

**CANADIAN
HUMAN RIGHTS
TRIBUNAL**



**TRIBUNAL CANADIEN
DES DROITS
DE LA PERSONNE**

BETWEEN/ENTRE:

RICHARD WARMAN

Complainant

le plaignant

and/et

CANADIAN HUMAN RIGHTS COMMISSION

Commission

la Commission

and/et

CANADIAN HERITAGE ALLIANCE
MELISSA GUILLE

Respondents

les intimées

BEFORE/DEVANT:

PIERRE DESCHAMPS

CHAIRPERSON/
PRÉSIDENT

LINDA BARBER

REGISTRY OFFICER/
L'AGENTE DU GREFFE

FILE NO./N^o CAUSE:

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CANADIAN HUMAN RIGHTS TRIBUNAL/
TRIBUNAL CANADIEN DES DROITS DE LA PERSONNE

HEARING HELD AT THE JPR ARBITRATION CENTRE, 390 BAY STREET,
FOURTH FLOOR, TORONTO, ONTARIO ON MONDAY, NOVEMBER 20, 2006,
AT 9:30 A.M. LOCAL TIME

CASE FOR HEARING/CAUSE DEVANT ÊTRE ENTENDUE

IN THE MATTER of the complaints filed under section 13.1 of the Canadian Human Rights Act by Richard Warman dated August 11, 2004, against Melissa Guille and the Canadian Heritage Alliance. The complainant alleges that the respondents have engaged in a discriminatory practice on the grounds of sexual orientation, religion, race, colour and national or ethnic origin in a matter related to the usage of a telecommunication undertaking.

APPEARANCES/COMPARUTIONS

Richard Warman	On his own behalf
Karen Ceilidh Snider Don Hawkins	For the Commission
Alexan Kulbashian	For Melissa Guille
Paul Fromm	For Canadian Heritage Alliance

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Toronto, Ontario

--- Upon commencing on Monday, November 20, 2006
at 9:45 a.m.

REGISTRY OFFICER: Order, please.

All rise.

Please be seated.

THE CHAIRPERSON: Good morning,
everyone.

MS CEILIDH SNIDER: Good morning.

MR. WARMAN: Good morning.

MR. KULBASHIAN: Good morning.

REGISTRY OFFICER: The case for
hearing today is in the matter of complaints filed
under section 13.1 of the Canadian Human Rights Act by
Richard Warman dated August 11, 2004, against Melissa
Guille and the Canadian Heritage Alliance.

The complainant alleges that the
respondents have engaged in a discriminatory practice
on the grounds of sexual orientation, religion, race,
colour and national or ethnic origin in a matter
related to the usage of a telecommunication
undertaking.

Presiding as Chairperson of this
inquiry is Pierre Deschamps.

The Tribunal now calls for

1 appearances, please.

2 MS CEILIDH SNIDER: Karen Snider on
3 behalf of the Canadian Human Rights Commission.

4 My colleague Don Hawkins is with me.

5 MR. HAWKINS: Good morning.

6 THE CHAIRPERSON: Good morning.

7 MS CEILIDH SNIDER: To my left,
8 Richard Warman, the complainant.

9 MR. WARMAN: Good morning.

10 THE CHAIRPERSON: Good morning.

11 MS CEILIDH SNIDER: And I'll let the
12 respondents identify themselves.

13 MR. KULBASHIAN: Alex Kulbashian
14 appearing on behalf of Ms Guille.

15 --- Reporter appeals

16 MR. KULBASHIAN: Alex Kulbashian
17 acting as the agent for the named respondent, Melissa
18 Guille.

19 This is Melissa Guille, the named
20 respondent, and Mr. Paul Fromm who is appearing on
21 behalf of the Canadian Heritage Alliance.

22 THE CHAIRPERSON: Good morning,
23 everyone.

24 MR. FROMM: Good morning.

25 MR. KULBASHIAN: Good morning.

1 THE CHAIRPERSON: Before we start
2 addressing substantial issues, there are some maybe
3 procedural issues that need to be addressed and I have
4 identified a few of them.

5 Now, first of all, with the parties
6 involved in this hearing, from what I have read from
7 the file, Mr. Kulbashian, you are representing Ms
8 Guille.

9 MR. KULBASHIAN: I am.

10 THE CHAIRPERSON: And it is expected
11 that even though you are not a lawyer, I presume.

12 MR. KULBASHIAN: I'm not.

13 THE CHAIRPERSON: You would be the
14 one who would be cross-examining Mr. Warman and
15 examining in-chief Ms Guille, that is my understanding.

16 MR. KULBASHIAN: That's right.

17 THE CHAIRPERSON: And, Mr. Fromm, you
18 are not a lawyer?

19 MR. FROMM: No, I'm not, sir.

20 THE CHAIRPERSON: But from my
21 understanding of how we will proceed, you will be
22 putting questions to Ms Guille, I presume, if need be.

23 MR. FROMM: If need be.

24 THE CHAIRPERSON: If need be.

25 MR. FROMM: And presumably

1 cross-examining Mr. Warman.

2 THE CHAIRPERSON: Okay. Do the
3 parties or the Commission or the complainant have any
4 problem with that?

5 Mr. Warman?

6 PRELIMINARY MOTION BY MR. WARMAN

7 MR. WARMAN: Mr. Chair, perhaps if I
8 can start.

9 There are two objections that we wish
10 to make. The first is in relation to Mr. Kulbashian
11 appearing in any capacity before this Tribunal.

12 Just give me a moment.

13 Mr. Kulbashian is currently the
14 subject of a previous decision by the Canadian Human
15 Rights Tribunal that was handed down by Member Hadjis
16 2006/03/10.

17 Mr. Hadjis found Mr. Kulbashian to
18 have violated section 13 of the Canadian Human Rights
19 Act. He also found Mr. Kulbashian to have violated the
20 retaliation provisions of the Canadian Human Rights
21 Act.

22 Specifically, I would like to bring
23 to the Tribunal's attention several paragraphs from
24 that decision, the first one being paragraph 60.

25 THE CHAIRPERSON: I don't have a copy

1 of the decision and I don't know if Mr. Kulbashian and
2 Mr. Fromm and Ms Guille have copies of the documents
3 that will be referred to by Mr. Warman.

4 MR. FROMM: We don't have copies of
5 that decision, Mr. Chairman.

6 MS CEILIDH SNIDER: I have a copy, I
7 can give a copy of the decisions to parties and then
8 provide my copy to you, sir, as well.

9 THE CHAIRPERSON: Because if we are
10 to refer to certain documents , I think it is essential
11 that everyone have copies, including the Tribunal, so
12 that eventually Mr. Kulbashian and Mr. Fromm or Ms
13 Guille will be able to respond appropriately to the
14 objection that is now being made.

15 Mr. Kulbashian?

16 SUBMISSIONS ON BEHALF OF THE RESPONDENT

17 MR. KULBASHIAN: Mr. Chair, I would
18 ask that if they are going to bring up this issue that
19 they actually disclose copies of the decision to us so
20 we can actually review them instead of standing around
21 and --

22 MR. WARMAN: Member Deschamps, Mr.
23 Kulbashian is the subject of this decision and a copy
24 was served on him in accordance with the Tribunal's
25 proceedings.

1 MR. KULBASHIAN: I don't have a copy
2 available with me though.

3 MR. WARMAN: The fact that Mr.
4 Kulbashian was intending to represent Ms Guille was
5 disclosed on Friday or Thursday of last week.

6 So, it puts everyone in a difficult
7 position when that kind of late notice is given.

8 THE CHAIRPERSON: No, it is just
9 that, you know, for the fairness to the process,
10 certainly if all the parties could have copies, so that
11 people could follow, you know, your arguments.

12 MS CEILIDH SNIDER: We have copies
13 back at the hotel. We can go provide those documents
14 in fairly short order.

15 THE CHAIRPERSON: Because I think the
16 respondents are entitled at this point in time, even
17 though maybe Mr. Kulbashian knows what the decision is
18 all, but if you are to refer to certain paragraph, if
19 he doesn't have in front of him a copy, it is going to
20 be hard for him to read --

21 MR. WARMAN: It was my intention to
22 read the specific paragraphs into the record, if that's
23 of assistance.

24 MR. KULBASHIAN: Well, the fact of
25 matter is, if he's going to read certain paragraphs, I

1 should be able to read other paragraphs of the decision
2 and be able to follow through rather than having to
3 listen to what he has to say, because I should actually
4 have a chance to respond as well.

5 THE CHAIRPERSON: I think in all
6 fairness to the parties, so that no one will say that
7 at end of the day that fairness was not part of the
8 process, I think it would be a good thing for -- if you
9 are to refer to not only that decision but other
10 documents, for the respondents to have copies of --

11 MR. WARMAN: If we could perhaps just
12 adjourn for 10 minutes, we could procure those other
13 copies.

14 THE CHAIRPERSON: Okay. So, we will
15 do that.

16 REGISTRY OFFICER: Order, please.

17 --- Upon recessing at 10:00 a.m.

18 --- Upon resuming at 10:20 a.m.

19 REGISTRY OFFICER: Order, please.

20 All rise.

21 Please be seated.

22 THE CHAIRPERSON: Mr. Warman.

23 MR. WARMAN: I believe the shortage
24 of documentation has been rectified, Mr. Chairman.

25 So, if I may refer you to tab 15,

1 Volume Two of Two of the Canadian Human Rights
2 Commission Book of Authorities, page 21 of tab 15,
3 please.

4 THE CHAIRPERSON: Page twenty...?

5 MR. WARMAN: 21. And, sorry, I
6 should note that just for the record the document I'm
7 referring to is the Canadian Human Rights Tribunal's
8 Decision by Member Hadjis in the case of Warman and the
9 Commission against Alexan Kulbashian, James Scott
10 Richardson, Tri-CitySkins.com, Canadian Ethnic
11 Cleansing Team and AffordableSpace.com.

12 At paragraph 60 of page 21, Member
13 Hadjis ruled:

14 "The same can be said of the
15 Vinland Voice editor's..."

16 Vinland Voice was a newsletter that
17 was put out by the Canadian Ethnic Cleansing Team. He
18 states:

19 "The same can be said of the
20 Vinland Voice editor's criticism
21 of Israel's policies set out in
22 Newsletter no. 12. The writer
23 resorts to denigrating language
24 against Jewish people,
25 describing them as a "Zionist

1 plague". This characterization,
2 along with their depiction as
3 "Betrayers of Christ", could
4 likely incite Christians and
5 others to feel hatred and
6 contempt against Jews. This
7 inference can easily be drawn
8 when considering the context of
9 this article.

10 He goes on to discuss a specific
11 threat that was made.

12 "It was preceded in the same
13 newsletter by a rant against Mr.
14 Warman in which victims of the
15 Holocaust were cruelly mocked:
16 - "Vacation pay...for working at
17 Auschwitz";
18 - "It will be a gas" - which I
19 take as a reference to the gas
20 chambers used in Nazi death
21 camps;
22 - "300,000 real reasons and 5.7
23 million made-up ones" - which is
24 meant to suggest that the
25 Holocaust did not take place, or

1 that the death toll was grossly
2 exaggerated.

3 In my view, these remarks
4 have the effect of exposing
5 Jewish persons to sentiments of
6 disdain and contempt."

7 I would turn to page 35, please,
8 paragraph 111. Member Hadjis ruled:

9 "Taking all of the evidence into
10 account, I have made the
11 following findings with respect
12 to Mr. Richardson and Mr.
13 Kulbashian and their level of
14 involvement with the Hate
15 Messages:

16 - Mr. Richardson and Mr.
17 Kulbashian were members of the
18 Canadian Ethnic Cleansing Team;
19 - Mr. Kulbashian operated a firm
20 under the name Affordable
21 Space.com which provided web
22 hosting services for websites
23 that included tri-cityskins.com,
24 wppect.com, and
25 vinlandvoice.com;

1 - Mr. Richardson and Mr.
2 Kulbashian contributed to the
3 content posted on the Canadian
4 Ethnic Cleansing Team's website,
5 namely its Vinland Voice
6 newsletter under the
7 pseudonyms..."

8 And then gives their respective
9 pseudonyms.

10 On the next page, page 36, the third
11 paragraph down, he states:

12 "Mr. Kulbashian (under the
13 pseudonyms "Totenkopf" and Alex
14 Krause") assumed the function of
15 editor and contributor to the
16 Editor's Voice and other
17 editorial comments in the
18 Vinland Voice, following Mr.
19 Richardson's arrest. Mr.
20 Kulbashian, in this capacity,
21 authored the material
22 communicated in Newsletter #12
23 (December 12, 2001) that I have
24 determined to form part of the
25 Hate Messages in this case."

1 The second paragraph that:
2 "- However, Mr. Kulbashian was
3 aware that persons or groups of
4 persons acting in concert were
5 using his web services to
6 communicate messages that
7 contravened s. 13 of the Act,
8 which included the material
9 posted on the tri-cityskins.com
10 website. One quarter of the
11 websites that Mr. Kulbashian
12 hosted on his server were, as he
13 acknowledged, "racialist" in
14 nature. Mr. Kulbashian admitted
15 during the taped police
16 interview that he intentionally
17 used a server that was
18 physically situated in the
19 United States in a deliberate
20 effort to avoid being subject to
21 the Canadian Human Rights Act."

22 The next page, paragraph 112:

23 "I therefore find that Mr.
24 Kulbashian and Mr. Richardson,
25 individually and in concert,

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1 communicated or caused to be
2 communicated repeatedly through
3 the Internet, matter that is
4 likely to expose persons to
5 hatred or contempt based on
6 their religion, race or
7 ethnic/national origin. Mr.
8 Warman's s. 13 complaint against
9 Mr. Kulbashian and Mr.
10 Richardson has been
11 substantiated."

12 I would turn to page 43, if I may,
13 please.

14 Paragraph 137 states:

15 "The complainant..."
16 That being me,
17 "...was specifically named in
18 the Vinland Voice newsletter no.
19 12, of December 10, 2001. I
20 have already determined that the
21 author of the article in
22 question was Mr. Kulbashian.
23 The article posted Mr. Warman's
24 home address and gave thanks to
25 "that Jewish lawyer". Mr.

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1 Warman is apparently not Jewish
2 but the author obviously
3 perceived him as such. The
4 article went on to make cruel
5 remarks about Holocaust victims,
6 including those that the author
7 assumed were Mr. Warman's
8 relatives."

9 The next paragraph:

10 "The attack was very personal
11 and Mr. Warman testified that he
12 felt some concern, considering
13 the reference to the murder of
14 Holocaust victims and the
15 posting of his home address in
16 the newsletter. He interpreted
17 the allusion to the death of
18 Jews in the past, as a direct
19 threat to his own personal
20 safety. In my view, and in
21 keeping with my earlier findings
22 regarding the Vinland Voice
23 Newsletter no. 12, this attack
24 was likely to expose him to
25 hatred or contempt on the basis

1 of being identifiable on a
2 prohibited ground of
3 discrimination. It does not
4 matter whether Mr. Warman was in
5 fact Jewish or not. A person
6 who is perceived to have the
7 characteristics of someone who
8 falls within one of the
9 prohibited grounds of
10 discrimination, may be the
11 object of discrimination even
12 though he does not actually have
13 those characteristics."

14 There are some citations.

15 "Taken in this context, Mr.
16 Warman is in my view, a victim
17 of the Hate Messages that
18 constituted of the
19 discriminatory practice."

20 At page 45, paragraph 146 at the
21 bottom -- excuse me, paragraph 145 essentially
22 summarizes the few reasons why Mr. Kulbashian submitted
23 to the Tribunal that he should be held to somehow a
24 lesser account on the basis of what had transpired.

25 Paragraph 146, Member Hadjis however

1 finds that this
2 "...assumes a false naivete on
3 Mr. Kulbashian's part. He knew
4 that a good number of his
5 "clients" were "racialist".
6 They shared the same post office
7 box as his business, Affordable
8 Space.com. He was a key member
9 of the Canadian Ethnic Cleansing
10 Team. He acknowledged having
11 designed the template for its
12 website, wpcect.com. Moreover,
13 Mr. Kulbashian wrote articles
14 and commentary in its
15 newsletter, the Vinland Voice.
16 The name alone of this group
17 should have alerted him to the
18 possibility that the messages on
19 the website may violate the Act.
20 In addition, as a regular member
21 of the Tri-City Skins, he likely
22 was familiar with the
23 organization's website. Indeed,
24 so mindful of the likelihood of
25 his clients' posting hateful

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1 messages that one of the reasons
2 he opted to use a computer
3 server situated outside Canada
4 was to evade s. 13 of the Act.

5 It lacks credulity,
6 therefore, for Mr. Kulbashian to
7 come today before the Tribunal
8 and feign ignorance of the
9 nature of the material that was
10 being communicated by way of his
11 web hosting services. On the
12 contrary, the above demonstrates
13 that he was aware of the content
14 of the material, and consciously
15 and deliberately enabled its
16 dissemination. This is wilful
17 conduct within the meaning of
18 the Act."

19 The Tribunal at paragraph 150 orders
20 Mr. Kulbashian to pay a penalty in the amount of \$1,000
21 to be received by the Tribunal within 120 days of being
22 notified of the decision.

23 If I may just take you back to,
24 excuse me, paragraph 139 on page 43, at the bottom Mr.
25 Kulbashian is therein ordered:

1 "...to pay Mr. Warman the sum of
2 \$5,000 as special compensation
3 pursuant to s. 54(1)(b) of the
4 Act."

5 Mr. Chair, with your permission I'd
6 like to take the witness stand for approximately two
7 minutes, simply for the purpose of testifying to this
8 objection and then I will close my submissions on this
9 subject simply because, otherwise, as a party, I would
10 be giving evidence pursuant to my submission.

11 THE CHAIRPERSON: Any objections?

12 But then the question arises, if you
13 take the witness stand and you testify, the Commission
14 will be able to examine you...

15 MR. WARMAN: Solely for the purposes
16 of what I'm submitting.

17 THE CHAIRPERSON: Yes.

18 MR. WARMAN: This is solely for this
19 purpose.

20 THE CHAIRPERSON: Then the
21 respondents would be entitled to cross-examine you on
22 what --

23 MR. WARMAN: The testimony will
24 amount to all of about a dozen words, at most.

25 THE CHAIRPERSON: But still...

1 MR. WARMAN: We need to enter the
2 evidence and I obviously can't do so as a party.

3 THE CHAIRPERSON: So, you have no --
4 yes, Mr. Fromm?

5 MR. FROMM: Mr. Chairman, shouldn't
6 this -- whatever evidence Mr. Warman intends to offer
7 at this time, should this not be presented in the form
8 of an affidavit.

9 MR. WARMAN: Obviously not. The
10 objection is being maintained for the first time now.

11 Ms Guille disclosed for the first
12 time that the intended representatives were Mr. Fromm
13 on behalf of the CHA and Mr. Kulbashian on behalf of
14 her last week, last Thursday or Friday.

15 THE CHAIRPERSON: Yes, Mr.
16 Kulbashian.

17 MR. KULBASHIAN: But, Mr. Chair, just
18 to clarify, Mr. Fromm was designated as agent for the
19 CHA almost -- like, I think it would be almost two
20 months ago the first time.

21 It is true that she just recently
22 picked me as her agent specifically. I don't, like,
23 the only issue that I have is previously maybe about
24 five or six months ago Mr. Warman already sensed that
25 there might be a chance that I would be representing Ms

1 Guille, he also put in objections with the Tribunal and
2 stated that he was going to object to me being Ms
3 Guille's agent, so he did have a certain amount of
4 reasonable notice.

5 Also, they did have seven copies of
6 these documents and everything was pretty much ready.

7 So, I mean, if he wants to testify, I
8 guess I will reserve my right to cross-examine him on
9 issues that are contained, not only in his testimony,
10 but everything contained with this case as well as
11 issues that might have arisen in the case in order to
12 address the issues that he's bringing forth.

13 THE CHAIRPERSON: The first thing is
14 whether it is through an affidavit or viva voce
15 evidence I don't see, you know, a big difference this
16 morning.

17 Mr. Fromm?

18 MR. FROMM: Well, there is going to
19 be an objection later on, sir, to what we feel is
20 disclosure by ambush, but...

21 THE CHAIRPERSON: Well, we will get
22 to that.

23 MR. FROMM: But along those lines,
24 apparently in the teleconferences that preceded this
25 case, it was indicated that Mr. Kulbashian was very

1 likely going to participate, there would be a role for
2 him and, thus, if there are objections from Mr. Warman,
3 if there is material that he wanted to bring forth,
4 that could have been prepared and provided in a far
5 more timely way than having him testify this morning.

6 They knew Mr. Kulbashian would be
7 participating in some manner in assisting the
8 respondent.

9 MR. KULBASHIAN: In order to clarify,
10 see, the issue is his motion here is not to, I guess,
11 challenge my status as an agent for one of the
12 respondents, it's to exclude me from the hearing
13 altogether and he knew I would be present at the
14 hearing, he knew I would have some capacity.

15 THE CHAIRPERSON: Well, the only
16 thing I know --

17 MR. KULBASHIAN: So, he did have some
18 warning.

19 THE CHAIRPERSON: The only thing I
20 know for sure right now is that Mr. Warman wants to
21 take the stand to testify to certain things.

22 MR. KULBASHIAN: Right.

23 THE CHAIRPERSON: And my question to
24 him was, that if he takes the stand, then the
25 Commission can put questions to him and then arises the

1 issue as to whether Mr. Kulbashian and Mr. Fromm can
2 cross-examine you at this point in time on this
3 discrete issue of the objection of having Mr.
4 Kulbashian and Mr. Fromm being agents for -- right now
5 it is just Mr. Kulbashian, I don't know about Mr. Fromm
6 and the Canadian Heritage Alliance.

7 I don't know if Ms Snider had
8 something to add.

9 MS CEILIDH SNIDER: It my be helpful
10 to note that, yes, this issue was addressed in a
11 motion, an exchange of letters and the Tribunal at that
12 time ruled that it would be more appropriate to deal
13 with the issue of Mr. Kulbashian or Mr. Fromm's
14 participation in the hearing, and particularly that of
15 Mr. Kulbashian at the time of the hearing, and that's
16 why we are presently dealing with this issue.

17 I believe also that it's helpful to
18 note that the evidence that will be tendered shortly my
19 Mr. Warman is very limited to the issue of payment
20 only, and I believe that it would be appropriate, if
21 the respondents wish to cross-examine him on that
22 issue, he can be cross-examined on that issue and that
23 issue alone.

24 THE CHAIRPERSON: Well, I don't know
25 what Mr. Warman's evidence will be, we will have to

1 wait and see and then we will...

2 MR. WARMAN: Just for the fact of Mr.
3 Kulbashian, I should state that I'm not looking to have
4 him excluded from the hearing room simply that he not
5 take part as an agent in this proceeding for the other
6 party.

7 MR. KULBASHIAN: But, Mr. Chair, one
8 issue that I have is he stated that he wasn't prepared
9 for this situation, yet he already had paragraphs
10 picked out that he would direct us to, so while he
11 read.

12 Everything seemed to be already
13 prepared. He was in the company of two lawyers and he
14 could have prepared an affidavit over the weekend, even
15 at this point, but I mean, if he wants to testify, all
16 I'm saying is I reserve the right to question him on
17 all particulars regarding the case because if -- the
18 major issue is the case under appeal at the moment in
19 the Federal Court.

20 As well as, another issue is that Mr.
21 Warman had previously tried to get Mr. Fromm barred
22 from the hearing as an agent and there was an order
23 issued by the Tribunal yet the order is not actually
24 available for us to read because it wasn't handed out
25 to the parties, so...

1 THE CHAIRPERSON: I think for, you
2 know, the clarity of the process, we should deal with
3 one issue at a time, and I know that there are other
4 outstanding preliminary issues that the Tribunal will
5 have to deal with.

6 MR. KULBASHIAN: I'm only discussing
7 the issue regarding this specific motion that he's
8 making because the major issue is -- this is, in a way,
9 kind of a surprise because we haven't had time to even
10 review, like, you know, notes to review the situation
11 or to, I guess, respond or even ask him questions in
12 cross-examination.

13 Another major issue is that there was
14 actually a similar motion that was put forth I believe
15 by the Commission or Mr. Warman in another hearing
16 recently in Ottawa which was the Warman v. Tremayne
17 case I believe, and there was a ruling that would be
18 very relevant to this case that we don't actually have
19 a copy of and we're not prepared to bring it forth
20 because we didn't know this was going to be coming
21 forth and, to a certain extent, plus the copy's
22 actually not available from what I know because it
23 hasn't actually been issued by the Tribunal yet either.

24 So, we are wondering if this can be
25 held over to another time because we actually need a

1 copy to show, to some extent, what the ruling was in
2 the other case and how it could apply to this ruling in
3 this case.

4 MR. WARMAN: Mr. Chair, just for the
5 purposes of that, we're not making the same objection.
6 Mr. Fromm will be a completely separate incident.

7 The only ruling that the Tribunal
8 Member rendered was that he would permit Mr. Fromm to
9 represent the individual as agent, Mr. Tremayne the
10 respondent in that case.

11 The objection that we will tendering
12 to Mr. Fromm has nothing to do with that.

13 THE CHAIRPERSON: But we are not yet
14 dealing with Mr. Fromm.

15 MR. WARMAN: Exactly, as well.

16 MR. KULBASHIAN: But, however, this
17 issue -- the Tribunal did also state that they would be
18 issuing a written -- like, a written ruling, that they
19 would be passing out to the parties and then none of
20 the parties actually have a copy yet, so we don't have
21 anything to refer to for precedent.

22 MS CEILIDH SNIDER: If I could help
23 you, Mr. Kulbashian. Tab 21 --

24 MR. KULBASHIAN: Tab 21.

25 MS CEILIDH SNIDER: -- of Volume Two

1 that you were provided with, at page 2 of that
2 ruling --

3 MR. KULBASHIAN: Yes.

4 MS CEILIDH SNIDER: -- by Ms Jensen,
5 and the ruling is 2006 CHRT 31.

6 At paragraph 8 and 9, this canvasses
7 the motion and the discussions that were had with
8 respect to your participation.

9 Are you with me?

10 MR. KULBASHIAN: Sorry.

11 MS CEILIDH SNIDER: At paragraph 9 Ms
12 Jensen writes:

13 "The Canadian Humans Rights
14 Commission put Ms. Guille on
15 notice that if Mr. Kulbashian
16 acts as her agent during the
17 hearing, the Commission will
18 object to Mr. Kulbashian
19 testifying as a witness for the
20 respondent. The Commission
21 subsequently requested an order
22 from the Tribunal preventing Mr.
23 Kulbashian from testifying at
24 the hearing. That request is
25 denied. It is unclear what

1 role, if any, Mr. Kulbashian
2 will be playing in the hearing.
3 Therefore, any such order would
4 be inappropriate at this time."

5 Which is why we're now dealing with
6 this.

7 MR. KULBASHIAN: But the major issue
8 is, there still is a ruling that might have some
9 relevance to this motion that the Tribunal has issued,
10 however, copies are not available. So, if they were
11 able to get a copy in order to disclose to us, I don't
12 know.

13 But the fact of the matter is,
14 it's -- because there is precedent, we do have a ruling
15 stating that he will be allowed to act as an agent.
16 The reasons for the ruling are not available, so the
17 reasons could be that agents cannot be excluded because
18 people don't have the rights to a lawyer, I mean, like,
19 they don't have an actual right to have, like, free
20 counsel so they might have to pay, in which case the
21 agents would probably be necessary for somebody who is
22 completely, I guess, inexperienced in the process.

23 So, there is no actual reasons for
24 the ruling, all it says is he will allow Paul Fromm to
25 act as an agent and he'll be issuing the ruling later

1 on.

2 THE CHAIRPERSON: Does anyone know
3 what happened in the Tremayne...?

4 MR. WARMAN: Having been present
5 there, there was an objection brought by the Commission
6 against Mr. Fromm's participation as agent for the
7 respondent.

8 That motion was denied by the
9 Tribunal. I can only presume that the reasons will
10 accompany the main body of the decision that will be
11 handed down by Member Doucet when he ultimately does.

12 But, to the extent that it is part of
13 a ruling that has not been rendered yet, it remains
14 just that. The ruling has been made, the reasons have
15 not been provided.

16 THE CHAIRPERSON: And the ruling was
17 to the effect that...?

18 MR. WARMAN: That Mr. Fromm may
19 participate in the hearing as agent.

20 MR. KULBASHIAN: And since we don't
21 have the ruling available, my main concern is if there
22 is anything there that might, I guess, provide some
23 sort of precedent in order for me to be able to, I
24 guess, counter the motion that's being put forth today,
25 I don't have access to any of it.

1 THE CHAIRPERSON: But was there a
2 ruling made with reasons to follow, or...?

3 MR. WARMAN: Yes. The thing is, as
4 with any court case, you can't rely -- you can't ask
5 for an adjournment until such sort of vague time in the
6 future when reasons may or may not be rendered that may
7 or may not include something that may or may not be
8 helpful to your argument.

9 THE CHAIRPERSON: That I understand.

10 MS CEILIDH SNIDER: It's also notable
11 that the issues that arose in the context of Mr. Fromm
12 are quite different than the issues that are currently
13 under consideration with respect to Mr. Kulbashian.

14 THE CHAIRPERSON: Well, that I don't
15 know, but...

16 MR. KULBASHIAN: The major thing, I
17 do agree with her that the issues may have been
18 different, however, the decision and, I guess the
19 reasons for the decision could have been more general
20 than specific to Mr. Fromm's participation.

