

**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

CONDENSED TEXT WITH INDEX

BEFORE/DEVANT:

PIERRE DESCHAMPS

**CHAIRPERSON/
PRÉSIDENT**

LINDA BARBER

**REGISTRY OFFICER/
L'AGENTE DU GREFFE**

FILE NO./N^o CAUSE:

T1089/7005 & T1090/7105

VOLUME:

5

LOCATION/ENDROIT:

TORONTO, ONTARIO

DATE:

2006/11/24

PAGES:

745 - 840

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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 FRIDAY, NOVEMBER 24, 2006,
AT 9:40 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 resuming in public on Friday, November 24,
3 2006 at 9:40 a.m.

4 THE CHAIRPERSON: So, for this part
5 we are back on.

6 MS CEILIDH SNIDER: On behalf of the
7 Commission --

8 MR. FROMM: Point. Mr. Chairman,
9 what is the distinction of being out of camera or on
10 the record? I know technically somebody could walk in
11 and sit and hear, but that's obviously not a problem
12 right now, but what is the implication though of being
13 on the record rather than in-camera.

14 THE CHAIRPERSON: Well, in-camera the
15 public is excluded and all the evidence that is
16 tendered during an in-camera session will not be part
17 of the public record, it will not be accessible to the
18 public it is only accessible to the parties who are
19 present.

20 So, here again, we will have to put
21 these proceedings, ensure the confidentiality of what
22 was said and what was said during the course of this
23 hearing cannot, in fact, be reported outside this
24 hearing and this is especially true with respect to the
25 type of motion that was brought, and if the parties

1 were, once the hearing on this specific motion is
2 completed, would go out and start talking to the media
3 or talking about what went on, and the very sensitive
4 information that was provided in this in-camera
5 session, this could have unknown consequences if you
6 wish.

7 So, it is for the protection of the
8 parties, all those that are involved, this is why we
9 have this special procedure.

10 MR. FROMM: Okay.

11 THE CHAIRPERSON: So, is it understood
12 by everyone that this is -- all that was said yesterday
13 and today in this in-camera session will be part of the
14 record but would be put in a sealed envelope and the
15 parties, all those present, are forbidden from talking
16 about what happened and discuss what happened outside
17 this hearing room.

18 MS CEILIDH SNIDER: Thank you.

19 MR. KULBASHIAN: In that case I would
20 like to object to going out of camera since the motion
21 is still ongoing.

22 THE CHAIRPERSON: But I don't know
23 what Ms Snider --

24 MS CEILIDH SNIDER: I don't intend to
25 refer to evidence.

1 If I may --

2 THE CHAIRPERSON: Yes. And you want
3 to address the Tribunal with respect to this...?

4 MS CEILIDH SNIDER: The process.

5 THE CHAIRPERSON: The process.

6 MS CEILIDH SNIDER: Yes. On behalf
7 of the Commission we are quite concerned about the way
8 that the way that this particular issue is being dealt
9 with.

10 We very much appreciate the need to
11 deal with this particular issue in-camera, however,
12 what is sought by the respondents is the exclusion of
13 members of the public from what ought to be a public
14 process.

15 This is not a request to exclude the
16 members of the public writ large, but three
17 particularized members of the public who, until the
18 Chair requested their departure, were present in the
19 room, were available.

20 It would be the submission of the
21 Commission that the proper way of dealing with this
22 situation would be to afford those individuals that
23 were sought to be excluded an opportunity in-camera to
24 respond to the allegations that we are hearing here.

25 The Tribunal has taken a rather

1 extraordinary step of excluding those individuals
2 without notice and without an opportunity to respond
3 and, on that basis, the Commission has some very
4 serious concerns.

5 I am fully aware of the paramount
6 concern of security. There are, as noted earlier,
7 police officers present, there are security officers
8 present, there are body guards present.

9 Perhaps a method of dealing with this
10 to address the concerns may have been to (a) afford
11 notice and (b) an opportunity to be heard and to
12 perhaps parse Mr. Fromm's testimony on each of them
13 individually and have each individually in the room
14 when testimony pertaining to them was being presented
15 or simply to have the three in the room and the rest of
16 the public excluded.

17 I appreciate the Tribunal is doing
18 its very best under difficult circumstances, but these
19 are our concerns and I believe that Mr. Warman may also
20 have something to say on this point.

21 Thank you.

22 THE CHAIRPERSON: Mr. Warman.

23 MR. WARMAN: Mr. Chair, I would
24 simply begin by wholly adopting the submissions of the
25 Commission.

1 I share a great deal of concern and a
2 great deal of reservations about the process on which
3 the Tribunal has embarked in terms of how it proposes
4 to consider the exclusion of individuals -- any
5 individual for that matter from the hearing room
6 through the nature of an ex-parti proceeding without
7 any input or any notice to those individuals or ability
8 to give input.

9 I think that -- and if I may, since
10 sort of not quite the dawning of time, but since at
11 least 1150 the Jurist Paucapalea has linked the concept
12 of sort of judicial order to the ability for the other
13 side to be heard and linked it directly to Adam and
14 Eve.

15 In Genesis, Chapter 3, verses 9 to 12
16 God gives Adam the ability to defend himself before
17 being cast out of Paradise.

18 MR. KULBASHIAN: I'm sorry --

19 MR. WARMAN: This is clearly not
20 Paradise, but at the same time I don't think you can
21 simply abridge the rights of a party whose interests
22 and rights are clearly being affected to not be heard
23 and not given the opportunity to present what they feel
24 transpired.

25 THE CHAIRPERSON: But, Mr. Warman,

1 the members of the public are not parties to this
2 hearing.

3 MR. WARMAN: No, they are not.

4 THE CHAIRPERSON: They are not.

5 MR. WARMAN: What is proposed is to
6 affect the rights of individuals who, as members of the
7 public, and in the general order of public courts and
8 courts being open in this country, then I think it
9 behooves the Tribunal not to take steps that will deny
10 those persons those rights without giving them some
11 opportunity of notice and the right to be heard.

12 And if I may bring it specifically to
13 this process, Mr. Kulbashian was not at the time that
14 motion was raised exclude him as a representative of
15 the party, he was simply a member of the public who had
16 not been as yet granted leave by the Tribunal to act as
17 a representative nor was Mr. Fromm.

18 I specifically went through not just
19 viva voce evidence but findings of this very Tribunal
20 that Mr. Kulbashian had threatened, had given out my
21 home address and all in the context of doing so on a
22 prohibited ground of discrimination, which speaks to
23 the very meaning and telus of the Canadian Human Rights
24 Act and yet he was permitted to be here, and that was
25 for a much lesser remedy than was being sought here, it

1 was not to exclude him entirely from the hearing which
2 would be, I would suggest, even though there were clear
3 security concerns that were put forward by me, I would
4 suggest to have people completely excluded from the
5 hearing room without giving them any opportunity to
6 respond to the allegations that are being made against
7 them comes perilously close to abridging some fairly
8 fundamental rights.

9 THE CHAIRPERSON: Fundamental rights,
10 which rights, under the Charter?

11 MR. WARMAN: The entire principle of
12 open court, freedom of assembly, freedom of expression,
13 but most fundamentally, just the concept of open courts
14 and audio ultra partum, the ability to be heard, for
15 the other side to be heard.

16 THE CHAIRPERSON: But, Mr. Warman, I
17 think when you say audio ultra partum, the other side,
18 I think we have to focus on --

19 MR. WARMAN: I wish we were.

20 THE CHAIRPERSON: -- this hearing,
21 and when you say, I don't know if we should engage in
22 this discussion now, but I am really prepared, I am
23 prepared to do so if that is -- I will hear your
24 submission and then I will make my views known because
25 there are some objection, you find that the process is

1 objectionable and you're representing in fact views
2 with respect to those who have been left out of the --

3 MR. WARMAN: But that's --

4 MS CEILIDH SNIDER: Sorry, just to
5 make myself very clear, on behalf of the Commission I
6 am not representing the views of those individuals who
7 have been excluded. I'm speaking to the Commission's
8 view on the process with respect to the public writ
9 large and the process that is unfolding in respect of
10 the public.

11 I have no particular interest in
12 those individuals that are the subject matter of this
13 proceeding whether they be on one side or the other.
14 The Commission's concerns are solely related to the
15 issue of this process in terms of the public's access
16 to these hearings, which is supposed to provide a
17 number of functions, not the least of which is
18 educative.

19 THE CHAIRPERSON: But the motion here
20 pertains to two individuals.

21 MS CEILIDH SNIDER: Yes, I
22 appreciate that, but I don't --

23 THE CHAIRPERSON: Two individuals.

24 MS CEILIDH SNIDER: I don't want the
25 Commission's concerns about this particular process to

1 be viewed as in the context of a concern pertaining to
2 a particular concern about the exclusion of these
3 particular individuals, that's not the point.

4 THE CHAIRPERSON: But the motion
5 deals with the exclusion of two individuals, not of --

6 MS CEILIDH SNIDER: No, I realize
7 that, I realize that.

8 THE CHAIRPERSON: It seems that Mr.
9 Warman has maybe different views from those of the
10 Commission.

11 MR. WARMAN: No. In fact, I want to
12 make it absolutely clear that I do not, I am simply
13 speaking to the process, that I am not acting in any
14 capacity as their representative or counsel or anything
15 like that.

16 I'm not attempting to make
17 submissions on behalf of any individual, I'm simply
18 stating that these are my profound concerns about the
19 process which has been undertaken and these people have
20 no ability under this process to make representation or
21 to have anyone here to represent them.

22 So, it's entirely a process based
23 question and a concern that is being raised.

24 THE CHAIRPERSON: That I understand,
25 but are you saying that these individuals should be

1 called as witnesses? Should they be compelled to
2 testify? Should they have legal representation in the
3 process?

4 MR. WARMAN: They should have notice
5 of the motion to affect their rights to exclude them
6 from participating.

7 MS CEILIDH SNIDER: As members of the
8 public.

9 MR. WARMAN: Then it's up to them to
10 make a decision as to whether they wish to participate
11 or not. They may choose not to, they may choose to,
12 they may choose to retain counsel to represent them.

13 But if you are making a fundamental
14 statement to exclude certain individuals that really
15 makes a very powerful -- a judicial body or a
16 quasi-judicial body makes a decision like that, it's
17 sending a fairly powerful message about those
18 individuals and why they were considered, and
19 especially since the evidence will be sealed as to the
20 character or the nature of those individuals without
21 ever having had a chance to defend themselves.

22 And that is not said in any way as a
23 defence of those individuals or any actions in
24 particular, it is simply the process.

25 THE CHAIRPERSON: The way that this

1 motion unfolded was there was a motion made yesterday
2 afternoon without notice to the Tribunal or the
3 parties.

4 MR. WARMAN: Yes.

5 THE CHAIRPERSON: And it had to do
6 with Mr. Fromm and certain events that had taken place,
7 if I recollect correctly.

8 MS CEILIDH SNIDER: Yes, that's true.
9 And, Mr. Deschamps, the Tribunal undertook to have the
10 room re-organized, we came back in, everyone was back
11 in the room and then Mr. Kulbashian raised a second
12 motion which was essentially to sustain Mr. Fromm's
13 initial motion which was, you know, unclear whether or
14 not that motion was brought on behalf of the CHA, Ms
15 Guille, that was never specified or himself personally.

16 That aside, the individuals of
17 concern were in the room when the Tribunal undertook
18 the decision to ask people to leave and to have this
19 session be in-camera and did not then afford them an
20 opportunity, even though they were present to speak to
21 the issue. That is the way in which notice could have
22 been given and an opportunity afforded them to make
23 representations with respect to the issues that were
24 coming before the Tribunal.

25 I understand that this was very much

1 on the fly and very peculiar.

2 THE CHAIRPERSON: But, you know, when
3 the motion was made, the motion -- the way I understood
4 the motion, it had to do not with Ms Guille's concern
5 about her safety, not about Mr. Kulbashian's concern
6 about his safety, but about Mr. Fromm who is an agent
7 of --

8 MS CEILIDH SNIDER: Yes.

9 THE CHAIRPERSON: -- the Canadian
10 Heritage Alliance, so the focus is on Mr. Fromm as an
11 agent.

12 MS CEILIDH SNIDER: Yes. And I said,
13 that aside, the individuals were -- and I know you are
14 getting to that --

15 THE CHAIRPERSON: So, I think the
16 focus is not on Mr. Kulbashian nor on Ms Guille, but
17 it's on Mr. Fromm --

18 MS CEILIDH SNIDER: Mm-hmm.

19 THE CHAIRPERSON: -- expressing
20 concern about his safety --

21 MS CEILIDH SNIDER: Yes.

22 THE CHAIRPERSON: -- with respect to
23 certain individuals in the room whose names were not
24 known at the time by the Tribunal and the question was
25 for me, do I have the power to ask people in the room

1 who are you, why are you here and those sorts of
2 questions.

