

**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

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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 WEDNESDAY, OCTOBER 19, 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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Toronto, Ontario

--- Upon commencing on Wednesday, October 19, 2005  
at 9:40 a.m.

REGISTRY OFFICER: Order, please.

All rise.

Please be seated.

THE CHAIRPERSON: Good morning.

MS MAILLET: Good morning.

MS SHI: Good morning.

THE CHAIRPERSON: Ms Shi, you are  
standing, I take it you are ready to roll.

MS SHI: Yes.

THE CHAIRPERSON: But before you  
begin, I would like to make just a few housekeeping  
remarks.

One thing that I would like to  
emphasize, if possible, is that I would like it if we  
could all be ready to go at 9:30. I appreciate that  
with Toronto traffic being what it is that it is  
difficult at times, but I would like to begin promptly  
at 9:30.

If we are to have any hope of  
concluding this matter by Friday afternoon, I think it  
is important that we begin promptly and utilize the  
time to the fullest.

1                   The other thing, and I don't know if  
2                   it is necessary today, but I would just like to  
3                   reiterate the reminder -- the statement that I made  
4                   yesterday with regard to the importance of refraining  
5                   from any interference with witnesses, counsel or  
6                   parties in this matter.

7                   We don't have very many people here  
8                   today from the public, but I think it is important that  
9                   I make it clear right from the outset, every day, that  
10                  there are some important issues with respect to the  
11                  security and emotional security of people involved in  
12                  this hearing and if there are any difficulties, there  
13                  are police officers that are present and people should  
14                  feel free to speak with the police and also bring to my  
15                  attention if there are any concerns.

16                  So, we are ready to resume today.

17                  The point where we left off yesterday  
18                  was the marking for identification of Mr. Warman's  
19                  postings to the VNN forum.

20                  Ms Shi, if you would like to resume  
21                  your cross-examination.

22                  MS SHI: Thank you, Madam Chair.

23                  About the marking of the exhibits, I  
24                  thought if I could I'd like to actually deal with that  
25                  first.

1                   I looked at my list of documents and  
2                   there are a good number of them that are either in the  
3                   nature of pleadings or they are documents from the  
4                   Commission, and I wonder whether my friend would agree  
5                   that we simply enter them without me going through them  
6                   one by one and taking up time.

7                   What I have in mine is No. 1 to 2 --  
8                   I'm referring to my documents -- tabs 1 to 2.

9                   THE CHAIRPERSON: Your book of  
10                  documents?

11                  MS SHI: Yes.

12                  THE CHAIRPERSON: Just for clarity  
13                  sake, what are you suggesting?

14                  MS SHI: I'm suggesting that we  
15                  simply ask the Registrar to mark these as exhibits  
16                  because they are either in the nature of pleadings such  
17                  as, for example, 1 and 2 are summary of complaints, or  
18                  else they are documents from the Commission, or they  
19                  are correspondence among the parties and the Tribunal.

20                  So, they are really not contentious  
21                  in any way and --

22                  MS MAILLET: The only -- well, one  
23                  point I'd like to make is that a lot of the documents,  
24                  for example, the complaints, are already exhibits, they  
25                  were introduced through us, so I don't know, Ms Shi and

1 I can sit at the break and go through what has already  
2 been submitted as evidence.

3 I'm not sure if she has a list of  
4 that, but...

5 MS SHI: I just got it from Madam  
6 Registrar, she was good enough to forward me a copy.

7 But that's a good suggestion, perhaps  
8 we could clear up during the break then. I will do  
9 that.

10 THE CHAIRPERSON: Okay.

11 RICHARD WARMAN, RESUMED:

12 EXAMINATION

13 MS SHI: And now I would like to  
14 resume, Madam Chair, if you don't mind, by switching  
15 the topic, and the reason will be very obvious almost  
16 immediately in my cross-examination.

17 I'm going to move away from the VNN  
18 messages just for a moment.

19 Mr. Warman, good morning.

20 MR. WARMAN: Good morning.

21 MS SHI: You had testified before  
22 that you have never faced any criminal charges; is that  
23 right?

24 MR. WARMAN: Okay. I should specify  
25 and now that you bring it up --

1 MS SHI: Yes.

2 MR. WARMAN: -- I will clarify that  
3 answer. I have never been charged by the police.  
4 There were two individual who swore private criminal  
5 charges against me and those were stayed by the Crown,  
6 so I'm sorry.

7 MS SHI: But you were charged? Were  
8 you charged?

9 MR. WARMAN: They swore out private  
10 informations against me, so in the sense that they  
11 swore private charges, yes.

12 MS SHI: Well, correct me if I'm  
13 wrong, whether it's a privately laid information or a  
14 police lay, it's still a charge under the Criminal  
15 Code; isn't that right?

16 MR. WARMAN: I'm sorry, criminal law  
17 was six or seven years ago, so I'm not sure.

18 MS SHI: But surely you know whether  
19 you were charged; do you not?

20 THE CHAIRPERSON: I think he's  
21 answered the question, Ms Shi.

22 MS SHI: All right. And, therefore,  
23 when you said to Ms Maillet that you had -- in response  
24 to a question whether you had been charged criminally  
25 before and you said no, that was not accurate; was it?

1 MR. WARMAN: No, that was incorrect,

2 MS SHI: Right.

3 MR. WARMAN: In the sense that I have  
4 just explained.

5 MS SHI: All right.

6 Madam Chair, the reason why I brought  
7 this up is I -- my friend having raised this, I tried  
8 to track down the actual indictment. I was provided  
9 with information that there have been indictment issued  
10 against Mr. Warman, and he's correct when it went  
11 before court for hearing, the Crown attorney stayed the  
12 charges.

13 And I came this morning, I haven't  
14 received a copy of the indictment yet. if you consider  
15 it necessary or appropriate, I will continue to search  
16 for it and produce it through my witness, but if you  
17 are satisfied simply with the answer, then I will just  
18 move on.

19 THE CHAIRPERSON: I think that's fair  
20 to say that I am satisfied with that and you could move  
21 on.

22 MS SHI: Thank you.

23 Then let's go back to the VNN  
24 postings.

25 THE CHAIRPERSON: What tab was that,

1           again?

2                               MS SHI:   Tab 54 is the list of his  
3           number of postings and 55 are the postings themselves.  
4           They have been marked for identification as Exhibits C  
5           and D.

6                               THE CHAIRPERSON:   Tab 55?

7                               MS SHI:   Yes.

8                               THE CHAIRPERSON:   And they have been  
9           marked as C and D; did you say, or just D?

10                              MS SHI:   That's right.   That's right,  
11           for identification purpose.

12                              THE CHAIRPERSON:   I have just got D.

13                              MS SHI:   D will be 55, correct.   54  
14           is C.

15                              THE CHAIRPERSON:   Mm-hmm.

16                              MS SHI:   Mr. Warman, could you go to  
17           tab 55, please.   Can you take a look at the information  
18           in it and tell me if those are your postings?

19                              What I've done, Madam Chair, because  
20           these postings are -- it's really like a conversation  
21           among various people, and what I've tried to give Mr.  
22           Warman's comments some context.

23                              I've included, to extent that it  
24           looks like it's necessary the postings that went before  
25           his to the amount that I thought was necessary, and

1           that's why you will see that there may be quite a bit  
2           there that are not Mr. Warman's postings, but it's  
3           there in order to make sense of what Mr. Warman's  
4           posting said.

5                         MR. WARMAN:  The initial portion of  
6           it is just sort of the summary --

7                         MS SHI:  Correct, right.

8                         MR. WARMAN:  -- the actual postings.  
9                         You want me to go through each and  
10           every posting to determine whether those...

11                        MS SHI:  Perhaps just quickly you  
12           will see that -- if you flip through, you will see  
13           where your own posting comes up, the rest are the  
14           comments that came before yours.

15                        MR. WARMAN:  Sorry, at 367 --

16                        MS SHI:  Yes.

17                        MR. WARMAN:  368 and 369 there is --  
18           at 369 it's simply two paragraphs.  I'm not sure if  
19           that was intended to be attached to 367, or whether --  
20           I only have one page, it's just two paragraphs and  
21           there's no...

22                        MS SHI:  Right.  Then please just  
23           move on.  If you look at the column to the left, just  
24           look at the parts as Axetogrind.

25                        These are your postings?

1 THE CHAIRPERSON: Sorry, on page 369,  
2 are those postings?

3 MS SHI: No, 369 does not have an  
4 Axetogrind posting. As I said before, I had included  
5 some of the postings that came before the Axetogrind or  
6 Mr. Warman's postings to give -- to inform as to the  
7 comments that Mr. Warman then posts, because it would  
8 be very difficult to understand what is being said.

9 THE CHAIRPERSON: No, I understand  
10 your point, but I just don't know what 369 is.

11 MS SHI: It has got nothing there.  
12 It doesn't have an Axetogrind posting. I'm not too  
13 sure why it was divided up there, so...

14 THE CHAIRPERSON: So, we can't  
15 identify this particular page?

16 MS SHI: No, not this particular  
17 page.

18 THE CHAIRPERSON: Well, then in my  
19 view, this page should not be a part of the exhibit.

20 MS SHI: Fair enough.

21 THE CHAIRPERSON: So, we will take  
22 that out.

23 Now, that will make the numbering off  
24 on your pagination here, but I'm not sure that is a big  
25 issue.

1 MR. WARMAN: Sorry, there's the same  
2 issue at 411, there doesn't appear to be any Axetogrind  
3 identification.

4 MS SHI: That's right.

5 THE CHAIRPERSON: Now, at 411.

6 MR. WARMAN: Sorry, 411 and 412.

7 THE CHAIRPERSON: 411 and 412 are not  
8 something that you can identify then, Mr. Warman; is  
9 that what you are saying?

10 MR. WARMAN: Yes.

11 MS SHI: That's fine.

12 THE CHAIRPERSON: So, those will be  
13 removed.

14 MS SHI: Right.

15 MR. WARMAN: Sorry, there is the same  
16 issue with 446.

17 MS SHI: I think 446 was included as  
18 a lead-in to the Axetogrind postings No. 20 at 447.

19 THE CHAIRPERSON: 447?

20 MS SHI: Yes.

21 MR. WARMAN: Sorry, I have nothing  
22 between 446 and 471.

23 MS SHI: And 471?

24 MR. WARMAN: Yes, there's nothing  
25 there.

1 MS SHI: Well, I apologize, somehow  
2 the reproduction has missed this portion. May I hand  
3 up my part for Mr. Warman to look at, and during the  
4 break I will provide a copy. I do apologize.

5 THE CHAIRPERSON: Then you are  
6 without a copy.

7 MS MAILLET: I see another red binder  
8 on the floor there, I don't know...

9 THE CHAIRPERSON: Do you want to  
10 check that one.

11 MR. WARMAN: Okay. This one appears  
12 to have the rest.

13 MS SHI: Oh, good.

14 MR. WARMAN: So, I can just...

15 MS SHI: I wonder if there is another  
16 complete copy for Madam Chair because Mr. Warman found  
17 one that has a complete set.

18 REGISTRY OFFICER: What are the pages  
19 that are missing?

20 MS SHI: 447 to 470.

21 THE CHAIRPERSON: Now, so that we are  
22 clear about the process that we are involved in here,  
23 you are asking Mr. Warman to identify his own entries,  
24 his own postings?

25 MS SHI: That's right, on the VNN.

1 THE CHAIRPERSON: For the purpose of  
2 having them, for identification purposes.

3 MS SHI: For the purpose for now of  
4 identifying them and then I'm going to ask him some  
5 questions about them.

6 THE CHAIRPERSON: All right. So, Mr.  
7 Warman, you were saying you have difficulty --

8 MR. WARMAN: Sorry, only because  
9 there were 30 or so pages missing, so I will continue  
10 going through them.

11 I think there is some duplicate  
12 postings. I think 452 -- 451 and 452 are the same as  
13 448 and 449.

14 Sorry, that is 451 and 452.

15 THE CHAIRPERSON: 451 and 452 are the  
16 same as 448 and...?

17 MR. WARMAN: Oh, sorry, I have get  
18 more duplicates here now. Sorry, I think it's probably  
19 just my binder. If you give me one second, I will...

20 What may have actually happened is  
21 that that binder may have gotten two sets. So, up  
22 until 470 --

23 MS SHI: Yes, 470 is the last page.

24 MR. WARMAN: Yes, then those appear  
25 to be the postings that I have made.

1 MS SHI: Thank you.

2 MR. WARMAN: Under the pseudonym of  
3 Axetogrind.

4 MS SHI: And earlier you testified  
5 that you, sometimes in order to monitor the websites  
6 used by White Supremacists and hate groups, that you  
7 would pretend to be interested or supportive of these,  
8 groups, I think that was your word, pretend to be  
9 supportive of those groups. Do you recall?

10 MR. WARMAN: Yes, I believe.

11 MS SHI: Is this an example?

12 MR. WARMAN: Yes, it would be.

13 MS SHI: And you pretend to be  
14 supportive by expressing agreement with the comments in  
15 the website; is that correct?

16 MR. WARMAN: It would depend on what  
17 the comment was, of course.

18 MS SHI: Well, we have 32 comments  
19 here and I'm interested in discussing with you the  
20 nature of them, and so I will be interested in whether  
21 you would -- you said that this is one of the examples  
22 where you're monitoring by pretending to be supportive,  
23 and I put it to you that you do that by expressing  
24 agreement with some of the postings.

25 Do you disagree with that?

1 MR. WARMAN: No, some of the comments  
2 I may agree with. You're absolutely right.

3 MS SHI: All right. And also the  
4 other way you do that is by talking like them; is that  
5 correct?

6 MR. WARMAN: It would depend on who  
7 or what individual you wanted to compare it to. There  
8 are wide divergence on the types of postings on these  
9 kind of websites.

10 MS SHI: Right. And you sometimes  
11 will pretend to talk like some of them?

12 MR. WARMAN: I would engage in -- I  
13 would use language that would make it appear that I was  
14 either supportive or part of the movement or interested  
15 in the movement, the neo-Nazi movement.

16 MS SHI: Right. And you also would  
17 pretend to be supportive by encouraging them to speak  
18 more or make more postings?

19 MR. WARMAN: Only to the extent that  
20 I wanted information about something.

21 MS SHI: And that would be your  
22 intention?

23 MR. WARMAN: In certain limited  
24 circumstances, yes.

25 MS SHI: All right. I would like to

1 take you to page 400, please.

2 Madam Chair, this is a typical  
3 example of these postings where Mr. Warman's comment  
4 comes at page 403, but I would ask that, before I ask  
5 the question that the witness reads from 400 on to 403  
6 in order to get the whole context of the comment, and  
7 then I will have a question.

8 Please, Mr. Warman.

9 MR. WARMAN: Sorry, you want me to  
10 read it out?

11 MS SHI: From 400, Mr. Winnicki's  
12 posting --

13 MR. WARMAN: It says --

14 MS SHI: No, not to read it into the  
15 record, but to read it quietly to yourself.

16 MR. WARMAN: Oh, sorry.

17 MS SHI: And then I will ask you a  
18 question.

19 --- Short pause

20 MR. WARMAN: Yes.

21 MS SHI: All right. So, Mr. Winnicki  
22 started by talking about Mr. Richmond's article on the  
23 criminal charge that was laid against Mr. Winnicki, and  
24 there are some comments made and someone said:

25 "And wait until you hear

1 Winnicki's side of the story."

2 (As read)

3 And you responded by saying:

4 "So what, you're going to keep

5 us in suspense?" (As read)

6 On page 403.

7 I put it to you that you were

8 encouraging Mr. Winnicki to make more postings of a

9 similar nature as the subject messages.

10 MR. WARMAN: I'm sorry, I couldn't

11 agree with that.

12 MS SHI: You were trying to get Mr.

13 Winnicki to make more postings; do you agree?

14 MR. WARMAN: What I was trying to do

15 was to get him to follow up on his comment that said:

16 "And wait until you hear

17 Winnicki's side of the story"

18 (As read)

19 And that I was interested to hear

20 what his version of events was.

21 MS SHI: Right. You were trying to

22 get him to make more postings.

23 MR. WARMAN: Not in the sense that I

24 think you mean of the subject message kind in here.

25 There are no sort of overt, if you

1 will, hate messages in the same context as his other  
2 postings.

3 So, what I was interested in was  
4 simply in finding out what his take on his arrest and  
5 charge for, as I understand it, possession of those  
6 weapons and carrying weapons to a public meeting.

7 MS SHI: And if you get your wish,  
8 Mr. Winnicki will have to make another posting; isn't  
9 that right?

10 MR. WARMAN: If he posts again, if he  
11 does respond to it, yes.

12 MS SHI: Right. How many Human  
13 Rights complaints have you launched?

14 MS MAILLET: I don't know how that's  
15 relevant, Madam Chair.

16 MR. WARMAN: Objection, relevance.

17 THE CHAIRPERSON: Can you provide me  
18 some more information about why you are objecting to  
19 that information?

20  
21 MS MAILLET: Because I can't  
22 understand. I'd like to know how Ms Shi feels that his  
23 filing complaints in other situations is relevant to  
24 the factual situation before us here and whether or not  
25 Mr. Winnicki posted messages on the internet.

1                   I would like to point out as well  
2                   that the messages speak for themselves.

3                   The evidence that Mr. Warman gave in  
4                   his direct examination was postings on the internet, he  
5                   didn't make them up, he didn't write them himself.

6                   Therefore, Mr. Warman's intent, if  
7                   that is what Ms Shi is getting at, it's my submission,  
8                   it's irrelevant here and I don't know where she's going  
9                   with other complaints he may or may not have filed.

10                  THE CHAIRPERSON: Are there two  
11                  objections here, Ms Maillet? Are you objecting both to  
12                  the information about Mr. Warman's postings as well as  
13                  the issue of the other complaints, or are you just  
14                  raising the issue of the other complaints?

15                  MS MAILLET: Just to the question  
16                  that she's asking.

17                  THE CHAIRPERSON: Okay, thank you.

18                  Mr. Warman.

19                  MR. WARMAN: So, I would just like to  
20                  echo that in the sense that the issue for the Tribunal  
21                  is whether Mr. Winnicki violated sections 13 and  
22                  section 14.1 of the Human Rights Act and to the extent  
23                  that I may have filed other Human Rights complaints, I  
24                  don't see any relevance whatsoever.

25                  THE CHAIRPERSON: Ms Shi.

1 MS SHI: Madam Chair, I asked the  
2 question for several reasons. One is it has to do with  
3 Mr. Warman's credibility because he is going to testify  
4 on -- or he has testified on his pain and suffering and  
5 on the likelihood that the subject messages would  
6 expose identifiable groups to hatred, and I'm entitled  
7 to probe, if Madam Chair permits, how often these  
8 complaints are made.

9 It may cast light on how easily Mr.  
10 Warman is offended, if I could put it that way, or how  
11 easily Mr. Warman incurs pain and suffering.

12 Furthermore, Mr. Warman has asked for  
13 monetary compensation for such pain and suffering, and  
14 asked for additional amount citing the respondent's  
15 conduct, and in my view, the fact that he has -- and  
16 it's no secret, it's been entered into evidence that he  
17 has filed many Human Rights complaints, and that's the  
18 other point too, that fact is already in the evidence,  
19 so I'm just following up on it.

20 But with those numerous numbers of  
21 complaints, Mr. Warman has a potential financial  
22 interest in these complaints, plus we have just seen  
23 that Mr. Warman himself admits to going around some  
24 time encouraging more postings of respondents that he  
25 feels he's, I think, somewhere about how Mr. Winnicki's

1           postings is the most vitriolic that he's seen in a long  
2           time, and I think it raises an issue about the  
3           credibility of the complainant that is germane.

4                        And when I say that he has filed  
5           numerous complaints, and it's already on the record,  
6           I'm referring to the speech to the ARA that have been  
7           entered as exhibits during his in-chief.

8                        So, and it says there on page --  
9           perhaps we could take a look at that exhibit. It has  
10          been marked as a Commission exhibit already yesterday,  
11          I'm not too sure what the number is, but you can find  
12          the same document on --

13                       THE CHAIRPERSON: HR-2.

14                       MS SHI: All right, thank you. The  
15          same document can be found at tab 37, starting at page  
16          207 of the respondent's documents.

17                       On page 208, the second complete  
18          paragraph, line 3:

19                                "I have now filed about a dozen  
20                                complaints against individuals  
21                                and groups using this law."

22                       THE CHAIRPERSON: Well, Ms Shi --

23                       MS SHI: So, this is no secret.

24                       THE CHAIRPERSON: -- it sounds like  
25          you have got the answer to your question right there.

1 MS SHI: I was going to continue.

2 Madam Chair, this is  
3 cross-examination and I am allowed a wide scope as to  
4 how I pose the question to the witness, and central to  
5 cross-examination always, always is the testing of the  
6 witness' credibilities.

7 I may ask him a question that I  
8 already have the answer to. In fact, I think it's  
9 pretty trite comment that I have heard in law school  
10 and everywhere that a good litigator don't ask a  
11 question in cross-examination that you don't know the  
12 answer to.

