

**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<sup>o</sup> 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 misled 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."

StenoTran

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.