

**CANADIAN  
HUMAN RIGHTS  
TRIBUNAL**



**TRIBUNAL CANADIEN  
DES DROITS  
DE LA PERSONNE**

**BETWEEN/ENTRE:**

**RICHARD WARMAN**

**Complainant**

**Plaignant**

**and/et**

**CANADIAN HUMAN RIGHTS COMMISSION**

**Commission**

**Commission**

**and/et**

**TOMASZ WINNICKI**

**Respondent**

**Intimé**

**BEFORE/DEVANT:**

**KAREN JENSEN**

**CHAIRPERSON/  
PRÉSIDENTE**

**CAROL ANN HARTUNG**

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

**FILE NO./N° CAUSE:**

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

SITTING AT JPR ARBITRATION CENTRE, 390 BAY STREET, 3rd FLOOR,  
TORONTO, ONTARIO ON THURSDAY, OCTOBER 20, 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

1  
2 --- Upon commencing on Thursday, October 20, 2005  
3 at 9:45 a.m.

4 REGISTRY OFFICER: Order, please.

5 All rise.

6 Please be seated.

7 THE CHAIRPERSON: Good morning.

8 Good morning to everyone.

9 MS SHI: Good morning.

10 THE CHAIRPERSON: I notice that Mr.  
11 Winnicki is not present.

12 MS SHI: Yes, Madam Chair, and the  
13 Registrar did ask me if I would like to proceed anyway.

14 I decided to, I did not wish to hold  
15 everyone up again because of Toronto traffic.

16 So, I'm sure he is going to join us  
17 shortly and I'm prepared to proceed.

18 And I know that I was advised by the  
19 Registrar that a new member, Marilou McPhedran, has  
20 joined us to observe today. Welcome.

21 SUBMISSIONS

22 There is one issue that I would like  
23 to bring up, if I may, at this point before we resume.

24 Oh yes, first of all, I have produced  
25 the entire trial transcript in Regina vs. Mark Elms.

1                   And yesterday the Tribunal reserved  
2                   on the admissibility of two documents, and after due  
3                   consideration, I'm requesting that the admissibility of  
4                   those two documents be decided before we proceed  
5                   further.

6                   And the reason is, I need to know --  
7                   they are my documents, my evidence, well, evidence that  
8                   my side is tendering, I need to know what I have and  
9                   have not been able to put before the Tribunal before I  
10                  can decide what else I need to present to the Tribunal  
11                  and complete our case.

12                  I am not asking that the Tribunal not  
13                  get the time that it requires to make its decision,  
14                  but I am bringing to your attention my difficulty  
15                  without knowing if those evidence is being admitted,  
16                  I'm in a real quagmire and, unfortunately, that dilemma  
17                  is all one-sided because my friend has finished her  
18                  case, and should these evidence be admitted, she would  
19                  have her chance to do her full in-chief and any cross,  
20                  she so chooses; should it not be admitted, it really  
21                  is not something that need affect her but, from my  
22                  perspective, then a part of my case and because of the  
23                  nature of the documents, I would submit, a significant  
24                  part of my case would be carved out.

25                  And so I would need to know before my

1 cross of Mr. Warman finishes and before I call my  
2 witness as to what I have and don't have before the  
3 Tribunal.

4 There are two ways to do this, and I  
5 am in your hands. We could either adjourn and wait for  
6 the Tribunal's decision, or if we don't want to waste  
7 the days that we have already booked, we could proceed  
8 on the basis that when the Tribunal makes its decision  
9 on the admissibility of these two documents, should  
10 they not be admitted, then I should have the option to  
11 re-open my cross of Mr. Warman and my in-chief of Mr.  
12 Fromm.

13 I am in Tribunal's hands as to what,  
14 Madam Chair, you believe is the most appropriate, but I  
15 do want to bring to your attention my difficulty.

16 Also in that regard, if you are going  
17 to make a decision on the admissibility of the David  
18 Icke document video, then I would submit that neither  
19 myself nor my friend has had a chance to respond to  
20 each other's legal authorities that were submitted to  
21 you and I request that that be done before the decision  
22 is made.

23 I would like to hand up...

24 THE CHAIRPERSON: Can you hang on for  
25 just one second.

1 MS SHI: Yes.

2 THE CHAIRPERSON: I have a few  
3 comments and questions that I want to discuss with you  
4 at this point and then I will hear from the other  
5 parties.

6 MS SHI: Well, may I --

7 THE CHAIRPERSON: I will let you  
8 finish your submissions before --

9 MS SHI: Sure.

10 THE CHAIRPERSON: But let me just say  
11 this, the evidence in question, the transcripts and the  
12 videotape of the documentary, have been marked for  
13 identification at this point only, they have not  
14 actually been identified, and so the issue of their  
15 admissibility has really not come to the fore yet.

16 I have allowed you to proceed to  
17 question Mr. Warman on these documents on a conditional  
18 kind of basis, on the condition that the document then  
19 be later admitted into evidence, and at that point I  
20 have a couple of options, as I see it.

21 I can rule right there and then on  
22 the admissibility of those documents or of those bits  
23 of evidence, or I can reserve judgment and make that  
24 decision on the basis of the closing submissions that  
25 you make and whether or not I accept the arguments that

1           you are making that supports the relevance of those  
2           documents.

3                                 And that is how I see the situation.  
4           And, in my view, it is actually the best of all  
5           possible worlds for all parties. You get the  
6           opportunity to undertake a full cross-examination of  
7           the witness on the basis of the documents in question  
8           and there is still room for ample argument as to their  
9           relevance and their admissibility.

10                                So, in my view, it furthers the  
11           process in considerable ways, it moves us along  
12           expeditiously towards a conclusion of the hearing, it  
13           allows full argument and full debate and full  
14           questioning and cross-examination, and I don't see the  
15           harm that could be done by that, I really -- I don't  
16           see it.

17                                MS SHI: Well, let me first respond  
18           to your view about when the issue of admissibility  
19           comes up.

20                                As I see it, it has only been marked  
21           for identification purpose because the witness before  
22           the court has not identified it, and that is one aspect  
23           of its admissibility that we have delayed until my  
24           witness will identify it.

25                                However, the rest of the issues as to

1           its admissibility has been raised, and I would submit  
2           that having been raised, at that point, it should be  
3           dealt with --

4                           THE CHAIRPERSON:  No, I want to deal  
5           with that as a whole, when all of the conditions are  
6           present, when there is somebody there who is able to  
7           identify the document.

8                           For example, the documentary, we need  
9           to where it was made, how it was made, you know, there  
10          are other questions that need to be explored with  
11          respect to the identification of that document, along  
12          with questions regarding its relevance, and so I don't  
13          think that it makes sense to chop that up into  
14          different fragments.  I think it makes sense to do it  
15          at the time that the document is being identified and  
16          admitted into evidence.

17                          MS SHI:  Well, if I may now hand up  
18          one case, in the Supreme Court of Canada's case of  
19          English v. Richmond, Justice Cartwright in his dissent  
20          dealt with this issue which was not the focus of the  
21          dissent or the case, but he said on page 8, towards the  
22          bottom:

23    "With the greatest respect, I am  
24    of opinion that it was the duty  
25    of the learned trial judge to

1 make his decision, as to whether  
2 the evidence should be admitted  
3 or rejected, at the conclusion  
4 of the evidence taken on the  
5 "voir dire" and the argument  
6 which follows. The law is, I  
7 think, correctly stated in  
8 Halsbury's Laws of England, 2nd  
9 Edition, Vol. 13 at page 530,  
10 where the learned author says:

11 ...The admissibility of  
12 evidence must be decided, as a  
13 preliminary question, by the  
14 judge as such when it is  
15 tendered.

16 The rule that the trial judge  
17 must decide questions of the  
18 admissibility of evidence as  
19 they arise is, in my opinion,  
20 applicable to actions tried  
21 either with or without a jury."

22 And on the next page it says:

23 "The reasoning of the Court in  
24 the Cloutier case applies with  
25 equal force to a civil action

1                                    tried with a jury."

2                                    Now, in the next paragraph he  
3                                    outlines the problem and I couldn't have said it better  
4                                    myself:

5                                    "While the necessity of the rule  
6                                    may be more obvious in a case  
7                                    tried with a jury, there are  
8                                    reasons in addition to those  
9                                    given in the Cloutier case which  
10                                   make it difficult to see how in  
11                                   a case tried with or without a  
12                                   jury counsel on either side can  
13                                   satisfactorily conduct the  
14                                   remainder of the trial unless it  
15                                   is known whether a piece of  
16                                   evidence already tendered and  
17                                   actually heard has or has not  
18                                   been received by the Court. Let  
19                                   us suppose, for example, that  
20                                   the evidence in question has  
21                                   been tendered on behalf of the  
22                                   plaintiff and, if admitted and  
23                                   not contradicted, is sufficient  
24                                   to establish an essential  
25                                   ingredient of his cause of

1 action. Is counsel for the  
2 plaintiff to call further  
3 evidence on the point? If the  
4 evidence in question is admitted  
5 this is unnecessary but if it is  
6 rejected it is essential. Is  
7 counsel for the defendant to  
8 cross-examine? Can he do so  
9 "without prejudice to his  
10 objection"? If so, what becomes  
11 of the evidence elicited during  
12 the cross-examination in the  
13 event of the trial judge  
14 ultimately deciding to reject  
15 the evidence in question; is it  
16 to be treated as expunged from  
17 the record? Is counsel for the  
18 defence to call evidence to  
19 contradict the evidence in  
20 question? Once again if the  
21 evidence is admitted it is  
22 essential that he do so but if  
23 it is rejected it is  
24 unnecessary. What of the  
25 argument at the conclusion of

1 the trial? Are there to be two  
2 sets of argument..."  
3 "The foregoing is not, I think,  
4 an exhaustive list of the  
5 difficulties which may arise in  
6 any trial in which the question  
7 of admissibility of a piece of  
8 evidence is not decided by the  
9 trial judge when it is  
10 tendered."

11 And, Madam Chair, I would  
12 respectfully submit, I know -- I understand the point  
13 you make about the issue of identification, but I would  
14 submit to you, apart from that, the evidence has been  
15 tendered and I'm about to conduct cross-examination on  
16 it. This the time when I must know if it is  
17 identified, whether it will be admitted.

18 I would submit to you that short of  
19 some disastrous problem with the identification, any  
20 problem you may have with it will go to weight, but I  
21 need to know if I need to elicit any other information  
22 by cross-examination from Mr. Warman and I can't know  
23 it unless I know if this cross-examination that I'm  
24 about to do based on this evidence is going to be part  
25 of the record.

1                   So, as I said, I'm not asking that we  
2                   disrupt this hearing, I am simply asking for a chance  
3                   to make my full defence so that I can know before I  
4                   finish my case what the court has and has not accepted,  
5                   and I think that is only fair.

6                   As I have pointed out, otherwise the  
7                   jeopardy is all on my side.

8                   If you decide that this is not going  
9                   to be accepted, and I have to say I'm a little bit  
10                  surprised to hear that there is going to be a lot of  
11                  questions raised about the origin of the tape.

12                  Mr. Warman himself has testified  
13                  about the documentary itself, it is not something that  
14                  is foreign to him, and so I don't believe the issue of  
15                  identification is all that contentious at this point.

16                  But, in any event, in order for me to  
17                  know when I am or am not done with Mr. Warman, and can  
18                  start with Mr. Fromm, and what I should or should not  
19                  ask Mr. Fromm, I need to know whether these evidence is  
20                  being admitted.

21                  And I would point out too, Madam  
22                  Chair, because I'm doing cross first before I do  
23                  in-chief, most of my documents have the same problem,  
24                  that they have not yet formally been entered as  
25                  exhibits and it would be patently unfair if the party

1           that has to do the cross first are not entitled to know  
2           which of their documents have been admitted before they  
3           wrap up their cross-examination, because the Commission  
4           doesn't have this problem, they do their in-chief  
5           first, they know before they start their  
6           cross-examination, before they finish their in-chief  
7           what of their documents have been admitted and which  
8           ones have not.

9                               And I'm simply asking for the same  
10           opportunity to have a full airing of our evidence and  
11           our arguments.

