

**CANADIAN
HUMAN RIGHTS
TRIBUNAL**



**TRIBUNAL CANADIEN
DES DROITS
DE LA PERSONNE**

BETWEEN/ENTRE:

RICHARD WARMAN

Complainant

Plaignant

and/et

CANADIAN HUMAN RIGHTS COMMISSION

Commission

Commission

and/et

TOMASZ WINNICKI

Respondent

Intimé

BEFORE/DEVANT:

KAREN JENSEN

CHAIRPERSON/
PRÉSIDENTE

CAROL ANN HARTUNG

REGISTRY OFFICER/
L'AGENTE DU GREFFE

FILE NO./N° CAUSE:

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

SITTING AT JPR ARBITRATION CENTRE, 390 BAY STREET, 3rd FLOOR,
TORONTO, ONTARIO ON MONDAY, OCTOBER 17, 2005, AT 9:30 A.M.
LOCAL TIME

CASE FOR HEARING/CAUSE DEVANT ÊTRE ENTENDUE

IN THE MATTER of the complaint filed under section 7 of the
Canadian Human Rights Act by Richard Warman, dated September 7th,
2002, and as amended against Tomasz Winnicki. The Complainant
alleges that the Respondent has engaged in a discriminatory
practice on the grounds of religion, race and national or ethnic
origin, colour and retaliation in a matter relating to the usage
of a telecommunications undertaking.

APPEARANCES/COMPARUTIONS

Richard Warman	on his own behalf
Monette Maillett Ikram Warsame	Counsel for the Commission
Chi-Kun Shi	Counsel for the Respondent

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1 Toronto, Ontario

2 --- Upon commencing on Monday, October 17, 2005

3 at 9:45 a.m.

4 REGISTRY OFFICER: Order, please.

5 All rise.

6 Please be seated.

7 Good morning.

8 The case for hearing today is in the
9 matter of the complaint filed under sections 13.1 and
10 14.1 of the Canadian Human Rights Act by Richard
11 Warman, dated September 7th, 2003 against Tomasz
12 Winnicki, and as amended in the Tribunal's Ruling on
13 July 11th, 2005.

14 The complainant alleges that the
15 respondent has engaged in a discriminatory practice on
16 the grounds of religion, race, national or ethnic
17 origin, colour and retaliation in a matter relating to
18 the usage of a telecommunications undertaking.

19 The Presiding Member of this Inquiry
20 is Karen Jensen.

21 The Tribunal will now resume.

22 MS SHI: Good morning, Madam Chair.

23 My name's Chi-Kun Shi, I'm appearing for the first time
24 on behalf of Mr. Winnicki.

25 THE CHAIRPERSON: Good morning. Thank

1 you.

2 Well, good morning to all. We are
3 here, as was mentioned, to resume the hearing of the
4 complaint against Mr. Tomasz Winnicki involving
5 allegations of the communication of hate messages and
6 also allegations of retaliation against the
7 complainant.

8 I adjourned the matter on July 9th to
9 provide counsel for Mr. Winnicki with time to prepare
10 the case. Dates were set then for resumption of the
11 hearing for today and continuing on through until the
12 end of the week.

13 So, since the adjournment in July we
14 have had an issue which has arisen with respect to the
15 disclosure of a document. That document consists of
16 the speaking notes prepared by Mr. Warman for a speech
17 that he delivered at a conference in 2005 in Toronto.

18 Ms Shi requested these notes, Mr.
19 Warman and the Canadian Human Rights Commission
20 objected. I then directed that Mr. Warman disclose the
21 notes.

22 Mr. Warman delivered his notes on
23 October 12th as required by the Tribunal. He included
24 a request for further direction from this Tribunal with
25 regard to the use of these notes.

1 I provided directions which were
2 essentially making explicit that which is implicit in
3 the compelled production of documents; that is, when
4 documents are compelled to be produced by a Tribunal
5 such as this there is an implied undertaking that that
6 document will not be used for any other purpose than
7 the litigation.

8 As master of this process here before
9 the Tribunal, it was my view that this was the most
10 expeditious and appropriate way to proceed in the
11 circumstances.

12 The document in question was sent to
13 the parties as quickly as possible to give all parties
14 an adequate opportunity to prepare to meet the merits
15 of the case.

16 However, I want to be very clear that
17 I am very open at this point in time to receiving
18 argument and, indeed, if it is deemed appropriate,
19 evidence as to why the implied undertaking either
20 should not apply or why Mr. Winnicki should be relieved
21 from the application of this rule.

22 Indeed, we can take as much time now
23 as you see fit to have a full airing of the issue.

24 So, Ms Shi, I think what I am going
25 to do is start by giving you an opportunity now to make

1 any arguments or submissions that you may feel
2 appropriate with regards to the application of the
3 implied undertaking.

4 MS SHI: Thank you, Madam Chair.

5 My concern, as you know, that in my
6 letter dated October 13th to both the Tribunal and to
7 the Commission wasn't so much the substance of your
8 direction but the manner in which it was obtained, ex
9 parte.