13 THE CHAIRPERSON: It is true you have  
14 a wide latitude, but you have to establish the  
15 relevance.

16 So, if are you finished with that --

17 MS SHI: I am just leading in with a  
18 question, the answer of which he already in the record,  
19 so I am really not too sure why there should be an  
20 objection and in objecting and me having to justify, I  
21 have already had to disclose that it's in the record  
22 and, therefore, I have lost the chance to test Mr.  
23 Warman's credibility.

24 THE CHAIRPERSON: You haven't lost  
25 anything yet.

1                   Let me just see if I can understand  
2                   what you are saying. You are saying that the relevance  
3                   relates to his potential financial interest.

4                   MS SHI: Yes.

5                   THE CHAIRPERSON: And there is also  
6                   an issue with respect to credibility.

7                   MS SHI: Right. And his  
8                   sensitivities.

9                   THE CHAIRPERSON: And that is that  
10                  you believe that there is some connection between  
11                  filing numerous complaints and pain and suffering.

12                  MS SHI: It's not what I believe,  
13                  Madam Chair, but it may be an issue, I believe it is an  
14                  issue and I want to go back to your comment that I  
15                  haven't lost anything.

16                  I didn't want to point out to Mr.  
17                  Warman that he had disclosed this information in his  
18                  speech, I was going to wait and see if he was going to  
19                  tell me the truth, and I have lost that chance to test  
20                  it and that, I would submit, is essential to  
21                  cross-examination.

22                  I say this because I know you are  
23                  concerned about the pace of this hearing and you have,  
24                  if I may say, kept me on the straight and narrow and I  
25                  have respects your decisions so far, but I must at this

1 point point out that sometimes I do need a little bit  
2 of room in order to test the credibility of the witness  
3 and, therefore, have full benefit of this  
4 cross-examination.

5 And I know sometimes it's hard to  
6 draw the line for the Chair, and I appreciate it, but I  
7 just would like to draw this to your attention as well  
8 for your consideration.

9 THE CHAIRPERSON: Thank you.

10 MS SHI: And while we are at that,  
11 perhaps I could just quickly make another comment.

12 My friend and I had discussed  
13 scheduling yesterday and, if she didn't feel I am  
14 misrepresenting, we both felt that, if necessary, we  
15 could hear evidence on Friday and we would be quite  
16 willing to do our submissions in writing to ensure that  
17 this hearing finishes this week.

18 THE CHAIRPERSON: Yes, unless --  
19 really, to be honest with you, about finishing the  
20 hearing within the time frames allotted, then I am  
21 about having a full and complete hearing.

22 So, I don't want anyone to feel as  
23 though the time constraints of the one week are fixed  
24 in stone, they are not.

25 MS SHI: Thank you.

1 THE CHAIRPERSON: The one thing that  
2 is fixed in stone is that all parties are entitled to a  
3 full and ample hearing of the issues, and so that will  
4 be the governing consideration.

5 All right, I have heard from you, Ms  
6 Shi, I have heard objections.

7 Are there replies to Ms Shi that  
8 either -- no?

9 MS MAILLET: No. I just reiterate  
10 what I indicated to you before, that Mr. Warman's  
11 motivations for filing any other Human Rights  
12 complaints are irrelevant to the matters before the  
13 Tribunal, and I am just afraid that we are going to get  
14 into a long winding road that does not lead us back to  
15 what's relevant to this hearing.

16 THE CHAIRPERSON: Mr. Warman.

17 MR. WARMAN: No, no further  
18 submissions.

19 THE CHAIRPERSON: All right.

20 Having considered the objections and  
21 having considered the argument presented by Ms Shi, I  
22 am going to allow you to cross-examine on this point.

23 I would like you to restrain your  
24 questioning to the points such as potential financial  
25 interest and any sort of credibility issues.

1                   I don't want you to go down any kind  
2                   of discussion about the nature of the other complaints,  
3                   the remedies that were requested and the details of the  
4                   other complaints.

5                   MS SHI: Well, with all due respect,  
6                   Madam Chair, in order to discuss the pain and  
7                   suffering, that is a remedy, so...

8                   THE CHAIRPERSON: Are you saying that  
9                   you are going to take us through each and every  
10                  complaint that's been laid by Mr. Warman?

11                  MS SHI: No, that is not my  
12                  intention.

13                  Perhaps, if I may, if I could ask you  
14                  to let me start with the questioning and see if you're  
15                  satisfied.

16                  THE CHAIRPERSON: That sounds  
17                  reasonable.

18                  MS SHI: And we'll go from there.  
19                  Thank you.

20                  So, Mr. Warman, as you can see from  
21                  page 208 you have filed about a dozen Human Rights  
22                  complaints; isn't that right?

23                  MR. WARMAN: It depends on who's  
24                  doing the counting, and I say that because the Canadian  
25                  Human Right Commission treats individual -- what I

1 would consider one complaint against a group and, say,  
2 its leader, the Commission can sometimes treat that as  
3 two separate complaints, even if the complaint that I  
4 filed deals with both of them the same.

5 So, when I say a dozen, that may not  
6 match up with how many -- if you wrote to the  
7 Commission and said how many complaints Mr. Warman  
8 filed, what they would say, but my count is about a  
9 dozen.

10 MS SHI: All right.

11 MR. WARMAN: Roughly, sorry.

12 MS SHI: Right. And in each case,  
13 are you claiming that you suffered pain and suffering?

14 MR. WARMAN: Sorry, pain and  
15 suffering falls under the retaliation component.

16 MS SHI: It doesn't matter,  
17 generally. As Madam Chair indicated --

18 MR. WARMAN: But that's the...

19 MS SHI: I'm sorry, I interrupted  
20 you. Finish up what you were saying.

21 MR. WARMAN: So, there have been  
22 retaliation complaints filed in a couple of the other  
23 ones, certainly not all of them, if I --

24 MS SHI: If I may cut in now, Madam  
25 Chair had indicated that she did not want a discussion

1           about specific complaints and I don't need that  
2           information, so to the extent that we don't have to go  
3           there, it will shorten the questioning, so...

4                         But if you feel you need to discuss  
5           each one in order to explain yourself, I'm in Madam  
6           Chair's hand obviously.

7                         My question is simply generally, I  
8           don't need you to enumerate which kind of pain and  
9           suffering, retaliation or not, but whether you are  
10          claiming that you have incurred pain and suffering in  
11          each case.

12                        MR. WARMAN:  None of the other cases  
13          have been -- are at the stage where we have submitted a  
14          statement of particulars, so in no other case that is  
15          to come have I submitted a claim for pain and  
16          suffering.

17                        MS SHI:  You haven't claimed, and  
18          have you suffered pain and suffering in each case?

19                        MR. WARMAN:  Not in each case, no.

20                        MS SHI:  In any case?

21                        MR. WARMAN:  I believe so, yes.

22                        MS SHI:  In how many of them?

23                        MR. WARMAN:  I would have to go  
24          through my notes and see where I filed a retaliation  
25          complaint.

1 MS SHI: So, it was where you have  
2 filed retaliation complaints that you had suffered pain  
3 and suffering?

4 MR. WARMAN: There is usually a  
5 correlation, yes.

6 MS SHI: All right.

7 MR. WARMAN: Although, again, I  
8 stated that we haven't submitted -- I haven't submitted  
9 a statement of particulars, so that hasn't been  
10 clarified yet and hasn't been done.

11 MS SHI: And for each case of  
12 retaliation you're potentially eligible to claim for up  
13 to \$30,000 up to; correct?

14 MR. WARMAN: I don't believe that's  
15 the case.

16 MS SHI: No?

17 MR. WARMAN: I don't believe that's  
18 the remedy that's available under the Act.

19 THE CHAIRPERSON: Did you say 30?

20 MS SHI: \$30,000.

21 THE CHAIRPERSON: Twenty.

22 MS SHI: Twenty. Hold on. Pardon  
23 me. Let me take a look again.

24 THE CHAIRPERSON: Section 53.

25 MS SHI: Yes. Please bear with me

1 for one moment.

2 MR. WARMAN: Madam Chair, if I could  
3 look at my notes for a second, I could give a more  
4 specific answer.

5 MS SHI: Mr. Warman, before you go, I  
6 should warn you, if you would like to use your notes  
7 during the hearing, I am entitled to see them.

8 MR. WARMAN: Okay. Then, I would  
9 raise an objection...

10 MS SHI: So...

11 MR. WARMAN: Okay. Well then, I will  
12 just leave them.

13 MS SHI: It becomes part of your  
14 testimony. That's how it is.

15 MR. WARMAN: So then, I will clarify  
16 that I can't remember exactly whether I have filed  
17 retaliation complaints.

18 MS SHI: All right.

19 THE CHAIRPERSON: What is it you are  
20 looking for, Ms Shi?

21 MS SHI: Well, if you could just give  
22 me a moment, I would like to go back to that joint  
23 letter of complaint.

24 Mr. Warman, do you remember, it's tab  
25 3, Exhibit R-1 in the joint statement of particulars,

1           it is page 12 of my binder, you had outlined the  
2           compensation that you sought; correct?

3                       MR. WARMAN:  Yes.

4                       MS SHI:  And you had earlier  
5           testified, when I asked you whether you were seeking  
6           \$60,000 and you said the amount was correct, and you  
7           broke it down for me; correct?

8                       MR. WARMAN:  Yes.

9                       MS SHI:  And my understanding is the  
10          way that you broke it down, under retaliation you were  
11          requesting \$20,000 under 53(2)(e) and then \$10,000  
12          under 53(3); isn't that right?

13                      MR. WARMAN:  No, that is incorrect.

14                      MS SHI:  That's not the breakdown?

15                      MR. WARMAN:  No, that is not and that  
16          is not what I testified.

17                      MS SHI:  Well, unfortunately we don't  
18          have a transcript here.  Perhaps you can give me the  
19          breakdown again then, because I think that's what  
20          you've told us me last time.

21                      MR. WARMAN:  No.  In fact, it's not  
22          under section 53(3).

23                      MS SHI:  Yes.

24                      MR. WARMAN:  There is a request for  
25          \$20,000 for pain and suffering.

1 MS SHI: 13 or 14.1?

2 MR. WARMAN: 14.1, which is the  
3 retaliation complaint.

4 MS SHI: All right. Under 53(3) --

5 MR. WARMAN: Sorry, I have -- yes,  
6 sorry, I think that's right, yeah, 53(3).

7 MS SHI: \$20,000.

8 MR. WARMAN: For the breach of the  
9 retaliation provisions.

10 MS SHI: And then what about your  
11 claim for compensation under 53(2)(e) for retaliation?

12 MR. WARMAN: Oh, sorry, that is the  
13 pain and suffering provision, that's the \$20,000.

14 MS SHI: And then what about 53(3)?

15 MR. WARMAN: That's not pain and  
16 suffering.

17 MS SHI: Oh, pardon me, but  
18 compensation -- I didn't say pain and suffering. The  
19 question that I asked you is, isn't it true that for  
20 every retaliation complaint that you could make a claim  
21 for \$30,000?

22 THE CHAIRPERSON: No, I think --

23 MS SHI: In fact, I'm wrong, you  
24 could make a claim of up to 40,000 compensation.

25 THE CHAIRPERSON: I think your

1 question was pain and suffering.

2

3 MS SHI: I will rephrase it then.

4 THE CHAIRPERSON: Okay.

5 MS SHI: Is it correct --

6 THE CHAIRPERSON: Could you rephrase  
7 it then.

8 MS SHI: -- that for each retaliation  
9 claim you could ask for compensation of up to \$40,000;  
10 isn't that right?

11 MR. WARMAN: Yes.

12 MS SHI: Mr. Warman, it is your  
13 position that the subject messages are likely to expose  
14 identifiable groups to hatred and contempt; correct?

15 MR. WARMAN: Yes.

16 MS SHI: I would like you to go to  
17 tab 40, please.

18 Could we please mark for now tab 40  
19 for identification purpose, please.

20 THE CHAIRPERSON: Okay.

21 REGISTRY OFFICER: The document,  
22 pages 231 to 263 at tab 40 of the respondent's book of  
23 documents, Volume I, will be marked for identification  
24 as E.

25 EXHIBIT NO. E: Document, pages

1                                   231 to 263 at tab 40 of the  
2                                   respondent's book of documents,  
3                                   Volume I.

4                   MS SHI: Thank you.

5                   If I could take you to page 247.

6                   Mr. Warman, you are not required to  
7 identify it, but assuming for a moment, I put it to  
8 you, that this is downloaded from the internet excerpts  
9 from the Bible, all right.

10                   MR. WARMAN: Sure.

11                   MS SHI: All right. And it says  
12 there under 18:22, do you see it?

13                   MR. WARMAN: I do.

14                   MS SHI:

15                                   "Thou shalt not lie with  
16                                   mankind, as with womankind: it  
17                                   [is] abomination."

18                   Could you please tell me whether it  
19 is your view that this passage is likely to expose  
20 homosexuals to hatred and contempt?

21                   MR. WARMAN: It would depend on who  
22 'thou' meant.

23                   MS SHI: I'm sorry?

24                   MR. WARMAN: It would depend on who  
25 'thou' meant.

1 MS SHI: Well, this is the Bible. I  
2 think 'thou' -- we can take it as public knowledge when  
3 the Bible says 'thou' that it is referring to the  
4 people who follow the Bible. Yes, Mr. Warman?

5 MR. WARMAN: I'm sorry.

6 MS SHI: Is it likely the passage  
7 that we just read that is being telegraphically  
8 repeatedly communicated on the internet as we speak, is  
9 it likely to expose homosexuals, which is an  
10 identifiable group, to hatred and contempt?

11 MR. WARMAN: If 'thou' refers to  
12 males and abomination was taken in the context of or  
13 was examined under section 13 of the Act and it is  
14 interpreted as being an interdiction, or that their  
15 practice are contemptible or hateful, then it could be  
16 construed in that way, yes.

17 MS SHI: I am interested in your  
18 view. I heard a lot of qualifications. I want to  
19 hear, is it your view that this passage is likely to  
20 expose an identifiable group to hatred and contempt.

21 MR. WARMAN: I'm sorry, I'm not  
22 really an expert witness, I have no extensive knowledge  
23 of the Bible, I have never studied it in any great  
24 detail. I would have to take it in its context and  
25 then consider what the context was, in the same way if

1           that passage was quoted, or that limited passage was  
2           quoted in the journalism report of Mr. Winnicki's  
3           activities, I do not -- as I said, I do not believe  
4           that they would have the same effect as someone who was  
5           posting that in the sense of a broader context of  
6           attempting to attack homosexuals.

7                         MS SHI: So, it's okay for the Bible  
8           to say it; is that what you're saying?

9                         MR. WARMAN: No, that's not what I'm  
10          saying at all and that wasn't my response.

11                        MS SHI: Well, I'm trying to  
12          understand your response. It's a very long one and I'm  
13          having trouble understanding what your view is.

14                        You have taken the view that Mr.  
15          Winnicki's messages are likely to expose identifiable  
16          groups to hatred and I would like to know whether --  
17          and, again, let's assume for now that the Bible -- this  
18          'thou' in this case was talking about man, and I don't  
19          think that it's an assumption that is very off the  
20          mark -- my question to you is, in your view, this  
21          message as we read now, the way it is sitting here as  
22          it's downloaded, you have it right in front of you,  
23          context and everything, whether it is likely to expose  
24          an identifiable group to hatred and contempt?

25                        MR. WARMAN: Sorry, what I actually

1           have in front of me is approximately six, maybe 10  
2           passages extracted from the whole of Leviticus which  
3           is, of course, merely one of the books in the Bible, so  
4           I don't consider that I have the full context of the  
5           Leviticus and, as I said, I'm not a Biblical scholar,  
6           if I looked at that, it certainly doesn't -- if we  
7           treat 'thou' as man, or as man in general, I certainly  
8           wouldn't say that it encourages love for homosexuals,  
9           it --

10                           MS SHI: Does it expose -- sorry, go  
11           ahead.

12                           MR. WARMAN: It doesn't treat them,  
13           or it doesn't appear to treat their sexual orientation,  
14           but I mean, the determination of whether something  
15           promotes hatred or contempt is a determination for the  
16           Tribunal to make.

17                           MS SHI: But you certainly have put  
18           out a position on this issue, so I am asking you  
19           whether you would consider that a passage like this is  
20           likely to expose an identifiable group to hatred and  
21           contempt.

22                           MR. WARMAN: And I have answered that  
23           I would have to take it in context and look at what was  
24           around it, what context it was made in, what other  
25           postings were around it, what -- you know, just

1 generally what I knew about the postings.

2 MS SHI: If I were to say then please  
3 look at it here, on your page here is your context;  
4 what would your answer be?

5 MS MAILLET: Madam Chair, I hesitate  
6 to interrupt my friend again, I don't mean to make this  
7 any more tedious than it should be but, again, I'm not  
8 sure where this line of questioning he going.

9 Mr. Warman's opinion -- first of all,  
10 he's not an expert witness, but his opinion on what the  
11 Bible may say and whether or not that exposes people to  
12 hatred and contempt is really not relevant to whether  
13 this Tribunal believes that Mr. Winnicki's messages  
14 expose people to hatred or contempt are, I believe, the  
15 issues we are dealing with, and whether Mr. Warman  
16 believes that an excerpt from the Bible may or may not  
17 expose people to hatred or contempt, I'm just not sure  
18 where that line of questioning is going.

19 THE CHAIRPERSON: Ms Shi.

20 MS SHI: Madam Chair, whether Mr.  
21 Winnicki's messages are likely to expose an  
22 identifiable group to hatred and contempt is a question  
23 of fact and the only way this Tribunal can make its  
24 determination is to hear evidence on it.

25 Mr. Warman, the complainant, has

1 taken a clear position that it's likely, that's how he  
2 decided to file the complaint. There will be no  
3 complaint if he doesn't believe that it's likely.

4 The Commission has no other  
5 witnesses, I'm entitled to probe the nature, the  
6 credibility again, the veracity of that opinion. If  
7 I'm not allowed to probe that opinion, why are we here?  
8 We may as well just accept the complaint, that is, the  
9 complainant's position.

10 It is how this complaint got started  
11 and it is a question of fact.

12 THE CHAIRPERSON: How does the  
13 likelihood that passages in the Bible will expose  
14 identifiable groups to hatred or contempt relate to Mr.  
15 Winnicki's -- the subject messages?

16 MS SHI: I'm trying to determine how  
17 Mr. Warman decided a message is likely to expose  
18 someone to hatred and contempt.

19 THE CHAIRPERSON: And I have given  
20 you a lot of latitude to discuss that, because I see  
21 your point, I see your point.

22 MS SHI: I want to see his reaction.

23 THE CHAIRPERSON: I think you are  
24 getting close to having reached the answer.

25 What I have heard him say, it depends

1 on the context. Is there any further questions that  
2 you would like...

3 MS SHI: I am getting close but I  
4 haven't gotten the answer, Madam Chair, I've not yet  
5 received the answer.

6 The context is right here. I don't  
7 believe the complainant has answered the question.

8 THE CHAIRPERSON: You can proceed  
9 with another couple of questions, but I think the  
10 relevance of this issue has certain limits.

11 MS SHI: Well, with all due respect,  
12 I think that the complainant, having made that  
13 assertion, having made that judgment call in this case  
14 must be open to having that judgment tested and,  
15 therefore, I should be entitled to question him and not  
16 just limited to two more questions.

17 So, if he evades my question twice  
18 more, then I'm done?

19 THE CHAIRPERSON: I don't see him  
20 evading your question, Ms Shi, I think he's given you  
21 and answer. Whether you like the answer or not is  
22 another question, is another issue, but I do  
23 hear --there are answers being given.

24 So, proceed, but be aware that I am  
25 reaching the end of my patience on this line.

1 MS SHI: I will proceed, Madam Chair,  
2 but I must admit that I am in complete disagreement as  
3 to the cooperation or lack of it that I have been  
4 receiving from this witness, and I also disagree with  
5 the Tribunal getting close to the end of its patience.

6 I think one way to deal with it more  
7 quickly is if the witness would answer the question  
8 more directly. It's a pretty direct question and he  
9 should be able to answer directly.

10 It's like somebody saying that I have  
11 got whiplash in a car accident and people saying, can  
12 you walk, can you run. It's the same thing.

13 THE CHAIRPERSON: I think you are  
14 asking for a judgment call.

15 MS SHI: He's made a judgment call  
16 here. The Tribunal has got to make the judgment call  
17 based on the evidence and that's what I'm trying to  
18 adduce here.

19 THE CHAIRPERSON: Okay, continue.

20 MS SHI: Thank you.

21 Well, Mr. Warman, I am giving you the  
22 context here which is page 242, and given this context  
23 and assuming that 'thou' is talking about man, is it  
24 your view that this passage is likely to expose an  
25 identifiable group to hatred and contempt?

1 MR. WARMAN: I'm sorry, if I was  
2 going to make that judgment, I would look at the rest  
3 of Leviticus and I would look at its place within the  
4 broader Bible and I would consider the fact that this  
5 was written and I would consider the fact that the  
6 Bible was written roughly 2,000 years ago and I would  
7 consider whether modern Christians who had posted it,  
8 whether they want it still to be interpreted in that  
9 sense or whether views of Christianity had changed over  
10 2,000 years.

