

**CANADIAN
HUMAN RIGHTS
TRIBUNAL**



**TRIBUNAL CANADIEN
DES DROITS
DE LA PERSONNE**

BETWEEN/ENTRE:

Complainant RICHARD WARMAN **le plaignant**

and/et

Commission CANADIAN HUMAN RIGHTS COMMISSION **la Commission**

and/et

Respondent JESSICA BEAUMONT **l'intimée**

BEFORE/DEVANT:

ATHANASIOS HADJIS THE CHAIRPERSON/
LE PRÉSIDENT

CAROL ANN HARTUNG REGISTRY OFFICER/
L'AGENTE DU GREFFE

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

SITTING IN ROOM 13, THE VANCOUVER CONVENTION AND EXHIBIT CENTRE,
999 CANADA PLACE, VANCOUVER, BRITISH COLUMBIA, ON WEDNESDAY,
DECEMBER 13, 2006 AT 9:30 A.M. LOCAL TIME.

CASE FOR HEARING/CAUSE DEVANT ETRE ENTENDUE

IN THE MATTER of the complaint filed under section 13.1 of the
Canadian Human Rights Act by Richard Warman dated January 6,
2005, against Jessica Beaumont. The Complainant alleges that the
Respondent has engaged in a discriminatory practice on the
grounds of religion, sexual orientation, race, colour, national
or ethnic origin and disability in a matter related to the usage
of a telecommunication undertaking.

APPEARANCES/COMPARUTIONS

Richard Warman	Appearing for himself, Complainant
Giacomo Vigna	For the Commission
Paul Fromm	For the Respondent

TABLE OF CONTENTS/TABLES DES MATIÈRES

	PAGE
Submissions by Mr. Vigna	517
Submissions by Mr. Fromm	611
Reply submissions by Mr. Vigna	695

1 Vancouver, B.C.

2 --- Upon resuming on Wednesday, December 13, 2006

3 at 9:30 a.m.

4 REGISTRY OFFICER: Order, please.

5 Please be seated.

6 THE CHAIRPERSON: Good morning. I

7 understand Mr. Warman is not with us.

8 MR. VIGNA: No, Mr. Chair, but he's

9 provided me his written submissions.

10 THE CHAIRPERSON: For the record, he

11 did not advise the Tribunal. He told the Tribunal he

12 would be here today. What he did was, and I'm advised

13 by Ms Hartung, is that he just e-mailed his written

14 submissions to us without any notification that he

15 wasn't going to be here.

16 MR. VIGNA: I think he was under the

17 understanding that he had an option of presenting

18 written submissions, and Mr. Fromm can present his

19 written submissions later.

20 THE CHAIRPERSON: Always after

21 advising the Tribunal and perhaps getting the

22 Tribunal's understanding on such things so that we can

23 better manage the trial. It wasn't fair. He didn't

24 even provide us with copies. He sends them by e-mail,

25 as if I'm going to read them on my Blackberry.

1 MR. VIGNA: I provided them.

2 THE CHAIRPERSON: I understand they
3 were provided, but Mr. Warman frequently insists that
4 everybody abide by the rules. He should too.

5 I hope you convey that message to
6 him. What we're going to do is accommodate the
7 respondent in any way that they feel necessary in light
8 of the fact that these written submissions have been
9 provided. I don't know if you've had time to read them
10 yet.

11 MR. FROMM: I was only made aware
12 that Mr. Warman was not going to be here perhaps about
13 15 minutes ago. Mr. Vigna has kindly provided me with
14 them. I can't say --

15 THE CHAIRPERSON: I see a lot of
16 pages there.

17 MR. VIGNA: There is my submissions
18 and his submissions.

19 THE CHAIRPERSON: You both provided
20 your own written submissions?

21 MR. VIGNA: Yes. Mine is short.

22 THE CHAIRPERSON: You also gave us a
23 heads up about what you would be talking about.

24 MR. VIGNA: In any event, the
25 respondent can send his submissions in writing later.

1 THE CHAIRPERSON: Right. Again, with
2 the permission of the Tribunal. You have to work
3 through us always, otherwise we can't manage the file.

4 MR. FROMM: I want to say that Mr.
5 Vigna yesterday gave me a heads up that he would be
6 relying heavily on the decision in the Kouba case. He
7 gave me an outline this morning of his submissions. I
8 do appreciate that. It does help. It cuts down the
9 notetaking.

10 THE CHAIRPERSON: It's not required.
11 It's not the normal practice necessarily, but I try to
12 encourage it as much as possible.

13 MR. FROMM: I just want to
14 acknowledge I appreciate the assistance.

15 I somehow failed to bring the most
16 important piece of one of the decisions and Mr. Vigna
17 was kind enough to obtain it for me for today.

18 THE CHAIRPERSON: The California
19 case?

20 MR. FROMM: No, the French case.

21 THE CHAIRPERSON: I saw it. I
22 flipped through both the Kouba case and the material
23 you handed up yesterday in order to better enable me to
24 be prepared for the submissions.

25 I have two copies of this French case

1 in the batch that was given to me. Perhaps one of
2 those was meant for the Tribunal. It looks to me as if
3 it is identical, so I will pass it up.

4 With that in mind we'll proceed. I
5 don't know how you want to deal with Mr. Warman's
6 submissions. Were you going to read them in?

7 MR. VIGNA: No, you can simply read
8 them on your own time.

9 THE CHAIRPERSON: Yes. If that's
10 okay with you, Mr. Fromm, or yourself, Ms Beaumont,
11 after having read Mr. Warman's submissions, would the
12 two weeks that I mentioned earlier for your pay stubs,
13 if you want in those two weeks as well to respond
14 directly to whatever Mr. Warman has written in his
15 documentation you can do so. Does that seem sufficient
16 for you, Mr. Fromm?

17 MR. FROMM: That would be fair, yes.

18 THE CHAIRPERSON: I will do one more
19 thing then to be fair to the parties because in about
20 ten working days the digital version of the transcript
21 will be made available.

22 REGISTRY OFFICER: That becomes the
23 24th. That is right around Christmas. The parties may
24 not receive the transcript electronically until the
25 27th or 28th. I think it may be because of Christmas.

1 THE CHAIRPERSON: Mr. Vigna, do you
2 have any objection if we go into the new year on those
3 submissions?

4 MR. VIGNA: No problem.

5 THE CHAIRPERSON: Mr. Warman is not
6 here to object. Do you object?

7 MR. FROMM: I'm not objecting. I
8 just wonder, I guess through the personnel from the
9 Tribunal, in the beginnings of the case against B.C.
10 White Pride, which ended I guess ten days ago, we were
11 told we would have the transcripts within two weeks but
12 I think we had them last week, within a week.

13 THE CHAIRPERSON: The contract we
14 have with the court reporting service is that they have
15 up to ten days. I would rather work with the maximum
16 rather than anything shorter. I know it has only been
17 two days, but it may not be the court reporter's own
18 responsibility. There are broader issues.

19 MR. FROMM: It seems to me that I've
20 received them within a week of the end of the hearing.

21 REGISTRY OFFICER: That does happen
22 in some instances. Given that we have the ten days and
23 that the holiday season does fall in there --

24 THE CHAIRPERSON: I'm going to give
25 you a month, not two weeks. A month puts us at January

1 --

2 REGISTRY OFFICER: Friday is the
3 12th, 15th is the Monday.

4 THE CHAIRPERSON: Friday is 12th,
5 that's exactly 31 days from now. So, Friday, January
6 12th, get your submissions in, dealing with Mr. Warman,
7 the pay stubs too. You can do this earlier by the way.
8 If you're done earlier, send them in earlier, there is
9 no harm done. But that will enable you to have the
10 written transcripts electronically by e-mail in advance
11 of that.

12 MR. VIGNA: Today is the 13th.

13 REGISTRY OFFICER: It is either the
14 12th or the 15th. Those submissions can be made
15 electronically to my attention.

16 THE CHAIRPERSON: I see the puzzled
17 look because who was responsible for the file prior to
18 you?

19 REGISTRY OFFICER: Katherine Julien.

20 MR. FROMM: Would a fax be all right?

21 REGISTRY OFFICER: A fax is fine.

22 THE CHAIRPERSON: But the transcripts
23 will come in e-mail form.

24 Mr. Vigna, then, I will let you
25 begin.

1 MR. VIGNA: Firstly, the submissions
2 of Mr. Warman, I have looked them through and I won't
3 repeat what is there, but I will just say I adopt what
4 has been said, and particularly he put more focus on
5 the issue of 54(1)(b).

6 THE CHAIRPERSON: That was an
7 important issue in the course of the hearing.

8 MR. VIGNA: I will address it also a
9 little bit.

10 THE CHAIRPERSON: You will address it
11 a bit?

12 MR. VIGNA: Yes. But there are more
13 detailed submissions.

14 THE CHAIRPERSON: Since it's an
15 important issue, you can deal with it in writing or
16 today as you wish, Mr. Fromm.

17 MR. FROMM: In my very quick perusal,
18 I did catch that.

19 SUBMISSIONS BY MR. VIGNA

20 MR. VIGNA: Mr. Chair, in this case I
21 will be very brief. The evidence was not extensive.
22 We had basically two witnesses. I would say that
23 there's not really any contest in terms of the facts.
24 It's more the interpretation of the facts that is the
25 object of the determination of the Tribunal.

1 Mr. Warman testified basically and
2 produced printouts from the Internet which are put in
3 evidence and which have not been disputed. They have
4 been admitted to. The testimony of Ms Beaumont
5 confirms that she basically was the one that posted the
6 postings, but the defence that she presents to you is
7 basically that in her view it's her political or
8 religious beliefs and that she should be allowed to
9 express them independent of the fact of whether they
10 offend or not individuals.

11 I will just do a brief recap of the
12 legislation and the case law on section 13. I have
13 produced an outline. I will be following the outline.

14 In deciding whether or not section 13
15 of the Canadian Human Right Act breached the Charter's
16 guarantee of freedom of expression, and if so, whether
17 it is saved under section 1 of the Charter, the Supreme
18 Court in the case of Canada versus Taylor, which is in
19 tab 3 recognized the importance of freedom of
20 expression in our society.

21 THE CHAIRPERSON: I know it's in
22 writing, I'm following you but the court reporter is
23 having difficulty.

24 MR. VIGNA: I gave her a copy also.

25 THE CHAIRPERSON: That's true, but

1 still try to slow it down.

2 MR. VIGNA: The court then looked at
3 the purpose of the Canadian Human Rights act as stated
4 in section 2. I think section 2 is very important to
5 consider in the analysis because it's the guiding
6 principle of the legislation.

7 The purpose of this Act, that's
8 section 2, the purpose of this Act is to extend to the
9 present laws in Canada to give effect, within the
10 purview of matters coming within the legislative
11 authority of the Parliament of Canada to the principle
12 that every individual should have an equal opportunity
13 with other individuals to make for himself or herself
14 the life that he or she is able and wishes to have,
15 without being hindered in or prevented from doing so by
16 discriminatory practices based on race, nationality,
17 ethnic origin, colour or religion.

18 That is referring to section 3, which
19 enunciates the various grounds.

20 The court then notes that Parliament
21 has indicated that it views the activity described in
22 section 13, that is communicating messages that are
23 likely to expose people to hatred based on certain
24 characteristics, as contrary to the furtherance of
25 equality, which is one of the primary goals of the

1 Canadian Human Rights Act, equality of all individuals.

2 The court refers to the Cohen
3 Committee Report, as well as many other studies, which
4 identify the serious harm caused by messages of hatred,
5 noting that individuals subjected to racial or
6 religious hatred may suffer substantial psychological
7 distress, the damaging consequences, including a loss
8 of self esteem, feelings of anger and outrage and
9 strong pressure to renounce cultural differences that
10 mark them as distinct. This intensely painful reaction
11 undoubtedly detracts from an individual's ability to,
12 in the words of section 2 of the Act, make for himself
13 or herself the life that he or she is able or wishes to
14 have.

15 As stated by Justice Mahoney in the
16 Taylor decision, in his view Canada is a multicultural
17 country. Such multiculturalism represents a positive
18 characteristic of its national persona. While racial
19 and religious strife were not rampant in Canada, the
20 great upheaval and damage caused by intolerance in
21 certain other nations amply illustrated the potentially
22 serious impact of these prejudicial ideas.

23 Then I go on to discuss the Barrick
24 Gold Corporation decision which is in tab 1, but we
25 don't need to refer to it. The only principle I want

1 to derive from that, and this is a case dealing with
2 slander, but the importance of it is the Internet and
3 its effect.

4 Paragraph 31 it states:

5 "Communication via the Internet
6 is instantaneous, seamless,
7 interactive, blunt, borderless
8 and far-reaching. It is also
9 impersonal and the anonymous
10 nature of such communications
11 may itself create a greater risk
12 that the defamatory remarks are
13 believed."

14 Then it goes on in paragraph 32 of
15 the decision to quote that an article from "Silencing
16 John Doe: Defamation and Discourse in Cyberspace:"

17 "Although Internet
18 communications may have the
19 ephemeral qualities of gossip
20 with regard to accuracy, they
21 are communicated through a
22 medium more pervasive than
23 print, and for this reason they
24 have tremendous power to harm
25 reputation. Once a message

1 enters cyberspace, millions of
2 people worldwide can gain access
3 to it."

4 There the importance of the Internet
5 as a means of communication which should not be
6 minimized and underestimated.

7 The Supreme Court of Canada in the
8 case of Taylor recognized the importance of freedom of
9 expression in our society and weighed this right
10 against the harm caused by hate messages. At paragraph
11 39 of the decision, the Court looked at the purpose of
12 the Canadian Human Rights Act and then looks again to
13 section 2 as the guiding principle.

14 In its analysis of the harm caused by
15 hate messages, the Supreme Court in Taylor refers to
16 the Cohen report, which we just cited, as well as
17 several other studies and reports, which identify the
18 serious harm caused by messages of hatred, noting at
19 paragraphs 40 and 41 that:

20 "Parliament's concern that the
21 dissemination of hate propaganda
22 is antithetical to the general
23 aim of the Canadian Human Rights
24 Act is not misplaced. The
25 serious harm caused by messages

1 of hatred was identified by the
2 Special Committee on Hate
3 Propaganda in Canada, commonly
4 known as the Cohen Committee, in
5 1966. The Cohen Committee noted
6 that individuals subjected to
7 racial or religious hatred may
8 suffer substantial psychological
9 distress, the damaging
10 consequences including a loss of
11 self-esteem, feelings of anger
12 and outrage and strong pressure
13 to renounce cultural differences
14 that mark them as distinct.
15 This intensely painful reaction
16 undoubtedly detracts from an
17 individual's ability to, in the
18 word of s. 2 of the Act, 'make
19 for himself or herself the life
20 that he or she is able and
21 wishes to have'. As well, the
22 Committee observed that hate
23 propaganda can operate to
24 convince listeners, even if
25 subtly, that members of certain

1 racial or religious groups are
2 inferior. The result may be an
3 increase in acts of
4 discrimination, including the
5 denial of equal opportunity in
6 the provision of goods,
7 services, facilities, and even
8 incidents of violence."

9 The Court in Taylor said at paragraph
10 19:

11 "Canada is a multicultural
12 country.."

13 And it goes on which I cited earlier.

14 One of the differences between
15 defamation cases and discriminatory hate speech which
16 must be taken into account in determining if an
17 injunction should be granted -- this was in the case of
18 an injunction -- is that truth or fair comment is no
19 defence in cases of hate messages. The focus is on the
20 effects suffered by the targets of discrimination.

21 The key point of analysis is the
22 effects that the messages and the words have on the key
23 groups that are identified.

24 THE CHAIRPERSON: You're citing here
25 from which decision when you say this? You say it's

1 from an injunction case. Is it the one relating to Mr.
2 Winnicki or is it something earlier?

3 MR. VIGNA: I'm not sure. I think I
4 wiped out by mistake the reference to the case. It's
5 either Winnicki or -- in any event, Mr. Chair, don't
6 rely on what I wrote there. It's a known quote from
7 one of the key decisions from the Federal Court, an
8 injunction case. I think there's only two.

9 THE CHAIRPERSON: Is it perhaps this
10 one here that was provided to us by Mr. Fromm?

11 MR. VIGNA: No.

12 THE CHAIRPERSON: In any event, move
13 on.

14 MR. VIGNA: It's not really that
15 important at this point in time but it's one of the
16 Federal Court decisions that is a complaint before the
17 Tribunal.

18 THE CHAIRPERSON: The issue is
19 important because --

20 MR. VIGNA: The issue, yes, but at
21 this point in terms of locating the exact reference. I
22 made a mistake last night when I was re-editing the
23 text and I erased the reference.

24 In the Canadian Human Right Tribunal
25 case in Citron, the law on this point is summarized.

1 The Tribunal states at paragraphs 185 to 187:

2 "We have already concluded that
3 showing that the offending
4 statements are true is not a
5 defence to a breach of section
6 13(1) of the Canadian Human
7 Rights Act. Dickson C.J.
8 discussed this issue in
9 Keegstra, which involved the
10 criminal offence of wilfully
11 promoting hatred against an
12 identifiable group...In
13 Keegstra, he expressed the view
14 that he was doubtful as to
15 whether the Charter mandates
16 that truthful statements
17 communicated with an intention
18 to promote hatred need be
19 excepted from criminal
20 condemnation."

21 Relying then on this reasoning in
22 Keegstra, Dickson in Taylor stated that:

23 "I am of the view that the
24 Charter does not mandate an
25 exception for truthful

1 statements in the context of s.
2 13(1)..."

3 Similarly, it seems to be settled law
4 that evidence of intent is not required, and that the
5 focus of human rights inquiries is on effects.

6 Those are the key points that I was
7 making in terms of what I was referring to later that I
8 couldn't find the reference, and the O'Malley case is
9 basically one of the key decisions on the issue in
10 discrimination cases, as well as hate message cases.
11 It's the effects that should be the focus of attention,
12 not the intent.

13 The unique nature of the Canadian
14 Human Rights Act.

15 The other difference to be taken into
16 account in looking at the differences between cases of
17 defamation and that of hate messages is the unique
18 nature and purpose of the Canadian Human Rights Act.
19 The Act is a quasi-constitutional law addressing a
20 fundamental objective of equal opportunity in our
21 society without people being hindered by
22 discrimination, and must therefore be given a liberal
23 and purposive interpretation.

24 The respondent's conduct contravenes
25 a statute which is remedial, and the purpose of which

1 is to prevent discrimination as stated by the Supreme
2 Court in Taylor at paragraph 70. The Act is also a
3 fundament law as stated by the Supreme Court of Canada
4 in ICBC versus Heerspink, and was upheld in Taylor,
5 notwithstanding that it infringed the guarantee of
6 freedom of expression because the harm flowing from
7 hate propaganda works in opposition to the values of
8 equality and multiculturalism, which are two linchpin
9 principles in the Charter of Rights and freedoms.

10 THE CHAIRPERSON: Mr. Vigna, I want
11 to be clear on this. You spent a fair bit of time here
12 discussing the Charter aspects and we don't have a
13 Charter challenge here.

14 MR. VIGNA: No, we don't.

15 THE CHAIRPERSON: Just as I would
16 probably tell Mr. Fromm if you were to try to make a
17 Charter argument at this point, that we don't have a
18 formal Charter challenge, as there has been in another
19 case in which you're involved or you're familiar, I
20 don't want you to somehow buttress the case that is
21 going on here by throwing all this Charter material at
22 me.

23 MR. VIGNA: The only reason I mention
24 it is I anticipate some of the arguments, and I'm not
25 saying that there was a Charter challenge or I would

1 accept that there could be one that could be argued
2 because there needs to be notification and all that.

3 THE CHAIRPERSON: And I got it from
4 Mr. From that he doesn't propose to do that earlier.

5 MR. VIGNA: The only relevance to the
6 Charter cases is basically the principle of equality
7 and the principle of multiculturalism and the principle
8 that in our Canadian society versus United States, we
9 have to balance freedom of expression with protecting
10 equality and multiculturalism.

11 THE CHAIRPERSON: I'm familiar with
12 the Taylor case. It's the background behind the
13 legislation. I understand the debate will be on the
14 legislation and the facts of this case.

15 MR. VIGNA: For sure. The issues to
16 be determined: Did the respondent communicate or cause
17 to be communicated the material which is the subject of
18 this complaint?

19 The answer to that question, the
20 three ingredients of section 13, one of them is what I
21 just mentioned, the evidence is ample and
22 uncontradicted and uncontested. There is no issue as
23 to whether the material was communicated by the
24 respondent. There are admissions, there is evidence,
25 and there is the testimony of the respondent herself

1 that admits to the communication.

2 Was the material communicated
3 telephonically or --

4 THE CHAIRPERSON: Let me back you up
5 on that, again, anticipating some arguments. There
6 were a few points where, for instance in that
7 correspondence that she had filed with the Tribunal and
8 the Commission, to which Ms Beaumont referred in her
9 evidence, that there were a few of the passages that
10 she did not recognize and suggested that they may have
11 not been placed by her. What do you have to say about
12 that?

13 MR. VIGNA: On those few passages
14 which she doesn't seem to recall, she said, she didn't
15 say she denied it, she said she didn't recall, she
16 didn't remember, I think you have to consider first of
17 all the credibility, the overall evidence in terms of
18 the Jessy Destruction acronym or moniker being used
19 constantly and recurringly, and also the fact that in
20 one of the postings that Mr. Warman focused on, I don't
21 recall it by memory, but when you go through the tabs
22 you will locate it. There is at one point, I am not
23 quoting verbatim the posting, but you have to remember
24 at least at one point there's 1,023 postings.

25 In one of the postings she says that

1 -- she doesn't remember all the postings that she had.
2 Now, she hasn't given you any logical explanation for
3 the postings which identified with Jessy Destruction,
4 which wouldn't be associated to her. She is giving you
5 some vague explanation of a potential, hypothetical,
6 speculative hacking where she hasn't made any efforts,
7 if that was the case, to denounce that. In particular,
8 the one that was more shocking in terms of when she
9 denied it, which I think was one dealing with
10 homosexual and AIDS and you located in the tab which
11 she said she didn't remember, she started speculating
12 about perhaps being hacked and all that, but what
13 credible, plausible explanation she gave you for that,
14 I would like to see any plausibility to that
15 explanation, particularly that if it was so shocking, I
16 think I asked the question if she made any efforts to
17 inform Stormfront to denounce if that would be the case
18 the fact that there was some posting that would have
19 been associated with Jessy Destruction that she doesn't
20 recall, she said she made no efforts.

21 You have to take all these points
22 into account when you assess the credibility of the
23 statement, do I not recall some of the postings. I
24 think it's important that she didn't say that she was
25 denying them. She didn't recall. Consider the fact

1 that there's at least 1,023 postings at one point,
2 which is an extremely high number, and probably more,
3 and the fact that in her own statement in one of the
4 postings, she basically says herself that she has so
5 many postings she won't remember, and it's kind of
6 normal human nature that if you have so many postings
7 you won't remember, but there is no other explanation
8 offered that would indicate otherwise.

9 That is what I have to say on that
10 point. That is in relation to question number 2, was
11 it communicated by the Internet and was it communicated
12 by the respondent.

13 The key issue to be determined is is
14 the material likely to expose persons to hatred based
15 on those persons being identifiable on a prohibited
16 ground?

17 If a violation of section 13 is
18 substantiated, you have to consider the remedies. Then
19 you have to consider what Mr. Warman has put forth to
20 you is whether an award based on section 54(1)(b) and
21 the distinction that needs to be made between 54(1)(b)
22 and 53(2) which is pain and suffering, and I will
23 expand upon it a bit later.

24 THE CHAIRPERSON: The issues that you
25 have put here, is the material likely to expose, but

1 before that, was it communicated, yes, I see that
2 issue, telephonically or Internet.

3 Doesn't the legislation also say, and
4 this is a key issue from what I anticipate --

5 MR. VIGNA: Contempt also, hatred or
6 contempt.

7 THE CHAIRPERSON: Hatred or contempt,
8 yes, okay. But what is missing, Mr. Vigna? There is
9 something missing.

10 MR. VIGNA: Repeatedly.

11 THE CHAIRPERSON: Exactly,
12 repeatedly.

13 MR. VIGNA: You are totally right.

14 THE CHAIRPERSON: Are you going to be
15 addressing that issue because I think you should
16 anticipate that. You can do it in reply afterwards.

