

**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**

TERRY TREMAINE

**Respondent**

**l'intimé**

**BEFORE/DEVANT:**

MICHEL DOUCET

CHAIRPERSON/

PRÉSIDENT

NICOLE BACON

REGISTRY OFFICER/

L'AGENTE DU GREFFE

**FILE NO./N<sup>o</sup> CAUSE:**

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

HEARING HELD IN HEARING ROOM NO. 1 OF THE CANADIAN HUMAN RIGHTS  
TRIBUNAL, 11TH FLOOR, 160 ELGIN STREET, OTTAWA, ONTARIO, ON  
THURSDAY, AUGUST 10, 2006, AT 9:35 A.M. LOCAL TIME

APPEARANCES/COMPARUTIONS

Richard Warman	on behalf of the Complainant
Ikram Warsame/ Giacoma Vigna, Esq.	Counsel for the Canadian Human Rights Commission
Terry Tremaine/ Paul Fromm	on behalf of the Respondent

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Ottawa, Ontario

1  
2 --- Upon resuming on Thursday, August 10, 2006  
3 at 9:35 a.m.

4 THE REGISTRAR: All rise, please.

5 THE CHAIRPERSON: Good morning.

6 THE REGISTRAR: Please be seated.

7 THE CHAIRPERSON: Just before we get  
8 going this morning I just wanted to do a little bit of  
9 tidying up.

10 I believe Mr. Warman will be the only  
11 witness for the Commission and for Mr. Warman.

12 Is that the case?

13 MS WARSAME: That is correct. That  
14 is correct, yes.

15 THE CHAIRPERSON: So you will be  
16 closing your case after the cross-examination of  
17 Mr. Warman?

18 MS WARSAME: The re-examination, yes.

19 THE CHAIRPERSON: After  
20 re-examination, yes.

21 MS WARSAME: Yes.

22 THE CHAIRPERSON: The same for you,  
23 Mr. Warman, you won't be calling any more witnesses?

24 MR. WARMAN. Yes.

25 THE CHAIRPERSON: Now, from the

1           respondent's point of view, you had indicated that you  
2           would probably be calling one witness.

3                           Is that still the case?

4                           MR. FROMM:   That is correct.

5                           THE CHAIRPERSON:  We have today and  
6           tomorrow to deal with this, so what I expect to do -- I  
7           hope we can get through the evidence if possible today  
8           or early tomorrow morning so that the parties can get  
9           into their arguments in the afternoon tomorrow.

10                           Today what we will do -- and we will  
11           play it by ear timewise -- if need be we will go beyond  
12           4:30, unless there is an objection by any party here.

13                           Yes...?

14                           MR. FROMM:   Mr. Chairman, I don't  
15           anticipate our evidence and the cross-examination going  
16           beyond noon and I'm wondering if we can go to our  
17           closing arguments this afternoon?

18                           THE CHAIRPERSON:  Certainly if we  
19           have everything done by noon we will address that  
20           issue,  We can break and probably come back later on in  
21           the afternoon and go to the closing arguments if there  
22           is no objection by anybody.  Certainly that would be --

23                           Yes, Ms Warsame?

24                           MS WARSAME:   We would prefer tomorrow  
25           morning, Mr. Chair.

1 THE CHAIRPERSON: We will deal with  
2 that when we get there. We will see how it goes there  
3 and I will listen to the parties on that issue.  
4 Certainly if we could get the evidence in by noon, that  
5 would certainly be very appropriate, but we will deal  
6 with that then.

7 We were at the point of the  
8 cross-examination of Mr. Warman.

9 Mr. Fromm, you will be doing the  
10 cross-examination?

11 MR. FROMM: Yes, I will.

12 THE CHAIRPERSON: All right.

13 --- Pause

14 PREVIOUSLY AFFIRMED: RICHARD WARMAN

15 MR. FROMM: If I could just have a  
16 moment to find something here.

17 --- Pause

18 MR. WARMAN: Mr. Chairman, I just  
19 need to get something for my briefcase.

20 THE CHAIRMAN: Certainly.

21 EXAMINATION

22 MR. FROMM: Mr. Warman, you began  
23 your testimony by explaining the process of getting  
24 onto a website like Stormfront and the process I  
25 believe of posting a message.

1                   I was wondering if you could tell  
2                   us, do you have to register to get onto the website  
3                   called Stormfront?

4                   MR. WARMAN: No, you do not. It is  
5                   accessible to the public, You could just go and type  
6                   in "stormfront.org" and you can view all of the  
7                   messages that are present there. It is a completely  
8                   open website.

9                   MR. FROMM: Did you in fact at one  
10                  point register?

11                  MR. WARMAN: I did, yes. I  
12                  registered a pseudonym, yes.

13                  MR. FROMM: What was the pseudonym?

14                  MR. WARMAN: The pseudonym was  
15                  "pogue mahone".

16                  MR. FROMM: Could you spell that,  
17                  please?

18                  MR. WARMAN: The pseudonym was  
19                  P-O-G-U-E, new word, M-A-H-O-N-E. It is the name of an  
20                  Irish Celtic music group.

21                  MR. FROMM: Is it also Gaelic for  
22                  "kiss my rear end"?

23                  MR. WARMAN: I'm not sure.

24                  MR. FROMM: I draw your attention  
25                  to HR-21.

1 MR. WARMAN: Yes.

2 MR. FROMM: At the top there in  
3 the first rectangular bracket it says "Welcome,  
4 pogue mahone".

5 That would be you. Is that correct?

6 MR. WARMAN: That was the pseudonym I  
7 used on Stormfront.

8 THE CHAIRPERSON: I'm sorry, could  
9 you indicate where you see that?

10 MR. FROMM: There is a big headline  
11 that says "Stormfront Town Hall with David Duke".

12 THE CHAIRPERSON: Yes.

13 MR. FROMM: Then there is a rectangle  
14 under it. In the top right-hand corner of the  
15 rectangle it says "Welcome, pogue mahone".

16 THE CHAIRPERSON: Yes.

17 MR. FROMM: Did you use other  
18 pseudonyms in your work on Stormfront?

19 MR. WARMAN: No, I did not. I'm  
20 sorry, I should say not to the best of my recollection.  
21 --- Pause

22 MR. FROMM: Did you ever post on  
23 Stormfront using the pseudonym "pogue mahone"?

24 MR. WARMAN: Yes, I did.

25 MR. FROMM: Did you provide

1           those posts in the material that you submitted to  
2           Mr. Tremaine?

3                         MR. WARMAN:  None of the  
4           postings were relevant or arguably relevant to the  
5           case at issue.

6                         MR. FROMM:  So the answer is that you  
7           did not.

8                         Is that right?

9                         MR. WARMAN:  My answer was my answer.

10                        THE CHAIRPERSON:  Your answer  
11           was that you felt that it was not relevant to  
12           this complaint?

13                        MR. WARMAN:  Exactly.

14                        MR. FROMM:  But there were times when  
15           you did post on stormfront you say?

16                        MR. WARMAN:  That is what I said.

17                        MR. FROMM:  I would like you, if you  
18           could, to inform us just how you would go about posting  
19           a message on Stormfront.  As perhaps the Member may not  
20           be familiar with the site perhaps you could start from  
21           the very beginning.

22                        How would you choose where you  
23           might wish to post?

24                        MR. WARMAN:  As I explained during my  
25           direct examination, it is essentially a pyramid format.

1           There are a small number of threads or broader topic  
2           areas within which there are greater number of threads  
3           theoretically related to that topic area and then there  
4           are individual posts, again theoretically related to  
5           that thread, topic of discussion.

6                         MR. FROMM: All right. So  
7           hypothetically a thread might be "Canadian Intervention  
8           in Afghanistan".

9                         Would you agree that was a  
10          possible thread?

11                        MR. WARMAN: Within the realm of  
12          possibilities, that's possible.

13                        MR. FROMM: All right.

14                        Now, you wish to make a comment about  
15          Canada's involvement in Afghanistan. What would you do  
16          at that point?

17                        MR. WARMAN: If there was a thread  
18          already in existence on that subject?

19                        MR. FROMM: Yes.

20                        MR. WARMAN: To the best of my  
21          recollection, you would go to the last post and you can  
22          either do "Post reply" or you could -- well, that is  
23          the easiest way to do it, as far as I can tell.

24                        MR. FROMM: So there might be  
25          10 posts on the thread "Canada's Involvement in

1           Afghanistan", you would go to the very bottom and you  
2           would become number 11 with your comments.

3                                Would that be correct?

4                                MR. WARMAN:  If you are the  
5           next poster.

6                                MR. FROMM:  All right.

7                                Supposing poster number three makes a  
8           comment:  We should increase our Armed Forces there to  
9           5,000".  Let's say you agree, or maybe you disagree.  
10          What might you do in that case?

11                               You want to direct yourself  
12          particularly to what poster number three said because  
13          you want to specifically agree or disagree with that  
14          person, what would you do in that case?

15                               MR. WARMAN:  Objection.  He is asking  
16          hypothetical question.

17                               THE CHAIRPERSON:  No, I will allow  
18          the question.  I guess what the respondent is trying to  
19          do here is to understand the workings --

20                               MR. FROMM:  Well, I won't ask a  
21          hypothetical question.  Let's just take,  
22          arbitrarily, HR-17.

23                               The first post there is from somebody  
24          named "Phalanx23" and he expresses some views on, I  
25          guess, the topic "questions from a black man".

1                   Mr. Warman, if you wanted to, let's  
2 say, particularly disagree with what Phalanx23 was  
3 saying, how would you do that in such a way that you  
4 were highlighting your objection to Phalanx23?

5                   MR. WARMAN: You could make a  
6 reference to it in your posting.

7                   MR. FROMM: Okay. If you turn over  
8 to the second page, page 2 of 13 under HR-17, what do  
9 you see in the very bottom of the rectangle at the top  
10 of the page?

11                  MR. WARMAN: I'm sorry, which page?

12                  MR. FROMM: This is page 2 of 13 and  
13 this would seem to be at the very end of Phalanx23's  
14 post on the top of page 2 of 3.

15                  What do you see at the bottom of the  
16 rectangle there on the right-hand side?

17                  MR. WARMAN: I see a bracket that  
18 says "Quote".

19                  MR. FROMM: What would happen if you  
20 clicked on "Quote"?

21                  MR. WARMAN: To my understanding,  
22 that repeats the previous posting within your response.

23                  MR. FROMM: And then you would be  
24 able to put in your views, probably in disagreement  
25 with Phalanx23, or agreement. Right?

1                   MR. WARMAN: That causes the  
2                   recommunication of the original posting and then you  
3                   can put whatever you want as your own comments.

4                   MR. FROMM: Now, were you to make a  
5                   post, either in reply or at the end of the thread to  
6                   express your point of view, how many times -- having  
7                   typed it out, what would you do next?

8                   If you have typed it out on  
9                   your computer, how do you get it from your computer  
10                  to Stormfront?

11                  MR. WARMAN: You would click on the  
12                  "Submit" button.

13                  MR. FROMM: All right. Then would  
14                  you have to do that again?

15                  In order to get it to Stormfront, to  
16                  get your views let's say in disagreement with  
17                  Phalanx23, you would type it out, type out what you had  
18                  to say, click "Send", and would I have to click it  
19                  again to send it?

20                  MR. WARMAN: Normally buttons work  
21                  when you click them once.

22                  MR. FROMM: At that point your  
23                  post would travel and would appear on Stormfront.

24                  Is that correct?

25                  MR. WARMAN: Provided you weren't

1 moderated, yes.

2 MR. FROMM: All right.

3 Would you agree that these threads  
4 often take the form of a conversation or discussion?

5 MR. WARMAN: Between the  
6 various posters?

7 MR. FROMM: Yes.

8 MR. WARMAN: There can be back and  
9 forth in them, yes.

10 MR. FROMM: All right.

11 Could you characterize  
12 stormfront.org? What is the ideology, as you see it,  
13 of stormfront.org.

14 MR. WARMAN: I believe that it is a  
15 mixture of White Supremacy and neo-Naziism as I termed  
16 those in my original testimony.

17 --- Pause

18 MR. FROMM: Have you visited  
19 stormfront.org often?

20 MR. WARMAN: I have.

21 MR. FROMM: Over what period of time?

22 MR. WARMAN: Several years.

23 MR. FROMM: Could you be a bit more  
24 specific about "several"?

25 MR. WARMAN: Since 2003 at least.

1 MR. FROMM: All right. How many  
2 times a week might you visit stormfront.org?

3 MS WARSAME: Objection. How is  
4 that relevant?

5 THE CHAIRPERSON: I will allow  
6 the question.

7 MR. WARMAN: It would depend on what  
8 week it was.

9 MR. FROMM: How many hours a week  
10 might you spend on stormfront.org?

11 MR. WARMAN: Again, it would depend  
12 on what the week was. It would vary dramatically.

13 MR. FROMM: I think we will be  
14 suffering from anorexia of information this morning.

15 MS WARSAME: Objection. He is  
16 providing --

17 MR. FROMM: I will spell that out,  
18 A-N-O-R-E-X-I-A.

19 THE CHAIRPERSON: I just want to make  
20 a point here. This is cross-examination. I will make  
21 it for both counsel, for Mr. Warman and for the  
22 Commission also.

23 In cross-examination certainly we are  
24 allowed to explore a little more largely than we do in  
25 examination. Up to now I guess Mr. Warman did testify

1           about the working of stormfront in his direct  
2           examination and I believe that the questions are --  
3           I'm not saying that they are relevant, but are  
4           appropriate on his knowledge of stormfront and on what  
5           he does with Stormfront.

6                           I am not saying that they are  
7           relevant and I will decide that at the end, but at this  
8           point I am not going to tell Mr. Fromm that he cannot  
9           question the witness on what the witness testified in  
10          direct examination about Stormfront.

11                           The witness did say that he monitored  
12          Stormfront for a certain length of time, so I will  
13          allow the question at this point.

14                           Go ahead, Mr. Fromm.

15                           MR. FROMM:   According to your  
16          testimony the amount of time you spend each week varies  
17          and the number of times you go on Stormfront varies,  
18          but in all of this monitoring of Stormfront that you  
19          have done would you be able to characterize the type of  
20          people that you have seen posting on Stormfront?

21                           I will put it differently.  What  
22          seems to be the clientele of stormfront.org?

23                           MR. WARMAN:  You wish my personal  
24          opinion on posters of Stormfront?

25                           MR. FROMM:  Yes.

1                   MR. WARMAN: I would describe the  
2 vast majority of them as professing beliefs that I  
3 would describe as being White Supremacist or neo-Nazi.

4                   MR. FROMM: Are you a White  
5 Supremacist?

6                   MR. WARMAN: Objection. I don't see  
7 any possible relevance and it is abusive.

8                   THE CHAIRPERSON: I will not allow  
9 that type of question.

10                  MR. FROMM: Did you testify at the  
11 beginning of your testimony yesterday that you have  
12 been involved in anti-racist causes for the last 15  
13 or 20 years?

14                  MR. WARMAN: I would describe it more  
15 broadly as a human rights work, but yes, that is an  
16 accurate time frame.

17                  MR. FROMM: Good. I think you have  
18 saved me a question then.

19                  So you would describe yourself as  
20 being interested and involved in human rights work?

21                  MR. WARMAN: That is correct.

22                  MR. FROMM: All right.

23                  This isn't trying to ask the same  
24 question through the back door but, sir, if you were  
25 involved in anti-racist activities would it be fair

1 to say that you are not a racist and you are not a  
2 White Supremacist?

3 MR. WARMAN: It is the exact same  
4 question, simply phrased differently.

5 THE CHAIRPERSON: I believe the  
6 answer has been given by the first question you asked.

7 MR. FROMM: Given your views that  
8 would seem to be contrary to those of the vast majority  
9 of people who post on Stormfront, why would you spend  
10 so much time on stormfront.org?

11 MR. WARMAN: For the exact same  
12 reason that police officers in child sex crime units  
13 monitor the activities of pedophiles.

14 MR. FROMM: Are you a police officer?

15 MR. WARMAN: I believe that is  
16 self-evidently not.

17 MR. FROMM: Nothing is self-evident.  
18 Are you a police officer?

19 MR. WARMAN: I am not a  
20 police officer.

21 --- Pause

22 MR. FROMM: Were you employed at one  
23 point in time by the Canadian Human Rights Commission?

24 MS WARSAME: Objection.

25 THE CHAIRPERSON: Why?

1 MS WARSAME: I don't see  
2 the relevance.

3 THE CHAIRPERSON: I will decide the  
4 relevancy of that question and I will allow the  
5 question to be asked. I will see if it is relevant and  
6 that will be my decision, but I can't see the objection  
7 at this point of on what basis is it not relevant.

8 MR. WARMAN: I was employed by the  
9 Canadian Human Rights Commission at one period.

10 MR. FROMM: All right. What was your  
11 role there?

12 MR. WARMAN: I was employed variously  
13 as a Human Rights Officer or counsel.

14 MR. FROMM: What were your duties as  
15 a Human Rights Officer?

16 MR. WARMAN: They would involve the  
17 investigation of human rights complaints.

18 MR. FROMM: What was your period of  
19 employment at the Canadian Human Rights Commission?

20 MR. WARMAN: I believe it was roughly  
21 2002 to 2004, although I may be off there.

22 MR. FROMM: Are you still employed by  
23 them?

24 MR. WARMAN: No, I am not.

25 MR. FROMM: Were you employed by the

1 Canadian Human Rights Commission when you began  
2 developing an interest in mathdokter or Terry Tremaine,  
3 the respondent here?

4 MR. WARMAN: I would have to  
5 cross-reference the periods.

6 --- Pause

7 MR. FROMM: Would investigating  
8 people like Terry Tremaine been part of your job  
9 description in your function as a Human Rights Officer  
10 at the Canadian Human Rights Commission?

11 MR. WARMAN: No, it was not.

12 I was explicitly separated from the  
13 investigation of any internet hate files that I might  
14 have had any involvement in in order to avoid any  
15 conflict of interest.

16 MR. FROMM: Just to clarify your  
17 answer in my own mind here, were you investigating  
18 Mr. Tremaine while you were employed by the Canadian  
19 Human Rights Commission?

20 MR. WARMAN: I did not  
21 investigate Mr. Tremaine on behalf of the Canadian  
22 Human Rights Commission.

23 MR. FROMM: That wasn't my question.  
24 I said --

25 MR. WARMAN: Perhaps you could

1 clarify it for me, please.

2 MR. FROMM: It is very  
3 straightforward: Were you investigating  
4 Mr. Tremaine while you were employed by the Canadian  
5 Human Rights Commission.

6 MR. WARMAN: Given that I was  
7 employed there over a two-year period, I would say  
8 that I was monitoring the activities of Mr. Tremaine  
9 on my own time while I was employed at the Human  
10 Rights Commission.

11 MR. FROMM: All right.

12 --- Pause

13 MR. FROMM: How many section 13(1)  
14 complaints have you filed?

15 MS WARSAME: Objection again.

16 THE CHAIRPERSON: I will allow the  
17 question. I think this is public information.

18 MR. WARMAN: It depends on who is  
19 doing the counting. The Commission will sometimes take  
20 a complaint against a leader in a group and separate it  
21 into two complaints.

22 By my count it is between a dozen  
23 and 15.

24 MR. FROMM: If I could draw your  
25 attention to HR-1. Is that a copy of the complaint

1 that you made against Terry Tremaine?

2 MR. WARMAN: That was indeed  
3 my testimony.

4 MR. FROMM: Is this the complaint as  
5 you wrote it?

6 MR. WARMAN: As I testified, the  
7 first page is a Commission document. The complaint as  
8 I wrote it follows on pages 2 and 3.

9 MR. FROMM: And that is what  
10 you wrote?

11 This is not written by anybody else,  
12 this is what you wrote?

13 MR. WARMAN: That is correct.

14 MR. FROMM: That is correct, okay.

15 --- Pause

16 MR. FROMM: So in interpreting this,  
17 am I correct in saying that this complaint that you  
18 wrote was accepted by the Canadian Human Rights  
19 Commission on October 13, 2004?

20 MR. WARMAN: I'm sorry, the  
21 Commission's form indicates that they accepted it on  
22 October 19, 2004.

23 MR. FROMM: All right.

24 At what point did you learn  
25 that Mr. Tremaine was employed by the University

1 of Saskatchewan?

2 MR. WARMAN: I'm sorry, I don't  
3 recall exactly.

4 MR. FROMM: All right.

5 If I could draw your attention  
6 to HR-10?

7 We looked at that document yesterday  
8 and on the direction of the Member you were asked to  
9 disclose to us the letters to which Mr. Germida refers,  
10 your letters of April 11th and of July 23.

11 You did give us the letter of  
12 April 11th yesterday, did you not?

13 MR. WARMAN: It was not my  
14 understanding that that is what I was asked  
15 to disclose.

16 What I was asked to disclose, to the  
17 best of my knowledge, was the letter of April 11, 2005.

18 Just to save time, the letter of  
19 July 23rd simply said: Can you please respond to my  
20 letter of 11 April 2005.

21 MR. FROMM: Mr. Chairman, I think  
22 the spirit of the direction was to provide both pieces  
23 of correspondence.

24 THE CHAIRPERSON: That are arguably  
25 relevant, yes.

1 --- Pause

2 MR. FROMM: I was wondering,  
3 Mr. Warman, if you can identify this as the letter  
4 that you disclosed to us on the direction of the Member  
5 yesterday?

6 MR. WARMAN: It does appear to be.

7 MR. FROMM: I wonder if I could have  
8 that marked?

9 THE REGISTRAR: The letter from  
10 Richard Warman to Peter MacKinnon, President,  
11 University of Saskatchewan, dated April 11, 2005, will  
12 be filed as Respondent Exhibit R-1.

13 EXHIBIT NO R-1: Letter from  
14 Richard Warman to Peter  
15 MacKinnon, President, University  
16 of Saskatchewan, dated April 11,  
17 2005

18 MR. FROMM: This letter is dated the  
19 11th of April 2005, is it not?

20 MR. WARMAN: That is correct.

21 MR. FROMM: Had your complaint,  
22 accepted by the Commission the previous October, yet  
23 been adjudicated?

24 MR. WARMAN: I don't recall whether  
25 the Commission had referred it to the Tribunal. I

1 don't recall the exact date.

2 MR. FROMM: That is not the question.  
3 The question is: Had your complaint  
4 been adjudicated?

5 MR. WARMAN: Perhaps you could  
6 clarify what you mean? Adjudicated by whom?

7 THE CHAIRPERSON: I'm not sure I  
8 understand what you mean by "adjudicated", because the  
9 procedure usually is the Commission will decide if it  
10 is going to receive the complaint and later on it will  
11 be forwarded to the Tribunal at one point.

12 MR. FROMM: Yes, all right.  
13 Had the Tribunal dealt with this  
14 complaint by April 11, 2005?

15 MR. WARMAN: I think the answer to  
16 that is self-evidently no.

17 MR. FROMM: All right.  
18 What were you seeking to have the  
19 University of Saskatchewan do with your letter of  
20 April 11th and the letter that we don't have of  
21 July 23rd?

22 MR. WARMAN: At the end of the  
23 letter it states:

24 "In closing, I would ask that  
25 the University of Saskatchewan

1 further investigate this matter,  
2 and if substantiated, take  
3 appropriate disciplinary  
4 action."

5 MR. FROMM: What did you have in mind  
6 by "appropriate disciplinary action"?

7 MR. WARMAN: It wasn't a decision  
8 that was open to me. That was something that the  
9 University of Saskatchewan would have to decide.

10 MR. FROMM: Let's not be cute,  
11 Mr. Warman. You wrote this letter. This took some  
12 drafting. That were you seeking the University of  
13 Saskatchewan to do?

14 MR. WARMAN: To have them further  
15 investigate the matter and, if substantiated, take  
16 appropriate disciplinary action.

17 --- Pause

18 MR. FROMM: You did receive a copy of  
19 the letter that is entered as HR-10.

20 Am I correct?

21 MR. WARMAN: Yes.

22 MR. FROMM: What was your reaction  
23 on learning that Mr. Tremaine had been dismissed from  
24 his position as a math instructor at the University  
25 of Saskatchewan?