11 MS SHI: Well, Mr. Warman, then let  
12 me put it another way. Is it your position that this  
13 statement as it appears on this page in this context,  
14 you are unable to say that it's likely to expose an  
15 identifiable group to hatred and contempt?

16 MR. WARMAN: I would never take a  
17 single passage out of the entire Bible and say this is  
18 "x" or this is "y" without considering it in the  
19 broader context of the Bible, of the book that it was  
20 written within and of the context that it was written  
21 2,000 years ago, whether that is interpreted literally  
22 by Christians today or not.

23 MS SHI: So, your answer is no, you  
24 cannot decide in this context; am I right?

25 MR. WARMAN: With the page that you

1 have given me --

2 MS SHI: Right.

3 MR. WARMAN: Sorry, if I could just  
4 finish my answer.

5 With the page you have given me, I am  
6 saying that I would go look at the rest of the Bible.

7 MS SHI: I am not asking what you  
8 would do, I am asking --

9 MR. WARMAN: You are asking me if I  
10 consider it --

11 MS SHI: I am asking, can you decide  
12 based on this, and I put it to you that you cannot  
13 decide; am I right?

14 MR. WARMAN: No, I wouldn't give a  
15 definitive answer either way.

16 MS SHI: Yes, because you cannot  
17 decide; right?

18 THE CHAIRPERSON: I think we are back  
19 at that situation where we were at before where you  
20 have got an equivocal answer, and that is it.

21 MS SHI: The witness was asked a  
22 question and he, in effect, in the long round way, in  
23 the way I understand it, he didn't give me a definitive  
24 answer because I think he's saying that he needs more  
25 information, so all I'm saying is, if you can't say yes

1 or no, do you mean to say that you cannot decide, based  
2 on this -- and I can't even get a straight answer out  
3 of that.

4 I don't think there is anything  
5 unfair in my question to Mr. Warman, in summing up, in  
6 saying that you are, in effect, saying that you cannot  
7 decide, based on page 247, whether the Bible calling  
8 homosexuality an abomination is likely to expose an  
9 identifiable group to hatred and contempt.

10 That is a perfectly fair question.

11 THE CHAIRPERSON: Okay.

12 MS SHI: Mr. Warman, please.

13 THE CHAIRPERSON: This is it.

14 MR. WARMAN: I'm saying that I would  
15 not decide and I would take steps to ensure that I was  
16 fully informed of the matter.

17 MS SHI: Well, perhaps you would not  
18 decide, that is not my question. Could you decide is  
19 my question.

20 MR. WARMAN: I don't think that would  
21 be a fair judgment for me to make.

22 MS SHI: I'm sorry?

23 MR. WARMAN: I don't believe that  
24 that would be a fair judgement for me to make.

25 MS SHI: Because you couldn't decide;

1 correct?

2 MR. WARMAN: I'm saying that if I  
3 made a decision, it would be an uninformed one.

4 MS SHI: Because you couldn't decide.

5 MR. WARMAN: It doesn't have enough  
6 context to it. I'm sorry, I wouldn't make a decision,

7 MS SHI: I didn't ask you if you  
8 wouldn't, I asked you if you couldn't.

9 THE CHAIRPERSON: Okay. I am think I  
10 am going to put an end to the questioning now.

11 You have gone far enough on this, Ms  
12 Shi. He has given you a number of qualifications, he's  
13 not -- this is the answer to your question.

14 MS SHI: Madam Chair, perhaps  
15 somebody could tell me, did he ever answer my question  
16 whether he could decide?

17 THE CHAIRPERSON: We are in the same  
18 situation -- the answer that I am hearing is that there  
19 would need to be more context.

20 MS SHI: And, therefore, the answer  
21 is he couldn't decide.

22 THE CHAIRPERSON: No, he is not  
23 saying that he couldn't decide, he is saying that he  
24 could -- that he would seek more context before he made  
25 a decision about that.

1 MS SHI: Right. And without that  
2 more context he couldn't decide, that is my question.

3 THE CHAIRPERSON: That may be the  
4 inference that you will draw from the evidence that he  
5 has given.

6 MS SHI: But I should not have to  
7 draw an inference, Madam Chair. I strongly object.  
8 This is the one question that I am absolutely entitled  
9 to ask the witness.

10 He will not give me the answer as to  
11 whether it was likely to expose because he said he  
12 needed more context, and it's the only logical  
13 follow-up question then to ask him, whether given the  
14 way it is now without that further context, isn't it  
15 true that he couldn't decide.

16 And any forthright witness should be  
17 able to answer that question in the affirmative, and I  
18 am fully entitled to ask that question and get a full  
19 straight answer to it.

20 THE CHAIRPERSON: You have asked the  
21 question.

22 MS SHI: He said he wouldn't decide.

23 THE CHAIRPERSON: You haven't got the  
24 answer that you like and now I am telling you to move  
25 on.

1 MS SHI: Madam Chair, I strenuously  
2 object, and you've said it twice now where I don't get  
3 the answer I like.

4 With all due respect, I don't believe  
5 it is for the Tribunal to tell me or to speculate what  
6 answers I like or don't like.

7 THE CHAIRPERSON: No, but it is my  
8 job to ensure that this moves on and that you don't  
9 badger the witness.

10 MS SHI: Well, I strongly object to  
11 that too. I strongly object to your characterization  
12 of my questions as badgering.

13 In fact, I would ask this Tribunal to  
14 direct the witness to answer the very simple question,  
15 that given the way it is at page 247, whether it isn't  
16 true that Mr. Warman couldn't decide whether the  
17 statement that homosexuality is an abomination is  
18 likely to expose an identifiable group to hatred and  
19 contempt.

20 And I'm not asking whether he would  
21 decide, but I'm asking if he could decide, and I'm  
22 fully entitled to that question. I'm asking the  
23 Tribunal to direct the witness to answer the question.

24 THE CHAIRPERSON: Ms Shi, I will  
25 direct him to answer the question could he decide on

1 the basis of this. Once we have an answer on that, we  
2 will move on.

3 MS SHI: Madam Chair, once we have an  
4 answer is the operative term in this. Once we have an  
5 answer.

6 THE CHAIRPERSON: Mr. Warman, could  
7 you decide on the basis of the information here whether  
8 or not homosexuality is likely to expose an  
9 identifiable group to hatred?

10 MR. WARMAN: It would depend on  
11 whether I took it in the context of the knowledge that  
12 I have right now about the passage, about the  
13 interpretation of the Bible, about modern  
14 interpretation of what that passage means, and if I  
15 drew upon that then, yes, I believe I could make a  
16 decision about whether that promotes hatred or  
17 contempt.

18 MS SHI: Then please tell me what  
19 your answer is, given your background, all you know  
20 about the Bible, everything you said, plus page 247  
21 with the passage:

22 "Thou...", meaning man,  
23 "...shalt not lie with mankind,  
24 as with womankind: It [is]  
25 abomination."

1                   Is it likely to expose an  
2                   identifiable group to hatred and contempt?

3                   MR. WARMAN: In isolation and without  
4                   further context around it, it could.

5                   MS SHI: Thank you.

6                   MR. WARMAN: But I don't -- sorry.  
7                   But I don't believe that on its own and in isolation  
8                   that it would necessarily, it would depend on the  
9                   context around it.

10                  And I can't state that a hundred  
11                  times without it meaning the same thing.

12                  MS SHI: You said that it could, but  
13                  it wouldn't. Is that what you said? I'm having  
14                  trouble.

15                  You said that it could, but you said  
16                  that it wouldn't, given what you consider to be proper  
17                  context; is that what you said?

18                  MR. WARMAN: If I interpret it in the  
19                  way that I understand modern Christianity to view the  
20                  passage, or at least modern world Christianity, then,  
21                  no, I wouldn't say in and of itself.

22                  MS SHI: I'm not talking about modern  
23                  Christianity, I'm talking about you.

24                  MR. WARMAN: You are asking me to  
25                  interpret the Bible.

1 MS SHI: Yes. I'm talking about you,  
2 and I think the answer is, you said that it could  
3 likely expose an identifiable group to hatred and  
4 contempt.

5 MR. WARMAN: And it could. It  
6 depends upon the interpretation that is given to it.

7 MS SHI: Thank you.

8 Perhaps this is a good time for the  
9 morning break, Madam Chair.

10 THE CHAIRPERSON: We will recess  
11 until 11:15.

12 MS SHI: Thank you.

13 REGISTRY OFFICER: Order, please.

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

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

16 REGISTRY OFFICER: Order, please.

17 All rise. Please be seated.

18 MS SHI: Mr. Warman, one more  
19 question about page 247, please.

20 Does that message that we had looked  
21 at earlier cause you any pain and suffering?

22 MR. WARMAN: Sorry, Leviticus 18:22?

23 MS SHI: Correct.

24 "Thou shalt not lie with  
25 mankind, as with womankind: it

1 [is] abomination."

2 MR. WARMAN: It causes me pain and  
3 suffering in that I believe that if it were taken in  
4 its literal sense that it would be condemnatory of  
5 homosexuality and that any such messages, I believe,  
6 diminish the community as a whole and that, as a member  
7 of that community, yes.

8 MS SHI: Thank you. Could you please  
9 turn to page 249, and if I could ask you to go down to  
10 passage 13:6. This is Deuteronomy, Chapter 13.

11 "If thy brother, the son of thy  
12 mother, or thy son, or thy  
13 daughter, or the wife of thy  
14 bosom, or thy friend, which [is]  
15 as thine own soul, entice thee  
16 secretly, saying, Let us go and  
17 serve other gods, which thou  
18 hast not known, thou, nor thy  
19 fathers;"

20 We move down to 13:8:

21 "Thou shalt not consent unto  
22 him, nor harken unto him;  
23 neither shall thine eye pity  
24 him, neither shalt thou spare,  
25 neither shalt thou conceal him;"

1 13:9:

2 "But thou shalt surely kill him;  
3 thine hand shalt be first upon  
4 him to put him to death, and  
5 afterwards the hand of all the  
6 people;"

7 Mr. Warman, I put it to you this  
8 passage, in effect, says that if your family tells you  
9 to worship a different God you should kill them.

10 Does the repeat communication of this  
11 message cause you pain and suffering?

12 MR. WARMAN: Not to any great extent  
13 because I take it within the context that it was  
14 written 2,000 years ago and that modern interpretation  
15 does not prescribe death for people who proselytize or  
16 proselytize.

17 MS SHI: And let me see if I  
18 understand you. What you are saying is you have faith  
19 that people don't believe in killing your family  
20 because they don't want to -- excuse me, I apologize, I  
21 turned the microphone away.

22 Madam Reporter, have you been able to  
23 hear me up to now?

24 --- Reporter nods

25 MS SHI: Thank you. Feel free to

1 interrupt me in the most direct manner if I do that  
2 again. Sorry.

3

4 Let me repeat, that you have -- it  
5 doesn't cause you pain and suffering because you have  
6 faith that the community generally do not believe and  
7 will not carry out what is in the passage, that is,  
8 kill your family if they do not worship the God as  
9 outlined in the Bible; am I right?

10 MR. WARMAN: Well, that. In  
11 addition, I'm not trying to proselytize anyone, I'm not  
12 trying to convert anyone, so I wouldn't feel that they  
13 were trying to prescribe my death.

14 MS SHI: I see. So, also because it  
15 doesn't apply to you?

16 MR. WARMAN: Yes.

17 MS SHI: Could we please go to tab  
18 43.

19 Are you there?

20 MR. WARMAN: I am.

21 MS SHI: Thank you. I would like to  
22 take you to just a couple of passages from the Merchant  
23 of Venice, you are not being asked to identify it  
24 unless you wish to. No?

25 MR. WARMAN: I'm sorry, I don't know

1 if there is a question there.

2 MS SHI: Well, unless you wish to  
3 identify this document, but you are not being asked to.

4 So, I would just put the document to  
5 you. Perhaps we could mark it for identification  
6 purposes for now, please.

7 THE CHAIRPERSON: Yes.

8 REGISTRY OFFICER: The excerpts from  
9 the Merchant of Venice by William Shakespeare, pages  
10 280 to 289 at tab 43 in the respondent's book of  
11 documents, Volume I, will be marked for identification  
12 as F.

13 EXHIBIT NO. F: Excerpts from  
14 the Merchant of Venice by  
15 William Shakespeare, pages 280  
16 to 289 at tab 43 in the  
17 respondent's book of documents,  
18 Volume I.

19 MS SHI: Thank you.

20 Mr. Warman, could I take you to page  
21 281 about midway down.

22 Solanio says:

23 "I never heard a passion so  
24 confused..."

25 Do you see it?

1 MR. WARMAN: I do.

2 MS SHI:

3 "...So strange, outrageous, and  
4 so variable

5 As the dog Jew did utter in the  
6 streets:"

7 Is this passage likely to expose an  
8 identifiable group to hatred and contempt, in your  
9 view?

10 MR. WARMAN: I believe if you are  
11 referring to Jews as dogs, that that would likely  
12 expose people to hatred or contempt.

13 MS SHI: Thank you. And does this  
14 passage cause you pain and suffering?

15 MR. WARMAN: Again, similar to my  
16 previous answer, in the sense that it diminishes the  
17 community as a whole by attacking Jews, in that  
18 context, yes.

19 MS SHI: Thank you.

20 Please turn to tab 44.

21 Sorry, I apologize, tab 42. Could we  
22 go to page 276, please.

23 THE CHAIRPERSON: Do you want this  
24 marked for identification?

25 MS SHI: Oh yes, please. Thank you,

1 Madam Chair. Tab 42.

2 REGISTRY OFFICER: Are they all  
3 excerpts from the Quoran?

4 MS SHI: Yes, they are.

5 REGISTRY OFFICER: The documents at  
6 tab 42, excerpts from the Quoran on various topics,  
7 pages 267 to 280 of the respondent's book of documents,  
8 Volume I, will be marked for identification as G.

9 EXHIBIT NO. G: Documents at tab  
10 42, excerpts from the Quoran on  
11 various topics, pages 267 to  
12 279A of the respondent's book of  
13 documents, Volume I.

14 MS SHI: Thank you.

15 Mr. Warman, could we please go to  
16 page 276.

17 THE CHAIRPERSON: Can I just ask a  
18 question here.

19 MS SHI: Yes.

20 THE CHAIRPERSON: I have in my binder  
21 pages 267 to 279, then I have another page, it doesn't  
22 have a number on it.

23 MS SHI: Yes. I will confess how  
24 this came about. After my secretary prepared the  
25 binder I realized I had neglected to give her that

1 page, so I slipped it in and, as a result, it has no  
2 page number.

3 Perhaps we could number it 279A.  
4 Will that work?

5 THE CHAIRPERSON: Then we will have  
6 to change the identification.

7 MS SHI: I apologize.

8 REGISTRY OFFICER: The document  
9 previously marked for identification G for golf will be  
10 amended to include pages 267 to pages 279A of tab 42 of  
11 the respondent's book of documents.

12 MS SHI: Mr. Warman, let's go to page  
13 276. I put it to you this is an excerpt from the  
14 Quoran where it says at passage 5:51:

15 "O ye who believe! take not the  
16 Jews and the Christians for your  
17 friends and protectors: They  
18 are but friends and protectors  
19 to each other. And he amongst  
20 you who turns to them (for  
21 friendship) is of them."

22 In your view, does this passage -- is  
23 this passage likely to expose an identifiable group to  
24 hatred and contempt?

25 MR. WARMAN: Well, again, I would

1 take it within the context of (a), having read only  
2 minimal portions of the Quoran, so without being able  
3 to put it into its proper context, without knowing  
4 anything about the translation or whether it's an  
5 accurate citation from the Quoran, I would look at it  
6 and I would say that, certainly isolationist, but  
7 whether it would cross the line into hatred or  
8 contempt, it would be difficult for me to say.

9 MS SHI: Thank you. And I would like  
10 you to go to page 272, please.

11 It says in passage 2:222:

12 "They ask thee concerning  
13 women's courses. Say: They are  
14 a hurt and a pollution:..."

15 Is this likely to expose an  
16 identifiable group to hatred and contempt?

17 MR. WARMAN: I'm sorry, I don't know  
18 what it means.

19 MS SHI: Courses. I put it to you,  
20 assuming that it means women's menstruation.

21 MR. WARMAN: It would depend on what  
22 was meant by the terms 'hurt' and 'a pollution'.

23 Generally pollution, I wouldn't take  
24 that to be a positive term.

25 If it was referring to a natural

1           bodily function of women and in the sense that it's --  
2           whether it's calling the bodily function a pollution  
3           or whether it's calling the women during those periods  
4           a pollution, I mean there are so many variables, it  
5           would be very difficult for me to say.

6                       MS SHI: Well, I'm telling you that  
7           assuming that courses means menstruation.

8                       MR. WARMAN: Yes, but they then go on  
9           to say they are a hurt and a pollution, but do they  
10          mean women during those periods, do they mean the  
11          bodily function itself, what do they mean by pollution.

12                      I don't think you can sort of take  
13          maybe 12 words without any sort of context around it  
14          and without me having virtually any knowledge of the  
15          Quoran and then say, what's meant by that, is that  
16          meant to promote hatred or contempt of women?

17                      MS SHI: So, you can not decide?

18                      MR. WARMAN: It's very difficult for  
19          me to answer.

20                      MS SHI: You cannot decide?

21                      MR. WARMAN: Not with that limited  
22          tiny little passage.

23                      MS SHI: And, therefore, it is  
24          possible, depending on what you call the context and  
25          the surroundings, that it may not expose an

1 identifiable group to hatred; isn't that right?

2 MR. WARMAN: In the same way that I  
3 answered your questions about Randy Richmond's  
4 reprinting of things, there are ways that things can be  
5 printed for an educational purpose that can have the  
6 goal of eliminating hatred or contempt.

7 MS SHI: Well, could we talk about  
8 this, please. We're not talking about Randy Richmond  
9 any more.

10 MR. WARMAN: No, but you asked me a  
11 question that deals with the same idea, so what I'm  
12 trying to do is draw an analogy for you.

13 MS SHI: Well, let's not draw an  
14 analogy. In this case, am I correct to say then that  
15 it is possible that this passage is not likely to  
16 expose an identifiable group to hatred and contempt?

17 MR. WARMAN: It's possible, depending  
18 on what was meant by the terms 'hurt' and 'pollution'  
19 and 'courses'.

20 MS SHI: All right.

21 MR. WARMAN: Or, sorry, and/or what  
22 they were generally understood to mean.

23 MS SHI: Could I then ask you to look  
24 at -- we are going to look at together page 277 to  
25 279A.



1 Christian;"

2 Do you see that?

3 MR. WARMAN: Yes.

4 MS SHI: In your view, does this

5 passage -- is this passage likely to expose an

6 identifiable group to hatred and contempt?

7 MR. WARMAN: Those dozen words, no.

8 MS SHI: And even given the context?

9 MR. WARMAN: What context? How broad  
10 a context?

11 MS SHI: Sorry?

12 MR. WARMAN: How broad a context  
13 would you like me to look at it?

14 MS SHI: Well, the context I would  
15 like you to look at is the story of the Merchant of  
16 Venice where Shylock was cast as the Jewish money  
17 lender, who upon trying to extract a pound of flesh was  
18 told he couldn't do it unless he could do so without a  
19 drop of blood and then when he wanted to give it up, he  
20 was punished in effect, and this is part of his  
21 sentence, that he is to convert from Judaism to  
22 Christianity, that is the context that I would like you  
23 to consider.

24 Given that context, is this passage  
25 likely to expose an identifiable group to hatred and

1 contempt?

2 MR. WARMAN: I really think it's  
3 taking things -- taking tiny little bits.

4 The forced conversion from one  
5 religion to another.

6 MS SHI: Yes.

7 MR. WARMAN: If that's sort of as a  
8 punishment in general, then I would think that that  
9 would be contemptuous or hateful of whatever individual  
10 or group was forced to undergo a compulsory conversion,  
11 religious conversion.

12 MS SHI: Thank you. And then that  
13 passage, read in that context, does it cause you any  
14 pain and suffering?

15 MR. WARMAN: Not terribly, because I  
16 take it in the sense of the period in which Shakespeare  
17 wrote it, I take it in the sense that it was a period  
18 during which historical anti-Semitism was existent, and  
19 it in and of itself does not cause me any great pain  
20 and suffering.

21 MS SHI: And that's because it  
22 doesn't reflect the current community values; is that  
23 correct?

24 MR. WARMAN: I think I would put it  
25 somewhat in the reverse, in that it reflects the

1           circumstances at the time in which it was written and  
2           that -- perhaps program I'll just leave it at that.

3                       MS SHI: Well, does it reflect the  
4           current Canadian values?

5                       MR. WARMAN: I don't believe it does,  
6           no.

7                       MS SHI: And that's partly why it  
8           does not cause you pain and suffering?

9                       MR. WARMAN: If that still existed,  
10          or if that continued to exist as a punishment, it would  
11          cause me pain and suffering, yes.

