

**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:

T1089/7005 & T1090/7105

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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 TUESDAY, NOVEMBER 21, 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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1 Toronto, Ontario

2 --- Upon commencing on Tuesday, November 21, 2006

3 at 9:35 a.m.

4 REGISTRY OFFICER: All rise. Order,
5 please.

6 Please be seated.

7 THE CHAIRPERSON: Good morning,
8 everyone.

9 MS CEILIDH SNIDER: Good morning.

10 MR. WARMAN: Good morning.

11 MR. KULBASHIAN: Good morning.

12 MR. FROMM: Good morning.

13 THE CHAIRPERSON: Before we
14 proceed -- yes, Mr. Kulbashian.

15 MR. KULBASHIAN: There was just one
16 small matter. Regarding the motion that we did
17 yesterday regarding the late disclosure, we had time to
18 review it last night and realize that they are, in
19 fact, correct that these files were submitted a while
20 ago and we retract the motion.

21 So, we apologize for any waste of
22 time.

23 THE CHAIRPERSON: Okay. So, I only
24 have one ruling to make this morning.

25 MR. KULBASHIAN: We're sorry. Just

1 unrepresented respondents tend to have some trouble
2 with representing the legal process.

3 THE CHAIRPERSON: Okay. So, with
4 respect to the objection made yesterday by Mr. Warman
5 in relation to having Mr. Kulbashian act as an agent
6 for Ms Guille:

7 RULING

8 THE CHAIRPERSON: at the start of
9 this hearing on Monday, November 20th, 2006, Mr. Warman
10 objected to Mr. Kulbashian acting as Ms Guille's agent
11 in these proceedings.

12 It appears from a ruling made by my
13 colleague, Karen Jensen, on August 15th, 2006 that
14 during a June 22nd, 2006 case conference pertaining to
15 this complaint Ms Guille indicated that Mr. Kulbashian
16 might be acting as her agent in these proceedings and
17 could also be called as a witness for the respondents.

18 It appears from the ruling that the
19 Tribunal agreed to contact Mr. Kulbashian for all case
20 management calls. The Tribunal further agreed to
21 provide Mr. Kulbashian with copies of all
22 correspondence on file.

23 It further appears from Ms Jensen's
24 the August 15th, 2006 ruling that at the time of the
25 case conference the Commission put Ms Guille on notice

1 that if Mr. Kulbashian was to act as her agent during
2 the hearing, the Commission would object to
3 Mr. Kulbashian testifying as a witness for the
4 respondents.

5 The Commission did not object to
6 Mr. Kulbashian acting as Ms --

7 MS CEILIDH SNIDER: Mr. Deschamps, I
8 believe that you mis -- I said on the record that I
9 wholly adopted all of the submissions of Mr. Warman
10 yesterday and the Commission does object, we were
11 simply dividing up the motion.

12 I think that you misapprehend the
13 Commission's position. The Commission does object
14 strenuously to Mr. Kulbashian's participation as an
15 agent. If you care to review the record, I wholly
16 adopted Mr. Warman's submissions.

17 THE CHAIRPERSON: I am just referring
18 to what was stated in August of 2006. I haven't come
19 yet to --

20 MS CEILIDH SNIDER: Okay, I'm sorry.

21 THE CHAIRPERSON: Maybe if you could
22 wait --

23 MS CEILIDH SNIDER: I'll wait.

24 THE CHAIRPERSON: I will come to
25 that.

1 The Commission subsequently requested
2 an order from the Tribunal preventing Mr. Kulbashian
3 from testifying at the hearing. The request was
4 denied. Ms Jensen noted at the time that it was
5 unclear what role, if any, Mr. Kulbashian would play at
6 the hearing.

7 The role that Mr. Kulbashian intends
8 to play in these proceedings is now clear.
9 Mr. Kulbashian will not be called as a witness.
10 Ms Guille indicated in an e-mail sent to the Tribunal
11 on November the 18th, 2006 that Mr. Kulbashian would be
12 representing her during the hearing and that Mr. Fromm
13 would be representing Canadian Heritage Alliance.

14 Mr. Warman, as well as the
15 Commission, object to having Mr. Kulbashian recognized
16 by the Tribunal as the agent of Ms Guille in these
17 proceedings. Mr. Warman's objections have two bases.

18 Firstly, Mr. Kulbashian is in
19 contempt of an outstanding order of the Tribunal
20 ordering Mr. Kulbashian to pay to Mr. Warman \$5,000 in
21 damages as well as a penalty of \$1,000.

22 Secondly, that Mr. Kulbashian was
23 found to have violated section 13 of the Canadian Human
24 Rights Act by this Tribunal, more specifically to have
25 described Mr. Warman as a Jewish lawyer, to have made

1 reference to the Holocaust, minimizing and ridiculing
2 it, as well as put Mr. Warman's name and personal
3 address in a newsletter.

4 Mr. Warman argues that to allow
5 Mr. Kulbashian to act as agent of Ms Guille would
6 demean the administration of justice and would bring it
7 into disrepute.

8 The evidence on the other hand shows
9 that Ms Guille is not represented by legal counsel.
10 Ms Guille testified that she is a single parent, that
11 she does not have the financial resources to retain
12 legal counsel. Her annual income from the last fiscal
13 year was around \$25,000.

14 Ms Guille further testified that she
15 has no substantial assets, that she has \$150 in her
16 bank account, that she lives from pay cheque to pay
17 cheque and did not have the money to retain the
18 services of a lawyer.

19 Ms Guille cannot rely on Legal Aid,
20 given that this hearing is considered a civil matter.

21 Ms Guille further testified that she
22 is not familiar with the judicial system and that
23 without some form of assistance she would be lost.

24 Ms Guille stated when she testified
25 that she had contacted a few lawyers but no paralegals.

1 She further stated that she took no other additional
2 steps to find alternative to having Mr. Kulbashian
3 serve as her agent.

4 What is at issue here is less the
5 question of whether or not Mr. Kulbashian because of
6 his past violation of section 13 of the Canadian Human
7 Rights Act and the fact that he has not yet paid the
8 damages and penalty he was ordered to pay make him
9 unfit to act as agent of Ms Guille, than whether or not
10 Ms Guille should get proper assistance in defending
11 herself against the allegations of discrimination
12 brought by Mr. Warman against her, given the fact that
13 it appears that she does not have the financial
14 resources to retain legal counsel.

15 The evidence shows that
16 Mr. Kulbashian has made a judicial review application
17 of his case to the Federal Court and that he is seeking
18 a stay with respect to the damages he was ordered to
19 pay to Mr. Warman, as well as with respect to the
20 penalty he was ordered to pay.

21 The record also shows that
22 Mr. Kulbashian has already played a role in assisting
23 Ms Guille in her case.

24 In any legal proceedings, due process
25 or procedural fairness requires that a respondent be

1 able to provide a full defence to any allegation of
2 improper conduct. The allegations made against
3 Ms Guille under the Canadian Human Rights Act are of a
4 very serious nature, not only can she be ordered to pay
5 damages to the complainant, but she could also be
6 condemned to pay a penalty under the Act.

7 Ms Guille is entitled to defend
8 herself against these allegations as best as she can.

9 In the present proceedings, the
10 complainant is an experienced lawyer and the
11 Commission, which supports the complainant's allegation
12 is recommended by a very able lawyer.

13 Not to allow Mr. Kulbashian to act as
14 Ms Guille's agent would deprive her, at this point in
15 time, of any kind of assistance in defending herself
16 against a very serious allegation of discrimination
17 made against her by the complainant.

18 If she would be left to defend
19 herself while unfamiliar with proceedings in a Human
20 Rights case, if that was the case, the interests of
21 justice would not be served well.

22 Mr. Kulbashian might not be the best
23 person to act as agent of Ms Guille, but he is the best
24 that she can afford it seems in the present context.

25 The Tribunal does allow

1 Mr. Kulbashian to act as agent of Ms Guille in the
2 present proceedings.

3 In the present instance the right
4 and/or need of Ms Guille to present a full defence to
5 the very serious allegation of discrimination she is
6 confronted with, must be the paramount concern, to act
7 otherwise could bring the administration of justice
8 into disrepute.

9 So...

10 MR. KULBASHIAN: Thank you,
11 Mr. Chair.

12 THE CHAIRPERSON: Mr. Kulbashian, you
13 have the authority to act as Ms Guille's agent.

14 Given the fact that you are not a
15 lawyer, still you will have to abide by the rules
16 governing these proceedings and you might not be
17 familiar with all of the rules, so you must expect that
18 if at one point you don't abide by these rules that the
19 complainant and/or the Commission might raise an
20 objection, which is their right to do so.

21 MR. KULBASHIAN: I understand. Thank
22 you very much.

23 THE CHAIRPERSON: Mr. Fromm?

24 MR. FROMM: Yes, Mr. Chairman.

25 Speaking of rules and procedures,

1 would it be possible for us to be provided with the
2 rules and procedures, I believe that's been done in
3 previous Tribunals.

4 MR. KULBASHIAN: We had a couple of
5 copies provided to us by...

6 THE CHAIRPERSON: So, you have the
7 rules and procedures and also a copy of the Act?

8 MR. KULBASHIAN: Do you have another
9 copy?

10 MR. MASON: I've got a copy.

11 MR. KULBASHIAN: Because I have one
12 copy here, this is the Act.

13 THE CHAIRPERSON: So, before we move
14 on to the substance of this hearing, as was stated
15 yesterday, we have to deal now with the request for
16 disclosure of certain documents pertaining to the
17 complainant.

18 And I know that Mr. Warman yesterday
19 provided the parties with some case law, but before he
20 starts presenting his views and refer to the case law
21 he has made available to the parties, I would ask you,
22 Mr. Kulbashian, to present your motion or your request.

23 MR. KULBASHIAN: Sure.

24 THE CHAIRPERSON: And then I'll ask
25 if Mr. Fromm has any comments to make and we will then

1 proceed with Mr. Warman, Ms Snider.

2 PRELIMINARY MOTION BY MR. KULBASHIAN

3 MR. KULBASHIAN: To start, Mr. Warman
4 has given various speeches throughout the time, he has
5 a certain status in the community of individuals who
6 fight racism.

7 He's given many speeches to various
8 individuals, including community groups as well as even
9 street gangs, one known as Anti-Racist Action who in
10 the motion that I submitted a while back over the
11 course of the past 10, 15 years have basically been
12 engaged in a lot of violent acts including possibly
13 arson, assault.

14 Their website has videos of
15 individuals getting assaulted. They have brag about
16 assaulting individuals that they deem to be
17 anti-racist. In fact, in one situation a group of
18 Anti-Racist Action members were involved in an assault
19 on the Toronto Transit Commission subway platform with
20 individuals that they thought were racist but were
21 actually not.

22 They were involved in basically an
23 altercation that involved weapons, people got injured.

24 THE CHAIRPERSON: What are you
25 looking for?

1 MR. KULBASHIAN: The reason why I'm
2 bringing this up is in the Warman v. Tomasz Winnicki
3 case Mr. Warman was told to disclose a speech that he
4 gave to Anti-Racist Action in the summer of 2005, if I
5 am not mistaken.

6 In the speech he basically posted --
7 well, intended to post up the pictures of individuals
8 he had filed complaints against before the complaints
9 were even evaluated by the Tribunal. He made
10 allegations against individuals that were not evaluated
11 by the Tribunal.

12 He stated in this speech that he
13 filed complaints, as we heard yesterday, on a worst
14 offender basis but if people get particularly annoying
15 they might be moved up the list.

16 The reason why we're requesting
17 copies of Mr. Warman's speeches is to go to the
18 credibility of the witness. We have already shown that
19 previously in the Tomasz Winnicki case the speeches
20 allowed the respondent to show that Mr. Warman's claim
21 of being targeted was not as serious as he had
22 initially portrayed to the court. I think it was
23 Ms Jensen that ruled in that case.

24 She stated that it did showed that
25 there was ongoing altercation -- ongoing disagreements

1 between the two individuals and it can't be, I guess,
2 said that he was targeted as much as it was ongoing
3 issue.

4 But this extends past that specific
5 situation. There's also the issue where we allege that
6 Mr. Warman had bad motivations, I would say, either
7 vexatious or frivolous in filing this complaint to
8 start.

9 The Commission in evaluating the
10 complaints did no -- like, basically made no efforts to
11 evaluate whether or not the complaint was vexatious,
12 frivolous or made in bad faith, and even though that is
13 part of section 41 -- if I could turn to a copy of the
14 Canadian Human Rights Act.

15 In section 41 of the Canadian Human
16 Rights Act it states that:

17 "Subject to section 40, the
18 Commission shall deal with any
19 complaint filed with it, unless
20 in respect of that complaint it
21 appears to the Commission that
22 the alleged victim of
23 discriminatory practice to which
24 a complaint relates ought to
25 exhaust grievance or review

1 procedures otherwise reasonably
2 available."

3 Subsection (b) states:

4 "The complaint is one that could
5 more appropriately be dealt with
6 initially or completely
7 according to procedure provided
8 for under an Act of Parliament
9 other than this Act."

10 THE CHAIRPERSON: Mr. Kulbashian, the
11 issue here is not whether or not the Commission
12 properly investigated the complaint.

13 What I understand from your request
14 other motion is that you want Mr. Warman to provide you
15 with copies of speeches he has made in the past.

16 MR. KULBASHIAN: That's right.

17 THE CHAIRPERSON: And the reason for
18 that is that you think that this -- by getting hold of
19 these copies, this could eventually be used in order to
20 attack the credibility of Mr. Warman.

21 MR. KULBASHIAN: That's actually what
22 I'm approaching. Maybe I should give you some outline
23 before I start reading individual sections of the Act.

24 It's not only the credibility of
25 Mr. Warman that we're seeking to attack, it's also the

1 credibility of the Commission as a body mandated to
2 enforce the Canadian Human Rights Act in the public
3 interest and not just in the interest of the
4 complainants or the interests of an ex-employee, which
5 Mr. Warman is, of the Commission.

6 The fact of the matter is the
7 Tribunal does have the jurisdiction to dismiss cases
8 down the line, be it when it is shown that either there
9 is improper disclosure of information or if the case is
10 brought forth, in the Tribunal's view, that basically
11 the actual proper process was not followed before the
12 Tribunal received the case.

13 The reason why we're seeking to get
14 copies of speeches is to also show that Mr. Warman is
15 an activist, that as an activist -- he may be bound as
16 a lawyer to tell the truth, he may be bound as a lawyer
17 to obey the rules of the court, but as an activist he
18 has done -- he has basically been involved in some
19 illegal actions. He has been involved in --

20 MR. WARMAN: Mr. Chair, there's a
21 clear objection. He is making unsubstantiated
22 allegations of illegal conduct on the part of me. So,
23 unless he's going to substantiate that, it really is
24 beyond the pale.

25 MR. KULBASHIAN: Mr. Chair, actually

1 in the Warman v. Winnicki case, Ms Jensen and --

2 THE CHAIRPERSON: Do you have a copy
3 of the --

4 MR. KULBASHIAN: Excuse me.

5 THE CHAIRPERSON: If you are to refer
6 to a case or excerpts --

7 MR. KULBASHIAN: Well, actually this
8 is some background. We have the video that was shown
9 in that hearing and that's been disclosed to all the
10 parties.

11 MR. FROMM: Perhaps I could assist,
12 Mr. Chairman.

13 The Warman v. Winnicki case is in
14 Volume Two of your book of authorities.

15 THE CHAIRPERSON: Tab 16.

16 MR. FROMM: Tab 16, 106.

17 MR. KULBASHIAN: I will continue and
18 Mr. Fromm is going to look for the exact segment that I
19 can look back.

20 THE CHAIRPERSON: Pardon?

21 MR. KULBASHIAN: I'm just going to
22 continue my overview and Mr. Fromm is going to look for
23 the exact segment in the Winnicki decision, so...

24 MR. WARMAN: Mr. Chair, there's a
25 remaining objection on the basis that there's no

1 substantiation of any relevance of any of this supposed
2 character evidence as to whether I saw material on a
3 website, which is the issue in question, which is, in
4 fact, the only testimony I will be giving, I saw this
5 on this website on this date. That's the only evidence
6 that I'll be giving.

7 MR. KULBASHIAN: Mr. Chair, the
8 reason that I'm going ahead with this, first of all,
9 Mr. Warman in the Warman v. Kulbashian case testified
10 in some cases that documents that he had received he
11 had downloaded off the website, copied and pasted them
12 into another program and then printed them out.

13 And in this situation, for example,
14 there is an issue where there's a forum, it's a forum,
15 public forum where individuals can post comments, it's
16 a public forum where individuals can actually post
17 comments that are even contrary to section 13.

18 The complainant and the Commission
19 allege that some of the postings on the forum were
20 actually a violation of section 13.

21 What I want to suggest is that there
22 is already evidence that Mr. Warman gave that he had
23 signed up to two individual racist forums under
24 pseudonyms. He also testified that he had made various
25 postings. I understand that would be kind of confusing

1 where I'm going.

2 THE CHAIRPERSON: I must say that I
3 am a little bit confused as to where you are going,
4 because my understanding of the motion you were making
5 this morning is that you wanted to get copies of
6 speeches --

7 MR. KULBASHIAN: That's right.

8 THE CHAIRPERSON: -- that Mr. Warman
9 had made over the years, and that the reason why you
10 wanted to get a copy of these speeches was to attack
11 the credibility of Mr. Warman.

12 But what I gather also this morning
13 is that you think that you could also attack the
14 credibility of the Commission.

15 And I must say with respect to that,
16 that I'm not sure that this is a matter that the
17 Tribunal must entertain, because once the complaint has
18 been referred to the Tribunal, the tribunal doesn't
19 have to look back how the Commission proceeded in
20 making its investigation of the complaint, what it
21 looked at and so on and so forth.

22 MR. KULBASHIAN: I understand.

23 THE CHAIRPERSON: If the party --

24 MR. KULBASHIAN: This actually goes
25 to the credibility of the complainant as a core.

1 The major issues are that the
2 complainant is an ex-employee of the Canadian Human
3 Rights Commission and we believe that because of his
4 activism and because of his status as an ex-employee,
5 he was afforded some level of leniency that other
6 complainants haven't been, and if I could elaborate
7 before you comment.

8 THE CHAIRPERSON: But all of this
9 could be --

10 MR. KULBASHIAN: This is kind of part
11 of the general picture though. The reason why I'm
12 bringing this up is, the major issue is that there is
13 posts here that have been -- that they're stating are
14 racist in HR-1, if I'm not mistaken.

15 In HR-1, tab C, there are -- it says
16 CHA forum material download July 22nd, 2004. There are
17 a total of, I guess, 10 items that they say were
18 downloaded from the Canadian Heritage Alliance forum.
19 The forum is a location where anyone can sign up for an
20 account, can post their comments.

21 The concern that I have here is
22 Mr. Warman has previously admitted to signing up to two
23 separate racist forums. He does have -- he has posted
24 up to maybe 50 or 60 comments on these two separate
25 racist forums. Some of these comments can be

1 considered to be contrary, can be a breach --

2 THE CHAIRPERSON: But, yes, what is
3 wrong with this, Mr. Kulbashian --

4 MR. KULBASHIAN: Sorry.

5 THE CHAIRPERSON: -- I'm sorry to
6 interrupt, when Mr. Warman testifies you can put all
7 these questions to Mr. Warman, but I think that what I
8 need to know from you is why do you request these
9 speeches and how relevant is it to your case?

10 MR. KULBASHIAN: That's why I'm
11 expanding just so you can get an overview.

12 The reason why I'm bringing up the
13 forum issue is because Mr. Warman has already testified
14 that in the process of investigating other individuals
15 he has made posts on forums.

16 There is -- what we are going to
17 suggest is Mr. Warman might have made some of these
18 posts on the forum before he filed the complaint and
19 one of the issues in which we will also be printing out
20 once I get a chance to sit down, we have an affidavit
21 where an expert witness by the name of Bernard Klatt
22 filed an affidavit where Mr. Warman, he alleges, posted
23 racist comments on a website right before complaining
24 about the websites.

25 THE CHAIRPERSON: But that I don't --

1 you know, this is not evidence before me.

2 MR. KULBASHIAN: I understand, but
3 the reason why we're requesting the speeches is to show
4 that the witness or complainant would go as far as
5 making racist comments on a website and then file a
6 complaint on the website, in effect, I guess framing
7 the individuals who run the website for --

8 THE CHAIRPERSON: But all of this
9 will come out most probably --

10 MR. KULBASHIAN: However, the problem
11 is, however, Mr. Warman denies creating any accounts on
12 the Canadian Heritage Alliance forum, he denies make
13 any postings on the Canadian Heritage Alliance forum,
14 which means if he denies it and we can show that he is
15 not a credible witness, we can also give less weight to
16 his testimony, when he says that I did not post this, I
17 did not post that, et cetera.

18 THE CHAIRPERSON: I can understand
19 that you want to attack Mr. Warman's credibility, but
20 suppose I was to order that Mr. Warman provide you with
21 all of his speeches --

22 MR. KULBASHIAN: We're asking for all
23 speeches that refer to Ms Guille and CHA, not every
24 single speech that he has ever given.

25 The primary reason is it shows

1 motivation behind filing complaints. It shows his
2 activist mentality that may lead him to carry out
3 illegal actions.

4 We do have a video that we have
5 submitted to all parties where Mr. Warman counsels two
6 members of Anti-Racist Action to commit assault which
7 we have here.

8 MR. WARMAN: Mr. Chair, it's a
9 fundamental misrepresentation of the video.

10 THE CHAIRPERSON: But all of this
11 will come out. We are not here to pre-try, you know --

12 MR. KULBASHIAN: We understand. The
13 major issue is it shows his motivation and how he can
14 be motivated to break the law in order to file these
15 complaints.

16 THE CHAIRPERSON: But what I
17 understand now is that you want to get a copy of all
18 the speeches that were given by Mr. Warman where
19 Ms Guille's name is mentioned.

20 Is that what you are looking for?

21 MR. KULBASHIAN: That's right. And
22 the reason why we're looking for that is to, I guess,
23 determine whether or not anything was said about
24 Ms Guille that might show that he may resort to extra
25 judicial actions in order to fight racism.

1 The major issue here is the
2 credibility of the witness. He is the only witness
3 that the Commission complainant are putting forward, he
4 is the only witness who will be testifying to the facts
5 in this case as to what he saw, what he read.

6 He also in every other case, in other
7 cases has testified to his credentials, has testified
8 to the fact that he's worked with such and such group,
9 he's fought racism here and there, and we believe that
10 that kind of testimony is testimony to his credibility
11 which means that the respondents do have the right to
12 cross-examine him on that credibility issue.

13 The fact of the matter is, Mr. Warman
14 is a witness and his credibility is at issue here.
15 We're not -- I understand that we're not allowed to
16 question him on the motivation behind filing the
17 complaint, but we are allowed to cross-examine him on
18 possible motivations of breaching the law in order to
19 obtain his goals, possibilities that he might have, I
20 guess, poisoned the proceedings by --

21 The major issue here is the
22 respondent states that all the articles that are
23 included here are based are from user accounts that she
24 hosts, you may have seen them on the motions
25 previously.

1 THE CHAIRPERSON: But this is
2 something that we will come to.

3 MR. KULBASHIAN: But the question is,
4 how do we get the disclosure after we start getting him
5 on the stand? Do we have to re-apply for the --

6 THE CHAIRPERSON: Disclosure of his
7 speeches?

8 MR. KULBASHIAN: Yes.

9 THE CHAIRPERSON: No, but that is
10 what we are looking into right now.

11 So, you are saying, if I understand
12 you correctly, is that you would like to have a copy of
13 all the speeches that were made by Mr. Warman in which
14 a reference was made to Ms Guille --

15 MR. KULBASHIAN: Or the Canadian
16 Heritage Alliance.

17 THE CHAIRPERSON: -- or the Canadian
18 Heritage Alliance, and the reason why you want to get
19 copies of these speeches is because they may go to
20 challenge the credibility of Mr. Warman, given the fact
21 that he has himself put this credibility in play in the
22 past.

23 Am I summarizing correctly --

24 MR. KULBASHIAN: That's right.

25 THE CHAIRPERSON: -- the point you

1 want to make?

2 MR. KULBASHIAN: Alternately, it
3 could be possible that we retract this motion now and
4 bring it back bring when Mr. Warman has already taken
5 the stand and testified to his credibility and once
6 that happens, then this becomes more fair game.

7 I'm not sure if that would be a more
8 appropriate approach to this issue, because he has --
9 in every Tribunal hearing, in every Tribunal transcript
10 that I have read so far he has started by testifying
11 that he's worked here and he's worked there, he's done
12 such and such to fight racism, et cetera.

13 And on that -- like, basically on
14 that pretext we're asking for this to be disclosed
15 because we are assuming that he would be testifying to
16 the same facts here in the Tribunal hearing.

17 So, if it would be more proper to
18 wait until he testifies to that --

19 THE CHAIRPERSON: In any proceedings
20 the credibility of a witness is always an issue.

21 MR. KULBASHIAN: That's right.

22 THE CHAIRPERSON: A fundamental
23 issue.

24 MR. KULBASHIAN: But the reason I was
25 specifically asking for speeches, because in all

1 testimony he has also stated that he has given speeches
2 at these locations, he has been hired by certain
3 individuals to give speeches and so this is where the
4 issue of the speeches come in and whether or not that
5 should actually add to his credibility or subtract from
6 his credibility.

