

**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
WEDNESDAY, MAY 9, 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 Phillipe Dufresne	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 Wednesday, May 9, 2007

3 at 9:30 a.m.

4 THE CHAIRPERSON: Good morning,
5 everyone.

6 I thought I should say at the outset,
7 for the record, that I happen to own one of those
8 laptops that contains a camera, so it has been taped
9 up. And I have left my Blackberry, which also contains
10 a camera, back in my office.

11 I understand that has been cleared up
12 for all of the participants here today, as well.

13 Are we prepared to proceed?

14 MS DAVIES: We discussed at an
15 earlier teleconference that Hansard excerpts could be
16 put in on consent.

17 THE CHAIRPERSON: Right.

18 MS DAVIES: The Attorney General has
19 taken the particular Hansard excerpts that it wishes to
20 refer to out of the Book of Documents and put them into
21 a small collection to be admitted as evidence.

22 There is one version where we could
23 only find the unedited text. Just to specify, that is
24 Tab 4, and 0906 and 0910 are the excerpts we would be
25 relying on.

1 THE CHAIRPERSON: You have said it on
2 the record. I am not going to concentrate too much --

3 MS DAVIES: Ms Kulaszka had asked me
4 to specify, so --

5 MS KULASZKA: Could you repeat that,
6 please?

7 MS DAVIES: They are paragraphs 0906
8 and 0910 of Tab 4.

9 We are simply seeking to confirm that
10 that will be admitted into evidence.

11 THE CHAIRPERSON: You say it is
12 evidence, although it's Hansard. Is it really
13 evidence?

14 The proceedings of Parliament, I
15 don't know if we could put them in as authorities or
16 evidence.

17 MS DAVIES: Certainly, as you will,
18 we just would like to have it on the record.

19 THE CHAIRPERSON: Let's identify it.
20 Is it being entered on consent?

21 MR. VIGNA: Yes.

22 MS KULASZKA: Yes, I had consented.
23 I just asked Ms Davies this morning why they were
24 putting in the unedited version. Apparently, there is
25 something in the unedited copy that is not in the

1 edited copy. Something was taken out when it was
2 edited. That's why I asked her to specify what it was.

3 THE CHAIRPERSON: All right. It has
4 been specified.

5 Do you have access to the edited
6 version?

7 MS KULASZKA: The edited version,
8 apparently, is included here.

9 THE CHAIRPERSON: Are they both
10 included?

11 MS DAVIES: We have put in the edited
12 version, where possible, and the unedited version where
13 we couldn't find the same paragraphs.

14 There is one of each date that --

15 THE CHAIRPERSON: You don't know why
16 Hansard lost a paragraph going from unedited to edited.

17 MS DAVIES: No. They are the first
18 two paragraphs in the unedited version.

19 THE CHAIRPERSON: Just so I
20 understand, because I am not that familiar with
21 Hansard, both are published?

22 The edited and the unedited versions
23 are both published?

24 MS DAVIES: I believe so. They put
25 the full unedited versions online. So where it hasn't

1 been excerpted, you can usually find it there.

2 THE CHAIRPERSON: All right. Let's
3 introduce it. The suggestion was that we identify it
4 as an exhibit from the Attorney General, so why don't
5 we do that.

6 THE REGISTRAR: I thought it was on
7 consent.

8 THE CHAIRPERSON: All right, we will
9 go with consent.

10 THE REGISTRAR: The Book of Documents
11 of the Attorney General of Canada will be filed, on
12 consent, as Agreed Exhibit A-1.

13 EXHIBIT A-1: Book of Documents
14 of Attorney General of Canada

15 THE CHAIRPERSON: For the record, I
16 should note that Mr. Philippe Dufresne is here with Mr.
17 Vigna. This is the first time he has appeared at the
18 proceedings. The other participants have all been here
19 before.

20 There is a letter that was sent by
21 the Commission. I don't know if you would like to
22 address it now or save it for later.

23 The bottom line of the letter is that
24 there is a witness prepared to testify today. Right?

25 MR. DUFRESNE: That's correct.

1 Mr. Chair, for the record, as you
2 have indicated, I am Philippe Dufresne, counsel for the
3 Commission. I will be appearing in this matter for the
4 purpose of these witnesses' testimony and to make
5 submissions on the constitutional issue.

6 The Commission sent a letter
7 yesterday to the Tribunal and parties, and as we
8 indicate in our letter, we have a witness today who is
9 prepared to testify.

10 We acknowledge that Ms Kulaszka's
11 intention was not to start with this particular
12 witness, so she may have something to say on that. Her
13 intention, as we understood it, was to call Ms Rizk as
14 her first witness.

15 We stated in our letter of yesterday
16 that we have remaining concerns on three levels and, as
17 a result, we have been invoking section 37 of the
18 Canada Evidence Act.

19 However, we have stressed that we are
20 open, should additional measures be put in place, to
21 proceed.

22 The concerns that we have are, first,
23 that the hearing is open. It is not an in camera
24 hearing, and we had asked --

25 THE CHAIRPERSON: There wasn't a

1 request for an in camera hearing. If that is what you
2 wanted, you should have been explicit. That was not
3 the request. No provision of section 52, or any
4 subparagraph, was invoked.

5 MR. DUFRESNE: Had our request for
6 video-conferencing been granted, then it would have
7 been necessary.

8 THE CHAIRPERSON: Sure. These are
9 all subsidiary arguments.

10 MR. DUFRESNE: Clearly.

11 We follow this on your order to
12 prevent cameras in the hearing room, which also was not
13 specifically asked for in our motion, but which is
14 something that goes in the direction of addressing some
15 of the concerns we have raised.

16 THE CHAIRPERSON: It formed the
17 object of some discussion that had gone on during
18 conference calls. Ms Kulaszka had even mentioned it in
19 one of her letters.

20 That's why that part of the ruling is
21 there. It was part of what had been discussed.

22 Go on.

23 MR. DUFRESNE: In the circumstances
24 now, we have a ruling from the Tribunal, and we have
25 remaining concerns, so we are now making a request for

1 this proceeding to be conducted in camera for the
2 purposes --

3 THE CHAIRPERSON: All right. So you
4 are making the request.

5 MR. DUFRESNE: For the purposes of
6 the Commission's witnesses.

7 THE CHAIRPERSON: Are you invoking a
8 specific provision?

9 MR. DUFRESNE: We are invoking the
10 provisions of the Canadian Human Rights Act, section
11 52(1).

12 THE CHAIRPERSON: Which subparagraph?

13 MR. DUFRESNE: Subparagraphs (c) and
14 (d).

15 THE CHAIRPERSON: Subparagraphs
16 52(1)(c) and (d).

17 You don't have to go into detail at
18 this point. I know the material that was submitted
19 with the other motion, and I have a sense of what
20 elements you are raising in support of this.

21 What measure would you be requesting?

22 MR. DUFRESNE: We would be requesting
23 three measures. First, an in camera hearing.

24 THE CHAIRPERSON: Define "in camera".

25 MR. DUFRESNE: That the hearing be

1 limited to parties to this matter and their counsel or
2 representatives.

3 As you know, we had asked for more
4 limited measures with video-conferencing, but in light
5 of the decision and specific comments on the rights of
6 parties, we now propose this measure.

7 So this is one.

8 THE CHAIRPERSON: That's one.

9 Two?

10 MR. DUFRESNE: Two, a directive from
11 the Tribunal to all persons in attendance in the
12 hearing not to disclose, in any manner, the visual
13 appearance of the Commission's witnesses.

14 THE CHAIRPERSON: You mean in a
15 verbal sense.

16 MR. DUFRESNE: That's correct.

17 This flows from the concerns about
18 pictures being posted, but we have concerns about
19 visual descriptions.

20 THE CHAIRPERSON: I understand what
21 you are saying. Even if I issued this order, the most
22 eloquent writer could not describe a person to the
23 point that he could be identified subsequently.

24 My understanding is that there are
25 hundreds of employees at the Commission. I am sure

1 there are some similarities in their images.

2 MR. DUFRESNE: That's correct, but
3 there are certain individuals that might have more
4 distinctive traits.

5 THE CHAIRPERSON: I don't know the
6 three individuals involved, so I cannot comment.

7 MR. DUFRESNE: That is two.

8 Three, we have concerns about
9 pictures being taken not only in the hearing room, but
10 outside, coming into and leaving the hearing room. So
11 we ask that there be measures taken so that no cameras
12 or individuals would be present outside the hearing
13 room in the Tribunal's area.

14 THE CHAIRPERSON: I should point out
15 something. One of the reasons my order was very
16 specific on that door being the checkpoint is because I
17 was under the impression that our facilities were being
18 shared on these dates with other cases.

19 It is now my understanding -- and I
20 had confirmation this morning -- that the whole space
21 here is only being used by our case today. So I can
22 put those kinds of preventive measures in place as far
23 as down the hall is concerned -- in fact, to the
24 elevators.

25 If that satisfies the concerns of the

1 Commission, that doesn't bother me, because I consider
2 this to be our space as well. It is just that, as a
3 duty to the taxpayer, we share our facilities with any
4 other organization that requests to use them, and it
5 was my understanding that another government
6 organization would be using some of the facilities
7 today, but that is not the case.

8 So I have control, I think, right to
9 the elevator. I am seeking approval from a
10 representative of the Tribunal at this point.

11 That can be accomplished.

12 MR. DUFRESNE: And we understand that
13 the Tribunal can do no more than that, because the rest
14 of the building is --

15 THE CHAIRPERSON: This is one of the
16 largest buildings in Ottawa.

17 I think we have made an allocation
18 for you to have rooms set aside to keep your people in.

19 The Commission may be familiar with
20 this, but I don't know if Ms Kulaszka is.

21 Were you shown some rooms?

22 MS KULASZKA: Ms Joyal showed us the
23 room.

24 THE CHAIRPERSON: That also works to
25 assist all sides in this matter.

1 MR. DUFRESNE: Those are our
2 requests.

3 THE CHAIRPERSON: So, in effect, the
4 second directive -- and I don't know what Ms Kulaszka
5 may have to say on it.

6 The principal one is the first one,
7 where the in camera would be a proceeding where members
8 of the public would not be here, not that the
9 proceedings themselves would be treated as
10 confidential.

11 Is that correct?

12 MR. DUFRESNE: That's correct,
13 subject to a description of the visual appearance. The
14 content of the testimony --

15 Obviously, we retain our right to
16 object to specific questions, as stated. Otherwise, it
17 would be public.

18 THE CHAIRPERSON: The description I
19 gave in my decision with regard to how section 52 is
20 ordinarily used -- ordinarily, it leads to the complete
21 shutdown of the proceedings, including what we call the
22 red filing of documentation. That arises often in
23 harassment files and so on, where very personal things
24 are being disclosed.

25 You are not asking for that.

1 MR. DUFRESNE: No.

2 THE CHAIRPERSON: Is there anything
3 else at this point?

4 MR. DUFRESNE: No.

5 THE CHAIRPERSON: We are not getting
6 into a debate, I just want to know, Ms Kulaszka, what
7 your position is on this issue.

8 I have been very practical about this
9 all the way through, and I think you all know that.

10 Ms Kulaszka, you have come all the
11 way up here. We want to get the evidence in. In
12 essence, what we are talking about is, Mr. Lemire will
13 be able to stay in the room, and all of the parties
14 will be able to stay, but perhaps members of the
15 audience will have to be outside. However, they will
16 be able to read everything that goes on. It is not
17 private in that sense.

18 That is the concern that would have
19 been in line with my previous concerns, had that been
20 requested, because that is what is usually requested
21 under section 52.

22 MR. DUFRESNE: If I may say one last
23 thing, as part of our letter we mentioned our
24 willingness to provide a proposed Agreed Statement of
25 Facts, which we have prepared, and I have raised it

1 with Ms Kulaszka.

2 It remains our strong position that
3 there is absolutely no need for Ms Rizk's testimony,
4 and that the information that is being sought -- we are
5 prepared to agree to it.

6 THE CHAIRPERSON: I understand.

7 MR. DUFRESNE: But Ms Kulaszka has
8 informed me that she is not open to even reviewing
9 this.

10 THE CHAIRPERSON: She has wanted to
11 cross-examine from the outset.

12 To be fair, this has been stated by
13 Ms Kulaszka from the first conference calls on this
14 point. It is not that she is wavering on her position,
15 she has been consistent.

16 I had proposed that, as well, as you
17 will see if you look at the record, but it's her right.

18 With regard to the other two
19 witnesses, you understand that the whole point was to
20 cross-examine on the affidavits. That is how this
21 whole thing came up.

22 Would you like a moment, Ms Kulaszka?

23 MS KULASZKA: Yes, I wonder if we
24 could have a few minutes.

25 THE CHAIRPERSON: Sure.

1 --- Upon recessing at 9:50 a.m.

2 --- Upon resuming at 10:00 a.m.

3 THE CHAIRPERSON: Ms Kulaszka, have
4 you had a chance to discuss matters with your client?

5 MS KULASZKA: Yes, I have.

6 I want to ask Mr. Vigna if they are
7 now representing the witnesses.

8 They are not here. They don't have
9 any lawyers here. They were subpoenaed. Are they
10 acting for the witnesses as their lawyers?

11 THE CHAIRPERSON: This thought did
12 come to my mind, as I saw the way the material was
13 done, but we are talking about employees of the
14 Commission.

15 Is your question more specific than
16 that?

17 Do they speak for those individuals?
18 Is that your question?

19 MS KULASZKA: Yes. Are they speaking
20 for those individuals?

21 MR. DUFRESNE: We are counsel for the
22 Canadian Human Rights Commission. In our letter of
23 yesterday, we indicated that the Commission had
24 instructed its employees not to attend this morning,
25 but to remain available. They are available, and if

1 these measures can be put in place, they will be here
2 in 15 minutes.

3 THE CHAIRPERSON: You are declaring
4 now to the Tribunal that your statements here are, in
5 some ways, binding on those witnesses.

6 MR. DUFRESNE: Yes.

7 THE CHAIRPERSON: They will comply
8 with whatever you are saying here.

9 MR. DUFRESNE: Yes.

10 They are on standby, as we speak, at
11 the Commission, and they will be here.

12 Ms Rizk is expecting a phone call
13 from us.

14 THE CHAIRPERSON: I also have another
15 point that I wanted to clarify.

16 When I mentioned earlier that this
17 hearing area is free, it is today. Tomorrow, I think
18 the Pension Appeals Board will be next door.

19 But we still will have our signs up,
20 and we will probably restrict those people from using
21 cameras.

22 However, I have another option, if it
23 would be of interest to any of you. We have a waiting
24 area which is next to the reception area. When you
25 came into the reception area this morning, on the

1 left-hand side there is a waiting area. So a person
2 could sit there. The door would be closed. There
3 wouldn't be access to the Tribunal offices.

4 A person could wait there; the
5 difference being, when a person comes to testify, if
6 you don't want to have the hassles out there, they
7 could come in through the interpreter's door.

8 MR. DUFRESNE: That would be a very
9 good option from our standpoint.

10 THE CHAIRPERSON: Yes, it's another
11 option.

12 MS KULASZKA: I want to put on the
13 record that I received this letter at four o'clock
14 yesterday afternoon, just prior to me leaving for
15 Ottawa. In fact, if I had left a few minutes earlier,
16 I wouldn't have got this letter, and I wouldn't have
17 known anything about it.

18 It wasn't sent by e-mail. There was
19 no warning by telephone.

20 I did get it --

21 THE CHAIRPERSON: It was sent here
22 earlier than that, but it was not brought to my
23 attention until this morning.

24 MS KULASZKA: The position of the
25 Commission keeps changing. They have brought numerous

1 motions about these witnesses. I want them to clarify,
2 are they still claiming section 37, or have they
3 abandoned that and are they now just making a motion
4 for an in camera hearing?

5 There are several things going on
6 here.

7 THE CHAIRPERSON: Right.

8 MS KULASZKA: First, they say they
9 are invoking section 37, but when they get here, all of
10 a sudden you have a motion before you for an in camera
11 hearing.

12 THE CHAIRPERSON: Right. Which, by
13 the way, normally comes up verbally in a hearing. It
14 is not normal that we get it in writing.

15 But I see your point, Ms Kulaszka.
16 You want to know, if you resolve on 52, is 37 still --
17 is that sword of Damocles still hanging over your head.

18 MR. DUFRESNE: As indicated in our
19 letter, we have invoked section 37. If there are no
20 measures put in place, we are invoking it.

21 If the measures that I am asking for
22 today are put in place, then we will not invoke, we
23 will withdraw our objection on the basis of section 37,
24 for the purpose of their attending and the disclosure
25 of their visual appearance. We retain our right to

1 invoke section 37 with respect to any and all specific
2 questions, with respect to the content of those
3 questions, as was made clear by this Tribunal.

4 THE CHAIRPERSON: All right. That's
5 a separate question.

6 --- Pause

7 MS KULASZKA: Mr. Lemire, as usual,
8 is being very helpful.

9 THE CHAIRPERSON: When I said that in
10 my decision -- Mr. Dufresne has not been
11 participating -- it's a fact.

12 MS KULASZKA: It's a fact.

13 THE CHAIRPERSON: He is very active
14 in the file. That is clear.

15 MS KULASZKA: Basically, Mr. Lemire
16 is being threatened with section 37. My point, and the
17 argument that I was going to make to the Tribunal about
18 section 37, is that you do have the jurisdiction to
19 hold and ask whether the visual appearance of a witness
20 even falls within section 37.

21 THE CHAIRPERSON: I can't say that I
22 have definitively answered that question to myself, but
23 the language is broad. It says, "information".

24 MS KULASZKA: Information that can be
25 disclosed.

1 If I had come to you in a motion and
2 said, "I want a picture of Hannya Rizk," you would have
3 said, "What for?" If I had said, "I just want to see
4 what she looks like," you wouldn't have disclosed it to
5 me.

6 THE CHAIRPERSON: I haven't decided.

7 I don't know if it encompasses this
8 type of thing, but you have heard my opinion in the
9 past about other types of information, Ms Kulaszka, and
10 how I have to deal with it.

11 MS KULASZKA: As for the Commission
12 invoking subsections 52(1)(c) and (d), essentially,
13 that was already dealt with in the previous motion.
14 These witnesses are in absolutely no danger from Mr.
15 Lemire.

16 THE CHAIRPERSON: No, they are not,
17 but that's not what 52(1)(c) speaks of.

18 MS KULASZKA: Certainly, he would
19 never agree that that provision applies.

20 THE CHAIRPERSON: As you say, that
21 matter was addressed by my decision, but you will
22 notice that the statute is broader than that. In
23 previous cases, when we have had to use it, it doesn't
24 necessarily relate to the parties in the room, it is
25 something often exterior. That is precisely why they

1 go in camera.

2 I think the suggestion is -- and it
3 was in the documentation submitted by the Commission in
4 its motion, the one that was just addressed by the
5 decision -- that they deal with other files than just
6 this one.

7 The fact is, the Tribunal has been
8 presented with documents, which I described as
9 abhorrent and troubling, and while I don't think there
10 is any indication that this relates to Mr. Lemire, it
11 certainly relates to the activities that these people
12 are involved with on a daily basis.

13 MS KULASZKA: Given the invocation of
14 that provision, which Mr. Lemire cannot consent to --

15 THE CHAIRPERSON: Which provision?
16 I'm sorry.

17 MS KULASZKA: Section 52 --

18 THE CHAIRPERSON: -- (1)(c) --

19 MS KULASZKA: -- (1)(c) and (d).

20 THE CHAIRPERSON: Yes?

21 MS KULASZKA: There is no basis for
22 making those allegations. Therefore, he cannot agree.

23 THE CHAIRPERSON: He cannot consent
24 to it.

25 Do you need to make further argument?

1 Do you want to argue the whole motion
2 now?

3 --- Pause

4 THE CHAIRPERSON: I am not going to
5 waste time. In effect, it has been argued through the
6 material that has already been filed.

7 And I have already indicated to you,
8 Ms Kulaszka, that I understand your position, but as I
9 also stated in my decision -- and I could pull it out
10 and read it -- I said that the positions on the facts,
11 on the circumstances, the background adopted by the
12 Commission, are not without basis. There is some basis
13 to that, and I alluded to it earlier.

14 I am mindful of Ms Kulaszka's
15 statement with regard to her client, and that has also
16 been made quite explicit in my decision, but these
17 employees are involved in a much bigger picture, for
18 which there is some cause for concern.

19 For that reason, I will be granting
20 the order, if that is what is being requested, to hold
21 these discussions in camera, in the narrow sense that
22 has been specified. It just means that the public
23 cannot be in the hearing room while those witnesses are
24 testifying only.

25 They can be in the hearing room when

1 we do arguments and so on. I have no problem with
2 that. It is just for the purposes of those witnesses'
3 testimony.

4 The evidence that those witnesses
5 will be giving will be public, in the sense that the
6 transcripts will be public, as will the exhibits.
7 There is no reason to withhold that.

8 Mr. Fromm?

9 MR. FROMM: Sir, I would like to go
10 on the record as registering a very strong objection to
11 this.

12 THE CHAIRPERSON: I understand. I
13 read your recent letter, Mr. Fromm.

14 MR. FROMM: I have filed
15 objections --

16 THE CHAIRPERSON: I have taken them
17 into account, Mr. Fromm.

18 MR. FROMM: First of all, you issued
19 a subpoena, and the subpoena was defied. These people
20 were ordered to be here, and they are not here.

21 There has been chatter in many of
22 these proceedings about various parties showing
23 contempt for the Tribunal, and I think this is an
24 example of the Commission showing its outright contempt
25 for your order. They are not here.

1 Secondly, I think that the public,
2 who paid for this entire proceeding, has the right to
3 be here. I think the assertion that somehow these
4 civil servants require a level of protection that,
5 normally, only undercover agents in drug cases, or
6 maybe genuine spies do, is further outrageous.

7 And I don't think that anybody here
8 actually takes these arguments seriously.

9 I know you weren't here during the
10 Tremaine case, but your colleague Mr. Doucet was, and
11 there was serious concern -- I think it was
12 exaggerated, but there was serious concern about
13 security. There were three levels of security at those
14 hearings. There was the hired gentleman who wanned
15 people and checked material being brought into the
16 Tribunal; there were, at least, three armed members of
17 the Ottawa City Police backing them up; and there were
18 several individuals who I took to be bodyguards for, I
19 guess, Mr. Warman, and perhaps Mr. Vigna.

20 I objected to the presence of the
21 bodyguards, because I thought it was prejudicial to the
22 gentleman I was representing, but there, at least, was
23 the appearance that the security concerns, if there
24 were any, were being addressed.

25 Today there are the two gentlemen who

1 wanned us at the door, who, I believe, are Tribunal
2 hirees, and, as far as I can tell, there is no other
3 security. There are no Ottawa Police here. I am not
4 aware of anybody having a bodyguard. These gentlemen
5 here are certainly not my bodyguards.

6 This great security concern -- where
7 is the beef?

8 It isn't there. This is just a big
9 drama to give people an anonymity they don't deserve.

10 Mr. Lemire is out here in public. I
11 am out here in public, for whatever it's worth. You
12 are out here in public.

13 THE CHAIRPERSON: And so is Mr.
14 Vigna.

15 MR. FROMM: And so is Mr. Vigna.

16 It doesn't seem fair that civil
17 servants, who have a considerable power over people's
18 rights -- and I underline that, their rights -- should
19 have this degree of anonymity.

20 This is Canada, not Cuba.

21 THE CHAIRPERSON: Your points are
22 duly noted, and reflected, to some extent, in my
23 decision, Mr. Fromm, but I think there is sufficient
24 cause to proceed in this matter, and the case can
25 proceed in this manner at that point.

1 However, I am concerned about the
2 fact that the witnesses weren't here. We haven't
3 gotten to it yet, but the point that was raised by Mr.
4 Fromm was striking to me this morning.

5 I thought it was almost an affront to
6 the Tribunal the way it came to us, but I was going to
7 see how things played out.

8 I saw right away that you were
9 withdrawing from it, so I didn't raise the point again,
10 but a subpoena had been issued.

11 From what I heard before from you,
12 Mr. Dufresne, these witnesses are ready and on call.

13 MR. DUFRESNE: They are, and I want
14 to clarify this. We struggled with this. The reason
15 they are not here is because we didn't want to render
16 the measures nugatory if we brought them without the in
17 camera and without the clarification of the issue of
18 photography.

19 They are on call, and they will be
20 here within 10 minutes, as soon as we call them.

21 THE CHAIRPERSON: Ms Kulaszka, I
22 don't know how you worded your subpoenas, but when we
23 discussed it, it was my understanding that we were
24 going to bring them in sequence, not bring them all at
25 the same time.

1 You were going to do one witness per
2 day, or one at a time. That was my understanding.

3 To be honest, I didn't expect them
4 all to be here, but I also didn't like the language of,
5 "We are instructing them not to be here," either, I
6 must say.

7 But I think that might be water under
8 the bridge at this point.

9 MS KULASZKA: I would ask that Ms
10 Rizk be produced first.

11 MR. DUFRESNE: If I may, I would like
12 to clarify one issue. We were also seeking a directive
13 that a description of the witnesses not be --

14 THE CHAIRPERSON: Descriptions.

15 MR. DUFRESNE: We have concerns, as
16 indicated in our motion, of some of these things making
17 their way onto the internet.

18 THE CHAIRPERSON: Is that essential?
19 I don't even know if I have authority to issue a
20 direction like that.

21 Can you find for me something in a
22 statute where I can issue an authority telling a person
23 what they can and cannot write about afterwards?

24 MR. DUFRESNE: In our submission, it
25 is in 52. It is the preamble to 52, which states that

1 the member or panel conducting the inquiry may take any
2 measure and make any order that the member or panel
3 considers necessary to ensure the confidentiality of
4 the inquiry.