12                           THE CHAIRPERSON:  But isn't that  
13           always endemic to the whole process, Ms Shi, that if  
14           you are going to introduce new documents through  
15           cross-examination and you have a witness who is not in  
16           a position to be able to identify those documents, then  
17           that's just the situation that you are faced with.

18                           You have to have them provisionally  
19           marked for identification and then subsequently through  
20           your own witnesses, they are identified.

21                           I don't see -- I think that that's  
22           just endemic to the process, to the trial process, I  
23           don't...

24                           MS SHI:  Well, my answer is as  
25           follows:  I don't believe that this is correct.  I

1 believe that admissibility of the document could and  
2 should be decided when it's tendered for  
3 cross-examination.

4 THE CHAIRPERSON: But that is not  
5 what is being said in this case.

6 MS SHI: It says when it is being  
7 tendered.

8 THE CHAIRPERSON: No, I think what is  
9 being said in this case is, yes, when it is being  
10 tendered as evidence, when it has been properly  
11 identified and it is being introduced as evidence in  
12 the case, and then I think there is a point to be made  
13 that a ruling on admissibility is necessary, and I take  
14 your point on that.

15 But we are not tendering these  
16 documents for admissibility into evidence at this stage  
17 of the game.

18 MS SHI: Well, I really have problem  
19 with that in the sense that, as I have pointed out,  
20 practically speaking it becomes a process that's  
21 lopsided in favour the of the Commission in terms of  
22 its ability to --

23 THE CHAIRPERSON: But not at all, Ms  
24 Shi, I have given you the full benefit of the doubt in  
25 the sense that I have said I am not going to rule on

1           this one way or another until it is brought forward as  
2           evidence.

3                           In the meantime I am agreeing to  
4           allow you to fully question the witness on this.  If  
5           anything, it enures to your benefit.

6                           MS SHI:  No, because if it is not  
7           accepted, then all the cross-examination should, and  
8           I'm sure would be struck from the record.

9                           THE CHAIRPERSON:  But in that event,  
10          assume -- if I were counsel I would assume the worst  
11          assume, that it is going to be ruled inadmissible and  
12          proceed with whatever you need to bolster your case in  
13          cross-examination in order to cover that possibility.

14                          MS SHI:  All right.  But the  
15          Commission counsel didn't have to make that guess.

16                          THE CHAIRPERSON:  But that is part of  
17          the process putting in examination-in-chief.

18                          MS SHI:  Well, I don't believe -- but  
19          just because the Commission counsel goes first, I don't  
20          belief that it's fair and, furthermore...

21                          THE CHAIRPERSON:  In my years in  
22          trial experience, that is how it goes.

23                          MS SHI:  Well, furthermore -- well, I  
24          would just beg to differ.  I think that the issue of  
25          admissibility could and should be decided when it's

1 first put to a witness and I think that, as Justice  
2 Cartwright pointed out, that that's crucial in a case  
3 with a jury, but it is equally as applicable in a case  
4 without a jury.

5 Surely, there are no courts that is  
6 going to conduct a case in front of a jury, allow full  
7 cross-examination on a document and later on not admit  
8 it.

9 THE CHAIRPERSON: Oh yes, and then  
10 directions are given to the jury that they are not to  
11 consider the evidence that was led on the basis of the  
12 document that is now no longer admissible. I think  
13 that is fair.

14 MS SHI: Well, my point is actually,  
15 Justice Cartwright points out that that is not the way  
16 it should be done.

17 And, with all due respect, my view is  
18 you should and could rule on the admissibility and say  
19 provisionally if it is properly identified then it is  
20 admissible.

21 I think that would be the proper way  
22 to do it. Otherwise I have to guess, I have to guess.  
23 If you say it's not admissible, why, it will change my  
24 strategy. I need to know.

25 THE CHAIRPERSON: Well, part of its

1           admissibility will depend upon the identification --  
2           proper identification of the document, so...

3                       MS SHI: I know that, I know that.

4                       THE CHAIRPERSON: So, I would like to  
5           hear that as a whole.

6                       MS SHI: But I need to know if it is  
7           not admitted why, this way I could get some direction  
8           as to what the next step that I can take.

9                       So, I am really not too sure how much  
10          more that I can say about the importance that I know  
11          before I finish with Mr. Warman whether the Commission  
12          would afterwards carve out probably the two most  
13          important pieces of evidence from our case, it hobbles  
14          me, and I don't believe that my request to have a  
15          ruling, not on the proper identification, but on the  
16          rest of the admissibility issues as raised by the  
17          Commission to be ruled on at this point so that I can  
18          get some direction as to how to proceed next.

19                      It certainly isn't going to prejudice  
20          anybody, but if it isn't done, then my client is  
21          prejudiced and I'm just not too sure --

22                      THE CHAIRPERSON: I don't see how  
23          your client is prejudiced, I really still do not see  
24          that because you are being given full opportunity to  
25          cross-examine.

1 MS SHI: But it could always be  
2 thrown out, and if it gets thrown out, I wouldn't have  
3 an opportunity to then go back and say, all right, this  
4 is gone and this is what I am going to do.

5 THE CHAIRPERSON: What if you assumed  
6 that that was the case and you proceeded; is that  
7 impossible?

8 MS SHI: It is.

9 THE CHAIRPERSON: Why?

10 MS SHI: Because I would need to know  
11 the reason for it being thrown out in order to know  
12 what to do next, or I could end up producing evidence  
13 with the same problem, for example.

14 I need to know from this court, get  
15 some direction as to how and why, if this piece of  
16 evidence is not admissible.

17 THE CHAIRPERSON: I don't see the  
18 prejudice, I really just don't. You will have to spell  
19 the prejudice out to me more clearly in more concrete  
20 terms.

21 MS SHI: Well, for example, if I'm  
22 told that it is not admissible by a specific ground,  
23 then I could take some guidance from that decision and  
24 not to bother bringing in evidence that would offend  
25 the same ground, because then it's all going to get

1           thrown out anyway.

2                               I would have the benefit to look at  
3           the decision and say, well then, that means I am going  
4           to have to bring in whatever -- perhaps the decision  
5           would be that it's inadmissible because it's hearsay,  
6           then it wouldn't do me any good to do anything unless I  
7           bring in the journalist, but I wouldn't know -- I  
8           wouldn't know why it's inadmissible.

9                               It could be inadmissible because you  
10          say that the resolution is not good, then I bring in a  
11          better tape.

12                              But if you say it's because it's  
13          hearsay, then I will have to contact the British  
14          journalist or the people who were there.

15                              I need to know why so that I can take  
16          my next step. That's the nature of preliminary  
17          matters, it allows counsel to be informed by it and  
18          continue their case following that information, and I'm  
19          not getting benefit of that.

20                              Whereas my friend gets to introduce  
21          all the documentation in-chief, have their  
22          admissibility ruled on and while the in-chief and the  
23          cross-examination are still open; whereas for me, by  
24          the time -- let's put it that way, by the time the  
25          admissibility of these documents are ruled on, if the

1 Tribunal insists on doing it after it's been identified  
2 by my own witness, then what happens is the in-chief is  
3 still open, but the cross is not open.

4 There is a big difference.

5 THE CHAIRPERSON: Okay. Thank you,  
6 for your submissions.

7 MS SHI: And perhaps finally, I  
8 should point out too, I would really appreciate if they  
9 are not admissible to get some guidance as to why and  
10 some time to follow up.

11 Use that example. If it is your view  
12 that you will not accept any video, then I will need a  
13 little bit of time to go and contact the British  
14 journalist and I would ask for that time, so that I  
15 could bring in the evidence with the quality and the  
16 attribute that this Tribunal feels is acceptable.

17 THE CHAIRPERSON: Thank you for your  
18 submissions.

19 MS SHI: Thank you.

20 SUBMISSIONS

21 MS MAILLET: Firstly, Madam Chair, in  
22 terms of Ms Shi's submissions that there is a  
23 suggestion that things are unfair because I was able to  
24 put in my documents.

25 I was able to produce my documents

1           because I had a witness that could identify those  
2           documents and they were relevant documents.

3                         So, the suggestion that there is some  
4           unfairness because I was able to put my documents in  
5           just doesn't hold any water. I was able to put my  
6           documents in because they were identified through my  
7           witness, Mr. Warman, and they were deemed relevant.

8                         I also disagree with Ms Shi's  
9           argument that there is any prejudice here as a result  
10          of the way that the process works. If anything, she's  
11          been given a wide latitude to fully cross-examine Mr.  
12          Warman on a document that may, in fact, be irrelevant  
13          in the end and may not even be admissible in the end.

14                        That will be determined once she  
15          establishes the necessary criteria for the  
16          admissibility of the document, and that hasn't happened  
17          yet, yet she's still been given a wide latitude to  
18          cross-examine fully.

19                        I'd like to distinguish the case as  
20          well that she provided. That case indicates that the  
21          evidence was tendered. As you indicated, no evidence  
22          has been tendered as evidence yet that she wishes to  
23          introduce.

24                        I stated yesterday that my objections  
25          on relevance may be premature, and this exactly the

1 reason why, it gave Ms Shi a heads-up that I would be  
2 objecting to the relevance.

3 I could have waited until she tried  
4 to admit that as evidence, and I did not do so.

5 The admissibility does not become an  
6 issue until she wants to admit the document as  
7 evidence. She hasn't been able to do that because she  
8 hasn't had a witness that has been able to identify it  
9 and establish its relevance and establish how their  
10 testimony will be relevant with relation to that  
11 document.

12 Again, I submit, I don't believe it  
13 is proper to make a decision on admissibility until  
14 this Tribunal is satisfied that the other criteria are  
15 met.

16 Those are my submissions.

17 THE CHAIRPERSON: Thank you.

18 Mr. Warman?

19 SUBMISSIONS

20 MR. WARMAN: Thank you.

21 In addition to adopting submissions  
22 of counsel for the Commission, I would just return to  
23 the decision that was cited by Ms Shi.

24 Towards the bottom part of the thing  
25 that she read was:

1 "The law is, I think, correctly  
2 stated in Halsbury's Laws of  
3 England, 2nd Edition, Vol.  
4 13..."

5 This is approximately four fifths of  
6 the way down.

7 THE CHAIRPERSON: Mm-hmm.

8 MR. WARMAN:

9 "...at page 530, where the  
10 learned author says:

11 ...The admissibility of  
12 evidence must be decided, as a  
13 preliminary question, by the  
14 judge as such when it is  
15 tendered.

16 And I would simply adopt and  
17 reinforce the submission that these documents have not,  
18 in fact, been tendered for submission as evidence to  
19 the Tribunal.

20 The other submission that I would  
21 make is with regard to the best evidence rule.

22 Mr. Winnicki has had over two years  
23 to prepare his case for hearing and Ms Shi has been  
24 counsel since roughly after the adjournment in August,  
25 so there has been over two months to prepare the best

1 evidence possible to put forward Mr. Winnicki's case.  
2 That is the responsibility of the respondent and his or  
3 her legal counsel, and I would suggest that that is  
4 incumbent on any counsel to do so, to best serve their  
5 client.

6 Unless there are further questions,  
7 those are my submissions on the issue.

8 THE CHAIRPERSON: Thank you.

9 MR. WARMAN: Thank you.

10 THE CHAIRPERSON: Ms Shi, reply.

11 REPLY

12 MS SHI: Yes, very brief.

13 If there is such concern about having  
14 the document identified, may I suggest that we let Mr.  
15 Fromm come in and testify and then we can rule on the  
16 document and we can all go on, it will not slow down  
17 the hearing.

18 I have no problem with Mr. Fromm  
19 doing his in-chief in two parts, I have no problem with  
20 Mr. Warman being informed of it before he resumes his  
21 cross-examination, and that should address your concern  
22 about the issue as to whether it's tendered.

23 But I do so without resiling from my  
24 position that I think the document had been tendered,  
25 objection had been raised about its admissibility and

1           it should be dealt with, but my offer is a practical  
2           solution to your concerns.

3                           And I can't emphasize how important  
4           this for me in order to be able to properly conduct the  
5           rest of my case.