21 THE CHAIRPERSON: But as long as we
22 know that the reasons haven't been --

23 MR. KULBASHIAN: Released.

24 THE CHAIRPERSON: -- released yet, it
25 is hard for anyone to surmise what these --

1 MR. KULBASHIAN: That's right.

2 THE CHAIRPERSON: -- reasons might
3 be, and if they are to come like in two, three or four
4 months --

5 MR. KULBASHIAN: That's right.

6 THE CHAIRPERSON: -- you know, we
7 can't just hold off until then.

8 So, what I propose that we do is that
9 Mr. Warman, as he asked to be heard as a witness, that
10 we hear him as a witness and then we will -- the
11 Tribunal will hear what he has to say.

12 The Commission can put questions to
13 Mr. Warman, and Mr. Warman doesn't seem to object to
14 you putting questions to him, and nor does he object to
15 Mr. Fromm, but there might be an objection as to, you
16 know, what the issues in the cross-examination will
17 deal with and there might be an objection as to how
18 far, you know, you are entitled to cross-examine him,
19 but...

20 MR. KULBASHIAN: I respectfully
21 submit that since he is going off information and, I
22 guess, evidence or facts that were contained in that
23 case, then effectively what he is doing is he's
24 allowing the whole case to be, I guess, fair game for
25 cross-examination, because the issues that are

1 portrayed, I guess, in the decision related to
2 testimony and events that happened during the hearing.

3 And there is an appeal that's
4 underway. So, that would mean that there might have
5 been multi-issues for appeal, which I can say there
6 have been because it is my appeal and I guess, if
7 anything, he's just opening the gates to a whole line
8 of questioning regarding that hearing that happened a
9 while back.

10 THE CHAIRPERSON: I am aware that you
11 have made an application to the Federal Court asking
12 asks for a stay of proceedings, which was dismissed
13 by --

14 MR. KULBASHIAN: That's right.

15 THE CHAIRPERSON: -- I think the
16 Registrar of the Federal Court --

17 MR. KULBASHIAN: This is the thing,
18 that would have been an application made by Ms Guille
19 regarding this hearing.

20 This application is for, I guess,
21 reversal of the decision by the Tribunal in the Warman
22 v. Kulbashian, my case, it's completed, so it comes up
23 with, I guess, the issues of the decision and facts of
24 the decision.

25 THE CHAIRPERSON: But with respect to

1 the stay of proceedings of last week, there hasn't been
2 any appeal to that decision.

3 MR. KULBASHIAN: No. What I'm
4 talking about is the appeal --

5 THE CHAIRPERSON: In your case.

6 MR. KULBASHIAN: Yeah, this is in my
7 case.

8 THE CHAIRPERSON: Okay.

9 MR. KULBASHIAN: It's just related to
10 my case.

11 THE CHAIRPERSON: Well, we will come
12 to that.

13 MR. KULBASHIAN: Okay.

14 THE CHAIRPERSON: So, Mr. Warman, if
15 you want to take the stand.

16 MR. WARMAN: In order to hopefully
17 narrow things, everything I have read into the record
18 is simply part of my submissions as a party, it is not
19 testimony, and I will be taking the stand solely to
20 testify to one discrete issue.

21 THE CHAIRPERSON: We will hear you on
22 that.

23 AFFIRMED: RICHARD WARMAN

24 EXAMINATION BY MS SNIDER

25 MS CEILIDH SNIDER: Good morning, Mr.

1 Warman.

2 MR. WARMAN: Good morning.

3 MS CEILIDH SNIDER: If you would
4 please turn to tab 15.

5 THE CHAIRPERSON: Just a second.

6 Mr. Warman is testifying on his own
7 behalf or as a witness for...

8 MS CEILIDH SNIDER: He is testifying
9 as a witness actually.

10 THE CHAIRPERSON: No, but this is
11 important because this has --

12 MS CEILIDH SNIDER: Okay. I'm sorry,
13 that's for my own guidance in terms of amounts --

14 THE CHAIRPERSON: No, because before
15 the Tribunal we have the complainant, Commission and we
16 have two respondents.

17 Now, what I would like to know is
18 that is Mr. Warman testifying as a complainant now --

19 MS CEILIDH SNIDER: Yes.

20 THE CHAIRPERSON: -- or as a witness
21 to the Commission.

22 MR. WARMAN: If it may be easier I
23 will just testify on my own behalf as complainant and
24 not require the services --

25 THE CHAIRPERSON: I think he should

1 testify on his own behalf.

2 MS CEILIDH SNIDER: Fine.

3 THE CHAIRPERSON: And if you have
4 additional questions to put to him as a representative
5 of the public interest, then that's fine with me.

6 MR. WARMAN: Mr. Chair, my sole
7 testimony is that I have not received any of the funds
8 that were ordered payable to me under the ruling of
9 Member Hadjis, specifically the \$5,000 special
10 compensation pursuant to paragraph 139 of Member
11 Hadjis' decision.

12 That is my only testimony that I wish
13 to give at this time.

14 THE CHAIRPERSON: Ms Snider, do you
15 have any questions?

16 MS CEILIDH SNIDER: No, I don't.

17 THE CHAIRPERSON: Mr. Kulbashian?

18 MR. KULBASHIAN: I do have questions.
19 Forgive me because I haven't actually had a chance to
20 review the entire decision and see what parts would be
21 relevant here.

22 EXAMINATION BY MR. KULBASHIAN

23 MR. KULBASHIAN: But if you could
24 turn to tab 15, page 46 of the Book of Authorities.

25 So, before we get into that first

1 paragraph, you are aware that there is an appeal in
2 Federal Court; is that right, of this case?

3 MR. WARMAN: Mr. Chair, I'm going to
4 object on the grounds of relevance. My only testimony
5 that I have given is that I haven't received --
6 actually, no, that's fine.

7 I'm aware that there is a judicial
8 review application underway before the Federal Court.

9 MR. KULBASHIAN: Okay. And are you
10 aware that there is also negotiations, I guess, if you
11 want to say, in order to issue a stay in the order to
12 pay the compensation or the fine? fine

13 MR. WARMAN: Your lawyer has put that
14 forward. Neither of the other parties have agreed to
15 it.

16 MR. KULBASHIAN: So, another
17 question --

18 MR. WARMAN: Excuse me, none of the
19 other parties have agreed to it.

20 MR. KULBASHIAN: If you could read
21 page 46, the paragraph, I think is two sentences down
22 or three sentences down, it is says:

23 "In addition..."

24 If you could read that part again.

25 MR. WARMAN: Mr. Chair, it's at this

1 point that I am going to object, given that my
2 testimony was solely to the fact that I have not
3 received the \$5,000, that this material was submitted
4 to the Tribunal pursuant to my submissions and not
5 pursuant to my testimony.

6 MR. KULBASHIAN: Mr. Chair, I would
7 like to respectfully submit just because that's all he
8 testified on doesn't mean that he can restrict with his
9 testimony what I can cross-examine him on.

10 What is actually restricted is the
11 re-direct that would happen by, I guess, his side or
12 the Commission, they can't bring up new issues, but in
13 cross-examination I can bring up new issues, especially
14 issues that he previously put forth in this motion.

15 Like, the testimony can't just be
16 restricted and him say, like, the word -- the letter
17 (a) and then, I'm saying, okay, I can't question him on
18 anything at all. You know, what I mean.

19 THE CHAIRPERSON: I think that the
20 issue right now pertains to the fact that Mr. Warman
21 objects to Mr. Kulbashian acting as an agent to Ms
22 Guille, and you have gone through a decision in which
23 Mr. Kulbashian was the respondent, and I presume -- and
24 you haven't argued it yet -- that because Mr.
25 Kulbashian was found to have discriminated under

1 section 13 of the Act that this, in a way, disqualifies
2 him as being an agent, but you haven't argued this yet,
3 you just referred to some paragraphs in the decision
4 rendered by Mr. Hadjis on March 10th, 2006.

5 And in your testimony you have only
6 raised -- or addressed the fact that the award that was
7 made by the Tribunal, the \$5,000, you were not able to
8 recover as of today from Mr. Kulbashian.

9 So, just maybe could you formulate
10 again your question so that I can see where you are
11 going with this cross-examination.

12 MR. KULBASHIAN: Okay. Mr. Chair,
13 can I just make some submissions on what he just
14 stated.

15 The main issue is in the process of
16 examination with the witness on the stand, the parties
17 are allowed in the cross-examination to hand him
18 documents, bring up new issues and, therefore, I'm
19 actually bringing up issues that is well within the
20 scope of his testimony.

21 His testimony is not just about the
22 fact that he hasn't been paid yet, it's about the fact
23 that -- that not being paid is part of the larger issue
24 of the actual decision that was rendered which he has
25 effectively put the decision on the stand and basically

1 extended the scope of the questioning to the decision
2 and possibly even the case that went on, because the
3 whole...

4 Because basically it's like saying
5 I'm just going to give you documents, not testifying to
6 it, so, like, you can't challenge it, I'm just going to
7 say, like, 10 words and, okay, you can challenge those
8 10 words.

9 In cross-examination I'm allowed to
10 bring up new issues. It's not an issue where I have to
11 only settle on issues that he brought up himself.

12 MR. WARMAN: Mr. Chair, the issue is
13 case law. I'm simply referring to case law,
14 pre-existing decisions of the Tribunal. I haven't
15 testified to them in any way, shape or form. The only
16 thing I have testified to is whether I received \$5,000
17 per the order.

18 I am entirely entitled to refer to
19 case law in making submissions. If I make reference to
20 any other cases, it doesn't mean that Mr. Kulbashian
21 can cross-examine me on them either.

22 THE CHAIRPERSON: Yes, but you are
23 referring to a case in which --

24 MR. WARMAN: The Tribunal made
25 specific findings of fact with regards to Mr.

1 Kulbashian.

2 MR. KULBASHIAN: However, I would
3 certainly submit that the issue here is that he did
4 testify to a fact regarding this decision, and if --
5 what is it I'm cross-examining?

6 I mean -- okay, let's put it this
7 way. Can I just get him to -- can I give you an idea of
8 where I'm going?

9 THE CHAIRPERSON: I would like you to
10 do that.

11 MR. KULBASHIAN: Okay, that would be
12 perfect.

13 Well, I guess ultimately, because I'm
14 going to be giving some evidence right now but I can
15 always pose it to the witness.

16 THE CHAIRPERSON: You are not
17 supposed to give evidence.

18 MR. KULBASHIAN: Yes. Well, it's
19 just kind of hard to tell you where I'm going
20 otherwise.

21 The major issue is in that line it
22 states that:

23 "In addition, as a regular
24 member of the Tri-City Skins, he
25 likely was familiar with the

1 organization's website."

2 And I was going to ask him whether or
3 not there was any testimony whatsoever that I was, in
4 fact, a member of Try-City Skins or whether that was
5 possibly an error in the judgment.

6 And the reason why I'm getting here
7 is because since he did include the decision as part of
8 his motion, what I'm trying to get to is that there are
9 multiple errors in this judgment and there is a
10 possibility of, like, good grounds for appeal and that
11 if he's using this decision to create an effect, I
12 guess, so to speak, with you, Mr. Chair, so as, I
13 guess, you will issue a ruling that I'm not allowed to
14 represent Ms Guille, I want to actually show that there
15 is another effect, that there's possibly there was
16 errors in the actual judgment.

17 THE CHAIRPERSON: What I --

18 MR. KULBASHIAN: And he actually read
19 this paragraph, so...

20 THE CHAIRPERSON: I know that Mr.
21 Warman read that paragraph , but this case is now being
22 judicially reviewed.

23 MR. KULBASHIAN: That's right.

24 THE CHAIRPERSON: Now, it could be
25 that the trier of fact was right coming to these

1 conclusions or findings, it may be that he was wrong,
2 and even if, you know, you were to ask Mr. Warman if he
3 doesn't think if these findings are right or wrong, I
4 think it is irrelevant in the present context because
5 it is going to be for the Federal Court to make that
6 decision.

7 The only thing I know, and I think
8 you will come to that, is that this case is now before
9 the Federal Court and you have asked the Federal Court
10 to judicially review that decision.

11 So, this is not -- you know, the
12 decision of the Tribunal is not the final say with
13 respect to --

14 MR. KULBASHIAN: I understand.

15 THE CHAIRPERSON: So...

16 MR. KULBASHIAN: What I'd to do with
17 that case, however -- see, what I'm trying to say is,
18 he read quotes that were, I guess, nested within
19 paragraphs, for example:

20 "- Vacation pay...for working at
21 Auschwitz;

22 - It will be a gas -"

23 Et cetera, et cetera.

24 And the purpose for -- it would be
25 enough for him to have said that there was a finding,

1 yes, he still hasn't paid the fines that were ruled,
2 yes, and however, what he also did is he actually read
3 quotes that would have a specific, I guess,
4 psychological effect on somebody that's listening to
5 them.

6 And so what I'm trying to do is show
7 that though there might have been, I guess, many bad
8 things said that were drop up in the case, there is
9 also the possibility that issues would be mitigated by
10 the fact that there's actually factual inaccuracies
11 that he can actually testify to right now.

12 THE CHAIRPERSON: But I don't think
13 that even if he was to testify to that that this would
14 have any kind of bearing on any decision that I could
15 render, given the fact that this decision is now before
16 the Federal Court.

17 Now, once Mr. Warman has finished
18 presenting the reasons for his objection, you can go
19 back to the decision and go back to certain passages or
20 paragraphs and you can argue, you know, what the
21 Tribunal should make out of that. But this would be
22 more in argument than putting questions to Mr. Warman
23 asking him, don't you think that the Tribunal might
24 have been wrong on this and this and that.

25 And most probably Mr. Warman will

1 say, no, but even if he says no --

2 MR. KULBASHIAN: No, I guess, the
3 point is not that. The point is to show that there is,
4 I guess, an effect in the opposite direction than that
5 he's trying to create.

6 Now, the major issue is, regardless
7 of this specific topic, by going up and testifying to
8 facts relating to this decision, he has effectively put
9 the entire decision into the scope of the questions
10 that I can ask him.

11 He can't restrict my questions in
12 cross-examination by only giving limited evidence in
13 the start.

14 THE CHAIRPERSON: Yes, but the
15 questions that you would like to put to Mr. Warman have
16 to be relevant to what I have to decide.

17 MR. KULBASHIAN: I understand.

18 THE CHAIRPERSON: And if you ask him,
19 you know, don't you think that the trial judge might
20 have made an error in his assessment of the evidence,
21 this will not help me in any way, given the fact that
22 now it is in the hands of the Federal Court to make
23 that determination.

24 MR. KULBASHIAN: But I'm not asking
25 for the court to make a determination, all I'm asking

1 is that since he did testify to facts relating to the
2 decision -- see this is the thing, if you could state
3 what the actual scope of his testimony is maybe that
4 will make it easier. What is the actual scope, as in
5 what information does it cover. Would it cover the
6 actual hearing, would it cover the decision, would it
7 cover just the mere facts that he was not paid money?

8 Because if he just said that he had
9 an order that -- I'm sorry, if he could just repeat
10 exactly the words that he used when he testified.

11 MR. WARMAN: To the effect that I
12 have not received the money that was, the \$5,000 from
13 Mr. Kulbashian.

14 MR. KULBASHIAN: And did you also
15 testify that, I guess, the money that was ordered for
16 me to pay you during this -- by this decision here,
17 like, would that money be related to the decision here?
18 Would that be the fine that I was, I guess, ordered to
19 pay to you in compensation by this decision by Member
20 Hadjis of the Tribunal?

21 MR. WARMAN: Sorry, Mr. Chair, we
22 seem to be veering very far off the beaten path here.

23 The issue at hand is simply, my
24 testimony to date has simply been that I have not
25 received any monies from Mr. Kulbashian.

1 Whatever I may or may not have
2 submitted as submissions is irrelevant to the question,
3 this is what I have testified to.

4 MR. KULBASHIAN: In which --

5 MR. WARMAN: And when we're dealing
6 with a discrete issue and other issues may be gotten to
7 at some further point in the hearing, you know, unless
8 we want to argue the entire case right now over this
9 issue --

10 THE CHAIRPERSON: What I understand
11 is that you did not recover any of the funds,
12 especially the \$5,000, you did not get that money that,
13 what I presume because the question was put to you,
14 what I understand is that the decision of Mr. Hadjis is
15 now the object of a judicial review before the Federal
16 Court.

17 MR. KULBASHIAN: Yeah.

18 THE CHAIRPERSON: This is what --

19 MR. KULBASHIAN: Well, that part he
20 actually answered.

21 THE CHAIRPERSON: Okay.

22 MR. KULBASHIAN: The major issue is,
23 if I could just ask him what the context of testimony
24 was. Because if he's saying that the context of the
25 testimony was not the decision, it was just saying that

1 he has not received any money from me, then I object to
2 him even testifying to that because there is no actual
3 context set, so, it's actually irrelevant unless he is
4 tying the context in with the ruling, in which case the
5 ruling is now part of the scope of the questioning.

6 THE CHAIRPERSON: Yes. But, even if
7 the ruling is part of the scope of the questioning, you
8 have to ask the witness relevant questions to, you
9 know, the gist of his testimony.

10 And as I said, and I think we will
11 stop there, if you want argue that the representation
12 that Mr. Warman made earlier on should not in any way
13 be taken into consideration by this Tribunal in
14 determining if you should act as an agent, then you can
15 argue it.

16 But even if you were to put questions
17 to Mr. Warman, as I said, to the effect that doesn't he
18 believe that all of this may be -- there might have
19 been an error on the part of the Presiding Member as to
20 errors that he could have made, I don't think that this
21 will lead us anywhere.

22 MR. KULBASHIAN: I understand. The
23 whole point though is, he still hasn't stated what his
24 actual objection is to me testifying.

25 The thing is you might say that you

1 can assume that's what he's saying, however, the major
2 issue I have here, since he is actually left the scope
3 undefined, therefore, I do not have restriction on how
4 I can question back.

5 Unless he specifically stated that
6 the reasons why he was filing this motion is for such
7 and such, so far he's on the stand and there's no scope
8 set and so, therefore, I do have a little bit more
9 latitude in what questions I can ask him.

10 THE CHAIRPERSON: I think the best
11 thing would be for Mr. Warman to continue presenting
12 his arguments with respect to the objection, not as a
13 witness, but as a complainant representing himself and
14 then we will see why you are making this point and
15 where this will lead us.

16 MR. KULBASHIAN: Would I be able to
17 cross-examine him afterwards though, because I still do
18 have my right to cross-examine him on the testimony
19 that he gave.

20 THE CHAIRPERSON: I don't think
21 that -- you know, if your questions, and I will try to
22 be as clear as I can, if your questions are to ask him
23 if he feels that --

24 MR. KULBASHIAN: It's not that at
25 all.

1 THE CHAIRPERSON: So, what is your...

2 MR. KULBASHIAN: My question is that
3 he read specific segments in order to create an effect,
4 for example, he read some of the statements that were
5 allegedly made, et cetera.

6 So, what he is -- ultimately what
7 he's doing is he's trying to create a psychological
8 effect as well as give facts.

9 THE CHAIRPERSON: Psychological
10 effect on...?

11 MR. KULBASHIAN: For example, like --
12 I guess, let's put it this way, what it says:

13 "300,000 real reasons and 5.7
14 million made-up ones" - which is
15 meant to suggest that the
16 Holocaust did not take place, or
17 that the death toll was grossly
18 exaggerated."

19 That was not actually relevant at all
20 to whether or not I should be allowed to specifically
21 in this case.

22 THE CHAIRPERSON: No, but this is
23 what I am telling you, Mr. Kulbashian, is that this is
24 something you can argue once, when your turn comes.

25 MR. KULBASHIAN: Right.

1 THE CHAIRPERSON: Because I don't
2 want to get into, was the trial judge or the Member
3 hearing the case against you made errors of fact or
4 errors of law. This is irrelevant to me, given the
5 fact that this will be decided by the Federal Court.

6 MR. KULBASHIAN: That's right.

7 THE CHAIRPERSON: Now, when your turn
8 comes, because you will be entitled to make
9 representation, you will be able to say what you have
10 just said, that this should be disregarded by the
11 Tribunal, but you will be able to argue that.

12 MR. KULBASHIAN: Okay. I have
13 another question for him then.

14 THE CHAIRPERSON: Okay.

15 MR. KULBASHIAN: This would be very
16 relevant to the thing. Have I in any way indicated to
17 you that I have no intents to pay the fine that you
18 were, I guess, awarded?

19 MS CEILIDH SNIDER: Excuse me, that's
20 not relevant either. The question is simply has it been
21 paid as of this date.

22 THE CHAIRPERSON: I think Mr.
23 Kulbashian is entitled to ask if Mr. -- you know, if...

24 MR. KULBASHIAN: It's directly
25 related to the statement that I made.

1 THE CHAIRPERSON: Yes.

2 MR. KULBASHIAN: So, have I indicated
3 to you in any way that I would not be paying the \$5,000
4 that I guess you were awarded?

5 MR. WARMAN: You have made no
6 communication to me, but neither have you applied for
7 stay of the decision.

8 MR. KULBASHIAN: Do you know what's
9 happening on November 28th in Federal Court?

10 Do you know that -- would you happen
11 to know, I guess, that there will be an application or
12 motion put forward for a stay on November 28th in the
13 Federal Court?

14 MR. WARMAN: I believe the Department
15 of Justice is bringing an application to strike your
16 application as being completely without merit.

17 MR. KULBASHIAN: However, you just
18 stated that I have made no application for a stay and
19 yet --

20 MR. WARMAN: That's true.

21 MR. KULBASHIAN: So, what would be on
22 November 28th, would that not be an application for a
23 stay?

24 MR. WARMAN: No, it would not be.

25 MR. KULBASHIAN: do you have any

1 copies of the documents that were filed in relation to
2 the November 28th hearing?

3 MR. WARMAN: As someone who is a
4 party to that application, I have not received any
5 documents from you or your counsel to that effect that
6 you are applying for a stay.

7 MR. KULBASHIAN: Therefore, could you
8 say that you do not know whether or not I am or,
9 instead of saying I am not applying for a stay?

10 MR. WARMAN: To the best of my
11 knowledge and belief, you have not applied for a stay
12 of the proceedings.

13 MR. KULBASHIAN: Can I take a moment
14 to print out some documents which would be very
15 relevant to this questioning because it would be in
16 relation to the application for a stay.

17 THE CHAIRPERSON: Go ahead.

18 MR. KULBASHIAN: Well, actually the
19 problem is that he can't identify documents, then I
20 would not be able to put them forward to him unless I
21 went on the stand and actually identified them myself.

22 THE CHAIRPERSON: No, well print
23 them, show them to him and he will say if he has
24 knowledge of these documents...

25 MR. KULBASHIAN: I guess the best way

1 to put it, instead of wasting ink at the moment is, do
2 you have knowledge of any documents in relation to an
3 application for a stay on the order of payment in the
4 Tribunal hearing?

5 MR. WARMAN: I've already indicated
6 that I do not.

7 MR. KULBASHIAN: And do you have
8 knowledge of any documents at all in, I guess, the
9 judicial review?

10 MR. WARMAN: I have seen a copy of
11 the material submitted by the Department of Justice, at
12 least in its draft form, the Notice of the Application
13 to quash your application for judicial review.

14 MR. KULBASHIAN: And would the Notice
15 of Application to quash the application for judicial
16 review to actually quash the judicial review by the
17 way, as in, did you see any documents relating to a
18 stay application?

19 MR. WARMAN: No, I did not.

20 MR. KULBASHIAN: Would it be fair to
21 say that you don't know, as opposed to saying you don't
22 think there is?

23 MR. WARMAN: I've already stated that
24 I have seen no documents from either you or your
25 counsel with regard to any application for a stay.

1 MR. KULBASHIAN: And would it be safe
2 to say that that's because you don't get documents
3 regarding application for judicial review?

4 MR. WARMAN: No, it would not. I
5 have been served with all the previous documents
6 through my counsel.

7 MR. KULBASHIAN: Including documents
8 my lawyer would have filed?

9 MR. WARMAN: Yes.

10 MR. KULBASHIAN: And would it be
11 possible to get in touch with your counsel and verify
12 as to whether or not there is an is application for a
13 stay?

14 MR. WARMAN: Mr. Chair, this is going
15 around in circles and just beating a dead horse for no
16 particular reason that I'm able to identify.

17 The decision was handed down in March
18 of 2006, it is now November. Mr. Kulbashian has made
19 no effort to pay the monies and any last-minute stay
20 brought solely for that purpose --

21 MR. KULBASHIAN: I want to object to
22 what he's saying right now because he doesn't know
23 whether or not I've made any effort to pay the money
24 and if he's actually testifying right now on his
25 objection, then he should, I guess, restrict his

1 statements to submissions rather than testimony.

2 MR. WARMAN: Mr. Chair --

3 THE CHAIRPERSON: So, we are not sure
4 if an application for a stay is now before the Federal
5 Court.

6 MR. WARMAN: But I bring back to the
7 issue that this decision was handed down in March, it
8 is now mid- to late November. Whether a last-minute
9 stay application has been brought or not, it's
10 irrelevant to this hearing and whether or not Mr.
11 Kulbashian in the intervening period between March and
12 November has made any efforts to pay those monies.

13 MR. KULBASHIAN: Well, he
14 testified --

15 THE CHAIRPERSON: Well, suppose the
16 case is under judicial review, doesn't that suspend --

17 MR. WARMAN: No, it does not and, in
18 fact, the Federal Court has been quite clear that an
19 application for a stay of monies payable as damages
20 will not, in fact, be granted.

21 So, the Federal Court has been
22 explicit that there is no irreparable harm in payment
23 of damages because the monies can always be repaid and
24 there is case law to that effect.

25 THE CHAIRPERSON: But still Mr.

1 Kulbashian is saying that he is making such --

2 MR. WARMAN: But it's a moot point,
3 it is res judicata before the Federal Court. The
4 Federal Court has already heard applications on that
5 same basis and decided against permitting that kind
6 of --

7 MR. KULBASHIAN: I would like to
8 object to what he just stated there.

9 THE CHAIRPERSON: Any way --

10 MR. KULBASHIAN: This is an issue --
11 again, coming back to the issue. He just testified and
12 while he was making submissions that the way it is,
13 basically -- have you seen any ruling regarding an
14 application for a stay in the monies to be paid in the
15 Federal Court in my judicial review?

16 MR. WARMAN: For the third, if not
17 fourth time, I have not seen any documents --

18 MR. KULBASHIAN: At all?

19 MR. WARMAN: -- that indicated that
20 you have submitted an application for stay.

21 MR. KULBASHIAN: That's not what I
22 asked. I asked have you seen any documents in relation
23 to any application for a stay in any way, like, in any
24 way regarding this Federal Court case?

25 THE CHAIRPERSON: And I think Mr.

1 Warman said no.

2 MR. KULBASHIAN: And, so, my question
3 would be, then why did you just state that there was an
4 order -- that the Federal Court rejected the order for
5 a stay?

6 MR. WARMAN: At the risk of
7 belabouring the point, the fact is that similar
8 applications have been brought in the past. That's the
9 nature of the entire body of common law, that previous
10 decisions at same level based on the same fact pattern
11 are highly influential of another member.

12 Other applications that were brought
13 to stay the payment of damages, they have been refused
14 by the Federal Court.

15 MR. KULBASHIAN: Is he, I guess,
16 acting in the capacity of a Federal Court judge at the
17 moment, in trying to make information as to whether or
18 not it's been granted.

19 THE CHAIRPERSON: I think on the pure
20 question of fact, you have put the question to Mr.
21 Warman, he said that with respect to your case that he
22 hasn't seen any documents on that.

23 MR. KULBASHIAN: But he also stated
24 that the an application for a stay was rejected, he
25 testified to that.

1 THE CHAIRPERSON: He is saying that,
2 generally speaking, these types of applications are
3 usually denied or rejected by the Federal Court.

4 MR. KULBASHIAN: So, how many
5 Federal --

6 THE CHAIRPERSON: That is one thing.
7 But the main thing is that he hasn't
8 seen any documents.

9 Whether you have made the procedure,
10 that's another...

11 MR. KULBASHIAN: No, that's not the
12 point I'm trying to make right now actually. I'm
13 actually -- because he keeps opening the door to other
14 questions.

15 My question will be, how many Federal
16 Court cases have you read?

17 THE CHAIRPERSON: No, but I think
18 this is more --

19 MR. KULBASHIAN: He just gave
20 testimony saying that an application for a stay
21 generally does not go forward.

22 THE CHAIRPERSON: No, but what is
23 important for me at this point in time is to know, as a
24 pure question of fact, whether or not you have made
25 such an application. Whether it is an application that

1 will be successful or not, that is something else, and
2 I don't want to argue the case law and go back to what
3 is the case law with respect to these types of
4 procedures.

5 I think you have made your point that
6 he hasn't seen any procedures that would pertain to an
7 application with respect to a stay, so...

8 MR. KULBASHIAN: Then I would like to
9 submit on November 28th there is actually an
10 application for a stay that is going to be evaluated by
11 the Federal Court.

12 THE CHAIRPERSON: But this you can
13 argue when the time comes.

14 MR. KULBASHIAN: Thank you very much.
15 I'm not sure if Mr. Fromm wants to
16 say anything.

17 THE CHAIRPERSON: Do you have any
18 questions --

19 MR. FROMM: Yes, Mr. Chair.

20 THE CHAIRPERSON: -- on this discrete
21 issue?

22 MR. FROMM: Yes, just one.

23 EXAMINATION BY MR. FROMM

24 MR. FROMM: Mr. Warman, do you have a
25 copy of the Amended Notice of Application pursuant to

1 the order of Roger R. Lafreniere served on you in the
2 Canadian Human Rights Commission and the Attorney
3 General of Canada and yourself?