5 This is a directive to the parties.
6 You could order an in camera hearing,
7 and nothing would go out to the world.

8 THE CHAIRPERSON: Yes, because it's
9 in camera. Because it's within my confines.

10 MR. DUFRESNE: But, presumably,
11 parties to an in camera hearing couldn't go outside and
12 disclose what took place, either --

13 THE CHAIRPERSON: That's true.

14 MR. DUFRESNE: -- and it's in the
15 same sense what we are asking.

16 It is very limited: No description
17 of the visual appearance.

18 THE CHAIRPERSON: Can I have an
19 undertaking, Ms Kulaszka, that you won't go writing
20 someplace what these people look like?

21 MS KULASZKA: My position is that it
22 is virtually unenforceable. Unless there is something
23 very, very different about these two people --

24 She is blonde. She is five-foot-six.
25 Ms Joyal could -- well, she is not

1 five-foot-six. I don't know how tall Ms Joyal is.

2 It is unenforceable.

3 THE CHAIRPERSON: It is. It is
4 almost making a travesty of my process. I will not
5 issue that kind of directive. I'm sorry.

6 They probably never thought about it
7 until you mentioned it. Now, watch, they are going to
8 write up, "Blonde, five-foot-six." They never would
9 have thought to put that in.

10 There is no indication that any of
11 these individuals have done anything like that. The
12 only photos that we have from this hearing, Mr.
13 Dufresne, are of themselves, calling themselves the big
14 defence team.

15 We need some context.

16 I am prepared to go this far because
17 of the bigger picture that you have raised, although
18 Mr. Fromm has raised some objections on that point,
19 which I hear him on.

20 I am going that far, but please --

21 MR. VIGNA: Mr. Chair, I want to
22 remind you that there are photos of judges and members
23 of the Tribunal --

24 THE CHAIRPERSON: Yes, there are.

25 MR. VIGNA: -- not just photos of

1 themselves.

2 THE CHAIRPERSON: Mr. Vigna, who is
3 more exposed here with the allegations that have been
4 made in your motion? You and I and all of the other
5 members of the Tribunal.

6 And we haven't been immune. I read
7 that article. The article went right to the core of
8 what is going on in this room -- that little story, the
9 fictional one. But yet we move on, we go on.

10 MR. DUFRESNE: On that basis, Mr.
11 Chair, we are prepared to proceed with, essentially,
12 two of the requests that we made, the in camera and the
13 measures with respect to cameras.

14 I want to state for the record that,
15 while all of our requests have not been addressed, the
16 Commission takes the security of its staff very
17 seriously. Unlike Commission counsel, who, by the
18 nature of their work, are going to be exposed to public
19 scrutiny, Commission investigators do not have similar
20 functions.

21 As a result, we have taken a strong
22 position on that, but we accept the Tribunal's ruling
23 on that basis.

24 THE CHAIRPERSON: Perhaps the job
25 function has changed over the years with legislative

1 change.

2 MS KULASZKA: Could they rescind
3 their section 37 certification for the record?

4 THE CHAIRPERSON: On the assumption
5 that we are proceeding on that basis?

6 MR. DUFRESNE: We rescind, again, for
7 the purpose of their testimony, but we reserve our
8 right to invoke it for questions.

9 MS KULASZKA: Thank you.

10 THE CHAIRPERSON: Since we want Ms
11 Rizk first, is she in the building, or is she anywhere
12 near the building?

13 MR. DUFRESNE: We are going to gather
14 her from the Commission office. She can be here in 15
15 minutes.

16 THE CHAIRPERSON: All right, we will
17 adjourn for 15 minutes.

18 --- Upon recessing at 10:15 a.m.

19 --- Upon resuming at 10:50 a.m.

20 THE CHAIRPERSON: Mr. Dufresne?

21 MR. DUFRESNE: Mr. Chair, if I may
22 make one comment; just to get back to the issue of our
23 letter and the suggestion from Mr. Fromm that the
24 Commission was flaunting the Tribunal's subpoena, I
25 want to be very clear for the record that it was always

1 the intention of the Commission to respect the
2 subpoenas issued by this Tribunal.

3 In our letter, we indicated that we
4 had brought Mr. Goldberg with us. There was no issue
5 there. We were prepared to proceed. And while the
6 Commission had instructed the other witnesses not to
7 attend pending the determination of section 37, because
8 the Canada Evidence Act states that the information is
9 not to be disclosed once a certificate is issued, this
10 was administrative, so that they weren't waiting and
11 there weren't any risks to their well-being.

12 THE CHAIRPERSON: It sounded
13 differently in the letter.

14 MR. DUFRESNE: I want to clarify on
15 the record -- and we did state, perhaps not as clearly
16 as we should have, that they were on standby, and they
17 would be available within a moment's notice.

18 THE CHAIRPERSON: That part I
19 understood, from the letter, that they were available.

20 MR. DUFRESNE: It was from the
21 standpoint of, pending this determination, there is a
22 section 37 objection.

23 It was in this sense, and I wouldn't
24 want it to be perceived as having --

25 THE CHAIRPERSON: Section 37 is very

1 broad. It can trump a lot of things it seems.

2 MR. FROMM: In response, perhaps in
3 my simple country-boy understanding, a subpoena means
4 be there, not "Stay away and we'll make a deal."

5 But what I really rise on, sir, is
6 the fact that, once again, the complainant in this
7 case, Mr. Warman, is absent. As I understand it, the
8 Commission has not taken over the prosecution of this
9 case as it did in Citron v. Zündel. So, actually,
10 technically, there really is nobody prosecuting this
11 case.

12 Mr. Warman is not here again. His
13 complaint has put the taxpayer to a tremendous cost, to
14 say nothing of Mr. Lemire and the other interested
15 parties who have intervened.

16 His continued absence has been noted
17 by you before, but I am suggesting to you that it
18 really puts these entire proceedings into question
19 because, as I understand the law, there really is
20 nobody prosecuting the case.

21 THE CHAIRPERSON: That is where I
22 would take a bit of an issue with what you just said,
23 Mr. Fromm. This is not a prosecution. That word is
24 associated with criminal and penal proceedings, which
25 this is not.

1 As you point out repeatedly in your
2 letters, this is a remedial type of legislation, and it
3 is a civil type of process in the administrative
4 context.

5 There is no prosecutor. The Tribunal
6 makes the inquiry, and the evidence is presented. The
7 Commission doesn't prosecute. Legally, that is not the
8 term to be using.

9 I have noted Mr. Warman's absence in
10 the past; I am noting it again today. Actually, I
11 thought that he might be here, being that we are in
12 Ottawa. I am kind of surprised that he is not.

13 I think my quote when you raised your
14 objection last time, Mr. Fromm, was, "I think he should
15 be here." That's all I can say.

16 MR. FROMM: There is one final point.
17 I think your order excluded members of the audience --

18 THE CHAIRPERSON: It did.

19 MR. FROMM: -- and the two gentlemen
20 who came from our side, who are interested, have
21 left --

22 THE CHAIRPERSON: I'm sorry, I didn't
23 catch your last statement.

24 MR. FROMM: The two gentlemen from
25 our side, who are interested, have left, and the

1 red-headed young lady, who I believe is with the press,
2 has left, but I see that there are still two people in
3 the audience, and I was wondering if they could be
4 excluded.

5 THE CHAIRPERSON: Yes. I was
6 informed that they are security personnel. Is there
7 any reason they need to be in the room?

8 They could be just outside the door.

9 MR. DUFRESNE: We would want them to
10 escort the witnesses in and out of the room.

11 THE CHAIRPERSON: They could be right
12 outside the door.

13 MS KULASZKA: I wonder if the
14 Commission could put on the record what kind of
15 security personnel they are, and what agency they are
16 with, because they look very familiar.

17 MR. VIGNA: Mr. Chair, I don't see
18 the relevance of that.

19 THE CHAIRPERSON: I would like to
20 know the concern.

21 I don't care what security company
22 they are from.

23 MS KULASZKA: I want to know if they
24 are from the Canadian Security Intelligence Service.
25 They look very familiar from the Zündel National

1 Security hearings.

2 MR. VIGNA: Mr. Chair, I don't think
3 we need to answer those questions.

4 If they were what Ms Kulaszka is
5 suggesting, I don't think it would be --

6 THE CHAIRPERSON: I can't hear you,
7 I'm sorry.

8 I want everyone to understand that I
9 have an air conditioning vent right over my head.

10 MS KULASZKA: Yes, we have one here,
11 too.

12 THE CHAIRPERSON: Sometimes I have
13 noticed that it is easy to hear down there, but I can't
14 hear a thing up here.

15 I would ask you to move closer to the
16 microphone and speak up, Mr. Vigna.

17 MR. VIGNA: All I am saying is, the
18 security matters that are being raised by Ms Kulaszka
19 have nothing to do with the case. I don't see any
20 relevance whatsoever.

21 She asks if they are members of
22 CSIS --

23 THE CHAIRPERSON: I don't want anyone
24 to be intimidated in this hearing. CSIS is an
25 intimidating type of organization, and I don't want any

1 party to feel intimidated. That is something that is
2 implicit in everything that has gone on today.

3 Is there any reason for the
4 respondent to feel intimidated by the presence of those
5 individuals?

6 MR. VIGNA: As far as I am concerned,
7 not at all, Mr. Chair. They have had no interaction
8 with the respondent. They deal with us. What's the
9 big deal?

10 THE CHAIRPERSON: It's my process. I
11 want to know what is going on. I don't want there to
12 be some kind of investigation going on in my hearing of
13 some other sort, especially something like that.

14 Are they from a federal agency, or
15 are they simply people from a security company like I
16 have here?

17 MR. DUFRESNE: We will verify that.
18 To the best of our knowledge, they are from an agency.
19 I have no information --

20 THE CHAIRPERSON: Agency meaning a
21 security company?

22 MR. DUFRESNE: A security firm.
23 We will confirm. We will get the
24 information and we will advise you.

25 THE CHAIRPERSON: Do that for me,

1 because I don't want this to be a venue for
2 investigations of some other sort.

3 MR. DUFRESNE: I will send an e-mail
4 right now, if you don't mind my doing this in the
5 hearing.

6 THE CHAIRPERSON: I don't mind if you
7 send e-mails.

8 Your Blackberry is older technology,
9 it has no camera. I noticed that.

10 MR. VIGNA: Mr. Chair, I want to make
11 it clear, with respect to Ms Rizk, that she did not
12 provide an affidavit, so she can't be cross-examined.
13 That is the position we will be taking.

14 The only affidavits filed were for
15 Mr. Goldberg and Mr. Steacy.

16 THE CHAIRPERSON: So she will be
17 examined in chief by Ms Kulaszka.

18 MR. VIGNA: Yes.

19 THE CHAIRPERSON: Ms Kulaszka, we
20 will follow the basic rules of evidence. She is your
21 witness. You have subpoenaed her. Examine her in
22 chief, and if you find that she develops a certain
23 hostility toward you, then you can ask if you could
24 proceed in a different fashion.

25 I don't expect that. I expect you to

1 be able to get your information. Even in your
2 cross-examination you intended to follow the same kind
3 of process, as I have noted, so I don't expect any
4 difficulty.

5 MS KULASZKA: I would like to put on
6 the record that I have in my possession the "Wiesenthal
7 Insider" from Spring `07. This is just about the word
8 "prosecution". They talk about the Lemire case and
9 they say:

10 "Friends of Simon Wiesenthal
11 Center is also on the
12 prosecution team, along with
13 Canadian Jewish Congress and
14 B'Nai Brith, of Marc Lemire, a
15 leading Canadian White
16 supremacist and Holocaust
17 denier, who is challenging the
18 constitutionality of section 13
19 of the Canadian Human Rights
20 Act." (As read)

21 THE CHAIRPERSON: Who wrote that?

22 MS KULASZKA: This is a magazine put
23 out by the Simon Wiesenthal Center.

24 THE CHAIRPERSON: That's fine. I
25 know that's a party here, but you know it's not the

1 law. This is not a prosecution.

2 It may appear that way, and some
3 people may call it that from each side, and you have
4 noted it for the record, but I don't see it as a
5 prosecution. It is not that. The statute doesn't call
6 it a prosecution.

7 MS KULASZKA: That's the term that
8 people use.

9 THE CHAIRPERSON: It's the term that
10 people use. I understand. I understand where Mr.
11 Fromm is coming from.

12 AFFIRMED: HANNYA RIZK

13 EXAMINATION-IN-CHIEF BY MS KULASZKA

14 MS KULASZKA: Ms Rizk, I am relieved
15 that you are not so distinctive as to be readily
16 identifiable.

17 That's a joke.

18 Ms Rizk, were you served with a
19 subpoena?

20 MS RIZK: Yes, I was.

21 MS KULASZKA: And attached to that
22 subpoena you were requested to bring all documents,
23 paper or electronic, concerning investigations of Marc
24 Lemire and/or his website "freedomsite.org", as well as
25 the website "jrbooksonline.com".

1 "All documents should be
2 produced, whether or not they
3 relate to this complaint."

4 Did you do so?

5 MS RIZK: Yes, I did.

6 MS KULASZKA: Could I see those
7 documents?

8 MR. VIGNA: Mr. Chair, the witness
9 has basically brought the investigation file. There
10 might be privileged documents in it that I haven't had
11 a chance to review.

12 It is the Commission file, basically.

13 Everything was disclosed, as far as
14 the disclosure process is concerned. I don't think
15 this should be a process where, basically, she can look
16 at the physical file --

17 THE CHAIRPERSON: Speak up. I can't
18 hear a thing.

19 MR. VIGNA: Everything that had to be
20 disclosed was disclosed. What she has brought with her
21 is the investigation file.

22 I don't remember if there are any
23 privileged documents in the file.

24 THE CHAIRPERSON: All right. Do you
25 want to take a look to see if there are any privileged

1 documents?

2 MR. VIGNA: Yes, we could do that at
3 the adjournment. We can proceed in the meantime.

4 THE CHAIRPERSON: They might be so
5 privileged that they should not even be disclosed to Ms
6 Kulaszka?

7 Is that what you are saying?

8 Haven't we done disclosure on this
9 file?

10 MR. VIGNA: We have done it, but I
11 wanted to make sure that she doesn't look at our
12 physical file --

13 THE CHAIRPERSON: So you didn't
14 review this material before the witness came.

15 MR. VIGNA: Not recently.

16 MS KULASZKA: I had assumed that it
17 would have been reviewed at this point.

18 THE CHAIRPERSON: This slows us down,
19 Mr. Vigna.

20 MS KULASZKA: Shall we take a
21 half-hour adjournment so that Mr. Vigna can review the
22 file?

23 THE CHAIRPERSON: That's too long.
24 We don't have all day.

25 MR. VIGNA: Mr. Chair, I could glance

1 at the documents quickly.

2 THE CHAIRPERSON: Take a glance. I
3 will give you five minutes.

4 --- Upon recessing at 11:00 a.m.

5 --- Upon resuming at 11:05 a.m.

6 MR. VIGNA: Mr. Chair, I have had a
7 chance to look at the file, and there is no problem.

8 THE CHAIRPERSON: Good.

9 MR. VIGNA: She brought the
10 investigation files of Mr. Lemire and Craig Harrison,
11 because, at first, if you note on the complaint form,
12 there was a joint complaint.

13 THE CHAIRPERSON: Yes.

14 MR. VIGNA: If there is anything that
15 is related, we have both files with us today.

16 THE CHAIRPERSON: All right, because
17 there was one original complaint.

18 MR. VIGNA: Yes.

19 MS KULASZKA: I wonder if I could get
20 those documents from the witness.

21 May I approach the witness?

22 THE CHAIRPERSON: Go ahead.

23 --- Pause

24 MS KULASZKA: I hate to ask this, but
25 would you mind, Mr. Chair, if I had five minutes to

1 look the documents over?

2 THE CHAIRPERSON: I am trying to move
3 it along, but it's your witness. That's not a problem.

4 MS KULASZKA: Would ten minutes be
5 okay?

6 THE CHAIRPERSON: That's fine.
7 How long do you think you will be?

8 We have three days. Originally we
9 were going to try to do it all in one day, for your
10 purposes.

11 MS KULASZKA: Three days is fine.

12 THE CHAIRPERSON: In the three days,
13 do you think we will be done with all of the witnesses?

14 MS KULASZKA: Absolutely.

15 MR. VIGNA: These are our physical
16 files, so we would like to recuperate them, obviously.

17 THE CHAIRPERSON: All right. She
18 will be in the room.

19 MS KULASZKA: Do you want me to stay
20 in this room?

21 We were going to go to the Conference
22 Room, but if you want us to stay here --

23 THE CHAIRPERSON: Given that they are
24 the original files, it is not so much that you would do
25 anything to them, but just so there is no suggestion

1 that they have been misplaced anywhere else, why don't
2 you stay in this room.

3 MS KULASZKA: That's fine.

4 THE CHAIRPERSON: That's helpful.

5 I would just ask you, Mr. Vigna, to
6 not listen in on their conversation.

7 --- Recess at 11:07 a.m.

8 --- Upon resuming at 1:07 p.m.

9 THE CHAIRPERSON: Ms Kulaszka?

10 MS KULASZKA: I was wondering if the
11 witness could have a binder.

12 --- Pause

13 MS KULASZKA: Perhaps I should
14 produce this binder. I don't know what number it will
15 be.

16 THE REGISTRAR: The "Binder for
17 Cross-Examination of CHRC Employees" will be filed as
18 Respondent Exhibit R-17.

19 EXHIBIT NO. R-17: Binder
20 entitled "Binder for
21 Cross-Examination of CHRC
22 Employees"

23 MR. VIGNA: That is only for the
24 purpose of identification.

25 MS KULASZKA: That's correct.

1 THE CHAIRPERSON: That is the way we
2 have done all of them, Mr. Vigna. They get marked, and
3 anything that isn't addressed is removed.

4 MS KULASZKA: Ms Rizk, I would ask
5 you to go to Tab 15 of the binder which is in front of
6 you and turn to page 9. This is a photocopy of a disk
7 that was disclosed by the Canadian Human Rights
8 Commission to the respondent. You can see that it
9 states "Warman v. Lemire, August 5th, 2002
10 (Stormfront)."

11 MS RIZK: Yes.

12 MS KULASZKA: Do you recognize that?

13 MS RIZK: No.

14 MS KULASZKA: Did you download
15 material from Stormfront on that date?

16 MS RIZK: I don't remember.

17 MS KULASZKA: So you did not create
18 this disk.

19 MS RIZK: If I created a disk, it
20 wouldn't have looked like this. This would have been a
21 duplicate of a disk that I created.

22 I don't remember whether I downloaded
23 it or not.

24 MR. VIGNA: Mr. Chair, this is a copy
25 of the original disk that was reproduced for litigation

1 purposes.

2 THE CHAIRPERSON: Is the original
3 disk the one that says "August 5th, 2002"?

4 Perhaps I am looking at the wrong
5 one.

6 It is page 9. It has a disk case and
7 a disk. The case says "Disclosed by CHRC, Jan. 8,
8 2007." Right?

9 MS KULASZKA: I wrote that. That's a
10 little tag that I put on, so that I had the date that
11 it was actually disclosed to me.

12 THE CHAIRPERSON: Okay. The disk
13 itself has one of those little labels that one puts on
14 these disks. Right?

15 MS KULASZKA: That's correct.

16 THE CHAIRPERSON: It says, "Created
17 on 2007-01-05," which I am assuming is January 5, 2007,
18 and it refers below to a date marked "August 5th, 2002
19 (Stormfront)".

20 MS KULASZKA: Correct.

21 THE CHAIRPERSON: So the question
22 is...?

23 MS KULASZKA: I am asking Ms Rizk:
24 Did you download that material on August 5th, 2002,
25 from Stormfront?

1 MS RIZK: I don't remember. I do
2 remember that I did go to Stormfront, but I do not
3 remember what date that was.

4 MS KULASZKA: So you can't say for
5 certain whether you actually downloaded the material
6 that was on that disk.

7 MS RIZK: No.

8 MS KULASZKA: Do you go to Stormfront
9 regularly?

10 MS RIZK: No, I do not.

11 MS KULASZKA: Can you say when you
12 first started monitoring Marc Lemire?

13 MS RIZK: We received a complaint
14 from Richard Warman around November 23rd or 24th, 2003,
15 and that is when we started investigating Marc Lemire
16 as a respondent.

17 He was named as a respondent in that
18 complaint.

19 MS KULASZKA: So prior to that -- and
20 I am talking about your personal knowledge -- you had
21 never monitored Marc Lemire or the Freedom site.

22 MS RIZK: No, prior to that I did
23 not.

24 MS KULASZKA: The complaint from Marc
25 Lemire was received by the Commission on November 24th,

1 2003?

2 MS RIZK: Yes, it was.

3 MS KULASZKA: At that time Mr. Warman
4 was an employee of the Commission.

5 Is that correct?

6 MS RIZK: I can't remember, but I
7 believe so.

8 MR. VIGNA: Mr. Chair, I don't quite
9 understand, because 2004 was mentioned, and now 2003.

10 THE CHAIRPERSON: Speak up, Mr.
11 Vigna.

12 MR. VIGNA: There were two dates,
13 2004 and 2003 for the complaint date. I am not clear
14 which date --

15 THE CHAIRPERSON: I understood that
16 November 2003 was the question, wasn't it?

17 MS KULASZKA: The complaint was
18 received on November 24th, 2003?

19 MS RIZK: Yes.

20 Could I just double-check my files?

21 MS KULASZKA: Sure.

22 MS RIZK: Thank you.

23 --- Pause

24 MS RIZK: Yes, it was November 24th.

25 MS KULASZKA: Mr. Lemire is handing

1 out a copy of a page from the file, which was stamped
2 by the Commission when they received it, and it was
3 November 24th, 2003.

4 Can you confirm that, in fact, the
5 date of the complaint was November 23rd, 2003, just
6 from your memory?

7 Do you need to see the complaint?

8 MS RIZK: The complaint was received
9 November 24th, 2003.

10 MS KULASZKA: And the date of the
11 complaint was --

12 MS RIZK: November 24th, 2003,
13 because that is the way we do it. When we receive a
14 complaint, the date of the receipt is the date of the
15 complaint form.

16 MS KULASZKA: Did Mr. Warman follow
17 what would be the usual procedure to file a complaint?

18 MS RIZK: Yes.

19 MS KULASZKA: What is that procedure?

20 MS RIZK: He would send in the
21 complaint form to Intake Services at the Canadian Human
22 Rights Commission, and when we receive the complaint we
23 review it.

24 THE CHAIRPERSON: That is Index
25 Services?

1 MS RIZK: Intake Services.

2 MS KULASZKA: What is the form?

3 Is that found on your website?

4 MS RIZK: A complaint can be sent
5 in -- at that point in time a complaint could be sent
6 in in any form, and if it doesn't meet the criteria to
7 file, then we would return it. We would say that it
8 doesn't meet the criteria to file for the following
9 reasons.

10 MS KULASZKA: Has that changed now?

11 MS RIZK: Yes. Since then the
12 criteria have changed a bit to file a complaint, not
13 the criteria to meet --

14 Not the criteria of the Human Rights
15 Act, but the criteria to file --

16 Let me try to rephrase.

17 What is necessary to file a
18 complaint -- there are rules. For instance, you can't
19 file more than three pages now, but at the time the
20 complainant filed, we did not have that.

21 MS KULASZKA: Any other changes?

22 MS RIZK: Not that I can remember
23 offhand right now.

24 MS KULASZKA: When was that change
25 made?

1 MS RIZK: I can't remember.

2 MS KULASZKA: Today they seem to
3 require a form. Is that a recent change?

4 MS RIZK: I'm sorry, what form?

5 I am not aware of a form --

6 MS KULASZKA: Being required.

7 MS RIZK: Being required from the
8 complainant?

9 MS KULASZKA: No, a form required to
10 be filled in.

11 MS RIZK: Yes. Yes, we send out what
12 we call an intake kit, which basically describes how to
13 file a complaint and what is necessary to file the
14 complaint.

15 MS KULASZKA: So if someone expresses
16 interest, you send them the kit.

17 MS RIZK: Yes, we do.

18 I'm sorry, can I rephrase?

19 THE CHAIRPERSON: Yes.

20 MS RIZK: It is not that they
21 express --

22 Normally what happens is, if a
23 persons sends it in by letter, then we review it, and
24 if there is a problem with the complaint form, we would
25 send them a kit, or we would --

1 Let me just -- I do not work at
2 Intake Services at present, so that is why I am
3 remembering.

4 A person contacts the Commission. We
5 send them a kit if we feel that they are within our
6 jurisdiction. We ask them basic questions: Is it
7 within our jurisdiction? Does it fall under criteria?
8 Is there a ground? And so forth.

9 If there is, then we send them a kit,
10 and in the kit are more instructions on how to file.
11 It explains our Act a little more, and what we need --
12 personal information: address, name -- respondent and
13 the specifics of the complaint.

14 MS KULASZKA: And you are limited to
15 three pages you said.

16 MS RIZK: Yes, now that is the
17 practice.

18 MS KULASZKA: So they can't be
19 sending you reams of material off the internet, for
20 example.

21 MS RIZK: Presently. At the time the
22 complainant filed, we did not have that in place.

23 MS KULASZKA: What would they refer
24 to today, just a URL?

25 MS RIZK: I'm sorry, I didn't hear

1 that.

2 MS KULASZKA: Three pages is not very
3 much. For the grounds, would they just give you the
4 URL of a website?

5 THE CHAIRPERSON: Do you know what
6 "URL" means?

7 MS RIZK: The address of the --

8 THE CHAIRPERSON: The internet
9 address, yes.

10 MS RIZK: Again, I don't work at
11 Intake Services at this time, but if they would send a
12 URL, they would have to have some specifics in the
13 complaint form.

14 MS KULASZKA: So Intake Services does
15 the initial screening at that point, then.

16 Intake Services decides whether to
17 send a kit or not.

18 MS RIZK: Yes, they would. However,
19 if a complainant insists on filing, or says that they
20 would like to file a complaint, we would be required to
21 send them a kit, regardless.