6                           As you know, Madam Chair, and I hope  
7           that you would agree with me, I have been diligent in  
8           moving this case along and I don't ask for anything  
9           else to deviate from the flow lightly, I am aware that  
10          there is a benefit to moving the case along without  
11          undue interruption and everyone's cooperation is  
12          required, and I believe I have lived up to that, and I  
13          would ask the Tribunal to take that into account in  
14          considering my request and my submission that unless my  
15          request is granted, it is my view that my client's  
16          ability to present a full defence, and enjoy procedural  
17          and natural justice is irretrievably --will be  
18          irretrievably compromised.

19                           And, finally, just on the issue of  
20          Mr. Fromm coming in, that that is partially a response  
21          to my friend, emphasizing how I haven't been able to  
22          get my documents identified because I don't have a  
23          witness. I don't have a witness because I'm patiently  
24          waiting my turn, Member.

25                           So, I don't see my friend pointing it

1 out as some sort of a defect in our case.

2 THE CHAIRPERSON: No, no, I don't  
3 think she is pointing it out as a defect in your case,  
4 Ms Shi, I think it is simply that that is the way the  
5 process works.

6 But while I have you on your feet,  
7 let me ask you this. Typically, because the Tribunal  
8 is a quasi-judicial body and the rules of evidence are  
9 somewhat relaxed in our proceedings, although not as  
10 much so in these kinds of cases, but are somewhat  
11 relaxed, often what happens is that a document will be  
12 ruled admissible and then the decision with regard to  
13 the weight that will be given to the document will be  
14 reserved and that will depend upon final argument  
15 essentially and how that ties all of the evidence  
16 together and how it brings the relevance of the  
17 document, how it establishes the strength of the  
18 evidence.

19 So, that is often the process that  
20 takes place in this Tribunal.

21 MS SHI: If I may so, that is the  
22 process that takes place in courts too, the weight is  
23 also reserved to the end of the submissions, so...

24 THE CHAIRPERSON: I am aware of that  
25 but I am looking to hear from you whether that is going

1 to present difficulty and whether we are going to have  
2 to deal with an objection on your part.

3 MS SHI: Absolutely not. The issue  
4 of weight is always reserved to the end for the  
5 adjudicator, judge, as the case may be, to decide after  
6 hearing all the evidence.

7 I am not seeking a decision on the  
8 weight that is going to be given these documents at  
9 this point.

10 THE CHAIRPERSON: This is a highly  
11 unusual sort of request that you are making to bring  
12 Mr. Fromm in, in fact, split the case, bring Mr. Fromm  
13 in, have him testify, have him identify the documents  
14 in question -- are you talking about the two, the  
15 transcripts and the --

16 MS SHI: Well, as far as I know those  
17 are the only two with outstanding objections.

18 The others, my understanding, is just  
19 waiting to be properly identified.

20 THE CHAIRPERSON: Right. So, your  
21 suggestion would be that he would come in, he would  
22 identify the documents, there would be a ruling on  
23 their admissibility and then he would go back out.

24 MS SHI: Right.

25 THE CHAIRPERSON: And you would

1           proceed with your cross-examination of Mr. Warman on  
2           that basis.

3                           MS SHI: Right. But, Madam Chair, I  
4           would like to make it clear that is something that I  
5           request, I put it out as an alternative to address the  
6           Tribunal's concern about the evidence for identifying  
7           the documents.

8                           It is my position that you don't need  
9           it, it's my position that the admissibility should be  
10          ruled on with the understanding that the respondent is  
11          undertaking to have the document properly identified  
12          later. That is the only fair way to do it, in my  
13          respectful submission, and if the respondent fails to  
14          have it properly identified eventually, then it's not  
15          admitted, even if it had been ruled admissible on other  
16          grounds.

17                          THE CHAIRPERSON: Okay, thank you,  
18          Ms Shi.

19                          MS SHI: Thank you.

20                          THE CHAIRPERSON: I would like to hear  
21          from the other parties regarding the notion of having  
22          Mr. Fromm come in.

23                          MS MAILLET: Yes. Madam Chair,  
24          normally in these situations counsel has to just live  
25          with the fact that their witness will not be able to

1 admit the evidence until the witness is called to the  
2 stand, and that it can't be done, as Ms Shi is trying  
3 to do now.

4 I don't see why there are any special  
5 circumstances here that would cause us to have to  
6 change the natural order of things.

7 My concern with putting Mr. Fromm up  
8 on the stand to identify a document is that we are  
9 always going to have to determine relevance in terms of  
10 its admissibility, and by determining relevance, he is  
11 going to have to go into his testimony and what his  
12 evidence will be, and if that happens -- and I can't  
13 see how it won't -- then I am going to want to  
14 cross-examine him.

15 And I submit that that's just not  
16 going to be a useful and efficient use of the  
17 Tribunal's process and that it should function as it  
18 normally does in hearings where, when counsel cannot  
19 get the document in through the other side's witness,  
20 they wait and they put it in through their own witness.

21 It's my submissions that that's how  
22 it should proceed.

23 MR. WARMAN: I would simply echo that  
24 and say that I strenuously object to any change from  
25 the normal proceeding.

1                   We have already had a circumstances  
2 where I was concerned about the natural fairness of an  
3 issue where I was excluded from the room, despite the  
4 fact that I am a party. I realize it's a fair ruling,  
5 I accepted it, but it does give me concern about my  
6 ability to have a fair process as the complainant, as a  
7 party.

8                   So, I'm a little bit concerned about  
9 the idea of, I don't want to say making it up as we go,  
10 along but changing the natural order of things in ways  
11 that may prejudice my case as the complainant.

12                   And if you have no further questions,  
13 those are my submissions.

14                   THE CHAIRPERSON: Thank you.

15                   MR. WARMAN: Thank you.

16                   THE CHAIRPERSON: All right. I am  
17 going to retire and consider your submissions in this  
18 regard, so we will take a break -- I hesitate to say  
19 how long because I haven't been very good about  
20 sticking to my time on this -- but let's say half an  
21 hour and we will reconvene then at 11:00 o'clock.

22                   REGISTRY OFFICER: Order, please.

23 --- Upon recessing at 10:30 a.m.

24 --- Upon resuming at 11:30 a.m.

25                   REGISTRY OFFICER: Order, please.

1 All rise. Please be seated.

2 THE CHAIRPERSON: I apologize once  
3 again for the delay.

4 MS SHI: Madam Chair, I apologize  
5 that I didn't bring this to your attention before we  
6 took the break, but Mr. Warman had, in fact, identified  
7 the Icke tape yesterday, he presented to the Tribunal,  
8 he confirmed the time frame, March, 2001 when the tape  
9 was made, he confirmed his knowledge and participation,  
10 he confirmed that he knew the journalist and the  
11 producer, he complained about his editing which, in my  
12 respectful submission, goes to weight and I apologize  
13 that I had neglected to bring that to the Tribunal's  
14 attention earlier, but it had been identified.

15 And as to Constable Hogan's  
16 testimony, the transcript, the identification was, as  
17 far as I know, was not an issue.

18 MR. WARMAN: I respectfully submit  
19 that I did not identify the documentation, that the  
20 submissions that I made with regard to the video's  
21 accuracy were simply preliminary issues as to why, in  
22 fact, it should not be put forward to the Tribunal and  
23 I will make my full submissions on its relevancy and  
24 other objections that I may have when it's tendered as  
25 evidence.

1                   That would be my submission.

2                   MS MAILLET: I have no submissions.

3                   THE CHAIRPERSON: Well then, in fact,  
4 I would like to hear your submissions then at this  
5 point that you have to make on the relevance of the  
6 videotape.

7                   MR. WARMAN: If I may ask for five  
8 minutes more to consult with counsel for the Commission  
9 in order to make coherent submissions on that point,  
10 that would be appreciated.

11                  THE CHAIRPERSON: I think then what I  
12 am going to do at this point is I am going to bifurcate  
13 the two issues, I am going to deal first of all with  
14 the transcripts and then I am going to deal with the  
15 videotape, so at this point you can sit down and relax  
16 on that issue.

17                  MR. WARMAN: Thank you.

18                  THE CHAIRPERSON: And I am going to  
19 deal with the transcripts.

20                  Ms Shi, you in your submissions  
21 yesterday said that the transcripts of the trial  
22 proceedings against Mr. Elms were relevant, if I am  
23 correct, to the issue of Mr. Warman's credibility.

24                  Can you be more specific about what  
25 you mean with respect to credibility.

1 SUBMISSIONS

2 MS SHI: Right. Well, as we had  
3 yesterday gone through quite extensively Mr. Warman's  
4 speech to the ARA and we all saw that in his speech,  
5 and it was dealt with in his in-chief as well, that  
6 among other things, not only that he had made negative  
7 comments about Mr. Winnicki ARA, he had attempted to  
8 put Mr. Winnicki's picture up at the ARA conference  
9 twice and, therefore, it becomes relevant to the nature  
10 of this group and their tendency to violence.

11 It is my intention to argue that Mr.  
12 Warman's association with this violent group reflects  
13 his character.

14 THE CHAIRPERSON: And what has that  
15 got to do with the nature of the messages that were  
16 communicated via the internet that are allegedly --  
17 that are in question in this hearing?

18 MS SHI: Well, you have to determine  
19 on whether the fact of these messages is that they are  
20 likely to expose an identifiable group to hatred and  
21 contempt.

22 THE CHAIRPERSON: That's right.

23 MS SHI: And that determination has  
24 to be made based on evidence because, as I have said  
25 yesterday, it's a question of fact.

1 THE CHAIRPERSON: But what does the  
2 evidence about his character and his involvement in the  
3 ARA have to do with the messages themselves?

4 MS SHI: It goes in short to whether  
5 you should believe him because, of course, it's Mr.  
6 Warman's position that these messages are likely to  
7 expose --

8 THE CHAIRPERSON: But it is not, in  
9 fact, his determination to make. It is not whether he  
10 says the messages are likely to promote -- to expose an  
11 identifiable group, but it is rather whether I believe  
12 when I look at the messages in the context that you are  
13 providing for me in this hearing whether I believe that  
14 those are likely to promote hate.

15 MS SHI: And, with respect, whether  
16 this Tribunal believes based on the evidence before it.

17 THE CHAIRPERSON: That's right.

18 MS SHI: And Mr. Warman is the  
19 Commission and the complainant's only witness providing  
20 this Tribunal with evidence.

21 THE CHAIRPERSON: But what does the  
22 evidence about his character and his involvement in  
23 other groups have to do with the messages themselves?

24 MS SHI: To evaluate the quality of  
25 his evidence. Are you going to believe him?

1 THE CHAIRPERSON: But the evidence  
2 that I am looking at with respect to the messages are  
3 the messages themselves.

4 MS SHI: But yes, however, whether  
5 they are likely or not is a question of fact that must  
6 be determined based on evidence.

7 Mr. Warman is the only source of  
8 evidence in support of the premise that it is likely  
9 and, therefore, his testimony must be evaluated.

10 You may choose to believe him, you  
11 may not, the only way you can determine is if you have  
12 full information as to his credibility.

13 THE CHAIRPERSON: But my concern  
14 here, Ms Shi, is really this: Mr. Warman has not been  
15 put forward as an expert in the area of anti-racism or  
16 hate messaging or anything of that kind, he is not  
17 provided me with any kind of expert testimony as to  
18 whether certain kinds of messages are more likely to  
19 expose groups to hatred or not.

20 He is putting forward, these are the  
21 messages. And insofar as the liability issue is  
22 concerned, insofar as whether the messages are or are  
23 not likely to expose a group to hatred, the only  
24 evidence that I have at this point are the messages  
25 themselves, it seems to me.

1 MS SHI: Well, I don't believe that  
2 is correct because in Mr. Warman's complaint he does  
3 assert that it is likely, and that evidence is before  
4 you. It's the only factual evidence you have to  
5 support the premise that it is likely.

6 THE CHAIRPERSON: But ultimately it  
7 is my determination.

8 MS SHI: Well, with all due respect,  
9 it is not whether you, Madam Chair, as a person thinks  
10 it's likely, you have to make your determination based  
11 on the evidence in front of you.

12 THE CHAIRPERSON: Mm-hmm.

13 MS SHI: It's not whether you  
14 personally believe, it is whether the Commission and  
15 the complainant has produced evidence sufficient --

16 THE CHAIRPERSON: That is right.

17 MS SHI: -- for you to make that  
18 finding of fact.

19 THE CHAIRPERSON: But I am having  
20 difficulty seeing a link between the involvement in the  
21 ARA and the messages in question.