4 MR. WARMAN: I do not.

5 MR. FROMM: (handed) Showing the
6 witness a copy of that.

7 THE CHAIRPERSON: Do you have copies
8 for the Commission?

9 MR. FROMM: I think the other counsel
10 have been provided with copies.

11 MS CEILIDH SNIDER: No, I haven't.

12 MR. KULBASHIAN: The Member has a
13 copy, I believe it's right in front of him.

14 MR. FROMM: Do you recognize having
15 received this?

16 MR. WARMAN: I believe I do, yes.

17 MR. FROMM: I was going to ask that
18 this be entered as an exhibit for the respondent.

19 THE CHAIRPERSON: Is there any
20 objection on the part of the complainant or the
21 Commission?

22 MS CEILIDH SNIDER: No.

23 THE CHAIRPERSON: No. As for how we
24 should mark it, I think we should mark it as a
25 preliminary --

1 MS CEILIDH SNIDER: Perhaps it could
2 be for identification.

3 THE CHAIRPERSON: Pardon?

4 MS CEILIDH SNIDER: Perhaps I think
5 for identification.

6 MR. FROMM: It's been identified.

7 THE CHAIRPERSON: Well, it has been
8 identified and the question is, should it be part of
9 the evidence. So, we could mark as exhibit --

10 REGISTRY OFFICER: Preliminary
11 hearing, PH.

12 THE CHAIRPERSON: PH. And we need
13 some form of description PH-1.

14 REGISTRY OFFICER: Yes. The document
15 entitled: Amended Notice of Application pursuant to the
16 order of Roger R. Lafreniere, Prothonotary of May 19th,
17 2006 will be filed as preliminary motion Exhibit PH-1.

18 EXHIBIT NO. PH-1: Document
19 entitled: Amended Notice of
20 Application pursuant to the
21 order of Roger R. Lafreniere,
22 Prothonotary of May 19th, 2006

23 THE CHAIRPERSON: Do you have
24 questions?

25 MR. FROMM: No, those are my

1 questions.

2 --- Witness stands down

3 THE CHAIRPERSON: Okay, Mr. Warman.

4 So, would you like to continue as to
5 why --

6 MR. WARMAN: Yes.

7 THE CHAIRPERSON: -- you are making
8 the objection to have Mr. Kulbashian disqualified as an
9 agent for Mrs. Guille.

10 MR. WARMAN: Yes, please.

11 PRELIMINARY MOTION BY MR. WARMAN (Cont'd)

12 MR. WARMAN: And, Member Chair, just
13 as a broader housekeeping point, with your permission
14 it may be most expeditious to make both objections
15 to -- I leave it in your hands as to whether you want
16 to hear both objections and render a decision on both
17 at the same time, or you feel you want to take some
18 time to consider them, or whether you wish us to finish
19 the submissions on Mr. Kulbashian, you will render a
20 decision and then we will move on to Mr. Fromm.

21 THE CHAIRPERSON: I think it would be
22 preferable to deal with Mr. Kulbashian because I think
23 the arguments will be different --

24 MR. WARMAN: Yes, they will be.

25 THE CHAIRPERSON: -- with respect to

1 Mr. Fromm.

2 MR. WARMAN: Yes.

3 THE CHAIRPERSON: So, might as well
4 have the issue dealing with Mr. Kulbashian dealt with
5 first.

6 MR. WARMAN: Certainly.

7 So, Mr. Chair, the submissions are
8 fairly straight forward, they are an objection on two
9 bases.

10 The first is that Mr. Kulbashian is
11 in what I believe to be contempt of an outstanding
12 order of the Tribunal. Mr. Kulbashian between
13 November -- excuse me, between March and November made
14 no effort to comply with paragraph 139 of Member
15 Hadjis' decision.

16 Whether or not he has brought a
17 last-minute stay application I believe is irrelevant,
18 and I believe that it would bring the administration of
19 justice, specifically that of the Tribunal, into
20 disrepute to permit someone who is in open breach of a
21 Tribunal order to then be granted the privilege of
22 acting as agent before that Tribunal.

23 And the second submission, and
24 perhaps more fundamental, Mr. Chair, is the appearance
25 of justice, of having someone who has, in fact, already

1 been found guilty of violating the hate message
2 provisions of the Canadian Human Rights Act granted
3 permission by that same Tribunal to appear before it.

4 And I say that it cuts most closely
5 to the bone in this case, as could possibly be the case
6 in that not only has Mr. Kulbashian been found guilty
7 of violating section 13, the hate propaganda sections,
8 but more specifically he has been found to have named
9 me personally, the complainant, in both that case and
10 this case against Ms Guille.

11 And, in fact, the Tribunal's
12 decision, which is the law, whether there is a judicial
13 review application or not outstanding, they remain the
14 existing findings of fact, one, that Mr. Kulbashian was
15 the author of a specific passage as one of the leaders
16 of a group called the Canadian Ethnic Cleansing team
17 that in one of their newsletters named me personally as
18 the complainant against them and Mr. Kulbashian, and
19 then proceeded to do what the Tribunal has described
20 as:

21 "A rant against Mr. Warman in
22 which victims of the Holocaust
23 were cruelly mocked."

24 The Tribunal's finding of fact was
25 that Mr. Kulbashian described me as a Jewish lawyer,

1 offered to send vacation pay for the work that my
2 family had engaged in at the Auschwitz death camps, and
3 in an attack on both me and the Jewish community as a
4 whole, he described that it would be a gas, which the
5 Tribunal took as a clear reference to the gas chambers
6 used in the Nazi death camps.

7 Mr. Kulbashian has been found to have
8 continued engaging in Holocaust denial or gross
9 materialization saying that he would give them 300,000
10 real reasons and 5.7 million made-up ones.

11 Mr. Kulbashian has been specifically
12 found by the Tribunal to have attempted to structure
13 his computer business in such a way as to avoid being
14 subject to the Canadian Human Rights Act.

15 And, finally, Mr. Kulbashian was
16 found to have posted my personal home address at the
17 time, and in making those kind of comments with regard
18 to me as what he presumed to be a Jewish lawyer, member
19 of the Jewish community, I think there can be no
20 question, and the Tribunal included in their decision,
21 the fact that Mr. Kulbashian's reference to the murder
22 of Holocaust victims and the posting of my home address
23 caused me concern and that I interpreted the allusion
24 to the death of Jews in the past as a direct threat to
25 my own personal safety.

1 I think that if there was ever a case
2 where it would demean the administration of justice and
3 bring it into disrepute, granting Mr. Kulbashian the
4 privilege of audience before this Tribunal under these
5 circumstances is that case.

6 Barring any questions you may have,
7 those are my submissions.

8 THE CHAIRPERSON: Thank you, Mr.
9 Warman.

10 MR. WARMAN: Thank you.

11 THE CHAIRPERSON: Ms Snider?

12 SUBMISSIONS BY MS SNIDER

13 MS CEILIDH SNIDER: The Commission
14 wholly adopts the submissions of Mr. Warman.

15 Nothing further.

16 THE CHAIRPERSON: It's 1130. I think
17 we are due for a health break, if you want and for
18 those who like coffee or tea, for a tea or coffee
19 break.

20 So, is 15 minutes okay with everyone?

21 MS CEILIDH SNIDER: That's fine.

22 MR. KULBASHIAN: Yes.

23 THE CHAIRPERSON: So, we will resume
24 in 15 minutes.

25 REGISTRY OFFICER: Order, please.

1 --- Upon recessing at 11:30 a.m.

2 --- Upon resuming at 11:55 a.m.

3 REGISTRY OFFICER: Order, please.

4 All rise.

5 Please be seated.

6 MR. KULBASHIAN: Mr. Chairman, may I
7 just bring up a small issue.

8 I was notified by Ms Guille that the
9 gentleman from the Commission who was sitting behind us
10 and at some point he was glancing at my laptop and my
11 notes, so could you just ask him to stay there and not
12 glance at my notes or anything that I have on my table
13 because earlier on when we were disbanding, I was
14 showing her something and he was standing right behind
15 me and he was staring at my laptop.

16 MR. HAWKINS: I wasn't looking and I
17 certainly wouldn't. I'm sure to stay away.

18 THE CHAIRPERSON: Okay.

19 MS GUILLE: I just noticed this
20 morning that he's had a hard time keeping his eye off
21 his laptop off and off the table and when Alexan was
22 showing me the notes on his computer, he had gone out
23 of his way to stand behind Alex to take a look.

24 I don't know if he saw anything, but
25 the fact is that there is intent to actually see what's

1 on his laptop.

2 THE CHAIRPERSON: The only thing I
3 would say is that I will ask the parties to act in such
4 a way so that what is part of their case remains
5 private and that goes for everyone.

6 You know, I am not blaming anyone at
7 this point in time, but I think so that no one will
8 feel that someone is looking at private material, that
9 be careful in where you stand or what you look at and
10 sometimes it's a question of appearance, but I think in
11 order to have a hearing which will go smoothly, I would
12 encourage all the parties to have this type of conduct.

13 Before we continue with you, Mr.
14 Kulbashian, Mr. Warman, do you have any objection as to
15 Mr. Kulbashian assisting Ms Guille, or is your
16 objection on Mr. Kulbashian having an active part in
17 the examination of yourself, the cross-examination of
18 yourself and examination of Ms Guille?

19 Where does your objection stand,
20 because at one point you said that you didn't want Mr.
21 Kulbashian to be excluded from these proceedings but
22 you don't want him to act as agent.

23 But does having him act as an agent
24 mean that you object to him cross-examining you or
25 examining Ms Guille?

1 MR. WARMAN: The objection is to Mr.
2 Kulbashian taking any role in these proceedings other
3 than that as a member of the public sitting in the
4 public gallery on the basis that it is an honour, it is
5 a privilege to be granted an appearance before the
6 Tribunal and it would bring into disrepute the
7 administration of justice for him to be granted that
8 privilege.

9 THE CHAIRPERSON: Okay. So, it goes
10 as far as having Mr. Kulbashian sitting at the same
11 table as Ms Guille.

12 MR. WARMAN: Indeed, permission for
13 Mr. Kulbashian to sit at counsel table would, in fact,
14 bring the administration of justice into disrepute.

15 However, Mr. Kulbashian, of course,
16 is -- if Mr. Kulbashian was a member of the public
17 sitting in the public gallery, he would of course be
18 welcome to consult with Ms Guille and vice versa during
19 the breaks.

20 THE CHAIRPERSON: I will first hear
21 from Mr. Kulbashian.

22 MR. FROMM: I think he allowed me to
23 go first.

24 THE CHAIRPERSON: Okay. Any
25 objection?

1 MS CEILIDH SNIDER: No.

2 THE CHAIRPERSON: Yes, Mr. Fromm.

3 SUBMISSIONS BY MR. FROMM

4 MR. FROMM: I believe, sir, you will
5 find that the law as to representation of people before
6 Tribunals like this is fairly permissive, that the
7 person has the right to select counsel as they see fit
8 or a person to act as their agent or representative,
9 and I think the law indicates only a very limited
10 number of exceptions, one being somebody who has
11 perpetrated a fraud on the court.

12 I don't think Mr. Kulbashian is being
13 accused of that.

14 I have had an opportunity to study
15 section 13.1 cases going back to the very first one,
16 the one involving John Ross Taylor back in the late
17 1970s, and with the exception of the Toronto Mayor's
18 Committee on Community and Race Relations and Sabina
19 Citron v. Ernst Zundel and possibly one other
20 exception, every one of these cases has involved
21 respondents who are poor, working class and what --

22 MR. WARMAN: Mr. Chair, I'm sorry,
23 but Mr. Fromm is attempting to give evidence, and if he
24 wishes to take the stand and give evidence then I have
25 no objection, but he's attempting to give evidence of

1 the nature and character of all these respondents in
2 all of the historical proceedings.

3 THE CHAIRPERSON: I'm not sure that
4 you want to give evidence.

5 MR. FROMM: I think, sir, if you look
6 at the cases that are in the two Volume Book of
7 Authorities submitted by the Canadian Human Rights
8 Commission you will find that in only two cases, and
9 that was Warman v. Winnicki and Sabina Citron and the
10 Toronto Mayor's Committee on Community and Race
11 Relations v. Ernst Zundel was the respondent
12 represented by counsel.

13 I am going to make a statement here
14 and if we need to call Ms Guille, I guess we can, but
15 Ms Guille is also not in a position to retain counsel.

16 MR. WARMAN: Objection, Mr. Chair,
17 it's clear that he is giving evidence as to the
18 financial capabilities of Ms Guille when Ms Guille is
19 perfectly able to take the stand and give testimony if
20 she wishes to.

21 It's also not the best evidence,
22 which is obviously the evidence to be put before the
23 Tribunal.

24 THE CHAIRPERSON: Mr. Fromm, Ms
25 Guille is not your -- you are not representing Ms

1 Guille.

2 MR. FROMM: No. Then I am certainly
3 informed that the Canadian Heritage Alliance is not in
4 a position to -- does not have the money to retain
5 counsel.

6 THE CHAIRPERSON: But this will have
7 to be dealt with when the second objection arises as to
8 your own status before this Tribunal.

9 MS CEILIDH SNIDER: And my objection
10 would go to that very point, and which would be on what
11 basis would you be able to have such knowledge saying
12 as Ms Guille has maintained from the start that the
13 Canadian Heritage Alliance is nothing more than a
14 website.

15 THE CHAIRPERSON: Well, we haven't
16 come to that yet.

17 But I think if you are to raise the
18 fact that Ms Guille is not in a position to retain a
19 lawyer to provide her with legal advice, that I don't
20 know, it would be for her to testify to that.

21 But the issue here is why should Mr.
22 Kulbashian be disqualified as an agent --

23 MR. FROMM: Well --

24 THE CHAIRPERSON: -- or should not
25 be.

1 MR. FROMM: Should not be
2 disqualified as an agent.

3 First of all, I think the law is
4 quite clear that with very limited exceptions the
5 respondent can select representation of their choice.

6 Now, the two objections are made
7 against Mr. Kulbashian. One is that there is an
8 outstanding contempt -- sorry, an outstanding order
9 against him to make a payment to Mr. Warman.

10 I think there has been already
11 evidence submitted to you that Mr. Kulbashian has taken
12 the ruling of Member Hadjis seriously, he has gone the
13 appropriate route which is to seek judicial review and
14 that that is working its way through the legal system.

15 He has been behaving as a responsible
16 citizen.

17 The second objection is that the
18 appearance of justice, according to Mr. Warman, of
19 having someone found guilty of hate messaging
20 provisions of the Canadian Human Rights Act and
21 allowing such persons to appear before it, someone who
22 named him personally, would bring into disrepute the
23 administration of justice.

24 In fact, allowing Mr. Kulbashian to
25 participate, considering that he had been through a

1 Human Rights Tribunal that, as I recall correctly,
2 lasted over a period of time, seven weeks, means that
3 Ms Guille will have as her representative or agent
4 someone who actually has a fair deal of experience in
5 these matters and very few and very few lawyers do.

6 A good deal was made in Mr. Warman's
7 submissions about comments that Mr. Kulbashian had made
8 about him and it was submitted that these comments had
9 made him fearful and worried about his own security.

10 It's interesting that very similar
11 allegations were made in another case, one of the other
12 of Mr. Warman's cases, that was Richard Warman v.
13 Tomasz --

14 MR. WARMAN: Mr. Chairman, if Mr.
15 Fromm can perhaps establish the relevance of what
16 transpired in a subsequent later case as opposed to
17 findings of fact by the Tribunal in the case against
18 Mr. Kulbashian.

19 I don't understand what the relevance
20 is of subsequent facts versus the findings of fact made
21 by Member Hadjis Tribunal hearing against Mr.
22 Kulbashian.

23 MR. FROMM: Well, if you will let me
24 get to it, I think you will see the relevance.

25 THE CHAIRPERSON: I will allow Mr.

1 Fromm to continue.

2 MR. FROMM: So, if I can refer you,
3 sir, to tab 16 in the Book of Authorities of the
4 Canadian Human Rights Commission, that's Volume Two of
5 Two, tab 16, and this is the Richard Warman v. Tomasz
6 Winnicki case, and I refer you to paragraphs 170 and
7 171.

8 As I say, the complainant in that
9 case, Mr. Warman, also alleged that Mr. Winnicki had
10 made harsh comments about him after the complaint had
11 been served on him, and Member Jensen concluded:

12 "The difficulty I have with the
13 Complainant's claim to having
14 suffered greatly is that a month
15 or two after the posting with
16 his photograph was made, he was
17 able to publicly state, in a
18 speech to the ARA, that he uses
19 his "maximum disruption"
20 approach, which includes the
21 laying of human rights
22 complaints, whenever he thinks
23 it will be most helpful or even
24 if he just feels it will be "the
25 most fun". He also indicated

1 that he files human rights
2 complaints against "neo-Nazis"
3 starting on a "worst offender"
4 basis, although if he finds
5 people to be "particularly
6 annoying this may move them up
7 the list a bit".

8 And then paragraph 171:

9 "It appears to me that there was
10 a certain amount of "saber
11 rattling" that went on between
12 the Complainant and the
13 Respondent and this does not
14 appear to have immobilized the
15 Complainant with fear. Indeed,
16 although he stated that he was
17 extremely concerned about the
18 photograph of himself on the
19 Internet, the Complainant
20 subsequently intended to
21 publicly display the
22 Respondent's picture at the ARA
23 conference, and in his speech he
24 called the Respondent "a nasty
25 piece of work". That kind of

1 conduct is not suggestive of
2 someone who is terribly alarmed
3 by the Respondent. Rather, it
4 suggest somewhat of a cavalier
5 attitude and even a whimsical
6 mockery of the Respondent's
7 activities. I agree with the
8 Respondent that this lends an
9 air of implausibility to the
10 Complainant's claim to have
11 suffered to such an extent that
12 a damages award in the order of
13 \$20,000 would be warranted."

14 In my submission, sir, considering
15 all the human rights complaints that Mr. Warman has
16 made, the suggestion that Mr. Kulbashian's remarks
17 caused him great fear and terror and is really not very
18 credible and apparently Member Jensen didn't find it
19 particularly credible either.

20 There is certainly no secret that
21 there is probably no love lost between Mr. Warman and
22 Mr. Kulbashian. Mr. Warman has filed a great number of
23 these section 13.1 complaints and there really is a
24 major tension between people who believe in freedom of
25 speech and Mr. Warman.

1 So, if the submission is that Mr.
2 Kulbashian is probably not the greatest admirer of Mr.
3 Warman, that's undoubtedly true.

4 However, I think the law is clear
5 that with very few exceptions Ms Guille has the right
6 to select the representative or agent of her choice and
7 her choice is Mr. Kulbashian, I would assume probably
8 because he's been involved in the case for quite a
9 while and from his own experience he is knowledgeable.

10 If I may use an analogy, and I hope
11 Mr. Kulbashian doesn't take offence at this, but a
12 person may be in prison for armed robbery and inform
13 himself of the law and become a jailhouse lawyer, and
14 just because he was once involved in armed robbery
15 doesn't mean he should be excluded from representing
16 people in the courts.

17 Now, while it's true that Mr.
18 Kulbashian was found to have violated section 13.1,
19 that in and of itself should not exclude him as Ms
20 Guille's representative and, as already indicated, and
21 I wanted to get that on the record and it is on the
22 record, Mr. Kulbashian has done the responsible thing
23 and is seeking judicial review because he obviously
24 does not agree with Member Hadjis' decision.

25 I'll suggest just one more thing,

1 that Mr. Warman several times quoted from the decision
2 by Member Hadjis to the effect that Mr. Kulbashian had
3 sought to move his computer operations to the United
4 States to evade the Canadian Human Rights Act. I think
5 that is susceptible to another interpretation. In the
6 United States, which truly does believe in its First
7 Amendment of freedom of speech is fairly sacrosanct,
8 the expressions on Mr. Kulbashian's website were
9 perfectly legal.

10 The other interpretation I suggest
11 that you might take of that is that Mr. Kulbashian
12 attempted to operate in a jurisdiction where the views
13 are more broad, expression of views was, in fact,
14 legal.

15 Perhaps similar to the smoker who is
16 one jurisdiction where it's illegal to smoke in a
17 restaurant or bar but crosses the state or provincial
18 line to some more liberated place where they allow you
19 to smoke in a bar or a restaurant.

20 But I think the basic point is that
21 Ms Guille has the right to select the representative of
22 her choice and she has done so.

23 To exclude Mr. Kulbashian would
24 essentially leave Ms Guille unrepresented and certainly
25 that would not serve the interests of justice nor the

1 appearances of justice.

2 I may submit, sir, that I think the
3 appearances of justice are really marred when you look
4 at this collection of cases and in all but two cases
5 the respondents were unrepresented by counsel.

6 Now, you may draw the conclusion that
7 they were the greatest cheap skates in the world and
8 didn't want to pay for the legal profession, or you may
9 accept my conclusion, I know it's not testimony, but
10 the Canadian Human Rights Commission was simply picking
11 on the poor who can't defend themselves.

12 Those are my submissions.

13 THE CHAIRPERSON: Thank you, Mr.
14 Fromm.

15 Mr. Kulbashian?

16 SUBMISSIONS BY MR. KULBASHIAN

17 MR. KULBASHIAN: Thank you.

18 If I could turn to tab 15 of the Book
19 of Authorities, paragraph 63 and 64 which are on
20 page -- sorry, about that I just wasn't prepared for
21 this, which are on page 22.

22 It states here:

23 "The Commission had Dr. Frances
24 Henry testify at the hearing as
25 an expert in racism and hate

1 propaganda. In my view, her
2 report and testimony consisted
3 essentially of her opinion about
4 the ultimate question before the
5 Tribunal. She did not provide
6 the Tribunal with any
7 significant insight into the
8 stereotypical or racial aspects
9 of the Hate Messages and how
10 these aspects could expose
11 persons to hatred or contempt,
12 certainly no more so than the
13 Tribunal can assess for itself
14 or can garner from the body of
15 jurisprudence relating to s. 13
16 of the Act. Moreover, in the
17 course of her cross-examination,
18 she acknowledged that her
19 studies were in the areas of
20 racism and how it manifests
21 itself, not specifically in the
22 realm of hate proper at issue in
23 the present case.

24 Dr. Henry's evidence has
25 therefore had no bearing on my

1 final disposition of this case."

2 If you could turn to paragraphs 88
3 and 89 -- actually -- well, yeah, 88 and 89, it's on
4 page 29.

5 It states question:

6 "The various chat logs record
7 numerous entries by WPCanada
8 that clearly indicate his active
9 involvement in the Vinland Voice
10 newsletter"

11 And the quotes include:

12 "- "We have weekly newsletter
13 called the Vinland Voice";
14 - "I was finishing the Vinland
15 Voice off";
16 - "[...] finishing the webpage
17 for the Vinland Voice, a weekly
18 white newspaper that I do";
19 - "I was just finishing off the
20 home page for the Vinland
21 Voice".

22 In reviewing the logs, Mr.
23 Wilson noticed that when persons
24 would join an Internet relay
25 chat, a code was recorded on the

1 log, which contained the name of
2 the Internet service provider
3 (ISP) through which these
4 persons were able to access the
5 Internet. WPCanada's ISP was a
6 firm called Execulink. Mr.
7 Wilson obtained a warrant and
8 seized Execulink's records as
9 they pertained to these relay
10 chat exchanges. When WPCanada
11 joined a chat session on the
12 evening of September 13, 2001, a
13 code from Execulink was recorded
14 on the #wpcanada chat log.
15 Execulink confirmed to Mr.
16 Wilson that this code related to
17 an Internet Protocol address
18 that had been assigned to one of
19 its clients whose user name was
20 Cox88. Their records further
21 showed that the actual name of
22 this client was James
23 Richardson. The contact
24 information that he had provided
25 to Execulink showed his street

1 address as being that of the
2 apartment in London where Mr.
3 Wilson had found and arrested
4 the respondent, Mr. Richardson,
5 on September 28, 2001."

6 And the main reason why I read that
7 second paragraph was to indicate that even though Mr.
8 Warman tried to create a stronger effect in order to
9 have me excluded from the hearing or excluded as an
10 active participant in the hearing, he wanted to show I
11 was the editor, I was pretty much everything that the
12 Vinland Voice at that time because he did not extend
13 his scope to the general picture.

14 In this ruling, in paragraphs 88 and
15 89, there is evidence that my co-respondent in that
16 hearing, Mr. James Scot Richardson had at some point
17 admitted that he was actually editing the Vinland
18 Voice, which is the newsletter which Mr. Warman stated
19 there were threats against him or identifying him for
20 that matter.

21 The other question -- the other issue
22 is he really elaborated on the issue of threats by
23 saying, oh, and then there was a Holocaust denial and
24 there was this and that saying that he was identified,
25 but all he was referring to was one paragraph in that

1 maybe like five minutes' description of what he was
2 giving of content that was found.

3 Coming down to the main issue, this
4 decision is under appeal, I did follow the proper
5 direction. So, I obviously -- I've also retained a
6 lawyer, in which case it's obvious that I must be
7 paying that, like, to some level -- a certain amount
8 of money for a lawyer to take that case to Federal
9 Court.

10 I'm not just regarding -- this shows
11 I'm not just disregarding the order and going about my
12 daily business, ignoring that it ever happened.

13 Another thing I find hard to believe,
14 or hard to understand, in fact, is what a previous, I
15 guess, finding by a Tribunal has to do with whether or
16 not I have the capacity to act as an agent for
17 somebody.

18 He hasn't been able to indicate
19 that -- he hasn't actually stated any way that I have
20 posted any racist comments or disregarded the order to
21 the effect of posting content contrary to section 13 on
22 line.

23 He hasn't stated that I've been
24 disruptive throughout the Tribunal hearing. He hasn't
25 stated that I was ineffective.

1 And another thing he did state is
2 that, aside from the fact that all these incidents
3 happened in the year 2001, which was just about five
4 years ago, he hasn't stated that he's also still
5 fearful of his life based on that quote that was made
6 that he read into the record, that he still fears me in
7 any capacity or that he fears that I'm still looking
8 out for retaliation.

9 Let me just -- another thing that he
10 stated was that I made no efforts to make good on the
11 payments. Again, that would be his opinion not
12 testimony. The fact of the matter is, well, that he
13 doesn't have any information as to whether or not I've
14 been making odd payments.

15 I also agree with Mr. Fromm, there is
16 an issue of the great cost that these Tribunal hearings
17 bring to respondents.

18 The complainants generally have the
19 Commission to, I guess, push their case forward to the
20 Tribunal, however, the respondents are kind of left to
21 fend for themselves. They are told that they do have a
22 right to have a lawyer but they have to pay for it,
23 they're not given any kind of monetary, I guess, grant,
24 pay, compensation in any way in order to hire or pay a
25 lawyer and, in fact, the majority of the -- actually I

1 could say all the cases that I have read in the Book of
2 Authorities, include individuals that had no legal
3 experience, which means effectively respondents with no
4 legal experience are, in effect, going up against two
5 lawyers --

6 THE CHAIRPERSON: Just a second.

7 MR. WARMAN: Mr. Kulbashian is
8 attempting to do the same thing Mr. Fromm did, he is
9 attempting to infer from what he had read whether there
10 is mention or there is no mention about any legal
11 training that any of the respondents may have or not
12 have and he can't make an inference, that's testifying.

13 MR. KULBASHIAN: Well, I would like
14 to submit that Mr. Warman made inference that I made no
15 attempt to pay him the money that I owe him that I was
16 ordered by the Tribunal to pay him.

17 So, I'm kind of making the
18 suggestion, I guess, in a sense that, I suggest that
19 from all the, you know, Book of Authorities, all those
20 section 13 cases or even (inaudible) Tribunal cases
21 individuals -- I guess it would be reasonable to assume
22 that individuals who have cases filed against them are
23 generally private citizens who, on the large part, may
24 not have any kind of legal experience or even been to a
25 court, like, court in the first place or even watch Law

1 & Order for that matter, so effectively --

2 MR. WARMAN: Mr. Chair --

3 THE CHAIRPERSON: Well, I think the
4 Tribunal is aware that whether it is a respondent or a
5 complainant who self-represents himself, it may be that
6 he could at one point in time have self-educated
7 himself in some legal matters or that he might have
8 sought legal advice from a friend, a neighbour.

9 But the fact of the matter is, is
10 when someone comes before the Tribunal and he is
11 unrepresented, well, like, he doesn't benefit from the
12 assistance of a lawyer properly registered to the Bar
13 of the province or to the Law Society of a province.

14 So, when Mr. Kulbashian is saying
15 that people who come before the Tribunal unrepresented,
16 I think in a way states much of the obvious, that one
17 could say that these people not being lawyers might
18 have some legal background or some legal ability or
19 some legal resources available to them, but that
20 doesn't put them in a situation where they can truly
21 benefit from legal counsel.

22 So, I don't think Mr. Kulbashian is
23 testifying in that respect, given the fact that from
24 the Tribunal's experience that in many of these cases
25 there might be some legal understanding of the process

1 but it is short of being able to get proper legal
2 counselling from a lawyer.

3 MR. KULBASHIAN: That's correct.
4 Actually, sorry, I kind of used so many words. I'm
5 kind of still getting my (inaudible) as times goes by.

6 But just to add to that, the major
7 issue is it's not only the fact that the respondents, I
8 guess, generally would not have proper legal
9 certification to a certain extent, it's also the fact
10 that the Commission effectively acts as a guaranteed
11 lawyer for the complainant to a certain extent.

12 MS CEILIDH SNIDER: Objection, that's
13 not...

14 MR. KULBASHIAN: Actually --

15 THE CHAIRPERSON: Just a second.
16 What is the nature of your objection?

17 MS CEILIDH SNIDER: Mr. Kulbashian is
18 attempting to give evidence again about what the
19 Commission does or doesn't do and the Commission --
20 I'll speak to that issue later, but I just have an
21 objection about his assertion that the Commission
22 represents the complainant, and that's clearly not the
23 case.