17 MR. VIGNA: Just the fact that it's
18 on the Internet it makes it repeatedly. When I quoted
19 the case of Barrick earlier, talking about the
20 pervasive and extensive nature of the Internet, the
21 Internet itself makes it repeatedly. When I quoted the
22 case, it mentions that when you put something on the
23 Internet it's for the viewing of millions of people.

24 When I questioned the respondent
25 yesterday and asked her if she realized it was a public

1 forum, she said she did. She realized there was a
2 distinction between being in the living room and being
3 on the Internet. In terms of repeatedly, we have 1,023
4 postings at the minimum that is indicated.

5 On the issue of repeatedly, and you
6 are totally right and I appreciate you raising that
7 point because it was perhaps so obvious to me that I
8 didn't think of putting it in, but the repeatedly in
9 terms of the evidence is very well substantiated. The
10 Internet, the number of postings, and --

11 THE CHAIRPERSON: How do you address
12 the issue, again anticipating what may be raised, that
13 this is not like websites? The material in this other
14 case that I was involved with that was raised by Mr.
15 Fromm, the Warman and Kulbashian case I recall was
16 material that was on web pages, where you click and see
17 things on a web page. I guess they're all web pages,
18 but content, it wasn't so much this type of postings.

19 There were some, but it wasn't
20 exactly the nature as we have seen here, where you
21 click this little "Quote" button or "Post Reply" and
22 everybody puts in their own information. I don't know
23 that there's an editor involved in how this material
24 gets on that thread. It seems everybody just clicks
25 and there appears to be a dialogue going on there.

1 What's your answer to that?

2 MR. VIGNA: First of all, this case
3 is not any different than the evidence on many of the
4 other cases that were decided where liability was found
5 for violating section 13 based on the same type of
6 evidence.

7 From memory, I recall the Harrison
8 case or the Bahr case recently decided. But
9 specifically to answer the factual question that you
10 asked me, the website was a website that was public.
11 There was a Canadian chapter or content to it. There
12 was a forum where people chatted.

13 I asked a question to the respondent
14 whether one can actually read the postings without
15 being logged in and going through the process of
16 putting a user name and a password and the answer was
17 positive in the sense that just about anybody can go.

18 So there's a distinction to be made
19 here between somebody sending an e-mail or sending a
20 letter, which is one to one or maybe one to two. Here
21 it's obvious that there's a great number of people.
22 When you look at the exhibits themselves, you will see
23 that there are several participants. There's a
24 discussion between several people, not just one on one.
25 There is at least two or three every the time, and it's

1 to promote basically a general discussion at large.
2 There are not too many restrictions in terms of public
3 accessibility.

4 Even on that issue of public
5 accessibility, when we look at the factual evidence, in
6 order for somebody to participate, in terms of
7 impediment, all they have to do is put in a user name
8 and a password. There is not even any cost involved.
9 So it makes it extremely accessible, it's free, it's
10 public.

11 In that sense the public and the
12 Internet and repeatedly are all covered in terms of the
13 evidence and in terms of the case law. So that's what
14 I have to say on that point. Specifically the
15 postings, they're on a public website. They're
16 publicly available. There's public debate. There's
17 participation of many. It's free, it's very
18 accessible. So, there's nothing that would indicate
19 that it's some kind of private conversation like the
20 argument might be put to you.

21 The Internet must not be
22 underestimated. It's very pervasive. It could be very
23 positive but when used for the purposes which is a
24 violation of section 13, it can be very harmful.

25 You are making me think of an

1 example, and I don't want to go beyond the facts of
2 this case, but in terms of the importance of the
3 Internet, we look at the Dawson College incidents where
4 there was somebody using the Internet, Gotham or
5 whatever and the impact that that had.

6 The point I am making is that the
7 Internet is something very powerful, very positive, but
8 it can be extremely harmful if used for the wrong
9 purposes. That is the objective of section 13 and that
10 is the objective of the legislature putting section 13
11 in the Canadian Human Rights Act, to basically reaffirm
12 core Canadian values that are quasi-constitutional
13 almost to the same extent as what's found in section 15
14 of the Charter: Equality, multiculturalism, a society
15 that's inclusive and a society that's tolerant. I
16 submit to you respectfully that the postings and what
17 is said goes contrary to those basic principles that
18 section 13 is aimed to protect.

19 If you look at the actual postings in
20 terms of the grounds that are identified, the grounds
21 which come into play are the Jewish faith (religion),
22 black (colour), aboriginal, homosexual (sexual
23 orientation) and non-white immigrants (nationality).
24 When you look at the different postings, which I am not
25 going to review, you will see that basically all those

1 grounds which aim to be protected by section 13 are
2 attacked by these postings.

3 Then in Taylor, reaffirming what was
4 said in Nealy, there's an important quote. The case is
5 found at tab 3, paragraph 60.

6 With 'hatred' the focus is a set of
7 emotions and feelings which involve extreme ill will
8 towards another person or group of persons. To say
9 that one 'hates' another means in effect that one finds
10 no redeeming qualities in the latter. It is a term,
11 however, which does not necessarily involve the mental
12 process of 'looking down' on another or others. It is
13 quite possible to 'hate' someone who one feels is
14 superior to one in intelligence, wealth or power. None
15 of the synonyms used in the dictionary definition for
16 'hatred' gives any clues to the motivation for the ill
17 will. 'Contempt' is by contrast a term which suggests
18 a mental process of 'looking down' upon or treating as
19 inferior the object of one's feelings.

20 Basically the key words you have to
21 look at section 3 is there's hated, contempt and
22 exposed. When you look at that and the facts in this
23 case, you will find at the very minimum that there is
24 contempt, which I would suggest is a bit less in terms
25 of evidence, than hate.

1 The legislature when it speaks, it
2 doesn't speak for nothing. If it put hatred and
3 contempt and expose, it's basically to make sure that
4 it protects certain groups which are mentioned in
5 section 3 from being the object of ill feeling,
6 ridicule or of non-inclusion, intolerance, et cetera.

7 I won't go into the definitions of
8 hate and contempt and all that which are found in the
9 Taylor decision. Mr. Fromm has been participating in
10 all these cases. The Tribunal is fully aware of them.
11 So I don't think there is anything novel that I need to
12 expand upon at length on those issues, but the key case
13 Taylor defines those concepts which are fundamental.

14 In terms of the novelty in the case
15 law, if I can call it that way, when I mentioned
16 yesterday Kouba is that there is for the first time a
17 certain criteria called the hallmarks of hate messages,
18 and they are found in the Kouba decision which I
19 provided to you separately than in the book.

20 There are a certain number of
21 principles or criteria of hallmarks that are identified
22 by Member Jensen in this decision, which are found
23 typically in hate message cases. I will just name
24 them.

25 Page 6 of the Kouba decision:

1 "The targeted group is portrayed
2 as a powerful menace that is
3 taking control of the major
4 institutions in society and
5 depriving others of their
6 livelihoods, safety, freedom and
7 speech and general well-being."

8 Then at page 8, the second principle:

9 "The messages use 'true
10 stories', news reports, pictures
11 and references from purportedly
12 reputable sources to make
13 negative generalizations about
14 the targeted group."

15 At page 11:

16 "The targeted group is portrayed
17 as preying upon children, the
18 aged, the vulnerable, etc."

19 Page 12:

20 "The targeted group is blamed
21 for the current problems in
22 society and the world."

23 Page 13:

24 "The targeted group is portrayed
25 as dangerous or violent by

1 nature."

2 Page 14:

3 "The messages convey the idea
4 that members of the targeted
5 group are devoid of any
6 redeeming quality and are
7 innately evil."

8 Page 15:

9 "The messages communicate the
10 idea that nothing but the
11 banishment, segregation or
12 eradication of this group of
13 people will save others from the
14 harm being done by this group."

15 Page 16:

16 "The targeted group is
17 de-humanized through comparisons
18 to and associations with
19 animals, vermin, excrement, and
20 other noxious substances."

21 Page 17:

22 "Highly inflammatory and
23 derogatory language is used in
24 the messages to create a tone of
25 extreme hatred and contempt."

1 That one I think is an important one
2 in this case.

3 "The messages trivialize or
4 celebrate past persecution or
5 tragedy involving members of the
6 targeted group."

7 Page 19:

8 "Calls to take violent action
9 against the targeted group."

10 Those are the key hallmarks that have
11 been identified from a review of the case law until
12 this date by Member Jensen, which is novel and should
13 be considered when we look at each piece of exhibit,
14 particularly what's in the tabs.

15 I will go briefly to the tabs. At
16 tab 5, for example, --

17 THE CHAIRPERSON: You want to take me
18 through the evidence and then reference it with what
19 you have alleged are hallmarks?

20 MR. VIGNA: Yes.

21 THE CHAIRPERSON: Go ahead.

22 MR. VIGNA: For example, tab 2, page
23 6. It starts at page 5 and then it goes to page 6,
24 Jessy Destruction. I won't read the statements, but
25 they are self-explanatory. This one talks about

1 homosexuals. It says:

2 "It says right in the bible that
3 homosexual relations are
4 punishable by death."

5 Then there are two quotes from the
6 Bible.

7 THE CHAIRPERSON: Hold on. Okay,
8 there it is. Go on.

9 MR. VIGNA: In terms of the hallmark,
10 it says the messages use true stories, news reports,
11 pictures and references from purportedly reputable
12 sources, which here would be the bible, to make
13 negative generalizations about the targeted group.
14 Here, by referencing to the bible quotes of Leviticus,
15 there are derogatory, to say the least, statements
16 about homosexuals particularly when they say they're
17 punishable by death. The hallmark that's involved is
18 the one at page 8 which is using reputable sources.

19 To that extent I will even recall the
20 testimony of Ms Beaumont, where she actually takes the
21 Bible and reads from it to try to justify that her
22 beliefs are justified based on the Bible and her
23 interpretation of the Bible that would enable her to
24 make the comments she makes.

25 Then there is tab 3.

1 THE CHAIRPERSON: Yes. Where?

2 MR. VIGNA: Sorry, it's tab 4. I
3 said tab 3 in my outline, but it's tab 4.

4 THE CHAIRPERSON: Page what, 7?

5 MR. VIGNA: It's page 7 of tab 4. I
6 wrote tab 3 but it's tab 4.

7 THE CHAIRPERSON: Yes.

8 MR. VIGNA: Here it's:

9 "We need all the help we can,
10 either help, or sit on the side
11 lines and watch Canada crumble
12 farther than it already has into
13 multicultural, anti-freedom,
14 faggot loving, white hating
15 hell."

16 There the hallmark I would say at the
17 least is the ones at 33, where it --

18 THE CHAIRPERSON: 33? Paragraph 33?

19 MR. VIGNA: Paragraph 33, page 9.

20 THE CHAIRPERSON: Of the Kouba
21 decision?

22 MR. VIGNA: Yes. Where it tries to
23 present it as a true story in terms of reference to the
24 fact that it's a multicultural society and anti-freedom
25 and because of that there are comments that are made.

1 THE CHAIRPERSON: Hold on. It's an
2 expression of an opinion, isn't it? It's clear that
3 this individual doesn't like multiculturalism and
4 thinks that it's a denial of freedom. The use of the
5 word "faggot" is a strong word.

6 MR. VIGNA: Faggot loving at least I
7 would say the hallmark that's involved is the one that
8 is highly inflammatory and derogatory language is used
9 in the messages to create a tone of extreme hatred and
10 contempt which is found at page 17. Perhaps that one
11 would be more relevant than the one I just mentioned.

12 THE CHAIRPERSON: That's which one,
13 highly inflammatory is which -- maybe you best
14 reference the Kouba --

15 MR. VIGNA: Page 17.

16 THE CHAIRPERSON: It might be better
17 to reference it with the paragraph lettering. So, page
18 17 is (i), highly inflammatory and derogatory language
19 is used in the messages to create a tone of extreme
20 hatred and contempt.

21 MR. VIGNA: By use of the word
22 "faggot." The one I was mentioning earlier about true
23 story, maybe it's more or less, but the fact that
24 Canada is a multicultural society is a fact.

25 The one I just mentioned is even more

1 predominant, the fact that it is (i), derogatory
2 language that incites ill feelings.

3 Tab 7.

4 THE CHAIRPERSON: Tab 7, yes.

5 MR. VIGNA: Page 1, and then the
6 reaction is on page 2, but they have to be read
7 together because it's a reaction to a quote.

8 Page 2 there's basically an
9 endorsement where it says the quote from somebody else:

10 "Cheers to both posts. And
11 Coldstar, I'm with you on the
12 Devil subject; except I believe
13 that Jews are the literal spawn
14 of Satan himself."

15 Before that, we can't neglect reading
16 it because there's an endorsement of what is said. It
17 says for example:

18 "I often think that they..."

19 Referring to Jews,

20 "I often think that they are a
21 representation of the Devil. In
22 fact these days when somebody
23 days Devil or Satan I only think
24 of Jews."

25 There I would refer to the Kouba

1 decision, paragraph (a), where there is --

2 THE CHAIRPERSON: Powerful menace.

3 MR. VIGNA: Yes. That they are
4 taking control. If you read the whole quote, there is
5 an underlining understanding that that is what is being
6 said, maybe not in such explicit terms I am saying it
7 today, but if you look at it overall.

8 Then there is paragraph 30, which is,
9 to mention the letter --

10 THE CHAIRPERSON: Paragraph 30 is
11 (b), the true story.

12 MR. VIGNA: Yes. Paragraph 45, which
13 is (d), where the targeted group is blamed for the
14 current problems in society, when they talk about the
15 state and the radio and all that.

16 49 is (e). They're portraying him as
17 the devil so I guess they're portrayed as dangerous.

18 51, which is (f), devoid of many
19 redeeming qualities, page 14 of Kouba.

20 62 is (h), they are dehumanized; they
21 are portrayed as the devil and Satan.

22 66, that's (i), and I think that's
23 the most important one, where highly inflammatory and
24 derogatory language is used in the messages to create a
25 tone of extreme hatred and contempt. That one is an

1 extremely important one because I would say that it
2 almost applies to all of them and it's much more all
3 encompassing. But that one seems to be reoccurring.

4 So I will go to tab 8.

5 THE CHAIRPERSON: These are two
6 sentences here where you attached all these hallmarks
7 to two sentences. It says "Cheers to both posts,"
8 you're referencing also back to the quotations that are
9 earlier. Right?

10 MR. VIGNA: That's correct. I didn't
11 read the entire quotation.

12 THE CHAIRPERSON: I understand. I
13 realize that there was a choice available to the person
14 who was posting to include or not include quotes.
15 That's what I understood from the evidence, that there
16 were two buttons that could be pressed. But if a
17 person wishes to comment on something and connect it, I
18 am just wondering -- because I understood from the
19 evidence of Mr. Warman, his implication that someone
20 who puts a quote in is just as culpable as if the
21 person wrote that material himself simply by opting to
22 put the quote into his or her posting. Correct?

23 MR. VIGNA: Correct.

24 THE CHAIRPERSON: That was his
25 submission in the course of his evidence. The question

1 I put to you, though, especially given that these
2 forums run on pages and pages, we saw sometimes this
3 one here that we're looking at alone has at least four
4 web pages which run physically in this case, each one
5 of them can run for pages, like there are three pages
6 on this particular one, sometimes we saw that they run
7 for seven pages.

8 Is it unreasonable for someone to
9 say, look, I want to refer to what was said by somebody
10 two pages back, which may actually be two clicks back
11 on the Internet and comment, so I'm going to click on a
12 Quote feature so that that person's opinions come back
13 into my message so I can put my two cents or two lines
14 in this case. Does that automatically mean because the
15 person has done that that everything that was said by
16 the previous posting person has been put on the
17 Internet in such a manner that the person thereby is
18 exposed to liability under section 13?

19 MR. VIGNA: First of all, when we
20 look at section 13, the key words that we should
21 consider also is "cause to be communicated" which is
22 added in this section. It is a discriminatory practice
23 for a person or a group of persons acting in concert to
24 communicate telephonically or to cause to be so
25 communicated.

1 So, the action that you have just
2 described about taking the quote and re-putting it, I
3 would respectfully submit to you, Mr. Chair, that it is
4 what the Act is supposed to address when it says "cause
5 to be communicated." That's on a legal point.

6 Then on the factual point, if we look
7 at the tab in question 7, there's two quotes, which I
8 understand are taken from elsewhere, but also
9 importantly, there is the response, where it says:

10 "Cheers to both posts. And
11 Coldstar, I'm with you on the
12 Devil subject; except I believe
13 that Jews are the literal spawn
14 of Satan himself."

15 Even if you were to extract, Mr.
16 Chair, the two quotes because you're saying they were
17 from somewhere else and you look only at what is
18 responded to, the Jews are the literal spawn of Satan
19 himself, right there I believe there's --

20 THE CHAIRPERSON: I understand that
21 submission there, but I wanted to address the broader
22 issue because it may re-emerge later.

23 I put it to you, suppose the person
24 who was making this comment, the two lines, was in
25 disagreement with the previous poster, and in order to

1 demonstrate his agreement with what the other person
2 had written, they pressed the Quote button, brought in
3 the material with which they disagreed and said, I
4 disagree, you're out of line, this is unacceptable
5 behaviour, does that person become responsible for
6 having caused to be communicated? In effect they did,
7 so that the quotation that had only appeared at posting
8 number one ends up reappearing at posting number 31.
9 So, yes it was reposted, thereby enabling someone to
10 see it one more time, but clearly with the intention
11 not to endorse what's being said, but to present an
12 opposite opinion such that the first opinion is
13 contradicted.

14 That's an obvious statement, but you
15 know what I'm saying.

16 MR. VIGNA: There might be some
17 nuance for example, in the example you're giving I
18 understand your point. It's a bit like --

19 THE CHAIRPERSON: Suppose Mr. Warman
20 got on there and said, I, Warman, disagree entirely
21 with what's being said here, this is racist talk,
22 unacceptable in our society, but he incorporated it in
23 order to address it.

24 MR. VIGNA: There might be a case
25 there that maybe might have to be explored further in

1 terms of attracting liability, obviously. For example,
2 if the media talks about some incident and quotes
3 somebody, it doesn't mean that they're endorsing it.
4 In the same logic, I would suspect --

5 THE CHAIRPERSON: That's a similar
6 kind of logic. When you read letters to the editor in
7 the newspaper, they will often put the headline and the
8 date of the original article because they don't have
9 enough space, but when you read that sometimes you say,
10 gee, I wish the newspaper had enough space to put what
11 the original editorial was because I would like to be
12 able to compare the letter to the editor with what was
13 originally said and see what they're dealing with.

14 The Internet, which has this greater
15 flexibility, enables a person to take that original
16 opinion, put it up and then address what is in that
17 opinion immediately, right thereafter. That is what is
18 going on here.

19 By doing that, you automatically
20 engage your own liability?

21 MR. VIGNA: I think liability is
22 engaged primarily because of the endorsement and the
23 promotion of the same idea. That is, I think, what is
24 important is to look at the factual situation, not the
25 operation of quoting and posting, but what exactly is

1 taking place.

2 There is a quote and there is an
3 endorsement which the person actually puts themselves
4 in the same shoes as the quoter.

5 THE CHAIRPERSON: I understand, but
6 it's difficult. I see a difficulty there.

7 This one here says "Cheers to both
8 posts." So, I wholeheartedly endorse what you've said.
9 How about if it said, you make some good points, but.
10 I know what you're saying.

11 MR. VIGNA: There could be a case in
12 the future, Mr. Chair, that on factual evidence might
13 need to be further explored if it's not to the same
14 extent as what's in here.

15 But if you look at this post itself,
16 if you look at the entire evidence, I think there is
17 ample evidence to say that the person doesn't distance
18 themselves from the quote. On the contrary, they
19 associate themselves to the quote and promote it even
20 further.

21 Just the sentence, "I believe that
22 Jews are the literal spawn of Satan himself," you take
23 that, and then you take the quote, it goes on in the
24 same context.

25 I understand your point, Mr. Chair.

1 THE CHAIRPERSON: I understand yours.
2 You're focusing on the two sentences, but there may be
3 other points along the way, is what I'm saying, and it
4 certainly wasn't the evidence of Mr. Warman that he
5 felt that the incorporation, using the Quote button,
6 enhanced the liability of the respondent, contributed
7 to their liability.

8 MR. VIGNA: I don't want to discuss
9 about every individual exhibit, but the point I want to
10 make primarily is that even if there's one or two
11 exhibits that don't attract liability, if you look at
12 the entire, I don't know how many exhibits we have had
13 here, in the forties or something like that, but the
14 great, great majority would attract liability.

15 THE CHAIRPERSON: That is a question
16 I would like you to address at some point. You may not
17 want to address it now, but given the nature of this
18 discussion, given that there are situations where some
19 of the material that has been shown to me through the
20 course of the hearing is copied in in the manner I have
21 just indicated or may perhaps be argued that it is an
22 expression of an opinion that may or may not expose a
23 person to hatred and other material perhaps may, as you
24 will submit, what effect that may have. If it's not
25 100 per cent of these 20-odd tabs that meet all the

1 criterion set out or fall under one of these hallmarks
2 that you point out in Kouba, what is the effect on the
3 overall remedy being sought, for instance, or on the
4 case, if only a handful, if only five of the 25 fall
5 into the hallmarks? What bearing does that have?

6 MR. VIGNA: What I would say is
7 basically this. First of all, you have to look at the
8 entire evidence. If you look at the entire evidence
9 you will find liability. The first decision you will
10 have to make is the issue of liability.

11 Then I guess in terms of the second
12 question is the issue of the penalty, which you will
13 have to address, is to look at the nature, the extent,
14 the frequency, and maybe at that level you can consider
15 more the issue if it's 100 per cent or 95 per cent or
16 80 per cent. But at least minimally on the issue of
17 liability, if you look at the entire evidence, I
18 respectfully submit that section 13 is violated.

19 Then, secondly, just a point that I
20 want to clarify, some exhibits are for purposes of
21 identity --

22 THE CHAIRPERSON: I'm aware, like the
23 one you skipped over earlier.

24 MR. VIGNA: Yes. So that's another
25 thing I wanted to highlight.

1 Another thing I would like to say,
2 and I will go maybe even further in this case, I will
3 put forth the proposition also, Mr. Chair, that even if
4 there was only one posting or let's say two postings,
5 but even one posting, and I understand you will say
6 that there is the issue of repeatedly if it's only one,
7 but I will say it to you on that issue is that the
8 Internet itself makes it repeated.

9 If the one posting is outrageous and
10 calls for killings of people or whatever that is
11 contrary to the basic objectives of sections 2, 3 and
12 13, I think even in that case you could find liability,
13 even one single posting, and the repeatedly aspect is
14 the Internet itself because many people can go to it.

15 I don't think the number is
16 necessarily the criteria for liability at the minimum.
17 Then if you want to look at the issue of the penalty,
18 maybe you could consider the nature, the extent, the
19 frequency and all that. That is what I have to say on
20 that point, Mr. Chair.

21 THE CHAIRPERSON: Okay.

22 MR. VIGNA: Tab 8, page 3.

23 THE CHAIRPERSON: Yes.

24 MR. VIGNA: There again you have a
25 quote, but there again I will say what is below the

1 quote:

2 "I understand why no-one
3 believes them."

4 And there is, I believe, reference to
5 it's Jewish people because if you look at the headline
6 and if you look at the previous tabs, I don't want to
7 go into them one by one, but they're talking about
8 Jewish people basically.

9 THE CHAIRPERSON: I remember it was
10 the article that referred to the staging of a hate
11 crime by Jewish people.

12 MR. VIGNA: "I understand why no-one
13 believes them."

14 So, "them" would be Jewish people.

15 "I wouldn't either after
16 learning this. But see, if this
17 was racial hatred; I don't
18 understand why someone would
19 attack helpless dogs opposed to
20 going after those dirty jewish
21 animals directly."

22 So, there at the very minimum and
23 when I look at the criteria in Kouba, at the very, very
24 minimum, there is the one that is at the last one
25 there, I forgot the letter, (i).

1 There is also the fact 62, which is
2 dehumanizes them and (i) inflammatory and 76, calls to
3 take violent action against the targeted group, where
4 it says helpless dogs as opposed to going after those
5 dirty Jewish animals directly, going after.

6 Before I was giving you an example of
7 perhaps just one posting could attract liability. I
8 respectfully submit to you that this could be one
9 example.

10 Also, this one is particular because
11 the importance of this one is in relation to the claim
12 by Mr. Warman. Sorry, I want to reread it because I
13 don't want to make a mistake here.