10 And I was also troubled by the fact
11 that even though the same morning when -- the same day
12 when the direction was issued -- and it was issued I
13 believe at around 3:30 or four o'clock in the afternoon
14 -- that morning I wrote Commission counsel asking
15 about the whereabouts of that speech because, of
16 course, the production was late.

17 Your direction had stipulated that
18 the speech was to have been disclosed on October 12th,
19 and so I wrote Ms Maillet on October 13th, morning, 10
20 o'clock, asking for the whereabouts of that speech, and
21 even at that point Ms Maillet did not disclose to me
22 that a request for direction is in the working.

23 And it's especially troubling because
24 that direction affects not only my client but me as
25 well as a lawyer.

1 And I'm also troubled that the
2 Tribunal issued a direction that the speech was to have
3 been disclosed on the 12th, it was not disclosed until
4 the 13th and no explanation nor extension was ever
5 given, not to my knowledge anyway.

6 And just purely housekeeping, Madam
7 Chair, I'd just like to, for the record, point out that
8 Mr. Warman forwarded his speech to the Tribunal October
9 11th not the 12th, according to his letter.

10 So, my concern is that this may be a
11 pattern of conduct, and it's a little bit ironic that
12 after I send my letter on October 13th complaining
13 about not being informed as to some of the proceedings,
14 I receive from the Tribunal an e-mail advising me that
15 my letter had been forwarded to the Commission and to
16 the complainant.

17 Now, if only the Tribunal would have
18 been just as diligent about doing that for me with
19 respect to communication from the Commission or the
20 complainant to the Tribunal.

21 There is at least an appearance of
22 lack of even handedness.

23 And if I may just quickly hand up a
24 few case law about what the court has said about ex
25 parte communication in legal proceedings, which I

1 submit that this is one, if I may hand it up.

2 This is the Taylor case, the Federal
3 Court of Appeals decision which the Supreme Court of
4 Canada upheld.

5 It says on paragraph 38:

6 "The determination that a person
7 or group has..."

8 THE CHAIRPERSON: Just a minute until
9 I find the page.

10 MS SHI: Yes, of course. It's page
11 14.

12 THE CHAIRPERSON: I have got it.

13 MS CHI-KUN SHI:

14 "The determination that a person
15 or group has contravened
16 subsection 13.1 is made by a
17 Tribunal after a hearing which
18 must be conducted according to
19 the requirements of natural
20 justice."

21 And in the case of Tobiass -- I
22 apologize, it looks as if my assistant had not produced
23 copies, I will provide copies later today to the
24 parties. I apologize.

25 But if I could just read from the

1 Supreme Court of Canada decision in *Tobiass*. It
2 discusses principles of professional conduct that must
3 be observed in order to maintain the appearance of
4 judicial independence.

5 "First..."

6 And this is paragraph 74:

7 "First, and as a general rule of
8 conduct, counsel for one party
9 should not discuss a particular
10 case with a judge except with
11 the knowledge and preferably
12 with the participation of
13 counsel for the other parties to
14 the case."

15 And then in paragraph 75(2):

16 "And again, as a general rule, a
17 judge should not accede to the
18 demands of one party without
19 giving counsel for the other
20 parties a chance to present
21 their views."

22 That's from the case of *Minister of*
23 *Citizenship and Immigration v. Tobiass*, 1997, S.C.J.
24 No. 82. And, as I said, I apologize that I don't have
25 copies for all the parties, which I will provide later

1 today.

2 THE CHAIRPERSON: Ms Shi --

3 MS SHI: Yes?

4 THE CHAIRPERSON: -- if I might just
5 interrupt your submissions at this point.

6 I understand your point completely
7 and I think that what I was trying to say in my opening
8 address was that the direction that was given was
9 appropriate, in my view, at the time given the lateness
10 of the disclosure, the impending hearing dates and your
11 need to have all of the documents at your disposal so
12 as to prepare for the merits of the case.

13 However, at this point in time -- and
14 I would like you to focus your submissions on that at
15 this point -- is, I understand what you are saying and
16 I don't think there is any need to go any further with
17 that.

18 At this point in time, I would like
19 to hear if you have -- I am more than open to the idea
20 of hearing your submissions regarding the application
21 of the rule and whether or not, in fact, you are
22 applying for relief against the application of the
23 rule.

24 MS SHI: Well, Madam Chair, my answer
25 is that I really hadn't thought about the substance of

1 the direction.

2 THE CHAIRPERSON: Have you had time
3 to think about it now?

4 MS SHI: No, I haven't had time to
5 think about it. I got this speech and notice of this
6 ex parte communication on Thursday at around four
7 o'clock and, no, I haven't had time to think about
8 that.