22 MS KULASZKA: Okay. Then they send
23 back their three-page form, and at that point what
24 would you do as an investigator?

25 MS RIZK: As an investigator on the

1 file, we don't receive the complaint form as soon as it
2 is --

3 The complaint form has to be
4 reviewed, to make sure that it meets the criteria. If
5 it is to go by investigation, yes, then we would
6 receive the complaint form at that time.

7 MS KULASZKA: So Intake also reviews
8 the complaint form to make sure it complies with your
9 requirements.

10 MS RIZK: Yes.

11 MS KULASZKA: If it does, at that
12 point it is forwarded to an investigator.

13 MS RIZK: Yes.

14 MS KULASZKA: What would you do at
15 that point, once, as an investigator, you receive a
16 complaint?

17 MS RIZK: I would go through the
18 complaint form and I would review the allegations and
19 commence my investigation.

20 MS KULASZKA: And what matters would
21 you be looking at in your investigation that you would
22 require proof of?

23 MS RIZK: I'm sorry, I don't
24 understand the question.

25 Could you be more specific? I'm not

1 sure --

2 MS KULASZKA: What matters would you
3 be investigating?

4 MS RIZK: Anything that falls within
5 the criteria of the Act. Anything based on a ground,
6 and any allegation -- any practice linked to that
7 ground.

8 The investigation's purpose is to see
9 if the practice is linked to the ground and to see if
10 it falls within our -- if it is something that we can
11 investigate --

12 No. I'm sorry, let me rephrase
13 again.

14 THE CHAIRPERSON: Take your time.

15 MS RIZK: I would be looking at the
16 allegations, and I would take it
17 allegation-by-allegation and verify -- I would verify
18 whether or not these allegations are -- if there is
19 enough evidence to support these allegations.

20 MS KULASZKA: What kind of
21 investigations would you do, for instance, to verify
22 the identity of a respondent?

23 MR. VIGNA: Mr. Chair, this would be
24 privileged under investigation techniques, and it would
25 jeopardize our investigations, so I would invoke --

1 THE CHAIRPERSON: The privilege of
2 investigation techniques?

3 MR. VIGNA: It could jeopardize our
4 operations in terms of investigating complaints and the
5 manner in which we find the identity --

6 THE CHAIRPERSON: What privilege is
7 that?

8 Is it privilege?

9 MR. VIGNA: Mr. Chair, it's a
10 privilege in terms of the investigation techniques that
11 are used. We cannot jeopardize these techniques in
12 terms of the future and --

13 THE CHAIRPERSON: All right, but are
14 you invoking a specific privilege?

15 Is it under the four Wigmore criteria
16 of investigation techniques?

17 It seems pretty obvious to me how one
18 could find out what the identity of a person is. Does
19 that question trouble you so much?

20 It's like any lawyer who is trying to
21 find out who he is going to sue.

22 I think that's what the question was.

23 Are you invoking section 37?

24 MR. DUFRESNE: Section 37 protects
25 the secrecy of investigative techniques, in that, if

1 they are disclosed, that could have a detrimental
2 impact on other investigations.

3 THE CHAIRPERSON: So you are invoking
4 37?

5 MR. DUFRESNE: For this point, yes.

6 THE CHAIRPERSON: Don't say it's
7 privilege. It's not privilege, it's 37.

8 It is a large tool that you have
9 chosen to use, and I hope that one day the Federal
10 Court has a chance to assess it.

11 Section 37.

12 Go ahead, Ms Kulaszka.

13 MS KULASZKA: With respect to the
14 investigation of Mr. Lemire and the FreedomSite, what
15 investigations did you do concerning whether he owned
16 the FreedomSite?

17 MS RIZK: I went on the website and I
18 did a "WHOIS" search, which basically -- you enter in
19 the website name and it gives you information on who
20 the operator is of the website.

21 MS KULASZKA: Did you do anything
22 else?

23 MR. DUFRESNE: I would stress that if
24 there is any information that falls under investigative
25 techniques that are confidential, then the objection

1 under section 37 stands.

2 THE CHAIRPERSON: I'm sorry, could
3 you repeat that?

4 MR. DUFRESNE: I would stress that
5 our objection under section 37 is for any investigative
6 techniques that ought to remain confidential for
7 investigations, in order to avoid --

8 THE CHAIRPERSON: Pursuant to section
9 37.

10 MR. DUFRESNE: That's correct.

11 THE CHAIRPERSON: But you are not
12 objecting to that question right now.

13 MR. DUFRESNE: Not to the question,
14 but --

15 THE CHAIRPERSON: Because, so far, I
16 haven't heard anything that I haven't already heard
17 from Mr. Warman.

18 I am asking for some discretion to be
19 utilized by the single party that has this tool in this
20 room.

21 Go ahead.

22 What was the question?

23 MS RIZK: Could you repeat the
24 question, please?

25 MS KULASZKA: Did you undertake any

1 other investigations to determine who owned the
2 FreedomSite?

3 MS RIZK: I used -- again, I haven't
4 done section 13 complaints in quite a while.

5 Can I refer to this, because the name
6 of it is right here.

7 MS KULASZKA: Certainly.

8 MS RIZK: I used something called
9 "Visual Route".

10 MR. VIGNA: Mr. Chair, I would like
11 to object to the last question, under section 37, on
12 the tools that are used in order to track down the
13 identity, based on section 37, because these tools are
14 part of the secrecy of investigations.

15 MS KULASZKA: I was just going to ask
16 Mr. Vigna to reconsider that, because the material was
17 disclosed to us about the tracer routes.

18 THE CHAIRPERSON: Take a look at
19 that, Mr. Vigna. If it has been disclosed --

20 MS KULASZKA: It was disclosed. It
21 was not used in the hearing. That is why Mr. Bernard
22 Klatt's expert report dealt with these tracer routes.

23 But, then, when the hearing came,
24 they did not rely on that material, they relied on
25 other material from Mr. Warman, which he disclosed at

1 the hearing.

2 THE CHAIRPERSON: Your point, then,
3 Ms Kulaszka, is what on that; that Mr. Klatt's evidence
4 was somehow affected by that?

5 MS KULASZKA: No, my point, really,
6 is that the Commission itself has disclosed the
7 documents which were generated by Ms Rizk concerning
8 the tracer routes.

9 MR. VIGNA: Mr. Chair, I just want to
10 make it clear that I don't want these types of
11 questions to go any further than what has been
12 disclosed, because if there are special programs that
13 are used in order to track down --

14 First of all, we invoke section 37,
15 and secondly, I don't see the relevance in terms of the
16 facts of this case.

17 THE CHAIRPERSON: Are you going to
18 apply section 37 to things that may be in the public
19 domain?

20 The "WHOIS" search you objected to
21 earlier, and that is something that I have heard a
22 dozen times in my section 13 complaints in the past.

23 MR. VIGNA: I understand your point,
24 Mr. Chair, it is just that I saw the direction in which
25 Ms Kulaszka was going and --

1 THE CHAIRPERSON: I didn't.

2 Go on.

3 So you know what this direction is,
4 and you don't want her to ask the question.

5 We are talking about this specific
6 complaint. These aren't general questions. She is
7 asking specifically about this complaint.

8 It goes right to the merits of the
9 case. The identity of who put that stuff on the web
10 goes right to the core of this case.

11 Where are we?

12 Ms Kulaszka, do you have another
13 question?

14 I have half-written the answer. It
15 was "Visual" something.

16 Am I not supposed to write it down
17 because it has been objected to under section 37?

18 Do I have to strike it from the
19 record?

20 I am not striking anything from the
21 record.

22 Go on, Ms Kulaszka.

23 MS KULASZKA: Ms Rizk, what training
24 did you receive concerning "WHOIS"?

25 MS RIZK: Just on how to conduct a

1 "WHOIS" search.

2 THE CHAIRPERSON: I'm sorry, you will
3 have to speak up, too.

4 MS RIZK: I apologize. How to
5 conduct a "WHOIS" search, basically, was the
6 training --

7 THE CHAIRPERSON: You got training in
8 how to conduct a "WHOIS" search.

9 MS RIZK: I received training on how
10 to conduct a "WHOIS" search.

11 MS KULASZKA: What did your training
12 consist of?

13 MS RIZK: I will be honest, I can't
14 remember exactly, because it has been a while, but at
15 that time I was shown how to conduct a "WHOIS" search,
16 basically, on the internet -- what to type in and what
17 I needed to do to find the owner of a site under
18 "WHOIS".

19 MS KULASZKA: You were instructed
20 that if you put a name in "WHOIS", then the information
21 you obtained would show the owner of the site.

22 MS RIZK: I honestly don't remember
23 exactly what the training was. It was a while back.

24 MS KULASZKA: Was it extensive?

25 MS RIZK: The training?

1 MS KULASZKA: Yes.

2 MS RIZK: No, it was, maybe, an hour,
3 if I remember. It wasn't very much.

4 MS KULASZKA: Are they called "tracer
5 routes"?

6 Is that the proper term?
7 You said that you could do a tracer
8 route --

9 MS RIZK: Visual Route.

10 MS KULASZKA: Visual Route.

11 MS RIZK: Yes, it's a tracer route.

12 MS KULASZKA: I am using the right
13 term, "tracer route"?

14 MS RIZK: I would have to check.
15 It basically shows you where --
16 I don't know the exact term, but it
17 just shows you where the site came from -- what city it
18 came from.

19 MS KULASZKA: Perhaps you could check
20 it, so that we can make sure we have the right terms.

21 MS RIZK: On the "WHOIS" site, you
22 put in the name of the website. I put in
23 "freedomsite.org" and the registrant came out as Marc
24 Lemire.

25 Then I did a search on Visual Route,

1 which routed it to London, Ontario.

2 No, it didn't. Just a second.

3 The last address was Boulder,
4 Colorado.

5 MS KULASZKA: Is Visual Route a
6 website?

7 MS RIZK: I believe it is, yes.

8 MS KULASZKA: So it is open to any
9 member of the public to do a search there.

10 MS RIZK: I believe so. I'm not
11 sure.

12 Again, I cannot remember what I did,
13 specifically, on how to get this route.

14 I am reading from what I have on the
15 file.

16 MS KULASZKA: And you would just
17 enter the URL of the website?

18 MS RIZK: That's what it says on the
19 file here, that the name was entered. But as to how I
20 accessed this address, I cannot remember.

21 MS KULASZKA: I am not sure if I
22 asked you this. You would get training, also, on the
23 use of "Visual Trace".

24 Is that correct?

25 Or "Visual Route"?

1 MS RIZK: Again, I didn't get
2 extensive training, and I do not remember what the
3 training was. All I remember is what is in the file.

4 MS KULASZKA: Did you get a manual
5 about how to do these things?

6 MS RIZK: No.

7 MS KULASZKA: So an instructor just
8 came in and went through the steps with you on the
9 computer?

10 MS RIZK: Yes.

11 MS KULASZKA: Were you told that
12 "WHOIS" and other such type of search facilities proved
13 who the owner of a site was?

14 MS RIZK: I'm sorry, I don't
15 understand the question.

16 THE CHAIRPERSON: I kind of lost you,
17 too, Ms Kulaszka.

18 MS RIZK: Could you repeat the
19 question?

20 MS KULASZKA: You are taught to use
21 "WHOIS", for example. There are others, but "WHOIS" --
22 "GoDaddy" is another one.

23 Were you instructed that when you put
24 the URL of a website in, the name that came up was, in
25 fact, the owner of the website; that this, in fact, was

1 definitive proof of who owned the website?

2 MS RIZK: No, I was just told that
3 this could be the owner, and to put the information on
4 the file.

5 MS KULASZKA: Okay. So that was just
6 one means of looking for the owner of a website.

7 MS RIZK: Yes.

8 MS KULASZKA: Mr. Warman laid his
9 complaint, and you began your investigation. The
10 complaint dealt solely with the FreedomSite, did it
11 not?

12 MS RIZK: The complaint itself, when
13 it first came in, there were three respondents on the
14 complaint. The respondents were Marc Lemire,
15 FreedomSite, and Craig Harrison.

16 MS KULASZKA: And Craig Harrison's
17 writings were on what?

18 MS RIZK: They were on the
19 FreedomSite. That is why the complaint had come in
20 together, because the complainant had alleged that
21 Craig Harrison's postings were posted on the
22 FreedomSite message board.

23 MS KULASZKA: To go back to your
24 training, who gave you the training concerning "WHOIS"
25 and the tracers?

1 Who gave you that training?

2 MS RIZK: The training was given to
3 me by Richard Warman.

4 MS KULASZKA: So he was the computer
5 expert at the Commission?

6 MS RIZK: He just knew how to do the
7 training on the "WHOIS" searches and the Visual Route
8 searches, and that was the training I received from
9 him.

10 MS KULASZKA: Was that his job at the
11 Commission?

12 MS RIZK: No.

13 MS KULASZKA: What was his job,
14 normally?

15 MS RIZK: I don't remember, actually,
16 at that point what his job was. I don't remember what
17 his job was at that point in time.

18 MS KULASZKA: But he was not an
19 investigator.

20 MS RIZK: He was not involved in this
21 file, no.

22 MS KULASZKA: No. He was not an
23 investigator.

24 MS RIZK: Honestly, I don't remember.

25 MS KULASZKA: When did you receive

1 the training on "WHOIS" and these various techniques?

2 MS RIZK: I remember that I started
3 working on the section 13 complaints around September
4 or October, and that is around when I would have
5 received that training.

6 MS KULASZKA: Of what year?

7 MS RIZK: Excuse me, 2003.

8 MS KULASZKA: So you had just begun
9 the section 13 complaints.

10 MS RIZK: Yes.

11 MS KULASZKA: So Marc Lemire's --
12 this case must have been one of the first ones you did.

13 MS RIZK: Yes, it was.

14 MS KULASZKA: Mr. Warman gave you
15 your training at that time?

16 MS RIZK: He gave me training on
17 searches for "WHOIS" and Visual Route, yes.

18 MS KULASZKA: Did he make any
19 representations to you about the accuracy of these
20 searches, just generally?

21 MS RIZK: I don't remember. I just
22 remember that this was a technique to use to find the
23 owner of the site.

24 MS KULASZKA: What is his expertise
25 in giving this training?

1 Do you have any knowledge of his
2 special knowledge?

3 MS RIZK: I just knew that he knew
4 how to conduct these searches, and that was why -- he
5 was asked, and I asked him to show me how to.

6 MS KULASZKA: What kind of
7 investigations had you done prior to that?

8 Investigations on what kinds of
9 discrimination cases?

10 MS RIZK: On disability --

11 MR. VIGNA: Mr. Chair, I object to
12 the relevance of the question.

13 MS KULASZKA: It is just a general
14 question to --

15 THE CHAIRPERSON: To see if there was
16 any background that was related.

17 MS KULASZKA: Yes, any background.

18 THE CHAIRPERSON: So your
19 investigations were on unrelated matters to section 13.

20 MS RIZK: Yes. Prior to this, yes.

21 I did investigate another section 13
22 complaint at the same time as this one.

23 MS KULASZKA: For how long did you do
24 that work on section 13?

25 You just said that you don't do

1 section 13 complaints any more.

2 MS RIZK: No, I no longer do section
3 13 complaints.

4 MS KULASZKA: When did you stop doing
5 that kind of work?

6 MS RIZK: Around the time that this
7 file was complete, around April of 2005.

8 MS KULASZKA: Are you assigned your
9 cases?

10 MS RIZK: Yes, I am.

11 MS KULASZKA: So you don't have any
12 choice in what you do.

13 You can't say, "I would like to work
14 on section 13 cases. I would like to work on
15 disability," it is whatever they need you for.

16 MS RIZK: We are assigned to teams,
17 yes, and they tell me what team I will be on.

18 MS KULASZKA: Can you ask to be
19 assigned to a team?

20 MS RIZK: I could, but I haven't
21 really asked to be assigned to a team.

22 MS KULASZKA: Okay. So there is a
23 Hate Crimes Team, or a Hate --

24 What would they call it, a Hate Team?

25 MS RIZK: I believe it's the Section

1 13 Complaint Team.

2 MS KULASZKA: I see. Okay. How many
3 other people would have been on the team at the time
4 when you were transferred onto that team?

5 MS RIZK: There was not a team at
6 that time, when I was first transferred onto this file,
7 and I can't remember if there was an actual team by the
8 time I disclosed the report.

9 MS KULASZKA: Who assigned you this
10 case?

11 MS RIZK: The manager of Intake
12 Services.

13 MS KULASZKA: Who was that?

14 MS RIZK: Her name is Suzanne Best.

15 MS KULASZKA: She signed a few of the
16 letters, I see.

17 MS RIZK: Yes.

18 MS KULASZKA: Were you given any
19 training in keeping track of the --

20 Let me re-word this.

21 When section 13 was restricted to
22 telephone hate lines, there was something called a
23 compliance manual, and investigators were given very
24 detailed instructions about how to tape the messages,
25 and sign the tape, that the custody had to be accounted

1 for at all times, and that the investigator had to be
2 prepared to testify concerning the possession of the
3 evidence.

4 I don't want to ask you about that, I
5 am just letting you know that. I am going to go over
6 that with somebody else.

7 Were you given a compliance manual
8 concerning how the evidence was to be gathered off the
9 internet, how it was to be proven, and how it was to be
10 checked?

11 Anything like that?

12 MS RIZK: Is this specifically
13 regarding section 13 complaints?

14 MS KULASZKA: Yes.

15 MS RIZK: No.

16 MS KULASZKA: We have a compliance
17 manual on investigations in general, but I am not aware
18 of a compliance manual specifically for section 13.

19 If there is one, I am not aware of
20 it.

21 MS KULASZKA: Section 13 might be a
22 chapter of that compliance manual.

23 MS RIZK: I was not given it. I did
24 not --

25 MS KULASZKA: You weren't aware of

1 any --

2 MS RIZK: At that point in time I was
3 not aware of it.

4 MS KULASZKA: So when you received
5 the complaint from Mr. Warman, how did you receive it?

6 Did he just hand it to you or --

7 Where did you get it from, Ms Best?

8 MS RIZK: Yes. Just like any other
9 mail, the mail goes through the mailroom and it is
10 stamped, and it comes up to Intake Services, and my
11 manager assigns --

12 If we have already been assigned the
13 file, then the piece of mail just comes into our box,
14 or the manager assigns the file.

15 Usually, if a complaint comes in,
16 then she would assign it to somebody.

17 MS KULASZKA: So you received the
18 complaint. What would your next step be?

19 MS RIZK: The next step of this
20 specific complaint?

21 MS KULASZKA: Yes.

22 MS RIZK: We received the complaint,
23 and then I would go onto the website and I would verify
24 that the information is there.

25 MS KULASZKA: And you did so?

1 MS RIZK: Yes, I did.

2 MS KULASZKA: You downloaded material
3 from the FreedomSite?

4 MS RIZK: Yes, I did. I downloaded
5 material from the FreedomSite.

6 MS KULASZKA: And you sent a letter
7 to Mr. Lemire, and you asked for various information.

8 Is that correct?

9 MS RIZK: Yes. Mr. Lemire was
10 notified of the complaint, I believe, around February
11 13th, 2004.

12 MS KULASZKA: A kind of form letter
13 is sent out to a respondent, and there is various
14 information that is asked for.

15 MS RIZK: Yes.

16 MS KULASZKA: What is that
17 information?

18 MS RIZK: To ask if -- just as an
19 example?

20 What information would you like, the
21 specific information of this specific file?

22 MS KULASZKA: You could just say
23 generally what it would be.

24 MS RIZK: Okay. General information
25 would be: Are you the owner of the site? Are you

1 aware of the contents of the site? Et cetera.

2 If you want specifics, I could refer
3 and I could read to you what we sent Mr. Lemire.

4 MS KULASZKA: Certainly.

5 MS RIZK: The letter says:

6 "At this time, I would
7 appreciate received by March 9,
8 2004 your position regarding the
9 allegations including, but not
10 limited to, the following:

11 1. Do you own and/or control
12 the www.freedomsite.org and
13 <http://chat.freedomsite.org>
14 websites? If not, who owns
15 and/or controls these websites?
16 What is the www.freedomsite.org
17 and <http://chat.freedomsite.org>
18 websites' present Internet
19 address (URL)?

20 2. What is the purpose of the
21 www.freedomsite.org?

22 3. What is the intent of the
23 information/documentation posted
24 on the websites?

25 4. Who is responsible for

1 editing and/or posting the
2 content of the
3 information/documentation on the
4 websites?

5 5. How are the documents...
6 being posted on the
7 www.freedomsite.org and
8 http://chat.freedomsite.org
9 websites?
10 6. Who is your present Internet
11 Service Provider (ISP)? Where
12 is it located? Please provide a
13 copy of the ISP's arrangement.
14 Please provide a copy of the
15 agreement with ISP."

16 MS KULASZKA: Why would you ask about
17 the intent of the material?

18 MS RIZK: To know what the message of
19 the material is, or what is the intent of posting this
20 material on the website.

21 MS KULASZKA: Are you given a form
22 letter to send?

23 This is just a basic form letter that
24 you are told to send out?

25 MS RIZK: Yes.

1 MS KULASZKA: So this is just part of
2 your job. You actually don't know why most of those
3 things are there?

4 You didn't draft that letter
5 yourself. That's what I mean.

6 MS RIZK: No, the questions were
7 given -- these are questions that are given
8 specifically for section 13 complaints.

9 MS KULASZKA: So anyone who is a
10 respondent would get a letter like that.

11 MS RIZK: That was my understanding,
12 yes, at the time.

13 MS KULASZKA: So you were basically
14 told: This is the letter we send out.

15 MS RIZK: Yes.

16 MS KULASZKA: And who would instruct
17 you in that?

18 MS RIZK: My manger.

19 MS KULASZKA: Who is that?

20 MS RIZK: Suzanne Best.

21 MS KULASZKA: I would ask you to go
22 back to Tab 15 of the large binder.

23 You can see on the first page that
24 there is a Memorandum to File --

25 THE CHAIRPERSON: Are you going to be

1 producing this whole tab?

2 MS KULASZKA: Probably, yes. I am
3 going to go through the whole thing.

4 THE CHAIRPERSON: All right. Just
5 keep track of it, in case anything doesn't get
6 produced.

7 We have seen page 9 up to now. I
8 will put a little tick on it.

9 Page 9 is produced, but if you get
10 the whole tab in, we will produce the whole tab.

11 Okay?

12 MS KULASZKA: Okay.

13 Do you recognize that document?

14 MS RIZK: Yes, I do.

15 MS KULASZKA: If I could produce
16 that --

17 THE CHAIRPERSON: The whole document,
18 or just the first page?

19 MS KULASZKA: Page 1.

20 THE CHAIRPERSON: All right. It is a
21 Memorandum to File from the Commission.

22 All right, we will produce that page.

23 MS KULASZKA: You state in this memo:

24 "I visited the website

25 www.freedomsite.org on December

1 17, 2003, January 22, 2004 and
2 today and downloaded contents of
3 the website..."

4 Was that the first time you visited
5 the website?

6 MS RIZK: Yes.

7 MS KULASZKA: Do you know why it took
8 so long to visit the website?

9 MS RIZK: From the time that we
10 received the complaint?

11 Probably due to just workload.

12 MS KULASZKA: Just workload, okay.

13 MS RIZK: Yes.

14 MS KULASZKA: We have another
15 memorandum --

16 THE CHAIRPERSON: Ms Kulaszka, while
17 you are looking for it, the paper that Mr. Lemire
18 brought up to me earlier --

19 MR. LEMIRE: We are going to start
20 giving you a bunch, we might as well just keep adding
21 to the end of that tab.

22 THE CHAIRPERSON: Did you want to
23 produce this document?

24 It wasn't really identified, and it
25 is missing the next page.

1 Is there more to this?

2 What is this?

3 MR. LEMIRE: Anything that we hand
4 you now comes out of those binders that she brought.

5 THE CHAIRPERSON: Right.

6 MR. LEMIRE: All of these are the
7 documents that she brought herself.

8 MS KULASZKA: There were quite a few
9 things that, I think, are relevant that were found in
10 the files, so we made copies and we would like to go
11 through them --

12 THE CHAIRPERSON: It's not a problem,
13 I just want to keep this organized. That's what I am
14 saying.

15 This is kind of a loose sheet and I
16 want to know where to put it.

17 Do we have any blank tabs?

18 I think we should produce it as a
19 separate document.

20 Did you want me to keep this?

21 I don't think you did. It was only
22 put to the witness for a second and --

23 MR. LEMIRE: It was just to show when
24 the complaint was received.

25 MS KULASZKA: I don't think it is

1 necessary to put it in.

2 THE CHAIRPERSON: It's not necessary.

3 I don't want things flying around
4 here on my desk that haven't properly been introduced.

5 MS KULASZKA: I don't think it is
6 necessary that we put it in.

7 THE CHAIRPERSON: If any loose
8 documents are coming up, there aren't any additional
9 tabs at the back. I could use stickies perhaps.

10 It will be easier if we just keep
11 putting them at the back of the textbook.

12 That's what we will do.

13 MR. LEMIRE: It might be better just
14 to put them at the back of this tab, because this tab
15 is mostly related to this witness.

16 THE CHAIRPERSON: Tab 15.

17 MS KULASZKA: Yes, Tab 15 would be a
18 good place to put it.

19 THE CHAIRPERSON: Excellent. We will
20 just add page numbers.

21 MS KULASZKA: This would be page 15
22 of Tab 15, the document we are handing out right now.

23 THE CHAIRPERSON: The document that
24 is being handed up right now is being treated as page
25 15 of Tab 15.

1 MS KULASZKA: Ms Rizk, this is
2 another Memorandum to File, which purports to be from
3 you. It is dated February 25th, 2004.

4 Do you recognize that document?

5 MS RIZK: Yes, I do.

6 MS KULASZKA: It states that you
7 checked the website. Would that be the Freedomsite?

8 MS RIZK: Yes.

9 MS KULASZKA: And you found that you
10 could not access the message board. The rest of the
11 site, however, was intact.