1                   MR. WARMAN: That the university had  
2                   investigated the matter and taken appropriate  
3                   disciplinary action in accordance with whatever human  
4                   rights or human resources policies they had.

5                   MR. FROMM: Did you realize at that  
6                   point that Mr. Tremaine was a family man?

7                   MR. WARMAN: Objection. There is no  
8                   possible relevance to that question whatsoever.

9                   THE CHAIRPERSON: Well, if it goes to  
10                  the issue. You are asking for a penalty in this case  
11                  and it might go to the issue of the impecuniosity of  
12                  the respondent.

13                  So I will allow the question for  
14                  whatever -- I don't know what relevance it will have,  
15                  but I will allow the question.

16                  MR. WARMAN: I'm not sure if at  
17                  that point I knew whether Mr. Tremaine was a  
18                  "family man" or not.

19                  MR. FROMM: Did you have some  
20                  knowledge of his age? I don't mean within a year, but  
21                  50s, 30s, 20s?

22                  MR. WARMAN: I had a picture of him.  
23                  That was the only thing that would have given me any  
24                  indication as to his age, and I wasn't sure what date  
25                  the picture was taken.

1 MR. FROMM: Did you not have  
2 his résumé?

3 MR. WARMAN: I didn't indicate  
4 his age, or if it did then I don't recall it.  
5 --- Pause

6 MR. FROMM: Well, sir, if I could  
7 draw your attention to HR-4, pages 3 of 5 and 4 of 5?  
8 You are an experienced investigator.  
9 Looking at his curriculum vitae of where he was  
10 educated and where he taught, would you not be able to,  
11 at least within a decade, guesstimate his age?

12 MR. WARMAN: His age wasn't of any  
13 concern to me.

14 MR. FROMM: I would like to revisit,  
15 if I might for a moment, HR-10.

16 When you got that letter indicating  
17 that Mr. Tremaine had been dismissed, knowing as you  
18 must have known that he was a middle-aged professional  
19 now dismissed from his position at a university, what  
20 was your feeling about him?

21 You said you are interested in  
22 human rights. What about him as a person? Does that  
23 concern you?

24 MR. WARMAN: Mr. Tremaine's  
25 actions interest me only insofar as they concern the

1 violation of section 13 or any other legal -- any other  
2 laws of Canada.

3 MR. FROMM: But you yourself have  
4 testified that that had not yet been determined. It  
5 has not even yet been determined. That is what we  
6 are here for.

7 MR. WARMAN: But that is why you lay  
8 a complaint, in order to get to the Tribunal stage so  
9 that a determination may in fact ultimately be made.

10 MR. FROMM: So without a  
11 determination having been made, are you telling me that  
12 you were still quite content that a middle-aged man  
13 with a family would lose his employment?

14 MS WARSAME: Objection. I don't  
15 see where he is going. The witness already answered  
16 the question.

17 MR. FROMM: I am going to ask that  
18 the witness be excluded because I would like to explain  
19 where I am going with this.

20 THE CHAIRPERSON: Well, no, the  
21 witness cannot be excluded because he is a party to the  
22 proceeding also.

23 MR. FROMM: I realize that you are in  
24 a bit of a conundrum there, sir, but he is now wearing  
25 his hat as witness. He is the Commission's witness.

1           There are two experienced counsel here who can protect  
2           his rights against the Baker Street Irregulars.

3                         THE CHAIRPERSON: I know, but under  
4           the proceeding of the Human Rights Tribunal and under  
5           the proceeding of the Human Rights Act he is a party as  
6           he is the complainant and I cannot exclude him from the  
7           room to discuss any matter.

8                         I will allow you to ask the question  
9           that you were asking him and I will let to make your  
10          arguments at the end tomorrow, or this afternoon, when  
11          we get to the argument.

12                        In cross-examination usually I am  
13          much more flexible in letting the lawyer or the person  
14          cross-examining to ask questions that are probably not  
15          at this point -- where I cannot probably at this point  
16          see the relevancy of the question.

17                        But in this case, since the issue of  
18          penalty is being raised, there is a possibility that  
19          you are seeking information to raise the issue that  
20          Mr. Tremaine will not be able to pay the penalty  
21          because of his situation. So in that case I will let  
22          you ask the question.

23                        But again how relevant is it how  
24          Mr. Warman felt. We have the letter that was sent to  
25          him. He answered that what preoccupied him was the

1 section 13 violation. That is where we are.

2 MR. FROMM: All right. I think  
3 perhaps I have gotten --  
4 --- Pause

5 MR. FROMM: Having had your complaint  
6 accepted in October of 2004, and knowing that it was  
7 working its way through the process, why did you feel  
8 called upon to write the letter, perhaps letters, that  
9 you did to the University of Saskatchewan?

10 MR. WARMAN: Because given the  
11 extent and the vitriolic hatred shown towards Jews,  
12 blacks, aboriginals and the homosexual community, I  
13 felt that it was of concern to me and would likely  
14 be of concern to the University of Saskatchewan if  
15 in fact Mr. Tremaine held a teaching position at  
16 that university.

17 MR. FROMM: So to put the cards on  
18 the table, you wanted him fired.

19 MR. WARMAN: That is not correct. I  
20 have given my answer to that question.

21 MR. FROMM: Well, having learned  
22 what you did, that he had been fired, did you write a  
23 letter objecting, saying: I hadn't meant that. I  
24 didn't mean for that to happen to this man. That might  
25 have violated his human rights.

1 Did you write such a letter?

2 MR. WARMAN: That was a decision of  
3 the University of Saskatchewan.

4 MR. FROMM: I'm asking you: Did you  
5 write such a letter?

6 MR. WARMAN: No, I did not.

7 MR. FROMM: You didn't. All right,  
8 thank you.

9 I would like to call your  
10 attention to HR-11.

11 I guess it is fair to say you  
12 recognize that document?

13 MR. WARMAN: I testified to  
14 that effect.

15 MR. FROMM: Can you indicate when you  
16 became aware of it?

17 MR. WARMAN: It would have been  
18 disclosed to me by the Commission, or at least a  
19 summary of it, at some point shortly after it was  
20 received by the Commission I would presume. I don't  
21 recall exactly when I became aware of it.

22 MR. FROMM: You are saying to me you  
23 had a summary of it or you saw the letter?

24 MR. WARMAN: I'm sorry, I don't  
25 recall off the top of my head.

1 --- Pause

2 MR. FROMM: You were aware, though,  
3 that Mr. Tremaine in this letter recanted his views,  
4 apologized to people he might have offended and  
5 indicated he would not be posting anything like that in  
6 the future.

7 Were you aware of that?

8 MR. WARMAN: I was aware of that  
9 much, yes.

10 MR. FROMM: All right. So in fact  
11 you probably did see the letter?

12 MR. WARMAN: As I have indicated, I'm  
13 sorry, I don't recall.

14 THE CHAIRPERSON: I'm sorry, what is  
15 your answer. I'm having difficulty.

16 MR. WARMAN: I'm sorry.

17 MR. FROMM: He doesn't recall.

18 MR. WARMAN: I knew at least the  
19 amount that Mr. Fromm has just finished describing,  
20 but that I simply don't recall off the top of my  
21 head whether I had actually seen the letter or  
22 whether the Commission had provided a summary of its  
23 contents to me.

24 THE CHAIRPERSON: All right.

25 MR. FROMM: Did you see a typewritten

1 copy of this or a handwritten copy?

2 The original here is handwritten.

3 MR. WARMAN: I'm sorry, I  
4 don't recall.

5 MR. FROMM: Do you recall whether you  
6 knew that it had been dated "Regina General Hospital"?

7 MR. WARMAN: I don't believe that  
8 that was pointed out to me.

9 MR. FROMM: That is because you can't  
10 recall whether you saw the letter, because if you saw  
11 the letter is there on the bottom, page 4 of 4.

12 MR. WARMAN: It is there, that  
13 is correct.

14 MR. FROMM: All right. So your  
15 testimony is that at some point after this letter  
16 was sent -- and it appears to have been sent on the  
17 30th of September 2005 -- you received it at some  
18 point thereafter.

19 At that point why did you not  
20 withdraw your complaint?

21 MR. WARMAN: In fact what I did was,  
22 I indicated to the Commission that Mr. Tremaine's  
23 letter, if sincere, was of great interest to me and  
24 that if in fact that was the case, that Mr. Tremaine  
25 was willing to essentially negotiate a settlement of

1 the complaint, that I was open to that, and that  
2 further, if -- obviously there would be preconditions  
3 such as a permanent cease and desist order and other  
4 appropriate remedies, and that under the circumstances,  
5 given that the complaint had been dragging on for some  
6 time, I asked that it be referred to the Tribunal and  
7 that if the negotiations to resolve the complaint were  
8 unsuccessful, that way it wouldn't impede the process  
9 of it to a Tribunal hearing, in order not to delay the  
10 matter further.

11 MR. FROMM: My question, though,  
12 isn't actually what did you do, but why, having had  
13 here in abject apology, a repudiation of the views that  
14 you had found offensive, a promise not to do this type  
15 of thing again, basically saying "I'm sorry, I'm out of  
16 this thing completely", why at that point did you not  
17 withdraw your complaint? You have what you want. He  
18 says: I'm out of it. I'm through with this stuff.

19 MR. WARMAN: Because unfortunately in  
20 this world sometimes people lie.

21 MR. FROMM: Would you not have had  
22 the option, if it turned out two weeks later he is back  
23 posting, to reinstitute your complaint?

24 MR. WARMAN: No, I don't believe that  
25 option would have been available to me.

1                   MR. FROMM:  Are you giving us an  
2                   interpretation of the law as you know it?  You would  
3                   not be allowed to re-file a complaint?

4                   MR. WARMAN:  I'm not giving you a  
5                   legal response, I am giving you a factual response to  
6                   the best of my knowledge and belief.

7                   --- Pause

8                   MR. FROMM:  Did you disclose to  
9                   the respondent a document you wrote as part of the  
10                  "2005 Audit of Antisemitic Incidents", a document  
11                  entitled "The Canadian Scene?"

12                  MR. WARMAN:  I don't recall including  
13                  that as part of my disclosure package.

14                  MR. FROMM:  I am really looking for a  
15                  yes or no answer.

16                  Did you disclose that to the  
17                  respondent, yes or no?

18                  MR. WARMAN:  I don't recall  
19                  disclosing that to the respondent.

20                  THE CHAIRPERSON:  Is your answer no,  
21                  that has not been disclosed?

22                  MR. WARMAN:  I can't say for certain,  
23                  but I don't recall it.

24                  THE CHAIRPERSON:  You don't recall.

25                  --- Pause

1 MS WARSAME: Mr. Chair, I would like  
2 just to mention that I haven't seen this document.

3 THE CHAIRPERSON: Yes. Take your  
4 time and look at before we go on.

5 You can bring it forward, but I will  
6 give the opportunity to the Commission to look at it.

7 MS WARSAME: I want to just clarify  
8 for the record that if the respondent had this in his  
9 possession he had an obligation to disclose and that he  
10 failed to comply with his obligations.

11 THE CHAIRPERSON: Well, if it is a  
12 document of the complainant it can go both ways. At  
13 this point I am not going to certainly --

14 MS WARSAME: I understand, but the  
15 Commission is a separate party and this document --

16 THE CHAIRPERSON: I understand that  
17 for the Commission, but in this case I will -- if that  
18 is the only objection you have I will allow the  
19 document to be put forward.

20 MS WARSAME: Sure.

21 --- Pause

22 THE CHAIRPERSON: My position would  
23 be different if this was a document produced by  
24 Mr. Tremaine, for example. Certainly that would have  
25 had to have been disclosed beforehand.

1 MR. FROMM: Mr. Chairman, my  
2 position is --

3 THE CHAIRPERSON: Just before we go  
4 there, I might argue that maybe the complaint did not  
5 produce the document -- and I don't know what is in  
6 it -- because he felt it was not arguably relevant to  
7 the process. But at this point I see no reason right  
8 now, just on that basis, to exclude the document.

9 MS WARSAME: I understand,  
10 Mr. Chair, but I will need at least a few minutes to  
11 read the document.

12 THE CHAIRPERSON: Well, you can read  
13 the document over, yes.

14 Do you want us to just take a  
15 five-minute break and give you a chance to look the  
16 document over?

17 MS WARSAME: Yes, that would be  
18 helpful.

19 THE CHAIRPERSON: Just five minutes  
20 though. Don't go too far.

21 MS WARSAME: Yes, we won't.

22 THE CHAIRPERSON: We will be back at  
23 10:25.

24 --- Upon recessing at 10:20 a.m.

25 --- Upon resuming at 10:25 a.m.

1 THE REGISTRAR: All rise, please.

2 THE CHAIRPERSON: Please be seated.

3 Mr. Fromm...?

4 MR. FROMM: Mr. Chairman, could you  
5 remind me where we were?

6 THE CHAIRPERSON: You were at  
7 the "2005 Audit" letter that you wanted to put  
8 into evidence.

9 MR. FROMM: Are you allowing me to  
10 do that?

11 THE CHAIRPERSON: Yes.

12 Well, first of all you can ask the  
13 witness to identify the document.

14 MR. FROMM: I would like to find  
15 out, Mr. Warman, if you have had a chance to take a  
16 look at this?

17 MR. WARMAN: I have.

18 MR. FROMM: Can you identify this as  
19 part of what you wrote in your piece "The Canadian  
20 Scene" for the "2005 Audit of Antisemitic Incidents".

21 MR. WARMAN: It appears to be an  
22 excerpt of a, although I will say that some of it was  
23 edited by an editor.

24 MR. FROMM: But you will agree that  
25 in the part there under "Saskatchewan", a report on

1 activities in Saskatchewan, that the five paragraphs  
2 included there that deal with Mr. Tremaine are what  
3 you wrote?

4 MR. WARMAN: As I said, some of it  
5 was edited so there were changes to the words that I  
6 wrote, but that is roughly what I said, yes.

7 MR. FROMM: Can you indicate, have  
8 words being changed?

9 Is it your testimony?

10 MR. WARMAN: The first paragraph  
11 starting "April 2005", I believe that is the only  
12 paragraph that has undergone any substantial change.

13 THE CHAIRPERSON: You mean "in March  
14 of 2005"?

15 MR. WARMAN: Sorry, the first  
16 paragraph under "Saskatchewan".

17 THE CHAIRPERSON: Under  
18 "Saskatchewan", all right.

19 MR. WARMAN: Yes.

20 MR. FROMM: But what is here is what  
21 you wrote about Mr. Tremaine essentially?

22 MR. WARMAN: Other than the first  
23 paragraph under "Saskatchewan".

24 MR. FROMM: You now agree this was  
25 not disclosed to the respondent?

1 MR. WARMAN: Not to the best of  
2 my knowledge.

3 MR. FROMM: I was wondering if I  
4 could have this marked?

5 THE REGISTRAR: An excerpt of a  
6 document entitled "2005 Audit of Antisemitic  
7 Incidents", prepared by Richard Warman, undated, will  
8 be filed as respondent Exhibit R-2.

9 EXHIBIT NO. R-2: Excerpt of a  
10 document entitled "2005 Audit of  
11 Antisemitic Incidents", prepared  
12 by Richard Warman, undated

13 THE CHAIRPERSON: Just to make the  
14 point, this is a document that referred specifically to  
15 this issue and I would like to just point out that it  
16 should have been disclosed as being arguably relevant.

17 MR. WARMAN: Do you wish to hear me?

18 THE CHAIRPERSON: No, unless you have  
19 something to add.

20 MR. WARMAN: Yes, because there is  
21 nothing in there that contains any new information  
22 whatsoever. It is not related to the issue other than  
23 a simple description of the circumstances.

24 THE CHAIRPERSON: I understand it is  
25 your opinion, but still, the disclosure procedures of

1 the Tribunal is "anything that might be arguably  
2 relevant" and the threshold is very low.

3 In this case, since it refers to the  
4 complainant, I just wanted to make that point.

5 That was introduced as R-2?

6 THE REGISTRAR: Yes.

7 MR. FROMM: Mr. Warman, if I may  
8 call your attention to page 2 of 2 there, the first  
9 paragraph, the one beginning "As early as February  
10 of 2004". The second sentence of that:

11 "His hate propaganda against  
12 blacks, said Mathdokter, was  
13 motivated by his experiences  
14 after having taught in the  
15 Caribbean ..."

16 Would you agree with me that your  
17 labelling of "hat propaganda" was done prior to this  
18 complaint being decided?

19 MR. WARMAN: I don't believe that  
20 is necessary for me to form an opinion as to whether  
21 the material constituted hate propaganda in my opinion  
22 or not.

23 MR. FROMM: Thank you.

24 THE CHAIRPERSON: It will be up to  
25 the Tribunal to decide if it is hate propaganda, if it

1 is in violation of section 13.

2 MR. FROMM: I simply draw your  
3 attention to this is published prior to any decision  
4 being made here.

5 Mr. Warman, did you disclose to  
6 Mr. Tremaine a document which were the notes for a  
7 speech you gave to a group called Anti-Racist Action in  
8 August of 2005?

9 MR. WARMAN: Not that I recall.

10 MR. FROMM: Is that a yes or a no?

11 MR. WARMAN: My answer is my answer.

12 --- Pause

13 MR. FROMM: Do you recall giving a  
14 speech entitled "Maximum Disruption: Stopping  
15 Neo-Nazis By (Almost) Any Means Necessary" to a group  
16 called the Anti-Racist Action group in August of 2005?

17 MR. WARMAN: Perhaps Mr. Fromm  
18 could identify some relevance to this proceeding of  
19 this question?

20 THE CHAIRPERSON: I will let him go  
21 forward and we will see if it is --

22 MR. WARMAN: Then I am objecting to  
23 the question on the basis of relevance.

24 THE CHAIRPERSON: I will let  
25 the question go in and you will answer the

1 question, please.

2 MR. FROMM: Do you recall providing  
3 notes for that speech to the Warman v. Winnicki  
4 Tribunal at the direction of the Member?

5 MS WARSAME: Objection.

6 THE CHAIRPERSON: Why?

7 MS WARSAME: I still don't see the  
8 relevance.

9 THE CHAIRPERSON: We will see the  
10 relevancy when it goes forward. I'm not sure that --  
11 objection on the basis of relevancy at this point I'm  
12 not seeing it. Mr. Fromm is setting the stage for  
13 that. He is referring to another decision of the  
14 Tribunal.

15 MS WARSAME: Mr. Chair, if I might, I  
16 will explain the position.

17 THE CHAIRPERSON: All right.

18 MS WARSAME: Mr. Bahr was involved in  
19 that hearing --

20 THE CHAIRPERSON: Mr. who?

21 MS WARSAME: Mr. Fromm was involved  
22 as a witness in that hearing. After that there was  
23 another hearing he was involved as an agent for the  
24 respondent. In those two hearings there was a request  
25 with respect to the speech provided by the complainant

1 and Mr. Fromm made the request in Bahr and that request  
2 was denied.

3 The reason we believe it is not  
4 relevant is because there is no connection between a  
5 complaint filed by Mr. Warman against Tremaine and the  
6 speech he provided in a previous year.

7 THE CHAIRPERSON: Can you explain  
8 to me why it is not relevant in this proceeding?  
9 Because I haven't seen the document. I haven't heard  
10 anything yet --

11 MS WARSAME: That is correct.

12 THE CHAIRPERSON: -- only your  
13 opinion saying that another Member in another case  
14 decided that it was not relevant and I'm hearing here  
15 that in another decision, in the Winnicki decision,  
16 it was -- I haven't seen anything yet, but what I'm  
17 being told is that the Member decided that it should  
18 be disclosed.

19 MS WARSAME: Let me just provide a  
20 context. Maybe that will assist you to understand the  
21 reason why we are objecting to this document on the  
22 basis of relevancy.

23 THE CHAIRPERSON: Why?

24 MS WARSAME: The respondent in Warman  
25 v. Winnicki, a case before Tribunal Member Karen

1           Jensen, tried to introduce the speech provided by the  
2           complainant in that case, Mr. Warman, into evidence.  
3           Then again Mr. Fromm was involved in that case as a  
4           witness. Mr. Fromm was again involved as an agent for  
5           the respondent in a case called Warman v. Bahr and  
6           Western Canada for us. He made a request to have the  
7           speech disclosed and in that case he argued that the  
8           speech was relevant to the character of Mr. Warman.

9                           At that time the Commission objected  
10           on the basis of relevancy and the Tribunal dismissed  
11           the request.

12                           THE CHAIRPERSON: That's good and  
13           well for that decision in the Bahr decision.

14                           MS WARSAME: I understand.

15                           THE CHAIRPERSON: I wasn't there. I  
16           wasn't a Member. I'm just trying to see here, why are  
17           you saying that it is not relevant here?

18                           MS WARSAME: I am going to let the  
19           respondent ask questions, but the reason we were  
20           objecting is because in our opinion there is no link  
21           between the speech provided by the complainant a  
22           previous year before he filed the complaint and the  
23           complaint before you. Unless the respondent, which is  
24           the party now trying to produce the document, proves a  
25           link between the speech provided by the complainant and

1           these particular proceedings.

2                         THE CHAIRPERSON:  Certainly if there  
3           is no relevancy at all with this document when I look  
4           at the matter, certainly I will deal with that.

5                         MS WARSAME:  All right.

6                         THE CHAIRPERSON:  But just objecting  
7           on the basis here saying that because in another  
8           decision the Member decided that it was not relevant  
9           there --

10                        Mr. Warman...?

11                        MR. WARMAN:  I'm sorry, if she has  
12           finished her submissions.

13                        THE CHAIRPERSON:  I don't know.

14                        Are you finished?

15                        MS WARSAME:  No.  I wanted just to  
16           keep my objection under reserve.

17                        THE CHAIRPERSON:  Your objection is  
18           noted in the proceeding.

19                        Yes, Mr. Warman?

20                        MR. WARMAN:  I'm sorry I don't have  
21           multiple copies of it, but I have here the decision of  
22           Member Jensen 2006, CHRT 18 dated 2006/04/05, dealing  
23           directly with the question of the disclosure that was  
24           applied for by Mr. Fromm on behalf of Mr. Bahr of  
25           those notes.

1                   Madam Jensen addresses some of the  
2 concerns that you have raised with my colleague from  
3 the Commission. She states --

4                   THE CHAIRPERSON: You are citing from  
5 the decision in Winnicki in the Commission's --

6                   MR. WARMAN: No, I'm sorry, it  
7 is not. It is a preliminary decision. It is a  
8 ruling on a request for disclosure.

9                   THE CHAIRPERSON: It is a ruling on  
10 that matter by my colleague Jensen. Yes?

11                  MR. WARMAN: It is, yes. I'm sorry,  
12 I would be happy to give you this copy or to have  
13 copies made of it.

14                  THE CHAIRPERSON: All right. That  
15 was fully argued at that point before her?

16                  MR. WARMAN: It was, yes.

17                  She states at paragraphs 7 to 9:

18                         "The first step in determining  
19 whether a document is arguably  
20 relevant is to identify the  
21 facts that are in issue in the  
22 case. The question to be asked  
23 is this: what facts must be  
24 proved in order to establish or  
25 defend against the case before

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

14 [8] The Respondent Bahr has  
15 argued that the Complainant's  
16 credibility is relevant to his  
17 motivation for bringing the  
18 complaint. However, at this  
19 stage of the proceedings, the  
20 Complainant's motivation for  
21 bringing the complaint is not in  
22 issue. It is the Canadian Human  
23 Rights Commission that has the  
24 power, pursuant to s. 41(1)(d),  
25 to dismiss a complaint if it is

1                   of the view that the complaint  
2                   is trivial, frivolous, vexatious  
3                   or made in bad faith."

4                   It then goes on to state that the  
5                   person's recourse is to the Federal Court and states:

6                   "... the Tribunal does not have  
7                   the authority to review the  
8                   Commission's decision to refer  
9                   the complaint to the Tribunal  
10                  ..."