24 THE CHAIRPERSON: But I don't think
25 he is saying that the Commission represents the

1 complainant. What he is saying is that the complainant
2 often times can, in a way, benefit from the legal
3 advice of the Commission. That is, I think, what he is
4 saying because we all know that the complainant is a
5 party, the Commission is a party and these are two
6 distinct parties to such a hearing.

7 MR. KULBASHIAN: I could rephrase
8 that.

9 What I can say effectively now, in
10 this case specifically, since I can talk about that,
11 there have been many motions filed, many communications
12 that took place regarding both general aspects of the
13 case as well as specific issues regarding Mr. Warman,
14 and the Commission on most occasions has actually done
15 the joint submissions for the complainant and even
16 though the complainant himself is also a lawyer with a
17 lot of experience in human rights cases.

18 So, the appearance would be that the
19 Commission -- the complainant benefits from the
20 Commission's, I guess, presence and the Commission,
21 though they are supposed to be, I guess, defending
22 public interests they do effectively, I guess,
23 prosecute the complainant's case.

24 So, another issue that I want to get
25 into is Mr. Warman talked about the honour and

1 privilege of being before the Tribunal. That is
2 understandable, however, that seems like a lot of
3 rhetoric to me.

4 The major issue is that the
5 respondent did not choose to be here. There was not an
6 issue of honour or privilege that brought her here, it
7 was the fact that the complaint was filed and she had
8 no choice but to either not appear and risk losing the
9 case or appear and try to do the best that she can and
10 with the most, I guess, resources that she can provide.

11 I also submit that Mr. Warman uses --
12 like, further to the issue that Mr. Fromm brought up,
13 Mr. Warman uses the fear that he has of being
14 identified in a more opportunistic manner as opposed to
15 using out of genuine fear as he read in articles
16 where -- and he claimed he was in fear of his life
17 because of posts that were made by Tomasz Winnicki,
18 which was the respondent in another case. He went
19 ahead, had a more light hearted approach to that
20 individual while giving a speech.

21 What I'd like to do right now is I
22 would like to take the stand and testify to certain
23 issues specific to the respondent, if I could get the
24 permission to do that.

25 THE CHAIRPERSON: What would these

1 issues be?

2 MR. KULBASHIAN: This would be issues
3 that I know to be true, issues like whether or not she
4 can afford a lawyer, whether or not she is financially
5 stable.

6 And I would have first-hand knowledge
7 of this information and it would not be information
8 that would be hearsay in any way, or information that I
9 heard from her as much as information that I got
10 directly from having, I guess, extensive communication
11 with her, as well as extensive dealings with her over
12 the past, I would say, five years.

13 THE CHAIRPERSON: Why not have Ms
14 Guille testify?

15 MR. KULBASHIAN: The one thing is
16 that Ms Guille does not have -- well, we could
17 ultimately have her testify.

18 The fact of the matter is it doesn't
19 matter where the information comes from, it's still
20 facts being put on the stand. And the fact of the
21 matter is this is her first day in court and I don't
22 she's not actually -- like, when we were outside during
23 the break she expressed some concern about the
24 possibility of testifying because she's not feeling
25 comfortable in this setting yet.

1 So, I could ultimately testify to
2 very, very strict facts, like, a very strict spectrum
3 of facts that would purely just go to my knowledge of
4 her financial status, as well as my knowledge of her
5 legal abilities because I have been, as Mr. Fromm
6 stated, monitoring these cases for a while, as well as
7 other cases.

8 THE CHAIRPERSON: But I would presume
9 that Mr. Warman and Ms Snider, even though if I were to
10 allow you to testify, would say that the best evidence
11 would be the testimony would be of Ms Guille and why
12 not have her testify, we can put questions to her as to
13 her -- if you think this is --

14 MR. KULBASHIAN: I could do that.
15 The major issue I have, or the fact is I'm also going
16 to be testifying on two other small issues including
17 the fact that I have been involved, I guess you could
18 say, I have been involved with her case from the very
19 start, I have read every single document, I have helped
20 her out on every single motion and how -- also Mr.
21 Fromm's involvement and how he kind of came in late, et
22 cetera, et cetera.

23 So, it would also facts that would be
24 specific to me. If you want to have two witnesses up
25 there and kind of delay --

1 THE CHAIRPERSON: It is just that at
2 this point in time we haven't decided -- or the
3 Tribunal has not decided if you can act as Ms Guille's
4 agent.

5 It's under reserve, I would presume
6 that Mr. Warman and Ms Snider have agreed that you, in
7 a way deal, with the objection I think, that is my
8 understanding, but I haven't decided yet if you will
9 have the standing of the agent of Ms Guille.

10 Because even if you were involved in
11 the case and suppose you were given the status of agent
12 before this Tribunal, if you are involved in the case
13 and you want to speak to certain aspects, there is no
14 need I would presume in many cases for you to take the
15 stand, you know, you would be an agent, like a lawyer
16 doesn't have to take the stand when he speaks on behalf
17 of his client.

18 MR. KULBASHIAN: I understand that.
19 The major issue that I'm trying to show here is that in
20 this case, in this specific hearing, of the three
21 individuals sitting here, I have the most experience
22 with this specific issue, as well as I have done the
23 best -- done the most work, and that if she weren't
24 allowed to, I guess, have me as an agent then she
25 would, in effect, be stuck and it would be a great

1 injustice to her, if anything. It would seriously
2 prejudice her abilities to defend herself.

3 THE CHAIRPERSON: Well, for me,
4 unless I'm off the mark, there seems to be two issues.

5 The first issue is that I think --
6 and this is what you stated -- Ms Guille is not in a
7 position to retain legal counsel to represent her in
8 this particular instance, that is the first thing.
9 That's I think -- this is what I gather from what you
10 said, that she is not in a position to retain legal
11 counsel and this is why instead of retaining legal
12 counsel she wants to have someone as an agent.

13 MR. KULBASHIAN: In that case --

14 THE CHAIRPERSON: So, that is the
15 first point.

16 The second point that was made or
17 that you are making, I understand, that having been
18 involved in her case for a number of years and having
19 your own -- having had to deal with your own case you
20 have -- and this is what I gather from what you are
21 saying -- the proper background in order to act as an
22 agent.

23 This is how I understand, you know,
24 the arguments that you are putting forward. Am I right
25 or am I...

1 MR. KULBASHIAN: It's more or less
2 right.

3 The other thing I wanted to testify
4 to is that paragraph I read first which was regarding
5 Dr. Frances Henry which was an expert witness in my
6 hearing, the one thing that I want to testify to was
7 the fact that before she was cross-examined she was
8 actually tendered as an expert, not only in the field
9 of hate but as well as hate propaganda, and I was able
10 to through my cross-examination effectively make her
11 admit that she was actually not an expert in hate
12 propaganda and that she was -- her testimony was
13 disregarded for that reason.

14 So, in effect, I was effective to a
15 certain level. So, I'm not just coming here with, I
16 guess, no ability to do anything.

17 THE CHAIRPERSON: I am not sure that
18 we have to get into how --

19 MR. KULBASHIAN: I understand.

20 THE CHAIRPERSON: -- in your own case
21 you were able to properly, say, examine and
22 cross-examine or, that is not I think what is at issue
23 here. There are two things.

24 First of all, the fact that Ms Guille
25 is not in a position to retain legal counsel, and the

1 fact that you're alleging that you have the proper
2 background in order to provide her with assistance in
3 her defence against the complaint.

4 Am I right in...

5 MR. KULBASHIAN: Well, I have the
6 proper background to actually act as her
7 representative, not just provide assistance, that's --
8 because otherwise --

9 THE CHAIRPERSON: As an agent.

10 MR. KULBASHIAN: As an agent, that's
11 right.

12 THE CHAIRPERSON: As an agent.

13 MR. KULBASHIAN: Right. Because, I
14 guess, you are right, at this point there is really no
15 reason to actually get into the details.

16 THE CHAIRPERSON: I am trying in a
17 way to identify the issues here, and I would ask the
18 Commission and Mr. Warman if this is where we are right
19 now with respect to your objection and the fact that
20 two things have been raised by the respondents,
21 firstly, that Ms Guille is unable to retain legal
22 counsel because of financial reasons, I would
23 presume -- but this is not before me right now -- and
24 the fact that Mr. Kulbashian has a background in order
25 to properly act as her agent.

1 MR. KULBASHIAN: Mr. Chair, actually
2 I think we might have solved this problem. She agreed
3 to testify, I guess, on a limited basis just so I can
4 ask her questions.

5 THE CHAIRPERSON: Do we agree,
6 Commission and Mr. Warman, that these are the two
7 issues that have to be dealt with right now.

8 MR. WARMAN: That's certainly my
9 understanding.

10 THE CHAIRPERSON: Okay.

11 MR. WARMAN: I think we have made our
12 objection clear and that's my understanding of the
13 position.

14 MS CEILIDH SNIDER: Same here.

15 THE CHAIRPERSON: So...

16 MR. KULBASHIAN: If I could just get
17 I guess five minutes of her testimony. I'm not going
18 to be take her side, just ask her questions right now.

19 THE CHAIRPERSON: It's just that it's
20 twenty to 1:00.

21 Usually the schedule is, we should be
22 going from 9:30 until 11:00, break for 15 minutes, and
23 then go on from 11:15 until a quarter to 1:00. Now, we
24 are close to a quarter to 1:00 and then usually we
25 resume --

1 MR. KULBASHIAN: I understand. The
2 timing wasn't an issue, I was just talking about the
3 next step would be for her testifying.

4 THE CHAIRPERSON: But for everyone's
5 understanding, some people wonder, when will we have a
6 break.

7 So, we usually go from 9:30 until
8 11:00 and 11:15 to, depending on, 12:30 or a quarter to
9 1:00 and then we could resume either at a quarter to
10 2:00 or two o'clock so that people have a decent break
11 for lunch.

12 So, now it's nearing a quarter to
13 1:00.

14 MR. KULBASHIAN: So, basically I
15 don't mind taking a break, I was just kind of stating
16 that she would be testifying.

17 THE CHAIRPERSON: Because she would
18 be cross-examined by...

19 MR. KULBASHIAN: Yes.

20 THE CHAIRPERSON: So, should we break
21 until...

22 MS CEILIDH SNIDER: Until 2 o'clock
23 is fine.

24 THE CHAIRPERSON: Ms Snider?

25 MS CEILIDH SNIDER: We'd be prepared

1 to take a break to 2:00 or a quarter to, whichever is
2 your preference.

3 THE CHAIRPERSON: Okay. Let's break
4 until 2:00, so you will be able to prepare yourself.

5 MR. KULBASHIAN: All right.

6 THE CHAIRPERSON: And what I would
7 like to say is that we will deal with first objection,
8 and we will deal with the objection with respect to Mr.
9 Fromm acting as an agent for the Canadian Heritage
10 Alliance.

11 And there were -- so that I can give
12 you a heads up, we will have to deal after that with
13 the motion for an adjournment.

14 Now, given --

15 MR. KULBASHIAN: We actually have I
16 think three motions for adjournment, they are all
17 independent of each other.

18 THE CHAIRPERSON: So, but...

19 MS CEILIDH SNIDER: We haven't been
20 served with any motions for adjournment.

21 MR. FROMM: Sorry, I didn't hear you.

22 MS CEILIDH SNIDER: We have not --
23 the Commission has not been served with any motions for
24 adjournment.

25 THE CHAIRPERSON: But there was a

1 request, from what I gather, from...

2 MS CEILIDH SNIDER: Just to clarify,
3 there was a motion for stay brought by Ms Guille in the
4 context of a judicial review application. That
5 application -- that motion for stay was dismissed by
6 the Federal Court on Friday.

7 There has been, as far as I know, no
8 other motion or procedure brought in the context of
9 this Tribunal for a stay.

10 THE CHAIRPERSON: But what I have
11 gathered from what I have read is that there was a
12 request, call it a formal motion or request for
13 adjournment for what, I have here, two reasons from my
14 understanding of the file for a late disclosure of
15 documents, i.e., 100 pages that was sent to the
16 respondents late last week, and also the detailed
17 particulars concerning the identification of the hate
18 messages that would be referred to which was received
19 late Friday of last week, and this is what I have got.

20 So...

21 MR. KULBASHIAN: They are --
22 basically all the issues are very fresh issues and the
23 thing is that they were not even prepared, like, an
24 actual written motion to try to exclude me. It's the
25 same reason why, like, basically it's all late issues,

1 like, issues of late disclosure that just came up over
2 the weekend.

3 THE CHAIRPERSON: Given the fact that
4 there is a request for an adjournment, but given also
5 that there are preliminary issues that have to be
6 addressed, this is why we are here today, and we might
7 spend today and maybe even tomorrow on these
8 preliminary issues, there is also a request for
9 disclosure of documents by the complainant, and these
10 have to do with speeches that the complainant, Mr.
11 Warman -- is this still a live issue?

12 MR. KULBASHIAN: That is still a live
13 issue. And another thing is, there is one more which
14 would be a fresh issue, because were unaware of this
15 information until recently, adding Mr. Warman as a
16 respondent to this complaint and that would be
17 something that we brought up as well.

18 THE CHAIRPERSON: So, just before we
19 get into that, a request for --

20 MR. KULBASHIAN: A request for --

21 THE CHAIRPERSON: -- for disclosure
22 of speeches that Mr. Warman would have made --

23 MR. KULBASHIAN: That's right.

24 THE CHAIRPERSON: -- is still a live
25 issue?

1 MR. KULBASHIAN: That's right.

2 THE CHAIRPERSON: The other thing I
3 have on my list is the Commission at one point
4 requested that Ms Guille provide the Commission with a
5 list of members.

6 MR. KULBASHIAN: That is also a live
7 issue.

8 THE CHAIRPERSON: This is also a live
9 issue?

10 MS CEILIDH SNIDER: That is correct.

11 THE CHAIRPERSON: And now you have
12 just added a fourth live issue, which is adding --

13 MR. KULBASHIAN: I'm sorry, it's kind
14 of all new, that's why it's all coming, like, together
15 at the last minute.

16 THE CHAIRPERSON: But it's just that
17 I don't want anyone to be taken by surprise and if we
18 want at one point in time to have a smooth hearing, we
19 have to deal with these issues, you know, from the
20 start, otherwise if we leave them to be dealt with in
21 the course of the hearing, it is going to mess up the
22 hearing. That's my own personal view.

23 MR. KULBASHIAN: That's right, they
24 are a live issue. I don't know what you have, if you
25 have on your -- like, we are still requesting the fact

1 of detailed particulars because the copy that came in
2 was very vague and wasn't as, I guess, detailed as we
3 had --

4 THE CHAIRPERSON: But we'll deal with
5 that when we deal with your motion for an adjournment.

6 MR. KULBASHIAN: Yes.

7 THE CHAIRPERSON: But the last one --

8 MR. KULBASHIAN: The last one was
9 adding Mr. Warman as a respondent to this complaint.

10 THE CHAIRPERSON: And this is
11 something that you will argue later on.

12 MR. KULBASHIAN: That's right. And
13 another issue I'm going to be arguing, because it is in
14 relation to the detail, I guess the particulars that
15 came in on Friday, would be a motion that they actually
16 require an expert witness to testify as to whether or
17 not the specific articles are hate.

18 THE CHAIRPERSON: Could you be more
19 precise on that.

20 MR. KULBASHIAN: Well, the position
21 is that an expert -- they would have to call an expert
22 witness in order to testify on the effect of the
23 documents because in some cases, first of all, the
24 documents are very vague and sometimes it's basically
25 inferred that it's racism or et cetera, so what we are

1 requesting is that an expert witness be brought, in if
2 they choose to state the specific documents are
3 actually hateful or not.

4 THE CHAIRPERSON: Please, you know...

5 MR. WARMAN: Mr. Chair, that's
6 clearly not something the Tribunal can make a decision
7 on.

8 MR. KULBASHIAN: Well, the motion
9 would be to actually dismiss these documents in the
10 exhibit that they rely upon -- that they say tell a
11 story and intend to rely upon.

12 MR. WARMAN: The weight of the
13 document or what interpretation should be given to the
14 document, not as to whether the document is admissible.

15 MR. KULBASHIAN: The other thing is,
16 in the Kulbashian case, during the hearing Mr. Hadjis
17 the Chairperson stated that to a certain extent on
18 documents that are more vague, an expert witness would
19 be required in order to make a determination on those
20 documents and that's why he restricted the decision to
21 specific documents as opposed to all the ones the
22 Commission had brought before it.

23 THE CHAIRPERSON: If you want to
24 bring a motion, if you want to -- basically I can't
25 force Mr. Warman or the Commission to bring an expert.

1 MR. KULBASHIAN: I understand that.
2 The motion would be to exclude certain documents, I
3 guess, from being identified for, like, you know, in
4 relation to the complaint unless an expert witness is
5 present to identify them and give his or her opinion on
6 them.

7 THE CHAIRPERSON: Well, I will
8 entertain the motion when it comes up.

9 Are there any other live issues?

10 MR. KULBASHIAN: That should be it.

11 THE CHAIRPERSON: Preliminary live
12 issues that would have to dealt with before we get into
13 the substance of this...

14 MR. FROMM: Yes. Mr. Chairman,
15 there's one other motion I would like to present after
16 all these other matters have been heard and if they are
17 not successful, this has to do with, we ask that you
18 dismiss the complaint --

19 MS CEILIDH SNIDER: Your mike.

20 MR. FROMM: Yes, there is one other
21 matter after you've dealt with these others, and these
22 other motions are not successful, I have a motion for
23 your consideration asking that the complaint be
24 dismissed on the basis that actions of the complainant
25 or people acting on his behalf created such a poisoned

1 environment as to bring the entire proceedings into
2 disrepute.

3 THE CHAIRPERSON: At this point in
4 time what is important for the Tribunal is to put on
5 the table or have on the table all the issues that will
6 be raised by one party or the other, before we even
7 think about starting the hearing, the substance of the
8 hearing.

9 I hope that everyone agrees, or if
10 anyone has any objection on this way of proceeding,
11 please tell me now, because if we don't deal with these
12 preliminary issues I'm afraid that the hearing will, in
13 a way, be very, very difficult to keep on track.

14 So, if there is any objection, I
15 would like those who have an objection to voice their
16 objection now for the record, otherwise we will go that
17 path, and maybe it's going to take a little bit more
18 time, but at least we will have dealt with the issues.

19 Mr. Warman?

20 MR. WARMAN: Mr. Chair, my only
21 concern is not that that be the path down which we will
22 travel, my concern is just I guess the fact that I
23 haven't heard the motions yet, but I'm assuming when I
24 do that they are the same repeated vexatious motions
25 that have been brought --

1 MR. KULBASHIAN: I would like to
2 object to what he's saying actually, he's
3 characterizing the motions --

4 THE CHAIRPERSON: Well, that's...

5 MR. WARMAN: The motions sound
6 suspiciously similar to those that have already been
7 brought and rejected by the Tribunal in previous cases.

8 MR. KULBASHIAN: I would submit that
9 he's not actually the decision-making body, the
10 Tribunal is and --

11 THE CHAIRPERSON: But I think that I
12 will have to first, you know...

13 MR. WARMAN: My only concern is that
14 they proceed expeditiously so we don't allow the
15 Tribunal to get bogged down in these preliminary
16 matters and, thus, interrupt the hearing of the actual
17 complaint.

18 THE CHAIRPERSON: But this is why,
19 you know, I'm really -- you know, with respect to these
20 preliminary matters I'm really open and I'm trying to,
21 you know, put on the table what I think needs to be
22 dealt with at this point in time and I think this is
23 for the proper administration of this hearing and these
24 proceedings, and really I don't have anything to hide
25 in that respect.

1 So, if at one point you think there
2 is no need to deal with something, you just, you know,
3 mention it or raise it and we'll deal with that.

4 Otherwise, what I see now is that I
5 have six different issues to deal with and we'll deal
6 with them as expeditiously as we can and also in an
7 orderly manner, if we can.

8 MS CEILIDH SNIDER: On the note of
9 late disclosure, inasmuch as the respondents have
10 concerns of late disclosure, the respondents also
11 provided very late disclosure of two CDs, so it goes
12 both ways.

13 THE CHAIRPERSON: Yes. But even if
14 it goes both ways, then --

15 MR. KULBASHIAN: Mr. Chair --

16 THE CHAIRPERSON: -- you know, what is
17 the impact of --

18 MS CEILIDH SNIDER: Exactly.

19 THE CHAIRPERSON: -- of the
20 disclosure at a certain point in time.

21 MR. KULBASHIAN: I will just make,
22 like to make a very brief submission since the time has
23 dragged on.

24 The CDs that were submitted to the
25 Commission were actually just second copies of the

1 original CDs of disclosure that she had and they are
2 disclosure that was submitted over the course, but they
3 were kind of amalgamating into one CD so it would be
4 easier for them to work with.

5 THE CHAIRPERSON: Yes, but the
6 question I have to deal with is the fact that some
7 documents were disclosed at a certain point in time, is
8 that prejudicial to the case of either the respondent
9 or the Commission or the complainant. That is the
10 issue I have to deal with.

11 MR. KULBASHIAN: For sure.

12 THE CHAIRPERSON: So, it's close to
13 one o'clock, so let's try to make it for 2:10 so that
14 people have a decent lunch break.

15 REGISTRY OFFICER: Order, please.

16 --- Upon recessing at 12:55 p.m.

17 --- Upon resuming at 2:10 p.m.

18 REGISTRY OFFICER: Order, please.

19 Please be seated.

20 THE CHAIRPERSON: Good afternoon,
21 everyone.

22 Mr. Kulbashian?

23 MR. KULBASHIAN: I would actually --
24 basically, Ms Guille will be testifying, however, I'd
25 like to take the stand and testify on issues directly

1 related to this application that was at issue in Mr.
2 Warman's testimony, the one in Federal Court on my
3 case.

4 That is, that actually did become an
5 issue because he stated that he did not know that any
6 motion for a stay was filed, you know, an outline.

7 So, I will be testifying directly to
8 counteract that information, very brief, depending on
9 how much questions they have.

10 THE CHAIRPERSON: Any objection?

11 MS CEILIDH SNIDER: No objection.

12 THE CHAIRPERSON: So, would you take
13 the stand first?

14 MR. KULBASHIAN: I will just make it
15 brief, I'm just figuring out what I should say.

16 THE CHAIRPERSON: Okay.

17 SWORN: ALEXAN KULBASHIAN

18 MR. KULBASHIAN: I'm just going to
19 testify to start and, if Mr. Fromm has any questions, I
20 will get into that along with the cross-examination.

21 Two weeks ago my lawyer, Doug
22 Christie, contacted me regarding the Federal Court
23 application for judicial review and he asked me to
24 write up an affidavit, which I did, and have it
25 commissioned because on November 28th they had an

1 actual hearing as opposed to written submissions where
2 he was going to be making a motion to basically apply
3 for an order of stay on the payment issue, with
4 payments I have to make towards the Tribunal as well as
5 payments I have to make towards Mr. Warman, the
6 complainant.

7 That's basically what I have to
8 testify to.

9 THE CHAIRPERSON: Mr. Fromm, do you
10 have any questions?

11 MR. FROMM: No, I don't.

12 MS CEILIDH SNIDER: I just have one
13 question.

14 THE CHAIRPERSON: Ms Snider.

15 EXAMINATION BY MS SNIDER

16 MS CEILIDH SNIDER: Mr. Kulbashian,
17 this ruling -- or decision was made in March of this
18 year. Why was it that it took you until this month to
19 make that motion?

20 MR. KULBASHIAN: Well, being
21 inexperienced with the Federal Court process, I assumed
22 that application for leave and judicial review would
23 actually also order a stay in the payment issue.

24 When I was served with documents by
25 Mr. Sinclair, it's a lawyer that works downtown, I was

1 asked to come in for examination in order to check my
2 ability to pay, and that's when I realized that there
3 was no stay in the actual order for payment and,
4 therefore, I contacted my lawyer and told him to make
5 an application.

6 MS CEILIDH SNIDER: And did your
7 counsel, Doug Christie, not advise you when he was
8 preparing your judicial review application of the
9 necessity to apply for a stay at the same time?

10 MR. KULBASHIAN: That wasn't an issue
11 at the time. The primary issue was to get the order,
12 like, the actual judicial review, to have the order
13 reversed or the decision reversed.

14 MS CEILIDH SNIDER: Okay, thank you.

15 THE CHAIRPERSON: Mr. Warman?

16 MR. WARMAN: Yes, I have just one,
17 sorry, quick question. It will just take me a moment
18 to find the reference.

19 EXAMINATION BY MR. WARMAN

20 MR. WARMAN: Mr. Kulbashian, on the
21 10th of March, 2006 you were ordered to pay a penalty
22 in the amount of \$1,000 by certified cheque or money
23 order payable to the Receiver General of Canada to be
24 received by the Tribunal within 120 days of having been
25 notified of this decision.

1 Did you comply with that?

2 MR. KULBASHIAN: I did not. I have
3 not yet.

4 MR. WARMAN: Thank you.

5 MR. KULBASHIAN: To say the least.
6 I'm guessing that's it.

7 THE CHAIRPERSON: No further
8 questions.

9 So, thank you, Mr. Kulbashian.

10 MR. KULBASHIAN: Thank you.

11 MR. KULBASHIAN: Now, I guess if we
12 could call Ms Guille to the stand to testify on issues
13 that we talked about before the break.

14 THE CHAIRPERSON: Okay. Ms Guille.

15 SWORN: MELISSA GUILLE

16 THE CHAIRPERSON: Any objection with
17 Mr. Fromm starting?

18 MR. FROMM: Oh, I'm not objecting.

19 THE CHAIRPERSON: Mr. Warman?

20 Okay, Mr. Fromm.

21 EXAMINATION BY MR. FROMM

22 MR. FROMM: Ms Guille, after you were
23 served with the complaint in this matter, did you
24 investigate retaining legal counsel?

25 MS GUILLE: Somewhat, yes.

1 MR. FROMM: And what did you learn?

2 MS GUILLE: It was a lot more than
3 what I could afford.

4 MR. FROMM: And would you be able to
5 describe in a general way your finances?

6 MS GUILLE: I'm a single parent. I
7 work full time hours for just barely reaching above the
8 poverty line.

9 MR. FROMM: Having investigated what
10 legal counsel in this matter might cost you and having
11 looked at your own finances, what did you conclude?

12 MS GUILLE: That I would have to
13 represent myself.

14 MR. FROMM: How familiar are you with
15 the workings of the legal system?

16 MS GUILLE: Not at all.

17 MR. FROMM: Whose help did you turn
18 to in preparing your responses to this complaint?

19 MS GUILLE: Alexan Kulbashian.

20 MR. FROMM: Can you indicate to the
21 court -- I mean, to the Tribunal how long he's been
22 assisting you?

23 MS GUILLE: Since the beginning. I
24 think it was around the time that his hearing was going
25 on that I have been served with the complaint and I had

1 turned to him for a lot of advice, and during that time
2 he's written a lot of the motions and helped me with
3 understanding some of the process.

4 MR. FROMM: If he were not able to
5 assist you, would you feel able to represent yourself?

6 MS GUILLE: Absolutely not.

7 MR. FROMM: Are you aware of the
8 finances of the Canadian Heritage Alliance?

9 MS GUILLE: To a point, yes.

10 MR. FROMM: You already indicated
11 that you checked into the costs of counsel. From your
12 knowledge, would the Canadian Heritage Alliance be able
13 to retain counsel?

14 MS GUILLE: Absolutely not.

15 MR. FROMM: Those are my questions.

16 THE CHAIRPERSON: Mr. Kulbashian?

17 MR. KULBASHIAN: I will continue
18 asking questions.

19 EXAMINATION BY MR. KULBASHIAN

20 MR. KULBASHIAN: To what extent was
21 Mr. Fromm involved in the case?

22 MS GUILLE: I just made him aware of
23 the case back in the summer, we had discussed it
24 briefly, but other than what he's seen on the Internet
25 and maybe some private discussions, he really didn't

1 know about the -- all the motions, the procedures that
2 were going through.

3 MR. KULBASHIAN: There were several
4 motions filed on this case throughout, I guess the case
5 management period. Can you tell us, like, how those
6 motions came about or how responses to the Commission's
7 motions or the case's motions came about?

8 MS GUILLE: They're all written by
9 you, Alex Kulbashian.

10 MR. KULBASHIAN: If I were only in a
11 position to be able to assist, you do you still think
12 you would be able to, I guess, represent yourself?

13 MS GUILLE: No, it would be -- I'd be
14 lost.

15 MR. KULBASHIAN: All right, thank
16 you.

17 MR. FROMM: I have one supplementary
18 question.

19 EXAMINATION BY MR. FROMM

20 MR. FROMM: Did you take
21 post-secondary education?

22 MS GUILLE: Yes, I did.

23 MR. FROMM: And what field was that
24 in?

25 MS GUILLE: English and history. I

1 could do a grammar check, but I can't defend myself
2 legally.

3 MR. FROMM: Thank you.

4 MR. WARMAN: Mr. Chair, could we have
5 just one minute.

6 THE CHAIRPERSON: Yes.

7 --- Pause

8 THE CHAIRPERSON: Mr. Warman.

9 EXAMINATION BY MR. WARMAN

10 MR. WARMAN: Good afternoon, Ms
11 Guille.

12 MS GUILLE: Good afternoon.

13 MR. WARMAN: You were asked whether
14 you had contacted lawyers. Can you tell me how many
15 lawyers you contacted?

16 MS GUILLE: There was a few.

17 MR. WARMAN: Can you tell me how
18 many, please?

19 MS GUILLE: Possibly three.

20 MR. WARMAN: Can you tell me what
21 their names are, please?

22 MS GUILLE: No, this was a couple of
23 years ago.

24 MR. WARMAN: Can you tell me when you
25 contacted them? When you say a couple of years ago, do

1 you mean two years ago, do you mean three years ago,
2 four years ago, last year?