14 Forget what I just said, Mr. Chair.
15 I was thinking of something else.

16 Tab 19.

17 THE CHAIRPERSON: We have a 19A and
18 19B.

19 MR. VIGNA: Yes.

20 THE CHAIRPERSON: Which one is it?
21 We never did the inventory. Is there anything that
22 needs to be removed in the binder?

23 REGISTRY OFFICER: Yes. There are
24 about seven tabs.

25 THE CHAIRPERSON: We will proceed

1 now. I don't want to interrupt submissions, but if Mr.
2 Vigna, by some error, refers to a tab that has not been
3 entered into evidence, please inform us.

4 REGISTRY OFFICER: I can advise Mr.
5 Vigna right now of the tabs that need to be removed.

6 REGISTRY OFFICER: We never did the
7 inventory of which tabs have not been produced. They
8 are supposed to be removed and we have not done that
9 yet. I don't want to interrupt you, but you can't
10 address tabs that have not been introduced in evidence.
11 I don't want to interrupt you now in your arguments.

12 We can put it aside for now and do it later, but if by
13 error you end up referring to something that has not
14 been introduced, Ms Hartung will inform us immediately.

15 MR. VIGNA: If by any chance that's
16 the case, when you go and do your --

17 THE CHAIRPERSON: They will be
18 removed from my binder by the end of the day.

19 MR. VIGNA: By mistake if I overlook
20 something --

21 THE CHAIRPERSON: Everything that has
22 been referred to up to now is okay. Go on, you said
23 19A or B?

24 MR. VIGNA: I am trying to locate it
25 myself now. I think it's B.

1 THE CHAIRPERSON: It's the one that
2 begins "Gangs and Double Standards?"

3 MR. VIGNA: Yes. There's a quote at
4 page 2, and then it goes to the bottom of the quote:

5 "...I do believe that your point
6 probably had to go along with
7 the fact that we were a 'gang'
8 of nazis, but if we were
9 nigs..."

10 The word nigs,

11 "...then we'd just be 'blacks
12 hanging out and eating'. I
13 didn't even notice those fags
14 until they came out of their
15 house. Lol"

16 Laugh out loud.

17 "Can't really remember seeing
18 them inside the humptys.
19 We know that we're good people,
20 it just seems that no one else
21 knows it."

22 There at the very minimum what
23 attracts the hallmarks is (i), which exposes to
24 contempt the word "nigs" and also the words "blacks
25 hanging out and eating."

1 THE CHAIRPERSON: Blacks hanging out
2 and eating, you're saying --

3 MR. VIGNA: In context, the way
4 they're portraying it, it seems to say that -- maybe
5 blacks hanging out and eating in isolation might not
6 have the same impact but for sure nigs, and if you look
7 at (i) under paragraph 67, the epithet nig is one of
8 them, and then the use of the word "fags," and the
9 general message being portrayed there it cannot be
10 ignored.

11 THE CHAIRPERSON: The general message
12 being?

13 MR. VIGNA: The general message being
14 that basically they're saying that there is
15 differential treatment which is preferable to black
16 people, whereas the white people are --

17 THE CHAIRPERSON: How does that
18 expose people to hatred or contempt? If it's an
19 observation that a person is making, it may be well
20 founded or not, but if it's a person's point of view
21 that certain groups are being treated differently than
22 others, how does that expose them to hatred or
23 contempt? I see your argument on the use of certain
24 words here. It's reflected in these hallmarks, but
25 just the point of view that these people are of a

1 certain political belief, as the witness said, the
2 references to Nazi, Nazi is a word that we all know,
3 but in her evidence I heard the term national
4 socialist, it was a political movement. It had of
5 course some impact in history, you brought that up in
6 your questioning.

7 But nonetheless she's saying we're
8 being singled out. How is that putting other people in
9 contempt?

10 MR. VIGNA: The title says "Gangs and
11 Double Standards."

12 THE CHAIRPERSON: Right.

13 MR. VIGNA: And then there's the
14 quote. Basically the image that is being portrayed
15 there is that --

16 THE CHAIRPERSON: What I am trying to
17 do is figure the impact of these statements, Mr. Vigna.
18 There are some words that stick out. I know what
19 you're going to, but I think the impact is going to be
20 important in this case because it's not perhaps as
21 evident as in other files that you refer to and maybe
22 the material that was referenced in here.

23 If instead of Nazis it said we are a
24 gang of Hispanics in multicultural Toronto and we're
25 always being picked on, whereas the gang of Irish are

1 not being picked on, does that expose the Irish to
2 contempt for saying that?

3 MR. VIGNA: What I'm saying is this.
4 The principles that the Canadian Human Rights Act is
5 aimed to promote is equality, multiculturalism,
6 tolerance. When you take the posting, when you take
7 the entire evidence, when you take the message that is
8 being portrayed, I respectfully submit to you, Mr.
9 Chair, that it's not respecting those basic fundamental
10 principles that are in the Canadian Human Rights Act.

11 THE CHAIRPERSON: I think the example
12 I just gave you is also not respecting the principles
13 of harmony, but yet we would look at it differently
14 because it was Hispanics saying something about the
15 Irish. You and I are both from Montreal. If it was a
16 Haitian group saying that the Haitians were being
17 singled out over the Jamaicans, we wouldn't draw the
18 same analogy, would we?

19 MR. VIGNA: I'm not sure I want to
20 pronounce myself on that. I am a little bit sensitive
21 to those kind of issues, but I understand your point.
22 That's on a legal matter that we have to decide.

23 THE CHAIRPERSON: I know the basic
24 principle is harmony, but it comes down to section --

25 MR. VIGNA: Let's look at the quote

1 at tab 2. I think what's important above all is to
2 look at the facts in the evidence.

3 "These people we ran into
4 flyering after leaving the
5 humpty's last night said to us,
6 they were white...they said, 'we
7 felt uncomfortable in there so
8 we had to leave' I asked them
9 if a blood or crypt walked in
10 wearing baggy clothes and
11 bandans and big gold chains,
12 sporting fubu...would you all be
13 scared and leave them? They
14 said no. Apparently we are more
15 threatening than gangbangers, so
16 me and my crew wear braces and
17 laces, and boots and flight
18 jackets with swastikas on them,
19 what's wrong with this? Shaved
20 heads and jeans with wp tattoos,
21 what's wrong with this?"

22 THE CHAIRPERSON: WP tattoos which I
23 gather means white power tattoos.

24 MR. VIGNA: Yes.

25 "I just don't understand.

StenoTran

1 Imao...."

2 I don't know what that means.

3 "I did have a point or story or
4 something, I forgot now...its
5 late."

6 That's the response of the
7 respondent:

8 "umm, I do believe that your
9 point probably had to go along
10 with the fact that we were a
11 'gang' of nazis, but if we were
12 nigs, then we'd just be 'blacks
13 hanging out and eating' I
14 didn't even notice those fags
15 until they came out of their
16 house. Can't really remember
17 seeing them inside the humptys."

18 If you look at the general message
19 and at the very minimum, Mr. Chair, when you call
20 people fags or nigs --

21 THE CHAIRPERSON: I know that one. I
22 understand that point.

23 MR. VIGNA: At the same time, I think
24 that we can't total make abstraction of the general
25 message when those words are used in conjunction.

1 There has to be maybe nuances in cases, but we have to
2 look at also the overall evidence.

3 THE CHAIRPERSON: Perhaps. You used
4 the word "nuances" and I think it's significant here.
5 Go on.

6 MR. VIGNA: Tab 20.

7 "When I moved to Calgary in 1997
8 there were hardly any blacks at
9 all..."

10 THE CHAIRPERSON: Tab 20, but what
11 page, I'm sorry?

12 MR. VIGNA: Page 1.

13 "When I moved to Calgary in 1997
14 there were hardly any blacks at
15 all, but now its getting worse,
16 they are popping out of the
17 woodwork...maybe not as bad as
18 [Toronto]."

19 THE CHAIRPERSON: You're reading
20 something from cryptonite.

21 MR. VIGNA: You're right. Yes, page
22 3, that was the precursor. This one I think, Mr.
23 Chair, and you will have to refer to the testimony of
24 the accused to be more specific and the admissions. I
25 think this is the one that she says she didn't recall,

1 the one I'm going to recite.

2 THE CHAIRPERSON: I have a note to
3 that effect. She is not an accused. She's a
4 respondent.

5 MR. VIGNA: I made a wrong choice of
6 words. She's a respondent in a civil proceeding for
7 sure.

8 "It could get worse, lets just
9 cross our fingers and hope they
10 all die off from AIDS."

11 So, that comment has to be taken
12 obviously in context with the rest of the discussion in
13 the group.

14 THE CHAIRPERSON: The topic appears
15 to be "Blacks in Western Canada."

16 MR. VIGNA: Yes. What I was saying
17 earlier about the entirety of the evidence, perhaps if
18 you look only at the other posting you will say, well,
19 this one is not as bad as this one, but what I will
20 say, Mr. Chair, is you can't take them in isolation.
21 There is a whole series of postings basically on the
22 same themes.

23 This one is particularly important
24 and, curiously enough, this is the only one she doesn't
25 seem to recall. I made my comments on the issue of the

1 credibility in terms of distancing yourself from this
2 quote in particular. This one goes as far as saying
3 they should all die off from AIDS. If that is not
4 something that is highly inflammatory or derogatory, I
5 don't know what is, Mr. Chair, in terms of all the
6 other hallmarks. I won't go through them one by one,
7 but I would say that they attract pretty much a great
8 number of them. This one is very important.

9 It's kind of curious that the one
10 that is the most grave in content is the one that she
11 doesn't seem to recall and doesn't provide, I
12 respectfully submit, a credible and plausible
13 explanation.

14 MS BEAUMONT: I'm sorry, there's more
15 than one that I don't recall and if we had this list
16 that I did send, it would say on there which ones I
17 don't recall.

18 THE CHAIRPERSON: We have the list.
19 It's in evidence. It's one person at a time, though.

20 MS BEAUMONT: I know, but I just
21 wanted to --

22 THE CHAIRPERSON: I know exactly
23 which ones you don't recall. Certainly there was a
24 document that came to the Tribunal's file. Do you have
25 it in your tab? It was the last tab, wasn't it?

1 MR. VIGNA: It's one of the last
2 tabs. I'm not going to dispute what the respondent
3 said. There is more than one she doesn't recall, she
4 said that in her admissions maybe, but this one struck
5 me the most when I questioned her.

6 THE CHAIRPERSON: For the purposes of
7 this discussion, I will bring it to everyone's
8 attention. It's tab 34. I highlighted which ones were
9 not remembered. I see two that were not recalled. The
10 first one is "It could get worse," it's the one you
11 just read before. That was not recalled.

12 The second one that was not recalled
13 was "I told my sister already that I would kill him and
14 beat her up, she knows I would too."

15 Those are the two that were not
16 recalled. Okay, Ms Beaumont?

17 MS BEAUMONT: Yes.

18 THE CHAIRPERSON: It's tab 34.

19 MR. VIGNA: I don't dispute the
20 admissions. What I dispute is the credibility of the
21 --

22 THE CHAIRPERSON: I understand. It's
23 a finer point. You said it's the only. It's one of
24 the few. That would be more appropriate to say.

25 MR. VIGNA: I totally agree. The

1 point I want to make is that this posting in particular
2 is highly -- when I was giving an example earlier,
3 perhaps even one posting could be attracting liability,
4 I would respectfully submit this one would be coming
5 pretty close to that.

6 Though it's not the only one she
7 doesn't recall, curiously it's one of those that she
8 doesn't recall. When I asked her specifically the
9 question on this one in particular, she said she didn't
10 recall but she didn't provide I would respectfully
11 submit a credible, plausible explanation.

12 Tab 20B, page 2. This one I think is
13 the one you just read --

14 THE CHAIRPERSON: That's the one I
15 just read. It's one that she does not recall.

16 MR. VIGNA: I won't repeat myself,
17 but on the issue of credibility you have to assess
18 that.

19 Here again I refer to the hallmarks
20 in paragraphs (f), no redeeming qualities; (i),
21 inflammatory and derogatory language; and (k), calls to
22 take violent action against a targeted group. Where it
23 says, "I told my sister already that I would kill him
24 and then beat her up, she knows I would too," and I
25 think there's a reference to interracial marriages or

1 relationships.

2 Tab 20D, page 1, I will always focus
3 to the main point. I won't go through the whole --

4 THE CHAIRPERSON: Right, tab 20, page
5 1 did not have an entry from the respondent. Tab 23
6 you said?

7 MR. VIGNA: Tab 20D. I'm sorry, Mr.
8 Chairman, I'm a little tired. Tab 20D.

9 THE CHAIRPERSON: I heard 23, I'm
10 sorry. Yes, tab 20D.

11 MR. VIGNA: Page 1, I won't read the
12 whole tab, but the key word is "nigger." I will refer
13 to the hallmark which is at the last one, (i)
14 inflammatory and derogatory language.

15 Then at page 5 I believe of the same
16 tab -- the next one should be 21 instead of 20, page 5.

17 THE CHAIRPERSON: I am following you
18 rather than your list. Tab 21, yes.

19 MR. VIGNA: Tab 21, if you can
20 correct it on my outline.

21 THE CHAIRPERSON: I have it. Go on.

22 MR. VIGNA: Page 5, I will go to the
23 key phrase and you will later on read the entirety.

24 "We believe that Christianity
25 has, like, kept black people

1 down and sort of told them that
2 God is white and that they are
3 inferior."

4 It's put in bold and black. That
5 attracts mainly, but not exclusively, the one of
6 derogatory and inflammatory which is at (i), but also
7 the other hallmarks which are in paragraphs 52, which
8 is no redeeming qualities for the group; the idea of
9 segregation, banishment; I said it already about
10 inflammatory and derogatory language; and as far as
11 calls to violate action against a targeted group, maybe
12 it is not as obvious, but the other ones more than that
13 one.

14 Tab 22A --

15 MR. FROMM: For the sake of accuracy
16 there, the material that is bolded is part of a
17 quotation from some place else. These aren't Ms
18 Beaumont's words.

19 THE CHAIRPERSON: You anticipated me.
20 I was about to say that right now, Mr. Fromm. I was
21 about to point that out to Mr. Vigna. Did you notice
22 that, Mr. Vigna, because I saw the closed quotation at
23 the end of the word "worship," so I want back to the
24 previous page and there were open quotations there.
25 So, she is citing something.

1 Now, it doesn't appear as a quote of
2 the type that we had discussed earlier where you press
3 the button and the quotation appears. We have noticed
4 that that usually comes up inside of a scare or
5 rectangle. That is not the case here. This may have
6 been a cut and paste.

7 MR. VIGNA: I understand your point
8 because it is not the same visual representation as the
9 other quote. I see the quotation marks.

10 THE CHAIRPERSON: I could envisage
11 the possibility that this could have been typed up this
12 way or that it was cut and paste into the text perhaps.

13 MR. VIGNA: In any event, Mr. Chair,
14 other than the actual operation involved, there is at
15 least a positive effort or gesture made to identify and
16 to promote the words that are there with the moniker
17 Jessy Destruction. Then later on, after the quote it
18 says:

19 "Thats about the little nignog's
20 religion. This site is
21 disgusting, it really worrrys me
22 even more so about what my
23 sisters are being forcefed in
24 school."

25 Then there's the reference to the

1 bible. You will say it's in the quote, but once again
2 I will say that it's still a positive gesture that is
3 undertaken by Jessy Destruction, now known to be the
4 respondent, to identify herself to that quote and to
5 adhere to it.

6 Tab 22A, at page 2, it says:

7 "which is why my profile says
8 'full-time n-a-z-i' theres ways
9 of getting around this BS."

10 When you take that posting, there is
11 also the testimony of the respondent when she was asked
12 about it, and there were questions asked in another tab
13 about --

14 THE CHAIRPERSON: Is this about
15 identity though or is it a section 13 violation you're
16 alleging?

17 MR. VIGNA: I would say both, Mr.
18 Chair. There's also the reference to Nazi.

19 THE CHAIRPERSON: But does being a
20 Nazi necessarily expose someone to hatred or contempt?
21 We have to always focus on section 13 and that's what
22 we're talking about.

23 If I follow your document, this is
24 what you said was the issue that you were going to
25 address. If someone says I'm a Nazi, does that expose

1 someone else to hatred or contempt?

2 MR. VIGNA: In this case, what we
3 have to realize is that there is also another quote, I
4 think it's later on, about Hitler, Nazi, what we know
5 from history about the holocaust, the testimony of the
6 complainant about saying that she doesn't believe there
7 was --

8 THE CHAIRPERSON: That's what she
9 testified here, but it was public in the sense it was
10 said in front of us, but that wasn't an Internet
11 citation, unless I incorporate it into my decision, in
12 which case it will go on the web.

13 MR. VIGNA: When you look at the
14 exhibits and what's said in the exhibits and the
15 explanation given to you by the complainant, you cannot
16 rely in terms of what she intended to say, which is one
17 what it says literally and also what she confirms to
18 you in her testimony that she basically denies the
19 Holocaust.

20 But I won't expand on 22A. I will
21 move on.

22 THE CHAIRPERSON: None of that
23 appears in this document. All it says is that she's a
24 full-time Nazi. In my opinion, in speaking of context
25 it was because the previous individual said putting the

1 four letters together was being blocked by MSN. So
2 notwithstanding her testimony, I think it seems quite
3 clear she was trying to address the ability to put
4 those four letters in. She put hyphens in and it
5 wouldn't get caught by MSN.

6 MR. VIGNA: I won't isolate this
7 posting. I am just saying that this posting in
8 relation to the previous postings, if you look at page
9 1 there's a mention of Adolf Hitler, at page 1 of the
10 same posting, tab 22A.

11 THE CHAIRPERSON: Mr. Vigna, you can
12 move on. It is quite clear to me, although
13 Der-Totenkopf uses language that appears different than
14 what I've just been talking about, in my view, when you
15 look at the answer --

16 MR. VIGNA: In any event, I'm not
17 going to expand on that, but I will simply say that the
18 postings prior to it, the other postings have to be
19 taken into account in looking at the entirety of the
20 evidence.

21 22C, page 1, if you look at the
22 posting by Jessy Destruction and you read the entire
23 posting, at first sight you might say it's a question
24 of identity and visibility, but if you go later on it
25 says:

1 "...then stay out of my effing
2 country!"

3 And there's reference to the title
4 being "Let Muslim women keep hijabs on."

5 That, I would respectfully submit to
6 you, is language which is inflammatory and derogatory
7 when it says "stay out of my effing country" and
8 referring to people of the Muslim faith.

9 It also attracts the hallmark which
10 is in (b), where we are referring to true stories,
11 which is the issue of identification and all that, and
12 trying to make a link to that. There's the hallmark of
13 --

14 THE CHAIRPERSON: All right.

15 MR. VIGNA: (d).

16 THE CHAIRPERSON: This is an ongoing
17 debate that is going on in our society, is it not?
18 This is the argument that they're going to say on this,
19 that there's a debate right now; this very debate and
20 the issue is going on in France. This whole issue
21 became the object of -- the attorney publique issued a
22 report on this. I don't know if you recall this, which
23 was endorsed by the President of France on the wearing
24 of the hijab or other religious artifacts in schools.

25 The word "effing" suddenly elevates

1 it to a different level?

2 MR. VIGNA: Mr. Chair, I think that
3 even in a debate where you're saying it's a political
4 debate that can be accepted in a free and democratic
5 society, I think there's always a certain level of
6 respect, a certain level of presenting your point of
7 view.

8 When you present it in the terms that
9 are presented here, and not only in this posting, but I
10 repeat it and it's very important that this not be
11 taken into isolation, every single posting, "then stay
12 out of my effing country," you are obviously targeting
13 people of the Muslim faith.

14 MR. FROMM: For the sake of accuracy,
15 fucking refers to country, not to hijabs or Muslims.

16 THE CHAIRPERSON: Yes. That was my
17 question. The "effing" is to the country. It's angry
18 language. When one uses the adjective, one often uses
19 that in an angry kind of context. You can be talking
20 about my seat on the bus or my effing floor.

21 MR. VIGNA: It's angry language, but,
22 Mr. Chair, what it's saying in this posting, there's a
23 message that's saying people of Muslim faith, I want
24 you segregated out of my country because you want to
25 have different rules in terms of what you need to have

1 for ID and all that and we don't want you in Canada.
2 If it's not said in the words I just said, that's the
3 message, I think that I can say with a certain
4 assurance say it says in terms of the message it
5 portrays.

6 That, once again, does not accord
7 with the principles of the Canadian Human Rights Act.

8 THE CHAIRPERSON: Perhaps. But
9 section 13 says exposure to hatred or contempt. Will
10 it expose Muslims to hatred or contempt that this
11 person is saying that since identity requires that a
12 full image be portrayed and certain groups are ordered
13 to do so and others are not, that that's a
14 discrimination that's going on, not in the direction
15 that one typically considers.

16 So, this person is saying the policy
17 should be one policy for all. If you don't like it,
18 don't come into my country. Yes, it's strong
19 inflammatory. Does it expose Muslims to hatred or
20 contempt for this?

21 MR. VIGNA: I think it has to be
22 taken into context of the entire evidence, the choice
23 of language, the exclamation mark, and the tone.

24 THE CHAIRPERSON: I understand your
25 submission. The question that I have put on these

1 points is, yes, take it into context, but look at the
2 flip side of that and that is: Should only parts of
3 all the evidence be looked at because if this
4 individual part is not one that fits into that puzzle
5 that you're trying to put together, maybe it should not
6 be considered by the Tribunal. This is when it comes
7 to the issues of remedy we talked about earlier.

8 MR. VIGNA: I'm saying if there would
9 be a complaint on section 13 based on one single
10 posting, maybe it's not sufficient. But this is not
11 the case here, Mr. Chairman.

12 In that context we have to take it
13 into account. If we start dissecting every single one
14 and then we say we can't take this one into account and
15 this one, we're not looking at the global picture and
16 we need to absolutely look at the global picture.

17 THE CHAIRPERSON: I understand your
18 submission that it's a puzzle that has many pieces to
19 it. I'm just wondering if this is a real piece. But
20 go on.

21 MR. VIGNA: Tab 22D, page 4, where it
22 says:

23 "Just think, all the mindless
24 pawns of the juden who believe
25 in race-mixing and all that

1 such, will be screwed over in
2 the end."

3 This one applies to the criteria of
4 mostly (i), inflammatory language. This again has to
5 be taken in context with the entire evidence.

6 22E:

7 "Ever seen a tar black negroid
8 and a chink? That's a pretty
9 sick/funny sight."

10 There again the language
11 negroid/chink and criteria (i) of the Kouba decision
12 about inflammatory and derogatory language I think fits
13 in with this kind of a statement.

14 24B, page 1, it says:

15 "Probably that 'it's okay to be
16 friends with other races' type
17 crap.

18 As well, I'm now curious, what
19 are the other things we've
20 accomplished (that makes
21 immigrants seem like a walk in
22 the park)?"

23 Then again it has to be taken into
24 context with the other evidence.

25 THE CHAIRPERSON: I'm not quite sure

1 I even understand the statement. Do we have the
2 previous thread? I don't have what preceded this. So
3 Jessy Destruction said, "probably that 'it's okay to be
4 friends with other races' type crap." This person is
5 saying they disagree with it's okay to be friends with
6 other races.

7 "...what are the other things
8 we've accomplished (that makes
9 immigrants seem like a walk in
10 the park)?"

11 MR. VIGNA: I will admit it's perhaps
12 not the most --

13 THE CHAIRPERSON: I don't understand
14 what it says.

15 MR. VIGNA: I will move on on that
16 one because it's not all that clear. It doesn't seem
17 to be positive but I can't say it's all that clear
18 either.

19 24C, page 2, there's a quote before
20 that, there's a discussion about NS, national
21 socialists befriending non-whites, and it says:

22 "I just don't feel the need to
23 be-friend non-whites, as they
24 can do nothing for me, nor would
25 I like to associate with them.

1 I am fine with my own kind, and
2 always will/have been. There's
3 my f*cking answer. Good enough?
4 If not, PM me, well debate this
5 some more."

6 There again it has to be taken into
7 context, but in terms of the criteria of Kouba, there
8 is (g), which is banishment, segregation and --

9 THE CHAIRPERSON: This person is
10 saying that they do not like to associate with people.
11 Yes, it's self-segregation; I don't like hanging out
12 with those people.

