

3 MR. VIGNA: Are you mindful of the
4 criteria in the law that the Commission has to look at
5 in terms of you drafting the report?

6 MR. STEACY: Yes.

7 MR. VIGNA: You were asked several
8 questions about whether there is monitoring of the
9 internet and so forth. Can you tell us whether
10 complaints at the Commission, whether they are
11 discrimination complaints that are not section 13 or
12 section 13 complaints, are complaint-driven or if they
13 are initiated by the Commission?

14 MR. STEACY: They are all
15 complaint-driven.

16 MR. VIGNA: What does that mean in
17 concrete terms, particularly when it comes to section
18 13?

19 MR. STEACY: It means that somebody
20 from outside the Commission has initiated the
21 complaint.

22 MR. VIGNA: Do you recall any
23 complaints under section 13 that were initiated by the
24 Commission?

25 MR. STEACY: None.

1 THE CHAIRPERSON: Is that complaints
2 only under section 13, or under other provisions of the
3 Act?

4 MR. STEACY: I am not aware of any
5 complaint that has ever been initiated by the
6 Commission, other than the John Ross Taylor complaint.
7 That, I think, was the very first complaint that was
8 taken when the Commission started, but I only have that
9 as historical knowledge from working at the Commission.

10 Other than that, I am not aware that
11 any complaint has ever been taken by the Commission.

12 THE CHAIRPERSON: That would be
13 pursuant to section 40(3); right?

14 MR. VIGNA: Section 44(3).

15 THE CHAIRPERSON: No, we are talking
16 about complaints that are initiated by the Commission;
17 right?

18 MR. VIGNA: Yes.

19 THE CHAIRPERSON: "Where the
20 Commission has reasonable
21 grounds for believing that a
22 person is engaging or has
23 engaged in a discriminatory
24 practice, the Commission may
25 initiate a complaint."

1 So, in regard to that provision, to
2 your knowledge, only the Taylor case comes to mind.

3 MR. STEACY: Yes, sir.

4 MR. VIGNA: In terms of your practice
5 in terms of the work, when it comes to the files that
6 you deal with, have you encountered files which were
7 Commission-initiated, or is it the same as what you
8 were telling us?

9 MR. STEACY: I have never encountered
10 a complaint that was Commission-initiated.

11 MR. VIGNA: You were asked whether
12 Mr. Warman made a certain number of complaints against
13 various respondents, and you mentioned a certain number
14 of them. Do you recall whether the reverse occurred,
15 where the same respondents that Mr. Warman complained
16 about made complaints against Mr. Warman?

17 MR. STEACY: Yes.

18 MR. VIGNA: Can you tell us if that
19 is something you see quite often in the files that you
20 investigate, whether respondents turn around and make
21 complaints as complainants?

22 MR. STEACY: I have seen it in other
23 cases, as well, besides hate.

24 MR. VIGNA: Particularly in the case
25 of Mr. Warman, to what degree can you say that it

1 manifests itself?

2 MR. STEACY: I am aware of, maybe,
3 four or five complaints in which former respondents are
4 now complainants against Mr. Warman.

5 MR. VIGNA: There was a series of
6 questions asked regarding the issue of jurisdiction and
7 whether letters were sent to ISPs in the United States.
8 In terms of complaints, whether the ISP is in the
9 United States or not, if the subject matter that is
10 discussed on the website is Canadian, would the fact
11 that the ISP is in the United States exempt a complaint
12 against the subject matter, which would be Canadian?

13 MR. STEACY: No, we take
14 jurisdiction.

15 MR. VIGNA: Do you remember any cases
16 that are even before the Tribunal at the present moment
17 that would have that kind of fact situation?

18 MR. STEACY: I am not sure about
19 presently, but there have been complaints that have
20 been before the Tribunal where the ISP was in the
21 States and the content and the control was Canadian.

22 MR. VIGNA: You were asked at one
23 point about freedom of speech, and you made a statement
24 about it being an American concept, and then you made
25 another affirmation regarding freedom of expression.

1 Can you tell us what you understand
2 in relation to freedom of expression and what Taylor
3 says -- you mentioned Taylor not too long ago -- and
4 how that applies in Canada, from your understanding of
5 the case law?