3 People are not obliged to respond to
4 these questions and they would have -- I don't know
5 what would have happened then, but my main concern is
6 that if a party raises an issue with respect to that
7 person's safety and knowing that things will be said
8 that if these things are said in open court might have
9 a detrimental effect on the whole process and sometimes
10 you don't know what can happen, you know, erring more
11 on the side of caution --

12 MS CEILIDH SNIDER: Mm-hmm.

13 THE CHAIRPERSON: -- that is why I
14 said that this issue should be dealt with in-camera.

15 MS CEILIDH SNIDER: We have no
16 problem with it being dealt with in-camera.

17 THE CHAIRPERSON: So, that is the
18 issue. There are things that I could add, but...

19 MS CEILIDH SNIDER: No. But to be
20 quite clear, the concern is not at all about the
21 process taking place in-camera, the process is with
22 respect to the ex-parti nature of the process. And I
23 laid out --

24 THE CHAIRPERSON: I understand your
25 concern, but I have also my own --

1 MS CEILIDH SNIDER: Yes.

2 THE CHAIRPERSON: -- concern as
3 someone proceeding a hearing with respect to a
4 complaint where, as I said, it is quite unusual to have
5 policemen in the room and a security guard and other
6 people here to ensure the security or safety of those
7 present.

8 MS CEILIDH SNIDER: Absolutely.

9 THE CHAIRPERSON: And, as you said,
10 when the Commission heard that threats had been made, I
11 think the Commission was right --

12 MS CEILIDH SNIDER: Mm-hmm.

13 THE CHAIRPERSON: -- in taking
14 certain steps in order to ensure, even though you don't
15 know how serious these threats may be, to ensure the
16 protection of its personnel and the same could be said
17 with respect to Mr. Warman and the same can be said
18 with respect to the respondents.

19 MS CEILIDH SNIDER: Absolutely.

20 THE CHAIRPERSON: And those who act
21 as agents of the respondent.

22 MS CEILIDH SNIDER: Mm-hmm,
23 completely.

24 THE CHAIRPERSON: Now, the reason why
25 we have an in-camera session without the public being

1 present, and I say the public being present because
2 there were other people here that were not part of, or
3 were not the individuals that were mentioned, and these
4 people were excluded from the --

5 MS CEILIDH SNIDER: But everyone was
6 excluded. I mean, Mr. Fromm wasn't expressing a
7 concern about members of a group on an amorphous level
8 he was very concerned about specific individuals that
9 were known to him, could have pointed -- I mean, he
10 pointed them out and, as I said before, it would have
11 been quite possible to have afforded those particular
12 individuals an opportunity in-camera without the rest
13 of the public here to address the concerns.

14 At this point I think we have said
15 all that need be said.

16 THE CHAIRPERSON: But that would have
17 meant that they would have been asked to take the stand
18 without notice, without legal representation and be
19 examined and cross-examined.

20 MS CEILIDH SNIDER: They could have
21 been afforded an opportunity. I mean, obviously things
22 are unfolding on the fly, there are ways of dealing
23 with those.

24 THE CHAIRPERSON: Yes, but what are
25 you suggesting now, that these people should be

1 recalled, should be present and should be examined and
2 cross-examined by -- examined by yourself, examined by
3 Mr. Warman and cross-examined by Mr. Fromm and
4 cross-examined by Mr. Kulbashian, would that be the
5 best way to go about and...

6 MS CEILIDH SNIDER: I think that
7 perhaps simply affording them an opportunity and if
8 that is what they would choose -- if that is the course
9 that they would choose to undertake.

10 I don't think that there is -- I
11 think that there is certainly precedent for this kind
12 of a proceeding and this is far outside of my domain of
13 experience, but I believe that in the context of
14 criminal courts there are precedents for a process by
15 which individuals, a decision by the court is made
16 whether to exclude certain individuals or not.

17 I would note that another option for
18 the Tribunal is that there are, as we've noted a number
19 of times now, a great number of security people here.
20 If there were anything untoward that occurred and there
21 wasn't at the time when the motion was brought forward,
22 Member Deschamps could certainly have those people
23 ejected forthwith.

24 That would be another option for you.
25 That would have been another option for you, and even

1 if they were to testify or in fact option that is
2 available if they were, in any way, not conducting
3 themselves in an appropriate manner.

4 HE CHAIRPERSON: But, Ms Snider, if
5 we want to be pragmatic about the whole thing, is if
6 you are saying that these individuals, and they are not
7 here and I don't know if they are going to come back or
8 not, I don't know their name, I don't know their
9 addresses, I don't have their phone number, I don't
10 think that you --

11 MR. WARMAN: Mr. Chair, that's not
12 your role, with all due respect, it's the party
13 bringing the motion to put on notice other parties
14 whose rights may be affected by that motion.

15 THE CHAIRPERSON: But, Mr. Warman, I
16 don't agree with you when you use the word parties,
17 because the public is not a party.

18 MR. WARMAN: No, but in this case
19 they very much are a party to the motion, if you will
20 let me explain for one moment.

21 The Commission does not represent
22 those individuals, the Commission obviously represents
23 the public good as defined under the Act.

24 I do not represent those individuals,
25 it's not my role at all, I'm here as complainant to

1 testify to the facts surrounding this complaint and
2 that's my role here. So, I am not a party to this
3 motion.

4 So, what Mr. Fromm has done is to
5 bring a motion on his behalf that affects the rights of
6 other individuals who may not be direct parties to this
7 proceeding but who are clearly parties to the motion
8 because it seeks to affect their rights, and under any
9 tradition the ability to be heard when someone's rights
10 are put on notice that a motion is being brought that
11 may affect your rights, it's just a fundamental
12 principle of notice and the ability to make
13 submissions.

14 And the Commission cannot represent
15 those individuals, I cannot represent those individuals
16 and so I just think that is --

17 THE CHAIRPERSON: Do you think that
18 the Tribunal has the power to compel these
19 individuals --

20 MR. WARMAN: No, not at all, that's
21 not what I am suggesting. I'm suggesting that when a
22 motion is brought, it's incumbent upon the party
23 bringing the motion to put on notice the other parties
24 whose rights may be affected by that motion and for
25 those individuals to make a decision on notice, knowing

1 full well that their rights may be affected, whether
2 they wish to participate in any way, shape or form or
3 whether they wish to simply let the proceeding unfold
4 as it would.

5 And if I may make a concrete
6 suggestion, given that those individuals are not here
7 currently, it would be possible for us to adjourn the
8 hearing of this motion in order that notice be given to
9 those individuals that their rights may be affected and
10 to simply proceed with the hearing of the evidence
11 until and unless such time as those individuals return
12 before notice had been given upon which time we could
13 then make some conscious choice as to how to proceed
14 after that point.

15 MS CEILIDH SNIDER: In similar
16 circumstances that I'm aware of in the context of this
17 Tribunal, a non-party's rights were going to be
18 affected -- and I'm not speaking of the Brown case -- a
19 non-party's rights were going to be directly affected
20 by a proceeding of the Tribunal, in that context the
21 Tribunal invited the party whose rights were going to
22 be affected to come and make submissions on the issue
23 that pertained directly to them and that party did come
24 and did make submissions and those submissions were
25 considered in the context of the Tribunal's decision

1 that affected that individual vis-a-vis the evidence
2 that was going to go into the Tribunal.

3 It was, again, a fairly unusual set
4 of circumstances, but that is the particular path that
5 was taken. That public was not then present when the
6 issue arose, the Tribunal ordered that that public be
7 contacted and that they be afforded, they were extended
8 an invitation to make submissions and the people at
9 issue did so.

10 THE CHAIRPERSON: When you talk about
11 submissions, just asking the person from the general
12 public to identify himself or herself --

13 MS CEILIDH SNIDER: Mm-hmm.

14 THE CHAIRPERSON: -- and then say --

15 MS CEILIDH SNIDER: It was in the
16 context of a settlement that had arose in a proceeding
17 between -- there was one party in common, the
18 complainant was a party in common, the set of
19 circumstances was that there were two complaints, one
20 against an individual, one against a corporate
21 respondent, the corporate respondent had settled with
22 the individual and was not a party to the proceeding
23 before the Tribunal.

24 There was evidence that was sought to
25 be led by the individual respondent on the issue of the

1 settlement that was a confidential matter between the
2 non-party with a former respondent.

3 THE CHAIRPERSON: Yes, but Ms Snider,
4 in this case it has to do with something which is not
5 even close to that, it has to do with someone telling
6 the Tribunal that he fears his safety, which is quite
7 different.

8 And under the Act, under section
9 50...

10 MS CEILIDH SNIDER: No, I know that
11 you have the authority to do that.

12 THE CHAIRPERSON: But under section
13 50, you have different situations where a Tribunal
14 could in a way decide that proceedings would be held
15 without members of the public being present.

16 MS CEILIDH SNIDER: Yes.

17 THE CHAIRPERSON: And these
18 circumstances are quite different from the ones that
19 you are referring to, and we have to go back to this.

20 MS CEILIDH SNIDER: But the question
21 that you asked me pertained to how such a thing would
22 happen and that is why -- how such notice would happen,
23 and in other circumstances, and that is why I raised
24 this other.

25 I fully recognize the differences,

1 they are very stark.

2 THE CHAIRPERSON: So, I don't know.

3 Mr. Kulbashian, Mr. Fromm what do you
4 have to say about this?

5 MR. FROMM: I can't recall whether I
6 said this on the record yesterday or not, but for the
7 record I want to make it -- put it on the record that I
8 too am uneasy if a hearing is not open to the public
9 and not my intention to try to holus-bolus exclude
10 people.

11 However, I think I am content with
12 the in-camera session that was granted to us.

13 Some of Mr. Warman's submissions as
14 to what might occur or ought to have been done,
15 recognizing that this situation was unexpected, arose
16 as was already pointed out on the fly, give notice to
17 the individuals, would have been completely
18 impractical.

19 The only person who could have given
20 them such notice would have been myself. I have no
21 knowledge of the addresses of these people, I have
22 actually no knowledge actually whether they actually
23 live in the City of Toronto.

24 Giving them notice would have been
25 yesterday impractical and would have been even more

1 impractical at this point.

2 While it obviously is a serious
3 matter to exclude anybody from a hearing, the Act makes
4 it clear that that is within your discretion for
5 serious cases, and as I think I said yesterday, I think
6 it was probably in-camera so I'd like to say it now,
7 there are other precedents where a serious person,
8 whose rights are curtailed by an ex-parte motion does
9 have other options, for instance, the action that is
10 taken by judges in a number of cases of imposing a
11 publication ban, the press doesn't normally get to
12 argue in front of him as to whether that's right or
13 wrong, but if they feel that that's not suitable in
14 those circumstances, they can seek --

15 THE CHAIRPERSON: Mr. Warman.

16 MR. WARMAN: That's factually
17 inaccurate.

18 MR. FROMM: They can seek and often
19 do go to another judge and argue the case.

20 THE CHAIRPERSON: But this morning
21 there's no member of the public present.

22 MR. FROMM: Sorry, the point being
23 that if the individuals were seriously interested in
24 attending the rest of the hearings and felt that
25 whatever decision, and you haven't made a decision yet,

1 if a negative decision were made by yourself, they are
2 certainly in a position to seek judicial review of your
3 decision in another place.

4 THE CHAIRPERSON: What I can --

5 MR. WARMAN: That too, of course,
6 would mean that they would be parties.

7 MR. KULBASHIAN: I'd like to make
8 some submissions which might add to the situation.

9 First of all, I'd like to point out
10 that it's ironic that Mr. Warman should state that
11 freedom of expression is at issue here when he filed a
12 complaint that's directly in relation to freedom of
13 speech issues.

14 The point whether they are here right
15 now doesn't matter, what if they come back, and
16 basically if it was -- what he was suggesting was that
17 we provide some kind of notice, do we provide notice to
18 everyone beforehand that we don't want to see you at
19 the hearing and then start to dealing with all those
20 issues right now or after they show up.