22 MS SHI: Well, again, it's not  
23 between ARA and the messages, it's between ARA and Mr.  
24 Warman's credibility and then the link between Mr.  
25 Warman's credibility and Mr. Warman's testimony, then

1 Mr. Warman's testimony and the accusation that these  
2 messages are likely to expose identifiable groups to  
3 hatred and contempt.

4 You can not evaluate Mr. Warman's  
5 testimony without looking at his credibility.

6 And, besides, as I have said  
7 yesterday, the Crown -- well, the Commission counsel  
8 put in a whole bunch of evidence about Mr. Warman's  
9 character, the people that he shares a panel with, the  
10 former Justice Frank Iacobucci and how he has lectured  
11 the Superior Court of Ontario, he is going to lectures  
12 at the U. of T., how many awards he has won.

13 Well then, I should be allowed to  
14 answer that evidence.

15 I know my friend's position is that  
16 they adduced that evidence because I raised the issue  
17 of character.

18 And, as I said yesterday, then  
19 wouldn't it be just the height of irony that them  
20 having relied on me having raised the issue, produce  
21 evidence, then it's turned around that I am not allowed  
22 to answer that evidence that was produced based on an  
23 issue that I raised.

24 As far as I am concerned, once  
25 Commission counsel has been allowed to put in all that

1 evidence about Mr. Warman's character, then there is no  
2 issue, no question that I should be able to rebut it.

3 THE CHAIRPERSON: I am not sure that  
4 that evidence is relevant.

5 MS SHI: Well, Madam Chair, I didn't  
6 object to it because I believe that character is an  
7 issue and I certainly did not hear the Tribunal say, I  
8 don't want to hear it, and it is on record now.

9 THE CHAIRPERSON: Sure, it is on  
10 record and we will deal with it in due course.

11 MS SHI: It is an issue and it is  
12 utterly unfair to say now that you are not sure it's  
13 relevant and, therefore, I don't get to answer it.

14 If it is not relevant, it shouldn't  
15 have been put out there. It's out there now and I am  
16 fully entitled to deal with this impact and rebut it.

17 THE CHAIRPERSON: And can you not put  
18 the questions that you want -- we discussed this at  
19 some length yesterday -- the questions that you want to  
20 put to Mr. Warman with regard to his involvement with  
21 the ARA group and the nature of the group, can you not  
22 put those questions to him without use of the  
23 transcripts?

24 MS SHI: Well, the short answer is  
25 no.

1 THE CHAIRPERSON: Why not?

2 MS SHI: And I was going to come to  
3 that. I don't believe, with all due respect, that I  
4 should have to justify what I could or couldn't do, I  
5 should be allowed to do it.

6 If I'm producing a piece of evidence  
7 that is being properly brought before the Tribunal, I  
8 don't believe that I should be told that don't do it  
9 this way but do it that way.

10 With all due respect, I think it is  
11 my job to decide and my prerogative to decide how to  
12 present my client's case and there is nothing improper  
13 about producing CSt. Hogan's transcripts.

14 I mean, I brought to your attention  
15 section 23 and 28 of the Canada Evidence Act. Under  
16 those sections, these records of a legal proceeding is  
17 admissible and is also admissible under the common law.  
18 I have marked for you that Supreme Court of Canada case  
19 that says so.

20 So, it is admissible and you have the  
21 prerogative to deal with it in weight, if you feel that  
22 I didn't have to put it before Mr. Warman, but I can't  
23 every time I cross-examine based on a document have to  
24 justify as to why I don't do it some other way. That  
25 would not be fair, it is not workable. It's the way

1           that I have decided, rightly or wrongly, it's best for  
2           my client.

3                                 And so long as it's not improper, I  
4           should be allowed to do so. And as far as I know, in  
5           the case of Hogan's testimony and the transcript for  
6           it, I don't believe identification is an issue. I  
7           understand that my friend's objection to it had to do  
8           with a different section under the Canada Evidence Act  
9           that governs business records.

10                                All that section said is that you  
11           can't admit transcripts as business records. That's  
12           all it said. It didn't say that you couldn't admit  
13           transcripts.

14                                And as for the Finta case, it dealt  
15           with the fact that the lawyer who produced the evidence  
16           didn't want to call it and asked the judge to call it  
17           and the judge called the evidence of -- Commission  
18           evidence taken of someone in Hungary who since died.  
19           It has got nothing to do with the case here.

20                                If necessary, Paul Fromm will speak  
21           to the testimony of Detective Hogan because he attended  
22           that trial, so...

23                                THE CHAIRPERSON: It is hearsay  
24           evidence.

25                                Here is my concern and I would like

1           you to...

2                               MS SHI:   Yes.

3                               THE CHAIRPERSON:  It is hearsay  
4           evidence.

5                               MS SHI:   Yes.

6                               THE CHAIRPERSON:  To be sure, some of  
7           the conditions regarding liability have been dealt with  
8           in the sense that it is testimony given under oath --

9                               MS SHI:   Yes.

10                              THE CHAIRPERSON:  -- subject to  
11           cross-examination.

12                              MS SHI:   Yes.

13                              THE CHAIRPERSON:  But it is evidence  
14           that is being cross-examined for a different purpose.

15                              The issues in question in this  
16           hearing are considerably different from the questions  
17           that are at issue there.

18                              MS SHI:   Well, with all due respect,  
19           either the ARA is a violent group or not a violent  
20           group.  It doesn't matter whether Detective Hogan was  
21           talking about the ARA in a criminal trial or in some  
22           other case, they don't morph into a peaceful group in  
23           another context.

24                              THE CHAIRPERSON:  But Detective  
25           Hogan's statement is that it is a violent group.  In

1           this proceeding --

2                           MS SHI:   Yes.

3                           THE CHAIRPERSON:  -- in this  
4           particular proceeding, I don't see any evidence that  
5           that he was cross-examined on that point.

6                           MS SHI:   Well, maybe he was, maybe he  
7           wasn't.  If you are truly concerned and would like some  
8           better evidence, I could contact Detective Hogan and  
9           ask him to come and testify, if you will issue the  
10          subpoena.  Absolutely, I would have no problem with  
11          that.

12                          THE CHAIRPERSON:  I would feel much  
13          more comfortable issuing a subpoena to have Detective  
14          Hogan come and testify on that issue, but I continue to  
15          be concerned, and I am going to hear more from the  
16          Commission and Mr. Warman, I continue to be concerned  
17          about the relevance of the violent nature of the ARA  
18          and its relationship to the nature of the messages in  
19          question.

20                          MS SHI:   No, it's relationship to the  
21          way that the Tribunal can evaluate the effect of the  
22          messages through evidence and the Tribunal's ability to  
23          evaluate the Commission and the complainant's evidence,  
24          and that is where the ARA comes in, to evaluate the  
25          credibility of the source of that evidence.

1                   Here we have the source of evidence  
2                   coming from somebody who not only associates with a  
3                   violent group but also is caught on tape inciting  
4                   someone to go and commit a violent crime and that  
5                   violent crime did take place.

6                   THE CHAIRPERSON: But it seems to me  
7                   that that, you know, that could be subject to all kinds  
8                   of other sorts of proceedings, but...

9                   MS SHI: It also goes to clearly in  
10                  the complainant's evaluation as to whether something is  
11                  likely to expose someone to hatred and contempt, well  
12                  it deals with his sensitivity, and if that doesn't deal  
13                  with his sensitivity, certainly his claim for pain and  
14                  suffering deals with his sensitivity.

15                  And if I could put it in street  
16                  lingo, the stomach that he has, and I think that these  
17                  evidence goes to the kind of person he is and how  
18                  sensitive he actually is. Seems to have a lot of  
19                  stomach for violent crime. It was fine with him...

20                  THE CHAIRPERSON: I understand and I  
21                  will let you speak, don't worry.

22                  I have a clear understanding of the  
23                  link between some of what you are talking about and the  
24                  issue of pain and suffering, I have a clearer link to  
25                  that, but that doesn't deal with his -- I mean, Mr.

1 Warman has testified that he is not a member of the  
2 ARA. Are you intending...

3 MS SHI: To disprove?

4 THE CHAIRPERSON: Yes.

5 MS SHI: No, I am not alleging that  
6 he's a member of ARA, but he associates with them and  
7 seems to be prepared to agitate young people to go and  
8 commit a violent crime.

9 And is the Tribunal prepared to  
10 believe someone like that, when that person alleges  
11 that certain writing found in a website, that as Mr.  
12 Paul Fromm will testify to identifies its own nature,  
13 that voluntarily he goes in and, oh, he suffered pain  
14 and suffering in reading those messages.

15 THE CHAIRPERSON: But how is his  
16 belief that these messages are likely to expose an  
17 identifiable group to hatred and contempt, how is that  
18 relevant to my decision?

19 MS SHI: Because it's the only  
20 evidence you have as to the effect.

21 THE CHAIRPERSON: It is not the only  
22 evidence I have.

23 MS SHI: What other evidence do you  
24 have?

25 THE CHAIRPERSON: I have the messages

1           themselves.

2                           MS SHI: You have the messages  
3 themselves, but it's my first position that the  
4 Tribunal cannot evaluate the effect without proper  
5 evidence. It's a question of fact.

6                           The Tribunal cannot decide on a  
7 question of fact without a factual foundation for it.

8                           THE CHAIRPERSON: No, and that is why  
9 in some cases experts are called to testify, to provide  
10 background information about the semiotics and  
11 different sorts of things that allow the trier of fact  
12 to understand what the effect of messages are and, you  
13 know, it is certainly open to you to adduce evidence  
14 along those lines as well countering any kind of...

15                           MS SHI: Well, let me put it another  
16 way. If the Tribunal doesn't need the complainant's  
17 testimony to decide, or even better the complainant and  
18 the Commission's only witness to -- doesn't need his  
19 testimony as to whether the messages are likely to  
20 expose an identifiable group to the hatred and  
21 contempt, we don't need to have this hearing.

22                           If the Tribunal is able to decide on  
23 the central question of fact without evidence as  
24 produced by the witnesses, then we don't need this  
25 hearing.

1 THE CHAIRPERSON: No, we need a  
2 hearing, we need a hearing. I mean, the messages are  
3 brought forward, then it is entirely in the  
4 respondent's -- it is the respondent's right to say no,  
5 no, these messages do not expose an identifiable group  
6 to hatred or contempt, they don't for these and these  
7 and these reasons.

8 MS SHI: Let me put it this way.  
9 Either the Tribunal is going to take into account the  
10 complainant's position that it's likely to expose  
11 identifiable groups to hatred, in which case the  
12 credibility of the complainant has to be assessed, or  
13 if the Tribunal is not going to take into account the  
14 complainant's position that it is likely, then I would  
15 submit you have no other evidence except the  
16 respondent's position that it isn't likely, and how is  
17 the Tribunal going to decide.

18 I would submit it will be improper  
19 for the Tribunal or the sitting Member, with all due  
20 respect, to say that, well, I looked at it and I think  
21 it is likely. The Tribunal Member is not a participant  
22 in the hearing, is not supposed to provide expert or  
23 non-expert factual foundation in order that findings of  
24 fact can be made.

25 THE CHAIRPERSON: Well, that's in

1           essence I think what the Tribunal is called upon to do,  
2           is to look at the evidence and to determine whether or  
3           not it is likely to expose --

4                       MS SHI: Based on the evidence.

5                       THE CHAIRPERSON: Yes.

6                       MS SHI: Based on the evidence and  
7           evaluate the evidence, including evaluate the  
8           reliability of the evidence which cannot happen without  
9           the credibility of the witnesses being evaluated,  
10          especially in a case like this when the likelihood is  
11          something intangible.

12                      We don't have any physical evidence  
13          or tangible evidence to corroborate any testimony.

14                      The credibility of the witnesses  
15          becomes central to the case.

16                      THE CHAIRPERSON: Okay.

17                      MS SHI: Thank you.

18                      THE CHAIRPERSON: Ms Maillet?

19          SUBMISSIONS

20                      MS MAILLET: Yes. This podium is at  
21          a bit of an awkward spot.

22                      THE CHAIRPERSON: Go ahead, Ms  
23          Maillet.

24                      MS MAILLET: Yes, Madam Chair.

25                      My friend states that this hearing is

1 based on facts. The only -- the critical factual  
2 evidence before you are the documents that were  
3 communicated by Mr. Winnicki as are outlined in the  
4 Commission's book of documents, Commission and  
5 complainant's books of documents.