9 But I can tell this Tribunal that I'm
10 much more troubled about the manner in which the
11 direction was rendered.

12 Respectfully, Madam Chair, it is my
13 submission that when the matter came before this
14 Tribunal, doesn't matter what time or what part of
15 proceeding is at, there simply should not be any ex
16 parte communication, period, unless there's a
17 justification that somehow there is harm to be incurred
18 from letting me know about this application for
19 directions, which I assume that nobody is arguing.

20 What I hear from this Tribunal, and
21 from you Madam Chair, it was a time factor and, with
22 all due respect, that cannot be a reason for this ex
23 parte communication.

24 I could have been reached on the
25 phone. It would have been a simple matter, if the

1 Tribunal or the Commission had copied me the
2 communication. I will submit it's not an issue of
3 time, it would have taken no time at all to notify me.

4 THE CHAIRPERSON: With all due
5 respect, Ms Shi, I hear your point on this matter and I
6 think that the point that I am trying to make, that I
7 am not hearing you respond to, is that the opportunity
8 is still there now for you to provide me with your
9 input on this and, if necessary --

10 MS SHI: Well, my answer --

11 THE CHAIRPERSON: Excuse me.

12 MS SHI: Yes.

13 THE CHAIRPERSON: -- if necessary,
14 modifications to directions can be given.

15 But I would ask you now to spend some
16 time -- you can certainly have the time you need during
17 break to put your mind to the issue, and if there are
18 any reasons why you think the rule should not apply, or
19 that relief should be granted against application of
20 the rule, please feel free to bring those arguments and
21 submissions forward to me at that time.

22 MS SHI: I will do so. I will do so.
23 I have advised this Tribunal that I haven't had time to
24 look into that aspect, however, I will do that.

25 However, I do have this issue of an

1 appearance of bias that I would like the Tribunal to
2 address, and what I'm asking for at this point is that
3 both the Tribunal and the Commission provide me with
4 full disclosure of its communications records.

5 I would like to have a full
6 investigation as to whether this kind of ex parte
7 communication has occurred before, and then I will
8 confer with my client as to see what are the
9 appropriate remedies.

10 Madam Chair, with all due respect, I
11 don't believe your offer to reconsider the direction
12 addresses the point of the conduct that has occurred to
13 date.

14 In my view, it has tainted these
15 proceedings and it has raised the issue as to whether
16 my client is to receive procedural fairness and natural
17 justice, and I would like to get to the bottom of this.
18 That's what I'm asking right now.

19 And if I could receive -- I assume
20 the file being here, and the Commission with its
21 resources and the Tribunal, it would not be a lot of
22 work to provide me with a copy of these records. And
23 all I would need is overnight.

24 If I get the records today, I would
25 be quite prepared to advise the Tribunal tomorrow as to

1 my position on the issue of appearance of bias and on
2 the issue of the substance of the direction.

3 THE CHAIRPERSON: I am not clear what
4 you are asking for. You are asking for a copy of all
5 documentation on the file?

6 MS SHI: No, just the communications.

7 THE CHAIRPERSON: Communications on
8 file. Are you making a motion at this time regarding
9 bias?

10 MS SHI: I'm making a request -- no,
11 I'm not, not yet. I'm asking for a disclosure of these
12 records so that I can fully assess the situation and
13 confer with my client.

14 THE CHAIRPERSON: So, what you are
15 requesting is a copy of all of the communications, and
16 then am I hearing you that you want the entire day --
17 you want the hearing adjourned so that you can spend
18 the day reviewing the correspondence?

19 MS SHI: No. Well, depending on what
20 time -- well, I should say this, I think until I've had
21 time to review the records, I do not believe it would
22 be appropriate for the hearing to continue, and all I'm
23 asking --

24 THE CHAIRPERSON: So, you are asking
25 for an adjournment?

1 MS SHI: Well, I'm asking for the
2 disclosure and I'm asking for a chance to look at it.

3 If you call that an adjournment; I
4 would call that a slight delay of one day. All I need
5 is overnight. I'm assuming that I can get the records
6 today.

7 THE CHAIRPERSON: You are saying that
8 if you got the records today, you would need an entire
9 day to review them and, in your submission, we could
10 not proceed with the hearing.

11 MS SHI: Well, I think that I warrant
12 the 24 hours. I don't think asking for 24 hours to
13 determine an issue of such fundamental importance is
14 excessive.

15 THE CHAIRPERSON: Are those your
16 submissions?

17 MS SHI: Yes.

18 So long as I'm on my feet, if I may
19 just bring to your attention another housekeeping
20 matter.

21 I have advised Commission counsel Ms
22 Maillet of this. I just received yesterday a video and
23 I'm seeking the Tribunal's leave to produce it as part
24 of our materials.

25 It is a documentary, I believe, made

1 by some journalist of an incident where Mr. Warman --
2 and, by the way, I have seen the video myself, so...

3 What it shows is Mr. Warman
4 counselling someone to commit a crime; namely, throwing
5 a pie at a person called David Icke at a book signing
6 in Vancouver, I believe, on or about 2001.