21 That becomes an issue where we would
22 have no, where it would end. We could probably have a
23 list of 200 people that we would provide notice not to
24 show up at a hearing and if they come here, you start
25 dealing with people individually.

1 The major problem we have is that
2 section 50.2(d) does give the Tribunal authority to
3 grant, in some way to make orders that are in relation
4 to security of the hearing.

5 Coming back to Ms Snider's point
6 where there is security here and body guards here, I
7 would like to point out the body guard or body guards
8 are only in relation to the Commission and complainant,
9 however, if they felt that the security here should be
10 enough, which effectively security is all we have,
11 there should be security guards or police officers that
12 are here, that's all the respondents have then they
13 should have brought body guards themselves if that was
14 their contention.

15 So, it comes down to whether or not,
16 I guess it comes to equal representation then, equal
17 security for all parties of the hearing. The security
18 and the police are here to ensure the security of all
19 the parties at the hearing, however, there are extra
20 body guards that are going to ensure the personal
21 security of the complainant and the Commission.

22 Therefore we ask that this motion is
23 our -- I guess, well, our submission -- it's our
24 submission that it is to ensure Mr. Fromm's personal
25 security further to the security and police officers

1 that are already present at the hearing.

2 As far as providing notice of the
3 motion, it was, I agree with the submissions of Mr.
4 Fromm, it was spontaneous and there is no way to --
5 there is actually no way to really foresee a situation
6 like this and pre-plan for it and then say before the
7 hearing starts we're going to provide notice to these
8 individuals that they shouldn't be showing up, if they
9 do show up we're going to be filing a motion, they are
10 in fact non-parties.

11 I disagree with the Commission or
12 complainant's assertions that both myself and Mr. Fromm
13 were not parties.

14 At one point the Tribunal had put us,
15 both our e-mail addresses on the case management e-mail
16 list. As far as Mr. Fromm was concerned they had ample
17 amounts of -- I guess ample amount of time, ample
18 amount of notice that Mr. Fromm, in fact was
19 representing the Canadian Heritage Alliance which they
20 did not object to, therefore, we can say he actually
21 was a party to the hearing.

22 I haven't really heard of a hearing
23 before where individual comes before the Tribunal and
24 really have to ask permission to become a
25 representative for a party. Lawyers don't have to do

1 that, therefore, we were technically, if not
2 tentatively parties to the hearing when Mr. Warman's
3 initial submissions were made, therefore, I ask that in
4 the issue -- sorry, for the sake of security of all
5 individuals here equally that this motion do continue
6 in-camera.

7 And we are not asking for the entire
8 hearing to be held away from the public, but we are
9 asking that this specific motion which is in relation
10 to serious security issues and Mr. Fromm contended that
11 he does believe that his personal safety is at risk,
12 therefore, we continue with this in-camera and deal
13 with other issues that arise, I guess, in relation to
14 whatever else happens.

15 THE CHAIRPERSON: In order to put
16 that in context, yesterday afternoon we had certain
17 persons present in the room.

18 Mr. Fromm also testified that he
19 received an anonymous phone call and that raised some
20 concerns about his safety.

21 This is when these concerns were
22 expressed and this is when I asked if it could be
23 possible to re-arrange this hearing room.

24 And I must say that given the type of
25 case we are dealing with, this might not be the proper

1 facilities to, in a way, hold such a hearing because
2 members of the public are very close to those
3 representing the parties.

4 Usually the public stands in the back
5 of the room and then those representing parties are
6 able to focus or concentrate on what they have to do
7 without having to bother as to what is happening in the
8 back and the Tribunal can see if someone has an
9 improper conduct, the Tribunal can intervene.

10 But when I look at how this room is
11 set up, everyone is very close, one to another, and
12 even though someone might just be sitting in the
13 hearing room, if that person is so close to a
14 representative of a party, this might have an impact on
15 that representative to fully concentrate on what is
16 going on, and I think we are all here to have a fair
17 hearing and we are here in order that this complaint
18 proceed and that each party be able to present its own
19 views and evidence with respect to the complaint.

20 We don't want the hearing to proceed
21 in an atmosphere or environment where someone is not
22 comfortable with -- it has to do in great part with how
23 the hearing room is set up, and I know that the
24 respondents are very close to any member of the public
25 and members of the public could even sit in the back

1 and they don't have much privacy, not knowing who is
2 sitting in the back. It is hard to know if their
3 privacy is fully respected.

4 Now, the reason why I decided
5 yesterday, given what Mr. Fromm said, to hold the
6 hearing in-camera is that I wanted to hear from him
7 what his concerns were and what I fear is that, given
8 what he had stated, that if he took the witness stand
9 and started talking about his fears, and given the fact
10 that the other -- the public would be there or the
11 three individuals, at first it was three and then it
12 might be only two, he would feel uncomfortable in just
13 apprising the Tribunal as to what his fears were.

14 Now, I have better understanding as
15 to why this motion is being made and right now I
16 haven't made any decision, but I wanted to know
17 first-hand, given the fact that this had to do with
18 someone's safety and this is how it was presented, I
19 wanted that person to be able to express himself and
20 make his concern known to the Tribunal.

21 And I would have done the same thing
22 had it been members of another group in the room and if
23 Mr. Warman or yourself had felt threatened, I would
24 have done the same thing, I would have had these people
25 excluded for the time being so that you could freely

1 say what you feared with respect to their presence.

2 And I come again back to what I said
3 earlier on, this has to do with the safety of those
4 present in this hearing room.

5 Whether the fears that they have are
6 well founded or ill founded, given what has happened in
7 the past, a Tribunal must be very sensitive to that and
8 this is why this hearing was held in-camera at this
9 stage in order to have Mr. Fromm express freely his
10 concern.

11 Now, what should be the next step,
12 knowing that we know now what Mr. Fromm's concerns are,
13 what would be the next step to take?

14 Now, there are many avenues. We
15 could, as Mr. Warman said, in a way suspend hearing the
16 motion and continue with his evidence, that would be
17 one possibility.

18 If we do that, if the Tribunal goes
19 along with your suggestion, that would mean that if
20 these people or the public who was excluded or members
21 of the public who were excluded come back, then we
22 would have to again deal with the issue, and then if
23 that situation arose, if I follow your suggestion, Mr.
24 Warman, the Tribunal would have to tell these
25 individuals that there's a motion to have them excluded

1 before the Tribunal.

2 And now we know who these individuals
3 are because at first the Tribunal didn't know, there
4 are three and most probably two, because Mr. Fromm said
5 that as to one individual he wasn't sure and he said,
6 well, you know, that might not be an issue to my motion
7 or that person may still be present.

8 Now, if we were to go that way and if
9 these people were asked to in a way make a case, I
10 don't know if that is what you had in mind, as to why
11 they should not be excluded, how would we go about
12 doing that?

13 Would there be only submissions from
14 members of the public -- through members of the public
15 who would just say, well, we have a right to be here
16 and so on and so forth, and then I think that would
17 probably be that's what they would say because if they
18 are here it is because they want to hear what's going
19 on.

20 And if that was what they would say,
21 then what do we do with respect to the concern
22 expressed by Mr. Fromm. Does Mr. Fromm have the
23 ability or should he be allowed to put questions to
24 them or should these individuals be asked to take the
25 witness stand, but they are not witnesses called by any

1 one of the parties, how do you think that this should
2 go about because this is -- I must say, unless you have
3 case law, this is a very unusual situation and in
4 unusual situation it's preferable to be more cautious
5 than less.

6 So, this is where we stand right now.

7 It's just that I thought it would be
8 better for the proceedings to hear Mr. Fromm in-camera.

9 Now, the motion has been not ruled
10 upon and I'm hear to listen to what you have to say and
11 hear your concern and see how we can deal with the
12 issue that we have to deal with.

13 MR. WARMAN: There is in fact
14 precedent before the Tribunal, not for an effort to
15 exclude individual members, but to bring -- to move the
16 hearing into a closed session in order to hear specific
17 evidence and the case that I'm referring to is the
18 Kyburz case.

19 And there counsel for the Commission
20 brought an application that the hearing be placed into
21 the closed hearing, and I forget which specific section
22 it is, and the purpose of that that was put before the
23 Tribunal was to discuss specific security steps that
24 had been taken by me and by the police to ensure my
25 personal safety.

1 And that was pursuant to the threats
2 that I felt as a result of certain actions of the
3 respondent.

4 THE CHAIRPERSON: That was held
5 in-camera?

6 MR. WARMAN: No, that's what I'm
7 coming to. A three-member Panel, including now Madam
8 Justice Mactavish, Eve Robert and Chirish Chotalia,
9 ruled in fact that it would not go into a closed
10 hearing and if I desired to make those kind of
11 representations, based on the principle of open courts
12 and the importance of that, that I should make them in
13 a generalized fashion in order to express my concerns.

14 So, there is a precedent, not in
15 relation to the exclusion of specific individuals, but
16 to the importance of open courts.

17 So, I put that before you just so
18 that you're aware of a precedent case brought before
19 the Tribunal itself and what the decision was taken by
20 a three-member Panel chaired by Madam Mactavish.

21 With regard to what process or how
22 such a process might unfold in these circumstances,
23 coming back to my original suggestion, if those
24 individuals were to return they could be put on notice
25 and they could be given the opportunity to decide what,

1 if any, participation they chose to make.

2 They may simply state we're here as
3 members of the public, we wish to remain in that
4 fashion, or they may -- there has been a suggestion
5 made by my colleague for the Commission that the
6 specific incident in question could be put to them and
7 they could be permitted to respond and say, no,
8 that's -- they could say nothing, they could say that's
9 entirely how it happened, they could say that's not at
10 all how it happened, but it gives them the opportunity
11 to respond to some very specific allegations that have
12 been made about the conduct of individuals that neither
13 the Commission nor I are in any position to represent.

14 THE CHAIRPERSON: But would these
15 individuals be asked to take the witness stand?

16 MR. WARMAN: In the same way that Mr.
17 Fromm was. Mr. Fromm is the moving party. The
18 Commission is not a party to this motion, I am not a
19 party to this motion, these individuals -- Mr. Fromm
20 has given testimony under oath with regard to what he
21 alleges transpired in relation to those specific three
22 individuals.

23 I can't see any way that you can get
24 around giving those people the opportunity, not forcing
25 them, the Tribunal can't do that, it does have the

1 power to issue subpoenas the same way as the Superior
2 Court, but in the circumstances I think it would be the
3 obligation to give them the opportunity to "present
4 their side of the story",

5 THE CHAIRPERSON: And who in a way
6 would put questions to them?

7 MR. WARMAN: That would be up to them
8 whether they decide to retain counsel, whether they
9 simply wish to take the witness stand and say for the
10 purposes of this motion I wish -- I acknowledge that I
11 have had the opportunity to retain counsel and choose
12 not to do so, but that's just part of the fundamental
13 fair process.

14 MS CEILIDH SNIDER: In the same way,
15 sir, that you have afforded Mr. Warman and the
16 Commission an opportunity to ask questions of Mr. Fromm
17 in his capacity as witness to his motion.

18 Perhaps we may also be, as I'm sure
19 Mr. Fromm would wish, if these particular individuals
20 chose to take the stand, Mr. Fromm would presumably
21 wish to ask questions of them and presumably the
22 Tribunal could extend to the Commission and Mr. Warman
23 the same opportunity the Tribunal has afforded us
24 vis-a-vis Mr. Fromm whom, as we know, is an agent here,
25 he is not a party to the proceeding, in the same -- you

1 know, he's not a party he is an agent and yet he is
2 taking the stand to testify in respect of this motion
3 that he has brought.

4 THE CHAIRPERSON: Yes, but he is
5 testifying because he was the one with a concern.

6 MS CEILIDH SNIDER: Yes, I realize
7 that.

8 THE CHAIRPERSON: It's not his
9 client.

10 MS CEILIDH SNIDER: No, I fully
11 appreciate that.

12 THE CHAIRPERSON: But coming back to
13 what you said, Mr. Warman, do you have a copy of the
14 decision of -- the ruling of Madam Justice Mactavish
15 because I would like to look at the circumstances in
16 which this arose.

17 MR. WARMAN: I apologize, I am just
18 not sure that it will actually be mentioned. I will
19 check the decision, but I'm just not sure it will be
20 mentioned in the actual decision versus in the
21 transcripts.