11                  THE CHAIRPERSON: That is another  
12                  issue altogether though.

13                  MR. WARMAN: I'm just getting to the  
14                  next paragraph that addresses what I believe is one of  
15                  the issues that you have raised with Ms Warsame.

16                  "Thus, the Complainant's  
17                  motivation for bringing the  
18                  complaint is not a relevant  
19                  issue at this stage in the  
20                  proceedings. Moreover, the fact  
21                  that the speaking notes were  
22                  disclosed in Warman v. Winnicki  
23                  does not mean that the same  
24                  material must be disclosed in  
25                  the present case. The arguable

1                   relevance of material must be  
2                   determined on a case-by-case  
3                   basis, having regard to the  
4                   issues raised in each case. In  
5                   Warman v. Winnicki, the  
6                   Complainant alleged that the  
7                   Respondent had engaged in  
8                   retaliatory conduct. The  
9                   Complainant also made a claim  
10                  for personal compensation under  
11                  s. 53 of the Act. There were,  
12                  therefore, different factual  
13                  issues to be determined in  
14                  Warman v. Winnicki than in the  
15                  present case. The Respondent  
16                  has not established the arguable  
17                  relevance of the Complainant's  
18                  credibility to the issues raised  
19                  in the present case."

20                   THE CHAIRPERSON: That was an issue  
21                  that goes to disclosure of the document. It probably  
22                  would answer the fact that this document was not  
23                  disclosed, seeing the decision that my colleague Jensen  
24                  in that case felt that it was not arguably relevant and  
25                  needed not to be disclosed. That is a completely

1 different issue.

2 What I'm trying to see here is now in  
3 this proceeding there seems to be an attempt by the  
4 respondent -- I'm not saying that they will succeed  
5 in -- in attacking the credibility of a witness in this  
6 case. They want to bring that document in for that  
7 purpose, I believe. I'm not saying that is what they  
8 are doing and I'm not saying that it will succeed.

9 Certainly what you have just read  
10 answers why you did not disclose the document, but it  
11 doesn't answer why Mr. Fromm would not be able to  
12 question you on that document and introduce that as  
13 evidence here in this proceeding.

14 MR. WARMAN: But of course in civil  
15 proceedings, as we know, credibility, if not put in  
16 issue, cannot be challenged. It is not a situation  
17 like a criminal process where you can challenge the  
18 credibility when in such a case as this the simple  
19 evidence that was given was simply: I saw these  
20 documents on the internet on this date.

21 THE CHAIRPERSON: You will be able to  
22 make those arguments certainly before me in your  
23 closing remarks.

24 I'm just trying to see, the objection  
25 is that this is not relevant and we shouldn't be able

1 to question the witness on this document. I don't know  
2 what is in the document. I don't know if it is, at the  
3 end of the day, relevant or if we are just on a fishing  
4 expedition at one point. I'm not sure where we are. I  
5 haven't heard anything yet.

6 Certainly what the Commission just  
7 gave me certainly answers my preoccupation about  
8 disclosure and I believe that you are totally right  
9 on that.

10 I will let the question --

11 Yes, Ms Warsame...?

12 MS WARSAME: Mr. Chair, just to  
13 clarify, maybe I was not clear at the beginning: In  
14 our opinion, it is our position that the document --  
15 the reason the respondent in this case, and in many  
16 other cases, would like to bring this document is to  
17 introduce character evidence which is not linked to the  
18 fact of this case. It is our position that character  
19 evidence should not be accepted.

20 THE CHAIRPERSON: Why?

21 MS WARSAME: Because the case, as you  
22 know, is a section 13. The elements that need to  
23 proven under a section --

24 THE CHAIRPERSON: I'm not sure if I  
25 would qualify this as character evidence. Is it going

1 to the issue of --

2 MS WARSAME: That is our position.

3 THE CHAIRPERSON: I don't want to  
4 argue the case with counsel, but I am going to leave  
5 the question where we are and I will decide later on if  
6 the document should be introduced into evidence.

7 MS WARSAME: All right. I  
8 wanted just to highlight that so you would be able  
9 to understand what the respondent is doing with  
10 this document.

11 THE CHAIRPERSON: I agree with you  
12 that I will not address the issue of character  
13 evidence, but certainly in cross-examination I believe  
14 the question of credibility can be addressed.

15 MS WARSAME: Our position is, we  
16 don't believe this is a question of credibility,  
17 we believe this is more like character evidence  
18 than anything else. We say that based on the past  
19 experience and the involvement of Mr. Fromm in  
20 other cases.

21 THE CHAIRPERSON: I wasn't there in  
22 other cases. I have to deal with this case here.

23 MS WARSAME: I understand.

24 THE CHAIRPERSON: Unless there is an  
25 issue -- you have cases to cite to me of decisions by

1 colleagues in other cases where they have addressed  
2 that issue specifically, it is your opinion and  
3 Mr. Fromm's opinion right now.

4 MS WARSAME: All right. Thank you.

5 THE CHAIRPERSON: Mr. Fromm, again,  
6 on that basis I will -- I am not saying that the  
7 document will be admitted into evidence at this point,  
8 but I will let you ask the question to the witness that  
9 you were going to ask.

10 MR. FROMM: It may be of assistance,  
11 sir, for you to look at paragraph 150 perhaps through  
12 155 of Madam Jensen's decision in the Winnicki case  
13 which deals with this document. Not necessarily to  
14 decide whether to allow it in, but --

15 THE CHAIRPERSON: You are referring  
16 to which paragraphs?

17 MR. FROMM: Paragraphs 150 to 155 of  
18 her decision where she discusses this document.

19 THE CHAIRPERSON: All right. Just  
20 one moment.

21 --- Pause

22 THE CHAIRPERSON: It was entered  
23 into evidence.

24 MR. FROMM: Yes.

25 --- Pause

1 THE CHAIRPERSON: The Winnicki case,  
2 that is the decision which followed the ruling that you  
3 were referring to a while ago on disclosure?

4 MR. WARMAN: I believe it  
5 preceded it.

6 THE CHAIRPERSON: It preceded it?

7 MR. WARMAN: I believe that the Bahr  
8 case -- because it mentions Winnicki.

9 THE CHAIRPERSON: That was the Bahr  
10 case. All right.

11 MR. WARMAN: Yes.

12 THE CHAIRPERSON: Well, I will let  
13 you ask the question.

14 MR. FROMM: In that speech that you  
15 delivered to the group called "Anti-Racist Action",  
16 what did you mean by the term "Maximum Disruption"?

17 MR. WARMAN: I meant using all legal  
18 available means to attempt to impede the activities of  
19 those who would spread hate propaganda within our  
20 communities.

21 MR. FROMM: Did you say:

22 "At least for now, I've come to  
23 the conclusion that I can be  
24 most effective by using what I  
25 like to describe as a `maximum

1                                   disruption' approach."

2                                   MR. WARMAN: Do you have a copy of  
3 the speech that you would like to put before me so that  
4 I may refer to it, please?

5                                   MR. FROMM: Surely you know what  
6 you said.

7                                   THE CHAIRPERSON: Well, could you  
8 give a copy of the speech so the witness -- you are  
9 referring to a document and I would want the witness to  
10 be able to refer to the same document.

11 --- Pause

12                                   MR. WARMAN: I'm sorry, where is that  
13 passage you are referring to?

14                                   MR. FROMM: The passage is the  
15 beginning of paragraph 4 on the first page, the second  
16 sentence.

17                                   "At least for now, I've come to  
18 the conclusion that I can be  
19 most effective by using what I  
20 like to describe as a `maximum  
21 disruption' approach."

22                                   MR. WARMAN: Those are the words that  
23 are included in there.

24                                   MR. FROMM: I was wondering if you  
25 could just continue reading that paragraph?

1 "That is, where I believe that  
2 neo-Nazis have committed crimes,  
3 I will co-operate with the  
4 police to try to ensure that  
5 criminal charges are laid. If I  
6 think that they've violated the  
7 Canadian Human Rights Act, then  
8 I'll look at all of the  
9 potential targets and file  
10 complaints against them starting  
11 on a 'worst offender' basis,  
12 although sometimes if I just  
13 find people to be particularly  
14 annoying this may move them up  
15 the list a bit. Perhaps most  
16 importantly though, I've tried  
17 to work together with  
18 individuals and representatives  
19 from many different groups to  
20 develop common fronts to deal  
21 with neo-Nazi activity and a  
22 sense of solidarity among all  
23 those that are under attack.  
24 I'm under no illusion about the  
25 reality that front-line

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1 community organizing is the only  
2 sustainable way to address the  
3 problem on a long-term basis."

4 MR. FROMM: I was wondering if you  
5 could read the first couple of sentences of the next  
6 paragraph, "The `maximum disruption' part?"

7 THE CHAIRPERSON: Yes...?

8 MR. WARMAN: Mr. Chair, there is an  
9 objection based on relevancy. Mr. Fromm has yet to  
10 establish any relevancy.

11 THE CHAIRPERSON: Yes, I am trying to  
12 see now the -- except for looking at the motives of the  
13 opinion of Mr. Warman concerning his motives for  
14 putting forward the section 13 complaint. I hadn't  
15 seen that speech. You have read a couple of -- I'm not  
16 sure where we are going on the relevancy to this issue.

17 If we look at the Winnicki case, the  
18 document was put into evidence also because Mr. Warman  
19 in that speech was making reference to the Winnicki  
20 case, if that is correct.

21 MR. FROMM: I have --

22 THE CHAIRPERSON: One of the three  
23 cases that the complainant discussed during his speech  
24 was that of the respondent.

25 Now, I have seen where you are going

1 with that and it certainly goes to his motivation for  
2 putting section 13 complaints forward.

3 MR. FROMM: I think I really only  
4 am asking for him to read a couple more sentences and  
5 I'm through.

6 My argument here, sir, is the point I  
7 raised yesterday about this whole complaint, given  
8 other things that have happened, constitute an abuse of  
9 process and vexatious litigation. I am trying to  
10 establish this through Mr. Warman's own account of his  
11 activities.

12 THE CHAIRPERSON: Instead of having  
13 him read through the document, just ask questions  
14 specifically.

15 MR. FROMM: All right.

16 In the last paragraph on the first  
17 page of the document we read:

18 "The `maximum disruption' part  
19 comes in because..."

20 MR. WARMAN: Mr. Chair, objection.  
21 He is simply reading in what he cannot have me read.

22 MR. FROMM: I can't ask you a  
23 question if i don't --

24 MR. WARMAN: Mr. Chair, could I  
25 finish my objection?

1 THE CHAIRPERSON: Yes.

2 MR. WARMAN: Again, I come back to  
3 the decision by Madam Jensen in the Bahr case.

4 "... at this stage of the  
5 proceedings, the Complainant's  
6 motivation for bringing the  
7 complaint is not in issue. It  
8 is the Canadian Human Rights  
9 Commission that has the  
10 power..."

11 Then it explains if the complaint is:  
12 "... trivial, frivolous,  
13 vexatious or made in bad faith."

14 THE CHAIRPERSON: At that stage. I  
15 agree with you. You don't have to reread me through  
16 Ms Jensen's decision in Bahr. At that stage.

17 At the preliminary stage certainly if  
18 we are raising the issue of it being frivolous and  
19 vexatious, that issue has to be dealt in judicial  
20 review before the Federal Court. I totally agree.

21 But I'm hearing the inquiry in its  
22 totality and it includes -- I can also go back to the  
23 question of at the end of the day do I find this to be  
24 substantiated. I believe that the question is  
25 acceptable on this point.

1                   I would ask Mr. Fromm not to re-read  
2                   the speech itself but rephrase his question if he has a  
3                   specific question for the witness. We know the witness  
4                   wrote the speech, he admitted that much.

5                   MR. FROMM: On the bottom of the  
6                   first page, just so you know where I'm referring to,  
7                   you indicated that you wanted to move on as many fronts  
8                   as possible, Criminal Code charges, human rights  
9                   complaints, in order to keep the neo-Nazis off balance.  
10                  Is that still your view?

11                  MR. WARMAN: I believe that one  
12                  should use all legal means available to oneself to  
13                  impede individuals and groups who would spread hate  
14                  propaganda within our communities.

15                  MR. FROMM: Would that be the reason  
16                  you wrote the letters you did to the University of  
17                  Saskatchewan?

18                  MR. WARMAN: No. I believe I have  
19                  already expressed the reason I wrote the letter to the  
20                  University of Saskatchewan.

21                  MR. FROMM: In the passage you read  
22                  you talked about how you would prioritize people and  
23                  sometimes if somebody was particularly annoying they  
24                  would move higher up the list.

25                  Was Mr. Tremaine particularly

1           annoying for some reason?

2                         MR. WARMAN: That particularly  
3           portion of the speech is what is known as "levity" so  
4           there was no real intent to it.

5                         MR. FROMM: I'm not asking whether  
6           this was meant as a comical remark, I'm just asking how  
7           Mr. Tremaine moved up on your list.

8                         MR. WARMAN: Mr. Tremaine was dealt  
9           with in accordance to my decision that I was dealing  
10          with people on sort of a worst-offender basis. So when  
11          I had the occasion to determine that I was positive as  
12          to what his identity was and that the material I felt  
13          violated section 13, that is the point at which I filed  
14          the complaint with the Commission.

15                        MR. FROMM: I wonder if this could be  
16          marked as an exhibit?

17                        THE CHAIRPERSON: Yes.

18                        MS WARSAME: Mr. Chair,  
19          objection under reserve because I haven't had a copy  
20          of the speech.

21                        THE CHAIRPERSON: We will mark it  
22          under reserve.

23                        MR. FROMM: Mr. Warman, did you at  
24          some time, either you or somebody on your direction,  
25          call Mr. Tremaine to find out his birthday?

1 MR. WARMAN: No, I did not.

2 MR. FROMM: Those are my  
3 questions, sir.

4 THE CHAIRPERSON: Thank you very  
5 much, Mr. Fromm.

6 We will take a 15-minute break and  
7 come back with the reply -- I mean the re-examination  
8 of the Commission of the witness.

9 Just before we go, I saw that you  
10 had a question mark on your face. Usually the way  
11 it works is that you cross-examine, there is a right  
12 to re-examination by the party that did the  
13 examination, but only on new matters that were raised  
14 during cross-examination.

15 MR. FROMM: I think, sir, you used  
16 the word "reply" and I was just wondering --

17 THE CHAIRPERSON: Yes, I'm sorry.

18 MR. FROMM: Now I understand.  
19 Redirect.

20 MS WARSAME: Mr. Chair, before we  
21 leave I would like to ask the respondent to provide a  
22 copy of the speech.

23 THE CHAIRPERSON: Yes, you can  
24 certainly do that.

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

1 --- Upon resuming at 11:20 a.m.

2 THE REGISTRAR: Order, please.

3 Please be seated.

4 THE CHAIRPERSON: Are we going to the  
5 re-examination or would you want to deal with the issue  
6 of the document that was taken under reserve?

7 MS WARSAME: Mr. Chair, with  
8 your permission I would like to deal with the  
9 document first.

10 My re-examination will be  
11 extremely brief.

12 THE CHAIRPERSON: All right.

13 Yes...?

14 MR. FROMM: Just a concern I have,  
15 Mr. Chairman.

16 I understand Mr. Warman is still on  
17 the witness stand and I couldn't help but noticing the  
18 consultations between him and the Human Rights  
19 Commission lawyer's during the break.

20 THE CHAIRPERSON: Mr. Warman, you are  
21 still under oath and you knew that you cannot discuss  
22 your evidence.

23 Did you discuss your evidence?

24 MR. WARMAN: In fact, my  
25 cross-examination had finished.

1 THE CHAIRPERSON: Yes. Thank you.

2 Yes, that's true, the  
3 cross-examination was finished. All right.

4 On the issue of the document itself,  
5 just before we go any further I wanted to clarify it  
6 and make sure we understand each other very well on  
7 this document.

8 I will allow no arguments going to  
9 character. There is no character evidence.

10 Concerning the section 13 violation  
11 at this point I don't see how we could attack the issue  
12 of credibility under section 13. The postings were  
13 admitted as having been posted by Mr. Tremaine. It is  
14 now up to the Tribunal to decided if they were in  
15 violation of section 13. That will be up to me to make  
16 that determination on the basis of the evidence that is  
17 before me on those postings.

18 There might be an issue, and maybe  
19 the parties will address this, going to the remedies.

20 If I understand well -- Mr. Warman  
21 you will clarify that for me -- the remedies that are  
22 being sought are cease and desist orders.

23 There is also a remedy being sought  
24 for indemnity. That includes what?

25 Also a penalty.

1 MR. WARMAN: Yes.

2 Pursuant to section 54(1)(b) the  
3 request is for an order under subsection 53(3) to  
4 compensate a victim specifically identified in the  
5 communication that constituted the discriminatory  
6 practice.

7 THE CHAIRPERSON: All right.

8 MR. WARMAN: The test for that  
9 obviously was the person named pursuant to the  
10 discriminatory practice.

11 THE CHAIRPERSON: All right. I will  
12 hear the parties' arguments on the document itself.

13 MS WARSAME: Mr. Chair, having had a  
14 chance to review the document during the break, I have  
15 noticed that the document made no reference to  
16 Mr. Tremaine, the respondent in the case.

17 The document, I'm talking about  
18 the speech.

19 THE CHAIRPERSON: Yes.

20 MS WARSAME: I don't know if the  
21 document was entered.

22 THE CHAIRPERSON: It was just put  
23 into evidence. With the objection it is not in  
24 evidence yet.

25 MS WARSAME: All right. So the

1 document entitled "Maximum Disruption: Stopping  
2 Neo-Nazis..."

3 THE CHAIRPERSON: Yes. Go ahead.

4 MS WARSAME: I have noticed that  
5 the document makes no reference to the respondent in  
6 this case.

7 Mr. Chair, I would like to highlight  
8 for your benefit a document drafted by Chairperson  
9 Grant Sinclair and I provide a copy to you.

10 THE CHAIRPERSON: Yes...?

11 MS WARSAME: In that document I only  
12 provided the relevant pages. I would like to direct  
13 your attention to page 8.

14 THE CHAIRPERSON: All right.

15 MS WARSAME: Mr. Sinclair stated,  
16 with respect to admissibility:

17 "When deciding on the  
18 admissibility of evidence, the  
19 first question to be asked is:  
20 is (the document) relevant. If  
21 the evidence is relevant, then  
22 it is admissible ..."

23 Mr. Sinclair then goes on and states  
24 the following:

25 "In determining what is

1 relevant, the first step is to  
2 identify the facts that are in  
3 issue in the case. Once that  
4 has been done, there are two  
5 aspects to relevance, namely,  
6 is there a logical connection  
7 to what must be proved in the  
8 case, and secondly, is the  
9 evidence of probative value in  
10 the sense of actually tending to  
11 prove that matter.

12 The first issue is dealt  
13 with by reference to the issues  
14 in the case: does the evidence  
15 relate to a fact in issue at the  
16 (particular) hearing."

17 The Mr. Sinclair stated, at the  
18 following paragraph:

19 "Evidence is either relevant or  
20 is not in terms of the tests set  
21 out above. If it is not  
22 relevant, it should not be  
23 admitted."

24 Mr. Chair, I would like just to  
25 highlight, in order to admit a document we have to

1 establish some connection between the document and the  
2 facts before you.

3 It is our position, Mr. Chair, that  
4 this document has no connection with respect to the  
5 facts in issue before you, so therefore it should not  
6 be admitted into evidence.

7 THE CHAIRPERSON: All right.

8 Mr. Warman...?

9 MR. WARMAN: Without belabouring the  
10 point, I would just refer again to paragraph 7 of Madam  
11 Jensen's decision, which states that the matter before  
12 the Tribunal:

13 "... is whether the Respondents,  
14 acting individually or in  
15 concert, repeatedly communicated  
16 by means of the Internet..."

17 Et cetera.

18 That is the test that is before  
19 the Tribunal. That is the factual question.

20 This presentation does not go to any  
21 of those issues.

22 It does not address any of the  
23 remedies that are being requested. The remedies  
24 are simply a cease and desist order, a penalty and  
25 whether Mr. Tremaine personally named me in any of

1 the communications.

2 This speech has no connection  
3 whatsoever to any of those issues.

4 I would adopt the submissions of  
5 the Commission that the document is completely and  
6 utterly irrelevant.

7 I realize it may not be a crucial  
8 point, but Mr. Fromm has also not explained why he  
9 is violating my copyright by repeatedly copying  
10 this document in spite it being clearly marked as  
11 my copyright.

12 THE CHAIRPERSON: That is another  
13 issue that you can take up in front of the proper --

14 MR. WARMAN: It is an ancillary  
15 issue, as I indicated.

16 Again, I would simply echo the  
17 comments of the Commission in addition to those I have  
18 just made.

19 THE CHAIRPERSON: Mr. Fromm, I will  
20 hear you on the issue of relevancy of this document.

21 MR. FROMM: Yes.

22 Well, I believe in terms of other  
23 submissions that I am going to make in closing it is  
24 relevant, but just to keep it very straightforward and  
25 simple, if the Commission is seeking an order under

1           54(1)(b), an order:

2                                 "... to compensate a victim  
3                                 specifically identified in the  
4                                 communication..."

5                                 I will be arguing that there were no  
6                                 threats or such things made in any communication that  
7                                 Mr. Tremaine made, but that this document is extremely  
8                                 relative and probative on the matter of the  
9                                 relationship between Mr. Warman and Mr. Tremaine. This  
10                                 document outlines an approach that Mr. Warman has taken  
11                                 toward people he dislikes or people he calls neo-Nazis,  
12                                 and it is one of maximum disruption and efforts to hurt  
13                                 them. Not just to make a human rights complaint, which  
14                                 may be his right, but to hurt them -- to hurt them in  
15                                 any way he can.

16                                 I think that will be very relevant in  
17                                 any considerations that you might have for an order  
18                                 under 54(1)(b). It might be of considerable assistance  
19                                 to you in determining just who is the victim before  
20                                 you.

21                                 THE CHAIRPERSON: What I have been  
22                                 told -- you have read the document, I haven't read the  
23                                 document -- is that this document does not in any way  
24                                 identify Mr. Tremaine.

25                                 MR. FROMM: No, you are right, sir.

1           It does not name Mr. Tremaine, it outlines Mr. Warman's  
2           approach to people whose views he doesn't like. It  
3           basically is telling you what he is all about and the  
4           sort of activities that he undertakes, some of which  
5           are manifested in this case.

6                            You are right, unlike the B'nai Brith  
7           document it does not specifically name Mr. Tremaine,  
8           but I guess he is indirectly named in the sense that I  
9           assume Mr. Warman would consider him a neo-Nazi.

10                           THE CHAIRPERSON: Is there any reply?

11                           MS WARSAME: Not for the Commission.

12                           MR. WARMAN: Mr. Chair, simply that  
13           the issues raised by Mr. Fromm do not address in any  
14           way the test that is before you for any of the remedies  
15           that are indicated.

16                           Mr. Fromm specifically raised the  
17           issue, in essence what amounts to a character argument.

18                           In relation to the remedy under  
19           section 54(1)(b) the test is simply: Was the  
20           individual specifically identified in the communication  
21           that caused the discriminatory practice. There is no  
22           room for character argument there.

23                           THE CHAIRPERSON: I would agree that  
24           there is no room for character argument on that issue.  
25           Certainly if the document is allowed to be put into

1 evidence it will be for a very limited purpose.

2 It would certainly not go to  
3 character evidence on the part of the witness since  
4 that is not in issue in this proceeding.

5 It certainly would not address the  
6 section 13 complaint, as the motivation is not in issue  
7 also at that point. It is a determination for the  
8 Tribunal to make on the issue of whether the postings  
9 themselves constitute a discriminatory practice under  
10 section 13.

11 In the Winnicki case where my  
12 colleague rendered her decision, she did admit the  
13 document. I know there is a big difference in that  
14 situation in the weight that was given. It is the fact  
15 that Mr. Winnicki, if I understand correctly from what  
16 my colleague stated in the Winnicki decision, was  
17 specifically identified in the document itself. She  
18 admitted the document even there on a very limited  
19 basis for the question of remedies on the issue of pain  
20 and suffering as a result of the action.