7 And that counselling was successful,
8 the pie was thrown, Mr. Icke was assaulted.

9 What my client has done is he's cut
10 out excerpts. It was a rather long program, these are
11 the excerpts.

12 And, to tell the truth, I've seen the
13 whole video on the tape -- I haven't seen the excerpts
14 yet -- but I'm in your hands as to whether you would
15 rather I produce a DVD of the entire thing or would the
16 excerpt do.

17 And I have advised Ms Maillet that I
18 am quite aware the position that this puts her in and
19 it will be only fair to let Ms Maillet, if she so
20 chooses, to re-open the examination-in-chief of Mr.
21 Warman, and not just with respect to this DVD, I'm
22 aware that a lot of documents were produced after
23 August 8, 2005 and, to the extent she would like to
24 conduct any in-chief -- further in-chief on them, I am
25 quite agreeable to that.

1 THE CHAIRPERSON: So, this is late
2 disclosure at this point?

3 MS SHI: Yes, it is.

4 THE CHAIRPERSON: This has not been
5 provided to the complainant or the Commission?

6 MS SHI: Oh, I understand that,
7 that's why I'm seeking leave of the Tribunal.

8 I would submit that it's a rather
9 important piece of information because it is, my
10 submission, similar to why Mr. Warman's association
11 with the ARA may be relevant, Mr. Warman counselling
12 someone to commit a violent crime, in my respectful
13 submission, and successfully, is relevant to his
14 hearing.

15 The Alberta -- I believe it was the
16 Alberta Superior Court has ruled that throwing a pie at
17 someone, in that case at the Premier, Ralph Klein, is
18 an assault and the accused received 30 days in jail.

19 So, it's my respectful submission
20 that it is relevant, and if we allow Ms Maillet
21 overnight also to take a look at the video to
22 determine -- if she needs more time, I'm also amenable
23 to that, to re-open examination-in-chief, I would
24 submit there is no prejudice to her and, of course, I
25 rely on the Canadian Human Rights Tribunal rules of

1 procedure that -- section 1(1)(c), that all proceedings
2 be conducted as informally and expeditiously as
3 possible.

4 I think this is an exception to the
5 production rule that should be made under the rules as
6 there is no prejudice and it is a piece of information
7 that may be relevant to the hearing.

8 THE CHAIRPERSON: While I have you on
9 your feet, and this may not be the best order, but I
10 would like you to speak a little bit more pointedly to
11 the relevance of this piece of evidence.

12 MS SHI: Well, it is -- Madam Chair,
13 I would submit that I actually am -- have been
14 surprised that the relevance of this issue had been
15 questioned.

16 It seems to me that the legislation
17 that we're working under deals with something that
18 actually is quite far away from the actual commission
19 of violence and crimes, and yet this hearing purports
20 to prevent it or to remedy it, and so it is, if I may
21 say -- I pause because it seems very harsh to say -- it
22 really will be a mockery to these hearings if it will
23 countenance a complainant showing up, a complainant who
24 has incited other people to commit crimes.

25 Or, if I were to use the language of

1 section 13, it has gone way beyond exposing people to
2 hatred and contempt, he's counselled people
3 successfully to commit crime and associated himself
4 with violent groups that have my client as a target.

5 THE CHAIRPERSON: Are you making some
6 kind of abuse of process argument, or clean hands
7 argument; is that --

8 MS SHI: Well, abuse of process,
9 clean hands, a fundamental sense of justice and
10 fairness, and it is my respectful submission that the
11 integrity of this Tribunal is at stake. That's why I
12 used the word mockery.

13 And it goes directly to the
14 credibility of the complainant who is claiming that he
15 suffered damages in pain and suffering for messages.

16 Well, this is the same person whose
17 sensitivities has no trouble counselling people to
18 commit a crime, and you will see the video laughing and
19 posting pictures of my client to a group that even a
20 police officer testifying in open court label as a
21 violent group.

22 So, for all of the above reasons,
23 Madam Chair, I would submit that not only it's
24 relevant, but the Commission and the Tribunal, as
25 public bodies, ought to be very, very concerned about

1 countenancing that kind of complainants, their coming
2 before the court, let alone be very sceptical of such
3 complaints.

4 THE CHAIRPERSON: Thank you.

5 MS SHI: Thank you.

6 THE CHAIRPERSON: Ms Maillet.

7 MS MAILLET: Yes, Madam Chair.

8 I'm going to reply to a few points
9 that my friend has made.

10 Firstly, beginning with allegations
11 against Mr. Warman here. There has been no evidence
12 whatsoever that Mr. Warman has committed a crime. I
13 find that to be a bit inflammatory. He's not been
14 convicted of anything, he's not been charged with
15 anything.

16 Which brings me to my next point and,
17 that is that the mockery here, Madam Chair, will be if
18 this Tribunal is led down a path that detracts from the
19 real issues before you.