22 THE CHAIRPERSON: Because the
23 decision is dated 2002 or...

24 MS CEILIDH SNIDER: The decision of
25 the Tribunal, the three-member Tribunal is 2003 CHRT 18

1 and it's dated -- I'm not sure.

2 MR. WARMAN: 9th of May, 2003.

3 MS CEILIDH SNIDER: And it's in your
4 book of authorities Volume Two.

5 THE CHAIRPERSON: Yes, it's at
6 tab...?

7 MS CEILIDH SNIDER: At tab 13.

8 MR. FROMM: Point of clarification.
9 Is it the decision or the transcript in the Warman v.
10 Kyburz that we are being referred to?

11 MS CEILIDH SNIDER: Presently we are
12 referring to the decision at tab 13 in the book of
13 authorities. I don't have a copy of the transcript.

14 MR. FROMM: Can you direct me to a
15 page or a paragraph.

16 MS CEILIDH SNIDER: We are presently
17 trying to do that.

18 MR. FROMM: It might be pointed out
19 though that --

20 MS CEILIDH SNIDER: As Mr. Warman
21 noted, he is not sure whether the events that he
22 mentioned earlier were canvassed in the decision
23 itself.

24 MR. FROMM: It might be pointed out
25 that Mr. Kyburz did not appear at the hearing, so there

1 wouldn't seem to be much reason to go in-camera.

2 MR. WARMAN: The problem was that
3 there were members of the public present and that was
4 the point, it was simply to exclude members of the
5 public who were, in fact, I use the word associates,
6 but were known to the respondent, and even if there
7 hadn't been, the principle was that they were issues of
8 personal security that were being raised as specific
9 examples of what steps had been take by the police and
10 myself to ensure my personal safety.

11 And that was the desire, it would
12 have been the same no matter who was in the court room.

13 MS CEILIDH SNIDER: The Tribunal
14 determined in that decision that, in fact, Mr. Kyburz
15 had retaliated against Mr. Warman, that was a finding
16 of fact in the decision and that he had threatened him
17 and that it's reasonable to infer that the individuals
18 sitting in the room that Mr. Warman sought to have
19 excluded for the purposes of providing in-camera
20 testimony with respect to presumably confidential
21 police measures to ensure his security and safety would
22 be conveyed back to Mr. Kyburz were those individuals
23 not asked to be excluded.

24 THE CHAIRPERSON: But during that
25 hearing there was no police officer.

1 MR. WARMAN: No, but there were
2 security guards.

3 THE CHAIRPERSON: But there were no
4 police officers?

5 MR. WARMAN: No, there were not.

6 MS CEILIDH SNIDER: But the issue is
7 that they could have conveyed information that would
8 have compromised Mr. Warman's security. Presumably the
9 police do not post their security measures on the
10 Internet for all and sundry to read.

11 THE CHAIRPERSON: And also at that
12 time the Commission did not have -- hadn't taken
13 steps --

14 MS CEILIDH SNIDER: Right. And in
15 that context the Tribunal nevertheless chose not to
16 have an in-camera session.

17 THE CHAIRPERSON: But now things have
18 changed and we see now that the Commission has taken
19 steps because the Commission, properly so, feels that
20 the risk is higher today than it was, and if we have an
21 officer in this room and one outside it's because those
22 concerned about the hearing feel that their needs to be
23 that type of security.

24 So, this is not the same context in
25 which a decision was rendered by Ms Mactavish, this is

1 the situation, the context has changed and now --

2 MR. WARMAN: But, Mr. Chair, if I
3 may. I don't believe that's in fact the case.

4 Mr. Kyburz had made what the Tribunal
5 found to be two death threats towards me. It was a
6 circumstance where there was extreme level of threats
7 of violence, it was not a circumstance where there was
8 somehow a lesser degree of threat or whether the danger
9 was somehow at a lesser status or state.

10 THE CHAIRPERSON: No, but since
11 then --

12 MS CEILIDH SNIDER: What has changed
13 is the Commission has, you know, retained protection
14 because direct threats have been made against the
15 Commission. Now, we don't go about disclosing what our
16 process of protection is, that is confidential and
17 should remain so.

18 Mr. Warman had direct threats made
19 against his life. In that context, I mean, the
20 particular set-up we see here today is in place because
21 particular threats have been made against members of
22 the judiciary and members of the Commission.

23 The security issue that was at play
24 when Mr. Warman was in the Kyburz hearing was vis-a-vis
25 the security concerns he had, given the death threats

1 made against him, not against Tribunal members, not
2 against the Commission, that's why it was different
3 but, nevertheless, the Tribunal still required that he
4 give evidence in open court as to those security
5 measures.

6 THE CHAIRPERSON: But I haven't seen
7 the ruling because it doesn't seem to be part of the
8 final decision.

9 But even if that was so, I think it's
10 my view that since then things have changed and we have
11 since then taken additional measures because additional
12 events have taken place.

13 And again yesterday when I decided
14 this to be held in-camera and if Mr. Warman had made
15 that request I would have done the same, was to just
16 hear --

17 MS CEILIDH SNIDER: The issue is not
18 being in-camera, the issue that we are focusing on or
19 that we ought to be focusing on is the ex-parti nature
20 of it and we were, I believe, at a point where we were
21 trying to decide what we were going to do next.

22 THE CHAIRPERSON: Yes, but still,
23 again, because we are coming back to, this was done in
24 open court and this, Mr. Warman said, no, it was done
25 in open court.

1 What I am saying is that in response
2 to what he says is that given that the situation has
3 changed, that additional events took place, that the
4 context is not the same and just relying on the
5 decision made by Ms Mactavish at the time might not
6 necessarily reflect what one should do today.

7 But I agree with you that it was held
8 in order to hear Mr. Fromm who had a concern.

9 Now, the next step is, how we should
10 go about dealing with one -- now, that we know what Mr.
11 Fromm's concerns are and given the fact that no
12 decision has been made as to exclude anyone from the
13 hearing proper, should we continue with Mr. Warman's
14 evidence and wait and see if these individuals will --
15 members of the public will come back and if the same
16 individuals come back, what you are suggesting is that
17 eventually they take the stand and they testify to -- I
18 don't have to ask them why they are here, they are a
19 member of the public and it's their right, that's a
20 basic principle, you know, you can attend any hearing
21 you want.

22 MS CEILIDH SNIDER: Perhaps what Mr.
23 Fromm could do, or counsel, or even the Chair, this is
24 an inquiry, is you could say to these individuals I put
25 it to you, sir, that on such and such a day this

1 happened, how do you respond to that?

2 The allegations that Mr. Fromm has
3 concerns about and have raised concerns for him for his
4 safety are quite particular, and given that they were
5 absent for Mr. Fromm's testimony, and to avoid having
6 this become more blown out than it needs to be, perhaps
7 it could be put to them, I put it to you, sir, that on
8 this day this happened and this was your response and
9 you did this, and have them respond to those very
10 narrow allegations which are the sum and substance of
11 Mr. Fromm's concerns, at the root of his concerns for
12 his safety.

13 MR. FROMM: A couple of submissions.

14 Sir, Ms Snider, speaking for the
15 Commission indicated that the atmosphere has become
16 more tense and in the summer additional confidential
17 security arrangements were made for the Commission
18 personnel and presumably the Tribunal. I can certainly
19 say I saw those in play during the Warman v. Tremayne
20 case in Ottawa.

21 We've heard previously that the
22 reason for those additional security measures were
23 threats made by an American living in the United States
24 going by the name of Lidner (ph) to the best of my
25 knowledge, lives in St. Louis, Missouri, he's not a

1 Canadian, he's not a player in Canada.

2 But the concerns I brought to you
3 were not some Internet chatter from another country but
4 were threats and actions taken by several individuals
5 who were here in the room. This is very immediate,
6 present, right here in Canada by no means hypothetical,
7 and if my come back to a theme I've struck before, it's
8 the imbalance and the inequality of this whole process
9 now to focus on security.

10 Some loud mouth in the United States
11 runs his mouth and makes comments about the process in
12 Canada and additional security is laid on.

13 I am in no position to judge whether
14 that's overreaction or not, I don't know, but I come to
15 you with serious concerns in the presence of
16 individuals who are actually here, who actually have
17 done something rather than just run their mouths and I
18 certainly appreciate you have given me a very fair
19 hearing.

20 Hearing from the Commission and Mr.
21 Warman, oh, everything should be put on hold and so on,
22 I don't think they are prepared to treat my concerns
23 with the same interest and the same intention that they
24 are obviously prepared to treat their own concerns.

25 And I might point out that while they

1 obviously have body guards, security and I have exactly
2 no idea what it means, although I was able to observe
3 in Ottawa, it meant Mr. Warman being escorted in and
4 out of the Tribunal by a wrestler-type gentleman.

5 I have to walk several blocks to my
6 car in downtown Toronto with a young lady, no security.

7 Once again, there is an imbalance,
8 whereas I have had direct threats by real honest to
9 goodness people, not motor mouth on the Internet, but
10 real honest to goodness people and I do hope you will
11 be able to take those concerns seriously and render a
12 decision on the motion.

13 MR. KULBASHIAN: Just from what I
14 gather in the Kyburz hearing the individual that made
15 the threats was not actually present and they had --
16 the motion was placed to have everyone else excluded
17 because they noticed individuals who they believed had
18 some relation to Kyburz.

19 Again, that becomes still a different
20 issue than here. Here, as Mr. Fromm has stated, these
21 are the individuals that are being asked, that he's
22 asking to have excluded from the hearing, so it's not a
23 situation where we're asking that the girl that was
24 with them be excluded because she was also obviously
25 friends with them, as Mr. Warman made a motion in the

1 Kyburz hearing for.

2 Again, so the problem we have to deal
3 with here is, do you call a body guard in when you
4 actually see the individual that wants to attack you,
5 or do you call a body guard in ahead of time in case
6 you see the individual that wants to attack you?

7 Stopping this motion until they
8 possibly show up would be effectively calling the body
9 guard when the incident is happening.

10 So, we ask that this motion continue,
11 that these issues actually be dealt with and that
12 objections don't keep delaying this process and because
13 this is a real issue of security.

14 Those are my submissions.

15 THE CHAIRPERSON: I might be
16 repeating myself, but my main concern yesterday was
17 given what Mr. Fromm said I wanted to hear from him and
18 I wanted him to be able to express himself freely, so
19 as to express his concern, and that was the purpose of
20 what we did yesterday afternoon.

21 Now, this morning some reservation, I
22 will say objection, formal objections are made but
23 reservation about continuing this process in-camera
24 without having the three or two individuals who were
25 named present.

1 What I can say this morning is that
2 these individuals are not in the room. What I must add
3 to this and it has to do with where this hearing is
4 being held. It is, that suppose we are to continue
5 with Mr. Warman's examination-in-chief and suppose this
6 afternoon for one reason or another they decided to
7 come back, we would have in a way materially speaking
8 the same problem of having these individuals present
9 very close to Mr. Fromm and Mr. Fromm, what I gather,
10 is at least uncomfortable with these individuals being
11 so close to him and that if maybe they were in the
12 back, if we had other facilities to continue this
13 hearing and they were in the back he would feel less
14 maybe threatened by these individuals, and if we were
15 to take steps in order to ensure that their paths
16 wouldn't cross, that might satisfy everyone and the
17 public could be in attendance and we could go on with
18 the hearing with the proper security ensured, that
19 might be...

20 And the reason I am taking so much
21 time is that for me, ensuring the safety of any
22 individual, is of crucial importance and it has to do
23 with the individuals, whomever they may be, but also
24 with the process.

25 MS CEILIDH SNIDER: Mm-hmm.

1 THE CHAIRPERSON: Now, if that was
2 the way we were to go about it, then on the one hand we
3 would have heard Mr. Fromm's concern, steps could be
4 taken in order to have better facilities and then maybe
5 these people would not have to be excluded and the
6 general public could attend.

7 I know that all of this has delayed
8 the start of the hearing and I know that Mr. Warman,
9 the complainant and the Commission wants the hearing to
10 proceed and the respondent, I would presume, would want
11 to respond and we want to have a hearing and then have
12 a decision and then see what happens.

13 So, given what I have said, should we
14 continue with Mr. Warman and wait to see if in the
15 afternoon these people come back and then, if they do
16 come back, then we will have to deal with the issue
17 whereby we would have to ask these individuals, could
18 you, not justify your presence, but the Tribunal has
19 been told that there is something going on between
20 yourself and Mr. Fromm and seek some form of
21 submissions on their part with them being sworn in as
22 witnesses or not.

