

**CANADIAN
HUMAN RIGHTS
TRIBUNAL**



**TRIBUNAL CANADIEN
DES DROITS
DE LA PERSONNE**

BETWEEN/ENTRE:

RICHARD WARMAN

Complainant

and/et

CANADIAN HUMAN RIGHTS COMMISSION

Commission

and/et

CRAIG HARRISON

Respondent

BEFORE/DEVANT:

MICHEL DOUCET

CHAIRPERSON/
PRÉSIDENT

LINE JOYAL

REGISTRY OFFICER/
L'AGENTE DU GREFFE

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CANADIAN HUMAN RIGHTS TRIBUNAL/
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HEARING HELD THE JPR ARBITRATION CENTRE/THE ARBITRATION PLACE,
390 BAY STREET, 3RD FLOOR, TORONTO, ONTARIO, ON WEDNESDAY,
JUNE 14, 2006, AT 9:30 A.M. LOCAL TIME

CASE FOR HEARING

IN THE MATTER of the complaint filed under section 13 of the Canadian Human Rights Act by Richard Warman dated November 23, 2003, against Craig Harrison. The complainant alleges that the respondent has engaged in a discriminatory practice on the grounds of religion, race, colour, national and/or ethnic origin in a matter related to the usage of a telecommunication undertaking.

APPEARANCES/COMPARUTIONS

Mr. Giacomo Vigna	on behalf of the Canadian Human Rights Commission
Mr. Richard Warman	on his own behalf

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Toronto, Ontario

--- Upon resuming on Wednesday, June 14, 2006
at 9:30 a.m.

REGISTRY OFFICER: Order, please.

THE CHAIRPERSON: Good morning.

MR. WARMAN: Good morning.

REGISTRY OFFICER: Be seated.

THE CHAIRPERSON: Mr. Vigna.

Mr. Warman.

MR. VIGNA: Mr. Warman had some
issues he wanted to raise.

THE CHAIRPERSON: Sure.

MR. WARMAN: Mr. Chair, you had asked
me to try and discover with regard to a few issues, and
I had mentioned something else, so the first issue that
I had agreed to look at, I had mentioned during my
testimony that there was two separate incidents where
the word whining was spelled whinning.

So, the first example of that is at
HR-34 and that is whinning spelled w-h-i-n-n-i-n-g and
the second incident of that is at HR-38.

The second issue, you had asked me in
terms of the dates for the use of the different
pseudonyms.

THE CHAIRPERSON: Mm-hmm.

1 MR. WARMAN: Last evening I was able
2 to confirm that the pseudonym realcanadianson --

3 THE CHAIRPERSON: Okay.

4 MR. WARMAN: -- is used in the
5 postings on the 13th, 14th, 15th, 16th and 21st of May,
6 2002.

7 The pseudonym rump is used the 13th
8 of November of 2002, as well as the 19th and 21st of
9 January, 2003.

10 And the pseudonym realnorthamerican
11 is used the 27th to the 30th of January, 2004, as well
12 as the 2nd and 5th of February, 2004 as well.

13 THE CHAIRPERSON: So, if I understand
14 correctly, realcanadian was used only in 2002, then
15 there was a change to rump from 2002 -- from November
16 through 2003, then to realnorthamerican, at least that
17 is what your research indicates?

18 MR. WARMAN: Yes, there is a break
19 between the use of realcanadianson and rump between May
20 of 2002 and November of 2002.

21 THE CHAIRPERSON: Okay.

22 MR. WARMAN: And then there is a
23 subsequent break of a year between January, 2003 and
24 January of 2004.

25 THE CHAIRPERSON: Thank you very much

1 for those details because I was wondering if they were
2 all mixed up together.

3 MR. WARMAN: Yes.

4 THE CHAIRPERSON: But I see that it
5 is --

6 MR. WARMAN: No, in fact, they are
7 distinct uses.

8 THE CHAIRPERSON: Thank you very
9 much.

10 Before we get back to Mr. Warman's
11 evidence, there was this issue also of the affidavit of
12 Mr. Lemire.

13 MR. VIGNA: We're agreed on the
14 content of it, we're all just missing the signature.
15 I'm hoping to get it shortly.

16 I was being told that Mr. Lemire was
17 going to get it notarized and signed.

18 THE CHAIRPERSON: Okay.

19 MR. VIGNA: I don't know if I'll be
20 able to get it by lunch, I was hoping so.

21 THE CHAIRPERSON: Because we won't be
22 able to get into the closing arguments before we file
23 that affidavit because you can't make references to
24 evidence which is not before the Tribunal, so until we
25 get that and it is filed...

1 MR. WARMAN: Mr. Chair, if I may, at
2 the previous proceedings in Edmonton, because one of
3 the witnesses was not in fact available on time, what
4 Madam Chair Lloyd suggested was that we -- in order not
5 to lose any more time than was absolutely necessary for
6 the Tribunal and the parties, was that we submit our
7 closing arguments but for that portion and then add
8 that as soon as that arrived.

9 THE CHAIRPERSON: Well --

10 MR. WARMAN: But I leave that just
11 as --

12 THE CHAIRPERSON: That might be a
13 possibility, but I don't like to --

14 MR. WARMAN: No, I just threw it out.

15 THE CHAIRPERSON: -- to have evidence
16 coming in after the Tribunal has finished sitting. It
17 might be the decision of my colleague on that, but in
18 my case I prefer that all the evidence be in before we
19 close the proceedings.

20 MR. WARMAN: Certainly.

21 THE CHAIRPERSON: So, I would prefer
22 that -- you know, we will wait this afternoon, if it is
23 possible, and if it is too late, well, we will consider
24 another alternative, but I certainly wish that we do
25 that before we close the arguments.

1 MR. VIGNA: At this point I don't
2 have any serious concern that it will be that late.

3 THE CHAIRPERSON: Okay.

4 MR. VIGNA: So, I don't think it will
5 be delayed that much.

6 THE CHAIRPERSON: Good. Thank you.

7 So, we can proceed with Mr. Warman.

8 RESUMED: RICHARD WARMAN

9 EXAMINATION BY MR. VIGNA (Cont'd):

10 MR. VIGNA: We had left off at tab
11 29.

12 So, Mr. Warman, under the same oath
13 and I presume what you just said earlier was also under
14 oath, you weren't on the witness stand, but it is my
15 understanding that it was also under oath?

16 THE CHAIRPERSON: I have to ask you
17 to speak a little louder.

18 MR. VIGNA: Sorry. Hello.

19 Okay, Mr. Warman, we left off
20 yesterday at tab 29. If you can maybe go to tab 29.

21 Before I go there and before -- I'll
22 just ask you another question that is a bit out of
23 chronology but just came to mind.

24 Mr. Warman, in the letter of
25 particulars of the respondent, I understand he is not

1 here, but in the first paragraph it said, and I'll read
2 it to you:

3 "Mr. Warman revised his date of
4 the onset of the alleged conduct
5 from September 24, 1999 to May
6 13, 2002 to coincide with the
7 receipt of our copy of the
8 original bill of sale of the
9 computer." (As read)

10 And then it's written:

11 "Very convenient to change the
12 story now." (As read)

13 Can you just tell us, what's your
14 answer to this statement?

15 MR. WARMAN: Yes. In fact, the date
16 was not changed. What happened was, because I
17 submitted what was, in effect, a complaint against both
18 Mr. Lemire and Mr. Harrison, the complaint was
19 contained together obviously, so, the material on the
20 Freedom-Site was the earliest date and the postings by
21 Mr. Harrison started, as you can see from HR-3, they
22 begin 13th of May, 2002.

23 So, in effect, although the overall
24 complaint states that the date of the conduct is 24,
25 September, 1999 and on going, that was in relation to

1 the earliest material on the Freedom-Site; whereas HR-3
2 clearly indicates that the material in relation to
3 Mr. Harrison, the earliest date for that is May, 2002.

4 THE CHAIRPERSON: Thank you very much
5 for those clarifications, but since the respondent
6 decided not to be here, that is not in evidence anyway.

7 MR. VIGNA: No.

8 THE CHAIRPERSON: Unfortunately.
9 They will not be cross-examining Mr. Warman and what
10 explanation they could give -- certainly I appreciate
11 your explanation to that -- but whatever explanation
12 they can give is not going to be in evidence for me and
13 that is a choice they made.

14 MR. VIGNA: I just asked the question
15 out of fairness in a certain sense.

16 I'll move on to tab 29.

17 MR. WARMAN: Yes, Mr. Vigna.

18 MR. VIGNA: Can you tell us the
19 important, relevant portions of tab 29, I guess it's in
20 relation to, based on your testimony yesterday, the
21 moniker realnorthamerican.

22 And to refresh our memory just give
23 us another brief sum-up on how we link
24 realnorthamerican with the respondent.

25 MR. WARMAN: Sorry, Madam Joyal, has

1 this been entered as an exhibit?

2 REGISTRY OFFICER: No.

3 MR. WARMAN: So, just for the
4 purposes of identification, this was downloaded from
5 the Yoderanium forum, it was printed off by me on the
6 25th of March, 2004 and then submitted to the
7 Commission pursuant to my complaint.

8 It is -- the thread is described as:

9 "Ukraine: Sacred Burial Ground
10 Endangered by Construction
11 Project."

12 MR. VIGNA: I'd like to file that as
13 Exhibit 39.

14 REGISTRY OFFICER: Four-page document
15 of thread entitled: "Ukraine: Sacred Burial Ground
16 Endangered by Construction Project" will be filed as
17 Commission Exhibit HR-39.

18 EXHIBIT NO. HR-39: Four-page
19 document of thread entitled:
20 "Ukraine: Sacred Burial Ground
21 Endangered by Construction
22 Project".

23 MR. VIGNA: Now, Mr. Warman, since
24 the responses which are of concern to us is
25 realnorthamerican, nevertheless, can you tell the

1 context that precedes it regarding the article you just
2 mentioned so we can get the full gist of the response.

3 MR. WARMAN: Yes. Essentially, it's
4 a traditional sort of anti-Semitic slur alleging that
5 Jews were in fact behind the communist party, the
6 Bolshevik revolution and, in this case, it extends it
7 to the question of the collectivization of Ukrainian
8 farms and what is alleged to be the starvation of --
9 the mass starvation of Ukrainians.

10 So, what this talks about is simply
11 sort of the construction of a highway rest area near a
12 memorial.

13 MR. VIGNA: And what is the response
14 of realnorthamerican to the article, if that's what you
15 call it. I don't know if it's an article or -- it's a
16 topic of discussion anyway.

17 "Ukraine: Sacred Burial Ground
18 Endangered by Construction
19 Project".

20 What is the response of
21 realnorthamerican, if we put it in context with the
22 article?

23 MR. WARMAN: Realnorthamerican
24 responds on the 30th of January, 2004, he states:

25 "it s called progress i

1 guess!ukrainians look asian
2 anyway so why worry!"

3 And then Demigorgona responds?

4 "Ukrainians are Slavic...and so
5 they are white."

6 Realnorthamerican replies:

7 "ukrainians look like ghengis
8 khan and he was a asian so
9 there!"

10 There is a response from another
11 individual decrying this sort of divisiveness within
12 the neo-Nazi movement as to who is really white among
13 white people and who's not white enough to be
14 considered aryan.

15 Realnorthamerican then responds on
16 the 2nd of February, 2004:

17 "sorry some of these people are
18 lost when it comes to history
19 and facts!i can back up any
20 thing i say on these threads!i
21 know a ukrainian guy and he and
22 his brothers have none to
23 minimal body hair!remember
24 ghengis khan and his crusades?he
25 made it to the ukraine!plus

1 sorry to say none of you really
2 have a back bone when it comes
3 to racial matters!the article
4 the enemy with in would probably
5 describe alot of our parents
6 because they bought trudeaus
7 free health care and all this
8 diversity crap!if any body did a
9 little research on that man they
10 would know he was a closet nazi
11 and a french coward draft evader
12 like the rest of the french from
13 quebec!and for your information
14 the french with dark features
15 and there a lot of them have
16 heavy indian back ground!"

17 And as per the previous postings, the
18 text is all in lower case letters and, in this
19 instance, it adds Ukrainians to the broad range of
20 targets that have previously been the subject of the
21 postings.

22 It indicates as well the traditional
23 target of former Prime Minister Pierre Trudeau and the
24 francophone population, more specifically in this case
25 the francophone population from Quebec.

1 And then as well, alleges that there
2 was heavy misogynation between the francophone
3 population and the Aboriginal population.

4 And the last thing I'd notice, there
5 is the traditional allegation that they are coward
6 draft evaders or dodgers.

7 MR. VIGNA: Mr. Warman, if you're
8 able to tell us -- maybe I should know this, but I
9 don't -- Ghengis Khan, who's that?

10 I don't know if I'm pronouncing it
11 right. Do you know who that is; is that a person?

12 MR. WARMAN: Historical, political
13 and military figure dating from several centuries ago
14 in Asia.

15 MR. VIGNA: And the thread in the
16 middle of page 3, when they talk about:

17 "remember ghengis khan his
18 crusades?"

19 What are they referring to, to the
20 limit of your knowledge if you're aware?

21 MR. WARMAN: Just the conquering of
22 territory that was conducted by Ghengis Khan and his
23 armies.

24 MR. VIGNA: And the article that is
25 mentioned, are you familiar with this article, the

1 article, "the enemy within"?

2 MR. WARMAN: No, I'm not.

3 MR. VIGNA: Okay. And on the last
4 page there seems -- of the document if you turn it
5 over. I don't know if it's all that important, but it
6 says:

7 "don't forget to vote for us
8 here regularly"

9 And there is some kind of emblem. If
10 you're able to give us --

11 MR. WARMAN: It's not really relevant
12 to the complaint.

13 MR. VIGNA: Okay.

14 Is there anything else to say on this
15 tab?

16 MR. WARMAN: No, I don't. Thank you.

17 MR. VIGNA: Okay, I'll move on to tab
18 30. Do you recognize this tab; if so, why and what did
19 you do with the tab once you -- if you printed it?

20 MR. WARMAN: I did in fact print it.
21 I printed it off on the 25th of March, 2004 from the
22 Yoderanium forum and I submitted it to the Commission
23 pursuant to my complaint.

24 MR. VIGNA: I'd like to file that as
25 Exhibit 40.

1 REGISTRY OFFICER: Copy of thread
2 entitled: "Israel Says Hamas Leader Yassin 'Marked for
3 Death'" found on Yoderanium Projections forum printed
4 off on 25/03/04 will be filed as Commission Exhibit
5 HR-40.

6 EXHIBIT NO. HR-40: Copy of
7 thread entitled: "Israel Says
8 Hamas Leader Yassin 'Marked for
9 Death'" found on Yoderanium
10 Projections forum printed off on
11 25/03/04.

12 MR. VIGNA: So, I'd like you to look
13 at the thread and the posting, Exhibit 40, which you
14 just filed and give us the general gist of the thread
15 and then, more particularly, what's of interest in
16 terms of this complaint and realnorthamerican.

17 MR. WARMAN: Yes. Demigorgona posts
18 an article from the yahoo website that talks about an
19 alleged statement presumably by the Israeli Government
20 indicating that the leader of Hamas, Yassin, had been
21 marked for death following a suicide bombing attack on
22 Israeli security officials at the time.

23 Realnorthamerican responds on the
24 30th of January, 2004 saying:

25 "canadians support the

1 pallistinians and not the
2 invading jews!i hope they blow
3 up lots of crowded buses!"

4 Again, it's all lower case letters,
5 it extends to Jews, a traditional target of the
6 postings, and obviously referring to the campaign of
7 suicide bombings against Israelis.

8 It's common knowledge that a number
9 of the targets have been public transport, being buses,
10 thus the reference to:

11 "...hope they blow up lots of
12 crowded buses!"

13 MR. VIGNA: Just in terms of Internet
14 lingo, when you look at the last emblem and the word
15 shock at the end of the sentence there, are you
16 familiar with what that means in Internet lingo?

17 MR. WARMAN: Yes. Essentially it's
18 just -- it's like sort of happy face commentaries after
19 your postings.

20 So, because the Internet is
21 notoriously, or can be difficult to get a true sense of
22 what the tone of the message is.