7 THE CHAIRPERSON: What will come out
8 of the cross-examination is one thing, what I hear you
9 saying this morning is that in preparation of
10 Ms Guille's case you need to have a copy now of any
11 speeches pertaining to her.

12 MR. KULBASHIAN: That's right.

13 THE CHAIRPERSON: Now, what will come
14 out of the cross-examination, what questions you will
15 put to the witness I don't know and we'll see then.

16 But what I have here is a very
17 specific request from you --

18 MR. KULBASHIAN: This issue.

19 THE CHAIRPERSON: -- with respect to
20 you being able to meet the case that is presented by
21 Mr. Warman.

22 MR. KULBASHIAN: That's right. And
23 so, I guess, the best way to put it, that we're
24 requesting the speeches to show that Mr. Warman's an
25 activist, that Mr. Warman has -- let's say has engaged

1 in questionable activity in the past, that his
2 credibility is of great issue for us, especially in the
3 respondent's case in defending this complaint.

4 THE CHAIRPERSON: That is all.

5 MR. KULBASHIAN: I guess I can be
6 brief that way, because I just want to avoid confusion
7 and giving away a lot of the defence that we're going
8 to have, so...

9 THE CHAIRPERSON: But you are not
10 required to do that.

11 MR. KULBASHIAN: Yeah.

12 THE CHAIRPERSON: It is just you
13 present a motion, you state why you want to present
14 your motion and why the Tribunal should in a way grant
15 your motion.

16 As I said, we are not pre-trying, you
17 know, this case.

18 MR. KULBASHIAN: Actually, if I may
19 just briefly go through the book of authorities.

20 If I could ask the Commission, I
21 guess, to give us the first binder of the book of
22 authorities since we only have the second one, I
23 believe.

24 MS CEILIDH SNIDER: Unfortunately,
25 mine is highlighted, I hadn't anticipated at this

1 stage --

2 THE CHAIRPERSON: As long as in due
3 time you provide the Tribunal with a highlighter, it
4 will be fine.

5 --- Laughter

6 MS CEILIDH SNIDER: Or several.

7 THE CHAIRPERSON: Or several, yes.

8 MR. KULBASHIAN: Actually, I'm sorry,
9 it was actually the second book of authorities, I just
10 saw the Zundel name.

11 I'm sorry, I was just looking for the
12 specific section here.

13 It's actually page 46, because I
14 don't have page numbers under tab 17 of the first book
15 of authorities -- actually, the second book of
16 authorities.

17 THE CHAIRPERSON: Tab 17?

18 MR. KULBASHIAN: Tab 17.

19 THE CHAIRPERSON: The Zundel case?

20 MR. KULBASHIAN: That's right.

21 THE CHAIRPERSON: Page...?

22 MR. KULBASHIAN: There is no page
23 numbers, but it's tab 17, paragraph 46.

24 It states:

25 "In my view, although Mr. Zundel

1 was not impressed by the lack of
2 subtlety of those people and
3 those organizations, he
4 nevertheless cooperated with
5 them, feeling it was better to
6 have some support, than to go it
7 alone. But he simply cannot
8 depict himself as a champion of
9 free speech and of non-violence,
10 while spending most of his time
11 in touch with people who promote
12 the opposite. Mr. Zundel could
13 not for ever sit on the fence,
14 and in my view, he fell to one
15 side. He decided to associate
16 himself with all these people,
17 including extremists and members
18 of the White Supremacist
19 Movement. The evidence spanning
20 over more than two decades shows
21 me that only one person, George
22 Burdi, a prominent figure of the
23 Canadian Movement, was excluded
24 from Mr. Zundel's house; if
25 Mr. Zundel had seriously

1 intended to distance himself
2 from those people and those
3 organizations, all of them would
4 have been excluded from his
5 house. Maybe, rather than being
6 an open and welcoming
7 atmosphere, 280 Carlton would
8 have been a revolving door to
9 throw out those violent and
10 extremist individuals, and to
11 demonstrate a clear intention to
12 distance himself from them."

13 In this decision, it's in response to
14 Mr. Zundel stating that he was non-violent, that he
15 didn't believe in, like, in the violence mentality,
16 like, ideologies that certain individuals had and the
17 judge finds that even though he states he is
18 non-violent and he was only for free expression, his
19 association with violent elements makes it hard to
20 believe that he is basically a non-violent personality.

21 And the reason -- the way this
22 relates to my motion is that copies of speeches to,
23 let's say, Anti-Racist Action which is a violent
24 organization both in Toronto and in London and possibly
25 other cities, or other speeches that he might have

1 given would be to a group of violent individuals.

2 Mr. Warman, I allege, is --

3 THE CHAIRPERSON: But...

4 MR. KULBASHIAN: -- circled with
5 these individuals, he's involved with them.

6 THE CHAIRPERSON: But for the purpose
7 of this motion, do you have any authority supporting,
8 you know, your views that these speeches should be
9 provided to you?

10 Has there been --

11 MR. KULBASHIAN: Actually, I think
12 Mr. Fromm can address that issue because he's been --

13 THE CHAIRPERSON: This is what I need
14 to know for this motion, and then we will --

15 MR. KULBASHIAN: Well, we don't have
16 authorities because we don't really have that much
17 experience with the Tribunal decisions and, I guess,
18 other administrative decisions.

19 But the major issue we're coming to
20 show here is that we wish to show with the speeches and
21 based on who he gave the speeches to as well, as well
22 as the fact in some of these speeches he went as far as
23 showing pictures of individuals he filed complaints
24 against.

25 THE CHAIRPERSON: But you only want

1 the speeches where Ms Guille's name is mentioned.

2 MR. KULBASHIAN: That's right. It's
3 only in relation to --

4 THE CHAIRPERSON: I understand your
5 point.

6 MR. KULBASHIAN: We don't want just
7 everything that he ever said. It's not a fishing
8 expedition at all.

9 THE CHAIRPERSON: This is what I need
10 to know at the present time.

11 MR. KULBASHIAN: Okay.

12 THE CHAIRPERSON: There is no need
13 for you to get into more than that as to whether
14 Mr. Warman is part of an activist group or whatnot, you
15 know, the evidence will show if that is the case or
16 not, you know, the evidence will show whether that's
17 the case or not.

18 MR. KULBASHIAN: What we're going to
19 show is that he actually is part of this group and this
20 group --

21 THE CHAIRPERSON: But that I don't
22 need to know now --

23 MR. KULBASHIAN: I understand.

24 THE CHAIRPERSON: -- for the purposes
25 of this motion.

1 MR. KULBASHIAN: Well, let's say,
2 that basically we're looking to show is that he would
3 go as far as possibly going under oath and even
4 stating --

5 THE CHAIRPERSON: But this you will
6 be able to do when the time comes to cross-examine him.

7 For the time being the only thing I
8 need to know is should your request be granted given
9 the fact that, as part of your line of defence, that
10 you want to attack the credibility of Mr. Warman.

11 Now, maybe, let's say he provides you
12 with these speeches and there is nothing wrong said
13 about Ms Guille, then you might say, well, I don't want
14 to consider these speeches.

15 But, you know --

16 MR. KULBASHIAN: Well, the major
17 issue is we don't know what was said. We only have a
18 copy of one speech that was given that was disclosed to
19 all the parties.

20 THE CHAIRPERSON: But that is the
21 purpose of this motion.

22 Now, what I would like to know is, do
23 you have any case law to support --

24 MR. KULBASHIAN: We don't have the
25 ability to --

1 THE CHAIRPERSON: Mr. Fromm was
2 supposed to --

3 MR. KULBASHIAN: Actually, Mr. Fromm
4 might have it, but I don't personally have case law. I
5 guess I'll leave Mr. Fromm to address this issue.

6 THE CHAIRPERSON: Yes.

7 MR. KULBASHIAN: All right, thank
8 you.

9 MR. CHAIRPERSON: I think maybe
10 someone will have to tape the wires on the floor so
11 that someone won't trip.

12 Mr. Fromm?

13 SUBMISSIONS BY MR. FROMM

14 MR. FROMM: Yes. I'll be very brief,
15 Mr. Chairman.

16 There is certainly one speech in
17 particular, speaking on behalf of the Canadian Heritage
18 Alliance, that we are interested in and this was a
19 speech I believe that was given by Mr. Warman in
20 London, Ontario probably in December, 2004 and we know
21 for a fact did mention Ms Guille.

22 There may be other speeches, but I
23 think that's certainly the parameters of what we're
24 looking for, that is, speeches that mention Ms Guille,
25 but particularly that speech given in London, Ontario I

1 believe in December, 2004.

2 And as to authorities, what I've
3 provided you with is from the transcript of Richard
4 Warman v. Terry Tremayne, a Tribunal hearing that was
5 held up in Ottawa in August of this year, and the
6 Chairman there was Mr. Doucet -- Member Doucet, and the
7 issue in this portion that I ran off for you was
8 something authored by Mr. Warman in the 2005 Audit of
9 Anti-Semitic Incidents which is put out by the League
10 for Human Rights of B'nai Brith, and there's a section
11 on, I think it was hate on the Internet in Canada and a
12 number of individuals were named, and that document had
13 not been disclosed, and I put it to Mr. Warman, and
14 Member Doucet makes some comments about that.

15 I refer you to page 339 of the
16 hand-out I gave you and at that Member Doucet said, and
17 I've highlighted it here:

18 "Just to make the point, this is
19 a document that referred
20 specifically to this issue and I
21 would like to just point out
22 that it should have been
23 disclosed as being arguably
24 relevant."

25 There's some further exchange and

1 then Member Doucet says, and on the bottom of page 339:

2 I understand it is your opinion,
3 but still, the disclosure
4 procedures of the Tribunal is
5 "anything that might be arguably
6 relevant" and the threshold is
7 very low.

8 In this case, since it
9 refers to the complainant, I
10 just wanted to make that point."

11 So, Member Doucet was indicating
12 quite clearly that document that had been authored by
13 Mr. Warman that had mentioned, among other people, the
14 respondent in that particular case, being Mr. Tremayne,
15 should have been disclosed.

16 And I believe that's really the
17 position being argued before you this morning, that
18 speeches that mention Ms Guille, particularly this
19 speech made in London, Ontario we believe in December,
20 2004 as they mention Ms Guille that seems to be the
21 threshold, ought to have been disclosed and it would be
22 our purposes to use it in Mr. Kulbashian's testimony.

23 THE CHAIRPERSON: Thank you,

24 Mr. Fromm.

25 Mr. Warman or Ms Snider.

1 REPLY SUBMISSIONS BY MR. WARMAN

2 MR. WARMAN: Mr. Chair, if I may, I'd
3 refer you to this decision by Member Jensen dated 5,
4 April, 2006 in the case of Warman v. Bahr and Western
5 Canada For Us.

6 Mr. Fromm acted as representative on
7 behalf of Mr. Bahr.

8 And essentially what this is, this is
9 a review of the exact same motion that was brought in
10 that case.

11 Here Member Jensen denies the motion
12 stating that despite the desire of the respondents to
13 attack my credibility, paragraph 6 states:

14 "I find that the Respondent Bahr
15 has not established the arguable
16 relevance of the requested
17 material to the issues that are
18 raised in this case. While the
19 threshold for arguable evidence
20 is low and the tendency is now
21 towards more, rather than less
22 disclosure, the nexus between
23 the issues to be proven and the
24 requested material must
25 nonetheless, be demonstrated."

1 She then goes on to say what are the
2 issues in this case.

3 "The central factual issue to be
4 determined in the present case
5 is whether the Respondents,
6 contacting individually or in
7 concert, repeatedly communicated
8 by means of the Internet,
9 messages that were likely to
10 expose people to hatred or
11 contempt by reason of the fact
12 that those people are
13 identifiable on the basis of a
14 prohibited ground of
15 discrimination."

16 Then goes on to state that Mr. Bahr
17 and WFC appears that they want to attack my credibility
18 are something that should have been addressed before
19 the Commission because it is the Commission under
20 section 41(d) of the Act that has ability to dismiss a
21 complaint on the basis of being trivial, frivolous,
22 vexatious or made in bath faith.

23 She states:

24 "...the Tribunal does not have
25 the authority to review the

1 Commission's decision to refer
2 the complaint to the
3 Tribunal..."

4 Paragraph 9:

5 "Thus, the complainant's
6 motivation for bringing the
7 complaint is not a relevant
8 issue at this stage in the
9 proceedings. Moreover, the fact
10 that the speaking notes were
11 disclosed in Warman v. Winnicki
12 does not mean that the same
13 material must be disclosed in
14 the present case. The arguable
15 relevance...must be determined
16 on a case-by-case..."

17 And then she gives the reasons, the
18 limited reasons why it was ordered disclosed, why
19 documents were ordered disclosed in the Winnicki case.

20 She states:

21 "For these reasons, I decline to
22 order the disclosure of the
23 documents listed above. I note,
24 however, the Complainant's
25 suggestion in his submissions

1 that some of the requested
2 material is available on the
3 Internet."

4 Mr. Fromm's been aware since at least
5 April of this year that one of the items requested is
6 openly available and in the public domain on the B'Nai
7 Brith website, he's known that, he was directed to it.
8 If he has chosen not to avail himself of that, then
9 that is his own decision.

10 I think for my purposes those are my
11 submissions, unless you have any questions.

12 THE CHAIRPERSON: Well, I agree with
13 you and this is what I said earlier on, the Tribunal
14 doesn't have any power to review or to question how an
15 investigation was made by the Commission, this is
16 another forum that has to decide that.

17 But here when I look at the case you
18 have just provided me with, in listening to what
19 Mr. Fromm said and Mr. Kulbashian, the issue here --
20 one issue over and above, you know, the issue
21 pertaining to the allegation, the credibility of a
22 witness is always an issue in every case and from what
23 I hear from their arguments is that they don't want to
24 have a copy of all of your speeches, but only of those
25 which might refer to Ms Guille.

1 MR. WARMAN: In fact that was one of
2 the primary reasons, as you will see in the decision,
3 why Ms Jensen acting as a Member in the Winnicki case
4 ordered the disclosure of certain documents because,
5 she said, Mr. Warman has alleged retaliatory conduct
6 and he's asked for damages specifically on the basis of
7 pain and suffering, so because certain documents may
8 mention Mr. Winnicki, it may go to show his propensity
9 for having suffered from pain and suffering, I will
10 order those documents disclosed.

11 Here, the circumstances simply do not
12 exist. I have not alleged retaliatory conduct on the
13 part of either of the respondents, I'm not claiming
14 damages for pain and suffering.

15 So, these are the exact same
16 circumstances as expressed in the Bahr case.

17 THE CHAIRPERSON: In the Bahr case.

18 MR. WARMAN: If I may just close.

19 THE CHAIRPERSON: Yes.

20 MR. WARMAN: But saying there was a
21 speech where I had mentioned Ms Bahr (sic), how does
22 that go to the question of whether Ms Bahr (sic) --
23 excuse me, Ms Guille acting alone or in concert
24 disseminated hate messages through the Internet?

25 There is no arguable relevance, even

1 at the lowest threshold.

2 THE CHAIRPERSON: But I think when we
3 look at what is arguably relevant it is to the whole
4 case it's not to specifically the case you are making.

5 What the respondents are asking for
6 is not a copy of all your speeches over the last 10
7 years.

8 MR. WARMAN: I understand.

9 THE CHAIRPERSON: It is only speeches
10 in which you might have mentioned Ms Guille, and we are
11 dealing with a disclosure issue here and in order for
12 the respondents to prepare themselves and see if there
13 is something in these documents that could be useful to
14 them.

15 If they were asking for, as I said,
16 all your speeches over the last 10 years, I think then
17 I would have concern about the nexus with respect to
18 this specific case involving Ms Guille.

19 But now they have restricted their
20 request, which was not obvious when the motion was made
21 or the request was made, to only those speeches
22 pertaining to Ms Guille in a disclosure context.

23 So, don't you think that since they
24 have narrowed it down to, I don't know how many
25 speeches you gave and how many times you referred to

1 Ms Guille, but don't you think that this is like very
2 close to what has to be decided in this case, and given
3 the fact that your credibility, as the credibility of
4 any witness is at stake, that this is something which
5 is arguably relevant to an issue which is the
6 credibility of a witness.

7 MR. WARMAN: I think that in essence
8 there's a difference between credibility and character
9 evidence, so what they're attempting to introduce is,
10 in fact, character evidence not credibility.

11 They're attempting to say Mr. Warman,
12 in essence, is a bad man and, therefore, he should not
13 be believed.

14 They are not attempting to say
15 anything that Mr. Warman has done in the past goes to
16 whether Ms Guille communicated or caused to be
17 communicated, acting alone or in concert, hate messages
18 under the Act which is the question that is before the
19 Tribunal.

20 THE CHAIRPERSON: But you know,
21 Mr. Warman, even if I was to order the disclosure of
22 these speeches, doesn't mean that I will admit them in
23 evidence.

24 MR. WARMAN: Of course.

25 THE CHAIRPERSON: So, it is a

1 two-step process. So, suppose at one point, suppose I
2 order you to disclose to the respondents copies of
3 these speeches where you mention Ms Guille, and suppose
4 later down the road when you testify, you're
5 cross-examined, they want to use it in order to attack
6 or characterize you as you just mentioned, a bad
7 person, then an objection will certainly be made and
8 then I will have to decide on the objection.

9 But we are not there yet.

10 MR. WARMAN: But if that's the only
11 purpose to which this evidence may be put, then I fail
12 to see what the argument is substantiating this motion.

13 THE CHAIRPERSON: But what I hear
14 from the respondents is that they want to attack your
15 credibility because they have said, and this is what I
16 heard this morning, that in the past you have presented
17 yourself as a credible person and --

18 MR. WARMAN: But that has not
19 happened in this case, so, perhaps we are putting the
20 cart before the horse.

21 THE CHAIRPERSON: No, but this is an
22 issue which is always present in any -- before we even
23 start a case, we know that the credibility of a
24 witness, whether it's an ordinary witness or expert
25 witness, will be challenged.

1 MR. WARMAN: Sure.

2 THE CHAIRPERSON: This is how things
3 go in legal proceedings. So, that is the point I
4 wanted to make.

5 And trying to understand how, if I
6 look at the Bahr case and the requests that were made
7 there, the documents that Mr. Bahr was requesting did
8 not specifically deal with speeches or documents where
9 his name was mentioned, unless I read the case wrongly.

10 MR. WARMAN: The paragraph 3 outlines
11 what they were asking.

12 THE CHAIRPERSON: They were asking
13 for a contract, which is --

14 MR. WARMAN: Among other things. And
15 again, Mr. Bahr was represented by Mr. Fromm, which is
16 why I state this is simply a repetition of the same
17 type of motion, and it is my belief -- it's my
18 submission, it's in your hands, but the Jensen decision
19 adequately disposes of it.

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

22 Ms Snider?

23 REPLY SUBMISSIONS BY MS SNIDER

24 MS CEILIDH SNIDER: If the
25 respondents are narrowing their motion simply to

1 documents that pertain to an issue that may have some
2 arguable relevance in this matter, and there's a
3 document that discusses Ms Guille, then it is the
4 submission of the Commission that I would support
5 actually the disclosure, recognizing however that there
6 is a distinction to be made between disclosure and what
7 is properly put before this Tribunal as evidence.

8 And we would ask that the Tribunal be
9 very circumspect in permitting any of these documents
10 that may be ordered disclosed to be put then into
11 evidence, and we would be raising any objections --
12 very strenuously at that point, but that any order for
13 disclosure of documents be very narrow and only in
14 respect of items that touch upon the Canadian Heritage
15 Alliance directly or upon Ms Guille directly.

16 THE CHAIRPERSON: Thank you,
17 Ms Snider.

18 FURTHER SUBMISSIONS BY MR. FROMM

19 MR. FROMM: Mr. Chairman I just had a
20 couple of points of clarification.

21 I think basically what we're looking
22 for comes under full disclosure, and it's our
23 submission full disclosure has not occurred, being
24 limited to speeches mentioning Ms Guille and Canadian
25 Heritage Alliance.

1 I think Mr. Warman did not properly
2 characterize something which may have mislead you, he
3 said Mr. Fromm has known that this material is
4 available on the Internet.

5 That's true about the document about
6 the League for Human Rights of the B'Nai B'rit, but
7 we're not talking about that, we're talking about
8 speeches that Mr. Warman gave that, to the best of my
9 knowledge, are not available on the Internet and --

10 THE CHAIRPERSON: But with respect to
11 the question of the Internet, I didn't address this
12 issue, but my personal view is that it's not because a
13 document is on the Internet that it means that a party
14 doesn't have to disclose that document because
15 otherwise, you know, someone could say -- and I'm not
16 speaking specifically with respect to this case -- but
17 could say, well, you know, everything is on the Net.

18 Well, nowadays when you go on the Net
19 you are like sometimes at a loss of finding, you know,
20 the right information, there is so much information on
21 the Net, and I think at one point someone has -- and
22 given the rules of disclosure that we have, a party has
23 the obligation to disclose any relevant documents to a
24 case whether it's on the Net or not.

25 So, for me, the fact that it is on

1 the Net is not crucial to my determination.

2 ORDER

3 THE CHAIRPERSON: So, given what was
4 said and given the fact that the respondents are
5 seeking disclosure of specific speeches made by
6 Mr. Warman in which the Canadian Heritage Alliance or
7 Ms Guille's name is mentioned, the Tribunal orders
8 Mr. Warman to disclose to the respondents those
9 speeches where Ms Guille's name is mentioned or the
10 Canadian Heritage Alliance name is mentioned.

11 With the understanding that this
12 order does not mean that these documents will
13 necessarily find their way into the evidence and that
14 if the respondents wants, at one point in time in
15 presenting their case, to use these documents they will
16 have to be tendered through the normal course of
17 evidence, and the parties, the complainant, the
18 Commission might object to their production if they
19 feel that their production is improper or that the
20 documents are inadmissible or totally irrelevant to the
21 issues in this case.

22 So, my order is limited to these
23 documents I just mentioned, and also it's in the
24 context of disclosing arguably relevant documents.

25 So, I don't -- I think Ms Jensen had

1 asked you to bring these documents, if they existed and
2 maybe --

3 MR. WARMAN: Mr. Chair, just to
4 facilitate things, I can state that pursuant to
5 Ms Jensen's order I did search my records and I have no
6 speeches.

7 THE CHAIRPERSON: So, you have no
8 speeches where the name of Ms Guille or the Canadian
9 Heritage Alliance are mentioned?

10 MR. WARMAN: I have no such records
11 that I can disclose.

12 MR. KULBASHIAN: Mr. Chair, then in
13 that case, we would ask that you issue a subpoena for
14 Mr. Warman to disclose documents.

15 The major issue is that in previous
16 cases we have found that he has kept copies of
17 documents for a long time. As far as the respondent
18 was amount one point there at the speech and especially
19 specifically one in London given to an anti-racist
20 group and that she does note that he was reading from
21 speech notes, and that if he destroyed the documents in
22 order to not disclose them, then that would be a breach
23 of the rules of procedure and we ask that a subpoena be
24 issued that he make every effort to disclose documents,
25 otherwise we'll see what happens from there.

1 The major issue is, you just can't
2 destroy documents so you don't disclose them.

3 THE CHAIRPERSON: But I don't know
4 now if --

5 MR. KULBASHIAN: He didn't state that
6 under oath that he did not have the documents, he
7 stated that standing at the table.

8 THE CHAIRPERSON: But from what I
9 know now is that a motion was brought by the
10 respondents to the Tribunal asking for Mr. Warman to
11 disclose any speech he might have made where the name
12 of Ms Guille and of the Canadian Heritage Alliance was
13 mentioned, and I granted the motion and I ordered
14 Mr. Warman to provide you with these speeches.

15 Now, Mr. Warman says that he has made
16 no speeches, we're talking about documents here, that
17 he has in his possession which mention Ms Guille and/or
18 the Canadian Heritage Alliance.

19 Now, when Mr. Warman testifies, in
20 cross-examination, you could ask him in the course of
21 your cross-examination questions on that, but I can't,
22 you know, ask Mr. Warman who's not under oath or has
23 not started testifying, to ask him have you destroyed
24 your notes and what happened with your notes, and this
25 would be improper for the Tribunal to do that.

1 It's when he's in the witness box and
2 when he starts testifying when you start your
3 cross-examination, then you could put these questions
4 to him and we'll see then what happens.

5 As I said, the process this morning
6 is just to deal with a motion, a preliminary motion.

7 MR. KULBASHIAN: I would ask that
8 since we requested all documents and speeches that are
9 relevant to -- would order also include the B'Nai Brith
10 document that he wrote that would have the respondent's
11 name and information, personal information.

12 THE CHAIRPERSON: Well, I would
13 presume if there is a B'Nai Brith, I don't know
14 document --

15 MR. KULBASHIAN: Is that part of the
16 order to disclose?

17 THE CHAIRPERSON: Well, if it's a
18 speech and Ms Guille's name is mentioned, this was part
19 of the order.

20 MR. KULBASHIAN: Our request was not
21 only for the speech, it was also for the documents as
22 well, the documents that named her. Specifically what
23 Mr. Fromm stated, was document that he wrote for the
24 B'Nai Brith which appeared in the Audit of Anti-Semitic
25 Incidents I believe of this year and we requested that

1 he disclose that as well.