23 Or would the best course of action
24 would be, if we don't want to go there, not knowing how
25 far it will bring us, because you might have a

1 question, Ms Snider, Mr. Warman, Mr. Fromm might have
2 questions for them and that might be a very long
3 process, a hearing within a hearing, and that might
4 take like a few days or so.

5 MR. WARMAN: If I can, just to be
6 clear, I would not have any questions and I do not
7 intend, if we were to continue, I do not intend to ask
8 any questions because I do not consider myself to be a
9 member or a party to this motion.

10 I think I have made the concerns
11 about the process clear, those would be the only
12 submissions that I would make.

13 THE CHAIRPERSON: Yes, Mr. Fromm?

14 MR. FROMM: May I suggest that a way
15 that you might be able to rule on the motion that would
16 take into account the rights of people to attend and
17 also the directions that you have already outlined of
18 what you think might be a solution, that these
19 individuals be excluded from the hearing for today and
20 that is for one day only, and that when the hearings
21 resume, whenever they resume, that they resume in a
22 larger facility as you've outlined which would separate
23 the audience from the parties.

24 Now, this would only minimally impair
25 their right to attend a hearing, assuming they even

1 want to attend today, it would impair their right for
2 one day and because this is the last day of the
3 hearings for this, and they will have to be rescheduled
4 that would impair their rights in the most minimal way,
5 or in the alternative, as that can't be done, adjourn
6 the hearing and we'll start up again in the future.

7 THE CHAIRPERSON: I couldn't rule on
8 excluding them for today without providing them, with
9 what has been said until now, with the opportunity to
10 address the tribunal.

11 I can't say, okay, we'll exclude them
12 today but if we have better facilities then they can
13 come in. I don't think that this would be
14 satisfactory.

15 There are -- like, the first thing --
16 one thing we could do is continue with Mr. Warman's
17 testimony and if the group doesn't show up or these
18 individuals do not show up, then we will have some of
19 the evidence in.

20 If they do show up, then the question
21 is do we want to engage in a process where questions
22 will be put or should we then suspend the hearing and
23 wait to have better facilities where then Mr. Fromm
24 would feel more comfortable without having to exclude
25 the public. So, I don't know what your views are and I

1 am asking everyone to make them known to the Tribunal.

2 MS CEILIDH SNIDER: Perhaps a
3 pragmatic approach to this may be that we proceed and
4 nobody knows whether these people will be back or not,
5 for example, if they do materialize after lunch, we
6 deal with it because there would be time presumably to
7 deal with it.

8 If they materialize towards the end
9 of the day, we just adjourn at that point and deal with
10 it when we resume.

11 THE CHAIRPERSON: Well, when you say
12 deal with it...

13 MS CEILIDH SNIDER: We do what has
14 been discussed, which is that they be afforded an
15 opportunity to -- that they be put on notice and be
16 afforded an opportunity to respond in a limited way as
17 we have discussed.

18 THE CHAIRPERSON: But the question
19 that I was raising is that, suppose when we resume we
20 had better facilities such as the one we have -- not
21 saying that there should be a change of venue, we
22 should go to Ottawa -- but looking at the hearing room
23 we have in Ottawa, the public are in the back, the
24 lawyers are in front and they are not impaired in any
25 way by what goes on in the back and there is a fair

1 distance between the public and the lawyers.

2 And that might solve the problem
3 where we wouldn't have to engage and there might not
4 need to be an order excluding some individuals if the
5 concerns that have been raised by Mr. Fromm are met or
6 properly dealt with.

7 MS CEILIDH SNIDER: I guess my
8 thinking is, perhaps Mr. Fromm could clarify for us, is
9 whether it is the particular arrangement of this room
10 which you have outlined Member Deschamps is not optimal
11 and does place Mr. Fromm in a particularly close
12 distance to the individuals from the public, whether
13 his concern pertains to the particular layout of this
14 facility or whether his concern pertains to their
15 presence whatever the layout was.

16 Say, for example, we were to
17 reconvene to conclude this hearing and we had the
18 facilities at Federal Court or at Osgoode Hall or
19 something like that, is Mr. Fromm's concerns heightened
20 because of the layout of this room but nevertheless
21 would exist regardless of the venue, or do those
22 concerns arise primarily given the layout of this
23 particular venue?

24 MR. FROMM: Well, frankly, based on
25 past behaviour both the layout of this room is very,

1 very difficult. Just from me to the wall is just 10
2 feet.

3 MS CEILIDH SNIDER: Mm-hmm.

4 MR. FROMM: The layout of the room
5 really is a problem but it's also their presence.
6 These individuals, at least two of them, including the
7 tall one, Martinez attended at several sessions of the
8 Richard Warman v. Tomasz Winnicki case and on two
9 occasions after -- at the lunch recess followed me
10 around and I don't mean just followed me down the hall
11 to the elevator or something, followed me down to the
12 food court and when they were following me I decided,
13 well forget about this, go down the street to a
14 restaurant that's more enclosed, they followed myself
15 and an associate down there.

16 Their behaviour is to intimidate me,
17 it's not just that these are people I may or may not
18 like and they happen to be sitting in the audience,
19 their behaviour --

20 MS CEILIDH SNIDER: We appreciate
21 that, but my question was really to try and understand
22 so that I can make submissions whether or not your
23 concern really arises from the particular set up of
24 this room or whether you would have concerns in any
25 venue, in a proper court room setting, whether or not

1 you would have concerns regardless.

2 MR. FROMM: I would have concerns
3 regardless. They might be lessened somewhat in the
4 sort of setting that I think occurs in the Commission's
5 offices or the Tribunal's office in Ottawa where the
6 Warman v. Tremayne hearing was held which, if I recall
7 correctly, had almost is like a courtroom, has a bar
8 between the audience and --

9 THE CHAIRPERSON: There is no bar
10 but, Mr. Fromm, but my concern is mainly with what
11 happens, my first concern is what happens in the course
12 of the hearing, it's with respect to people who might
13 be in the hearing room, who might have an impact on
14 your ability to conduct serenely what you are asked to
15 do as an agent of the Canadian Heritage Alliance.

16 That's my first concern.

17 What can happen outside of the
18 hearing room, I don't know if I have jurisdiction in
19 order to order something about that, but this is
20 something that can be raised and maybe measures can be
21 taken if there is a risk that something might occur.

22 But for me it's mainly what happens
23 in the hearing room, that's my first concern, and it is
24 ensuring that you are able to do your work as a
25 representative.

1 So, it may be that if we had a
2 different set up. I can't prevent these individuals
3 from being outside the hearing room or downstairs, that
4 I can't do, but what I can do is ensure that while the
5 hearing is taking place that everyone is comfortable
6 and can do the job that that person is being asked to
7 do.

8 So, after having listened to what has
9 been said and taking into consideration your concerns
10 and the concerns of Mr. Warman and of the Commission, I
11 think that the best solution would be to have better
12 facilities which might change, you know, alleviate your
13 concerns and would maybe make this hearing more
14 efficient.

15 And then I would not have to render
16 an order preventing some individuals from attending the
17 hearing and we wouldn't have to get into, call it a
18 voir dire if you want, where we would have to spend a
19 day, two days just discussing that.

20 Maybe there is a more practical way
21 of meeting the concerns of everyone.

22 I don't know if this, Mr. Warman, in
23 fact is a solution that --

24 MR. WARMAN: It may be the easiest
25 way for you to be out of being between a rock and a

1 hard place.

2 THE CHAIRPERSON: But also the most
3 sensible way --

4 MR. WARMAN: That's what I mean.

5 MS CEILIDH SNIDER: Yes, absolutely.

6 THE CHAIRPERSON: -- of dealing --

7 MS CEILIDH SNIDER: It makes, I mean,
8 imminent sense to me.

9 I guess the thing that concerns me is
10 that when we resume in another facility, that Mr. Fromm
11 again raises the same concerns even though we are in a
12 better facility or a proper facility, if Mr. Fromm
13 would not to raise those concerns, then that would work
14 very well.

15 My concern is just to clarify whether
16 or not changing the facility would address Mr. Fromm's
17 concern.

18 If changing the facility will not
19 address his concerns, then we are going to find
20 ourselves in precisely the same place that we are now.

21 THE CHAIRPERSON: But I think we have
22 to change facilities.

23 MS CEILIDH SNIDER: I have no doubt
24 about that, I agree with you entirely.

25 THE CHAIRPERSON: But, Mr. Fromm, Ms

1 Snider asked you if there was a different setting, if
2 the public was in the back of the hearing room and, as
3 I said, you know, when people leave the hearing room,
4 we can take certain measures, if you feel that your
5 safety is threatened some measures can be taken and
6 these can be addressed, but I can't order individuals
7 to stay home and stay like 500, let's say, metres from
8 the hearing room. This is not within my power.

9 So, would that be something that -- I
10 was asking Mr. Fromm, because he is the person who is
11 directly concerned.

12 MR. FROMM: A different venue would
13 certainly alleviate the concerns to some extent, but I
14 note that in a somewhat analogous situation, that in
15 the Warman v. Kyburz, the respondent chose not to
16 attend, the presence of just people who allege to be
17 his associates or whatever caused Mr. Warman to want to
18 go into camera.

19 Now, I have a similar uneasiness
20 about members of that entire group, but if I have to
21 prioritize, there are three of them I am particularly
22 concerned about and those are three of the four who
23 showed up yesterday.

24 I guess the most I can say, the next
25 group, the next session of hearings obviously

1 considerably in the future and things may happen
2 between then and now or nothing may happen between then
3 and now.

4 I would probably have to reassess it.
5 I would feel more comfortable in a different facility,
6 whether or not I would still have the same concerns, I
7 don't know, it might depend on the behaviour of these
8 individuals, these individuals have been over the past
9 couple of years more and more threatening and not just
10 in terms of words, but in terms of actual deeds.

11 THE CHAIRPERSON: But that is one
12 thing, but even if we were in a way -- it's one thing
13 to hold a session in-camera but suppose in the other
14 facilities steps would be taken so that the general
15 public would leave and maybe five or 10 minutes after
16 counsel could leave and there would be like another way
17 of leaving the building, then we don't have to get into
18 putting questions to people, members of the public and,
19 as I said, this could open a can of worms and God knows
20 what would happen.

21 So...

22 MR. FROMM: I agree. I think a
23 hearing within a hearing could turn into a circus and
24 probably would not be the best use of the Tribunal's
25 time.

1 THE CHAIRPERSON: Mr. Kulbashian.

2 MR. KULBASHIAN: Just one point I
3 want to make, it kind of feels somewhat unbalanced,
4 well, I don't mean the Tribunal hearing as much as the
5 position the Commission are taking.

6 The fact of the matter is if this
7 hearing were to happen at another location, would the
8 Commission, complainant still keep their security
9 guards, body guards close?

10 The question is, why would they be in
11 a position to be in more -- like, what it seems here is
12 it feels like their concerned with their safety a lot
13 more than they think anybody else should be concerned
14 with theirs and that's the major issue here.

15 THE CHAIRPERSON: Mr. Kulbashian, in
16 order to ensure the safety --

17 MR. KULBASHIAN: Yeah.

18 THE CHAIRPERSON: -- of everyone,
19 this is why we have two police officers whose services
20 have not been retained by Mr. Warman or by Ms Snider,
21 this is why, and they are here to protect each and
22 every one of us if something did in fact happen.

23 So, I think your safety is being
24 ensured by having these two policemen. You could maybe
25 find an imbalance if we only had security guards for

1 the Tribunal and some security for the Commission and
2 Mr. Warman.

3 MR. KULBASHIAN: I can make myself
4 clear. I don't think there is an imbalance in the way
5 the Tribunal is dealing with it anyway, my issue of the
6 imbalance is why the Commission and complainant on one
7 hand they feel that they need private security aside
8 from the fact that there are security guards and police
9 present, on the other hand they are stating that the
10 respondents who are actually concerned due to real
11 issues, well the representative of one respondent,
12 sorry, Mr. Fromm is actually concerned because of real
13 reasons, somehow should get less of a chance.

14 Like it just seems to me that they
15 are complaining that, well, Mr. Warman's security is
16 somewhat more important than Mr. Fromm's security at
17 this point because they are stating that, well, the
18 people are not here right now, so why should we
19 continue, is what they are stating.