23 You see that there is a very large
24 grinning face after talking about blowing up crowded
25 buses with Jews, and then I presume the shock is what

1 actually is supposed to be a smiley face with the eyes
2 raised showing sort of a shocked reaction to the
3 posting.

4 MR. VIGNA: The person that puts that
5 emblem, shock and all that, is that normally the same
6 person that makes the statement, or is that like a
7 response?

8 MR. WARMAN: No. Traditionally that
9 would be the poster themselves.

10 THE CHAIRPERSON: Does that forum
11 Yoderanium, does it still exist or...

12 MR. WARMAN: The last time I checked
13 it didn't. It has sort of a very spotty history of
14 being up and down and the last time I checked, which
15 probably wouldn't have been -- probably would have been
16 about three or four months ago, it wasn't up and it
17 seemed to be down for the most part on what appeared to
18 be a permanent basis, or at least an indefinite
19 period.

20 MR. VIGNA: So, is there anything
21 else on this exhibit or...

22 MR. WARMAN: No, there's not, thank
23 you.

24 MR. VIGNA: Tab 31. Same questions,
25 Mr. Warman. Do you recognize the document, why, and

1 what did you do with it?

2 MR. WARMAN: Yes, I do. This was a
3 print-off from the Yoderanium forum entitled:

4 "Religious Fanaticism Infects
5 the University of Toronto".

6 I printed it off on the 25th of
7 March, 2004 and submitted it to the Commission pursuant
8 to my complaint.

9 MR. VIGNA: I'd like to file that as
10 Exhibit 41.

11 REGISTRY OFFICER: Copy of thread
12 entitled: "Religious Fanaticism Infects the University
13 of Toronto" on the Yoderanium Productions forums
14 printed off on 25/03/04 will be filed as Commission
15 Exhibit HR-41.

16 EXHIBIT NO. HR-41: Copy of
17 thread entitled: "Religious
18 Fanaticism Infects the
19 University of Toronto" on the
20 Yoderanium Productions forums
21 printed off on 25/03/04.

22 MR. VIGNA: So, can you tell us what
23 the article talks about, where it's from to the best of
24 your knowledge and what's the reaction which is of
25 interest for us to the ongoing question and what we

1 have to understand from the statement that is being
2 made by realnorthamerican, to the best of your
3 understanding?

4 MR. WARMAN: Yes. One thing that I
5 would point out is that approximately two inches from
6 the top just under the large bold Yoderanium
7 Productions forums on the first page, there's sort of
8 small, approximately 10-point font text, it is:
9 "Yoderanium Productions Forums" and then there is an
10 arrow, ">International" and then there is another
11 arrow: ">YP in Canada".

12 What that demonstrates is that at
13 this point the Yoderanium forums had, in fact,
14 established a specific forum related to Canadian themes
15 for people who wanted to post there.

16 MR. VIGNA: Was it only for Canada or
17 different countries?

18 MR. WARMAN: No, they had a number of
19 different countries, but they would usually sort of
20 group together Australia, New Zealand, South Africa,
21 but in this case it was specifically the forum
22 dedicated to Canadian topics.

23 MR. VIGNA: At the same time, since
24 you're on the topic, you see the document it says:
25 "Register | FAQ", I guess that's frequently asked

1 questions, "Members List | Calendar | Arcade | Today's
2 Posts | Search".

3 Like, on the home page, is that what
4 you would see on the website to the best of your
5 knowledge?

6 MR. WARMAN: Yeah. I'm sorry, I
7 don't recall.

8 MR. VIGNA: Okay.

9 And "arcade", do you know what that
10 deals with? with

11 MR. WARMAN: Yeah, it was just a
12 section where they had little computer games that you
13 could play if you clicked on it.

14 MR. VIGNA: Okay. Go on to the
15 article in question, in terms of the article that is
16 discussed and then what the reaction of it is.

17 MR. WARMAN: Demigorgona on the 28th
18 of January, 2004 posts text from a website called the
19 ukrainian archive.org, and you can see that on page 2
20 of 3 at the very top it gives the URL link
21 "www.ukar.org".

22 That website is the subject of a
23 separate -- or was the subject of a Federal Human
24 Rights complaint against it by the Canadian Jewish
25 Congress, and essentially what the article purports is

1 that Canadian Jewish Congress has been pressuring in
2 order to have the Canadian criminal law amended to deal
3 with holocaust denial as a criminal offense and it
4 then purports to say -- to disparage that action.

5 And then on page 2 of 3, on the 30th
6 of January, 2004, realnorthamerican responds to the
7 article saying:

8 "i know a greek guy who went to
9 the york university in north
10 york above toronto there and he
11 used to call it JEW U!"

12 All capitals.

13 "i guess they had a lot of jews
14 there so if any arab terrorist
15 reads this then you know where
16 to start picking them off!have a
17 nice day!"

18 Again, this is all -- virtually all
19 lower case except for "JEW U" and it deals with
20 traditional attacks upon the Jewish community and it
21 also, again, is exhorting other populations to engage
22 in anti-Semitic attacks or in attacks against any of
23 the targets that are listed in the particular post.

24 MR. VIGNA: Okay. Anything else in
25 relation to this posting?

1 MR. WARMAN: No, thank you.

2 MR. VIGNA: Okay. Move on to tab 32.
3 Do you recognize this document; if so, why, did you
4 print the document?

5 MR. WARMAN: I did. It's an 11-page
6 document that I downloaded from the Yoderanium forum
7 entitled: "Pope Defends Gibson Film".

8 I printed it off on the 25th of
9 March, 2004 and submitted it to the Commission pursuant
10 to my complaint.

11 MR. VIGNA: I'd like to file this as
12 Exhibit 42.

13 REGISTRY OFFICER: Copy of a thread
14 entitled: "Pope Defends Gibson Film" found on the
15 Yoderanium Productions forums printed off on 25/03/04
16 will be marked as Commission Exhibit HR-42.

17 EXHIBIT NO. HR-42: Copy of a
18 thread entitled: "Pope Defends
19 Gibson Film" found on the
20 Yoderanium Productions forums
21 printed off on 25/03/04.

22 MR. VIGNA: The movie that's being
23 spoken about I guess was The Passion of Christ?

24 MR. WARMAN: Yes, it is. Essentially
25 what it is, is an individual named Chris V who

1 indicates that, on his sort of little image beside it
2 there's a picture of a skinhead zieg heiling and
3 indicates that he's with Skinheads Canada, posts saying
4 that he very badly wants to see this movie because of
5 the controversy caused by the Jews because he doesn't
6 know whether Mel Gibson is a white nationalist, meaning
7 "WN" or not, but that it sounds to him as though he's
8 done a good job with this movie.

9 Realnorthamerican responds on the
10 20th of January, 2004 saying:

11 "jews know that they killed
12 jesus!so why don't they want you
13 to know!" claim

14 MR. VIGNA: The emblem again
15 thereafter, what is it, it seems like a person with an
16 upside down smile.

17 Do you know what that means in
18 Internet lingo?

19 MR. WARMAN: It's sort of a demonic
20 little happy face with a frown and then right beside it
21 there is the sort of little Internet icon, for lack of
22 a better term, a happy face sticking its tongue out.

23 MR. VIGNA: Where's the emblem you're
24 talking about?

25 MR. WARMAN: That's the colon and

1 capital P right beside it. If you look at it sideways,
2 you turn your head to the --angle it down to the left
3 it's intended to represent a happy face sticking its
4 tongue out.

5 MR. VIGNA: So, when the person -- to
6 put that emblem you have to actually make a certain
7 action or -- because I guess you can leave it,
8 familiarity from the Internet, without any reaction to
9 the statement; am I correct?

10 MR. WARMAN: Yes. The poster would
11 have an option of, on a number of forums, a wide
12 variety of little smiley faces that they could click on
13 to add to their comments or within the body of the
14 comments and those are simply two of them.

15 MR. VIGNA: Okay. So, somebody in
16 this case here puts an exclamation mark in the emblem.
17 What's the purpose he's trying to
18 achieve or she's trying to achieve?

19 MR. WARMAN: That would be within the
20 realm of their knowledge, but traditionally if you're
21 putting demonic unhappy faces and someone sticking
22 their tongue out, it would lead me to believe that they
23 are expressing discontentment and sort of spurning
24 whatever the group is that they have talked about by
25 sticking their tongue out at them.

1 MR. VIGNA: So, they are trying to
2 put emotion or tone to what's difficult to do when
3 you're dealing with Internet, that is the best way they
4 can do it, is that what I understand?

5 MR. WARMAN: I think that's a fair
6 explanation.

7 MR. VIGNA: Okay. What about the one
8 that follows it?

9 MR. WARMAN: Yes. On the 30th of
10 January, 2004, sorry, an individual named -- using the
11 pseudonym Fubar, F-u-b-a-r, responds:

12 "Think about what you said for a
13 second real. If you shot and
14 killed your granny's cat with
15 your new .22 rifle, would you
16 want her to know you killed it?"

17 Realthnorthamerican responds on the
18 30th of January, 2004:

19 "true there oregon but what when
20 i got might b.b gun i didnt
21 shoot grannys cat i shot out all
22 the windows at the school down
23 the street and the dutch
24 neighbours window with him
25 standing in it and i shot at the

1 cop cars heading into the
2 hospital!but i never shot
3 grannies cat!"

4 Again, you have the traditional
5 targets of the Dutch being the target. It's almost as
6 though he's seen one too many Austin Powers movies, but
7 he is just essentially targeting the traditional
8 targets, the Dutch community.

9 MR. VIGNA: I don't want to expand
10 too largely on this issue, but if you look at the
11 statement right above realnorthamerican, at the end of
12 the statement there's no emblem or intention to express
13 tone or emotions because it's empty; is that the case?

14 MR. WARMAN: Again, I think it's kind
15 of verging within the knowledge of the person who
16 posted it.

17 MR. VIGNA: No, but I'm saying if you
18 look --

19 MR. WARMAN: There are none of the
20 little smiley faces.

21 MR. VIGNA: -- compared to
22 realnorthamerican, he makes it a point to give the
23 statement emotions and tone because of the emblem and
24 shock compared to the other statement.

25 Would that be a correct assumption?

1 MR. WARMAN: Realnorthamerican has
2 added this sort of smiley face emblem and demonic
3 unhappy face emblem.

4 THE CHAIRPERSON: I believe this is
5 getting into really opinion evidence of the effect of
6 what the smiley face is saying or not, so...

7 MR. VIGNA: Okay, I'll move on.

8 THE CHAIRPERSON: Did you put this
9 one in as evidence? I don't think so.

10 MR. VIGNA: I think it's 42.

11 THE CHAIRPERSON: Has it been put in,
12 Ms...?

13 REGISTRY OFFICER: What tab?

14 THE CHAIRPERSON: This, has it
15 been --

16 MR. VIGNA: 32.

17 REGISTRY OFFICER: 32 is HR-42.

18 THE CHAIRPERSON: HR-42.

19 MR. VIGNA: The next page talks about
20 the: "'Passion' to omit 'anti-Semitic' Scene".

21 MR. WARMAN: The rest is simply other
22 people's further comments on the issue. There's no
23 further content with respect to realnorthamerican

24 MR. VIGNA: It's just to give context
25 to the whole thread.

1 MR. WARMAN: Yes, because the thread
2 itself was 11 pages, so I included all of it.

3 MR. VIGNA: Okay. So, there's
4 nothing more on this Exhibit 42?

5 MR. WARMAN: No, there's not.

6 MR. VIGNA: Tab 33.

7 MR. WARMAN: This a page downloaded
8 from the Yoderanium forum entitled: "Nazi Collaborator
9 Deported".

10 I downloaded this on 25th of March,
11 2004 and provided it to the Commission.

12 MR. VIGNA: I'd like to file this as
13 Exhibit 43.

14 REGISTRY OFFICER: Copy of thread
15 entitled: "Nazi Collaborator Deported" found on the
16 Yoderanium Productions forums printed off on 25/03/04
17 will be filed as Commission Exhibit HR-43.

18 EXHIBIT NO. HR-43: Copy of
19 thread entitled: "Nazi
20 Collaborator Deported" found on
21 the Yoderanium Productions
22 forums printed off on 25/03/04.

23 MR. VIGNA: So, tell us about the
24 topic of discussion on this thread and then what's of
25 interest in terms of the response of realnorthamerican

1 to the topic of discussion.

2 MR. WARMAN: The first article is
3 posted on the 19th of January, 2004 by Demigorgona and
4 what it is is, it's a news story about a former
5 Lithuanian citizen who had moved to the United States,
6 having been deported to Germany to face trial on
7 allegations of collaboration with the Nazis and the
8 persecution of Jews during World War II in the
9 Lithuania.

10 So, the next page, on the 28th of
11 January, 2004, realnorthamerican replies:

12 "i saw a film clip on the
13 holohoax were a kid and his
14 mother were separated in the
15 camps!imagine how more worse the
16 world would be if hitler hadnt
17 fried all those jews!i wish i
18 could have been in charge of the
19 gas chambers!"

20 Again, the posting is all lower case
21 letters and in terms of just my observation of the
22 terminology used by the neo-Nazi movement, the term
23 "holohoax" is used to refer to the allegation that, in
24 fact, the Holocaust was simply a hoax within the
25 neo-Nazi movement.

1 And, again, the posting targets the
2 traditional enemies of the Jews.

3 MR. VIGNA: Is there anything else of
4 interest in this exhibit?

5 MR. WARMAN: No, thank you.

6 MR. VIGNA: The next one is from
7 rumblestrip?

8 MR. WARMAN: Yes, it is.

9 MR. VIGNA: Okay. Tab 34.

10 MR. WARMAN: This is a download from
11 the Yoderanium forum entitled:

12 "Lahud: Hit Israeli bulldozer in
13 Lebanon"

14 I printed it off on the 25th of
15 March, 2004 and provided it to the Commission.

16 MR. VIGNA: I'd like to file this as
17 Exhibit 44.

18 REGISTRY OFFICER: Copy of thread
19 entitled: "Lahud: Hit Israeli bulldozer in Lebanon"
20 found on the Yoderanium Productions forums printed off
21 on 25/03/04 will be filed as Commission Exhibit HR-44.

22 EXHIBIT NO. HR-44: Copy of
23 thread entitled: "Lahud: Hit
24 Israeli bulldozer in Lebanon"
25 found on the Yoderanium

1 Productions forums printed off
2 on 25/03/04.

3 MR. VIGNA: Excuse me, Mr. Warman,
4 Lahud is that what is really the word that they want to
5 use or do you think it's a close word to it?

6 MR. WARMAN: I believe it is because
7 the first post by Demigorgona indicates that Emil Lahud
8 is -- or at least was the Lebanese President at the
9 time and it alleges that an Israeli military bulldozer
10 was hit by a Hizb Allah rocket.

11 MR. VIGNA: Thank you. And what's
12 the reaction to --

13 MR. WARMAN: Realthnorthamerican
14 replies on the 28th of January, 2004:

15 "too bad only one kike died
16 though!"

17 And, again, it's all lower case
18 letters and it attacks the Jewish community again,
19 "kike" being a traditional anti-Semitic word for the
20 Jewish community -- for Jews, excuse me.

21 MR. VIGNA: Kike is a known term?

22 MR. WARMAN: Yes, it's a derogatory
23 slur.

24 MR. VIGNA: Okay. I guess nothing
25 else on this tab?

1 MR. WARMAN: No, there's not.

2 MR. VIGNA: Tab 35.

3 MR. WARMAN: This is a --

4 MR. VIGNA: 45, sorry. No, 35, I'm
5 sorry.

6 MR. WARMAN: Yes. I printed this off
7 on the 25th of March, 2004 from the Yoderanium forum,
8 it's a thread entitled:

9 "Arizona Rancher Family Sued By
10 Hate Group"

11 and I provided it to the Commission.

12 MR. VIGNA: I'd like to file this as
13 Exhibit 45.

14 REGISTRY OFFICER: Copy of thread
15 entitled: "Arizona Rancher Family Sued By Hate Group",
16 found on the Yoderanium Productions forums will be
17 filed as Commission Exhibit HR-45.

18 EXHIBIT NO. HR-45: Copy of
19 thread entitled: "Arizona
20 Rancher Family Sued By Hate
21 Group", found on the Yoderanium
22 Productions forums printed off
23 on 25/03/04.