6 The facts that are relevant to this  
7 hearing are not the answers that Richard Warman  
8 provides regarding opinions and sensitivities  
9 surrounding what he does and doesn't believe composes  
10 people to hatred and then his credibility around those  
11 opinions and sensitivities.

12 What is relevant to this hearing are  
13 the facts that rest on the material that bring us all  
14 here today, and the material that brings us all here  
15 today are the messages that were communicated by Mr.  
16 Winnicki on the internet.

17 The evaluation of that evidence rests  
18 only with those documents, we submit. Mr. Warman's  
19 evaluation of that material, it is our position, is  
20 irrelevant.

21 It is also our position that the  
22 evaluation of that material is irrelevant from other  
23 witnesses, unless they are expert witnesses.

24 In fact, in all of the other  
25 decisions of this Tribunal with respect to hate on the

1 internet, the Tribunal has held that although the  
2 expert may have been helpful in explaining racist  
3 terms, for example, and ideology, that it was the  
4 Tribunal's decision to decide what exposes people to  
5 hatred and contempt and what type of material exposes  
6 people to hatred and contempt and that they didn't need  
7 an expert witness to decide that.

8 In other words, the material speaks  
9 for itself.

10 Whether or not you believe Mr.  
11 Warman's opinions about what the material is, is  
12 irrelevant. That is solely for the Tribunal to decide.

13 The evidence that you need to look at  
14 then is documentary evidence and it's not attacks on  
15 Mr. Warman's character or credibility that is relevant  
16 to that evaluation.

17 And for the Tribunal to determine if  
18 the material exposes people to hatred or contempt, the  
19 Tribunal, of course, looks at the law around the  
20 definitions of what exposes people to hatred and  
21 contempt, and that is found in the Supreme Court of  
22 Canada case of Taylor, as well as the case of Neely vs.  
23 Johnson which first enunciated the test with respect to  
24 what type of material exposes people to hatred or  
25 contempt.

1                   This is what Tribunal considers in  
2                   evaluating the documentary evidence before us.

3                   And, as I stated at beginning of this  
4                   hearing, I was worried that we were going to go down a  
5                   hearing where this hearing was about what Mr. Warman  
6                   does and does not do, and I submit that is completely  
7                   irrelevant to what the Tribunal needs to determine in  
8                   making its determination on breach of section 13 and  
9                   14.1.

10                   THE CHAIRPERSON: Thank you.

11                   Mr. Warman?

12                   SUBMISSIONS

13                   MR. WARMAN: I only have two very  
14                   brief issues.

15                   In addition to adopting the  
16                   submissions of counsel for the Commission, I would just  
17                   note that Ms Shi has indicated that there is no  
18                   physical evidence to corroborate the case that is put  
19                   before you.

20                   In fact, the physical evidence that  
21                   exists is the postings themselves. They were submitted  
22                   to the Tribunal, no objection was taken to them, they  
23                   were properly entered as evidence and, therefore, it is  
24                   at the full ability of the Tribunal to consider them as  
25                   validly entered evidence.

1                   And, in my position, I would just  
2 echo that of the Commission that the postings speak for  
3 themselves.

4                   The second issue that I would just  
5 raise is Ms Shi's repeated statement that I have  
6 committed a criminal act, I have counselled criminal  
7 acts.

8                   I have never been committed of any  
9 such offence and I would just ask that perhaps a  
10 greater sense of decorum be imposed, that if Ms Shi  
11 wishes to allege that I have committed such acts, I  
12 would take no objection to that, but her continued  
13 characterization of it as a fact I take objectionable.

14                   Those are my submissions.

15                   THE CHAIRPERSON: Thank you.

16                   Ms Maillet, I wanted to ask you a few  
17 more questions with regard to the issue of relevance  
18 regarding pain and suffering.

19                   MS MAILLET: Yes.

20                   THE CHAIRPERSON: What is the  
21 position -- and I will ask you also Mr. Warman, because  
22 I did ask Ms Shi this question, I would like to hear  
23 more from you.

24                   What position then are you taking  
25 with respect to the evidence that may go to the issue

1 of any pain and suffering that Mr. Warman may have  
2 suffered as a result of the exposure to the messages?

3 SUBMISSIONS

4 MS MAILLET: That evidence was given  
5 by Mr. Warman in direct examination with respect to how  
6 the messages affected him, how these messages affected  
7 him, and I believe that is the issue that needs to be  
8 determined by the Tribunal, how these messages affected  
9 him personally.

10 THE CHAIRPERSON: There is evidence,  
11 I mean, there is evidence that Ms Shi is putting in  
12 that goes to that issue.

13 MS MAILLET: Yes. And my submission  
14 is that that may be relevant as a very small issue in  
15 terms of what damages the Tribunal wishes to award Mr.  
16 Warman, however -- and there is case law and I don't  
17 have it with me -- but the conduct of the complainant  
18 should not be taken into consideration in determining  
19 things like pain and suffering because, to do so, you  
20 in fact condone discriminatory behaviour, and that is  
21 not what the Tribunal is here to do.

22 The sensitivities, and especially the  
23 conduct of the complainant to matters completely  
24 irrelevant to the issues that are before you.

25 The case I'm thinking of, and I'm

1       sorry, I don't have the name and I apologize, I will  
2       get it to you at lunch time, talks about the conduct of  
3       the complainant within a particular complaint, and I  
4       believe the Tribunal held that that conduct was taken  
5       into account in determining pain and suffering, and I  
6       believe reinstatement, the location of reinstatement.

7                   The Federal Court found that the  
8       Tribunal had erred in taking that into the  
9       consideration and awarded pain and suffering.

10                   So, I guess my answer to you is that  
11       with respect to Mr. Warman's pain and suffering in  
12       matters that are relevant to this Tribunal, i.e., how  
13       Mr. Winnicki's messages affected him, I believe that is  
14       relevant, however, Mr. Warman's sensitivities around  
15       everything from the Bible to Huckleberry Finn I believe  
16       are not relevant to your determination of what award he  
17       should have in terms of pain and suffering.

18                   And to look at the ARA, which is a  
19       third party and not involved in these proceedings, in  
20       my opinion, goes beyond looking at the relevance of  
21       what actually should be taken into account in  
22       determining his pain and suffering for this proceeding  
23       and for this hearing.

24                   THE CHAIRPERSON: All right.

25                   Mr. Warman?

1 SUBMISSIONS

2 MR. WARMAN: I would again adopt the  
3 submissions of the Commission and state that, while  
4 there may be some limited relevance in terms of the  
5 question of damages on pain and suffering, that does  
6 not, by extension, justify my sensibilities becoming a  
7 central issue of this hearing.

8 With the greatest of respect, I would  
9 submit that that is almost what this has become and  
10 that, in fact, if I could just take everyone back to  
11 foundational principles, the question that is before  
12 the Tribunal is, did Mr. Winnicki post messages to the  
13 internet that are likely to expose the named target  
14 groups to hatred or contempt?

15 And the second is, did Mr. Winnicki  
16 retaliate against me for having filed those complaints.

17 And that, in fact, I just greatly  
18 fear that we are straying very far away from those  
19 central questions and, in fact, the basis of the  
20 complaints that are, in fact, before the Tribunal for  
21 hearing.

22 Thank you.

23 THE CHAIRPERSON: Ms Shi?

24 REPLY

25 MS SHI: Just a very quick reply.

1                   My friend said the issue of  
2                   compensation is a small issue. I would like to put it  
3                   on the record, a threat of an award of \$60,000 in  
4                   damages is not a small issue for my client.

5                   And the second point is, Mr. Warman  
6                   said I accused him of having committed crimes. I have  
7                   not said such a thing. I have always said that he  
8                   incited and counselled, and I stand by these comments  
9                   based on the videotape from David Icke that we saw  
10                  yesterday.

11                  Finally, my client has not disputed  
12                  that he made those postings.

13                  If, according to Ms Maillet, she said  
14                  the evaluation of the materials is irrelevant unless  
15                  it's from an expert. I can assure the Tribunal that  
16                  Mr. Paul Fromm our only witness is not an expert and  
17                  neither is Mr. Warman. I am not too sure why we're  
18                  here.

19                  I would ask the Tribunal to think  
20                  about that.

21                  RULING

22                  THE CHAIRPERSON: Well, I have, I  
23                  have thought about it at length and that is why the  
24                  breaks have been so long and I do apologize for taking  
25                  the amount of time that I have, but I think it is

1           important to give a very serious and thoughtful  
2           consideration to the issues that are raised.

3                           And I am concerned, and I have done  
4           some thinking and reading about this, that one of the  
5           reasons for not entering too far into the realm of  
6           character evidence in the context of civil proceedings  
7           is that there is an fear on the part of most courts  
8           that the proceedings will become distracted and taken  
9           down the route of character, which is of minimal use in  
10          civil proceedings, as opposed to criminal proceedings.

11                           And so very restrained use is made of  
12          evidence, only to the extent that it has been put in  
13          issue and can be rebutted appropriately and within  
14          certain constraints, but that the real issue is to get  
15          to the merits of the particular case and character,  
16          frankly, has very little to do with the merits of the  
17          case.

18                           And so I am concerned about the  
19          extent to which we are travelling down the road of  
20          impugning the victim, Mr. Warman's -- the alleged  
21          victim's character in this case.

22                           Having said that, I believe that the  
23          issue of pain and suffering and the extent to which Mr.  
24          Warman may or may not have suffered as a result of the  
25          messages in question is a live issue, is an important

1 issue, is a significant issue, there is a significant  
2 amount of monetary damages at stake here and I think  
3 that the respondent is fully entitled to explore the  
4 extent to which Mr. Warman may be said to have suffered  
5 as a result of these, as a result of the exposure to  
6 the messages.

7                   There is also the consideration that  
8 in cross-examination character evidence and evidence  
9 with regard to an individual's reactions to events is  
10 much broader, much broader latitude will be given  
11 during cross-examination to explore the extent to which  
12 an individual has -- to explore the character of the  
13 individual and explore the extent to which he or she  
14 has suffered.

15                   And so to that extent I have allowed  
16 a wide degree of latitude, and that was my purpose in  
17 allowing Ms Shi to go into the question of -- to look  
18 at the video and then even to question on the  
19 transcripts.

20                   However, since I am being forced at  
21 this point to make a ruling on the admissibility of the  
22 documents in question, I am going to do so, and I am  
23 going to say that I am not satisfied that the evidence  
24 in the trial proceedings as given is the best evidence,  
25 and I will not admit the transcripts of the trial

1 proceedings.

2 I will allow questions to be put to  
3 the witness regarding the ARA, the involvement in the  
4 ARA since that has been raised, that was an issue that  
5 was raised in-chief, but the transcripts themselves  
6 will not go in.

7 I am not satisfied that the issue  
8 regarding the violence, the violent nature of the ARA  
9 was fully explored in cross-examination in the context  
10 of those trial proceedings and I believe that if we are  
11 to have a proper airing of that issue, it would be  
12 necessary to call the witness himself in order to  
13 explore that issue.

14 However, on that point, I do not  
15 believe that the nature of the ARA as a violent or not  
16 violent organization is relevant to the matters in  
17 question.

18 For those reasons, I am not going to  
19 admit the transcripts of the trial proceedings.

20 And I will now turn my attention to  
21 the video. I am going to make a ruling on that and I  
22 would like to hear, before I do, from the parties on  
23 the relevance of the video that we watched yesterday.

24 MS MAILLET: If we could just have a  
25 couple of minutes. I did take notes on it and we

1 haven't thought that we were going to do this today. I  
2 apologize but, I don't know, we could probably take  
3 five quick minutes.

4 THE CHAIRPERSON: Okay.

5 MS SHI: Perhaps, if I could suggest  
6 that we break for lunch now and come back when we are  
7 well prepared, if it's possible.

8 MS MAILLET: I am happy to make our  
9 submissions at this point and if you want to think  
10 about...

11 THE CHAIRPERSON: Why don't we just  
12 deal with these issues before lunch and we will have a  
13 lunch break to dedicate to the having lunch and not to  
14 the matter.