12                      MS SHI: Thank you. Could we go to  
13          tab 45, please.

14                      Could we mark that for  
15          identification, please.

16                      REGISTRY OFFICER: Do you have a  
17          description?

18                      MS SHI: Tab 45, page No. 298 to 304.

19                      THE CHAIRPERSON: And these pages are  
20          excerpts of the Adventures of Huckleberry Finn?

21                      MS SHI: Yes, from the internet.

22                      THE CHAIRPERSON: Pardon?

23                      MS SHI: From the internet.

24                      REGISTRY OFFICER: The document at  
25          tab 45 of the respondent's book of documents, pages 298

1 to 304, excerpts from the internet, the Adventures of  
2 Huckleberry Finn will be marked for identification as  
3 H.

4 EXHIBIT NO. H: Document at tab  
5 45 of the respondent's book of  
6 documents, pages 298 to 304,  
7 excerpts from the internet, the  
8 Adventures of Huckleberry Finn.

9 MS SHI: Thank you.

10 Mr. Warman, I'd like you to take a  
11 look at pages 299 where the word nigger appears once  
12 and page 300 where the word nigger appears once, and  
13 page 301 where the word nigger appears six times, page  
14 302 where the word nigger appears three times, page 303  
15 where the word nigger appears six times, and then at  
16 page 304, I'd like to draw your attention to the  
17 passage where it starts:

18 "It warn't the grounding -- that  
19 didn't keep us back but a  
20 little. We blowed out a  
21 cylinder-head."

22 Do you see that?

23 MR. WARMAN: I do.

24 MS SHI: And the next line:

25 "Good gracious! Anybody hurt?"

1 Next line:

2 "No'm. Killed a nigger."

3 Next line:

4 "Well, it's lucky; because  
5 sometimes people do get hurt.  
6 Two years ago last Christmas  
7 your uncle Silas was coming up  
8 from Newrleans on the old Lally  
9 Rook, and she blowed out a  
10 cylinder-head and crippled a  
11 man."

12 And it continues.

13 Is it your view that the Adventures  
14 of Huckleberry Finn with all its use of the term  
15 'nigger' and the last passage that I read, are they  
16 likely to expose an identifiable group to hatred and  
17 contempt?

18 MR. WARMAN: Well, first off, I would  
19 say it's very difficult for me to answer in that it's  
20 been at least, I would say, 20 years since I've read  
21 Huckleberry Finn and that, again, taking tiny little  
22 passages out of the context in which they are written,  
23 out of the social context in which they are written --

24 MS SHI: You mean social context as  
25 in the phenomenon of slavery in the South back in those

1 days; is that what you're referring to?

2 MR. WARMAN: Not just that, but all  
3 the social conditions in the surrounding social milieu  
4 in terms of what was the state of race relations at the  
5 time, and what was the author -- what was the author  
6 describing, where was the -- how can I put this -- what  
7 was the context of which that word was used.

8 MS SHI: Well, I did provide some  
9 context there and I'd like you to please tell me if you  
10 could answer the question based on the context that you  
11 see there?

12 MR. WARMAN: No, I'm sorry, I don't  
13 believe I can given the limited extracts that are there  
14 and the length of time and just the fact that I haven't  
15 looked at or even studied Huckleberry Finn within at  
16 least 20 years, if not more.

17 MS SHI: And so it's possible that  
18 the use of the term 'nigger' in the book, plus that  
19 passage that I just read to you, it's possible that it  
20 may not expose an identifiable group to hatred and  
21 contempt; correct?

22 MR. WARMAN: In the sense that it  
23 dehumanizes Blacks by indicating on the last page of  
24 304, the:

25 "Good gracious! Anybody hurt?"

1                                   No'm. Killed a nigger."

2                                   Certainly that would cause me a great  
3 deal of concern and --

4                                   MS SHI: Let me then concentrate on  
5 that. Is that passage likely to expose an identifiable  
6 group to hatred and contempt?

7                                   MR. WARMAN: If the passage is  
8 interpreted as being that Blacks are not, in fact,  
9 persons, then yes, I would suggest that that would  
10 expose Blacks to hatred or contempt.

11                                  But that, again, really showing me a  
12 passage from the Quoran, from the Bible, from  
13 Huckleberry Finn, from the Merchant of Venice, as I  
14 said, you know, takes them completely out of context,  
15 so I would certainly qualify my answer with that.

16                                  MS SHI: Well, absolutely, your  
17 answer is based on the context that's been provided  
18 here.

19                                  MR. WARMAN: But it's almost like  
20 asking me a hypothetical question. It's saying, if  
21 this were this, then what would you think of it?

22                                  MS SHI: Well, I just wanted --

23                                  MR. WARMAN: Can I finish my answer,  
24 please?

25                                  MS SHI: Yes, of course.

1                   MR. WARMAN: I don't believe that  
2                   it's a characterization that enables me to give an  
3                   accurate understanding of it, to take something of out  
4                   of it and just say, okay, these six words, what do they  
5                   mean to you, these six words, what do they mean to you,  
6                   when you don't provide the full  
7                   context to them, not just in terms of the broader works  
8                   as a whole, but also in terms of the social context in  
9                   which it was written, the current social context in  
10                  which it's understood.

11                  So, I'm just -- I'm not sure I can  
12                  really provide accurate or as accurate answers as I  
13                  could, provided those kind of things.

14                  So, I guess I'm not sure how much my  
15                  answers are worth.

16                  MS SHI: Well, that will be for the  
17                  Tribunal to decide.

18                  MR. WARMAN: It will indeed.

19                  MS SHI: However, feel free to, if  
20                  you're unable to decide to simply say that you are not  
21                  able to decide whether it is likely, okay.

22                  MR. WARMAN: I will.

23                  MS SHI: All right. An so I would  
24                  like to go back to that passage that you were  
25                  discussing earlier that you had a great deal of concern

1           about, and you said to the extent it was interpreted as  
2           Blacks being not persons, you think it's likely to  
3           expose them to hatred and contempt.

4                         Then let me ask you, according to  
5           your interpretation of that passage, in the context  
6           that I gave you, is it likely to expose an identifiable  
7           group to hatred and contempt?

8                         MR. WARMAN: I'm sorry, could you  
9           refresh my memory as to what context again?

10                        MS SHI: Right in front of you.

11                        MR. WARMAN: This limited passage,  
12           within this page?

13                        MS SHI: Yes, yes.

14                        MR. WARMAN: Again, to the extent  
15           that it's interpreted in that -- even just in that  
16           limited body, that Blacks --

17                        MS SHI: Well, to the extent that you  
18           read it, is it your view?

19                        MR. WARMAN: I'm sorry, I really  
20           don't think I can answer that because I know something  
21           of the broader context, but it's been a long time since  
22           I read Huckleberry Finn, so --

23                        MS SHI: Yes.

24                        MR. WARMAN: So, in my personal  
25           opinion, the broader work as a whole is not likely to

1       expose persons to hatred or contempt because I  
2       understand what the context that it was, that it was  
3       written in and that it wasn't -- it doesn't fall into  
4       what I perceive that milieu to be of sort of hate  
5       propaganda or hate messaging on the internet, which is  
6       in fact the subject of this complaint.

7                   MS SHI: Let me see if I understand  
8       your answer.

9                   Are you saying that the whole work,  
10       the Adventures of Huckleberry Finn does not expose an  
11       identifiable group to hatred and contempt because it  
12       was simply a reflection of the time in which it was  
13       written?

14                   MR. WARMAN: No, no, certainly I  
15       wouldn't go that far.

16                   MS SHI: All right. Well, I'm trying  
17       to understand what the answer you just gave means.

18                   You said something about the social  
19       context. Does that mean it that -- so, if it isn't  
20       because it reflected the social situation at the time  
21       then let me go back perhaps to just the passage instead  
22       of going to the whole works, because my question is  
23       really about this passage that we found on the  
24       internet.

25                   Is it your view the way this passage

1 appears on the net, and what you have, you can take it  
2 from me for now is the way it looks like when you call  
3 up the book on the net, does this passage, as it  
4 appears on the internet, is it likely to expose an  
5 identifiable group to hatred and contempt?

6 MR. WARMAN: My personal perspective  
7 is that I would need broader context in which to  
8 establish that.

9 MS SHI: So, I think your answer when  
10 you look at it, you cannot decide, you don't know.

11 MR. WARMAN: I'm sorry.

12 MS SHI: Because you need a broader  
13 context to decide, you cannot decide. So, when you  
14 look at that page, you don't know if it is likely to  
15 expose an identifiable group to hatred and contempt?

16 MR. WARMAN: No, but I would go back  
17 to my original answer that said, look, to the extent  
18 that it depersonalizes and dehumanizes Blacks and  
19 suggests that Blacks are not, in fact, persons or not,  
20 in fact, humans, yes, to that extent it could be  
21 construed as promoting hatred and contempt.

22 MS SHI: Well, to the extent that you  
23 read it, does it, or can you did decide?

24 MR. WARMAN: No, because I certainly  
25 don't intend -- sorry, I don't interpret it as being --

1           that that is the actual context in which it was  
2           written.

3                           MS SHI: I'm sorry, I didn't  
4           understand that answer. You do not...?

5                           MR. WARMAN: I personally would not  
6           take that passage and say automatically that that  
7           equals the exposure of Blacks to hatred or contempt.

8                           MS SHI: All right. Let's go to tab  
9           51, please.

10                           I am showing you a news item now, I'm  
11           sorry, could we mark that for identification purpose,  
12           please, page 340 to 341.

13                           REGISTRY OFFICER: The document found  
14           at tab 51 of the respondent's book of documents, Volume  
15           II, page 340 and 341, National Catholic Reporter  
16           on-line article will be marked for identification as I.

17                           EXHIBIT NO. I: Document found  
18                           at tab 51 of the respondent's  
19                           book of documents, Volume II,  
20                           page 340 and 341, National  
21                           Catholic Reporter on-line  
22                           article.

23                           MS SHI: Thank you.

24                           Mr. Warman, I would like to draw your  
25           attention to page 341, and you can take it from me that

1           this is a news article about the visit by Cardinal  
2           Ratzinger as he then was, he is now, of course, Pope  
3           Benedict, and on that occasion on page 341, Cardinal  
4           Aloysius Ambrozic from Toronto answers some questions  
5           from reporters and you will see midway down 341 it  
6           says:

7                                 "In response to a reporter's  
8                                 question, Ambrozic reiterated  
9                                 the church's ban on women  
10                                priests."

11                               Now, this news item and Cardinal  
12           Ambrozic's position was download from the internet.

13                               In your view, does that the  
14           passage -- is that passage likely to expose an  
15           identifiable group to hatred and contempt?

16                               MR. WARMAN: I don't believe so  
17           because it's simply a reporting of what the person  
18           said.

19                               MS SHI: Just reporting. So, you  
20           don't think it is true, that's why you are not  
21           concerned?

22                               MR. WARMAN: No, it's simply a  
23           reporting of what person "x" said, that person's  
24           interpretation of religion, the Catholic religion that  
25           the position is with regard to women priests.

1 MS SHI: Do you think that it's true  
2 that the Catholic church bans women priests?

3 MR. WARMAN: I believe that the  
4 traditional large majority body of the Catholic faith  
5 does so, yes.

6 MS SHI: And so this passage here,  
7 would you agree with me, reflects the position of the  
8 Catholic church that women are not allowed to be  
9 priests; correct?

10 MR. WARMAN: It reflects Mr.  
11 Ambrozic's statement of that, yes.

12 MS SHI: Of the Catholic church's  
13 position?

14 MR. WARMAN: Yes.

15 MS SHI: Right. And that position is  
16 being communicated on the internet through this report.

17 To that extent, in your view, is this  
18 report likely to expose an identifiable group to hatred  
19 and contempt?

20 MR. WARMAN: No, I don't believe so  
21 because all it does is report the church's position on  
22 the issue.

23 MS SHI: That women are not allowed  
24 to be priests.

25 You don't think that is likely to

1 expose women to hatred or contempt?

2 MR. WARMAN: I don't believe simply  
3 reporting on that fact does, no.

4 MS SHI: But what about that fact?

5 MR. WARMAN: The fact -- you want me  
6 to express an opinion on the Roman Catholic church's  
7 ban on women priests?

8 MS SHI: Whether you think it's  
9 likely to expose women to hatred and contempt.

10 MR. WARMAN: Really, I'm having  
11 trouble determining the relevance -- sorry, my point  
12 first point is that I'm objecting to the question. I  
13 haven't conducted an extensive study of the Roman  
14 Catholic church.

15 My personal opinion on whether the  
16 Roman Catholic church permits gays and lesbians,  
17 permits women to become part of the Roman Catholic  
18 clergy, I'm really having difficulty establishing the  
19 association, if there is any, to the fact of whether  
20 Mr. Winnicki communicated hatred or contempt or  
21 retaliated against me.

22 My opinions on the Roman Catholic  
23 church's decision on who may become a clergy person I  
24 consider to be irrelevant.

25 MS SHI: It goes to Mr. Warman's, the

1 evaluation of the veracity and credibility of his  
2 testimony that Mr. Winnicki's messages are likely to  
3 expose identifiable groups to hatred.

4 The Catholic church's ban of women to  
5 be priests is not only more well-known, more wide  
6 spread than Mr. Winnicki's messages has been or ever  
7 could be, its impact on women is very well known, and  
8 I'm interested in knowing whether Mr. Warman, in  
9 evaluating what is likely to expose an identifiable  
10 group to hatred and contempt, what his view is in this  
11 case.

12 It is extremely -- it is central to  
13 this case that we evaluate Mr. Warman's position on  
14 this.

15 As I have said before, and I don't  
16 want to belabour the point, it's a question of fact.  
17 It's not only a question of fact, it's the central  
18 question of fact and I am entitled to probe Mr.  
19 Warman's position and testimony on it.

20 MS MAILLET: If I just may, Madam  
21 Chair.

22 The question of fact for this  
23 Tribunal deals with the messages that are reproduced in  
24 the complainant's books of exhibits, it deals with the  
25 documentary evidence before you.

1                   Furthermore, I believe Mr. Warman has  
2 answered this question. The question was, does he  
3 believe that this excerpt at page 341 is likely to  
4 expose people to hatred or contempt, he answered no.

5                   And so, my belief is you have a  
6 question that's now been answered and Ms Shi should  
7 probably just move on to her next question.

8                   MS SHI: If Ms Maillet is right I'm  
9 prepared then to ask a couple of follow-up questions,  
10 if Madam Chair would let me try, to see if we can  
11 resolve this problem, that I will go along with Mr.  
12 Warman's answer that he doesn't believe that the  
13 reporting, I'd be quite prepared to ask a follow-up  
14 question along that line which he doesn't seem to find  
15 objectionable.

16                   THE CHAIRPERSON: Yes. I don't find  
17 it relevant in any way what Mr. Warman's personal  
18 beliefs about Roman Catholicism are.

19                   MS SHI: I'm not concerned about  
20 that, so...

21                   THE CHAIRPERSON: Okay.

22                   MS SHI: Perhaps we could try that.

23                   Mr. Warman, let's go back then to  
24 your answer that you don't believe that the reporting  
25 of the Catholic church's position is likely to expose

1 women to hatred and contempt.

2 MR. WARMAN: Not in the language that  
3 it's written there, no.

4 MS SHI: Right. And is that because  
5 you don't think it's discriminatory for the church to  
6 disallow women to be priests?

7 MR. WARMAN: I'm going to object to  
8 that question. It's simply the same question that was  
9 already asked in a reworded fashion.

10 I'm objecting again to the relevance  
11 of it.

12 MS SHI: I'm trying to -- he said  
13 that he doesn't think that it is likely to expose women  
14 to hatred and contempt, the reporting.

15 And I'm trying to find out why he  
16 doesn't believe that that language and that  
17 reporting --

18 THE CHAIRPERSON: But then ask him  
19 that question. Ask him that question, why don't you  
20 believe.

21 MS SHI: All right, yeah. Because,  
22 Madam Chair, to be perfectly honest, that question is  
23 an open-ended question and when I conduct  
24 cross-examination I am entitled to ask questions that  
25 are tighter than that.

1 I should not be forced to give Mr.  
2 Warman an open question.

3 THE CHAIRPERSON: But I have already  
4 told you that I don't believe that his personal views  
5 on Roman Catholicism are relevant to this inquiry.

6 MS SHI: All right. Well then, let  
7 us try.

8 Mr. Warman -- my problem is that I  
9 can see Mr. Warman objecting again if I ask why, that  
10 he may consider it too broad a question.

11 THE CHAIRPERSON: Try it.

12 MS SHI: But I'm going to try it  
13 anyway.

14 Why does it not expose women to --  
15 why is it not likely to expose women to hatred and  
16 contempt?

17 MR. WARMAN: Because I believe that  
18 it's simply reporting on the church's position in  
19 fairly straightforward wording.

20 MS SHI: And it is disseminating the  
21 church's position.

22 MR. WARMAN: It reports on Mr.  
23 Ambrozic's view of the church's position, yeah.

24 MS SHI: Right. And I would put it  
25 to you, and I hope we don't get into a big argument

1 about that, that the church's position is likely -- is  
2 discriminatory; correct?

3 MR. WARMAN: That may be your  
4 opinion.

5 MS SHI: But do you agree that the  
6 church's position -- and I don't want to get into it,  
7 but I need -- Madam Chair, if we have better way to do  
8 it I would.

9 What I would like to get to is the  
10 church's position is discriminatory, why is the  
11 reporting of it not likely to expose women to hatred.

12 That is my point.

13 Let me see if I can get around and  
14 make Mr. Warman happy. Let me try again.

15 Mr. Warman, let's just assume for now  
16 that the church's position is discriminator under  
17 Canadian law, all right, assuming -- you don't have to  
18 tell me if you agree or not -- let's assume it is.

19 Would you agree with me then the  
20 reporting of that position and the dissemination of  
21 that position will likely expose an identifiable group  
22 to hatred and contempt?

23 MR. WARMAN: No, because it's simply  
24 a reporting on what that group's position is.

25 Certainly not in these words, not these six words, no,

1 I wouldn't say that.

2 MS SHI: Is it because the report  
3 does not support -- does not say that it's supported;  
4 is that why the report itself isn't likely to expose  
5 women to hatred and contempt?

6 MR. WARMAN: I will say that that  
7 would perhaps be part of it. It doesn't -- it doesn't  
8 carry an endorsement of it, as I said, it's simply a  
9 reporting on what the church's position is, or what Mr.  
10 Ambrozic states is the church's position.

11 MS SHI: Just telling the truth?

12 MR. WARMAN: The truth as Mr.  
13 Ambrozic and the church establish and understand it.

14 MS SHI: Right. Just telling  
15 everybody what Cardinal Ambrozic said; correct?

16 MR. WARMAN: Yeah, in those words.

17 MS SHI: In those words. And if he  
18 was telling the truth and reporting what Cardinal  
19 Ambrozic said, it could still happen that it would  
20 likely expose women to hatred and contempt, depending  
21 on the wording he uses?

22 MR. WARMAN: I'm sorry, can you  
23 repeat that?

24 MS SHI: Well, I'm trying to  
25 understand. You said in those words. I thought that

1 we had understood each other that you're saying he's  
2 just reporting, telling the truth of what Cardinal  
3 Ambrozic related to the public as to the position of  
4 the Catholic church on women's rights to be priests,  
5 and then you qualified it with in those words.

6 MR. WARMAN: Yes, because the words  
7 you've given me are in response to a reporter's  
8 question, Ambrozic reiterated the church's ban on women  
9 priests.

10 MS SHI: So, you are saying that the  
11 use of the words matter?

12 Is that a separate reason why it is  
13 acceptable that aside from the fact that it just  
14 reporting, telling the truth, that the words also have  
15 to be appropriate?

16 MR. WARMAN: Yes, I do believe that  
17 because as Human Rights Tribunal and the Supreme Court  
18 have indicated that using true words for the sole  
19 purpose of promoting hatred or contempt on an  
20 identifiable group under the Act is not acceptable.

21 MS SHI: So, it's not just that it  
22 was -- so telling the truth really is not the point,  
23 the point was the words used were appropriate?

24 MR. WARMAN: No.

25 MS SHI: Telling the truth is not a

1 criterion?

2 MR. WARMAN: No, I'd say it was both.

3 I'd say if he was lying about what  
4 Mr. Ambrozic, what he stated or if -- sorry, it's a  
5 hypothetical. I won't go down there.

6 MS SHI: Let me see if I understand  
7 you then. What you're saying is it has to be just  
8 reporting, no endorsement or condemnation, and telling  
9 the truth, and in words that are not offensive, and if  
10 the truth is going to engage words  
11 that are offensive, then you don't tell the truth.

12 Is that the criteria?

13 MR. WARMAN: I'm sorry --

14 MS SHI: Have I got it right?

15 MR. WARMAN: That was about four or  
16 five parts.

17 MS SHI: All right. Let's try again.

18 Is it your view that this article as  
19 found on the internet, this message, is not likely to  
20 expose women to hatred and contempt for the following  
21 reasons, and feel free to say no to any of the reasons  
22 that I'm citing.

23 One, it's just a reporting with  
24 neither condemnation nor praise. Two, it is reflecting  
25 the truth and, however, not only that it's telling the

1 truth which will not be sufficient, but also it's  
2 telling the truth that does not sound offensive; am I  
3 right?