12 That was on February 25th, 2004;
13 correct?

14 MS RIZK: Correct.

15 MS KULASZKA: When you had gone to
16 the Freedomsite on December 17th and January 22nd, had
17 you gone to the message board?

18 MS RIZK: Yes, I did.

19 MS KULASZKA: And it was still there.

20 MS RIZK: Yes, it was.

21 MS KULASZKA: And then, on February
22 25th, when you checked the message board, it wasn't
23 there any more.

24 MS RIZK: That's right.

25 MS KULASZKA: Did Mr. Lemire at this

1 point know about the complaint?

2 Had you notified him?

3 MS RIZK: Mr. Lemire was notified on
4 February 13th.

5 MS KULASZKA: And when did he receive
6 the complaint?

7 MS RIZK: When he actually received
8 the complaint?

9 MS KULASZKA: Yes.

10 MS RIZK: I believe Mr. Lemire sent
11 us information on file that he received it, I believe,
12 in March.

13 MS KULASZKA: Can you check your file
14 to get that date?

15 MS RIZK: I can.

16 THE CHAIRPERSON: While you check,
17 just to be clear, when you said that Mr. Lemire was
18 notified, it was what you indicated earlier, that
19 letter?

20 MS RIZK: Yes, that letter.

21 THE CHAIRPERSON: With the questions,
22 as opposed to a copy of the complaint.

23 Is that what you are saying?

24 MS RIZK: It includes a copy of the
25 complaint.

1 THE CHAIRPERSON: So a letter was
2 sent, according to your records, on February 13th --

3 MS RIZK: Yes.

4 THE CHAIRPERSON: -- which contained
5 all the questions that you referred to earlier, and a
6 copy of the complaint.

7 MS RIZK: Yes.

8 I am not sure when Mr. Lemire --
9 Mr. Lemire sent us a fax on March
10 25th, 2004, with a Canada Post tracking saying --

11 It says "Reference Item" and the
12 delivery date is March 24th, 2004.

13 THE CHAIRPERSON: Delivery where, at
14 the Commission offices?

15 MS RIZK: No, it says to Mr. Lemire.

16 THE CHAIRPERSON: Is it the letter
17 that you sent to him?

18 MS RIZK: No, this is a letter that
19 Mr. Lemire sent to us.

20 THE CHAIRPERSON: So why would it
21 have the arrival address at Mr. Lemire's?

22 That is what I am trying to
23 understand.

24 Mr. Lemire responded to you by letter
25 that the Commission received on March something?

1 Is that what you are saying?

2 MS RIZK: He said:

3 "I am in receipt of Suzanne
4 Best's letter dated Feb. 13....I
5 just received this letter
6 yesterday (March 25, 2004).
7 Proof of delivery confirmation
8 from Canada Post is attached."

9 MS KULASZKA: So he got it almost a
10 full month later -- actually, over a month.

11 MS RIZK: It would appear so.

12 MS KULASZKA: How do you send your
13 letters?

14 Was it regular post?

15 MS RIZK: I'm not sure.

16 MS KULASZKA: Up to this point, what
17 was the extent of your investigation concerning the
18 FreedomSite?

19 Was it just downloading material?

20 You would just download material?

21 MS RIZK: Yes. We usually wait until
22 the respondent can provide a defence, and then, when
23 the respondent provides a defence, we summarize the
24 defence and send it to the complainant, and have the
25 complainant provide a rebuttal to the defence.

1 Then, when we have that information,
2 we usually start preparing our report.

3 MS KULASZKA: You received a reply
4 from Mr. Lemire; correct?

5 MS RIZK: Yes, I did.

6 I believe that Mr. Lemire asked for
7 an extension, and then we received a letter from you on
8 April 23rd, 2004.

9 MS KULASZKA: And he admitted being
10 the owner and webmaster of the Freedomsite?

11 MS RIZK: Yes.

12 THE CHAIRPERSON: Could you repeat
13 your question?

14 MS KULASZKA: He admitted, through
15 counsel, that he was the owner and operator of
16 Freedomsite.org.

17 MS RIZK: That he was the owner, yes.

18 THE CHAIRPERSON: What date was that
19 response?

20 MS RIZK: April 23rd, 2004.

21 THE CHAIRPERSON: And that was the
22 letter from Ms Kulaszka.

23 MS RIZK: Yes.

24 THE CHAIRPERSON: When you said "you"
25 earlier, you were referring to Ms Kulaszka.

1 MS RIZK: Yes.

2 MS KULASZKA: I would like to put on
3 the record that the Memorandum to File, which is at
4 page 15 of Tab 15, was never disclosed to the
5 respondent.

6 MR. VIGNA: Mr. Chair, that is the
7 file from Craig Harrison, which has nothing to do with
8 the FreedomSite. We brought both files today.

9 MS RIZK: That memorandum is in both
10 files.

11 THE CHAIRPERSON: Careful, Mr. Vigna.
12 Thank goodness for honesty.

13 Mr. Vigna, I am going to be clear
14 about this point, aside from that last comment. I
15 knew -- and everyone knows -- that the two files were
16 together initially.

17 I think they were even together when
18 he was referred to the Tribunal, if I am not mistaken.

19 So, for the purposes of disclosure, I
20 assume that the whole subject matter was being
21 disclosed. These two files were separated, it is my
22 understanding, only at the Tribunal.

23 I could be mistaken on that last
24 point, but that is my understanding, and I see that Ms
25 Joyal is agreeing with me.

1 MS KULASZKA: I would also like to
2 put on the record the importance of this memorandum.
3 It shows and corroborates what Mr. Lemire said
4 concerning the message board, which, in fact, was taken
5 down prior to him being notified about this complaint.

6 From my recollection of the file, for
7 almost a year, the respondent did not hear from the
8 Commission.

9 Is that correct?

10 MS RIZK: I'm sorry, could you repeat
11 the question?

12 MS KULASZKA: Mr. Lemire received the
13 complaint and the letter from Ms Best, and he put in a
14 response, and thereafter he did not hear back for a
15 year from the Commission.

16 MS RIZK: I would have to check to
17 see the exact dates as to when we contacted the
18 respondent.

19 --- Pause

20 MS RIZK: Yes, I believe that is
21 correct.

22 MS KULASZKA: We are handing around
23 now a letter that purports to be from you to Mr.
24 Warman. It is dated May 17th, 2004.

25 Mr. Lemire will be handing you that

1 document.

2 THE CHAIRPERSON: Just hold on in
3 asking your question, Ms Kulaszka, until I have it.

4 Are we going to put this at the end
5 of the tab?

6 MS KULASZKA: Yes, they would be
7 pages 16, 17 and 18 of Tab 15.

8 THE CHAIRPERSON: It is a three-page
9 letter, which will now become pages 16, 17 and 18 of
10 Tab 15.

11 MS RIZK: Is it possible to go back
12 to the Memorandum to File on February 25th, 2004?

13 MS KULASZKA: Certainly.

14 MS RIZK: I just wanted to note that
15 the subject is a different name, the one that was found
16 in the Lemire file, than it was on the Craig Harrison
17 file.

18 THE CHAIRPERSON: The subject says
19 "Warman, Richard vs. Craig Harrison."

20 It does say that, yes.

21 MS RIZK: It does say that on the one
22 that we were provided. But the one on the Freedom site
23 file says "vs. Marc Lemire and the Freedom site."

24 THE CHAIRPERSON: All right.

25 MS KULASZKA: So that would be the

1 only difference?

2 MS RIZK: Yes. I just wanted to
3 clarify that there was a difference.

4 MS KULASZKA: They would both say --

5 MS RIZK: That I checked the website,
6 yes.

7 MS KULASZKA: Okay. Going to pages
8 16, 17 and 18, do you recognize that document?

9 MS RIZK: Yes, I do.

10 MS KULASZKA: What would this letter
11 be?

12 MS RIZK: This is the respondent's
13 defence summarized and sent to the complainant.

14 MS KULASZKA: So you don't actually
15 send the actual response of a respondent to the
16 complainant.

17 MS RIZK: In some instances we do,
18 and in some instances we don't. Some reasons would be
19 just to protect the privacy of the individual.

20 But I summarized it exactly as it was
21 written.

22 MS KULASZKA: If we could, we do have
23 a copy of the memorandum concerning the message board
24 which was in the FreedomSite file. Maybe it should be
25 filed.

1 THE CHAIRPERSON: To complete the
2 extra response that came from the witness?

3 MS KULASZKA: To complete the record.

4 THE CHAIRPERSON: I am presuming that
5 was disclosed.

6 That was not disclosed?

7 MS KULASZKA: This was not disclosed,
8 no. Neither one of them was disclosed.

9 MR. LEMIRE: Could we mark that one
10 as page 15(a)?

11 THE CHAIRPERSON: Yes, all right.

12 MS KULASZKA: So the memorandum dated
13 February 25, 2004, concerning the FreedomSite, will be
14 page 15(a), Tab 15.

15 THE CHAIRPERSON: Yes.

16 MS KULASZKA: Ms Rizk, could you
17 confirm that that is your memorandum, the document
18 contained at 15(a)?

19 MS RIZK: Yes.

20 MS KULASZKA: After sending the
21 letter of May 17th, 2004, to Mr. Warman, you received a
22 reply from him?

23 MS RIZK: Yes, I did.

24 MS KULASZKA: Can you tell me why the
25 respondent didn't hear back for a year after that?

1 MS RIZK: I never contacted the
2 respondent.

3 I should have contacted the
4 respondent, and I did not contact the respondent.

5 MS KULASZKA: That was in 2004, May.
6 Mr. Warman replied to that letter, didn't he?

7 MS RIZK: Yes, he did.

8 MS KULASZKA: I don't think we have a
9 copy of that letter.

10 THE CHAIRPERSON: You found it in the
11 file, but you haven't photocopied it. Is that what you
12 are saying?

13 MS KULASZKA: We just haven't
14 photocopied it.

15 THE CHAIRPERSON: All right. Let me
16 record the date, and you can deal with it afterwards.

17 The reply by Mr. Warman was on May
18 24th. Is that what you said?

19 Somebody said that just now.

20 MS KULASZKA: Perhaps you could look
21 at the file and confirm when you received a reply back.

22 You sent a letter dated May 17th,
23 2004 --

24 MS RIZK: The reply was received on
25 June 21st, 2004.

1 MS KULASZKA: Were you in regular
2 contact with Mr. Warman about the file during that
3 year?

4 MS RIZK: From the file, I see that I
5 was in contact with Mr. Warman. Mr. Warman called me
6 on a few occasions.

7 MS KULASZKA: About what?

8 MS RIZK: On September 13th he called
9 to inform me that he came across a website called
10 "jrbooksonline".

11 THE CHAIRPERSON: September 13th of
12 what year?

13 MS RIZK: I apologize. 2004.

14 MS KULASZKA: Okay. I am handing
15 around a memorandum that we did find. It is from
16 January 29th, 2004, just to make the record complete.

17 THE CHAIRPERSON: We will put this at
18 the end?

19 MS KULASZKA: Yes, let's put it right
20 at the end.

21 THE CHAIRPERSON: That will be page
22 19; correct?

23 MS KULASZKA: Page 19, correct.

24 Ms Rizk, do you recognize that
25 document?

1 MS RIZK: Yes, I do.

2 MS KULASZKA: That is a memorandum
3 dated January 29th, 2004.

4 What is it about?

5 MS RIZK: The complainant had filed
6 his complaint, he had given us his complaint, and we
7 were still in the process of verifying the information
8 on the website. So the respondent was not notified as
9 of yet.

10 MS KULASZKA: He just wanted to know
11 what was happening.

12 MS RIZK: That's right.

13 MS KULASZKA: Would you speak to Mr.
14 Warman at any other time prior to September of 2004
15 about the complaint?

16 Would he phone you about it or talk
17 to you about it?

18 MS RIZK: Prior to September 2004?

19 MS KULASZKA: Right.

20 MS RIZK: Just asking me about the
21 complaint? No.

22 Only what is on the file -- only what
23 is in the notes to file.

24 MS KULASZKA: So your habit would be
25 to make a memorandum if something happened on the file,

1 like a phone call.

2 MS RIZK: Yes, that would be --

3 MS KULASZKA: On September 13th,
4 2004 -- if you look at page 2 of Tab 15, there is a
5 memorandum from you dated September 13th, 2004. Do you
6 recognize that document?

7 MS RIZK: I'm sorry, what tab?

8 MS KULASZKA: It's Tab 15, page 2.

9 MS RIZK: Yes.

10 MS KULASZKA: What did Mr. Warman say
11 during that conversation to you?

12 MS RIZK: He informed me that he came
13 across a website called "jrbooksonline.com". He said
14 that it was operated by the respondent. He said that
15 it included subject matter such as "Jewish Ritual
16 Murder" and "blood libel", and then he asked that we
17 include this as additional evidence against the
18 respondent, and asked that we hold off on informing the
19 respondent that we know of this website until the
20 police take a good look at it.

21 MS KULASZKA: Were those his words
22 exactly?

23 MS RIZK: Yes.

24 Maybe not exactly, but, yes, that's
25 what he said.

1 MS KULASZKA: And that's what you
2 did, isn't it?

3 MS RIZK: Yes.

4 MS KULASZKA: You didn't inform the
5 respondent.

6 MS RIZK: I did not.

7 MS KULASZKA: Why not?

8 MS RIZK: I did not inform the
9 respondent. I gave the complainant the benefit of the
10 doubt that what he said was true, that the police were
11 looking into it.

12 It did come out in my report,
13 however, and the respondent had a chance to comment on
14 this information.

15 But you are right, I did not inform
16 the respondent for the whole time, up to the time of
17 the report.

18 MS KULASZKA: Up until the
19 investigator's report.

20 MS RIZK: Up until the investigator's
21 report.

22 MS KULASZKA: Is that normal?

23 Has that happened in other cases?

24 MS RIZK: Have I done this before in
25 other cases? Is that what you are asking?

1 Or, is it, in general, done in other
2 cases?

3 MS KULASZKA: Has it happened in
4 other cases that the complainant has asked you not to
5 tell the respondent something because the police are
6 investigating it?

7 MS RIZK: I am not aware of other
8 cases where this has happened.

9 MS KULASZKA: Did he tell you what
10 police he went to?

11 MS RIZK: No, he did not.

12 MS KULASZKA: Did you do any further
13 inquiries of him concerning the police investigations?

14 MS RIZK: No, I did not.

15 MS KULASZKA: Did he tell you who he
16 wished to charge? Was it Mr. Lemire, or was it Mr.
17 Harrison?

18 Did he make any comments about what
19 he was doing at the police?

20 MS RIZK: No, he did not. What he
21 told me is what is written in this note to file.

22 THE CHAIRPERSON: Let me ask you
23 something else, then, sort of in line with the earlier
24 question.

25 Does it happen that you would proceed

1 to investigate and then include in your investigation
2 allegations that would not have been brought to the
3 attention of the respondent?

4 Since it didn't form part of the
5 original complaint, the respondent would not have been
6 aware of it. Right?

7 MS RIZK: In retrospect, I should
8 have told the respondent about it.

9 THE CHAIRPERSON: But my question
10 was, as a practice, you have not done that before?

11 MS RIZK: No, but I have -- this was
12 a very different case. I never came across something
13 like this before. This would have been a first-time
14 instance.

15 MS KULASZKA: Did you tell your
16 manager that Mr. Warman had made this request?

17 MS RIZK: I don't remember.

18 MS KULASZKA: Would you be influenced
19 by the fact that you knew Mr. Warman from the
20 Commission and that he had done training with you?

21 MS RIZK: I didn't know Mr. Warman
22 very well.

23 MS KULASZKA: But he had trained you
24 on the computer.

25 MS RIZK: He trained me for an hour.

1 I didn't know Mr. Warman.

2 MS KULASZKA: I would ask you to turn
3 to page 3.

4 Do you recognize that document?

5 THE CHAIRPERSON: Give me a moment to
6 look at it, too, Ms Kulaszka, before you ask your
7 question.

8 MS RIZK: Yes, I do recognize it.

9 MS KULASZKA: What is the date of
10 that document? It is very unclear.

11 MS RIZK: July 14th, 2005.

12 MS KULASZKA: Where do you see that
13 date?

14 MS RIZK: Next to "Date" it says
15 7/14/2005.

16 MS KULASZKA: Oh, there it is.

17 I need new glasses.

18 Once you were informed of
19 "jrbooksonline.com" --

20 THE CHAIRPERSON: By the way, for the
21 record, everything that we have looked at so far I am
22 considering has been produced, for the purposes of the
23 record.

24 MS KULASZKA: Before I go to that,
25 Mr. Lemire is going to hand around two memoranda.

1 THE CHAIRPERSON: It is a two-page
2 document?

3 MS KULASZKA: They are two memoranda,
4 with separate dates.

5 THE CHAIRPERSON: All right. So
6 these two pages we are inserting at the end of Tab 15,
7 and they will be pages 20 and 21.

8 MS KULASZKA: If the March 26th
9 document could be 20, and the next one could be 21 --

10 THE CHAIRPERSON: Yes.

11 MS KULASZKA: Ms Rizk, once you get
12 them in your binder, I would ask you to have a look at
13 those documents.

14 Do you recognize them?

15 MS RIZK: Yes, I do.

16 MS KULASZKA: The first one, on page
17 20, is dated March 26th, 2004. What is this about?

18 It states:

19 "Detective Mike Brown from
20 the..."

21 Is that the Halton Region?

22 It says "Holton". Should it be
23 "Halton"?

24 Do you see that?

25 MS RIZK: Yes, I do.

1 This is the way I heard it on the
2 phone. That's probably why I wrote it that way.

3 THE CHAIRPERSON: Did he say what
4 city he was from?

5 Was it a city west of Toronto?

6 MS RIZK: He didn't, actually.

7 THE CHAIRPERSON: There is an area in
8 southern Ontario called Halton, isn't there?

9 MS KULASZKA: Yes, it's the Halton
10 Region Police Service.

11 "...called me today to inquire
12 about obtaining a copy of the
13 CD-ROM which I had downloaded
14 the FreedomSite website onto.
15 He said that the complainant had
16 also filed criminal charges
17 against the respondent and that
18 he had provided Detective Brown
19 with my name and number.
20 Detective Mike Brown said that
21 he needed the information to be
22 able to make a link to the
23 respondent's address in order to
24 obtain a warrant.

25 I explained to Detective Mike

1 Brown that I could not discuss
2 the case with him at all or
3 provide him with any
4 information. I did inform him,
5 however, that he could contact
6 Lucie Veillette to inquire about
7 getting the information he
8 needed through an ATIP request.

9 Detective Mike Brown asked me
10 if the complainant has special
11 privileges in terms of providing
12 information because he works at
13 the Commission. I explained
14 that the complainant does not
15 have special privileges and that
16 he is an individual complainant
17 and that he would not be
18 involved in any way in
19 investigating the complaint.

20 I called Detective Mike Brown
21 today and advised him that I am
22 seeking advice within the
23 organization to find out what we
24 can do, if anything and to what
25 extent to assist him in this

StenoTran

1 matter."

2 And then you have Detective Mike
3 Brown's telephone number.

4 I assume that you wrote that at the
5 bottom.

6 MS RIZK: Yes, it was me.

7 MS KULASZKA: In this case, the
8 reference to the respondent, who is that?

9 MS RIZK: The respondent was Craig
10 Harrison.

11 MS KULASZKA: At that time this was a
12 single complaint against Mr. Lemire, FreedomSite and
13 Mr. Harrison.

14 Is that right?

15 In March of 2004?

16 MS RIZK: I don't understand what you
17 mean.

18 MS KULASZKA: The complaint was
19 against these three entities.

20 MS RIZK: Yes.

21 THE CHAIRPERSON: I just want to be
22 clear on that last point. There are numerous
23 references to -- I see one here to "respondent", and by
24 that you meant, when you wrote your memo, only Mr.
25 Harrison?

1 MS RIZK: Yes, this is off the
2 Harrison file.

3 THE CHAIRPERSON: That's right. At
4 the top it says "Harrison".

5 MS KULASZKA: I also want to note
6 that this was never disclosed to Mr. Lemire, even
7 though it is in respect of the FreedomSite.

8 THE CHAIRPERSON: Noted.

9 MS KULASZKA: You stated that you
10 were going to seek advice within the organization about
11 what to do. Did you do so?

12 MS RIZK: Yes, I did.

13 MS KULASZKA: Who did you talk to?

14 MS RIZK: I spoke to my manager and
15 our Legal Department at the Commission.

16 MS KULASZKA: Who would the manager
17 have been?

18 MS RIZK: Suzanne Best.

19 MS KULASZKA: Who did you speak to at
20 the Legal Department?

21 MS RIZK: I can't remember the name
22 of who it was.

23 MS KULASZKA: What were you told to
24 do?

25 MR. DUFRESNE: I just want to caution

1 that they shouldn't be going into solicitor/client
2 privileged information with respect to discussions with
3 legal counsel.

4 THE CHAIRPERSON: Now, that's a
5 privilege I recognize.

6 Let's be careful, Ms Kulaszka. Don't
7 ask questions that clearly go into solicitor/client
8 privilege.

9 MS KULASZKA: What did Ms Best tell
10 you?

11 MS RIZK: Actually, it's provided at
12 the next page, which says:

13 "...and explained that as per
14 advice from within the
15 department I would need a
16 written request of what he needs
17 and for what purpose so that we
18 could respond to it in a formal
19 manner. He said that he would
20 provide me with this."

21 MS KULASZKA: Did he do so?

22 MS RIZK: No, he did not.

23 MS KULASZKA: He didn't.

24 MS RIZK: No, he did not. I did not
25 hear from him afterwards.

1 MS KULASZKA: You never heard from
2 him again?

3 MS RIZK: No.

4 MS KULASZKA: Did Mr. Warman ever say
5 anything to you about this police investigation?

6 MS RIZK: No.

7 MS KULASZKA: Did you ever ask him
8 about it?

9 MS RIZK: I don't remember. I don't
10 remember. I don't think I did, because I didn't know
11 who this Detective Mike Brown was, honestly. I asked
12 him to send me something in writing, and that I would
13 take it from there, but he didn't, and I didn't pursue
14 it.

15 MS KULASZKA: Was there ever a
16 similar request concerning Mr. Lemire?

17 MS RIZK: You mean from a detective?

18 MS KULASZKA: Yes.

19 MS RIZK: No.

20 MS KULASZKA: When you spoke to
21 Detective Brown, did he specifically mention Craig
22 Harrison?

23 --- Pause

24 MS KULASZKA: Can you remember, just
25 from your own memory?

1 MS RIZK: No, I can't remember.

2 MS KULASZKA: To your recollection,
3 when Mr. Warman told you about "jrbooksonline", did he
4 specifically ask you not to tell Mr. Lemire about the
5 website?

6 MS RIZK: No. He said if it's
7 possible that we could hold off telling the respondent.

8 MS KULASZKA: Right. He said that,
9 not to tell the respondent, to hold off.

10 MS RIZK: Yes.

11 But just in reference to the question
12 about whether or not he mentioned Craig Harrison, it is
13 written as the respondent is Craig Harrison, and if I
14 put it on that file, it was linked to Craig Harrison.

15 MS KULASZKA: Yes. I don't want to
16 confuse you. I was actually referring to page 2. That
17 was when Mr. Warman phones you and he says that he has
18 come across "jrbooksonline" --

19 MS RIZK: Yes, yes.

20 THE CHAIRPERSON: So your answers
21 dealt with two different things just a moment ago. One
22 question was: What did Mr. Warman tell you about if it
23 is possible, et cetera.

24 The second part of your answer, when
25 you said that he only -- "He", that's all you said.

1 "He only told me with regard to Mr. Harrison -- "

2 Was it in regard to the respondent --

3 MS RIZK: I'm sorry. I apologize.

4 It was with regard to --

5 THE CHAIRPERSON: The police?

6 MS RIZK: -- the note to file. The
7 police, yes.

8 I will be more specific.

9 THE CHAIRPERSON: So when Mr. Brown
10 called you, he only said --

11 MS RIZK: Yes.

12 THE CHAIRPERSON: That was the second
13 part of your previous answer.

14 MS RIZK: Yes.

15 MS KULASZKA: So, with respect to the
16 memo to file on page 2, Mr. Warman did specifically ask
17 you and say to you to hold off in informing the
18 respondent, Mr. Lemire, about "jrbooksonline" until the
19 police could have a look at it.

20 MS RIZK: I don't remember the
21 conversation, I just know from what is written on the
22 note to file.

23 MS KULASZKA: Would you say that you
24 were pretty accurate in writing down what the
25 conversation was about?

1 MS RIZK: Yes.

2 MS KULASZKA: So you would be very
3 confident that, in fact, he did say that to you.

4 MS RIZK: Yes.

5 MS KULASZKA: Have you spoken to the
6 police on any other section 13 file that you handled?

7 MS RIZK: No.

8 MS KULASZKA: When did you start your
9 investigation of the Stormfront.org Canadian
10 Immigration Poem?

11 MS RIZK: I don't remember when I
12 actually visited the website. I did it between June
13 21st, 2004 and the time that the report was disclosed
14 on April 15th, 2005.

15 MS KULASZKA: Did Mr. Warman tell you
16 about this posting?

17 MS RIZK: Yes, he provided it in his
18 rebuttal.

19 He provided a copy of this poem in
20 his rebuttal.

21 MS KULASZKA: And what date would
22 that have been?

23 MS RIZK: June 21st, 2004, was the
24 date of the rebuttal -- of his letter.

25 MS KULASZKA: Was the respondent told

1 of that?

2 MS RIZK: No, he was not.

3 He was told in the investigation
4 report, yes.

5 MS KULASZKA: Which was almost a year
6 later.

7 MS RIZK: Yes.

8 MS KULASZKA: Once Mr. Warman tells
9 you about this posting -- and it is located, you will
10 see, on page 4 of Tab 15.