24 MR. VIGNA: So, tell us the topic of
25 discussion, I guess it's a matter in the States.

1 MR. WARMAN: Yes, it is. Demigorgona
2 posts on the 22nd of January, 2004 and she posts a
3 story about -- essentially there were a small number of
4 ranching families along the U.S./Mexican border that
5 had, if not actively engaged the services of militia
6 groups, they had at least tolerated their presence on
7 their land.

8 These unorganized sort of vigilante
9 groups of American citizens who took it upon themselves
10 to attempt to trap illegal migrants coming up -- or
11 what they thought or suspected of being illegal
12 migrants from Mexico coming across the U.S./Mexican
13 border.

14 So, because of a number of incidents
15 regarding questionable conduct on the part of the
16 militia groups, the vigilante groups, a number of human
17 rights and migrant workers rights groups took legal
18 action against not just the vigilante groups but also
19 against the ranchers who had permitted them to operate
20 on their land where the alleged civil rights and
21 criminal violations took place.

22 So, that is what the first post is
23 about.

24 And realnorthamerican responds on the
25 28th of January, 2004, saying:

1 "canada has been the victim of
2 illegal aliens since the liberal
3 government enacted political
4 correctness on an unsuspecting
5 population!trudeau who was p.m
6 for 15 years was a french draft
7 dodger and pro nazi and
8 commie!his buddy was fidel
9 castro for fukin shits sake!the
10 immigrants in canada vote in
11 blocks and not
12 independently!they vote for a
13 party and not the person in
14 other words!they hold free
15 speechers like zundel in
16 solitary confinement and let
17 nigger and paki terrorists post
18 1000 dollar bonds and walk away!
19 these scum bags flush there
20 travel papers down the air plane
21 toilet!remember people real
22 refugees cant afford plane
23 tickets they are selected from
24 camps!"

25 What we have here is a posting that

StenoTran

1 is entirely in lower case letters. It attacks the same
2 communities that all the other posts do. They attack
3 the francophone population, former Prime Minister
4 Trudeau, they allege that he was draft dodger and
5 pro-Nazi.

6 They exhort support for Ernst Zundel.
7 It attacks the black and Pakistani communities as well
8 as the immigrants and refugee populations.

9 And if I could actually just
10 cross-reference the last sentence of this posting,
11 Mr. Chair, it says:

12 "remember people real refugees
13 cant afford plane tickets they
14 are selected from camps!"

15 And also the traditional allegation
16 of Trudeau being a french draft dodger, if I could take
17 you to HR-22 which is at tab 11.

18 THE CHAIRPERSON: Yes.

19 MR. WARMAN: It opens with:

20 "canada needs a canadian prime
21 minister not some french man who
22 were draft dodgers in the war."

23 And then the second last sentence
24 says:

25 "refugees dont land at airports

1 real ones are in camps."

2 So, I just note the similarity
3 referring to refugees coming from camps, as well as the
4 traditional thread of Mr. Trudeau having been a French
5 draft dodger.

6 MR. VIGNA: That is for the issue of
7 identity of realnorthamerican?

8 MR. WARMAN: Yes.

9 MR. VIGNA: On the same topic, you
10 mentioned about the communities targeted, and so far in
11 your evidence you've mentioned a certain number, and I
12 refer to your complaint where, tab 1, the very
13 beginning you mention the communities that are exposed,
14 Italians.

15 And we can recall yesterday in your
16 testimony a portion dealing with that group, but you
17 also mentioned Mexicans, Porta Ricans, Haitians.

18 In relation to the last exhibit, can
19 you tell us which groups are targeted and also if there
20 is other exhibits that have been produced relating to
21 Mexicans, Porta Ricans, Haitians?

22 MR. WARMAN: Again, because it was a
23 joint complaint, the grounds that were enumerated as
24 being the grounds of discrimination or the targeted
25 community would have covered not just the posts by

1 Mr. Harrison but also the posts included in the
2 complaint against Mr. Lemire as well.

3 So, if there are specific groups that
4 aren't covered within these exhibits that are entered,
5 it's simply because they refer to other content dealing
6 with Mr. Lemire.

7 THE CHAIRPERSON: Okay.

8 MR. WARMAN: So, in this case it
9 targets the black community, the francophone community,
10 it targets the Pakistani community, but within all of
11 the different groups it's possible that I missed one
12 of them.

13 MR. VIGNA: So, you're saying we have
14 to base ourselves on the evidence and the exhibits of
15 the specific groups that are mentioned?

16 MR. WARMAN: Yes, of course.

17 MR. VIGNA: Okay. In this last
18 exhibit, look at the article in question, which is not
19 from realnorthamerican, but the group that is mentioned
20 here, the communities that are targeted would be what?

21 MR. WARMAN: Well, it's the targeting
22 the Hispanic community from Mexico.

23 THE CHAIRPERSON: But the issue of
24 which group the article targets is not relevant.

25 MR. VIGNA: It's not directed to

1 realnorthamerican. Okay, I'll move on to tab 36.

2 MR. WARMAN: It's a post that I
3 downloaded from the Yoderanium forum entitled:

4 "Mutilated White Farmer Found
5 'In a hole in the ground'"

6 I downloaded it on the 25th of March,
7 2004 and provided it to the Commission.

8 MR. VIGNA: Do you recognize the
9 document?

10 MR. WARMAN: I do, I did it. I
11 downloaded it myself and provided it to the Commission.

12 MR. VIGNA: I'd like to file that as
13 Exhibit 46.

14 REGISTRY OFFICER: Copy of the thread
15 entitled: "Mutilated White Farmer Found 'In a hole in
16 the ground'" found on the Yoderanium Productions forums
17 will be filed as Commission Exhibit HR-46.

18 EXHIBIT NO. HR-46: Copy of the
19 thread entitled: "Mutilated
20 White Farmer Found 'In a hole in
21 the ground'" found on the
22 Yoderanium Productions forums
23 printed off on 25/03/04.

24 THE CHAIRPERSON: 46 or 47?

25 MR. VIGNA: I'm not sure. I thought

1 it was 46.

2 REGISTRY OFFICER: 46.

3 THE CHAIRPERSON: 46. Yes, okay.

4 MR. VIGNA: So, can you tell us the
5 importance of this thread, the response to it
6 particularly and what we need to be concerned about in
7 terms of the evidence for the respondent?

8 MR. WARMAN: Yes. This is a posting
9 by Demigorgona on the 22nd of January, 2004. There is
10 a bit of handwriting just to the right of her initial
11 posting and that is, I just note that that is my
12 personal handwriting.

13 It talks about a white farmer who was
14 allegedly killed in Zimbabwe, that his body had been
15 mutilated, apparently as a result, or as an accessory
16 to a robbery.

17 And on the 28th of January, 2004
18 realnorthamerican responded, but underneath it we have
19 square brackets saying:

20 "[edit - While we support
21 freespeech, we do not condone
22 violence and what you posted was
23 illegal and violent, so I am
24 editing this to protect YOU and
25 US..."

1 And there is a dash, and then the
2 letter "D", and what I take that to mean is that
3 Demigorgona, the woman who operated the entire forum,
4 as a moderator you have the power to go in and erase
5 posts or change the text or edit them.

6 So, what I take that to mean is that,
7 in fact, realnorthamerican -- Demigorgona feels that
8 realnorthamerican posted something that condoned
9 violence and was illegal and Demigorgona thus deleted
10 that content and indicated what is, in effect, a
11 warning to realnorthamerican not to do so.

12 THE CHAIRPERSON: Must have been
13 something very bad because the other ones we have read
14 up to now refer to --

15 MR. WARMAN: Yeah. I think that's
16 certainly a valid inference, that even within a
17 neo-Nazi forum a moderator has seen fit to delete the
18 content.

19 MR. VIGNA: You know, you can deduct
20 that there was an intervention based on what, I guess
21 the word -- the brackets, the edit and the word "D".

22 MR. WARMAN: Yes.

23 MR. VIGNA: The "D" would represent?

24 MR. WARMAN: To the best of my
25 knowledge that represents "D" for Demigorgona the woman

1 who's the head of the forum.

2 MR. VIGNA: Is that common practice
3 for a moderator to intervene or, particularly on a site
4 where I guess free speech is tolerated.

5 MR. WARMAN: Having looked at these
6 kinds of sites for 15 years I would say it's very rare
7 for white supremacist and neo-Nazi website moderators
8 to intervene and delete comment, usually it has to be
9 very far reaching indeed in terms of the comments
10 and/or promoting illegal conduct.

11 MR. VIGNA: Is there anything else
12 you'd like to say in relation to this exhibit?

13 MR. WARMAN: No.

14 MR. VIGNA: Thank you. I'll move to
15 tab 37.

16 Do you recognize this tab? Firstly,
17 I'd like you to distinguish it from the other tabs
18 we've just seen and tell us if you recognize it and if
19 you printed it.

20 MR. WARMAN: I do. I printed this
21 off on the 28th of September, 2003 and although the
22 first page the date is a little difficult to read, the
23 second page at the bottom the date is quite clear.

24 I printed this off from a neo-Nazi
25 website called the Northern Alliance. The group is

1 based in London, Ontario and it's from their forum on
2 their website.

3 I then provided this print-off to the
4 Commission pursuant to my complaint.

5 MR. VIGNA: I'd like to file this as
6 Exhibit 47.

7 REGISTRY OFFICER: Copy of a Neo-Nazi
8 website entitled: Northern Alliance, printed off on
9 September 28th, 2003 will be filed as Commission
10 Exhibit HR-47.

11 EXHIBIT NO. HR-47: Copy of a
12 Neo-Nazi website entitled:
13 Northern Alliance, printed off
14 on September 28th, 2003.

15 MR. VIGNA: Mr. Warman, just as
16 general knowledge, we're dealing with a new website
17 here Northern Alliance.

18 First of all, is this website still
19 in existence today, to your knowledge, and is this
20 group still in existence to your knowledge?

21 MR. WARMAN: The group has been
22 active over at least the past five to 10 years in and
23 around the London and southwestern Ontario region.

24 It's closely affiliated with other
25 groups within that movement and, to the best of my

1 knowledge, the website went down approximately perhaps
2 three or four months ago and has not resurfaced,
3 although I can't be certain if that's a temporary thing
4 or whether that's a permanent situation.

5 MR. VIGNA: Okay. So, in terms of
6 the contents of the thread and the topic is:

7 "Bow down before the Charter of
8 Rights"

9 Can you tell us what the discussion
10 is about and what's of concern for us in terms of the
11 evidence against the respondent?

12 MR. WARMAN: Yes. Essentially what
13 this is is, it's an individual has posted an article
14 that purports to be from the Edmonton Sun and it talks
15 about how the disciples in Parliament of the Charter of
16 Rights and Freedoms constitute a fundamentalist
17 religion that are hijacking Canadian society and this
18 is largely as a result, at least in accordance with the
19 article with regard to the courts, striking down
20 legislation, prohibiting the marriage of gay and
21 lesbian couples.

22 And essentially it just goes through
23 and decries that situation.

24 I note there's reference to a very
25 Progressive Bloc member of Parliament named Richard

1 Marceau who says that he was also part of this and
2 essentially that there is an allegory, or at the end of
3 it that alleges that these disciples of the Charter of
4 Rights and Freedoms just need a good sized coliseum and
5 a few lions in order to feed those poor members of the
6 public who don't believe in such things to the lions.

7 So, what happens is a number of
8 people post responses to this decrying the entire
9 situation on page 3, and on page 4 of 6, approximately
10 the second posting down there is a guest who posts on
11 the 26th of September, 2003 and the guest posts, in all
12 caps:

13 "YOU BITCHES NEED TO WAKE UP AND
14 FIGHT BACK!THERES NO BACK BONE
15 IN ANY OF YOU!I BEAT DOWN A HALF
16 BREED IN G TOWN IN 96 AND DID 2
17 YEARS IM A REAL CANADIAN HERO!"

18 And then further on on page 5 of 6,
19 the administrator responds quoting that post and says:

20 "I remember reading about that
21 in the newspaper. I seem to
22 recall it being a Paki store
23 clerk in Georgetown that was
24 assaulted."

25 And I think the importance of the

1 first posting by guest is that, again, it refers to an
2 incident that is self-referential to an incident that
3 occurred in Mr. Harrison's criminal history and also
4 with regard to the expression "there is no backbone in
5 any of you", I would ask if the Tribunal Chair could
6 turn to HR-39, which is at tab 29, and --

7 THE CHAIRPERSON: HR-29?

8 MR. WARMAN: Yes. Excuse me, HR-39.

9 THE CHAIRPERSON: 39, okay.

10 MR. VIGNA: Tab 29, right.

11 MR. WARMAN: Yes, which is tab 29 in
12 the Commission's binder. On page 3 of 4 --

13 THE CHAIRPERSON: Yes.

14 MR. WARMAN: -- at the end of the
15 third line down it begins:

16 "plus sorry to say none of you
17 really have a back bone when it
18 comes to racial matters"

19 So, again, not only are you engaging
20 in self-referential commentary but there is also the
21 consistent reference to no one else within the movement
22 having a backbone and also to the poster being a real
23 Canadian hero, which is consistent with previous posts
24 as well.

25 MR. VIGNA: Mr. Warman, I'm having

1 difficulty locating it. It's tab 29, Exhibit 39?

2 MR. WARMAN: Yes, HR-39.

3 THE CHAIRPERSON: On page 3 of 4.

4 MR. WARMAN: It's:

5 "Ukraine: Sacred Burial Ground
6 Endangered by Construction
7 Project"

8 MR. VIGNA: Okay, I'm there.

9 MR. WARMAN: Page 3 of 4.

10 THE CHAIRPERSON: The posting of
11 February 2, 2004.

12 MR. VIGNA: Okay.

13 MR. WARMAN: It's the third line, at
14 the end of the third line down.

15 MR. VIGNA: Okay, I see the backbone
16 comment. Okay, thanks.

17 MR. WARMAN: You're welcome.

18 MR. VIGNA: And also going back to
19 where we left off tab 47 with the expression, "I'm a
20 real canadian hero", do you have anything to say about
21 that?

22 MR. WARMAN: Yes, it's consistent
23 with previous references by the other postings to that
24 person being a real Canadian hero, as well as the
25 language of describing the victim and assault as half

1 breed and describing Georgetown as G Town.

2 And also obviously the fact that the
3 poster claims that they were sentenced to two years as
4 a result.

5 MR. VIGNA: Okay. Anything else on
6 this tab?

7 MR. WARMAN: No, sir.

8 MR. VIGNA: Okay. We'll move on to
9 tab 39. Sorry, there is no more tabs. 39 was a CD ROM
10 I believe.

11 THE CHAIRPERSON: 38.

12 MR. WARMAN: 38.

13 MR. VIGNA: 38, yeah, the CD ROM, I
14 don't think we'll need to put it in the evidence. So,
15 can we just extract it from the binders after the
16 break?

17 THE CHAIRPERSON: Yes.

18 MR. VIGNA: Before I finish with
19 Mr. Warman, I would maybe suggest a break so I can
20 think if there is any other questions, and then
21 Mr. Warman, I have finished, if you have anything to
22 add you can also take advantage of the break and
23 complete your testimony.

24 MR. WARMAN: There's only other one
25 other point that I would make and it would take about

1 one minute.

2 THE CHAIRPERSON: Okay.

3 MR. WARMAN: If I could right now.

4 THE CHAIRPERSON: Do you want to do
5 it right now or wait until Mr. Vigna has finished
6 his --

7 MR. WARMAN: I'm in your hands.

8 MR. VIGNA: You can say it also now
9 and I'll --

10 THE CHAIRPERSON: Go ahead, do it
11 now.

12 MR. WARMAN: I don't know whether to
13 stand or sit.

14 THE CHAIRPERSON: You can sit, no
15 problem.

16 MR. WARMAN: So, I would just note
17 that in relation to the letter -- and I'm sorry, I
18 don't have the actual exhibit number in front of me,
19 it's the letter from the Canadian Human Rights
20 Commission that was sent to Ms Lemoine.

21 MR. VIGNA: C-1.

22 THE CHAIRPERSON: C-1.

23 MR. WARMAN: C-1, thank you.

24 THE CHAIRPERSON: Yes.

25 MR. WARMAN: At the fourth point that

1 is enumerated in the sequential list there, the request
2 for the Internet protocol address assigned for the
3 following times, and then it says, give or take, half a
4 dozen different times and dates in relation, so the
5 only other thing that I wanted to mention in my
6 testimony was that how those dates and times were
7 selected and, essentially what it was was, all I did
8 was I went through the postings, I picked out roughly
9 half a dozen random samplings of the different times
10 and posts.