21 If I am to allow the document to be  
22 put into evidence at this point, it will be only on the  
23 issue of section 54(1)(b), and even there I'm not sure  
24 how this will help the respondent if we go there.

25 It would only be an issue of whether

1 in this case to explain -- if there is any issue at  
2 that point and I haven't seen the arguments yet -- why  
3 the victim was specifically identified or is that a  
4 part of retaliation in this case. I don't know where  
5 we are going.

6 I will just allow the document into  
7 evidence only for the issue of 54(1)(b) and that's it,  
8 not character evidence, not as evidence under  
9 section 13, but only for the issue of 54(1)(b), if  
10 there is an argument to be made there, and I will weigh  
11 if that argument is relevant or not in my decision.

12 So it will be entered into evidence  
13 for a very limited purpose under section 54(1)(b).

14 THE REGISTRAR: The document entitled  
15 "Maximum Disruption: Stopping Neo-Nazis By (Almost)  
16 Any Means Necessary" by Richard Warman, dated July 6,  
17 2005, will be filed as Respondent Exhibit R-3.

18 EXHIBIT NO. R-3: Document  
19 entitled "Maximum Disruption:  
20 Stopping Neo-Nazis By (Almost)  
21 Any Means Necessary" by Richard  
22 Warman, dated July 6, 2005

23 EXAMINATION

24 MS WARSAME: Mr. Warman, the  
25 respondent entered a document I believe entitled

1 "2005 Audit of Antisemitic Incidents".

2 Do you have a copy of the document?

3 MR. WARMAN: I do, thank you.

4 MS WARSAME: Can you please tell us  
5 what the source of the document is?

6 MR. WARMAN: Yes. I was invited by  
7 the B'Nai Brith League for Human Rights to write a  
8 chapter in their Annual Report on Antisemitic Incidents  
9 discussing the topic of internet hate propaganda here  
10 in Canada. Thus, this is a small excerpt of a larger  
11 chapter on sort of the year in review on internet hate  
12 in 2005. It was subsequently published by the B'Nai  
13 Brith League for Human Rights.

14 MS WARSAME: Do you know the reason  
15 why there are no pages written on the document?

16 MR. WARMAN: I do not, I'm sorry.

17 MS WARSAME: You were asked by  
18 Mr. Fromm with respect to how to access the  
19 website Stormfront.

20 Can you just clarify how to access  
21 that? Do you need a membership?

22 MR. WARMAN: No, there is no need for  
23 membership. It is a freely accessible public forum.  
24 You can go to it, you can look any page you so desire  
25 without any sort of registration required. It is a

1 completely open and public forum.

2 MS WARSAME: Thank you.

3 MR. WARMAN: I would add that I  
4 viewed on more than one occasion the messages in  
5 question here.

6 MS WARSAME: Thank you. No more  
7 questions.

8 THE CHAIRPERSON: Thank you  
9 very much.

10 Mr. Warman, thank you very much.

11 MR. WARMAN: Thank you.

12 THE CHAIRPERSON: Are there any more  
13 witnesses for the Commission?

14 MS WARSAME: No, Mr. Chairman.

15 THE CHAIRPERSON: Does that close the  
16 case for the Commission?

17 MS WARSAME: Yes.

18 THE CHAIRPERSON: Mr. Warman, do you  
19 have any more witnesses you wish to call?

20 MR. WARMAN: No, thank you.

21 THE CHAIRPERSON: That closes your  
22 evidence also?

23 MR. WARMAN: It does.

24 THE CHAIRPERSON: Will the respondent  
25 call his witness?

1 --- Pause

2 THE CHAIRPERSON: Opening remarks had  
3 been made yesterday.

4 --- Pause

5 THE CHAIRPERSON: Yes...?

6 MR. FROMM: I would like to call  
7 Terry Tremaine, the respondent.

8 THE CHAIRPERSON: Mr. Tremaine...?

9 MR. FROMM: Just for the record, as  
10 apparently truth is no defence in this proceedings I  
11 object to him being sworn in.

12 THE CHAIRPERSON: Well, the witness  
13 will have to be sworn in.

14 MR. FROMM: Perhaps if it is a  
15 non-issue we can just have a chat.

16 THE CHAIRPERSON: Well, if you just  
17 have a chat with him it is not evidence for me, so at  
18 that point it --

19 MR. FROMM: I guess you will have to  
20 be sworn in.

21 THE CHAIRPERSON: -- it would be  
22 irrelevant.

23 I'm sorry, Ms Bacon, did you ask the  
24 witness if he wanted to be sworn in or affirmed?

25 MR. TREMAINE: Affirmed.

1 THE CHAIRPERSON: Affirmed,  
2 all right.

3 THE REGISTRAR: Please state your  
4 full name for the record.

5 MR. TREMAINE: Terry Tremaine.

6 THE REGISTRAR: Thank you. Please  
7 be seated.

8 AFFIRMED: TERRY TREMAINE

9 EXAMINATION

10 MR. FROMM: Mr. Tremaine, perhaps we  
11 could introduce you a little bit to the Tribunal.

12 Could you outline your educational  
13 background?

14 MR. TREMAINE: Well, I have a  
15 Bachelors Degree in Mathematics and Philosophy; I have  
16 a Masters Degree in Science in Mathematics; and I have  
17 a diploma in Computer Programming Analysis.

18 MR. FROMM: Are your academic  
19 qualifications fairly laid out in Commission  
20 Exhibit HR-4?

21 MR. TREMAINE: What page is that on?

22 MR. FROMM: That would be pages 3  
23 and 4 of the document.

24 MR. TREMAINE: It doesn't mention my  
25 Bachelor's Degree, but that wasn't --I took the policy

1 to just put in my highest degree in mathematics.

2 MR. FROMM: Where did you earn your  
3 university degrees?

4 MR. TREMAINE: My Bachelor's Degree  
5 is from the University of Regina and my Master's Degree  
6 is from Concordia in Montreal.

7 MR. FROMM: Could you outline for the  
8 Tribunal your work history?

9 MR. TREMAINE: Well, I have had a  
10 variety of occupations. I worked in telecommunications  
11 for a number of years; I taught in various universities  
12 for 15 or 16 years; and since about 1997 I have been  
13 employed part-time teaching, but also have been  
14 pursuing a career in information technology as a  
15 programmer.

16 MR. FROMM: In your most recent  
17 career in university, where were you teaching?

18 MR. TREMAINE: I was at the  
19 University of Saskatchewan.

20 MR. FROMM: What were you  
21 teaching there?

22 MR. TREMAINE: I was teaching  
23 mathematics.

24 MR. FROMM: This complaint of course  
25 is dealing not with your academic career so much as

1           your political ideas, so I was wondering if you could  
2           outline for us how you became politically aware and --

3                       MR. TREMAINE:   Do you want me to go  
4           into -- how much detail are you looking for?

5                       MR. FROMM:   Well, how did you develop  
6           the ideas you have today?

7                       MR. TREMAINE:   Well, it pretty well  
8           started -- if I want to assign what might be an  
9           arbitrary starting point, when I was a Masters student  
10          in Montreal there was the invasion of Lebanon in 1982 I  
11          believe and there were massive atrocities being  
12          committed by the Zionists then, as now, and I became  
13          enraged by it.

14                      MR. WARMAN:   Objection, Mr. Chair.

15                      THE CHAIRPERSON:   I'm sorry,  
16          Mr. Warman...?

17                      MR. WARMAN:   Mr. Tremaine has not  
18          been qualified as an expert witness.  He is giving  
19          evidence that there were "massive atrocities being  
20          committed by the Zionists".

21                      THE CHAIRPERSON:   I understand that,  
22          but we have been very flexible on that issue and I'm  
23          not going to make a decision based on what happened in  
24          Lebanon in 1982.

25                      MR. TREMAINE:   Mr. Chairman, it was

1 my perspective that there were --

2 THE CHAIRPERSON: Yes, it is your  
3 perspective and I will leave it at that.

4 MR. TREMAINE: Yes. It was my  
5 perspective that there were massive atrocities  
6 occurring -- and, for the record, that is underscored  
7 in Noam Chomsky's book "The Fateful Triangle" --  
8 Israel, the United States and Palestine.

9 So I guess you could say I was jolted  
10 by it and morally incensed by it, as we many people. I  
11 talked with many people about it. Even Jews I was  
12 talking to were morally outraged by it.

13 So time went on and I graduated from  
14 Concordia and I took a teaching position in Red Deer  
15 Alberta. Now, it just so happened that the James  
16 Keegstra trial was on in Red Deer and one of my  
17 students, her father was testifying actually for the  
18 prosecution. He was the principal at the -- I can't  
19 remember the name of the town where James Keegstra  
20 taught. James Keegstra was also the mayor of that  
21 town.

22 Mr. Keegstra was one of the --  
23 perhaps the first person charged under the hate crime  
24 laws in force at that time. I had a student whose  
25 father was testifying and this student asked me if I

1 would like to go and witness the proceedings, so I did.

2 I saw Mr. Keegstra testify and I was  
3 very impressed. He was logical, rational, indeed  
4 passionate but not outside the bounds of reason.

5 His testimony, combined with the  
6 moral outrage I experienced at the time in 1982, got  
7 me to start thinking of what you might call the  
8 Jewish problem.

9 Later I began doctoral studies at  
10 Queen's University and I became part of a group  
11 called -- I think this is the correct name -- "Queen's  
12 International Concern for the Middle East". This group  
13 was established to bring in speakers to encourage  
14 debate. We wanted to alternate -- we wanted to focus  
15 on the Zionist issue, but we wanted to alternate  
16 speakers. One month it would be a pro-Israel speaker,  
17 the next month it would be a pro-Palestine speaker.

18 Our first speaker was Norman  
19 Finkelstein, who is a Jew but very much an  
20 anti-Zionist Jew. There was a great deal of fuss  
21 and bother among the various Jewish groups on campus  
22 to have his talk banned.

23 They did everything in their power to  
24 prevent the talk from going ahead. They made threats.  
25 At this point I can't remember the nature of the

1 threats, but they were serious, to the point where  
2 campus security was brought in and had to decide  
3 whether to allow us to go ahead and use university  
4 facilities.

5 We went and met with campus  
6 authorities and explained: Well, if you cave in on  
7 this there will never be another controversial  
8 speaker here again. So they didn't cave in and  
9 Mr. Finkelstein's talk went through.

10 But when I saw the tactics the Jewish  
11 groups used, it was unbelievable. Despicable tactics  
12 of threats of physical violence and all of this and it  
13 began me thinking more about the Jewish question.

14 Eventually I took a teaching position  
15 in the Bahamas. I won't go into a lot of detail, but  
16 I developed some fairly negative views towards blacks  
17 and black culture while there. When I went down there  
18 I thought: Well, perhaps I will spend the rest of my  
19 working career down there. But after doing two  
20 two-year terms I decided that I had had enough and  
21 moved back to Canada.

22 By then I was a racist. I did not  
23 think blacks were equal to whites, either  
24 intellectually or morally even.

25 But I kind of just went ahead with my

1 IT career and --

2 MR. FROMM: Could you just clarify  
3 what "IT" is?

4 MR. TREMAINE: Information  
5 technology. I did the computer diploma, which was a  
6 one-year program, and basically that was my focus. I  
7 didn't have any political preoccupation at that time,  
8 it sort of all went onto the back burner.

9 So I started a job in IT. I began  
10 programming for a company in Saskatoon.

11 I eventually started my own business.  
12 Soon after starting my own business, in the fall of --  
13 I started my business in July of 2001 and in the fall  
14 of 2001 -- well, in September, everyone knows what  
15 happened in September, the events at the World Trade  
16 Center and the Pentagon, what we normally call 9/11.

17 I was very suspicious of the reasons  
18 given. The media kept saying, "Oh, those damn Muslims  
19 hate our freedoms and liberties". It was like the same  
20 mantra being repeated and I didn't believe it. I just  
21 didn't believe it.

22 At one point George Bush welcomed  
23 Ariel Sharon to the White House and referred to him as  
24 "a man of peace". At that point I knew something was  
25 very, very wrong.

1                   So again the Jewish question was  
2                   popping up and that is when I began to get interested  
3                   in White Nationalism. I began doing -- I don't know  
4                   how many websites I looked at, dozens perhaps, of  
5                   multiple shades of opinion. I finally got -- I don't  
6                   know how I found Stormfront, but when I found  
7                   Stormfront I recognized that a lot of people on  
8                   Stormfront had the same concerns I did.

9                   I was just a reader of Stormfront for  
10                  quite some time before actually joining. I might have  
11                  been just a reader for a couple of months and just  
12                  trying to make sure whether this was somewhere I  
13                  belonged or not.

14                 I can't remember the exact amount of  
15                 time between when I found Stormfront and when I joined,  
16                 but it wasn't finding it and then joining. I examined  
17                 it at some length.

18                 MR. FROMM: So would this summarize  
19                 the development of your political views from a position  
20                 of being somewhat apolitical to what you are today?

21                 MR. TREMAINE: Yes. I should mention  
22                 along the way I began studying Hitler's "Mein Kampf".

23                 MR. FROMM: May I just ask you a  
24                 question? Where did you buy "Mein Kampf"?

25                 MR. TREMAINE: Oh, I think I ordered

1           it -- I think I ordered it from amazon.com. I think.  
2           I'm not -- I would say I'm 90 percent sure I got it  
3           through amazon.com.

4                       MR. FROMM: What other books  
5           or authors influenced you in the development of  
6           your ideas?

7                       MR. TREMAINE: Nietzsche quite a bit.  
8           I began reading Nietzsche in university. I always  
9           looked at him as the anecdote to political correctness.  
10          It was the pin that always popped the bubble.

11                      I also read "Which Way Western Man",  
12          which is a huge tome. So "Mein Kampf", "Which Way  
13          Western Man", various works of Nietzsche, including  
14          "Genealogy of Morals", "Twilight of the Gods", "The  
15          Antichrist", "Beyond Good and Evil", "Zarathustra" of  
16          course. I almost forgot the most important one.

17          --- Pause

18                      MR. FROMM: Thank you.

19                      You indicated at some point you found  
20          the website named Stormfront.

21                      MR. TREMAINE: Yes.

22                      MR. FROMM: I would like to ask you,  
23          how do you get to post on Stormfront?

24                      Do you have to join?

25                      MR. TREMAINE: Yes. If you want to

1 post on all the forums you have to join. There is one  
2 forum set aside called "Opposing Views" which you are  
3 allowed to post on without joining. But it is for  
4 that, it is for people who like blacks or jews to come  
5 in and argue with us.

6 Because for the most part free speech  
7 is practised on Stormfront. There are moderators, but  
8 the moderators will only strike down a post if it  
9 advocates some sort of illegal activity, if it  
10 advocates violence or uses vulgarities or racial slurs.

11 But apart from that one category, all  
12 the other categories you have to join, you have to  
13 become a member.

14 MR. FROMM: So it is your testimony  
15 that to get on Stormfront in order to post you have  
16 to join?

17 MR. TREMAINE: Yes.

18 MR. FROMM: Thank you.

19 You said that after several months of  
20 reading things on Stormfront you began to post some of  
21 your views there as well.

22 MR. TREMAINE: Yes.

23 MR. FROMM: I would like to go  
24 through with you exactly what that meant.

25 When you chose to post your view on

1 something, as a computer man can you explain to us what  
2 exactly you did, like physically?

3 You are sitting there at the computer  
4 and you want to post your idea about something today on  
5 Stormfront. Tell me what you would do.

6 MR. TREMAINE: Well, first of all,  
7 you have to decide whether you want to create a thread.  
8 A thread, as Mr. Warman explained, it is like a  
9 conversation but someone starts the conversation and  
10 then others can join in and either rebut or agree with.

11 So when you first want to post  
12 you have to decide whether you want to start a new  
13 thread or whether you want to make a comment on an  
14 existing thread.

15 So if you want to start a new thread,  
16 you hit the button that says "New thread". If you want  
17 to reply to an existing thread, you hit the button --  
18 you click on the button that says "Reply". It's pretty  
19 simply.

20 MR. FROMM: So having made that  
21 decision, whatever it might be, now you are seated at  
22 your computer and you type your message.

23 MR. TREMAINE: Yes.

24 MR. FROMM: What is your next step?

25 MR. TREMAINE: You type your message

1 and you click the button that says "Submit Message".

2 MR. FROMM: Do you do that  
3 more times?

4 MR. TREMAINE: No, you do that once.

5 MR. FROMM: Have you had fairly  
6 extensive experience on Stormfront since you joined up?

7 MR. TREMAINE: I think currently I  
8 have something like 1,900 posts.

9 MR. FROMM: Would you be able to tell  
10 me roughly how many times you go on Stormfront a week?

11 MR. TREMAINE: Oh, two or three  
12 times a day.

13 MR. FROMM: So you have a fair  
14 experience of threads in some areas on Stormfront?

15 MR. TREMAINE: Oh, there are so many  
16 threads on Stormfront, but I do have fair experience  
17 with many of them.

18 But there are literally hundreds of  
19 threads on Stormfront. You can't possibly keep up with  
20 all of them.

21 MR. FROMM: I'm not trying to put a  
22 word in your mouth, but did I hear you use the word  
23 "discussion" in terms of what goes on --

24 MR. TREMAINE: Yes.

25 MR. FROMM: -- on these sites?

1                   MR. TREMAINE: Yes, that's what it  
2 is. It's like an online discussion. In fact, they are  
3 often called discussion forums.

4                   MR. FROMM: In your experience, if a  
5 thread starts off hypothetically about the war in  
6 Afghanistan, does it ever veer off into something else?

7                   MR. TREMAINE: Well, it always is  
8 under that topic, but like any discussion there are  
9 people who can go off on tangents. The moderators --  
10 that is another role the moderators have, is to keep  
11 the discussion on topic. They will come in and say,  
12 "Stick with the topic, please."

13                   But once a thread is established you  
14 are supposed to talk about that thread.

15 --- Pause

16                   MR. FROMM: From your experience on a  
17 number of threads, can you characterize the postings as  
18 highly academic or informal?

19                   MR. TREMAINE: It varies. There is a  
20 disproportionate number of highly educated people on  
21 Stormfront, a remarkable number of Ph.D.s, people with  
22 Master's Degrees, Graduate Degrees, all the way down to  
23 just ordinary working folks. I shouldn't say "down to",  
24 but in terms of education, okay.

25                   The discussion reflects that. Some

1 of the threads are very scholarly where people quote  
2 references to this and references to that. It's almost  
3 like they are writing a research paper. Other threads  
4 are more informal where people are just ventilating.

5 MR. FROMM: All right.

6 If I could just return to your post,  
7 you decided to post to a thread, you have written your  
8 comment, you have sent it, do you then go out and  
9 advertise the fact that you have posted?

10 Did you ever pass out business  
11 cards --

12 MR. TREMAINE: No.

13 MR. FROMM: -- saying "I'm Terry  
14 Tremaine and I am posting on Stormfront"?

15 MR. TREMAINE: No, no.

16 MR. FROMM: Did you ever print up  
17 flyers and hand them out in your neighbourhood, "I am  
18 Terry Tremaine and I am posting on Stormfront"?

19 MR. TREMAINE: No.

20 MR. FROMM: Did you ever take out an  
21 advertisement in a newspaper saying "Come and read my  
22 writings on Stormfront"?

23 MR. TREMAINE: No.

24 MR. FROMM: There was a comment that  
25 you made and I'm afraid I can't find where it is, but

1 the comment was referring to Jews, that they were  
2 parasite and vermin.

3 I was wondering if you could explain  
4 how that comment came about and what you meant by it?

5 MR. TREMAINE: Well, first of all,  
6 it's redundant in a way, but there is -- just to give a  
7 little bit of background, there is a lot of debate on  
8 Stormfront about Jews, whether Jews are innately  
9 evil -- and some of the Christians would say, "Well,  
10 they are innately evil because they have rejected  
11 Christ and so they have been claimed by the devil."  
12 Such people use such phrases as "The Jews are the  
13 children of the devil, they are demon seed", et cetera.  
14 So let's call that the "demon seed theory".

15 There is the other theory that  
16 Jews have pursued a group evolutionary strategy leading  
17 to parasitism, that they have always latched onto a  
18 pre-existing culture and exploited that pre-existing  
19 culture the way a bacillus would exploit a medium in a  
20 petri dish. So let's call that "the group evolutionary  
21 strategy theory".

22 For a long time I was wrestling with  
23 that. Well, I -- and to this day I am still wrestling  
24 with it. But at the time I wrote that post I was  
25 trying to emphasize the Jews were behaving

1           instinctively and I was trying to remove the element  
2           of evil from their behaviour, since I regard evil as  
3           being a choice.

4                       Whereas instinctive behaviour, like  
5           when an animal kills for food, that is instinctive  
6           behaviour. We don't attach any moral quality to that.

7                       So I was trying to remove the factor  
8           of evil from Jewish behaviour and I'm just trying to  
9           say they are behaving instinctively.

10                      MR. FROMM: Was there any author  
11           whose works assisted you in coming to that conclusion  
12           on the evolutionary question?

13                      MR. TREMAINE: Yes. There was an  
14           author -- there is an author who is quote quite often  
15           on Stormfront by those who favour the evolutionary  
16           theory, of group evolutionary strategy theory of Jewish  
17           behaviour, and that author is Kevin MacDonald.

18                      I had not -- at the time I wrote that  
19           post I had not read his book. At most I have only read  
20           excerpts from it, but I have read his own review of his  
21           own book. In other words, he has a synopsis of his  
22           book on the internet and I have read that.

23                      MR. FROMM: Can you identify --

24                      MR. TREMAINE: He makes a very strong  
25           case for the group evolutionary strategy theory.

1 MR. FROMM: Can you identify  
2 Professor MacDonald, where he teaches or what  
3 his expertise --

4 MR. TREMAINE: I think it's in  
5 California. If I'm not mistaken, University of  
6 California -- is it University of California, Berkeley?  
7 I'm not sure.

8 MR. FROMM: Some of the posts that  
9 were submitted into evidence dealt with your views  
10 on blacks.

11 Did you work with blacks?

12 MR. TREMAINE: Yes.

13 MR. FROMM: Do you hate blacks?

14 MR. TREMAINE: No.

15 MR. FROMM: Do you hate Jews?

16 MR. TREMAINE: No. And my lack of  
17 hate towards Jews sometimes surprises me. I am  
18 appalled at their behaviour; I detest what they have  
19 done to this country; I detest that they are such a  
20 poisonous influence, not only in Canada but the United  
21 States and Europe and other countries as well.

22 MR. FROMM: Could you explain why you  
23 say that?

24 --- Pause

25 MR. TREMAINE: Well, they have

1 encouraged the destruction of the very civilization  
2 that we want to preserve.

3 Benjamin Franklin, at the  
4 constitutional convention -- and these comments were  
5 written into the diary of one of those present -- said:  
6 If you let the Jews into this country it will be like  
7 letter vampires into this country and your descendants  
8 200 years from now will curse you in your graves.

9 General Ulysses S. Grant, everyone  
10 has heard of the carpetbaggers who came into the  
11 Confederacy near the end of the Civil War. The  
12 carpetbaggers were Jews and Grant tried to keep them  
13 out of the South and issued edicts against them.

14 Many of our great men through history  
15 have always warned us about the Jews and it is not hard  
16 to find -- up to the time of Winston Churchill where he  
17 talked about their goal to overthrow civilization.

18 Do I need to go on?

19 MR. FROMM: I think you have answered  
20 my question.

21 In a number of the postings, but just  
22 arbitrarily let's take HR-7, page 3. If you just want  
23 to take a look at that.

24 MR. TREMAINE: Which is HR-7?  
25 Which tab?

1 MR. FROMM: Tab 7. I don't think we  
2 rejected a single one of them so they are just as in  
3 the book there.

4 MR. TREMAINE: All right.

5 Page 3?

6 MR. FROMM: Yes, HR-7, page 3.

7 Is that a posting by you

8 "mathdokter99"?