11 Is that it?

12 MS RIZK: Yes.

13 MS KULASZKA: There are little
14 squiggly lines at the bottom. What is that?

15 MS RIZK: I had written on it by
16 mistake, and I squiggled it out.

17 THE CHAIRPERSON: Ms Kulaszka, I'm
18 sorry, I didn't follow you. Could you give me that
19 page number again?

20 MS RIZK: It is page 4 of Tab 15.

21 THE CHAIRPERSON: All right. The
22 squiggly lines at the bottom.

23 MS RIZK: Because, as I go through
24 the file, the stuff that I viewed on the website, some
25 of it I printed off and wrote "Viewed by the

1 investigator", and I wrote it on this, and I squiggled
2 it off because I hadn't -- I mistakenly wrote on it,
3 and I didn't --

4 MS KULASZKA: Did you go to
5 Stormfront and look for that poem?

6 MS RIZK: I did.

7 MS KULASZKA: When did you do that?

8 MS RIZK: Again, I don't remember
9 when I went to Stormfront. It was sometime between
10 June 21st, I believe was the date of the rebuttal, and
11 the disclosure of the report on April 15th, 2005.

12 MS KULASZKA: And how did you do the
13 search on Stormfront?

14 MS RIZK: I probably would have
15 checked Stormfront and gone to -- I don't remember
16 exactly, but I would have put in the exact address that
17 is shown here, or I would have gone through the website
18 to try to locate this poem.

19 MS KULASZKA: And you didn't find it.

20 MS RIZK: I did not find it.

21 MS KULASZKA: Do you have any idea
22 what date you would do that?

23 Would it be very soon after you --

24 MS RIZK: Again, I can't remember.

25 MS KULASZKA: -- were given this by

1 Mr. Warman?

2 MS RIZK: I cannot remember.

3 MS KULASZKA: But you checked before
4 Mr. Lemire was told about it.

5 MS RIZK: Mr. Lemire was told about
6 it in the report, and I absolutely checked before.

7 MS KULASZKA: How familiar are you
8 with using Stormfront?

9 MS RIZK: This was the first time I
10 went on Stormfront to check. I got this from the
11 complainant, and I went in and I checked.

12 I must have checked the forum, as
13 well, and checked to see if Mr. Lemire was a member,
14 which he was, as I indicated in the report, but I
15 couldn't come across this particular posting.

16 MS KULASZKA: Did you sign up an
17 account to do the search?

18 MS RIZK: No.

19 MS KULASZKA: You said that you
20 entered a URL.

21 If you look at page 4, it is from
22 "the-cloak.com".

23 Could you just say which URL you put
24 in?

25 MR. VIGNA: Mr. Chair, I would like

1 to raise an objection on the program that is used
2 regarding the finding of the URL, because that is
3 something that would be protected under section 37.

4 THE CHAIRPERSON: Didn't I have
5 evidence on this "cloak" thing?

6 MR. VIGNA: On the "cloak", but the
7 exact program that is used, no.

8 THE CHAIRPERSON: "cloak.com".

9 I thought that Mr. Warman testified
10 about this. I would have to check my notes.

11 MR. VIGNA: That could be, Mr. Chair,
12 but I just don't want to go too far when it comes to
13 programs that are used.

14 THE CHAIRPERSON: Okay. We may not
15 need to go there anyways.

16 I don't know if the questions are
17 coming in that direction.

18 I gather you are making an objection
19 in advance.

20 MS KULASZKA: I wonder what URL you
21 entered to try and find this poem.

22 MS RIZK: Again, I don't remember.

23 MS KULASZKA: How many times did you
24 try to find it?

25 MS RIZK: I don't remember. I went

1 in -- I went in, I tried to find it. I couldn't find
2 it.

3 Because the poem is dated. The
4 message -- it is dated here, and I tried to find this
5 exact posting, and I could not find this poem.

6 I did find that Mr. Lemire was a
7 member, but I did not find this poem, and I indicated
8 that in my report.

9 THE CHAIRPERSON: How did you find
10 out that he is a member?

11 How did you see that?

12 MS RIZK: On the forum -- again, I
13 don't remember exactly, but I would go and I would
14 search the forum, and I am assuming there would be a
15 name.

16 Like, you go in and you can put in --

17 THE CHAIRPERSON: Search the member's
18 name.

19 MS RIZK: You can search the member's
20 name and --

21 THE CHAIRPERSON: Since you had the
22 name from the photocopy.

23 Just so I am clear, this page 4 here
24 is a photocopy that Mr. Warman had given you. Right?

25 MS RIZK: That's right.

1 THE CHAIRPERSON: That's why, when
2 you said earlier that you had written "Viewed
3 by investigator", you squiggled it out, because you
4 corrected yourself, you had not viewed it.

5 MS RIZK: That's right.

6 MS KULASZKA: You had just assumed
7 that it was going to be there.

8 MS RIZK: No. If I would have done
9 this, I would not have done it prior, I would have done
10 it as I was filling out other -- writing on other
11 printouts. I would not have done it prior to checking
12 it out, I would have done it as I printed out the stuff
13 and written it. I must have just --

14 Because I put it in the file, and as
15 I am flipping through, I probably would have written it
16 by mistake and -- you know, as I verified if this was
17 something I had checked, I would have scribbled it out.

18 MS KULASZKA: Did you tell Mr. Warman
19 that you couldn't find it?

20 THE CHAIRPERSON: That you could not
21 find it?

22 MS KULASZKA: That you could not find
23 it.

24 MS RIZK: No, I did not. No, I
25 only --

1 I don't believe I did, no.

2 MS KULASZKA: Now, let's turn to
3 "jrbooksonline". What did Mr. Warman give you to prove
4 that Mr. Lemire operated "jrbooksonline"?

5 MS RIZK: Can I check my files?

6 MS KULASZKA: Certainly.

7 MS RIZK: Thank you.

8 THE CHAIRPERSON: Just so I am clear
9 on what is being produced here, Ms Kulaszka, although I
10 think we have seen this before, it is page 4?

11 MS KULASZKA: Pages 4 and 5.

12 THE CHAIRPERSON: Why does page 5
13 seem to be --

14 It says "Page 1 of 4" at the top, and
15 then it says "Page 3 of 4" at the top of page 5.

16 MR. LEMIRE: The whole poem wasn't
17 reproduced. It is in one of the other books.

18 MS KULASZKA: It is actually an
19 exhibit, I believe, in the Commission's binder.

20 THE CHAIRPERSON: I am trying to
21 establish what the significance is of keeping page 3
22 and not keeping page 2 or page 4 of 4.

23 Is there something I should be
24 looking at at page 3 of 4?

25 What is on page 5 at the bottom?

1 MS KULASZKA: This is the document
2 that Mr. Warman gave to Ms Rizk?

3 Is that correct?

4 MS RIZK: Are we talking about --

5 MS KULASZKA: Pages 4 and 5 of Tab
6 15.

7 THE CHAIRPERSON: There is some
8 significance here. What you are saying is, you weren't
9 given --

10 Ms Rizk, you weren't given pages 1,
11 2, 3 and 4 of this printout, you were only given page 1
12 and page 3?

13 Do you see at the top right corner
14 that it says "1 of 4" and "3 of 4"?

15 MS RIZK: I am a little lost.

16 Oh, I see, it says "Page 1 of 4".

17 THE CHAIRPERSON: Yes.

18 MS RIZK: Okay. Now I understand.

19 THE CHAIRPERSON: Why is page 2
20 missing and why is page 4 missing?

21 MS RIZK: I will check.

22 THE CHAIRPERSON: I have a guess.
23 Maybe it was the flip side and it was never
24 photocopied.

25 Is that possible?

1 MS KULASZKA: If Mr. Vigna has his
2 binder there, he could check that.

3 THE CHAIRPERSON: I know that it has
4 been produced already. I have seen this all before. I
5 was just wondering how this page was unconnected. The
6 third page, why is it here?

7 MS KULASZKA: We actually put it in
8 just to make it handy, so that it's in one place and we
9 could ask Ms Rizk about it.

10 THE CHAIRPERSON: Where are the other
11 two pages, 2 and 4? That's all I meant.

12 If there is nothing to it, then we
13 will just let it go and I will say it is produced --

14 MS RIZK: No, there is no page 2.

15 THE CHAIRPERSON: There is no page 2.

16 So, according to your file, you were
17 only given page 1 of 4 and page 3 of 4 of this
18 printout.

19 MS KULASZKA: Of this specific
20 printout on Stormfront?

21 THE CHAIRPERSON: Yes.

22 MS RIZK: Yes.

23 MR. VIGNA: You will find it at Tab
24 16 of the Commission's binder.

25 THE CHAIRPERSON: Yes, I know that it

1 has been entered into evidence through Mr. Warman, and
2 he perhaps printed out more, but my question was: What
3 did the Commission investigator have in her possession
4 when she proceeded to that part of the investigation.

5 She seems only to have had two pages.

6 I don't know if anything is of
7 significance there, I just noticed the discrepancy.

8 MR. DUFRESNE: We have it here. It
9 is double-sided.

10 THE CHAIRPERSON: It is double-sided.

11 MS KULASZKA: That would explain it.

12 THE CHAIRPERSON: And you don't have
13 the full document.

14 Okay. It's all there.

15 When you say "We have it," Mr.

16 Dufresne --

17 MR. DUFRESNE: It is in this binder.

18 MS RIZK: Yes, it is.

19 I apologize, it is double-sided.

20 THE CHAIRPERSON: And you have it
21 double-sided.

22 MS RIZK: Yes, I do.

23 MR. VIGNA: It's in evidence, Mr.

24 Chair.

25 THE CHAIRPERSON: I know that, but I

1 was wondering whether the investigator, somehow, was
2 given something different when she did her examination.
3 That is what I was trying to establish.

4 MS RIZK: No, it's there.

5 THE CHAIRPERSON: She had it
6 double-sided, just like we all have it in full.

7 Let's call this page 5, handwritten
8 at the bottom, produced as well, and we will move on.

9 MS KULASZKA: With respect to
10 "jrbooksonline", Mr. Warman tells you about this on
11 September 13th of 2004. What investigations did you do
12 after that?

13 MS RIZK: I went into the website and
14 I printed out some documentation off that website.

15 MS KULASZKA: And that's in your
16 file.

17 MS RIZK: Yes.

18 MS KULASZKA: And you were the person
19 who ran that off?

20 You printed it off?

21 MS RIZK: Yes, and then Mr. Warman
22 sent me a letter with his own copies of information.

23 MS KULASZKA: So he also sent you
24 copies of information.

25 MS RIZK: After I did this, yes.

1 --- Pause

2 THE CHAIRPERSON: For the record,
3 given my decision earlier this week, throughout all of
4 this day Mr. Lemire has been constantly communicating
5 with his counsel, and helping her, advising her,
6 providing us with copies, et cetera.

7 MR. VIGNA: Mr. Chair, before I
8 forget, you asked about the security guards this
9 morning.

10 THE CHAIRPERSON: Yes.

11 MR. VIGNA: They have nothing to do
12 with CSIS. They are a private --

13 THE CHAIRPERSON: A private firm?

14 MR. VIGNA: -- firm. The same one
15 that we hired in Toronto.

16 MS KULASZKA: All right. Mr. Lemire
17 is going to hand around a couple more documents that we
18 photocopied from the files.

19 MS RIZK: Excuse me. I apologize.
20 Is it possible to go to the washroom?

21 THE CHAIRPERSON: Yes, we will take a
22 break. It's been an hour and a half, so that's fair.

23 --- Upon recessing at 2:35 p.m.

24 --- Upon resuming at 3:00 p.m.

25 THE CHAIRPERSON: I understand that

1 you would like to see if we could run longer. I am
2 prepared to accommodate, but I may have to take a
3 little break to make some arrangements for family
4 issues.

5 MS KULASZKA: I hope it won't be too
6 long. We should be done by five o'clock, but just in
7 case...

8 THE CHAIRPERSON: Five o'clock would
9 be just fine. If it is more than that, I will have to
10 make arrangements.

11 MS KULASZKA: Ms Rizk, could we go
12 back to Tab 15 at page 20?

13 MS RIZK: Yes.

14 THE CHAIRPERSON: I see that there
15 are two more pages that have been inserted.

16 MS KULASZKA: I want to go back to
17 the third paragraph. It states:

18 "Detective Mike Brown asked me
19 if the complainant has special
20 privileges in terms of providing
21 information because he works at
22 the Commission."

23 Did Richard Warman still work at the
24 Commission at that time?

25 MS RIZK: I believe he did, from my

1 note to file. I cannot remember when Mr. Warman
2 started and ended his work with the Commission, but
3 from my note to file, I explain that the complainant
4 does not have special privileges, and he is an
5 individual complainant, that he would not be involved
6 in any way in investigating the complaint.

7 I didn't say, otherwise, that he
8 wasn't --

9 MS KULASZKA: So, to your knowledge,
10 he still worked there.

11 MS RIZK: Yes.

12 MS KULASZKA: Going back to the kind
13 of training you received from Mr. Warman, would you say
14 that it was about an hour?

15 MS RIZK: If I remember, yes.

16 I really don't remember at all the
17 training. It was very brief, and it was really just on
18 search techniques.

19 MS KULASZKA: How to use Google?

20 MS RIZK: No, I know how to use
21 Google.

22 MS KULASZKA: All right. Did he
23 teach you how to sign up for an e-mail account or
24 anything like that?

25 MS RIZK: No. No, he did not.

1 MS KULASZKA: Going back to
2 "jrbooksonline" --

3 Wait a minute. Let me go back, so I
4 am not so disorganized. We will keep with Stormfront.

5 When you wrote your investigator's
6 report, you dealt with that at paragraphs 30 and 31.

7 Do you have your investigator's
8 report there?

9 MS RIZK: Yes. May I refer to it?

10 MS KULASZKA: Yes.

11 MS RIZK: Thank you.

12 THE CHAIRPERSON: It is something
13 that I have in front of me?

14 MS KULASZKA: It is in R-3 at Tab 10.

15 THE CHAIRPERSON: Should I look at
16 it, Ms Kulaszka?

17 MS KULASZKA: Oh, yes. It is in R-3.
18 It has been entered into evidence. It is at Tab 10.

19 I am looking at the seventh page of
20 the investigator's report.

21 Do you have that, Ms Rizk?

22 MS RIZK: Yes, I do.

23 MS KULASZKA: If you turn over the
24 page to page 8, in your paragraph 31 you state:

25 "The investigator searched the

1 Stormfront website forum and did
2 not find the poem. However, a
3 search of the website revealed
4 that Lemire is a member of the
5 forum and has posted messages."

6 Is that right?

7 MS RIZK: Yes.

8 MS KULASZKA: I am wondering, why did
9 you include the poem when you couldn't find it?

10 MS RIZK: I'm sorry, why did I or did
11 I not?

12 MS KULASZKA: Why did you include the
13 poem in your investigator's report?

14 MS RIZK: Because the complainant
15 provided a copy of the poem and I wanted to show what
16 the complainant provided a copy of.

17 MS KULASZKA: "jrbooksonline", what
18 kind of investigations did you do about that?

19 MS RIZK: I downloaded the
20 information.

21 I printed the information off the
22 website and I viewed it, and I did -- I believe I also
23 did a "WHOIS" search and a "Virtual Route" search on
24 that, too, to find out who the registrant was, and I
25 found out that the registrant was Mr. Marc Lemire.

1 MS KULASZKA: And that was it?

2 MS RIZK: May I refer to my --

3 MS KULASZKA: Certainly.

4 MS RIZK: Thank you.

5 Yes, that's all.

6 THE CHAIRPERSON: That's what
7 happened?

8 MS RIZK: That's what happened.

9 MS KULASZKA: Mr. Lemire has handed
10 around two documents. One is called "To My English and
11 Afrikaans Speaking Brothers", and the other one is "The
12 Real Jew: A Lesson From Turkey".

13 THE CHAIRPERSON: Are these two
14 sheets to be added to Tab 15?

15 THE REGISTRAR: They will be pages 22
16 and 23.

17 MS KULASZKA: Which one is page 22?

18 THE CHAIRPERSON: "To My English and
19 Afrikaans Speaking Brothers."

20 MS KULASZKA: Ms Rizk, do you have
21 those two documents?

22 MS RIZK: Yes, I do.

23 MS KULASZKA: Could you explain the
24 writing at the bottom of page 22?

25 MS RIZK: It says, "Provided by

1 complainant and confirmed by investigator Hannya Rizk."

2 MS KULASZKA: How did you confirm it?

3 MS RIZK: By finding it on the
4 website.

5 MS KULASZKA: So this document is one
6 that was actually provided by Mr. Warman.

7 MS RIZK: I believe so, yes.

8 If not this one, then a copy of it,
9 and I printed it out.

10 I am not sure exactly how I did it,
11 if I actually printed it out because he had given us a
12 copy of that before, or if he actually gave us this
13 copy and I wrote that on there.

14 MS KULASZKA: There isn't really a
15 strict format, is there, for keeping track of what
16 comes from a complainant, what comes from you, what you
17 may have downloaded --

18 MS RIZK: It was my understanding
19 that we just wanted to make sure that the information
20 was found on the website -- that the information that
21 was provided was found on the website.

22 MS KULASZKA: Okay, but you know what
23 I mean. You are not sure whether you printed this out
24 or Mr. Warman printed it out.

25 MS RIZK: I would have to refer to my

1 files to find out exactly who did it, because he
2 provided information --

3 He provided us the website, and then
4 he provided information.

5 Now, I don't know if this was
6 afterwards when I printed it out, or if it was
7 information that Mr. Warman had included.

8 MS KULASZKA: Could you look that up?
9 Would it take too long?

10 MS RIZK: Sure.

11 --- Pause

12 MS KULASZKA: This is "To My English
13 and Afrikaans Speaking Brothers."

14 MS RIZK: Yes.

15 This appears to be material that I
16 printed out.

17 MS KULASZKA: Did you do so from the
18 internet?

19 MS RIZK: Yes, I did.

20 MS KULASZKA: I was wondering if you
21 could read the URL at the top right of the page, the
22 one entitled "To My English and Afrikaans..."

23 THE CHAIRPERSON: On my copy it is
24 not that visible.

25 MS RIZK: Mine either.

1 MS KULASZKA: Is it better on your
2 copy?

3 THE CHAIRPERSON: On the top left
4 corner I see something more than on the right corner.

5 MS RIZK: Yes. It appears to have
6 been downloaded from a CD. It looks like it is off the
7 "D" Drive.

8 Let me check.

9 --- Pause

10 MS RIZK: Again, I would like to
11 reiterate that I do not remember exactly how I did this
12 investigation. It was a while back.

13 According to the file, the
14 complainant provided a CD, and I printed those copies
15 off his CD, and then I double-checked on the website.

16 MS KULASZKA: Okay. So he gives you
17 a CD --

18 Do you have the CD in your file?

19 MS RIZK: No, I do not have the CD on
20 file.

21 MS KULASZKA: You don't have the CD.
22 You are sure?

23 MS RIZK: I am positive.

24 MS KULASZKA: From what you can
25 remember, you get a CD from Mr. Warman, and then you

1 put it in your drive and you print stuff out. And then
2 what do you do?

3 MS RIZK: And then I would go to the
4 website and verify that the information is there.

5 MS KULASZKA: That it is actually on
6 the website.

7 MS RIZK: Yes.

8 The one responsibility that I have --
9 as an investigator, I have to verify that the
10 information is actually on the website.

11 MS KULASZKA: So when you see it on
12 the screen, and you have verified it --

13 MS RIZK: Yes.

14 MS KULASZKA: -- then you write down
15 your note at the bottom of the page.

16 MS RIZK: Yes.

17 If I have said that I viewed it, that
18 means I went on the website and I viewed it.

19 MS KULASZKA: Okay. And the same
20 would be for page 23?

21 MS RIZK: I believe so. I believe
22 that's what I did.

23 Again, it's either I did that or I
24 printed it off the website.

25 MS KULASZKA: Can you say why it took

1 so long for the investigator's report to be written?

2 It took a year from the time of the
3 response, as we know.

4 Just overwork?

5 MS RIZK: Yes, it would be overwork.

6 There was a lot of work, yes.

7 I had a lot of files.

8 MS KULASZKA: Do you recall that we
9 had wanted to enter into negotiations to mediate?

10 MR. VIGNA: Mr. Chair, I don't know
11 if we can talk about mediation, it's privileged.

12 THE CHAIRPERSON: Maybe the content,
13 but we haven't heard a question about that yet.

14 The question was: Do you recall that
15 we had wanted to enter into discussions.

16 MS RIZK: Is that the question?

17 MS KULASZKA: Yes.

18 I will hand out a letter dated April
19 25, 2005.

20 THE CHAIRPERSON: Before it gets
21 handed up, at least to me, I want to make sure that
22 other counsel have viewed it, in case there is any
23 objection, given their previous comments.

24 --- Pause

25 MR. VIGNA: Mr. Chair, I object to

1 the introduction of this document on the basis of
2 settlement discussions and mediation privilege.

3 This point already arose at one point
4 in the hearing and I had the same objection. I don't
5 see the relevance, and there is also a privilege to
6 this type of discussion.

7 THE CHAIRPERSON: Does it contain the
8 content of --

9 MS KULASZKA: No, it doesn't. We
10 never had mediation.

11 It was a request.

12 MR. VIGNA: It is a settlement
13 proposal that --

14 MS KULASZKA: There was no settlement
15 proposed, it was a procedure that was proposed.

16 THE CHAIRPERSON: Yes, I think I read
17 something when I was reviewing my notes. I think I
18 allowed something on the procedural aspect, but not on
19 the content.

20 If it is just the procedure, it is
21 like the demonstration of an intent to mediate, as
22 opposed to the contents of the mediation.

23 MS KULASZKA: That's what it was --

24 THE CHAIRPERSON: I don't think it is
25 privileged.

1 MS KULASZKA: -- I suggested a
2 procedure.

3 THE CHAIRPERSON: Is there any
4 objection that I look at it?

5 MS KULASZKA: No.

6 THE CHAIRPERSON: Yes, but what about
7 the other side?

8 --- Laughter

9 THE CHAIRPERSON: I know that you
10 don't object.

11 MR. DUFRESNE: There is no objection
12 for you to look at it.

13 THE CHAIRPERSON: Okay. Let me look
14 at it.

15 --- Pause

16 THE CHAIRPERSON: I have gone, to a
17 certain extent, through it, and my first thought is, I
18 thought this was coming from the Commission. That was
19 my initial concern. This is coming from Ms Kulaszka.
20 If there are any declarations here against interest,
21 they are from her.

22 So I don't see how the Commission can
23 invoke --

24 If it has nothing about what the
25 Commission would have said -- all I have seen so far

1 is --

2 I have nothing, actually, reflecting
3 what the Commission has done in any of this. This is
4 all --

5 MR. DUFRESNE: We are not objecting
6 to this document. It relates to procedures, and it is
7 coming from them, but should others --

8 THE CHAIRPERSON: I understand. If
9 it is a true negotiation document, I understand; but it
10 is Ms Kulaszka, and she is introducing it.

11 So anything that would be there that
12 might be privileged, she seems to be waiving.

13 Yes, you can proceed with this
14 document, Ms Kulaszka.

15 MS KULASZKA: Ms Rizk, do you
16 recognize that document?

17 MS RIZK: Yes, I do.

18 MS KULASZKA: If I could produce
19 that --

20 THE CHAIRPERSON: Yes. Would you
21 like to put it at the end of this tab?

22 MS KULASZKA: Yes, at the end of Tab
23 15. They would be pages 24, 25 and 26.

24 Would you agree that this is the
25 letter which the Commission would receive from me after

1 I received the investigator's report?

2 MS RIZK: Yes.

3 MS KULASZKA: Do you remember
4 speaking to me?

5 MS RIZK: Yes.

6 MS KULASZKA: I had asked you that
7 the matter go to a conciliator or mediation.

8 Do you remember that?

9 MS RIZK: Yes.

10 MS KULASZKA: Do you remember that
11 you kept saying to me, repeatedly, that this complaint
12 will be going to the Commission?

13 MS RIZK: I don't remember that I
14 said it repeatedly, but I did say that the matter would
15 be going to the Commission.

16 MS KULASZKA: Why was that?

17 MS RIZK: Because it is up to the
18 Commission to make the decision as to whether --

19 I cannot make that decision, it is
20 the Commission that makes the decision as to whether or
21 not --

22 The final decision comes from the
23 Commission, not from me. I am only the investigator,
24 and I had finished the investigation and I had
25 disclosed the report.

1 MS KULASZKA: But can you not go to a
2 conciliator at any point before a decision is made by
3 the Commission?

4 MS RIZK: Again, it is the Commission
5 that makes the decision as to whether or not the case
6 can go to a conciliator.

7 MS KULASZKA: So had a decision been
8 made, that you had been informed about, that it would
9 be going to the Commission?

10 MS RIZK: I'm sorry?

11 MS KULASZKA: Had a decision been
12 made that it was going to the Commission, and it was
13 not going to a conciliator?

14 THE CHAIRPERSON: I think you are
15 confusing some things.

16 You say that it is going to the
17 Commission. Do you mean to say the Tribunal?

18 MR. VIGNA: Mr. Chair, what I
19 understood was that the Commission decides whether it
20 goes to a tribunal or conciliation.

21 THE CHAIRPERSON: Yes.

22 MS KULASZKA: Yes. If I could direct
23 you to my letter --

24 THE CHAIRPERSON: Could you direct me
25 to it, because I am not quite sure that I understood

1 your question, Ms Kulaszka.

2 MS KULASZKA: If you could look at
3 page 25, the third paragraph from the bottom --

4 THE CHAIRPERSON: From the bottom?

5 MS KULASZKA: Yes.

6 I had just received the
7 investigator's report at this point, and it states:

8 "When I spoke with Ms. Rizk last
9 week, she told me repeatedly
10 that this complaint `will' be
11 going to the Commission even
12 though I indicated to her that
13 Mr. Lemire wished to enter into
14 settlement negotiations with Mr.
15 Warman. I was deeply disturbed
16 by her decisiveness in this
17 matter.