11 THE CHAIRPERSON: Okay.

12 MR. WARMAN: And then said, if Bell
13 Sympatico can confirm that the computer within that
14 household was on line at that time, then I believe that
15 that is further circumstantial evidence with regard to
16 the likelihood of that computer having been used to
17 make the actual posts in question.

18 THE CHAIRPERSON: Okay, thank you.

19 MR. VIGNA: That is the information
20 you provided to Ms Warsame, Commission counsel, and
21 then the request was made?

22 MR. WARMAN: It is, yes.

23 MR. VIGNA: All right.

24 THE CHAIRPERSON: So, we will take a
25 15-minute break at this point and come back at a

1 quarter to 11 to complete.

2 REGISTRY OFFICER: Order, please.

3 --- Upon recessing at 10:30 a.m.

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

5 REGISTRY OFFICER: Order, please. Be
6 seated.

7 MR. VIGNA: Mr. Warman, I'm pretty
8 much finished with my questions.

9 Maybe if you could just quickly go
10 through the different tabs and see if there is anything
11 you would like to add before I finish.

12 If you have yourself anything to add,
13 this is your last opportunity.

14 So, maybe you can just turn quickly
15 to the tabs.

16 MR. WARMAN: I'm comfortable that
17 there is nothing further to add.

18 THE CHAIRPERSON: It's been covered?

19 MR. WARMAN: Yes.

20 MR. VIGNA: I'm just going to go
21 through myself there.

22 THE CHAIRPERSON: Sure.

23 MR. VIGNA: Okay, Mr. Chair, I have
24 no other questions.

25 Thank you for your patience, and I

1 don't have any other witnesses.

2 THE CHAIRPERSON: We won't close your
3 evidence at this point --

4 MR. VIGNA: Other than the affidavit.

5 THE CHAIRPERSON: -- because there is
6 still the issue of the affidavit.

7 Just to explain, the reason why I
8 don't want to go the route you had suggested, once you
9 have completed, you go to argument, you have closed
10 your case and certainly reopening the case after to
11 bring in new evidence would certainly be a little bit
12 awkward from a procedural point of view, and also the
13 fact that the respondent is not here. Maybe the
14 situation in Edmonton was different because the parties
15 were there and you agreed to that.

16 I am also for saving time, but I am
17 also to respect the procedures.

18 So, before you close your case and go
19 on to your arguments, I would like to have all of the
20 evidence of the complainant, the Commission before the
21 Tribunal and then we close it and we don't reopen the
22 evidence again.

23 So, do you know if you would have
24 that by 1:30 this afternoon or...

25 MR. VIGNA: What I was going to

1 suggest, first of all, I agree to the manner of
2 proceeding, we won't be killing time, I will be working
3 on my closing, and as soon as we get the affidavit, I
4 propose that maybe I can Ms Joyal and we can
5 re-convene.

6 THE CHAIRPERSON: I will be here all
7 morning, I won't be leaving here, so as soon as you get
8 it we can re-convene and put that in, and then proceed
9 to the closing argument.

10 MR. VIGNA: That won't take very
11 long. I would just have to file the affidavit and I
12 would subsequently just start pleading, I won't be
13 very long either.

14 In the mean time, I'm pretty much
15 finished my closing, but I'm just going to have time to
16 review it.

17 THE CHAIRPERSON: Since it is your
18 evidence and it is also Mr. Warman's evidence that you
19 are putting in the affidavit of Mr. Lemire, I don't
20 know how long it will be.

21 MR. VIGNA: The affidavit you mean?

22 THE CHAIRPERSON: Yes.

23 MR. VIGNA: It's about a page and a
24 half.

25 THE CHAIRPERSON: Maybe it would be

1 good just to read it in and if I have any questions at
2 that point I can ask you questions.

3 We can put the document in, but I
4 would want it to be read in and if I have any questions
5 at that point I can ask you the questions.

6 MR. VIGNA: At the same time, like I
7 said, rather than re-convene at 1:30 because if we come
8 here we don't have the affidavit, we're just going to
9 come here for nothing.

10 So, I would suggest that as soon as I
11 get it I call and Ms Joyal can tell me what time you
12 would like to re-convene.

13 THE CHAIRPERSON: Sure, no problem

14 MR. VIGNA: Okay.

15 THE CHAIRPERSON: I am just trying to
16 understand, is it that you don't know if you will get
17 it by 1:30, it could be later than that?

18 MR. VIGNA: Ms Joyal was also there
19 when Ms Kulaszka made it clear to her that I would like
20 it for 12 o'clock but she didn't give me any guarantee
21 and she said she would give it to me as quickly as
22 possible. That's the understanding I have.

23 I suspect it will be ready but from
24 what she told me, she wasn't absolutely certain because
25 it was a question of her client notarizing it.

1 THE CHAIRPERSON: Okay. I'll just go
2 through to the other room and work on something else
3 and wait for your word on that.

4 MR. VIGNA: I don't know. Ms Joyal,
5 I don't want to put you in the stand there, that is the
6 understanding I got.

7 REGISTRY OFFICER: That's my
8 understanding as well.

9 MR. VIGNA: Okay.

10 THE CHAIRPERSON: Okay. So, we will
11 adjourn until we hear from --

12 MR. VIGNA: Yeah.

13 THE CHAIRPERSON: -- Mr. Lemire's
14 counsel.

15 MR. VIGNA: At the earliest 1:30 and
16 if not, a little bit later if I don't receive it.

17 THE CHAIRPERSON: Just let Ms Joyal
18 know.

19 MR. VIGNA: Sure.

20 REGISTRY OFFICER: Order, please.

21 --- Upon recessing at 10:55 a.m.

22 --- Upon resuming at 11:00 a.m.

23 REGISTRY OFFICER: Order, please. Be
24 seated.

25 THE CHAIRPERSON: Thank you. I

1 believe you received the affidavit.

2 MR. WARMAN: We have, Mr. Chairman.

3 MR. VIGNA: Mr. Warman is going to
4 read it. Technically it's his witness, so he will have
5 the credit for it. I'll just distribute the affidavit.

6 THE CHAIRPERSON: Thank you.

7 Maybe we could just file the copy
8 before you read it in.

9 MR. WARMAN: Yes.

10 MR. VIGNA: Mr. Warman is calling the
11 Commission witness but the Commission is relying on the
12 same witness.

13 THE CHAIRPERSON: No problem.

14 REGISTRY OFFICER: Should we file it
15 now?

16 THE CHAIRPERSON: Yes, go ahead.

17 REGISTRY OFFICER: The affidavit of
18 Marc Lemire dated June 14, 2006 with attached Exhibits
19 "A" and "B" will be filed as Complainant Exhibit C-3.

20 EXHIBIT NO. C-3: Affidavit of
21 Marc Lemire dated June 14, 2006
22 with attached Exhibits "A" and
23 "B".

24 THE CHAIRPERSON: Yes, go ahead.

25 MR. WARMAN: Thank you.

1 Affidavit of Marc Lemire, the first
2 name Marc, M-a-r-c, last name Lemire, L-e-m-i-r-e.

3 "I, Marc Lemire, the person
4 named in a subpoena from the
5 Tribunal dated June 6, 2006
6 make oath and say as follows:

7 1. I am the webmaster of the
8 Freedomsite.org, which up until
9 January of 2004 included a
10 message board.

11 2. On the message board, the
12 required fields to register a
13 user account were: first name,
14 last name, login name and email
15 address. There was no
16 verification done on the first
17 name, last name or login name.
18 The only verification done was
19 to ensure that a valid email
20 address was provided.

21 3. When an individual signs up
22 a new account, a password was
23 emailed to the address he or she
24 provided. This was an automated
25 process done by the software

1 package that I installed.
2 4 . The search function was a
3 built-in function of the
4 software package. I did not
5 configure the search in any way
6 and it was not specific to the
7 Freedom-Site message board.
8 From the search screen, a
9 visitor could request the search
10 engine to search on key words.
11 I'm not sure of the exact
12 process used by the software to
13 search through the various
14 messages or how it generated
15 results.
16 5. The user profile for the
17 login name "rump" is attached
18 hereto as Exhibit "A". It shows
19 the email for this login name as
20 susen, s-u-s-e-n, @sympatico.ca.
21 6. The user profile for the
22 login name "realcanadianson" is
23 attached hereto as Exhibit "B".
24 It shows the email address for
25 this login name as susen,

1 s-u-s-e-n, @sympatico.ca."

2 The affidavit is then signed by Marc
3 Lemire and it is indicated to have been sworn before me
4 this 14th day of June, 2006 in the City of Oakville,
5 the Province of Ontario and it bears the signature of a
6 commissioner, et cetera.

7 Exhibit "A" indicates the sign-in
8 information used for "rump". The email address is as
9 listed, susen@sympatico.ca. The location is typed in
10 as "Y-u-k-o-m, ontario", new word, "p-o-l-o-p".

11 The first login is indicated as
12 Wednesday, November 13th, 2002, the last login is
13 indicated as Monday, January 27, 2003.

14 It lists a total of 15 logins, 26
15 messages posted and user ID 1115.

16 THE CHAIRPERSON: Now, do you have
17 any indication what the location means, "Yukom, ontario
18 polop"?

19 MR. WARMAN: I would assume that's
20 simply a fabricated collection of letters. I'm not
21 aware of any actual location called "Yukom, ontario" or
22 "ontario polop".

23 Exhibit "B" -- oh, sorry.

24 THE CHAIRPERSON: Go ahead.

25 MR. WARMAN: Exhibit "B" is the login

1 information for "realcanadianson" (Craig Harrison).

2 The email address is listed as susen@sympatico.ca.

3 The location is listed as --

4 THE CHAIRPERSON: And it's the same
5 email address as rump?

6

7 MR. WARMAN: Yes, it is.

8 THE CHAIRPERSON: And I believe this
9 is the first time in all of the evidence that we have
10 on rump that the email address appears.

11 In all the other exhibits that you
12 had put in, rump, there was no email address if I
13 remember well.

14 MR. WARMAN: I believe that's
15 correct.

16 The email address -- sorry indicated
17 at that location is listed as Georgetown, Ontario,
18 Dominion of Canada.

19 The first login is indicated Monday,
20 May 13, 2002 and the last login is indicated as
21 Tuesday, May 21, 2002. Total logins are 10, messages
22 posted are 46 and the user ID is indicated as 941.

23 Mr. Chair, I'm just -- if you have
24 any questions you would like --

25 So, Mr. Chair, barring any questions

1 you may have, I believe that Mr. Vigna has indicated
2 that it would be appreciated if there could be a break
3 until after lunch in order for --

4 THE CHAIRPERSON: For the closing
5 arguments, but this closes the case for the Commission
6 and for the complainant?

7 MR. WARMAN: It does.

8 THE CHAIRPERSON: And we will resume
9 then at 1:15 to hear the closing arguments of the
10 Commission and of the complainant.

11 Unfortunately, the respondent not
12 being here, there will not be any closing arguments
13 from the respondent.

14 MR. WARMAN: My colleague has just
15 indicated that we will endeavour not to repeat each
16 other's argument. For the purposes of that we may
17 simply adopt each other's submissions.

18 THE CHAIRPERSON: That would be
19 appreciated. Thank you very much.

20 MR. WARMAN: Thank you, sir.

21 THE CHAIRPERSON: So, we will
22 re-convene at 1:15 to hear the closing arguments.

23 REGISTRY OFFICER: Order, please.

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

25 --- Upon resuming at 1:15 p.m.

1 REGISTRY OFFICER: Order, please. Be
2 seated.

3 THE CHAIRPERSON: Good afternoon.
4 So, Mr. Vigna, you will be starting
5 out?

6 MR. VIGNA: I will be starting out.
7 I gave a copy of basically my closing arguments in
8 writing to the Tribunal, I gave you case law which I
9 won't be citing, but I put tabs for the key passages in
10 case law.

11 THE CHAIRPERSON: Is this what you
12 are referring to?

13 MR. VIGNA: No, that's another one,
14 that's Mr. Warman's.

15 THE CHAIRPERSON: Okay, this one?

16 MR. VIGNA: Yeah.

17 THE CHAIRPERSON: Okay.

18 ARGUMENT BY THE COMMISSION:

19 MR. VIGNA: Essentially, Mr. Chair,
20 you have heard the evidence in support of the complaint
21 for a violation of section 13 of the Canadian Human
22 Rights Act.

23 The key section which you will have
24 to consider are section 2, which I will dispense you
25 from reciting, but basically give the principles that

1 must guide the interpretation of all the sections in
2 the Canadian Human Rights Act.

3 And the basic principle is that all
4 human beings are equal in Canadian society and that
5 these are core Canadian values reflected in a
6 quasi-constitutional document which is the Canadian
7 Human Rights Act.

8 Now, in terms of section 13, there's
9 basically I would say three or four ingredients which
10 you will have to look into in terms of the evidence.

11 And the first I've laid it out on the
12 first page of my closing arguments and the questions
13 you will have to answer in relation to the evidence
14 are:

15 Did the respondent, Mr. Craig
16 Harrison, acting alone or acting in concert with
17 others, communicate or cause to be communicated the
18 material which is the subject of this complaint.

19 The second element of the section 13
20 is, was the material communicated by way of the
21 Internet repeatedly.

22 Three, is the material likely to
23 expose persons to hatred based on those persons being
24 identifiable on a prohibited ground.

25 And prohibited ground is found in

1 section 3 which is also another section of relevance
2 for the interpretation of section 13.

3 And then, obviously, if there is a
4 finding of liability, you will have to look at section
5 54 which enunciates the potential remedies that can be
6 ordered by the Tribunal if a section 13 violation has
7 occurred.

8 So, based on those three elements, I
9 will just recite to you, Mr. Chair, the evidence in
10 conjunction to be considered.

11 So, it is the position of the
12 Commission that this element, firstly, did the
13 respondent, acting alone or acting in concert with
14 others, communicate or cause to be communicated the
15 material which is the subject of this complaint.

16 And in simple language, I mentioned
17 at the very beginning, in the opening statement, that
18 the issue of identity was something the Tribunal would
19 have to look at and focus in terms of the evidence more
20 particularly, and that at the end of the day I will be
21 submitting that when you take the different pieces of
22 the puzzle, the identity is clearly established.

23 So, it is the position of the
24 Commission that this element has clearly be proven on
25 the balance of probabilities which is the learned proof

1 that has to be satisfied in this kind of proceeding.

2 Mainly, the testimonial and
3 documentary evidence provided by Mr. Richard Warman,
4 who has testified in a credible manner and a very
5 detailed manner and a very persuasive manner, but is
6 also corroborated by the testimony of Daniel Dubé of
7 Bell Sympatico, whom you heard from yesterday in terms
8 of making the connection between the times of the
9 postings and the time the customer at 50 Ewing was on
10 the Internet provider Bell Sympatico, and also the
11 affidavit of MarC Lemire which were provided to you
12 today, as well as you have at the very beginning the
13 Commission affidavit from the investigator where is the
14 response to certain questions by the respondent.

15 So, Mr. Harrison, as you know, did
16 not testify to deny any of the allegations, so off the
17 bat the evidence is uncontradicted and that is a very
18 important thing to consider from the very start.

19 Nor did he present any evidence to
20 rebuttal the Commission or complainant evidence which
21 was left.

22 And when you take the entire evidence
23 in its globality it leads to only one logical
24 conclusion. It is our position that Mr. Harrison's
25 attitude before the Tribunal, his refusal to attend

1 even after being thoroughly summonsed for the Tuesday,
2 the next day, and in full knowledge of the allegations
3 against him has, in a way, implicitly admitted to this
4 liability by communicating messages which form the
5 basis of this complaint and has not rebutted any of
6 the evidence that was put before the Tribunal in the
7 past three days.

8 Mr. Harrison's statement of
9 particulars, which at the start I would say is general
10 and unpersuasive has not been substantiated by any
11 evidence and, therefore, it becomes irrelevant as a
12 result.