9 MR. TREMAINE: Regarding "Your  
10 Awakening"?

11 MR. FROMM: Yes.

12 MR. TREMAINE: Yes, it appears to be.

13 MR. FROMM: All right. In the Avatar  
14 there, what is that symbol?

15 MR. TREMAINE: That is a swastika.

16 MR. FROMM: Why would you choose that  
17 symbol as your avatar?

18 MR. TREMAINE: Because I am a  
19 National-Socialist.

20 MR. FROMM: Is National-Socialism  
21 your political belief?

22 MR. TREMAINE: Yes.

23 MR. FROMM: In 2004 were you made  
24 aware that a complaint had been lodged against you  
25 by Richard Warman in respect of your postings on

1 the internet?

2 MR. TREMAINE: No. I received the  
3 complaint in 2005.

4 MR. FROMM: All right. Can you  
5 remember approximately when?

6 MR. TREMAINE: I believe it was on  
7 the same day they buried the Pope. I think that was  
8 April 8th, or maybe the day the Pope died. I conjoin  
9 the two events. I believe it was April 8th I received  
10 the complaint.

11 MR. FROMM: What was your initial  
12 reaction when you received this complaint from  
13 Mr. Warman?

14 MR. TREMAINE: That it was  
15 totally absurd.

16 MR. FROMM: Why did you feel that?

17 MR. TREMAINE: I had thought that the  
18 country I was born into respected freedom of speech.

19 MR. FROMM: During that time were you  
20 teaching part-time at the University of Saskatchewan?

21 MR. TREMAINE: Yes.

22 MR. FROMM: Did you use your position  
23 as a teacher to proselytize students to your political  
24 point of view?

25 MR. TREMAINE: No. Never. It was

1 always my view that when I walked into the classroom I  
2 left my politics at the door.

3 MR. FROMM: Did you --

4 MR. TREMAINE: I was so -- as a  
5 student I was so incensed at the fact that these  
6 Marxists would walk in and use their positions as --  
7 their position as a bully pulpit to promote their  
8 theories of society. I decided I would never do that.  
9 So I always left my politics at the door.

10 MR. FROMM: Did you teach any  
11 students who were non-white?

12 MR. TREMAINE: Yes.

13 MR. FROMM: What was your  
14 relationship with those students?

15 MR. TREMAINE: Good.

16 MR. FROMM: What sort of evaluations  
17 did you get for your teaching?

18 MR. TREMAINE: I always got good  
19 evaluations. In fact, the Chairman of the Mathematics  
20 Department at U of S, even just a few days before  
21 Mr. Warman contacted them, he said how happy they were  
22 that they had me there and that it was wonderful that  
23 someone like me was available to teach -- I was  
24 teaching part-time -- that it was wonderful that  
25 someone like me was available to teach part-time and I

1 was -- everywhere I have taught they have always  
2 considered me not only a good teacher but an excellent  
3 mathematician.

4 MR. FROMM: Sometime, then, in the  
5 spring of 2005, were you contacted by the university  
6 administration in respect of the complaint?

7 MR. TREMAINE: Yes. I can't remember  
8 the exact date, but I think it was somewhere around the  
9 middle of the month.

10 MR. FROMM: The middle of what month,  
11 as you recall?

12 MR. TREMAINE: The middle of April.  
13 It might have been the third week of April. I would  
14 have to check the date of Mr. Warman's letter, but it  
15 was, I think, somewhere around -- I don't want to be  
16 too specific about the date.

17 MR. FROMM: I don't think the date is  
18 that important.

19 MR. TREMAINE: Yes.

20 MR. FROMM: If you could just --

21 MR. TREMAINE: The Head of the -- at  
22 U of S the PR Department and Legal Department are  
23 conjoined under one group, so the Head of that  
24 department called me in and said: A Mr. Warman has  
25 sent us a fax concerning a human rights complaint

1           against you and we would like to get together to talk  
2           to you about it.

3                           At first I said "I'm not interested",  
4           but then I called him back and said "Well, okay".

5                           So they arranged a meeting for -- I  
6           think it was the following morning or it might have  
7           been that afternoon, between that gentleman, the Head  
8           of the Mathematics Department and myself.

9                           At that meeting, I was told that  
10          in order to avoid "a media circus" that I was to  
11          be terminated.

12                          MR. FROMM:   What had you been told  
13          was the substance of Mr. Warman's communication with  
14          the university?

15                          MR. TREMAINE:  I can't recall their  
16          exact words, but they referred to a human rights  
17          complaint and that Mr. Warman had faxed them -- I  
18          believe they said Mr. Warman had faxed them a copy of  
19          the human rights complaint.  So it would be the -- I  
20          imagine it would be the same as the complaint we have  
21          before us here in this testimony.

22                          The didn't go into the details of the  
23          complaint.  They emphasized how "Oh, all the students  
24          will be in an uproar and we will have demonstrations  
25          and we will have the media here and we don't want a

1 media circus."

2 MR. FROMM: Why would the students be  
3 holding demonstrations and there be a media circus?

4 MR. TREMAINE: I don't know. That  
5 was their -- universities are very sensitive to their  
6 images, especially when these left wing Liberal causes  
7 are involved.

8 MR. FROMM: Other than the complaint,  
9 a copy of the complaint itself, what were you told  
10 Mr. Warman had communicated to the university?

11 MR. TREMAINE: That he would  
12 contact -- that if they did not act, if they did not  
13 act on his complaint to them, that he would contact the  
14 local and national media.

15 MR. FROMM: I see. So you  
16 subsequently were terminated?

17 MR. TREMAINE: Yes.

18 MR. FROMM: So you were terminated  
19 and you had no other employment at the time?

20 MR. TREMAINE: At the time none,  
21 except a small amount of work doing freelance  
22 programming that came in in dribs and drabs.

23 MR. FROMM: What was your age at  
24 that time?

25 MR. TREMAINE: At that time? That

1 was a little over a year ago, so I would have been  
2 almost 57.

3 MR. FROMM: What happened to your  
4 life after you were terminated?

5 MR. TREMAINE: It was a terrifying  
6 experience. I can only describe him as a thug hanging  
7 around my building, and he looked familiar, but he  
8 didn't look like he belonged in Saskatoon. I mean, I  
9 had never seen him before. He also looked like he was  
10 wearing a wig, like kind of a wig, like a long -- like  
11 scruffy black hair, almost like a clown's wig. So it  
12 seemed to me he looked like he was, in some sense,  
13 trying to disguise his identity, but other than that he  
14 had a very thuggish appearance.

15 So I thought "I kind of recognize  
16 that face." I thought about where I had seen it  
17 before. So I went and checked photos, images that are  
18 on the internet of the Zundel demonstrations in Toronto  
19 and he was in that group.

20 MR. FROMM: When you say "the Zundel  
21 demonstrations", could you explain that a little bit  
22 more because it might give the -- please explain what  
23 you mean by "Zundel demonstrations"?

24 MR. TREMAINE: Mr. Zundel was in the  
25 Detention Centre in Toronto charged under -- he was

1 under a security certificate and there were -- would  
2 they have been hearings, a trial of some sort going on  
3 to determine his status and whether -- oh yes, the  
4 extradition hearings to Germany.

5 There were a number of people in  
6 support of Mr. Zundel demonstrating and there were a  
7 number of counter demonstrators. The people supporting  
8 Mr. Zundel took pictures of the counter demonstrators.  
9 And they were under the Anti-Racist Action banner, and  
10 as well as I could determine I identified the same  
11 individual in those pictures with the same silly  
12 looking wig. It seemed to me to be the same  
13 individual.

14 I thought, "Now, what are the odds,  
15 what are the odds that some -- given that this might be  
16 the same individual as that ARA member, what are the  
17 odds that he would turn up at my apartment in Saskatoon  
18 hanging around the lobby looking suspicious just a few  
19 days after I got served with this complaint"?

20 MR. FROMM: Did you feel intimidated  
21 or harassed?

22 MR. TREMAINE: I felt quite  
23 intimidated. Yes, harassed, intimidated.

24 So I moved my stuff, as best I could,  
25 out to the west coast.

1 MR. FROMM: So this is after you  
2 were fired?

3 MR. TREMAINE: Yes.

4 MR. FROMM: So you moved to the  
5 west coast?

6 MR. TREMAINE: Yes.

7 MR. FROMM: I took out a P.O. Box so  
8 that no one would know my civic address.

9 The situation I was in, I was very  
10 concerned about whomever I might stay with. I was  
11 staying with an individual who had a good career -- has  
12 a good career, has a child, and I was very concerned  
13 about Mr. Warman doing the same thing to him as he had  
14 done to me. I was concerned about my friend getting  
15 fired from his job. That was a constant worry for me.  
16 But I was very concerned about the thuggery of the ARA,  
17 I was concerned about the safety of his son.

18 MR. FROMM: Your friend's son?

19 MR. TREMAINE: My friend's son.

20 THE CHAIRPERSON: I'm sorry,  
21 Mr. Fromm. I don't want to interrupt or stop you. I  
22 don't know how long you --

23 MR. FROMM: I probably have less than  
24 10 minutes.

25 THE CHAIRPERSON: All right.

1 MR. FROMM: Can we complete this?

2 THE CHAIRPERSON: Sure.

3 MR. TREMAINE: I would like to say,  
4 all this fear, all this uncertainty, all this -- I  
5 should say, at this point in my life I began to feel  
6 like I had no future: No job, no home. I was putting  
7 in danger, in jeopardy, anyone I might stay with. I  
8 felt my future was to be one of these homeless guys on  
9 the street, and I went into a fairly deep depression.

10 MR. FROMM: Were you drinking  
11 to excess?

12 MR. TREMAINE: Yes. But I should  
13 say, that was just -- that was the only way I was able  
14 to sleep.

15 MR. FROMM: So you fell into  
16 a depression?

17 MR. TREMAINE: Yes. And I  
18 became suicidal.

19 MR. FROMM: And what happened then?

20 MR. TREMAINE: I began to think that  
21 the only way out -- the only future I had was a very  
22 dismal one and it was either that or suicide. That  
23 became more and more and more serious so I felt myself  
24 cracking up from this depression.

25 And somewhat by instinct I guess I

1 thought "If I'm going to crack up, I want to crack up  
2 in my home town", so I left the west coast and went  
3 back to Regina without any place to stay or anything  
4 and checked myself into the psychiatric ward.

5 MR. FROMM: While you were in that  
6 psychiatric ward in Regina -- it was Regina, was it?

7 MR. TREMAINE: Yes. Correct.

8 MR. FROMM: Did you write a letter,  
9 a handwritten letter which is Exhibit HR-11 in your  
10 book there?

11 MR. TREMAINE: Yes.

12 MR. FROMM: HR-11, faxed to Sandy  
13 Kosak of the Human Rights Commission --

14 MR. TREMAINE: Yes.

15 MR. FROMM: -- from the Regina  
16 Qu'Appelle Health Region.

17 MR. TREMAINE: Yes.

18 MR. FROMM: Was that where you were?

19 MR. TREMAINE: Yes, I was in the  
20 Psychiatric Ward of the Regina General Hospital.

21 MR. FROMM: Why did you write this  
22 letter to -- Sandy Kosak is with the Canadian Human  
23 Rights Commission, isn't she?

24 MR. TREMAINE: Yes.

25 MR. FROMM: Or was she?

1 MR. TREMAINE: Yes.

2 MR. FROMM: Why did you write  
3 this letter?

4 MR. TREMAINE: Well, like I said, I  
5 was under this -- in this state of horrible depression.  
6 In fact, the nurses were following me around at the  
7 hospital because they thought I was about to kill  
8 myself and they wouldn't -- for the first few days  
9 there I wasn't allowed to wear my street clothes. When  
10 they finally trusted me with my street clothes, I  
11 couldn't wear my belt, because they thought I might use  
12 my belt to hang myself.

13 MR. FROMM: Was that a  
14 realistic fear?

15 MR. TREMAINE: I would have welcomed  
16 death, yes. Every day when I woke up I cursed the fact  
17 that I had woken up. I was hoping that I would die in  
18 my sleep.

19 But at some point, I think with some  
20 urging from the nurses, I acquired the idea -- I was  
21 fairly well medicated so it is a little fuzzy, a little  
22 blurry, but I acquired the idea that apology was an  
23 alternative to killing myself. I really didn't want to  
24 kill myself. So I acquired the idea that an apology  
25 was an alternative.

1                   MR. FROMM: At that time you were  
2 fairly heavily medicated and you were in the Regina  
3 mental health institution?

4                   MR. TREMAINE: Well, the Psychiatric  
5 Ward of the Regina General Hospital. It is a  
6 multi-purpose facility and they have one ward devoted  
7 to acute care psychiatric -- it is an acute care  
8 psychiatric facility.

9                   MR. FROMM: You did communicate that  
10 letter by fax to the Canadian Human Rights Commission?

11                  MR. TREMAINE: I wrote it and one of  
12 the nurses actually faxed it.

13                  MR. FROMM: Did you receive a  
14 response from them?

15                  MR. TREMAINE: No.

16                  MR. FROMM: All right.

17                                You no longer hold to that  
18 handwritten letter?

19                  MR. TREMAINE: No, I totally  
20 repudiate it.

21                  MR. FROMM: Did you put that  
22 repudiation on Stormfront?

23                  MR. TREMAINE: Yes, I did.

24                  MR. FROMM: Roughly when was that?

25                  MR. TREMAINE: I think it was some

1 time in February.

2 MR. FROMM: Of this year?

3 MR. TREMAINE: Yes.

4 MR. FROMM: All right.

5 What is your position today?

6 MR. TREMAINE: My position is that  
7 the posts I wrote on Stormfront, except for perhaps  
8 minor modifications in terms of as my philosophy has  
9 evolved -- apart from minor modifications I totally  
10 support everything I wrote on Stormfront.

11 MR. FROMM: So that handwritten  
12 repudiation is retracted?

13 MR. TREMAINE: Well, when I came out  
14 the handwritten repudiation is retracted.

15 MR. FROMM: Would your retraction --  
16 I would like you to take a look at HR-9. Would that be  
17 your statement of retraction that you repudiate the  
18 statement of February 2005?

19 MR. TREMAINE: The statement on  
20 February 2005 repudiates the apology written on  
21 September 30th.

22 MR. FROMM: I'm sorry. The apology  
23 of 2005 and HR-9 of February 2006, that is your  
24 present position that that repudiation or retraction  
25 was done under --

1 MR. TREMAINE: Well, under  
2 psychological duress.

3 MR. FROMM: Right.

4 MR. TREMAINE: I mean, I was  
5 profoundly depressed, facing the possibility of  
6 suicide, and an apology seemed the only way of avoiding  
7 suicide.

8 MR. FROMM: I would like to direct  
9 you, if I might, to page 3 of 9 of HR-9, the  
10 paragraph the third from the bottom of your post  
11 "One word of advice".

12 Would you read that, please?

13 MR. TREMAINE:

14 "One word of advice from one who  
15 has been through the mill and  
16 broke under the pressure (but  
17 not completely or I would not be  
18 writing this). NEVER APOLOGIZE  
19 AND NEVER GROVEL!! It gives our  
20 enemy comfort and a sense of  
21 victory and will not do you any  
22 good ever."

23 MR. FROMM: Would that be your  
24 position today?

25 MR. TREMAINE: Yes.

1                   MR. FROMM:  Would your position be  
2                   the position of the marches throughout Northern Ireland  
3                   "No surrender"?

4                   MR. TREMAINE:  I'm not -- I'm not  
5                   familiar with their ideology, but I would take -- I  
6                   would say "No surrender" would be our ideology -- would  
7                   be a good slogan, yes.

8                   MR. FROMM:  All right.

9                   Just prior to you being served  
10                  with the human rights complaint back in -- you said  
11                  it was early in 2005 -- did you receive a phone call  
12                  that concerned you from a man inquiring about your  
13                  birth date?

14                  MR. TREMAINE:  Yes.  That was  
15                  actually -- in October I received what turned out to be  
16                  a bogus call from a potential client for my computer  
17                  business where he out of the blue asked me what my date  
18                  of birth was.  Without really thinking, I just told him  
19                  my birth date.  Then, within -- I guess within a couple  
20                  of weeks, I didn't receive the complaint, but the  
21                  complaint was dated, I believe October 19th and I think  
22                  this phone call was on October 4th.

23                  So when I received the complaint and  
24                  saw the date, I go "Ah-ha, that is what the phone call  
25                  was about, that it was the last thing they needed to

1           verify my date of birth."

2                           MR. FROMM:   Today, August 10th, 2006,  
3           do you own a home?

4                           MR. TREMAINE:   No.

5                           MR. FROMM:   Do you own a car

6                           MR. TREMAINE:   No.

7                           MR. FROMM:   Can you give us an idea  
8           of your income? How are you supporting yourself?

9                           MR. TREMAINE:   At present I am  
10          working a minimum wage job 20 hours a week. I earn --  
11          I clear about \$600 a month.

12                          MR. FROMM:   Those are my questions.

13                          THE CHAIRPERSON: We will take the  
14          dinner break here. It is 12:30. Be back here at  
15          quarter to 2:00 for the cross-examination of the  
16          witness by the Commission and Mr. Warman.

17                          You are still under oath,  
18          Mr. Tremaine.

19                          MR. TREMAINE:   Yes.

20                          THE CHAIRPERSON: Thank you very  
21          much.

22          --- Upon recessing at 12:30 p.m.

23          --- Upon resuming at 1:45 p.m.

24                          THE REGISTRAR:   Order, please.

25                          Please be seated.

1 THE CHAIRPERSON: We will continue  
2 this afternoon with the cross-examination of  
3 Mr. Tremaine.

4 Ms Warsame...?

5 MS WARSAME: Yes.

6 EXAMINATION

7 MS WARSAME: Good afternoon,  
8 Mr. Tremaine.

9 MR. TREMAINE: Good afternoon.

10 MS WARSAME: You stated that you  
11 received a call around October 4th with respect to  
12 someone actually called you and asked you your  
13 birth date.

14 I would like to refer you to Tab 2.

15 MR. TREMAINE: Tab 2?

16 MS WARSAME: Tab 2.

17 --- Pause

18 MR. TREMAINE: Yes...?

19 MS WARSAME: Isn't it correct if you  
20 look at page 2 of HR-2 that your birth date is  
21 available on the website?

22 MR. TREMAINE: Yes. But, you see, in  
23 order to verify that I was mathdokter99 they needed to  
24 know Terry Tremaine's birth date in order to match it  
25 up with mathdokter99's birth date.

1 MS WARSAME: That's correct.  
2 But do you agree with me that it was  
3 available on the internet?

4 MR. TREMAINE: Yes.

5 MS WARSAME: All right. Thank you.

6 Mr. Tremaine, you testified that  
7 you totally support and believe everything you wrote  
8 in Stormfront.

9 Is that correct?

10 MR. TREMAINE: With only minor  
11 exceptions. In some ways my views have evolved, but in  
12 substance, yes, I totally support everything I wrote  
13 and I stand by everything I wrote.

14 MS WARSAME: Perfect.

15 I would like to refer you to HR-17,  
16 which is at Tab 17.

17 --- Pause

18 MR. TREMAINE: Yes...?

19 MS WARSAME: Page 7.

20 MR. TREMAINE: Yes. Page 7 of 13?

21 MS WARSAME: That's correct.

22 There is your posting?

23 MR. TREMAINE: The one at the  
24 bottom, yes.

25 MS WARSAME: In that one this is the

1 solution you propose in respect to non-whites living  
2 within Canada.

3 MR. TREMAINE: Yes.

4 MS WARSAME: Isn't it correct? That  
5 is what you are proposing?

6 MR. TREMAINE: That is one of the  
7 areas where my views have evolved.

8 You would see, if you look at my  
9 proposed Constitution --

10 MS WARSAME: Which is where?

11 MR. TREMAINE: It would be --

12 --- Pause

13 MR. FROMM: If I might be of  
14 assistance --

15 THE CHAIRPERSON: It would be at  
16 HR-36 page 1 of 4.

17 MR. FROMM: Yes.

18 MR. TREMAINE: In my proposed  
19 Constitution for Canada -- actually, there are two  
20 copies, one taken from Stormfront and one taken from  
21 the National-Socialist website. There may be some  
22 minor discrepancies between the two, okay, but in  
23 substance they are the same.

24 Let's see. Anyway, my current  
25 position is only whites would be citizens. Non-whites

1 living in Canada would either be subjects of Canada and  
2 have passports declaring that or resident guest  
3 workers.

4 Subjects would have no voting rights  
5 and there would be many occupations which they would  
6 not be allowed to be involved in.

7 Can you refresh my memory what the  
8 original post was that you were referring to?

9 MR. TREMAINE: That was HR-17,  
10 page 7.

11 MR. TREMAINE: In that one I had --  
12 the voluntary sterilization part, I no longer  
13 support that.

14 Non-whites -- under the proposed  
15 National-Socialist Constitution, non-whites who chose  
16 to remain in Canada would have to accept status as  
17 subjects not citizens, but we would follow a policy of  
18 voluntary repatriation, financial assistance, that kind  
19 of thing.

20 But I no longer subscribe to the  
21 sterilization part.

22 And there is an asterisk there,  
23 notice, where I exclude native Indians.

24 MS WARSAME: Yes. But I'm not  
25 focusing on native Indians, I am focusing on non-white.

1 MR. TREMAINE: Well, they are not  
2 whites. Native Indians are not white.

3 MR. TREMAINE: That's correct.

4 MR. TREMAINE: Yes.

5 MS WARSAME: Let's go back to what  
6 you are saying.

7 What you are saying, if I  
8 understand -- you have to tell me if you agree  
9 with me --

10 MR. TREMAINE: Okay.

11 MS WARSAME: -- that non-white shall  
12 have a second class citizenship.

13 MR. TREMAINE: They won't have any  
14 citizenship at all.

15 MS WARSAME: So they won't --

16 MR. TREMAINE: They will be  
17 classified as subjects or guest workers.

18 MS WARSAME: Okay. I  
19 understand that.

20 What is the rationale for that?

21 MR. TREMAINE: To exclude non-whites  
22 from voting, to exclude non-whites from government, to  
23 exclude non-white from teaching in universities, to  
24 exclude non-whites from the military and to allow  
25 any -- to allow businesses to employ only citizens

1           should they choose to do so.

2                           The ultimate goal is to repatriate as  
3 many non-whites as possible.

4                           You must understand, I believe in  
5 racial separation. We don't want to dominate anybody.  
6 We would like to send non-whites back to their  
7 ancestral homelands as peaceful as possible, with as  
8 little social chaos as possible.

9                           MS WARSAME: So you will agree with  
10 me that your view is to have a Canada which is  
11 100 percent white?

12                           MR. TREMAINE: Ultimately yes,  
13 excluding the native Indians. I mean, they are going  
14 to be here. They are going to be here forever, right,  
15 so we will never have a Canada that is 100 percent  
16 white. But apart from the native Indians, we would  
17 like to see a Canada that is as close to being  
18 100 percent white as possible.

19                           MS WARSAME: Thank you.

20           --- Pause

21                           MS WARSAME: You also stated that  
22 citizens must be 100 percent white.

23                           MR. TREMAINE: No.

24                           MS WARSAME: And then --

25                           MR. TREMAINE: No, I didn't.

1 MS WARSAME: That is your  
2 posting at --

3 MR. TREMAINE: That citizens can  
4 have at most one non-white grandparent. And if in the  
5 case of adoption for example and they don't know who  
6 their natural parents are, we would use the best  
7 available science. There are DNA tests available to  
8 determine ethnicity.

9 MS WARSAME: I understand, but I'm  
10 just going back to the posting you made, which is at  
11 Tab 17.

12 MR. TREMAINE: Again, look at the  
13 proposed Constitution. It follows the Nuremberg  
14 Race Law and it requires 75 percent white lineage to be  
15 a citizen.

16 MS WARSAME: So basically you went  
17 from 100 percent white in your previous posting to now  
18 75 percent is acceptable?

19 MR. TREMAINE: Yes. I was persuaded  
20 that the true National-Socialist position is at most  
21 one non-white grandparent.