13 The examples that are cited in Kouba
14 under (g) are statements like these savages don't learn
15 anything unless it's being a savage beast that should
16 not be amongst civilized people. They should not be
17 restricted to reserves; they should be confined to
18 zoos. That is the kind of language that is given as
19 examples under (g).

20 Here this person is simply saying I
21 don't like to associate with those kind of people;
22 that's my point of view. I know you're going to tell
23 me it's context. It's so much context.

24 MR. VIGNA: I can't tell you more
25 than that.

1 THE CHAIRPERSON: Look at the quote.
2 The quote is interesting because the quote before that
3 is in keeping with the principles that are espoused in
4 section 2 of the Act.

5 "I know several [national
6 socialist] individuals who have
7 non-white friends. They are
8 friends because they mutually
9 benefit from the relationship.
10 Would you like to explain what's
11 so bad about that?"

12 At the end of the message there's an
13 invitation from Jessy saying if not, private message me
14 and we'll debate the issue some more.

15 MR. VIGNA: I understand your point,
16 Mr. Chair, that if that posting in itself was the only
17 one, it's not sufficient, but I'm not going to expand
18 on this posting.

19 THE CHAIRPERSON: I understand, taken
20 into context.

21 MR. VIGNA: Yes. Here I will give
22 you a better example, then. D, it's the same tab but
23 it's D.

24 THE CHAIRPERSON: That will be 24D.

25 MR. VIGNA: "Welcome, I am living in

1 Calgary... until Sunday. But
2 you can always [private message]
3 me, or other Calgarians. It's a
4 nice city, if you get past all
5 the ARA threats (which are just
6 that... empty threats) and homo
7 loving retards."

8 That's the key phrase,

9 "And, if you can, stay the f*ck
10 away from the North East and
11 North West, filled with
12 non-whites, best place is good
13 old south, still white."

14 I can't consider that this would not
15 attract liability and that it would be innocent and
16 there would be political discourse. This is highly
17 inflammatory. It attracts the hallmarks which are
18 mentioned in (i), highly inflammatory and derogatory
19 language and also the issue of segregation where it
20 says stay out of the northeast and northwest, filled
21 with non-whites.

22 Even the fact that we're calling
23 homosexuals homo loving retards or people that frequent
24 homosexual, they're loving retards.

25 THE CHAIRPERSON: In your questioning

1 yesterday there seemed to be some misunderstanding. I,
2 hearing that statement, see someone referring to
3 individuals who are "homo loving," meaning people who
4 accept homosexuals and she is referring to those people
5 as being retards.

6 MR. VIGNA: That's it.

7 THE CHAIRPERSON: It's not
8 necessarily clear whether this is an actual reference
9 to someone who is mentally deficient or in the more
10 colloquial sense of the term. It's a word that one
11 hears in a school yard. Anybody can be called by that
12 term. It's a derogatory term, but it's not necessarily
13 referring to people who are mentally handicapped.

14 I think it's simply saying that these
15 derogatory people who love homosexuals in the sense
16 that they're accepting of homosexuals.

17 I am not saying necessarily that that
18 doesn't attract attention under the Act. I understand
19 your submission, but let's be clear on how this reads
20 in English.

21 MR. VIGNA: I totally agree with you.
22 Perhaps the way I questioned was not as clear as it
23 reads in English.

24 THE CHAIRPERSON: One is not
25 describing the other. It's a sequence.

1 MR. VIGNA: If I look at this
2 statement, I think it's more saying that people who
3 accept homosexuals or don't reject them are --

4 THE CHAIRPERSON: They populate this
5 area and she doesn't like that they populate the area.

6 MR. VIGNA: Exactly. I believe that
7 kind of language put on the Internet attracts section
8 13 liability and promotes segregation and rejection of
9 people of a homosexual orientation.

10 And also the non-whites that are
11 mentioned, which also furthers the issue of segregation
12 and contrary to the Canadian Human Rights Act.

13 THE CHAIRPERSON: My questioning may
14 have delayed your progress.

15 MR. VIGNA: It's okay.

16 THE CHAIRPERSON: Are we still okay?
17 Are we on time, Mr. Vigna?

18 MR. VIGNA: I won't be much longer,
19 Mr. Chairman.

20 THE CHAIRPERSON: How long do you
21 expect, Mr. Fromm?

22 MR. FROMM: Maybe you could ask Mr.
23 Vigna how long he expects.

24 MR. VIGNA: Ten minutes, less than
25 ten minutes.

1 MR. FROMM: Could I propose, then,
2 maybe a 20-minute break to make it to Tim Horton's.

3 THE CHAIRPERSON: And then we will go
4 all the way through?

5 MR. VIGNA: Starbucks is closer.

6 24H, Mr. Chair, page 2, I will be
7 brief. There is the use of the word "nigger" and then
8 again the derogatory criteria of the Kouba decision.

9 THE CHAIRPERSON: Which is (i).

10 MR. VIGNA: (i).

11 25A, there I won't expand on every
12 single one, but if you look at all the different
13 principles put together, I would respectfully submit to
14 you that it attracts a good number of the criterias in
15 the Kouba decision. It obviously gives sort of an
16 outline of what a society should be and it's not one
17 that would be in conformity with section 13, section 3,
18 section 2 of the Canadian Human Rights Act.

19 These are clearly principles that are
20 enunciated in this document that are not adhered to by
21 the core Canadian values and, therefore, I respectfully
22 submit to you that it attracts section 13 liability.

23 Tab 26, page 5:

24 "I was proud before, to say that
25 [Alberta] was one of the only

1 provinces to not allow Same sex
2 'marriage'..."
3 Until there you could say that it's a political debate.

4 But then it says:

5 "...but now it's all the same
6 AIDS peddling sh*t."

7 With the asterisks. That is clearly
8 derogatory, inflammatory and attracts liability based
9 on section 13 and the criteria I would mention is
10 particularly (i).

11 I think that it's important to
12 understand when you make the distinction between
13 political debate and not political debate, that when
14 such words are said it's all the same AIDS peddling
15 shit, that's when basically the line is crossed and we
16 are not any more in the arena of what is acceptable
17 political debate.

18 I understand, Mr. Chair, the
19 respondent will say it's part of the political debate
20 in the country and internationally, but when people are
21 dehumanized, degraded, humiliated, and the language
22 chosen, you cannot hide and say this is part of the
23 debate and it's acceptable. Debate is fine as long as
24 we don't cross the line. That's the point I'm making.

25 When statements like "it's all the

1 same AIDS peddling shit" put on the Internet for public
2 consumption, I think that the line has been crossed and
3 a violation has been made.

4 Tab 27, the same idea, page 2, Jessy
5 Destruction:

6 "I hope [Alberta] never lets
7 those..."

8 The topic is homosexual marriages in
9 Alberta. I guess at the time it was the province of
10 Alberta which was undergoing a judicial determination
11 on the issue.

12 "I hope [Alberta] never lets
13 those degenerates marry, it's
14 just vile!"

15 That's another example, Mr. Chair, of
16 when debate becomes no longer a debate, but it becomes
17 basically targeting certain groups based on their
18 characteristics and dehumanizing them, berating them,
19 humiliating them and subjecting to a sense of they are
20 no good and they should be considered degenerates.

21 That statement in itself, Mr. Chair,
22 for example, when you asked me this posting is not as
23 bad as maybe what we have seen in other cases, if you
24 look at this posting here and you look at the other
25 postings, they have to be read together.

1 When I was saying earlier that even
2 one posting could be sufficient, here's another
3 example.

4 I think it is not meaningless to
5 consider each posting and then putting them together as
6 a puzzle and looking at the choice of language and the
7 effect that that has on the protected groups in the
8 Canadian Human Rights Act.

9 On this issue I would refer to the
10 Bahr decision which is before you separately.

11 THE CHAIRPERSON: Bahr, you said?

12 MR. VIGNA: Yes. I just would refer
13 to paragraph 93 on this issue of entirety and
14 globality, paragraph 93, Member Lloyd agrees with
15 yourself in another case. It says:

16 "I agree with Member Hadjis'
17 analysis and find in this case
18 that the WCFU website was
19 similarly not benign in its
20 character. When viewed in its
21 entirety, the site is clearly
22 designed to provoke discussion
23 that is likely to be hateful
24 nature. There are links to
25 neo-Nazi and white supremacist

1 sites, Nazi memorabilia and
2 literature including the three
3 works in this decision."

4 Here, just the idea that the sites
5 and the messages have to be read in its entirety, which
6 is reflected in this principle in paragraph 93.

7 I will conclude on the issue of
8 remedies if the complaint is substantiated by simply
9 saying that the Commission and the complainant also is
10 seeking for a cease and desist order against the
11 respondent.

12 In terms of penalty --

13 THE CHAIRPERSON: What sort of cease
14 and desist order, cease and desist from what?

15 MR. VIGNA: From continuing to post
16 postings that violate section 13 of the Canadian Human
17 Rights Act, and any other remedy the Tribunal deems
18 appropriate based on the evidence that has been put
19 before you.

20 That the penalty in the range of
21 \$5,000 to \$7,500 would be justified.

22 THE CHAIRPERSON: We have heard
23 evidence about financial means of the respondent. What
24 do you have to say to that, in light of -- let's all be
25 clear on this -- in light of section 54 sub 1.1:

1 "In deciding whether to order
2 the person to pay the penalty,
3 the member or panel shall take
4 into account the following
5 factors.

6 (a) the nature and
7 circumstances, extent and
8 gravity of the discriminatory
9 practice, and;

10 (b) the wilfulness or intent of
11 the person who engaged in the
12 discriminatory practice;

13 (c) any prior discriminatory
14 practices that the person has
15 engaged in, and;

16 (d) the person's ability to pay
17 the penalty."

18 MR. VIGNA: On that issue, right
19 underneath my outline I highlighted some key paragraphs
20 in each decision that talks about it. In Kouba in
21 paragraph 140 it basically recites what you just
22 enunciated in 54, 1.1. Then there is the Bahr decision
23 in paragraph 102. I will talk about it later in terms
24 of the evidence, where they consider also the financial
25 circumstances. Then one of our decisions in Kulbashian

1 at paragraph 149 which is in the case book, and also in
2 Kyburz in paragraph 98.

3 But overall what I will say basically
4 is this. In terms of 1, the nature and circumstance
5 and extent and gravity of the discriminatory practice,
6 I will submit to you respectfully that, one, the
7 postings are fairly numerous, 1,023; two, that it took
8 place over a long period of time.

9 THE CHAIRPERSON: Hold on, back up.
10 The postings are numerous, but you have only brought to
11 my attention not 1,023.

12 MR. VIGNA: No.

13 THE CHAIRPERSON: I know Mr. Warman
14 asserted that these are just examples, but I don't have
15 those examples. They weren't even produced. What has
16 been produced is the tabs.

17 MR. VIGNA: Even if you take just the
18 tabs, I will say they are numerous but maybe they are
19 not 1,023.

20 THE CHAIRPERSON: She posted 1,023
21 times. For all I know she posted about the weather or
22 sports, for all I know. Go on.

23 MR. VIGNA: The nature of the website
24 Stormfront was described to you by the complainant.
25 The gravity of the comments, for example, the one I

1 just read about considering homosexuals degenerates and
2 vile. The wilful intent of the person who engages in a
3 discriminatory practice, I think that's fairly clear
4 from the postings and also from the testimony of the
5 respondent that is unrepentant and basically believes
6 that she has the right to say those things because it's
7 her political beliefs and relies on the Bible. In that
8 respect I refer to her testimony in-chief. She also
9 read the Bible and says that she prays.

10 THE CHAIRPERSON: Mindful of the
11 distinction. The statute does not prevent people from
12 believing these things. Right?

13 MR. VIGNA: Sure.

14 THE CHAIRPERSON: The statute says
15 that you cannot express your opinion or belief in a
16 manner that exposes persons to hatred or contempt.

17 MR. VIGNA: I totally agree.

18 THE CHAIRPERSON: That she believes
19 these because of her interpretation of the Bible and
20 her religious beliefs or whatever it else it might be,
21 that's okay. Right?

22 MR. VIGNA: I will give you a better
23 example. Maybe you have a point there. In
24 cross-examination, I asked her if she was concerned
25 about the effect that her statements would have on

1 other people. What she said, and I will refer you to
2 the actual transcripts, but from memory she said I
3 don't care. Whatever I say can offend people, but
4 basically I will still say what I have to say.

5 That in itself speaks volumes.

6 THE CHAIRPERSON: That resembles to a
7 large extent the definition of reckless?

8 MR. VIGNA: Yes. Then also from
9 memory, there's the tab where there's a discussion
10 about another case where the person got nine months in
11 jail, I don't know if it's Winnicki and she says, Nope,
12 I won't pay one cent to Mr. Warman and all that, which
13 basically shows that there's a disregard for
14 consequences of her actions.

15 Three, any prior discriminatory
16 practice that the person has engaged in. I won't
17 comment much on that one.

18 Four, the person's ability to pay the
19 penalty. On that we have heard the testimony of the
20 respondent that says that she works in the retail
21 industry at nine-something an hour. I don't remember
22 the cents. That she does, I believe, 34 hours a week
23 or something in that vicinity; that she has been
24 working since the month of September.

25 She says she has expenses but she

1 lives at home, from what I understand. So I guess
2 maybe it's a little bit less costly than renting an
3 apartment.

4 There is also the fact that there is
5 further financial information that should be upcoming.
6 So you will have to take that into account.

7 But I think what you have to do
8 basically is to balance out the gravity and the intent,
9 the financial means, the proportionality and
10 ultimately, since the legislation is remedial, impose a
11 penalty which will convey the message and at the same
12 time take into account the criterias which are in 54,
13 1.1.

14 Finally, in terms of the -- I won't
15 cite the Zundel case I mention there in terms of:

16 "A significant symbolic value in
17 the public denunciation of the
18 actions that are the subject of
19 this complaint. Similarly,
20 there is the potential educative
21 and ultimately larger
22 preventative benefit that can be
23 achieved by open discussion of
24 the principles of the Tribunal's
25 decision."

1 I mentioned that because I anticipate
2 Mr. Fromm saying that basically courts cannot regulate
3 human behaviour and that it would be pointless to have
4 a decision and all that. But I will say simply to that
5 that in the Zundel case the statement that I just read
6 basically makes the point that it's important to
7 denounce violations of basic Canadian core values which
8 are reflected in the Canadian Human Rights Act, and
9 that is what section 13 is all about.

10 In terms of the other point of
11 section 54(1)(b) which is personally identifying Mr.
12 Warman, I didn't refer to the tabs, but Mr. Warman did
13 so in the submissions he submitted to you, which I
14 provided to you, and I will expand more on the legal
15 aspect which was discussed at one point where an
16 objection was raised.

17 I understand from your ruling that
18 you did not, at least for the purposes of the objection
19 on the question, didn't adopt the reasoning in
20 Winnicki, I believe, Winnicki, tab 15 at pages 178-180.

21 THE CHAIRPERSON: Do you want me to
22 look at it?

23 MR. VIGNA: Yes, we can look at it.

24 THE CHAIRPERSON: Where is that?

25 MR. VIGNA: Tab 15. I will read it

1 because it is kind of important as guiding principles
2 in interpreting section of 54(1)(b). At 178 it says:

3 "In determining the appropriate
4 quantum for an award under s.
5 53(3)..."

6 Which is referred to in 54(1)(b),

7 "...the Tribunal's focus is on
8 the Respondent's conduct and not
9 on the effect that this conduct
10 has had on the Complainant."

11 Then it refers to the Milano case,
12 which is a human rights case; Woiden versus Lynn, which
13 is a case that you are familiar with; and Bressette
14 case.

15 "The effects of the conduct are
16 considered when remedies are
17 ordered under s. 53(2) of the
18 Act."

19 Then it says:

20 "Counsel for the Respondent
21 argued that the term
22 'compensation' must involve
23 compensation for a loss,
24 intangible though it might be.
25 Therefore, the extent to which

1 the Complainant suffered as a
2 result of the retaliatory action
3 must be relevant in determining
4 the quantum of an award for
5 compensation..."

6 But it says later:

7 "I disagree. In my view, the
8 wording of s. 53(3) clearly
9 indicates that compensation is
10 provided for the wilful and
11 reckless nature of the
12 Respondent's conduct."

13 On that point I think the evidence is
14 pretty ample.

15 "There is no indication in s.
16 53(3) that the victim's
17 suffering must be
18 established..."

19 Here I will simply say that the Act
20 says personally identified and it's key words that are
21 in the Act which distinguish it from the section
22 dealing with pain and suffering.

23 MR. FROMM: Sorry, what paragraph is
24 this?

25 THE CHAIRPERSON: 180.

1 MR. VIGNA: 180 of tab 15. 178 to
2 180. They refer to different sections of the Canadian
3 Human Rights Act.

4 "...that the victim's suffering
5 must be established in order to
6 make an award for compensation."

7 There is no indication that it must
8 be established. So the whole impact on the victim and
9 all that that usually takes place when we analyze for
10 an award for section 53(2)(e), which is pain and
11 suffering, does not take place in 53(3) and therefore
12 54(1)(b).

13 "Section 53(3) makes no
14 reference whatsoever to s.
15 53(2)."

16 And that's important.

17 "Thus, in my view, s. 53(3) is
18 aimed at providing compensation
19 for wilful and reckless
20 discriminatory conduct
21 regardless of its effects on the
22 complainant. The effects of the
23 respondent's conduct are
24 considered when remedies are
25 ordered under s. 53(2) of the

1 Act."

2 So I respectfully submit to you that
3 these three paragraphs are really key to the point in
4 deciding 54(1)(b), that the legislator does not speak
5 for no reason. If they made a distinction between
6 53(2)(e) and 54(1)(b) and 53(3), they did so for a
7 purpose. If the legislator added personally identified
8 as basically the criteria that needs to be met in order
9 for the award to be granted, the impact on the victim
10 is not what is aimed at.

11 THE CHAIRPERSON: I see the reading
12 that my colleague made on this, and I'm not saying that
13 I don't disagree for the purposes of this hearing. I
14 sensed that Mr. Fromm would like to make an argument
15 which I don't know it was presented in front of that
16 Tribunal with regard to, as you say, Parliament does
17 not speak without reason, and there is deliberate use
18 of the words "victim" and "compensation" in there.
19 Those words have implications. I think that is the
20 question to be considered.

21 You are saying that, yes, the words
22 "victim" and "compensation" are there, but so are the
23 other words which are naming of the person -- well,
24 your earlier submission, the naming of the person
25 triggers 53(3) and 53(3) focuses on the wilful or

1 reckless conduct of the discriminating party.

2 MR. VIGNA: Correct. I refer in
3 terms of the facts particularly from a visual
4 recollection, the photograph of the Church of Warman
5 Dead Society, whatever, and other. In terms of what
6 the legislation tries to aim at is basically to protect
7 maybe not specifically that specific aim, but one of
8 the aims I submit to you is that it tries to encourage
9 people to feel free to make complaints and not be
10 subjected to ridicule or being personally identified as
11 a result of making the complaint. It is made so that
12 reckless behaviour does not occur, that wilful
13 behaviour does not occur.

14 THE CHAIRPERSON: The question is if
15 the legislator wanted to do that, why didn't they write
16 there, as opposed to 53 and 54, why didn't they say the
17 person who files a complaint that is found to be
18 substantiated, if named, will be entitled to damages or
19 payment or even the word "compensation?" Why do they
20 choose to use the word "victim?" If they did choose to
21 use the word "victim," Parliament does not speak
22 without cause, you say, so what is the cause there?
23 Why use the word "victim?"

24 MR. VIGNA: The word "victim," Mr.
25 Chair, has to be read in conjunction with "specifically

1 identified." What I am submitting to you, and I don't
2 think there is any case law on this, is that victim
3 specifically designated as a phrase has to be read
4 together because when somebody specifically is
5 identified, he becomes by that simple fact a victim.
6 It is not the fact that he's a victim of the comments
7 himself, but the fact that he's specifically identified
8 is what makes him a victim.

9 I would respectfully submit to you,
10 Mr. Chair, that the word "victim" has to be read with
11 the rest of the section which is "specifically
12 identified in the communication," not in the sense that
13 it's read in 53(2), where 53(2)(e) relates more for
14 cases of discrimination that we would traditionally see
15 before the Human Rights Tribunal, not cases of hate
16 messages.

17 So there is a different reasoning
18 there that is adopted. The word "victim" in itself
19 should not be read in isolation and saying that the
20 victim means that the person has to have personally
21 proven that they have been affected psychologically, et
22 cetera.

23 Somebody that is specifically
24 identified by that very fact is a victim.

25 THE CHAIRPERSON: I see. So you're

1 saying the word "victim" used here is a victim of
2 specific identification in a communication?

3 MR. VIGNA: Exactly. I am saying,
4 for example --

5 THE CHAIRPERSON: In the context of
6 hate messages, the larger context of hate messages?

7 MR. VIGNA: Yes. I think it's
8 important that the purpose that is trying to be
9 achieved here by 54(1)(b) be considered and
10 distinguished from the purposes of 53(2)(e). Also we
11 have to remember that usually 53(2) is not in relation
12 to hate messages. It's in relation to remedies for
13 discriminatory actions that we have seen in numerous
14 cases before the Tribunal that do not involve section
15 13 violations.

16 54(1)(b) is specifically for section
17 13, the hate messages. Therefore, there's an important
18 distinction that needs to be made. By specifically
19 identifying an individual on a website and denigrating
20 him or putting him to ridicule attracts liability.

21 On that point, Mr. Warman's
22 submissions, which I adopt, elaborate a bit more.

23 THE CHAIRPERSON: Just backing you
24 up, it's victim specifically identified in the
25 communication that constituted the discriminatory

1 practice. So it has to be someone who is identified in
2 a communication that constitutes a discriminatory
3 practice. It has to be a communication that meets the
4 criteria of section 13.

5 MR. VIGNA: But the facts justify
6 that because, as I recall, and I'm going strictly from
7 memory here --

8 THE CHAIRPERSON: Going to the facts,
9 if it's anything like what Mr. Warman mentioned during
10 our little discussions because he said whether or not
11 he --

12 MR. VIGNA: They call him Jewish
13 whatever.

14 THE CHAIRPERSON: Yes, and he's not
15 Jewish, but it doesn't make a difference, which is the
16 authorities on the point.

17 MR. VIGNA: He testified --

18 THE CHAIRPERSON: Assuming that the
19 naming of Mr. Warman is in the context of
20 discriminatory communication, then he is a victim of
21 that discriminatory communication and that opens the
22 door to 54(1)(b) and following. That's your
23 submission?

24 MR. VIGNA: Yes.

25 THE CHAIRPERSON: I understand your

1 submission.

2 MR. VIGNA: The submissions of Mr.
3 Warman on page 5 of the submissions go in the same
4 sense.

5 THE CHAIRPERSON: That will end up
6 being a separate debate in writing. Do you think the
7 Commission will need to make submissions on Mr.
8 Warman's representations in writing?

9 MR. VIGNA: You mean on Mr. Fromm's
10 representations?

11 THE CHAIRPERSON: No, on Mr.
12 Warman's. Do you wish to address that here?

13 MR. VIGNA: No, I concur with the
14 same submissions.

15 THE CHAIRPERSON: You just concur
16 with them.

17 MR. VIGNA: Yes. You can consider
18 them as part of the Commission's submissions. I didn't
19 mention them because I didn't want to repeat myself.

20 THE CHAIRPERSON: That's fine.

21 MR. VIGNA: What I said basically is
22 a short summary of what Mr. Warman had in his
23 submissions. He relates to specific parts in the
24 evidence that relate to that 54(1). I will simply
25 refer the Tribunal to that. For example, "Church of

1 the Dead Warman Society, Warman Haters Allways
2 Welcome," et cetera. There are other examples that he
3 gives.

4 "I hate you Warman; I can only
5 hope that I live long enough to
6 piss on your useless grave, you
7 kyke."

8 Et cetera, et cetera. He gives numerous examples which
9 I didn't go into, but for the purposes of brevity I
10 didn't.

11 Thank you very much, Mr. Chair. That
12 is all I have to say.

13 THE CHAIRPERSON: We are approaching
14 12:00, and I gather Mr. Fromm needs his coffee break.
15 Why don't we just make it a longer break? Do you think
16 you will be able to complete in two hours?

17 MR. FROMM: Yes. It's noon now. Can
18 we come back at 12:30?

19 THE CHAIRPERSON: That's not a
20 problem for us. 12:30 is good.

21 --- Upon recessing at 11:55 a.m.