2 And I'm not sure if that was part of
3 your order.

4 THE CHAIRPERSON: Well, from what I
5 understood, my order pertained to speeches.

6 MR. KULBASHIAN: Speeches only. What
7 about the order pertaining to the Audit which did
8 actually name Ms Guille?

9 THE CHAIRPERSON: Well, if you are
10 making a motion now to have any document in which
11 Ms Guille's name is mentioned, that's different from --

12 MR. KULBASHIAN: Well, the major --
13 see, the reason why I guess the documents, the B'Nai
14 Brith document kind of falls under the same category,
15 in the sense it's a public article, in the sense that
16 either read or posted on line that would involve her
17 and information about her or the complaint.

18 THE CHAIRPERSON: We're not here to
19 split hairs.

20 MR. KULBASHIAN: Well, the idea is
21 that it does include her name.

22 THE CHAIRPERSON: What I mean is that
23 if there's a document which mentioned Ms Guille's name,
24 I think, without having heard Mr. Warman on that, you
25 know, logically speaking, if it's something that

1 pertains to Ms Guille or Canadian Heritage Alliance,
2 this should be disclosed.

3 MR. KULBASHIAN: Thank you,
4 Mr. Chairman.

5 THE CHAIRPERSON: Now, I know that
6 the motion was on speeches but, Mr. Warman, what do you
7 have to say?

8 MR. WARMAN: Really I think this is
9 prejudice.

10 I will disclose the copy of the
11 article simply for the purposes of expediting this
12 hearing, but it's something that's clearly available on
13 line, they know exactly where to find it.

14 If I may finish.

15 And the issue has been raised in the
16 past, it's been denied by the Tribunal, it's become a
17 big kerfuffle in the past, Mr. Fromm was told it's
18 openly there for him.

19 You know, it really becomes
20 pernicious to say, oh, and we want a copy of it because
21 we refuse to go and look at it and read it where, from
22 my perspective, it's quite likely that they already in
23 fact have it and they already know full well what the
24 content is.

25 It becomes just simply a waste of

1 time and abuse of process, but in the interest of
2 expediting things, I will produce it at lunch.

3 THE CHAIRPERSON: Mr. Kulbashian?

4 MR. KULBASHIAN: Mr. Chair, the
5 specific request we want to make, as you stated,
6 documents available on line may be edited from their
7 original form when a document -- because Mr. Warman did
8 not write the entire document, he submitted sections to
9 the documents.

10 What we're looking for is his
11 submission, not the entire document, because documents
12 can be edited and the best evidence would be the actual
13 document that he submitted, not the document that
14 appeared on line after editing.

15 THE CHAIRPERSON: But what I said, I
16 will maintain what I said, is that with respect to the
17 disclosure process, the parties have an obligation to
18 disclose to one another any or every document that is
19 arguably relevant to the case.

20 The fact that a document can be found
21 on the Net is not, in my view, sufficient because you
22 could have a website where you will have thousands of
23 pages and a party might say, well, it's on the Net.

24 This is not good enough, you need
25 to -- so, Mr. Warman made the undertaking that he would

1 provide you with that document at the lunch break.

2 MR. KULBASHIAN: Thank you.

3 THE CHAIRPERSON: So, I think that
4 this puts an end to this preliminarily motion.

5 The next motion that we have to deal
6 with is the one that has to do with adding Mr. Warman
7 as a respondent to the complaint.

8 MR. KULBASHIAN: Is it possible to
9 move that motion to a bit later on because we have a
10 lot of printing to do in relation to that and we'll do
11 it over the lunch break.

12 MS CEILIDH SNIDER: Perhaps we can
13 deal with the membership list next, we can deal with
14 that.

15 THE CHAIRPERSON: Do you want to take
16 a break now before?

17 So, we will break for approximately
18 15 minutes and we will entertain your motion for the
19 disclosure of the members' list.

20 MS CEILIDH SNIDER: Thank you.

21 REGISTRY OFFICER: Order, please.

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

23 --- Upon resuming at 11:15 a.m.

24 REGISTRY OFFICER: All rise.

25 Please be seated.

1 THE CHAIRPERSON: So, we will now be
2 dealing with the complainant's and Commission's motion
3 to have the respondent disclose a list of members.

4 MS CEILIDH SNIDER: Yes, thank you.

5 PRELIMINARY MOTION BY MS CEILIDH SNIDER

6 MS CEILIDH SNIDER: I take the
7 Tribunal first to the Commission's book of authorities.

8 Just to outline, first of all, before
9 we begin, at tab 21 what we have there, there was an
10 exchange of communications preceding the ruling found
11 at tab 21 which is a ruling by Ms Jensen, 2006-CHRT-31.

12 The Commission and complainant sought
13 disclosure of the membership lists or list of the
14 Canadian Heritage Alliance in that we were of the view
15 that (a) it exists; and, (b) that it is arguably
16 relevant to the issue at hand, which is whether there
17 is a group of persons acting in concert contrary to
18 section 13 of the Act for the communication of hate
19 messages.

20 Ms Jensen in the decision I referred
21 you to at 2006-CHRT-31, at paragraph 7 at page 2 of the
22 decision ordered Ms Guille to disclose the membership
23 lists or list for the Canadian Heritage Alliance in her
24 possession for the relevant periods, the relevant
25 periods being from the date of the filing of the

1 complaint forward.

2 Ms Guille subsequently raised
3 concerns about her ability to properly argue on the
4 issue of the arguably relevance of these membership
5 lists, despite her assistance from Mr. Kulbashian.

6 Ms Jensen permitted Ms Guille to make
7 further submissions, Ms Guille and the CHA to make
8 further submissions which would serve to waive the
9 direction or order of Ms Jensen if she were satisfied
10 that the respondents provided sufficient evidence or
11 sufficient material that would warrant waiving this
12 ruling.

13 By a letter dated September 26th,
14 2006, Ms Jensen in reviewing the submissions of the
15 respondents and complainants, the Canadian Human Rights
16 Commission and Mr. Warman, issued the following
17 direction, and I'll read it:

18 "Following our directions issued
19 today by the Tribunal, the
20 Tribunal has reviewed the
21 request submitted by the
22 Respondent Melissa Guille to
23 vary the Tribunal's direction to
24 disclose the membership lists,
25 if such a list exists, of the

1 Canadian Heritage Alliance. The
2 Tribunal has also reviewed the
3 letter submitted by the Canadian
4 Human Rights Commission dated
5 September 20th, 2006. The
6 Tribunal will not vary the
7 direction to disclose the
8 membership lists of the CHA.
9 Since the membership list is to
10 be produced under compulsion as
11 part of this Tribunal
12 proceedings, the rule regarding
13 implied undertakings applies to
14 its use. The role with respect
15 to disclosure of the ruling is
16 clear..." and so forth.

17 Ms Guille had a concern that these
18 membership lists would be used for perhaps an improper
19 purpose and Ms Jensen, Member Jensen addressed this
20 issue and explained the implied undertaking rule in
21 both a teleconference on the issues of disclosure and
22 subsequently in the ruling CHRT-31 that I referred you
23 to earlier.

24 To date the respondents have not
25 provided the Commission nor the complainant with the

1 membership lists and have not provided any valid reason
2 why such document has not been produced and we would
3 ask simply that the Tribunal at this stage order the
4 CHA and Ms Guille to produce these list or lists at
5 this point.

6 It's late disclosure, but we will be
7 happy with this at this point.

8 In the event that the CHA and
9 Ms Guille refuse to comply, we would ask down the road
10 in our argument that an adverse inference be made with
11 respect to this refusal and evidence will go in down
12 the road to substantiate that an adverse inference
13 would be properly drawn.

14 Thank you. Those are my submissions.

15 THE CHAIRPERSON: Mr. Warman?

16 SUBMISSIONS BY MR. WARMAN

17 MR. WARMAN: I would simply adopt the
18 submissions of the Canadian Human Rights Commission,
19 but also add that in the absence of the membership list
20 being produced, we'll object to any effort to
21 cross-examine on the basis of attempting to show that
22 the Canadian Heritage Alliance does not constitute a
23 group of persons.

24 And that Member Jensen was quite
25 clear in the teleconference that rule 9.3 would prevent

1 such efforts, excuse me, of course absent leave from
2 the Tribunal.

3 Thank you.

4 THE CHAIRPERSON: Thank you,
5 Mr. Warman.

6 MR. WARMAN: Sorry, and I should just
7 close by saying, not just to cross-examine, but to make
8 any submissions to the effect that there is not a group
9 of persons acting in concert of the CHA as respondent.

10 THE CHAIRPERSON: Mr. Fromm?

11 MR. FROMM: Mr. Chair, I didn't catch
12 that last comment. I was wondering if it could be read
13 back to me.

14 THE CHAIRPERSON: Could you make it
15 again, Mr. Warman.

16 MR. WARMAN: Simply, in addition to
17 objecting to any effort, any line of cross-examination
18 that seeks to establish that there is not a group of
19 persons known as the Canadian Heritage Alliance that
20 constitutes a valid respondent in this case, we would
21 also object to any effort to make submissions in that
22 regard.

23 REPLY SUBMISSIONS BY MR. KULBASHIAN

24 MR. KULBASHIAN: As far as some
25 background, Ms Snider read out a list of summarized

1 list of phone conversations and motions, communications
2 related to membership lists.

3 One thing that I'm not sure she was
4 very clear on, but this is why I believe I heard her
5 say during the phone conference, the conference call
6 where I was actually not present, Ms Guille was asked
7 for a membership list and she stated that she did not
8 have a membership list at all and she stated -- and
9 Mr. Warman and Ms Snider were both in that
10 conversation -- she did not have a membership list, she
11 did not have a membership list regarding the CHA --

12 MS CEILIDH SNIDER: Excuse me.

13 MR. WARMAN: Mr. Chair, that's a
14 fundamental mischaracterization of the evidence.

15 Unless Mr. Kulbashian is prepared to
16 tender some sort of record, transcript or...

17 MR. KULBASHIAN: There is no
18 transcript of that conference call.

19 THE CHAIRPERSON: But you were not
20 present?

21 MR. KULBASHIAN: I was not present, I
22 was advised by the respondent and I was advised
23 immediately after the phone conversation initially as
24 well --

25 MS CEILIDH SNIDER: Sorry, in none of

1 the written submissions of the CHA or Ms Guille do ever
2 allege that such lists do not exist. They have had
3 ample opportunity to make this statement, they have
4 never asserted that the lists do not exist.

5 Ms Jensen who participated in the,
6 obviously chaired the teleconference that is part of
7 the issue, made the directions. She also made a
8 subsequent ruling, she made a further direction with
9 the full evidence before her of what had been said and
10 has been written and at no point does she ever say that
11 the availability of the membership lists is in issue.

12 She raises it -- she makes an opening
13 and says, if such a list exists, but at no point has
14 the CHA or Ms Guille ever asserted that such a list
15 does not exist.

16 MR. KULBASHIAN: If I can refresh the
17 Commission's and the complainant's memory, during the
18 conference call, I think it was June or July of this
19 year, in the conference call there were two requests
20 made by the Commission and complainant.

21 One was for Ms Guille's hard drive
22 which was rejected, and in that same conference call
23 they were requesting membership list in which Ms Guille
24 stated a few times that she does not have membership
25 list, but sarcastically if they wanted her to make one

1 up she would go through the phone book and make one up.

2 And that conversation and the
3 thing -- and I was not present at that conversation,
4 that conference call. In fact, just as Mr. Warman
5 earlier on today did not state he did not have copies
6 of the speech, he just adamantly objected to the motion
7 to provide copies of the speech. On that same -- in
8 that same, I guess, manner the respondent filed motions
9 in order to say that Mr. Warman should not have access
10 to any private data including membership lists by
11 providing information and evidence, stating that the
12 ARA which is a group that he's involved with is a
13 violent group, could be considered a terrorist group
14 and for that reason the list should not be disclosed to
15 him.

16 We also showed evidence in that
17 motion that Mr. Warman had passed information on --

18 MR. WARMAN: Mr. Chair, it's not
19 Mr. Kulbashian's role to re-argue a motion you have
20 made a ruling on.

21 MR. KULBASHIAN: Ms Snider went
22 through a motion that was provided, went through the
23 motion, I'm just restating what was said in the motions
24 and the reason why -- and basically the progress of
25 events just in order to --

1 THE CHAIRPERSON: The issue here is,
2 I hear two things. First of all, it appears that
3 Ms Guille at one point in time stated that she had
4 concern about communicating, let's say, "a membership
5 list" or "the membership list", and I say quote/unquote
6 of the Canadian Heritage Alliance. That is one thing.

7 The other thing is, does such a list
8 exist? We could cut short on the debate --

9 MR. KULBASHIAN: The actual list does
10 not exist.

11 THE CHAIRPERSON: -- if you go on the
12 record, as you have just did it seems, saying that
13 there is no membership list pertaining to Canadian
14 Heritage Alliance, then the point you know would become
15 moot, because if no list exists or membership list
16 exists then, you know, we are looking for --

17 MR. KULBASHIAN: The major issue --

18 THE CHAIRPERSON: -- for nothing.

19 MR. KULBASHIAN: The major issue is
20 that the respondent did in fact state during that
21 conference call, where I was not available to be
22 involved in the call, that she did not have a list and
23 the Commission and complainant kept pushing for a list
24 and feeling cornered she made a sarcastic comment
25 stating that, if they wanted her to make up a list, she

1 would go through the phone book and make up a list, but
2 she never admitted there was a list, in fact, she
3 stated there was no list and CHA was not a membership
4 organization.

5 THE CHAIRPERSON: So, are you telling
6 the Tribunal that --

7 MR. KULBASHIAN: That such a list
8 does not exist. In fact, every single motion that was
9 filed --

10 THE CHAIRPERSON: -- that no
11 membership list exists pertaining to --

12 MR. KULBASHIAN: CHA.

13 THE CHAIRPERSON: -- Canadian
14 Heritage Alliance?

15 MR. KULBASHIAN: That's right.

16 THE CHAIRPERSON: And, Mr. Fromm, you
17 also support that?

18 MR. FROMM: I am advised that there
19 is no membership list that exists in response to the
20 direction from Member Jensen.

21 MR. KULBASHIAN: The major issue was
22 in every communication, the motions and replies, there
23 was -- we clearly stated that this motion does not
24 confirm or deny the existence of any list and it was
25 made purely based on the principle that Mr. Warman

1 should not have access to information of private lists
2 or private individuals, and with this motion there was
3 attachment of maybe a hundred documents which outlined
4 details of violence committed by the Anti-Racist
5 Action -- and I'm just basically summarizing that
6 motion -- violence committed by Anti-Racist Action and
7 also how he has previously passed information on to
8 them and other anti-racist networks.

9 So, the motion was not based on the
10 fact the list existed and we didn't want to disclose
11 it, the list did not exist, however, he should still
12 not have access to any private information.

13 THE CHAIRPERSON: Because it's one
14 thing if the list exists and someone expresses concern
15 about producing the list, that's one thing, but if the
16 list does not exist, then there is no purpose in
17 looking further for a list that does not exist.

18 MR. KULBASHIAN: We indicated in the
19 motion that we didn't obey the order, and there was
20 communication where we disclosed, if I'm not mistaken,
21 I actually it right here.

22 THE CHAIRPERSON: When?

23 MR. KULBASHIAN: The date is November
24 21st. Oh, that's today. The timing -- the actual date
25 is September 25th, 2006 and it states it is in response

1 to things that have to be disclosed, I'm trying to
2 remember. Yes, because they had also requested
3 information about the process involved for banning
4 individuals from the forum.

5 And basically in compliance with the
6 ruling, this document was filed in order to disclose
7 information that we were required to disclose, as well
8 as, you know, if any other information that they
9 requested and this document was the compliance to the
10 order to disclose everything that was arguably
11 relevant.

12 Since a list did not exist, we did
13 not disclose the list. In fact, in a previous --

14 THE CHAIRPERSON: So, why not have
15 stated earlier on in the process that no such list
16 exists.

17 MR. KULBASHIAN: She had stated in
18 the phone conversation that no such list exists but,
19 however, the Commission and the complainant were
20 adamant that a list did exist and she felt cornered and
21 that's the reason why she kind of -- she apparently
22 stuttered in the phone conversation and could not
23 continue properly and make logical arguments,
24 therefore, she just conceded and said that she would
25 disclose a list if she could find one.

1 But no such list actually exists.

2 THE CHAIRPERSON: Ms Snider?

3 MS CEILIDH SNIDER: Thank you.

4 It's, frankly, disbelief that one
5 would object so strenuously to the production of a
6 membership list for fear that these names would be
7 passed on to members of the ARA by Mr. Warman, and much
8 discussion, much ink spilt on that point and not a
9 single line written in any of the subsequent letters or
10 submissions that would suggest that such a list did not
11 exist.

12 MR. KULBASHIAN: On the same note --

13 THE CHAIRPERSON: Just a second,
14 Mr. Kulbashian.

15 Ms Snider?

16 MS CEILIDH SNIDER: In the joint
17 statement of particulars of the CHA and Ms Guille, they
18 make specific reference in a number of passages in
19 their statement of particulars to the existence of a
20 membership list.

21 There are a variety of internal
22 inconsistencies, in some places they state that the CHA
23 is merely a website, in other places they refer to
24 members and so forth.

25 This is where we take the notion that

1 a membership list exists.

2 MR. KULBASHIAN: If I could ask
3 her --

4 THE CHAIRPERSON: Just --

5 MS CEILIDH SNIDER: I'd like to refer
6 you in the book of documents, simply to point out and
7 not for evidence, that we are in tab Y at paragraph 16,
8 which is at page 3 of the joint statement of
9 particulars of Ms Guille and the Canadian Heritage
10 Alliance.

11 It says --

12 MR. FROMM: Can you give me that
13 reference again, please?

14 MS CEILIDH SNIDER: Yes. We are in
15 the Commission's book of documents at tab Y, at page 3
16 paragraph 16. It says:

17 "The CHA does not edit or modify
18 articles before they are posted
19 onto the members accounts. The
20 members are responsible for
21 their own web spaces."

22 And further, not as evidence but just
23 to refer you, at tab N, the document under tab N refers
24 to a membership guide.

25 The first sentence under tab N,

1 within that document is:

2 "Thank you for becoming a
3 member..." and so forth.

4 And it is signed off Chris Guille,
5 CHA Secretary. Typically a secretary has as their task
6 the collation of addresses and information of
7 individual that are part of an organization in the
8 dissemination of information, brochures, so forth.

9 In order to know where to send items
10 one has to keep a list at a certain point -- give me
11 one moment.

12 You turn over to the following page
13 at page 5, in terms of there is a header entitled:
14 Membership and Subscriptions, and the next line is
15 Active Member, and they talk about the cost of
16 membership and the second sentence reads:

17 "Your contribution includes
18 invitations to meetings and
19 events, if applicable, voting
20 privileges..." and so forth.

21 I submit that in order to invite
22 members to meetings and events, it's reasonable that
23 there be a membership list in order to contact such
24 individuals for the purposes of inviting them to such
25 meetings and events.

1 Again, I close by suggesting that the
2 assertion on the part of the respondent that there is
3 no such membership list is not credible.

4 Thank you.

5 MR. KULBASHIAN: Before she
6 interrupted me, I would like to actually continue.

7 First of all --

8 THE CHAIRPERSON: No, no, no, but I
9 think Ms -- before you continue, with what I have heard
10 from what Ms Snider -- well, from her reference to
11 certain documents, what I hear is that there are
12 members, there is a membership guide --

13 MR. KULBASHIAN: Well, this would go
14 to the evidence as to what constitutes an actual group,
15 because the problem is --

16 THE CHAIRPERSON: No, no, no, no.

17 MR. KULBASHIAN: -- membership is a
18 very broad term. Forums have members, websites have
19 members...

20 THE CHAIRPERSON: Mr. Kulbashian, if
21 someone has to donate \$20 to become a member, you know,
22 someone is sending a cheque somewhere, there must be a
23 trace of whose sending the cheques and the amount of
24 money that person sent, and if you are asking for a
25 mailing address there must be a trace somewhere.

1 Now, I don't know how Canadian
2 Heritage Alliance is run, if it ever exist, but from
3 what I not only hear but from what I read, I find it
4 hard to believe that there is no trace of anyone having
5 sent -- you know, because what you're saying is we
6 don't have any members. Well, if you don't have any
7 members it may be because no one subscribed to
8 membership, no one sent any money.

9 But if we're talking about --
10 membership means -- a membership list is a list
11 containing names and addresses with respect to if you
12 have to pay a certain amount in order to be part of the
13 membership list without having to become a member,
14 let's say.

15 Surely there must be something
16 somewhere which --

17 MR. KULBASHIAN: This is the main
18 issue. The problem is, first of all, the source of
19 these documents are going to be contested when the
20 complainant goes on the stand in order to identify
21 them.

22 Second of all, the major issue is
23 membership is a very broad term.

24 Now, the major thing is, for example,
25 a forum where people go on, the can post, may be

1 considered members, but it's not actually a membership
2 list of the Canadian Heritage Alliance, it's just
3 people that signed up to make postings on the forums,
4 there was no names, just e-mail addresses and they are
5 posts.

6 Furthermore, the fact of the matter
7 is that the -- it doesn't state over here that they
8 actually need the address, per se, like for the
9 membership, it shows peoples' membership cards.

10 I can show, for example, and I don't
11 mean to use this kind of example, however, it's pretty
12 much the most common example, a porn site has members
13 and the porn site would actually have members but that
14 would not still signify membership to a group.

15 The fact of the matter is these
16 documents were all taken from 2003, and regardless of
17 that fact, the capacity of membership is what
18 determines whether or not a website is a group.

19 A porn site does not actually
20 constitute a group unless it's a registered
21 corporation, even though it has members, but those
22 individuals just log in and pay a subscription fee in
23 order to be logged in.

24 Another thing that it states clearly
25 in tab Y, if you turn to it, tab Y, page 3, 16 it says:

1 "The CHA does not edit or modify
2 articles before they are posted
3 onto the members accounts. The
4 members are responsible for
5 their own web spaces."

6 Now, it does mean that it's a group
7 membership, membership is a very broad term that's used
8 on the Internet to signify any attachment to any
9 website, meaning any kind of log-in credentials.

10 Now, the fact of the matter is
11 Ms Guille stated that there is no membership list.
12 Whether or not it existed is a completely different
13 issue, but as ruled by Ms Jensen in another motion that
14 we filed, Ms Guille is not required to create a list to
15 produce it. It does not exist, it does not exist.

16 Now, coming back to this point that
17 Ms Snider mentioned regarding wasting ink in order to
18 stop the disclosure of something that does not exist.

19 The exact same thing happened to the
20 complainant, he just adamantly opposed a motion to
21 disclose his speeches and after the motion went through
22 and he was ordered to disclose them, he just said they
23 don't exist.

24 It's exactly the same thing, it's
25 part of the legal process.

1 So, the fact of the matter is a
2 membership list actually does not exist, so, she can't
3 disclose something that does not exist, she can't
4 create it because she's not required to create it.

5 So, whether or not CHA is a member,
6 is actually a group doesn't have to be proven, because
7 whether or not it has members is not proof as to
8 whether it's group.

9 Many websites have members, they're
10 still not groups.

11 So, the fact of matter is all this
12 evidence is going to be coming as far as the issue of
13 excluding the CHA showing, however, there was some kind
14 of adamant opposition to disclose the list.

15 The fact of matter is we took that
16 opportunity to try to get Mr. Warman denied access,
17 from getting copies of any private information that
18 might be disclosed throughout the trial, primarily
19 because we believe, and in some case we know, that
20 private information that Mr. Warman has retrieved, even
21 in Tribunal hearings, have been passed on to members of
22 violent organizations.

23 And in fact that would be the subject
24 of another motion that Mr. Fromm is going to be filing
25 after this.

1 THE CHAIRPERSON: So, what I
2 understand from what you just said is that someone --
3 and what you're saying is that the term member is
4 usually on the Net used very loosely.

5 MR. KULBASHIAN: Yes.

6 THE CHAIRPERSON: You said that if
7 someone in a way wants to access a certain site usually
8 on the website they will refer to that person as a
9 member.

10 MR. KULBASHIAN: With log-in
11 credentials.

12 THE CHAIRPERSON: Pardon?

13 MR. KULBASHIAN: Like, basically a
14 member would be somebody with the credentials to access
15 the site, like on a personal level as opposed to
16 just --

17 THE CHAIRPERSON: Or it could be
18 given, you know, if you want to access a site and you
19 have to pay a certain fee, you might be more a
20 subscriber to that site than a member of an
21 organization, or is that the point you are making?

22 MR. KULBASHIAN: Yeah. Well, it
23 would be a subscriber, yes, but the word member is used
24 loosely, especially since sites try to give off a
25 different kind of thing.

1 This being a political website,
2 political websites try to expand, basically elevate
3 their image by showing members as opposed to somebody
4 that is just a subscriber.

5 video.google.com, which is the Google
6 video site calls the individuals that don't even pay,
7 they call them members.