20 THE CHAIRPERSON: What I understand
21 from Mr. Warman and the Commission's position is that
22 we have spent some time discussing that and they
23 haven't objected and they have tried to be as
24 supportive as they can and they have been straight
25 forward in saying that they had concerns about the

1 public or some members of the public being excluded,
2 that they understood that we had to deal with the very
3 sensitive issue and they have done a lot in order to
4 address the issue and see how we could deal with this
5 issue, and I don't think that they have shown in any
6 shape or form that they are not sensitive to ensuring
7 the safety concerns of Mr. Fromm.

8 This is why I have seen them trying
9 to see how we can, in a way, meet or in fact respect
10 the rights of everyone. So, this is why we spent
11 yesterday afternoon, we have been spending a lot of
12 this morning on that in order to deal with that.

13 So, I think that everyone is on the
14 same page and everyone wants this hearing to move on
15 and those legal representatives or representatives can
16 do their work.

17 So, the only issue for me now is that
18 should we move on with the examination-in-chief of Mr.
19 Warman and if individuals or the same individuals do
20 appear this afternoon, then everyone agrees we will
21 stop and adjourn and we will try to set new dates in
22 another facility.

23 I don't know if this is agreeable to
24 the Commission and you, Mr. Warman.

25 MS CEILIDH SNIDER: Yes, it is. On

1 behalf of the Commission, yes, absolutely.

2 MR. WARMAN: Yes.

3 MR. KULBASHIAN: I would say that is
4 the second best thing at this point. Obviously the one
5 issue I guess that you brought up that has to be
6 settled, we do also need to deal with the issue of when
7 the hearing is going to continue.

8 THE CHAIRPERSON: Yes.

9 MR. KULBASHIAN: So, that's just an
10 issue that I had on my list.

11 THE CHAIRPERSON: Yes, but this we
12 could -- if we decide to continue with Mr. Warman's
13 examination-in-chief, we will have to set new dates and
14 I will ask the parties to provide me with their
15 availabilities and the availability of the Tribunal so
16 have to be taken into account.

17 MR. WARMAN: Mr. Chair, I would ask
18 at this time that that be taken care of either through
19 e-mail subsequently just because I don't have my
20 calendar, I'm not in a position to set dates at this
21 point. I'm not sure if the Commission, if that in fact
22 can be taken care of through e-mail properly.

23 THE CHAIRPERSON: But I would set
24 dated for you to report back to the Tribunal.

25 MR. WARMAN: Yes, yes.

1 THE CHAIRPERSON: And hopefully that
2 this could take place early in the new year and not
3 have it like postponed to --

4 MS CEILIDH SNIDER: I can advise the
5 Tribunal that January out for me. I would be available
6 in February. I know that I do have obligations in Nova
7 Scotia in February, but that is in the later portion of
8 February and I would need -- I would probably be
9 available in the second week of February or later in
10 February or March.

11 MR. WARMAN: Just for -- I know for a
12 fact that are Mr. Fromm and I are scheduled to be in a
13 case a whole month, it's a Tribunal hearing that's
14 currently scheduled for four weeks.

15 THE CHAIRPERSON: So, that means that
16 January and --

17 MS CEILIDH SNIDER: February.

18 THE CHAIRPERSON: And February.

19 MS CEILIDH SNIDER: I have got a
20 two-week hearing in Edmonton with a week in between and
21 I'm in the middle of completing my factum on the Canada
22 Post JR which is due at the end of January, so I am not
23 available in January.

24 MR. WARMAN: Like I said, perhaps it
25 would be most convenient for everyone to take care of

1 this in the near future over the Internet submissions
2 to -- e-mail submissions to the Tribunal.

3 THE CHAIRPERSON: But if January and
4 February are out, then we should focus on March and I
5 don't know, Mr. Kulbashian and Mr. Fromm, if --

6 MR. KULBASHIAN: For me personally, I
7 am very flexible with my times, obviously don't have
8 any other cases to represent.

9 However, the major issue is the
10 respondent. She's actually -- basically I guess she
11 could tell you the details, I don't want to really talk
12 for her, she could --

13 MS GUILLE: The situation with my
14 employment, we start busy season in February and we go
15 through until September, and then in October we have
16 year-end and November we have an audit, and so
17 basically what I'm looking at is the first two weeks of
18 October or the last two weeks of November.

19 My supervisor, she had to take
20 recently three months off, so I'm not even sure if it's
21 better if I wait until it is slow before I take a week
22 off work because I'm not sure how she's going to --
23 what her schedule is going to be like through the busy
24 season.

25 MS CEILIDH SNIDER: Perhaps we

1 could -- this is obviously complex. Perhaps we can
2 deal with this at another time, just simply set a date
3 upon which we need to get back to you with our
4 availability.

5 THE CHAIRPERSON: Yes, but I have
6 seen in the past that this sometimes raises -- if you
7 are telling me that you are not available in January
8 nor in February, Mr. Warman, and if the complainant
9 says that the only opening that she sees is in
10 September or October, then...

11 MS GUILLE: There is a possibility
12 that I can take one or two days off, but not a full
13 week off between say in July or August, but it would
14 have to be only a day or two.

15 THE CHAIRPERSON: But I don't think
16 that we should like fragment the hearing. The next
17 time we go, I think we need a week in order to be sure
18 that -- and even then, you know, I don't know what
19 could happen, but we would need at least a week set
20 aside to continue this hearing.

21 Now , if it's not worth the trouble
22 of you, the Commission and Mr. Warman trying to find
23 dates in July, in June or in April if the complainant
24 says, you know, at this point in time I don't have any
25 or my schedule does not permit me to provide five

1 straight days.

2 MS CEILIDH SNIDER: I know that I
3 have a matter in the Federal Court that's going to last
4 for at least a week, it's the judicial review of the
5 Canada Post decision. I know it's in October, I know
6 that there is going to be a lot of preparation in
7 advance of that, but that's irrelevant, I don't off the
8 top of my head recall the dates, I can provide those to
9 you.

10 But I know that I have an obligation
11 in October in the Federal Court for a week.

12 THE CHAIRPERSON: We are looking
13 right now at the hearing continuing in the fall.

14 MS CEILIDH SNIDER: I would think
15 that it would be possible for Ms Guille to at least
16 make a request, in light of the serious nature of this
17 proceeding that her employer consider permitting her
18 some time.

19 Now, I can't speak -- I can't
20 anticipate what her employer will say, but I think it's
21 prudent to at least or reasonable to at least expect
22 that a request could be made, a request could be denied
23 but a request could be made.

24 MR. WARMAN: But in the past actually
25 subpoenas have been issued by parties for themselves so

1 that their presence is required.

2 And, again, but I really would prefer
3 not to have to attempt to set dates right now because I
4 don't have the ability to do that.

5 THE CHAIRPERSON: No, but what I am
6 hearing from the Commission, now don't look for
7 January, you know, there is no --

8 MS CEILIDH SNIDER: Well, I am not
9 sure what -- that's one month.

10 THE CHAIRPERSON: Yes, but no, but
11 Mr. Warman says, well it's not worthwhile looking, like
12 January is out.

13 MS CEILIDH SNIDER: Right.

14 THE CHAIRPERSON: February seems to
15 be out because you have a four-week hearing.

16 MS CEILIDH SNIDER: Yes. So, then we
17 are into March.

18 THE CHAIRPERSON: So, then we are
19 into March and April and May.

20 MS CEILIDH SNIDER: And what I am
21 suggesting is that perhaps, either as Mr. Warman said,
22 subpoenas could be issued and that would not then put
23 Ms Guille's job security at any kind of risk, or she
24 could, you know, make a request to her employer, you
25 know, with or without a subpoena, whatever.

1 I don't know, she presumably has a
2 good working relationship with her employer, perhaps
3 they would be generous, or perhaps not and a subpoena
4 could be sought by her for her own attendance.

5 MR. KULBASHIAN: Well, this goes to
6 the issue where the respondent, it's actually coming
7 down to the core issue, she's a single mother, she's
8 the sole supporter of her family and her household and
9 obviously heard evidence she doesn't make that much
10 money, now the situation she has if she does take the
11 considerable amount of time off with or without a
12 subpoena, she's not in a position of seniority to still
13 be guaranteed her job when she returns after the end of
14 the week.

15 And I don't think it's reasonable for
16 the Tribunal to assume. First of all, just to get to
17 the issue of the seriousness of the allegations,
18 there -- every article that the Commission and
19 complainant have put forward that they allege to
20 constitute violation of section 13 is no longer on
21 line, so there is also no rush for a judgment at this
22 point.

23 I understand the need for expediency,
24 but there is also a need to make sure the respondent is
25 not put through any kind of undue pressure or any kind

1 of undue stress from losing her job because of the
2 hearings.

3 Bringing a subpoena that states, you
4 know, Richard Warman and the Canadian Human Rights
5 Commission, complaint against Melissa Guille and
6 Canadian Heritage Alliance and showing it to your boss
7 is not exactly the best way to go about keeping your
8 job when you get back a week later.

9 THE CHAIRPERSON: What I hear from Ms
10 Guille is that you would be available, given the
11 constraint pertaining to your job.

12 MS GUILLE: The first two weeks of
13 October and the last two weeks of November.

14 THE CHAIRPERSON: The first two weeks
15 of October and...?

16 MS GUILLE: The last two weeks of
17 November.

18 THE CHAIRPERSON: Last two weeks of
19 November.

20 Because I also have to look at my own
21 schedule and the availability of the Court Officer,
22 Tribunal's Officer in order to set dates. So, it seems
23 as if we are like into the first two weeks of October
24 and the last two weeks of November. This is how --

25 MR. KULBASHIAN: However, if we could

1 make this tentative because she will still try to get
2 time off from her work, this is just based on the fact
3 that she doesn't foresee getting time off from her work
4 without losing her job.

5 So, if the Tribunal could ultimately
6 even e-mail and clarify the dates that the Tribunal is
7 available, as well as Mr. Warman and Commission and
8 then when she gets back to work on Monday she can ask
9 questions that she has to ask and see what other
10 possible times, but at this point the only times that
11 she sees she's available are those four weeks.

12 THE CHAIRPERSON: So, Ms Guille, you
13 will check with your employer.

14 MS GUILLE: Subtly, yes.

15 THE CHAIRPERSON: Subtly, and get
16 back to the Tribunal as to whether or not you could
17 free yourself before the months of October and
18 November, and then I think I would ask you to report
19 back to the Tribunal and then we confer with the
20 Commission and Mr. Warman.

21 So, given what was said, we should
22 proceed or continue with Mr. Warman's
23 examination-in-chief and that if during the hearing
24 members of the public which Mr. Fromm has identified
25 are present, we will suspend the hearing and resume it

1 whenever we have set new dates.

2 Is that agreeable to everyone?

3 MS CEILIDH SNIDER: Yes, it is.

4 THE CHAIRPERSON: So, it's 11:25. Do
5 you want to take the morning break until maybe a
6 quarter to 12:00 and then we can go for an hour and
7 then stop for an hour and then resume.

8 MS CEILIDH SNIDER: Yes, thank you.

9 REGISTRY OFFICER: Order, please.

10 --- Upon recessing at 11:25 a.m., to resume in-camera
11 immediately.

12 --- Upon resuming at 11:59 a.m.

13 THE CHAIRPERSON: Mr. Warman, are you
14 ready to take the stand?

15 MR. WARMAN: I am.

16 RESUMED: RICHARD WARMAN

17 EXAMINATION BY MS CEILIDH SNIDER (Cont'd)

18 MS CEILIDH SNIDER: Just before we
19 begin, I have got a couple of housekeeping matters with
20 respect to documents.

21 THE CHAIRPERSON: Yes.

22 MS CEILIDH SNIDER: Yesterday before
23 we broke I provided to the Registry Officer some better
24 copies of documents as there were concerns about the
25 quality of copies.

1 So, there is a document that is to be
2 inserted at tab J, also at tab E and a new tab C-1.

3 Ms Barber will distribute those and
4 there are also pursuant to a he request from the
5 respondents copies of envelopes and these envelopes
6 don't have a tab and they may simply be for referral
7 purposes only and they've been three-hole punched for
8 you.

9 THE CHAIRPERSON: That is common
10 practice. This was a common practice which was
11 established in the Bell case.

12 MS CEILIDH SNIDER: I believe so.

13 THE CHAIRPERSON: Where thousands of
14 pages that were filed.

15 So...

16 REGISTRY OFFICER: Can I just confirm
17 the envelopes, are they to be filed as an exhibit.

18 MS CEILIDH SNIDER: I don't think
19 that we had quite got to that point yet but perhaps
20 they could be distributed and there are sufficient
21 copies of each and if it would be possible to hand them
22 out in the order in which they were provided to you,
23 yesterday there was some confusion about dates and so
24 forth.