3 MS GUILLE: I believe it was a few
4 months after I received the complaint and it was
5 sporadic between the day I received the complaint and
6 Christmas.

7 MR. WARMAN: And, sorry, which
8 Christmas is that?

9 MS GUILLE: Possibly Christmas, 2004.

10 MR. WARMAN: So, since that time you
11 have had no contact with any lawyers with regard to
12 acting on your behalf at this hearing; is that correct?

13 MS GUILLE: No, there was a lawyer in
14 Cambridge I did ask her secretary about whether or not
15 she did civil cases with the Tribunal and the
16 conversation didn't go further than that, she didn't
17 deal with these type of cases.

18 MR. WARMAN: So, just to be clear,
19 you asked a couple of lawyers within few months of
20 receiving the complaint and subsequent to that the only
21 contact you had with a lawyer was to speak with a
22 secretary about whether she did civil cases.

23 And when you were informed they
24 didn't, that's as far as you went; is that correct?

25 MS GUILLE: Actually, no, I also

1 checked into Legal Aid but they don't do civil cases on
2 this level.

3 MR. WARMAN: But apart from Legal
4 Aid, is that correct, what I have summed up to you?

5 MS GUILLE: Yes.

6 MR. WARMAN: Can you tell me how many
7 paralegals you contacted to represent you before these
8 proceedings?

9 MS GUILLE: None.

10 MR. WARMAN: None.

11 MS GUILLE: I'm aware of another case
12 where he has employed a paralegal and he is still
13 trying to pay that off, so...

14 MR. WARMAN: Sorry, my question was
15 specifically how many paralegals have you contacted and
16 your answer is none; is that correct?

17 MS GUILLE: That's right.

18 MR. WARMAN: You knew since at
19 least -- I'm sorry, I don't have the exact date before
20 me. Sorry, Mr. Chairperson.

21 On the 15th of August, 2006 Madam
22 Karen Jensen of the Canadian Human Rights Tribunal
23 rendered a ruling in which she indicated that the role
24 of Mr. Kulbashian in the present complaint would be one
25 that would be addressed at the hearing.

1 You're aware of that ruling of
2 course?

3 MS GUILLE: Yes.

4 MR. WARMAN: So, as of at least
5 mid-August you were aware that Mr. Kulbashian would be
6 challenged, you were put on notice of that fact by the
7 Commission and by myself; were you not?

8 MS GUILLE: Yes.

9 MR. WARMAN: So, having been aware of
10 that and knowing there was a possibility that Mr.
11 Kulbashian would be rejected as your representative,
12 what steps did you take to provide or seek alternative
13 representation in the event he was, in fact, rejected?

14 MS GUILLE: I was hoping I could
15 still bring him through, but at that time I started
16 considering asking Paul Fromm to help with the case,
17 however, as you know yourself, he's been very busy with
18 other cases.

19 MR. WARMAN: So, those are the only
20 steps, you simply talked to Mr. Fromm in the event that
21 he might be able to assist you?

22 MS GUILLE: Yes.

23 MR. WARMAN: So, if Mr. Kulbashian
24 was able to assist you, would Mr. Fromm be able to
25 assist you?

1 MS GUILLE: He possibly would but he
2 is not familiar with all the paperwork behind the case.

3 MR. WARMAN: Are you aware that Mr.
4 Fromm has represented a number of other individuals
5 before the Tribunal who were accused of having violated
6 section 13 of the Canadian Human Rights Act?

7 MS GUILLE: Yes.

8 MR. WARMAN: Can you state what your
9 highest level of formal education is, please?

10 MS GUILLE: University.

11 MR. WARMAN: And did you complete a
12 Bachelor of Arts or a Bachelor of Arts Honours?

13 MS GUILLE: No.

14 MR. WARMAN: Thank you. Those are my
15 questions.

16 THE CHAIRPERSON: Thank you.

17 Ms Snider?

18 MS CEILIDH SNIDER: Good afternoon.

19 MR. KULBASHIAN: I actually object to
20 Ms Snider asking questions. This comes down to the
21 issue where the entire time that Mr. Warman was asking
22 questions they were constantly conferring with each
23 other, so it's like -- effectively, like taking two
24 kicks at the cat.

25 And it just seems, like, it's more of

1 an ambush than actually two independent parties asking
2 questions.

3 THE CHAIRPERSON: Well, before this
4 Tribunal the complainant and the Commission are two
5 separate parties, and I think that if I -- so as not to
6 be repetitive in their cross-examination or in
7 examination that they need to consult, I think they are
8 entitled to do that, and I would say the same about
9 yourself and Mr. Fromm.

10 MR. KULBASHIAN: I understand.

11 THE CHAIRPERSON: And even though you
12 are two distinct parties, I for one would see no
13 collusion between yourselves if you need to consult so
14 that, you know, proper questions would be put to the
15 witness.

16 MR. KULBASHIAN: I understand.
17 Actually, if they continue to communicate, then there
18 should actually be no reason to communicate from this
19 point on I guess.

20 THE CHAIRPERSON: So, I wouldn't as a
21 Tribunal see Mr. Warman and Ms Snider speaking to one
22 another as ganging up on the respondent, but as trying
23 to be as efficient as one may be in proceeding with
24 cross-examination or examination-in-chief, and the same
25 applies to you.

1 MR. KULBASHIAN: All right.

2 THE CHAIRPERSON: So, there is no two
3 sets of rules.

4 MR. KULBASHIAN: Okay.

5 THE CHAIRPERSON: So, does that
6 clarify?

7 MR. KULBASHIAN: It does, yeah.

8 THE CHAIRPERSON: Ms Snider.

9 MS CEILIDH SNIDER: Thank you.

10 EXAMINATION BY MS SNIDER

11 MS CEILIDH SNIDER: Yes, Ms Guille,
12 I'm going to deal with the issue of finances as
13 distinct from the issue that Mr. Warman dealt with.

14 In your examination-in-chief you
15 discussed that you had reviewed the finances of CHA in
16 order to determine whether or not CHA, Canadian
17 Heritage Alliance, would have sufficient funds to
18 procure a lawyer; is that correct?

19 MR. KULBASHIAN: I object. Actually
20 I am objecting because she didn't actually state that,
21 she just stated that CHA does not the have funds, she
22 didn't state that she actually reviewed the finances of
23 the CHA.

24 MS CEILIDH SNIDER: I'll rephrase.

25 MR. WARMAN: In fact, she stated

1 specifically in response to question from Mr. Fromm
2 that she was aware of the finances of CHA.

3 MR. KULBASHIAN: That doesn't mean
4 she actually reviewed the finances of the CHA.

5 THE CHAIRPERSON: There is a --

6 MS CEILIDH SNIDER: There's a very
7 fine distinction and I can rephrase my question --

8 MR. KULBASHIAN: Yes.

9 MS CEILIDH SNIDER: -- to satisfy the
10 respondent.

11 THE CHAIRPERSON: Would you, please,
12 do so.

13 MS CEILIDH SNIDER: You stated that
14 the CHA didn't have sufficient funds. How did you
15 become aware of that knowledge?

16 MS GUILLE: There is no funds.

17 MS CEILIDH SNIDER: As of when -- how
18 frequently -- first of all, is there a bank account
19 associated with Canadian Heritage Alliance?

20 MS GUILLE: No, there's not.

21 MS CEILIDH SNIDER: Okay. Ms Guille,
22 do you file tax returns, income tax returns?

23 MS GUILLE: Yes, I do.

24 MS CEILIDH SNIDER: And have you
25 filed income tax returns for each of the past three

1 years?

2 MS GUILLE: I've never missed a year,
3 every year.

4 MS CEILIDH SNIDER: Ms Guille, could
5 you tell us by a range what your income for each of the
6 past three years has been; 10 to 20, 20 to 30?

7 MS GUILLE: Two years ago probably
8 about 20 to 23 and this year I think it was almost 25.

9 MS CEILIDH SNIDER: Ms Guille,
10 presently have you any idea how much money you have in
11 your own personal account?

12 MS GUILLE: Unfortunately, yes.

13 MS CEILIDH SNIDER: Could you tell
14 us, please?

15 MS GUILLE: Take out -- because my
16 rent is sitting in there, so I have about \$150.

17 MS CEILIDH SNIDER: Okay. And could
18 you outline for us, please, the assets that you own,
19 assets being computers --

20 MR. KULBASHIAN: I'm sorry, actually
21 I want to object to this question. Assets that she
22 owns can't actually be used to pay a lawyer, like, give
23 him a computer.

24 This is more a proper question for
25 ability to pay a fine, if she was ordered to do so, as

1 oppose to assets that she owns, like, she can't say,
2 I've got a couch, I can sell that to get a lawyer.
3 It's kind of going more into, like, kind of being
4 forced to pay issue.

5 MS CEILIDH SNIDER: In fact one can,
6 if one makes a decision that one's priority is to
7 obtain legal representation, it's perfectly possible
8 for an individual to make a decision about how they
9 wish to prioritize their finances and what assets they
10 wish to sell from time to time in order to obtain
11 necessary finances.

12 MR. WARMAN: Mr. Chair, it would be
13 ludicrous if a respondent was able to say, well, I own
14 a mansion and a yacht but I'm unwilling to do anything
15 with them, dispose of those assets because I prefer to
16 retain them and not pay for legal counsel, and then
17 appear at a hearing and say, well, I can't afford legal
18 counsel because I have a mansion and a yacht but I
19 don't want to do anything.

20 THE CHAIRPERSON: Yes, but from what
21 I heard from Ms Guille, I don't think we would find, if
22 we were to go to her place, any mansion and --

23 MS CEILIDH SNIDER: That may be the
24 case --

25 MR. WARMAN: That may be the case,

1 but we are entitled to ask.

2 THE CHAIRPERSON: Well, you can ask
3 the question --

4 MS CEILIDH SNIDER: Thank you.

5 THE CHAIRPERSON: -- but it has to be
6 put in the proper -- you will have to put it in the
7 proper context.

8 MS CEILIDH SNIDER: Ms Guille, I'd
9 like you to outline for the Tribunal the assets that
10 you own that would be of a saleable nature?

11 MS GUILLE: I have a bus pass and a
12 bicycle that was given to me to get to and from work.
13 I own no car, I own nothing.

14 MS CEILIDH SNIDER: Do you own a
15 computer?

16 MS GUILLE: I do. I put it together
17 with bits and pieces, so, it's not worth anything
18 either.

19 MS CEILIDH SNIDER: I take it you do
20 not own a car?

21 MS GUILLE: No, I don't.

22 MS CEILIDH SNIDER: Okay.

23 THE CHAIRPERSON: Thank you, Ms
24 Guille.

25 MR. KULBASHIAN: If I could just

1 follow up.

2 THE CHAIRPERSON: Yes, follow-up
3 question.

4 EXAMINATION BY MR. KULBASHIAN

5 MR. KULBASHIAN: Okay.
6 Hypothetically speaking -- okay, first of all, there
7 is some question about how long you tried to contact
8 lawyers, et cetera.

9 Do you think that the price of
10 lawyers would have, say, depreciated to hire a lawyer?

11 MR. WARMAN: Objection, he's asking
12 clearly for speculation of a matter that is not within
13 her knowledge.

14 MR. KULBASHIAN: Actually, this was
15 Mr. Warman's question where he asked how long ago she
16 tried to contact a lawyer, how long ago she tried to
17 contact a paralegal, et cetera, et cetera.

18 MR. WARMAN: He's asking her to
19 speculate. Do you know, do you think that lawyers'
20 fees would have increased or decreased since that time,
21 it's pure speculation.

22 MR. KULBASHIAN: I can reword the
23 question, that's fine. Would you be able to pay a
24 lawyer \$5,000?

25 MS GUILLE: I have no disposable

1 income at all. I live pay cheque to pay cheque. There
2 is no way I could afford \$50 a month for a lawyer.

3 MR. KULBASHIAN: So, would it be fair
4 to say that through the lawyers that you talked to that
5 under any reasonable circumstances their price would
6 have fallen within your budget within the two years
7 that you had contacted them?

8 MS GUILLE: No.

9 MR. KULBASHIAN: Okay. Is it --
10 sorry, would you be able to afford the services of a
11 paralegal?

12 MS GUILLE: No, they're not much
13 cheaper.

14 MR. WARMAN: Again, Mr. Chair, I'm
15 sorry, again, but he's asking for speculation. Ms
16 Guille says she's never contacted a paralegal and then
17 Mr. Kulbashian says, would you be able to afford the
18 services of a paralegal.

19 MR. KULBASHIAN: She did state --

20 MR. WARMAN: It's obviously outside
21 her knowledge.

22 MR. KULBASHIAN: She did state that--

23 MR. WARMAN: She knew somebody else
24 who hired one.

25 MR. KULBASHIAN: Stop interrupting

1 me.

2 THE CHAIRPERSON: Just, just -- for
3 the stenographer I think it is important that only one
4 person speak.

5 MR. KULBASHIAN: Sure. Well, she did
6 state that she did know somebody who did use the
7 services of a paralegal and she can reasonably
8 speculate how much it cost him.

9 And the fact of the matter she did
10 state that he was still paying off the paralegal for
11 the services, and I'm assuming that if he chose to get
12 a paralegal he couldn't find a lawyer that was cheaper.

13 THE CHAIRPERSON: Do you have that
14 actual knowledge of how much that person was indebted
15 to its paralegal?

16 MS GUILLE: Not the full amount, but
17 I know the last time he spoke to me he still owed
18 almost a thousand dollars.

19 MR. KULBASHIAN: Could you afford a
20 thousand dollar retainer for a case for a lawyer?

21 MS GUILLE: No.

22 MR. KULBASHIAN: Thank you. Those
23 are my questions.

24 THE CHAIRPERSON: Thank you, Ms
25 Guille. Unless you have another -- thank you.

1 MS GUILLE: Okay.

2 SUBMISSIONS BY MR. KULBASHIAN

3 MR. KULBASHIAN: If I could just
4 finish, I guess, my submissions now, since I was -- the
5 Commission and the complainant and then Mr. Fromm went.
6 I just want to finish.

7 The major issue is that the
8 respondent can't afford a lawyer. So far she has made
9 efforts to see if she could afford a lawyer and she
10 can't. She came to me and I helped her out of good
11 faith a while back and I'm not charging her anything.

12 The major issue here is, first of
13 all, Mr. Warman stated that allowing me to be an agent
14 would put the administration of justice into disrepute,
15 however, he hasn't given an exact reason why it would
16 put the administration of justice into disrepute. I
17 can surmise that he doesn't like my presence here.

18 The fact of the matter is he did file
19 a complaint against Ms Guille and it wasn't out of her
20 choice that she's actually here today, she's here today
21 out of respect for the Tribunal, respect for the law
22 and willing to actually fight rather than, I guess, let
23 the court -- let the hearing take its course and her
24 not be present.

25 She has made quite a great effort to

1 try and make this happen, however, the fact of the
2 matter is she doesn't have any experience, legal
3 experience to defend herself. She has never gone up
4 and, I guess, talked on the stand before -- I'm not
5 sure, I can't really say that -- but she never actually
6 represented anyone, she doesn't have any legal
7 experience, as she stated. Her qualifications are very
8 unrelated to the law field.

9 I do have a certain level of
10 experience and this is what I can offer.

11 The fact of the matter is it's not
12 logical to file a complaint and then try to pick out
13 people who are going to represent her purely on the
14 fact that, you know, that I had previously had an order
15 against me. The fact of the matter is the order is
16 under appeal, I am following the proper, I guess,
17 course of the administrative justice.

18 One second.

19 Another issue is whether or not I'm
20 her agent, Mr. Warman has not been able to show that
21 I've been disruptive, that I've been belligerent or in
22 any way I've been, I guess, a problem when I appeared
23 at my own hearing.

24 Another issue is that the order
25 ultimately, if she should lose this case, will not be

1 issued against me, so whether or not I'm here, and I
2 haven't actually by his, I guess, opinion haven't
3 actually followed the order that was against myself,
4 the actual order, the issue would be against Ms Guille
5 and the CHA and it would have nothing to do with me as
6 to whether or not she would have to pay the fine, et
7 cetera, et cetera.

8 I guess to make sure I get all my
9 notes because it's kind of last minute.

10 As she stated, I have been involved
11 from the very beginning in this case back when it was
12 still a complaint and continued to do so until this
13 point and, in her opinion, I am the most, I guess,
14 qualified to handle her case. I have knowledge of all
15 the details and, as she stated, Mr. Fromm, though he's
16 here in the capacity representing the CHA, I am
17 basically the only one that could handle the
18 substantiative charges against her, like, the
19 respondent.

20 And ultimately the issue is, can you
21 tell me to not be her agent and then put her in a
22 situation of jeopardy because ultimately this is not
23 just a formality, she could actually have thousands of
24 dollars of fines against her, she will have a court
25 order against her from doing certain actions for the

1 rest of her life and there is actually, you know, for
2 her especially since she doesn't have very much in the
3 way of financial means, any kind of order that's made
4 by the Tribunal will actually strongly affect her and
5 she will not be able to afford to make any payment on
6 it.

7 So, ultimately, I ask for the
8 Tribunal to, I guess, disregard or, I don't know what
9 the word for it is, I guess, deny the motion put
10 forward by the complainant and Commission in this case
11 and allow me to actually represent her.

12 THE CHAIRPERSON: Thank you, Mr.
13 Kulbashian.

14 Mr. Fromm?

15 MR. FROMM: Mr. Chairman --

16 MR. WARMAN: Mr. Chairman.

17 THE CHAIRPERSON: Yes.

18 MR. WARMAN: Did Mr. Fromm not
19 already make submissions on this?

20 THE CHAIRPERSON: Is there anything
21 else you wanted to add?

22 MR. FROMM: Very briefly.

23 FURTHER SUBMISSIONS BY MR. FROMM

24 MR. FROMM: Mr. Chairman, you are
25 faced with a dilemma that involves an injustice, no

1 matter which way you turn.

2 The Charter guarantees Ms Guille not
3 only due process but natural justice.

4 Mr. Kulbashian cannot really
5 represent Ms Guille, I can't, we are not trained
6 lawyers. The best that can be done is that she get
7 very second-best assistance, and that's all Mr.
8 Kulbashian can do.

9 The crying tragedy is that this is
10 another case where the Human Rights Commission is
11 beating up on a --

12 MR. WARMAN: Mr. Chairman --

13 THE CHAIRPERSON: Mr. Fromm, I don't
14 think that this is proper language.

15 MR. FROMM: All right. This is
16 another case where the person comes, the respondent
17 comes before you with no resources to retain counsel,
18 Legal Aid does not cover civil matters, as she
19 discovered, her only resource is to come alone to try
20 to deal with a process she doesn't understand, has no
21 experience in or, in the alternative, turn to people
22 who have some experience, and that's all I'm sure Mr.
23 Kulbashian or I could offer, very much second best and
24 not really giving her the proper defence that I believe
25 the Charter entitles everybody to.

1 And, as I say, the dilemma you are
2 faced with, sir, is injustice either way.

3 But perhaps the lesser injustice
4 would be to let Mr. Kulbashian, who does have
5 experience and certainly does have a lot of enthusiasm
6 and a real care for this case to continue to assist her
7 as her agent.

8 THE CHAIRPERSON: Thank you, Mr.
9 Fromm.

10 Mr. Warman?

11 REPLY SUBMISSIONS BY MR. WARMAN

12 MR. WARMAN: Mr. Chair, I think it
13 just bears emphasizing the fact that by Ms Guille's own
14 testimony she has indicated that, in fact, her steps to
15 retain counsel consisted of, over a period of six
16 months upon receiving the complaint, which I understand
17 was probably back in 2003, of speaking with various
18 lawyers. She's spoken with no paralegals.

19 She knew that Mr. Kulbashian would be
20 objected to, she took no steps to seek any alternative
21 other than perhaps Mr. Fromm.

22 She's indicated that Mr. Fromm is in
23 fact available and would be willing to help her.

24 And, finally, the question --

25 MR. KULBASHIAN: Objection. I have

1 an objection. She didn't state that, she stated that
2 Mr. Fromm was unable to help her because he was bogged
3 down with other cases that he was assisting in.

4 MR. WARMAN: The last issue is that
5 Ms Guille is entirely entitled to have representation
6 whether it's by an agent, a paralegal or a lawyer, but
7 there are, to the best of my knowledge, over
8 5,999,000,000 people in the world and Mr. Kulbashian is
9 not the only person in the world who can provide her
10 with assistance, could have provided her with
11 assistance.

12 He is not legally trained by his own
13 admission, he has a history before this Tribunal and an
14 outstanding order from the Tribunal that would make an
15 entirely gross mockery of these proceedings where the
16 intent is to give full force and effect to the Canadian
17 Human Rights Act to permit someone with that history to
18 appear as an agent before this Tribunal.

19 Thank you.

20 THE CHAIRPERSON: Thank you, Mr.
21 Warman.

22 Given there is a second challenge, I
23 will reserve my decision on the objection to have Mr.
24 Kulbashian disqualified as agent of Ms Guille and we'll
25 hear submissions with respect to Mr. Fromm on your

1 part, Mr. Warman.

2 MR. WARMAN: I believe Ms Snider will
3 be commencing with these.

4 THE CHAIRPERSON: Thank you.

5 SUBMISSIONS BY MS SNIDER

6 MS CEILIDH SNIDER: This is a motion
7 or objection that may be dispensed with very quickly.

8 Ms Guille has taken the position
9 hitherto that Canadian Heritage Alliance is merely a
10 website and not a group. If Ms Guille decides that she
11 wishes to change her position in respect of that
12 characterization of the Canadian Heritage Alliance that
13 may go some way towards alleviating the Commission's
14 objections.

15 Ms Guille, it may be prudent to
16 simply get Ms Guille's position on this, whether or not
17 she intends at this time to change her position before
18 proceeding with the rest of my submissions.

19 THE CHAIRPERSON: But wasn't -- you
20 know, the status of the Canadian Heritage
21 Association --

22 MS CEILIDH SNIDER: Alliance.

23 THE CHAIRPERSON: -- Alliance an
24 issue that this Tribunal had to deal with and determine
25 what is the status or legal status of the --

1 MS CEILIDH SNIDER: Certainly that's
2 the case, but if Ms Guille decides that she wants to
3 change her position on what the status of the Canadian
4 Heritage Alliance is, we would be willing to entertain
5 that.

6 If she wishes to say, for example,
7 that it is a group and a group for which she has legal
8 authority to bind, then we have no problem with that
9 and she can provide evidence of that, then we have no
10 problem with her retaining, or the Canadian Heritage
11 Alliance retaining Mr. Fromm.

12 So, rather than take up a great deal
13 of the Tribunal's time and arguing this, it may be
14 simpler just to ascertain what Ms Guille's position is
15 on this at this time and I would be happy to proceed
16 with my submissions if they're warranted.

17 THE CHAIRPERSON: What I gather, from
18 what have here, is that there are two respondents.

19 MS CEILIDH SNIDER: Yes, Ms Guille
20 and the Canadian Heritage Alliance. That's the
21 position that the Commission takes, however, Ms Guille
22 has taken the position that the Canadian Heritage
23 Alliance is merely a website.

24 THE CHAIRPERSON: Yes. Well, that's
25 her position.

1 MS CEILIDH SNIDER: Yes.

2 THE CHAIRPERSON: And we haven't even
3 started hearing witnesses on that.

4 MS CEILIDH SNIDER: No, I realize
5 that.

6 THE CHAIRPERSON: I would presume
7 that if a complaint was made against Canadian Heritage
8 Alliance as well as Ms Guille, it is because someone
9 thought that there was some form of entity there.

10 MS CEILIDH SNIDER: Yes, clearly.

11 THE CHAIRPERSON: Now, I don't know
12 if at this point in time it's proper to ask Ms
13 Guille --

14 MS CEILIDH SNIDER: She's at liberty
15 not to answer.

16 MR. KULBASHIAN: If she wants to
17 change her position that's, that's the whole question?

18 Okay. Well, that was very quick.
19 She actually said she will not change her position, but
20 I submit that since the Canadian Heritage Alliance is
21 in fact a named respondent in this hearing and since
22 she does, in fact -- like, she considers it a website,
23 but it is part of the hearing complaint and the
24 allegations are that she ran the website, in fact,
25 something that she doesn't admit as well.

1 Canadian Heritage Alliance, as a
2 respondent, does have a right to have representation in
3 court and since she's the only one right now that they
4 can say right now is administering the website, then
5 she does have a right to assign an agent to, I guess,
6 defend the Canadian Heritage Alliance's case.

7 MS CEILIDH SNIDER: I guess that's
8 the nub of our objection. I just wanted to clear this
9 up very clearly and if she was taking a different
10 position, then we could just dispense with this
11 objection and move on, but clearly that is not the
12 case.

13 THE CHAIRPERSON: I understand that
14 there is in fact, given the present status of the
15 complaint, two respondents that were named in the
16 complaint.

17 MS CEILIDH SNIDER: Yes, there are
18 indeed two respondents, however, Ms Guille, as I noted,
19 is taking the position that the respondent, Canadian
20 Heritage Alliance, as we have seen from the same ruling
21 of Ms Jensen which was -- oh, I guess it's a different
22 ruling of Ms Jensen. If I could just direct the
23 Tribunal, which I'm sure you know, to the ruling of Ms
24 Jensen at tab 19, paragraph 3, which is what we've been
25 discussing, that Ms Guille maintains that it's nothing

1 more than a website that she owns on her own.

2 It's not, Ms Guille says -- Ms Jensen
3 says:

4 "Ms Guille argues that in order
5 to be properly named as a
6 respondent, Canadian Heritage
7 Alliance must be either a living
8 human being or a corporation."

9 And she has obviously maintained that
10 it's neither. So, the Commission objects to Mr.
11 Fromm's being named as an agent for Canadian Heritage
12 Alliance because it seems that there is no entity that
13 could name him as agent, there is either a group that
14 has a representative that could name him, or it's a
15 corporation, and Ms Guille says it's neither.

16 A website has no ability -- no legal
17 ability to name an agent and, on this basis, we see no
18 legal ability for Mr. Fromm to act as agent.

19 THE CHAIRPERSON: Yeah, but that
20 would mean that we are in some kind of Catch-22
21 situation --

22 MS CEILIDH SNIDER: Clearly.

23 THE CHAIRPERSON: -- where if it's
24 not a legal entity, then how come it's a respondent in
25 the complaint and if it's --

1 MS CEILIDH SNIDER: Well, we take --
2 to answer your question, the Commission takes the
3 position that it is.

4 THE CHAIRPERSON: So, if it is, then
5 surely, if I want to pursue your logic, there must be
6 someone that should be entitled to represent Canadian
7 Heritage Alliance.

8 MS CEILIDH SNIDER: That's certainly
9 true too.

10 THE CHAIRPERSON: And then we'll see
11 in the course of the evidence that is brought before
12 this Tribunal what status the Canadian Heritage
13 Alliance has, if any, and then you know...

14 MS CEILIDH SNIDER: Which, of course,
15 then leads to the next point, if the Canadian Heritage
16 Alliance is indeed found to be a group, under what
17 authority does Ms Guille have any legal authority to
18 act on behalf of the Canadian Heritage Alliance and
19 name Mr. Fromm as their agent.

20 We have seen nothing to that effect.

21 THE CHAIRPERSON: But this might come
22 out of cross-examination or out of something, but it's
23 hard at this point in time to -- because if it was --
24 if there is no entity there, then the Tribunal could
25 dismiss the complaint because there is no entity that

1 exists.

2 Now, we are not sure if an entity
3 exists and I think this is the reference in Ms Jensen's
4 ruling --

5 MS CEILIDH SNIDER: It's to be
6 determined.

7 THE CHAIRPERSON: -- it's to be
8 determined. So, it's only at the end of the day will
9 we know if it's an entity or not and who has control
10 over that entity, but for the time being I think there
11 needs to be someone, whether it's Mr. Fromm or someone
12 else, otherwise who will speak for the Canadian
13 Heritage Alliance should, you know, the Tribunal
14 appoint and it was querying for --

15 MS CEILIDH SNIDER: Unless --

16 MR. WARMAN: Mr. Chair, if I may. It
17 is in essence a situation where you cannot say this
18 does not exist and this entity that does exist and will
19 appoint this person to represent them.

20 It's a fundamental legal tenet before
21 the courts of representation, in order to appear before
22 the court you need to have some legal authority from
23 the person, the person or corporation or, in this case,
24 what we allege to be a voluntary association, simply a
25 group of persons acting in concert to violate the Act.

1 You simply can't go before the court
2 and say, I am here to represent Mr. Deschamps before
3 the Tribunal. I don't need anything that shows that I
4 have legal authority to represent him, I don't need
5 anything from him to say that I am here on his behalf,
6 I don't need, if it's a corporation, an order from the
7 minute books or a decision taken by the board of
8 directors for that, if it's a voluntary association,
9 the members would have to come together and make a
10 decision saying, we wish to appoint Mr. Fromm to
11 represent us.

12 It's just a basic tenet of
13 representation that you cannot appear before a Tribunal
14 and say I represent this person.

15 I mean, I could appear before the
16 Tribunal and say I represent the Canadian Heritage
17 Alliance and I would like to submit that we are guilty.

18 You can see the potential folly that
19 this leads to.

20 THE CHAIRPERSON: So, what do you
21 suggest, that -- why was in the first place Canadian
22 Heritage Alliance --

23 MR. WARMAN: Because under the Act --
24 and we'll get into the whole argument in constituting a
25 group of persons acting in concert -- but you can't say

1 we don't constitute a group of persons acting in
2 concert, I have no affiliation with this organization
3 apart from running the website on their behalf and then
4 turn around and say, and I want this person to
5 represent this group that doesn't exist.

6 You simply cannot come before the
7 court and say, I represent this person without having
8 some legal authority to do so, whether you're an agent,
9 or a lawyer or a paralegal or John Doe or Jane Q.
10 Public.