8 THE CHAIRPERSON: It seems as if
9 there is going to be an issue with the term member.

10 If I am a member of a video club, if
11 I'm a member of Block Buster doesn't mean that, from
12 what I hear from you, is that I am a member of the
13 Block Buster organization.

14 MR. KULBASHIAN: Exactly.

15 THE CHAIRPERSON: I'm a member and I
16 can, by paying a certain entrance fee or I might be
17 dispense of it, I'm able to rent DVDs and so...

18 MR. KULBASHIAN: Ms Guille basically
19 contends that this was a fund-raising basically ploy as
20 opposed to a membership, an actual membership ploy.

21 Basically, see, the major issue here
22 is, the current issue is that this information is from
23 2003. When Mr. Warman is on the stand, we'll be asking
24 as to whether or not this site has changed over the
25 course of years he has visited it.

1 The problem with this membership and
2 disclosure becomes, actually a list does not currently
3 exist. It might have existed, it might not have
4 existed, but it does not actually exist, and even if it
5 does exist, it does not mean that -- it's still not
6 definite that that shows -- like, I mean, there could
7 be a list of names, that will not show anything other
8 than the fact that there is a list with names in it and
9 that would give the complainant access to private
10 information.

11 However, a list with names still does
12 not show that the group, that is actually a group, it
13 just shows that there is a list with names in it.

14 And so ultimately on two levels,
15 first of all, the actual relevance and the ability to
16 show anything and also the likelihood that Mr. Warman
17 will eventually pass that list on to other individuals,
18 because once it becomes public record, the transcript
19 can be passed on to anyone, and that list can be read
20 into the public record. Undertaking doesn't mean
21 anything once it's been put on the public record and
22 that list may be passed on to other individuals as
23 Mr. Warman has done previously, both in my case and
24 other cases.

25 Another issue is whether or not the

1 membership list exists at the moment is the real issue
2 and it does not exist, there is no such membership
3 list.

4 This information was from 2003, this
5 complaint was from 2003 or 2004 and therefore
6 situations have changed.

7 Mr. Warman himself might testify that
8 the site has changed in many different ways since he
9 first started visiting it and there may be many
10 changes, many re-vamps that may have been done and many
11 of the process of the way in which the site works might
12 have been changed.

13 So, basically what I'm saying is
14 let's kind of stick to the issue of whether or not the
15 membership list exists right now and it doesn't, and
16 other issues can be brought during cross-examination or
17 examination-in-chief of the witnesses.

18 THE CHAIRPERSON: What I hear,
19 Ms Snider, is that parties have different views with
20 respect to the notion of membership.

21 If I'm a member, and that has come
22 up, a member of Block Buster, does it mean that I am a
23 member of the Block Buster organization.

24 Now, from what I see there might be
25 people who have subscribed to a certain site but

1 someone who subscribes doesn't necessarily become in a
2 way a member of an organization.

3 MS CEILIDH SNIDER: Mm-hmm. I take
4 Mr. Kulbashian's point.

5 I have some further submissions, if I
6 may.

7 THE CHAIRPERSON: Yes, because it's
8 not --

9 MS CEILIDH SNIDER: I understand.

10 THE CHAIRPERSON: I think we have
11 opened a door to maybe something else than purely
12 people becoming members, such as of a political party
13 where you have a membership card and you are a member
14 of that party.

15 MS CEILIDH SNIDER: Yes, I
16 understand, and I suppose I will begin by taking you up
17 on your last point, which was the issue of a membership
18 card.

19 Political parties very frequently
20 have these things and it shows membership in a sense
21 that goes much beyond that of a mere subscriber, and I
22 suppose it would be best and most efficient if you
23 would turn, please, in your book of documents to tab O.

24 MR. KULBASHIAN: Which tab?

25 MS CEILIDH SNIDER: Tab O.

1 MR. KULBASHIAN: Tab O?

2 MS CEILIDH SNIDER: Yeah. And we see
3 here, this is a photocopy, but I can produce down the
4 road when we're in the hearing, this is a document that
5 says Canadian Heritage Alliance supportive card and it
6 is addressed to Dave -- member name Dave McLean.

7 And under tab M, going backwards, it
8 says:

9 "Dear Dave..."

10 THE CHAIRPERSON: I don't want to get
11 into the evidence --

12 MS CEILIDH SNIDER: Yes, I know, but
13 this is information, these are documents that are
14 physical documents, they are not in the world of the
15 Internet, in the amorphous, you know, semi, I'm a
16 subscriber, there's nothing going on other than that.

17 And, furthermore, if you would turn,
18 please, and just on that point I suppose, just if you
19 would turn under tab I, you were canvassing earlier --

20 MR. KULBASHIAN: Tab I?

21 MS CEILIDH SNIDER: Yes, tab I.

22 -- earlier the notion that if there
23 were payments for such a membership there would be a
24 necessity to write a cheque, send a money order and the
25 names would have to be provided and so forth.

1 Under tab I we see: Becoming a
2 Canadian Heritage Alliance Member, and then payment:
3 please make cheques or money orders payable to the
4 Canadian Heritage Alliance.

5 THE CHAIRPERSON: Ms Snider, I
6 understand that by going through all of these
7 documents, and I don't want to get into --

8 MS CEILIDH SNIDER: Too much of it,
9 yes, but we're talking about in this --

10 THE CHAIRPERSON: But what I can
11 understand by just summarily looking at them, when you
12 look at these documents --

13 MS CEILIDH SNIDER: Mm-hmm.

14 THE CHAIRPERSON: -- you are led to
15 believe that --

16 MS CEILIDH SNIDER: Mm-hmm.

17 THE CHAIRPERSON: -- there are
18 members.

19 MS CEILIDH SNIDER: Yes, and that
20 they have invitations to meetings and events, and that
21 is far beyond merely a posting of a subscriber on a
22 website.

23 THE CHAIRPERSON: But for that we
24 would have to, you know, get into the evidence.

25 MS CEILIDH SNIDER: Yes.

1 MR. KULBASHIAN: If I could address
2 this.

3 THE CHAIRPERSON: Just a minute,
4 Mr. Kulbashian.

5 MR. KULBASHIAN: Sorry.

6 MS CEILIDH SNIDER: I appreciate we
7 are in a situation where we are asking for something
8 and the membership lists, because we believe that there
9 is evidence that suggests that these membership lists
10 exist and we are in the peculiar notion of having to
11 deal with this before the evidence has been properly
12 tendered.

13 Nevertheless, looking through these
14 documents, not for the truth of their content but for
15 what we suggest on their face, I contend that this is a
16 strong recommendation that membership lists do in fact
17 exist, and coupled with the fact that no assertion has
18 been made either orally or in writing, and I disagree
19 with Mr. Kulbashian's assertion that Ms Guille said
20 that she would put together or cobble something
21 together from a phone book to Ms Jensen, no such
22 comment was made, to Ms Guille's credit, she was not
23 sarcastic or rude to Ms Jensen, she never made such an
24 assertion, nor did she make assertion that the
25 membership lists didn't exist, nor in any

1 correspondence or motion was such an assertion made.

2 There was an expression of concern
3 about the dissemination of the membership lists that
4 was addressed by Ms Jensen.

5 And further to, I simply deal with
6 the concern raised by Mr. Kulbashian here in terms of
7 the public record, public nature of the Canadian Human
8 Rights Tribunal hearings.

9 It is certainly possible for the
10 Tribunal to put -- to close the evidence in a manner of
11 speaking around certain very sensitive issues such as
12 if there were names or so forth that were brought
13 forward in evidence as a result of the disclosure of
14 the membership lists, there could be a motion brought
15 or on consent that these names or references to these
16 individuals would be kept in a red file and not made
17 part of the public record.

18 That would be the Commission's
19 recommendation as to how to deal with this issue.

20 I think that the most vociferous
21 objections to the production of the membership list
22 stem from this concern that they would be disclosed on
23 to members of the ARA given past experience, and the
24 Commission is very sensitive to that concern, so this
25 would be our proposed resolution.

1 Thank you.

2 MR. KULBASHIAN: I would like to
3 address on the issue, first of all --

4 THE CHAIRPERSON: No, but before
5 we -- you continue, I understand that the Commission,
6 you know, is sensitive to protecting private
7 information concerning individuals but we are not there
8 yet.

9 MS CEILIDH SNIDER: Mm-hmm.

10 THE CHAIRPERSON: The question now is
11 it seems as if the respondents are saying, well, maybe
12 we refer to members but in fact these members are not
13 members they are in fact people who subscribe.

14 MR. KULBASHIAN: If I could --

15 THE CHAIRPERSON: Now, the problem I
16 have is that if one says, I don't have any formal
17 membership list that exists such as, here is my
18 membership list, but there are places somewhere within
19 an organization that people have sent e-mails, have
20 subscribed, have made donations, whether we call them
21 members or not.

22 MS CEILIDH SNIDER: That would
23 certainly be evidence.

24 THE CHAIRPERSON: You are saying that
25 this is information, whatever form it's in which is

1 arguably relevant, and I mean arguably relevant for
2 disclosure purposes.

3 MS CEILIDH SNIDER: Yes, correct.

4 THE CHAIRPERSON: It doesn't mean
5 that the list will eventually be admitted in evidence.

6 MS CEILIDH SNIDER: This is true.

7 THE CHAIRPERSON: And I think that we
8 have to in a way understand the process.

9 Now --

10 MR. KULBASHIAN: This is a concern.

11 My concern is this is a fishing
12 expedition. The first issue is, if we can very briefly
13 go over the documents that she looked at.

14 THE CHAIRPERSON: It's just that --

15 MR. KULBASHIAN: Well, if you could
16 just please indulge me just for a little bit so I can
17 address the issues that she brought up, because I want
18 to respond to the issues that she brought up primarily
19 in tab O where --

20 THE CHAIRPERSON: As long as the
21 parties are comfortable with the Tribunal looking at
22 some of these documents without, you know, admitting
23 them in evidence or making any ruling as to it's proof
24 of its content or what not.

25 MS CEILIDH SNIDER: Yeah, that was my

1 point when I was referring you to these documents was
2 simply to look at them to assist you in making a
3 decision but not for the proof of their content.

4 THE CHAIRPERSON: Are you comfortable
5 with that, Mr. Warman?

6 MR. WARMAN: If I could just have a
7 moment.

8 THE CHAIRPERSON: Yes.

9 --- Pause

10 MS CEILIDH SNIDER: Yes. I just have
11 one other point that I'd like to make and then we are
12 done as far as I'm concerned, and I'd like to ask you
13 to make your ruling.

14 My final point in submission would be
15 that inasmuch as Mr. Warman was asked to disclose the
16 B'nai Brith document, this is also for Mr. Kulbashian's
17 assistance, it was a document that he believed was of
18 limited relevance but, nevertheless, was deemed by the
19 Tribunal to be of arguable relevance however
20 tangential.

21 In the same vein, documents that
22 could be evidence of membership that are in the
23 possession of the CHA and/or Ms Guille would be
24 arguably relevant on the issue of membership and if
25 membership lists per say do not exist, we contend that

1 based on the documents -- granted they're not evidence
2 yet, but we're at the disclosure stage -- it is
3 reasonable to believe that such documents exist,
4 documents such as bank accounts, such as cancelled
5 cheques, such as communications of various forms
6 seeking membership information would exist and ought to
7 be disclosed as they would be and they are arguably
8 relevant, being mindful that a respondent or a
9 complainant isn't required to prepare or create a
10 document that doesn't exist.

11 THE CHAIRPERSON: It's just that up
12 until now we have been pursuing, you know, or looking
13 for a membership list and we ended up in a dead end.

14 Now, what I hear --

15 MS CEILIDH SNIDER: I don't know if
16 we are at a dead end because you haven't yet rendered
17 your ruling.

18 THE CHAIRPERSON: I know, but we are
19 at a dead end because in such -- what I mean when I say
20 that is that Mr. Kulbashian and Mr. Fromm have stated
21 for the record that there is no membership list and
22 they have not in any way violated the order of
23 Ms Jensen.

24 What I hear now is that people have
25 different views as to what constitutes membership.

1 MS CEILIDH SNIDER: Mm-hmm.

2 THE CHAIRPERSON: Period. What I
3 know from what I've heard and seen, is that there is
4 reference to members, membership list, mailing list and
5 so on and so forth.

6 Now, I cannot order someone to
7 produce a document which does not exist, of course, or
8 to create a document.

9 MS CEILIDH SNIDER: Mm-hmm.

10 THE CHAIRPERSON: But if you are
11 coming to this Tribunal and we are in the context of
12 disclosure and you are asking now, given what was said
13 today --

14 MS CEILIDH SNIDER: Yes.

15 THE CHAIRPERSON: -- and it was hard
16 for you maybe to understand what was meant by
17 membership because there might be some different views
18 on what constitutes membership, and I know that
19 Ms Jensen didn't have these documents in front of her.

20 MS CEILIDH SNIDER: No, she did not.

21 THE CHAIRPERSON: Then I would ask
22 you maybe to make a formal motion to the Tribunal
23 listing what documents, given what was said, listing
24 the documents that you think are arguably relevant and
25 you mentioned a few.

1 But I don't want to issue an order
2 which would be so broad --

3 MS CEILIDH SNIDER: I understand.

4 THE CHAIRPERSON: -- that the
5 respondent would have to look at all of their records,
6 if they have records, and then would say, well, this is
7 going to take time and, as you know, that was the type
8 of thing that happened in the Bell Canada case where
9 people said, well, if you are asking us to in a way
10 disclose every relevant document pertaining to this
11 case, it's going to take two years, it's going to cost
12 \$250,000 because we have boxes and boxes stored
13 somewhere in a warehouse.

14 So, I would ask you maybe to take
15 some time to maybe identify, given what you have heard
16 and what you have in your file, what you are asking the
17 Tribunal, because if I was to go only on the list, even
18 if I was to rehash it and the issue is saying, well,
19 does this constitute the list, if there is no formal
20 list, then this will bring us nowhere.

21 MS CEILIDH SNIDER: Right.

22 THE CHAIRPERSON: So, if you could be
23 more specific --

24 MS CEILIDH SNIDER: I can certainly
25 do that over the lunch hour.

1 THE CHAIRPERSON: Over the lunch
2 hour, because then you would -- maybe...

3 MR. KULBASHIAN: I would like to make
4 some submissions actually --

5 THE CHAIRPERSON: Yes.

6 MR. KULBASHIAN: -- in relation to
7 what she stated. I will point only two or three
8 documents, I am not going to get into very much detail,
9 but at tab O of HR-1.

10 As I said previously, this was an
11 attempt at raising money and the card clearly states
12 Canadian Heritage Alliance supporter card, it doesn't
13 say membership card, it's supporter.

14 Again, on the letter in tab M it
15 says:

16 "Thank you for your interest in
17 supporting Canadian Heritage
18 Alliance. We have included in
19 the envelop items that are part
20 of your membership package."

21 It shows that it's not necessarily
22 membership. Now, membership does not -- the key to
23 membership requires somebody who's actually a part of
24 the organization.

25 The fact of the matter is over here:

1 "You'll also be receiving our
2 quarterly newsletter, Canadian
3 Heritage Alliance New, published
4 every January, April, July, and
5 October."

6 Effectively what is being said, it's
7 just like a subscriber list of people who receive the
8 newsletter, who receive information but it's under the
9 name of membership in order to give people kind of a
10 feel they belong to something, but it's not necessarily
11 an actual group.

12 A lot of websites use these ploys,
13 even political websites. Some websites have
14 fund-raisers, many websites do many things in order to
15 raise monies.

16 It's obvious if the CHA had a
17 newsletter, had a website running they had some
18 expenses and it's obvious that they would need some
19 kind of financial help from individuals that support
20 ideologies to keep the website going, but it doesn't
21 state here that you are member and you are in this
22 division, you are in this chapters, it's just, you are
23 a supporter and your membership package includes --

24 THE CHAIRPERSON: Mr. Kulbashian, I
25 understand the point you're making, but we're at the

1 stage of disclosure now.

2 MR. KULBASHIAN: I understand, but the
3 reason why I'm making this point is because if it's
4 just subscribers ultimately or supporters then getting
5 a list of supporters and subscribers amounts to a
6 fishing expedition because whether or not people
7 receive documents does not mean anything as to whether
8 or not -- if I could just suggest that the request be
9 made that any members -- a list of all and any
10 individuals involved in the day-to-day operations of
11 Canadian Heritage Alliance, that would be very concise,
12 very strict as opposed to just lists, because list
13 could be individuals who subscribe to the newsletter,
14 they're not involved in a group but they do get a
15 newsletter.

16 As it states here, individual who
17 signed up with a false name, Dave McLean, he signed up,
18 is he a member. Like, the only thing this document can
19 testify to is where this document came from and if
20 Dave McLean is not actually him, he's not going to
21 testify as to whether or not he was actually told do
22 anything or involved in the day-to-day operations.

23 So far we have no indication as such,
24 all we have is the word membership being used to create
25 an effect of, kind of like political ideology, however,

1 it's supporters.

2 THE CHAIRPERSON: Mr. Kulbashian,
3 again, at this stage of the proceedings it's a matter
4 of disclosure --

5 MR. KULBASHIAN: That's true.

6 THE CHAIRPERSON: -- of documents
7 that are arguably relevant to the case.

8 MR. KULBASHIAN: But what I'm arguing
9 is --

10 THE CHAIRPERSON: Yes, but what you
11 are arguing right now, and these might be valid
12 arguments to make later down the road, but what is in
13 issue here is that the Commission and the complainant
14 are, given what they were led to believe by reading,
15 you know, documents contained in the disclosure, they
16 are saying that we want to access a certain type of
17 information because we think -- whether they're right
18 or wrong, this has not been determined yet -- that this
19 is relevant to an issue here pertaining to section 13.
20 This is what they are saying.

21 MR. KULBASHIAN: Can I just complete
22 very quickly on this paragraph, we might be able to
23 solve this situation a lot quicker.

24 Can I just confer?

25 THE CHAIRPERSON: Okay.

1 MR. KULBASHIAN: Well, there might be
2 a possible solution.

3 The first thing I'm going to say, the
4 Commission did state that they are sensitive to the
5 fact that the list is private and kept confidential,
6 but the respondents have no illusions that the
7 complainant will actually keep it confidential whether
8 it's red envelop or anything like that once it's
9 disclosed.

10 However, the fact of the matter is,
11 you know, if their intent is to prove that the Canadian
12 Heritage Alliance is a group, then the only list they
13 would need would be a list of individuals involved in
14 daily operations of the actual group, as they allege,
15 which means that a list of individuals that subscribe
16 to the newsletter doesn't -- it would amount to a
17 fishing expedition, it's not arguably relevant because
18 it's -- ultimately it's like saying, by looking into
19 the violations of a specific website and the content
20 was posted on there by the website, which they are
21 stating is the only one that was violating the
22 allegations, they don't need a list of everyone who
23 visited that website or everyone who likes the ideas on
24 that website or everyone who supported to keep that
25 website up, unless they were involved in the actual

1 operations of the website, otherwise it doesn't
2 actually point to any proof.

3 And the respondent says that she
4 would be willing to create a list of names of
5 individuals involved in the day-to-day operation of the
6 group, however, a list of subscribers, of individuals
7 who just want to receive a newsletter, as it states
8 over here, they are getting the newsletter and they get
9 news and other information that's published every
10 January, April, July and October, like, it's a fishing
11 expedition to get names of individuals that purely went
12 there, that purely went to the website and they want to
13 receive news. That's not a member, like by the real
14 definition, a member who would actually be somebody
15 who's actually part of the organization, neither of
16 which these individuals were.

17 So, if they could restrict their
18 request, then the respondent is, I guess, willing to do
19 whatever she can to entertain that request.

20 However, a fishing expedition like
21 asking for everyone's name seems to be more of an
22 intelligence gathering project which I know Mr. Warman
23 to actually do with that list of individuals that he
24 views are racist and distribute that list to
25 individuals who fight racism as an actual attempt to

1 show that CHA is actually a group.

2 THE CHAIRPERSON: A proposition was
3 made --

4 MR. WARMAN: Mr. Chair, that's
5 clearly not acceptable. It's an attempt to subvert the
6 motion, subvert the clear intent of the disclosure
7 obligation that is on the respondents.

8 I think -- I don't want to speak for
9 my colleague, but I certainly don't know what value
10 further submissions on this point would have at this
11 point, so...

12 I think we have heard your
13 recommendation to come back with a more specific list
14 after lunch and I'm certainly willing to work with my
15 colleague on that.

16 MS CEILIDH SNIDER: As am I.

17 MR. KULBASHIAN: I guess we'll see
18 what happens after lunch at this point.

19 THE CHAIRPERSON: I think if we are
20 trying to resolve this matter, it's appropriate for the
21 Commission and complainant, as I suggested, to list the
22 documents that they believe are arguably relevant to
23 the case in general, to be as specific as they can be
24 so that the respondent won't have to go through all of
25 its records, if records exist, and that might be a

1 little bit time consuming.

2 So, if you were more specific --

3 MS CEILIDH SNIDER: Mm-hmm.

4 THE CHAIRPERSON: Now, we will deal
5 with that after lunch.

6 I am sensitive to the concern that
7 you have raised. I haven't made any decision yet, but
8 whatever the decision that is made, I think for a
9 Tribunal to protect confidential information and to
10 protect the private lives of individuals is a concern
11 to the Tribunal and measures can be taken and orders
12 can be made so as to protect the privacy or
13 confidentiality of information.

14 I am just speaking in general. So,
15 what I would ask you to do, we will resume at two
16 o'clock.

17 I would ask the Commission and
18 Mr. Warman to list, you know, the documents that they
19 feel are arguably relevant.

20 MR. KULBASHIAN: If I could submit
21 that they actually describe what specific information
22 is contained in the document, not as in the exact names
23 in the case of, say, membership list, but what they
24 actually mean by membership list. So, not just anyone.

25 Because the thing is in Ms Jensen's

1 order it asked for a membership list.

2 Now, the fact that it says member on
3 here doesn't mean it's actually a membership list.

4 So, the idea is if they could just be
5 in some way elaborate, maybe describe the exact type of
6 information that is contained as opposed to just
7 putting a heading, like title, like list of people or
8 something like that, you know what I mean.

9 So, there will be less confusion,
10 less arguments when we come back from lunch.

11 THE CHAIRPERSON: I think I will
12 leave it to the Commission and the complainant to draw
13 up a list knowing that, you know, coming back with, we
14 still want the membership list will lead us nowhere or
15 we know where, like an impasse.

16 So, I would ask you to do that, and
17 at two o'clock, and if you could, you know, at two
18 o'clock, once we get back, provide the list to the
19 respondents and if they need maybe 15 minutes for them
20 to review that so that they can prepare we will do
21 that, but I think we have to deal with this now.

22 MS CEILIDH SNIDER: Mm-hmm.

23 THE CHAIRPERSON: I know that it has
24 taken some time but I believe that we are progressing
25 slowly, but hopefully surely.

1 So, we will resume at two o'clock
2 this afternoon.

3 MR. KULBASHIAN: Thank you,
4 Mr. Chair.

5 REGISTRY OFFICER: Order, please.
6 --- Upon recessing at 12:20 p.m.

7 --- Upon resuming at 2:00 p.m.

8 REGISTRY OFFICER: Order, please.
9 Please be seated.

10 THE CHAIRPERSON: Good afternoon,
11 everyone.

12 MR. KULBASHIAN: Good afternoon.

13 MR. WARMAN: Good afternoon.

14 MS CEILIDH SNIDER: Good afternoon,
15 Mr. Chair.

16 THE CHAIRPERSON: So, Ms Snider?

17 MS CEILIDH SNIDER: I will try that
18 again. Good afternoon, Mr. Chair.

19 Over the lunch hour we've had an
20 opportunity to reflect on this passage of events this
21 morning and it seems to us to be, to the Commission and
22 to Mr. Warman to be most expedient to accept the offer
23 proposed by the respondents that they provide the names
24 of a limited number of individuals as they put forward
25 through Mr. Kulbashian that seemed to be sort of

1 executive members or individuals directly related with
2 the control of the Canadian Heritage Alliance.

3 THE CHAIRPERSON: Does that mean
4 that --

5 MS CEILIDH SNIDER: So, in light of
6 that, we are prepared to rely on -- in addition, to
7 that we are prepared to rely on the disclosure that we
8 presently have, so, we feel that we have got sufficient
9 to establish that a group exists.

10 THE CHAIRPERSON: So, there won't be
11 any request made down the road --

12 MS CEILIDH SNIDER: No.

13 THE CHAIRPERSON: -- to have
14 additional information pertaining to membership?

15 MS CEILIDH SNIDER: Yeah. We'll
16 withdraw the request for further disclosure.

17 THE CHAIRPERSON: So, for the record
18 could you state which information you --

19 MS CEILIDH SNIDER: My understanding,
20 and Mr. Kulbashian can correct me if I don't have this
21 correct, Mr. Kulbashian offered on behalf of the
22 respondent, Canadian Heritage Alliance and Ms Guille,
23 to provide the names of a limited number of individuals
24 directly connected with the control of the Canadian
25 Heritage Alliance and the running of -- I presume, the

1 running of the website, but that's knowledge within the
2 purview of Mr. Kulbashian and the respondents.