20 The real issues before you is whether
21 or not Mr. Winnicki communicated hate messages on the
22 internet. With all due respect to my friend, I sense
23 that there is a desire to detract from the real issues
24 before this Tribunal.

25 We can deal with damages when it is

1 appropriate, we can deal with Mr. Warman's credibility
2 when it is appropriate; however, to turn this hearing
3 into a criminal trial against Mr. Warman, I submit, is
4 totally inappropriate.

5 As well, with respect to the bias
6 issue, it's our submission that there's absolutely no
7 evidence before us here that there is an apprehension
8 of bias on behalf of this Tribunal. As you stated to
9 Ms Shi, the direction given to Ms Shi was simply making
10 explicit what is implicit, and that is her legal and
11 her professional obligations.

12 It's our submission that to allow Ms
13 Shi to now go on a fishing expedition looking through
14 records would be an unnecessary delay and, again, an
15 abuse of this Tribunal's process.

16 Ms Shi did not continue to read at
17 paragraph 38 of Taylor, which indicates:

18 "A complaint cannot be referred
19 to a Tribunal unless the alleged
20 transgressor has been informed
21 of and afforded an opportunity
22 to respond to the complaint and
23 the evidence upon which the
24 Commission intends to decide."

25 It's our submission that that is what

1 natural justice is.

2 If Ms Shi wants to be given an
3 opportunity to reply to what her legal and professional
4 obligations are, then you are giving her a complete and
5 full opportunity to do so at this point.

6 It's our submission to allow Ms Shi
7 to now go through all of the correspondence between the
8 Tribunal and the parties and to delay the matter again
9 would be inappropriate.

10 Those are my submissions. I don't
11 know if Mr. Warman has any submissions to make.

12 THE CHAIRPERSON: Thank you, Ms
13 Maillet.

14 Mr. Warman.

15 MR. WARMAN: With regard to the issue
16 of a further delay of the hearing, I think the fact of
17 the matter is, is that Mr. Winnicki, pursuant to
18 disclosure, has received copies of all correspondence
19 between the Commission and the Tribunal, including any
20 copies of correspondence that I submitted to the
21 Tribunal.

22 I think the question is, having gone
23 through, no doubt with her client, those documents, my
24 perspective is, is that Ms Shi is fully aware of any
25 communication that has transpired between the

1 Commission, myself and the Tribunal.

2 I adopt Ms Maillet's submission with
3 regard to the fact that Ms Shi is welcome to make
4 submissions to the Tribunal with regard to what extent
5 the implied undertaking should apply or what that
6 should entail.

7 I think most seriously, though, is
8 that this is the second time that unfounded allegations
9 of criminal conduct have been made against me by Ms
10 Shi. I find that unprofessional. I think it's a very
11 serious matter to make those kinds of unfounded
12 allegations, especially when claiming to have seen
13 evidence and knowing, having seen the video myself,
14 that that allegation cannot be substantiated.

15 So, I think really the abuse of
16 process comes down to the hurling of unsubstantiated
17 attacks on my integrity as an officer of the court, and
18 also making these kinds of ludicrous allegations of
19 criminal conduct.

20 So, I think really a lot of what this
21 comes down to is that where there is a weakness in a
22 legitimate defence, there is often an effort to
23 revictimize the victim and to attack the complainant.

24 So, I think, in my respectful
25 submission, that that is what this amounts to.

1 THE CHAIRPERSON: Thank you, Mr.
2 Warman.

3 MS SHI: Ms Jensen --

4 THE CHAIRPERSON: Ms Shi.

5 MS SHI: Madam Chair, if I may, a
6 very short reply.

7 THE CHAIRPERSON: Yes.

8 MS SHI: On the issue of delay, I'm
9 not envisioning any overall delay. This matter was
10 scheduled for five days and I intend to finish within
11 that five days. So, there is going to be no delay.

12 And Mr. Warman submitted that we have
13 received all correspondence between the Commission and
14 the Tribunal. I'm not too sure how he's in a position
15 to know that, unless he's privy to the files that I've
16 asked for, which I assume that he is not.

17 And as to his allegation against my
18 lack of professionalism, it will -- it really
19 highlights the fact that why the Tribunal needs to see
20 this video because it really speaks for itself.

21 And if the Tribunal is to decide on
22 whether there has been any abusive use of this process,
23 it will have to take a look at this video.

24 Those are my submissions.

25 THE CHAIRPERSON: Thank you.

1 All right. I thank you all for your
2 submissions on these very important issues.

3 I think what is appropriate now is
4 that we will take a recess for 20 minutes or so and I
5 will reflect on these matters and we will come back to
6 you in due course, in 20 minutes, and I will resume.

7 REGISTRY OFFICER: Order, please.

8 --- Upon recessing at 10:17 a.m.