11 You just simply cannot come before
12 the court and say, you know what, I represent Mr.
13 Deschamps, I'm here to settle this case on his behalf,
14 and whatever you want.

15 THE CHAIRPERSON: No, but I would
16 think that if Ms Guille has --

17 MR. WARMAN: She has to have the
18 legal authority to appoint Mr. Fromm to represent them.

19 THE CHAIRPERSON: I would presume, I
20 would presume --

21 MR. WARMAN: But that's an admission
22 that she's denying.

23 MS CEILIDH SNIDER: This is very much
24 akin to -- to put it in the context of something that
25 you, Mr. Deschamps, are too familiar with -- this is

1 very much like some of the objections raised by Bell
2 Canada to the union representing its members. They
3 very often in the Pay Equity context, they seek to have
4 some demonstration that these individuals that are
5 holding themselves out to the Tribunal as having the
6 authority to represent this other group of people, that
7 they demonstrate that there is evidence of that
8 authority.

9 This is a very similar situation.
10 And I know it's very peculiar, but there is -- as far
11 as based on what Ms Guille maintains as her position
12 vis-a-vis the nature of the Canadian Heritage Alliance
13 it doesn't exist, then there is no ability for Mr.
14 Fromm to represent an entity that doesn't exist and she
15 has no ability to enable him to act as an agent for
16 something that doesn't exist, if that's ultimately
17 what...

18 I recognize that ultimately is a
19 finding that the Tribunal will have to make on the
20 issue of group or no group, but I go back to what my
21 friend Mr. Warman was saying about the necessity of
22 some proper legal representation.

23 MR. KULBASHIAN: If I can make some
24 submissions, I can probably clear this up.

25 Ms Guille asserts that she does run

1 the website, therefore, she does have the authority
2 to -- the one thing that I don't understand here is,
3 what they're saying can go both ways.

4 The fact they put this motion in
5 here, are they saying that the Canadian Heritage
6 Alliance doesn't exist?

7 So, ultimately it is somewhat of a
8 paradox. The fact is she maintains that she runs the
9 website, but it's just a website.

10 The fact that the website showed up
11 as a named respondent in a Tribunal hearing means she
12 does actually have the authority to appoint someone as
13 a representative it. It doesn't mean that -- like, the
14 paradox goes both ways.

15 I mean, the fact they filed this
16 motion, if you find that her stating that it's not
17 really a group means that she can't have a lawyer, then
18 the fact they are filing this motion means it's not
19 really a group. It's kind of -- it's a paradox both
20 ways.

21 MR. WARMAN: Mr. Deschamps, just your
22 clarification, we have not named the website, we have
23 named the Canadian Heritage Alliance as a group of
24 persons acting in concert as provided by the Act and as
25 provided by the historical case law.

1 MR. KULBASHIAN: I understand that,
2 however --

3 MR. WARMAN: Extensively. We have
4 not named in any way, shape or form, we have named Ms
5 Guille and Ms Guille's conduct as being in violation.
6 We also consider the Canadian Heritage Alliance to be a
7 separate respondent.

8 Yes, I mean, there are connections
9 between the two in terms of the evidence that we will
10 submit to you, but you cannot say this does not exist
11 and yet I will appoint a legal representative for it.

12 We are not in any way alleging that
13 the website violated the Act, we are alleging that the
14 content that the individual put on to the website
15 violated the Act.

16 MR. KULBASHIAN: What I just stated
17 was that on that same logic the fact that they're
18 trying to have Mr. Fromm, I guess, barred from
19 representing the CHA would mean that -- well, would it
20 mean that they're stating the CHA is not a group,
21 because if their position is that the CHA is a group,
22 they should have no problem having somebody represent
23 it.

24 The fact of the matter is one thing
25 that all the parties here agree on, as well as Ms

1 Guille, she states that she does run the website which
2 means at the moment the only, I guess, apparent legal
3 authority -- like, you know, individual who has legal
4 authority over naming the respondent would be her.

5 MR. WARMAN: We have no information
6 that Ms Guille can legally represent the Canadian
7 Heritage Alliance.

8 MR. KULBASHIAN: In which case we
9 should bring it up later.

10 THE CHAIRPERSON: Because she -- what
11 I understand is --

12 MR. KULBASHIAN: And actually there's
13 another point that Ms Guille --

14 THE CHAIRPERSON: -- the Canadian
15 Heritage Alliance, you are saying that it's a group of
16 individuals.

17 MR. WARMAN: Under the Act, section
18 13 requires a person or a group of persons acting in
19 concert.

20 THE CHAIRPERSON: And this is why the
21 complaint was made against the Canadian Heritage
22 Alliance because you felt that it was more than a
23 website.

24 MR. WARMAN: Yes.

25 THE CHAIRPERSON: It was a group of

1 people acting together.

2 MR. WARMAN: Yes.

3 THE CHAIRPERSON: So, this being said
4 if Ms Guille thinks that there is no group of people
5 but it's a website and she owns the website without any
6 group existing, what I understand if I can find some
7 logic in this, is that she says, well, for the sake of
8 this complaint, given the fact that Canadian Heritage
9 Alliance was named as a respondent, given the fact that
10 the website is my website, then I will appoint someone
11 to in a way defend this entity.

12 MR. WARMAN: But the website is not
13 an entity.

14 THE CHAIRPERSON: I know.

15 MR. WARMAN: If I can just --

16 THE CHAIRPERSON: When I say I know,
17 I haven't started hearing the case.

18 MR. WARMAN: True.

19 THE CHAIRPERSON: So, if that is her
20 position, I think this is her starting position and can
21 a website be incorporated or not, it's not for me at
22 this point in time to start asking myself, maybe I
23 should go and look, and this is not, you know, the
24 proper thing to do.

25 So, if she's saying that, yes, it's

1 my website and even if the website was not a legal
2 entity, and suppose she's wrong and in fact it's a
3 group of individuals and you're able to prove that but
4 then, you know, maybe at the end of the day there
5 should be someone out there to, in a way, take the
6 interests of this entity called the Canadian Heritage
7 Alliance.

8 MR. WARMAN: But I guess the only
9 submission that I would make in that regard is that is
10 something that may be done through Ms Guille's defence
11 and not through appointing a separate representative
12 for this group that doesn't exist.

13 I mean, if she is saying I control
14 that and it is my website, and that is all it is, that
15 is something she can submit.

16 But unless she can show some legal
17 authority to appoint a representative, whether it's
18 through herself, a voluntary organization decision, a
19 corporate order, you know, a decision taken by the
20 board of directors, there has got to be some legal --

21 THE CHAIRPERSON: She's saying that
22 there is this -- the Canadian Heritage Alliance is
23 something that is identified as a respondent.

24 Okay, fine. She's says it's my
25 website and I don't think that it represents a group of

1 individuals that have associated themselves.

2 So, that being the case, still to
3 represent that -- not maybe entity -- but that interest
4 let's say that might not her view or eyes have any
5 legal status, I still will -- and what she says is I
6 have the control over that website which might not be a
7 legal entity, which might not be a group of persons or
8 which may be, since she says she has control over the
9 website, she wants to appoint someone to represent the
10 interests of that --

11 MR. WARMAN: This is where -- I can't
12 have someone appear and say represent my teddy bear.
13 If the teddy bear is an inanimate object, I can't have
14 legal representation, no matter how much I may like my
15 teddy bear to have legal representation.

16 THE CHAIRPERSON: I think that using
17 the comparison of the teddy bear is going a little --

18 MR. WARMAN: It's an extreme example,
19 but the point is, unless Ms Guille can show some legal
20 authority to appoint a representative for this group,
21 or the group can show some ability to appoint, it's
22 just a fundamental tenet of representation.

23 THE CHAIRPERSON: She won't say that
24 this is a group.

25 MR. WARMAN: But then it's a personal

1 interest and it becomes something that you defend
2 through her personal case and not through a separate
3 representative.

4 THE CHAIRPERSON: Yes, but still, you
5 know, in the complaint it is still identified as a
6 group, so it's like --

7 MR. WARMAN: But we are the party
8 that says this group exists. We're not coming before
9 you saying the group doesn't exist, but I'm going to
10 appoint someone to represent it.

11 You cannot in essence say "X" but
12 then perform "Y" to the Tribunal.

13 THE CHAIRPERSON: No, but Mr. Warman
14 if you say that the group exists and you know that the
15 group exists and that's your position that it's not
16 only a website but it's a group...

17 MR. WARMAN: And if you bring forward
18 a decision from this voluntary association, this group
19 of people that says we are Canadian Heritage Alliance
20 and we want this person to represent us, then there is
21 no question that that constitutes the legal authority
22 to do so, but in the absence of that, I can stand here
23 and say that I represent the Canadian Heritage Alliance
24 and you have no way to distinguish between me and Mr.
25 Fromm because Ms Guille indicates that she has no legal

1 authority. She's unwilling to bring forward any
2 evidence of the legal authority.

3 THE CHAIRPERSON: But what she's
4 saying is she has control over the website.

5 MR. WARMAN: But, I mean, you know, I
6 started up a P.O. Box and put Canadian Heritage
7 Alliance heading, name on it, can I represent the
8 Canadian Heritage Alliance. It's just tenuous.

9 THE CHAIRPERSON: No, but she says
10 she has control over the website, so it gives her some
11 form of authority. It's not like someone -- you know,
12 you pick someone out on Queen Street and you ask the
13 person, do you want to represent this website, he has
14 no control over the website, she says that she has
15 control.

16 It's just that it's a very peculiar
17 situation where on the one hand it is identified as the
18 Canadian Heritage Alliance as a respondent and then
19 someone says it's not a real respondent, it's only
20 something that is in the material, but you want to
21 prove that, in fact, it is a group.

22 And suppose you are able to prove
23 that it is a group, who will take the interest of that
24 group, who will represent that group's interest if it's
25 not a real respondent but it's one that, you know, we

1 all know that Ms Guille has control over, which may be
2 a group, I don't know.

3 MR. WARMAN: To my mind the
4 fundamental issue comes down to if it's website, it's a
5 personal interest and the interest of the website may
6 be presented at the same time as Ms Guille presents her
7 case.

8 If it's a separate entity, then even
9 in that event, it needs to have some legal ability to
10 appoint a representative. Mr. Fromm does not have
11 that, no one has brought forward any evidence on that.

12 You simply cannot say "X" does not
13 exist but by virtue of my having some affiliation with
14 "X" --

15 THE CHAIRPERSON: Where will the
16 evidence come from, the preliminary hearing on that?

17 MR. WARMAN: Well, no. Ms Guille has
18 known, Ms Guille has the put this defence forward that
19 this group does not exist.

20 If she wanted to say -- to bring this
21 forward and say but, you know, in an abundance of
22 caution these people have gotten together who are, in
23 fact -- basically you can't say my defence is "X", my
24 defence denies any and all existence and yet I will
25 appoint someone to represent them because I purport to

1 have the legal authority, without any evidence of that.

2 You can bring forward an affidavit,
3 take the stand and say I have the legal authority to
4 bind the voluntary association, we got together with
5 --to use the colloquial, you can't suck and blow at
6 the same time.

7 You can't say, you know, this doesn't
8 exist but here's his representative. You have to put
9 your feet down on one side of the fence, you can't sit
10 up there like Humpty-Dumpty.

11 I think I've beaten the matter over
12 the head a little bit, but I really think there needs
13 to be some concrete legal authority for Mr. Fromm to
14 represent this group.

15 THE CHAIRPERSON: How will I get
16 that?

17 MR. WARMAN: Through a voluntary
18 association coming together and saying we wish Mr.
19 Fromm to represent it, here's the members who took the
20 position, the same way any non-personal representative
21 of a corporation makes a decision by a board of
22 directors who give them authority to bind the
23 corporation and put forward minutes of the decision
24 saying we appoint person "X", firm "X" as our
25 representative.

1 A voluntary association makes the
2 decision, we're the board of directors, we have the
3 ability to bind the voluntary association, we had a
4 general members meeting, we did whatever.

5 THE CHAIRPERSON: All of that
6 evidence will come from the statement of particulars
7 because, you know, I haven't heard any evidence yet.

8 My colleague Ms Jensen referred this
9 issue --

10 MR. WARMAN: And you will.

11 THE CHAIRPERSON: -- on my lap for me
12 to make that determination, but I cannot make that
13 determination only by looking at, you know, the
14 documentation that constitute the file without any
15 evidence, nothing has been tendered in evidence.

16 If I was to make a ruling I would
17 need to hear something on that.

18 MR. WARMAN: Yes.

19 THE CHAIRPERSON: I would need to
20 hear a witness testifying to the fact that--

21 MR. WARMAN: If I may. Perhaps the
22 easiest way to solve this, our position is, you have no
23 evidence before you that Mr. Fromm represents the
24 group.

25 If Ms Guille wishes to testify to the

1 limited issue, to entirely restrict the issue to her
2 ability to authorize Mr. Fromm to represent the group
3 or to whatever evidence they may have that Mr. Fromm is
4 the legitimate representative of this group, then
5 that's the way that they can appoint him.

6 I mean, if Ms Snider turned up and
7 said I represent the Commission, and I said Ms Snider
8 doesn't even work at the Commission, she wandered in
9 off the street, we have no idea who she is or who she
10 used to work for or anything, or she runs the
11 Commission's website, how about that; does that make
12 her legal counsel or a representative of the
13 Commission, a legitimate representative who's been duly
14 appointed by the Commission to represent them in a
15 hearing?

16 THE CHAIRPERSON: No, but if she says
17 I run the website, I have control, total control over
18 the website and, given the fact that my website could
19 be considered as a group of individuals, then I will --

20 MR. WARMAN: You need some authority
21 from the Commission, you would need the Commissioner,
22 the Chief Commissioner, some legitimate legal authority
23 to allow you to represent it.

24 THE CHAIRPERSON: But what would you
25 suggest that the Tribunal should do is to solve this

1 discrete issue before starting the hearing and devote,
2 I don't know, how many days on that specific issue
3 before even considering hearing, you know, the
4 substance of the case?

5 MR. KULBASHIAN: Mr. Chair, if I
6 could just make some submissions because -- for a
7 couple of minutes this might clear some things up.

8 Both the complaints for named
9 respondent Melissa Guille and the named respondent
10 Canadian Heritage Alliance were sent to her mailing
11 address, she had signing authority on both the
12 complaints.

13 Over a month ago she sent an e-mail
14 stating that Mr. Fromm would be representing the CHA.
15 There was no complaint, there was no motion to strike
16 that, to stop it from happening, they just went along
17 with it.

18 And now, first day of hearing they're
19 coming here and changing their position.

20 The fact of matter is if the
21 Commission didn't consider it to be authority on the
22 Canadian Heritage Alliance, they shouldn't have been
23 serving her documents or giving her signing authority
24 in the first place.

25 Now, they did give her signing

1 authority, now they want to take it back just because
2 it's kind of convenient at this point.

3 So, basically it's a ball that they
4 started rolling and she has to keep up with it right
5 now.

6 I don't know how else to put it. I
7 understand where they're coming from, but the fact of
8 the matter is everything that he is saying, whether or
9 not you can suck and blow at the same time or anything
10 else, implies both ways.

11 They can't say that it is a group yet
12 she's not allowed to have representation for it, you
13 know what I mean, it's the same type of situation.

14 THE CHAIRPERSON: All procedures were
15 served on both Ms Guille and the Canadian Heritage
16 Alliance?

17 MR. KULBASHIAN: Same address.

18 MS CEILIDH SNIDER: They were served
19 to a post office box which Ms Guille happens to have
20 the authority to open.

21 MR. KULBASHIAN: They have not served
22 anyone else --

23 THE CHAIRPERSON: Mr. Kulbashian --

24 MS CEILIDH SNIDER: And it was listed
25 as the contact P.O. Box for the Canadian Heritage

1 Alliance.

2 But one suggestion I might make in
3 terms of resolving this, and in some ways it is
4 recognizably putting the cart before the horse, but it
5 is a critical issue.

6 I suggest that we do have a brief
7 voir dire on the issue of how Ms Guille came to appoint
8 Mr. Fromm as -- purported to appoint Mr. Fromm as agent
9 for Canadian Heritage Alliance.

10 MR. KULBASHIAN: Mr. Chair, I think
11 that's just going to end up wasting more time.

12 Basically, the Commission did serve
13 that P.O. Box, they haven't served anyone else with the
14 complaint regarding the Canadian Heritage Alliance.

15 If the Commission was of the position
16 that she was not signing authority, they wouldn't have
17 served her in the first place, they wouldn't have
18 allowed her to sign Paul Fromm as an agent a month ago
19 which she did by e-mail.

20 MS CEILIDH SNIDER: Allow him, we
21 simply -- I'm sorry, we didn't allow him, we don't have
22 an ability to allow or disallow.

23 MR. KULBASHIAN: I'm going to object.

24 THE CHAIRPERSON: Just a second.

25 MS CEILIDH SNIDER: This issue is

1 being dealt with now, and just as the Tribunal directed
2 the Commission to deal with the particular issue of Mr.
3 Kulbashian in the fullness of time at the hearing, it
4 would also seem appropriate to deal with this issue
5 now, inasmuch as it's difficult to resolve it at the
6 beginning of the hearing, it would have been just as
7 difficult if not more so to deal with it prior to the
8 commencement.

9 Here we have Ms Guille available to
10 testify on this issue and I suggest that that be the
11 way that this is dealt with, with respect.

12 MR. KULBASHIAN: I heard their
13 suggestions, but the major issue, that's not what she
14 wants to do.

15 Second of all, when she asked -- when
16 Mr. Warman asked actually, let's say you are
17 representing someone that didn't exist, et cetera, with
18 what authority, like, what authority do you have to
19 represent him, anything hard copy, documentation of it.

20 The fact of the matter is to this
21 date, until the hearing started the Commission did
22 allow her to be signing authority on the complaint, so
23 the authority was actually given to her by the
24 Commission.

25 So, ultimately it doesn't matter what

1 her position is, she does have the authority, mind you
2 by the Commission who has changed their mind right now,
3 but she does actually have the authority to
4 represent -- to actually assign an agent CHA because
5 they gave her that authority.

6 THE CHAIRPERSON: I don't think that
7 the Commission can give any authority to Ms Guille.

8 MR. KULBASHIAN: Well, I mean, for
9 the purpose of -- because they were saying that
10 internally if her opinion is this, well, if their
11 opinion was any different then they wouldn't have given
12 her authority in the first place. Now, things has
13 changed.

14 Basically they should have said, if
15 they received any correspondence in relation to CHA,
16 they should have said, I'm sorry, you're not the
17 authority on this, you should have somebody else
18 contact us, please.

19 But they didn't do that, they
20 accepted all correspondence from her, they accepted her
21 as an authority for the CHA. She agrees that she
22 administers and runs the website.

23 The fact of the matter is all they
24 are doing is they are using technicalities and kind of,
25 it's wording technicalities, it's all semantics.

1 So, the fact of the matter is in
2 front of the Tribunal the CHA is a valid respondent.
3 If what they want is for the CHA to not have valid --
4 or maybe they're just trying it to fish for
5 information, trying to get names of other members.

6 The fact of the matter is they do
7 allegedly believe that there are other members
8 involved in the CHA, however ,they haven't brought them
9 forward here.

10 THE CHAIRPERSON: The Canadian
11 Heritage Alliance is a respondent before this Tribunal.

12 MR. KULBASHIAN: It is.

13 THE CHAIRPERSON: A respondent which
14 is distinct from Ms Guille.

15 MR. KULBASHIAN: It is.

16 THE CHAIRPERSON: That, in my mind,
17 raises no doubt.

18 MR. WARMAN: Mr. Chair, I wonder if
19 it might be easily resolved by Ms Guille providing the
20 membership list and showing that, in fact, the members
21 have taken a decision on behalf of the CHA. There is
22 that outstanding order of the Tribunal.

23 THE CHAIRPERSON: No, but this is
24 another issue. We are mixing up issues.

25 But for me there are two respondents.

1 Now, what is in issue or at issue here is whether or
2 not Ms Guille has the authority to designate Mr. Fromm
3 as agent of the second respondent, i.e., Canadian
4 Heritage Alliance and where does she derive that
5 authority from and that would be the only issue that I
6 would have to deal with at the present time.

7 And my concern is that we would go
8 beyond that and start asking questions with respect to,
9 is the Canadian Heritage Alliance a group, and if it's
10 a group, we want the names and the list of, and then we
11 are getting into something that will bring us further
12 than what maybe we need at the present time.

13 And this is my concern. I don't want
14 to be in a runaway train on that issue, and this is why
15 I am so open with respect to that, so that at one point
16 we won't lose control over the process.

17 MS CEILIDH SNIDER: I appreciate the
18 Chair's concern.

19 I guess the last submission that the
20 Commission would make in this regard is to point you to
21 section 40 of the Canadian Human Rights Act which
22 discusses groups, group complaints now, there's an
23 analogous argument.

24 Under this section:

25 "If the complaint is made by

1 someone other than the
2 individual who is alleged to be
3 a the victim of the
4 discriminatory practice..."

5 I'm subsection 2:

6 "If the complaint is made by
7 someone other than the
8 individual who is alleged to be
9 the victim of the discriminatory
10 practice to which the complaint
11 relates, the commission may
12 refuse to deal with the
13 complaint unless the victim
14 consents thereto."

15 Similarly, we have here the situation
16 we've just been discussing. We have a respondent, and
17 that may or may not represent a group, the Commission
18 believes and the complaint alleges it is a group, Ms
19 Guille of course contends that it is not, but if it is,
20 or if Ms Guille purports to act on behalf of this
21 website or whatever the entity is, if it is in fact a
22 group, then in a similar nature to the requirements
23 under the Act vis-a-vis the filing of a complaint and
24 the requirement to demonstrate that, there is legal
25 authority. We would suggest that similar legal

1 authority needs to be demonstrated by Ms Guille in
2 order to appoint Mr. Fromm.

3 And I go back to my earlier
4 submissions, bearing in mind of course that, and I
5 giving an undertaking, frankly, that we would not go
6 more broadly than to explore the narrow scope that's
7 presently before the Tribunal to ascertain under what
8 authority Ms Guille has provided Mr. Fromm as the agent
9 for the Canadian Heritage Alliance.

10 MR. KULBASHIAN: Mr. Chair, the major
11 issue, she did read section 40, subsection 2 and it's
12 kind of ironic she did bring this up because it states:

13 "If the complaint is made by
14 someone other than the
15 individual who is alleged to be
16 the victim..."

17 Et cetera, et cetera.

18 Now, the main point is that there is
19 allegations of hate against people because of sexual
20 orientation, individuals because they're Muslim, Asian,
21 Black and the complaint here is neither one of them yet
22 I'm wondering, if they're going to be consistent on
23 this, where they got the authority to even file the
24 complaint from the complainant in the first place.

25 The fact of matter is at this point

1 whether or not the CHA exists doesn't really matter,
2 ultimately let's say she wasn't the named respondent
3 but her P.O. Box received a complaint against the
4 Canadian Heritage Alliance, would that mean that she
5 just would not show up at all.

6 Who's to say if Mr. Fromm wasn't
7 here, would she be able to even represent herself and
8 the CHA...

9 THE CHAIRPERSON: But the issue at
10 the present time, irrespective of whether Canadian
11 Heritage Alliance constitutes a group or not, is where
12 does Ms Guille derive her authority in order to
13 appoint, in fact, Mr. Fromm as agent of the Canadian
14 Heritage Alliance. Isn't that what is the issue at the
15 present time?

16 MS CEILIDH SNIDER: Yes.

17 MR. KULBASHIAN: If I could have a
18 quick minute.

19 MS CEILIDH SNIDER: Yes, it is.

20 THE CHAIRPERSON: It has to do more
21 with where she derives her authority and if she can say
22 where she derives her authority without getting into
23 proving or disproving that Canadian Heritage Alliance
24 is a group of individuals which we'll leave, let's say,
25 for a later day.

1 If we were to ascertain, then maybe
2 we would resolve the issue as to Mr. Fromm representing
3 as an agent the Canadian Heritage Alliance.

4 Isn't that where we stand right now?

5 MS CEILIDH SNIDER: Yes, precisely.

6 MR. KULBASHIAN: One second, please.

7 I'm looking for their statement of
8 particulars that the complainant and Commission had
9 submitted.

10 Okay. See, the material facts are
11 Ms Guille is the registered owner and administrator of
12 the website candianheritage.com.

13 So, basically by their own -- this is
14 in the complainant/commission joint statement of
15 particulars. They agree that she has authority on the
16 website and so ultimately if they -- so, this paradox
17 is not really much of a paradox any more, because if
18 she doesn't think it's a valid respondent, that doesn't
19 mean that she still does not have the authority, and
20 this is like by their own, like, admission that she's
21 the registered owner and administrator of the website,
22 ultimately they have agreed that she has authority on
23 the website.

24 So, whether or not she thinks it's a
25 group, or whether or not she thinks it's not a group,

1 ultimately in their joint statement of particulars
2 there is only indication that she is the only, I guess,
3 registered owner administrator of the website and they
4 haven't filed a complaint against anyone else in
5 relation to CHA.

6 So, ultimately there is no one else
7 here. So, what would have happened otherwise? If she
8 had just received the complaint against CHA, would she
9 have ignored it and not gone to court, or would she
10 come down and be rejected, like, refused because they
11 are saying, I'm sorry, I understand you are one of the
12 respondents, however, we don't believe you have
13 authority and you are saying it's a website, so you
14 can't be here, is what they are saying effectively.

15 THE CHAIRPERSON: So, if she is the
16 owner -- if she is the purported owner of the website
17 and administrator, doesn't that serve as basis for her
18 authority to appoint --

19 MS CEILIDH SNIDER: If the entity
20 under consideration here was the
21 canadianheritageAlliance.com, however, it is not, the
22 issue is as very concisely stated, where does Ms Guille
23 get authority to appoint Mr. Fromm as agent for the
24 Canadian Heritage Alliance, not .com, but the Alliance.

25 MR. KULBASHIAN: Okay. In which

1 case, material fact No. 4:

2 "Ms Guille is the public leader
3 and/or prominent member of the
4 Canadian Heritage Alliance."

5 This is part of their statement of
6 particulars.

7 MS CEILIDH SNIDER: Being a leader
8 does not, or a prominent member does not give her
9 necessarily the authority. That authority is something
10 that must be demonstrated.

11 MR. KULBASHIAN: But there is no
12 evidence as to whether or not it was an autocratic type
13 group, if they're saying it's a group, or whether or
14 not it was a democratic type group where everyone has
15 control.

16 Ultimately if their position is that
17 it's a group, they haven't submitted that if it was a
18 group that she didn't have full control of the group
19 was even allowed to make their own, like, opinions
20 heard of the group. So, it's possible that if it's a
21 group she has full control, she told people what to do,
22 and if it's not a group, it's a website, she's the
23 administrator on it, so both ways she is in control.

24 THE CHAIRPERSON: My real concern
25 is --

1 MS CEILIDH SNIDER: Just very
2 briefly. I was just simply going to say, unless you
3 have any further questions, I think that you have heard
4 what you need to hear in order to make a decision.

5 If there are any further questions,
6 we would be happy to entertain them, but...

7 THE CHAIRPERSON: As I said earlier
8 on, my concern is that if we get into this now, and
9 this is what I was asking you to do, because if we want
10 to in a way solve this issue once and for all, then it
11 would be a voir dire even before we started hearing the
12 case.

13 MS CEILIDH SNIDER: I recognize that.

14 THE CHAIRPERSON: And this would be
15 quite unusual, it would be like a motion judge --

16 MS CEILIDH SNIDER: I can think of
17 Dr. Groarke, for example, who for years on issues that
18 were of a contentious nature, I can't recall the name
19 of the case --

20 --- Reporter appeals

21 MR. FROMM: I can't hear you.

22 MS CEILIDH SNIDER: I can't recall
23 the name of the case. I can think of certain instances
24 where Dr. Groarke, formerly of the Tribunal, would hold
25 voir dires prior to the commencement of the hearing to

1 determine issues that were of a contentious nature that
2 played upon the way that the Tribunal hearing would
3 unfold in order to resolve the issues so they could go
4 forward expeditiously.

5 If, for example, we find that at the
6 end of the day the Canadian Heritage Alliance is in
7 fact a proper respondent and it has had the benefit of
8 Mr. Fromm's assistance without any proper designation
9 or any proper legal authority to do so, I would submit
10 that would be quite unfair and improper.

11 If, however, on the other hand we
12 find at the end of the day that the Canadian Heritage
13 Alliance is in fact merely a website, then again we're
14 left with a rather peculiar situation of Mr. Fromm
15 acting as agent on behalf of a nothingness.

16 MR. KULBASHIAN: I suggest that since
17 they're the ones putting the motion forward, the onus
18 is actually on them to prove she doesn't have
19 authority, whereas her trying to prove she does have
20 authority.

21 Because so far all indications and
22 communication between the complainant and the
23 Commission and respondents that went through the
24 Tribunal indicate that she's either leader or the owner
25 and or both of the group/website.

1 So, if anything, at this point they
2 have the onus to prove that she in fact does not have
3 authority.

4 Because if they are stating she does
5 not have authority, then I guess their particulars have
6 to change as well to reflect that.

7 THE CHAIRPERSON: But I think it's
8 more complex than that because if it was, you know,
9 someone, you know, Mr. Fromm being here with no
10 representative of the Canadian Heritage Alliance and we
11 don't know, you know, why he is here, and now it's Ms
12 Guille who has stated recently that she wants Mr. Fromm
13 to represent or to act as agent of Canadian Heritage
14 Alliance.

15 She says that I have, she's in fact
16 saying that I have the authority to appoint someone.
17 This is being challenged by Mr. Warman and the
18 Commission.