13 It is clearly established by all the
14 documentary evidence that all of the material which
15 forms the subject of this complaint and is relied upon
16 by the Commission and the complainant consists of
17 articles posted on the Internet with the pseudonym or
18 moniker "realcanadianson" and "rump" and
19 "realnorthamerican" when examined in terms of their
20 content and cross-reference with the newspapers
21 articles, as well as the minutes of the criminal
22 conviction, the reoccurring themes, the choice of words
23 which Mr. Warman made a great effort in stressing and
24 focusing for the Tribunal, and cross-reference with the
25 times established by the documents produced by

1 Mr. Daniel Dubé, the affidavit of the Commission
2 investigator where questions and answers are provided.

3 And at that note I would just bring
4 to your attention that the answers, without going
5 through the document provided by the respondent, where
6 he doesn't necessarily deny what is being alleged, the
7 most we can say at that time there was some general
8 denials but nothing specific or persuasive.

9 And also there is certain admissions
10 that are there, when taken in the context of the
11 globality of evidence before you, becomes very
12 persuasive.

13 There's also the fact that the last
14 piece of evidence that was put before you today by
15 Mr. Marc Lemire was the administrator of one of the
16 main websites in question, Freedom Site which explains
17 how a person would get in and out of the website, but
18 more importance the connection to the name Susen
19 Harrison at 50 Ewing, in Georgetown.

20 When you take all these pieces of the
21 puzzle it becomes very clear that Mr. Craig S. Harrison
22 was the individual that was posting these postings,
23 even the mention of the word -- the letter "S" for your
24 focus and your examining of the evidence was relayed
25 from the documentary evidence produced from the court,

1 and then you would have to cross-reference it to the
2 posting where it is signed CSH, Craig Steve Harrison.

3 It's also to be noted that yesterday
4 in the testimony of Daniel Dubé, when I questioned him
5 on the issue of the ticket history and he explained
6 what the ticket history was, I will submit to the
7 Tribunal respectfully that an additional piece of
8 evidence on the issue of identity would be the fact
9 that there was a deliberate attempt by the customer --
10 of the subscriber at 50 Ewing to not disclose any
11 information to the Canadian Human Rights Commission.

12 And I would respectfully submit to
13 you that in virtue of the theory of guilty conscience,
14 that this is also an element that you can also take
15 into account.

16 But even if you do not take this into
17 account, I think the evidence on its totality is very
18 clear in terms of the identity, and later I will go
19 into the subject matter.

20 In terms of the guilty conscience
21 theory, why would someone try to avoid disclosing the
22 history of the account which, if somebody is not liable
23 for the acts which are being alleged against them, can
24 actually exonerate himself or herself from the acts
25 being alleged against them.

1 Instead what we have is a deliberate
2 attempt to block any information that is highly
3 relevant, and that doesn't only go against the rules of
4 full disclosure, but it demonstrates a certain state of
5 mind in terms of not wanting this information to be
6 relayed.

7 When we look at the language used in
8 the postings, its consistency, the reoccurring themes
9 and also at times the name Craig Harrison does appear,
10 and it's from memory -- I will just refer you to the
11 petition, I believe, which had several pages and
12 Mr. Warman can correct me on that factual
13 recollection -- the name Craig Harrison next to the
14 name susen@sympatico, Susen with an "e" appears for the
15 first time at that point.

16 So, in terms of the identity, when
17 you take all of this together it leaves no doubt. Even
18 today the evidence -- the last piece of evidence when
19 there was a little doubt and I would respectfully
20 submit that would have been a doubt that would have
21 been overcome when you take into account the totality
22 of the evidence, the moniker rump, for the first time
23 it's associated susen@sympatico.ca.

24 So, the evidence is fairly
25 overwhelming in terms of the identity, and despite the

1 use of the monikers, the face and name behind those
2 monikers has been revealed when you take into account
3 the totality of the evidence.

4 It is the position of the Commission
5 that if these postings -- sorry, it would be incredible
6 to believe that if the respondent would not be the
7 person behind these postings he would have chosen
8 deliberately, despite being served with a subpoena,
9 which was an extra step taken by the Tribunal, not to
10 come and testify or present any evidence to rebuttal
11 such allegations.

12 And Mr. Warman will discuss later a
13 bit more in depth on the adverse inference that can be
14 made regarding the failure to provide evidence in
15 rebuttal.

16 So, I'll skip the part about Nealy
17 Johnston, which is the case law. You have it before
18 you but Mr. Warman will talk about it also, so I will
19 avoid getting into it.

20 Was the material communicated
21 telephonically or via the Internet.

22 The evidence of Mr. Warman is that
23 most of Mr. Harrison's messages were found on two
24 websites, Freedom Site and Yoderanium. Perhaps I don't
25 pronounce it right, but the Tribunal knows what I'm

1 referring to.

2 His evidence with respect to all
3 these postings was that he observed them on the
4 Internet and printed them himself before providing them
5 to the Commission.

6 Section 13(3) falls within the ambit
7 of section 13(1).

8 And on the issue of Internet and its
9 impact, I will refer you in the case book 1, the first
10 case is the Barrick case which basically, in a
11 nutshell, says that the Internet is much more even
12 devastating than other forms of -- means of
13 communication because it's so prevalent and it's so
14 easily accessible.

15 THE CHAIRPERSON: What case is that?

16 MR. VIGNA: The Barrick case, it's
17 the first case in the case book.

18 THE CHAIRPERSON: The first case at
19 tab...?

20 MR. VIGNA: And it's at tab 1.

21 THE CHAIRPERSON: Tab 1. Barrick
22 Gold, yes.

23 MR. VIGNA: Yes. It's not a case
24 dealing with section 13, but it's dealing with libel
25 and slander, but it was on the Internet so the whole

1 idea of Internet and how it's prevalent and pervasive.
2 There's a quote in there that I'll say later, but
3 that's the importance of the that case.

4 It is, therefore, the position of the
5 Commission that Mr. Harrison was communicating messages
6 on the Internet, that's required to find a breach of
7 section 13 of the Canadian Human Rights Act.

8 Also when it comes to the element of
9 repeatedly, which is mentioned in section 13, there's
10 case law that basically says when you're dealing with
11 the Internet in itself it's repeatedly because anybody
12 can have access to it and it's prevalent, but in
13 addition to that, the factual evidence demonstrates
14 very clearly that it's repeatedly.

15 Is the material likely to expose a
16 person or persons to hatred or contempt by reason of
17 the fact that those persons are identifiable on the
18 basis of a prohibited ground of discrimination.

19 It is the Commission's position that
20 section 13 must be interpreted in light of the harm
21 it's meant to address. Exceptions must be interpreted
22 narrowly and the Act must be given a broad and liberal
23 interpretation.

24 In interpreting what is intended by
25 section 13 and in deciding whether or not to allow the

1 argument of community standards test, which was not by
2 the way raised in this case, the Tribunal has the
3 benefit of the Supreme Court of Canada, also section 13
4 of the Canadian Human Rights Act in the Taylor
5 decision, which is a key decision.

6 Perhaps the tab I'm referring to,
7 Mr. Chair, is not the proper reference but it's in
8 the --

9 THE CHAIRPERSON: Tab 3.

10 MR. VIGNA: Tab 3, sorry. In this
11 case the Supreme Court went through a constitutional
12 analysis of this section which recognizes the
13 importance of freedom of expression, which is not an
14 argument again raised in this case and said:

15 "...the nature of human rights
16 legislation militates against an
17 unduly narrow reading of section
18 13(1)..." (As read)

19 Then there is mention -- I mention
20 the case of the Insurance Corporation of B.C. and
21 Heerspink to the effect that the Human Rights Code:

22 "...is not to be treated as
23 another ordinary law of general
24 application. It should be
25 recognized for what it is, a

1 This intensely painful reaction
2 undoubtedly detracts from an
3 individual's ability to, in the
4 words of s. 2 of the Act, "make
5 for himself or herself the life
6 that he or she is able or wishes
7 to have".

8 At paragraph 19 in Taylor, key
9 decision:

10 "The concern of any free and
11 democratic society to avoid the
12 vilification of individuals or
13 groups by reason of their race
14 and/or religion is self evident
15 and that in his view "Canada is
16 a multicultural country ...such
17 multiculturalism represents a
18 positive characteristic of its
19 national persona. While racial
20 and religious strife were not
21 rampant in Canada, the great
22 upheaval and damage caused by
23 intolerance in certain other
24 nations amply illustrated the
25 potentially serious impact of

1 these prejudicial ideas."
2 Mahoney J. thus concluded that
3 "the avoidance of the
4 propagation of hatred [on
5 grounds of race or religion] is,
6 in itself, properly a pressing
7 and substantial concern of a
8 free and democratic society."

9 The Commission submits that the test
10 to be used in determining whether or not this material
11 is likely to expose people to hatred or contempt is set
12 out in the Tribunal decision in Nealy v Johnston. Here
13 again there's a mistake on the reference to the tab,
14 Mr. Chair, but it's in the binder.

15 THE CHAIRPERSON: Tab 9.

16 MR. VIGNA: Tab -- I'm not sure.

17 THE CHAIRPERSON: 9.

18 MR. VIGNA: Okay, thank you. Which
19 refers to the Taylor decision which is the key decision
20 in terms of the definition of hatred and it's at
21 paragraph 60 where it says:

22 "With "hatred" the focus is a
23 set of emotions and feelings
24 which involve extreme ill will
25 towards another person or group

1 of persons. To say that one
2 "hates" another means in effect
3 that one finds no redeeming
4 qualities in the latter. It is
5 a term, however, which does not
6 necessarily involve the mental
7 process of "looking down" on
8 another or others. It is quite
9 possible to "hate" someone who
10 one feels is superior to one in
11 intelligence, wealth or power.
12 None of the synonyms used in the
13 dictionary definition for
14 "hatred" gives any clues to the
15 motivation for the ill will.
16 "Contempt" is by contrast a term
17 which suggests a mental process
18 of "looking down" upon or
19 treating as inferior the object
20 of one's feelings."

21 And on that issue, Mr. Chair, the
22 Taylor decision defines hatred, the key word is expose
23 and in certain decisions they even make -- I didn't
24 mention in the written document here, but I'm just
25 speaking from my knowledge -- when you compare it, for

1 example, to the terminology used in the Criminal Code
2 regarding hate crimes, I will say in simple language
3 the terminology used in the Canadian Human Rights Act
4 is not as demanding in terms of what is required for it
5 to constitute hate in contrast to the Criminal Code.

6 It's basically premised on the idea
7 that if it has a consequence that affects people and
8 harms people, that's what's important. It's not the
9 intention and when one says the comments that are made,
10 but it's the impact and the effect that those comments
11 have on people.

12 So, there is a little distinction to
13 be made, which is not necessarily relevant in terms of
14 the section 13, but it is just to understand the
15 definition of section 13 and the way hate is
16 interpreted in section 13 versus other legislation.

17 It is our position, therefore, that
18 the test to be used by this Tribunal is as enunciated
19 in many Tribunal and Court decisions; that is, on a
20 balance of probabilities do the messages involve
21 extreme ill will to a person or group of persons and do
22 they characterize a person or group as having no
23 redeeming qualities or treat them as inferior.

24 It is clear that the materials which
25 were posted by Mr. Harrison on the websites are likely

1 to expose people to hatred or contempt based on the
2 fact that they are either Jewish, black, non-white,
3 immigrants, Aboriginal, and I will not go through the
4 different postings because they speak for themselves
5 pretty much in terms of them being hate in the sense of
6 section 13.

7 THE CHAIRPERSON: I am just wondering
8 out loud and I wanted to ask you the question, the fact
9 that these postings were, according to Mr. Warman's
10 evidence also, were posted on websites which were from
11 groups who were already convinced of racist remarks,
12 this Freedom Site or the other one, does that make a
13 difference, because he was talking to a community which
14 it was not open to the general public; was it, or was
15 it?

16 MR. VIGNA: Mr. Chair, I would
17 respectfully submit to you that it was open to the
18 general public because anybody can simply, based on the
19 affidavit, for example, of Marc Lemire, go into the
20 website, put in their name and access these postings.

21 It's not the issue of whether it is
22 as easily available to the general public as you would
23 go perhaps and buy a newspaper at the newspaper stand,
24 but the fact that it is accessible to the general
25 public is what entails liability.

1 The websites by nature are
2 accessible. Anybody who wants to go in the website in
3 question does not have to pay to get in, based on the
4 Marc Lemire affidavit, all they have got to do is
5 basically follow a certain procedure.

6 THE CHAIRPERSON: And they would have
7 access to that chat forum?

8 MR. VIGNA: Exactly. And when we
9 talk about the public, I don't think it's the numbers
10 that count, it's really whether anybody can have access
11 to it. It's not necessarily the accessibleness of the
12 chat or forums, it's whether they can have access to
13 it.

14 And it wasn't all that complicated, I
15 respectfully submit, because all you needed to do was
16 identify yourself, put in your email address and go
17 into the forums in question.

18 So, that gives the -- that satisfies
19 the public element which is required and I don't think
20 we need to -- the legislation would be so -- how shall
21 I say this -- would require such a heavy burden that it
22 has to be easily accessible because the legislation
23 does not speak for nothing, the word easily accessible
24 has not been placed in section 13, therefore, the fact
25 that it is accessible by a member of the public,

1 whether they have to perform a certain procedure to get
2 in or not, makes it -- gives it the public element that
3 is required.

4 So, that is the answer I would give
5 to you at this moment in time, Mr. Chair.

6 THE CHAIRPERSON: Thank you.

7 MR. VIGNA: It is difficult to
8 imagine how core Canadian and universally accepted
9 values in our society could even tolerate such
10 messages. Even if someone were to say they were jokes,
11 which is some of the way they are presented, the law
12 cannot excuse such horrible words even if one attempts
13 to shield them from liability by claiming they are
14 jokes.

15 Such messages, whether sincerely
16 expressed or as jokes, cause serious harm towards those
17 objects of such comments and that is all that counts,
18 what is the impact of the comments, not what is the
19 intent.

20 THE CHAIRPERSON: What is the impact
21 on whom?

22 MR. VIGNA: On the groups that are
23 targeted here were mentioned. We have ample evidence
24 about Aboriginals, about Jews. Basic groups that are
25 mentioned in section 3 of the Act which includes

1 nationality, religion, which are the key ones in this
2 particular case.

3 And it's pretty clear who's targeted
4 when they talk about killing French Canadians or
5 killing other groups, the way they describe the
6 Indians, the Aborigines in terms of -- I recall the
7 joke about, I don't dare even -- I cannot it verbatim
8 but about how does an Aboriginal father --

9 THE CHAIRPERSON: Mm-hmm. Yes, I
10 remember that.

11 MR. VIGNA: Okay. I don't want to
12 restate it.

13 THE CHAIRPERSON: No.

14 MR. VIGNA: But you know what I'm
15 talking about.

16 THE CHAIRPERSON: I am just trying to
17 maybe in a certain way just because we don't have the
18 opportunity of having --

19 MR. VIGNA: Opposite side.

20 THE CHAIRPERSON: -- the opposite
21 side to present the arguments on the other side, and
22 certainly it is unfortunate, but it is their choice to
23 have done that.

24 But just to make sure that I get the
25 full picture, the questions I am asking are not

1 necessarily what I believe or what I understand the law
2 to be but, for example, in this case, if it wasn't for
3 Mr. Warman doing that research -- specific research on
4 the websites, for example, you and I probably would
5 never have heard of these comments.

6 Are we affected by those comments if
7 we don't know that they are there as a group?

8 MR. VIGNA: I'm not sure I fully
9 understand the --

10 THE CHAIRPERSON: Well, you say
11 that -- I am reading from your --:

12 " whether sincerely expressed or
13 as jokes cause serious harms
14 towards those objects of such
15 comments."

16 So, I believe the object of such
17 comments are the groups that are identified.

18 MR. VIGNA: Yeah.

19 THE CHAIRPERSON: But if the groups
20 or the individuals who are part of that group don't
21 know --

22 MR. VIGNA: I'll refer you to
23 section, by memory, 44 of the Act. I think I have it
24 somewhere around here in the Act to answer your
25 question.