6 MR. STEACY: I start with freedom of
7 speech as an American concept. Individuals in the
8 United States believe that the First Amendment
9 guarantees them the right to say anything.

10 My understanding of the concept of
11 freedom of expression is that, while we have the right
12 to express ourselves, we don't have the right -- and it
13 has been limited by the courts -- to say absolutely
14 anything we want; whereas the Americans believe that
15 they can say absolutely anything they want.

16 My understanding is that, through
17 freedom of expression, we don't have -- that right is
18 not as encompassing, and that our freedom of expression
19 comes with some responsibility not to harm or injure
20 within that freedom of expression.

21 MR. VIGNA: That is the distinction
22 you make with Canada and the United States when it
23 comes to freedom of expression or freedom of speech.

24 MR. STEACY: Yes.

25 MR. VIGNA: There was a series of

1 questions asked regarding the gay marriage debate and
2 whether you would be making a distinction between what
3 would be a political debate or a legitimate debate in
4 the context of the gay marriage debate and when it
5 would be no longer a debate.

6 Could you elaborate a bit more on
7 what -- you gave an example. For example, you said
8 that when you used a certain type of language -- if you
9 said that every gay is -- I don't know the exact words,
10 "butt fucker" or something like that.

11 Could you elaborate a bit more on
12 what distinctions are made in terms of what is
13 political debate and acceptable and what becomes
14 unacceptable, legally speaking, in relation to section
15 13?

16 MR. STEACY: To determine what we
17 look at, or what we have held to be acceptable, is when
18 the debate is the expression of an opinion where people
19 are trying to express that opinion without inferring
20 harm on any group or when the expression is pointedly
21 saying that something should happen to that group.

22 For example, in the AOL forum there
23 were lots of people expressing that they weren't happy
24 with the fact that the law was going to be changed, and
25 that same-sex marriage was going to become part of the

1 legislation, and people were expressing that it
2 violated their religious beliefs and they didn't
3 believe that the government should be invoking that
4 legislation.

5 Some people expressed it quite
6 strongly. Some were saying that people should put
7 political pressure on their member of Parliament, and
8 stuff like that, versus there were postings that were
9 advocating harm to specific individuals, that people
10 should be going out and harming homosexuals and that
11 specific things should be done to them.

12 I am trying not to use the language
13 that was there, but it was very, very specific in
14 nature to the harm that should be dealt upon them.

15 MR. VIGNA: In that same line of
16 questioning, you mentioned, for example, if someone
17 would say that people with disabilities would have to
18 be killed, if I remember exactly, verbatim, what you
19 said, or that gay people should be killed, do you need
20 a guide in order to know whether that is contempt or
21 hate?

22 MR. STEACY: No, I don't.

23 MR. VIGNA: What makes you realize
24 that it is contempt or hate when you see such
25 statements?

1 MR. STEACY: The Taylor test is
2 there, but based on what most reasonable people would
3 believe or think, advocating for the destruction of a
4 certain group goes beyond freedom of expression.

5 MR. VIGNA: I don't have any further
6 questions.

7 THE CHAIRPERSON: Ms Davies?

8 MS DAVIES: No, thank you, Mr. Chair.

9 THE CHAIRPERSON: Ms Kulaszka?

10 MS KULASZKA: I was wondering if we
11 could start at nine o'clock tomorrow.

12 THE CHAIRPERSON: I think so.

13 It is a bit tight for me sometimes to
14 get here by then.

15 I will try to be here.

16 We could say nine o'clock, if
17 everyone else is in agreement.

18 MR. VIGNA: Could we make it 9:15?

19 I told the witness to be at the
20 office at 8:30. That would give me, at least, a chance
21 to get here.

22 THE CHAIRPERSON: Let's make it 9:15.
23 That will definitely give me enough time to be here, as
24 well.

25 Let's go off the record.

1 --- Off Record Discussion
2 --- Whereupon the hearing adjourned at 5:25 p.m.
3 to resume on Friday, May 11, 2007
4 at 9:15 a.m.

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I hereby certify that I have
taken down in shorthand and
transcribed therefrom the
foregoing transcript to the best
of my skill and ability.

Susan B. Villeneuve
Verbatim Court Reporter

StenoTran