22 MS WARSAME: Were you following the  
23 Nuremberg Race Law?

24 MR. TREMAINE: Yes. The  
25 National-Socialists of Germany, their main concern was

1 Jews of course. They didn't have many non-whites.  
2 There were a few -- any other non-whites. There were a  
3 few negroes living in the Saar region.

4 MS WARSAME: Go ahead.

5 MR. TREMAINE: I'm waiting.

6 MS WARSAME: No, go ahead.

7 MR. TREMAINE: There were a few  
8 negroes living in the Saar region but their main  
9 concern was Jews.

10 They developed as a reasonable  
11 middle ground, because for example there were a lot  
12 of half-cast and quarter-cast Jews in the German Armed  
13 Forces. They couldn't take and throw out half the  
14 officer corps.

15 For example, the Captain of the  
16 Bismarck, you know the famous battleship, he had one  
17 Jewish grandparent. I think his paternal -- his  
18 paternal grandmother was a full racial Jew.

19 So the proposed Constitution  
20 adopts -- there are many people on Stormfront who want  
21 a country that is absolutely totally 100 percent white,  
22 no compromise. Right.

23 I am not one of those people. We  
24 live in the real world where there is not -- there are  
25 fuzzy boundaries around everything, okay. So I decided

1 to go with the Nuremberg Race Law since it strikes what  
2 I consider a reasonable compromise.

3 MS WARSAME: If you go back to the  
4 posting at HR-17 --

5 MR. TREMAINE: Okay.

6 MS WARSAME: -- you also refer to  
7 the Jews. At page 8 --

8 MR. TREMAINE: Yes. Just a second,  
9 let me get there. I'm a bit lost.

10 MS WARSAME: Page 7.

11 MR. TREMAINE: Page 7. Okay, yes.  
12 Go ahead.

13 MS WARSAME: If you go to page 8 --

14 MR. TREMAINE: Yes.

15 MS WARSAME: -- you were talking:

16 "If that were impossible  
17 then..."

18 You are talking about sterilization:  
19 If it were impossible then you would have to kick them  
20 out and:

21 "In no case would a Jew be  
22 allowed to remain ..."

23 MR. TREMAINE: That is correct. We  
24 don't have any tolerance towards the Jews. I think as  
25 much as possible we should get as many of them out of

1           our country as possible.

2                               Suppose tomorrow there were a  
3           National-Socialist government in Canada, immediately  
4           the Jews would be excluded from the public service.

5                               I personally think sending --  
6           encouraging or sending all Jews to Israel is not a good  
7           idea. There are enough problems.

8                               I view that they stole Palestine from  
9           the Palestinian people and that theft of land should  
10          not be encouraged any further. There has to be  
11          somewhere else where they can go.

12                              From my own point of view the  
13          Madagascar plan should be put back on the table. Are  
14          you familiar with the Madagascar plan?

15                              MS WARSAME: Fairly. Why don't you  
16          explain it to me though?

17                              MR. TREMAINE: Hitler's original  
18          plan for the Jews was that they all be sent to  
19          Madagascar, which is a large island off the coast of  
20          Africa, right. A fairly underpopulated island. It  
21          could support probably 50 million people, but it is  
22          largely underpopulated. I mean, there are people  
23          there, but -- but Palestine was a fully developed  
24          culture and country.

25                              Now, Hitler's original plan was send

1 the Jews to Madagascar and there was a time when it  
2 would have been possible, but the Jews had to have  
3 Palestine. They wouldn't allow Jews to go to  
4 Madagascar. They did everything they could  
5 diplomatically, militarily, et cetera, to prevent Jews  
6 from going to Madagascar.

7 But some territory of that size where  
8 they could have as little negative impact on their  
9 neighbours as possible. Because, as you know,  
10 Madagascar, it is an island and it is one country. It  
11 doesn't border any other country.

12 But now we are talking a speculative  
13 hypothetical situation here and I don't -- I would  
14 prefer to see Madagascar put on the table at some point  
15 in the future if there is the collective will to  
16 dissolve the State of Israel and find a different place  
17 for the Jews to live.

18 MS WARSAME: Thank you.

19 No more questions.

20 THE CHAIRPERSON: Thank you.

21 Mr. Warman...?

22 MR. WARMAN: I believe that  
23 Mr. Tremaine has done a fine job on his own so I won't  
24 have any questions.

25 THE CHAIRPERSON: Thank you.

1                   Are there any questions in redirect?  
2           Only on the issues that were raised in  
3           cross-examination, that would be it?

4                   I would like to remind you that a lot  
5           of what was raised in cross-examination was opinion so  
6           it is not factual evidence directly to this issue.  
7           --- Pause

8                   MR. FROMM: I thought I had one  
9           but it has flown out the window, so I guess I have  
10          no questions.

11                  THE CHAIRPERSON: Thank you very  
12          much, Mr. Tremaine.

13                  MR. TREMAINE: All right.

14                  THE CHAIRPERSON: Are there any more  
15          witnesses for the respondent?

16                  MS WARSAME: No, there are none.

17                  THE CHAIRPERSON: That closes  
18          your case?

19                  MR. FROMM: It does.

20                  THE CHAIRPERSON: We are at the  
21          position now of closing arguments. I have two  
22          propositions on the table.

23                  One was that we adjourn until  
24          tomorrow morning to do the closing arguments and get  
25          that done tomorrow morning before noon.

1                   You, sir, were saying that you would  
2                   be ready to go forward this afternoon.

3                   MR. FROMM:    Yes.  I know it is  
4                   probably going out of turn, but as I don't get a  
5                   rebuttal I am content to make my case now, to provide  
6                   you with the final summation.

7                   THE CHAIRPERSON:  You would want to  
8                   make your case now and not wait until tomorrow morning  
9                   and hear the Commission's and Mr. Warman's argument?

10                  MR. FROMM:    No.

11                  THE CHAIRPERSON:  It is your --

12                  MR. FROMM:    I mean, I would prefer  
13                  that we proceed in the normal fashion --

14                  THE CHAIRPERSON:  Yes.

15                  MR. FROMM:    -- with the normal  
16                  rebuttals, but if you rule that the Commission and  
17                  Mr. Warman can have until tomorrow morning, I would  
18                  still prefer to go this afternoon.

19                  THE CHAIRPERSON:  All right.

20                  Are there any objections to that?

21                  MR. WARMAN:   No objection.

22                  MS WARSAME:   No objection.

23                  THE CHAIRPERSON:  If you want to go  
24                  ahead, Mr. Fromm.

25                  MR. FROMM:    Could I have a couple of

1 minutes to shuffle the papers?

2 THE CHAIRPERSON: Yes. We can take  
3 until 2:15 and come back at 2:15.

4 Would that be sufficient?

5 MR. FROMM: That is fine. Thank you.

6 --- Upon recessing at 2:05 p.m.

7 --- Upon resuming at 2:15 p.m.

8 THE REGISTRAR: Order, please.

9 Please be seated.

10 THE CHAIRPERSON: Mr. Fromm...?

11 ARGUMENT

12 MR. FROMM: Mr. Chairman, the great  
13 American civil defence lawyer Clarence Darrow at the  
14 Scopes Monkey Trial in 1925 was asked by his client,  
15 the school teacher John Scopes, he said to him: I  
16 don't understand. He said: Last year they brought  
17 back a fellow through the train station who had  
18 murdered his wife up in Ohio and all the town gathered  
19 to see that the fellow in the train going, extradited  
20 back to Ohio. He said: The people were just looking  
21 and he said there was no anger or hatred in their  
22 faces.

23 But he said: The townspeople look at  
24 me and it looks as if they want to kill me. They hate  
25 me. And he said: Mr. Darrow, I don't understand why.

1                   Clarence Darrow supposedly said to  
2                   him" Well, killing your wife is not unusual, it  
3                   happens all the time, but you have killed one of their  
4                   pipedreams one of their sacred cows and they will never  
5                   forgive you for that.

6                   I think that may well be one of the  
7                   things that is going on here.

8                   Mr. Tremaine I think, sir, presents  
9                   with a real problem. He stands before you an utterly  
10                  honest guileless man. He says right upfront, even  
11                  without prompting, I am National-Socialist. Those are  
12                  my political views. There are some people in our  
13                  society who take that very, very ill. It to them kills  
14                  one of their pipedreams or sacred cows. It is very,  
15                  very offensive.

16                 For that reason, if there has been  
17                 any hate expressed in this room, it is the hate of a  
18                 system for a dissident like Mr. Tremaine, who I suppose  
19                 could have hidden his views, or could have sugarcoated  
20                 them, or could have evaded, or could have suggested  
21                 somebody else did those postings. But he said, "No, I  
22                 did them."

23                 He admitted to every single one of  
24                 the postings that was presented in evidence by the  
25                 prosecution, by the Commission by Mr. Warman. He said,

1 "Those are my views and I stand in front of you  
2 honestly with those views."

3 I think that is something, sir, you  
4 are going to have to deal with, because you are charged  
5 with enforcing section 13(1) of the Canadian Human  
6 Rights Act. It is not in a vacuum. We are still  
7 governed by the Charter of Rights and Freedoms and by,  
8 I think the vision of civil liberties of Pierre Trudeau  
9 brought to us in 1982.

10 So I'm going to deal with six points,  
11 if I might.

12 First of all there is the scope of  
13 the complaint. You did instruct us yesterday to  
14 address that.

15 I am going to kill with what I think  
16 is probably the strongest argument we have -- and as  
17 far as I know it has not been advanced before -- and  
18 that deals with a matter of repeated, especially  
19 repeated in terms of the particular situation of this  
20 complaint, and that is the website called Stormfront.

21 I am also going to deal with the  
22 impact in terms of this case of the word "likely" in  
23 section 13(1), repeated expressions that are likely to  
24 expose hatred or contempt groups on prohibited grounds.

25 I am going to deal with a point that

1 I made yesterday. I really feel very, very strongly.  
2 I think this is something that really ought to present  
3 you with a serious problem, and that is our contention  
4 that this complaint is made in utter bad faith, is  
5 vexatious and although it is before you should be  
6 rejected because it is in bad faith.

7 I am going to deal with the political  
8 platform that basically is the substance of posting  
9 HR-36 and then some concluding remarks.

10 First of all, the scope of  
11 this complaint.

12 I think common justice requires  
13 that the accused know the charged against him. Those  
14 charges are outlined in the complaint and essentially  
15 are two posts, one from the 20th of September 2004.  
16 Terry Tremaine states:

17 "Soviet communism was for the  
18 most part Jewish. Of the  
19 several hundred original,  
20 commissars, only five or six  
21 were ethnic Russians, one was an  
22 American Black and the rest were  
23 Jews. The Red Terror was  
24 entirely Jewish."  
25 "NS..."

1                   That is National-Socialist:  
2                   "... policy toward Jews was  
3                   quite restrained. Hitler was a  
4                   lot nicer to the Jews than they  
5                   deserved."

6                   We have had no expert evidence. In  
7                   fact I don't think we had any discussion of that as  
8                   all. It may well be that it is -- except for the  
9                   opinion at the very of it it is factually true. We  
10                  certainly have had no evidence that it is not factually  
11                  true as to who the original commissars were.

12                  Mr. Tremaine there is expressing, it  
13                  would appear, to be a fact. Certainly we have had no  
14                  evidence that is not a fact. He is expressing an  
15                  opinion. I don't think that post suggests that anybody  
16                  ought to hate anybody, just that in one limited context  
17                  in terms the Russian Revolution the majority of the  
18                  people who were the commissar's, or the initial leaders  
19                  of a communist resolution were one particular ethnic  
20                  persuasion.

21                  That is one post.

22                  The second post occurred in  
23                  September of 2004 and it is apparently made after a  
24                  group called Western Canada for Us was the subject of a  
25                  human rights complaint also by Richard Warman, and

1 Mr. Tremaine responds. He is commenting that  
2 Mr. Warman apparently wants to go after those who  
3 created the site. He claims that is very Jewish "Never  
4 forget and never forgive" and they suggests their time  
5 will come, and so on.

6 This is not a threat, simply an  
7 observation perhaps that if you push people long enough  
8 and often enough don't be surprised if eventually they  
9 strike back.

10 I would suggest to you that those are  
11 the only two postings that are properly before you,  
12 because they were the postings that Mr. Tremaine was  
13 advised of. That was the complaint.

14 Now, I know since then more and more  
15 postings have been added. In fact, even on Tuesday  
16 morning with a brief little interlude where Mr. Warman  
17 got up and identified yet a further posting that  
18 apparently had appeared last week.

19 I don't think this allows even the  
20 most experienced counsel to provide an adequate  
21 defence. State the charges, as was done in the  
22 complaint and let's deal with them.

23 I would submit that you should really  
24 limit your inquiry to those two posts. Those were the  
25 ones in the complaint. I don't think it is fair and I

1 think it violates natural justice to keep heaping more  
2 and more complaints on the table.

3 Mr. Tremaine has complained, and I  
4 think he yourself saw this and made some comment about  
5 it, the strategy of the experienced counsel of the  
6 Canadian Human Rights Commission to simply attack  
7 Mr. Tremaine by ambush.

8 On Tuesday morning we found this  
9 motion dated August of last week on the desk here.  
10 That was a motion that was discussed and disposed of on  
11 Tuesday by yourself and that was the one to exclude me  
12 from being Mr. Tremaine's representative. But as you  
13 yourself pointed out, at the very least in terms of the  
14 second relief sought in that motion, I should have been  
15 advised in a timely fashion last week.

16 I think you can see in that the  
17 unfairness. Given also the fact that Mr. Tremaine  
18 up to now, up until Tuesday was operating entirely  
19 on his own, a person with obviously a lot of academic  
20 background and special expertise in certain areas,  
21 but definitely not an expert and no expertise in the  
22 law. He has been the victim repeatedly of prosecution  
23 by ambush.

24 I suggest fairness demands that he  
25 answer the two posts in the complaint and none other.

1                   I will make a few comments about some  
2 of the other postings, but those are the ones I suggest  
3 that this case ought to deal with.

4                   The first one, certainly we have had  
5 no evidence that exposes anybody to hatred or contempt.  
6 It says that some choose were largely responsible for  
7 the Russian Revolution.

8                   The second one comments if you push  
9 people enough they might just eventually get ugly. I  
10 think all of human history will back that up.

11                   The second point I would like to  
12 deal with, and this perhaps is one of the most  
13 important parts of Mr. Tremaine's case, and that is  
14 our submission that the postings by Mr. Tremaine on  
15 Stormfront, I mean all the postings on Stormfront,  
16 do not fall within the ambit of the Canadian Human  
17 Rights Act section 13(1). Section 13(1) talks  
18 about "repeated communications", messages that must  
19 be repeated.

20                   I asked Mr. Warman to take us  
21 carefully through what one does to post on Stormfront.  
22 The procedure was confirmed in greater detail by  
23 Mr. Tremaine when he was on the witness stand.

24                   Both confirmed that what the  
25 procedure was -- and I'm a layman and not very good at

1 computers so I hope I am restating it correctly -- that  
2 one would find a thread, which would be a topic that  
3 would have some postings, and you might wish to respond  
4 maybe agree, disagree. or maybe just make some general  
5 comment about the topic.

6 And you would have two choices. You  
7 could go to the very last posting and click on and you  
8 then become the next post work or if you want to  
9 particularly comment on somebody's posting, you would  
10 click on "Repeat" and that would the -- sorry, you  
11 would click on "Quote" and that would then highlight  
12 what that person had said and then you can type in your  
13 particular views. And then you would click "Send".

14 I asked both of them and they both  
15 confirmed you send it once. And then, through the  
16 magic of computers and electronics, it appears up on  
17 the website Stormfront. Both confirmed that you sent  
18 it once. You did not repeat it. It was not sent  
19 click, click, click, click, click, click, click. It  
20 was sent once.

21 Mr. Tremaine communicated those  
22 messages, which he, as an honest man, readily admits  
23 he wrote. He wrote them. No doubt about it. He is a  
24 National-Socialist. He says he is. He has these  
25 views. But he communicated those views each once.

1                   I asked Mr. Tremaine: Do you have to  
2 register to be on Stormfront? He said he did.

3                   I suggest to you, although we have  
4 not called him as a computer expert or an expert  
5 witness, I think his educational background and his  
6 teaching career and his business career -- and these  
7 have not been challenged -- would back up the fact  
8 that he is knowledgeable around computers. He said  
9 that the experience of going on Stormfront was that you  
10 had to register. And he had a name "mathdokter99".

11                  I asked Mr. Warman how he posted on  
12 Stormfront and he admitted to me that he posted under  
13 the name "pogue mahone", which he told us was an Irish  
14 group. So he too had had to register.

15                  I asked Mr. Warman: How would you  
16 characterize Stormfront? Whether I would personally  
17 agree with this or not, he said it was a neo-Nazi  
18 White Supremacist website. I asked him: What sort of  
19 people post?

20                  I asked him had he observed  
21 Stormfront much. Now, I must admit I'm not sure what  
22 I got as an answer. I asked him repeatedly: How often  
23 did you go on Stormfront? I was told "It varies." I  
24 said: How often would you go on in a week? "Well,  
25 it varies.

1                   I think you will note and you will  
2           observe that when I asked Mr. Tremaine: How often have  
3           you posted on Stormfront? He said: I think I have  
4           posted -- I think he said something like 1,100 posts.  
5           I said, "Well, how often do you go on?" He said about  
6           three times a day. I got a frank and candid answer  
7           from him.

8                   I didn't get such an answer from Mr.  
9           Warman, but from the way he has been bringing in  
10          postings of Mr. Tremaine in this case, and we know he  
11          has initiated, by his own account, between 12 and 15  
12          other section 13(1) cases he is clearly on Stormfront  
13          a great deal.

14                   But from whatever experience was  
15          there he told me -- and I'm certain you heard this  
16          too -- that most of the people posting on Stormfront  
17          were neo-Nazis and White Supremacists.

18                   I asked roughly the same question of  
19          Mr. Tremaine: What sort of people? He said, "Well,  
20          people who seem to share similar views. And people  
21          would discuss these views back and forward.

22                   Both of them, when I asked them,  
23          confirmed that what was going on in these threads was a  
24          conversation. A person would post a view on whatever  
25          the topic might be and others would come in agreeing,

1           disagreeing, adding their comments, pretty much as you  
2           would in a circle of friends in a conversation.

3                           Which brings me to a suggestion to  
4           you, sir, that the nature of Stormfront is that of a  
5           community -- in fact, Mr. Warman said so, he said it  
6           was a collection of White Supremacists and neo-Nazis.  
7           Now, whether or not that is exactly so perhaps is not  
8           germane here, but both Mr. Tremaine and Mr. Warman  
9           agreed it was a group of people who shared similar  
10          opinions. I think that is kind of important.

11                           So both agree that these messages  
12          were not communicated repeatedly.

13                           I would like to call your attention,  
14          if I might, to the Supreme Court. This is in some ways  
15          I guess the Bible for the moment of section 13(1), and  
16          that is the Canadian Human Rights Commission versus  
17          Taylor, the Supreme Court decision in 1990.

18                           I imagine the Commission has provided  
19          you with a list of authorities?

20                           THE CHAIRPERSON: Yes, we have the  
21          Book of Authorities of the Canadian Human Rights  
22          Commission.

23                           MR. FROMM: Well, I haven't got their  
24          Book of Authorities.

25                           THE CHAIRPERSON: It is at

1 Tab 3, yes.

2 MR. FROMM: Yes.

3 THE CHAIRPERSON: I know what you are  
4 referring to. What are you looking for?

5 MR. FROMM: Because we didn't have  
6 any photocopying budget I'm using Bahr.

7 Tab 3, yes.

8 THE CHAIRPERSON: Yes.

9 MR. FROMM: This is the Canadian  
10 Human Rights Commission versus Taylor.

11 I would first of all draw your  
12 attention to paragraph 6. My copy isn't paginated, I  
13 just have paragraphs.

14 THE CHAIRPERSON: Yes, that's fine.

15 MR. FROMM: Is paragraph 6 all right?

16 THE CHAIRPERSON: Yes.

17 MR. FROMM: All right.

18 Now, one of the reasons that the  
19 Supreme Court found that the communications in Taylor  
20 were repeated was that there was a deliberate effort to  
21 call public attention to them. In paragraph 6 we read:

22 "Though the service's number..."

23 That is Mr. Taylor's telephone  
24 answering or telephone recording device:

25 "Though the service's number was

1 not widely publicized by the  
2 appellants, they attempted to  
3 make it known by the  
4 distribution of cards among  
5 individuals and crowds and by  
6 slipping these cards under  
7 doorways. The cards bore only a  
8 maple leaf symbol and an  
9 admonition to dial the number.  
10 As well, the number was placed  
11 in the telephone book opposite a  
12 notation which read 'White Power  
13 Message'."

14 Now, I asked Mr. Tremaine in as many  
15 ways as I could think of: Had he attempted to call  
16 public attention to or advertise his postings on the  
17 internet. I think you will recall, sir, that I asked  
18 him if he handed out business cards saying "Come see my  
19 postings on Stormfront. Come and see Terry Tremaine."  
20 He said he had not.

21 I asked him if he had done the same  
22 thing with pamphlets, he said he had not. I asked  
23 whether he had ever taken out an ad in the newspaper  
24 trying to call attention, or to perhaps create a  
25 repeated aspect these messages and he said yet not.

1                   His testimony was that these were  
2 messages communicated once on threads that took the  
3 form of a conversation among like-minded people.

4                   Now, Taylor at paragraph 77, if I  
5 might ask you to look at that, in the last sentence of  
6 paragraph 77 the Court wrote that:

7                   "The connection between s. 2(b)  
8 and privacy is thus not to be  
9 rashly dismissed, and I am open  
10 to the view that justifications  
11 for abrogating the freedom ...  
12 of expression are less easily  
13 envisioned where expressive  
14 activity is not intended to be  
15 public, in large part because  
16 the harms which might arise from  
17 the dissemination of meaning are  
18 usually minimized when  
19 communication takes place in  
20 private, but perhaps also  
21 because the freedoms of  
22 conscience, thought and belief  
23 are particularly engaged in a  
24 private setting."

25                   Mr. Tremaine indicated that you

1 had to join Stormfront. It has to be a deliberate act.  
2 It wasn't just something that you happened on cruising  
3 the net.

4 Both Mr. Warman and Mr. Tremaine  
5 indeed join Stormfront. Each had a pseudonym or a  
6 moniker.

7 THE CHAIRPERSON: Is it your  
8 position, sir, that I couldn't go on the net right now  
9 and tap onto Stormfront?

10 MR. FROMM: You would ave to join in  
11 order to post.

12 THE CHAIRPERSON: In order to post --

13 MR. FROMM: Yes.

14 THE CHAIRPERSON: -- but to read?

15 MR. FROMM: Well, my understanding is  
16 that in order to post you have to join.

17 THE CHAIRPERSON: All right.

18 MR. FROMM: We heard from both that  
19 the people on Stormfront seem to share in a general way  
20 a same world view. That is going to be important for  
21 my next point. Mr. Warman said they were neo-Nazis and  
22 White Supremacists. Mr. Tremaine was slightly less  
23 judgmental and said people in general who seem to share  
24 a world view.

25 All right. In paragraph 78 of

1 Taylor -- and this is the quotation from the  
2 original Tribunal.

3 --- Pause

4 MR. FROMM: It is a long indented  
5 paragraph at the end of section 78:

6 "The combination of the  
7 telephonic medium and the  
8 material is, we believe,  
9 particularly insidious, because,  
10 while a public means of  
11 communication is used, it is one  
12 which gives the listener the  
13 impression of direct, personal,  
14 almost private, contact by the  
15 speaker, provides no realistic  
16 means of questioning the  
17 information ... presented and is  
18 subject to no counter-argument  
19 within that particular  
20 communications context."

21 Now, that was the way the original  
22 Human Rights Tribunal found their way to justifying the  
23 restriction on freedom of speech involved in the  
24 telephonic communication.

25 And notice what the objections were,

1           that although the communications seem personal and  
2           almost private, there was no realistic way of  
3           questioning the information or views and they were not  
4           subject to counter argument.