1 THE CHAIRPERSON: And, again, I am
2 just asking questions here to make sure that I get
3 the --

4 MR. VIGNA: Not 44 but -- section 40
5 of the Act, Mr. Chair --

6 THE CHAIRPERSON: Yes.

7 MR. VIGNA: -- which deals with who
8 may file a complaint and who is not allowed to file a
9 complaint.

10 It says:

11 "Subject to sections 5 and 7,
12 any individual...",

13 that is the key word,

14 "...or group of individuals
15 having reasonable grounds for
16 believing that a person is

17 engaging or has engaged in a
18 discriminatory practice, may

19 file with the Commission a

20 complaint in a form acceptable
21 to the Commission."

22 THE CHAIRPERSON: Okay.

23 MR. VIGNA:

24 "If a complaint is made by
25 someone other than the

1 individual who is alleged to be
2 the victim of the discriminatory
3 practice to which the complaint
4 relates, the Commission may
5 refuse to deal with the
6 complaint unless the alleged
7 victim consents thereto."

8 So, if I properly understood your
9 question, Mr. Chair, it's not necessarily that it's
10 actually the group that's impacted to be the one to
11 file the complaint, it talks about any individual that
12 believes -- that has reasonable grounds for believing
13 that there is a discriminatory act can file a
14 complaint.

15 So, Mr. Warman, as an individual in
16 the Canadian public who realizes that there is a
17 violation and the Commission is very grateful for his
18 filing a complaint and we expect to any violation of
19 the Act can file a complaint.

20 And I would go further, Mr. Chair,
21 and I submit this respectfully in terms of what I
22 believe to be the philosophy behind section 40 by the
23 legislator.

24 Groups that -- the Act, in my view, I
25 will argue is aimed at protecting vulnerable groups.

1 So, I will respectfully submit to you that the
2 legislator's intention in not imposing that it actually
3 be the victim of the discriminatory act that can make
4 the complaint, is trying to make sure that these groups
5 or victims that are affected that may have fear of
6 filing complaints.

7 And if we look at, for example,
8 section 14 which talks about retaliation, favours the
9 filing of such complaints to try to eradicate
10 discrimination in Canadian society because that is the
11 fundamental objective, if you go back to section 2 of
12 the Act is, to eradicate discriminatory comments,
13 discriminatory actions, discriminatory stereotypes,
14 discriminatory prejudices in Canadian society.

15 And it's not important that it be
16 done by the actual individual affected necessarily, but
17 by any individual that has reasonable grounds for
18 believing, and in order to favour and to fight better
19 such un-Canadian values in our society, it allows
20 people like Mr. Warman to file a complaint in the
21 public interest, as well as the Commission, to make
22 sure that we don't have that rigorous requirement that
23 it actually necessarily has to be the individual that
24 is victim.

25 And my point on that is basically

1 that I submit this myself, but that the legislator was
2 thinking that sometimes people that are victims or
3 targets of this type of comments, especially when you,
4 to give an example, when we see the type of comments in
5 this case where they call for the killing and genocide
6 of people which is pretty extreme, I would say, I don't
7 think it's unreasonable to say that such groups or
8 people would be fearful of filing a complaint when they
9 are dealing with these kinds of comments.

10 They don't know, you know, what the
11 seriousness of the person's or the groups's intentions,
12 but the comments are in themselves racism, so that is
13 the whole philosophy behind. I hope I answered your
14 question.

15 THE CHAIRPERSON: No, you did. Thank
16 you very much.

17 MR. VIGNA: So, to continue on that,
18 I am referring to the quote from the Taylor decision.
19 I strongly would put emphasize on the Taylor decision
20 in terms of the definition of hate, the definition of
21 contempt and the definition of expose, which are the
22 very words in section 13.

23 And I won't recite the quote there,
24 but I just refer to it.

25 It's clear that the material, like I

1 said, is discriminatory, contrary to section 13, it
2 meets the requirements of hate. I won't go through the
3 evidence, it's fresh in the Member's memory since we
4 are only in day three, and the extreme comments that
5 are made where there's repeated, repeated calls for
6 genocide, killing, I think are very serious for the
7 Tribunal to consider and to render a decision that
8 makes it clear that such comments cannot be tolerated
9 in Canadian society.

10 And, Mr. Warman, I'm going off topic
11 from my materials here, ably made the comment at the
12 very beginning from the Supreme Court in the Andrews
13 decision where he says that:

14 "The Holocaust didn't begin with
15 actual actions but with words."

16 (As read)

17 And when we think of situations like
18 in Rwanda, I mean it's not something to be taken
19 lightly, it's the first step that can lead to much more
20 serious consequences.

21 I don't want to be an alarmist, but
22 when we see the terms that are used when we are talking
23 about killing, even if they are portrayed as jokes, I
24 think it's unacceptable in our Canadian society to make
25 such comments.

1 And I don't think we need any experts
2 to help the Tribunal decide whether it's hate or
3 contempt or expose in this particular case. in
4 particular. because the words are of such an extremity,
5 of such seriousness that they speak for themselves.

6 In Smith v. Western Guard Party which
7 went to the Supreme Court, I'm quoting a passage from
8 pages 16 of 37:

9 "Not only if there extreme
10 criticism of Jews as being the
11 root cause of many of the
12 economic and political problems
13 facing Canada, but the messages
14 over the period of time that
15 they were telephonically
16 delivered increasingly call for
17 violence against Canadian
18 minorities and especially Jews.
19 The messages contain aggressive
20 overtones." (As read)

21 And even on the issue of the tone and
22 the emotions, like Mr. Warman was saying in his
23 testimony, on the Internet you don't necessarily see
24 the emotions and tone like you would see when you are
25 speaking in person, but I brought to the attention of

1 the Tribunal that they made a point several times to
2 puts exclamation marks or put letters in big capitals
3 which was the exception, because most of the time it
4 was all in small letters, to give it that tone, that
5 aggressiveness.

6 Even the emblems, the shock and all
7 that, I mean, they don't just -- the comments that were
8 made were not just made, the individual was not only
9 concerned about making the comments, but even was
10 concerned with making sure that there was emotions
11 attached to those comments and going to the extent of
12 calling for the genocide and killing of people, I would
13 respectfully and I think safely submit that it goes
14 beyond racism, I would say it's fairly approaching
15 threatening behaviour.

16 In the Khaki case, which I refer to
17 on page 6, just a key quote:

18 "...messages point out that
19 immigrants are non-whites and
20 are not Europeans, bear no
21 resemblance to our founding
22 fathers; bring poverty, crime
23 and corruption to our
24 society.....that there is a
25 good reason not just to dislike

1 them or be suspicious of them
2 but to be contemptuous of them.
3 When one is described as a human
4 refuge or a threat to the very
5 substance of civilization that
6 person is held up for contempt
7 and nothing so mild as
8 apprehension or suspicion or
9 dislike would be appropriate."
10 "...the first true men separated
11 themselves from the sub-men
12 around them and established
13 civilization and states that
14 today the white people of
15 America face a similar decision,
16 similar to the one taken by
17 their white ancestors to hold
18 themselves separate. The
19 message goes on to say the white
20 people of America are surrounded
21 on all sides by the rising tide
22 of the lower races who envy and
23 hate them, who are streaming in
24 uncounted numbers and who are
25 encouraged to dispossess white

1 by exhorting white people of the
2 West not to succumb to the
3 rising tide of colour and to
4 take back their destiny."

5 This is just important in terms of
6 how we have to interpret hate, expose and contempt in
7 terms of what is the impact once again.

8 Similar themes are found in the
9 Manitoba Coalition where the messages and language
10 targets non-whites and portrays them as a threat to
11 which the white race must not surrender.

12 Again, in determining whether
13 Mr. Harrison's messages are likely to expose blacks,
14 non-whites, immigrants -- there is mention of Dutch,
15 there is mention of French, there is mention of
16 Italians -- to hatred or contempt, it's important for
17 the Tribunal to consider the tone of these messages as
18 well which is not only hateful and contemptuous but
19 very angry.

20 The Tribunal must consider -- I'm
21 quoting here from a Federal Court where an injunction
22 was awarded prior to even the Tribunal hearing taking
23 place, and just the passage that's underlined:

24 "Having looked at these messages
25 in their entirety and in

1 context, I have no doubt that
2 they are likely to expose
3 persons of the Jewish faith to
4 hatred or contempt, as these
5 concepts have been defined in
6 Nealy, supra, and approved in
7 Taylor, supra. And the same can
8 be said of the messages which
9 target persons of the black
10 race. They are undoubtedly as
11 vile as one can imagine and not
12 only discriminatory but
13 threatening to the victims they
14 target."

15 This paragraph is only related to
16 Winnicki, but the only importance of it is the
17 underlined passage to show that there's no need for
18 expert testimony to actually assess the words that are
19 used when the words are so outrageous the Tribunal can
20 easily come to the conclusion that they constitute hate
21 or contempt or expose, as defined in section 13.

22 So, I'm only referring to that
23 passage for that purpose.

24 It is the position of the Commission
25 that this Tribunal find that the materials which were

1 posted on the website by Mr. Harrison are likely to
2 expose people to hatred or contempt based on the fact
3 that they are of Jewish religion, of the black race and
4 are non-white immigrants or Aboriginals. Based on
5 section 3, I refer to nationality, race or religion.

6 It is the position of the Commission
7 and we respectfully submit that this Tribunal must find
8 that all of the elements of a breach of section 13 have
9 been proven on a balance of probabilities and that
10 Mr. Harrison must be found to have breached this
11 section of the Canadian Human Rights Act.

12 And once the Tribunal -- if the
13 Tribunal comes to the conclusion, which I respectfully
14 submit should be the one that should prevail at the end
15 of an analysis of the entire evidence, including the
16 element of identity, the Tribunal will have to look at
17 the issue of remedies based on section 54 of the
18 Canadian Human Rights Act.

19 So, for the Commission one of the
20 first remedies that we're looking for to prevent
21 further occurrences and to pass a message that this
22 type of behaviour is unacceptable in Canadian society,
23 is an order under section 54 which incorporates by
24 reference 53(2)(a) that the respondent, Mr. Craig S.
25 Harrison and any other individual acting in concert

1 with him cease and desist the discriminatory practice
2 pursuant to section 53(2)(a) of the Canadian Human
3 Rights Act.

4 And there I cite what I mentioned
5 earlier, the Barrick decision regarding the impact of
6 Internet and the quote:

7 "...Communication via the
8 Internet is instantaneous,
9 seamless, interactive, blunt,
10 borderless and far-reaching. It
11 is also impersonal and the
12 anonymous nature of such
13 communications may itself create
14 a greater risk that the
15 defamatory remarks are
16 believed."

17 And then there is in that same
18 decision:

19 "...Although Internet
20 communications may have the
21 ephemeral qualities of gossip
22 with regard to accuracy, they
23 are communicated through a
24 medium more pervasive than
25 print, and for this reason they

1 have tremendous power to harm
2 reputation. Once a message
3 enters cyberspace, millions of
4 people worldwide can gain access
5 to it."

6 And, secondly, one of the other items
7 that the Commission is asking in terms of an order is
8 if the liability is found, is that the respondent be
9 imposed a penalty which would be the maximum or close
10 to the maximum because of the nature of the comments,
11 the outrageousness of the comments and I'd even go so
12 far as the disgraceful nature of the comments that are
13 being made.

14 Now, section 54(1)(1), when imposing
15 a penalty also asks the Tribunal, if evidence -- and I
16 stress that -- is presented to consider certain
17 elements, the nature, circumstance, extent and gravity
18 of the discriminatory practice, the wilfulness and
19 intent of Mr. Harrison in this case, any prior
20 discriminatory practices that Mr. Harrison has engaged
21 in and his ability to pay.

22 And the issue of ability to pay, I
23 would just like to mention that there's some case law
24 in the book of authorities but I'm not going to
25 elaborate on that simply because it is my respectful

1 submission, Mr. Chair, that in order for the Tribunal
2 to consider this element, there has to be evidence that
3 has been presented to you to show perhaps the
4 respondent's ability to pay or weak ability to pay.

5 None of that has been presented
6 before you, of deliberate choice by not attending these
7 hearings, and even after being served a subpoena, which
8 was an extra measure that the Tribunal undertook, and
9 they, I understood from the Tribunal's comments
10 yesterday, the respondent clearly indicated that they
11 did not want to come back to the hearing. So, one of
12 the consequences are they are not going to be able to
13 present evidence on their ability to pay which is one
14 of the things for consideration -- the Tribunal can
15 consider in imposing a penalty.

16 Also I just mention that in the case
17 law there is a bit of flux in terms of whether the
18 evidence regarding ability to pay must be under oath or
19 it can be simply put forward verbally.

20 The Commission would submit the
21 position that it should be under oath, it should be at
22 least reliable evidence, but in this case there is no
23 evidence, so the question doesn't even pose itself.

24 THE CHAIRPERSON: And you are asking
25 that the penalty be close to the maximum?

1 MR. VIGNA: The maximum being up to
2 10,000. I think that the Tribunal would be justified
3 in imposing 10,000 in regards to the comments and the
4 gravity of the comments made.

5 But it should at least be close to
6 that, in my respectful view, considering the what's
7 being said and the repetition of the comments.

8 And I think also, Mr. Chair, I would
9 respectfully submit to you that the attitude of the
10 respondent which is not -- goes without saying in terms
11 of his reaction in the Tribunal and demonstrates
12 that -- I am not sure he quite understood the
13 importance of the respect of section 13.

14 If you will recall, at one point, to
15 the best of my recollection, he made a comment in
16 relation to the testimony of Mr. Warman. He was --
17 Mr. Warman was talking about, at that point about the
18 newspaper article, and Mr. Warman just said that --
19 reciting the article about being racist and all that,
20 and he stormed out and basically said a few words,
21 which I will not repeat, but the attitude --

22 THE CHAIRPERSON: Yes.

23 MR. VIGNA: Okay. So, I think that's
24 something that I respectfully submit could be
25 considered in terms of the message that needs to be

1 given in terms of not reoccurring, not repeating such
2 events.

3 Mind you, I'm not saying the Tribunal
4 hearings are civil, they are preventive measures, but I
5 respectfully submit that in order to pass a message,
6 one of them is the order, obviously, and the money
7 element is also a good way to pass the message that
8 such behaviour is not tolerated in Canadian society.

9 THE CHAIRPERSON: Can I just ask you
10 a question. On page 9 of your written arguments, the
11 second paragraph, there is a statement you make there
12 but I don't think there is any evidence to substantiate
13 that statement.

14 You say:

15 "There is no doubt about
16 Mr. Harrison's will or intent to
17 communicate hatred. After the
18 human rights complaint was filed
19 against him, and right up until
20 week before the hearing began,
21 he was still posting hate
22 messages on the Internet."

23 I don't remember any evidence --

24 MR. VIGNA: That's a mistake. I had
25 erased it, and thank you for bringing it to my

1 attention.

2 The only things that I'd like to
3 say --

4 THE CHAIRPERSON: But there is no
5 evidence about beyond 2004.

6 MR. VIGNA: No, that's a mistake on
7 my part, Mr. Chair, and I had erased it by pen, but
8 unfortunately realizing that, because just a clerical
9 mistake on my part, I had taken the time to erase all
10 that, then I lost the copy when the hearing began, so I
11 had to redo it quickly and that part I erased.

12 THE CHAIRPERSON: But it certainly
13 raises an issue in my mind about the amount of the
14 penalty that should be imposed, and I'm just asking you
15 the question, the fact that I do not have any evidence
16 beyond, I believe the last post was 2004 here, does
17 that indicate that --

18 MR. VIGNA: The evidence you have,
19 nevertheless, Mr. Chair, and I will refer you to the
20 transcripts because I'm just relying on memory here,
21 Mr. Warman when he filed the complaint it was in
22 November, I believe, 2003.

23 THE CHAIRPERSON: And it was up to
24 that --

25 MR. VIGNA: But afterwards, after

1 that there was still re-occurrence in 2004, and maybe
2 Mr. Warman can refresh my memory on that, on other
3 websites.

4 There was a certain repetition that
5 continued even after filing the complaint.

6 And also it comes to mind, Mr. Chair,
7 it might seem innocuous at the time now that you
8 mention it, but at one point in the postings you recall
9 there is people actually warning Mr. -- at least
10 realcanadianson or rump that the kind of comments he
11 was making could expose him to legal liability and he
12 nevertheless continued in his endeavours in that sense.