3 Thank you.

4 THE CHAIRPERSON: Is it clear what
5 information, Mr. Kulbashian, you are asked to provide
6 to the Commission and the complainant?

7 MR. KULBASHIAN: Yes, it is.

8 THE CHAIRPERSON: So, that when such
9 information -- and when do you think that such
10 information could be provided to --

11 MR. KULBASHIAN: I guess I could type
12 it up on the next break and then hand it out. I have
13 my printer right here.

14 THE CHAIRPERSON: Okay.

15 MS CEILIDH SNIDER: That would be
16 acceptable.

17 THE CHAIRPERSON: And if there is
18 anything that you think that you need in addition to
19 because if that doesn't meet your expectation, after
20 the break you'll --

21 MS CEILIDH SNIDER: Yeah, we'll
22 review it and ensure that it's satisfactory.

23 THE CHAIRPERSON: Okay.

24 MS CEILIDH SNIDER: We will of course
25 not go beyond for any further items.

1 THE CHAIRPERSON: Thank you.

2 MR. KULBASHIAN: I'm so sorry by the
3 way, about the layout here, we're still printing out --
4 there is quite a bit of pages to be printed out for the
5 motion to add Mr. Warman as a respondent in this
6 complaint. It's still ongoing here, that's why the
7 printer keeps going right now.

8 THE CHAIRPERSON: It's a silent
9 printer.

10 MR. KULBASHIAN: It's a pretty silent
11 printer, actually.

12 MS CEILIDH SNIDER: We're just
13 handing the respondents a copy of Countering Hate On
14 The Internet, A Canadian Experience which my
15 understanding is the document requested and ordered to
16 be produced this morning from the B'Nai Brith through
17 Mr. Warman.

18 MR. KULBASHIAN: Thank you to the
19 Commission and Mr. Warman, we appreciate it.

20 THE CHAIRPERSON: Okay. So, the next
21 preliminary matter that we have to deal with is adding
22 Mr. Warman as a respondent.

23 MR. KULBASHIAN: Yeah. Basically
24 over here I have an affidavit and what we are printing
25 out now are the exhibits for the affidavit, so that's

1 why it's kind of taking me a while but the affidavit is
2 actually ready and printed out, seven copies, so I can
3 start handing those out.

4 PRELIMINARY MOTION BY MR. KULBASHIAN

5 MR. KULBASHIAN: The reason for
6 bringing this issue in late is this is relatively a
7 recent issue and this information was very recently
8 disclosed to us by the gentleman sitting over there,
9 Mr. Lemire, he is a respondent in another complaint by
10 Mr. Warman and, therefore, pretty much organized what
11 we have regarding, I guess, this information that we're
12 going to be filing.

13 THE CHAIRPERSON: Is the Commission,
14 Mr. Warman, like aware of the content or the purpose
15 or --

16 MR. WARMAN: This application has
17 already been rejected by the Tribunal, Member Hadjis
18 has already -- sorry, I'm leafing through, and this
19 appears to be the exact same affidavit that was
20 submitted, unless there's some new information in
21 there, in addition to the fact that the affidavit isn't
22 actually signed or dated.

23 THE CHAIRPERSON: I haven't seen --

24 MR. WARMAN: No, I'm just raising
25 this because it's in front of me.

1 THE CHAIRPERSON: It is just that
2 this is a motion to add you, Mr. Warman, as a
3 respondent to the present proceedings.

4 MR. KULBASHIAN: Yeah, that's right.

5 THE CHAIRPERSON: And the basis on
6 which...?

7 MR. KULBASHIAN: The basis, this
8 information, this expert report outlines basically the
9 investigation done by the expert, an expert witness in
10 the Warman v. Lemire case.

11 MR. WARMAN: Sorry, just to be clear,
12 he's not an expert witness and he has not been tendered
13 such and has not been qualified.

14 MR. KULBASHIAN: I would beg to
15 differ and Mr. Klatt has actually acted as an expert
16 witness -- has testified in the capacity of an expert
17 witness in I believe a few cases previously.

18 MR. FROMM: Perhaps I can assist on
19 that.

20 Mr. Klatt has been accepted as an
21 expert witness in Sabina Citron and the Toronto Mayor's
22 Committee on Community and Race Relations v. Ernst
23 Zundel Tribunal hearing.

24 He was also qualified as an expert
25 witness on the Internet in the Richard Warman v. Glenn

1 Bahr Tribunal hearing that was held this past spring,
2 so he has been qualified on a number of occasions in
3 the course of proceedings as an expert.

4 MR. KULBASHIAN: Basically,
5 regardless of whether or not he's been tendered as an
6 expert in this hearing at the moment, basically the
7 information we are passing forward is not for the
8 Tribunal to issue a ruling on the allegations that
9 we're bringing against Mr. Warman.

10 Ultimately all the Tribunal needs to
11 add Mr. Warman as a respondent is a strong suggestion
12 that he was actually involved, not -- we're not asking
13 for an actual ruling on whether he did what was said,
14 but we have strong enough evidence to suggest that he
15 was involved and this information applies to him.

16 THE CHAIRPERSON: So, you want me to
17 look at the affidavit and --

18 MR. KULBASHIAN: And there are
19 exhibits that are coming up, once this printing is
20 done.

21 The affidavit basically outlines
22 information. The reason why how this applies to this
23 case is because if I read --

24 MS CEILIDH SNIDER: Mr. Chair, we
25 have the ruling from Mr. Hadjis on this issue and I'd

1 like to pass a copy of it up to the Tribunal and across
2 to the respondents.

3 THE CHAIRPERSON: Might as well do
4 so.

5 MR. KULBASHIAN: And the reason --

6 THE CHAIRPERSON: We will just pass
7 the documents and then we will move on.

8 MS CEILIDH SNIDER: (handed)

9 MR. KULBASHIAN: Thank you.

10 Basically the relevance to this case
11 is that the affidavit outlines information, and if I
12 could read to you it's in --

13 MR. WARMAN: Mr. Chair, the affidavit
14 is not even signed, it's not dated.

15 MR. KULBASHIAN: This is all we have
16 at the moment and Mr. Warman has actually seen the
17 official affidavit, this is the best evidence that we
18 have right now.

19 MR. WARMAN: You can't tender before
20 the Tribunal an affidavit or what purports to be an
21 affidavit if it's not signed or dated, it's not even
22 sworn.

23 MR. KULBASHIAN: We do have copies of
24 the sworn affidavit which will be supplied but at the
25 moment right now we only have the draft, like, as in

1 this version without the signature at the moment, but I
2 do have access to a copy which I'll be obtaining from
3 Mr. Lemire after the hearing is over today.

4 So, if this can be tentatively
5 accepted until the signed and sworn version.
6 Mr. Warman has seen the sworn version of the affidavit
7 and he does know this to be the actual affidavit, if
8 I'm not mistaken.

9 MR. WARMAN: You can't tender a
10 document that's not signed, not sworn, not dated that
11 was sworn for purposes of another proceeding for
12 someone who hasn't even been tendered as witness,
13 hasn't been announced as a witness in this proceeding,
14 hasn't been subjected to cross-examination.

15 There is no factual or legal
16 foundation for this motion to even get off the ground.

17 MR. KULBASHIAN: Basically, this
18 information -- we are not here to actually argue
19 whether or not he did it, in the sense that we are not
20 asking for an immediate ruling as to whether or not
21 Mr. Warman actually did violate section 13 of the Act,
22 what we are asking that this information here shows
23 that there is a reasonable likelihood that he was
24 actually involved and then he gets added as a
25 respondent and ultimately the questioning and evidence

1 will show down the line whether or not he actually --
2 you know, whether the final ruling will come against
3 him.

4 So, basically this is a preliminary
5 at this point. It's not that we're not having the
6 entire hearing as to whether or not he did, we're just
7 adding him as a respondent.

8 So, we believe this information is
9 sufficient in order to at least have Mr. Warman added
10 as a respondent to this case.

11 And the reason, before we get into
12 the details of this point, the reason why this is
13 relevant is because in the list of detailed
14 particulars, the e-mail that came in on November 17th
15 at 5:30, is the Commission and complainant submit that
16 both Ms Guille and CHA communicated all of these
17 impugned messages.

18 The Commission and complainant submit
19 that the CHA articles and the forum material taken in
20 their entirety are hate messages, which means they have
21 now put the CHA forum which is part of the CHA website
22 into the scope of the Tribunal hearing.

23 In this affidavit, Mr. Klatt
24 outlines, if you could read it --

25 THE CHAIRPERSON: But before I read

1 it --

2 MR. KULBASHIAN: It outlines, I'll
3 give you some background, who he believes through
4 computer evidence to be Mr. Warman, signed in and
5 posted a blatantly racist threat, racist message on the
6 Canadian Heritage Alliance forum.

7 This actually puts it into the scope
8 of the hearing because it is against the Canadian
9 Heritage Alliance website, or group if they want to
10 call it that, and Ms Guille as well.

11 THE CHAIRPERSON: But before I take
12 any notice of the affidavit, which is not signed but
13 purports to have been -- you're saying that Mr. Klatt
14 did in fact sign such an affidavit.

15 MR. KULBASHIAN: And Mr. Warman has
16 actually seen the original copy of that affidavit.

17 THE CHAIRPERSON: Now, Mr. Warman is
18 objecting to the production of this affidavit.

19 Now, even if I was to rule that this
20 affidavit is admissible, would Mr. Klatt be examined on
21 this affidavit, would he be cross-examined on it?

22 MR. KULBASHIAN: and this is an
23 issue --

24 THE CHAIRPERSON: And this purpose of
25 all of this is to add Mr. Warman as a respondent?

1 MR. KULBASHIAN: As a respondent,
2 that's right.

3 THE CHAIRPERSON: And if he is a
4 respondent there must be conclusions that you want --

5 MR. KULBASHIAN: That's right. The
6 conclusions are that Mr. Warman in filing this
7 complaint did not merely file this complaint out of a
8 concern for public issues, in fact in one situation,
9 which is what Mr. Klatt outlines over here --

10 THE CHAIRPERSON: But before I get to
11 Mr. Klatt, now --

12 MR. KULBASHIAN: Okay. The basic
13 issue that this outlines is the fact that the Canadian
14 Heritage Alliance website, or as they call it group, is
15 part of this complaint, the messages from the Canadian
16 Heritage Alliance forum are part of this complaint.

17 Mr. Klatt in this affidavit or
18 evidence will show that -- what seems to be a strong
19 indication that Mr. Warman posted an overtly racist
20 comment on the Canadian Heritage Alliance forum and
21 it's likely that there might be more.

22 And the fact of the matter is one for
23 sure, there is evidentiary, I guess, I guess a
24 suggestion at this point that Mr. Warman was the one
25 who made that post. So, what we're doing basically --

1 this information I understand is incomplete in the
2 sense that we don't have a signed affidavit, but it's
3 coming back to the best evidence issue, this all we
4 have at the moment.

5 THE CHAIRPERSON: Even if you had a
6 signed affidavit, what would you do with it?

7 MR. KULBASHIAN: We would print it
8 out and submit it as evidence.

9 THE CHAIRPERSON: That's it?

10 MR. KULBASHIAN: At this point, yes,
11 because at this point that's all we believe is needed
12 in order to add him as a respondent.

13 Whether or not this information is
14 going to be substantiated in order to have a finding
15 of, I guess guilt, I don't know how you call it in a
16 Tribunal hearing against Mr. Warman, that would be part
17 of the process, of the actual hearing to determine.

18 At this point in time though we
19 believe that this is sufficient in order to at least
20 create a strong suggestion in order to start
21 proceedings to actually find him liable of section 13
22 violations as well in the scope of this hearing.

23 Therefore, what we're doing is we're
24 not actually trying to make you come to a decision at
25 the moment and say, yes, he did it, we're just saying

1 there is enough evidence to suggest that he might have
2 done it or -- and that he is a respondent in these
3 proceeding because the CHA is, what's the word, the CHA
4 is a respondent and the CHA website is under review in
5 the scope, as well as the CHA forum, which is part of
6 their disclosure as well as part of their evidence, the
7 CHA forum was also what communicated hate messages,
8 meaning that that puts Mr. Warman's posting on the CHA
9 forum in the scope of this Tribunal hearing.

10 MR. FROMM: If I can assist just a
11 little bit.

12 In the letter sent on the 17th to the
13 respondents here, the second paragraph, and this was
14 from Ms Snider.

15 "The Commission and the
16 complainant submit that the CHA
17 are posts and the an forum
18 material taken in their entirety
19 are hate messages."

20 So, the entirety, not just a few
21 items, but the entirety of the CHA forum. And it's our
22 submission in this motion that there is at least prima
23 facie evidence that Mr. Warman was one of the
24 participants in this forum, and if the forum in its
25 entirety is a hate message and he's a participant with

1 a message I think you're going to see is pretty
2 inflammatory, then he too should be named as a
3 respondent.

4 THE CHAIRPERSON: Well, the first
5 thing I have to say is that if you think that someone
6 is in violation of section 13, why not make a
7 complaint, file a complaint with the Canadian Human
8 Rights Commission and the Commission would investigate
9 the complaint and determine if it needs to be referred
10 to the Tribunal.

11 MR. KULBASHIAN: There are two
12 reasons for that, sir.

13 The primary issue is the fact that
14 this is actually new information that we received,
15 meaning we hadn't seen this before, so we didn't have
16 enough time, because at this point in time I actually
17 do have an outstanding complaint to the Commission,
18 it's taken over a year and they still have not given me
19 a response. As of today I called them, they still
20 haven't given me a response as to whether this
21 complaint has been accepted, meaning that this case
22 would be going on, Mr. Warman would be testifying in
23 the capacity of the complainant, which means the
24 information that he's going to be giving, the facts
25 would be basically taken in the context of him being

1 the complainant, however, if he is testifying as a
2 respondent as well, which he should be in this case,
3 we're submitting, then the information will be given
4 weight accordingly.

5 And the major other issue that we
6 have is that the Commission has -- okay, I guess we can
7 kind of come to the brunt of it.

8 This is new information and there's
9 no reasonable, like, we don't have any reasonable
10 belief to think that the Commission would on short
11 notice file a complaint, validate it and put it through
12 and if the Chair is satisfied that this at least
13 suggests strongly that Mr. Warman was involved, then we
14 would be asking for an adjournment in order to file a
15 complaint with the Commission and then file that
16 complaint and attach it to this one right now in front
17 of the Tribunal right now at the moment.

18 THE CHAIRPERSON: This would mean
19 that this hearing would not start until 2010.

20 MR. KULBASHIAN: However, if you look
21 at the ruling that they just handed out by --

22 THE CHAIRPERSON: It's just that --

23 MR. KULBASHIAN: -- Mr. Hadjis.

24 THE CHAIRPERSON: The first thing is,
25 if you bring a motion to add a respondent to an

1 existing complaint, there are rules that exist that in
2 a way spell out what you need to prove in order to add
3 a respondent at this stage of the proceeding.

4 MR. KULBASHIAN: That's true.

5 THE CHAIRPERSON: And I don't know if
6 you are aware of the Tribunal's jurisprudence on that,
7 because this is the gist of your motion you want to add
8 a respondent.

9 Now, in order to satisfy the criteria
10 so that, you know, such a new respondent would be
11 added, you have to meet certain criteria.

12 MR. KULBASHIAN: And --

13 THE CHAIRPERSON: And I don't know if
14 you are aware of the criteria that you have to meet.
15 That's the first thing.

16 The second thing is that if you are
17 to tender an affidavit, the affidavit must have been
18 sworn, and if you are tendering such an affidavit, then
19 Mr. Warman would be entitled to cross-examine Mr. Klatt
20 on his affidavit.

21 It's not just a question of here's
22 an affidavit and you should in a way take for granted
23 that what is said in the affidavit is what has
24 happened. You need to have more than a mere suggestion
25 that Mr. Warman might have done something contrary to

1 section 13.

2 MR. KULBASHIAN: I understand,
3 however, the process by which the complaint is filed
4 with the Commission does not require cross-examination
5 and affidavits, it's enough to suggest at least
6 strongly that the case should be referred to the
7 Tribunal for evaluating.

8 Right now all we're asking is that
9 Mr. Warman get added as a respondent and the Tribunal
10 evaluate after that whether or not actually he did
11 commit the infraction of section 13.

12 As far as the affidavit not being
13 signed, as I stated, I can get a copy of the signed
14 affidavit and print it out and bring it in, I will get
15 in touch with Mr. Klatt to come here and testify, put
16 the Commission and complainant on notice that Mr. Klatt
17 might be testifying on this hearing.

18 THE CHAIRPERSON: As what?

19 MR. KULBASHIAN: As an expert witness
20 with this information.

21 THE CHAIRPERSON: Well, there are
22 some rules that have to be respected with, you know,
23 someone being called as an expert witness and maybe
24 providing an expert report, and then there must be
25 some --

1 MR. KULBASHIAN: This is, however,
2 late information that we just received, so it is going
3 to be kind of difficult for us to do that.

4 The problem is, this does affect not
5 only I guess the process of this hearing as well as the
6 actual information and facts of this hearing. This
7 information --

8 THE CHAIRPERSON: When you are
9 speaking to this information...?

10 MR. KULBASHIAN: Okay. Well, the
11 information that we're trying to file. The affidavit,
12 I can bring a signed notarized version, that I can get.
13 I understand that's the issue at the moment, but I'm
14 asking the Tribunal to tentatively accept this until
15 tomorrow when I can get a signed version here.

16 The other issue is, however, as
17 Mr. Fromm stated on its face right now, this
18 information is enough to show that Mr. Warman did in
19 fact -- should in fact be added as a respondent to this
20 case as the complaint is against the CHA as the
21 complaint does affect the CHA forum, or the forums that
22 the Commission has stated in its entirety on this
23 complaint and, therefore, since an overtly racist post
24 by Mr. Warman on there will basically show that he
25 would also have been involved in the spreading of hate,

1 that he can no longer just be a complainant.

2 At the least this could be some form
3 of, I guess -- I mean, I don't want to get into
4 allegations but fraud perpetrated on the courts but the
5 fact that -- initially we had a conference call where
6 we stated -- where Ms Jensen stated that he should
7 disclose any information that he has relating to any
8 accounted that he signed up on the CHA forum.

9 He just stated he had no information,
10 no document that were basically relevant, so the fact
11 is we here have documents show that Mr. Warman did in
12 fact sign up to an account that gave him access to the
13 CHA forum and he did actually post a racist -- overtly
14 racist quote.

15 And the thing is that I don't want to
16 get into the details of the affidavit at this point,
17 but the major issue is that this is an issue of
18 fairness. The complainant can't be hearing testifying
19 in the capacity of a complainant when he's actually a
20 respondent in this case as well because he did
21 communicate or broadcast one at least, or even possibly
22 many more messages that are the subject of this
23 complaint.

24 You can't expect the respondent to
25 respond to a complaint that states that she's

1 responsible for broadcasting messages that the
2 respondent himself might have -- the complainant
3 himself might have broadcast.

4 THE CHAIRPERSON: If you are able to
5 prove in the course of this hearing, in the course of
6 the cross-examination of Mr. Warman what you're
7 alleging happened then, you know, if that type of
8 information comes out --

9 MR. KULBASHIAN: But my -- this is
10 the reason why I'm bringing it to the Tribunal instead
11 of bringing it through cross-examination in response to
12 that affidavit.

13 THE CHAIRPERSON: No, but,
14 Mr. Kulbashian, what you said earlier on is if the
15 Tribunal was to add Mr. Warman as a respondent, then
16 you would ask for an adjournment so that --

17 MR. KULBASHIAN: That's not what I
18 meant to say. What I said was, if we were supposed to
19 go to the Commission and file a complaint, we'd have to
20 ask for an adjournment in order for the Commission to
21 evaluate the complaint.

22 If the Tribunal were to add
23 Mr. Warman as a respondent --

24 THE CHAIRPERSON: You can't just add
25 Mr. Warman as a respondent like that just because

1 someone has signed an affidavit which pertains to
2 establish that Mr. Warman contributed to a website.

3 There needs to be more than that.

4 MR. KULBASHIAN: The major issue
5 though is if you read the affidavit, the information
6 contained within it, the major issue we have right now,
7 when this affidavit was filed initially in the Warman
8 v. Lemire case he stated that he did not post now, he
9 did not post that message in I think a response or an
10 affidavit that he filed.

11 Our position is that he was lying and
12 our position is that even if he came on the stand he
13 would be lying. That's the major issue that we have.

14 THE CHAIRPERSON: Yes. But this is
15 something that most probably will have to be dealt with
16 in the course of the hearing of witnesses.

17 But before we continue I would like
18 to hear from the Commission and Mr. Warman with respect
19 to this motion to add Mr. Warman as a respondent in a
20 complaint where he is the complainant.

21 And also hear you on the affidavit of
22 Bernard Klatt.

23 REPLY SUBMISSIONS BY MS CEILIDH SNIDER

24 MS CEILIDH SNIDER: Thank you,
25 Mr. Chair.

1 I think first of all I will begin by
2 clarifying perhaps a misapprehension on the part of the
3 respondents, with respect, that I think may have led to
4 this present motion, to be generous.

5 In my letter of November 17th that
6 they've identified in which I say -- they are quoting
7 from my letter:

8 "The Commission and Complainant
9 submit that both Ms Guille and
10 the CHA communicated all of
11 these impugned messages..."

12 And they've taken this to mean that
13 the Commission is suggesting that all messages in the
14 forum and all articles are at issue of the CHA. That's
15 not --

16 MR. KULBASHIAN: I'm going to object
17 here.

18 MS CEILIDH SNIDER: Excuse me.

19 MR. KULBASHIAN: I'm going to object
20 here actually because --

21 MS CEILIDH SNIDER: Please, let me
22 finish my submission.

23 MR. KULBASHIAN: -- you object when
24 I'm talking.

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

1 MR. KULBASHIAN: There is actually an
2 objection and I'll state that the second sentence said:

3 "The CHA articles, forum and
4 materials taken in their
5 entirety are hate messages."

6 That's the part that I read, not the
7 first sentence, so they do state that the forum
8 material in their entirety is part -- considered as
9 hate messages.

10 THE CHAIRPERSON: Okay. Ms Snider?

11 MS CEILIDH SNIDER: Thank you.

12 Ms Jensen directed the Commission and
13 the complainant to identify which messages we were
14 concerned of of the disclosure, which messages we
15 intended to focus on and which messages we alleged
16 contained hate messages.

17 In compliance with that direction, we
18 produced this letter dated November 17th. Clearly the
19 extent of the letter and the language of the letter is
20 to focus the party's attention on the specific
21 documents that are alleged to contain hate messages and
22 those specific messages are those that are contained
23 within the Commission's book of documents.

24 We are not suggesting, neither the
25 complainant nor the Commission are suggesting that

1 every single communication that occurred via the forum
2 or the articles on the Canadian Heritage Alliance
3 website are of a hateful nature -- excuse me.

4 MR. KULBASHIAN: I didn't say
5 anything. I just stood up.

6 MS CEILIDH SNIDER: The statement
7 that Mr. Kulbashian and the respondents are relying on
8 to expand this to suggest that Mr. Warman ought to be
9 brought into the scope here is taken very much out of
10 context, as I've explained.

11 When I say the Commission and
12 complainant submit that the CHA articles and forum
13 material taken in their entirety are hate messages, I
14 am referring clearly to the documents that we are
15 relying upon in the course of this hearing and that we
16 have gone through in some detail in these preliminary
17 motions, and they are found at the fourth paragraph and
18 the fifth paragraph of the Commission's letter of the
19 6th and I'm not going to go into it in detail.

20 Next, as the Tribunal has noted, if
21 Mr. Kulbashian or the respondents wish to make a
22 complaint against Mr. Warman and allege that he has
23 contravened section 13 of the Canadian Human Rights
24 Act, they are certainly at liberty to do so, what they
25 are not at liberty to do is to subvert the trial

1 process and to deny Mr. Warman the opportunity afforded
2 all what, would be respondents in a complaint filed
3 with the Commission, an opportunity for investigation
4 and reply submissions.

5 As Mr. Kulbashian knows himself as he
6 has filed a complaint with the Commission, this is a
7 process that is available to each and every Canadian.

8 Furthermore, just moving to the issue
9 of the affidavit, I'll first close on the issue of the
10 propriety of adding Mr. Warman.

11 The decision in Brown which is the
12 decision which is the decision that the basis for
13 adding a party in the course of a Tribunal, it is very
14 clear the basis is that that individual plays a
15 necessary part, a necessary party for the resolution of
16 the complaint, that is, that they have an indispensable
17 part to play.

18 In Brown the National Capital
19 Commission was added as a party because they were
20 essential for the resolution and the implementation of
21 a remedy in that complaint and, on that basis, they
22 were added.

23 I submit that aside from the
24 astounding impropriety of trying to add Mr. Warman as a
25 respondent at this particular juncture, delay aside,

1 the evidence upon which the respondent is trying to
2 rely upon, being the affidavit of Mr. Bernard Klatt,
3 which I note for the record has a date at least the
4 front page of this affidavit of August, 2006 and we are
5 now in November, 2006, has not recently come to their
6 attention.