5                                 Now, somewhat Mr. Warman and very  
6           emphatically Mr. Tremaine indicated that these threads  
7           involve conversations, argument, and in some cases  
8           debate. In fact, he indicated that that particular  
9           quotation -- which I suspect was presented to us  
10          somewhat out of context because it was not presented in  
11          terms of the entire thread, the one about Jews as  
12          vermin -- was part of an ongoing discussion as to what  
13          the nature of, at least as some people saw it, these  
14          people were.

15                                There was one particular view that  
16          was a moral view and that they were, to use the  
17          language of the Bible, the offspring of Satan or  
18          bad people. Then there was the other view, that  
19          proposed by Professor Kevin MacDonald, and to some  
20          extent adopted by Mr. Tremaine, that this group was  
21          following something of an evolutionary imperative  
22          and that might explain the behaviour that some people  
23          took exception to.

24                                But in either case there is  
25          opportunity to discuss.

1                   Mr. Tremaine further informed us that  
2                   there is a special thread on Stormfront, or actually a  
3                   particular forum that is called "Opposing Views", and  
4                   for that you don't even have to register, that you can  
5                   go on -- and he said a lot of blacks and Jews go on,  
6                   but presumably anybody could go on and get into a  
7                   debate with people who might normally be supporters of  
8                   Stormfront. In other words, the ultimate in democracy.  
9                   The ultimate in the free exchange of ideas.

10                   Stormfront actually welcomes  
11                   dissenters, disagreement, people who say you guys are  
12                   all cracked.

13                   The exact opposite of the reasons for  
14                   which the Supreme Court in the end found section 13(1)  
15                   to be constitutional. Because the internet, or at  
16                   least Stormfront allows for response, reaction,  
17                   rebuttal, even totally dissenting views that, at least  
18                   according to Mr. Tremaine's testimony, views that would  
19                   be completely contrary to maybe the majority of people  
20                   on Stormfront.

21                   Paragraph 79 of Taylor. The second  
22                   paragraph about four lines:

23                   "Those who repeatedly  
24                   communicate messages likely to  
25                   expose others to racial or

1 religious hatred or contempt are  
2 seeking to gain converts to  
3 their position."

4 That was the ruling in the case of  
5 the telephone message run by Mr. Taylor. But what we  
6 were told by Mr. Tremaine and Mr. Warman about  
7 Stormfront was that this was an in-house conversation,  
8 communication among people who, to a certain extent,  
9 shared the same views.

10 This was not an attempt to gain  
11 converts. I asked Mr. Tremaine, had he done anything  
12 to try to expose his postings to the public, to try to  
13 get more people to come along and look at what he had  
14 to say and he said he had not.

15 Finally, I call your attention, sir,  
16 to paragraph 80:

17 "Section 13(1) is worded so as  
18 to diminish phone use of the  
19 type I have just described, for  
20 in the context of s. 13(1) the  
21 term 'repeated' must comport a  
22 requirement for something in the  
23 way of a series of messages."

24 Both Mr. Warman and Mr. Tremaine  
25 confirmed that the message was sent to only once. It

1 was not repeated. It was sent once, as in a  
2 conversation that might go on, let us say in a bar,  
3 where Mr. Tremaine makes a point and I make a point  
4 maybe adding to it and Mr. Vigna makes a point  
5 contradicting it, and so on. We don't keep saying the  
6 same thing over and over again. The message is  
7 communicated once.

8 Continuing in paragraph 80:

9 "Moreover, because the Tribunal  
10 must be satisfied that the  
11 messages are likely to expose  
12 persons to hatred or contempt,  
13 it may be that even a series of  
14 personal calls (by which I mean  
15 communications with friends and  
16 acquaintances) espousing hate  
17 propaganda will not constitute a  
18 discriminatory practice within  
19 the definition of the section."

20 So even a series of personal calls --  
21 and that is what I invite you to see is going on in  
22 Stormfront. You have to join. It is for like-minded  
23 people. The masthead, and I got Mr. Warman -- I think  
24 during his initial examination when I took issue  
25 something he had said -- to tell us -- the masthead

1           says -- the banner says "White Nationalist Community".

2                               So it is not a way to seduce people  
3           in. It doesn't say "We are the Humane Society", it  
4           doesn't say this Greenpeace, it is upfront "White  
5           Nationalist Community". If that doesn't sound like  
6           what you are about you probably ought not be there.

7                               I asked Mr. Warman if he was a White  
8           Supremacist. He took great exception to that. I asked  
9           him if he was a neo-Nazi. I don't think I ever got an  
10          answer, but I will certainly assume he wasn't. You  
11          have to wonder, "Well, what would you be doing on a  
12          forum that basically says this is for people who share  
13          our particular views, or White Nationalist views"?

14                              So what I suggest to in paragraph 80  
15          is very germane to this case, particularly to the  
16          postings on Stormfront. It is the Court's view that  
17          provided the communications are among friends and  
18          acquaintances, even a series of personal calls, that  
19          that would not constitute hate propaganda as envisioned  
20          by section 13(1) of the Human Rights Act. That the  
21          communications would have to be repeated. Provided  
22          they are within this in-house group, that would not  
23          violate the law.

24                              I don't believe this argument has  
25          ever been made before, at least in my limited -- and I

1           may well be wrong here, but in my limited study of the  
2           jurisprudence on this I don't think this argument has  
3           been made before, but I suggest it might be a way to  
4           salvage the freedom of speech provisions of the Charter  
5           of Rights and Freedoms from what would appear in  
6           subsection 13(1) decisions, the prohibition against the  
7           criticism of any of a list of special groups.

8                           Onto my third point, and I think that  
9           revolves around the word "likely" in section 13(1).  
10          Repeated communications.

11                           It is our argument, just to  
12          reiterate, that these are not repeated communications  
13          as outlined by the law. But the law tries to capture:  
14          repeated communications likely to expose to hatred or  
15          contempt certain groups.

16                           I note that you were offered no  
17          expert evidence -- I can only speak for Mr. Tremaine --  
18          we can offer you no expert evidence on the impact of  
19          the statements because we have no money. We can't  
20          afford to hire an expert. But I would have thought,  
21          backed by the taxpayers of the Dominion of Canada,  
22          Mr. Warman or the Commission could have brought in  
23          somebody to have looked at the posts and said, "Well,  
24          as an expert in linguistics" -- and this happened in  
25          the Zundel case, this happened in the Micka case that

1 I was involved in, they had an expert and the expert  
2 said "Well, I studied these posts and as a sociologist  
3 or a linguist this is, in my expert opinion, what the  
4 impact would be.

5 Sir, you have no guidance. You have,  
6 depending on which submission you choose to accept, is  
7 Mr. Tremaine's submission that you should limit your  
8 inquiry to two posts, and I don't know what Mr. Warman  
9 or what the Commission will submit, but I suppose that  
10 having brought all this into evidence they would like  
11 you to consider far more postings. But one way or the  
12 other you are going to have to decide whether those  
13 postings are likely to expose various groups -- I  
14 believe these were outlined as Jews, blacks,  
15 homosexuals -- perhaps I have left somebody out -- to  
16 hatred or contempt.

17 You have before you no expert  
18 evidence to guide you.

19 You have, on the other hand, clearly  
20 from Mr. Tremaine and perhaps less clearly from  
21 Mr. Warman, evidence that these are in-house  
22 communications among like-minded people. I think  
23 commonsense would suggest that if you are already, as  
24 Mr. Warman testified, a neo-Nazi or White Supremacist,  
25 I doubt that the postings of Mr. Tremaine are going to

1       expose these groups to hatred or contempt. If you are  
2       already a believing Christian, if I say "Hallelujah and  
3       praise the Lord to you", that isn't going to make you  
4       any more believing.

5                   So my submission is that because this  
6       was an in-house communication among -- according to  
7       Mr. Warman like-minded people who are neo-Nazis and  
8       White Supremacists -- that there wasn't going to a much  
9       converting going on. Presumably they are already  
10      sharing the faith.

11                   I know there have been several  
12      previous Tribunals where there was no expert evidence  
13      led and it is my commentary and submission that this  
14      shows the very contempt that we talked about on  
15      Tuesday, but contempt not coming from people like  
16      Mr. Tremaine and myself, but contempt shown by those  
17      who are presenting the case, that they have not taken  
18      this very serious issue of the restrictions of freedom  
19      of speech enough to bring in an expert to say "These  
20      posts will have this and this impact".

21                   I know it is suggested that you have  
22      to take a look at them and make that decision yourself,  
23      but it would seem more respectful of the process if you  
24      had been assisted with some expert testimony. I wish  
25      we could have assisted you, but we have no money. We

1 would like to have had an expert, but that is beyond  
2 our abilities.

3 There may be another way, though,  
4 that you may -- because you have to look at these as an  
5 informed layman, but how you might judge whether they  
6 are likely to expose groups to hatred or contempt.

7 My first submission on that is that  
8 the forum is one that clearly labels itself White  
9 Nationalist forum. It is a White Nationalist Community  
10 of I believe almost 100,000 people across the world.  
11 So it is not likely that somebody who doesn't see  
12 himself in those terms is going to want to read this  
13 and be exposed to anything.

14 But I think there is another way of  
15 looking at it as well. All of the groups mentioned in  
16 the complaint, blacks, Jews, aboriginals, Asians, all  
17 of these groups -- and I think it is common  
18 knowledge -- have organizations that speak on their  
19 behalf, national organizations. Certainly in the case  
20 of Jews, big organizations like the Canadian Jewish  
21 Congress the League for Human Rights of B'nai Brith,  
22 the Friends of the Simon Wiesenthal Centre. All of  
23 these groups are well and professionally represented.  
24 They probably would be the best to know whether they  
25 are being exposed to hatred or contempt.

1                   Who made the complaint? Was at the  
2                   Assembly of First Nations? Was at the Council of  
3                   Chinese Canadians? Was it the National Congress of  
4                   Black Women? Richard Warman.

5                   So those who you think would be most  
6                   affected if the complaint is correct, they weren't the  
7                   ones complaining.

8                   Well, knowing that the complaint is  
9                   being made, did these groups seek intervener status to  
10                  say "Yes, we were seriously aggrieved by what we read.  
11                  We feel very, very vulnerable because of all of this  
12                  and so we wish to seek interested party status." That  
13                  has been done. It was done in the Zundel case by a  
14                  number of groups, both pro-free speech and against. It  
15                  was done in the Micka case by ourselves for standing up  
16                  for freedom of speech.

17                  But in this case, one big yawn.  
18                  Nobody cares. None of the apparently aggrieved groups  
19                  saw fit to complain, or the complaint having been made  
20                  saw fit to seek interested party status to back up the  
21                  complaint, which I think suggests to you that these  
22                  postings did not expose anybody to hatred or contempt.  
23                  I think it would be fairly logical to assume that these  
24                  groups would best know their own interests and would  
25                  best know whether they were in fact being exposed to

1 hatred or contempt.

2 So I submit that you have been  
3 provided with no evidence and no guidance and no expert  
4 testimony as to how to assess these views. Because it  
5 is our submission that these are in-house  
6 communications among like-minded people, and Taylor, at  
7 paragraph 80, suggests that those types of  
8 communications, were they took her on a telephone, even  
9 repeatedly, among friends or acquaintances, even if  
10 they breached the limits of what might be called hate  
11 propaganda, would still not be considered to violate  
12 section 13(1).

13 Those last two points, sir, are  
14 probably pretty cerebral, but my next point really  
15 bothers me, as a person who once believed in the  
16 promises of Pierre Elliott Trudeau when he brought us  
17 the Charter of Rights and Freedoms and these specific  
18 guarantees as in the United States Bill of Rights of  
19 freedom of speech, freedom of expression, freedom of  
20 belief, freedom of religion.

21 We are not pleading freedom of  
22 religion here, but certainly freedom of belief. It is  
23 quite illusory to say "Oh yes, you can believe, but you  
24 better not open your mouth." I think our Courts have  
25 long since said that that is not acceptable. You

1 cannot say to a person of religious persuasion, "Yes,  
2 you can have your religious beliefs, but you can't  
3 practice your religion."

4 As I said, I find this kind of an  
5 emotional thing. I know that we have been told,  
6 "Well, if you think the complaint is vexatious or  
7 frivolous or in bad faith you should have gone to the  
8 Federal Court when the Commission decided to pass it  
9 on to the Tribunal.

10 But I think, sir, you are in a  
11 similar position. You can look at the complaint and,  
12 considering all the factors, decide that it is  
13 vexatious and in bad faith. That is why I did  
14 introduce for Mr. Tremaine a number of documents, and  
15 it is almost hard to know where to start.

16 Maybe we could look at Commission  
17 document HR-9. This is Mr. Tremaine's posting on  
18 Stormfront where he says that he completely recants his  
19 apology of September of last year and he outlines in a  
20 very personal way -- publicly, and I don't think a lot  
21 of people would want to do this. I don't think a lot  
22 of people would want to say "I abused drugs, I  
23 descended into -- I abused alcohol. I descended into  
24 my own personal hell. I contemplated suicide. I  
25 thought I would end up on the street. I eventually

1 ended up in a mental institution and I have now risen  
2 back out of that and this is where I stand today. I  
3 don't think many people would want to do that. This is  
4 very personal. And however in-house Stormfront might  
5 be, it is still going, to some degree, public.

6 I invite you to read that. I'm not  
7 going to read it all into the record, but I think it is  
8 a very dignified statement. It is not whining, it is  
9 not complaining, it is not "Oh, woe is me."

10 But you know, sir, it all stems from  
11 actions by the complainant. I would agree that under  
12 section 13(1) he has a right to make a human rights  
13 complaint, and he did in October of 2004.

14 I, in the process of, like  
15 extracting teeth, did manage to ascertain that that  
16 complaint has not yet been adjudicated. We played with  
17 words, and so on, but that is what we are here today to  
18 do. You are in a position, sir, to decide whether or  
19 not Mr. Warman's complaint against Mr. Tremaine is to  
20 be sustained.

21 So that complaint is only that, a  
22 complaint, an assertion by Mr. Warman of certain facts.

23 As I think I tried to argue yesterday  
24 in my complaint about the security forces here, that we  
25 are all supposed to be equal, Mr. Warman with his

1 complaint, Mr. Tremaine presumed not guilty until you,  
2 sir, have made a decision.

3 Mr. Warman confirmed that he had  
4 written a letter to the University of Saskatchewan,  
5 Mr. Tremaine's employer. Well, actually we got the  
6 letter that was sent from the university to Mr. Warman.  
7 You, sir, had to rule yesterday, you had to direct  
8 Mr. Warman to do what he ought to have done, and that  
9 was to have supplied the original letters.

10 We managed to get only one, but for  
11 that I suppose we are grateful. That was the letter to  
12 Mr. Peter MacKinnon, the President of the University of  
13 Saskatchewan. That was entered this morning as  
14 Respondent Exhibit 1.

15 At the end of that Mr. Warman  
16 had said:

17 "In closing, I would ask that  
18 the University of Saskatchewan  
19 further investigate this matter,  
20 and if substantiated, take  
21 appropriate disciplinary action"

22 Mr. Warman had outlined some of the  
23 postings Mr. Tremaine had put up on Stormfront and  
24 he had said:

25 "Given the seriousness of the

1                   alleged conduct, I wish to note  
2                   that I will be making my  
3                   concerns public and also  
4                   forwarding them to the Saskatoon  
5                   Police Service."

6                   And he gave them from the date of the  
7                   letter 11 days to get back to him with a response.

8                   I asked, "Well, what did you want  
9                   university to do? I think, sir, you will agree that  
10                  the answer was evasive. I don't suspect he wanted the  
11                  university to give Mr. Tremaine a warm fuzzy and a  
12                  chocolate bar. What did he expect them to do? Well,  
13                  he told us, investigate.

14                  I suggest that is in the grossest bad  
15                  faith. He did not want them to investigate, he was  
16                  essentially blackmailing them: If you don't get rid of  
17                  Tremaine I will go public and make your lives hell.

18                  What did the university authorities  
19                  say to Mr. Tremaine? According to his testimony, they  
20                  were scared. Because one said, "There will be student  
21                  protests and disruption and there will be a media  
22                  circus". That's what they said. I invite you to draw  
23                  the same conclusion.

24                  This letter, R-1, was meant to get  
25                  Terry Tremaine's job.

1                   Now, Mr. Warman is a lawyer. He  
2 knows the law far better than I do. He knows that as  
3 of that time, indeed as of today, his section 13(1)  
4 complaint was only that, an allegation, but he went  
5 after Mr. Tremaine's job.

6                   We had a bit of an argument this  
7 morning as to why you should consider R-3 in evidence,.  
8 Those of the notes from Mr. Warman's speech to a group  
9 called the Anti-Racist Action in Toronto last year.  
10 They were titled "Maximum Disruption: Stopping  
11 Neo-Nazis by (Almost) Any Means Necessary". Not just  
12 human rights complaints; taking their jobs.

13                   This is not about an aggrieved or  
14 insulted minority group. They are not here. They  
15 didn't make the complaint.

16                   Mr. Warman accused me of having a  
17 political agenda. I have an agenda: freedom. He has  
18 an agenda, and he says it in the title, "Stopping  
19 Neo-Nazis by (Almost) Any Means Necessary". He talks  
20 about making human rights complaints, complaints under  
21 the Criminal Code.

22                   In the last paragraph on page 1 of  
23 that document, I think this really says it all:

24                   "The `maximum disruption' part  
25 comes in because wherever I

1 think it will be most helpful,  
2 or even if I just feel it will  
3 be the most fun, I strongly  
4 believe in hitting the neo-Nazis  
5 on as many of these fronts as  
6 possible either at the same time  
7 or one after the other. I say  
8 this because it keeps them  
9 off-balance and forces them to  
10 respond to things..."

11 I wonder if when Pierre Elliott  
12 Trudeau brought us the Charter guaranteeing freedom  
13 of speech and freedom of expression he would ever have  
14 had in mind that day when the name of human rights a  
15 person would be fired because he held, on his own  
16 time, communicating on his own computer off-campus,  
17 not proselytizing students, views that would be  
18 politically dissident.

19 It might have brought Mr. Trudeau  
20 back to the days of the Union National in Québec and  
21 the government of Maurice Duplessis. I think that was  
22 the background out of which Mr. Trudeau came. There  
23 was a time when the Province of Québec had the padlock  
24 law, where Jehovah's Witnesses were considered weirdos,  
25 a dangerous minority, a dangerous people with peculiar

1 religious views in a largely catholic province.  
2 Duplessis did everything possible to shut them down,  
3 including the notorious padlock law which was  
4 eventually overturned by the Supreme Court of Canada.

5 I think that is the background under  
6 which Mr. Trudeau came, a time when people who might be  
7 communist would lose their jobs in teaching  
8 institutions, a time when I believe even Mr. Trudeau,  
9 because he was seen to have crossed the Catholic  
10 Church, lost a teaching position himself.

11 I think the Charter was brought in  
12 primarily to defend people's rights to dissent, to  
13 think, and even perhaps to be a National-Socialist.

14 And yet Mr. Warman -- I eventually  
15 got him to agree that he was a human rights advocate --  
16 took the action to get this man fired. I think that  
17 has to be taken into the context of this complaint.

18 I would like to read to you from  
19 HR-9. This is the third paragraph on page 2 of 9.  
20 This is Mr. Tremaine's statement of "I'm Back". He  
21 said, after he had been fired:

22 "I pondered the possibility of  
23 living entirely off the grid as  
24 a homeless person eating at soup  
25 kitchens and staying in mens'

1                   shelters. The thought of that  
2                   was not exactly inspiring. In  
3                   fact I was scared..."

4                   I don't know if I'm supposed to  
5                   say it or not. On Stormfront we are not supposed  
6                   to use bad language, so it is S-H-I-T-L-E-S-S ,  
7                   "merde" I guess:

8                   "...at the prospect. At this  
9                   point the other possibility of  
10                  suicide as a political statement  
11                  began to take hold. As the days  
12                  and weeks rolled on I became  
13                  more or less convinced that was  
14                  the best solution."

15                  You know, sir, if you go on top of an  
16                  overpass with a cement block, close your eyes and drop  
17                  it onto the highway below, you can't very well say, "I  
18                  didn't mean for that block to go through that car  
19                  windshield and kill the driver. I was only dropping a  
20                  block. I didn't really mean that." Well, I don't  
21                  think there is a Court in this land that wouldn't send  
22                  the person who did that to jail for a very long time.

23                  Mr. Warman, knowing that this human  
24                  rights complaint had not yet been adjudicated, that  
25                  Mr. Tremaine ought to be considered innocent, went to

1 his employer clearly with the intention of having him  
2 fired. I believe Mr. Tremaine testified that he is  
3 57 years old. Sir, you are obviously a man of  
4 experience. You know that the prospects of a  
5 professional who is fired at age 57 in his chosen field  
6 are pretty dim. Mr. Tremaine sank into not only a  
7 personal abyss but a financial abyss.

8 He testified near the very end of my  
9 examination this morning that he is currently is  
10 working at a minimum wage job for 20 hours a week.

11 Not exactly what I think Pierre  
12 Trudeau would have had in mind in terms of guaranteeing  
13 people's rights to their beliefs. Oh yes, sir, you can  
14 have whatever eccentric beliefs you like, but you are  
15 going to live on the street, or you are going to be  
16 flipping burgers at McDonald's even know you are a  
17 university lecturer and an educated men.

18 Well, I put that to Mr. Warman. I  
19 asked him how he felt when he got the letter from the  
20 university -- which I believe is HR-10 -- when the  
21 university informed him on August 4th of last year that  
22 Mr. Tremaine had been fired.

23 I think when you get a chance to  
24 check the transcript you will find one of the most  
25 chilling answers that I certainly have ever heard. I

1           didn't hear the slightest compassion. I heard  
2           something about "Oh, the university has conducted  
3           its investigation and it had done whatever they were  
4           going to do.

5                               We know that that it is being  
6           absolutely disingenuous. The clear purpose of  
7           Mr. Warman's communication with the university was to  
8           have Mr. Tremaine fired. He duly was fired.

9                               And I asked Mr. Warman several ways  
10          to try and get some glimmer of understanding or  
11          compassion, or even in terms of human rights: Was not  
12          a wrong done to Mr. Tremaine?

13                              I think you heard the same responses  
14          that I did. Not the slightest glimmer of compassion or  
15          care for Mr. Tremaine rights.

16                              And given all of that, and given  
17          the fact that Mr. Warman is a lawyer, he is an  
18          experienced counsel, he knows the rules of these  
19          Tribunals far better than I do, and as you pointed out  
20          on several occasions, sir, proper disclosure was not  
21          provided. Not only is Mr. Tremaine not properly  
22          represented, not only does he not have money for a  
23          lawyer, but he is not even given proper natural justice  
24          according to the rules of the Tribunal, something as  
25          obvious as Mr. Warman's article on "The Canadian Scene"

1 written for the "2005 Audit of Antisemitic Incidents"  
2 for the League for Human Rights of B'nai Brith, which  
3 mentions Mr. Tremaine in five paragraphs. Even this  
4 was not disclosed.

5 You were told, sir, that he hadn't  
6 thought it was relevant and you responded "But it  
7 mentions Mr. Tremaine. This is elementary. How much  
8 do we -- has not been disclosed. We will never know.

9 I think you were able to judge the  
10 quality of the animosity and the evasion. I could not  
11 even get Mr. Warman to admit he hadn't put this in. He  
12 said something to the -- well, he couldn't recollect.  
13 He couldn't recall.

14 You are an experienced person at  
15 such Tribunals and I'm sure you have heard a great  
16 deal of testimony in your life and I think your  
17 conclusion will probably be that this was entirely  
18 disingenuous, very lacking in frankness, and very  
19 lacking in basic civility.

20 If any contempt has been shown in  
21 these proceedings to the Tribunal, it is in the utter  
22 lack of respect and the utter lack of following the  
23 rules accorded to Mr. Tremaine by the complainant, the  
24 fact that this was not revealed.