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

10 REGISTRY OFFICER: Order, please. All
11 rise. Please be seated.

12 THE CHAIRPERSON: Well, I am sorry to
13 have kept you waiting. I realize I was going to be
14 longer than the 20 minutes that I had set aside, but I
15 think that issues have been raised that are of
16 fundamental importance and it is really worth spending
17 some time thinking things through.

18 Ms Shi has raised concerns that she
19 was not given an opportunity to speak to the implied
20 undertaking rule at the appropriate time.

21 I provided an explanation as to why,
22 as the master of the proceedings here, I felt that it
23 was necessary to issue the directives that I did, but I
24 understand Ms Shi's concerns and that is why, at the
25 outset of this hearing, I stated that I was very open

1 to the idea of receiving submissions and, if need be,
2 evidence regarding the application of the rule.

3 And I asked Ms Shi if she wanted to
4 take advantage of the opportunity at the moment to
5 speak to that, so that any potential hardship that was
6 created, or defects that might have been created as a
7 result of the previous directions could be cured by
8 providing a full and ample opportunity at this point to
9 speak to those issues.

10 Ms Shi indicated at that point that
11 she was not prepared to proceed to discuss the
12 application of the rule or any potential relief against
13 the rule that she might be wanting for herself and her
14 client.

15 I would like to indicate at this
16 point in time that I am prepared to grant an
17 adjournment so that she has ample time to consider this
18 issue, so that any potential hardship that has been
19 created as a result of the previous week's ruling can
20 be dealt with at this time and dealt with and remedied.

21 So, that is there and I will ask Ms
22 Shi to speak to that in a moment.

23 However, Ms Shi has also said that
24 she wants more than this, that those assurances and
25 opportunities to speak to the issue are not sufficient

1 and that she wants copies of the documents on the
2 Tribunal file to ensure that Mr. Winnicki has been
3 apprised of all matters that have been dealt with by
4 the Tribunal on this issue.

5 Out of an abundance of fairness and
6 good will on the part of the Tribunal, I am prepared to
7 have the Tribunal Registry Officer prepare a list of
8 all documentation -- of all correspondence, rather, on
9 the file, and I will have the Registry Officer provide
10 that to Ms Shi as soon as possible, and I anticipate
11 that that would be within a couple of hours' time, so
12 that she can then cross-check her file against the list
13 that is provided and then may request any document that
14 is missing from her file that is on the list of the
15 Tribunal's correspondence.

16 The reason that I am providing the
17 list is that there are issues of confidentiality of
18 addresses and there will be a need to white out a good
19 deal of the information, a good bit of the
20 correspondence in order to protect confidentiality.

21 So, I am not at this point going to
22 release all documentation, rather, there will be a
23 complete list provided to counsel for Mr. Winnicki.

24 So, that is my ruling with respect to
25 that aspect of the motion -- or, rather, the issues

1 that were raised at the outset.

2 With regard to the video tape and the
3 excerpts thereof, I have decided that there may be some
4 arguable relevance to those video tapes.

5 Ms Shi has spoken about the potential
6 of the material in the video tapes to go to the issue
7 of Mr. Warman's credibility, specifically regarding his
8 request for compensation for hurt feelings.

9 So, I find that on that basis there
10 is some arguable relevance to the video tape.

11 Having said that, it is clear in law
12 that having decided that there is arguable relevance
13 for the purpose of disclosure, we may need to revisit
14 that issue when it comes to the admissibility of the
15 document in evidence.

16 At this point in time, given the
17 lateness of the disclosure, it would be appropriate --
18 and I think Ms Shi acknowledged this -- to grant time
19 to the Commission and Mr. Warman to prepare to deal
20 with this document -- or, to deal with this piece of
21 evidence.

22 Ms Shi also raised the issue of
23 excerpts versus the full document. I think it probably
24 goes without saying that it is preferable to have the
25 entire document, to have the entire record -- document

1 isn't the appropriate word in this case -- but the
2 entire video tape so that counsel may ensure that there
3 hasn't been anything left out that is of relevance to
4 their case.

5 So, I am going to rule that that
6 document be reviewed by counsel, by all counsel, that
7 Mr. Warman and Commission counsel be granted the
8 appropriate amount of time to look at that and that we
9 will adjourn the hearing in order for these matters to
10 be dealt with.

11 I am anticipating that it shouldn't
12 take the entire day, but I am open to submissions on
13 the part of counsel for all parties as to how long this
14 adjournment for the various different issues that I
15 have outlined should take.

16 So, I think perhaps we could begin
17 with Ms Shi.

18 MS SHI: Sure. Thank you, Madam
19 Chair.

20 In terms of the list of documents, if
21 I could get it today, then my file isn't here, I would
22 need to go back to the office to put one against the
23 other, but I could be ready first thing tomorrow
24 morning.

25 So, that deals with the

1 correspondence.

2 In terms of the video, I was just
3 conferring with my client as to how long it will take
4 him to do the diskettes. If I may just have a moment,
5 because obviously the Commission's time line will
6 depend on how soon they get the diskettes.