22 --- Upon resuming at 12:33 p.m.

23 REGISTRY OFFICER: Order, please.
24 Please be seated.

25 MR. VIGNA: Mr. Chair, if you will

1 allow me, I just want to add one little point I forgot.

2 THE CHAIRPERSON: Sure.

3 MR. VIGNA: In the evidence of the
4 respondent, at one point there was the affidavit that
5 was filed from the criminal process.

6 THE CHAIRPERSON: The affidavit.

7 MR. VIGNA: I don't remember the
8 exhibit number. In the evidence of the respondent
9 there was the affidavit from the criminal process.

10 THE CHAIRPERSON: Hold on.

11 MR. VIGNA: It was produced by the
12 respondent.

13 REGISTRY OFFICER: R-4.

14 THE CHAIRPERSON: I will just pull it
15 up. Right, R-4.

16 MR. VIGNA: Do you have that, Mr.
17 Chair?

18 THE CHAIRPERSON: I have it.

19 MR. VIGNA: I just wanted to say that
20 in there there's also mention of other postings that
21 were not in the ones mentioned by the Commission which
22 are important. This I have to stress was put in by the
23 respondent herself. For example, at page 14 of the
24 affidavit, that is only one example. There are some
25 that are associated with Donnelly, which is not the

1 case here, but others which are associated to the
2 respondent, Ms Beaumont.

3 For example, at page 14, you have one
4 at c) where it says:

5 "Someone should say, 'to end
6 racism, and all other races' LOL
7 let's hope we win."

8 Then there's a whole bunch of them
9 which I won't go through. But the point I wanted to
10 make is that this piece of evidence was put in by the
11 respondent herself.

12 THE CHAIRPERSON: It was for another
13 purpose and it is triple hearsay also.

14 MR. VIGNA: What I would say though
15 is one thing. First of all, the respondent put it in
16 herself so they have to live with the evidence they put
17 in themselves.

18 The hearsay rule doesn't apply to the
19 same extent.

20 THE CHAIRPERSON: No, it goes to
21 weight.

22 MR. VIGNA: But particularly that it
23 wasn't presented by the Commission or the complainant,
24 it was presented by the respondent themselves. At
25 least for the minimum purpose regarding the issue of

1 the entirety of the postings and messages, it could at
2 least be looked at.

3 I think it's a piece of evidence
4 which is in evidence, put in by the respondent herself
5 and that the Tribunal can consider. I just wanted to
6 attract the Tribunal to this piece of evidence which I
7 didn't focus on, but I think it's also important.

8 THE CHAIRPERSON: Okay. That's it?

9 MR. VIGNA: Yes.

10 THE CHAIRPERSON: Mr. Fromm.

11 SUBMISSIONS BY MR. FROMM

12 MR. FROMM: In my summation I would
13 like to deal with a number of things.

14 First of all, I'm going to argue that
15 these messages are not contrary to section 13(1)
16 because they are not repeated. I am going to argue
17 that they are not contrary to section 13.1 because
18 there is no evidence being led that they are likely to
19 expose designated groups to hatred or contempt. On the
20 contrary, there is evidence before you that they are
21 not likely to expose groups to hatred or contempt.

22 I am also going to argue that because
23 of the conduct of the complainant, that this complaint
24 should be dismissed because this proceeding is an abuse
25 of process.

1 I am going to then deal with the
2 penalties that are being suggested to you.

3 That is where I intend to go.

4 THE CHAIRPERSON: Okay, thank you for
5 the outline.

6 MR. FROMM: Section 13(1) talks about
7 messages that are communicated repeatedly. This
8 argument has been made only once before, to my
9 knowledge, and that was in Richard Warman versus Terry
10 Tremaine before Member Doucet. There has not been a
11 decision in that case.

12 I am going to make this argument
13 before you this afternoon on the way that the term
14 "repeated" seems to be treated in the Taylor case.

15 I would like to draw your attention
16 to the Commission's Book of Authorities, and that is
17 tab 3, the Canadian Human Rights Commission versus John
18 Ross Taylor. This went all the way to the Supreme
19 Court in 1990.

20 THE CHAIRPERSON: Right.

21 MR. FROMM: This is paragraph 79.

22 THE CHAIRPERSON: Yes.

23 MR. FROMM: I will be dealing with
24 that. I would like to lead up to it though, now that
25 we have a page reference.

1 I asked Mr. Warman during my
2 cross-examination to go through for us the exact
3 process that was followed on Stormfront to make a
4 posting. He established that he had been on Stormfront
5 for a number of years. He was a little vague as to how
6 many, but he had been on for a number of years. He
7 went to Stormfront repeatedly. He still goes to
8 Stormfront.

9 So, it would appear that he is
10 knowledgeable. He said that he had at least one user
11 name. So he was in a position not just to observe what
12 was there, but he was in a position to make posts.

13 I asked him what that process was and
14 he said that it could be done in two ways. If you saw
15 a posting that was already there and you wished to just
16 make a comment in general, you could click the button
17 that said "Reply," write out your response, and then
18 press I guess send, and I asked what would happen then.
19 He said, well, you would see your response up there on
20 the thread.

21 I said, well, what about the other
22 option that is Quote? He said, well, if you saw a
23 posting and you wanted to specifically bring down that
24 information so your reply could be connected to that,
25 you would press "Quote." It would put on the screen

1 the passage that you had clicked on and then you would
2 be able to type in your reply.

3 Certainly, in the evidence presented
4 to you in the Commission's evidence, you have certainly
5 seen a number of examples of both.

6 I asked him then was that the only
7 thing you had to do, and he said yes. I asked a second
8 time, so, to send the message, to put it up there on
9 Stormfront, you had to click that button but once. He
10 said yes. So you didn't have to click it repeatedly.
11 You clicked it once; one time you have sent that
12 message.

13 From that point of view alone it
14 would not seem to be repeated communication. It is a
15 communication once. In fact, if the communication in
16 any sense has been repeated or accessed, it would be
17 because of people like Mr. Warman or other people who
18 might want to go on to Stormfront to read what there
19 was there.

20 I call your attention to what was
21 said in Taylor at paragraph 79. 79 says:

22 "I agree with the Tribunal's
23 comments regarding telephone
24 communications and hate
25 propoganda, and find its

1 observations to be helpful in
2 rebutting the contention that
3 the private nature of telephone
4 conversations makes it
5 especially difficult the
6 imposition of constitutionally
7 valid limitations upon
8 expressive telephone activity."

9 But then:

10 "Those who repeatedly
11 communicate messages likely to
12 expose others to racial or
13 religious hatred or contempt are
14 seeking to gain converts to
15 their position. The evidence of
16 the Cohen Committee, referred to
17 extensively in Keegstra, and
18 expert testimony given before
19 the Tribunals in both Taylor and
20 Nealy, suggest that hate
21 propaganda often works to
22 insidiously to spread a message
23 of intolerance and
24 inequality..."

25 Again, just before I get to the

1 repeatedly, the evidence, though, was that what is
2 occurring on Stormfront or on the Canada forum
3 particularly, where Ms Beaumont's postings were to be
4 found, was not an effort to gain converts. She said
5 she was talking to her friends or people of like mind.

6 Mr. Warman, when I asked him to
7 characterize the people on Stormfront, he said, well,
8 like other websites that he monitored, it was for
9 neo-Nazis. Now, I might not totally agree with that.
10 I asked Ms Beaumont, what type of people were on there
11 and she said some people who were NS or nationalist
12 socialists and others, but that there was a general
13 similarity of views, that people were of somewhat like
14 mind.

15 She said that her purpose was not to
16 proselytize. She wasn't going on, let's say, neutral
17 websites or let's say general discussions of the issue
18 of the day sorts of websites trying to proselytize
19 people or gain converts. She was essentially throwing
20 ideas around with like-minded people. I think that
21 ought to be kept in mind.

22 Paragraph 80 of Taylor says:

23 "Section 13(1) is worded so as
24 to diminish phone use of the
25 type I have just described, for

1 in the context of s. 13(1) the
2 term 'repeated' must comport a
3 requirement for something in the
4 way of a series of messages.
5 Moreover, because the Tribunal
6 must be satisfied that the
7 messages are likely to expose
8 persons to hatred or contempt,
9 it may be that even a series of
10 personal calls (by which I mean
11 communications with friends and
12 acquaintances) espousing hate
13 propaganda will not constitute a
14 discriminatory practice within
15 the definition of this section."

16 That's the passage I particularly
17 want to call your attention to and to reply on.

18 The term "repeated" is important. My
19 submission is Ms Beaumont posting her views on whatever
20 they might be once does not constitute repeated
21 communication. She may have made indeed many
22 communications, but each one is a separate one.

23 Moreover in the wording of the Taylor
24 ruling, a series of personal calls, communications with
25 friends and acquaintances, even if they espouse hate

1 propaganda, and I would argue that these posts don't,
2 but even if they did according to Taylor, they will not
3 constitute a discriminatory practice within the
4 definition of the section.

5 It appears that Taylor is saying that
6 the nature of the audience is everything and it's
7 proselytizing or seeking to win converts that is
8 problematic as far as Taylor is concerned.

9 Sir, I know you know this decision,
10 so I don't have the precise citation, but you will
11 probably recall that what Mr. Taylor did was to hand
12 out business cards, calling cards, giving the phone
13 number, I forget what he called it, white power message
14 or something and these were handed out to the public
15 and people were invited to phone up and hear his
16 messages, et cetera.

17 There is no evidence of anything like
18 this having gone on. What Ms Beaumont testified to,
19 and Mr. Warman appeared to agree, that the Canada forum
20 was a series of discussions among, in Mr. Warman's view
21 neo-Nazis and in Ms Beaumont's view like-minded people,
22 some of whom were not nationalist socialists, some were
23 not.

24 THE CHAIRPERSON: Could I ask you a
25 question on that though?

1 MR. FROMM: Yes.

2 THE CHAIRPERSON: The Internet is a
3 multi-faceted tool. Can a distinction not be drawn
4 that falls within the analogy that you're making here
5 between these types of threads, because in answer to
6 that question, Ms Beaumont, I believe, and even Mr.
7 Warman said that anyone can access the thread. But I
8 am putting it to you that what if a website had been
9 developed where, after having first logged in, provided
10 your information, address, let's say, phone number and
11 you became a user, you then were able to enter a
12 thread, that would be more of a community of
13 conversations akin to what is being referred to by the
14 Court here, a series of personal calls.

15 We are a group of like-minded
16 individuals who do personal calls to each other and to
17 speak to each other we enter this passageway into a
18 sort of closed discussion. Perhaps that's what those
19 PMS were that were referred to in some of these threads
20 that we saw.

21 But that what is going on here in the
22 evidence that is before me with regard to the Canadian
23 section of the Stormfront website is that it's
24 nonetheless public, that this discussion is going on is
25 being done publicly. If I could draw the physical

1 analogy, it's not that two people or five people are
2 sitting inside of a closed door room and engaging in a
3 discussion, but instead they are in the middle of a
4 park speaking with microphones so others can hear, yet
5 only they are conversing amongst themselves, and that
6 distinction is what the legislation tries to address,
7 that the first may be permissible, but the second is
8 not.

9 MR. FROMM: I think the Stormfront
10 falls somewhere in between: An open forum where
11 anybody can get on and start writing, and the more
12 restrictive closed shop that you're talking about.
13 Anybody can in fact go on Stormfront, we were told, and
14 read. But in order to post, you have to join and
15 provide some information. There may not be a lot of
16 checking as to how valid it is, but you do have to
17 formally join in order to be able to post.

18 THE CHAIRPERSON: The reading of the
19 legislation is that what's the message that emanates?
20 You may join, you may post, but it's the message. Is
21 the message only going to the few individuals,
22 something like what's described here by the Supreme
23 Court as personal calls amongst friends and
24 acquaintances, or is it something that is being somehow
25 disseminated, even though two people are speaking, but

1 the megaphone, it's called the Internet that's sending
2 it everywhere, in every corner of the earth.

3 MR. FROMM: I think that's where
4 other evidence may be of assistance, but on paragraph
5 82 at the very end:

6 "Finally, by focusing upon
7 'repeated' telephonic messages,
8 s. 13(1) directs its attention
9 to public, larger-scale schemes
10 for the dissemination of hate
11 propaganda..."

12 THE CHAIRPERSON: Where did you just
13 read from?

14 MR. FROMM: This is paragraph 82 at
15 the end.

16 THE CHAIRPERSON: Okay.

17 MR. FROMM: "Finally, by focusing
18 upon 'repeated' telephonic
19 messages, s. 13(1) directs its
20 attention to public,
21 larger-scale schemes for the
22 dissemination of hate
23 propaganda..."

24 Our first submission is that in the
25 act of posting the message, there is no repetition.

1 Secondly, that it is in house. I
2 don't think you really have evidence before you that
3 it's not. Yes, theoretically the public could read
4 this, but I asked Mr. Warman to tell us what was on the
5 title page of Stormfront, and he said there was a
6 cross, a celtic cross, and a circle and it said "White
7 Pride World Wide."

8 I asked him what did that mean to
9 you? He said it was a neo-Nazi site. They often used
10 symbols like that. He himself said that by looking at
11 the content, he thought it was a neo-Nazi site.

12 My submission would be that this
13 would not be widely frequented by the public.
14 Certainly there is no evidence that it's being
15 frequented by the public, that it's anything other than
16 what Ms Beaumont has testified, that it's a site of
17 like-minded people who talk about issues back and forth
18 that are of interest to them.

19 I think even this morning we had an
20 example quoted to us where she was having a dialogue, I
21 believe, on Stormfront about having friends from other
22 races. There seemed to be some disagreement between
23 her and whoever had made the original posting and she
24 said, we can continue this through PM, and that's
25 private messaging.

1 So, the nature of this is not public
2 communication as envisioned in the Taylor decision,
3 public communication with a view of winning converts,
4 influencing the general public, crafting arguments to
5 sell an ideology to supposedly unsuspecting public.
6 But it really is something different.

7 These discussion boards are
8 essentially in house dialogue. That doesn't prevent
9 somebody, I suppose, from watching it and looking at
10 it, but there was certainly no evidence before you that
11 that is what is happening.

12 I invite you on the first point to
13 see that this is not repeated communication as
14 understood by Taylor. At the risk of being verbose,
15 there is that interesting sentence in paragraph 80,
16 where it says:

17 "...messages are likely to
18 expose persons to hatred or
19 contempt, it may even be a
20 series of personal calls (by
21 which I mean communications with
22 friends and acquaintances)
23 espousing hate propaganda will
24 not constitute a discriminatory
25 practice within the definition

1 MR. FROMM: There was no evidence
2 before you of that happening. Mr. Warman apparently
3 has monitored Stormfront extensively, he didn't say to
4 you and every now and again I see somebody who has come
5 on Stormfront who has joined up and is appalled and
6 shocked and writes in you people are all horrible
7 hate-filled lunatics or whatever.

8 There are enough signals on
9 Stormfront that indicates it's for people with a
10 particular political point of view. White Pride World
11 Wide, that does not suggest that this is necessarily
12 for people who are deeply into multiculturalism. There
13 are signals there that the purpose of Stormfront would
14 not seem to be to seduce or to propagandize. It's for
15 people who more or less share --

16 THE CHAIRPERSON: Could you take me
17 to the front page? Does it appear anywhere?

18 MR. FROMM: Yes. For instance, we
19 will just grab it out of a hat. Tab 19A.

20 THE CHAIRPERSON: We are inside the
21 website because I can just tell from the bottom here
22 it's stormfront/org/forum/member.

23 MR. FROMM: You've gone one step into
24 it.

25 THE CHAIRPERSON: Even on this page

1 what are we seeing here?

2 MR. FROMM: Right here we're seeing a
3 banner, White Pride World Wide, the celtic cross. It's
4 widely recognized as a white nationalist symbol.

5 THE CHAIRPERSON: That is not saying
6 anywhere, come on in, get to the truth or something
7 like that?

8 MR. FROMM: No. It's not saying a
9 balanced objective discussion of issues of the day. It
10 says White Pride World Wide.

11 THE CHAIRPERSON: It doesn't say stay
12 away either.

13 MR. FROMM: Just below that, it says
14 Stormfront White Nationalist Community.

15 THE CHAIRPERSON: Yes, White
16 Nationalist Community, yes.

17 MR. FROMM: In the box on the page
18 I'm looking at, there's a headline under the banner and
19 then there's a box under that and it says "Stormfront
20 White Nationalist Community," and then it has the title
21 of the thread and it welcomes the person who has just
22 clicked on.

23 Once again, a white nationalist
24 community. So, there are pretty broad signals there
25 that this is designed for a particular point of view.

1 This is not to proselytize the unwary.

2 There is a joke told about two old
3 ladies in a small town. A new couple moves in next
4 door and the old ladies phone the police and say, that
5 young couple next door walk around in the nude. The
6 policeman looks and he says, well, how do you know?
7 They said, we look out the window. The policeman says,
8 the only window that looks out on their property is one
9 that's six feet off the ground. How can you ladies
10 see? They say, well, we stand on a chair.

11 THE CHAIRPERSON: I understand your
12 analogy.

13 MR. FROMM: That in a way seems to be
14 relevant to the second point, and that is dealing with
15 the question whether these various posts that are being
16 complained about are likely to expose to hatred or
17 contempt.

18 I think really the answer to that
19 question was delivered very eloquently yesterday by Ms
20 Beaumont. I think she was asked by Mr. Vigna if she
21 did worry that maybe people who saw her posts would be
22 moved or influenced to hate people, and she said if
23 they base their lives on something I've said, they have
24 a pretty crappy life.

25 I think that comment may be helpful

1 in looking at one of the questions that is at the heart
2 of that case, and that is whether the posts up there,
3 the ones complained about by Mr. Warman and brought to
4 your attention by the Commission are likely to expose
5 various groups to hatred or contempt.

6 I don't want to reissue a previous
7 decision of yours, but we did want to lead some
8 evidence that might assist, and I think it's a very
9 difficult question. One of the things that bothers me
10 about the way these 13(1) cases have been progressing
11 is that for the last year or so the Commission has not
12 chosen to bring forth expert evidence. Perhaps they
13 feel their decisions are so in the bag they don't need
14 to, or perhaps they assume that the members will simply
15 be able to look at posts and come up with decisions on
16 their own.

17 THE CHAIRPERSON: Perhaps the members
18 may exclude the expert evidence, which has happened.

19 MR. FROMM: Yes, indeed. I'm aware
20 of the comments made by yourself in the Winnicki case.

21 THE CHAIRPERSON: No, I wasn't in the
22 Winnicki case. In another one, yes.

23 MR. FROMM: Be that as it may, the
24 word has been used many times this morning by Mr.
25 Vigna. I certainly would agree with him that context

1 is everything.

2 So we begin with the context of a
3 white nationalist forum with pretty strong signals
4 there: This is for people of like-minded views. If
5 somebody that is not already let's say fairly critical,
6 let's say, of immigration, somebody who is actually
7 completely for immigration, likely to get on to
8 Stormfront on one of these threads, Stormfront Canada,
9 look at something that Jessica Beaumont has written and
10 said, I am so influenced by this I am moving 180
11 degrees, I used to be completely for open borders, now
12 I am an exclusionist, if that is the case, then we
13 certainly haven't been told about it. I do know that
14 there have been rulings. In fact, although it is not
15 helpful to me, I know it has been brought to your
16 attention. This is from the Richard Warman versus Tom
17 Winnicki case and it's paragraph 61.

18 THE CHAIRPERSON: It's at what tab?

19 MR. FROMM: Tab 15, paragraph 61.

20 There Member Jensen concludes:

21 "Secondly, and perhaps more
22 importantly, whether or not
23 Canadians have reacted with
24 hatred or contempt to any of the
25 so-called tolerated messages has

1 no bearing whatsoever on my
2 evaluation of the Respondent's
3 messages. As I indicated above,
4 it is not necessary for the
5 Complainant to prove that the
6 Respondent's messages, much less
7 other messages found on the
8 Internet, have caused others to
9 react with hatred or contempt
10 toward the targeted groups."

11 THE CHAIRPERSON: Complete the
12 paragraph.

13 MR. FROMM: "The question is whether
14 the Respondent's messages are
15 likely to expose members of the
16 targeted groups to hatred or
17 contempt."

18 THE CHAIRPERSON: Citing the statute.

19 MR. FROMM: I suggest that presents
20 you with a problem. You are not required to find that
21 hatred or contempt has been communicated. So, the
22 Commission doesn't have to bring forth a person, my
23 hypothetical who went 180 degrees having read a post by
24 Jessica Beaumont.

25 THE CHAIRPERSON: Or that a person

1 has actually been exposed to hatred or contempt, but
2 that the person is likely to be exposed.

3 MR. FROMM: At some point likely has
4 to have a meaning. There has to be some degree of
5 probability, otherwise we could say with perfect
6 validity, there is likely to be a hurricane here in
7 Vancouver tonight, when probably the likelihood is one
8 in a million.

9 At some point likely has to have some
10 connection with probability, with reality.

11 The Commission has led no evidence
12 whatsoever as to the likelihood. I am going to offer
13 some considerations that may suggest to you that the
14 type of people reading Stormfront are not likely to be
15 exposed to hatred or contempt. As Ms Beaumont said, if
16 somebody bases their lives on something that I've said,
17 they have a pretty crappy life.

18 THE CHAIRPERSON: Let's always be
19 clear what the language is of 13(1). The matter that
20 is likely to expose a person or person to hatred or
21 contempt.

22 MR. FROMM: On the basis of the
23 prohibited grounds.

24 THE CHAIRPERSON: Yes. Perhaps it
25 was a misstatement on your part. You just said that no

1 one on the website would feel that he was exposed to
2 hatred or contempt.

3 By your definition of who would be on
4 this website, of course they're not going to feel
5 exposed to hatred or contempt. The point is is the
6 conveying of messages, even amongst those individuals
7 whom you define somewhat narrowly would be visiting the
8 website, is that communication going to result in
9 persons from these groups, in this particular case we
10 speak of peoples from visible minorities and Jewish
11 groups and so on, feeling hate? Would it likely
12 exposed them to hatred or contempt?

13 MR. FROMM: My submission would be
14 very clearly not. First of all, the Commission has not
15 led any evidence that would suggest they are.

16 I would like to suggest a number of
17 thoughts to you that may indeed answer the question.

18 I asked Mr. Warman, and in trying to
19 do so there was a great deal of reluctance to answer
20 and in the end basically you said it's common knowledge
21 the answer to your question, let's move on. I asked
22 him was he aware of Jewish groups active here in
23 British Columbia. In the end I think nobody disagreed
24 when I said, yes, there are, there's the Canadian
25 Jewish Congress, League for Human Rights of B'nai

1 Brith, Friends of the Simon Wiesenthal Centre and
2 probably some others. I don't think anybody would
3 disagree and I'm sure, sir, you wouldn't either, that
4 these groups are organized, well-funded, well-connected
5 and certainly very capable of watching for situations
6 that might threaten the Jewish community.

7 I don't think I got anywhere when I
8 tried to ask the same question about homosexuals, but
9 at the risk of testifying, I think it's common
10 knowledge that the homosexual community is quite well
11 organized in Vancouver. The first out member of the
12 community, Svend Robinson, was elected from a Vancouver
13 riding and repeatedly re-elected. There are at least
14 two homosexual Members of Parliament from the Vancouver
15 area at the present time.

16 There is at least one, probably more,
17 openly homosexual members of the provincial legislature
18 elected from Vancouver. I think it's pretty safe to
19 say there's an active, organized homosexual and lesbian
20 community in Vancouver.

21 My point being surely, because things
22 have changed since the analysis that laid behind the
23 Cohen Report. Mr. Vigna quoted that this morning, and
24 I hope I can repeat it back to you.

25 One of the problems with hatred,

1 according to the Cohen Report, is that individuals
2 subject to racial or religious hatred may suffer
3 substantial psychological distress, the damage and
4 consequences including loss of self-esteem, feelings of
5 anger and outrage and strong pressure to renounce
6 cultural differences that mark them as distinct. This
7 intensely painful reaction undoubtedly detracts from an
8 individual's ability, in the words of section 2 of the
9 Act, to quote, make for himself or herself the life
10 that he or she is able or wishes to have.

11 Things have come a long way certainly
12 since the mid-sixties when the Cohen Report was
13 written, and certainly in terms of the organized
14 homosexual and lesbian community. They are successful;
15 they are organized.