4 MR. WARMAN: No. Well --

5 MS SHI: Well, which part is not  
6 right, please tell me.

7 MR. WARMAN: Okay. Well, I'll do my  
8 best. The reporting in and of itself in the way that  
9 it's done there I don't consider to expose women to  
10 hatred or contempt.

11 MS SHI: It's in the way that it's  
12 done there that I am interested in.

13 MR. WARMAN: Yes.

14 MS SHI: In the way that it's done  
15 there, let's elaborate on that. I think your earlier  
16 testimony was in the way it was done there does not  
17 expose women to hatred and contempt because, one, it  
18 was telling the truth, but also at the same time the  
19 truth turned out to not engage offensive language.

20 MR. WARMAN: I should perhaps clarify  
21 that in saying the truth, words can be the truth and  
22 still, if used for the sole purpose of promoting hatred  
23 or contempt, to me it's still possible for them to, in  
24 fact, promote hatred or contempt and --

25 MS SHI: Well, I --

1 MR. WARMAN: Sorry, if I could just  
2 finish. So, there's that.

3 The second thing is that, yes, in the  
4 way that that one sentence reports the church's  
5 position, yes, I believe that reporting in that fashion  
6 does not promote hatred or contempt, and that that's  
7 important.

8 And the last thing is that it's done  
9 in a simple descriptive fashion without -- you  
10 described it in a way that doesn't sound offensive, but  
11 I think it's possible to offend someone without  
12 exposing them to hatred or contempt, but...

13 MS SHI: Could you please repeat for  
14 my benefit, you said that it was reported in a what  
15 fashion, in a...?

16 MR. WARMAN: Straight forward.

17 MS SHI: Straight forward. And I  
18 think you said something else.

19 I still would like to back up and  
20 perhaps if you could help me by trying not to use the  
21 more general phrase of the way it is reported because  
22 that is central to the question. I'm interested in  
23 your evaluation.

24 With the way it's reported, I want to  
25 know which way it was reported makes it not likely to

1       expose women to hatred and contempt despite the fact  
2       that it states the position of the Catholic church  
3       banning women from being priests, which for now, for  
4       the purpose of this cross-examination you can assume is  
5       discriminatory under Canadian law and that if we can  
6       focus on that, that would be helpful.

7                   I think that the part that we get  
8       into a little bit of difficulty is, I need to clarify  
9       whether it's your position, part of the way it was  
10      reported was that not only it told the truth, but it  
11      told the truth using expressions, or if I could put it  
12      another way, I'd like to rephrase that -- that it  
13      stated the truth which engages language that is not  
14      likely to expose women to hatred and contempt?

15                   MR. WARMAN: Okay. Again, I will try  
16      and clarify the two things.

17                   I don't believe that the simple truth  
18      of the matter is decisive of the question of whether it  
19      promotes hatred or contempt.

20                   For the second part of your question,  
21      that it does so -- that the language in that sentence,  
22      I don't believe, uses terms that would promote hatred  
23      or contempt of women.

24                   MS SHI: And so it's not the  
25      substance of the message but the language that it uses,

1           that's one of the criterion, that's the substance of  
2           what's in the sentence matter in terms of whether it is  
3           likely to expose women to hatred and contempt.

4                       MR. WARMAN: I believe substance is  
5           extremely important in determining any words, passages,  
6           phrases, sentences, books, whatever you want to  
7           extrapolate that to, in interpreting whether it exposes  
8           someone to hatred or contempt.

9                       MS SHI: And the substance being that  
10          the Catholic church does not allow women to be priests.  
11          You do not believe that that substance is likely to  
12          expose women to hatred and contempt; is that correct?

13                      MR. WARMAN: I don't believe that  
14          simply reporting on that position is likely to expose  
15          women to hatred or contempt.

16                      MS SHI: Well, I'd like to get a  
17          little bit away from the reporting now because we are  
18          now talking about the substance of the message. The  
19          substance of the message is that the Catholic church  
20          does not allow women to be priests.

21                      MR. WARMAN: I think you take a  
22          different substance from it than I do, because to me  
23          the substance is that Mr. Ambrozic reiterated the  
24          church's ban on women priests.

25                      MS SHI: Well --

1 MR. WARMAN: Can I just finish.

2 That's the substance of what is being reported.

3 The fact that the church does that is  
4 a completely other matter. It's not the substance of  
5 what that sentence says.

6 MS SHI: What about the message from  
7 that sentence that the Catholic church does not allow  
8 women to be priests?

9 THE CHAIRPERSON: I have ruled that  
10 Mr. Warman's personal views on whether women should be  
11 priests or not is not relevant.

12 MS SHI: I'm not asking about Mr.  
13 Warman's view, I'm asking -- he said the substance of  
14 the message does matter, and I would submit that part  
15 of the message is the Catholic church does not allow  
16 women to be priests.

17 And I don't want to argue with Mr.  
18 Warman, if that's the message, I would simply ask, if I  
19 may, that assuming that that is the message, that the  
20 Catholic church does not allow women to be priests,  
21 does the substance of that message, is it likely to  
22 expose an identifiable group to hatred or contempt?

23 MR. WARMAN: I'm sorry, but the writing -- the  
24 description in this sentence doesn't do that.

25 MS SHI: I'm not talking about the

1 writing and the description now, I'm talking about the  
2 substance.

3 MR. WARMAN: But the substance is  
4 simply reporting. It's simply saying that this is the  
5 position of the Catholic church.

6 MS SHI: Right. And so it's not just  
7 the substance, the substance and the language could  
8 interact.

9 MR. WARMAN: Certainly, language and  
10 context.

11 MS SHI: So, it's not just what is  
12 being said but how you say it.

13 MR. WARMAN: Of course.

14 MS SHI: And I just want to be  
15 absolutely sure that I understand.

16 The substance of the message that the  
17 Catholic church does not allow women to be priests,  
18 couched in appropriate language, is not likely to  
19 expose women to hatred and contempt? Is that your  
20 view?

21 MR. WARMAN: Sorry, I'm going to  
22 object to that question. It's simply trying to reword  
23 the same question, what are your views on the fact that  
24 the Catholic church prohibits the ordination of women  
25 as clergy.

1 MS SHI: No, I don't want an answer  
2 to that question, I'm just really trying to sum up what  
3 I think Mr. Warman was trying to tell me.

4 He said that they would interact, the  
5 substance and the language and, therefore, it really  
6 follows logically that that message, couched in  
7 appropriate language, could avoid exposing women to  
8 hatred and contempt or, according to the language of  
9 the legislation, that that message, couched in  
10 appropriate language, is not likely to expose women to  
11 hatred and contempt.

12 I think that's what I heard Mr.  
13 Warman say about the relationship between the language  
14 and the substance.

15 THE CHAIRPERSON: But we are talking  
16 about this particular exhibit and we are talking about  
17 the way in which the reporting was done.

18 MS SHI: Yes.

19 THE CHAIRPERSON: And so, could you  
20 phrase your question so that it refers to this  
21 particular exhibit, because that is the basis of the  
22 testimony.

23 MS SHI: Right. I mean, we are still  
24 looking at this exhibit. If I haven't made it clear,  
25 then I'd like to now focus back on here.

1                   In terms of the message that the  
2 Catholic church does not allow women to be priests,  
3 when couched in the language as it does here, is not  
4 likely to expose women to hatred and contempt; is that  
5 correct?

6                   MR. WARMAN: I don't believe that the  
7 way that this reports on the Catholic church's position  
8 exposes women to hatred or contempt.

9                   MS SHI: So, the answer is yes, you  
10 agree with me?

11                  MR. WARMAN: The answer that I gave I  
12 believe is specific enough and I wouldn't agree -- I  
13 wouldn't want to put words in my mouth from the way  
14 that you're attempting to phrase it.

15                  MS SHI: Is there -- did you have a  
16 concern about the way I phrased it? Was it not  
17 correct?

18                  MR. WARMAN: Because I think you're  
19 trying to get at some broader or greater meaning, and  
20 when I look at this and I say -- I have said it three  
21 or four times now -- the way that this reports on the  
22 Catholic church's position, I do not believe exposes  
23 women to hatred or contempt.

24                  THE CHAIRPERSON: I think that --

25                  MS SHI: I'm all right with that.

1 Thank you.

2 THE CHAIRPERSON: We have about five  
3 more minutes until I think it would be appropriate to  
4 take a lunch break. Do you think it is better to stop  
5 at this point, or did you want to take another five  
6 minutes? I will leave it to you, Ms Shi.

7 MS SHI: No, I think it's good to  
8 stop at this point, if that's all right, because I'm  
9 going to move on to something else.

10 So, all right.

11 THE CHAIRPERSON: Okay. Well, let's  
12 say we will take a one-hour lunch break, one hour and  
13 five minutes until 1:30 for lunch break.

14 REGISTRY OFFICER: Order, please.

15 --- Upon recessing at 12:25 p.m.

16 --- Upon resuming at 1:30 p.m.

17 REGISTRY OFFICER: Order, please.

18 All rise.

19 Please be seated.

20 THE CHAIRPERSON: Good afternoon.

21 MS SHI: Good afternoon.

22 Madam Chair, just a couple of things  
23 before we proceed with Mr. Warman, if I may.

24 First of all, it was brought to my  
25 attention -- I want to emphasize, it was brought to my

1 attention but I have no personal knowledge of it, that  
2 Mr. Warman and Commission counsel have been seen  
3 together and in one place going into a room here, and I  
4 want to make it perfectly clear that I am not making  
5 any allegation of impropriety, but I would just ask in  
6 the interest of the appearance of fairness, as Mr.  
7 Warman is under cross-examination, I would request  
8 respectfully that Mr. Warman and Commission counsel  
9 perhaps not associate until he's finished.

10 And it's not going to be very  
11 oppressive because I expect Mr. Warman to be done, if  
12 not by the end of today, then definitely by tomorrow  
13 morning.

14 And I want to emphasize once again, I  
15 myself have no basis to think that there is any  
16 impropriety and I'm not alleging any.

17 THE CHAIRPERSON: And it probably was  
18 an oversight on my part not to mention that, as  
19 always -- and they know this -- that when an  
20 individual, when a witness is being cross-examined he  
21 or she is not to discuss the evidence with counsel.

22 MS SHI: Thank you.

23 And the second thing is with Mr.  
24 Warman's and Commission counsel's cooperation, we have  
25 been able to agree that there are certain documents in

1 my book of documents that we could all just agree to  
2 mark as exhibits without having to go through them one  
3 by one through a witness.

4 You will see that most of them are  
5 either by nature of pleadings or documents from the  
6 Commission or Tribunal, they are not contentious.

7 So, if I could read out, the first  
8 one is tab No. 4.

9 THE CHAIRPERSON: Of...?

10 MS SHI: Of my book of documents,  
11 please.

12 THE CHAIRPERSON: So, these are going  
13 to be marked as an exhibit then?

14 MS SHI: Yes, please.

15 REGISTRY OFFICER: The documents  
16 found at tab 4 of the respondent's book of documents,  
17 Volume I, letter to the parties from Holly Lemoine  
18 Registry Officer, July 12th, 2005 enclosing the  
19 Tribunal's ruling 2005-CHRT 25, dated July 11th, 2005  
20 will be marked as respondent Exhibit R-7.

21 EXHIBIT NO. R-7: Documents  
22 found at tab 4 of the  
23 respondent's book of documents,  
24 Volume I, letter to the parties  
25 from Holly Lemoine Registry

1                   Officer, July 12th, 2005  
2                   enclosing the Tribunal's ruling  
3                   2005-CHRT 25, dated July 11th,  
4                   2005.

5                   MS SHI: Thank you. The next one is  
6                   No. 6, please.

7                   THE CHAIRPERSON: Tab 6?

8                   MS SHI: Yes, please.

9                   THE CHAIRPERSON: This is just the  
10                  list of -- Ms Hartung is reminding me and, you know,  
11                  this is standard, we don't typically mark as exhibits  
12                  correspondence from the Tribunal.

13                  MS SHI: Yes. Then, I'm in your  
14                  hands as to how we will deal with it in case we need to  
15                  refer to it during summation. That is my only concern.

16                  THE CHAIRPERSON: I think you can  
17                  just refer to it. It is on the file, it doesn't need  
18                  to be an exhibit, it doesn't need to be evidence.

19                  MS SHI: So, I will just simply  
20                  say --

21                  THE CHAIRPERSON: Yes, and Ms Hartung  
22                  says she is going to remove this tab.

23                  In your submissions you just refer to  
24                  it, it doesn't need to be put in.

25                  MS SHI: All right. Then let's go

1 down to the next one then, No. 7.

2 THE CHAIRPERSON: Mm-hmm. That is  
3 the same sort of thing, you can just refer to that in  
4 argument.

5 MS SHI: Right. I'm putting a note  
6 next to my list as an N/A that marking of exhibits is  
7 not applicable for these documents.

8 No. 8, please.

9 THE CHAIRPERSON: Uh-huh.

10 MS SHI: That's the respondent's  
11 amended statement of particulars.

12 REGISTRY OFFICER: The document found  
13 at respondent book of documents, tab 8, letter to Ms  
14 Maillet at the Commission from Ms Shi --

15 MS SHI: Sorry, excuse me, I  
16 apologize for interrupting, but I thought tab 8 is  
17 simply the amended statement of particulars.

18 THE CHAIRPERSON: Yes, that is what  
19 my tab 8 is.

20 REGISTRY OFFICER: And on page 40  
21 just the order in which they are listed, is the letter  
22 and then the front part is the enclosure to the letter.

23 MS SHI: Right. Quite right, yes.

24 REGISTRY OFFICER: So, the letter to  
25 Ms Maillet from Ms Shi enclosing the amended statement

1 of particulars of the respondent dated September 23rd,  
2 2005 will be marked as respondent Exhibit R-8.

3 EXHIBIT NO. R-8: Letter to Ms  
4 Maillet from Ms Shi enclosing  
5 the amended statement of  
6 particulars of the respondent  
7 dated September 23rd, 2005.

8 THE CHAIRPERSON: Thank you.

9 MS SHI: Thank you. The next one is  
10 tab 9, please.

11 REGISTRY OFFICER: The document  
12 located at tab 9 of the respondent's book of documents,  
13 Volume I, letter to the Tribunal, Ms Joyal, from  
14 Monette Maillet, CHRC counsel, dated October 2, 2005  
15 will be marked as Exhibit R-9.

16 EXHIBIT NO. R-9: Document  
17 located at tab 9 of the  
18 respondent's book of documents,  
19 Volume I, letter to the  
20 Tribunal, Ms Joyal, from Monette  
21 Maillet, CHRC counsel, dated  
22 October 2, 2005.

23 THE CHAIRPERSON: Just so it is clear  
24 on the record, those documents are going in as exhibits  
25 on consent.

1 MS SHI: Yes.

2 MS MAILLET: That is correct.

3 MR. WARMAN: Yes.

4 MS SHI: Tab 10, please.

5 REGISTRY OFFICER: The document found  
6 at respondent's book of documents, tab 10, the order  
7 from Justice de Montigny, dated October 4th, 2005 in  
8 the matter of the proceedings of the Canadian Human  
9 Rights Tribunal re: Richard Warman and Tomasz Winnicki  
10 will be marked as respondent Exhibit R-10.

11 EXHIBIT NO. R-10: Document  
12 found at respondent's book of  
13 documents, tab 10, the order  
14 from Justice de Montigny, dated  
15 October 4th, 2005 in the matter  
16 of the proceedings of the  
17 Canadian Human Rights Tribunal  
18 re: Richard Warman and Tomasz  
19 Winnicki.

20 MS SHI: Thank you. Tab 11, please.  
21 Should this be treated as an N/A?

22 THE CHAIRPERSON: This is an N/A.

23 MS SHI: All right. Tab 12, please.

24 REGISTRY OFFICER: The document found  
25 at tab 12 of the respondent's book of documents, Volume

1           1, letter to Ms Shi from Ms Maillet dated October 7th,  
2           2005 will be marked as respondent Exhibit R-11.

3                           EXHIBIT NO. R-11: Document  
4                           found at tab 12 of the  
5                           respondent's book of documents,  
6                           Volume 1, letter to Ms Shi from  
7                           Ms Maillet dated October 7th,  
8                           2005.

9                           MS SHI: Tab 13, please.

10                          REGISTRY OFFICER: The document found  
11           at respondent's book of documents, Volume I, tab 13,  
12           letter to Ms Maillet from Ms Shi dated October 13th,  
13           2005 will be marked as respondent Exhibit R-12.

14                          EXHIBIT NO. R-12: Document  
15                          found at respondent's book of  
16                          documents, Volume I, tab 13,  
17                          letter to Ms Maillet from Ms Shi  
18                          dated October 13th, 2005.

19                          MS SHI: Tab 14.

20                          THE CHAIRPERSON: This is another  
21           N/A.

22                          MS SHI: N/A. Thank you. Tab 15.

23                          THE CHAIRPERSON: Unless -- let's  
24           just have a look at this one. These include the  
25           speaking notes which are already entered under another

1 exhibit.

2 MS SHI: That is true, right.

3 Tab 15.

4 REGISTRY OFFICER: The document found  
5 at tab 15 of the respondent's book of documents, Volume  
6 I, a letter to Chair Jensen -- Member Jensen from Ms  
7 Shi dated October 13th, 2005 will be marked as  
8 respondent Exhibit R-13.

9 EXHIBIT NO. R-13: Document  
10 found at tab 15 of the  
11 respondent's book of documents,  
12 Volume I, a letter to Member  
13 Jensen from Ms Shi dated October  
14 13th, 2005.

15 MS SHI: Tab 16.

16 REGISTRY OFFICER: The document found  
17 at tab 1 of the respondent's book of documents, Volume  
18 I, letter to Mr. Winnicki from Suzanne Best at the  
19 Canadian Human Rights Commission date stamped October  
20 24th, 2003 will be marked as respondent Exhibit R-14.

21 EXHIBIT NO. R-14: Document  
22 found at tab 1 of the  
23 respondent's book of documents,  
24 Volume I, letter to Mr. Winnicki  
25 from Suzanne Best at the

1 Canadian Human Rights Commission  
2 date stamped October 24th, 2003.

3 MS SHI: Tab 18.

4 THE CHAIRPERSON: This is already in  
5 as an exhibit -- no.

6 Is this the investigator's report.

7 No, I don't think it is. It is not.

8 REGISTRY OFFICER: At tab 18?

9 THE CHAIRPERSON: We are at tab 17,  
10 are we not?

11 MS SHI: No, not 17.

12 MS MAILLET: Tab 16, part of it has  
13 already been introduced I believe as HR-1 because it  
14 attaches Mr. Warman's complaint to a letter from the  
15 Commission to Mr. Winnicki.

16 THE CHAIRPERSON: Sorry, what were  
17 you speaking of at tab...?

18 MS MAILLET: Tab 16.

19 THE CHAIRPERSON: Tab 16. Okay, you  
20 are right. Some of tab 16 is already in as another  
21 exhibit.

22 MS SHI: Yes, and to that extent it  
23 doesn't need to be marked again.

24 THE CHAIRPERSON: No.

25 MS SHI: But, on other hand, perhaps

1           it's easier just to mark it as separate document  
2           enclosing something. I'm in your hands.

3                         THE CHAIRPERSON: I think it gets  
4           confusing. If it is already marked as an exhibit, I  
5           would just ask you to verify --

6                         MS SHI: Just mark those pages then.

7                         THE CHAIRPERSON: Just verify that  
8           all of what you are referring to in tab 16 has been  
9           marked as an exhibit.

10                        MS SHI: Ms Maillet can correct me, I  
11           think then perhaps it's just the first page that we  
12           need for tab 16; am I right?

13                        MS MAILLET: That's right. The  
14           material that is in the Commission's exhibits does not  
15           include the very first page which is the letter from  
16           Suzanne Best at the Canadian Human Rights Commission to  
17           Mr. Winnicki.

18                        THE CHAIRPERSON: Okay. So, we will  
19           take everything else out and leave that one in as  
20           respondent Exhibit 14.

21                        MS SHI: Thank you. Tab 18, please.

22                        THE CHAIRPERSON: Now, this is the  
23           Canadian Human Rights Commission investigation report.

24                        MS SHI: Right.

25                        THE CHAIRPERSON: That is not entered

1 as an exhibit. That is not something that I am  
2 prepared to have entered as an exhibit, unless the  
3 investigator is present to have that entered in through  
4 her or through another witness.

5 MS SHI: Madam Chair, I would like to  
6 get it admitted simply to have a complete record of the  
7 process that had been gone through for the purpose of  
8 final submissions.

9 This is a document that's been  
10 produced by the Commission, and so there can be no  
11 issue of its veracity and identification, it's not  
12 needed.

13 Perhaps you can indicate to me, is  
14 the Tribunal's concern one of relevance that you would  
15 like me to address?

16 THE CHAIRPERSON: Well, I think --  
17 the issue with the investigation report is that it  
18 really has no bearing on the proceedings before the  
19 Tribunal.

20 You are entering evidence, I am  
21 hearing the case on the basis of the evidence that is  
22 coming before me now; thus, this is not relevant to my  
23 determination in any way, shape or form.