18 How does Ms. Rizk know that
19 no settlement could be reached
20 between the parties?

21 How does she know that this
22 matter will not go to a
23 conciliator?"

24 I guess I am asking you the same
25 questions today.

1 MS RIZK: I had written the report at
2 that time, and the report was disclosed to you.

3 The process of the Commission is,
4 once the report is disclosed, your submissions go to
5 the Commission, as well, and they will be able to make
6 the decision, based on my report and your comments, as
7 to whether or not the complaint would go to
8 conciliation.

9 It is not up to me to make that
10 decision. I cannot make that decision. I had already
11 made my recommendation.

12 So it goes to the Commission at that
13 time for a decision.

14 MS KULASZKA: The investigator's
15 report contained a lot of material that Mr. Lemire
16 never knew about until he saw that report.

17 Would you agree with that?

18 MS RIZK: It contained information
19 about "jrbooksonline" and the poem, yes, that I had not
20 informed Mr. Lemire about previously.

21 MS KULASZKA: What about the articles
22 by Doug Collins? Were those included in the original
23 complaint?

24 Do you remember?

25 MS RIZK: The articles that I

1 referred to, the other material found on the website?

2 THE CHAIRPERSON: Could you point out
3 which one is Doug Collins' article?

4 Is that paragraph 26?

5 MS KULASZKA: Yes, it would be
6 paragraph 26, on page 6 of the investigator's report.

7 That would be Tab 10 --

8 THE CHAIRPERSON: -- of R-3.

9 MS KULASZKA: It would be Tab 10, and
10 page 6 of your report.

11 MS RIZK: Yes.

12 MS KULASZKA: The cartoon, did you
13 include that yourself?

14 MS RIZK: Yes, I did.

15 MS KULASZKA: That had not been
16 included in the earlier complaint.

17 MS RIZK: No, but it was part of the
18 website, and one of the respondents on the complaint
19 form is the website, so I checked the whole website.

20 And it wasn't just limited to the
21 complaint, it's the specifics in the complaint itself.
22 So I added information that was off the website.

23 MS KULASZKA: Had you ever informed
24 Mr. Lemire before your report that this was going to be
25 included in it?

1 MS RIZK: No, I had not.

2 MS KULASZKA: Is that the usual
3 process?

4 MS RIZK: I know that Mr. Lemire had
5 a chance to comment on the report and make submissions.
6 The Commission would not make a decision without
7 submissions, and the submissions are provided after the
8 disclosure of the report.

9 MS KULASZKA: But you see the problem
10 for a respondent, don't you?

11 Once the report is made, then you are
12 given a very short time to make submissions, and at
13 that point it is almost impossible to go to
14 conciliation.

15 Is that right?

16 MR. DUFRESNE: If I may, Mr. Chair,
17 in our submission this is pure judicial review. There
18 are cases from the Federal Court that address that very
19 point about whether the process is fair or not, what
20 documents go, what notice is given -- the decisions in
21 Mercier and onwards talk about that.

22 This is the essence of our previous
23 objection.

24 THE CHAIRPERSON: I have shown some
25 latitude, but you may have just --

1 Remember that fine line that I was
2 talking about, Ms Kulaszka? You may have crossed it
3 there.

4 It is very tempting, your argument, I
5 must say, but I don't wear the gowns.

6 MS KULASZKA: Okay. What kind of
7 training do you receive in determining what would be
8 considered a hate message within section 13?

9 MS RIZK: This is based on
10 jurisprudence presently. This is based on Taylor.

11 Again, I do not work with section 13
12 complaints, so I don't receive any training right now
13 on section 13 complaints.

14 MS KULASZKA: But did you receive
15 training when you were transferred into the Section 13
16 Team?

17 I believe that is what you called it.

18 MS RIZK: I did not -- I don't
19 remember receiving training on what constitutes a hate
20 complaint.

21 MS KULASZKA: No, a hate message.

22 MS RIZK: A hate message?

23 I didn't have the training, but I
24 don't make a decision on what is or is not a hate --

25 I'm sorry, I don't make a

1 recommendation on what is or what is not a hate
2 message, I just make a recommendation on whether or not
3 it appears that there is evidence to support the
4 allegation.

5 MS KULASZKA: I'm sorry, could you
6 repeat that?

7 MS RIZK: I make a recommendation --
8 Can I refer to my report?

9 MS KULASZKA: Yes.

10 --- Pause

11 MS RIZK: My recommendation was that
12 the evidence supports the allegations.

13 I don't make a determination, and I
14 did not receive any training on determining whether or
15 not something constitutes hate.

16 MS KULASZKA: You were previously an
17 investigator into complaints of discrimination on the
18 basis of disability.

19 Is that your evidence?

20 MS RIZK: Yes, I was an investigator
21 investigating other complaints, other than section 13.

22 MS KULASZKA: And then you were
23 assigned to the Section 13 Team, or you were just given
24 some cases on section 13?

25 MS RIZK: I was given these cases on

1 section 13.

2 MS KULASZKA: At the same time, you
3 were doing other cases that were not section 13 --
4 discrimination cases.

5 MS RIZK: Yes, but at that time I was
6 working at Intake, I wasn't actually doing
7 investigations.

8 Like, I wasn't actually working on
9 investigations, I was a complaint analyst.

10 MS KULASZKA: Okay. At the same time
11 you were doing the section 13 case on Mr. Lemire?

12 MS RIZK: Yes.

13 MS KULASZKA: So you were kind of
14 wearing two hats.

15 MS RIZK: Yes, but I was -- my title
16 was Human Rights Officer, and we do complaint analysis,
17 we do reports on section 40 and 41 complaints --
18 objections, sorry -- and I did have these two to do.

19 I just want to say that I am not on
20 my own. There is a process of review, as well, it's
21 not just me that makes the determination on -- or it's
22 not just me that writes the report and sends it to --

23 MS KULASZKA: And who would review
24 it?

25 MS RIZK: My manager would review it.

1 And I saw that, at this point in
2 time, I hadn't remembered, but it was reviewed by the
3 Section 13 Team.

4 MS KULASZKA: How many people would
5 that be?

6 MS RIZK: There would be somebody
7 from Legal, somebody from Policy, and the manager of
8 the investigator who is writing the report.

9 MS KULASZKA: And that would be Ms
10 Best for you.

11 MS RIZK: Yes.

12 MS KULASZKA: Do you know the people
13 who actually reviewed this?

14 MS RIZK: I honestly don't remember
15 who they were, no.

16 MR. DUFRESNE: I just want to
17 reiterate -- we have been letting this go, but it seems
18 that it is, again, very linked to the Commission's
19 process generally, not to this particular case, but I
20 fail to see the relevance to either the complaint or
21 the constitutional issue.

22 THE CHAIRPERSON: You are objecting
23 to the line, if you will. That is your position.

24 I understand.

25 But you don't have a specific

1 objection. There was no question at that point.

2 MR. DUFRESNE: Yes.

3 THE CHAIRPERSON: All right.

4 Go on.

5 MS KULASZKA: When did you stop doing
6 section 13 complaints?

7 MS RIZK: When this complaint was
8 disclosed in April 2005.

9 MS KULASZKA: And that was it?

10 MS RIZK: Yes.

11 MS KULASZKA: Altogether, you did
12 about three cases?

13 MS RIZK: Yes.

14 MS KULASZKA: You must have been
15 given some kind of training on what constitutes a hate
16 message; were you not?

17 MS RIZK: I don't remember. I
18 wouldn't call it training.

19 I don't remember getting anything in
20 writing or --

21 No, I don't remember.

22 I will be honest with you, I don't
23 remember. It has been a while, and I was on leave for
24 a year afterwards, so I do not remember.

25 MS KULASZKA: When you went on the

1 Freedomsite message board, how did you enter the
2 message board?

3 MS RIZK: I believe, from a review of
4 the file, if I remember correctly, there were subjects
5 on the front of the page, on the home page of the
6 Freedomsite, and one of them said "message board", and
7 you could just click on it and go in.

8 MS KULASZKA: A page would come up.
9 Do you remember anything after that?

10 Do you remember signing in as a
11 guest?

12 MS RIZK: I never signed in as a
13 guest.

14 MS KULASZKA: You probably just don't
15 remember.

16 MS RIZK: No, I did not sign in as a
17 guest.

18 MS KULASZKA: You didn't do anything
19 else?

20 You can't remember.

21 MS RIZK: No, I did not sign in as a
22 guest. I do remember that I did not sign in --

23 MS KULASZKA: So you didn't set up an
24 account or anything like that.

25 MS RIZK: No, I did not set up an

1 account.

2 MS KULASZKA: Did you download the
3 message board?

4 MS RIZK: Yes, I did.

5 THE CHAIRPERSON: I'm sorry, download
6 the message board?

7 MS RIZK: I downloaded it on a CD --
8 on a disk.

9 THE CHAIRPERSON: Okay. So you
10 copied it.

11 MS RIZK: I copied it, yes.

12 THE CHAIRPERSON: The entire message
13 board, or what you were looking at at the given moment?

14 MS RIZK: What I was looking at at
15 the given moment, if I remember correctly.

16 I don't remember the whole message
17 board.

18 I did go through the complaint, and I
19 downloaded everything that pertained to the complaint.

20 MS KULASZKA: Did you use an e-mail
21 called -- (an e-mail address).

22 MR. VIGNA: Mr. Chair, I object to
23 this question in terms of -- if it is related to an
24 investigation technique.

25 Public interest and it's privileged.

1 THE CHAIRPERSON: Thank you for
2 giving me the key words from section 37 again.

3 Public interest.

4 MS KULASZKA: And what is the public
5 interest, just for the record?

6 MR. VIGNA: If it relates to an
7 investigation technique, I have some concern about
8 names that may have been used to track down people.

9 Maybe Ms Kulaszka could give us more
10 information on the --

11 MS KULASZKA: I can ask her a
12 question.

13 Did you ever use an e-mail account in
14 any way to track down people's identities?

15 MS RIZK: Okay. When you say did I
16 sign up as an account, did you say that I actually went
17 in and became a member of the forum -- of the
18 FreedomSite forum message board?

19 Was that what you were asking, if I
20 set up an account?

21 MS KULASZKA: Did you ever set up an
22 account, yes.

23 MS RIZK: No, I said that I don't
24 understand what you mean by setting up an account.

25 Set up an account on the message

1 board?

2 MS KULASZKA: Yes, you would have to
3 give an e-mail address -- a real e-mail address. The
4 rest of the information could be false, but you would
5 have to give a real e-mail address.

6 That was one way of getting on.

7 Do you remember that at all?

8 MS RIZK: I don't remember, but the
9 e-mail account that you have said is one, yes, that I
10 have used, but I didn't set up an account with a name
11 on the message board.

12 I am just curious, and it is only
13 because I honestly don't remember and I am curious to
14 know how that e-mail came about.

15 MS KULASZKA: That is your e-mail?

16 MS RIZK: Yes, it is.

17 MS KULASZKA: I think I have asked
18 you this, but did you sign up any accounts on
19 Stormfront.org?

20 MS RIZK: Not that I remember, no.

21 I don't remember.

22 Is it something that I can ask, as to
23 how you got my e-mail?

24 Is this something I can ask?

25 Am I allowed to ask?

1 MS KULASZKA: Certainly. It is on
2 one of the documents that was disclosed.

3 THE CHAIRPERSON: These are documents
4 that were disclosed by you, or disclosed to you?

5 MS KULASZKA: To us.

6 That is an e-mail which just appears
7 on one of the documents, Ms Rizk, and I am just
8 confirming that, actually, it is an e-mail that you
9 used.

10 If you look through your documents,
11 you will find it on one of the documents at the bottom
12 of the page.

13 THE CHAIRPERSON: I have consistently
14 said in this case, for all parties, that I don't want
15 to know personal e-mails. Those are things that we
16 have deleted. I think there was some stuff that had
17 been written by --

18 I don't remember whose it was now,
19 but I remember that I had looked at the document.

20 I am not interested in knowing
21 individual e-mail accounts, if the information can be
22 obtained otherwise.

23 In this particular case, I don't
24 think that Ms Kulaszka completed the statement of that
25 e-mail account.

1 Did you actually say the whole
2 account earlier, Ms Kulaszka?

3 MS RIZK: Yes, she did.

4 MR. DUFRESNE: I am wondering about
5 the necessity of putting this on the record. That
6 would be the objection.

7 THE CHAIRPERSON: That is what I am
8 thinking about.

9 We have gotten the information that
10 we needed to obtain, and I have been consistent on
11 this.

12 I am seeing from the reaction of the
13 witness that it might have been her personal account,
14 although I haven't asked that question.

15 Today e-mail accounts are as personal
16 as phone numbers, and there is no need for them to be
17 published.

18 I am going to ask the court reporter
19 to strike that. You can just put a blank, and if you
20 would like, put in parenthesis "(an e-mail address)".

21 Do you have any objection to my doing
22 that, Ms Kulaszka?

23 MR. VIGNA: Mr. Chair --

24 THE CHAIRPERSON: All right, I will
25 listen to it, but remember that I have done this

1 before.

2 MR. VIGNA: Mr. Chair, I would like
3 to see the e-mail in question that is being discussed.

4 THE CHAIRPERSON: We can find out
5 from Ms Kulaszka which document it is.

6 MS KULASZKA: So your position is
7 that it was a personal e-mail?

8 MS RIZK: Yes, and I did find my
9 e-mail.

10 MS KULASZKA: Have you found it?

11 MS RIZK: I found the document.

12 This is not a document that I set up
13 an account with on -- whether it was Stormfront or
14 FreedomSite, it was when I was doing the Visual Route
15 search.

16 I just want to reiterate that I did
17 not set up an account, whether on Stormfront or on
18 FreedomSite.

19 And this is a personal e-mail that is
20 one -- yes, it is a personal e-mail.

21 MS KULASZKA: So you didn't set it up
22 for work at the Commission, for use like this.

23 MS RIZK: I did on Visual Route,
24 because it required an e-mail, but it wasn't --

25 For the Visual Route, to track the

1 information on the website, yes, I used my e-mail
2 account.

3 MS KULASZKA: Would you not have used
4 the Commission e-mail account?

5 MS RIZK: No.

6 MS KULASZKA: You never used it?

7 MS RIZK: No, I did not.

8 MS KULASZKA: Were you taught by Mr.
9 Warman not to use the Commission e-mail account?

10 MS RIZK: No.

11 No, it is something we are asked not
12 to use, the e-mail account from the Commission.

13 I, in retrospect, should not have
14 used this e-mail account, either, because it is my
15 personal e-mail account.

16 MS KULASZKA: If you could confirm
17 that this is not an e-mail account set up to do this
18 type of work, then I don't have any objection.

19 MS RIZK: Yes, I can confirm that
20 this is not an e-mail account set up to do this type of
21 work.

22 THE CHAIRPERSON: This is not an
23 e-mail account that you use to do this kind of work.

24 MS RIZK: No, it is my personal
25 e-mail account.

1 THE CHAIRPERSON: It is your personal
2 e-mail account.

3 Do you have the confirmation there,
4 Ms Kulaszka?

5 MS KULASZKA: Yes, so I don't object.

6 THE CHAIRPERSON: Fine. That's how
7 the record will show it.

8 MS KULASZKA: Why were you asked not
9 to use the Commission e-mail account?

10 THE CHAIRPERSON: I don't think she
11 said that.

12 MR. DUFRESNE: I don't see the
13 relevance of these questions. I would like to know,
14 what does this have to do with this complaint on the
15 merits or the constitutional question?

16 THE CHAIRPERSON: I will allow your
17 objection to be made to Ms Kulaszka, and she can
18 answer.

19 MS KULASZKA: The evidence is very
20 clear that what is happening is, particularly with
21 someone like Mr. Warman, he is using all sorts of
22 e-mails, like "hotmail" or "Yahoo" -- he is setting up
23 these kinds of anonymous e-mails, and then he uses
24 them, and he signs up on Stormfront, and he signs up
25 on, I would assume, other message boards, and he is

1 posting things and --

2 THE CHAIRPERSON: I have that with
3 Mr. Warman's evidence.

4 MS KULASZKA: Yes.

5 She did say that they were asked not
6 to use the Commission e-mail, so they are obviously
7 using other e-mails.

8 THE CHAIRPERSON: I thought her
9 reference was to the contrary.

10 I'm sorry about that. Am I --

11 MS RIZK: No, I said that I did not
12 set up an account with Stormfront or --

13 MS KULASZKA: No, no. What I am
14 referring to is: You stated that you were asked at the
15 Commission not to use Commission e-mails --

16 MS RIZK: On the Visual Route I did
17 not use the Commission e-mail, no.

18 THE CHAIRPERSON: But did you say --
19 We can go back to the record
20 afterwards, but --

21 MS RIZK: Yes, I said that I was
22 asked not to use the --

23 THE CHAIRPERSON: Oh, you were asked.

24 MS RIZK: Yes.

25 THE CHAIRPERSON: That's my error.

1 I'm sorry.

2 MS KULASZKA: Yes, she was asked --

3 MS RIZK: I was asked not to use
4 Commission e-mail.

5 THE CHAIRPERSON: All right. I was
6 confused.

7 Let me report that properly. You
8 were instructed by the Commission to not use the
9 Commission e-mail address --

10 MS RIZK: By my manager, yes.

11 THE CHAIRPERSON: -- by your manager.

12 MS RIZK: Not to use the e-mail
13 address, yes.

14 MS KULASZKA: Would that be Ms Best?

15 MS RIZK: She was my manager.

16 I can't remember -- I mean, the
17 direction was --

18 Yes. She was my manager, yes.

19 MS KULASZKA: So if you weren't to
20 use the Commission e-mail -- your e-mail at the
21 Commission, what were you supposed to do?

22 MS RIZK: I never actually had to use
23 my e-mail, except in this case, and I had forgotten
24 that I had to use my e-mail.

25 Just looking back, it was just in

1 this case, on the Visual Route.

2 In no other instance did I have to
3 use -- do I have to use Commission e-mail.

4 THE CHAIRPERSON: In no other
5 instance what? I'm sorry.

6 MS RIZK: Did I use the Commission
7 e-mail when checking these websites out.

8 THE CHAIRPERSON: You never had to
9 supply an e-mail, is that what you mean?

10 MS RIZK: No, I never had to supply
11 an e-mail.

12 THE CHAIRPERSON: This was the one
13 time when an e-mail had to be supplied?

14 MS RIZK: Yes --

15 THE CHAIRPERSON: And your manager
16 told you --

17 MS RIZK: -- for the Visual Route.

18 THE CHAIRPERSON: It was on the
19 Visual Route, and your manager told you: Don't use the
20 CHRC's, use something else.

21 MS RIZK: I don't remember if --

22 I honestly don't remember. I just
23 know that I was not to use Commission e-mail.

24 MS KULASZKA: Were you ever shown how
25 to set up another e-mail, so you wouldn't have to use

1 your own personal one?

2 MS RIZK: No.

3 MS KULASZKA: That's why you used
4 your personal one.

5 MS RIZK: I assume so, yes.

6 MS KULASZKA: As part of your duties,
7 did you ever go on message boards and make postings?

8 MS RIZK: No, I never did.

9 MS KULASZKA: Were there any rules
10 concerning posting on message boards such as
11 Stormfront?

12 MS RIZK: Any rules from the
13 Commission you mean?

14 MS KULASZKA: From the Commission.

15 MS RIZK: No, I am not aware of any
16 rules from the Commission regarding postings.

17 No, I am not aware of any --

18 MS KULASZKA: Did you write the
19 report yourself, your investigator's report?

20 MS RIZK: Yes, I did.

21 MS KULASZKA: And it was subsequently
22 reviewed.

23 MS RIZK: Yes, it was.

24 --- Pause

25 MS KULASZKA: Could we take a break

1 for five minutes?

2 THE CHAIRPERSON: That will be
3 convenient.

4 What do you think about five o'clock?
5 Are you on target?

6 MS KULASZKA: Yes.

7 THE CHAIRPERSON: We will be done by
8 five o'clock?

9 MS KULASZKA: Yes.

10 --- Upon recessing at 3:45 p.m.

11 --- Upon resuming at 4:04 p.m.

12 MS KULASZKA: Mr. Lemire is going to
13 hand around some further documents that were copied
14 from the files brought by Ms Rizk.

15 Ms Rizk, do you recognize this
16 document?

17 The top document is a handwritten
18 letter, dated February 10th, 2004.

19 MS RIZK: Yes, this is off the Craig
20 Harrison file.

21 MS KULASZKA: What is it?

22 MS RIZK: I believe I had asked Mr.
23 Warman to let us know how he had -- I think Mr.
24 Harrison had used the name, and we asked Mr. Warman how
25 he knew that the certain name that he used -- how he

1 identified that it was actually Craig Harrison.

2 MS KULASZKA: So he sent you this
3 letter with the following attachments?

4 MS RIZK: Yes.

5 MS KULASZKA: The first one is
6 "Rose's Place", and the second one is "Karen Harrison -
7 Hockey Heritage Award Winner 1994".

8 MS RIZK: Yes.

9 MS KULASZKA: And the third one is
10 "Yahoo! Mail", and the last one is also "Yahoo! Mail".

11 MS RIZK: Yes. I think we had asked
12 him how he associated this e-mail with the respondent
13 Craig Harrison, how he knew that he used this e-mail.

14 MS KULASZKA: I would like to produce
15 those documents.

16 MR. VIGNA: Mr. Chair, I don't see
17 the relevance of this document. It has nothing at all
18 to do with Mr. Lemire or the Freedomsite, and
19 particularly Karen Harrison --

20 THE CHAIRPERSON: That does deal with
21 the other complaint.

22 How is it relevant to this complaint,
23 Ms Kulaszka?

24 MS KULASZKA: All of Craig Harrison's
25 postings are being used against Mr. Lemire.

1 THE CHAIRPERSON: So it is in
2 reference to the postings by Mr. Harrison --

3 MS KULASZKA: Yes.

4 THE CHAIRPERSON: -- that are alleged
5 in the present complaint.

6 MS KULASZKA: Yes.

7 THE CHAIRPERSON: That sounds
8 relevant to me.

9 MR. VIGNA: The postings, but this is
10 in relation to the identity, and Karen Harrison has
11 nothing to do with the file. This is the mother of the
12 individual.

13 THE CHAIRPERSON: I am not looking at
14 it in that much detail yet, so --

15 MR. VIGNA: It is not necessarily
16 prejudicial, but --

17 THE CHAIRPERSON: That's what I am
18 saying, is it prejudicial to you at this point?

19 MR. VIGNA: The last document might
20 be problematic.

21 MR. DUFRESNE: I just want to make
22 sure that it is linked to the Lemire complaint.

23 Perhaps Mr. Kulaszka could point to
24 where in the investigator's report references to those
25 particular postings are -- in the Lemire investigator

1 report.

2 THE CHAIRPERSON: More than the
3 complaint, it is the disclosure and evidence of Mr.
4 Warman that we should be looking for.

5 You may not be familiar with this,
6 Mr. Dufresne, but through the course of the disclosure
7 period the Commission declared that every single page
8 on the FreedomSite message board was being invoked.
9 Then, at the beginning of the hearing it was narrowed
10 down to what is in these documents here.

11 So it may not be in the complaint
12 itself, but it is still in evidence.

13 MR. VIGNA: But this, Mr. Chair,
14 dealt with --

15 THE CHAIRPERSON: There is another
16 point, too, that I am familiar with here -- if I may
17 interrupt, Mr. Vigna. I think part of what has been
18 raised by the respondent is that a good number of the
19 material -- the matter that is being alleged to be in
20 violation of section 13, is material from this one
21 individual, done over the course of a few days, and
22 that, if anything, may still have some bearing on the
23 remedies.

24 I am sure the argument is that it is
25 not relevant to the liability, but it may have some

1 bearing on the remedies in this file.

2 That alone raises some relevance, and
3 it goes to how involved Mr. Lemire was in the actual
4 production of the content that was posted.

5 MR. VIGNA: I will argue at the end
6 the relevance, Mr. Chair. It is not necessarily
7 prejudicial.

8 I understand there is a link with the
9 postings, but this is more for the issue of the
10 identity --

11 THE CHAIRPERSON: I understand.

12 MR. VIGNA: Maybe I could ask the
13 Tribunal that pages 2 and 3 be sealed, because they
14 deal with an individual who has no connection to either
15 Craig Harrison or Mr. Lemire.