16 I find it significant that as these
17 posts occurred mostly from an address in British
18 Columbia, in Coquitlam and often dealt with British
19 Columbia issues, though not exclusively, that the
20 organized homosexual community here, which would
21 presumably be knowledgeable if they were feeling that
22 they were subjected to hatred or contempt, that they
23 did not lay the complaint. Similarly, the organized
24 Jewish community, at least three organizations that I
25 have ticked off and I probably have missed others that

1 are well connected, organized, vigilant for threats to
2 their interests, presumably knowing that such posts
3 were being made, did not see themselves subject to
4 hatred or contempt, being exposed.

5 Surely I think it's instructive that
6 the groups -- those two perhaps being the most
7 significant here because a lot of Ms Beaumont's posts
8 deal with homosexuality, same-sex marriage and Jews, at
9 least two communities well organized and certainly on
10 occasion have made public submissions, made human
11 rights complaints, are not the ones who made this
12 complaint.

13 The complaint is lodged by a man who
14 has made numerous complaints in far off Ottawa.

15 I think that's instructive. If we're
16 going to deal with what "likely" means, those most
17 involved, the presumed targets of these comments didn't
18 seem to feel that they were sufficiently being exposed
19 to hatred or contempt to make a complaint.

20 Interestingly, and you may have to
21 rely on my observations because I have known every
22 person who has walked into these sessions, with the
23 exception of one person, I know them either personally
24 or I know who they are, there has been no
25 representatives of either of these communities, either

1 the homosexual community or the Jewish community here
2 at a hearing looking into comments made by Ms Beaumont
3 that it's alleged are likely to expose their
4 communities to hatred or contempt.

5 I think that absence is eloquent. I
6 also think that the absence of these organizations from
7 these communities intervening in this case is also
8 eloquent. In certain other cases, very hard fought
9 cases, for instance, like Sabina Citron and the Toronto
10 Mayor's Committee on Community and Race Relations
11 versus Ernst Zundel, that there were a considerable
12 number of intervenors, both for the complainant and for
13 the respondent, a case where various interests from
14 various points of the political spectrum felt
15 sufficiently concerned about it to speak up or at least
16 to want to get in on the action.

17 So you have the fact that the
18 complaint did not come from any of the groups who it's
19 alleged are being exposed to hatred or contempt, who
20 presumably best know their own interests.

21 I never did get to go through the
22 series of questions about what Mr. Warman is, but I
23 think he has pretty much stated he was not a member of
24 any of these particular groups, so whatever he is doing
25 he is doing for other purposes.

1 But those whose evidence might be
2 moving to you, who could say we felt traumatized, when
3 we read these things we felt we were being exposed to
4 hatred or contempt, even if they couldn't provide you
5 with any particular evidence, even if they could say
6 that that was the way it was, in the Mark Schnell
7 versus John Micka case, which I am not going to quote
8 from it, but there was testimony led -- needless to say
9 we disputed it -- but testimony was led that
10 homosexuals in Vancouver, some felt, especially young
11 ones, felt distressed, traumatized, et cetera, by the
12 sort of postings Mr. Micka had made on his website.

13 You have no such evidence before you.

14 THE CHAIRPERSON: Let me ask you
15 something. Can't you state or can it not be said that,
16 given the whole line of authorities, that the Tribunal
17 can now be informed on what is likely to expose these
18 groups, person or persons of these groups, to hatred or
19 contempt, as I say, based on what has been written
20 already from the Taylor decision on down? The Taylor
21 decision incorporated the Tribunal's definitions. They
22 are quite detailed. They were referenced by Mr. Vigna
23 and have culminated in the submission of Mr. Vigna in
24 this recent ruling in Warman v. Kouba where actual
25 categories were created and enumerated by letter, so

1 that it's come to the point where the matter has been
2 defined.

3 MR. FROMM: In my respectful
4 submission, as you yourself have said about other
5 Tribunal decisions, you are not bound by other
6 tribunals. You may be bound by the decisions of the
7 Supreme Court and other Superior Courts.

8 THE CHAIRPERSON: The Tribunal may
9 not be bound but it may still follow if it so chooses.

10 MR. FROMM: Yes, and of course you
11 may.

12 THE CHAIRPERSON: You mentioned
13 superior courts. I prefaced my earlier question to you
14 with the fact that it's all routed back to decisions of
15 the courts that have incorporated some findings from
16 tribunals along the way. So, we are being informed
17 from court decisions.

18 MR. FROMM: In every particular case
19 you are being asked to look at certain comments or
20 observations and decide on that very dicey term
21 "likely." Is this communication likely to expose these
22 groups or a group to hatred or contempt?

23 In my submission, that very much
24 requires a context which you don't really have before
25 you.

1 I would take strong exception to the,
2 I will come to that in a minute, but the benchmarks of
3 hate messaging outlined in the most recent decision in
4 Warman versus Kouba taken at face value.

5 It would be impossible to criticize
6 any of the designated minorities, in my opinion.
7 Political dialogue would simply cease were ever one of
8 the protected groups was involved.

9 Just to give an example. My own
10 former Member of Parliament, I think the Americans
11 invaded Iraq in 2003, relieved herself of the opinion
12 dammed Americans, I hate those bastards. She didn't
13 say George Bush or the U.S. government or the political
14 establishment of the United States. A blanket comment,
15 dammed Americans, I hate those bastards, presumably
16 every single last American.

17 Had that position been put up on the
18 Internet, what is one to conclude? She quite clearly
19 proclaims she hates Americans and they are a group
20 identifiable by national origin.

21 I am urging a very strict
22 construction of "likely" because, without that, it
23 basically would be impossible to criticize groups. It
24 also, in my submission, would be discriminatory against
25 people who don't have a sophisticated education. A

1 more clever person perhaps than Caroline Parrish might
2 have said, damned Republican leadership, I hate those
3 bastards. That qualifies it. Not all Americans, but
4 just George Bush and company.

5 But not all of us, including Members
6 of Parliament, are necessarily that sophisticated. Not
7 everybody phrases every communication with the
8 aforethought of a lawyer. Does that mean that they
9 better keep their opinions to themselves?

10 If that is the conclusion, then are
11 we not into a society where only the very sophisticated
12 and legally well-advised individuals will dare tackle
13 controversial topics involving these protected groups.
14 Everybody else had better get the message keep your
15 opinions to yourself, or at least don't put them up on
16 the Internet.

17 I think that leads us into a
18 situation of discrimination not on the basis of
19 poverty, but certainly on the basis of education. Say
20 somebody who doesn't have a highly refined education,
21 does that mean that they are not allowed to express
22 their opinions?

23 I asked Ms Beaumont about some of the
24 language Mr. Vigna has found problematic, use of the
25 word "fucking" for instance, "niggers" and so on, I

1 asked her if that language was restricted in her terms
2 to her postings on Stormfront or was this the language
3 she used with her peers. She testified that she used
4 that language with her peers. She might not use the
5 same words around the supper table, but that was
6 acceptable language with her peers.

7 We also, in the terms of Mr. Warman,
8 had the use of the word "retarded." I think when you
9 heard her on the stand, and I think you commented on
10 that yourself today, sir, that the word "retarded"
11 could of course mean somebody who is mentally
12 handicapped, but in youthful slang, it is simply a term
13 used to indicate you don't like something. For
14 instance, young people often refer to their retarded
15 parents in a sense that many parents impose a curfew
16 that they don't like. Young ladies will sometimes
17 refer to the retarded clothing of their mothers not in
18 tune with what they consider to be the fashion.

19 So, some of the language, which as
20 Mr. Vigna said is perhaps inflammatory, is harsh,
21 understood in terms of a rebellious youth culture may
22 not be likely to expose anybody to hatred or contempt.
23 For one thing, that language would be seen for what it
24 is. If it's likely to expose somebody, likely to -- it
25 has a possibility of changing an opinion, it has to, I

1 would suggest, have certain credibility.

2 Much of that language does not have
3 that sort of credibility. We certainly have not had
4 any evidence led that would suggest it does. First of
5 all, it's in-house. As Ms Beaumont said in response to
6 a question by Mr. Vigna, well, when you called Indians
7 chugs, what do you think a native Indian would feel if
8 he were on the Stormfront website, and she said, and I
9 don't think there has been any evidence that would
10 contradict this, there aren't many Indians or any
11 Indians visiting Stormfront Canada.

12 So, while the language is rebellious,
13 youthful, maybe harsh, there certainly is no evidence
14 presented to you that the audience reading it was
15 likely to feel hatred or contempt.

16 THE CHAIRPERSON: I think the theory
17 is, and that has been reflected in the authorities, and
18 perhaps going back to the Cohen Report but certainly in
19 the judicial authorities, that the dissemination of
20 these points of view, when read by those people that
21 are there, will then result in conduct outside the web
22 forum that exposes those individuals to hatred or
23 contempt.

24 If I read the material on the web and
25 see that it says that, you know, minorities or

1 immigrants are bad for society and they shouldn't be in
2 our communities and so on, then when I go outside and
3 interact with those people in the general community,
4 those opinions will influence my conduct vis-a-vis
5 those people, and that is where they are likely to be
6 exposed to the hatred or contempt. From that moment
7 on, I won't hire the black person because I think he is
8 contemptible, he is beneath me, or I won't permit a
9 person wearing a hijab from entering my business or
10 whatever it might be.

11 In the worse scenario, where we
12 sometimes hear them report in the press, it leads to
13 violence.

14 MR. FROMM: That may indeed be the
15 theory, but there isn't the slightest scintilla of
16 evidence that Ms Beaumont's postings have led to any of
17 those.

18 Most of those behaviours are already
19 prohibited by either federal or provincial Human Rights
20 Acts in terms of discrimination of employment or
21 provision of goods and services, and in more extreme
22 cases, assaults. Of course those acts are also
23 prohibited.

24 There is no evidence presented to you
25 that an in-house discussion among more or less

1 like-minded people has had any such influence.

2 THE CHAIRPERSON: Unless, as I say,
3 the authorities tell me so in that it's already been
4 discussed and answered by the authorities. That is the
5 question I am putting to you. I understand your answer
6 so we don't have to debate this further, but that is
7 what I am putting to you and this is what was suggested
8 by Mr. Vigna when referring to the Kouba case because
9 Kouba reflects what has been said before and before and
10 before.

11 There is at least a 16-year history
12 going back to the Taylor case and beyond that, even to
13 the Tribunal decision, we're looking at 20 years of
14 discussion of what this kind of language is.

15 If the language found on these
16 messages that are before the Tribunal here, putting
17 aside the issue of repeatedly -- I understand your
18 argument on that component -- fits the criteria set out
19 in this line of authorities, then the answer has been
20 made for me. That's a suggestion that the Commission
21 is putting to me, and I understand your reply.

22 MR. FROMM: I would like to deal with
23 a few examples. I don't propose to go through the
24 entire compendium that Mr. Vigna did.

25 I think you have already signalled

1 your views on a couple of those.

2 THE CHAIRPERSON: Well, I put
3 questions. Views have not been expressed.

4 MR. FROMM: The questions you asked
5 were perhaps the points I would have wanted to make so
6 I will try not to be repetitive.

7 THE CHAIRPERSON: I anticipated all
8 your questions. Is that what you're saying?

9 MR. FROMM: Okay, yes. Just take a
10 look at tab 2. No, I don't want to do that.

11 Tab 20B.

12 THE CHAIRPERSON: That's the one that
13 begins "ur view on this situation?"

14 MR. FROMM: 20B, yes.

15 THE CHAIRPERSON: So, that one?

16 MR. FROMM: Yes. This has to do with
17 interracial dating, and the question had been posed by
18 a previous poster, and Ms Beaumont had said on page 2:

19 "I told my sister already that I
20 would kill him..."

21 That is somebody who might date her
22 sister.

23 "...and then beat her up, she
24 knows I would too..but she says
25 'blacks look funny so I don't

1 have to worry'."

2 Mr. Vigna suggested that that
3 indicated an incitement to violence. I think in normal
4 every day parlance, it simply indicates that she would
5 be very upset and probably not want such a young person
6 around and would probably try to correct her sister. I
7 don't think that this really suggests an advocacy of
8 violence. Then she diffuses it all and says, but she's
9 not so inclined anyway.

10 The criteria that were outlined for
11 you in Kouba, you have already questioned some of
12 those. As I say, I don't want to revisit all of the
13 postings, but in paragraph 22, Member Jensen says:

14 "An analysis of the growing body
15 of s. 13 jurisprudence reveals
16 that there are a number of
17 hallmarks of material that is
18 more likely than not to expose
19 members of the targeted group to
20 hatred or contempt."

21 I would like to think that the
22 operative words there are "more likely than not," but
23 there still is a matter of judgment in every case.

24 For instance, let's just take a look
25 at the hallmark (a), which is I guess just above

1 paragraph 24 on page 6 of the Kouba decision.

2 "The targeted group is portrayed
3 as a powerful menace that is
4 taking control of the major
5 institutions in society and
6 depriving others of their
7 livelihoods, safety, freedom of
8 speech and general well-being."

9 That may not be an exact example, but
10 many a Canadian nationalist has railed against American
11 ownership of Canadian industries on the basis that
12 control will leave Canada, decisions will be made only
13 for the American head office, Canadian jobs may be
14 lost, American values may be substituted for Canadian
15 values and so on.

16 In other words, if one was to
17 complain about large-scale American ownership of
18 Canadian industry, it's very likely that that hallmark
19 of hate messaging could apply to you. That would
20 clearly make very difficult a recurrent concern in
21 Canadian politics.

22 Above paragraph 26:

23 "Does the Material in the
24 Present Case..."

25 Actually, I would think chillingly,

1 and I found this chilling when I read this in odd
2 moments during the week spent a while back in the
3 Richard Warman versus Melissa Gillen, Canadian Heritage
4 Alliance case. This is under paragraph 29 (b):

5 "The Messages use 'true
6 stories', new reports, pictures
7 and references from purportedly
8 reputable sources to make
9 negative generalizations about
10 the targeted group."

11 Elsewhere in this decision, if one
12 rants and raves without any evidence, but just
13 generally emotes bad feeling, that's bad, but if you
14 use true stories, new reports, pictures and references
15 from reportedly reputable sources to make negative
16 generalizations, that is bad too.

17 THE CHAIRPERSON: If it is likely to
18 expose people to hatred or contempt.

19 MR. FROMM: That is scary. That is
20 the end of political discussion. A lot of people again
21 feel we're in a relatively safe area because I think we
22 all feel liberated to hate Americans, heaven knows why,
23 but if I make comments about the crass American
24 entertainment culture --

25 THE CHAIRPERSON: There is a

1 distinction to be drawn, Mr. Fromm. Americans have not
2 been traditional victims of discrimination. This
3 legislation, why are the prohibited grounds listed as
4 they are in this statute? Why does section 2 say what
5 it says?

6 It's because Parliament has had to
7 intervene in order to correct these things that it has
8 deemed wrong because of traditional discrimination
9 against certain designated groups. Throughout the
10 course of Canadian history there was discrimination
11 against women, discrimination against visible
12 minorities, discrimination against people of different
13 sexual orientation, and that is why we have had to
14 intervene.

15 You can't equate discrimination that
16 gay people may have experienced in the past with what
17 Americans are experiencing in today's global conflicts,
18 the super power and immigrant visible minorities.
19 There's a difference, isn't there?

20 MR. FROMM: There may indeed. I
21 don't want to get into a debate on that, but the
22 wording of section 13(1), or at least the wording of
23 the Act talks about a whole list of groups, among those
24 groups identifiable by nationality.

25 If you didn't qualify, if you said

1 American culture is crass, American politics is this,
2 American business is that and you back it up with some
3 quotations from President Bush and some examples from
4 American culture, you are using true stories, new
5 reports and pictures and say we have got to do more to
6 prevent American TV from coming up to Canada or
7 whatever your conclusion might be, I read this and I
8 find that type of categorizing a real chill on
9 political debate.

10 I do know it's qualified at the
11 beginning by these benchmarks that are likely. So
12 there's always the matter of judgment. I could
13 actually go through all of these, but --

14 THE CHAIRPERSON: I understand your
15 point.

16 MR. FROMM: I think maybe I've made
17 my point.

18 THE CHAIRPERSON: Except one thing
19 that I have said in the past is perhaps you are right,
20 perhaps if an American feels victimized they could file
21 a complaint and why don't they? If the Commission
22 deals with the complaint and perhaps chooses not to
23 refer the matter to the Tribunal, why doesn't the
24 victim of that discrimination take to it the Federal
25 Court and have it out?

1 You may have a point, but it doesn't
2 justify saying that what also meets those criteria,
3 same as an American would feel offended if it's a
4 person of visible minority that feels offended, that
5 person should not -- I'm not talking about the actual
6 individual, but if the language of the message offends
7 section 13 vis-a-vis a visible minority and if you were
8 to transpose the visible minority for an American, that
9 person would also feel offended, there may be two equal
10 wrongs.

11 But what I have in front of me is the
12 one that is alleged to offend the groups that have been
13 are referred to in the complaint.

14 MR. FROMM: If you choose to use that
15 analysis, not only is it extremely dangerous for any
16 meaningful discussion in this country, but you still
17 have to go one step further.

18 Let's say in the hypothetical case of
19 Americans, yes, it might be alleged that their culture
20 is crass and their politics are this and there's danger
21 of economic domination, but having said all that, does
22 that still expose Americans to hatred or contempt? I
23 would argue that perhaps it doesn't. It's a viable,
24 political opinion. Maybe it's right, maybe it's wrong.

25 THE CHAIRPERSON: It appears one

1 politician felt hate.

2 MR. FROMM: She says she did. You
3 even wonder if she did.

4 THE CHAIRPERSON: It may have been a
5 rhetorical remark, but did she resign as a result of
6 that?

7 MR. FROMM: I think she eventually
8 left the party and she didn't run again.

9 In the sake of perhaps completeness,
10 tab 22.

11 THE CHAIRPERSON: I think there's
12 multiple sub-tabs there.

13 MR. FROMM: 22C. This has been
14 revisited on numerous occasions, but maybe I can make
15 my submission on this that will cover a lot of other
16 messages.

17 This happens to deal with the hijabs.
18 I think Mr. Vigna took the view that this was
19 recommending segregation and that certain people, the
20 Muslim women who wore the hijab were no good and based
21 this on the comment made by Ms Beaumont:

22 "That drives me nuts, I take
23 photos for the citizenship,
24 passports, pr (permanent
25 residents), visa cards etc. And

1 as I have been told from human
2 resources that the ears MUST be
3 visible, which means, if your
4 hair covers your ears, it has to
5 be tucked back.

6 I don't care if it's a
7 religious thing or not, if you
8 don't want to follow our rules,
9 even if it is taking off your
10 scarf thing for one lousy
11 picture, then stay out of my
12 effing country!"

13 Well, the "effing" refers not to
14 these people but to country. This view is not
15 promoting hatred or contempt against --

16 THE CHAIRPERSON: You're saying the
17 effing denotes anger?

18 MR. FROMM: The effing denotes anger
19 and the effing is actually just attached to the
20 country.

21 I think, again, context is very
22 important. In linguistics they often refer to levels
23 of language. The sort of language that would be
24 suitable in a Tribunal might be totally different from
25 the language which is acceptable in a bar.

1 In fact, there's even, as I've come
2 to learn, a certain way of referring to one another
3 here. If I were a lawyer I would be referring to Mr.
4 Vigna as my friend. He probably isn't, but there is
5 that formality, or I wouldn't say "this guy" and so on,
6 whereas in a bar I might refer to this effing guy,
7 which wouldn't be suitable in a Tribunal.

8 THE CHAIRPERSON: I once had a
9 professor of law who was a Dean, he is now actually a
10 judge, and he once said that using the four letter word
11 in a non-unionized environment will get you fired, but
12 if it's in a unionized workplace it's industrial
13 language and permissible.

14 I understand your point on that.

15 MR. FROMM: Again, I invite you to
16 look at this in the context of a rebellious young
17 person from a youth sub-culture, until recently Ms
18 Beaumont called herself a skin-girl, so a
19 self-consciously rebellious sort of youth group.

20 I think it's trite knowledge, but
21 it's true nonetheless that groups are always very
22 aggressive about themselves and toward out groups. So,
23 if you are not us, you are the subject of a fair deal
24 of verbal abuse. That has nothing to do with not being
25 us in terms of race or religion or anything else; just

1 a different youth group. We have seen some of that
2 language before you, that contemptuous language used
3 about groups like the ARA, another youth group with
4 obviously very different opinions from Ms Beaumont.

5 Although the language, as Mr. Vigna
6 says, in places is inflammatory, it probably wouldn't
7 be suitable for use here in a Tribunal, within that
8 context is relatively normal, and the sort of people
9 looking at that with similar points of view, I would
10 submit, are not likely to be moved to hatred or
11 contempt against any of the groups that have been
12 cited.

13 I couldn't help but smile to a
14 certain extent when I heard Mr. Vigna telling us that
15 these sorts of restrictions are very necessary and
16 certain types of views must be outlawed in order to
17 have a tolerant society.

18 Also, I would hope at the end of the
19 day you would conclude that one of the values of
20 Canadian society is the toleration of dissent. Just
21 because the law today defines Canadian society as such
22 and such -- for instance, multiculturalism is a value
23 -- surely shouldn't prevent a person from being able to
24 say I dissent, I don't agree for these or those
25 reasons.

1 There was a time when Canada had
2 prohibition. Many people agreed that demon rum must be
3 defeated, but others fortunately disagreed. Over the
4 years the political process moved and we are no longer
5 a prohibitionist country.

6 There is a huge risk of criminalizing
7 dissent, and the huge risk basically is that there's
8 really only two ways of accomplishing change in a
9 society. There is the violent way. That is
10 unfortunately the way most governments are changed in
11 most parts of the world. There is a coup d'etat.
12 There's rebellion; there's street riots or whatever.
13 There is violence and a new regime takes its place.

14 We're among the very few countries
15 that have developed a way of channelling disagreement
16 or unhappiness with present conditions and that's
17 through the democratic process, but absolutely crucial
18 to that democratic process is the right to discuss and
19 to debate the issues.

20 To the extent that it becomes
21 impossible to debate or discuss the most heated issues
22 of the day like same-sex marriage, immigration,
23 multiculturalism, perhaps other things as well, to the
24 extent that it's difficult to discuss those things
25 without finding yourself silenced by the Canadian Human

1 Rights Commission, as Ms Beaumont has already told you,
2 she is not going to change her mind, and I don't think
3 that was said in any sense of disrespect, but it's a
4 reality. She has thought about her views, her
5 religious views, her political views deeply. She is
6 not about to change her mind.

7 We don't want to see a situation
8 where political views are driven underground because I
9 think it's also well known, and the Tribunal in the
10 Zundel case admitted as much, that they could impose
11 penalties on Zundel, who was no longer in the country
12 and the Zundel site which was not even located in the
13 country, knowing that those penalties were, in a sense,
14 futile because the ideas will persist.

15 You look at the views of Ms Beaumont
16 or the topics she addressed. She addressed the
17 currency, for instance, changes in the design on
18 Canadian notes which she didn't like because they
19 seemed to portray only one group, namely Native people;
20 changes in the 25 cent piece which she did like because
21 one particular design dealt with veterans.

22 Homosexually and the related same-sex
23 marriage issue, she comes at it from a religious point
24 of view. I tried to ask Mr. Warman if quoting certain
25 of those scriptures from the Bible would constitute

1 violation of the law. Again I got an evasive answer,
2 but I think it's a huge problem because in all of this
3 it's a matter of balancing various rights.

4 In fact, in my recollection, this may
5 be the first 13(1) case that has in any way in its
6 response relied on freedom of religion. I think it's a
7 huge problem, sir, you face.

8 I will argue that all religions are
9 intolerant, that all religions are -- because religion
10 is an intensely held belief. The reason I choose to be
11 this rather than that is because I believe we are right
12 and all others are, at the very least, misguided, if
13 not absolutely evil.

14 It may be that most religions keep
15 the hostility down to a dull roar, but traditionally --
16 and I hope I am not unfairly generalizing about anybody
17 -- the Catholic church has said outside the church
18 there is no salvation. I guess Ms Beaumont is going to
19 go to hell.

20 Jews have seen themselves as a chosen
21 people. That leaves the rest of us I guess as
22 unchosen.

23 Islam says that there is no God but
24 ours and Mohammed is his true messenger.

25 Other branches of Christianity, for

1 instance, Calvinism talks about the elect. If I recall
2 correctly from religious studies that's about 12,000.
3 I guess most of us got unelected.