15 So, we will recess for five minutes.

16 REGISTRY OFFICER: Order, please.

17 --- Upon recessing at 12:10 p.m.

18 --- Upon resuming at 12:25 p.m.

19 REGISTRY OFFICER: Order, please. All  
20 rise. Please be seated.

21 THE CHAIRPERSON: Ms Maillet?

22 SUBMISSIONS

23 MS MAILLET: Thank you, Madam Chair.

24 With respect to the relevance of the  
25 video and we are talking about the documentary from the

1 U.K., from what I understand, my friend's position is  
2 that it is relevant because it shows Mr. Warman's  
3 sensitivity or lack thereof to criminal activity.

4 It is our submission that Mr.  
5 Warman's sensitivity or lack thereof to criminal  
6 activity and violence has absolutely nothing to do with  
7 his sensitivity with respect to hate messages and with  
8 respect to his sensitivity as being targeted as a  
9 person of the Jewish faith and retaliated against.

10 There is absolutely no connection  
11 between his response to having someone throw a pie on a  
12 person that communicates classic examples of  
13 anti-Semitism and how he is affected five years later  
14 by being the victim of retaliation for having filed a  
15 Human Rights complaint.

16 And so it is our submission that  
17 there is no connection between what is attempting to be  
18 produced as evidence, and the issue before the  
19 Tribunal, in determining his sensitivities around what  
20 happened to him and determining pain and suffering in  
21 this case.

22 Madam Chair, I bring your attention  
23 too, and I will make copies of this for everybody, it  
24 is a paper regarding evidence at administrative  
25 tribunals by the Chair of this Tribunal Grant Sinclair,

1 indicates with respect to admissibility of evidence:

2 "When deciding on the  
3 admissibility of evidence, the  
4 first question to be asked is,  
5 is it relevant? If the evidence  
6 is relevant, then it is  
7 admissible, unless it falls  
8 within an exclusionary rule.  
9 When determining what is  
10 relevant the first step is to  
11 identify the facts that are in  
12 issue in the case. Once that  
13 has been done, there are two  
14 aspects to relevance; namely, is  
15 there a logical connection to  
16 what must be proved in the case;  
17 and, secondly, is the evidence  
18 of probative value in the sense  
19 of actually tending to prove  
20 that matter."

21 It is our submission that neither  
22 test has been met in this case. There is no connection  
23 between sensitivity around being targeted in a White  
24 Supremacist website and the tolerance or sensitivity to  
25 throwing a pie at somebody.

1                   Those are our submissions.

2                   THE CHAIRPERSON: Mr. Warman?

3                   MR. WARMAN: Sorry, in fact, those  
4 were the joint submissions of the Commission and  
5 complainant.

6                   THE CHAIRPERSON: Those were the  
7 joint. Okay, thank you.

8                   MR. WARMAN: Thank you.

9                   THE CHAIRPERSON: Ms Shi?

10                  MS SHI: No reply.

11                  THE CHAIRPERSON: All right. I am  
12 going to rule on that immediately.

13                  --- Off mike

14                  RULING

15                                 We saw a video yesterday that was  
16 marked for identification, and at the time I said that  
17 I am not going to rule on the admissibility of this at  
18 the time, I am going to wait until it becomes tendered  
19 in evidence, and I still believe that the proper time,  
20 strictly speaking, to rule on something of that nature  
21 would be when it is tendered into evidence.

22                                 However, I understand Ms Shi's point  
23 that she needs to know at this point whether or not the  
24 video is acceptable, whether or not the transcripts are  
25 admissible in order to plan her case.

1                   And in order to be abundantly fair,  
2                   and in order to be completely transparent and to give  
3                   every possible advantage to all of the parties to  
4                   present their case to the best of their ability, I am  
5                   going to make a ruling now on the relevance, on the  
6                   admissibility, rather, of the video.

7                   As I indicated in my previous ruling,  
8                   I am uncomfortable with the notion of travelling down a  
9                   path of a full examination of Mr. Warman's character. I  
10                  think that that detracts from the central consideration  
11                  in this case, which is to look at whether or not the  
12                  messages are likely to expose an identifiable group to  
13                  hatred or contempt.

14                  However, in the context of  
15                  cross-examination, Ms Shi is entitled to a wide range  
16                  of exploration so that she can determine all of the  
17                  issues that are in question.

18                  She has alleged that Mr. Warman could  
19                  not possibly have suffered the full extent of the pain  
20                  and suffering that he is claiming to have suffered  
21                  because he has engaged in a kind of street fighting, to  
22                  use her -- or, rather, to use street language, I  
23                  suppose, that would belie any kind of sensitivity of  
24                  the nature that he is claiming.

25                  That is an allegation that she has

1 put in issue, and so the question is whether there is a  
2 logical connection between the material that was shown  
3 in the video and that allegation that she is making.

4 And I believe that there may well be,  
5 and so, as such, I am going to rule that the video is  
6 admissible and that I will reserve my decision as to  
7 what weight I will give to both the video and any  
8 testimony that is given with regard to the video until  
9 such point as I have full evidence before me in this  
10 case and make a final decision.

11 I will note that I am making a ruling  
12 on the admissibility of the evidence at this point or,  
13 rather, on the relevance.

14 The evidence has yet to be -- the  
15 documentary has yet to be tendered, has yet to be  
16 identified. In my view, the statements made by Mr.  
17 Warman yesterday were not in the nature of -- it was  
18 not put to him whether he could identify the video in  
19 question, he made some comments that I considered to be  
20 secondary or believe that is satisfactory to identify  
21 the video.

22 So, my ruling with respect to the  
23 relevance of the document is what it is and I will  
24 require that it be properly identified in order to be  
25 entered into evidence.

1                   So I am hoping that we can now  
2                   proceed to a hearing, to resuming the hearing on the  
3                   merits and that we can really get to the merits of the  
4                   issue and we can, to the extent possible, move through  
5                   the evidence and not become bogged down in endless  
6                   questions, though I recognize the importance of them  
7                   and certainly the right of all counsel to raise any  
8                   concerns that they have.

9                   MS SHI: Thank you.

10                  THE CHAIRPERSON: So, shall we now  
11                  take a much deserved break for lunch and eat heartily  
12                  and come back ready for the afternoon.

13                  So, I am going to say 1:30 and we  
14                  will see you all then.

15                  REGISTRY OFFICER: Order, please.

16                  --- Upon recessing at 12:35 p.m.

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

18                  REGISTRY OFFICER: Order, please.

19                  All rise. Please be seated.

20                  THE CHAIRPERSON: Good afternoon.

21                  MS SHI: Good afternoon. Thank you.

22                  RICHARD WARMAN, RESUMED:

23                  EXAMINATION

24                  MS SHI: I wonder if Madam Registrar  
25                  could put on that VHS of the David Icke tape. I would

1           like to ask the witness a few questions about that,  
2           please.                   REGISTRY OFFICER: Pardon me?

3                               MS SHI: I would like to ask a few  
4           questions about the David Icke tape and, therefore, I  
5           wonder if Madam Registrar could put it on.

6                               THE CHAIRPERSON: Are we going to  
7           watch the entire thing?

8                               MS SHI: No, no.

9                               I wonder how we do that. When we  
10          were watching it yesterday I attempted to put down some  
11          time as to when certain parts showed up. I wonder if  
12          that would be useful.

13                              I think we started at about 4:24 and  
14          the part that I would first like to go to is at 4:56,  
15          so about 28 minutes into the tape, please.

16                              REGISTRY OFFICER: Do you remember  
17          approximately what the episode is?

18                              MS SHI: It was where Mr. Warman was  
19          sitting around a table and they were having a beer.

20                              THE CHAIRPERSON: And you will take  
21          keep in mind, I take it, the remarks that I made this  
22          morning. You will keep in mind the remarks that I made  
23          this morning?

24                              MS SHI: I did, I even wrote them  
25          down, but I'm sure if I forget you will remind me.

1                   REGISTRY OFFICER:  If anyone  
2 remembers, is this before or after?

3                   MS SHI:  I think you keep going.  I  
4 don't think you've missed it yet.

5                   THE CHAIRPERSON:  Are you going  
6 backwards?  I think it is before that.

7                   MS SHI:  You go forward, yes.

8                   Okay, could we go back.  I wonder if  
9 I could have the remote?

10                  THE CHAIRPERSON:  The control.

11                  MS SHI:  Yes, please.

12                  REGISTRY OFFICER:  Can everyone see  
13 with the lights on?

14                  MS SHI:  No, I would like to...

15 Pardon me, I need a minute to -- wait, how does one  
16 stop?

17                  REGISTRY OFFICER:  You want to know  
18 how to pause?

19                  MS SHI:  Yes, please.  I'm having  
20 trouble, I'm just learning to use the remote.  Perhaps  
21 I could approach Madam Registrar for a second.

22                  REGISTRY OFFICER:  It may not work  
23 from where you are to the VCR.

24                  MS SHI:  Then I will have to ask  
25 Madam Registrar to assist me and stop it when I ask her

1 to.

2 Could we just go back a little bit,  
3 please. Sorry, I would like to go to where Mr.  
4 Warman's image shows up.

5 REGISTRY OFFICER: So, you would like  
6 it played now, this portion?

7 MS SHI: No, freeze it, please. The  
8 image of Mr. Warman, could we freeze that.

9 Mr. Warman, what I would like to do  
10 is call this the beginning of this segment, and then I  
11 will mark a certain part that I will say it's the end  
12 of the segment and I will be asking you some questions  
13 about the segment.

14 Would that be all right?

15 MR. WARMAN: Sure.

16 MS SHI: First of all, in this  
17 picture, the person in the green jacket on the  
18 left-hand side; is that you?

19 MR. WARMAN: Yes.

20 MS SHI: All right. And perhaps we  
21 could then, Madam Registrar, continue, please.

22 Could we stop that, please.

23 Did you hear that, the audio of what  
24 you said there? First of all, did you hear it?

25 MR. WARMAN: For the most part I

1 believe, yes.

2 MS SHI: Would you like to hear it  
3 again because I was going to ask you a question about  
4 it?

5 MR. WARMAN: No, I think I'm  
6 comfortable and if I'm not, I will ask it to be  
7 replayed.

8 MS SHI: Did you say that?

9 MR. WARMAN: Say what?

10 MS SHI: Did you say what was  
11 recorded on it?

12 MR. WARMAN: I believe so, yes.

13 MS SHI: And you heard the voice over  
14 of the British journalist identifying that it was you  
15 that was there and you don't dispute that, I assume?

16 MR. WARMAN: No, I don't.

17 MS SHI: Thank you. Let's continue,  
18 please.

19 Could we stop, please.

20 Mr. Warman, is that you --

21 MR. WARMAN: It is, yes.

22 MS SHI: -- in the picture? Thank  
23 you.

24 And you have heard the audio that was  
25 played just now? Did you say that?

1 MR. WARMAN: I'm sorry.

2 MS SHI: Or did you hear?

3 MR. WARMAN: The words that I  
4 specifically said?

5 MS SHI: Yes. Did you say that?

6 MR. WARMAN: Yes.

7 MS SHI: Thank you. Let's continue,  
8 please.

9 Sorry, could we go back a little bit  
10 before the beer, please, just before the beer, sorry.

11 So, we just heard -- is that you?  
12 Sorry. I'm sorry, Madam Registrar, no, you are fine  
13 now, but I just know that this is very tough for you to  
14 do and I appreciate it.

15 Is that you, Mr. Warman?

16 MR. WARMAN: Yes, it is.

17 MS SHI: And were you able to hear  
18 the audio of what you just said?

19 MR. WARMAN: I was.

20 MS SHI: And did you say that?

21 MR. WARMAN: Yes, I did.

22 MS SHI: Thank you.

23 Let's continue, please to the beer  
24 part. Let's stop, please.

25 Is that you, Mr. Warman, in the

1 picture that we just saw, the hand is still in the  
2 picture to the left?