24 MS SHI: And I'm in entire agreement  
25 with that.

1 THE CHAIRPERSON: It is relevant to  
2 the Commission's decision to refer the complaint to the  
3 Tribunal, but once the complaint has been referred to  
4 the Tribunal, then I conduct an independent inquiry  
5 into the complaint and I do not have regard to the  
6 investigator's comments.

7 MS SHI: Absolutely. I'm in complete  
8 agreement with of that. There is one issue that had  
9 been raised in the amended statement of particulars,  
10 and that is with regards to this Tribunal's  
11 jurisdiction over the messages that have been produced  
12 subsequent to the initial investigation.

13 It is our position that those  
14 messages and the way the Commission referred them to  
15 this Tribunal had not been proper, and to the extent  
16 that this report outlined the process that the initial  
17 messages had gone through is indicative of the  
18 procedure that had been skipped with the rest of them.

19 So, if I remember correctly, and I  
20 don't want to be totally confined to it, I think that  
21 was the purpose why I included it.

22 What I can say is this, I have no  
23 intention, and I will undertake -- if this document is  
24 marked, I will undertake not to make any submissions  
25 with regards to the merits of this case using this

1 document, except on that issue of jurisdiction.

2 THE CHAIRPERSON: The difficulty with  
3 your jurisdictional argument is this, if you have  
4 difficulty with the way in which the matter was  
5 referred to the Tribunal, then properly speaking, the  
6 appropriate redress for that is to the Federal Court,  
7 is for a review of the Commission's decision to refer  
8 the complaint to the Tribunal.

9 Once it is at the Tribunal stage,  
10 we have no jurisdiction to review the  
11 Commission's decision.

12 So, if the Commission made a mistake  
13 or if the Commission failed to have regard to pertinent  
14 evidence or included evidence that should not have  
15 been -- whatever the difficulty, whatever the infirmity  
16 might be, it is not within our jurisdiction to correct  
17 that.

18 MS SHI: Well, Madam Chair, I'm not  
19 prepared to make my full-blown argument on that point,  
20 but I would like to have this document for me to refer  
21 to when I make that argument and only for that limited  
22 purpose.

23 THE CHAIRPERSON: I will hear from  
24 the Commission on this.

25 MS MAILLET: Yes. And I apologize,

1           this was an oversight on my part in agreeing to admit  
2           this -- all of these documents.

3                           You are absolutely right, the  
4           investigator is not being called here today and, from  
5           what I understand, there will be nobody that can  
6           identify this document as being -- my understanding,  
7           was Mr. Winnicki may have received a copy of this, but  
8           he is not taking the stand, and so I agree that this  
9           should not be admitted as an exhibit.

10                           Secondly, if Ms Shi wants to make an  
11           argument that the Commission's decision was not a  
12           proper one, then submission that (a) it should have  
13           been done, of course, to the Federal Court by way of  
14           judicial review.

15                           If she wishes to make that argument  
16           before the Tribunal, that is separate from the  
17           proceedings before you today, it's an issue of your  
18           jurisdiction to review the Commission decision, and to  
19           do that through dealing with the section 13 complaint  
20           and 14 complaint against Mr. Winnicki would not, in my  
21           view, be appropriate in these proceedings.

22                           THE CHAIRPERSON: Excuse me just a  
23           minute, Mr. Warman.

24                           MR. WARMAN: No, I just simply concur  
25           that the appropriate remedy is to seek judicial review

1 before the Federal Court and making the argument before  
2 the Tribunal would be inappropriate.

3 THE CHAIRPERSON: Ms Shi.

4 MS SHI: Yes. This issue of  
5 jurisdiction was raised in the amended statement of  
6 particulars. My friend in her reply made an objection  
7 to me making it an issue and I maintain the position  
8 but, as I said, I'm not prepared right now to make my  
9 full-blown argument on the issue of jurisdiction.

10 As to the issue of who's going to  
11 identify this document, the Commission produced this  
12 document, by definition this is from the joint book of  
13 documents from both the complainant and the Commission.

14 MS MAILLET: No, sorry, I have to  
15 correct my friend on that.

16 This was part of the Commission's  
17 disclosure where we disclosed all of our documents. We  
18 did not put this in our joint book of documents for the  
19 purposes of this hearing because, I agree with Madam  
20 Chair, this is completely irrelevant to the matter to  
21 be determined by the Tribunal.

22 Whether or not the investigator  
23 included something or didn't include something is  
24 irrelevant to the matter before you.

25 MS SHI: I apologize, I misspoke.

1           What I meant was, this was in my friend's disclosure  
2           and it's a document source from the Commission. The  
3           veracity, it simply cannot be put at issue and,  
4           therefore -- and the use that I want to make of it,  
5           I've made it perfectly clear, is not to argue about the  
6           merits of this case, it's simply on the issue of  
7           jurisdiction because this report outlines the process  
8           that the Commission went through.

9                         THE CHAIRPERSON: I understand your  
10           argument, Ms Shi.

11                        MS SHI: It's very limited argument.

12                        THE CHAIRPERSON: It is not a  
13           document that is going to go in on consent, so if you  
14           want this document to come in, then you will need  
15           somebody to identify the document.

16                        MS SHI: All right. Well, and I want  
17           it duly noted that I had sought my friend's consent on  
18           this initially, and so it wasn't as if there was no  
19           notice that I endeavoured to put it before the  
20           Tribunal, so I'll move on then.

21                        MR. WARMAN: Sorry, just on that  
22           point, I'd just like to clarify, I believe Ms Shi  
23           stated that Commission raised no objection to this line  
24           of argument and, in fact, I believe in at least one of  
25           our responses, if not our last two responses, we

1 indicated that this line of argument was inappropriate  
2 and that the appropriate way to follow this up, if it  
3 was desirable, would have been Federal Court and that  
4 the time for that had long since expired.

5 So, just to clarify the record.

6 MS SHI: We will continue then. Tab  
7 20.

8 REGISTRY OFFICER: The document  
9 found at tab 20 of the respondent's book of documents,  
10 Volume I, letter to Ms Lalonde from Mr. Warman dated  
11 May 28th, 2004 will be marked as respondent Exhibit  
12 R-15.

13 THE CHAIRPERSON: This isn't an  
14 exhibit anywhere else?

15 MS MAILLET: No.

16 THE CHAIRPERSON: Okay.

17 EXHIBIT NO. R-15: Document  
18 found at tab 20 of the  
19 respondent's book of documents,  
20 Volume I, letter to Ms Lalonde  
21 from Mr. Warman dated May 28th,  
22 2004.

23 MS SHI: Tab 21, please.

24 REGISTRY OFFICER: The document found  
25 at tab 21 of the respondent's book of documents, Volume

1 I, a letter to Ms Lalonde from Mr. Warman dated May  
2 28th, 2004 will be marked as respondent Exhibit R-16.

3 EXHIBIT NO. R-16: Document  
4 found at tab 21 of the  
5 respondent's book of documents,  
6 Volume I, a letter to Ms Lalonde  
7 from Mr. Warman dated May 28th,  
8 2004.

9 MS SHI: Tab 22, please.

10 REGISTRY OFFICER: Document found at  
11 tab 22 of the respondent's book of documents, Volume I,  
12 memo to file from Hannya Rizk dated September 15th,  
13 2004 Subject: Warman vs. Winnicki 20041228 will be  
14 marked as respondent Exhibit R-17.

15 EXHIBIT NO. R-17: Document  
16 found at tab 22 of the  
17 respondent's book of documents,  
18 Volume I, memo to file from  
19 Hannya Rizk dated September  
20 15th, 2004 Subject: Warman vs.  
21 Winnicki 20041228.

22 MS SHI: Tab 23.

23 MS MAILLET: Madam Chair, and I  
24 apologize to the Tribunal, as well as to my friend, I  
25 had looked at this just very quickly just five minutes

1 before we began and I realized by looking at this that  
2 this appears to be a document which is from, I believe  
3 an investigator, an intake officer at the time to legal  
4 counsel at the Commission.

5 And I'm looking at this now and I  
6 believe this would be a privileged document that was...

7 MS SHI: We'll take it out then.  
8 That's fine.

9 Then does the same apply to 23 and  
10 24?

11 MS MAILLET: Yes, that's correct 24  
12 and 23.

13 THE CHAIRPERSON: I appreciate that,  
14 Ms Shi.

15 MS SHI: No problem.

16 REGISTRY OFFICER: Was that tab 22?

17 THE CHAIRPERSON: 23 and 24.

18 REGISTRY OFFICER: Just 23 and 24?

19 MS MAILLET: Yes, that's right, 23  
20 and 24.

21 MS SHI: Tab 26.

22 REGISTRY OFFICER: The document found  
23 at tab 26 of the respondent's book of documents, Volume  
24 I, letter to Mr. Warman from Suzanne Best date stamped  
25 September 28th, 2004 will be marked as respondent

1 Exhibit R-18.

2 EXHIBIT NO. R-18: Document  
3 found at tab 26 of the  
4 respondent's book of documents,  
5 Volume I, letter to Mr. Warman  
6 from Suzanne Best date stamped  
7 September 28th, 2004.

8 MS SHI: I'm sorry, what is R-17  
9 then?

10 REGISTRY OFFICER: Tab 22.

11 MS SHI: That's solicitor/client  
12 privilege, I thought we were taking them out, 22 to 24.

13 MS MAILLET: No, 22 was just a  
14 memorandum to file.

15 MS SHI: So, that's fine. All right,  
16 thank you.

17 MR. WARMAN: Sorry, if I could just  
18 clarify. With regard to tab 22, in consenting to the  
19 entry of it, I just want to make clear that I'm not  
20 consenting to the accuracy of the discussion that it  
21 details.

22 THE CHAIRPERSON: Okay, it's noted.

23 MS SHI: Tab 27.

24 REGISTRY OFFICER: The document found  
25 at tab 27 of the respondent's book of documents, Volume

1 I, Temporary Docket, Warman v. Winnicki (Retaliation  
2 Complaint) file announcement 20041228 will be marked as  
3 respondent Exhibit R-19.

4 EXHIBIT NO. R-19: Document  
5 found at tab 27 of the  
6 respondent's book of documents,  
7 Volume I, Temporary Docket,  
8 Warman v. Winnicki (Retaliation  
9 Complaint) file announcement  
10 20041228.

11 MS SHI: Thank you. And that's all  
12 the exhibits that I am going to mark for now, Madam  
13 Chair.

14 THE CHAIRPERSON: Thank you, Ms Shi.  
15 I do want to make it clear to Ms Shi,  
16 just so that there is no misunderstanding, that I am  
17 perfectly open to hearing your arguments with respect  
18 to jurisdiction.

19 MS SHI: Yes, thank you.

20 THE CHAIRPERSON: So, I am open on  
21 that.

22 MS SHI: Right, at the summation.

23 THE CHAIRPERSON: At the appropriate  
24 time.

25 MS SHI: If I may -- yes, thank you.

1                   Mr. Warman, could I ask you to go to  
2                   your speech to the ARA, please. That will be in tab  
3                   37.

4                   THE CHAIRPERSON: Tab 37, did you  
5                   say?

6                   MS SHI: Yes, please.

7                   And I would like to take you to page  
8                   208. If I could take you down to the section with the  
9                   title: Filing a Complaint. Do you see it?

10                  MR. WARMAN: Mm-hmm.

11                  MS SHI: In the second paragraph it  
12                  says:

13                                 "Although the Commission has the  
14                                 ability to initiate complaints  
15                                 on their own, this power has  
16                                 never been used to date to deal  
17                                 with Internet hate, and given  
18                                 the attitude of the current  
19                                 senior management I'm not  
20                                 optimistic it will be used any  
21                                 time soon unfortunately."

22                  Do you see that?

23                  MR. WARMAN: I do.

24                  THE CHAIRPERSON: I'm sorry, but I  
25                  don't.

1 MS SHI: I'm sorry, page 208.

2 THE CHAIRPERSON: Okay. And where  
3 again?

4 MS SHI: There is a section that  
5 says: Filing a Complaint.

6 THE CHAIRPERSON: Okay. Yes, mm-hmm.

7 MS SHI: Second paragraph.

8 THE CHAIRPERSON: Thank you.

9 Sorry, continue.

10 MS SHI: Mr. Warman, could you please  
11 describe the attitude of the Commission senior  
12 management that you were referring to?

13 MR. WARMAN: Just that I had been  
14 encouraging the initiation by the Commission of their  
15 own complaints on the basis that it exposed individual  
16 complainants to excessive -- or unnecessary cost,  
17 unnecessary use of time and risk, personal risk and  
18 that, to date, that hadn't been successful in  
19 encouraging them to do so.

20 MS SHI: And you felt that it was  
21 because they had an attitude that was resistant to the  
22 suggestion?

23 MR. WARMAN: I could only assume that  
24 it was and that they hadn't actually done so.

25 MS SHI: You talked about fighting

1 neo-Nazis in your speech there. Do you consider Mr.  
2 Winnicki as one them?

3 MR. WARMAN: Whether I would describe  
4 Mr. Winnicki as a neo-Nazi per se, or whether I would  
5 simply say that he extols many of the same philosophies  
6 and arguments that the Nazi -- the National Socialist  
7 Regime of World War II did, in the sense that he  
8 promotes the hatred of individuals who are considered  
9 to be non-Aryan, homosexuals, women, gays and lesbians,  
10 I would agree with that.

11 MS SHI: And so you, in your speech,  
12 when you refer to your fight with the neo-Nazis, you  
13 were also referring to your fight, generally speaking,  
14 with people like Mr. Winnicki; am I right?

15 MR. WARMAN: Sorry, is there a  
16 particular passage that you would like to refer me to?

17 MS SHI: Well, I'm just wondering in  
18 terms of your discussion of your strategies and your  
19 own approach in the speech in fighting the neo-Nazis,  
20 whether the same thing applies to your approach to Mr.  
21 Winnicki?

22 MS MAILLET: If I could just -- Madam  
23 Chair, I apologize again for interrupting, but I don't  
24 believe that that was the evidence of Mr. Warman, that  
25 he was fighting with neo-Nazis, I believe the words

1           that were used in our direct examination was that he  
2           was combatting and monitoring hate propaganda and the  
3           groups that communicate hate propaganda.

4                        I'm just afraid that by her  
5           characterizing it as a fight with the Nazis that it's  
6           going to confuse exactly what it is that Mr. Warman was  
7           doing.

8                        MS SHI: Two points, Madam Chair.

9                        The word fight is no big deal. Mr.  
10          Warman, as far as I can see, having complained when Mr.  
11          Randy Richmond wrote an article about him and dubbing  
12          it: Fight of a Lifetime, I think we have seen that  
13          earlier.

14                       And the second thing is if it is of  
15          assistance, I could take Mr. Warman to paragraph 3 of  
16          his speech.

17                       Do you see it, Mr. Warman?

18                       MR. WARMAN: I see paragraph 3.

19                       MS SHI: Yes. it says there:

20                                "I was invited to speak to you  
21                                about the human rights work that  
22                                I'm involved in attempting to  
23                                stop neo-Nazi activity here in  
24                                Canada..."

25                       And you went on to talk about, among

1 others, Mr. Winnicki.

2 MR. WARMAN: Mm-hmm.

3 MS SHI: And hence my question as to  
4 when you were referring about your work to stop  
5 neo-Nazis activity here in Canada whether you were also  
6 referring to Mr. Winnicki.

7 MR. WARMAN: As I have said, I  
8 believe that the belief system that he espouses, or  
9 certainly the hate propaganda that he has posted to the  
10 internet would fall under the rubric of neo-Nazi  
11 political beliefs.

12 MS SHI: And I see in the next  
13 paragraph you refer to hate group, you say:

14 "I've been active in monitoring  
15 and attempting to fight back  
16 against hate group organizing in  
17 my communities here in Canada  
18 for approximately the last 15  
19 years."

20 So, is that a term that maybe you  
21 feel more comfortable in using describing Mr. Winnicki,  
22 part of a hate group, or is that what it is?

23 MR. WARMAN: I don't have the ability  
24 to say conclusively, so Mr. Winnicki is an individual.  
25 When I refer to hate groups, that's easier for me to

1 say that that -- we referred to the Western Canada for  
2 Us, which was clearly a group.

3 So, whether Mr. Winnicki is a formal  
4 member of any group, I can't say conclusively.

5 MS SHI: Well, I'm just wondering.  
6 You talk about a broad front approach and a maximum  
7 disruption approach against neo-Nazis and the hate  
8 groups.

9 Are these the approaches that you  
10 have used against Mr. Winnicki?

11 MR. WARMAN: Some of them, certainly.

12 MS SHI: Which ones? There are two  
13 here, broad front or maximum disruption, or both?

14 MR. WARMAN: Certainly the broad  
15 front, yes, I have no difficulty with that, and  
16 attempting to use as many means possible to stop his  
17 conduct, I have no problem with that either.

18 MS SHI: Meaning the maximum  
19 disruption as well?

20 MR. WARMAN: Yes. Yeah.

21 MS SHI: Right. And then you say  
22 that -- further down that paragraph:

23 "If I think that they've  
24 violated the Canadian Human  
25 Rights Act..."

1 Do you see it?

2 MR. WARMAN: Yes.

3 MS SHI:

4 "...then I'll look at all of the  
5 potential targets and file  
6 complaints against them starting  
7 on a 'worst offender' basis,  
8 although sometimes if I just  
9 find people to be particularly  
10 annoying this may move them up  
11 the list a bit."

12 When you made that statement, did you  
13 believe it to be true?

14 MR. WARMAN: In fact, it was a joke.

15 MS SHI: It wasn't true?

16 MR. WARMAN: Well, I don't want to  
17 get into the myriad of things that could possibly go  
18 into or could have gone into any particular decision to  
19 file a human rights complaint, but the vitriol and the  
20 hate propaganda that has been put on the internet by  
21 Mr. Winnicki would certainly categorize him on the  
22 first -- sort of on the worst offender basis, and he  
23 certainly took priority over other individuals which I  
24 had information or concerns may also be violating the  
25 Canadian Human Rights Act contemporaneously.

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MS SHI: So, see if I get you right, that you in fact on Mr. Winnicki, you moved on the worst offender basis and not on the particularly annoying basis; am I right?

MR. WARMAN: Yes. In fact, the second part, as I said, was a joke.

MS SHI: And it wasn't true that -- well, let me be more specific.

You do not move people up your list for filing human rights complaints just because they are particularly annoying; do you?

MR. WARMAN: I mean, annoying can be interpreted in many different ways.

If I believe that they're annoying in the sense that they are showing utter contempt for -- but I mean, it all ties in with the worst offender basis, so, it depends on their -- I mean their conduct goes into it and how I judge their conduct.

If they are particularly contemptuous of human rights in Canada, if they indicate contempt for the values of multiculturalism and human rights respect and protection in Canada, then it may impact on my decision.

I don't know whether I would call

1 that annoying or not but, as I said, the annoying part  
2 was mostly a joke.

3 MS SHI: So, really what you're  
4 saying is annoying only if it's in the sense of being a  
5 worst offender.

6 MR. WARMAN: Yes.

7 MS SHI: But not annoying in the  
8 sense of not being a worst offender, that would not  
9 form a criterion for you?

10 MR. WARMAN: No.

11 MS SHI: And then you said further  
12 down the maximum disruption part. Do you see it?

13 THE CHAIRPERSON: Can you refer me --

14 MS SHI: The last paragraph.

15 MR. WARMAN: Yes.

16 THE CHAIRPERSON: Of which page?

17 MS SHI: The same page, the maximum  
18 disruption, page 207. I'm sorry, maybe I didn't -- I  
19 was looking at page 207.

20 So, the last paragraph, the maximum  
21 disruption, do you see that, Mr. Warman?

22 MR. WARMAN: I do.

23 MS SHI: The maximum disruption that  
24 you say applied to Mr. Winnicki, it says:

25 "The 'maximum disruption' part

1                   comes in because wherever I  
2                   think it will be most helpful,  
3                   or even if I just feel it will  
4                   be the most fun, I strongly  
5                   believe in hitting the neo-Nazis  
6                   on as many of these fronts as  
7                   possible either at the same time  
8                   or one after the other."

9                   Was that statement true when you said  
10                  it?

11                  MR. WARMAN: In the sense that I take  
12                  joy in conducting human rights work in Canada, yes.

13                  MS SHI: It's fun?

14                  MR. WARMAN: Well, there is a lot of  
15                  work, it's extremely stressful at times, it can be  
16                  extremely draining, but at the same time I think it's  
17                  important to be committed to the work that one  
18                  undertakes and in the sense of my commitment to the  
19                  human rights work, yes, it can be.

20                  It's not always certain.

21                  MS SHI: It can be fun? Fun, that's  
22                  the word you use.

23                  MR. WARMAN: Sure. Joyous, fun.

24                  MS SHI: Fun, right. Thanks.

25                  Could we go to page 214, please.

1 I would like to take a look at the  
2 second last paragraph, please.

3 MR. WARMAN: Mm-hmm.

4 MS SHI: That starts with: "Beyond  
5 the demonstrations..." Do you see it?

6 MR. WARMAN: Yes.

7 MS SHI:

8 "Beyond the demonstrations held  
9 by ARA, there were more serious  
10 incidents such as the time when  
11 Zundel received mail bombs and  
12 had his bunker severely damaged  
13 by an arsonist."