4 There is an intense us, we are right
5 and you, at the very least are very misguided, if not
6 absolutely evil and leave with the devil, or some other
7 expression.

8 Religious views, especially
9 passionately held ones, are going to be dogmatic and
10 probably offensive. Ms Beaumont's views no doubt would
11 be offensive to a sensitive homosexual. She makes no
12 bones about it. She certainly doesn't sugar coat it at
13 all. She considers homosexuality perverse.

14 Somewhere in all of this, you have to
15 be able to, I would argue, allow for freedom of
16 religious expression; otherwise we are in the
17 hypocritical role of saying you can believe what you
18 like but you can't say it.

19 I would like to think that our
20 understanding of individual human rights, especially as
21 outlined by the Charter of Rights and Freedoms, has
22 ruled that to be a non-starter, that you can't say
23 you're free to believe what you like but you can't say
24 anything about it.

25 Which brings me now to the question,

1 and perhaps I didn't have it outlined in my
2 introduction, of the respondent, of Ms Beaumont.
3 Perhaps I didn't signal where I was going to go in my
4 opening remarks, but you have in front of you I think
5 only for the second time in all of these section 13(1)
6 cases a female respondent. She fits what I would call
7 the Human Rights Commission profile. She is white.
8 She is young, she is poor. She makes a good target.

9 In my submission, Ms Beaumont is the
10 only victim in this room, with the possible exception
11 of the Canadian taxpayers who are having to pay for
12 this, but Ms Beaumont is uncharacteristic in that at a
13 young age she has taken a strong interest in the issues
14 of this country. She is informed by a sincerely held
15 religious belief. I did ask her, and I think you have
16 seen this in some of the posts, she talks about praying
17 on a regular basis. These were posts made long before
18 there was any section 13(1) complaint.

19 I think you would also find and I
20 hope that the evidence you heard is of a person who is
21 painfully honest, honest probably to her own detriment.
22 She did not, as would have been easy, denied all the
23 controversial posts. She denied having made two of
24 them.

25 THE CHAIRPERSON: She denied

1 recalling those.

2 MR. FROMM: She did not recall, okay.
3 There might have been other approaches.

4 If there is one thing Canadians don't
5 like to talk about, it's not their sex life, it's their
6 financial life. While I think Mr. Vigna and myself
7 would have been happy with a ball park financial figure
8 from her, she gave us right down to the cent what she
9 is earning per hour and the number of hours she is
10 working per week. I think most people would be more
11 reluctant to tell you about what they are earning than
12 to tell you about their sex life.

13 I invite you to see Ms Beaumont as a
14 person who sincerely holds to her religious beliefs, a
15 young woman who has been honest with this Tribunal,
16 honest also in the sense that she is not prepared, she
17 says, to change her political views. She also is
18 somebody, as she testified, who is overwhelmed by this
19 process. Mr. Vigna asked her a number of times
20 yesterday, but don't you realize that posting your
21 views, you could get into trouble, and she said she
22 felt that she had a right to express her political or
23 religious views on the event or actually she said to
24 discuss them with like-minded people, she said in her
25 testimony, with her friends. She considers many of the

1 people on Stormfront her friends.

2 She further said that it was
3 impossible to avoid offending people. She was asked by
4 Mr. Vigna if people going to the website, to
5 Stormfront, might not be offended by her views and she
6 said she didn't care, and she didn't know because she
7 said no matter what you say, it's going to offend
8 somebody. This is a problem that the Tribunals face
9 because, although there has been a series of decisions
10 in 13(1) cases and although 13(1) has been granted by
11 the Supreme Court of Canada a certain shelter from the
12 Charter provisions, an exception rather, because
13 although the Supreme Court agreed that it did violate
14 the right to freedom of speech and freedom of
15 expression, but it was granted a certain exception
16 because it was, in the view of the Supreme Court,
17 fulfilling a higher goal. But that does not cancel the
18 Charter of Rights that Ms Beaumont and others have and
19 a right such as the right to freedom of belief and
20 freedom of expression.

21 That is something that in your
22 decision and looking at the posts, looking at the
23 context of the posts, you have to try to balance.

24 I think you will also find in Ms
25 Beaumont somebody who is very strongly and passionately

1 in love with somebody else, and with a good sense of
2 humour. She posted in one place she wouldn't mind
3 going to jail. I think that was clarified for you that
4 this was not a matter of defiance but it was a matter
5 of a joke because she would get three squares a day and
6 she would no longer have to put up with Mr. Donnelly's
7 snoring.

8 I think we are always worried about
9 running into a fanatic. I am happy to be here before
10 you today and try to assist as best I can somebody who
11 is not a fanatic. I always think of a fanatic as
12 somebody who doesn't have a sense of humour. I don't
13 mean just a sense of humour laughing because somebody
14 who slips on a banana peel. Somebody who can laugh at
15 themselves and laugh in a kind way with those who are
16 with them.

17 She also spoke about some of those
18 pictures which I think are in our Exhibit R-5. I
19 believe Mr. Vigna asked her -- I am sure he meant well
20 in all this -- about that picture at the bottom of page
21 5, there with a gun to her head. I can see with just
22 the black and white in front of you, you might wonder
23 what that is all about, and she explained that that's a
24 red child's water pistol and she is just clowning
25 around.

1 In making your decision, I think you
2 have to wonder what message you want to send.

3 Mr. Vigna said you have to send a
4 message that hate won't be tolerated. But you have
5 here a young woman who feels passionately about
6 politics, about her religious views who wants to talk
7 with others, and we have seen that. This is not a
8 matter I am going to preach to other people. She wants
9 to talk. She is interested in people who don't exactly
10 share her views. There has been a little bit of
11 dissent there on some of those Stormfront threads. Her
12 reaction to that is not you're this or you're that,
13 but, rather, let's PM about it, let's talk about it.
14 Isn't that a value we want to encourage?

15 I said in my opening submissions, and
16 I don't want to repeat them, but a common complaint
17 about young people, and this goes back for many
18 generations, is that they are frivolous and only
19 concerned about partying and things like that and not
20 interested in what's happening to society. What do we
21 do with young people who are interested? I think it's
22 characteristic of young people to see things very much
23 in black and white. Youthful expression tends to be
24 radical, exaggerated, no matter what side of a
25 political spectrum or other spectrums they are from.

1 They are still in a stage of their lives where they are
2 defining themselves, and to define themselves means to
3 be as different as possible from the people you are
4 rebellling against.

5 In the 1960s, to show that you were
6 not part of the establishment, guys grew their hair
7 down to their tailbones practically to be different
8 from the old man with his brush cut.

9 I think Ms Beaumont testified that
10 she had been a skin chick, and that meant, if I have it
11 correctly, cutting her hair into a C-cut, adopting
12 certain types of clothes. Well, she was 16 then, she's
13 21 today, and she doesn't appear before you in boots
14 and braces and a Chelsea cut.

15 Rebellion of youth often involves
16 temporarily taking extreme stands. The language of
17 youth is always offensive and extreme. I recall a
18 friend of mine coming back during the Vietnam war from
19 visiting his family in upstate New York and he talked
20 about his brother who had been in the Marines who had
21 just come back from his first duty in Vietnam. They
22 were a very conservative, Catholic, upstate New York
23 family, and every second word at the supper table was
24 F, F this, F that. Finally, before the dessert the
25 father had to take the son outside and say, listen,

1 we're so glad that you're back, but you're not going to
2 be using the F word around the kitchen table in front
3 of your mother and your sisters. That is simply the
4 posture of youth.

5 Are we going to say youthful talk,
6 and maybe some of it a little bit radical, language a
7 bit bad, in a forum for other like-minded people, we're
8 going to come down on you with the full weight of the
9 law because, you know, we have proven it, somebody
10 might somewhere be offended. I am not sure that's a
11 really healthy way to deal with a young woman who has
12 already made an important commitment. She is
13 interested. Her existence is not just partying and
14 chasing guys. She actually cares in her own way about
15 what's going on in our society.

16 I went through some of those 16
17 principles that she quoted from an American website and
18 I asked her about a couple of those issues; the issue,
19 for instance, of the declining situation of white
20 people in North America. I said do you care? She said
21 she did. She explained why. I invite you not to crush
22 this type of person.

23 Which brings me now to the nature of
24 this complaint and to the penalties, but I guess these
25 two issues are tied up together.

1 I am not going to belabour it, but I
2 think it is significant, Mr. Warman chose not to be
3 here this afternoon and this morning. I will invite
4 you to draw a conclusion that the decision is so in the
5 bag, it's not even necessary to do anything more than
6 toss the Tribunal his submissions and that's it.

7 There have sometimes been accusations
8 of some of us who are up front about our opposition to
9 section 13(1). I would like to see it stricken from
10 the laws of this country, or show contempt. I hope
11 that is not the case but I think the behaviour that
12 this Tribunal has experienced this morning is showing
13 less than proper respect and showing contempt.

14 I am going to argue that this is an
15 abuse of process. I am going to try to be brief.

16 I asked the question yesterday, I
17 asked Mr. Warman if he worked for the Canadian Human
18 Rights Commission. There were many numerous objections
19 to this. I was accused of being on a fishing
20 expedition. Mr. Warman launched into a story that I
21 had led a protest in Ottawa outside of the Canadian
22 Human Rights Commission and he was afraid, and if I
23 found out where he worked I would do such a thing, and
24 my associates were all neo-Nazis. I chose not to get
25 into a debate because I sensed that you wanted to move

1 this along, but I do have to say at this point that
2 that protest was a peaceful protest. It was aimed at
3 government policy. Our argument was hands off the
4 Internet. We did not fly Nazi or any other flags, only
5 the red ensign, what we consider the traditional
6 Canada. It was peaceful and the purposes were
7 peaceful, and the purposes were for reform.

8 I eventually tried to ask the
9 question again, and if I recall, and we obviously don't
10 have the transcript here, but if I recall the sequence
11 of events correctly, I think, sir, you said, that I did
12 have a right to ask that. Then he said, but something
13 or other there was one building in downtown Ottawa and
14 I had would be able to figure it out. In the end,
15 although that question could very easily have been
16 answered by a very simple two letter word no, you got
17 no such answer.

18 Can you infer the opposite? Well, if
19 you can, what are we faced with here? We're faced with
20 a person who has made -- I was not able to find out the
21 exact number but you moved the thing along and said
22 numerous complaints, and that's true. He has made more
23 section 13(1) complaints than any other person in
24 Canada. In fact, no other person has made more than
25 one. He has made numerous complaints.

1 If his non-answer is to say he does
2 work for the Canadian Human Right Commission, do we not
3 have here an incredible conflict of interest, that
4 somebody who works for them is making these 13(1)
5 complaints to advance, from what I can gather from
6 material from the Human Rights Commission, an agenda
7 that was formulated in 2003 to specifically go after
8 dissent on the Internet. That remains up in the air.
9 I invite you to draw that as at least a possible
10 conclusion.

11 In the material I have brought to
12 your attention, there was a speech given by Mr. Warman
13 to this group called the Anti-Racist Action Group. The
14 title of the speech was "Maximum Disruption: Shutting
15 down the Neo-Nazis by (Almost) Any Means Necessary."
16 He talked about the various complaints he had filed and
17 he talked about the human rights complaints and the
18 Criminal Code complaints and various other things he
19 did. It was quite clear that this is not a complaint,
20 the one before you, from somebody who is an ordinary
21 citizen, probably a member of one of the groups that Ms
22 Beaumont has mentioned. It is not a complaint from
23 somebody who feels on a personal basis that are
24 aggrieved by the comments made. This is a person with
25 an agenda.

1 Mr. Warman correctly read you the Act
2 and said that anybody may make a complaint. That is
3 true, anybody may. But we have this case, part of a
4 long series of cases of complaints made by one person
5 whose own remarks talk about a political agenda,
6 shutting down the neo-Nazis, not hate.

7 Again, I hope I am not repeating
8 something from the first morning, but I have on a
9 couple of occasions invited Mr. Warman or the Human
10 Rights Commission to pick on somebody who can fight
11 back. For instance, one of the big record publishing
12 companies that have sites on the Internet that pump out
13 some really hateful and hideous rap music lyrics. I am
14 not talking about the music itself, but the lyrics,
15 talking about abusing women, beating women, calling
16 them all sorts of names. I guess we don't even have to
17 go into that this afternoon.

18 Mr. Warman has announced a political
19 agenda and he has followed that. It would be my
20 submission, and I suggest this to you, that this is a
21 complete abuse of process. This is not dealing with a
22 discriminatory practice from somebody who probably has
23 an interest in it. But this is an attempt to silence
24 one part of the political spectrum, usually people who
25 are so overwhelmed or so poor that they can't fight

1 back.

2 THE CHAIRPERSON: Of course you're
3 aware, as I indicated in our discussion on this point,
4 that the ordinary course to follow when one feels that
5 the Commission has abused the process of filing
6 complaints is before the Federal Court.

7 As I said, there has been a very
8 narrow -- you are using language that I brought up, if
9 I recall. There was at least one situation I'm
10 familiar with where the Tribunal raised the issue of
11 abuse of process. It doesn't quite fall into the
12 example given here. Quite frankly, I don't have it
13 readily at hand here to provide to you.

14 I understand your submission, but my
15 response to you is what I did raise during the course
16 of the hearing is that in the ordinary course when the
17 Commission decides to listen to Mr. Warman, accept his
18 complaint and investigate it or not, which is within
19 their discretion as well, and then refer to the
20 Tribunal, the respondents may seek judicial review. I
21 realize that can be a daunting task, which may be your
22 reply, but nonetheless that's the process that the law
23 outlines.

24 MR. FROMM: It's too bad they didn't
25 choose to pick on Conrad Black, because I'm sure he

1 would be in Federal Court doing this. Ms Beaumont
2 can't afford a lawyer for this process. It's fine to
3 say that she should go to Federal Court, and maybe she
4 should, but she doesn't have the money.

5 THE CHAIRPERSON: The Registry at the
6 Federal Court is always very helpful even with
7 individual claimants. It might not be as daunting as
8 one would think.

9 MR. FROMM: It sounds like an offer
10 we can't refuse.

11 If our theory is correct, what you
12 have is an employee of the Commission making complaints
13 which his present or former colleagues duly pass on to
14 Tribunals in the furtherance of a political agenda. I
15 will not take it any further than that. I think you
16 know where I'm going with this. I hope that the point
17 has been made.

18 In contrast to the clear, honest,
19 forthcoming evidence that was given to you yesterday by
20 Ms Beaumont, I invite you to conclude that Mr. Warman's
21 evidence was highly evasive. You yourself were not
22 able to extract from him the dollar amount that he has
23 in mind under section 54, I think; neither was Mr.
24 Vigna.

25 I learned, when I pursued it this

1 morning, that I believe \$7500 is what he feels he is
2 owed for I guess it's not his hurt feelings, he's owed
3 as a victim.

4 The fact that he was not prepared to
5 answer a direct question from Mr. Vigna and from
6 yourself I think speaks volumes. Much of his other
7 testimony should be treated with a good deal of
8 scepticism.

9 The penalties. I am going to deal
10 with them I think in the order that Mr. Vigna did.

11 The first penalty he wanted was a
12 cease and desist order. There are very few penalties
13 in Canadian law that are for life. Even life
14 imprisonment normally has some other meanings. Life
15 imprisonment is for at least 25 years or 20 years or 15
16 years, as the case might be. But this cease and desist
17 order would be forever. Ms Beaumont would have to be
18 forever careful of any political or religious view she
19 posted on the Internet unless it was incredibly
20 carefully crafted.

21 In the case of the Canadian Human
22 Rights Commission and French, which I gave you
23 yesterday, Mr. Justice Cullen commented in his
24 conclusions about the difficulty of cease and desist
25 orders. The background to this was that the Heritage

1 Front, a group in Toronto in the early nineties, there
2 had been a complaint made against them under section
3 13(1) for a telephone answering machine they had.
4 Prior to going to a Tribunal, they agreed to a cease
5 and desist order. They continued their telephone
6 answering machine operations for a number of years
7 further, and at some point along the way the Canadian
8 Human Rights Commission felt that they had not lived up
9 to the cease and desist order, that they had strayed
10 over the line.

11 This is the background to Mr. Justice
12 Cullen's conclusions. I am calling your attention to
13 paragraph 42, which I now suspect you don't have.

14 THE CHAIRPERSON: It cuts off right
15 there. Page 15 is missing. Does anyone have page 15?

16 MR. FROMM: I forgot to get it
17 photocopied.

18 THE CHAIRPERSON: I have part of it.
19 Whatever is missing you can read into the record. I
20 will get it or you can give me a copy afterwards. I
21 can readily find this. Does any of it start here at
22 the bottom of page 14?

23 MR. FROMM: No, it's paragraph 43.

24 He says:

25 "I am also troubled that neither

1 the Canadian Human Rights
2 Commission or Dr. Erlich took
3 the time to examine whether
4 there was even a grain of truth
5 in some of the allegations of
6 the subject message. The
7 prosecution of war criminals
8 like the settlement of native
9 lands claims and the merits of
10 immigration are subjects of
11 vigorous debate in this country.
12 I have no doubt that these
13 subjects can arouse strong
14 feelings in many people.
15 Speaking the truth or one's
16 honestly held belief, so long as
17 the belief does not promote
18 hatred, should not be sufficient
19 to bring one into contempt of
20 the court order in question."

21 (As read)

22 His decision is I think instructive
23 in that it shows that should a person be targeted, as
24 Ms Beaumont would be certainly in the past behaviour of
25 Mr. Warman, once he gets a cease and desist order,

1 certainly this was in the case of Tom Winnicki, if he
2 feels that that person has been posting again, goes
3 back after them, seeking a contempt of court finding,
4 which could very well lead to their going to jail.

5 What Mr. Justice Cullen is pointing
6 out is the difficulty in crafting, in writing such an
7 order that doesn't invite that person to be brought
8 repeatedly back to court for very questionable reasons.

9 That would leave Ms Beaumont in the
10 position of essentially being silenced on anything
11 political or religious on the Internet.

12 THE CHAIRPERSON: Mr. Fromm, I see
13 your point. I know that you may have issues with
14 section 13, but section 13 is there, it's a statute,
15 it's a law of the land. Don't we all have to abide by
16 section 13? Is an order to cease and desist under
17 section 54 not in effect an order that you abide by the
18 laws of this land?

19 The definition of what section 13 is
20 may be flexible, I have heard your points on that, or
21 may appear flexible, but is it not really any different
22 than saying, look, you were caught by radar doing 130
23 kilometres, don't do that, here's your fine, and don't
24 ever exceed 100 kilometres again, which is what you
25 should not have been doing in the first place?

1 MR. FROMM: I do see your point, but
2 it's a big gun at the person's head and it's capable,
3 in my submission, of abuse because if she were to make
4 postings in the future that might violate it, she can
5 be brought into a court where the penalty now is not
6 just a fine, it's jail, and the Canadian courts would
7 be only too happy to throw people in jail. John Ross
8 Taylor was sentenced to jail twice. It's not exactly
9 the same thing because Tom Winnicki has not been, as
10 far as I know, charged for having violated the
11 Tribunal's order. It was something different. But he
12 was under a contempt finding.

13 THE CHAIRPERSON: It was a
14 preliminary injunction.

15 MR. FROMM: He was sentenced to nine
16 months in jail. This is very serious. Yes, I agree
17 with you, everybody has to obey the law, my submission
18 would be, and I know you will not be finding the
19 respondent guilty, but if you were to, consider a cease
20 and desist order with a time period.

21 Of course, you would continue to have
22 to obey the law of the land, as everybody else would,
23 but there would not be this gun poised at her head with
24 the very serious penalties, and the costs; unless she
25 becomes wealthy, there's the cost of going to court for

1 a contempt charge.

2 THE CHAIRPERSON: I could perhaps
3 hear you submitting to me that there should be some
4 clarification or more specificity in the cease and
5 desist order, but limiting it to a certain time period,
6 to go the same analogy, is like saying you must stay
7 within the speed limit of 100 kilometres for the next
8 five years, then after that go ahead and break the law.

9 MR. FROMM: Not exactly. It would be
10 you have to stay within the speed limit of 100
11 kilometres an hour for the next five years, and if you
12 don't you will lose your car. After that, yes, of
13 course you have to stay within the limits, but if you
14 didn't, if you ran 120 you face a \$100 fine or
15 something.

16 There is a much more severe penalty
17 hanging over her head, and that is why I would argue of
18 course for finding that the charge is not proved. But
19 if we are talking about penalties, then I would be
20 arguing for a very narrowly crafted cease and desist
21 order and one with a time limitation, which is
22 certainly I think within your power to do.

23 THE CHAIRPERSON: I see your point,
24 but it would require some very fine crafting.

25 MR. FROMM: I think we have been over

1 this. I won't repeat it except to say that she has
2 very, very limited means. She might very well not be
3 able to pay a fine or any substantial fine. So I would
4 argue that there should be no fine imposed.

5 If you look at any one of her posts,
6 just for example, just take 24A, on page 2, at the
7 bottom of that page, Jessy Destruction, she joined in
8 2003. She is 21 years old at this point. She may well
9 have begun posting when she was under 18. I invite you
10 not only to consider her youth, but to consider that
11 she may well have been posting, were she to be doing
12 anything wrong, she would be considered a young
13 offender and therefore I think greater consideration on
14 latitude should be given.

15 THE CHAIRPERSON: You have raised an
16 interesting point. I would like to see if we could get
17 into the specifics here. She is 21 years old and the
18 material that has been shown I think for the most part
19 dated from 2004 and later. Right?

20 MR. FROMM: I believe so.

21 THE CHAIRPERSON: So she would have
22 been 19 at the time. There aren't any posts
23 specifically when she was 17 of the ones that have been
24 shown to me.

25 MR. FROMM: I can't point to them, I

1 must say.

2 THE CHAIRPERSON: I just want to be
3 clear. I see what your broader point is, but just to
4 be clear, none of the posts that have been brought by
5 the Commission to which my attention has be drawn in
6 the book seem to come in a period when she was under
7 18.

8 MR. FROMM: Excluding that, I ask
9 that you consider her youth. Mr. Vigna asked her
10 yesterday, and I hope I am summarizing it correctly,
11 something to the effect that when you got this
12 complaint, why did you continue to post? The reason,
13 she gave a reason. He said did you not know that there
14 were penalties and consequences, that there are
15 consequences for expressing your views, and she said
16 she didn't know that.

17 I might say that she has had no
18 benefit of legal counsel as to what her rights and
19 obligations were. I have come into this somewhat late
20 in the game and I hope to some extent maybe have
21 assisted a little bit, but she really has been
22 steamrollered by this process.

23 THE CHAIRPERSON: The evidence is, I
24 believe, that her last post at least that has been
25 documented or that she conceded to having made on the

1 Stormfront website?

2 MR. FROMM: I think she said she
3 hasn't made any since July, even though she does have
4 access to a computer now. But she has been very busy.
5 She's been somewhat traumatized by these proceedings
6 and has basically devoted herself to work and
7 considerable worry about her very, very ill boyfriend.

8 The final consideration under penalty
9 is the compensation claimed by Mr. Warman. I am not
10 sure I understood Mr. Vigna's submission. Perhaps he
11 didn't put a dollar figure to it. Mr. Warman, if my
12 memory is correct, is asking for \$7500.

13 I have the wording here. 53(3): In
14 addition to any order under subsection (2), the member
15 or panel may order the person to pay such compensation
16 not exceeding \$20,000 to the victim as the member or
17 panel may determine if the member or panel finds that
18 the person has engaged in the discriminatory practice
19 wilfully or recklessly. That apparently flows from the
20 fact that Ms Beaumont named Mr. Warman.

21 My submission, my very strong
22 submission is that she did not name him in the course
23 of a discriminatory practice, which would mean having
24 tied him with a particular group that is protected
25 under section 13(1).

1 One of the posts did call him a Jew,
2 but that was only, according to him, erroneously, but
3 whether erroneously or not, that was only for
4 identification purposes. There was nothing in the
5 language that ran down Jews. It ran down Warman, not
6 Warman because he's a Jew or alleged to be a Jew, but
7 Warman for his actions. There is nothing derogatory
8 about Jews.

9 Would she have been equally guilty if
10 she had said that man Warman because that would be
11 identifying him on another prohibited ground, namely
12 sex. I think if you read the passage that she is
13 talking about, identifying him in this case
14 incorrectly, and this is tab 10, so perhaps we could
15 look at that.