7 THE CHAIRPERSON: I was under the
8 impression actually that the video was ready right now.

9 MS SHI: Well, the video is. This is
10 the whole thing, this is the excerpts.

11 THE CHAIRPERSON: No, but what I said
12 is I prefer the entire video to be produced.

13 MS SHI: That's right, and so we have
14 to make copies of this one as well.

15 THE CHAIRPERSON: A copy, right.

16 MS SHI: But what I could do is, this
17 one contains all the scenes that I intend to use. I
18 could produce these now while my client will arrange to
19 have the full documentary put on DVDs for everyone and
20 produce them as soon as possible.

21 Not being very well versed in this
22 technology, I don't know exactly how long it will take,
23 but I will say this, I am not going to raise any
24 objection as to how much time the Commission or Mr.
25 Warman's going to require because I understand that

1 they should be given enough time to review this.

2 So, if I may just confer with my
3 client about how long it would take to produce this.

4 THE CHAIRPERSON: I have a couple of
5 more questions for you as well --

6 MS SHI: Yes.

7 THE CHAIRPERSON: -- before you do
8 that.

9 MS SHI: Yes.

10 THE CHAIRPERSON: One is that, will
11 you be taking advantage, I'd like to know right now, of
12 the opportunity to make submissions regarding the
13 implied undertaking?

14 MS SHI: Absolutely. I'm sorry, I
15 neglected to advise the Tribunal of that. I fully
16 intend to have -- to deal with the issue about both the
17 appearance of bias and the direction itself in terms of
18 the implied undertaking within 24 hours, or overnight,
19 so long as I have it, meaning if I get the list some
20 time today, then by tomorrow morning I will deal with
21 it, just so long as I have an overnight period of time.

22 THE CHAIRPERSON: I think probably,
23 we will hear from counsel for the Commission, but it
24 may be that the better format might be to produce a VHS
25 copy, I don't know, we will see, but...

1 MS SHI: It may be faster. As I
2 said, I'm completely ignorant on that front and cannot
3 assist.

4 THE CHAIRPERSON: Thank you.

5 Okay. Ms Maillet.

6 MS MAILLET: Yes, Madam Chair. I'm
7 really not that interested in having the excerpts, if
8 we could simply have a copy of the full video.

9 THE CHAIRPERSON: In what format?

10 MS MAILLET: Geez. I'm just trying
11 to think of where we can view this.

12 THE CHAIRPERSON: My thoughts were
13 that you could perhaps view it in your hotel room, as
14 inconvenient as that may be.

15 MS MAILLET: Mm-hmm.

16 THE CHAIRPERSON: I mean, that will
17 be a matter of informing yourself about what is
18 available at the...

19 Also, there are lap tops that can
20 play DVDs. I don't know whether you have access to
21 that or whether the VHS system at the hotel room will
22 allow you to view it.

23 MS MAILLET: Perhaps if in the next
24 little while I could look into that, advise Ms Shi, she
25 can be contacted in the next very short time frame as

1 to what technology I have access to and that can help
2 her determine how she could copy the video.

3 MS SHI: That will be helpful. And
4 perhaps the break is a really good idea, because what
5 we could do then is to look into whether there's some
6 possibility of even having it ready some time today.

7 I could arrange to have it couriered
8 to wherever Ms Maillet asks me to, and she could have
9 tonight to look at it and we can take a look at where
10 we are tomorrow morning, perhaps.

11 THE CHAIRPERSON: Thank you.

12 Mr. Warman?

13 MR. WARMAN: No, I have no
14 submissions.

15 THE CHAIRPERSON: All right. So,
16 what you are proposing then is a short break now to
17 discuss what kinds of arrangements could be made in
18 terms of the video and the accessibility of viewing
19 equipment and then come back, or should we adjourn at
20 this point and --

21 MS SHI: I'm in your hands, Madam
22 Chair.

23 I was thinking, maybe even have an
24 early lunch because that would give us a little bit
25 more time to look into it.

1 But, I'm in your hands.

2 MS MAILLET: Yes. It's just a matter
3 of contacting my hotel and seeing what equipment they
4 have that I have access to there.

5 So, if we could, in fact, possibly
6 break for lunch that might not be a bad idea.

7 THE CHAIRPERSON: Okay.

8 Let's break for lunch then, and then
9 we will resume simply to deal with the housekeeping
10 matters of what format the video should be in and when
11 the list will be available to you -- and, of course, it
12 will be made available to all parties -- and then we
13 will adjourn for the remainder of the day to resume
14 tomorrow morning, and tomorrow morning we will
15 determine where everybody is at in terms of
16 preparation.

17 I should say that although it sounds
18 as though it is going to be quite manageable to
19 complete the case within the remaining four days, you
20 know, it is always difficult to anticipate what kinds
21 of issues may come up and so on.