16 THE CHAIRPERSON: You are talking
17 about --

18 MR. VIGNA: Karen Harrison.

19 I know from knowledge, Mr. Chair,
20 that that was --

21 THE CHAIRPERSON: I'm sorry.

22 MR. VIGNA: Pages 2 and 3 that you
23 have in the set of four --

24 THE CHAIRPERSON: You mean the third
25 and the fourth pages; right?

1 MR. VIGNA: Yes.

2 THE CHAIRPERSON: Yes, this woman, I
3 don't know who she is.

4 MR. VIGNA: That is the mother of Mr.
5 Harrison, but she has nothing to do with the --

6 THE CHAIRPERSON: Yes.

7 Why is that in here, Ms Kulaszka?

8 It was because it was attached to --

9 MS KULASZKA: It was attached to the
10 letter which Mr. Warman sent.

11 It is from "Yellow.ca". It is like
12 "Canada 411".

13 MR. VIGNA: The only problem I have
14 is with the issue of personal information in the
15 public.

16 THE CHAIRPERSON: Yes, it has her
17 address and things like that.

18 I certainly won't write up the
19 address in any decision I write, I can assure you of
20 that.

21 MS KULASZKA: I don't think there is
22 any --

23 Her address you could find on the net
24 at any time.

25 MR. VIGNA: Unless we keep the name

1 sealed --

2 THE CHAIRPERSON: I don't know about
3 the name. The name might be relevant.

4 I don't know what this is about quite
5 yet. That is part of the problem.

6 MR. VIGNA: It deals with the
7 identity -- there was a search on the address at the
8 time for Harrison, and the mom's address came up, so I
9 have a bit of a concern that --

10 THE CHAIRPERSON: So when he looked
11 up the address, the mother's name came up.

12 MR. VIGNA: Yes. I know this from
13 having dealt with this file.

14 From memory, I don't even think we
15 produced it --

16 THE CHAIRPERSON: At that hearing,
17 either.

18 MR. VIGNA: Yes.

19 I only have a concern in terms of
20 personal information.

21 THE CHAIRPERSON: All right. He came
22 up with the mother's name. I don't see that as posing
23 a problem.

24 I am certainly willing to say that we
25 can delete the addresses, if they are not public.

1 Oh, but that is relevant because that
2 is the link to the web postings?

3 Is that why the addresses were there?

4 MR. VIGNA: It's more the name,
5 actually, than the address.

6 The address, too, but the name in
7 question, because Karen Harrison has nothing to do with
8 the Craig Harrison file. Her name came up simply
9 because --

10 THE CHAIRPERSON: I don't want to
11 waste a lot of time on this.

12 MR. VIGNA: I leave it to your
13 discretion, Mr. Chair.

14 THE CHAIRPERSON: You should know
15 that I would not post personal information.

16 As everyone has come to realize, just
17 because it is in the file of the Tribunal, it is not a
18 public document, as such, either. It is subject to
19 Access to Information requests. We have had a few in
20 this file already.

21 It is not being publicized, as such,
22 Mr. Vigna.

23 You can make final submissions at the
24 end, but I don't see a problem at this point. I don't
25 see it as being key to the case anyways, from what I

1 gather from Ms Kulaszka's questioning.

2 I think it can be produced, with all
3 of the concerns noted.

4 The page numbers will be 27 and
5 following.

6 As stapled by Ms Kulaszka, that
7 brings us to page 32.

8 MS KULASZKA: Ms Rizk, when I called
9 you about the fact that Mr. Lemire wanted to enter into
10 conciliation, did you write a memo about that telephone
11 call?

12 MS RIZK: What date? Was this after
13 the disclosure --

14 MS KULASZKA: It would have been
15 around April of 2005.

16 MS RIZK: Yes, I did.

17 MS KULASZKA: Do you have that?

18 MS RIZK: I don't have it right now.
19 I did --

20 In reviewing the file after I got the
21 subpoena, I went through the notes -- the electronic
22 file, and I found that note to file, because I hadn't
23 found it on the hard file, but I did not put it on the
24 file to bring with me today. I do have it, though.

25 MS KULASZKA: What does the memo say?

1 MS RIZK: If I remember correctly, it
2 says that you called and you asked for settlement into
3 the matter, and if I remember correctly, I didn't know
4 the exact procedure at the time, and I said that I
5 would get back to you on that, and I did, and then I
6 can't remember what I said, but I believe I said that
7 it would go to the Commission for a decision.

8 MS KULASZKA: Are there any other
9 files that you haven't brought with you, or memoranda?

10 MS RIZK: No. Honestly, that's the
11 only one, and I thought I had put it in this morning,
12 and I had not.

13 MS KULASZKA: I wonder if the
14 Commission could produce that document tomorrow.

15 THE CHAIRPERSON: Just provide you a
16 copy?

17 Do you have any objection to doing
18 that?

19 MS RIZK: No.

20 THE CHAIRPERSON: All right. It will
21 be done tomorrow, then.

22 I note that Mr. Vigna and Mr.
23 Dufresne are nodding "yes".

24 MR. VIGNA: You have it in your
25 electronic --

1 MS RIZK: It is on the electronic
2 file.

3 MR. DUFRESNE: Produce it and we will
4 bring it.

5 MS RIZK: Yes.

6 But I do remember having the
7 conversation, and I do remember you asking about
8 settlement, as well, at the beginning, and I did pass
9 that on in your defence, and I did pass that
10 information on to the complainant, and the complainant
11 did not want to settle the matter, so there was nothing
12 else we could do.

13 MS KULASZKA: All right. We will
14 have a look at those letters.

15 I am handing around a Memorandum to
16 File written by you on February 2nd, 2004. Could you
17 have a look at that?

18 Do you recognize that document?

19 MS RIZK: Yes. Again, this is from
20 the Craig Harrison file.

21 MS KULASZKA: You had spoken to Mr.
22 Warman, and you wanted to know how he linked Mr.
23 Harrison's name to "rump" and "real canadianson".

24 MS RIZK: Yes.

25 MS KULASZKA: You asked him how he

1 knew to perform a search using "Craig" and "Harrison".

2 What did he say?

3 MS RIZK: "The complainant explained
4 that he first knew about the
5 respondent because he assaulted
6 someone years ago because of his
7 race. In the guestbook of
8 another of the websites, Craig
9 Harrison had identified himself
10 by name in a posting dated
11 December 4, 2002, in which he
12 indicated that his e-mail
13 address is `susen@sympatico.ca'
14 and that he lives in Georgetown,
15 Ontario."

16 It was important for us to know how
17 Mr. Warman made that connection, because we couldn't
18 just assume that Craig Harrison's e-mail was
19 "susen@sympatico.ca", because it had nothing to do --
20 that name had nothing to do with the other name.

21 MS KULASZKA: You have written that
22 Mr. Warman first knew about the respondent because he
23 assaulted someone years ago because of his race.

24 Did he indicate to you when he first
25 knew who Craig Harrison was?

1 MR. VIGNA: Mr. Chair, I object on
2 relevance. We are dealing with another file that has
3 been decided by the Tribunal, and there is no relevance
4 whatsoever in terms of Mr. Harrison to this complaint.

5 We are not here to re-argue --

6 THE CHAIRPERSON: No, we are not here
7 to re-argue the Harrison file, that's true.

8 MR. VIGNA: I don't see the relevance
9 at all.

10 THE CHAIRPERSON: Ms Kulaszka?

11 MS KULASZKA: It is important because
12 it is important to know when Mr. Warman, number one,
13 was looking at the Craig Harrison postings, and when he
14 knew that Craig Harrison was, because he doesn't lay a
15 complaint until the fall of 2003, but he seems to
16 indicate to Ms Rizk that he knows about Craig
17 Harrison -- that he has known about him for years.

18 THE CHAIRPERSON: He has known about
19 him for years. That's what this is talking about, but
20 not the web postings, per se.

21 Run that past me again.

22 He has known about Mr. Harrison for
23 years -- or whatever --

24 MS KULASZKA: But doesn't lay a
25 complaint until the fall of 2003.

1 Was it clear to you how long he had
2 known who Craig Harrison was?

3 MR. DUFRESNE: Again, Mr. Chair, this
4 has to do with the Harrison case. There is no link in
5 Ms Kulaszka's question.

6 There is nothing about the Lemire
7 case before you, it is all about: When did Mr. Warman
8 know about Craig Harrison vis-à-vis when he filed his
9 complaint in the Harrison case.

10 THE CHAIRPERSON: I am having some
11 difficulty.

12 You heard my comments earlier on the
13 connection to Mr. Harrison and the material, but I am
14 not quite sure -- now we are actually going to Mr.
15 Harrison's liability or conduct, and I don't see how
16 that is relevant. I still don't get --

17 MS KULASZKA: I had asked Mr. Warman,
18 under cross-examination, when he started monitoring the
19 FreedomSite. When did he first see these Harrison
20 postings.

21 THE CHAIRPERSON: Yes.

22 MS KULASZKA: As usual, he couldn't
23 remember anything. So then I had pointed out to him
24 that he had gotten an e-mail, basically dated December
25 4th, 2002, about Craig Harrison.

1 So, yes, he remembered that, and that
2 was it.

3 So now I have an opportunity to try
4 and ask Ms Rizk what Mr. Warman said to her about how
5 long he had known who Craig Harrison was.

6 THE CHAIRPERSON: All right. It
7 relates to the certain question that we had back then.

8 I recall that questioning.

9 I will allow it on that basis. It is
10 somewhat relevant to that discussion, which I recall.
11 We have it in our notes.

12 Go ahead.

13 MS KULASZKA: Do you remember what
14 Mr. Warman said to you about how long he had been
15 familiar with Craig Harrison?

16 MS RIZK: I know what was written in
17 the note to file, and that's what I can go by.

18 "The complainant explained that
19 he first knew about the
20 respondent because he assaulted
21 someone years ago because of his
22 race. In the guestbook of
23 another of the websites, Craig
24 Harrison had identified himself
25 by name in a posting dated

1 December 4, 2002..."

2 MS KULASZKA: That was, basically, a
3 summary of what he said.

4 MS RIZK: Yes.

5 MS KULASZKA: It wasn't any clearer
6 than that. That was the only date he gave.

7 MS RIZK: Yes.

8 MS KULASZKA: I would like to produce
9 that document, if I could. It would be page 33.

10 THE CHAIRPERSON: Right.

11 MR. DUFRESNE: We would object to
12 that. The date of the contact has been stated --

13 THE CHAIRPERSON: It doesn't say the
14 date of --

15 I am quite clear what that document
16 says. If you would like, I can clarify it.

17 The document says that the posting on
18 the guestbook was December 4th, 2002. Right?

19 MS RIZK: On another website.

20 THE CHAIRPERSON: Yes, on another
21 website.

22 It doesn't say that Mr. Warman saw it
23 on December 4th, 2002, I appreciate that.

24 Yes, you can produce that. It will
25 be page 33.

1 MS KULASZKA: I would ask you to go
2 back to page 32, Ms Rizk.

3 How did Mr. Warman explain this
4 e-mail?

5 You will see that it is an e-mail
6 from Mr. Warman, and the subject is "looking for info
7 on neo-Nazi from Georgetown".

8 He says:

9 "Hi:

10 Anyone have any info on a male,
11 last name Holmes or Harrison..."

12 He gives the address and e-mail
13 account.

14 "Looks like he was posting some
15 very nasty material on the
16 Freedomsite forum..."

17 Did he give you any kind of
18 explanation of this?

19 MS RIZK: I don't remember.

20 My concern was just to make the
21 connection between the e-mail and Craig Harrison.

22 MS KULASZKA: You will see that he
23 says "Thanks, in advance, Richard," and then he
24 gives -- it seems to be a copy of a message.

25 Do you know where that message

1 appeared?

2 MS RIZK: No, I do not.

3 MS KULASZKA: Ms Rizk, have you been
4 given a document dated February 25th, 2004?

5 MS RIZK: Yes.

6 MS KULASZKA: Do you recognize that?

7 MS RIZK: Yes, I do.

8 MS KULASZKA: What is this about?

9 MS RIZK: This is the respondent
10 Craig Harrison's defence on the complaint.

11 MS KULASZKA: So you sent him the
12 standard letter, where you ask a series of questions?

13 MS RIZK: Yes.

14 MS KULASZKA: And this was his reply?

15 MS RIZK: Yes.

16 MS KULASZKA: And he called you?

17 MS RIZK: Yes, he did.

18 MS KULASZKA: And you spoke to him?

19 MS RIZK: Yes, I did.

20 MS KULASZKA: He gives a series of
21 answers.

22 You asked if he knew who controlled
23 or owned the FreedomSite, and he said that he didn't
24 know.

25 MS RIZK: He said that he did not

1 know.

2 MS KULASZKA: Did he say anything
3 else?

4 MS RIZK: No, I wrote down what he
5 said.

6 MS KULASZKA: And you asked him the
7 purpose of the FreedomSite, and he said that he didn't
8 know.

9 MS RIZK: That's right.

10 MS KULASZKA: Did he say anything
11 else?

12 MS RIZK: No, he did not.

13 MS KULASZKA: You asked him about the
14 intent, and he said that he didn't know.

15 MS RIZK: That's correct.

16 MS KULASZKA: And, also, that he
17 didn't know who was responsible for editing or posting
18 the content?

19 MS RIZK: That is correct.

20 MS KULASZKA: He didn't know how the
21 documents were being posted on the FreedomSite?

22 MS RIZK: That's correct.

23 MS KULASZKA: And he knew nothing
24 about the ISP.

25 MS RIZK: Again, that's correct.

1 MS KULASZKA: When you find out, just
2 as an aside, from this letter who the Internet Service
3 Provider is, what actions would you take once someone
4 told you who the ISP was?

5 This is hypothetical.

6 Say that a complaint is made, and you
7 send out this form letter asking who the ISP is, and
8 the person replies and tells you. Were there any other
9 steps that you would take as an investigator?

10 MS RIZK: I did not know what steps
11 to take at that time.

12 MS KULASZKA: You didn't have a
13 little series of steps that you were to take?

14 MS RIZK: No.

15 MS KULASZKA: So there were no
16 instructions about that.

17 MS RIZK: No. If the answer was --
18 if he had known, I would have taken it from there. I
19 would have shown it to my manager and asked for
20 direction.

21 MS KULASZKA: In any of the cases you
22 dealt with, did you ever do that, go to the manager and
23 ask for directions?

24 MS RIZK: Yes.

25 MS KULASZKA: About ISPs?

1 MS RIZK: No.

2 MS KULASZKA: Why did you want to
3 know what the user policies were?

4 THE CHAIRPERSON: Where is that?

5 MS KULASZKA: That was another one
6 of --

7 I don't see it here. I think they
8 are called the "Acceptable Use Policies".

9 THE CHAIRPERSON: Is it a question
10 that appears on this memo that I am looking at?

11 MS KULASZKA: Yes, it is Point 6.

12 THE CHAIRPERSON: Point 6, okay.

13 MS KULASZKA: It says:

14 "Who is your present Internet
15 Service Provider (ISP)? Where
16 is it located? Please provide a
17 copy of the ISP's arrangement.
18 Please provide a copy of the
19 agreement with ISP."

20 Could you explain that?

21 MS RIZK: I wonder if "arrangement"
22 meant agreement. I'm not sure.

23 The question asks the respondent if
24 they know who the ISP is, and, if they do know who the
25 ISP is, if there is an agreement between them and the

1 ISP.

2 MS KULASZKA: I think it is called an
3 "Acceptable Use Policy".

4 MS RIZK: I am not familiar with it.

5 THE CHAIRPERSON: I have to say, Ms
6 Kulaszka, that "Acceptable Use Policy" is far away from
7 the word "arrangement". I don't see the link.

8 MS KULASZKA: In your files, do you
9 have the letter that was sent to Mr. Lemire where you
10 asked this series of questions?

11 MS RIZK: Yes, I do.

12 MS KULASZKA: Just to clarify for the
13 Tribunal --

14 THE CHAIRPERSON: Are we going to put
15 this document at the back of the book?

16 MS KULASZKA: Yes, if we could.

17 They would be pages 34 and 35.

18 MS RIZK: Yes, I found a copy of the
19 letter.

20 MS KULASZKA: Could you just read the
21 points that you ask?

22 Just explain to the Tribunal about
23 the letter, and then read the questions that are asked.

24 MS RIZK: Is this the notification
25 letter that was sent out?

1 MS KULASZKA: Right.

2 THE CHAIRPERSON: The pertinent
3 question; right?

4 Do you want to hear all of the
5 questions again?

6 MS KULASZKA: If you could just
7 explain what the purpose of the letter is, and then you
8 can read the question about the acceptable use policy,
9 just to clarify, because I don't think you are using
10 the right wording here in your own Point 6.

11 If you could read from the letter
12 from the file -- if you go to the second page --

13 MS RIZK: Yes, okay.

14 The purpose of the letter is to
15 notify the respondent of the complaint, to explain what
16 the Commission is required to do to address the
17 complaint, and to explain that a report will be
18 prepared for the Commission for recommendation.

19 Then we ask a series of questions to
20 the respondent to find out more about the site.

21 And that specific question, you would
22 like me to read it?

23 MS KULASZKA: Yes.

24 MS RIZK: "Who is your present

25 Internet Service Provider (ISP)?

1 Where is it located? Please
2 provide a copy of the ISP's
3 arrangement. Please provide a
4 copy of the agreement with ISP."

5 THE CHAIRPERSON: Where does it
6 say --

7 MS KULASZKA: I guess that's it.
8 Do you know what is meant by that?

9 MS RIZK: What agreement the
10 respondent has with the ISP?

11 MS KULASZKA: Yes. What are you
12 asking the person for?

13 A contract?

14 MS RIZK: Any type of agreement or
15 arrangement that the respondent might have with the
16 ISP.

17 THE CHAIRPERSON: That is how I take
18 it when I hear it.

19 MS RIZK: It is just like any other
20 file.

21 THE CHAIRPERSON: Is there anything
22 in that letter of yours that talks about --

23 What did you call it? Use of
24 policy --

25 MS KULASZKA: "Acceptable Use

1 Policy."

2 MS RIZK: No.

3 MS KULASZKA: Ms Rizk, we have just
4 handed up another document. It is another memo by you,
5 dated October 18, 2004.

6 Do you see that?

7 MS RIZK: Yes, I do.

8 MS KULASZKA: Can you explain what
9 this memo is about?

10 MS RIZK: Yes. I had had a
11 conversation with the complainant shortly after
12 receiving the respondent's objection on bad faith, and
13 I had gone through the objection with the complainant.
14 I had not written a note to file then, but as soon as I
15 remembered, I wrote the note, which was on October
16 18th, 2004, and I said:

17 "My recollection of what the
18 complainant said was that he had
19 nothing to do with what was
20 written on the site rabble.ca.
21 I called him back today..."

22 -- October 18th:

23 "...to confirm that this was
24 what he said and he confirmed
25 that he had nothing to do with

1 what was written and what
2 happened."

3 MS KULASZKA: Was that the only
4 investigation you did about that?

5 MS RIZK: In terms of the site?

6 MS KULASZKA: Yes.

7 MS RIZK: I went on the site and I
8 verified that it was there.

9 MS KULASZKA: On "rabble.ca".

10 MS RIZK: Yes.

11 MS KULASZKA: Did you e-mail the
12 site? Did you call the webmaster of "rabble.ca"?

13 MS RIZK: No, I did not.

14 MS KULASZKA: What constitutes,
15 according to your training, a vexatious complaint?

16 MR. VIGNA: Mr. Chair, I think that
17 is a legal question more than --

18 THE CHAIRPERSON: I'm sorry?

19 MS KULASZKA: It is not a legal
20 question. I asked about the training, what training
21 they are given regarding what would constitute
22 vexatiousness in a complaint.

23 MS RIZK: Do I proceed?

24 THE CHAIRPERSON: Do you get training
25 on section 41 --

1 MS RIZK: We get training on section
2 41 complaints, and we have a procedure that we follow,
3 and if the respondent raises an objection, we deal with
4 their objection under -- depending on the subsection,
5 under 41.

6 MS KULASZKA: And what kind of
7 training are you given?

8 MS RIZK: We write the report, we
9 analyze the report --

10 We look at the objection and we
11 prepare the report to say that the respondent had
12 raised this objection, and we make a recommendation on
13 the objection.

14 MS KULASZKA: Did you do that in this
15 case?

16 MS RIZK: I mentioned the objection
17 on bad faith in my report, but I did not make a
18 specific recommendation with respect to the bad faith
19 objection.

20 I did make a specific recommendation
21 with respect to the other 41 objection that was raised.

22 MS KULASZKA: Why was no analysis
23 done?

24 MS RIZK: On the bad faith?

25 MS KULASZKA: Yes.

1 MS RIZK: I am not sure.

2 MS KULASZKA: Well, you wrote it.

3 MS RIZK: I realize that, but there
4 was no analysis done.

5 There was no specific recommendation
6 done --

7 There was no specific recommendation
8 dealing with the bad faith, but the objection was
9 raised in the report. It was mentioned in the report
10 that this objection was raised.

11 Can I refer to the report?

12 MS KULASZKA: Yes.

13 MS RIZK: In paragraphs 4, 5 and 6 I
14 deal with the specific objection, and in paragraph 7 I
15 deal with the other objection, having to do with the
16 complainant not being a victim of the alleged
17 discrimination.

18 In my recommendation, under 41, I
19 recommend, pursuant to subparagraph 41(1) of the
20 Canadian Human Rights Act, that the Commission deal
21 with the complaint because section 45(b) of the
22 Canadian Human Rights Act does not require that the
23 complainant be the intended target of the alleged
24 discrimination for section 13 complaints.

25 I do not, however, make a specific

1 recommendation with respect to the bad faith objection.

2 MS KULASZKA: I was wondering if I
3 could produce that memo now. It would be page 36.

4 It is the October 18th, 2004 memo.

5 THE CHAIRPERSON: Could I back you up
6 for a second?

7 Your last statement was that you did
8 not make any recommendation on section 41 --

9 MS RIZK: Specifically.

10 THE CHAIRPERSON: You did not read
11 that from your report just now, you just testified
12 that; right?

13 MS RIZK: Yes, I just testified.

14 THE CHAIRPERSON: All right.

15 MS KULASZKA: Did the respondent
16 request --

17 THE CHAIRPERSON: It can be produced.
18 Your answer was "yes".

19 That was page --

20 MS KULASZKA: Page 36.

21 Did the respondent request to make
22 submissions on that ground?

23 MS RIZK: I'm sorry, submissions
24 meaning --

25 MS KULASZKA: On vexatiousness.

1 MS RIZK: I believe it was on bad
2 faith that the objection was made.

3 MS KULASZKA: But under that
4 provision.

5 Under that section of the Act.
6 Maybe you could check your file.
7 There should be a letter there.

8 MR. VIGNA: Mr. Chair, I object to
9 these questions. They go to the matter of the judicial
10 review, they are not within the Tribunal's
11 jurisdiction -- all of these questions regarding
12 section 41, et cetera, and the report and the process.

13 I don't see the relevance, even in
14 terms of the constitutional question that is being
15 asked.

16 THE CHAIRPERSON: It is close to that
17 line, Ms Kulaszka.

18 If you have another question, go
19 ahead.

20 MS KULASZKA: When your report is
21 reviewed by the team that you referred to, is that
22 something that is also reviewed?

23 MS RIZK: The allegations --

24 MS KULASZKA: The allegations of bad
25 faith against the complainant?

1 MS RIZK: Yes, and it was mentioned
2 in the report, so they would have been aware of the
3 objection under bad faith -- objection to dealing with
4 the complaint under 41 because of bad faith.

5 MS KULASZKA: Were you asked about
6 that?

7 Were you asked for the background to
8 that allegation?

9 MR. DUFRESNE: Mr. Chair, again, this
10 is judicial review territory. This is about whether
11 the Commission's process met the requirements of
12 procedural fairness.

13 All of these questions are about
14 that, and I have to object. There is no relevance, or
15 arguable relevance, to the merits of this case.

16 There was a process whereby this
17 decision could have been challenged in the Federal
18 Court, and that hasn't been done.

19 THE CHAIRPERSON: It's interesting
20 that it wasn't, but go ahead.

21 MS KULASZKA: It also goes to -- I
22 think my friends are aware that we have put in a number
23 of complaints in R-3 dealing with how various
24 complaints have been handled, and we are trying to make
25 this a constitutional argument about the effect of

1 section 13.

2 THE CHAIRPERSON: All right. It goes
3 to that aspect of it, certainly.

4 The tower leans always to one side
5 when it comes to these types of complaints.

6 Is that what you are getting at?

7 MS KULASZKA: Yes, exactly.

8 THE CHAIRPERSON: So what you want to
9 know is the process that is there, and whether the
10 process is --

11 It is like JR -- judicial review --
12 but it also goes to the larger argument that has been
13 made, and I have allowed it, so it would be consistent
14 for me to allow this line of questioning -- although,
15 whatever the knowledge this witness has; right, Ms
16 Kulaszka?

17 MS KULASZKA: Yes.

18 Do you know if Mr. Warman worked on
19 section 13 complaints?

20 MS RIZK: Not that I am aware of.

21 MS KULASZKA: Just on a general
22 basis, not just section 13, what kind of education and
23 training do you have to have to be a Human Rights
24 Officer?

25 What kind of education and training

1 is required to be a Human Rights Officer with the
2 Commission?

3 Were you required, for instance, to
4 have a university degree?

5 MS RIZK: I believe I was required to
6 have a university degree or experience -- or years of
7 experience --

8 How do you call that?

9 A university degree or sufficient
10 years of experience.

11 MS KULASZKA: And which did you have?

12 MS RIZK: I have a university degree.

13 MS KULASZKA: And what kind of years
14 of experience, in what --

15 MR. DUFRESNE: Mr. Chair, this has
16 nothing to do with whether there is a suggested bias at
17 the Commission, this has to do with the training of
18 investigators.

19 THE CHAIRPERSON: That's right.

20 I don't see how that is relevant, Ms
21 Kulaszka.

22 Go to your next question.

23 MS KULASZKA: Have you attended any
24 conferences or symposiums on hate messaging?

25 MR. DUFRESNE: The same objection,

1 Mr. Chair. This has to do with training, information,
2 continuous language, and it also has to do with the
3 investigator's c.v.

4 THE CHAIRPERSON: On that one, I will
5 allow Ms Kulaszka to give me her opinion.

6 MS KULASZKA: It goes to the kind of
7 training that these officers would have in making the
8 judgments they are making.

9 THE CHAIRPERSON: The focus here, Ms
10 Kulaszka, as broad as we take it, is supposed to be on
11 the legislation and not on mismanagement by the
12 Commission.

13 If they are not given enough
14 training, it may be more of another issue than how
15 section 13 plays out and its effect.

16 MS KULASZKA: In the Lemire case, did
17 you change the report as a result of the review by
18 Legal Services or other members who reviewed it?

19 MR. VIGNA: Mr. Chair, I don't know
20 if that falls within solicitor/client privilege --

21 THE CHAIRPERSON: If it was based on
22 advice from lawyers, it might be subject to
23 solicitor/client privilege.

24 Perhaps that should be clarified.

25 MS KULASZKA: I haven't asked for

1 what changes were made, I simply asked if any changes
2 were made. I didn't ask what changes were made.