16 It's part of an ongoing series of
17 posts about what had happened to Terry Tremaine or
18 mathdokter99. This is what Ms Beaumont said.

19 THE CHAIRPERSON: Do you have a tab
20 number?

21 MR. FROMM: Yes, tab 10. Do you see
22 it there?

23 THE CHAIRPERSON: I see there's
24 something from Jessy Destruction.

25 MR. FROMM: Yes, and she says:

1 "Glad to hear that you are doing
2 better. Hopefully this
3 [bullshit] will stop before
4 everyone knows what we've
5 experienced. People have lost
6 their family, jobs, and
7 websites. (Among many other
8 things) And all because of that
9 retarded jew Warman. We all
10 know he does this because he is
11 a very low and disgraceful
12 animal. He does this for his
13 own personal gain (be it
14 monetary or mentally)
15 Regardless, I WILL NOT LET HIM
16 DEFEAT ME!"

17 Although she does identify him
18 apparently erroneously as a Jew, the word itself in
19 this case is not discriminatory, it's not pejorative.
20 She assumes apparently incorrectly that that's what he
21 is. Would it be any different if she said that
22 retarded man, Warman?

23 THE CHAIRPERSON: But there is a
24 difference. It's a subtlety. You called me a man of
25 the world at one point in your introductory statements.

1 We're all persons of the world. Language like that has
2 always been used as a way to demean people. Language
3 like that has been used against people from my culture
4 or other ethnic groups saying dirty this, dirty that,
5 retarded this. It's a way to bring the person down.
6 It's not just a reference to the fact that there is a
7 mistaken opinion that the person is Jewish. We know
8 what's meant by that when you use that term.

9 Is it a flagrant violation of section
10 13, or is it even a violation of section 13 may be
11 another thing. But to submit to me that just by using
12 the term "retarded Jew" is just an identification of a
13 perception that of the person is Jewish --

14 MR. FROMM: That would be my
15 submission.

16 THE CHAIRPERSON: I understand your
17 submission.

18 MR. FROMM: The retarded goes with
19 Warman. That's generic. Retarded means something I
20 don't approve of. It doesn't mean Mr. Warman is a
21 couple chromosomes short of the normal. It's just I
22 don't like him. She says nothing further in that post
23 about his being a Jew. She says he's a disgraceful
24 animal.

25 THE CHAIRPERSON: It's not a neutral

1 term.

2 MR. FROMM: She makes the claim,
3 whatever it's all about, he's in it for personal gain,
4 monetary or mentally.

5 Much has been made of the sign, and I
6 think she helped clarify that. First of all, the sign
7 does not mention anything that is discriminatory. It's
8 about the Dead Warman Society. She explained it's a
9 take off on the Dead Poet's Society, a movie that was
10 quite popular among young people about a decade ago.
11 Yes, it's harsh. She's angry. I think people have a
12 right to be angry when they find themselves charged in
13 a way like this.

14 THE CHAIRPERSON: Let's look at the
15 context here. The sign there is referring to Mr.
16 Warman who is perceived to be Jewish and has three
17 Swastikas on top. We know the historic relationship
18 between Nazi Germany and the Jews. I don't want to get
19 into a debate on numbers, but that is the perception.

20 Can it not be argued that that also
21 may constitute that kind of a reference? It seems to
22 me that in the authorities that have been published in
23 the past, those types of mixing of messages have been
24 perceived as breaches of section 13.

25 MR. FROMM: I think that's a very

1 highly interpretive take on the sign. Ms Beaumont has
2 told you she's a national socialist, so the presence of
3 the Swastika, that's her symbol.

4 The sign does not say, the retarded
5 Jew Warman Society or something like this.

6 THE CHAIRPERSON: I know it's a play
7 on the word, but it says Dead Warman Society.

8 MR. FROMM: Yes, it does. I would
9 submit that angry is the comment maybe or maybe even
10 morbidly humorous. It's not violating section 13(1).
11 It's not a discriminatory -- he's not being targeted
12 for reasons of religion or race, but activity.

13 The other comments Warman has made,
14 as mentioned, deal with his activities against people
15 like mathdokter or against herself.

16 The submission that somehow Richard
17 Warman is a victim I invite you to consider as
18 laughable. He is not an aggrieved individual who feels
19 that the posting has hurt his group and has come forth
20 with a complaint and then finds himself mentioned. He
21 is a person who has made numerous complaints, by my
22 count 20, but suffice it to say numerous complaints.
23 He is a player.

24 In fact, to quote the man who
25 introduced him at a recent meeting, Harry Abrams of

1 B'nai Brith, he called him the Wayne Gretzky of
2 Canadian human rights actions, a person who has made
3 numerous complaints, who has targeted her group,
4 shutting down the neo-Nazis by almost any means
5 necessary.

6 THE CHAIRPERSON: How do you address
7 the interpretation of section 54 that Mr. Vigna made
8 that the victim as used in this specific provision is
9 related to the rest of that sentence, as any person who
10 is identified in a communication, that constitutes
11 discriminatory practice. We went through that, let's
12 assume that for a moment.

13 If it is a discriminatory practice,
14 if those two messages that we just looked at are
15 discriminatory practice, dealing with the issue of
16 victim now, that is what victim is meant.

17 MR. FROMM: I would submit they are
18 not, but if they are, then you would have to, I guess,
19 determine how much compensation this particular person
20 is entitled to. As opposed to the person who feels
21 personally aggrieved by a message and complains, Mr.
22 Warman testified yesterday he is not a member of any of
23 these particular groups but is on a political mission,
24 is a person who has made numerous complaints, has on
25 various occasions said he feels his life is in danger,

1 he's been threatened he says, and so on. Ms Beaumont
2 has not threatened him. She has not put his address
3 up, has not put his picture up. As she says, she has a
4 temper, she's reacted angrily to what has been done to
5 her.

6 I would invite you not to accept the
7 notion that even having named a person constitutes a
8 discriminatory practice. Would that mean that the
9 victim is not able to report, I am the subject of a
10 human rights complaint and the complainant is Richard
11 Warman. If the mere naming of the person who has
12 complained --

13 THE CHAIRPERSON: Your submission was
14 already to the point that it has to be a discriminatory
15 practice and mere naming would not be.

16 MR. FROMM: Would not do it.

17 THE CHAIRPERSON: It has to be
18 something broader than that. And the submission, I
19 believe, of Mr. Vigna is that the two examples we just
20 looked at constituted discriminatory practice, which
21 brings us to 53(3) and that is at that point you look
22 at the conduct of the person who engaged in the
23 discriminatory practice, whether it was wilful or
24 reckless.

25 MR. FROMM: Perhaps before I --

1 THE CHAIRPERSON: I didn't mean to
2 push you in a different direction.

3 MR. FROMM: I will deal with that.

4 THE CHAIRPERSON: I think I
5 understand your submissions broadly. I see your points
6 on those. I don't have a sense that you take issue
7 with the fact that 53(3) is assessed on the basis of
8 those words as indicated, wilful or reckless.

9 MR. FROMM: There may be some case
10 law, though, to assist you on this. Mr. Warman has
11 made these demands before, and at tab 15, which is
12 Richard Warman versus Thomas Winnicki, Member Jensen
13 said --

14 THE CHAIRPERSON: What paragraph,
15 please?

16 MR. FROMM: Paragraphs 159 and 160.
17 159 Member Jensen writes:

18 "I find, however, that the
19 Complainant's speaking notes do
20 suggest a certain robustness of
21 spirit and even an enjoyment of
22 the thrust and parry of the
23 battle. His ability to derive
24 pleasure out of his 'maximum
25 disruption' approach and to use

1 it to deal with people he finds
2 annoying suggest a degree of
3 imperviousness to the pain and
4 suffering that some victims
5 might experience as a result of
6 retaliation.
7 [160] I also find it
8 significant that the Complainant
9 would be prepared to display a
10 photograph of the Respondent to
11 members of the ARA and call him
12 'a nasty piece of work' only a
13 few months after the Respondent
14 had posted a picture of the
15 Complainant on the Internet.
16 The nature and tone of this
17 reaction suggests a resiliency
18 that is not consistent with a
19 claim to have suffered greatly
20 as a result of the Respondent's
21 retaliatory message."

22 THE CHAIRPERSON: Of course you know
23 that that was all in reference to his claim for pain
24 and suffering on the retaliation.

25 MR. FROMM: Yes, but I think perhaps

1 instructive that another member was less than
2 overwhelmed by the suggestion that Mr. Warman is a
3 victim. Mr. Warman is a player. I will call him a
4 professional complainer. He has made a lot of
5 complaints. He's a man on a mission. He speaks at
6 various public gatherings.

7 I will also point out in terms of
8 trying to assess who's the victim here, in this case,
9 as in the case of Terry Tremaine, there was an effort
10 to specifically hurt as much as possible the
11 respondent. A human rights complaint had been filed
12 against Ms Beaumont and also Mr. Donnelly.

13 Mr. Warman was not content to let the
14 Commission and then the Tribunal process run its
15 course. He went, according to -- I don't think I got a
16 very clear response from Mr. Warman. Ms Beaumont was
17 very clear in her evidence that Mr. Warman went to the
18 local newspaper to out them, and "to out them" means to
19 publicly expose them so all their neighbours will say
20 look at the horrible Nazis. That is what outing means.
21 You will have to take that as my testimony rather than
22 the -- but I think you will find it in the dictionary.
23 So that is what was meant by demonstrations and
24 outings. Outings is a public exposure of an individual
25 in the hopes of hurting them.

1 Not only that, though, again before
2 this complaint was dealt with, Mr. Warman filed a
3 complaint under section 319, which is a more serious,
4 far more serious procedure than this one. In the case
5 of Terry Tremaine -- the case itself has not been
6 decided, it's still before Member Doucet -- I was able
7 to lead evidence about the fact that again before the
8 complaint had been decided, he went to Mr. Tremaine's
9 employers and I asked, you asked, we never did get an
10 answer what the purpose of the letter was, but as a man
11 of the world you too must have concluded it was not to
12 get him promoted.

13 There is a particular destructiveness
14 and vindictiveness on the part of the complainant. I
15 submit to you the only victim in this room is Ms
16 Beaumont. Mr. Warman has done the most he can to cause
17 this young person serious pain and suffering and, of
18 course, the section 319 complaint, nothing, as far as
19 I, know has happened at this point.

20 My final submission, and I hope you
21 will not conclude I am trying to back door an issue
22 that you have already ruled on, but it did strike me in
23 the fact that in the case of Ms Beaumont there has been
24 a complaint made by Mr. Warman under section 319, that
25 perhaps section 41 applies, and that will be 41(a).

1 The alleged victim of the discriminatory practice to
2 which the complaint relates ought to exhaust grievance
3 or review procedures otherwise reasonably available.
4 He has already chosen to make a Criminal Code
5 complaint.

6 THE CHAIRPERSON: First of all,
7 41(1)(a) usually alluding not to the two parallel
8 options, not being criminal and civil, but another
9 civil instance, for instance labour arbitration. That
10 is the kind of thing that is envisaged.

11 More importantly, again, 41, you
12 skipped what came right before that: If it appears to
13 the Commission that. There was one case where the
14 Federal Court said that the Tribunal had some authority
15 to invoke perhaps I think it was sub (b) and that has
16 since been rejected by the Court in a later decision.

17 There hasn't been any authority from
18 the courts saying that we have the authority to engage
19 in this process. If the Commission chooses to refer,
20 if the Commission chooses to ignore (a) through (e),
21 that's their business and we are not the forum to be
22 reviewing it.

23 MR. FROMM: I thought I would draw it
24 to your attention anyway.

25 THE CHAIRPERSON: I appreciate what

1 you're saying. It goes back to what I told you
2 earlier. Sometimes there are other recourses that
3 should be taken and not just fighting it out here in
4 front of the Tribunal. But once it's here, we have to
5 deal with it in the context of 13.

6 MR. FROMM: I will accept what you
7 have told me.

8 THE CHAIRPERSON: I am just telling
9 you what the situation is as I see it.

10 MR. FROMM: But in terms of who is
11 doing what to whom, the angry response of a young lady
12 with a sense of humour perhaps or maybe not a very good
13 sense of humour about the Dead Warman's Society is in
14 the context, I suggest to you, of youthful give and
15 take in a situation where she feels she has been
16 unjustly dealt with.

17 What Mr. Warman has done is not only
18 this complaint, but the Criminal Code complaint and the
19 effort to set the local press on her and Mr. Donnelly
20 to make their lives miserable.

21 I would invite you to consider that
22 disparity in terms of power in trying to decide who is
23 the victim.

24 I want to thank you for your time,
25 and I certainly hope that you will conclude that the

1 only victim in this room is Jessica Beaumont.

2 THE CHAIRPERSON: Thank you, Mr.
3 Fromm. Mr. Vigna, do you want to address those issues?
4 Mr. Fromm had a deadline, he had mentioned to me
5 yesterday, of 3:00 p.m. Will you be long because the
6 other option is to enable you to put them in writing.

7 REPLY SUBMISSIONS BY MR. VIGNA

8 MR. VIGNA: I won't elaborate. I
9 will just pinpoint the key points that refer to the
10 arguments without elaborating.

11 In terms of the case, the way it
12 should be looked at, if I can suggest something, if you
13 look at tab 25, you don't have to actually look at it
14 now, but I think it's one of the key -- I would say it
15 would be the skeleton of the case. All the other
16 postings would be what adds to it. I should put that
17 with the argument I made about context.

18 For example, at principle 9:

19 "History has shown us that the
20 Black race cannot create or
21 maintain an advanced society on
22 its own. Its members therefore,
23 as a people, cannot well fit
24 into an advanced society, as
25 equals, living and working

1 beside those who not only are
2 capable of building one advanced
3 society, but have built numerous
4 such societies in all climates
5 and all types of land."

6 And it goes on. This document is
7 like the backbone, and all the other postings, for
8 example, the one that Mr. Fromm tries to say it's only
9 language used by youths and all that, has to be taken
10 into context with the whole message that is being
11 given. The fact that the nature of the website, the
12 fact that the entire message that is being portrayed is
13 one that violates section 13.

14 Secondly, on the issue of repeatedly,
15 I would like to refer to the case, the first one in the
16 tab, a passage which I think speaks to the point about
17 the Internet, which is important.

18 THE CHAIRPERSON: What's the first
19 decision?

20 MR. VIGNA: The decision is called
21 Barrick. I mentioned it earlier but I am going to
22 refer to the exact quote. It is after the sixth page
23 where it says Justice Blair.

24 THE CHAIRPERSON: Is there a
25 paragraph number?

1 MR. VIGNA: Before the first
2 paragraph.

3 THE CHAIRPERSON: Right at the top?

4 MR. VIGNA: Yes, right at the top.

5 "The Internet represents a
6 communications revolution. It
7 makes instantaneous global
8 communication available cheaply
9 to anyone with a computer and an
10 Internet connection. It enables
11 individuals, institutions, and
12 companies to communicate with a
13 potentially vast global
14 audience. It is a medium which
15 does not respect geographical
16 boundaries. Concomitant with
17 the utopian possibility of
18 creating virtual communities,
19 enabling aspects of identity to
20 be explored, and heralding a new
21 and global age of free speech
22 and democracy, the Internet is
23 also potentially a medium of
24 virtually limitless
25 international defamation."

1 This was a defamation case but the
2 point about the Internet is pervasiveness.

3 THE CHAIRPERSON: I understand the
4 Internet, but what do you think about the question that
5 is raised by Mr. Fromm that let's look at this part of
6 the Internet.

7 I mean, let's start from the basic
8 level. I think you would agree that if someone is
9 sending an e-mail to another person, x@yahoo to
10 y@yahoo, is very similar to what Taylor described as
11 communications between two individuals telephonically.
12 Arguably if it was X to Y and Z and w@yahoo.com,
13 multiple twos, it still would seem to fit with what the
14 exception in Taylor said.

15 That is one end of it, and the other
16 end is a full-blown web page that someone can see.
17 This is somewhere in the middle is the argument of Mr.
18 Fromm. How do you address that point?

19 MR. VIGNA: The way I address it is
20 that this is not a case of an e-mail between two
21 individuals or even three. It's the case of a forum, a
22 public forum because it was even admitted to by the
23 respondent when the question was asked whether it's
24 public. A forum that is on a public site that can be
25 publicly accessible, one at least read very easily and,

1 two, even in terms of participation it can be easily
2 accessed by simply putting a user name and a password
3 with no cost and it's very cheap, like the quote says.

4 I don't think it's the case of a
5 private --

6 THE CHAIRPERSON: What about the
7 issue of practical obscurity? You come into this
8 sometimes and say is a document public or not. I
9 remember we used to discuss this in terms of court
10 documents. When they are filed in the court docket at
11 the court house at the palais de justice in Quebec, you
12 say they're public but really they're obscure. You
13 have to go down to the basement of the court house and
14 get a copy of that document to say that you've seen it.
15 So, we are not that concerned with privacy issues
16 related to those documents because they are sort of
17 buried down there.

18 The same kind of analogy is being
19 made here. This is not public in the sense of
20 something that is readily seen and viewed by everyone
21 or easily found. It is something that you have to go
22 down through several layers to find, and the minute you
23 come to the first layer, you can't even get there if
24 you are not a person of like mind, to quote Mr. Fromm.

25 MR. VIGNA: Mr. Chair, I would say

1 simply this. It's called a forum which in itself means
2 a public type of --

3 THE CHAIRPERSON: A public exchange
4 of like-minded -- quote/unquote --

5 MR. VIGNA: Even if it's like minded
6 or not, there's still a public element to it because
7 they're not in a private room discussing in isolation.
8 When you're on the Internet, the Stormfront site, it's
9 publicly accessible. You type in www.stormfront, you
10 go to it and that's it. That you actually have to go
11 to a certain chapter, it's about the case with just
12 about any website that exists out there. There is
13 nothing that makes it insular to the point that it's
14 not publicly available. Because if that would be the
15 case, then basically people would be able to escape
16 liability just by proceeding this particular way and
17 saying it is semi-public, it's not totally public.

18 It's publicly available. It's a
19 forum. It's on a public website. The whole purpose of
20 the Stormfront is to generate public discussion.

21 THE CHAIRPERSON: Just by clicking
22 without even actually typing in anything, you can
23 access stormfront.org. Something would have to be
24 typed in in order to find it.

25 MR. VIGNA: You have to type in

1 something, but I mean, the newspaper too, you have to
2 go to the store and actually make the positive gesture
3 of buying a newspaper, going to the counter and paying
4 for it. If you don't do that, you don't get access to
5 the newspaper, but does it make it less public because
6 you have to do all those things?

7 THE CHAIRPERSON: Section 13 doesn't
8 deal with newspapers.

9 MR. VIGNA: I am saying there is a
10 certain operation that has to be taken. It won't be in
11 the public's eye if people don't go on it, but they
12 have access to it, it's publicly available. The
13 Internet itself is --

14 THE CHAIRPERSON: I won't belabour
15 the point. I understand your position.

16 MR. VIGNA: Finally, the whole case
17 about whether -- this has been argued and it's in the
18 case law, but section 40 simply says that any
19 individual can make a complaint. It doesn't have to be
20 the targeted group. It doesn't have to be like there
21 was a big case made about the Jewish groups in
22 Vancouver not making the complaint. If that would be
23 what the law requires, they wouldn't have put the words
24 "any individual," and the case law is pretty clear on
25 that issue. That has been decided and argued in the

1 past.

2 Then in terms of another tab I have
3 here that I would like to bring to your attention, it's
4 tab 26B, page 2, first of all, page 1 talks about
5 "Split verdict in fatal gay swarming; Cran guilty, Rao
6 acquitted." It says one person was acquitted and the
7 other was found guilty. Then there's a comment in the
8 quote there that's not from Ms Beaumont.

9 "Aaron was peaceful, loving,
10 kind,' she said, weeping. 'We
11 hope he will be remembered that
12 way, not as the homosexual
13 murdered in Stanley Park.'"

14 Then it goes:

15 "Just to spite this fags sister,
16 I am now going to remember that
17 he was the gay killed in Stanley
18 park."

19 If you look at that and you want to
20 make the argument that the respondent is making that
21 it's only a joke, when you're talking about gay people
22 being killed and presenting it as something that's
23 funny --

24 THE CHAIRPERSON: No, Mr. Vigna, it
25 links up to what was said before.

1 "We hope we will be remembered
2 that way, not as the homosexual
3 murdered in Stanley Park."

4 To be contrary to that, she says,
5 well, I am going to remember him as the gay killed in
6 Stanley Park. That's what's going on there. A strong
7 word is used earlier in there, but --

8 MR. VIGNA: The point I'm making, Mr.
9 Chair, is that it's not because you're using humour
10 that you can justify hateful or contemptuous messages.
11 It's not because you camouflage something with humour
12 that you can actually get away with it. That's the
13 point I am making. That's all I have to say, Mr.
14 Chair.

15 THE CHAIRPERSON: Thank you.

16 MR. FROMM: Can I have one more kick
17 at the cat? There's a citation I want to bring to your
18 attention which got lost in the paper.

19 THE CHAIRPERSON: Okay.

20 MR. FROMM: In terms of compensation
21 to Richard Warman, this is perhaps something that may
22 assist you. It's a recent case here in British
23 Columbia before the B.C. Court of Appeal and it's
24 Simpson versus Mair, and that's Carrie Simpson and Rafe
25 Mair, the radio personality. This was a libel case.

1 THE CHAIRPERSON: You don't have it
2 with you?

3 MR. FROMM: Unfortunately not.

4 THE CHAIRPERSON: If Mr. Vigna has
5 any comment on this, you can just send it by e-mail.

6 MR. FROMM: In this case, Mr. Mair
7 took off after Carrie Simpson, who was a campaigner
8 against the homosexual agenda, and he said that she was
9 like Hitler and like former Arkansas Governor, Orval
10 Faubus.

11 The court ruled that because she was
12 a public personality, very much involved in politics
13 and lobbying, that even very harsh characterizations
14 like that would be acceptable, provided Mr. Mair had
15 backed them up. So if in were in fact that she was
16 like Hitler or like former Governor Orval Faubus, even
17 those were hurtful characterizations, that would be
18 acceptable. However, as he had not backed it up, he
19 simply called her those names, she won the case.

20 But the ruling of the B.C. Court of
21 Appeal was that there is wide latitude for comment in
22 politics but it must be based on evidence. I would
23 submit that Mr. Warman is a political player and that
24 Ms Beaumont's comments, well, sarcastic and nasty, are
25 based on fact.

1 THE CHAIRPERSON: I will look at that
2 case given the information you have given me. You tell
3 me it's a British Columbia Court of Appeal case.

4 MR. FROMM: Yes.

5 THE CHAIRPERSON: Mr. Vigna, if you
6 have anything you want to say on the case, you can
7 submit something to the Tribunal. We have given
8 ourselves basically to the 12th.

9 Before we close, you have to tell us
10 the seven documents that are to be removed.

11 REGISTRY OFFICER: The tabs that are
12 to be removed are tab 13, tab 14, tab 15, tab 16, tab
13 18, and tab 31, as I understand it, is a replication of
14 tab 11, I believe.

15 MR. VIGNA: Yes, that's right.

16 REGISTRY OFFICER: So that's six tabs
17 to be removed. If any of the parties have any
18 questions with regard to that, they can e-mail me.

19 MR. FROMM: Will you be sending us a
20 reminder of the deadlines?

21 REGISTRY OFFICER: I could. I will
22 also be sending a copy of the exhibit list. It will
23 not include the tabs that are included, but if there's
24 a question as to which ones have been excluded, e-mail
25 me.

1 THE CHAIRPERSON: It's also on the
2 record. Given that we have just entered the binder as
3 one exhibit, there haven't been mention along the way
4 of what each exhibit is. It's just the book of
5 documents that has been filed.

6 REGISTRY OFFICER: The transcript and
7 the exhibits will be sent to the parties electronically
8 as soon as they are received by the Tribunal.

9 THE CHAIRPERSON: That is it then.
10 Thank you very much.

11 --- Whereupon the hearing adjourned at 3:03 p.m.

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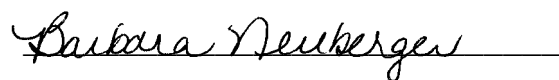
16

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

21

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23



24

Barbara Neuberger

25

C.S.R., R.P.R.