7 The rules of the Tribunal are quite
8 clear and has been noted earlier in these preliminary
9 motions, rule 9 of the Tribunal's rules say that:

10 "Except with leave of the Panel,
11 which leave shall be granted on
12 terms and conditions as accord
13 with the purposes set out in
14 rule 1.1 and subject to party's
15 right to lead evidence in reply,
16 a party who does not raise an
17 issue under rule 6 shall not
18 raise that issue at the hearing
19 and the party who does not under
20 rule 6 identify a witness or
21 provide a summary of his or her
22 anticipated testimony shall not
23 call that witness at the
24 hearing."

25 I believe that we are squarely in

1 that situation, no leave has been sought, and I'm a
2 little bit at a disadvantage because we were not aware
3 of the nature or scope of this motion that has just
4 been brought in terms of there was a -- here I think I
5 have it -- a direction by Ms Jensen dated June 27th,
6 which I note pre-dates the August, 2006 but, in any,
7 event where Ms Guille and the Canadian Heritage
8 Alliance were directed no later than July 11th to
9 provide an amendment to the respondent's statement of
10 particulars to set out the defences, and at No. 5, to
11 provide an updated and final witness list with more
12 detailed witness statements.

13 They were to provide that, as I said,
14 no later than July 11th.

15 We have not received an amended
16 statement of particulars in response to that direction
17 or in compliance with that direction and we have
18 pointed out that deficiency in a letter from myself to
19 the Tribunal dated July 21st, 2006 -- I needn't go into
20 it in detail now -- but highlighting the fact that the
21 respondents were not in compliance, the respondents
22 have taken no efforts, made no steps to bring
23 themselves within compliance in providing a more
24 detailed statement of particulars or an updated witness
25 list with appropriate will-say statements.

1 I believe that Ms Guille indicated
2 that she had communications with Mr. Fromm earlier in
3 the summer as a result of being put on notice by the
4 Commission that we intended to object to
5 Mr. Kulbashian's participation in this hearing.
6 Mr. Fromm, it's my understanding, is involved in the
7 Lemire hearing extensively and could have at that time
8 suggested to the respondents that Mr. Bernard Klatt be
9 added as a witness, if they felt it was appropriate.

10 Nothing of that nature was done and
11 nothing has been done since the August date.

12 Furthermore, with respect to the
13 affidavit, the affidavit that we are looking at is in
14 respect of an entirely different matter and in respect
15 of an entirely different website and can have
16 absolutely no bearing and no relevance to this
17 proceeding.

18 The Commission vigorously opposes the
19 addition of Mr. Warman as a respondent in this matter.

20 Thank you. Those are my submissions.

21 THE CHAIRPERSON: Do you have any
22 case law on adding the complainant as a respondent?

23 MS CEILIDH SNIDER: Yeah. Sorry, I
24 handed that up earlier. Thank you for reminding me, I
25 provided a copy to the parties.

1 THE CHAIRPERSON: The ruling by
2 Mr. Hadjis.

3 MS CEILIDH SNIDER: Yes, there's a
4 ruling by Mr. Hadjis and I've got too many bits of
5 paper on the table here. Give me a moment, please.

6 Yes, thank you for reminding me. I
7 had drawn this to your attention at the beginning of
8 our argument.

9 I draw your attention in the ruling
10 of Mr. Hadjis, Member Hadjis in the decision or, sorry,
11 in the ruling of Mr. Warman and Canadian Human Rights
12 Commission v. Mark Lemire and the AG, et cetera, in
13 2006, CHRT-48.

14 First at page 3:

15 "Mr. Lemire claims to find
16 support for his position..." --
17 there is with respect to adding Mr. Warman,
18 "...his position in the Brown
19 ruling where the Tribunal
20 allowed the addition of a third
21 party to the complaint, however,
22 the circumstances of the Brown
23 case are very different from
24 those of the present case. The
25 complainant, Mr. Brown, was

1 disabled. He had alleged that
2 the National Capital Commission
3 had discriminated against him by
4 failing to provide wheelchair
5 access..."

6 and so forth.

7 "During the course of the
8 hearing, evidence was adduced
9 suggesting that a possible
10 solution to the problem was to
11 provide public access to an
12 elevator situated in a nearby
13 building owned by the Federal
14 Department of Public Works and
15 Government Services."

16 And, sorry, I misspoke myself, it was
17 the Public Works that was added. So, the Commission
18 made a motion requesting that the Tribunal --

19 THE CHAIRPERSON: In that case, the
20 Brown case, the party that was added was not the
21 complainant, it was a third party.

22 MS CEILIDH SNIDER: No, clearly not,
23 it was a third party, exactly.

24 THE CHAIRPERSON: Because how can one
25 be in the same proceeding both the complainant and the

1 respondent.

2 MS CEILIDH SNIDER: It's totally
3 illogical, it's completely illogical.

4 And sort of at the end of the day,
5 aside from the complete illogic of it as Member Hadjis
6 noted in paragraph 13 of his ruling:

7 "It has not been demonstrated to
8 me how the Tribunal's ability to
9 issue an effective remedial
10 order against Mr. Lemire under
11 the Act will being hampered by
12 not adding Mr. Warman as a
13 respondent in the present case,
14 nor has it been demonstrated
15 that the participation of
16 Mr. Warman as a respondent is
17 necessary or indispensable to
18 the resolution of any question
19 of discrimination raised in
20 Mr. Warman's complaint."

21 And that was the test in terms of
22 whether or not to add as a party, was whether or not
23 under Brown a party would have an indispensable part to
24 play in the resolution of the case.

25 Here clearly a complainant cannot

1 have an indispensable part to play as a respondent in a
2 case.

3 I submit that the proper venue for
4 the respondents to take their concerns regarding any
5 possible concern they may have with Mr. Warman's
6 conduct on the CHA or any other website, CHA.com or any
7 other website, would be to file a complaint with the
8 Commission.

9 THE CHAIRPERSON: But you have no --

10 MS CEILIDH SNIDER: I don't know of
11 any jurisprudence that would permit a complainant to be
12 added as a respondent in the context of a Tribunal
13 hearing or any other civil hearing for that matter.

14 THE CHAIRPERSON: Mr. Warman?

15 REPLY SUBMISSIONS BY MR. WARMAN

16 MR. WARMAN: I would begin by
17 adopting the submissions of the Commission.

18 I think this really highlights one of
19 the dangers of permitting individuals who have no
20 professional or ethical obligations to the Tribunal to
21 represent parties, and I say that because there has
22 been clearly conduct, that if conducted by a member of
23 the Bar could have resulted in a complaint to the Bar
24 Association for conduct.

25 I say specifically that this conduct

1 is the obligation to provide all relevant information
2 to the Tribunal in relation --

3 MR. KULBASHIAN: I'm going to object
4 to this, I'm sorry.

5 If he could just state specifically
6 what he's talking about I could understand it, but he's
7 making allegations --

8 MR. WARMAN: If you'd sit down and
9 listen you'd hear it.

10 THE CHAIRPERSON: Please sit down,
11 Mr. Kulbashian.

12 One thing I must add, Mr. Warman, is
13 that in cases of this nature when you have
14 unrepresented parties, if Mr. Kulbashian was not here
15 Ms Guille would have to defend herself all by herself
16 and it's not, you know the Tribunal is not to provide
17 advice to parties or unrepresented, so sometimes there
18 might be some procedures that are made by an
19 unrepresented party or someone who is not assisted by
20 legal counsel, and the Tribunal has to deal with that,
21 and the Tribunal will deal with that in such a way not
22 as to, in fact, accuse the party of improper conduct.

23 So, we have do to put all of this
24 into a certain context and we have to live with the
25 fact that even though Mr. Kulbashian is the agent, he

1 is not a lawyer, he is not a member of the Bar and he
2 is making a motion, maybe the motion is ill founded,
3 and it's up to me to decide.

4 But I think we have to, in a way,
5 bear with that and there is no other way.

6 It's like the same with an
7 unrepresented complainant. You are the complainant,
8 you are unrepresented, you are representing yourself,
9 but you are a lawyer, so you know all the legal
10 intricacies.

11 But what I would like to hear from
12 you is, should the Tribunal grant this motion to add
13 you as a respondent and, if not, why.

14 MR. WARMAN: I think the simple
15 response to that is to say that you have no legal or
16 factual basis before you upon which you could grant the
17 motion.

18 Those are my submissions.

19 MR. KULBASHIAN: If I could make some
20 submissions?

21 There are multiple issues came up now
22 with what the Commission and complainant stated.

23 First of all, an issue of whether or
24 not the complainant can be added as a respondent,
25 though it might not have been heard of, the fact of the

1 matter is the Commission is here to represent the
2 public interest not the private interest of Mr. Warman.

3 In fact, talking about issues whether
4 or not this complaint can go through the Commission,
5 the Commission has tendered many complaints from
6 Mr. Warman every single one of which were speedily
7 expedited to the Tribunal.

8 The complaint that I filed --

9 THE CHAIRPERSON: No, not --

10 MR. KULBASHIAN: No, but if I could
11 just --

12 THE CHAIRPERSON: No, you are
13 saying --

14 MR. KULBASHIAN: There is other
15 issues.

16 THE CHAIRPERSON: But I am not aware
17 of that, you know.

18 MR. KULBASHIAN: Okay.

19 THE CHAIRPERSON: I don't have
20 judicial notice of that.

21 MR. KULBASHIAN: Okay. The best way
22 to put it is, okay, the respondents have disclosed all
23 documents to the Commission and have also disclosed
24 documents to the Tribunal, although documents and part
25 of this process, though I'm not bringing the process

1 into question at the moment, but even though the
2 respondents complained after the complaint was received
3 that this was done vexatiously and in bad faith, the
4 Commission made no efforts to actually investigate that
5 issue.

6 THE CHAIRPERSON: No, but we're not--

7 MR. KULBASHIAN: I understand.

8 THE CHAIRPERSON: No, but

9 Mr. Kulbashian --

10 MR. KULBASHIAN: The reason I'm
11 getting, I'm getting somewhere with this, I'm not just
12 talking about the response.

13 THE CHAIRPERSON: The complaint is
14 now before the Tribunal.

15 MR. KULBASHIAN: I understand that, I
16 understand that and what I'm saying the reason why --
17 okay, maybe I'll skip that issue and maybe I'll make
18 myself more clear with something else.

19 First of all, whether or not him
20 being added as a respondent is indispensable, it is
21 indispensable because Mr. Warman is going to be
22 testifying on the stand in the capacity of the
23 complainant, he's going to be stating that this forum
24 post I found on the CHA website is racist because I saw
25 it here, I saw it there.

1 At no time is he going to state that,
2 yes, I posted this object, yes, I posted that object.

3 The problem is it greatly prejudices
4 the respondents when the complainant who may have
5 actually filed one or more of the racist comments are
6 being -- is being found liable, mean while the
7 complainant gets to, I guess, act in the capacity of an
8 innocent victim.

9 THE CHAIRPERSON: Mr. Kulbashian, no,
10 but in the course of your cross-examination you can
11 raise this issue and you can ask Mr. Warman a question
12 about, you know, what does it matter to you, and if you
13 feel that Mr. Warman is incorrect, and I won't use
14 another word, what he's saying is incorrect, then you
15 can challenge him on that.

16 MR. KULBASHIAN: Well, in that
17 case --

18 THE CHAIRPERSON: And if you want to
19 do so, this will still be open to you.

20 MR. KULBASHIAN: However, it won't,
21 however, because, see, the thing is we don't have
22 unlimited resources that the Commission does, virtually
23 unlimited.

24 At this point we're in front of the
25 Tribunal and her and the CHA are being accused of

1 having communicated racist messages, some of those
2 messages may have been communicated by the complainant,
3 so effectively what is happening, in fact even in a
4 criminal court a victim can be added as a suspect.

5 If a fight happened between two
6 people, two individuals can be arrested. If two
7 individuals were involved in something, one person
8 might have been a witness initially then they found out
9 that he was involved, he can be added as a defendant in
10 the case as well.

11 THE CHAIRPERSON: Well, I don't think
12 he's going to be added as a defendant like that.

13 MR. KULBASHIAN: No, like that.

14 THE CHAIRPERSON: There will be an
15 inquiry, an investigation and then there would be a
16 decision --

17 MR. KULBASHIAN: That's right.

18 THE CHAIRPERSON: -- and a decision
19 as to lay charges or not.

20 MR. KULBASHIAN: That's right, but
21 the case may be held over until that inquiry takes
22 place. Now, at this point in this decision, I'm going
23 to find the exact location, it states --

24 THE CHAIRPERSON: You are referring
25 to Mr. Hadjis' decision?

1 MR. KULBASHIAN: Mr. Hadjis'
2 decision, para 14 it states:

3 "If Mr. Lemire is of the view
4 that Mr. Warman has contravened
5 the Act he is free to file his
6 own human rights complaint with
7 the Commission. The Tribunal
8 is, however, seized at this time
9 with a complaint filed by
10 Mr. Warman against Mr. Lemire."

11 If the Chair's position is that we
12 should file a complaint with the Commission, to start,
13 we have a Commission representative over here, which I
14 believe should have the authority since she does
15 represent the public interest to add Mr. Warman as a
16 respondent. That's assuming she represents the public
17 interest at this point.

18 The problem that happens if he is not
19 added as a respondent is that he is going to be on the
20 stand as someone, regardless of whether or not there
21 is -- whether or not we can cross-examine him on
22 issues, there will be the appearance of innocence for
23 the witness regardless because he is not here to
24 answer.

25 I mean, ultimately if he admits on

1 the stand that he did it, there is no decision that can
2 be taken against him, and even though, like,
3 ultimately --

4 THE CHAIRPERSON: No, but
5 Mr. Kulbashian, suppose Mr. Warman was to admit that,
6 suppose then -- you know, and I am just
7 supposing --suppose then that he admits it, if you want
8 to file a complaint with the Commission you could use,
9 you know, his testimony before the Tribunal to support
10 your own complaint. I am just supposing.

11 But if we are to add, or if your
12 request is to add a respondent and Mr. Warman as a
13 respondent, the Tribunal can only decide with respect
14 to the laws that exist, the rules of the Tribunal and
15 the case law that exists, and in order to add a
16 respondent it must be necessary or indispensable to the
17 resolution of any question of discrimination raised in
18 the complaint now before the Tribunal. The Tribunal
19 cannot change the essence of the complaint, cannot
20 change the essence of the question in issue, cannot
21 change the essence of the hearing itself.

22 And that is how the system works.

23 Now, having said that, that doesn't
24 mean that you are deprived of all means of showing that
25 a witness when he is testifying is omitting certain

1 things, or if you want to raise these things with the
2 witness, you can do it and if you think that you have
3 evidence to show that the witness is not telling the
4 truth, then you can most probably challenge him and
5 through an affidavit or what not you could in a way
6 make your point.

7 But it is not through the process of
8 adding a complainant as a respondent, and mind you I
9 have never seen in my career someone acting both as a
10 complainant and respondent because then, you know, if
11 there is a respondent it's as if I would have to turn
12 things upside down and say, well, in this case
13 Mr. Warman is the complainant, Mrs. Guille is the
14 respondent, but now Mrs. Guille will be a
15 co-co-complainant and Mr. Warman will be a respondent.

16 This is not how the system works.

17 MR. KULBASHIAN: I would like to
18 submit that though there is no precedent it doesn't
19 mean that it's not possible. Ultimately --

20 THE CHAIRPERSON: It could, but for
21 it to be possible you have to meet the legal criteria
22 that has already been established in the past and it
23 must be shown that it is necessary or indispensable
24 given the complaint as it stands right now, and up
25 until now I have failed to see you convince me that it

1 is necessary and indispensable to add Mr. Warman as a
2 respondent, irrespective of the fact that I have
3 serious doubt as to the ability or the logical
4 possibility or legal possibility to have a complainant
5 be also a respondent in a case without having a
6 co-complainant.

7 And, you know, the more I think of it
8 the more I see that this would be a major, major step
9 forward in dealing with Human Rights cases where the
10 Tribunal would at one point in time have to deal with
11 co-complainants and the co-complainants being the
12 respondents in the first place.

13 I don't think that this is something
14 that, even if it's theoretically possible or
15 imaginable, that this is something that should in a way
16 be put in place in a human rights process.

17 So, my decision is --

18 MR. KULBASHIAN: I have not finished
19 my submissions.

20 THE CHAIRPERSON: Well, I will hear
21 you, but be to the point.

22 But from what I have heard now from
23 you and what I have heard now from the Commission, from
24 Mr. Fromm, I'm not even close to accepting that
25 Mr. Warman, adding him as a respondent is necessary or

1 indispensable for the resolution of this complaint.

2 MR. KULBASHIAN: At this point,
3 Mr. Fromm hasn't actually made his submissions, so
4 that's we're still...

5 THE CHAIRPERSON: In all fairness to
6 you, I will listen to you, I will listen to Mr. Fromm
7 so that at the end of the day no one will say that the
8 Tribunal did not take the time, even though taking more
9 time means that there is a delay in the beginning of
10 this hearing, but I will hear you.

11 MR. KULBASHIAN: Okay. Firstly, the
12 other issues, first of all, that Ms Snider brought up
13 is the affidavit was in August, 2006. I am not a part
14 of that proceeding, part of that process, Mr. Fromm was
15 not a part of this process until well after that date.
16 The actual decision, the ruling which brought this to
17 my attention is on October 26th, 2006 which is not that
18 long ago, therefore, I haven't had it since August,
19 2006 even though the document has that title.

20 Second of all, I understand the
21 position of the Tribunal and not only dilemma, but the
22 difficulty it's faced with as far as, I guess, doing
23 what we're asking, however, the major concern that the
24 respondents have is that they will be greatly
25 prejudiced in this hearing because the complainant in

1 fact, if anything, could have framed the respondent for
2 the complaints.

3 I mean -- well, one major issue -- if
4 I could have one second, I'm just going to talk to --
5 if I could get some time to print out a copy of
6 Mr. Warman's speech from August, 2005 actually from the
7 summer, 2005?

8 In this speech he states that he
9 files complaints as a form of maximum disruption which
10 in its face is not what complaints are supposed to be
11 used for.

12 THE CHAIRPERSON: But this is
13 something you can bring up later on.

14 MR. KULBASHIAN: I understand that we
15 can bring it up later on, but the major issue is if he
16 goes and testifies in the capacity of the complainant
17 when he should, in fact, be testifying in the capacity
18 of a respondent as well as a complainant, at this point
19 he's not even a complainant, he is neither the targeted
20 individuals in the statements, he is nowhere near, in
21 those statements.

22 He is filing a complaint based on the
23 fact that he saw this information and it shouldn't be
24 there, as opposed to him being personally targeted in
25 any way, shape or form, therefore, he is technically a

1 party and not the actual complainant, he is just a
2 witness to identify documents.

3 THE CHAIRPERSON: No, Mr. Kulbashian,
4 even if you were to print this, how will this in a way
5 make me change, you know, views as to the fact that up
6 until now I haven't seen adding Mr. Warman as a
7 respondent, irrespective of the fact that I, for one,
8 view the fact that a complainant cannot be both the
9 complainant and respondent, that this is necessary for
10 the Tribunal to deal with the issues now before him?

11 MR. KULBASHIAN: In that case, can I
12 make I guess an alternate suggestion. The Commission
13 is the one that's defending the public interest at the
14 moment and it, I guess, can be possible for the
15 Tribunal to remove Mr. Warman as a complainant and add
16 him as co-respondent and that would not create the
17 paradox.

18 THE CHAIRPERSON: Mr. Kulbashian --

19 MR. KULBASHIAN: Well, the fact of
20 the matter, his status here is only because of the
21 Commission's position as to what he is at the moment.
22 The Commission does have power over the parties.

23 THE CHAIRPERSON: Mr. Warman has gone
24 through the normal process where he made complaint, the
25 Commission investigated, ruled on it, decided to refer

1 it to -- Mr. Warman is before the Tribunal as a
2 complainant period, and the Tribunal cannot change
3 that.

4 The Tribunal can -- at the end of the
5 day the Tribunal can, in a way, determine that, yes,
6 the complaint is well founded and orders some remedial
7 measures or it can dismiss the complaint and this will
8 happen after having listened to both sides.

9 But I cannot change anything and even
10 if the Commission is here as a representative of the
11 public and even if Ms Snider is here representing the
12 Commission, Ms Snider has no authority to change
13 anything to these proceedings and --

14 MR. KULBASHIAN: That's correct.

15 THE CHAIRPERSON: That's it.

16 MR. KULBASHIAN: However, the
17 Tribunal does have in fact, does have the ability to
18 add or remove parties.

19 THE CHAIRPERSON: Yes, but I have the
20 ability to add or remove parties if there is evidence
21 that this is necessary or indispensable for the
22 complete resolution of the issues before the Tribunal.

23 And you have not in a way convinced
24 me that it's the case. Now, unless you come up with
25 better argument, I don't think that I can grant your

1 motion.

2 MR. KULBASHIAN: In that case, can I
3 take, I guess, few minutes and review some case law
4 regarding the change.

5 THE CHAIRPERSON: We will break for
6 15 minutes and then I will give you five minutes,
7 Mr. Fromm, and if you haven't come up with better
8 arguments, given the fact, as I said, that the law as
9 it stands, you have to demonstrate, it's not only
10 suggest but demonstrate, on the balance of
11 probabilities, that Mr. Warman being added as
12 respondent is necessary or indispensable, and I would
13 underscore indispensable for the Tribunal to rule on
14 these questions.

15 MR. KULBASHIAN: Could you give out
16 some kind maybe broad definition of what you consider
17 to be indispensable.

18 Because, see, from the respondents'
19 perspective somebody who I guess filed a complaint
20 after posting a message himself against a website could
21 be considered like adding as --

22 THE CHAIRPERSON: I will give you,
23 even though I'm not here to give a course in law, but I
24 will give you just one example and it stems from the
25 Brown case.

1 Where if you order, someone wants to
2 have changes made to a certain structure but the
3 respondent is not the owner of that structure and in
4 order for the Tribunal, you know, to make a final
5 decision and be able to in a way to find some final
6 resolution, you know, to the problem that it is
7 confronted with, if the owner is someone else, you
8 know, is a third party, then someone would say, well,
9 you know, if you force me to make changes to this
10 structure, I'm not the owner of that structure, you
11 will have to call in the owner, so that the owner would
12 be bound by the decision of the Tribunal, because if
13 the Tribunal says, I order Mr. so-and-so to make
14 changes to his elevator and the person is not in front
15 of the Tribunal, it has no impact, no consequence.

16 So, that's a case where it becomes
17 indispensable to in a way add a third party in.

18 But this is -- but here I fail, and
19 as I said we'll break for 15 minutes, I will give you
20 five minutes because I think I've heard you try and
21 convince me but up until now, I will be forthright, you
22 haven't been able, and I think we have to move on to
23 other things.

24 So, five minutes Mr. Fromm and we'll
25 continue dealing with other issues.

1 REGISTRY OFFICER: Order, please.

2 --- Upon recessing at 3:10 p.m.

3 --- Upon resuming at 3:30 p.m.

4 REGISTRY OFFICER: Order, please.

5 Please be seated.

6 THE CHAIRPERSON: Mr. Fromm?

7 SUBMISSIONS BY MR. FROMM

8 MR. FROMM: Thank you, Mr. Chairman.

9 In your comments to Mr. Kulbashian I
10 could hear the concern and frustration in your voice
11 because I think you were beginning to feel a little bit
12 like --

13 THE CHAIRPERSON: Frustration, most
14 probably not.

15 MR. FROMM: Oh. Well, fine.

16 You're being asked to do something
17 perhaps a little bit unusual and perhaps almost as in
18 the song by blue grass singer, Grandpa Jones, who sings
19 a song about "On My Own Grandpa", and it may seem like
20 that.

21 But Mr. Warman, who is a complainant,
22 might be added as a respondent, and I'd like to submit
23 I think a few points that perhaps may assist in this.

24 First of all, as I read the
25 procedures, the rules of procedure of the Canadian

1 Human Rights Tribunal, particularly section 8.3, you do
2 have the power to add a respondent, where:

3 "The Commission, a respondent or
4 a complainant seeks to add a
5 party to the inquiry it may
6 bring a motion to this effect,
7 which motion may be served on
8 the prospective party and the
9 prospective party shall be
10 entitled to make submissions on
11 the motion."

12 When this matter, in a similar sense,
13 not exactly the same, but when it is being raised in
14 the preliminaries to Warman v. Lemire, Member Hadjis, I
15 would submit, chose to rule conservatively that there
16 are two possibilities, Mr. Warman could be added to the
17 complaint, or Mr. Lemire, in this case Ms Guille named
18 Canadian Heritage Alliance could be advised to take
19 their concern as a complainant to the Canadian Human
20 Rights Commission and try in that venue.

21 You asked though as to what
22 jurisprudence there would be, and obviously subject to
23 the correction of the obviously more learned people on
24 the other side of the room, there doesn't not seem to
25 have been a lot of legal precedent, certainly not legal

1 precedent in a 13.1 case, but then 13.1 is the anomaly
2 of the Canadian Human Rights Act.

3 Most complaints brought under the
4 Canadian Human Rights Act are complaints by a person
5 who is fairly clearly a victim of discrimination
6 usually in employment or in the provision of services,
7 and a respondent would usually be some body that is
8 governed by the Canadian Human Rights Act, a government
9 body, a crown corporation or other areas of government
10 subject to the Canadian Human Rights Act.