14 And you continue to say:

15 "Please note that these last two  
16 examples are the kinds of things  
17 that I believe go beyond the  
18 "(almost) any means necessary"."

19 And then I'd like to ask you a few  
20 questions about the next sentence. You said:

21 "Indiscriminate violence...",

22 and I'd like to underline

23 indiscriminate,

24 "...that places the safety of

25 other individuals...",

1                   and I'd like to underline other,  
2                   "...at risk, is not only suspect  
3                   on a moral basis, but also puts  
4                   in jeopardy broader public  
5                   support that is essential to  
6                   maintaining isolation of the  
7                   neo-Nazis."

8                   Now, did you also tell the audience  
9                   that even discriminate violence against the target  
10                  person is morally suspect?

11                  MR. WARMAN: No, I believe that  
12                  that's included within that statement.

13                  MS SHI: Oh. So, really when you say  
14                  indiscriminate violence, you meant indiscriminate and  
15                  discriminate; is that right?

16                  MR. WARMAN: No. No, I believe that  
17                  when I use the word indiscriminate, I mean it in the  
18                  sense of the broader ability of the community to fight  
19                  back against neo-Nazi violence; for instance, the use  
20                  of force by the allied forces during World War II was  
21                  an appropriate use of violence to put down the  
22                  aggression of the German National Socialist Regime.

23                  When I use the word other  
24                  individuals, I mean anyone else other than yourself.

25                  MS SHI: So, indiscriminate violence

1 by that -- from what I hear from you, it's something  
2 outside they sponsor, perhaps police action; is that  
3 what you had in mind at the time?

4 MR. WARMAN: Certainly police action  
5 that involves violence in enforcing the law within the  
6 bounds of the law is acceptable to me, if necessary.

7 MS SHI: But you didn't say that, you  
8 didn't say leave it to the police, you didn't tell them  
9 to leave it to the police if violence became necessary;  
10 did you?

11 MR. WARMAN: Because I don't think  
12 it's up to individuals to make that decision on their  
13 own, that's why I said that indiscriminate violence,  
14 meaning violence that is conducted by non-state actors  
15 in a non-lawful manner.

16 MS SHI: Well, you didn't tell them  
17 that, leave it to the police; did you?

18 MR. WARMAN: I believe that I have  
19 always -- even in the opening to my speech I say, where  
20 I have thought that it's most appropriate I've worked  
21 with the police, where I've thought that it's most  
22 appropriate I've worked within the confines of the  
23 Human Rights Act, and where I think it's more  
24 appropriate, I've worked with NGO, community groups,  
25 such as is clearly evident in the case of Mr. Winnicki.

1                   So, I think that my historical record  
2                   on this issue speaks for itself.

3                   MS SHI: Because you don't believe  
4                   that individuals other than -- well, as you say,  
5                   individuals simply should ever engage in violence;  
6                   isn't that right?

7                   MR. WARMAN: No, I believe that  
8                   within the law there are exceptions to the use of  
9                   violence for individuals, such as self-defence.

10                  MS SHI: Right.

11                  MR. WARMAN: So, the unlawful use of  
12                  violence, I believe, is inappropriate.

13                  MS SHI: I would like to now show tab  
14                  38, please.

15                  And if we could mark that for  
16                  identification purpose for now, please.

17                  REGISTRY OFFICER: The document at  
18                  tab 38 of respondent's book of documents, Volume I,  
19                  Trial Proceedings, Her Majesty the Queen v Mark Roy  
20                  Elms, four pages will be marked for identification as  
21                  I.

22                  MS SHI: Sorry, we have marked  
23                  something as I which is 51.

24                  REGISTRY OFFICER: Oh, sorry, J.

25                  MS SHI: Also 39 should be CBC

1 program about ARA, it's a CD.

2 THE CHAIRPERSON: So, we have got the  
3 wrong -- because my tab 38 is the --

4 MS SHI: No, 39. 39.

5 Did I say 38?

6 THE CHAIRPERSON: Yes.

7 MS SHI: I apologize. It's getting  
8 later in the afternoon. I apologize.

9 REGISTRY OFFICER: The Tribunal  
10 wishes to strike its marking of tab 38 of the  
11 respondent's book of documents.

12 THE CHAIRPERSON: So, it is marked as  
13 J.

14 MR. WARMAN: I'm sorry, I'm just not  
15 sure I understood.

16 REGISTRY OFFICER: The Tribunal had  
17 been advised to mark tab 38 --

18 MR. WARMAN: Yes.

19 REGISTRY OFFICER: -- for  
20 identification.

21 MR. WARMAN: So, tab 38 has not been  
22 marked.

23 THE CHAIRPERSON: No.

24 MR. WARMAN: Okay.

25 REGISTRY OFFICER: It has not. It is

1 no longer and, as a note, I don't have anything under  
2 I, so that's still be marked.

3 THE CHAIRPERSON: Oh, you don't have  
4 anything under I.

5 MS SHI: Well, I have tab 51 marked  
6 as I.

7 REGISTRY OFFICER: I. Okay.

8 --- Discussion off the record

9 THE CHAIRPERSON: Okay. Are we all  
10 right.

11 MS SHI: My consent.

12 REGISTRY OFFICER: Tab 39 you would  
13 like to have marked for identification; am I correct?

14 And the Tribunal Registry Officer  
15 would like to obtain a copy of the CD to be marked.

16 MS SHI: Of course. I apologize, I  
17 will bring one tomorrow. I somehow neglected to  
18 reproduce it to put into the book of documents.

19 I had sent one to the Tribunal when I  
20 produced the amended statement of particulars, but I  
21 apologize, it had slipped my mind to bring the six  
22 copies over to the hearing. I will do that tomorrow.

23 THE CHAIRPERSON: Okay. So, I think  
24 then --

25 MS SHI: The Commission and Mr.

1 Warman both have copies.

2 THE CHAIRPERSON: I don't think we  
3 can properly mark it for identification if we don't  
4 have a copy of it at this point.

5 You were planning on showing this  
6 now?

7 MS SHI: Yes.

8 THE CHAIRPERSON: All right. I will  
9 mark it for identification --

10 Ms Hartung has made the suggestion  
11 that we keep the original.

12 REGISTRY OFFICER: The Tribunal's  
13 practice is that the original copy of a document or a  
14 piece of material is the one that goes in as the  
15 official record copy.

16 MS SHI: Meaning, like the one that  
17 we have.

18 REGISTRY OFFICER: The one that is  
19 proffered for use.

20 MS SHI: Sure, sure, that makes  
21 sense. So, we will view it and then I could give it to  
22 you, but maybe borrow it to be reproduced tonight.

23 THE CHAIRPERSON: Okay.

24 MS SHI: Thank you.

25 So, we will mark that as, is it J?

1                   REGISTRY OFFICER: So the CD from a  
2 CBC program about the ARA found at tab 39 of the  
3 respondent's book of documents will be marked for  
4 identification as J.

5                   EXHIBIT NO. J: CD from a CBC  
6 program about the ARA found at  
7 tab 39 of the respondent's book  
8 of documents.

9                   REGISTRY OFFICER: Ms Shi, should we  
10 just have it played.

11                  MS SHI: Yes, please. Is it in there  
12 already, I think?

13                  REGISTRY OFFICER: Can all the  
14 parties see from where they are; because if not, they  
15 can shift where they are sitting for this.

16 --- Video presentation

17                  MS SHI: This is the end of it.

18                  THE CHAIRPERSON: Okay. So, from  
19 2:34 until 2:39 we viewed a video, rather a DVD of a  
20 CBC program about the ARA that has been marked for  
21 identification as J.

22                  MS SHI: Thank you.

23                  Mr. Warman, I would like to take you  
24 to page 214 of your speech, please.

25                  I apologize, page 211, please.

1                   You talked about, in the second last  
2           paragraph, that:

3                   "...Mr. Winnicki...was stopped  
4                   in Toronto...", when they were  
5                   going to the, "...demonstration  
6                   outside of the Toronto West  
7                   Detention Centre in support of  
8                   imprisoned Holocaust Denier  
9                   Ernst Zundel. As a result of  
10                  that stop, Mr. Winnicki has now  
11                  been charged with numerous  
12                  criminal offences after throwing  
13                  knives, a bow and arrows and  
14                  body armour were found in the  
15                  vehicle."

16                 And then you said:

17                   "The demonstration they were  
18                   headed for, of course, was one  
19                   where Anti-Racist Action Toronto  
20                   was going to be attending to  
21                   ensure that public support for  
22                   one of the world's worst  
23                   Holocaust deniers would not go  
24                   unopposed."

25                 And in the video that we just saw

1           that was the activity that you were referring to in  
2           this paragraph; isn't that right?

3                       MR. WARMAN:  No, in fact I have never  
4           seen that video before, that's the first time I've seen  
5           it.

6                       MS SHI:  So, you were not aware as to  
7           what happened that day?

8                       MR. WARMAN:  I was aware that there  
9           had been scuffles.  I certainly hadn't seen the video  
10          and those images.

11                      MS SHI:  Were you aware, as you can  
12          see in the video, that some of the members of the ARA  
13          contingent were arrested by the police for violent  
14          behaviour?

15                      MR. WARMAN:  I was aware that  
16          individuals on the both sides had been arrested, yes.

17                      MS SHI:  I would like to go to tab 38  
18          now, please.  And I'd like to mark it for  
19          identification purpose, please.

20                      REGISTRY OFFICER:  The document at  
21          tab 38 of the respondent book of documents, Volume I,  
22          the Ontario Court of Justice, Her Majesty The Queen v  
23          Mark Roy Elms, trial proceedings, will be marked for  
24          identification as K.

25                      MS SHI:  Thank you.

1 MS MAILLET: I'd just like to note,  
2 Madam Chair, that this document appears quite  
3 incomplete, it goes from page 29 to 30 and then 94,  
4 126, 127.

5 MS SHI: That's right. It is an  
6 excerpt. I have the entire transcript if my friend  
7 would like to see it. I thought that for the purpose  
8 of this hearing I was only going to produce the excerpt  
9 that I feel is relevant to this hearing, but I have the  
10 whole transcript and I have no problem producing it if  
11 my friend would like to see it.

12 MS MAILLET: And I note that it's not  
13 being put in evidence as an exhibit at this point, but  
14 I question (a) the ability to provide transcripts of  
15 another proceeding under the Canada Evidence Act, I  
16 don't believe that's allowed, first of all; and,  
17 secondly, of course, my issue of relevance is always  
18 there.

19 THE CHAIRPERSON: Mr. Warman.

20 MR. WARMAN: If I may, I have a copy  
21 of the Canada Evidence Act in my briefcase. If I can  
22 just obtain it, I can just refer to the section that  
23 bars the introduction of such evidence.

24 THE CHAIRPERSON: Do you have copies  
25 for everyone?

1 MR. WARMAN: No, I don't. I could  
2 undertake --

3 THE CHAIRPERSON: Why don't we take a  
4 break at this point, and I'm just wondering if it is  
5 better to take a break now or to hear your argument.

6 MS SHI: May I assist, see if I could  
7 put to rest the concerns with the following.

8 Mr. Paul Fromm, as you can see from  
9 the video, he was at the demonstration and he will  
10 speak to the ARA and he was also present at this  
11 proceeding. In many ways all that this transcript does  
12 is to refresh his memory. I had gone through the  
13 transcript with him and he said he did remember the  
14 testimony.

15 So, in terms of reliability, I wonder  
16 if that will put to rest the concerns. And in terms of  
17 concerns about admissibility, also, one way to deal  
18 with it is to simply let Mr. Fromm testify and use  
19 these as a reminder.

20  
21 THE CHAIRPERSON: As his notes.

22 MS SHI: So, I don't know if that  
23 will solve the problem, but if Mr. Warman wishes to  
24 proceed...

25 Thank you.

1 THE CHAIRPERSON: Well, let me hear  
2 the argument and then at the break you can provide  
3 copies.

4 MR. WARMAN: Can I just ask if a copy  
5 of, say, two pages on either side of that part of the  
6 Act would be acceptable?

7 Under section 30(10)(c) of the Canada  
8 Evidence Act, it states -- sub (10) states:

9 "Nothing in this section renders  
10 admissible in evidence in any  
11 legal proceeding...", (As read)

12 And sub (c) states:

13 "...any transcript or recording  
14 of evidence taken in the course  
15 of another legal proceeding."  
16 (As read)

17 THE CHAIRPERSON: And so your  
18 submissions would be that...

19 MR. WARMAN: I'm sorry, that the  
20 introduction of this transcript is barred by the Canada  
21 Evidence Act.

22 MS MAILLET: We also have a case that  
23 supports that, it's quite long, it's R v Finta. It  
24 simply states what the Canada Evidence Act exclusively  
25 states. It's in the form of case law.

1 THE CHAIRPERSON: It's the Finta case  
2 from the Supreme Court of Canada?

3 MS MAILLET: That's correct. Oh,  
4 this is the Court of Appeal, but there is nothing much  
5 more in there other than saying that the trial judge  
6 was correct in finding that the evidence was not  
7 admissible and then cites that section.

8 I don't need to rely on it, Madam  
9 Chair, the Act speaks for itself, it's quite a lengthy  
10 case.

11 THE CHAIRPERSON: Ms Shi.

12 MS SHI: I would like to have a copy  
13 of the section to review but, as I said, the use of  
14 this excerpt is really limited to refreshing Mr.  
15 Fromm's memory.

16 And, as I said, I have gone through  
17 it with him and specifically made sure that he was  
18 aware of these testimony and did remember and could  
19 testify to it.

20 And so, as I said, maybe practically  
21 speaking, the easier way to deal with it is to mark it  
22 for identification purpose now and let Mr. Fromm use it  
23 as notes to refresh his memory.

24 And if the Commission counsel and Mr.  
25 Warman wish to have a copy of these notes entered as an

1 exhibit, they could; if they don't, they don't have to.  
2 Perhaps that is the easy way to deal with it.

3 THE CHAIRPERSON: Then, strictly  
4 speaking, we don't need to enter it as an exhibit for  
5 identification at this point; do we?

6 MS SHI: I need to put the premise to  
7 Mr. Warman, so...

8 THE CHAIRPERSON: And do you need to  
9 do that with this document?

10 MS SHI: Well, I could do that or I  
11 could read it out into the record.

12 THE CHAIRPERSON: Well then, we need  
13 to have a ruling I think on whether it is admissible or  
14 not.

15 MS SHI: No, but certainly it's  
16 admissible if I put it to him with a witness who's  
17 going to prove later that Officer Hogan in a criminal  
18 trial testified to something. Certainly that is in the  
19 public record.

20 MR. WARMAN: But just that that's an  
21 attempt to put the cart before the horse. Mr. Fromm  
22 has not testified, there is no guarantee as to what he  
23 will testify to.

24 So, you can't -- in my respectful  
25 submission, you can't put to someone something that

1       hasn't been entered as evidence and that reading in  
2       this trial proceeding transcript is the same as  
3       entering in the transcript itself, there is no  
4       difference whatsoever within the application of the  
5       Canada Evidence Act.

6                   THE CHAIRPERSON: Well, provided the  
7       evidence is admissible, you can conditionally enter  
8       something into evidence, or you can conditionally mark  
9       it on an undertaking from counsel that they will  
10      establish -- that they will identify it and enter it,  
11      that can be done.

12                   MS SHI: In fact, I would be  
13      hopelessly hobbled if I can't put to the witness  
14      premises that I undertake to prove during my own case.  
15      That's the way it's done, so...

16                   THE CHAIRPERSON: Ms Maillet, do you  
17      have any other...

18                   MS MAILLET: The only -- and maybe we  
19      could take a moment just to gather my thoughts because  
20      I am thinking about how Mr. Fromm is going to testify  
21      to something that somebody else said based on a  
22      transcript that's not admissible in order to refresh  
23      his memory.

24                   I am just having some difficulty  
25      around this whole issue, but...

1 THE CHAIRPERSON: As am I, as am I,  
2 truly. I mean, I think we are going to have to think  
3 this one through.

4 MS SHI: No, but let's go back to the  
5 first premise. Mr. Fromm does now remember hearing  
6 this testimony, he is going to relate to the fact that  
7 this was given in open court by a police officer, and  
8 to the extent that it's hearsay certainly will be  
9 admissible for his reliability. The officer was  
10 testifying in an open court and, so, short of me having  
11 to bring the officer in, which I would submit is not  
12 reasonable, I think that that evidence should be able  
13 to go in and --

14 THE CHAIRPERSON: You have to  
15 overcome the hearsay hurdle first; right?

16 MS SHI: Well, I mean, a video is  
17 hearsay too, but...

18 THE CHAIRPERSON: But there are  
19 certain conditions for reliability that...

20 MS SHI: Yeah, but I'm sure the  
21 Tribunal is not going to ask me to bring the reporter  
22 in to testify as to the authenticity. If you are, I  
23 better find out pretty soon.

24 But I think in this case there is no  
25 question about the reliability. Mr. Fromm was there

1           when the police officer testified as to ARA being a  
2           violent group and the information contained in it is  
3           very useful, and to the extent that Mr. Fromm needs to  
4           use the transcript to refresh his memory, that is  
5           something that he should be allowed to do.

6                         Witnesses can use anything to refresh  
7           their memory, so long as, at counsel's request, they  
8           are prepared to let the counsel have a look at it,  
9           there's no secret about it, and certainly the  
10          transcript itself, it's an open, public record as to  
11          what transpired, so...

12                        THE CHAIRPERSON:  But that then may  
13          not be -- my understanding, and I will look at this  
14          some more on the break, but my understanding is that  
15          the notes that are used to refresh a witness' memory  
16          may be something that has to be disclosed to all  
17          counsel upon request.  That doesn't necessarily put  
18          them into evidence.

19                        MS SHI:  Maybe we don't put this into  
20          evidence, is what I'm trying to say.

21                        Practically speaking, if you don't  
22          feel comfortable putting this into evidence, what we  
23          could do is to simply listen to Mr. Fromm's first-hand  
24          account -- after all, this is hearsay too, unless  
25          Officer Hogan comes here to testify -- this is no more,

1 no less hearsay than Mr. Fromm, and what I'm saying is  
2 that if I may use this, because I can't remember, I  
3 wasn't there, to put some questions to Mr. Warman and  
4 undertake to have Mr. Fromm during his testimony  
5 confirm that Mr. Hogan's comments and testimony were  
6 indeed made in open court, then that should address all  
7 the concerns about the reliability, and to also respect  
8 whatever concern there may be about using these  
9 transcripts.

10 THE CHAIRPERSON: Ms Maillet.

11 MS MAILLET: Yes. And I still go  
12 back, and I will look at that at the break, but I still  
13 can't help but going back to the relevance of the  
14 activities of the ARA which are not a party to these  
15 proceedings.

16 I'm not sure exactly where my friend  
17 is going with that, is it because Mr. Warman gave a  
18 speech at their conference. But the activities of the  
19 ARA are of no relevance to this hearing.

20 So, what Mr. Fromm heard a police  
21 officer say about the ARA, I think, is just -- I can't  
22 understand how that's germane to what is before the  
23 Tribunal.

24 MS SHI: Well, I think it's actually  
25 very important, it speaks to the credibility of the

1 witness because he has claimed on the stand that he's  
2 against using any violent means and I intend to show  
3 that that's far from the truth by way of his  
4 association with the ARA. I haven't finished with my  
5 cross-examination.

6 And also, in addition to that, my  
7 friend yesterday had extensive in-chief on Mr. Warman's  
8 character. They have put Mr. Warman's character now  
9 front and centre as an issue and certainly his  
10 association and friendliness with a group that behaves  
11 the way we saw on the video, if nothing else, must go  
12 to consideration of his character.

13 If they could put in evidence about  
14 how Mr. Warman has never been criminally convicted and  
15 never been criminally charged by a police officer, and  
16 has shared a panel with Justice Iacobucci and all  
17 that, then this evidence, if for nothing else, his  
18 association and speech to a group that is known to be  
19 violent is relevant, it goes to his credibility and his  
20 character and his reliability.

21 THE CHAIRPERSON: Thank you.

22 Mr. Warman, do you have any further  
23 submissions?

24 MR. WARMAN: No.

25 THE CHAIRPERSON: Okay. I think we

1 will take a break at this point, and I would ask that  
2 copies be made of the relevant documents and provided  
3 to Ms Hartung who will then provide them to me.

4 I think we will take half an hour now  
5 to deal with these matters and come back at 3:30.

6 REGISTRY OFFICER: Order, please.

7 --- Upon recessing at 3:00 p.m.

8 --- Upon resuming at 3:50 p.m.

9 REGISTRY OFFICER: Order, please.

10 All rise. Please be seated.

11 THE CHAIRPERSON: Okay. After  
12 considerable reflection on this issue, I have come to a  
13 decision which may not be entirely satisfactory to all  
14 involved, but I am not going to rule on the  
15 admissibility of this document at this time.