13 So, those are elements you
14 nevertheless can consider in terms of imposing a
15 penalty because even members of the public, I would say
16 even members of that forum, which were not necessarily
17 the most hostile to that kind of speech in this course,
18 warned him of the extremity of his comments.

19 And I would refer you to at one point
20 the moderator in the testimony of Mr. Warman made it
21 clear, actually went to the extent of editing some of
22 the comments. We will never know what those comments
23 were.

24 And, Mr. Warman said also that it was
25 kind of exceptional that editing would occur because in

1 those kind of websites there is a certain amount of,
2 unfortunately, tolerance towards those kind of
3 comments.

4 THE CHAIRPERSON: Again, I guess
5 Mr. Harrison would have had the opportunity to explain
6 that or give evidence to that effect but he didn't.

7 MR. VIGNA: He didn't

8 THE CHAIRPERSON: He decided not to
9 participate, so basically even that I don't have his
10 explanation of what happened between 2004 and now.

11 MR. VIGNA: So, you still have some
12 evidence which is uncontradicted that there was an
13 editing of the comments which indicates I think with a
14 certain reliability that the comments were of an
15 extremeness

16 THE CHAIRPERSON: No, I am just
17 saying about the mitigating factor that he could have
18 raised, he is not here.

19 MR. VIGNA: No.

20 THE CHAIRPERSON: He hasn't raised
21 those. Okay.

22 MR. VIGNA: But the second time, I
23 apologize, it was a mistake on my part.

24 THE CHAIRPERSON: Okay, no problem.

25 MR. VIGNA: Okay. And then I refer

1 to a Kyburz decision which talks about the issue of
2 ability to pay and what has to be concerned in terms of
3 the amount that has to be imposed and I won't go into
4 that for the -- to avoid prolonging this out, but it's
5 in the case books, particularly in case book No. 2 at
6 the end where you can see there's a certain number of
7 case law regarding what penalty should be imposed and
8 what considerations should be considered and interpret
9 54.1 and all that.

10 And just at the last page I quote
11 from the Kyburz decision:

12 "It should be noted that the
13 Court's comments in Noseworthy
14 were made in the criminal law
15 context. The Court noted that
16 the Criminal Code does not
17 impose a general duty on a trial
18 judge to inquire into an
19 individual's ability to pay,
20 except in limited circumstances.
21 In contrast, subsection 54(1)(1)
22 mandates that the Tribunal
23 consider the respondent's
24 ability to pay before levying a
25 fine. That said, we are of the

1 view that the Court's comments
2 regarding the burden of proof
3 relating to the ability to pay
4 are equally applicable to our
5 deliberations under this
6 provision of the Canadian Human
7 Rights Act."

8 So, all that to say that in terms of
9 the penalty, I think it's important that the Tribunal,
10 if the finding is one of liability, make it clear that
11 it reflects the severity of the comments and in terms
12 of the ability to pay and the considerations that the
13 Tribunal may consider as mitigating, like you have
14 mentioned, there has been no evidence whatsoever put
15 forth, and actually the absence of the respondent here
16 during the proceedings, the deliberate choice, the
17 behaviour I would respectfully submit are more
18 aggravating than mitigating in terms of the amount of
19 the penalty to impose.

20 So, that is all I have to say and I
21 have seen Mr. Warman's closing arguments and for the
22 purposes of time, I simply will say that I will echo
23 the same comments.

24 THE CHAIRPERSON: Just referring to
25 that comment made in the Kyburz case saying that the

1 section 54(1)(1) mandates the Tribunal to consider the
2 respondent's ability to pay before levying a fine,
3 looking at 54(1.1) then could you indicate where that
4 is, because it says:

5 "the nature, circumstances,
6 extent and gravity of the
7 discriminatory practice and the
8 wilfulness or intent of the
9 person who engaged in the
10 discriminatory practice, any
11 prior discriminatory practice
12 that the person has engaged..."

13 Okay, I see,

14 "...and the person's ability to
15 pay the penalty."

16 Okay, I am sorry, I have answered my
17 own question. Thank you.

18 MR. VIGNA: I notice for precision,
19 the quote came from the case law and the Act was the
20 actual source.

21 THE CHAIRPERSON: No problem. It's
22 just I was not reading until the end.

23 MR. VIGNA: Thanks. I don't have any
24 further comments, unless you have any questions you
25 would like to ask me, Mr. Chair.

1 THE CHAIRPERSON: No.

2 MR. VIGNA: Thank you, Mr. Chair.

3 THE CHAIRPERSON: Thank you,
4 Mr. Vigna.

5 Mr. Warman.

6 ARGUMENT BY MR. WARMAN:

7 MR. WARMAN: Mr. Chair, if I may,
8 what I would like to do is just run through briefly my
9 closing remarks and then I would just like to pick up
10 on a few items -- questions that you were inquiring
11 with counsel for the Commission, Mr. Vigna, about.

12 So, in essence, in these cases
13 there's almost always some consideration of a fact:
14 well, what portion of the material is before the
15 Tribunal constitutes hate speech, what part of it is
16 political speech, what part of it is simply a robust
17 harangue of the targeted groups, if you will.

18 And it's my respectful submission
19 that the Supreme Court's reasons in the leading case of
20 Taylor display what can only be called as an ample
21 awareness of the need to balance the competing
22 interests of freedom of expression and versus what is
23 really a consensus within virtually every western
24 democracy about the fact that hate propaganda should
25 and must be suppressed, given the historically

1 self-evident risk of harm to the targeted communities.

2 Mr. Vigna mentioned the World War II,
3 1930 Germany. Again, the Supreme Court in Andrews said
4 that:

5 "The Holocaust did not begin
6 with the gas chambers, the
7 Holocaust began with words."

8 And I think really that stems from
9 the Cohen Commission's Report and just the general
10 understanding of world history that the Tribunal is
11 able to take judicial notice of.

12 To the extent there is any question
13 whether there is some sort of freedom of expression
14 ability to engage in hate speech, this kind of issue
15 was raised by a respondent in Payzant, P-a-y-z-a-n-t v.
16 McAleer, M-c-A-l-e-e-r and Canadian Liberty Net, where
17 the respondent initially attacked pedophilia,
18 associated homosexuality with pedophilia and then
19 suggested that homosexuals should be stomped into bogs.

20 The three-member Tribunal Panel
21 stated:

22 "Counsel for the respondent
23 McAleer based part of his
24 argument on fair comment and
25 free speech. The fact that the

1 discrimination..."

2 Citing the Ontario Human Rights

3 Commission and O'Malley, O-'-M-a-l-l-e-y v.

4 Simpson-Sears Ltd. and the CHRC v. Taylor of the

5 Supreme Court.

6 "Moreover, the language of s. 13

7 is clear, in that it is the

8 effect of the messages that has

9 attracted the attention of

10 Parliament. The question to be

11 asked is not whether the

12 conveyor of the message intended

13 to communicate hate or contempt,

14 but whether the message itself

15 is likely to expose persons

16 belonging to the identifiable

17 groups to hatred or contempt. If

18 indeed the newsletter..."

19 In this case there were numerous, one

20 was advanced as political expressions contained in

21 newsletters belonging to a group whose name was the

22 Canadian Ethnic Cleansing Team,

23 "...if the newsletter's content

24 was intended to express a

25 supposed political opinion, the

1 message could have been
2 communicated without resort to
3 the extremist and denigrating
4 language that pervades editions
5 of the newsletter that were
6 entered into evidences."

7 And I would submit that this -- the
8 case is the same in these circumstances.

9 Specifically, that the call for the
10 extermination of Aborigines, francophones, blacks and
11 other non-whites, as well as attacks on others based on
12 their religion, colour, national and/or ethnic origin
13 using racial slurs and degrading stereotypes does not
14 in any way, shape or form constitute legitimate
15 political debate, it promotes hatred and contempt.

16 I'd like to now address the issue
17 that Mr. Vigna touched upon briefly, and that is the
18 ability of the Tribunal to draw any adverse inference
19 from Mr. Harrison's declining to participate beyond the
20 opening in these proceedings.

21 Mr. Harrison chose not to give
22 evidence in this proceeding despite his initial
23 presence here. His refusal to submit himself to
24 cross-examination permits the Tribunal to draw an
25 inference that his evidence may indeed have been

1 detrimental to him if it had been given.

2 As noted by the Tribunal in Nealy, et
3 al. N-e-a-l-y, v. Johnston, et al., at paragraph 4, 5,
4 6, 27, quote:

5 "As Sopinka and Lederman,
6 supra., state, failure on the
7 part of a defendant to testify,
8 once a prima facie case has been
9 made out against the defendant,
10 may be the subject of an adverse
11 inference."

12 The learned authors also note:

13 "An unfavourable inference can
14 also be drawn when a party
15 litigant does not testify or
16 fails to call a witness who
17 would have knowledge of the
18 facts and who might have given
19 important supporting evidence if
20 the case of the litigant had
21 been sound."

22 In this case Mr. Harrison did not
23 testify, nor did he choose to call anyone else as a
24 witness or witnesses.

25 It is submitted that a prima facie

1 case has been made out in this case and that it would
2 be appropriate for the Tribunal to draw an adverse
3 inference under the circumstances.

4 As noted by Member Hadjis in the
5 Kulbashian decision at paragraphs 114 and 115, quote:

6 "The ultimate burden obviously
7 rests on the complainant and the
8 Commission to establish their
9 case on the balance of
10 probabilities but where the
11 prima facie case has been made
12 out, it is incumbent upon the
13 respondent to provide a
14 reasonable explanation
15 demonstrating that the alleged
16 discrimination did not occur as
17 alleged or that the conduct was
18 somehow non-discriminatory."

19 Member Hadjis continues:

20 "From my earlier discussion on
21 the evidence, it is clear that a
22 prima facie case has been
23 established against
24 Mr. Kulbashian and
25 Mr. Richardson. Did they put

1 forth a reasonable explanation?
2 Both gentlemen indicated at the
3 outside of the hearing that they
4 looked forward to presenting
5 their version of facts when
6 their turn would come up, but
7 when this opportunity finally
8 arrived, they chose not it to
9 adduce any evidence.

10 The Tribunal cannot take
11 stock of mere hints or innuendos
12 that may have been tossed in
13 with their leading questions
14 during their cross-examination
15 of Commission witnesses if there
16 is ultimately no evidence
17 introduced to sustain these
18 assertions. This is not a
19 reasonable explanation."

20 In this case there were a variety of
21 what I might call pseudo-denials or conspiracy theories
22 as to how the material might have ended up on the
23 Internet being so closely associated with Mr. Harrison.

24 But, again, the respondent's chose to
25 boycott the hearings after their initial appearance

1 and, thus, there is no evidence before the Tribunal
2 that could in any way substantiate those defences that
3 may have been included in the statement of particulars.

4 THE CHAIRPERSON: In the Kulbashian
5 case, they stayed at the hearing, they just did not put
6 in any evidence?

7 MR. WARMAN: Exactly.

8 THE CHAIRPERSON: They did
9 cross-examination the witnesses, but again, they did
10 not --

11 MR. WARMAN: Yes, they did. They
12 declined to take the stand, however.

13 THE CHAIRPERSON: Mm-hmm.

14 MR. WARMAN: It is submitted this is
15 exactly the case here as well, the respondent made a
16 variety of hypothetical suggestions in his statement of
17 particulars but called no evidence to substantiate
18 them.

19 Instead what transpired is that,
20 although initially in attendance, Mr. Harrison
21 thereafter chose to shout profanities and homophobic
22 abuse at me and then abandon the hearings.

23 THE CHAIRPERSON: Those
24 profanities -- I did hear profanity. Were those done
25 while we were still here in the room, or --

1 MR. WARMAN: I was on the witness
2 stand.

3 THE CHAIRPERSON: Yes.

4 MR. WARMAN: Mr. Harrison referred to
5 me as a fag, a faggot, a cock sucker and --

6 THE CHAIRPERSON: I did hear those
7 words. Yes, thank you.

8 --- (Court reporter states that this matter occurred as
9 hearing adjourned for recess and above-stated matter is
10 not on the record)

11 MR. WARMAN: I will save my closing
12 remark for my actual closing closing, but you had asked
13 a number of questions or had asked for any input that
14 Mr. Vigna wish to make in regards to some items that
15 you had raised.

16 The first was with regard to the
17 availability of the messages that were contained on the
18 message boards and, in fact, and I apologize, I don't
19 have the exact cite, but my testimony is that you did
20 not have to be a member to view a message, only if you
21 wished, in fact, to post onto the message board.

22 With regard to the intent of the
23 reader, whether the material appeared on a website
24 where a number of readers may have already been
25 predisposed to believe the messages.

1 THE CHAIRPERSON: Mm-hmm.

2 MR. WARMAN: The previous Tribunal
3 case law has indicated that the intent of the reader is
4 irrelevant, whether the reader is already inclined to
5 believe or even opposed to the hate messages.

6 And I will draw your attention to the
7 Winnicki case --

8 THE CHAIRPERSON: Tab 15.

9 MR. WARMAN: -- which is contained at
10 tab 15, starting at page 12, paragraph 46.

11 THE CHAIRPERSON: Page 12?

12 MR. WARMAN: Yes, please.

13 THE CHAIRPERSON: Paragraph 46. Yes.

14 MR. WARMAN: Because it is important
15 and it's fairly short, I would just like to read
16 through some of the passages, if I may.

17 THE CHAIRPERSON: Go ahead.

18 MR. WARMAN: Here Member Jensen
19 states:

20 "The Tribunal in Nealy v.
21 Johnston stated that the use of
22 the word "likely" in s. 13(1)
23 means that it is not necessary
24 that evidence be adduced to
25 prove that any particular

1 individual or group took the
2 messages seriously and directed
3 hatred or contempt towards
4 others, nor is it necessary to
5 show that, in fact, anyone was
6 so victimized. Unlike the other
7 sections in the Act dealing with
8 discrimination, s. 13(1)
9 provides for liability where
10 there is no proven or even
11 provable discriminatory impact."

12 Citing Nealy and Johnston.

13 "The Tribunal alluded to the
14 difficulty involved in
15 determining how many people had
16 received the message and to
17 gauging the impact of the
18 message on these people. This,
19 in the Tribunal's view,
20 justified the extension of
21 liability under s. 13(1) to
22 cases where there is no proven
23 or provable actual
24 discriminatory effect."

25 Paragraph 47 continues:

1 "The respondent in this case
2 took issue with the
3 interpretation of s. 13(1)
4 provided by the Tribunal in
5 Nealy v. Johnston, arguing that
6 the majority of the Supreme
7 Court in Taylor did not endorse
8 their interpretation. The
9 respondent based his argument on
10 statements made by Dickson C.J.,
11 on behalf of the majority of the
12 Supreme Court in that case. At
13 paragraph 60 Dickson, C.J.,
14 stated:
15 'In my view, there is no
16 conflict between providing a
17 meaningful interpretation of s.
18 13(1) and protecting the s. 2(b)
19 freedom of expression so long as
20 the interpretation of the words
21 "hatred" and "contempt" is fully
22 informed by an awareness that
23 Parliament's objective is to
24 protect the equality and dignity
25 of all individuals by reducing

1 the incidence of harm-causing
2 expression'."

3 The respondent in the Winnicki case
4 interpreted that statement, and others made by the
5 majority in Taylor regarding the importance of focusing
6 on the effects of discrimination to mean that s. 13(1)
7 requires proof that the impugned material caused harm.

8 Member Jensen states:

9 "I disagree with the
10 respondent's interpretation of
11 the majority's decision in
12 Taylor. Moreover, it does not
13 accord with the wording of s.
14 13(1) of the Act. Section 13(1)
15 makes it a discriminatory
16 practice to communicate messages
17 that are likely to expose a
18 person or persons to hatred or
19 contempt. The provision does
20 not state that it is a
21 discriminatory practice to
22 communicate hate messages that
23 cause others to feel hatred or
24 contempt toward members of the
25 targeted group.

1 As the majority in Taylor
2 stated, "hate messages, by their
3 very nature, do cause harm in
4 two significant ways. First,
5 they undermine the dignity and
6 self-worth of target group
7 members and, secondly, they
8 erode the tolerance and open
9 mindedness that must flourish in
10 a multicultural society that is
11 committed to the idea of
12 equality." This statement was
13 based on numerous studies and
14 Reports that established the
15 harm that is caused by hate
16 messages."