3 THE CHAIRPERSON: The final version
4 of the report that you initially drafted, was it
5 changed?

6 I think that is what you are saying.

7 MS KULASZKA: Yes.

8 MS RIZK: Honestly, I don't remember
9 if it went and there were changes or not.

10 I don't specifically remember, no.

11 MS KULASZKA: Is it normal for an
12 investigator to investigate the person laying the
13 complaint?

14 THE CHAIRPERSON: Normal to
15 investigate the person laying the complaint?

16 MS KULASZKA: Yes.

17 THE CHAIRPERSON: I am not sure that
18 I understood your question, Ms Kulaszka.

19 MS KULASZKA: Was it normal practice
20 for an investigator, such as yourself, to investigate
21 the complainant as part of your investigation?

22 THE CHAIRPERSON: All right.

23 MS RIZK: We investigate the
24 allegations laid out by the complainant.

25 I am not sure what you mean by

1 "investigate the complainant".

2 MS KULASZKA: The background of the
3 complainant.

4 MS RIZK: No.

5 MS KULASZKA: Have you ever done so?

6 MS RIZK: No.

7 I'm sorry, let me clarify. The
8 background in the context of the complainant, are we
9 talking specifically a section 13 complaint or in
10 general?

11 MS KULASZKA: Section 13.

12 I am talking about the background of
13 the complainant in a section 13 complaint.

14 MS RIZK: No, not specifically.

15 MS KULASZKA: You have never done
16 that yourself.

17 MS RIZK: No.

18 MS KULASZKA: You downloaded material
19 from the FreedomSite, and that was in January of 2004,
20 or around there?

21 MS RIZK: December and in January of
22 2004.

23 MS KULASZKA: You downloaded it onto
24 a CD?

25 MS RIZK: Yes.

1 MS KULASZKA: Can you tell me when
2 you gave that CD to Mr. Vigna?

3 MS RIZK: When I gave it to Mr.
4 Vigna?

5 I didn't, because I was on leave at
6 the time.

7 MS KULASZKA: So you have no
8 knowledge about that.

9 MS RIZK: No.

10 MS KULASZKA: I think that Mr. Lemire
11 has just handed you another document. It is a letter
12 signed by Richard Warman.

13 Could you identify that document?

14 MS RIZK: Yes.

15 MS KULASZKA: What is it?

16 MS RIZK: It's a document from the
17 complainant, which he gave us with a CD. It says with
18 a CD "containing downloads representing a sampling of
19 the anti-semitic material available on the website
20 www.jrbooksonline.com..."

21 MS KULASZKA: This is the CD that you
22 ran those portions off from that we saw earlier.

23 You put it in your drive and you
24 printed off portions of the CD.

25 MS RIZK: I believe so.

1 MS KULASZKA: If I could produce that
2 document --

3 THE CHAIRPERSON: All right.

4 MS KULASZKA: -- it would be page 37.

5 Mr. Lemire has just handed you
6 another document, which is dated May 8th, 2005.

7 Could you identify that document?

8 MS RIZK: Can I check my files?

9 I'm not sure, but I believe this is a
10 submission to the investigation report, and I just want
11 to be sure.

12 May I do that?

13 MS KULASZKA: Sure.

14 MS RIZK: Thank you.

15 --- Pause

16 MS RIZK: Yes, this is a submission
17 from the complainant to the report.

18 MS KULASZKA: To the what?

19 MS RIZK: After we disclosed the
20 report, it is the complainant's submission.

21 MS KULASZKA: And it is with respect
22 to the --

23 MS RIZK: Oh, sorry. No, it was
24 after we cross-disclosed the respondent's submission.

25 It is a reply to the respondent's

1 submission.

2 MS KULASZKA: And an offer to try and
3 conciliate.

4 MS RIZK: Yes.

5 MS KULASZKA: If I could produce that
6 document, it would be page 38.

7 THE CHAIRPERSON: All right.

8 MS RIZK: Can I just clarify the
9 Commission's process in terms of settling --

10 MS KULASZKA: Yes.

11 MS RIZK: When any of the parties
12 bring forth a request to settle the matter prior to the
13 disclosure of the report, or during the investigation,
14 the request is put forth to the other party, and if the
15 other party denies it, then there is no -- we proceed
16 with the investigation.

17 Because the respondent asked to
18 settle the complaint earlier on during the
19 investigation, we put that forth to the complainant,
20 and the complainant refused to settle the matter, so we
21 proceeded with the investigation.

22 This information came after the
23 disclosure of the report. So this information was
24 given to the Commission before it made its decision.

25 MS KULASZKA: That is the policy of

1 the Commission in all cases?

2 MS RIZK: In all cases, yes.

3 MS KULASZKA: Not just section 13.

4 MS RIZK: Not just section 13.

5 THE CHAIRPERSON: The conciliation
6 process is a voluntary process.

7 Is that what you are saying?

8 MS RIZK: Before that it's a
9 mediation process. Conciliation comes after.

10 THE CHAIRPERSON: What is the
11 distinction between the two?

12 We run into this word a lot.

13 There is a mediation process that
14 goes on before the report is issued?

15 MS RIZK: Yes.

16 THE CHAIRPERSON: And that is
17 mediation in the sense that people get together, there
18 is a meeting conducted with a mediator --

19 MS RIZK: And it is completely
20 voluntary.

21 THE CHAIRPERSON: It's voluntary, and
22 there is a mediator present, and there is an attempt to
23 reach a settlement.

24 MS RIZK: Yes.

25 THE CHAIRPERSON: That's voluntary.

1 MS RIZK: That's voluntary.

2 THE CHAIRPERSON: And the
3 conciliation process...?

4 MS RIZK: That is by recommendation.

5 THE CHAIRPERSON: By recommendation.

6 MS RIZK: Or by decision by the
7 Commission.

8 MS KULASZKA: So the Commission has
9 the power to order a meeting.

10 MS RIZK: Conciliation, yes.

11 MS KULASZKA: When?

12 At what point in the process?

13 MS RIZK: At the time it makes its
14 decision.

15 MS KULASZKA: All right. Mr. Lemire
16 is going to hand out another letter --

17 MR. DUFRESNE: Mr. Chair, perhaps as
18 an officer of the court I could point to section 43 of
19 the Act, which talks about conciliation, and it has its
20 own statutory system.

21 THE CHAIRPERSON: That's right.

22 MR. DUFRESNE: It is triggered by a
23 decision of the Commission.

24 THE CHAIRPERSON: Right.

25 MR. DUFRESNE: Unlike mediation,

1 which is purely voluntary.

2 THE CHAIRPERSON: That is the
3 distinction.

4 MR. DUFRESNE: The Commission can
5 compel attendance at conciliation, but it makes a
6 decision. The case is put before it and it can either
7 dismiss, refer the complaint to a tribunal, or send it
8 to conciliation.

9 THE CHAIRPERSON: Section forty...?

10 MR. DUFRESNE: Section 47, and
11 onwards.

12 THE CHAIRPERSON: It can order
13 conciliation, which may or may not succeed, depending
14 on the cooperation of the parties. But conciliation
15 may be ordered.

16 MR. DUFRESNE: That's correct.

17 THE CHAIRPERSON: My question was
18 more along the lines of the practical conduct. The
19 conciliation process may be different from mediation.

20 The mediation process, from the
21 answer that I have been given, is one where there is an
22 actual mediator and the parties meet.

23 Is that what goes on in mediation?

24 Maybe I am asking too many questions
25 and they are not relevant to this case.

1 MR. DUFRESNE: I don't want to
2 testify, but they are both --

3 THE CHAIRPERSON: They both may be
4 functioning as the same.

5 MR. DUFRESNE: Generally, a mediation
6 is earlier in the process, and at the end of the
7 process we are talking about conciliation.

8 THE CHAIRPERSON: So when the word is
9 being used in two different fashions, it is to
10 distinguish between the one that is made as a
11 consequence of section 47, as opposed to one that is
12 being made prior to any decision by the Commission
13 under section 47.

14 MR. DUFRESNE: Correct.

15 MS KULASZKA: Mr. Lemire just handed
16 around another document.

17 Do you have that document?

18 MS RIZK: Yes.

19 MS KULASZKA: Do you recognize that
20 document?

21 MR. VIGNA: Mr. Chair, I am going to
22 object to this document, if it is for the statements
23 that Mr. Lemire wishes to put in evidence, without him
24 testifying, through the witness who is before you,
25 because it would be self-serving evidence.

1 THE CHAIRPERSON: Self-serving?

2 I haven't looked at it.

3 Do you mind if I look at it?

4 MR. VIGNA: Sure.

5 --- Pause

6 THE CHAIRPERSON: It is a mixed bag.

7 Yes, it is sort of trying to get evidence in by the

8 back door; on the other hand, much of it --

9 I have looked at it very quickly, and
10 much of this material came from the cross-examination
11 of Mr. Warman.

12 MS KULASZKA: Yes, it did.

13 THE CHAIRPERSON: The business about
14 Florida and all of that.

15 I don't know what to do with it.

16 I don't want you to try to pass off
17 evidence that way, Ms Kulaszka. However, as I say,
18 much of it is already there.

19 Do we need the letter itself?

20 Is your point here that Mr. Lemire
21 tried to present his case at this date to the other
22 side?

23 MS KULASZKA: Yes. At the paragraph
24 that is second from the bottom on the first page, he
25 said:

1 "...I would request that the
2 Commission send this matter to
3 conciliation pursuant to section
4 47 of the Canadian Human Rights
5 Act."

6 THE CHAIRPERSON: Okay. So it is not
7 the material above that you want to put before me.

8 MS KULASZKA: No, I asked Mr. Warman
9 about that material.

10 THE CHAIRPERSON: I understand.
11 Mr. Vigna, given that information --
12 Would you rather we strike it, or I
13 could just say that it doesn't mean anything to me.

14 The point is, as you see, that the
15 line of questioning is going toward the conciliation
16 issue. That is what she wants to bring up.

17 MR. VIGNA: Under those circumstances
18 I don't object, but when you do your analysis, I would
19 like you to take into account --

20 THE CHAIRPERSON: I will even put a
21 note right here on the document.

22 I am sort of putting a line through
23 it, because I am not going to consider this in view of
24 the actual evidence that I have in front of me.

25 MS KULASZKA: Do you see that, Ms

1 Rizk?

2 MS RIZK: Yes, I do.

3 MS KULASZKA: The next paragraph:

4 "My client has removed all
5 material that Mr. Warman
6 complained about, most of it
7 before any complaint came to his
8 attention. The only other
9 matter in dispute,
10 jrbooksonline.com, is not Mr.
11 Lemire's..."

12 The last paragraph:

13 "...I request that the
14 Commission appoint a conciliator
15 pursuant to section 47 of the
16 Canadian Human Rights Act for
17 the purpose of attempting to
18 bring about a settlement of the
19 complaint."

20 Do you know what happened with this
21 request?

22 MS RIZK: Yes. These submissions
23 were presented to the Commission.

24 It is not just the report that goes
25 to the Commission, the Commission also reads these

1 submissions.

2 This document was presented to the
3 Commission. The complainant's document was sent to the
4 Commission.

5 Any documents that you sent to us,
6 after we disclosed the report, were sent to the
7 Commission.

8 MS KULASZKA: Once your report is
9 done, essentially, whatever you receive, you simply
10 send on to the Commission.

11 MS RIZK: We cross-disclose it to the
12 parties, and then, yes, we send it to the Commission,
13 so that they have all of the information when they make
14 their decision.

15 I only make a recommendation, and
16 this is the chance for the parties to comment on the
17 recommendation, and the Commission gets all of that
18 information before it makes its decision.

19 MS KULASZKA: So you have no other
20 knowledge of what happened to that request, except that
21 you handed it on to the Commission.

22 MS RIZK: Yes, I prepared a package
23 for the Commission, and the Commissioners read it
24 before making their decision.

25 MS KULASZKA: Could I produce that

1 document?

2 THE CHAIRPERSON: Yes, with the
3 comments noted that Mr. Vigna made earlier.

4 They would be pages 39 and 40.

5 We have hit the five o'clock point.

6 MS KULASZKA: I think this is the
7 last document.

8 Ms Rizk, this is a document dated
9 August 19th, 2005. Can you identify the document?

10 MS RIZK: Yes.

11 MS KULASZKA: What is it?

12 MS RIZK: This is a letter written by
13 the Secretary to the Commission, informing the parties
14 of the decision taken by the Canadian Human Rights
15 Commission in the complaints.

16 MS KULASZKA: One of them is the
17 FreedomSite and one is against Marc Lemire.

18 MS RIZK: That's correct.

19 MS KULASZKA: If I could just produce
20 that document --

21 THE CHAIRPERSON: It is one document.
22 It is the one that went to the complainant.

23 MS KULASZKA: Yes, it's a letter.

24 Just to make it clear, it deals with
25 several complaints. Correct?

1 MS RIZK: Yes.

2 This was the letter sent to the
3 complainant.

4 THE CHAIRPERSON: If you want to
5 produce it, that's fine. They will be pages 41, 42 and
6 43.

7 MS KULASZKA: Ms Rizk, can you tell
8 us why you were unavailable to testify earlier this
9 year?

10 MR. VIGNA: Mr. Chair, I don't think
11 it is relevant that she give her personal reasons why
12 she was unavailable.

13 She was on leave, and I made mention
14 of it several times.

15 THE CHAIRPERSON: Why is that
16 relevant, Ms Kulaszka?

17 Why do I need to know that?

18 MS KULASZKA: It is because certain
19 representations were made. I don't want to know
20 personally why, or where she was, or --

21 THE CHAIRPERSON: You are concerned
22 that Mr. Vigna didn't tell us about it from day one, on
23 January 28th?

24 MS KULASZKA: We were told various
25 stories about this, and I just wanted to clear it up.

1 THE CHAIRPERSON: We have worked it
2 out.

3 MR. VIGNA: Mr. Chair, she can say
4 that she was on leave; I object to the reason why she
5 was on leave.

6 THE CHAIRPERSON: All right.
7 Were you on leave?

8 MS RIZK: Yes, I was.

9 MS KULASZKA: Earlier this year.

10 MS RIZK: Yes, I was.

11 MS KULASZKA: I would ask if we could
12 have a moment.

13 --- Pause

14 MS KULASZKA: Thank you, Ms Rizk,
15 those are my questions.

16 THE CHAIRPERSON: Mr. Vigna?

17 MS KULASZKA: I was wondering, is Mr.
18 Fromm going to be given an opportunity, before or
19 after?

20 THE CHAIRPERSON: What was the
21 process that we followed with regard to other witnesses
22 who were called by the respondent? I can't remember.

23 I think we went straight to cross --
24 Would someone remind me? What was
25 the protocol we used?

1 Does anyone remember?

2 Did it arise?

3 We went from one side to the other
4 side? Is that what we did?

5 MR. VIGNA: I think so, Mr. Chair.

6 THE CHAIRPERSON: That's how we did
7 it, was it?

8 Mr. Fromm, do you have any questions?

9 MR. FROMM: Yes.

10 CROSS-EXAMINATION BY MR. FROMM

11 MR. FROMM: In the interests of
12 brevity, I really only have one question.

13 Ms Rizk, how many section 13(1)
14 investigations did you undertake?

15 MS RIZK: If we include the
16 FreedomSite and Mr. Lemire as one, then there would
17 have been three altogether.

18 MR. FROMM: And they would have been
19 Mr. Lemire and the FreedomSite --

20 MS RIZK: Yes.

21 MR. FROMM: -- and...?

22 MS RIZK: Craig Harrison.

23 MR. FROMM: Okay. And...?

24 MS RIZK: I am not sure of the
25 outcome of the other one. Can I --

1 MR. FROMM: Were you not the
2 investigator in the Tomasz Winnicki case?

3 MS RIZK: No, I was not.

4 MR. FROMM: And in the case of
5 Lubomyr Prytulak and the Ukrainian Archive?

6 MS RIZK: Yes, that is the other one
7 that I was on.

8 MR. FROMM: Those would be my
9 questions.

10 THE CHAIRPERSON: All right.

11 EXAMINATION BY MR. VIGNA

12 MR. VIGNA: Ms Rizk, you were asked
13 about a document at Tab 15 regarding the CD-ROM of
14 "jrbooksonline" and when you would have given it to
15 me -- if you would have given it to myself, and you
16 answered the question.

17 MS RIZK: Yes.

18 MR. VIGNA: I would ask you to look
19 at the document at page 38. It is not really the
20 document itself, but it is in relation to the document.

21 While you were on leave, were you
22 contacted about the CD-ROM in question?

23 MS RIZK: I was contacted about the
24 CD-ROM with the FreedomSite information.

25 MR. VIGNA: By whom and for what

1 purpose?

2 MS RIZK: Because you couldn't find
3 the CD-ROM on the Marc Lemire file, and I suggested
4 that you look on the Craig Harrison file, because the
5 files were -- the complaints came in together and they
6 travelled together.

7 MR. VIGNA: Do you know if they found
8 it on the Harrison file?

9 MS RIZK: The "jrbooksonline" CD, or
10 the Freedomsite?

11 MR. VIGNA: "jrbooksonline."

12 MS RIZK: I am not sure about that
13 one.

14 MR. VIGNA: But you suggested that
15 they look in the Harrison file.

16 MS RIZK: Yes, I did.

17 MR. VIGNA: Do you know who called
18 you?

19 MS RIZK: I believe it was Dean
20 Steady who called me.

21 MR. VIGNA: Do you know the time
22 period, approximately?

23 MS RIZK: Maybe the end of last year,
24 or the beginning of this year.

25 But, again, I am not sure. I do not

1 remember.

2 MR. VIGNA: In relation to your
3 investigation report, you mentioned the poem and the
4 fact that you were not able to locate it.

5 Can you tell us, when the complainant
6 provided you the poem and the time that you looked,
7 what the timeframe was?

8 MS RIZK: The complainant provided
9 the poem on June 21st, 2004, I believe, in his
10 rebuttal -- around that time -- until I wrote the
11 report --

12 The report was disclosed on April
13 15th, 2005.

14 MR. VIGNA: When did you look to see
15 if the poem was on the web?

16 MS RIZK: Sometime between those two
17 dates.

18 MR. VIGNA: Do you know if it was
19 immediately, as soon as you got it, or sometime later?

20 MS RIZK: I cannot remember.

21 I'm sorry, can I go back to a
22 question that Mr. Fromm asked me?

23 THE CHAIRPERSON: Only if there are
24 no objections.

25 MS RIZK: In terms of the Tomasz

1 Winnicki file --

2 THE CHAIRPERSON: Everyone seems to
3 be nodding, so go ahead.

4 MS RIZK: I apologize. Honestly, my
5 memory is --

6 THE CHAIRPERSON: I understand.

7 MS RIZK: It hasn't been very good,
8 because it's been such a while.

9 Is it possible to go back and check
10 the records about the Tomasz Winnicki file?

11 MR. FROMM: Yes, I would very much
12 appreciate it if you would do that.

13 MS RIZK: Sure. Now that you mention
14 it, I might not have actually investigated it, but I
15 might have had some sort of dealings with the file.

16 I just want to be clear that I didn't
17 actually investigate the file.

18 MR. FROMM: The reason I asked the
19 question was, I believe there is correspondence between
20 you and Mr. Winnicki's solicitor in the matter.

21 MS RIZK: Yes, and there might have
22 been some sort of dealings, but I just want to go back
23 and confirm.

24 MR. DUFRESNE: We will undertake to
25 provide those clarifications tomorrow.

1 I don't think it would be necessary
2 for Ms Rizk to come back, we can --

3 THE CHAIRPERSON: Oh, no, that's
4 fine.

5 MR. VIGNA: I think you made it
6 clear, but in terms of your recommendation in an
7 investigation report, and the possibility of
8 conciliation --

9 There was a series of questions that
10 were asked regarding the possibility of conciliation.
11 Can you tell us if that is a decision you make or if
12 that is a decision the Commission makes?

13 MS RIZK: I don't make any decisions
14 on the file, I only make recommendations.

15 The conciliation would be a decision
16 that the Commission would make.

17 THE CHAIRPERSON: But do you ever
18 have occasion to recommend conciliation?

19 MS RIZK: Yes.

20 MR. VIGNA: I don't have any further
21 questions, Mr. Chair.

22 THE CHAIRPERSON: Thank you.

23 MS DAVIES: I have no questions, Mr.
24 Chair, but I was wondering if, before we go, we could
25 confirm which documents from Tab 15 were produced

1 today.

2 I have question marks on a few of
3 them.

4 THE CHAIRPERSON: Are you in a
5 position to tell us, Ms Joyal?

6 This doesn't prevent the parties from
7 raising the remainder of the documents. I am not going
8 to be removing the documents at this point, it is just
9 for the purpose of keeping track.

10 I know that we have, at least, until
11 page 4 -- page 5, even, I would say.

12 Page 6 has not been produced, to my
13 knowledge.

14 Page 7 wasn't produced, nor was page
15 8.

16 Page 9 was produced.

17 Page 10 was not.

18 We begin again at 15, and from that
19 point on, all of them were new documents that were
20 produced.

21 THE CHAIRPERSON: That will be it?
22 There are no further questions from anyone?

23 Ms Kulaszka, I guess, technically, it
24 is re-examination, and I should give you that
25 opportunity.

1 MS KULASZKA: Pages 1 to 5 have been
2 produced. Correct?

3 THE CHAIRPERSON: Yes.

4 MS KULASZKA: I was wondering about
5 the documents that Mr. Steacy is going to bring.

6 Maybe we could have another
7 arrangement tomorrow. Perhaps we could come early
8 and --

9 THE CHAIRPERSON: Look at the
10 documents, to avoid the delay we had today.

11 MR. VIGNA: Mr. Chair, in terms of
12 the documents from Mr. Steacy, I have spoken with him
13 and, essentially, it will be the same file.

14 And the documents that he provided
15 were disclosed a long time ago. They were, primarily,
16 the ISPs.

17 THE CHAIRPERSON: Does he have
18 anything else in his files?

19 Is it possible?

20 MR. VIGNA: No, Mr. Chair. I spoke
21 to him again today, and there is nothing much more.

22 THE CHAIRPERSON: I know, but
23 sometimes things slip through your hands --

24 MR. VIGNA: I did ask him to look at
25 the subpoena and to basically look at each point, to

1 make sure there is nothing that has been overlooked.

2 I just don't want to have any
3 surprises tomorrow, saying that he didn't bring this
4 and that, because I have asked him several times --

5 THE CHAIRPERSON: That is not exactly
6 what is being asked.

7 Whatever he has put together, in good
8 faith, based on the subpoena, they just want to have a
9 chance to look at it a bit earlier, so that we don't
10 lose a good chunk of the morning while they look at the
11 file -- just to compare.

12 They have a right to compare it with
13 what has been disclosed, just in case.

14 MR. VIGNA: What he had, he gave it
15 to me, and I disclosed it, basically. It is part of
16 the litigation.

17 THE CHAIRPERSON: I understand what
18 you are saying.

19 Are you going to be here at nine --
20 whatever it is?

21 Maybe we could advance the arrival
22 time to nine o'clock. All of you arrive here at nine
23 o'clock, without my having to come in here, waiting for
24 me to open the door and all of that, and just exchange
25 the documents in everyone's presence, so that Ms

1 Kulaszka can look at them like she did today.

2 Presumably it will be an easy task,
3 because you have disclosed everything, as you said.

4 MR. VIGNA: That's right, but I don't
5 want there to be an expectation that he is going to
6 bring anything much more --

7 THE CHAIRPERSON: I understand what
8 you are saying.

9 MR. VIGNA: We have provided what he
10 had, and I asked him --

11 THE CHAIRPERSON: Are you expecting
12 something more, Ms Kulaszka?

13 MS KULASZKA: I can only see what
14 they bring tomorrow.

15 THE CHAIRPERSON: You have the
16 statement from Mr. Vigna that what you have seen today
17 and what has been disclosed already is what you are
18 going to see tomorrow.

19 But she still has the right to look
20 at it, she made a subpoena duces tecum.

21 MR. VIGNA: We cannot give something
22 that we don't have, and we gave what we had.

23 THE CHAIRPERSON: Yes, I know, but
24 she wants to see it before the hearing, so that if she
25 wants to make a photocopy --

1 Just for that alone, if she wants to
2 make a photocopy, she can do it without wasting our
3 time tomorrow. That's all.

4 That's what I understand. Right, Ms
5 Kulaszka?

6 MS KULASZKA: Yes, it is so we don't
7 waste time. Today there was a lot of time taken --

8 THE CHAIRPERSON: And you managed to
9 get through it.

10 MS KULASZKA: Yes, we did finish.

11 MR. VIGNA: There are certain
12 documents, Mr. Chair, like the Investigation Guide,
13 which we have claimed privilege on.

14 THE CHAIRPERSON: Yes.

15 MR. VIGNA: We do not want to
16 disclose that.

17 There will be a debate, probably,
18 tomorrow on that.

19 THE CHAIRPERSON: So he is not going
20 to include in his file documents that are the object of
21 the previous --

22 MR. VIGNA: Privilege.

23 THE CHAIRPERSON: -- claim under
24 section 37. Right?

25 Maybe there was a little bit of

1 privilege in there, too. I don't recall if there was.

2 MR. DUFRESNE: There were two --

3 THE CHAIRPERSON: There were two,
4 yes.

5 Whatever the previous letters related
6 to.

7 All right. Mr. Vigna, would you ask
8 your witness if he can be here at nine o'clock
9 tomorrow?

10 MR. VIGNA: Yes.

11 THE CHAIRPERSON: All right. I will
12 see you tomorrow.

13 --- Whereupon the hearing adjourned at 5:15 p.m.,
14 to resume on Thursday, May 10, 2007
15 at 9:30 a.m.

16

17 I hereby certify that I have
18 taken down in shorthand and
19 transcribed therefrom the
20 foregoing transcript to the best
21 of my skill and ability.

22

23

24

25

Susan B. Villeneuve

Verbatim Court Reporter

StenoTran