11 Section 13.1 is a little bit
12 different, particularly in the matter before you.
13 There is nobody who's being discriminated against.
14 Mr. Warman has not come before you and saying that he's
15 been a victim of discrimination. In this case he has
16 seen some postings which he alleges violate the Act.

17 Thus perhaps it's not surprising that
18 in other areas it's not very infrequent that a
19 respondent will be added.

20 You did cite the case of Brown v.
21 the National Capital Commission from 2003 and I think
22 it's already been summarized as to what that involved
23 but it involved the case of provision or non-provision
24 of services.

25 Here we have a situation where there

1 are a number of postings on the website of the Canadian
2 Heritage Alliance are impugned as possibly constituting
3 a discriminatory practice, and this is where I think
4 perhaps the door may be open to your choosing to grant
5 this motion.

6 I think it's a basic point in law and
7 natural justice that the parties, the complainant comes
8 to the table with clean hands and the material
9 submitted to you, or that would be submitted to you
10 strongly suggests that Mr. Warman made a posting,
11 perhaps other postings, certainly made a particular
12 posting on the website that's impugned on the Canadian
13 Heritage forum, and this posting was I think in the
14 materials in front of you to be modest, modern about it
15 pretty inflammatory and of the same nature perhaps as
16 some of the comments complained about.

17 So, you are asking Mr. Kulbashian to
18 establish that adding Mr. Warman was necessary or
19 indispensable to resolving this matter of
20 discrimination.

21 Well, if in fact, and needless to say
22 we don't agree that the postings on the Canadian
23 Heritage Alliance website constitute a violation of
24 section 13, and if in fact they do and Mr. Warman was
25 posting a post or several postings in like vein but he

1 is the one who's complaining about the Canadian
2 Heritage Alliance and these postings, then he comes to
3 the table with dirty hands.

4 And if in fact a finding of
5 discrimination is to be made then -- and he is posting
6 similar material on the Canadian Heritage Alliance
7 site, then surely he should be added as a respondent.

8 I would be the first to agree that
9 certainly from my research there has been very little
10 jurisprudence on this matter, and perhaps what we are
11 asking you is to perhaps make history and maybe move
12 things ahead a little bit, but recognizing that section
13 13.1 is a different ballgame from most of the
14 complaints of discrimination that would come before the
15 Canadian Human Rights Commission that deal essentially
16 with employment or provision of facilities or services.

17 This deals with expressions or points
18 of view, 13.1 now almost entirely deals with the
19 Internet, no longer with much of the telephone
20 answering machines.

21 So, if as this material would tend to
22 suggest Mr. Warman was not an observer, came to the
23 Canadian Heritage Alliance website and saw certain
24 things and came to the Commission and said I've seen
25 things that I think constitute a discriminatory

1 practice and made a complaint, but if in fact he was a
2 player posting exactly the same type of things, then he
3 ought to be added in terms of natural justice to the
4 complaint, otherwise you would have anomalous situation
5 that should the Tribunal rule against Melissa Guille
6 and the Canadian Heritage Alliance -- we certainly hope
7 that won't be the case -- but were that to happen,
8 there would be a cease and desist order against
9 whatever it is the Canadian Heritage Alliance might be
10 and against Melissa Guille, but a person who was in
11 there posting exactly the same type of material was the
12 complainant and would have no such prohibition against
13 him.

14 And so if this, if indeed this entire
15 site constitutes a discriminatory practice, and I know
16 Ms Snider in a sense drew back a little bit, but the
17 clear words of the letter that was sent out just this
18 past week:

19 "The Commission and the
20 complainant submit that the
21 CHA..." --

22 that's the Canadian Heritage Alliance --

23 "...articles and forum material
24 taken in their entirety are hate
25 messages."

1 Now, the plain sense of that is the
2 whole operation. Now, she says she only meant the
3 postings that have already been disclosed, but if the
4 words there mean what they seem to mean, the whole
5 thing, then part of the whole thing is what appears
6 Mr. Warman posts, and if this is indeed a
7 discriminatory practice, that the postings on the
8 Canadian Heritage Alliance website, then to adequately
9 deal with it, Mr. Warman should be added as a
10 respondent.

11 And I might say, you know, the
12 comments about this is what you get when people are
13 unrepresented by lawyers, I think is just a little bit,
14 on the part of Mr. Warman, is just a little bit
15 precious because it's he who chose to make a complaint
16 against someone who he knew or ought to have known did
17 not have the resources to hire a lawyer, the system
18 does not provide for adequate Legal Aid, you know.

19 I think Mr. Kulbashian and I are
20 doing the very best we can, but in other cases where
21 this was not brought up to you, but at least in other
22 Human Rights section 13.1 cases I did attempt to bring
23 to the attention of the Tribunal the ruling by the
24 Supreme Court in the Okanagan Indian Band case where
25 the Indian Band was not able to adequately defend

1 itself, had no resources and the Supreme Court of
2 Canada did order funding.

3 But in the pursuit of fairness, and I
4 think it's like kicking a person when they're down, to
5 complain that the representation for Ms Guille or the
6 Canadian Heritage Alliance is amateurish or incompetent
7 when the system itself doesn't provide for a fair
8 fight.

9 And those are my submissions.

10 THE CHAIRPERSON: I must say,
11 Mr. Fromm, on your last point, I haven't criticized in
12 any way, shape or form the work that you or
13 Mr. Kulbashian have been doing.

14 MR. FROMM: No, I'm sorry, I didn't
15 mean, not you, not you.

16 THE CHAIRPERSON: I just want to make
17 the point that, as I said, Ms Guille and the Canadian
18 Heritage Alliance are not represented by lawyers but by
19 agents who are doing, I would presume, their best to
20 defend the interests of their clients. And I think I
21 say it for the record, and I would say the same for an
22 unrepresented plaintiff.

23 I can't in a way make negative
24 comments because someone is unrepresented. You know,
25 we go with what we have and that is the case, so I am

1 not in any way, and I would indulge counsel not to
2 criticize the fact that people who are not represented,
3 whether they are complainants or respondent.

4 Now, what you are asking me to do as
5 a Tribunal, if I can speak figuratively, is to rock the
6 boat of the human rights process but, mind you, I don't
7 want the sip to capsize.

8 So, there are rules that have to be
9 followed and one of these rules with respect to adding
10 a party or adding even a respondent, I would say, is
11 that the burden is on the person or the party asking
12 the Tribunal to add a party or to add a new respondent
13 to a complaint to prove, that is given the nature of
14 the complaint before the Tribunal, necessary or
15 indispensable for that party to be added so that at the
16 end of the day we can come to a definite resolution of
17 the questions that are before the Tribunal.

18 It's a question of law, of meeting
19 certain criteria, and if you look at the decision by
20 Mr. Hadjis, the ruling by Mr. Hadjis dated October
21 26th, 2006, this is what he does, he looks at all of
22 the case law or the most important cases that have
23 dealt with the addition of a third party to
24 proceedings.

25 And whether it is Desameaux (ph),

1 whether it's Brown or whether it's Telus, and I
2 rendered that decision in Telus, the same principles
3 apply. It must be necessary or indispensable in order
4 to come to a definite resolution to the questions that
5 are before the Tribunal.

6 And here I fail to see any convincing
7 arguments that would lead me to conclude that adding
8 Mr. Warman as a respondent is necessary in the present
9 circumstances and given the nature of the complaint.

10 That doesn't prevent Mr. Kulbashian
11 nor you, Mr. Fromm, when the time comes to
12 cross-examine Mr. Warman to raise issue as to his
13 credibility, to raise issue as to his conduct with
14 respect to different website or newsletter or what not,
15 and it is open to you to do that.

16 But adding Mr. Warman as a respondent
17 won't change that in any shape or form, and it could be
18 that if you were able to convince a Tribunal that
19 Mr. Warman acted inappropriately and the Tribunal would
20 deal with that or comment on that in its decision and
21 then, you know, if someone feels that there's a need or
22 sufficient facts to make a complaint against to the
23 Commission against Mr. Warman, this would still be
24 open.

25 But when you say that the Tribunal

1 must be less conservative than Mr. Hadjis and more
2 liberal, in a sense, I don't think that the Tribunal
3 can be as liberal as it may and ignore cases or
4 decisions or the jurisprudence that exists on a certain
5 point, unless the facts of a case are so different from
6 the facts in these other cases that this would justify
7 the Tribunal to distance itself from, or depart itself
8 from a previous ruling by the Tribunal.

9 In many ways I feel bound by the
10 decision by Mr. Hadjis in the Lemire case because what
11 he sets out with respect to the facts or the
12 similarities of the facts in that case and in this
13 case, I fail to see, you know, any justification or any
14 reasons for me to depart from his ruling and, as I
15 said, given the state of the law as it is right now and
16 I think that Mr. Hadjis has in his ruling stated when
17 referring to these different cases that this is the
18 state of the law as it stands right now.

19 MR. KULBASHIAN: If I may just make a
20 submission. There is a difference between the Lemire
21 case and this case.

22 THE CHAIRPERSON: There might be
23 differences, Mr. --

24 MR. KULBASHIAN: There is a serious
25 difference, however.

1 THE CHAIRPERSON: But from what I
2 have heard until now is that I have no reason to depart
3 from Mr. Hadjis' decision and there is no -- nothing
4 that you have come up with that has convinced me that
5 there is.

6 MR. KULBASHIAN: I wish to show you,
7 however, in the style of cause in the complaint against
8 Mr. Lemire is Richard Warman and Canadian Human Rights
9 Commission v. Mark Lemire.

10 Now, what's happening in this case is
11 that the complaint is not against a website it's
12 against an individual only. In this situation the
13 actual postings were made on the website that is
14 actually in issue because over here the style of cause
15 only can includes Mr. Lemire in this.

16 In the current hearing it's against
17 the CHA as well, and Mr. Warman's involvement with that
18 would actually make him a party to the CHA and
19 ultimately a party to the hearing because, see --

20 THE CHAIRPERSON: I have heard that,
21 I have heard that.

22 MR. KULBASHIAN: I haven't actually
23 stated that before.

24 The major issue, there is
25 differences, primarily, I mean, you might not agree and

1 I understand, laws are -- this section 13 law happened
2 out of necessity. This case is different because I
3 don't think that there has been a section 13 case
4 before where somebody has actually posted racist
5 comments and then went and complained about the
6 website. So, there is a difference in this situation
7 where the Tribunal has to decide whether or not it's
8 going to make laws so to prevent people from doing
9 this. That's where the issue comes in.

10 What's to stop somebody else from
11 going and literally making a racist comment on the
12 website and then saying that website has racist
13 comments on it.

14 THE CHAIRPERSON: But this,
15 Mr. Kulbashian, you will be able to argue at the end of
16 case.

17 MR. KULBASHIAN: However, no more --

18 THE CHAIRPERSON: And even if I was,
19 I would say even if I was convinced that Mr. Warman did
20 what you're alleging he did, given the human rights
21 process and how the system works, it would be -- I
22 would still reach the same decision that it is improper
23 or not necessary to have him as a respondent and, more
24 so, that he is the complainant and I didn't get into
25 that, but I fail to see how someone can be in the same

1 procedures both the complainant and the respondent
2 unless the complainant becomes Ms Guille or the
3 Canadian Heritage Association, and then it's not only
4 adding a party but it's changing the whole nature of
5 the complaint, and I don't think the process as it
6 stands will allow a Tribunal to change the law or make
7 amendments by the law, the Tribunal is there to apply
8 the law, to apply the rules, it's not there to make the
9 law.

10 So, even if you were right on that,
11 still, this would not in a way have an impact on the
12 decision that I have made, that adding a respondent --
13 Mr. Warman as a respondent to the present proceedings
14 is necessary or indispensable for the resolution of the
15 issues that are now before the Tribunal and without
16 changing any aspect of the complaint.

17 RULING

18 THE CHAIRPERSON: So, my ruling is
19 that Mr. Warman won't be added as a respondent.

20 But as I said earlier on, if you want
21 to make the proof or bring evidence that Mr. Warman did
22 act in the way you allege he did, you can bring it up
23 and if Mr. Warman denies that and you have evidence to
24 show the contrary, you will be allowed to present that
25 evidence.

1 So it's not because I am dismissing
2 your motion that it's the end of the matter with
3 respect to the allegation that you are making.

4 MR. KULBASHIAN: In that case, I
5 would just like to, I guess, finish off a previous
6 matter which is the list that was supposed to be
7 provided to the complainant and Commission.

8 THE CHAIRPERSON: Yes, you can do
9 this at this time and see if this satisfies --

10 MS CEILIDH SNIDER: Thank you.

11 THE CHAIRPERSON: I don't need to see
12 the list, it's only for Ms Snider.

13 MS CEILIDH SNIDER: No, this doesn't
14 satisfy the request, but I think that at this juncture
15 it may be prudent to highlight a particular aspect of
16 the rules of the Tribunal for the benefit of all the
17 parties.

18 The first and foremost rule of the
19 Tribunal says:

20 "The rules are enacted to
21 ensure...",

22 paragraph 1(c):

23 "...that all proceedings before
24 the Tribunal be concluded as
25 informally and as expeditiously

1 as possible."

2 And I note that we are now virtually
3 at the end of the day on Tuesday, the second day of the
4 hearing and we have yet come to the matter that brings
5 us to the Tribunal, which is the hearing of the
6 complaint.

7 In light of this, I'm not -- the
8 Commission is not going to make further issue of this
9 material that's been provided to us.

10 But what I am going to suggest is
11 that it may be, given that we have only until this
12 Friday to hear this matter...

13 THE CHAIRPERSON: Well, we have
14 scheduled this week.

15 MS CEILIDH SNIDER: Yes.

16 THE CHAIRPERSON: But I must remind
17 you that when we started on Monday there were -- issues
18 were raised that were not contemplated.

19 MS CEILIDH SNIDER: No, I'm very
20 aware of that.

21 THE CHAIRPERSON: So, this is
22 something that has now become -- I don't say --

23 MS CEILIDH SNIDER: My suggestion,
24 sorry if I may just finish, is simply to request that
25 the Tribunal consider sitting late to enable the

1 parties to proceed to deal with and the Tribunal to
2 deal with all of the matters currently before it and
3 also to have some chance of hearing the actual
4 complaint that brings us to the Tribunal.

5 I note that we still actually have
6 two preliminary issues to deal with and it's four
7 o'clock.

8 THE CHAIRPERSON: Yes, I'm aware of
9 that, but what I could say is there is no rush to
10 judgment.

11 MS CEILIDH SNIDER: No.

12 THE CHAIRPERSON: That if we have to
13 deal, if we have to deal with these issues before we
14 start hearing the core of the evidence, let's do it,
15 but it may be that we might have to schedule additional
16 days in the coming new year.

17 MS CEILIDH SNIDER: No, I realize
18 that, that is certainly a possibility but I'm just
19 mindful of the fact that we are all here now, that
20 Ms Guille for example has family responsibilities that
21 she's reminded us of and people have travelled a great
22 distance and at cost to their various organizations and
23 to themselves to be here, and if it is possible to do
24 this hearing in an expeditious fashion as the rules
25 require, the Commission is prepared to do whatever is

1 necessary to ensure that that happens, including
2 sitting late and whatever, but I'm in your hands.

3 MR. KULBASHIAN: Can I make some
4 submissions.

5 THE CHAIRPERSON: Yes.

6 MR. KULBASHIAN: First of all, I
7 understand that these preliminary issues took up a lot
8 of time, however, I would like to remind the Tribunal
9 that I understand the Commission's submissions as well,
10 I have basically work coming up right after this, I
11 believe Mr. Fromm has to head to the office as well
12 after this and we can't really stay late.

13 I mean, for the first full day almost
14 the Commission and complainant challenged myself and
15 Mr. Fromm as being agents which doesn't seem to have
16 been a procedural issue which wasted a day of time.

17 We do agree, if the Tribunal cannot
18 finish this case by Friday, then we continue at a later
19 date, however, I can't stay after time. Mr. Fromm is
20 all the way at the west end, like it's kind of -- it's
21 kind of tough for me to stay here until six or seven
22 o'clock. Five o'clock yesterday, I barely made it to
23 work, so...

24 THE CHAIRPERSON: Well, we'll do with
25 the time we have and if we cannot extend the hours

1 we'll try to use the time we have as best as we can.

2 MR. KULBASHIAN: That's right.

3 THE CHAIRPERSON: And I will never in
4 a way comment negatively on someone challenging
5 something, like, it was the right of Mr. Warman to
6 raise an objection and even if it took, you know, a day
7 to deal with that, with that issue, well, this is part
8 of the legal process.

9 MR. KULBASHIAN: I understand.

10 THE CHAIRPERSON: And you come up
11 with a motion and I have to deal with that, and you
12 know, I have to give the time to the parties to explain
13 themselves. Maybe I'm being generous in the time I'm
14 allowing to give to parties, but at the end of the day
15 people won't be able to say, well, we weren't able to
16 make our case.

17 MR. KULBASHIAN: I understand.

18 THE CHAIRPERSON: No, no, but I am
19 not in any way commenting on what you said --

20 MR. KULBASHIAN: Chastise for them
21 taking the time. I just meant, basically the issue is
22 that we've been spending a lot of time on preliminary
23 matters. The fact of the matter is, like, effectively
24 what you said, I was about to actually say that this is
25 the kind of process, however, the issue is that we do

1 have other motions outstanding and --

2 THE CHAIRPERSON: So, we'll deal with
3 this complaint within the normal hours of business.

4 MR. KULBASHIAN: That's right.

5 THE CHAIRPERSON: Now, the next issue
6 we have to deal with as a preliminary matter. There
7 are two issues, the motion to exclude documents unless
8 experts are called and the motion by Mr. Fromm to
9 dismiss the complaint.

10 MR. KULBASHIAN: Well, okay, I guess
11 I can start making submissions.

12 I don't know what time we have
13 until --

14 THE CHAIRPERSON: Submissions on
15 what?

16 MR. KULBASHIAN: On the first one.

17 THE CHAIRPERSON: The first one
18 motion to exclude documents.

19 MR. KULBASHIAN: Yeah.

20 THE CHAIRPERSON: We could start.

21 MR. KULBASHIAN: Yes.

22 THE CHAIRPERSON: And the other
23 motion, will we have to deal with the other one, motion
24 to dismiss the complaint.

25 MR. KULBASHIAN: The other one is

1 quite large from my knowledge, it's not my motion,
2 so...

3 THE CHAIRPERSON: Okay. So...

4 MR. FROMM: If I may be of
5 assistance, it will probably take me an hour, so
6 perhaps we can do that tomorrow morning.

7 MR. WARMAN: Mr. Deschamps, just in
8 order to avoid wasting a lot of everyone's time on a
9 given matter, would it be possible to elaborate what
10 the nature of each of those motions will be and then
11 perhaps you can give some indication as to whether you
12 even have the authority to make some decision.

13 THE CHAIRPERSON: So, I will ask you
14 first, Mr. Kulbashian, to maybe give me an idea of what
15 your motion is all about and maybe Mr. Fromm also.

16 Mr. Warman.

17 MR. WARMAN: Yes, please.

18 THE CHAIRPERSON: So, that we could
19 have an idea of what is the nature of your motion.

20 MR. KULBASHIAN: Well, I guess the
21 basic nature of the motion is that without expert
22 evidence Tribunal should not be able to, or cannot rule
23 directly or indirectly whether or not a specific
24 document does constitute a case under section 13.

25 Other issues include that documents

1 can be taken out of context, documents could be a
2 historical documents, document could be -- basically
3 there is many possible reasons why documents should not
4 constitute hate or not constitute hate.

5 Also I submit that I understand the
6 Tribunal is only, I guess, the only unbiased party here
7 at this time, however, we do believe that the effect of
8 certain documents might personally affect the
9 Chairperson of the Tribunal and, therefore, in some way
10 cloud the judgment on the actual violation whether or
11 not there was a violation of section 13.

12 For example, documents could have
13 been not necessarily racist, not necessarily sexist but
14 it could have been written in such a language that it
15 creates I guess, like you know, it creates a personal
16 effect within the person that's reading it and,
17 therefore, we believe that it's important for an expert
18 witness to be called.

19 I'm going to be quoting basically a
20 decision from the Warman v. Kulbashian case by Member
21 Hadjis as well as other rulings and why the court, or
22 why the Tribunal required an expert witness in order to
23 determine these sort of documents.

24 THE CHAIRPERSON: Mr. Warman,
25 Ms Snider, is it clear to you, the essence of the

1 motion that is being brought by Mr. Kulbashian?

2 MR. WARMAN: It is. If I may just
3 take two seconds, it sounds remarkably like an argument
4 that has been made in previous cases such as the
5 Winnicki case previously and it was commented on by the
6 Member who rendered that decision.

7 So, I hate to see us waste a lot of
8 everyone's time on matters that are properly the
9 subject of argument versus being the subject of a
10 motion.

11 MR. KULBASHIAN: I'm sorry, I
12 understand his position however he hasn't actually
13 heard my submissions yet, so this is just my outline of
14 the motion.

15 THE CHAIRPERSON: So, we have the
16 highlights of the upcoming motion.

17 Mr. Fromm?

18 MR. FROMM: My motion deals with my
19 submission that the activities of Mr. Warman appears to
20 have been involved in have hopelessly poisoned the
21 environment of this Tribunal and constitute a form of
22 retaliation which is prohibited, I believe, by section
23 14 of the Canadian Human Rights Act and I have
24 considerable documentation and affidavits, et cetera to
25 argue that.

1 THE CHAIRPERSON: And even if I was
2 to entertain that motion, what you would be asking
3 is to have the complaint dismissed.

4 MR. FROMM: Yes, dismissed summarily
5 because at least one person on this side of the table
6 has been the subject of the intimidation and what I
7 think the Act will call retaliation of a very serious
8 nature and it would appear to have been involved by
9 Mr. Warman, the plaintiff, in the entire process is
10 poisoned and the only fair remedy is to dismiss the
11 complaint.

12 THE CHAIRPERSON: Will you be
13 submitting some legal authorities?

14 MR. FROMM: Yes.

15 THE CHAIRPERSON: Particularly on the
16 point that if what you say is right that the Tribunal
17 has the power to dismiss a complaint.

18 MR. FROMM: Yes.

19 THE CHAIRPERSON: Mr. Warman?

20 MR. WARMAN: I'm mindful of the
21 Tribunal's warning not to criticize parties, but on the
22 basis that they are not lawyers, however, there is a
23 basic level of not attempting, or there is a basic
24 obligation to ensure that the Tribunal has all the
25 information before it.

1 There, and again I will wait to hear
2 further details, but if this motion is the exact same
3 motion that Mr. Fromm has brought in four other cases,
4 three or four other cases, one of which has already
5 been the subject of a five-paragraph dismissal by
6 Member Doucet dismissing it as groundless, then this
7 really gets into the question of whether this is a
8 valid motion or whether this is an abuse of process.

9 MR. FROMM: This motion has not been
10 brought in any other case and, even it were, as you
11 have seen from the rulings on the admissibility of
12 certain documents argued before you earlier today, some
13 Tribunals document A is accepted by the member, another
14 Tribunal the same document is not accepted.

15 The failure of a motion for one
16 Tribunal does not necessarily mean it should never be
17 brought up again, one ruling is certainly not
18 definitive, but this has not been raised as a motion.

19 THE CHAIRPERSON: So, we know where
20 Mr. Fromm stands.

21 MR. WARMAN: But, again, you get into
22 rule 9. Neither of these motions were brought on
23 notice, neither of these motions were given any advance
24 notice, there is no explanation of any kind for why
25 that wasn't the case, why they are being brought up at

1 the last minute.

2 MR. KULBASHIAN: I would like to
3 argue that the complainant and the Commission's initial
4 motion to have Mr. Fromm excluded from the hearing
5 resulted in a similar matter, even though they knew
6 Mr. Fromm was going to be involved, this motion came in
7 at the last possible moment, we weren't even provided
8 notice.

9 So, on the same note we believe we
10 have the right to put forth any motions.

11 MR. CHAIRPERSON: What I have seen in
12 recent times is a lot of requests or motions that are
13 brought very late in the process and in one case I
14 spent nine days just sorting out preliminary issues for
15 a case that was supposed to start on a certain Monday
16 because documents had been provided at a later stage in
17 the process.

18 This is something I just observed and
19 I have to deal with that.

20 Mind you, I'll hear these motion and
21 I'll see if they should be granted or not, but we are
22 better off doing it now when we start the hearing with
23 witnesses, then a lot of things will have been sorted
24 out.

25 My other question will be how long,

1 if we start hearing you Mr. Warman and Ms Guille
2 because it seems as if you're going to be the two only
3 witnesses, how long will the examination-in-chief, how
4 long the cross-examination and the same, this is
5 something we will have to in a way address so that we
6 know where, but we might not be there yet because of
7 these two...

8 MR. WARMAN: Ms Snider I haven't had
9 a chance to discuss it, but it is our present best
10 guesstimate, if you will, that we would finish within
11 one day all of the evidence that is to be submitted.

12 THE CHAIRPERSON: In
13 examination-in-chief?

14 MR. WARMAN: Examination-in-chief,
15 that's barring -- and that is including our opening
16 submissions, and I wouldn't think our closing
17 submissions would go very long either.