17 Citing Taylor.

18 "There is no suggestion that the
19 majority's conclusion with
20 regard to the harm that is
21 caused by hate messages was
22 limited to the particular facts
23 of the case."

24 She continues:

25 "Therefore, messages that fall

1 within the definition of "hate
2 messages" in s. 13(1) do cause
3 harm. Proof of harm is not
4 required.

5 The key is to ensure that only
6 those messages that are likely
7 to expose members of the
8 targeted group to unusually
9 strong and deep-felt emotions of
10 detestation, calumny and
11 vilification are caught by s.
12 13.(1)"

13 Mr. Vigna had mentioned the
14 possibility, I believe it was more simply sort of a
15 hypothetical reference that, in some way, perhaps these
16 materials might have been interpreted as a joke.

17 With regard to that, I won't go
18 through it, but I would simply draw your attention to
19 paragraphs 43 to 50 of the Warman v. Kulbashian, et al.
20 case which is contained at tab 14.

21 THE CHAIRPERSON: And that is
22 paragraph...?

23 MR. WARMAN: Paragraphs 43 to 50
24 which are contained on pages 17 and 18.

25 THE CHAIRPERSON: Thank you.

1 MR. WARMAN: And, in fact, I think
2 that the material before you, there is absolutely no
3 evidence that the material was intended to be taken as
4 a joke.

5 The materials are persistent in their
6 calls for genocide of the Aboriginal community, of the
7 francophone community, of the black and other non-white
8 community. There are no parentheses afterwards which
9 say ha! ha! I was just kidding, of course.

10 In fact, what you have is repeated
11 again and again and again, calls for the genocide of
12 these communities, despite the fact, as Mr. Vigna noted
13 in one instance another member stated specifically,
14 talk like that is likely to get you in legal trouble,
15 just warning you.

16 And in another case a moderator of a
17 neo-Nazi forum, which I submit is absolutely not a
18 place that you are likely to find a lot of people that
19 are concerned about hate speech in general, but a
20 moderator chose to delete a message, an entire message
21 that was posting stating that, that kind of talk was
22 illegal and that the board itself would not tolerate
23 that kind of behaviour.

24 So, when you have even a neo-Nazi
25 forum deleting comments and saying this is

1 unacceptable, it is violent and it calls for illegal
2 acts, I submit that the only inference is that these
3 messages were not intended to be taken as a joke, they
4 would not have been taken so by the targeted groups,
5 nor even by the members within the neo-Nazi community
6 itself.

7 THE CHAIRPERSON: But, again, there
8 is no evidence that somebody is saying -- I guess
9 you're answering Mr. Vigna's arguments, nobody said
10 that it was a joke, so I would not --

11 MR. WARMAN: Exactly. So, I --

12 THE CHAIRPERSON: The main issue I
13 guess for the complainant and the Commission in this
14 case, like you have stated on many occasions during
15 this hearing, is the issue of identity.

16 Once that is established, your
17 position is that the messages themselves are
18 self-explanatory about their intent.

19 MR. WARMAN: Yes. I don't believe it
20 could be said better than that. I do believe very much
21 that the messages do speak for themselves.

22 THE CHAIRPERSON: Yes.

23 MR. WARMAN: With regard to then
24 penalty, I differ only slightly from the Commission's
25 position in that I would submit that, in fact, the

1 maximum is, if not the only, a very appropriate penalty
2 in this case, a penalty of \$10,000 and I state that for
3 a number of reasons.

4 The first consideration is the
5 nature, extent and circumstances in this case. As we
6 have just discussed, you have individuals or even
7 within the neo-Nazi community saying, hey, you're going
8 too far, your stuff is going to get you in legal
9 trouble and deleting comments on the basis that they
10 are violent and unlawful and likely to get a neo-Nazi
11 forum located in the United States into trouble.

12 You have repeated over and over again
13 calls for genocide of the various communities. To me I
14 would submit that the nature, extent and circumstances
15 are as severe as one can possibly imagine.

16 I may have covered this a little bit
17 already, but with regard to the wilfulness and intent,
18 it's my submission that the poster of these messages
19 knew very well what the reaction was likely to be of
20 individuals to those messages.

21 There were not only the previous
22 incidents discussed of comments being deleted from
23 neo-Nazi forum, warnings from other neo-Nazi, but even
24 neo-Nazis got into arguments with the poster saying,
25 look, stop picking on francophones, they are aryan

1 too, stop picking on Italians, who are all part of our,
2 you know, aryan race.

3 So, when you have even people within
4 a milieu that is dedicated to the premise of those same
5 beliefs saying you're going too far, surely at some
6 point that brings home the message in vivid colour to
7 the poster that the wilfulness and intent required to
8 continue making those postings is extreme.

9 In terms of the prior discriminatory
10 practices, I would respectfully submit that the
11 arguments that were submitted from the Georgetown
12 Independent Free Press may be taken into consideration
13 by the Tribunal for more than just the issue of
14 identity based on --

15 THE CHAIRPERSON: How? How can I do
16 that? Yes.

17 MR. WARMAN: Based on the fact that
18 they are corroborated by the postings themselves.

19 The postings indicate they are
20 self-referential, they talk about an attack and what is
21 variously described as a nigger, a nigger chink, a
22 nigger half breed, a half breed, whatever pejorative
23 racial slur the poster chose to use at any given moment
24 with regard to the victim.

25 They state that -- the poster states

1 that they were sentenced to two years in jail for
2 having committed just such a racist assault.

3 The evidence before you is also that
4 the court documents that were submitted to you, the
5 probation order signed by Mr. Harrison.

6 Mr. Harrison having been convicted,
7 having pled guilty -- excuse me, having been sentenced
8 to two years less a day imprisonment in signing his
9 probation orders, then chooses to scrawl swastikas
10 beside his name.

11 I think when you look at that, and in
12 terms that also can be taken into account in
13 considering prior discriminatory practices.

14 And I say that the articles
15 themselves can be considered, and I say that only to
16 the extent that they confirm exactly what the poster
17 themselves has claimed repeatedly over and over again.

18 And the poster wasn't saying, I'm
19 remorseful for having committed this racist assault,
20 the poster doesn't say, it's a really bad idea, it was
21 wrong, I shouldn't have done it, I'm sorry, you know,
22 I'm trying to set my life straight.

23 The poster says, I'm a real Canadian
24 hero because I attacked some guy who's of mixed black
25 and Chinese ancestry and hospitalized him and then I

1 did two years for that and that makes me a hero, and is
2 going on to these boards and egging and egging on, is
3 essentially adding fuel to the fire of a neo-Nazi forum
4 where you have people who are already predisposed to
5 think badly of the black community, of the Chinese
6 community, any non-white communities and saying, you
7 know what, I did something about it.

8 There are repeated exhortations that
9 you guys don't have any backbone because you guys sit
10 around and talk, talk, talk and I do the doing, I do
11 the actual work and I did that by beating down some
12 poor guy on the Main Street in Georgetown, he was
13 minding his own business, trying to make a life for
14 himself.

15 I would submit to you that all of the
16 evidence by the poster themselves cries out that they
17 have committed prior discriminatory acts and that that
18 may be considered by the Tribunal.

19 THE CHAIRPERSON: Just a question on
20 the facts on that. I guess there is no -- anything to
21 contradict the evidence that at one point he's
22 realcanadianson certainly referred specifically to that
23 Georgetown incident.

24 I guess, again, we didn't have any
25 evidence telling us the opposite or that wasn't right

1 it was somebody else, so there is no evidence to
2 contradict that realcanadianson certainly referred to
3 that incident.

4 I don't remember, maybe you do, I
5 will certainly check it out through the evidence, does
6 rump refer to that incident also at one point?

7 I will check it out myself at one
8 point, I am just asking the question if you do remember
9 or does realnorthamerican or --

10 MR. WARMAN: Yes. If I can refer you
11 to HR-35.

12 THE CHAIRPERSON: HR-35. Yes, rump.
13 Yes, it doesn't really --

14 MR. WARMAN: Sorry.

15 MR. VIGNA: Sorry, it's a mistake on
16 my part, I saw Georgetown there.

17 THE CHAIRPERSON: No, it doesn't
18 really refer to that. But it's just that since we
19 didn't have any -- you were referring to that incident
20 and certainly the question of identity it is an
21 important issue, and in realcanadianson we have seen
22 that reference on many occasions.

23 MR. WARMAN: Yes.

24 THE CHAIRPERSON: And I was just
25 wondering if the same was done for rump, but I will

1 check it out myself also or realnorthamerican also.

2 MR. WARMAN: I can state with
3 certainty that the last exhibit --

4 THE CHAIRPERSON: Yes, but there is
5 no name, I remember.

6 MR. WARMAN: Yes, sure. But I would
7 submit that the evidence taken in its totality, all of
8 the indicia, that the posting language, the posting
9 messages, the targeted communities, even the language
10 used itself --

11 THE CHAIRPERSON: Were the same.

12 MR. WARMAN: -- are so similar that
13 it would defy logic to make any other inference, that
14 they are in fact the same individual making those
15 postings.

16 THE CHAIRPERSON: And, again, I
17 understand that in the disclosure there was an attempt
18 to give an explanation to that but, again, they chose
19 not to submit any evidence today.

20 MR. WARMAN: Indeed.

21 The last thing that I would mention
22 in that regard is with regard to the ability to pay.

23 As Mr. Vigna has indicated, in Kyburz
24 the issue was considered and that any evidence of
25 impecuniosity must be tendered by the respondent

1 themselves and that I would suggest to you that the
2 only evidence that you have before you in this case is
3 that Mr. Harrison is employed because he has indicated
4 during conference calls --

5 THE CHAIRPERSON: Do I have that in
6 evidence here?

7 MR. WARMAN: The Tribunal in
8 teleconference calls beforehand --

9 THE CHAIRPERSON: Well, that is not
10 part of the evidence though.

11 MR. WARMAN: I will proceed.

12 So, the issue of what an appropriate
13 remedy is in terms of the cease and desist order, I
14 would respectfully submit that the wording found at
15 paragraph 1.1.3(i), that's the Kyburz decision at tab
16 12 of the authorities -- sorry, sub (1) would be the
17 appropriate one.

18 In that in some cases there is a
19 difference in the language of some of the orders that
20 have been issued by the Tribunal.

21 THE CHAIRPERSON: 1.1.3(1)?

22 MR. WARMAN: Yes, 1.1.3(1). That is
23 at page 38.

24 THE CHAIRPERSON: Thank you.

25 MR. WARMAN: Tab 12. And I say that

1 only because previously some of the Tribunal Members
2 have issued orders subsequent to a finding of liability
3 that include only the targeted groups, whereas I would
4 submit that a large liberal interpretation as has been
5 dictated by the Supreme Court of the Act is not to, in
6 essence, give the possibility to a respondent of simply
7 switching their targets, of saying before I was only
8 targeting the francophone, black, other non-white and
9 Aboriginal communities, I now have an order against me
10 barring me from targeting those groups, but nobody told
11 me I couldn't target the homosexual community or the
12 disabled community.

13 So, in keeping with a large and
14 liberal interpretation of the Act, and to give meaning
15 to the content of the section within the Act, I would
16 submit that it is better to issue an order that
17 prohibits the dissemination of hate messages simply
18 against persons or groups of persons that are
19 identifiable on the basis of a prohibited ground of
20 discrimination contrary to section 13(1) of the
21 Canadian Human Rights Act.

22 THE CHAIRPERSON: In this case the
23 nature of the order that the Commission and complainant
24 are seeking is that the respondent cease the
25 practice -- the discriminatory practice of

1 communicating by Internet.

2 MR. WARMAN: No. In fact, again, in
3 order to ensure that there is no sort of weasel room,
4 if you like, an order simply dealing with the Internet
5 would not prevent someone from then setting up a
6 telephone hate line, which is the old method by which
7 hate groups disseminated hate messages.

8 The wording communicating
9 telephonically or causing to be communicated
10 telephonically by means of the facilities of a
11 telecommunication undertaking, essentially to mean the
12 words that are contained within the section itself.

13 THE CHAIRPERSON: Okay.

14 MR. WARMAN: And because section
15 13(2)

16 makes explicit that that includes the
17 Internet, I would submit that the broader order would
18 be more appropriate.

19 THE CHAIRPERSON: But you would
20 not -- are you asking me also to go as far as they did
21 say in Kyburz because he had a website I believe in
22 that case.

23 MR. WARMAN: Yes.

24 THE CHAIRPERSON: But in this case
25 there is no website belonging to the respondent, so...

1 MR. WARMAN: So, the last sentence
2 should simply be ignored as not relevant to the facts
3 of this case.

4 THE CHAIRPERSON: Okay. If I do
5 that the respondent is the person
6 that posted this information.

7 MR. WARMAN: Precisely.

8 The only other thing you had asked
9 about, or you had made comment on was whether it would
10 be appropriate to take into account the fact that it
11 appeared that the individual responsible for all of
12 these postings, that the evidence in this case
13 submitted before you, goes only to 2004.

14 And I would submit with respect that
15 the evidence before you goes to 2004. There is no
16 evidence before you that the individual responsible
17 has, in fact, stopped posting.

18 The complaint was filed in November
19 of 2003, I submitted with it the best evidence that I
20 had available to me at the time and, through a limited
21 amount of further research within a close proximity of
22 that time, I was able to locate other similar postings
23 that appeared to be have been posted by the same
24 individual.

25 So, I would submit that because there

1 is no evidence before you either way that it is not
2 really something that should be considered or taken
3 into consideration by the Tribunal.

4 Casting a net over the entire
5 Internet is very difficult at the best of times. The
6 amount of work that is required to go into amassing the
7 30 some odd exhibits that you found is enormous.

8 The amount of time and effort to
9 bring it from the initial deposition of a filing of a
10 complaint with the Commission in November of 2003 to
11 now, to a week-long hearing -- three-day long hearing
12 before the Tribunal in June of 2006 is enormous.

13 So, to take into consideration
14 something that may or may not exist, I would submit,
15 should not be considered to be a mitigating factor.

16 Mr. Chair, I would close with words
17 that I believe could have been written precisely for
18 circumstances such as this case.

19 Martin Luther King Jr. once said
20 that:

21 "Morality cannot be legislated
22 but that behaviour can be
23 regulated. Judicial decrees may
24 not change the heart, but they
25 can restrain the heartless."

1 And barring any further questions
2 that you may have, those are my submissions.

3 THE CHAIRPERSON: Thank you very
4 much, Mr. Warman.

5 MR. WARMAN: Thank you.

6 THE CHAIRPERSON: Mr. Vigna, is there
7 anything else at this point you wish --

8 MR. VIGNA: Not much, just a
9 clarification. When I mentioned about the jokes, I was
10 referring to primarily HR-33.

11 THE CHAIRPERSON: Yes.

12 MR. VIGNA: Where the headline is
13 jokes and trivia.

14 THE CHAIRPERSON: I understand that.

15 MR. VIGNA: Okay.

16 THE CHAIRPERSON: Thank you. Is that
17 it? There is nothing else to add at this point.

18 So, I would like to thank counsel for
19 the Commission and Mr. Warman for going through this
20 process with me. I will certainly now take the time to
21 go over the evidence that you have submitted.

22 Certainly my task now is only to
23 consider if the Commission and Mr. Warman have met
24 their burden of establishing a discriminatory practice
25 under section 13.

1 Unfortunately for the respondent they
2 decided not to participate in the hearing and not to
3 submit any evidence to explain the situation or to give
4 their side of the story, but that is their choice, and
5 I will now look at this matter and decide the matter on
6 the basis of the evidence that is before me and on the
7 arguments that were submitted to the Tribunal by the
8 Commission and by the complainant.

9 So, again, I wish you the best of
10 luck in your future endeavours and thank you very much
11 for your time and patience.

12 MR. WARMAN: Thank you.

13 THE CHAIRPERSON: Thank you to the
14 people of the stenograph and to people from the staff
15 of the Tribunal.

16 Thank you.

17 REGISTRY OFFICER: Order, please.

18 --- Whereupon the hearing concluded at 2:55 p.m.

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I HEREBY CERTIFY THAT I HAVE, to
the best of my skill and
ability, accurately reported and
transcribed the foregoing.



Beverley Dillabough

C.S.R., R.P.R.

StenoTran