19 MR. KULBASHIAN: The Commission
20 agrees she has the authority, that's the thing.

21 MS CEILIDH SNIDER: No, we do not.

22 THE CHAIRPERSON: The Commission
23 doesn't agree that she has authority. You know, this
24 is why they are objecting today it's because they feel
25 that Ms Guille doesn't have the authority.

1 Now, how do you prove that she has
2 the authority to appoint a legal, let's say, a
3 representative?

4 MR. KULBASHIAN: I would suggest,
5 first of all, that just to back track a little bit, in
6 a previous hearing in Warman v. Tremayne, Mr. Warman or
7 the Commission I believe tried to exclude Mr. Fromm
8 from that hearing as well, and if you could please,
9 like, just entertain this idea for a moment.

10 It's possible that there is some
11 personal issues between Mr. Warman, which actually I
12 know there to be, that since it didn't work out the
13 first time they're trying to do it this time.

14 THE CHAIRPERSON: I don't want to,
15 you know, get into why Mr. --

16 MR. KULBASHIAN: Well --

17 HE CHAIRPERSON: What Mr. --

18 MR. KULBASHIAN: Well, I would submit
19 that it's actually a vexatious motion.

20 THE CHAIRPERSON: No, I said -- well,
21 you objected this morning to the fact that Mr. Warman
22 used the term vexatious and now you're using it.

23 You can't have it both ways.

24 MR. KULBASHIAN: I understand.

25 THE CHAIRPERSON: So, I will render

1 my decision with what I've got.

2 MR. WARMAN: Mr. Chair, if I may
3 refer you to one case that may be of assistance of the
4 Tribunal that dealt with the same situation.

5 In the case of Canadian Liberty Net,
6 a former Tribunal case, Mr. Doug Christie appeared, and
7 this is based on my understanding from the actual
8 decision of the Tribunal, he appeared indicating as a
9 member of the bar that he represented Canadian Liberty
10 Net and an individual named Derek Peterson.

11 Derek Peterson, which was later
12 admitted by Mr. Christie, to be pseudonym, he in fact
13 was representing the person who was actually
14 responsible for the telephone hate line, the
15 individual's name was Tony McAleer.

16 So, Mr. Christie in that case
17 actually gave some assurance, I'm assuming as an
18 officer of the court, that he did in fact have legal
19 authority to be present at those hearings and to
20 represent what was in effect the Canadian Liberty Net,
21 a telephone hate line and a pseudonym that was
22 subsequently revealed to be someone else.

23 So, if that's of any assistance,
24 there is a previous case where an individual purporting
25 to appear on behalf of a non-entity or a group has in

1 fact put forward to the Tribunal evidence, presumably
2 as an officer of the court, that they were in fact
3 entitled to represent that party.

4 THE CHAIRPERSON: So, what do you
5 suggest in this case?

6 MR. WARMAN: What we have suggested
7 all along. And I'm sorry, I don't have any more
8 submissions.

9 THE CHAIRPERSON: To have Ms Guille
10 testify on that discrete issue, is that what it comes
11 down to?

12 MR. WARMAN: Mr. Chair, in the
13 interest of proceeding as expeditiously as possible
14 into this hearing, we will --

15 THE CHAIRPERSON: You will...?

16 MR. WARMAN: Let the matter lie.

17 MS CEILIDH SNIDER: If you feel that
18 you can render a decision without the necessity of her
19 voir dire, then we're content to do so, however it
20 would not be the Commission's preference per se.

21 --- Reporter appeals

22 MS CEILIDH SNIDER: I said, if Mr.
23 Deschamps, if the Member feels that he can render a
24 decision without the benefit of a voir dire, then we're
25 content to proceed that way, however, it would be the

1 Commission's preference to do otherwise.

2 THE CHAIRPERSON: Are you content to
3 have Ms Guille testify on that discrete issue?

4 MR. KULBASHIAN: Well, see, this is
5 relatively an old issue per se, because Mr. Fromm was
6 designated as an agent a while back and there was no
7 objection at that point to him being an agent.

8 THE CHAIRPERSON: So, that is the
9 argument you are making?

10 MR. KULBASHIAN: No, my argument is
11 that we're not even prepared basically. We don't know
12 what to do at this point, per se, as in if they want to
13 start with by bringing in, I guess evidence.

14 I mean, what I don't understand is
15 are they going to bring evidence that it's not a valid
16 respondent and that's why or, are they going to bring
17 evidence that she doesn't have administrative control?

18 The fact of the matter is, I mean,
19 effectively talking about showing the statement of
20 particulars, it's pretty much all we have, and it
21 states that the Commission's and complainant's position
22 is that she is a leader or and that she is owner and
23 administrator of the domain.

24 Like, I don't know what else to say.

25 THE CHAIRPERSON: So, I will render

1 my decision with what I have, unless Mr. Fromm has
2 something to add.

3 But I think the issue here was,
4 finally, will the Tribunal recognize Mr. Fromm as a
5 valid agent of Canadian Heritage Alliance, given the
6 fact that with all that has been said.

7 MR. KULBASHIAN: Well, in that case,
8 would the Tribunal's position also that if it does not
9 recognize Mr. Fromm as a valid respondent, then the
10 case against the CHA has to be severed because there is
11 obviously no -- what's the word -- there isn't enough
12 notification to CHA because so far there hasn't been
13 any calls stating that somebody states that we're the
14 CHA, you have a complaint against us, no one has come
15 forth stating that they are taking these matters into
16 their own hands.

17 So, far the only individual is her,
18 so if you decide that she does not have the signing
19 authority -- authority to appoint a representative --

20 THE CHAIRPERSON: Then the Canadian
21 Heritage Alliance will go without any legal
22 representative.

23 MR. KULBASHIAN: But would that mean
24 that the Canadian Heritage Alliance is now getting, I
25 guess, no representation whatsoever and without that,

1 the question is who else would there be?

2 The fact of the matter is -- yeah,
3 I'm not really confused as much as kind of baffled.

4 The main issue is the Commission's
5 position, statement of particulars is that she's
6 leader, so in fact -- better yet in my case when I had
7 a case against me, Warman v. Kulbashian, CECT, Tri-City
8 Skins, affordablespace, there was no issue brought up,
9 I was holding defence on all three, like, there was no
10 objection made saying, I'm sorry, you're not Tri-City
11 Skins, you're not Affordable Space.

12 THE CHAIRPERSON: But I think -- you
13 know, suppose I was to decide that Ms Guille had no
14 authority to appoint Mr. Fromm as agent of the Canadian
15 Heritage Alliance, then Canadian Heritage Alliance
16 would have no one to represent it, right, and then we
17 would have a respondent who would have no individual to
18 represent it, right?

19 MR. WARMAN: Mr. Deschamps, perhaps
20 if Ms Guille can simply give an undertaking to the
21 Tribunal and say, I have the authority on behalf of the
22 CHA to appoint Mr. Fromm, and then we can argue during
23 the hearing about what the CHA actually is, I'd be
24 content to let it ride.

25 MR. KULBASHIAN: However, the major

1 issue is, if she states that I have authority on behalf
2 of the CHA, the next thing I see coming is, well, who
3 is the CHA that gave you authority, et cetera, et
4 cetera.

5 MR. WARMAN: We promise not to go any
6 further than the undertaking, if there was an
7 undertaking given.

8 THE CHAIRPERSON: Can we go with that
9 undertaking?

10 MR. KULBASHIAN: Yeah. I mean, how
11 could we proceed? Would she have to take the witness
12 stand and be cross-examined or...

13 MR. WARMAN: I have no desire to
14 cross-examine. If she's willing to give it on the
15 record as if it were under oath, then --

16 THE CHAIRPERSON: Are you --

17 MS CEILIDH SNIDER: In either event,
18 we would withdraw the voir dire request, just to
19 facilitate matters.

20 MR. FROMM: Can I make a brief
21 submission while Ms Guille discusses...

22 THE CHAIRPERSON: No, not while she
23 discusses. If they want to discuss, then you can...

24 MR. FROMM: Okay.

25 It seems to me, looking over the

1 paper trail here, that this problem has arisen only
2 very, very recently.

3 The Commission was quite content to
4 serve Canadian Heritage Alliance, whatever that is,
5 whether it's a group as they seem to contend or whether
6 it's a website as Ms Guille contends, to serve it at
7 the same address as Ms Guille, to accept responses from
8 her.

9 There did not seem to be a question,
10 we've got the wrong individual, there must be other
11 individuals, there must be a board of directors, that
12 didn't seem to be a problem at all, they were quite
13 content to have Ms Guille speak on behalf of the
14 Canadian Heritage Alliance.

15 My one concern is that if she gives
16 this undertaking, she may be admitting what she does
17 not want to, what she does not believe and that her
18 position is that the Canadian Heritage Alliance is a
19 website and, as I understand Mr. Warman and the
20 Commission, they suggest it's a group, and that's a
21 fundamental bone of contention.

22 But they were quite content to have
23 Ms Guille respond, so they must have felt that she was
24 in a position to respond.

25 If she's in a position to respond,

1 surely she's in a position to say I believe it's
2 website, I want Mr. Fromm to represent Canadian
3 Heritage Alliance, whatever it is.

4 That's my submission.

5 My suggestion is this, perhaps we
6 could make this entire aspect of the complaint go away
7 if the Commission is prepared to agree that the
8 Canadian Heritage Alliance is a website, therefore,
9 it's simply an address and, as happened in the Richard
10 Warman v. Mark Lemire and Freedom Site.org, it was
11 eventually agree that Freedom Site.org was simply an
12 address just like 390 Bay Street --

13 MR. WARMAN: Mr. Chair, that's
14 fundamentally a misrepresentation --

15 MR. FROMM: Can I finish my
16 submission?

17 Therefore, is not a person, is not a
18 legal entity and the complaint was withdrawn. So,
19 perhaps the complaint could be withdrawn against the
20 Canadian Heritage Alliance and deal only with Warman v.
21 Ms Guille.

22 THE CHAIRPERSON: I don't think --

23 MR. WARMAN: That was a
24 misrepresentation.

25 THE CHAIRPERSON: I don't want to

1 speak for you, but I don't think that at the present
2 time either Mr. Warman or the Commission wants to
3 change their views with respect to Canadian Heritage
4 Alliance.

5 The only thing that in order for sake
6 of spending more time on that, what Mr. Warman is
7 asking from Ms Guille is an undertaking saying that she
8 has the authority to appoint Mr. Fromm as agent of
9 Canadian Heritage Alliance, whatever Canadian Heritage
10 Alliance may be, whether it's a website, whether it's a
11 group of individuals. Is that what you were --

12 MR. WARMAN: Yes. And if it will
13 further this, I will undertake not to use the
14 undertaking in my closing submissions as evidence of Ms
15 Guille's role in the Canadian Heritage Alliance.

16 And also the only other thing is that
17 Ms Guille was not served with documents for the CHA,
18 they were served at a P.O. Box that was listed on the
19 website, Ms Guille was served at her personal home
20 address.

21 THE CHAIRPERSON: So, with all these
22 precautions, is Ms Guille ready or prepared to make
23 that undertaking?

24 MR. KULBASHIAN: Just a correction,
25 she got both copies of all correspondence to her P.O.

1 Box, she didn't get any to her home address.

2 So, just coming back. But, yeah --
3 hold on, I will ask her about the --

4 How does this happen?

5 THE CHAIRPERSON: Mr. Warman only
6 wants Ms Guille to say for the record in front of the
7 microphone that she has the authority to appoint or to
8 ask Mr. Fromm to act as agent for Canadian Heritage
9 Alliance, whatever Canadian Heritage Alliance may be
10 and we will maybe discover it in the course of the
11 hearing.

12 Is that a fair statement, Mr. Warman?

13 MR. WARMAN: It is, yes, in either
14 capacity. If it's just a website, then she has the
15 authority to appoint a representative; if it is in fact
16 found to be a group, then we won't get into issues
17 somewhere down the road that, you know, Ms Guille
18 purported to appoint someone to represent the group,
19 she wasn't entitled to, he shouldn't have been there,
20 you know, there was no legal representation.

21 THE CHAIRPERSON: Okay. Ms Guille.

22 MS GUILLE: I attest that I have the
23 authority to appoint Mr. Fromm as agent for the named
24 respondent CHA, Canadian Heritage Alliance.

25 MR. WARMAN: Thank you.

1 THE CHAIRPERSON: Are you still
2 challenging Mr. Fromm?

3 MR. WARMAN: No, that was the basis
4 of the objection.

5 THE CHAIRPERSON: So, the only
6 objection that remains is the first one, the issue is
7 whether Mr. Kulbashian should or should not act as
8 agent for Ms Guille.

9 So, I will take this under advisement
10 and render my decision tomorrow morning.

11 In the mean time, we could take a
12 15-minute break for those who need it and then, as I
13 said, there were other issues that needed to be
14 addressed and I would like to know, you know, your
15 views with respect to the motion for adjournment, the
16 request for disclosure, the list of members, and the
17 fourth one was adding Mr. Warman as a respondent to the
18 complaint and there was a motion to exclude documents
19 unless experts are called, and eventually a motion to
20 dismiss the complaint itself.

21 So, we will break for 15 minutes and
22 we will deal with, well maybe summarily with the motion
23 for adjournment and request for disclosure and
24 eventually we will have to, in a way, see with respect
25 to the substance of the hearing, how much time Mr.

1 Warman will testify, be cross-examined, re-examined and
2 how much time the Commission expects to be with all the
3 filing of documents and how much time Ms Guille will be
4 in examination-in-chief and cross-examination so we can
5 have a better idea of where we are going.

6 So, we will break until ten past
7 4:00.

8 REGISTRY OFFICER: Order please. All
9 rise.

10 --- Upon recessing at 3:50 p.m.

11 --- Upon resuming at 4:10 p.m.

12 REGISTRY OFFICER: Order, please.
13 Please be seated.

14 THE CHAIRPERSON: So, the next
15 preliminary matter -- Mr. Fromm?

16 MR. FROMM: Yes. I was wondering,
17 just on a housekeeping matter, would it be possible to
18 leave some of the legal documents, et cetera, here
19 overnight?

20 REGISTRY OFFICER: Yes.

21 MR. FROMM: Thanks.

22 THE CHAIRPERSON: I think they will
23 lock the room.

24 REGISTRY OFFICER: Yes.

25 THE CHAIRPERSON: The next

1 preliminary issue we have to deal with is the motion
2 for adjournment that was brought by Ms Guille late last
3 week, and I don't know if the Commission was able to
4 get hold of the e-mails or...

5 MS CEILIDH SNIDER: The e-mail that
6 was received with respect to this motion, the
7 Commission was provided with a copy of the motion
8 brought by Ms Guille on Saturday, November the 18th by
9 Ms Barber this morning.

10 Thank you, we do have a copy.

11 THE CHAIRPERSON: So, you do have a
12 copy.

13 MS CEILIDH SNIDER: Yes.

14 THE CHAIRPERSON: And, Mr. Warman,
15 you also have a copy?

16 MR. WARMAN: Yes.

17 THE CHAIRPERSON: Now, what I gather
18 from what was said to the Commission and the
19 complainant is that there are two reasons for asking
20 for an adjournment. First of all, the late disclosure
21 of documents, 100 pages by the Commission, and also the
22 detailed particulars pertaining to the identification
23 of hate messages was received late Friday afternoon.

24 So, are there any objection for Mr.
25 Kulbashian to make the Tribunal aware of the reasons

1 for this motion or -- we are dealing with preliminary
2 matters, we are not in the substance of the --

3 MS CEILIDH SNIDER: Not at all. You
4 are reserving on your decision, so he is good.

5 THE CHAIRPERSON: So...

6 MR. KULBASHIAN: I guess that's me.

7 THE CHAIRPERSON: That's you.

8 PRELIMINARY MOTION BY MR. KULBASHIAN

9 MR. KULBASHIAN: The major issue is
10 that for, I believe it was almost two months ago in
11 exchange, because -- this is somewhat related to the
12 membership list but it's not actually the same topic,
13 during the membership list requests there were many
14 requests made in communications as well as in motions
15 and responses for the Commission to disclose the exact
16 allegations, the exact documents concerning the
17 allegation, et cetera, and they were generally ignored.

18 So, finally a formal motion was filed
19 which was contested by the Commission, but ultimately
20 the ruling was that they should disclose details of
21 these particulars.

22 The main problem with this is the
23 information was disclosed at the last possible moment,
24 it was 5:30 on Friday and the respondent believes that
25 the information has some shortcomings, it's just very

1 vague, doesn't identify specific documents, it just
2 says from here to here, from there to there.

3 So, like I mean, so the major issue
4 was the fact that it came in very late.

5 See, the reason for requesting the
6 particulars up until two months ago -- well, from two
7 months ago until now, was that there needed to actually
8 formulate our defence, it's not just a technicality,
9 it's not just okay, well, let's hear it, let's
10 continue, it's something that has to be, I guess, used
11 in the process of forming a defence.

12 So, the fact that it was ignored the
13 first few times around and it wasn't until a motion was
14 filed and the motion was ruled on and not until 5:30 on
15 Friday when the e-mail was actually sent to the
16 Commission -- to the respondents.

17 The major issue we have with that as
18 well is the e-mail is maybe four, five paragraphs and
19 it couldn't have taken 10 days to formulate that
20 response. So, whether or not they delayed it
21 intentionally or not, the fact of the matter is that
22 provided little time for that e-mail to be reviewed and
23 actual allegations to be reviewed.

24 THE CHAIRPERSON: So, are you asking
25 the Tribunal to provide you with more time to review?

1 MR. KULBASHIAN: Well, the request
2 was made two months ago initially in motions regarding
3 the membership list, it was made in some
4 communications, it wasn't until, like, a specific
5 e-mail just saying, please, this is the information we
6 want and then there was a long response to that, like,
7 a couple -- a few days later and then we replied and
8 from there the information didn't get to us until
9 Friday at 5:30.

10 THE CHAIRPERSON: But we are where we
11 are at and I don't want to go back, like, two or three
12 months.

13 MR. KULBASHIAN: I understand where
14 we are.

15 THE CHAIRPERSON: And what I would
16 like to know is that, given the fact that the detailed
17 particulars came in late Friday, there is the further
18 fact that you seem to be arguing that you didn't have
19 time to, you know, get proper review, you didn't have
20 the time to review these particulars.

21 MR. KULBASHIAN: The major issue
22 is --

23 THE CHAIRPERSON: And then the other
24 thing I believe is that you feel that they are not
25 detailed enough or...

1 MR. KULBASHIAN: See, the major issue
2 that we have is, I mean, going back to the issue none
3 of use are lawyers and we're not that good at just
4 coming up with things on the fly.

5 I mean, given these documents because
6 up until that point all we had was just loose
7 disclosure.

8 There was the allegations that she
9 did, like, violate section 13 on these specific
10 grounds, but there are no allegations on what
11 specifically violates section 13, and the fact that
12 this motion came in and it points to maybe 40 pages of
13 documents, maybe more in fact, we haven't even got time
14 to review it means that there was no time actually
15 given to use that information, that request that we
16 did, because the reason for that request was
17 specifically to prepare a defence, it wasn't just
18 because it was something to do.

19 And the major issue now here is, I
20 mean, the respondent lives in Cambridge, both myself
21 and Mr. Fromm live in the greater Toronto area. This
22 information came in at 5:30, we didn't have time to get
23 together, it was just like kind of it started off the
24 weekend looking at it, just sort, remember we also had
25 to prepare for things that are already happening during

1 the hearing.

2 So, like it's not like we could have
3 devoted all our time there, because there were other
4 issues they were going to bring up as well as the
5 motions that we indicated we would be dealing with, as
6 well as organizing the files, et cetera.

7 So, we were kind of put in a tough
8 spot where, I understand this is where we are right
9 now, but the fact of the matter is, the fact that we
10 didn't have any kind of -- we didn't have much in the
11 time to review this, put the respondents, both
12 respondents in a prejudiced situation where they are
13 not exactly equipped to deal with the situation and it
14 should have been done before.

15 THE CHAIRPERSON: But it was not done
16 before, so what do we do, what kind of remedy...

17 MR. KULBASHIAN: Well, the fact of
18 the matter is we need time, there is no way around,
19 like, we actually do need time because we are here, we
20 are still scrambling last minute to figure out what we
21 are going to do with the motion that they try to get
22 me, I guess, take off the case.

23 But, like, we're not that organized
24 in the way a lawyer would be. I only have experience
25 with one other Tribunal hearing, to be fair.

1 What I do, I do like thinking about
2 it, working on it, Mr. Fromm didn't even have time to
3 review it, it ultimately pretty much came in and it was
4 on to court, do you know what I mean.

5 THE CHAIRPERSON: Mr. Fromm, do you
6 have something to add before Ms Snider?

7 MR. FROMM: Yes, the first time I saw
8 this latest disclosure and this is it, Your Honour, the
9 better part of three quarters of an inch thick full of
10 documents was this morning.

11 Ms Guille received it, she's in
12 Cambridge on Friday afternoon, this is the first time I
13 have had a chance to look at it and I have obviously
14 not had a chance to go through all of it.

15 But much of this appears to be
16 downloaded from the Internet. There's a Whois search,
17 there are some documents from the Canadian Heritage
18 Alliance, some that I have some questions about, will
19 have to consult with Ms Guille, some of the things that
20 are not dated, there's some reprints of Canadian
21 Heritage news.

22 It would seem that most of these have
23 long been available, but it's hard for me at a cursory
24 look at this to say, oh, this must have just come up
25 Thursday afternoon and in the interest of timely

1 disclosure, the Human Rights Commission sent Ms Guille
2 these documents.

3 These documents appear to have been
4 available for quite a long time. Now, suddenly they
5 are part of the case.

6 We simply need time, first of all, to
7 read them, to study them and, in my case, to ask Ms
8 Guille, of the little I've seen I have a number of
9 questions, is this complete, why doesn't this have a
10 date on it, do you know what the date was, and we are
11 supposed to be doing this on the fly.

12 I think, you know, the Human Rights
13 Commission has a staff of lawyers and staff, Mr. Warman
14 is a lawyer, in a far better position to provide timely
15 disclosure than certainly Ms Guille is.

16 This really is an ambush to receive
17 all of this at the very last minute. We are simply not
18 able to handle this and it would seem to me we would
19 have to have an adjournment and, you know, like an hour
20 or two really just doesn't cut it.

21 I don't think we can fairly proceed
22 this week, at least I can't with this material and
23 there's no good reason for disclosing, the Tribunal to
24 say most of this was available, this didn't just come
25 up. This just isn't fair cricket to dump this on Ms

1 Guille.

2 I mean, the Commission knows, it's
3 not alarming, if she wants. This just isn't fair at
4 the last minute, it isn't fair, especially with a
5 respondent who has no background in the law.

6 You know, this is just screamingly
7 unfair.

8 MR. KULBASHIAN: The major issue is
9 if the Commission took 10 days to file that five
10 paragraph e-mail and get it in at the last moment and
11 the fact of the matter is that's Commission already had
12 they have been investigating for two years and we
13 haven't even had a day to look at the information or
14 the detailed particulars, like, they just pretty much
15 came in, I got a copy on Friday night which was
16 e-mailed to all three of us just as far as the
17 particulars goes, the detailed particulars and then I
18 looked through them, I noticed there was, like, 40, 50
19 pages per section, like a thousand documents.

20 It's -- actually it's hard to say
21 that the Commission who actually works doing this, I
22 mean I have other things to do as well, would take this
23 long to disclose this information and then we only have
24 two days to look at it and then go ahead with it.

25 That does put the respondent in a

1 disadvantaged position, substantially disadvantaged
2 position.

3 THE CHAIRPERSON: I haven't seen the
4 documents which were disclosed, I only heard there was
5 additional disclosure that came about last --

6 MS CEILIDH SNIDER: If I may address
7 this?

8 THE CHAIRPERSON: Yes.

9 MS CEILIDH SNIDER: It would be in
10 fact quite shocking if the Commission had disclosed,
11 as is alleged, these hundreds or so pages of documents
12 at the very last moment.

13 I agree, I would certainly say that
14 that was a terrible thing to do to these unrepresented
15 respondents, however, that's simply not the case.

16 The documents that Mr. Fromm held up
17 in his hand were disclosed by a sworn affidavit of Mr.
18 Richard Warman. The affidavit was sworn February
19 either 1st or 2nd of 2006.

20 THE CHAIRPERSON: February...?

21 MS CEILIDH SNIDER: Either 1st or
22 2nd, I don't have a signed copy of it here, and this
23 was the subject matter that was of a ruling by Ms
24 Jensen dated March 13th, 2006 that we have already
25 referred to at tab 19 of the book of documents -- I'm

1 sorry, Book of Authorities.

2 So, in fact, the respondents have had
3 this material from approximately the beginning of
4 February, 2006.

5 THE CHAIRPERSON: So, the material
6 that was disclosed --

7 MS CEILIDH SNIDER: That's right, it
8 had been disclosed.

9 THE CHAIRPERSON: -- last week was
10 not new material?

11 MS CEILIDH SNIDER: No, it wasn't.
12 If I may finish, Mr. Kulbashian.

13 THE CHAIRPERSON: Yes, go ahead, Ms
14 Snider.

15 MS CEILIDH SNIDER: The documents
16 were not disclosed in a summation format, however they
17 had been provided to the respondents and to the
18 Tribunal as I mentioned in early February of 2006
19 pursuant to the motion of the respondent to have the
20 case -- the complaint against the respondent Canadian
21 Heritage Alliance dismissed. This was the subject
22 matter of our earlier discussion.

23 Furthermore, the many, many pages
24 that were also referred to by I believe Mr. Fromm as
25 being problematic as being late disclosure were

1 disclosed to the respondents approximately December
2 9th, 2005 and these documents, if you will turn to your
3 book of documents, I know it hasn't been marked at this
4 stage so it's a little bit of a problem, but for
5 identification purposes only, for referral purposes
6 only, at tab C in the book of documents you will see
7 that there is a disclosure number in the lower
8 right-hand side of the page W-A-003.

9 THE CHAIRPERSON: There is.

10 MS CEILIDH SNIDER: Sorry.

11 THE CHAIRPERSON: Yes.

12 MS CEILIDH SNIDER: Yes.

13 MR. FROMM: Which document is this?

14 MS CEILIDH SNIDER: If you look under
15 your book of documents.

16 MR. FROMM: Yes.

17 MS CEILIDH SNIDER: At tab C.

18 MR. FROMM: C.

19 MS CEILIDH SNIDER: Yes, there are
20 many numbered tabs but those are tabs that are numbered
21 within the context of the C tab.

22 So, go to the beginning of your
23 document, the beginning of your book, I should say, and
24 I apologize I don't have a copy -- well, actually the
25 Tribunal has as a matter of its record the list of

1 documents that were disclosed to the respondents on
2 December 9th, 2005.

3 THE CHAIRPERSON: Why were these
4 documents disclosed again last week?

5 MS CEILIDH SNIDER: They were not
6 disclosed again last week, I think that Mr. Kulbashian
7 is confusing the issues.

8 Mr. Kulbashian made reference, first
9 of all, to a request as he put it for further
10 particulars. First of all, the Commission never
11 received a request for further particulars. There
12 was -- eventually there was, in fact, a request that
13 the Commission provide further details.

14 THE CHAIRPERSON: It was an order
15 by --

16 MS CEILIDH SNIDER: And there was an
17 order pursuant to that request dated November 8th, 2006
18 from Ms Jensen and that direction -- perhaps Ms Barber
19 could assist and I can read it.

20 It was a letter format.

21 And I apologize, I didn't realize it
22 was going to be of particular issue, I would have made
23 copies.

24 THE CHAIRPERSON: Okay. Letter dated
25 November 8th.

1 MS CEILIDH SNIDER: Yes, in the third
2 paragraph the Tribunal directs as follows:

3 "The Tribunal is of the view
4 that further precision is needed
5 in order for the respondents to
6 know the case that must be met."

7 Cites the case.

8 "The Commission and the
9 complainant are therefore
10 directed to identify which
11 messages within the documents
12 produced are alleged to be hate
13 messages and whether it is
14 alleged that Ms Guille
15 communicated the messages or CHA
16 or both."

17 So, in response to that, and that was
18 dated November 8th and it was a Wednesday, and
19 unfortunately as sometimes happens to all of us, I was
20 extremely ill and I did not return to the office until
21 November 14th, I communicated with Ms Barber of your
22 office.

23 You will note also November 8th
24 direction there was no date provided by which these
25 submissions were required of the Commission.

1 I communicated with Ms Barber and
2 advised her I would be producing the Commission's
3 response to this direction contemporaneously with the
4 production of the book of documents.

5 So as to facilitate ease of reference
6 for the Tribunal and the parties, given that of the
7 very voluminous disclosure that had taken place, we
8 would simply narrow the range of documents and make
9 life easier for all concerned.

10 So, for this reason I make reference
11 in my letter which is dated November 17th, I make
12 reference to Commission document, for example, W-A-003
13 which is in the book of documents and it's entitled and
14 it's found at tab C of the Commission's book of
15 documents and that is a 10-page document that, as I
16 said earlier, the parties have had, the respondents in
17 particular have had since approximately December 9th,
18 2005.

19 This particular document at tab C
20 summarizes each of the messages at issue and each of
21 the articles, the title is Hate Messaging Content from
22 the Canadian Heritage Alliance and it's dated --
23 Summary of Materials Likely to Expose Individuals to
24 Hatred or Contempt on the Basis of a Prohibited Ground
25 of Discrimination contrary to section 13.1 of the

1 Canadian Human Rights Act, and this provides a very
2 clear direction of the particulars that the Commission
3 and complainant are alleging, which is why it's
4 included in my response to the direction of Ms Jensen.