16 I am going to allow it to be marked  
17 for identification and I am going to allow questioning  
18 on it.

19 I am going to reserve my judgment as  
20 to whether the document itself will be admissible, and  
21 that will depend upon the testimony and what happens  
22 with Mr. Paul Fromm.

23 And I am going to reserve my judgment  
24 as to whether any of the statements made by the witness  
25 on the basis of this document are to be considered part

1 of the evidence.

2 So, that is my decision on this  
3 document at this time.

4 Ms Shi, you may proceed.

5 MS SHI: Thank you.

6 If I may just have a minute to make a  
7 note of your decision.

8 MS MAILLET: Madam Chair, would you  
9 mind repeating it, I just the wasn't fast enough to  
10 write it down.

11 THE CHAIRPERSON: Sure. So, I have  
12 said that I am not going to rule on the admissibility  
13 of the document at this time and, in fact, I don't  
14 think that admissibility is really in issue right now,  
15 the question is really whether or not I will allow  
16 questioning on the document.

17 And I am going to allow questioning  
18 on the document at this point, but I am going to  
19 reserve judgment as to whether or not the answers that  
20 are given in response to this document will be  
21 considered to be part of the admissible evidence in  
22 this hearing, based on my decision later on with  
23 respect to the document and based on other factors as  
24 well.

25 MS SHI: Thank you. Madam Chair,

1                   so if we could mark that then for  
2                   identification purpose then for now.

3                   REGISTRY OFFICER: The document at  
4                   tab 38 of the respondent book of documents, Volume I,  
5                   Ontario Court of Justice, Her Majesty The Queen v Mark  
6                   Roy Elms, being excerpts from trial proceedings, pages  
7                   29, 30, 94, 126 and 127 will be marked for  
8                   identification as K.

9                   EXHIBIT NO. K: Document at tab  
10                   38 of the respondent book of  
11                   documents, Volume I, Ontario  
12                   Court of Justice, Her Majesty  
13                   The Queen v Mark Roy Elms, being  
14                   excerpts from trial proceedings,  
15                   pages 29, 30, 94, 126 and 127.

16                   THE CHAIRPERSON: Just a point of  
17                   clarification. Was there any discussion about having  
18                   the entire transcripts available, if need be.

19                   MS SHI: If anybody wishes to have  
20                   it, I could certainly bring it tomorrow.

21                   THE CHAIRPERSON: Could those be made  
22                   available at the end of the day?

23                   MS SHI: Oh, absolutely, I will have  
24                   it done overnight and it will be available tomorrow  
25                   morning.

1 THE CHAIRPERSON: Tomorrow morning?

2 MS SHI: Yes, when we come in.

3 Or, in the alternative, Madam Chair,  
4 if there is any concern about fairness to the witness,  
5 if that is your concern, as an alternative, it is now  
6 four o'clock, I could move to the next topic which is  
7 the VHS video and leave this until I bring the whole  
8 transcript tomorrow, if that is your concern.

9 THE CHAIRPERSON: Well, I would like  
10 to hear from counsel for the Commission.

11 MS MAILLET: Yes. Just looking at  
12 page 94, when the answer is only -- it's not complete,  
13 "I believe that's a fair..." and then we don't know  
14 what else the officer says about provoked violent  
15 instances.

16 So, yes, I would request that we at  
17 least have the relevant sections be complete. If Ms  
18 Shi -- I don't believe she's going to finish with Mr.  
19 Warman today, so in the interest of saving time,  
20 perhaps I would concur that we move on to the next  
21 topic and deal with the transcripts tomorrow.

22 THE CHAIRPERSON: Okay.

23 MR. WARMAN: Yes, same thing.

24 MS SHI: I understand that Ms Maillet  
25 would like to, instead of seeing excerpts, she thinks

1           that the entire tape should be played, and I understand  
2           that it takes about an hour. I haven't watched the  
3           entire tape myself, frankly, because I fast forwarded,  
4           but I have been told it's about an hour, and I think  
5           that will finish the day nicely for us.

6                       MS MAILLET: Yes, if it is admitted.  
7           I make an objection to the relevance of this tape. I  
8           don't believe it's useful to this hearing, I don't  
9           think it adds any value to the decision that the  
10          Tribunal needs to make.

11                      I have got submissions here on what I  
12          think the video -- why it should not be admissible.  
13          Now, I'm not sure if I can make this objection now, I  
14          know she wants to mark it for identification but,  
15          frankly, I don't believe it's worth anybody's time for  
16          us to sit and watch this.

17                      However, if the Tribunal rules that  
18          it is relevant and that you would like to see it, then  
19          I would request that we see the whole thing.

20                      MS SHI: I'm not too sure how the  
21          Tribunal can rule without seeing it. I'm in your  
22          hands, but I think perhaps what will make sense is for  
23          us to watch it and then we will deal with the  
24          admissibility tomorrow morning.

25                      I do not believe, Madam Chair, that

1           you ought to rule on the admissibility of evidence that  
2           you haven't seen.

3                           MS MAILLET: Perhaps if I could just  
4           say a couple of things.

5                           First of all, it's a video about Mr.  
6           David Icke, a documentary about him. He is, in  
7           essence, a conspiracy theory -- proponent of conspiracy  
8           theory, believes in all kinds of things.

9                           It was made -- and some of his  
10          writings and speeches are in support of some of the  
11          classic anti-Semitism thinking.

12                          Mr. Warman has been an opponent of  
13          him, obviously, he's objected to him spreading hate  
14          here in Canada and he's tried to oppose his public  
15          speaking.

16                          The video interviews Mr. Icke,  
17          follows him around through his tour in Canada. Part  
18          of that tour, they interviewed Mr. Warman.

19                          These events happened long before Mr.  
20          Warman had ever even heard of Mr. Winnicki or had seen  
21          any of his postings on the internet, I believe the  
22          events were filmed in 2000.

23                          I believe that Ms Shi wants to put  
24          this in to show that Mr. Warman may be -- and I don't  
25          want to put words in her mouth -- but maybe sympathetic

1 to people that maybe commit crimes, I don't know, and  
2 there is no evidence of that on the video.

3 So, I just am not sure -- and if she  
4 wants to talk about how we could agree on what's in the  
5 video, we could do that.

6 THE CHAIRPERSON: Agree...?

7 MS MAILLET: You know, this is what  
8 the video...

9 THE CHAIRPERSON: Agreed statement of  
10 fact?

11 MS MAILLET: This is what Mr. Warman  
12 says in the video, that's fine. But, frankly, I don't  
13 see the value of it.

14 MS SHI: Madam Chair, I disagree with  
15 my friend's characterization of why I want to show this  
16 video. It's not that Mr. Warman is sympathetic to  
17 people who commit a crime, but that was Mr. Warman  
18 incited someone to go and commit assault on Mr. Icke  
19 and the assault actually took place. That's the reason  
20 for showing the tape.

21 Now, I left it to me, and as you well  
22 know I had in fact taken out extracts, however, Ms  
23 Maillet felt that it was important to see the whole  
24 tape, and I have no quarrel with that and that's why we  
25 have the whole thing here.

1                   I would submit to you that I think it  
2                   is a very important point even without the issue of  
3                   character, which Ms Maillet in her in-chief, I believe  
4                   on Monday, has put solidly in issue by adducing all  
5                   that evidence as to what a stellar character Mr. Warman  
6                   was, and aside from that, his own credibility is very  
7                   much at issue, whether his statements about, again,  
8                   pain and suffering and what he feels is likely to  
9                   expose someone to hatred and contempt.

10                   These are all evidence on questions  
11                   of fact that this Tribunal will have to make a judgment  
12                   on, and that judgment cannot be made without ruling on  
13                   the credibility of some witnesses, and there has to be  
14                   some basis for ruling on that credibility.

15                   So, for all these reasons, I would  
16                   submit that this tape is very important, and I'm really  
17                   kind of surprised that my friend, having made all these  
18                   points to talk about Mr. Warman's character, now thinks  
19                   that a video which shows him inciting someone to go and  
20                   commit assault and the assault actually took place  
21                   would be irrelevant.

22                   And, finally, I'm really not too sure  
23                   why -- how you can rule on this relevance without first  
24                   seeing it, and in my submission, at least what we  
25                   should do is to have a look at the passages that I

1 think is germane. Now, my friend I know has always  
2 objected of me just taking the extracts, and that's why  
3 I thought that we should take a look at the whole  
4 thing.

5 But I do not agree with her  
6 characterization of the tape and I don't see how the  
7 Tribunal can rule on the admissibility when counsel  
8 cannot agree on the characterization of this piece of  
9 evidence.

10 Under those circumstances, I think  
11 it's appropriate for the Tribunal to have a look at it.

12 THE CHAIRPERSON: Do you think you  
13 might be able to agree on -- Ms Maillet has suggested  
14 that there may be some possibility of coming to an  
15 agreement on some parts of it that are relevant, but  
16 thinking more in terms of a written document or...

17 MS MAILLET: When my friend indicates  
18 that Mr. Warman incites somebody to commit an assault,  
19 what is happening is, he is interviewed, the idea is  
20 put out, there is a group of people around a table,  
21 that a pie should be thrown at Mr. Icke and Mr. Icke  
22 believes in political world figure conspirators being  
23 extraterrestrial visitors and that are, in fact,  
24 pedophiles, and so at the end after -- anyway, during  
25 this discussion you have people talking about throwing

1 a pie, and Mr. Warman laughed at that.

2 Thereafter, the next shot is actually  
3 people dressed as lizards that throw a pie at Mr. Icke  
4 and the pie hits him in the arm.

5 So, that is what I'm willing to  
6 concede. I mean, that is what happened, that is what  
7 the video shows.

8 Secondly, I just wanted to point out,  
9 to clarify that I did not at any time put Mr. Warman's  
10 character in issue, that was put in issue by my friend  
11 and I was responding, because as you'll recall, there  
12 was a re-examination that was opened up after my friend  
13 brought up these allegations of criminal activity.

14 So, that is the only time that I  
15 addressed Mr. Warman's character. I have no problem  
16 with Mr. Warman's character, so I just want to make  
17 that clear.

18 THE CHAIRPERSON: So, it sounds to me  
19 like, and one thing, I just have to say one thing that  
20 I appreciate is that one counsel is speaking, the other  
21 counsel is sitting --

22 MS MAILLET: Yes, I was just going to  
23 sit down.

24 THE CHAIRPERSON: -- that is a  
25 protocol that for some reason has really -- I would

1           like to stick to.

2                                 But what it sounds to me as though  
3           there may be some agreement around certain parts of the  
4           video that may be relevant to see.  Am I right?  Am I  
5           wrong?

6                                 MS SHI:  I think that maybe there are  
7           segments we would agree to see.  I have always felt  
8           that they are only very short segments of less than a  
9           minute we need to see, but I need to point out that Ms  
10          Maillet's characterization of what happened, I  
11          completely disagree with.

12                                Mr. Warman did not laugh in response  
13          to the suggestion, Mr. Warman initiated the idea, he is  
14          the one who put the idea out there and he's the one who  
15          gave the details as to where Mr. Icke was going to be,  
16                                 he initiated it.  That is my take on  
17          the tape.

18                                As to whether we could agree on the  
19          segment, I think Ms Maillet is quite -- oh, I guess she  
20          would not be aware which segment I had chosen because  
21          she has never seen the excerpts that I originally  
22          wanted to produce.

23                                But the only part that I would want  
24          to produce is the part where Mr. Warman was having beer  
25          with a few people, that's I would say no more than half

1 a minute, and then that discussion, Mr. Warman putting  
2 out the idea of the pie and the young people giggled a  
3 bit, and then after that, then I believe it was a book  
4 signing, the pie was thrown. It's true it landed on  
5 Mr. Icke's arm, I believe the right arm, and most of  
6 the guck then went onto the books in the book store.

7 So, but about that discussion, I  
8 think we have, it is in contention as to what we say.

9 As to the answer to my friend that I  
10 put Mr. Warman's character into contention, I produced  
11 evidence that she maintains is irrelevant, but if she  
12 chooses to put out there evidence that Mr. Warman is a  
13 stellar guy, then certainly I'm entitled to answer it.

14 Wouldn't it be the height of irony if  
15 she said I'm the one that made her do that examination  
16 because of the issues I raised, and then now I cannot  
17 adduce evidence on that very issue? That can't be  
18 right.

19 THE CHAIRPERSON: Mr. Warman, do you  
20 have any submissions to make on this?

21 MR. WARMAN: Just that I would also  
22 raise an objection to its entry on the grounds of  
23 relevancy. The incident dates from March of 2000.

24 My personal perspective is that the  
25 characterization of what took place not only is much

1 closer to Ms Maillet's description of it, but also that  
2 the editing of the video is extremely important, that  
3 there are parts that were left out.

4 And further, in fact -- sorry,  
5 essentially just that it's irrelevant. Two years  
6 before, in fact three years -- over three years before  
7 I had ever heard of Mr. Winnicki, this event was  
8 filmed, it involved a very wide ranging discussion  
9 about a wide variety of issues over a number of hours  
10 and it's reduced to maybe two minutes in this video.

11 So, just that the editing of it  
12 really contributes to the perception of it. In fact, I  
13 subsequently wrote to the journalist and his producers  
14 and indicated that I felt that a number of things were  
15 mischaracterized in the video.

16 So, in fact, the whole issue of  
17 relevancy I believe and the integrity of the video  
18 itself are highly questionable.

19 And beyond that, I would simply adopt  
20 the submissions of counsel for the Commission.

21 THE CHAIRPERSON: Can I ask you, Mr.  
22 Warman, so you are saying that the whole video in its  
23 the entirety, even if we saw it from beginning to end  
24 for one full hour was edited improperly in your view?

25 MR. WARMAN: The sections that deal

1 with the actions of myself, I took fairly grave issue  
2 with in relation to the journalist, how the tape -- the  
3 numerous, numerous hours that were shown, how those  
4 were then edited and interpreted within the film and  
5 the way that it was spliced in with other events,  
6 without any explanation. There were dates changed, the  
7 locations -- some of the locations were changed,  
8 sequence of events were changed.

9 So, there are really substantive  
10 questions that I raised directly a number of years ago  
11 with the journalist about the integrity of the  
12 document.

13 THE CHAIRPERSON: Thank you.

14 Well, it seems as though everything  
15 is boiling down to a question of contention over  
16 whether it is going to go in or not, and it is  
17 difficult for me at this point to say, without having  
18 seen it and hearing conflicting views about what is  
19 included in this video and what is not included, it is  
20 difficult for me to get a sense of this piece.

21 One thing that troubles me is that it  
22 predates the complaint by some considerable amount, and  
23 so that is troublesome.

24 I am wondering, in terms of the  
25 relevant -- not the relevant, that is the wrong word to

1 use in this case -- the portions that might be viewed  
2 subject to a determination on their relevance and their  
3 admissibility, is there any agreement on seeing the --  
4 would you insist open seeing the full -- have you seen  
5 the edited part that Ms Shi has put forward?

6 MS MAILLET: I believe I know which  
7 part she wants to put in there and I believe it would  
8 take it out of context, because until you see exactly  
9 who David Icke is and what is going on around, I  
10 believe, and then, although it's as Mr. Warman said,  
11 probably not an accurate portrayal of everything that  
12 went on around those interviews, it puts a little more  
13 perspective around the discussions that took place with  
14 Mr. Warman.

15 I don't know how Mr. Warman feels  
16 about that.

17 THE CHAIRPERSON: Just so that I am  
18 clear, Ms Shi, your questioning around this, I mean, is  
19 it going to be extensive?

20 MS SHI: No, no.

21 And, Madam Chair, as to your comment  
22 that this pre-dates the complaint doesn't matter, it's  
23 Mr. Warman's character.

24 When they adduce the evidence about  
25 the awards that he's got and the years he's been

1 fighting hate and discrimination, they were talking  
2 about quite a few years ago too.

3 This is character. It is squarely,  
4 solidly in issue. It's inescapable.

5 THE CHAIRPERSON: But we are not  
6 dealing with a criminal hearing here where a character  
7 is, you know, arguing around -- we are dealing with a  
8 complaint of discrimination, a complaint of hate  
9 messaging.

10 MS SHI: But I must be able to answer  
11 the evidence, otherwise you are just hearing one side  
12 of the story.

13 THE CHAIRPERSON: And your argument  
14 is that this is going to questions of...?

15 MS SHI: That he may share a panel  
16 with Justice Iacobucci, but he also shared some time  
17 with people who will go and commit crimes and he  
18 actually incites them to do it.

19 THE CHAIRPERSON: But how is that  
20 relevant to whether or not the messages are likely to  
21 expose identifiable groups to hatred or contempt?

22 MS SHI: His credibility. Should he  
23 be believed when he says that it is.

24 As I said this morning, this a  
25 question of fact and the Tribunal cannot decide that in

1 a vacuum, it needs evidence. Where is the evidence  
2 going to come from, from two sources, from the  
3 complainant and the Commission with their one witness  
4 and from my witness, and all the exhibits that went in.

5 There has got to be a basis for the  
6 Tribunal to make that judgment, otherwise we don't need  
7 to have a hearing. The Tribunal can receive a  
8 complaint and sit in its office and make a decision.  
9 It's a question of fact and the credibility of the  
10 witness is everything.

11 In addition, of course, we go back to  
12 the issue that he's claimed for pain and suffering. Do  
13 you believe him? That's a very big issue.

14 And I go back again to, otherwise, if  
15 I'm not allowed to answer about who he shared a panel  
16 with and what awards he's won, by his activity in  
17 inciting people to commit crimes, it's not fair, I'm  
18 not being allowed a chance to rebut that evidence.

19 As I said to Ms Maillet's assertion  
20 that they brought his character in because I brought it  
21 in, well wouldn't that be the height of irony that I am  
22 then not allowed to deal with that issue after they  
23 have been allowed to deal with it?

24 THE CHAIRPERSON: All right.

25 I am going to allow this videotape to

1           be viewed. I am going to reserve my judgment on its  
2           admissibility for a later point in time, and we will  
3           see it in its entirety, and then we will adjourn for  
4           the day.

5                           And I will take this opportunity to  
6           remind counsel that Mr. Warman is under  
7           cross-examination and that counsel should not speak to  
8           one another, witness and counsel.

9                           So, that's normal procedure.

10                          MS SHI: The only problem, I  
11           understand from Ms Maillet the tape is almost an hour  
12           long and it's 4:20 now.

13                          THE CHAIRPERSON: Well, why don't we  
14           push on and see it.

15                          MS SHI: All right, okay.

16                          THE CHAIRPERSON: And then adjourn --  
17           did you want to say something?

18                          MR. WARMAN: Not on that issue.

19                          THE CHAIRPERSON: Now I have  
20           everybody paranoid about standing.

21                          It is going to be like those games  
22           you play in school.

23                          Mr. Warman, did you want stand to say  
24           something?

25                          MR. WARMAN: Not on that issue. It

1 is something else I need to clarify about what you said  
2 just in terms of your instructions that we not speak  
3 with one another.

4 I would ask that it be restricted to  
5 the...

6 THE CHAIRPERSON: Yes, to the issues  
7 in cross-examination.

8 MR. WARMAN: Exactly, because  
9 otherwise it would prevent us from preparing for the  
10 cross-examination of Ms Shi's witness.

11 MS MAILLET: I just wanted to  
12 reassure the Tribunal and Ms Shi and Mr. Winnicki, that  
13 I take my professional obligations very seriously.

14 I at no time -- at any time have  
15 spoken with Mr. Warman about his cross-examining in any  
16 way.

17 THE CHAIRPERSON: And I am cognizant  
18 of Ms Shi's statement that she did not have any grounds  
19 to believe that there were any improprieties  
20 whatsoever.

21 Okay. Shall we proceed to the video.  
22 We have to mark it for identification.

23 MS SHI: Thank you.

24 REGISTRY OFFICER: It would be great  
25 if I could have a description of the videotape.

1 MS SHI: That would be videotape  
2 regarding David Icke pie throwing incident. It's not  
3 elegant, but it is descriptive.

4 MR. WARMAN: That fundamentally  
5 prejudices the -- wait, I'm sorry, I'll sit.

6 MS SHI: Incident regarding David  
7 Icke. Just regarding David Icke, yes.

8 THE CHAIRPERSON: Video regarding  
9 David Icke.

10 MS SHI: That's it.

11 MR. WARMAN: Thank you.

12 THE CHAIRPERSON: How do you spell  
13 David Icke?

14 MS SHI: I-c-k-e.

15 REGISTRY OFFICER: The respondent's  
16 videotape re: David Icke will be marked for  
17 identification as L.

18 EXHIBIT NO. L: Videotape of  
19 David Icke.

20 --- Videotape presentation (4:25-5:25 p.m.)

21 THE CHAIRPERSON: All right. It is  
22 5:15. We are going to adjourn for the day and will  
23 resume tomorrow at 9:30. I would encourage everyone to  
24 be on time so that we can begin right away.

25 I reiterate my caution to everyone to

1           behave within the confines of the law, and there were  
2           will be no intimidation of witnesses, parties or  
3           counsel whatsoever.

4                               REGISTRY OFFICER:   Order, please.

5           --- Whereupon the hearing adjourned at 5:15 p.m.  
6                               to resume on Thursday, October 20, 2005  
7                               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.