18 So, you know, cross-examination is
19 out in our hands, but just to give you some sense,
20 approximately a day.

21 THE CHAIRPERSON: And if I was --
22 since we are on this topic, ask Mr. Kulbashian and
23 Mr. Fromm with the experience they have or how much
24 time they would expect to be in cross-examination with
25 respect to Mr. Warman?

1 MR. KULBASHIAN: I guess that would
2 depending on what he has to say I guess, but there
3 is...

4 THE CHAIRPERSON: I don't know if you
5 are in a position --

6 MR. KULBASHIAN: I'm not going to be
7 showing you anything.

8 THE CHAIRPERSON: I don't know if you
9 are in a position to provide me with some --

10 MR. KULBASHIAN: I'm not going to be
11 providing anything.

12 THE CHAIRPERSON: No, no, providing
13 me some information about how long you think you would
14 be in cross-examination.

15 MR. KULBASHIAN: The problem is
16 depending on the issues that arise, I had a
17 cross-examination that took three and a half days in my
18 case, just my cross-examination, so it could be less, I
19 mean, it shouldn't be more, but depending on the
20 situation because there are allegations, as you heard
21 before.

22 THE CHAIRPERSON: So, it could be
23 let's say two days for now.

24 MR. KULBASHIAN: That's good, well
25 you can start off with.

1 THE CHAIRPERSON: Then, Ms Guille
2 would take the witness stand.

3 MR. KULBASHIAN: Ms Guille, again, as
4 we say, that Ms Guille may take the witness stand
5 depending on the evidence that Mr. Warman brings in.

6 THE CHAIRPERSON: And if she was to,
7 how long do you expect her to be?

8 MR. KULBASHIAN: As I said, depending
9 on the evidence. Examination-in-chief should not take
10 more than a couple of hours or maybe three hours max,
11 depending on the issues that come up. Again, I don't
12 have very much experience so I can't really tell you.

13 THE CHAIRPERSON: Let's say half a
14 day and cross-examination would take...?

15 MS CEILIDH SNIDER: Likely an hour,
16 two hours tops.

17 THE CHAIRPERSON: Say half a day. So
18 that would be one day, three days, four days total plus
19 your final submissions. That would be, like, let's set
20 aside one day.

21 MS CEILIDH SNIDER: To facilitate the
22 process, we could provide written submissions instead
23 of oral submissions. That's a possibility.

24 THE CHAIRPERSON: But if we were to
25 have oral submissions it would take, let's say, one

1 day.

2 MS CEILIDH SNIDER: That's a good
3 guess.

4 THE CHAIRPERSON: So, we are back
5 to -- if the hearing started on Monday with the
6 different witnesses, we could have it in five days.

7 MS CEILIDH SNIDER: Mm-hmm.

8 THE CHAIRPERSON: So, we have to
9 maybe contemplate five days for a hearing of the
10 witness and submission by the parties. Is that a fair
11 assessment?

12 MS CEILIDH SNIDER: Yes.

13 MR. WARMAN: My personal sense is
14 that that's probably being extremely conservative and
15 not sort of over pessimistic, that's what I meant to
16 say, in terms I don't think personally it will take
17 anywhere near that long.

18 THE CHAIRPERSON: Okay. So, if we
19 were -- like, if tomorrow we dealt with some
20 submissions, we have Thursday and Friday, so that's two
21 days, we would have to maybe schedule three days in the
22 upcoming year to finish hearing the complaint and
23 hearing the submissions. Is that a fair assessment?

24 MS CEILIDH SNIDER: Yes. If we go as
25 long as you anticipate, it seems reasonable.

1 THE CHAIRPERSON: So, just keep these
2 number of days in mind and we never know what can
3 happen.

4 Mr. Fromm?

5 MR. FROMM: I think in your math you
6 didn't ask me.

7 THE CHAIRPERSON: Well, you...

8 MR. FROMM: I can't actually give you
9 an answer, but just on the basis of precedents in the
10 Warman v. Terry Tremayne case I cross-examined
11 Mr. Warman I believe for about an hour and a half, in
12 the Glenn Bahr case I'm a little fuzzy, but I think it
13 was about two hours, if that helps.

14 Certainly in terms of final
15 submissions, I would really offer oral submissions I
16 think, you know, face to face and you can see our body
17 language and assess our credibility and sincerity and,
18 I think certainly from my point of view it's really
19 important to have final submissions.

20 THE CHAIRPERSON: So, we are talking
21 still even if we add a few hours here and there of
22 about five days.

23 Okay. So, Mr. Kulbashian with
24 respect to your motion.

25 MR. KULBASHIAN: I'm actually in the

1 process of printing something out before the motion.

2 Primarily, I guess I should just
3 start off...

4 THE CHAIRPERSON: We could go for
5 half an hour.

6 MS CEILIDH SNIDER: I just have one
7 quick -- you were asking if everyone was clear and I
8 didn't get a chance to respond in terms of, I'm
9 actually not clear about the motion that Mr. Fromm
10 intends to bring.

11 My notes say that you wish to bring a
12 motion with respect to the activities of Mr. Warman
13 that have "hopelessly poisoned the environment of the
14 Tribunal", those were your words.

15 Is your motion contending that this
16 Tribunal is biased somehow?

17 MR. FROMM: No, no, no, I'm not --

18 MS CEILIDH SNIDER: I'm unclear about
19 how this Tribunal can be poisoned.

20 --- Reporter appeals

21 MR. FROMM: Perhaps I should have
22 said these proceedings, not this Tribunal, I'm not
23 suggesting that the Member is biased.

24 MS CEILIDH SNIDER: Okay. I'm sure
25 it will become clear when you bring your motion but,

1 thank you.

2 THE CHAIRPERSON: Mr. Kulbashian?

3 MR. KULBASHIAN: Okay. Well, if you
4 could just please indulge me for a minute while I start
5 printing out things I will just run background while I
6 start out.

7 I want to know how much time do I
8 have?

9 THE CHAIRPERSON: Well, we'll go
10 until a quarter to five.

11 MR. KULBASHIAN: Okay, that's good.

12 I will just start printing out these
13 documents.

14 Basically I would like to argue that
15 I think over time the Tribunal's view of how to treat
16 evidence, how to treat articles has become more lax.

17 In earlier cases it began with the
18 Tribunal requiring expert evidence or in some form at
19 least having expert evidence in order to determine
20 whether or not articles are especially hateful or
21 contrary to section 13, and over time the Tribunal
22 started allowing the Chairperson to make that
23 determination.

24 The problem is, my position is the
25 Chairperson, I guess the Chairperson's role is to

1 gather evidence, interpret it, provide it weight and
2 provide a ruling in the very end.

3 I don't believe that the Chairperson
4 is either trained, and this is no disrespect to you,
5 Mr. Chair, I don't believe the Chairperson is either
6 trained to interpret the effect of documents or
7 interpret the meaning of documents, unless the Chair --
8 that would basically involve the Chairperson giving his
9 own evidence while coming to a ruling.

10 That is my submission.

11 Also, there's many documents that are
12 listed here that are alleged to be hate.

13 If I could be refreshed by the way on
14 what the maximum penalty is for the violation of
15 section 13 of the Act. Would you happen to know what
16 the maximum penalty is for violation of section 13 of
17 the Act?

18 THE CHAIRPERSON: I think it's
19 \$10,000.

20 MR. KULBASHIAN: \$10,000. Well, the
21 reason I need that number because just for, well,
22 basically the fines are issued on basically a level of
23 least to worst offender, that type of calculation. So,
24 if somebody was blatantly racist, blatantly hateful on
25 line, did not only I guess discriminate against

1 individuals but threatened individuals based on things,
2 maybe that would be your top of line which would be
3 \$10,000 and individuals who may be happened to exchange
4 a couple of words with somebody in a racist fashion on
5 line would probably get maybe \$1,000, \$5,000 fine.

6 The problem is for the Tribunal to
7 effectively be able to actually issue an order for
8 payment of fines and/or restitution they will need to
9 be able to properly I guess gauge the effects of
10 certain documents and gauge the actual, I guess, impact
11 of messages, and I don't believe that the Chair is in a
12 position to do that because that would involve actually
13 the Chair giving his own evidence in the ruling.

14 And if I could actually just add more
15 paper to my printer, I'm going to be handing out the
16 ruling that I'm referring to, it's only three pages.

17 A simple example, we sort of
18 comparing the ruling for Warman v. Kulbashian, my case,
19 the Tribunal Chair Mr. Hadjis ruled that the Tribunal
20 required, if I could use word, an expert in order to
21 interpret some of the evidence because in itself it
22 wouldn't come to the same conclusion as an expert
23 would.

24 The difference between experts and
25 actual regular witness, the Chair is an expert is

1 trained in a specific field, is trained to analyze
2 things in a very objective manner, is trained to
3 analyze the specific field that they are testifying on
4 in a very objective manner, and individuals and other
5 parties to the hearing usually get affected by
6 statements and, therefore, a statement that an expert
7 might state, it's actually not that bad, people use it
8 in a joking manner, people use it in a connotation,
9 there will be no evidence to that effect as well
10 whether or not that statement was used -- it could be
11 used in joking manner, it could be used in a, I guess,
12 less than blatant violation of section 13 type manner
13 and ultimately it's for the experts to determine that
14 based on the context of the articles or the context of
15 the statements and the context of the website that the
16 articles are found on.

17 So, basically -- one second, if I
18 could start handing copies of the ruling here.

19 It seems I printed one copy short,
20 I'm just going to quickly print that out.

21 MS CEILIDH SNIDER: Mr. Kulbashian,
22 it would be helpful for me to understand where you're
23 going, if I may, just to understand that -- are you
24 saying that it's your contention that it's the expert
25 that must decide whether or not a message is hateful or

1 contemptuous?

2 MR. KULBASHIAN: No, what I'm saying
3 is that this expert must decide whether some of the
4 messages are hateful or contemptuous because basically
5 it's -- without the expert decision there could have
6 been a hundred articles, only 40 of which were, could
7 be considered a violation of section 13 of the Act, or
8 maybe even 20 of them and depending on the severity of
9 that, a fine will be issued to pay to the Receiver
10 General, therefore, the Tribunal will not be able to
11 properly or effectively, I guess, calibrate the -- I'm
12 trying to look for the right word here, it's kind of
13 been long day for me -- the Tribunal will not
14 effectively be able to determine the fines that have to
15 be paid, as well as in some cases consider some
16 messages to be hateful when experts would say that they
17 are not, et cetera.

18 Now, the problem that I have here is
19 the only person that is going to be testifying to these
20 articles and testifying where they came from is
21 Mr. Warman and his testimony would only be limited to
22 where the articles came from and what the articles are
23 and maybe reading some passage from the articles,
24 however, he's not in a position to say that, whether or
25 not he feels they are hateful, whether or not it's his

1 opinion they are hateful or a violating section 13
2 because that would be testifying outside his realm of
3 knowledge and after all the evidence is submitted the
4 Tribunal Chair would have to have some point, because
5 just reading articles into the docket effectively the
6 articles could -- honestly I'm just a little bit out of
7 it here, if you could give me a second just to collect
8 my thoughts -- like, basically once the evidence is put
9 forth, it's like basically saying all Mr. Warman's,
10 what he'll be able to say is this a ball, he won't be
11 able to say this a ball that broke my window.

12 Somebody who actually is in a
13 position to testify to whether or not there even is
14 effect of the articles should be the one that does it,
15 and that's an expert witness.

16 So, it doesn't matter how many
17 documents Mr. Warman puts forward and states I found
18 this document on this date, on this website, I found it
19 at that date on this URL, all he'd be able to say is
20 effectively just that, he would not be able to put any
21 evidence into the, I guess, the hearing saying that I
22 believe this is hateful because, or this article is
23 hateful, because that would not be his specialty, that
24 would not be his experience he would not have been
25 qualified as an expert witness.

1 And if we can read, I'm sorry the
2 things are just three pages here, loose pages, they're
3 in the right order though.

4 Okay. It's line 24 on page 2307, it
5 says:

6 "In my opinion..."

7 Oh, actually let's read up -- oh, I
8 would like to actually have this document identified,
9 sorry, if I could.

10 It came -- okay, sorry, it's kind of
11 been a long day for me.

12 This document is actually a
13 transcript from the hearing of Warman v. Kulbashian,
14 the exact date for that hearing was November 11th,
15 2004.

16 THE CHAIRPERSON: The date is...?

17 MR. KULBASHIAN: November 11th, 2004.

18 And starting from line 16 on 2307
19 says:

20 "The respondent, Mr. Kulbashian,
21 points out that Dr. Henry's
22 expertise is grounded more in
23 the areas of race relations
24 involving people of colour, or
25 to use the term more commonly

1 found in federal statutes,
2 visible minorities.

3 Mr. Kulbashian contends that
4 her expertise is more limited
5 with respect to some areas, such
6 as Arab Israeli relations.

7 In my opinion, these are
8 certainly arguments that can be
9 raised by the respondents in
10 dealing with the value to be
11 assigned to this witness'
12 testimony. These issues do not
13 render her evidence irrelevant
14 to the complaint, especially
15 when one considers that the
16 complaint raises and refers to
17 statements and declarations that
18 relate to groups other than Jews
19 and Arabs and which include
20 people of colour.

21 Is the evidence necessary.

22 The quick review of the
23 report done before the break by
24 the Tribunal in the presence of
25 all, shows that, to some extent,

1 Dr. Henry appears to be
2 answering the ultimate question
3 that is before the Tribunal."

4 As in was hate broadcast on the
5 Internet?

6 "However, she is also conducting
7 an analysis of the declarations
8 in question to explain the
9 existent or not of stereotypical
10 or racial components in the
11 language used and how much
12 language may expose individuals
13 from these groups to hatred or
14 contempt.

15 Indeed, the discriminatory
16 or rational implication of some
17 of the terms used on these
18 websites may fall outside the
19 experience or knowledge of this
20 Tribunal. As such, this opinion
21 may assist the Tribunal in
22 reaching its own conclusion with
23 respect to the complaint filed
24 pursuant to section 13 of the
25 Canadian Human Rights Act, and I

1 underscore the word its own
2 conclusion.

3 I will, therefore, allow Dr.
4 Frances Henry to testify as an
5 expert in racism and
6 propaganda."

7 So, the idea is, to some effect,
8 Mr. Hadjis in that decision stated that he -- the
9 Tribunal, to some extent, needs the help of an expert
10 witness to make certain determination of articles.

11 The problem with not having an expert
12 witness means that the Tribunal has to like relate
13 itself --

14 MR. WARMAN: Mr. Chair --

15 MR. KULBASHIAN: If you could wait
16 until I'm finished, please.

17 MR. WARMAN: I'm sorry, I hesitate to
18 try and short cut the process, but I'm just having a
19 really difficult time understanding how this isn't
20 argument as to the weight that should be given certain
21 documents that will ultimately and haven't even yet
22 been tendered as evidence.

23 I still don't understand how this is
24 a motion as opposed to argument or submissions.

25 THE CHAIRPERSON: Well, what I

1 understand the point that Mr. Kulbashian is making is
2 that the Tribunal needs the help of an expert witness
3 in order to make a determination whether a document or
4 a message can be labelled as a hate message.

5 And I don't know if he -- because
6 from the start, I thought that the motion was to have
7 documents excluded unless expert evidence --

8 MR. KULBASHIAN: That is kind of
9 where I'm going. This is kind of, like, the intro to
10 my submission.

11 The problem is I can't really just
12 jump right into it, so I don't lose my train of
13 thought.

14 THE CHAIRPERSON: But then this
15 becomes some kind of preliminary decision that the
16 Tribunal would have to make with respect to documents
17 that the Tribunal had not seen yet and have not been
18 tendered in evidence, because you're saying that some
19 might be considered by just looking at them as hate
20 messages, others it might be a little bit more
21 difficult for someone to say that this constitutes hate
22 messages, and in order to make that determination you
23 would need expert evidence.

24 Now , I'm not sure if at this point
25 in time I can, without having seen the documents, say

1 that these documents should be excluded, that is the
2 first thing.

3 Secondly, you are raising the point
4 that I can't determine myself in some -- or may not be
5 able to determine in some instances if a message
6 constitutes a hate message without having proper expert
7 testimony.

8 MR. KULBASHIAN: Yes.

9 THE CHAIRPERSON: This is what I
10 gather.

11 MR. KULBASHIAN: That is very much
12 what I'm getting at. And the reason why I bring that
13 up, see, of the fine that is going to be issued,
14 assuming there is a finding of liability, would be
15 based on the severity of the violation as well as the
16 actual effect or number of times it was broadcast by
17 the actual witness.

18 The expert witness would be able to,
19 I guess, testify not on the number of times, like the
20 number of articles that actually have that effect and I
21 guess the spectrum of violations in effect, like, how
22 many different types of violations, why the specific
23 thing is a violation.

24 For example, an expert witness can
25 testify, that, oh, this is this type of racism, this is

1 this type of racism, et cetera, or this seems to me to
2 be a joke.

3 However, since the Commission and
4 complainant, I say a certain paragraph in the document,
5 or I say only put into evidence only certain paragraphs
6 in a document, then the context may have changed or
7 even the general context, for example, the complainant
8 could ultimately say that crime statistics related to
9 blacks could be considered racism, so an expert would
10 say that the way the statistic is portrayed should not
11 be considered hate, et cetera, et cetera, and that's
12 where the lines get blurred.

13 That's when the Tribunal is not in a
14 position to actually make a fair judgment as to whether
15 or not specific documents constitute hate or not.

16 So, therefore, what I'm asking
17 ultimately is that if they are going to introduce
18 documents and try to state that certain documents are
19 hate, then I understand their concerns and your
20 concern as well specifically because you haven't seen
21 documents, and I'm not sure if this would be probably
22 better filed, maybe it would be better if I start this
23 motion when documents actually start getting introduced
24 during the testimony of Mr. Warman or --

25 THE CHAIRPERSON: Well, you have

1 raised a number of issues. Another issue that you have
2 raised is that when Mr. Warman starts to testify the
3 only thing you can do, according to what you have said
4 is, here's a document I found on the website.

5 MR. KULBASHIAN: Yeah.

6 THE CHAIRPERSON: And you're saying
7 that he cannot in fact comment on the document because
8 according to you he doesn't have --

9 MR. KULBASHIAN: He's not tendered as
10 an expert.

11 THE CHAIRPERSON: It would be his own
12 personal views.

13 MR. KULBASHIAN: That's right.

14 THE CHAIRPERSON: And the only thing
15 the Tribunal would have would be Mr. Warman's take on
16 the documents. This is what I hear you --

17 MR. KULBASHIAN: That's right and the
18 reason why this is difficult, I understand that if
19 Mr. Warman was actually a victim in this case that
20 would be different, then he can testify as to the
21 effect of specific statements on himself.

22 If we could turn to the statement of
23 particulars that the Commission complainant submitted.

24 MS CEILIDH SNIDER: The actual
25 statement of particulars of the Commission. That is

1 the complaint form of Mr. Warman.

2 The joint statement of particulars of
3 the Commission and complainant are not in the book of
4 documents.

5 MR. KULBASHIAN: Not in the book of
6 documents. In that case I'll refer to, is it on
7 record. So, would that be the same list of violations
8 that would be in the complaint or have there been any
9 added here?

10 MS CEILIDH SNIDER: Just to assist,
11 the Commission filed the joint statement of particulars
12 and it's in the file of the Tribunal.

13 THE CHAIRPERSON: January 6, 2006.

14 MS CEILIDH SNIDER: Yes.

15 MR. KULBASHIAN: I'm sorry I didn't
16 realize that's specific how the process went, so I'm
17 just going to locate, see if I can.

18 THE CHAIRPERSON: But the only thing
19 I want to raise now is that --

20 MR. KULBASHIAN: In that case --

21 THE CHAIRPERSON: -- we started off
22 with a motion to exclude documents if expert evidence
23 is not tendered.

24 MR. KULBASHIAN: That's right.

25 THE CHAIRPERSON: That's the basis of

1 your motion.

2 MR. KULBASHIAN: That's right.

3 THE CHAIRPERSON: Now, Mr. Warman
4 said, well, if that is the case, after hearing some of
5 your arguments this is, he says this is something to
6 argue at the end of the day, that's one thing.

7 The other thing you said earlier on
8 is if Mr. Warman, you know, testifies and he tenders in
9 evidence certain documents, the only thing he can do is
10 put the document in and he cannot comment on that.

11 A third thing I think I hear you say
12 is if certain documents are put in evidence or someone
13 wants to put them in evidence, you will maybe raise the
14 issue that this is a type of document upon which the
15 Tribunal cannot in a way decide without expert
16 evidence.

17 MR. KULBASHIAN: That's right.

18 THE CHAIRPERSON: This is what I am
19 hearing right now.

20 MR. KULBASHIAN: That's what I'm
21 saying.

22 THE CHAIRPERSON: I think that these
23 are issues that if they are not brought up at this
24 point in time will eventually be brought up later.

25 And if we have to do it on a document

1 by document basis, so, given the fact that the motion
2 has evolved in a way --

3 MR. KULBASHIAN: Well, it really
4 hasn't evolved as much as when I initially provided
5 notice was when I first had the intent to do it, so it
6 would be, like, as early as possible and then I started
7 working on the semantics and the strategy, so that we
8 would avoid coming here Monday and saying now I have a
9 motion, you know what I mean.

10 So, what I did in brief explanation
11 earlier on, I didn't expect to be as detailed as the
12 question answered appeared.

13 THE CHAIRPERSON: But your motion
14 raises other questions which are maybe part of -- this
15 is more like a case management conference, but maybe
16 it's the best way to deal with these issues, unless the
17 Commission and Mr. Warman says, well, we'll leave it
18 and we'll deal with these issues when they come up.

19 But I think these are important
20 questions that are now being raised and that might
21 impact on the way the hearing will proceed and the
22 examination-in-chief and cross-examination.

23 So, maybe the best thing would be for
24 us to stop now, so that you can get back into your
25 presentation of your motion and joint statement of

1 particulars of the Commission and Mr. Warman tomorrow,
2 so you can have a rest.

3 MR. KULBASHIAN: I have it right
4 here, I guess, I can use --

5 THE CHAIRPERSON: We will resume
6 tomorrow, and maybe Mr. Warman and Ms Snider, could
7 sleep on, you know, these question and see if tomorrow
8 they have come up with some idea as to how we should
9 deal with these issues.

10 I know that no experts have been
11 scheduled, but now the respondents are raising an
12 important issue and I would like to hear from you as to
13 how we would deal with these issues, if they come up in
14 the course of the examination of Mr. Warman.

15 MR. KULBASHIAN: This is -- if I
16 might, the reason why -- this is my major concern here
17 again, this is actually my intent is to expedite it
18 more than delay it.

19 If Mr. Warman, let's say, if you look
20 at tab C I believe where there is all these little
21 quotes what they allege violate the Act, if Mr. Warman
22 just reads the section that are there from the articles
23 that are being presented, then I have a right to make
24 him read the entire article so that you as the Tribunal
25 Chair gauge the context of the information coming in

1 and I won't elab -- on the same thing, like saying,
2 well, okay, you just read that section and the Tribunal
3 read all of it, because one thing I have learned is
4 that sections which are not read to the Tribunal have a
5 tendency to be ignored as well.

6 THE CHAIRPERSON: But this is
7 something that would come up in the course of the
8 cross-examination.

9 MR. KULBASHIAN: I understand.

10 THE CHAIRPERSON: My concern right
11 now, and I said it --

12 MR. KULBASHIAN: It's with context
13 and everything, it's --

14 THE CHAIRPERSON: It's more than
15 context, it's the fact that you would object to
16 Mr. Warman qualifying any message as a hate message.

17 MR. KULBASHIAN: Of course.

18 THE CHAIRPERSON: And, secondly, you
19 would, whenever a document is tendered in evidence, you
20 would say, well, this document needs to be -- you need
21 expert evidence to determine if it's a hate message or
22 not.

23 MR. KULBASHIAN: Or the severity of
24 said message.

25 THE CHAIRPERSON: So, that raises the

1 question. If that is the case, what are we going to
2 do? Will we just, you know, leave it as is so that at
3 the end of the day without any expert evidence or what
4 not I would have to make a determination whether I have
5 the ability to say that this is a hate message and this
6 is not, some might be obvious in some instances but it
7 might be less in other instances.

8 So, I would like you to think about
9 that so that, you know, we won't have any surprises
10 when we do start hearing Mr. Warman and Ms Guille.

11 So, we will adjourn until tomorrow
12 morning 9:30.

13 MR. KULBASHIAN: Thank you, sir.

14 THE CHAIRPERSON: Hopefully we will
15 be done by tomorrow afternoon all of these motions so
16 that we could start on Thursday morning hearing
17 Mr. Warman, that's the game plan.

18 And if you have any concern or any
19 issue that you want to address, feel free to do so
20 tomorrow morning or at any time.

21 REGISTRY OFFICER: Order, please.

22 THE CHAIRPERSON: Thank you.

23 Have a nice evening, everyone.

24 --- Whereupon the hearing adjourned at 4:48 p.m.

25 to be resumed on Wednesday, November 22, 2006

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at 9:30 a.m.

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.