5 And further, Ms Jensen directed that
6 we identify which messages are at issue, and to that
7 end in my letter of November 17th I made reference both
8 to the tabs which you'll find in your book of documents
9 and to the disclosure numbers which range from
10 W-A-003.01 to W-A-003.37 which are in fact the 37
11 articles and messages which were provided by way of
12 disclosure to the parties, the respondents on December
13 9th, 2005.

14 THE CHAIRPERSON: So, this is not new
15 disclosure?

16 MS CEILIDH SNIDER: This is not in
17 any way new disclosure.

18 THE CHAIRPERSON: These are not new
19 documents that were provided?

20 MS CEILIDH SNIDER: Not new
21 documents.

22 THE CHAIRPERSON: It's only that in
23 response to Ms Jensen's order --

24 MS CEILIDH SNIDER: That's correct.

25 THE CHAIRPERSON: -- you provided

1 letter dated November 17th.

2 MS CEILIDH SNIDER: With a limited
3 caveat there are I believe six new documents. These
4 documents are as follows, just let me -- these
5 documents are found under tab I of the book of
6 documents, sorry, L and they have sub-tabs No. 1
7 through 5, and these were disclosed, came into
8 possession of the Commission through Mr. Warman late in
9 the week of November -- around November 16th and these
10 are new documents, they number five and they are
11 photographs variously of Ms Guille and other
12 individuals.

13 THE CHAIRPERSON: But for now
14 these --

15 MS CEILIDH SNIDER: That's right, I'm
16 sorry.

17 THE CHAIRPERSON: -- five new
18 documents?

19 MS CEILIDH SNIDER: Five new
20 documents.

21 THE CHAIRPERSON: -- that were
22 provided...

23 MS CEILIDH SNIDER: By Mr. Warman to
24 the Commission for disclosure on November 16th.

25 THE CHAIRPERSON: And these were the

1 only five new documents?

2 MS CEILIDH SNIDER: And one more
3 which was the Whois document which was referred to by
4 Mr. Fromm and the Whois document is simply updating, I
5 believe that was dated November 10th, just let me find
6 it for you. Just bear with me a second, I believe at
7 tab G, and this was printed off on November 14th, 2006
8 upon my return to the Commission.

9 THE CHAIRPERSON: It's a four-page
10 document?

11 MS CEILIDH SNIDER: Yes.

12 THE CHAIRPERSON: So...

13 MS CEILIDH SNIDER: And it's simply
14 an update of a document found at the preceding tab, tab
15 F which I understand I believe was disclosed to the
16 parties some time ago and is dated the November 8th,
17 2004.

18 Oh, Mr. Warman has corrected me, it
19 was the 11th of August, 2004.

20 THE CHAIRPERSON: But finally what
21 was disclosed last week was, first of all, additional
22 precision to the --

23 MS CEILIDH SNIDER: That's correct.

24 THE CHAIRPERSON: -- statement of
25 particulars.

1 MS CEILIDH SNIDER: Which was
2 previously found in document, the 10-page document I
3 referred to under tab C.

4 THE CHAIRPERSON: Yes.

5 MS CEILIDH SNIDER: And the Whois
6 document under tab G and five photographs.

7 THE CHAIRPERSON: So, that was the
8 extent --

9 MS CEILIDH SNIDER: That was it.

10 THE CHAIRPERSON: -- of the new
11 disclosure?

12 MS CEILIDH SNIDER: Yes.

13 THE CHAIRPERSON: -- with only six
14 new documents, the four-page long document plus one
15 with five --

16 MS CEILIDH SNIDER: Images.

17 THE CHAIRPERSON: -- images, that was
18 it.

19 MS CEILIDH SNIDER: That was it, yes.

20 THE CHAIRPERSON: So, and I am a
21 little bit puzzled by the fact that what I read is that
22 there were a hundred pages of new documents...

23 MS CEILIDH SNIDER: Perhaps Mr. Fromm
24 hadn't familiarized himself with the material in
25 advance and perhaps it's an honest mistake on his part,

1 but these documents, save those six, had been
2 previously disclosed and for quite some considerable
3 time.

4 THE CHAIRPERSON: Because what is
5 being asked here is an adjournment because of the late
6 disclosure of a hundred pages of new documents by the
7 Commission and you're saying that this is not the case.

8 MS CEILIDH SNIDER: No, it's not.

9 THE CHAIRPERSON: It's only five plus
10 four pages, that's nine pages of new documents and five
11 of these are images and four is the Who Is.

12 MS CEILIDH SNIDER: Yes.

13 THE CHAIRPERSON: So, I'm a little
14 bit surprised --

15 MR. KULBASHIAN: Just looking for the
16 documents, there is still more, there is two parts to
17 it.

18 First of all, the fact of the matter
19 is, they are complaining about a lot of postings on the
20 Canadian Heritage Alliance forum, neither of which are
21 included here in this list of, what it says, W-A-003
22 under tab C.

23 And looking through the lists they
24 are only looking at articles and there's no information
25 regarding any postings on the forum which apparently

1 there is a substantial amount of.

2 MS CEILIDH SNIDER: If I could direct
3 your attention, Mr. Kulbashian, to page 1 of that
4 document.

5 MR. KULBASHIAN: Yeah, page.

6 MS CEILIDH SNIDER: Yes. It says CHA
7 forum materials downloaded 22 July, 2004 so that's
8 forum material.

9 MR. KULBASHIAN: Yes.

10 MS CEILIDH SNIDER: If you turn under
11 tab 1 of C you'll see that this is a forum posting and
12 it says, Auschwitz Myths and Facts, and the content
13 we'll go into at some point down the road, and it's the
14 summary of the allegations of hateful messages, it's a
15 denial of the Holocaust.

16 All of these items listed under Forum
17 on page 1 at tab C are forum documents that were -- as
18 Mr. Warman will testify to eventually, these were all
19 provide to the complainants (sic) quite some time ago
20 and I've given you the time.

21 So, under tabs in our book of
22 documents, under tabs C-1 through I believe 9 are the
23 forum messages of concern, and I guess actually it goes
24 up to 10 -- tab 10.

25 Then commencing at tab C-11 to C-37

1 are articles.

2 MR. KULBASHIAN: First of all, in the
3 schedule A, which I don't know where it is in the
4 documents, I don't know where schedule A is in the
5 documents here or just the late disclosure.

6 Would that be in the book of
7 documents?

8 MS CEILIDH SNIDER: I'm just going to
9 assist.

10 THE CHAIRPERSON: Yes.

11 MR. KULBASHIAN: On schedule A it
12 says W-A-003, it says it's a -- that letter from Mr.
13 Warman to the Canadian Human Rights Commission list.
14 That doesn't mean that that outlines the detailed
15 charges, that's what he allege specifically, but the
16 Canadian Human Rights, it has to be the one that
17 provides the final say as to what the actual
18 allegations are during the hearing.

19 So, a bundle of documents that he
20 sent them don't necessarily reflect what is going to be
21 put before the Tribunal because the Commission makes
22 the final determination.

23 Second of all, not all of these
24 documents, the problem is I really find a copy of
25 the -- well, the copy that was over here for the

1 response striking CHA from the complaint, however, not
2 all of the abandoning rules, et cetera, were actually
3 included in that document at that point either, from my
4 review.

5 THE CHAIRPERSON: My understanding is
6 that there was disclosure of "X" number of documents.

7 MS CEILIDH SNIDER: Yes.

8 THE CHAIRPERSON: And what I will
9 find in the book of documents are those have been
10 selected by the Commission --

11 MS CEILIDH SNIDER: Yes, that's
12 correct.

13 THE CHAIRPERSON: -- and by Mr.
14 Warman in order to support their case.

15 MS CEILIDH SNIDER: Yes. And, in
16 fact, to make matters very simple, the letter that is
17 approximately 10 pages in length under tab C that we've
18 been discussing and the contents that were under the
19 tabs in that letter originally and disclosed are in
20 both the Commission's view and the view of the
21 complainant, further particularize the complaint and we
22 have made that clear in our letter of November 17th.

23 And the parties have had this, as I
24 have said, since about December 9th, 2005. This is not
25 new, this is not novel, this is not --

1 MR. KULBASHIAN: That I understand.
2 The major issue, however, is that it was never stated
3 that these were actual charges, this was just
4 disclosure at this point.

5 And the fact of matter is, in the
6 index over here it says it's communication from Mr.
7 Warman to the Canadian Human Rights Commission.

8 The fact of the matter is it's not up
9 to us to decide what is actual disclosure because they
10 did file a statement of particulars in which they did
11 not refer to this as a detailed list, the original
12 statement of particulars.

13 To make -- wait a second, I'm looking
14 for that one document.

15 So, I'm just going to continue with
16 this one for now. These set of documents, this
17 information that Mr. Warman filed to the Commission, we
18 can't -- we don't know whether or not these are actual
19 charges or actual allegations, this is part of the
20 complaint process or ongoing complaint process where he
21 filed information. There's no date even on here just
22 to state when it was received from Mr. Warman, so we
23 don't know how much weight to give individual documents
24 that are in here.

25 Because, another thing here is, I

1 recognize Mr. Warman's handwriting which is Indexed
2 Summary for Attached Tab Materials.

3 MS CEILIDH SNIDER: This is part of
4 the materials that would have been disclosed to you, as
5 I said, quite some time ago.

6 MR. KULBASHIAN: That's right. But
7 the purpose of the statement of particulars is to
8 actually outline the particulars, not refer to so you
9 have to, it's not to say, well, you should have read
10 the disclosure because there's lots of documents in
11 there that by their admission are irrelevant to the
12 actual finding.

13 THE CHAIRPERSON: I believe Mr.
14 Warman --

15 MR. WARMAN: Mr. Chairman --

16 MR. KULBASHIAN: I just want to
17 finish, just to clarify one thing.

18 In the response to Ms Snider's letter
19 on September 25th, I found this, it says the CHRC and
20 the complainant should outline in detail -- this is
21 September 25th:

22 "...should outline in detail
23 what the Canadian Heritage
24 Alliance are alleged to have
25 done, outlining in detail what

1 the allegations are and what
2 specific content they are
3 complaining about to gauge the
4 scope of the complaint and
5 allegations. Only then can the
6 domain of relevance be
7 established and disclosure
8 properly identified as relevant
9 or irrelevant."

10 So, this is something that went back
11 to September 25th, there was no response. In directing
12 that part, the section was outlined in bold as well, no
13 response.

14 There was another filing after that
15 happened after that one --

16 MS CEILIDH SNIDER: Excuse me, that's
17 not a direction from the Tribunal, that's a submission
18 of Ms Guille.

19 MR. KULBASHIAN: I understand.

20 MS CEILIDH SNIDER: Yeah. Well,
21 you're presenting it as if it was a direction from the
22 Tribunal.

23 MR. KULBASHIAN: I didn't state that
24 it was from the Tribunal, I stated that in
25 communications up the point where actual direction

1 came, they ignored our request for detailed disclosure,
2 did not actually respond.

3 THE CHAIRPERSON: And I want to know
4 now, and before I say anything more I will ask Mr.
5 Warman to speak.

6 MR. WARMAN: Just to point out that
7 the simple title of the document states:

8 "Hate Messaging Content from the
9 Canadian Heritage Alliance
10 Website. Summary of the
11 material likely to expose an
12 individual to hatred or contempt
13 on the basis of a prohibited
14 ground of discrimination
15 contrary to s. 13.1 of the
16 Canadian Human Rights Act."

17 I don't know how much more explicit
18 you can get than that followed by an entire page
19 summary of the forum postings, followed by a 10-page of
20 summaries of the articles in question that include the
21 URL link, the specific location where it was found on
22 the website, the title of the article in question in
23 order to make cross-referencing abundantly easy and
24 then between, let's say, a 6 and 15-line, maybe 25 if I
25 look at the longest -- well, let's say 35-line summary

1 of the specific content that is alleged to violate the
2 Act in those articles.

3 I don't know how much specific it can
4 get.

5 MR. KULBASHIAN: Again, it comes down
6 to the core issue, it doesn't outline who violated what
7 in this document, if you can take this document as any
8 kind of authoritative list of the charges, I guess,
9 that were filed.

10 But the fact of the matter is this
11 document was not from the Commission, there was no
12 authoritative list given to us, it was just part of the
13 disclosure and also it did not indicate who did what,
14 it just indicates what documents and why the
15 complainant himself would consider it to be hate.

16 So, ultimately the final decision
17 lies with the Commission --

18 MR. WARMAN: It doesn't require a
19 full party. This is my submission, I'm the only the
20 witness --

21 MR. KULBASHIAN: Regardless --

22 MR. WARMAN: -- they're calling.
23 They can't present other evidence except for me.

24 MR. KULBASHIAN: There are also
25 dates, in fact the dates are zeroed out.

1 THE CHAIRPERSON: I know, but you are
2 referring most probably to documents coming from
3 disclosure.

4 MR. KULBASHIAN: That's right.

5 THE CHAIRPERSON: The list of all the
6 documents that have been disclosed.

7 You know, disclosure is something
8 that, you know, goes on between the parties.

9 MR. KULBASHIAN: Yes, sir.

10 THE CHAIRPERSON: What I am
11 interested in is to hear you on your motion for an
12 adjournment.

13 MR. KULBASHIAN: Okay.

14 THE CHAIRPERSON: And what you were
15 saying at first is that there were like a hundred pages
16 of new documents that had been filed by the Commission
17 last week and that they, in response to an order made
18 by Ms Jensen on November 8, the Commission responded in
19 a letter dated November 17th and Ms Snider explained
20 why this came about because of, you know, what she
21 explained, that she just came back to the office on
22 November the 14th.

23 Now, what I hear now is that there
24 isn't, you know, a pile of a hundred pages of new
25 documents that were filed by the Commission and by the

1 complainant, it's mostly nine pages with five images.

2 Am I right in saying that?

3 MR. KULBASHIAN: Somewhat. This is
4 where it gets a little more complicated as well.

5 The fact of the matter as well, these
6 documents that were not even included in here one of
7 them seems to also be -- if you refer to the last
8 paragraph of that letter where she identified where,
9 the response on Friday at 5:30, it says -- and these
10 were issues that we're not involved in here, this whole
11 idea creates a confusing environment because there is
12 nothing authoritative from the Commission.

13 But if I could just read this
14 section, it says:

15 "Under the Commission Book of
16 Documents, tab S, the articles
17 entitled: "Ethnography", "Who
18 Built Canada", "Politically
19 Correct Chaos", and the document
20 entitled: Canadian Heritage
21 News, April 2003: Vol. 3, No. 2,
22 published by the Canadian
23 Heritage Alliance in the
24 Commission documents are relied
25 upon and are alleged to be hate

1 messages."

2 These are documents that were not
3 even listed here, for example.

4 Another issue is --

5 THE CHAIRPERSON: Are they listed, Ms
6 Snider?

7 MS CEILIDH SNIDER: If I may address
8 this. This is, and I apologize, this is an error on my
9 part, I was looking at things on a screen and I
10 mislooked, these is actually documents -- these are
11 actually articles contained within one of the documents
12 that was disclosed in a late disclosure but that had
13 previously been included in Mr. Warman's affidavit.

14 For ease of reference, I will just
15 take you to tab S.

16 THE CHAIRPERSON: But these on page 2
17 of the letter dated November 17th, the second
18 paragraph --

19 MS CEILIDH SNIDER: Yeah.

20 THE CHAIRPERSON: -- you are
21 referring to articles that are --

22 MS CEILIDH SNIDER: That are,
23 sorry...?

24 THE CHAIRPERSON: -- in your book of
25 documents?

1 MS CEILIDH SNIDER: Yes, yes, they
2 are in the book of documents, they were -- I mean, this
3 was --

4 THE CHAIRPERSON: And they were
5 disclosed?

6 MS CEILIDH SNIDER: This was
7 disclosed. My error in this actually is that that
8 these were included in a newsletter and are not in fact
9 from the Internet and so that's my error, I will
10 withdraw these. As I said, I was looking at these on
11 the computer and --

12 THE CHAIRPERSON: But knowing that
13 Mr. Kulbashian --

14 MR. KULBASHIAN: Well, the issue is
15 it comes down to, like, actual proper notification.
16 Handing loose documents that seems to be communication
17 between the Commission and the respondent is not the
18 same as having a statement of particulars, a statement
19 of particulars is actually part of the legal process in
20 order to officially formally outline and provide
21 notification of what case has to be met.

22 Now, whether or not it's included as
23 part of disclosure, the statement of particulars'
24 purpose is to actually outline the case has to be met.

25 THE CHAIRPERSON: But what are you

1 saying with respect to the -- where do we stand right
2 now with respect to the statement of particulars and
3 the additional information provided in Ms Snider's
4 November 17th letter?

5 MR. KULBASHIAN: I didn't start off
6 by comments on the initial information because we
7 actually did have a conversation which I might not have
8 relayed because of the confusion at that point, but we
9 did have a conversation today earlier on where she was
10 indicating what the documents were.

11 What I'm talking more about is the
12 actual process where the statement of particulars
13 wasn't complete and then instead of -- actually the
14 thing is if they had these documents --

15 THE CHAIRPERSON: Is it now complete?

16 MR. KULBASHIAN: It is as of now, per
17 se, but the biggest issue is that these documents until
18 the statement of particulars came were just disclosure,
19 they were just part of disclosure, it could have been
20 the case if they wanted to put them forth, but it could
21 not have been and the fact of the matter is, the
22 statement of particulars is what actually outlines the
23 case that has to be met and that's part of the legal
24 process.

25 And then when we filed the motion,

1 for example, on her behalf and then they state, oh, I'm
2 sorry, it should be accompanied by an affidavit and it
3 gets dismissed because we didn't follow the exact
4 proper procedure and then we get a situation where we
5 get loose documents that don't actually --

6 THE CHAIRPERSON: So, what are you
7 asking --

8 MR. KULBASHIAN: What I'm asking is
9 that we need time to actually review, if this is what
10 they state the actual allegation are, then these are
11 what the allegations are, but the fact of the matter is
12 until then the statement of particulars did not outline
13 anything in detail.

14 MS CEILIDH SNIDER: It's completely
15 obvious since the disclosure was provided in December,
16 2005 as Mr. Warman pointed out the header on the
17 document under tab C: Summary of material likely to
18 expose individuals to hatred or contempt, and so forth,
19 on the basis of a prohibited ground subject to...
20 contrary to section 13.1 of the Canadian Human Rights
21 Act.

22 And then going through all of it, if
23 the respondents had taken the time to read the
24 disclosure, which was provided to them back in December
25 of 2005, this would be absolutely crystal clear. The

1 Commission provided its statement of particulars, which
2 we were not asked for further particulars, we were
3 asked to point out which messages were going to be
4 relied on and --

5 THE CHAIRPERSON: Messages which had
6 been disclosed in --

7 MS CEILIDH SNIDER: That's correct.

8 THE CHAIRPERSON: -- in 2005?

9 MS CEILIDH SNIDER: That's right, and
10 we have done that, that's our letter of November 17th.

11 Mr. Kulbashian keeps referring to it
12 as further particulars, it is -- as the Tribunal
13 directed, it is to specify which messages in amongst
14 the 150 documents that had that at that point of
15 November 8th been disclosed, Ms Jensen was of the view
16 that it would be of assistance to the respondents to
17 narrow their focus, to assist them by narrowing their
18 focus on the documents that were going to be -- the
19 passages within those documents that were going to be
20 of issue.

21 I believe, in my submission we went
22 one better than that, we not only provided which
23 passages, but we also provided an indication of which
24 particular documents of the 150 and we cross-referenced
25 them to the tabs to enable them to have ease of

1 reference during the course of this hearing.

2 These are documents that, save and
3 except the nine documents, including five images, that
4 the respondent have had back as far as December, 2005.

5 I don't see the prejudice here, with
6 all due respect. I have heard nothing about what the
7 prejudice might be and I just don't see the point in an
8 adjournment at all.

9 MR. KULBASHIAN: I understand her
10 position but the major issue is that the statement of
11 particulars is only part of disclosure that the
12 Tribunal actually does review and the statement of
13 particulars does outline, or should be outlining in
14 detail what the exact allegations are and the case that
15 has to be met.

16 All these documents were not actually
17 in the statement of particulars, so we could -- see,
18 the thing is that whether -- to prepare a case by
19 saying, for example, that we know this is what is or we
20 may think this is what it is, because in this case it
21 doesn't even -- the idea is putting loose documents
22 together and saying to figure out is one thing, but
23 actually stating specifically what has to be met is a
24 completely different thing.

25 THE CHAIRPERSON: No, but the

1 documents were available to you, had been available to
2 you since December, 2005.

3 MR. KULBASHIAN: They were, however,
4 the fact of the matter is these documents were not
5 identified to actually be their official position
6 either way.

7 THE CHAIRPERSON: No, but there was a
8 piece, a heading --

9 MR. KULBASHIAN: The heading I
10 understand, but the fact of the matter is it is a
11 document that was drafted by Mr. Warman and sent to the
12 Commission and the Commission is the one that actually
13 makes final determination as to --

14 MS CEILIDH SNIDER: You know what,
15 I'm sorry, Mr. Kulbashian --

16 MR. KULBASHIAN: -- the final
17 understanding of the process.

18 THE CHAIRPERSON: All of this was
19 disclosed --

20 MS CEILIDH SNIDER: Furthermore, the
21 respondents have had the joint statement of particulars
22 since January 6th, 2006.

23 THE CHAIRPERSON: So, all of those
24 found in C.

25 MS CEILIDH SNIDER: Yes.

1 THE CHAIRPERSON: Was disclosed in
2 December, 2005.

3 MS CEILIDH SNIDER: That's correct.

4 THE CHAIRPERSON: And given the fact
5 that the respondent was saying, well, from all of that
6 that is found in tab C we would like the complainant
7 and the Commission to identify more specifically --

8 MS CEILIDH SNIDER: What they took
9 issue with almost a year later, after our filing of the
10 joint statement of particulars, was that they believed
11 our joint statement of particulars was insufficient.

12 Ms Jensen did not agree with them,
13 she simply directed us to point out which documents we
14 would be providing or would be relying on.

15 THE CHAIRPERSON: In tab C?

16 MS CEILIDH SNIDER: Yes. Well, tab C
17 is effectively what we're relying on in terms of hate
18 messages.

19 THE CHAIRPERSON: Yes.

20 MS CEILIDH SNIDER: And so we
21 provided great detail which we provided back in 2005.

22 THE CHAIRPERSON: So, what is the
23 prejudice?

24 MR. KULBASHIAN: Well, first of all,
25 it's not a fair to mischaracterize things to say Ms

1 Jensen did not agree with us. The fact of the matter
2 is ultimately this was included in disclosure.

3 See, the statement of particulars I
4 mean if -- I mean what is the statement of particulars?

5 THE CHAIRPERSON: I mean, we are past
6 that now.

7 MR. KULBASHIAN: I understand we are
8 past that, but the fact of matter still remains the
9 statement of particulars still only included a vague --

10 THE CHAIRPERSON: No, but now you
11 know --

12 MR. KULBASHIAN: Now we know.

13 THE CHAIRPERSON: -- what they are
14 relying with the letter dated November 17th because Ms
15 Jensen directed the Commission to provide or to zero in
16 on certain documents in the W-A-003 and this is what
17 the Commission seems to have done, like, from tabs 1
18 through 10 and then we have 11 to 37 and this is where
19 they add some more precision to their statement.

20 All of these documents have been in
21 your hands since December, 2005. Now they are just
22 saying, well, with respect to the letter of November
23 17th, this is what you should be looking at more
24 precisely.

25 Isn't that the case?

1 MS CEILIDH SNIDER: Yes, that's
2 precisely the case, and if this was such a concern to
3 the respondents, they have had since January 6th, 2006
4 to seek further particulars or so forth, to bring a
5 motion, a motion such as was brought and responded to
6 by the Tribunal and by letter dated November 8th.

7 THE CHAIRPERSON: So, we are not
8 dealing with a massive --

9 MS CEILIDH SNIDER: No, we are not.

10 THE CHAIRPERSON: -- production or
11 disclosure.

12 MS CEILIDH SNIDER: No, not at all.

13 THE CHAIRPERSON: We are dealing with
14 a few documents and a letter which specifies with
15 respect to your book of documents which one --

16 MS CEILIDH SNIDER: That's right.

17 THE CHAIRPERSON: So...

18 MS CEILIDH SNIDER: And largely
19 reiterates material which the respondents have had
20 since December of 2005.

21 THE CHAIRPERSON: I fail to see how
22 this can take you by surprise, given the fact that we
23 are not talking about a massive disclosure of
24 documents, and even if the letter came on November 17th
25 and given the content of the letter and it refers to

1 documents that are already in your hands, I fail to see
2 how this needs an adjournment to --

3 MR. KULBASHIAN: That's okay. I have
4 filed a complaint before with the Commission and this
5 is where the confusion starts. You can file all the
6 information you want with the Commission and the
7 Commission makes a determination as to whether or not
8 it's going to take the case and then afterward the
9 Commission is the one, in the investigator's report
10 that outlines exactly what they believe and then that
11 goes to the Commissioner which makes the final
12 determination.

13 These documents have no date on them,
14 they could have been either signed -- that he wrote and
15 filed with his initial complaint form or could have
16 been something that --

17 THE CHAIRPERSON: But you are talking
18 about the disclosure.

19 MR. KULBASHIAN: We don't even know
20 disclosure, that's right.

21 THE CHAIRPERSON: We are not into
22 disclosure, we are into getting ready to hear the case.

23 MS CEILIDH SNIDER: Mr. Kulbashian,
24 just to help you, at page -- at the top of the document
25 under tab C it says CHA forum material downloaded 22nd

1 July, 2004.

2 MR. KULBASHIAN: Yes.

3 MS CEILIDH SNIDER: Mr. Warman's
4 complaint was filed August 12th, 2004.

5 MR. KULBASHIAN: The one thing I
6 know -- well, depending on whether or not Mr. Warman's
7 complaint goes to the Commission a lot faster, I filed
8 a complaint --

9 THE CHAIRPERSON: No, but...

10 MR. KULBASHIAN: Well, this is the
11 issue -- well, she started talking about the date.

12 I filed a year ago and still there
13 has been no decision on the complaint.

14 THE CHAIRPERSON: How is this
15 relevant to the fact that you are asking for an
16 adjournment because you feel that you need more time to
17 prepare yourself, given the fact that I have no
18 evidence in front of me that there was a massive late
19 disclosure of documents, that it was only five -- six
20 documents that were new documents that were provided to
21 you, and given the nature of these documents, it
22 doesn't take that much time to go over them.

23 The other thing is that the letter
24 dated November the 17th provides you with additional
25 information as to what is found in tab C, as to what

1 you should be looking at.

2 MR. KULBASHIAN: But that's November
3 17th and today is November 20th.

4 THE CHAIRPERSON: Suppose I was to
5 provide you with half a day to go over the material?
6 Do you need more than half a day? Do you need a week,
7 a month?

8 MR. KULBASHIAN: Well, the fact of
9 the matter is I don't know if I'm coming through, like,
10 clearly.

11 The major concern is that this list
12 of what you called, like, detailed allegations were
13 filed in the disclosure as part of disclosure which the
14 Tribunal doesn't even get to see.

15 THE CHAIRPERSON: No.

16 MR. KULBASHIAN: Exactly. What I'm
17 stating is that there was no formal service or notice
18 saying this is what they were actually going to rely
19 on, whether or not they file it here or rely on it, we
20 have asked questions about other disclosure and we have
21 been told that this is just disclosure, that is what we
22 are told.

23 We are actually told this is just
24 disclosure, you just have to file everything, et
25 cetera.

1 So, this could have been communicated
2 subsequent, there is no date on it from Mr. Warman,
3 it's only partial --

4 THE CHAIRPERSON: I think we'll end
5 soon.

6 MR. WARMAN: Mr. Kulbashian has
7 ceased to introduce any new arguments. I believe he
8 has made his submissions and unless he last any new
9 arguments, I'd ask the Tribunal to render a ruling.

10 THE CHAIRPERSON: I will look at it
11 tonight, give my decision tomorrow as to what time, if
12 any, of an adjournment is needed, given what was argued
13 this afternoon and what I heard from you, Mr. Fromm,
14 you, Mr. Kulbashian, and Ms Snider and Mr. Warman, so I
15 will give my ruling tomorrow on the adjournment motion,
16 and then tomorrow we still have to the deal with a few
17 other issues, as I stated.

18 And I think the first one will be the
19 request for disclosure of certain speeches given by Mr.
20 Warman in certain forms or venues and that will be the
21 first one that we will have to deal with.

22 Mr. Warman?

23 MR. WARMAN: Mr. Chairman, if it may
24 be of assistance, just so there is no question about
25 case law having to be read, if I can just distribute

1 the case of a pre-existing decision of the Tribunal on
2 the exact point to all the parties, they can have the
3 evening to review it in preparation for tomorrow.

4 THE CHAIRPERSON: Well, give it to
5 the parties, not to the Tribunal.

6 MR. WARMAN: No, no.

7 THE CHAIRPERSON: And the second --
8 before you do that, the second item is a list of the
9 members which the Commission is seeking.

10 MS CEILIDH SNIDER: Yes.

11 THE CHAIRPERSON: And this will be
12 the next item I will look at.

13 And, thirdly, adding Mr. Warman as a
14 respondent, and motion to exclude documents unless
15 experts are called.

16 And then the last one is a motion to
17 dismiss the complaint.

18 Is that clear to everyone?

19 MS CEILIDH SNIDER: Yes.

20 THE CHAIRPERSON: So, tomorrow
21 morning at 9:30.

22 REGISTRY OFFICER: Order, please.

23 --- Whereupon the hearing adjourned at 5:15 p.m.,

24 to resume on Tuesday, November 21, 2006

25 at 9:30 a.m.

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I hereby certify that I have
taken down in Stenograph and
transcribed the foregoing to the
best of my skill and ability.


Beverley Dillabough, C.S.R.