25 MR. FROMM: Could I ask at what tab

1 does the four-page item headed up panzer-dragon go?

2 MS CEILIDH SNIDER: Sorry, what's the
3 title?

4 MR. FROMM: The author is
5 panzer-dragon and the --

6 MS CEILIDH SNIDER: I believe that's
7 the document that goes in tab at sub-tab, tab C at
8 sub-tab 1. I'll just check that for you.

9 THE CHAIRPERSON: Ms Snider, I
10 haven't gotten every copy yet, so if we want to do it
11 so I can follow...

12 MS CEILIDH SNIDER: All right.

13 THE CHAIRPERSON: So, the first one
14 was the yahoo mail?

15 MS CEILIDH SNIDER: Yes, that's
16 correct, and that goes in at tab J.

17 Next there was a concern about the
18 document under tab E, so the next document you have
19 been provided with entitled: Canadian Heritage Alliance
20 and it has a document number on it WA-014.06.

21 THE CHAIRPERSON: That is which?
22 Yes.

23 MS CEILIDH SNIDER: Goes under tab E.

24 THE CHAIRPERSON: Just wait a second.

25 REGISTRY OFFICER: (handed)

1 THE CHAIRPERSON: Thank you.

2 MS CEILIDH SNIDER: The next tab to
3 replace is under tab C-1. If you look at the --

4 THE CHAIRPERSON: C-1?

5 MS CEILIDH SNIDER: Yes. It looks
6 like this.

7 THE CHAIRPERSON: This one.

8 MS CEILIDH SNIDER: Yes. And then,
9 finally, there was three copies of -- photocopies of
10 envelopes that were provided and we haven't yet really
11 dealt with those.

12 I believe Mr. Warman testified
13 yesterday that the material was contained in envelopes
14 and Mr. Fromm had a question about those envelopes.

15 I'm not sure if they will be
16 required, but I have made copies for -- at this stage
17 they're just with you.

18 THE CHAIRPERSON: I will ask Mr.
19 Kulbashian if he wants these to be filed as --

20 MR. KULBASHIAN: Well, we didn't
21 really deal with C-1 either, so we might as well file
22 these. Like, I mean, C-1 there is a tab, I don't
23 understand what she meant when she said we haven't
24 dealt with them yet.

25 MS CEILIDH SNIDER: They haven't --

1 for example, C-1 hasn't yet been made an exhibit but
2 when we were reviewing our book of documents because
3 there was concerns about a couple of documents, quality
4 of copies, we noticed that C-1 was also of poor quality
5 so we decided to go ahead and replace that before there
6 were concerns.

7 MR. KULBASHIAN: That's fine. Yeah,
8 we should definitely enter these as --

9 MR. FROMM: These were in
10 relationship to the document about membership?

11 MS CEILIDH SNIDER: That's right.

12 MR. FROMM: Which tab was that?

13 MS CEILIDH SNIDER: We were at --
14 just give me a second. We haven't got all the way
15 through all of those documents, I think this will come
16 in.

17 If we proceed with Mr. Warman's
18 testimony, I think that the envelopes will sort of flow
19 from that testimony. I think that it's probably best
20 to deal with them at that time.

21 MR. KULBASHIAN: Well, we did look at
22 some documents that --

23 THE CHAIRPERSON: Document M.

24 MS CEILIDH SNIDER: Yeah, document M.

25 MR. KULBASHIAN: Yeah, document M,

1 document N, document O, P.

2 MS CEILIDH SNIDER: Okay.

3 MR. KULBASHIAN: Q, R and I think we
4 didn't actually look into R, but if --

5 MS CEILIDH SNIDER: We got to Q.

6 MR. FROMM: Perhaps these envelopes
7 could be part of HR tab M or HR tab N because
8 apparently they were these envelopes contained these
9 mailings.

10 MS CEILIDH SNIDER: Perhaps what I
11 can do is ask Mr. Warman if he can identify for us
12 which envelope the first set of documents were in as I
13 understand from his testimony yesterday, perhaps Mr.
14 Warman can just refresh everyone's memory.

15 MR. WARMAN: So, there are three
16 separate envelopes. The first one is dated the 4th of
17 February, 2003, that is the post mark date. The second
18 is dated 17 March, 2003. And the third is the 1st of
19 May, 2003.

20 MR. KULBASHIAN: I see the 17th of
21 March date, however, I don't see the other two dates.

22 MR. WARMAN: If you look in the top
23 line of digits.

24 MR. KULBASHIAN: Yeah, I see it.

25 MR. WARMAN: If you go over, just

1 past, starting with the 10th digit to the 15th digit,
2 if you read that in reverse order or in order of year,
3 month, day those are the dates.

4 MR. KULBASHIAN: Fine, thank you.

5 MR. WARMAN: And it's the same with
6 both of the other envelopes that don't have that circle
7 stamp on them. So...

8 MS CEILIDH SNIDER: Mr. Warman,
9 yesterday you were testifying to certain material that
10 you received first, and I believe that you stated that
11 they came in one envelope.

12 MR. WARMAN: Yes. If you can just
13 hang on one second. I believe the tabs N, O, P, Q at
14 least came in the second envelope, the March 17th, 2003
15 envelope.

16 MS CEILIDH SNIDER: Tab M is included
17 in that list, I presume, M, N, O, P?

18 MR. WARMAN: I'm not a hundred per
19 cent, but I believe it probably would have been.

20 THE CHAIRPERSON: So, N, O, P, Q?

21 MR. WARMAN: M, N, O, P, Q and R.
22 Excuse me, sorry, M, N, O, P, Q.

23 THE CHAIRPERSON: All came in the
24 March 17th envelope you believe?

25 MR. WARMAN: Although I'm not certain

1 about M. I believe the tab T, which has not yet been
2 entered but will shortly be, came in the envelope
3 marked 4 February, 2003. And I believe tab S as in
4 Sam, came in the envelope marked 1 May, 2003.

5 THE CHAIRPERSON: Maybe we could mark
6 the March 3rd, 2003 as Exhibit HR-1-MA. Should we do
7 that, so that...

8 MS CEILIDH SNIDER: Yeah, that would
9 be acceptable, thank you.

10 REGISTRY OFFICER: So, the copy of
11 the envelope with the date of March 17th, 2003 will be
12 filed as Commission Exhibit HR-1, MA.

13 EXHIBIT NO. HR-1-MA: Envelope
14 dated March 17, 2003.

15 THE CHAIRPERSON: And we'll mark the
16 others as we go along.

17 MS CEILIDH SNIDER: Thank you.

18 So, picking up from yesterday, we are
19 presently under tab R. Mr. Warman, do you recognize
20 this document?

21 MR. WARMAN: I do. It's an
22 information booklet from the Canadian Heritage Alliance
23 that was sent to me, and I don't have the exact date on
24 which it was sent to me, but that I personally received
25 and then provided a copy to the Commission pursuant to

1 my complaint.

2 MS CEILIDH SNIDER: I think, unless
3 there are any objections, may I have this marked,
4 please?

5 THE CHAIRPERSON: Any objection, Mr.
6 Kulbashian, Mr. Fromm?

7 REGISTRY OFFICER: The document as
8 described will be filed as Commission Exhibit HR-1, tab
9 R.

10 EXHIBIT NO. HR-1, Tab R:
11 Information booklet from
12 Canadian Heritage Alliance.

13 MS CEILIDH SNIDER: Mr. Warman, would
14 you please advise the Tribunal the significance of this
15 document?

16 THE CHAIRPERSON: Just a second.

17 MS CEILIDH SNIDER: Sorry.

18 MR. KULBASHIAN: She was just making
19 some notes.

20 THE CHAIRPERSON: So, you don't have
21 any objection?

22 MR. KULBASHIAN: No.

23 MR. WARMAN: Actually now that I have
24 opened it I can see that the date on the letter is
25 actually 1 February, 2003 that's on the second page

1 within the information booklet at the top left.

2 So, essentially what this is, is it
3 was a response to my request for more information about
4 the Canadian Heritage Alliance, indicates that it's the
5 starter package, outlines there are three categories of
6 active member, allied member and subscriber for the
7 news magazine or newsletter, goes through the same
8 statement:

9 "The Canadian Heritage Alliance
10 is a collection of dissident
11 writers and concerned Canadians
12 who have united to act as a
13 political lobby group. We seek
14 to revive the civil liberties of
15 the Canadian citizen which have
16 been smothered by the voice of
17 the minority."

18 Continues on the next page with an
19 article talking about how the group adopted a section
20 of road to be cleaned up, and when this was found out
21 the offer -- or the sign was taken down and the offer
22 was rejected.

23 The next page is a couple of what
24 they indicate are letters to the editor or letters to
25 the Canadian Heritage Alliance.

1 And the final page is simply the same
2 contact information.

3 MS CEILIDH SNIDER: Thank you. If we
4 may turn now to tab S.

5 MR. WARMAN: This is the April, 2003
6 newsletter for the Canadian Heritage Alliance that I
7 received in the mail and submitted to a copy to the
8 Commission of.

9 MS CEILIDH SNIDER: May I have this
10 document marked, please, as an exhibit.

11 THE CHAIRPERSON: Any objection, Mr.
12 Kulbashian or Mr. Fromm?

13 MR. KULBASHIAN: Not at this point.

14 THE CHAIRPERSON: So, we can mark
15 it.

16 REGISTRY OFFICER: The document as
17 described will be filed as Commission Exhibit HR-1, tab
18 S.

19 EXHIBIT NO. HR-1, Tab S: April,
20 2003 Newsletter of Canadian
21 Heritage Alliance.

22 MS CEILIDH SNIDER: Thank you.

23 THE CHAIRPERSON: And the envelope
24 forms part of that document?

25 MS CEILIDH SNIDER: Yes, it does.

1 REGISTRY OFFICER: The envelope with
2 the date of 03/05/01 will be filed as Commission
3 Exhibit HR-1-SA.

4 EXHIBIT NO. HR-1-SA: Envelope
5 with date of May 1, 2003.

6 MR. KULBASHIAN: Actually before we
7 identify, there's just one issue. What the relevance
8 of this document is really to the proceeding, if there
9 is any kind of submission you can make.

10 THE CHAIRPERSON: Ms Snider.

11 MS CEILIDH SNIDER: The relevance of
12 the document is that it is further evidence of the
13 group nature.

14 THE CHAIRPERSON: Further evidence
15 of...?

16 MS CEILIDH SNIDER: The Canadian
17 Heritage Alliance as a group and there are also
18 messages contained or articles contained within this
19 document that we will see are of a similar nature to
20 articles that were published on the Canadian Heritage
21 Alliance website that we will come to.

22 This is relevant as it shows
23 consistency between the website and this article which
24 is, in our submission, clearly is reflective of the
25 group nature of the Canadian Heritage Alliance.

1 MR. FROMM: Just to be clear though,
2 what's just been marked as HR-1, Tab S the Canadian
3 Heritage News, this was a print document.

4 MS CEILIDH SNIDER: Yes, it is.

5 MR. FROMM: It was not on line.

6 MS CEILIDH SNIDER: No.

7 MR. KULBASHIAN: So, what allegation
8 is that there is articles contained within that that
9 violate section 13 of the Act or...

10 MS CEILIDH SNIDER: The Act does not
11 covered to print material, the Act that we are
12 concerned, as you know just to refresh, it's the Act
13 section 13.1 covers telecommunication, section 13.2
14 covers telecommunication over the Internet.

15 MR. KULBASHIAN: I understand that
16 part.

17 MS CEILIDH SNIDER: The purpose in
18 submitting this particular article is that, as I
19 mentioned, it demonstrates the group nature of the
20 Canadian Heritage Alliance which is one of the elements
21 of the complaint the Commission and complainant are
22 required to prove. It also, we submit, contains
23 articles that are of a similar nature to those in the
24 website and demonstrates consistency that the types of
25 thoughts and views expressed in these articles are

1 similar to the thoughts and views expressed on the
2 website, and that those individuals expressing their
3 thoughts and views on the website are also members of
4 the group Canadian Heritage Alliance.