3 MR. WARMAN: Yes, it is.

4 MS SHI: And did you say what was  
5 just played on the audio?

6 MR. WARMAN: I did.

7 MS SHI: Thank you. Let's continue,  
8 please. Perhaps we could stop one moment.

9 Madam Chair, I'd like to indicate  
10 that I'm doing this for the purpose of identifying this  
11 video in order to enter it as an exhibit. I understand  
12 that you are concerned that it hasn't been properly  
13 identified, and so the process may seem a bit tedious,  
14 however, we could expedite it, if you feel at any time  
15 that the Tribunal is able to allow the tape to be  
16 properly identified and entered as an exhibit, I may be  
17 able to stop at that point.

18 I would appreciate taking guidance  
19 from you.

20 THE CHAIRPERSON: I have some  
21 concerns about the tape itself.

22 MS SHI: Yes.

23 THE CHAIRPERSON: Where it was made,  
24 who made it, for what purposes, but I'm not sure that  
25 that -- I have to rethink that.

1 MS SHI: Madam Chair, I don't think  
2 that for what purpose it was made is germane to the  
3 issue of identification.

4 I think that Mr. Warman so far has  
5 agreed that it is him on the video and he has said what  
6 it purports to say that he says, that I think he has  
7 confirmed, if we can call it the hearsay, and I will be  
8 happy to go through -- what I intend is to go through  
9 all the parts where Mr. Warman appeared and I think  
10 that I would submit that that should be more than  
11 sufficient to properly identify this piece of evidence  
12 so that it can be admitted.

13 But if you believe that it's not  
14 sufficient, then I will go through it.

15 I mean, I assume the idea of the  
16 identification is to get some comfort as to the  
17 veracity of the document, and Mr. Warman is confirming  
18 it.

19 And I know you felt his statement  
20 yesterday was off-the-cuff, however, together with  
21 that, I submit, that there is more than sufficient  
22 information to enter it properly as an exhibit.

23 THE CHAIRPERSON: I will hear from the  
24 Commission and Mr. Warman.

25 MS MAILLET: Madam Chair, I don't

1           have a huge problem, unless Mr. Warman feels that -- I  
2           mean, I'm not sure exactly when he first saw this  
3           video, assuming it was quite some time ago, I don't  
4           know if he can remember exactly what is and is not on  
5           this video or what would have been on the original  
6           video.

7                                So, that is the one concern I have,  
8           but perhaps we can ask him that. I don't know.

9                                The rest of the concerns I have  
10          around how the video was made, how it was edited and so  
11          on, I do plan to explore with Mr. Warman, so I have no  
12          other concerns, other than if Mr. Warman feels that  
13          when he saw the original video that it is different  
14          from this one.

15                               THE CHAIRPERSON: Okay.

16                               Mr. Warman?

17                               MR. WARMAN: No, I guess the only  
18          specificity is that I didn't actually create this copy  
19          of it, it's been several years since I saw the version,  
20          what I would call the original version, so within the  
21          bounds of that, I have no real objection to going  
22          through and identifying the passages where I'm speaking  
23          and, to the best of my recollection, as they reflect my  
24          words at the time, within the context that they are  
25          small snippets of my words at the time in a much

1 broader context.

2 THE CHAIRPERSON: Okay.

3 MR. WARMAN: Sorry, just in the sense  
4 that they are extracts from what, especially in this  
5 case, was a several hours long conversation.

6 THE CHAIRPERSON: Okay, thank you.

7 Ms Shi, then I am satisfied on the  
8 basis of what I have heard that this will be sufficient  
9 for the purposes of identifying these portions of the  
10 video.

11 MS SHI: Yes. could we mark it as an  
12 exhibit, please.

13 REGISTRY OFFICER: The document,  
14 videotape re David Icke approximately 60 minutes  
15 previously marked for identification as L will now be  
16 marked as respondent Exhibit R-20.

17 EXHIBIT NO. R-20: Document,  
18 videotape re David Icke  
19 approximately 60 minutes  
20 previously marked for  
21 identification as L.

22 THE CHAIRPERSON: And is there  
23 something in our book of documents that refers to that?  
24 What tab was that?

25 MS SHI: It was put in late, Madam

1 Chair, and so it's not in the tab.

2 THE CHAIRPERSON: It is not in.

3 MS SHI: No.

4 THE CHAIRPERSON: So, it is now. I'm  
5 sorry, respondent exhibit...?

6 REGISTRY OFFICER: R-20.

7 MS SHI: Those are my questions.

8 Thank you, Mr. Warman.

9 MS MAILLET: Are you done with your  
10 cross-examination?

11 MS SHI: Yes.

12 MS MAILLET: Oh. If I could just  
13 have five minutes, I didn't -- I thought that there  
14 would be more questions for Mr. Warman.

15 THE CHAIRPERSON: Okay.

16 MS SHI: I don't have any problem if  
17 my friend wants a bit of time, if she wasn't expecting  
18 it.

19 THE CHAIRPERSON: Okay.

20 MS MAILLET: I am sorry about that.

21 THE CHAIRPERSON: That is okay. I  
22 think that we were all cut a little bit off guard.

23 So, I think this would be called the  
24 hearing of breaks.

25 --- Laughter

1 So, we will take...?

2 MS MAILLET: Really five, 10 minutes.

3 THE CHAIRPERSON: That is okay. We  
4 all have to take the time we need. So, 10 minutes,  
5 come back at 20 past. Is that right? My watch is...

6 REGISTRY OFFICER: Quarter past.

7 THE CHAIRPERSON: Quarter past.

8 REGISTRY OFFICER: Order, please.

9 --- Upon recessing at 2:05 p.m.

10 --- Upon resuming at 2:15 p.m.

11 REGISTRY OFFICER: Order, please.

12 All rise. Please, be seated.

13 THE CHAIRPERSON: Ms Maillet?

14 MS MAILLET: Yes. I just have a few  
15 questions for Mr. Warman, Madam Chair, in  
16 re-examination.

17 EXAMINATION

18 MS MAILLET: Mr. Warman, counsel for  
19 the respondent asked you a question about a private  
20 information that was laid against you.

21 Could you please tell us about that  
22 private information and the context surrounding what  
23 that was all about?

24 MR. WARMAN: Certainly. What that  
25 involved was a meeting that was held -- that was sought

1 to be held in Toronto in the basement of a church.

2 The advertised subject matter and the  
3 individuals involved led me to believe that it would  
4 involve essentially anti-government conspiracy theories  
5 that promoted ideas around non-payment of taxation and  
6 that there was at least a decent risk that they would  
7 also move into wider ranging conspiracy theories, of  
8 which classic anti-Semitism played a part.

9 Based on that, I wrote to the -- I  
10 sent an e-mail to the church, I can't remember if it  
11 was the pastor or the deacon or what exactly their  
12 position was, indicating my concern about it, outlining  
13 some of the details around the individuals who were  
14 involved and then asking them, in essence, to consider  
15 my concerns and whether they desired to continue to act  
16 as host for that meeting.

17 Subsequently, one of the two  
18 individuals attempted -- sorry, two of the individuals  
19 who were involved in the meeting, one was named Thomas  
20 Kennedy and the other was named David Lindsay, they  
21 both attended at court in Ottawa and swore out private  
22 criminal informations against me.

23 As I indicated in my original  
24 testimony, both of those charges were stayed by Crown  
25 counsel on the first appearance for those, on the basis

1           that there was no reasonable prospect of conviction and  
2           that continuing with the charges would not be in the  
3           public interest.

4                           MS MAILLET: Thank you.

5                           MR. WARMAN: I should also just  
6           specify that in relation to the individuals who filed  
7           those criminal -- those private criminal charges, the  
8           one individual named David Lindsay had such an  
9           extensive history of engaging in this kind of, what I  
10          consider to be, abuse of process and abuse of the legal  
11          system, that the Attorney General of Manitoba pursued  
12          and obtained a permanent injunction against him to stop  
13          him from swearing out these kinds of private criminal  
14          charges against judges, members of court staff and  
15          police officers.

16                          MS MAILLET: Thank you. Mr. Warman,  
17          I'm going to call it the British video that we have  
18          seen, documentary dealt with Mr. David Icke.

19                          MS SHI: I have to rise because,  
20          Madam Chair, I think it was determined on Monday when I  
21          brought in Mr. Icke's video there was -- my friend had  
22          said that she was going to save her questions on it for  
23          re examination, I had objected and you had given  
24          direction that if she wanted to ask questions about the  
25          tape, because she has reasonable notice that it's going

1 to be brought up, that she was to do it during her  
2 in-chief, and she hadn't done that, and I haven't asked  
3 any questions about that video, except to have it  
4 identified.

5 So, I would submit that this is not a  
6 proper subject for re-examination.

7 THE CHAIRPERSON: Ms Maillet?

8 MS MAILLET: The video was shown to  
9 Mr. Warman, snippets of it were shown to Mr. Warman.

10 He had indicated prior to this that  
11 he had concerns surrounding how the video was edited  
12 and, as he just indicated a few minutes ago, that a lot  
13 of what was shown in that video, and we have all seen  
14 it, dealt with hours of conversations that he had but  
15 had been reduced to a couple of minutes on a tape, and  
16 I wanted him to be able to address that.

17 THE CHAIRPERSON: And the issue there  
18 is that you had the opportunity in examination-in-chief  
19 to deal with the video at that time, and I did put you  
20 on notice that if you decided not to deal with the  
21 video at that point there would be issues that would  
22 likely arise with respect to doing that in  
23 re-examination because the rule is that one cannot  
24 re-examine on issues that might reasonably have been  
25 anticipated to arise --

1 MS MAILLET: Right.

2 THE CHAIRPERSON: -- during the  
3 cross-examination.

4 MS MAILLET: Now, she hadn't asked  
5 Mr. Warman at that time about what he said or if that  
6 was, in fact, him that said it, as she did this time,  
7 and I wanted to be able to say to him -- to ask him  
8 questions about this is what you said, did you say  
9 other things?

10 That stems from the questions she  
11 just asked him in terms of trying to identify the  
12 video.

13 THE CHAIRPERSON: Yes. The issue is  
14 could you have anticipated that kind of questioning to  
15 have arisen when you watched the video when it was  
16 disclosed to you beforehand.

17 The video didn't come through in  
18 cross-examination by surprise, it was previously  
19 disclosed and you made the decision not to deal with it  
20 in examination-in-chief.

21 MS MAILLET: That's right.

22 THE CHAIRPERSON: And instead are  
23 dealing with it now in re-examination.

24 MS MAILLET: Right. Okay. That's  
25 okay, I understand your point.

1 I will deal with it in another way.

2 Thank you.

3 Mr. Warman, counsel for the  
4 respondent has brought into question during her  
5 cross-examination your motives in filing these  
6 complaints.

7 It has been suggested that you have  
8 some financial interests, that you're simply having fun  
9 and so on.

10 I'd like you to address that,  
11 firstly, by indicating to the Tribunal why it is that  
12 you do what you do to attempt to stop the proliferation  
13 of hate propaganda in Canada?

14 MR. WARMAN: I think because in  
15 modern day Canada hate propaganda, and by that I mean  
16 to encompass not just the promotion of hatred of  
17 individuals and groups on the basis of their race,  
18 religion, sexual orientation and such things, but also  
19 the promotion of genocide against such individuals and  
20 groups, to be essentially as egregious a violation of  
21 human rights in Canada as we are likely to find in the  
22 absence of those actual events, and I believe that  
23 history has shown again and again that words lead to  
24 action and that, in fact, without laying the groundwork  
25 through words and through hate propaganda and through

1       advocation of genocide, the actual deeds don't rise up  
2       in and of themselves.

3                       There is no sudden, a light comes on  
4       people, go out and start committing genocide without  
5       any discernable reason or motive.

6                       I think that society as a whole is  
7       diminished and is cheapened and, in fact, that it shows  
8       a fundamental lack of respect for the dignity of our  
9       fellow human beings to attack them in such vicious and  
10      undeserved ways on the basis of immutable  
11      characteristics such as race, religion, sexual  
12      orientation, et cetera, and I think that really if I  
13      boil it down, I mean you can look last fall, I believe  
14      it was, Irwin Cottler quoted the Supreme Court when  
15      they said that:

16                      "The Holocaust did not begin  
17                      with the gas chambers, the  
18                      Holocaust began with word." (As  
19                      read)

20                      And just that I think it's incumbent  
21      upon any member of society of good will to denounce  
22      this kind of activity and to take steps to put an end  
23      to it. I think it would be very difficult for me to  
24      sleep at night if I knew that people were calling for  
25      the expulsion or the murder of my friends, or even

1           fellow citizens, or non-citizen for that matter, just  
2           on the basis of their race, religion or virtually for  
3           any reason.