25 I invite you to take a look at what

1           was said about Mr. Tremaine in it. I will just to take  
2           you to the last couple of paragraphs. "He", that is  
3           Mr. Tremaine:

4                           "... gave out enough personal details  
5                           in his profile and postings that it  
6                           was possible to determine that he  
7                           was, in fact, Terry Tremaine of  
8                           Saskatoon, Saskatchewan who had a  
9                           Masters degree in Math. It was  
10                          discovered that, in addition to  
11                          computer contracting, he held a  
12                          position as a lecturer in the  
13                          Department of Mathematics at the  
14                          University of Saskatchewan.

15                                 Mr. Tremaine's position with  
16                                 the University of Saskatchewan  
17                                 was terminated in April of 2005  
18                                 following a complaint,  
19                                 accompanied by evidence of his  
20                                 activities, to the President of  
21                                 the University and the Head of  
22                                 the Department of Mathematics."

23                                 Not of course revealing that it was  
24                                 the author who had done this to Mr. Tremaine.

25                                 There is an agenda here and I think

1           it is outlined for you in the speech to the ARA,  
2           "Maximum Disruption". The complainant has practised  
3           maximum disruption to the financial ruin of  
4           Mr. Tremaine, and the denying to students and the  
5           university community of a person who was well regarded  
6           as a lecturer in mathematics and in computers.

7                         It is because of those other factors  
8           that I submit that this entire complaint is vexatious.  
9           It is meant in the proper -- in the true meaning of  
10          "vexation", too annoying, to hurt. That is what it is  
11          meant to do: Hit him with this. Take away his job.

12                        Mr. Tremaine wrote a letter when he  
13          was in the mental institution in which he -- and that  
14          is at HR-11 -- in which he completely repudiated all  
15          that he had done. I asked him about that, because I  
16          think certainly you would want to know: Is this man a  
17          devious sort. Is he an actor who will say one thing  
18          today and the opposite tomorrow? You know, he may be  
19          fairly hard-core. He posts on Stormfront, now he is  
20          says he is completely repentant. He must have been  
21          deluded to think of such things. He promises never to  
22          do it again. He apologizes to the Jewish community,  
23          et cetera. So I wanted to ask him about that.

24                        He said essentially that he had done  
25          it under the deep, deep depression, contemplating

1 suicide, and very likely under the influence of various  
2 drugs that had been given to him.

3                   However this did go to the  
4 Commission -- it was sent in September of last year, it  
5 was faxed on September 30th from the Regina Qu'Appelle  
6 Health Region of the Regina General Hospital. I asked  
7 Mr. Warman if he had received it.

8                   I have trouble understanding why a  
9 yes or a no wouldn't have done. We heard, "Well, he  
10 wasn't exactly sure. He might have received a summary.  
11 He didn't" -- anyway, he apparently in some way, shape  
12 or form did know about it.

13                   I invite you, as an experienced  
14 adjudicator to assess that evidence in terms of  
15 its frankness.

16                   No matter what question I asked or  
17 Ms Warsame asked Mr. Tremaine, I think he answered  
18 you frankly, clearly. I know that was some chortling  
19 that he has already kiboshed his own case, but I  
20 think Mr. Tremaine answered with credibility and  
21 honesty and directness. The odd time when he didn't  
22 know or couldn't remember, he said so without evasion.

23                   Well, I asked Mr. Warman about this.  
24 Here you have what Mr. Tremaine would later call a  
25 grovelling apology, "I won't do it again. I'm

1           disgusted with myself for what I did. I repudiate  
2           all of what I have said. I apologize to anybody I  
3           might have offended."

4                           And I asked, "Well, you had what you  
5           wanted, didn't you? He says, 'I'm out of the game.  
6           I'm no longer going to do that type of thing. I'm  
7           terribly apologetic for what I have done.'" Would not  
8           the decent and gentlemanly thing be to withdraw the  
9           complaint?

10                           Because in Taylor the section 13(1)  
11           of the Human Rights Act was upheld because it was  
12           remedial not punitive. The Supreme Court upheld it,  
13           saying of course it was a violation of freedom of  
14           speech, but it was remedial. The whole idea was to  
15           remove a discriminatory practice, not to punish.

16                           Mr. Tremaine said, "I apologize. I  
17           won't do it again. I repudiate my views. I'm out of  
18           this type of political activity." Would not that have  
19           achieved the goal? He says, "I'm not going to do that  
20           any more. If that is a discriminatory practice" -- and  
21           of course we don't agree it is, but even if it is --  
22           "I'm not going to do it."

23                           Now, if this was a good faith  
24           complaint, in good faith about an abuse or a  
25           discriminatory practice, would Mr. Warman not withdraw

1           it and say, "Okay, you have given us an assurance, I  
2           withdraw the complaint." Save the taxpayers some  
3           money. And of course if you go right back to it, then  
4           of course the complaint can be reinstated or the  
5           complaint can be made on whatever new grounds you give  
6           us. It doesn't take away Mr. Warman's options of  
7           making a complaint.

8                                But he said he didn't do that. he  
9           wouldn't do that. He had no reason to think  
10          Mr. Tremaine was playing false. In fact, Mr. Tremaine  
11          did not repudiate this for another six months.

12                              And I suggest to you that that is  
13          again evidence that this is not about posts on  
14          Stormfront that have aggrieved some particular minority  
15          that are likely to expose them to hatred or content.  
16          I have already argued they don't even seem interested,  
17          the spokesman for various minorities. They don't seem  
18          to have any great problem with what went on in-house  
19          in Stormfront.

20                             Mr. Warman does, because he has an  
21          agenda and that is maximum disruption. And that is  
22          why he wouldn't save the Human Rights Commission, the  
23          Tribunal, Mr. Tremaine and the entire political  
24          process a lot of time and some money by withdrawing  
25          the complaint.

1                   I hope you won't consider this,  
2           but if you do I have to call your attention to  
3           Exhibit HR-36. This is the platform of the  
4           National-Socialist Party of Canada.

5           --- Pause

6                   MR. FROMM: I hope that you won't  
7           consider it because normally we deal with political  
8           parties in Canada not by tossing their personnel in  
9           jail or banning them but: Fine you form a party.  
10          Contest some elections and we will see how many  
11          people -- you run it up the flag and see how many  
12          people salute it.

13                   This is a political party apparently.  
14          I don't know if it is registered or anything, but it  
15          calls itself a party. There are some elaborate plans  
16          and a Constitution and a party platform. I heard  
17          Ms Warsame questioning Mr. Tremaine about it. I really  
18          got the impression that, you know, you tell me your  
19          wish list and I will tell you mine.

20                   This is a political platform and it  
21          ought to be dealt with in a political arena. If the  
22          National-Socialist Party runs candidates, then the  
23          Canadian public will be the judge, as it always is with  
24          political parties in such matters. They can run  
25          candidates and if they gain support, well, they will

1 gain support. If, on the other hand, people don't  
2 particularly care for their platform or their new  
3 Constitution, they will go the way of hundreds and  
4 hundreds of other parties who have risen up and  
5 disappeared ever since Confederation.

6 I hope you won't get to this because  
7 I hope, sir, you will break the pattern, that this will  
8 be the first section 13(1) case to be dismissed.

9 I think I have offered you several  
10 reasons to do this. The interpretation particularly of  
11 "repeated", given the context of Stormfront; and also  
12 the matter of whether these posts were likely to expose  
13 any of the groups mentioned to hatred or contempt.

14 You have no evidence before you and  
15 no learned or expert assistance as to what the impact  
16 of those communications were on the audiences.

17 But should you find against Mr.  
18 Tremaine, I would be negligent if I didn't make a few  
19 submissions on penalties.

20 --- Pause

21 MR FROMM: Mr. Tremaine, I asked  
22 him -- and I think after peoples sex lives the one  
23 thing people least like to talk about is money, unless  
24 they can boast about it. I had to ask Mr. Tremaine  
25 about his present financial status. He testified that

1 he had no house, he had no car and was working at a  
2 minimum wage job for 20 hours a week. In terms of a  
3 fine, I leave it to your judgment what you would  
4 make of that.

5 He can't afford a defence, I suspect  
6 he can't afford a fine.

7 The Commission is asking for a cease  
8 and desist order. If there are those of us in the free  
9 speech community who find ourselves on the edge of  
10 contempt for the Human Rights Act it may be in part  
11 because of this. There are very few penalties in  
12 Canada that are for life.

13 If you violate section 319 of the  
14 Criminal Code the most they can do to you is put you  
15 in jail for two years. Armed robbery, there are limits  
16 as to how long they can incarcerate you. Even murder,  
17 except in the most extraordinary circumstances, doesn't  
18 really mean life in prison. However, a cease and  
19 desist order is forever -- I mean could be forever.  
20 The ones that have previously been imposed are totally  
21 open-ended.

22 It is my submission that that is a  
23 gun to the head of a person against whom that order is  
24 made, because the orders have tended to be broad. Not  
25 just "Don't repeat those statements", but "it is those

1 or similar statements", which gives would-be censors,  
2 or people who wish to stop the neo-Nazis -- through any  
3 means necessary, almost any means necessary, maximum  
4 disruption -- the opportunity the next time the person  
5 goes back on the internet to make a complaint and  
6 possibly get that person jailed for contempt of court.

7 That means that person has that gun  
8 at their heads for the rest of their lives. It is not  
9 a be good for the next two years sort of thing or be  
10 good for the next year, it is a cease and desist order  
11 for the rest of their lives, which means essentially  
12 they probably had better not go on the internet to say  
13 anything more than their comments on bird-watching. In  
14 other words, it essentially limits their expression of  
15 their sincerely held religious or political beliefs as  
16 the case might be.

17 So I would submit that should you  
18 find it necessary to issue a cease and desist order,  
19 that it be of very limited duration, keeping in mind  
20 that you are also governed by the Charter, that talks  
21 in glowing terms -- and probably a great monument to  
22 Pierre Elliott Trudeau -- about freedom of speech and  
23 freedom of expression.

24 I would also like to call your  
25 attention, sir, to the Canadian Human Rights Commission

1 decision, that is the Canadian Human Rights versus  
2 French. I don't know if that is in your binder of  
3 authorities or not, but that is the 1996 decision --

4 THE CHAIRPERSON: Versus French?

5 MR. FROMM: Yes. FCJ number 384.

6 THE CHAIRPERSON: It is a  
7 Federal Court?

8 MR. FROMM: A Federal Court, yes.  
9 That was Mr. Justice Cullen.

10 THE CHAIRPERSON: Is there a year?

11 MR. FROMM: Yes, 1996. The Court  
12 File was T619/95.

13 THE CHAIRPERSON: If you can just  
14 give me one minute.

15 That is Federal Court Trial Division?

16 --- Pause

17 THE CHAIRPERSON: It must be.

18 MR. FROMM: Yes. The Court File  
19 number is "T". That would be Trial Division?

20 THE CHAIRPERSON: Yes.

21 MR. FROMM: T619/95.

22 THE CHAIRPERSON: And it is 1996?

23 MR. TREMAINE: In 1996, yes.

24 THE CHAIRPERSON: Just give me one  
25 moment and I will see if I have it here.

1 --- Pause

2 THE CHAIRPERSON: Unfortunately, I  
3 don't have it here.

4 I will let you go ahead with it.

5 MR. FROMM: This was a case where the  
6 government attempted to -- this was actually a contempt  
7 of court hearing into a telephone answering machine run  
8 by the Heritage Front in Toronto and several  
9 individuals including June French, hence the name  
10 Government of Canada versus French.

11 There had been a cease and desist  
12 order and the government went back to Court, to  
13 Mr. Justice Cullen, alleging that the subsequent  
14 broadcasts on the Heritage Front's answering machine  
15 had been in violation of a cease and desist order.

16 Mr. Justice Cullen dismissed the  
17 charges with costs to the respondent, but what I want  
18 to call your attention to, sir, are the penultimate  
19 paragraphs 43 and 44.

20 Mr. Justice Cullen ruled:

21 "I am also troubled that neither  
22 the (Canadian Human Rights  
23 Commission) nor (their witness)  
24 Dr. Ehrlich took the time to  
25 examine whether there was even a

1 grain of truth in some of the  
2 allegations in the subject  
3 message."

4 These subject messages dealt with:

5 "The prosecution of war  
6 criminals, like the settlement  
7 of native land claims and the  
8 merits of immigration, are  
9 subjects of vigorous debate in  
10 this country. I have no doubt  
11 that these subjects can arouse  
12 strong feelings in many people.  
13 Speaking the truth or one's  
14 honestly-held belief, so long as  
15 the belief does not promote  
16 hatred, should not be sufficient  
17 to bring one in contempt of the  
18 court order in question.

19 In arriving at my decision,  
20 I have considered the difficulty  
21 in crafting an order such as the  
22 consent order which is at issue  
23 in the case at bar. To adjudge  
24 whether two messages are  
25 `similar in form or content' is,

1                   in my view, an esoteric and  
2                   difficult exercise. It would be  
3                   much more straight-forward  
4                   simply to inquire whether the  
5                   offending message was likely to  
6                   expose an individual or  
7                   individuals to hatred or  
8                   contempt, something that was  
9                   never explicitly considered in  
10                  the case at bar."

11                  I think the decision by Mr. Justice  
12                  Cullen suggests the difficulty perhaps on both sides of  
13                  cease and desist orders, especially ones that are  
14                  crafted in a very broad or general sense.

15                  So again I would submit that if at  
16                  the end of the day a cease and desist order is deemed  
17                  to be in order that it be crafted very narrowly and be  
18                  for a limited duration.

19                  As I understand the complaint  
20                  outlined in HR-1, Mr. Warman is alleging that  
21                  Mr. Tremaine posted materials intended to threaten or  
22                  intimidate him. The sole evidence of that was the  
23                  posting put up by Mr. Tremaine in September of 2004  
24                  after the group Western Canada for Us was the victim of  
25                  a complaint by Mr. Warman.

1                   Again I think that you have to  
2           consider this, sir, in context. Who are the players  
3           here? Mr. Tremaine is angry, not at the complaint  
4           against him, which had not yet occurred, but he is  
5           angry on behalf of others. He says it is not enough  
6           that the site was shut down -- and in the case of  
7           Western Canada for Us, under some pressure Mr. Glenn  
8           Bahr who was in charge of the site shut it down, but  
9           after that a complaint went through -- so even though  
10          it was shut down there was going to be a complaint  
11          anyway -- and Mr. Tremaine commented "They never forget  
12          and they never forgive. Their time will come."

13                   Well, that could be read in many  
14          different ways. Mr. Tremaine has never made, at least  
15          we have not been told of any, other threats. We have  
16          been told of no criminal record, of violent behaviour  
17          or threatening behaviour. I would invite you to read  
18          that as a historical comment.

19                   Much of the nature is: If you keep  
20          people down long enough they will rebel some day and  
21          you may not like the consequences.

22                   That is not, in my submission,  
23          threatening or intimidating. It certainly it didn't  
24          intimidate Mr. Warman from a month later having a  
25          complaint filed against Mr. Tremaine.

1                   I am subject to correction on this,  
2                   but the complaint is dated -- the Human Rights  
3                   Commission accepted it on October 19th, Mr. Warman  
4                   dated it on October the 13th. If there is any  
5                   retaliation involved -- and I know that may not be  
6                   before you in terms of anything you may be able to do  
7                   anything about, but it might well be that Mr. Warman  
8                   could be seen to be retaliating against Mr. Tremaine  
9                   for having made that comment, because that human rights  
10                  complaint went in within a month of Mr. Tremaine's  
11                  comment about Mr. Warman.

12                  As I said, sir, our submission is  
13                  that you have to look at this in a context.

14                  Clearly Mr. Warman was in no way  
15                  intimidated, nor did he feel threatened, otherwise he  
16                  wouldn't continue taking his stick and poking at the  
17                  hornet's nest.

18                  I have had an opportunity to look  
19                  at similar assertions and complaints by Mr. Warman  
20                  and perhaps their decisions may be of some assistance  
21                  to you.

22                  The Canadian Human Rights case  
23                  Richard Warman versus Fred Kyburz, K-Y-B-U-R-Z.

24                  The Tribunal in that case -- and this  
25                  would not be the first time -- came to the conclusion

1           that Mr. Warman might be considered a political player,  
2           not some tiny individual who has summoned all their  
3           strength to make a complaint and is then the object of  
4           some negative comment.

5                           At paragraph 109 the three-person  
6           panel in the Kyburz case said:

7                           "...Mr. Warman strikes the  
8                           Tribunal as a resilient  
9                           individual, who was clearly on  
10                          something of a personal mission  
11                          to stop people such as  
12                          Mr. Kyburz from disseminating  
13                          their vitriol over the Web. It  
14                          appears that Mr. Warman's  
15                          conviction as to the justness of  
16                          his cause has served to insulate  
17                          him somewhat from the negative  
18                          effects that Mr. Kyburz' actions  
19                          may have otherwise had on a less  
20                          strong individual."

21                           In other words, Mr. Kyburz posted  
22           some fairly forceful and negative comments about  
23           Mr. Warman on the web and even the Panel in the Kyburz  
24           case thought that Mr. Warman, being a player or having  
25           this as a life mission, wasn't one to unduly feel these

1 things. Certainly they did not seem to think that he  
2 was particularly intimidated.

3 Similarly in the case last fall of  
4 Richard Warman versus Tomasz Winnicki. That may be in  
5 your documents at Tab 15.

6 Your colleague, Karen Jensen, was  
7 considering a similar complaint by Mr. Warman, and at  
8 paragraph 170 Ms Jensen concluded:

9 "The difficulty I have with the  
10 Complainant's claim to have  
11 suffered greatly is that a month  
12 or two after the posting with  
13 his photograph was made..."

14 That is Mr. Warman:

15 "... he was able to publicly  
16 state, in a speech to the ARA,  
17 that he uses his 'maximum  
18 disruption' approach, which  
19 includes the laying of human  
20 rights complaints, whenever he  
21 thinks it will be most helpful  
22 or even if he just feels it will  
23 be 'the most fun'. He also  
24 indicated that he files a human  
25 rights complaints against

1                   `neo-Nazis' starting on a `worst  
2                   offender' basis, although if he  
3                   finds people to be `particularly  
4                   annoying this may move them up  
5                   the list a bit'.

6                   She went on to say:

7                   "It appears to me that there was  
8                   a certain amount of "saber  
9                   rattling" that went on between  
10                  the Complainant and the  
11                  Respondent and this does not  
12                  appear to have immobilized the  
13                  Complainant with fear."

14                  Given my submission about the  
15                  vexatious and hurtful behaviour of Mr. Warman,  
16                  particularly in attempting to take away -- in  
17                  successfully taking away Mr. Tremaine's job, and given  
18                  also the conclusions by your colleagues in two other  
19                  cases initiated by Mr. Warman, I would suggest that  
20                  Mr. Warman was not at all threatened or intimidated.

21                  If I might just quote again from the  
22                  Kyburz case, it is very ironic but I think very  
23                  apropos, sir, to this case. Paragraph 107.

24                  Mr. Kyburz apparently wrote letters  
25                  to Mr. Warman's employer with a view to getting him

1           fired. This is what the Panel in the Kyburz concluded  
2           at paragraph 107:

3                                "Certainly, the retaliatory  
4                                actions taken by Mr. Kyburz in  
5                                this case were very serious.  
6                                Not only did Mr. Kyburz  
7                                repeatedly disparage Mr. Warman  
8                                publicly in the most negative  
9                                terms, it appears that he  
10                              actively attempted to interfere  
11                              with Mr. Warman's employment,  
12                              going so far as seeking to have  
13                              him fired from his job."  
14                              "...it appears that he actively  
15                              attempted to interfere with  
16                              Mr. Warman's employment, going  
17                              so far as seeking to have him  
18                              fired from his job."

19                            This the Tribunal in the Kyburz case  
20                            thought was a very serious matter.

21                            In coming to your decision, sir, I  
22                            hope you will take that as some guidance when you look  
23                            at the totality of this case and what was done to the  
24                            real victim in this case, Terry Tremaine.

25                            The various minority groups allegedly

1 exposed to hatred or contempt have no interest in this  
2 case. Clearly they did not consider in-house chit-chat  
3 on Stormfront to imperil their rights. This was  
4 entirely in the mind of the complainant, who I was able  
5 to get to tell us that he had made numerous complaints  
6 although even in that case he couldn't give us a  
7 straightforward answer.

8 How many? Well he said 12 to 15.  
9 Well, I guess that is about the best were going to do.

10 But I again invite you to look at  
11 the quality of the evidence -- and you only have two  
12 witnesses before you. I would invite you to consider  
13 the straightforward evidence of Mr. Tremaine, an  
14 honest man with dissident political opinions, probably  
15 very unpopular political opinions, but a man who is  
16 sticking to his beliefs. Somehow you have to find a  
17 way to reconcile the promises of freedom of speech,  
18 freedom of expression, freedom of belief that were  
19 given to us by Pierre Trudeau in the Charter with the  
20 facts in this complaint.

21 Perhaps National-Socialist Germany is  
22 a good place at which to end.

23 Mr. Tremaine is a follower of  
24 National-Socialism. He has quoted extensively from  
25 Adolf Hitler. He has praised Adolf Hitler, and so on.

1           Some might say he makes an easy target. He is a  
2           bad guy.

3                           But I submit that if you look at the  
4           historical record, the Weimar Republic had legislation  
5           very similar to Canada's anti-hate laws and at any  
6           given time large numbers of the leadership and lower  
7           operatives of the German National Socialist Workers'  
8           Party were imprisoned under legislation not terribly  
9           different from section 13(1) of the Canadian Human  
10          Rights Act or 319 of the Criminal Code.

11                          For those who say that repression  
12          will keep racism or Naziism, or what ever other ism  
13          they are worried about away, need only look at the  
14          tremendous success of the Weimar Republic in doing  
15          that. Repression never works.

16                          The only way to beat a bad idea is  
17          with a better idea and that is why my submission is  
18          that in terms of Tab 36, the platform and the dreams  
19          and the Constitution of the Canadian Nazi Party, that  
20          the best answer to that is in the marketplace of ideas  
21          and in the political arena, not in terms of cease and  
22          desist orders and fines, and so on.

23                          At the end of the day I think you are  
24          going to have to look at the straightforward, honest  
25          evidence of a highly committed man who believes in what

1 he believes in, whether we might agree with that or  
2 not, and the less than candid evidence of a man so  
3 driven by his anger, or whatever it is that drives him,  
4 that he could not even provide you with the normal  
5 niceties of some regret when a middle-aged man loses  
6 his employment and essentially ends up at the very  
7 bottom of society.

8 Those are my submissions.

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

11 We will be hearing the submission of  
12 the Commission and Mr. Warman tomorrow morning.

13 MS WARSAME: That is correct, yes.

14 THE CHAIRPERSON: Mr. Fromm and  
15 Mr. Tremaine, will you be attending tomorrow?

16 MR. FROMM: No, I will not be.

17 MR. TREMAINE: I will be.

18 THE CHAIRPERSON: You will be here?

19 MR. TREMAINE: Yes.

20 THE CHAIRPERSON: All right.

21 Mr. Fromm, thank you very much for  
22 your participation in this hearing. Mr. Tremaine, I  
23 will see you tomorrow morning at 9:30, and the other  
24 council also.

25 MS WARSAME: If I could just clarify

1 for the record...?

2 THE CHAIRPERSON: Yes...?

3 MS WARSAME: The Commission provided  
4 the Book of Authorities to the respondent.

5 MR. FROMM: When? Is that it?

6 MS WARSAME: Yes.

7 THE CHAIRPERSON: The Books of  
8 Authorities are there, all right. Thank you.

9 So we will adjourn until tomorrow  
10 at 9:30.

11 Thank you very much.

12 --- Whereupon the hearing adjourned at 3:50 p.m.,  
13 to resume on Friday August 11, 2006  
14 at 9:30 a.m.

15

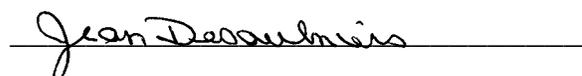
16

17 I HEREBY CERTIFY THAT I HAVE, to  
18 the best of my skill and  
19 ability, accurately taken down  
20 and transcribed the foregoing.

21

22

23



24

Jean Desaulniers,

25

Stenomask Reporter