5 THE CHAIRPERSON: Does that answer
6 your question, Mr. Kulbashian?

7 MR. KULBASHIAN: Somewhat, but I
8 guess I'll see what they say about it ultimately.

9 THE CHAIRPERSON: Okay, Ms Snider.

10 MS CEILIDH SNIDER: Thank you.

11 Mr. Warman, this exhibit having been
12 marked, I'd like to take you through it.

13 First, are there are any particular
14 messages or content that you would like to bring the
15 Tribunal's attention to.

16 MR. WARMAN: The first page indicates
17 that it's Volume 3 Issue 2 of the Canadian Heritage
18 News with a date of April, 2003.

19 States that they are politically
20 incorrect and proud of it.

21 The first article entitled: A
22 Message from CHA, on the second page talks about Ernst
23 Zundel, then states that, after talking about him for a
24 bit says:

25 "Thought is not a crime except

1 perhaps to a government that
2 seeks to oppress its people from
3 questioning its direction. The
4 government has decreed that
5 Canadians accept the "diversity"
6 of other cultures with open
7 arms, regardless of how
8 disturbing some of their
9 practices may be, yet they
10 persecute and threaten a man who
11 has practised nothing but free
12 thought. As the government
13 becomes more critical of our
14 freedoms and initiatives new
15 laws and policies that inhibits
16 our rights as Canadian citizens,
17 more people are questioning the
18 current political scheme.
19 Hopefully this change in the
20 people will end the government's
21 participation in the decay of
22 the Canadian nation."

23 The next thing that is listed is an
24 upcoming event and the Canadian Heritage Alliance
25 indicates that it hopes many of their supporters who

1 live in southern Ontario can attend a march on Sunday,
2 April 27th, 2003 regarding the City of London's Hate
3 Free policy.

4 Proceeds through a couple of pages
5 until you get to page 6, 6 being at the bottom of the
6 page closest to the three rings, so pages 6 and 7.

7 The article entitled: Hate Free
8 London.

9 It indicates that it's written by
10 Melissa Guille who is staff journalist. It goes
11 through Ms Guille's perspective on the London's
12 proposed hate free policy.

13 The second half -- second column, if
14 you will, down towards the end says:

15 "This hate free policy is
16 extending an already present
17 discrimination against Europeans
18 in employment, scholarships and
19 education through various
20 "equity policies". One can
21 assume like all previous "hate
22 legislation" this new policy
23 will not be applied to..."

24 MR. KULBASHIAN: I'm going to object
25 to this, to the article being read into the record

1 unless there is any allegation that this article could
2 in fact constitute any kind of breach of section 13.

3 Just reading the article into the
4 record presumably for whatever reason if you can make
5 it a little more clear and it doesn't -- unless there
6 is any allegation that this is contrary to section 13
7 in any way, then just reading the article itself
8 doesn't seem to make sense, it doesn't seem relevant.

9 THE CHAIRPERSON: Ms Snider.

10 MS CEILIDH SNIDER: The relevance of
11 this article is that it demonstrates the particular
12 views of Ms Guille in this article and it also will be
13 linked to particular views that are expressed on the
14 website and that we allege that Ms Guille has an
15 acceptance of, promotes, permits to be promoted on her
16 website both by herself and by other contributors to
17 the website. It's a reflection -- it's clearly under
18 her name.

19 It also is submitted for the purposes
20 of demonstrating that she is on staff of the Canadian
21 Heritage Alliance.

22 THE CHAIRPERSON: But I think Mr.
23 Kulbashian's objection was --

24 MS CEILIDH SNIDER: I addressed his
25 objection in the first part of my response. Just to be

1 clear, the content of this article goes to the views of
2 Ms Guille which we say are articles expressed in the
3 website of the canadianheritagealliance.com and that
4 she in her statement of particulars says that she, you
5 know, tends to disavow and, in fact, that's not, in our
6 submission, the case and that she has a particular
7 tolerance for and is in fact supportive of these views.

8 This article demonstrates that.

9 MR. KULBASHIAN: Actually I don't
10 believe that whether or not somebody's -- what
11 somebody's personal views are, whether or not that
12 would in any way help the specific issue here which is
13 whether or not she did communicate in the sense that if
14 the articles that they're alleging that she did
15 communicate or in any way on line were in violation of
16 section 13.

17 Whether or not her views themselves
18 were similar to that article is actually, in fact,
19 irrelevant and the reason for that is because just by
20 saying somebody is racist or even in this sense
21 possibly has politically charged opinions, doesn't
22 necessarily mean in any way, doesn't necessarily mean,
23 sorry, whether or not a section 13 violation was taking
24 place because these articles are, first of all,
25 articles from print, they are not stated these articles

1 were on line. I'm sorry, I have a feeling this mike is
2 not picking up properly.

3 These articles were made in print,
4 were disseminated in print, they are not stated that
5 they were placed on line. Just putting an individual's
6 views before the court, it's kind of the idea of trying
7 to give character evidence.

8 THE CHAIRPERSON: But I think this
9 will be a matter for you to argue, because at this
10 point in time what I have to deal with is is this
11 document admissible.

12 MS CEILIDH SNIDER: Mm-hmm.

13 THE CHAIRPERSON: And is this
14 document relevant to the issues that have to be
15 decided.

16 And eventually down the road I will
17 have to determine how much weight I should give to this
18 document and you may then say, well, the Tribunal
19 should disregard any views expressed in any other
20 format than what was found on the Internet.

21 But this will be more a question of
22 argument than --

23 MR. KULBASHIAN: However, my
24 submission is that this amounts to giving character
25 evidence and, as we saw earlier this week, Mr. Warman

1 objected to getting into any character evidence.

2 This could be evidence in the way of
3 the credibility of an issue of an individual, that's
4 one thing, but putting character evidence -- I
5 understand if they want to prove that Ms Guille is the
6 staff journalist, they can read that part, but reading
7 this actual passage into the record amounts to giving
8 character evidence, which I believe...

9 First of all, to go back a little
10 bit, Ms Snider stated that she -- in the statement of
11 particulars that Ms Guille disavowed the views.

12 I don't understand where that states
13 specifically, so that's not an issue, and whether or
14 not she disavowed the views, just because somebody --
15 actually not because -- the character evidence itself
16 is prejudicial.

17 MS CEILIDH SNIDER: This is not
18 character evidence, this is similar fact evidence.

19 MR. KULBASHIAN: However, I guess
20 effectively then we can just get Mr. Warman to read the
21 entire document into the record and state, well, pick
22 what you want from there.

23 However, reading a passage that they
24 state means that these are her views, et cetera, when
25 somebody contested in the first place. I mean, if you

1 can get where I'm coming from, the major issue here is
2 if they are opening the door to give character evidence
3 about the respondent, then they are opening the door
4 about character evidence about the complainant himself
5 as well who is on the stand.

6 THE CHAIRPERSON: No, but this -- you
7 can raise that if you wish at a later date, but right
8 now this document is a document which comes from
9 Canadian Heritage Newsletter or, if you want, it's a
10 document which is admissible, it's a document which
11 seems to be relevant to the present proceedings.

12 But you could, and Mr. Warman is
13 just, because you know there are like "X" number of
14 pages, he is just highlighting those that he feels
15 should be submitted to the attention of the Tribunal,
16 but you are free at one point in time to argue that the
17 Tribunal should not look at these excerpts and should
18 disregard them for one reason or another.

19 MR. KULBASHIAN: I understand. Thank
20 you very much, Mr. Chair.

21 MR. WARMAN: Mr. Chair, I'm wondering
22 if I may have permission to speak to counsel for the
23 Commission on a specific security issue, please, solely
24 related to that issue and not related to my testimony?

25 THE CHAIRPERSON: Yes, on an issue of

1 security.

2 MR. WARMAN: Yes.

3 THE CHAIRPERSON: Yes.

4 MR. WARMAN: Thank you.

5 --- Discussion off the record

6 MS CEILIDH SNIDER: In light of the
7 information that Mr. Warman has just --

8 THE CHAIRPERSON: Just a second, so
9 that...

10 MR. KULBASHIAN: I'm sorry.

11 THE CHAIRPERSON: If you want to be
12 heard.

13 MS CEILIDH SNIDER: Yes. Sorry, I
14 didn't realize he was...

15 THE CHAIRPERSON: Okay. Ms Snider.

16 MS CEILIDH SNIDER: It's been brought
17 to my attention that there is a particular security
18 issue that we need to deal with that I would suggest is
19 at least on par with the issue that we dealt with
20 earlier.

21 In light of that, I would ask that
22 briefly the hearing be cleared of any members of the
23 public and that we go in-camera.

24 THE CHAIRPERSON: As you know, my
25 concern --

1 MS CEILIDH SNIDER: Very briefly.

2 THE CHAIRPERSON: No, but for
3 security measures for me, you know, I have opted in
4 these circumstances to have the hearing in-camera, so I
5 will apply this rule.

6 So, I would ask anyone who is not a
7 party to these proceedings, members of the public to
8 leave the room for "X" number of minutes.

9 --- Upon recessing at 12:25 p.m., to resume immediately
10 in-camera.

11 --- Upon resuming at 2:50 p.m.

12 THE CHAIRPERSON: Then I will get
13 back on the record in order to deal with matters with
14 the continuance of the hearing.

15 So, we are off the in-camera session.

16 As I said earlier on, given the fact
17 that this hearing will -- additional dates will have to
18 be set, but with what I have heard this morning, I
19 don't think that it would be the best thing if the
20 hearing was only to resume in the fall.

21 I think we have started the hearing,
22 due to facts or a situation that arose which were out
23 of the control of the Tribunal and which were most
24 probably unforeseeable to the parties, we couldn't do
25 as much as we would have liked to this week, but this

1 being said, I think and I urge the parties to do more
2 than their utmost best so that we can find dates early
3 in the next year and not to have to deal with these
4 matters in the summer or late in the fall because this
5 would be very, very disruptive to everyone.

6 So, a letter will be sent to the
7 parties directing them to provide new sets of dates for
8 the continuance of this hearing.

9 I stated earlier on that one week
10 might be sufficient, but I don't know, given what
11 happened this week, so, I don't know if we shouldn't
12 set more than one week and if we only need one week
13 that's fine, but what happens if we set one week and
14 then we need more days, then it becomes more disruptive
15 to the parties because they have already maybe taken
16 other undertakings elsewhere.

17 So, I would ask you, if you would, to
18 provide the Tribunal, and we'll do that by, directives
19 will be sent to you by letter, if you could provide the
20 Tribunal with two additional weeks and if you could do
21 your best to indicate dates early in the spring or,
22 yes, early in the spring but, as I said, to have this
23 hearing continue only in October would be very, very
24 disruptive.

25 So, as I said, a letter will be sent

1 asking you to report back to the Tribunal maybe within
2 a week because we have to set dates early and, given
3 the fact that the next session or the hearing date or
4 next hearing will not take place here and we all agree
5 that this is not, for this type of hearing, the best
6 facilities, we will have to look for additional -- look
7 elsewhere for facilities and it seems that there are
8 some places where maybe would have liked to have the
9 hearing which are not available to the Tribunal for
10 this type of case.

11 So, as I said, a letter will be sent
12 to you most probably early next week and the rest we
13 will do via letter or electronic mail.

14 Do you have anything else to add at
15 this point in time?

16 MS CEILIDH SNIDER: Nothing, no,
17 thank you.

18 THE CHAIRPERSON: Mr. Warman.

19 MR. WARMAN: No, I do not.

20 THE CHAIRPERSON: Ms Snider, no.
21 Mr. Kulbashian.

22 MR. KULBASHIAN: Happy New Year.

23 THE CHAIRPERSON: It's early but I'll
24 take it anyway.

25 Mr. Fromm?

1 MR. FROMM: Merry Christmas.

2 THE CHAIRPERSON: It's less early,
3 but I'll take it anyway.

4 So, this hearing is adjourned, new
5 dates will be set so that the hearing can proceed,
6 hopefully early in the coming new year.

7 And if in the meantime you have any
8 submissions that you have to make to the Tribunal,
9 please do so and we will deal with these submissions.

10 Thank you.

11 REGISTRY OFFICER: Order, please.

12 --- Whereupon the hearing adjourned at 2:55 p.m.

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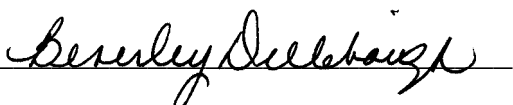
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I hereby certify that I have
taken down in Stenograph and
transcribed the foregoing to the
best of my skill and ability.



Beverley Dillabough, C.S.R.