22 So, to the extent possible, if you
23 are ready to go tomorrow with whatever issues, whatever
24 motions, submissions you want to make on the
25 outstanding issues, I would appreciate that, so that we

1 can proceed then to the merits of the case.

2 Oh, good point. When are we
3 returning?

4 Let's say a short lunch break. Would
5 12:30 be adequate?

6 REGISTRY OFFICER: Order, please.

7 --- Upon recessing at 11:30 a.m.

8 --- Upon resuming at 12:35 p.m.

9 REGISTRY OFFICER: Order, please. All
10 rise. Please be seated.

11 THE CHAIRPERSON: Good afternoon. A
12 rather hurried lunch, I would imagine.

13 So, we were to resume now to discuss
14 just the arrangements for this afternoon and for
15 proceeding with matters.

16 I am advised by the Registry Officer
17 that, in fact, it may be only necessary to have four
18 copies of the video produced, so that may make matters
19 somewhat simpler.

20 MS SHI: Madam Chair, I'm happy to
21 report that my client had been able to secure a promise
22 from a VHS dubbing place that they could have at least
23 three copies ready by three o'clock today and, so, I
24 have made arrangement with Ms Maillet that we will get
25 in touch and I will see that one copy gets to her.

1 With the Chair's leave, I may bring
2 the Tribunal's copy or the rest of it tomorrow morning.

3 THE CHAIRPERSON: That's fine.

4 MS SHI: Thank you.

5 THE CHAIRPERSON: How have
6 arrangements gone then in terms of the viewing of the
7 video?

8 MS MAILLET: Yes. Well, and firstly,
9 I may want to check with Mr. Warman that one copy to me
10 is sufficient, we can possibly view it at the same
11 time, since he is a separate party.

12 THE CHAIRPERSON: Mm-hmm.

13 MS MAILLET: I made a phone call to
14 the hotel, I wasn't able to get in touch with their
15 video people, it's an answering machine. However,
16 whether the hotel has one, we could always rent one, so
17 it's not a problem.

18 THE CHAIRPERSON: All right.

19 So, Ms Shi, if I am correct then, you
20 will be able to get three copies which would allow both
21 parties to have a copy; am I correct?

22 MS SHI: Yes, that's my
23 understanding.

24 Now, I guess I neglected to ask where
25 I should send Mr. Warman's copy, should it simply go to

1 Ms Maillet, or where would Mr. Warman like me to send
2 it.

3 MR. WARMAN: In fact, that's fine, I
4 can just -- I can view the copy of the Commission this
5 evening and then accept the copy tomorrow when it's
6 brought in.

7 THE CHAIRPERSON: Okay.

8 MS SHI: What I will do is I will
9 send two copies to Ms Maillet, then one is for Mr.
10 Warman.

11 THE CHAIRPERSON: Good.

12 I am also advised by Carol Ann
13 Hartung, the Registry Officer, that she will probably
14 be able to complete the list of documents within an
15 hour or so's time and there has been, apparently, some
16 agreement to receive the document in electronic format,
17 so that will facilitate the distribution of that.

18 Then with regard to any particular
19 requests for documentation that may not be on the
20 file -- as unlikely as that may be -- if there is a
21 request, I am assuming that you can make that request
22 electronically by e-mail to Ms Hartung and then she can
23 make arrangements to have the documents in question
24 copied and sent to the appropriate place.

25 MS SHI: Yes, I shall do that. Thank

1 you, Madam Chair.

2 One last thing is, I wonder if the
3 Registrar is reachable by phone in case I need to
4 confer with her. I know that you're travelling.

5 Is there a number where I could reach
6 her at locally?

7 THE CHAIRPERSON: There is. The
8 Registry Officer, Ms Hartung you are speaking of?

9 MS SHI: Yes, yes.

10 THE CHAIRPERSON: I think probably in
11 the circumstances the best way might be through e-mail.
12 We all have black berries.

13 MS SHI: Sure, I'll try that first
14 and then we'll go from there.

15 THE CHAIRPERSON: Actually, I think
16 that would be even better than phone just because I
17 know she is on e-mail just as much as phone.

18 MS SHI: Okay.

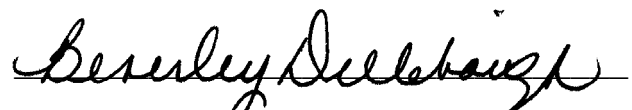
19 THE CHAIRPERSON: All right. So, if
20 that is sufficient...

21 Unless there are any other matters
22 then, we will adjourn for the rest of the day and be
23 back here tomorrow at 9:30, at which point we will
24 proceed with the matters -- the issues that have been
25 raised today.

1 REGISTRY OFFICER: Order, please.
2 --- Whereupon the hearing adjourned at 12:40 p.m.
3 to resume on Tuesday, October 18, 2005
4 at 9:30 a.m.

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HEREBY CERTIFY, to the best of
my skill and ability, that the
foregoing is a true and accurate
transcript of the proceedings.


Beverley R. Dillabough, C.S.R.