4                       MS MAILLET: Thank you.

5                       MR. WARMAN: Sorry, and I should add,  
6           and I didn't do anything about it.

7                       MS MAILLET: Yes, thank you.

8                       So, therefore, when you see messages  
9           such as that that's found in the material before this  
10          Tribunal, what is your reaction?

11                      MS SHI: Objection.

12                      Madam Chair, this was central to the  
13          hearing in here and I strenuously object to my friend,  
14          that having finished her case and having heard me  
15          during my cross talk about how important this factor is  
16          and my view of the quality of the evidence, she is now  
17          trying to improve their case.

18                      This did not come up as a surprise  
19          topic in my cross-examination, it is a constituent  
20          element of this case right from the start.

21                      THE CHAIRPERSON: Can I stop you for  
22          a second, because I am not even sure I heard what the  
23          question was to which you are objecting.

24                      MS MAILLET: Ms Shi brought up in  
25          cross what Mr. Warman's sensitivities are, so what I

1 want to address are his sensitivities with respect to  
2 hate messages.

3 She talked about sensitivities with  
4 respect to the Bible and the Quoran and Huckleberry  
5 Finn and so on, and if we are talking about his  
6 sensitivities, I believe I am entitled to ask him about  
7 his sensitivities with respect to hate messages, which  
8 is exactly what we are dealing with here.

9 THE CHAIRPERSON: And your objection,  
10 Ms Shi?

11 MS SHI: Well, my objection is his  
12 sensitivity is an essential element to prove in order  
13 for Mr. Warman to succeed in his claim for  
14 compensation.

15 It is hardly a surprise when he has  
16 claimed for pain and suffering and compensation,  
17 otherwise, that his sensitivity and his reaction to  
18 certain potentially hurtful messages or pictures will  
19 be addressed. It is an essential element of the  
20 complaint.

21 THE CHAIRPERSON: But there is new  
22 material now that the Quoran and Huckleberry Finn that  
23 was not brought up in examination.

24 MS SHI: That was disclosed, the  
25 documents were not a surprise either.

1                   The focus of the cross-examination  
2 based on the documents also cannot be a surprise. I  
3 strenuously object. That's called splitting a case. I  
4 will do a bit and then I will take a look and see how  
5 you deal with mine and then I will put some more in.

6                   It is not an issue --

7                   THE CHAIRPERSON: I have already  
8 dealt with that, I know, I know, you don't have to...

9                   MS SHI: Right. Well, I am just  
10 really surprised that something this central to the  
11 Commission's case that Ms Maillet is now standing here  
12 saying that she was surprised that it was brought up.

13                  MS MAILLET: I never said I was  
14 surprised anything was brought up, I am clarifying  
15 exactly what Mr. Warman's sensitivities are and I am  
16 entitled to clarify and to make sure that his  
17 credibility around his sensitivities is addressed,  
18 because there was an attempt to weaken that and I have  
19 an opportunity to attempt to restore that.

20                  THE CHAIRPERSON: I think it is  
21 appropriate in re-examination to bolster a witness'  
22 credibility, that's clear. In re-examination, that is  
23 an appropriate line of questioning to bolster a  
24 witness' credibility.

25                  It is also true that you have to

1 limit yourself to questions that are new, that have  
2 arisen on cross-examination.

3 MS MAILLET: How about if I try to  
4 reword it somewhat?

5 THE CHAIRPERSON: Okay. Let's have a  
6 go at that and see what happens.

7 MS MAILLET: Mr. Warman, Ms Shi in her  
8 cross-examination talked about your sensitivities with  
9 respect to numerous articles that I will qualify as  
10 extraneous to the articles that are before the Tribunal  
11 in terms of Mr. Winnicki's hate messages.

12 You indicated several different  
13 answers surrounding your sensitivities with respect to  
14 those articles.

15 Could you please further clarify the  
16 difference between your sensitivities with those  
17 articles and your sensitivities with respect to the  
18 material that brings us here today?

19 MS SHI: Madam Chair, the same  
20 objection, it's got exactly the same problem.

21 My friend is getting at the same  
22 issue that should have been addressed.

23 I don't mind if she wants to bolster  
24 the witness' credibility if it is done properly, I  
25 agree with you that that is one of the purposes of

1 re-examination, but there has to be a proper reason for  
2 it.

3 THE CHAIRPERSON: It is hard to do  
4 that in the absence of some subject material and, in  
5 this case, Ms Shi, you know, I gave you a fair degree  
6 of latitude I think in cross-examination.

7 I am not going to widen the door  
8 completely on re-examination, but in the interests of  
9 pursuing, of carrying on with this, I think that we  
10 will allow Mr. Warman to answer the question and then  
11 to explain, because that will be the basis of examining  
12 his credibility.

13 MS SHI: Well, I repeat my objection,  
14 and it is very unfair because under the system of  
15 in-chief and cross-examination, to allow my friend  
16 after I have finished my cross-examination and gotten  
17 all the answers, in effect, you step back and then to  
18 repair whatever she feels had been weakened on issues  
19 that she should have covered fully and, in effect, give  
20 the witness a second kick at the can, is really unfair  
21 for all the work that went into the cross-examination.

22 The reason why I have the right to  
23 cross-examine is because the procedure assumes that the  
24 witness is going to have a certain propensity, and to  
25 allow the witness now, having heard the cross, having

1 answered the questions, having slept on it overnight,  
2 to then come in and, in effect, muddy the water, is not  
3 fair and I do not believe that it is going to help in  
4 the fact finding process.

5 The answers on the cross-examination  
6 is a glimpse at the witness' credibility and a glimpse  
7 at the truth when it is being put to the witness by an  
8 adversary, and that is very valuable, and then to have  
9 it all diluted in re-examination, I am at a bit of a  
10 loss for words.

11 As I said, I'm not objecting to, my  
12 word, if she wants to ask something for example about  
13 that criminal indictment, it's fair, that's new, she  
14 couldn't have anticipated this, but here all the  
15 documents were disclosed, she knew the case that she  
16 had to meet.

17 I mean, even the passages have been  
18 marked for her. She knew full well what I was going to  
19 ask, I'm sure she did. None of this could have been a  
20 surprise.

21 The only thing is that she's trying  
22 to give Mr. Warman another chance to give an answer  
23 that's going to, I'm sure, tend to damage our defence  
24 and be favourable to the Commission and the plaintiff's  
25 case, that is pure and simple, all of this, and that is

1 not a legitimate purpose, it is just procedurally not  
2 fair.

3 MS MAILLET: If I may, Madam Chair, I  
4 don't think this has anything to do with procedural  
5 fairness.

6 First of all, and this may be as a  
7 result of my own limitation, but I in fact was  
8 surprised that Ms Shi was taking a position with  
9 respect to Mr. Warman's credibility, I thought we were  
10 going to deal with comparing the material before you  
11 and the material that she had put before Mr. Warman, I  
12 had no idea she was going to deal with Mr. Warman's  
13 sensitivities as an aspect of his credibility, and I  
14 don't think it's unreasonable that I wouldn't have  
15 anticipated that.

16 She brought up his sensitivity to  
17 material and she is the one that made it an issue of  
18 credibility, and I think I am entitled to now attempt  
19 to restore that credibility regarding what he is  
20 sensitive to and what he is not sensitive to.

21 It wasn't an issue of mine, it was an  
22 issue that was brought up in cross-examination and that  
23 is what I'm responding to at this point.

24 THE CHAIRPERSON: In my view, I do  
25 not think that the issue -- I too was surprised at the

1 line that was taken, that you were looking at Mr.  
2 Warman's sensitivity to matters in the Quoran, in  
3 Huckleberry Finn, that was not a line of questioning  
4 that I think could reasonably have been anticipated.

5 So, I am going to allow questions to  
6 be directed along those lines with regard to  
7 sensitivity alone, and I'd like you to restrain  
8 yourself.

9 MS MAILLET: Yes, I will, I will.  
10 Thank you.

11 Again, Mr. Warman, when we are  
12 dealing with your sensitivities and your reaction to  
13 material that you see and that you read, could you  
14 please advise the Tribunal what your reaction is when  
15 you see the type of material that is the subject of  
16 this complaint versus the type of material that was put  
17 to you by Ms Shi in the Quoran and the Bible and  
18 Huckleberry Finn and Shakespeare?

19 MS SHI: Madam Chair, I bear in mind  
20 your comment that you're allowing the question on Mr.  
21 Warman's sensitivities on the materials I brought in.

22 But I'm hearing my friend now is also  
23 asking about Mr. Warman's sensitivity on the subject  
24 messages.

25 I'm not sure I understand, even if

1 sensitivity on the materials I brought in was a  
2 surprise, how can a complainant who has claimed for  
3 pain and suffering be surprised that he's going to be  
4 asked about his sensitivity or susceptibility to incur  
5 pain and suffering.

6 THE CHAIRPERSON: On the subject  
7 messages, you mean?

8 MS SHI: On the subject messages,  
9 that's right.

10 THE CHAIRPERSON: So on that, I agree  
11 with Ms Shi on that point, I would like you to restrict  
12 yourself to the material that was brought up in  
13 cross-examination.

14 MS MAILLET: Mr. Warman, is there a  
15 -- I have got two questions for you.

16 Firstly, what is your reaction when  
17 you see messages such as those that Ms Shi has put to  
18 you that I submit are not the subject of this  
19 complaint?

20 MS SHI: Could we be more specific,  
21 please.

22 MS MAILLET: Messages that she  
23 brought to your attention in the Quoran, in the Bible  
24 and Huckleberry Finn and in, I believe it was Merchant  
25 of Venice?

1                   And if Madam Chair will allow me to  
2 ask this question, I want to know, should those types  
3 of messages be found on the internet, would you  
4 consider them to be a breach of section 13.1?

5                   THE CHAIRPERSON: No, I am not going  
6 to allow that question. I think that is a question  
7 that is more properly a legal question.

8                   MS MAILLET: Ms Shi brought up his  
9 sensitivity, what drives him to file these complaints,  
10 and so that's what I'm getting at, why he would not be  
11 driven to file a complaint.

12                   THE CHAIRPERSON: Okay. In those  
13 terms --

14                   MS MAILLET: Perhaps it wouldn't be a  
15 breach of section 13.

16                   THE CHAIRPERSON: In those terms, I  
17 can accept it, but not in the terms of legal argument.

18                   MS MAILLET: Thank you.

19                   MR. WARMAN: The materials that were  
20 put to me by Ms Shi on cross-examination such as  
21 Huckleberry Finn, the Bible, the Quoran, the Merchant  
22 of Venice are variably between hundreds and thousands  
23 of years old, they reflect a social perspective on the  
24 issues such as Blacks, homosexuals, women that were  
25 current during the time that they were written.

1                   They have been extensively studied  
2                   by both lay people and scholars. Their meanings, I  
3                   believe, have changed over time to the extent that they  
4                   are no longer understood to be meant in a literal  
5                   sense, or that they should be interpreted in a literal  
6                   sense in today's society.

7                   THE CHAIRPERSON: Mr. Warman, if I  
8                   could just remind you that you are being asked about  
9                   your reactions to the materials, your sensitivity to  
10                  the materials.

11                  MR. WARMAN: But I guess the reason  
12                  why I am laying the groundwork is to give some --  
13                  because in order for me to say why it is that I don't  
14                  have any sort of extreme reaction to them, I need to  
15                  put them in the context of why I don't have that  
16                  extreme reaction to them.

17                  THE CHAIRPERSON: Okay, you can  
18                  proceed.

19                  MR. WARMAN: So, based on that, I  
20                  don't have the reaction that I would to perhaps similar  
21                  messages were they seen today in a different context or  
22                  even -- if I may, part of it would depend on the  
23                  context in which they were presented.

24                  For instance, the passages dealing  
25                  with homosexuals that were presented to me from the

1 Bible would be, to my interpretation, and my  
2 sensitivity to them a very different thing if they were  
3 simply placed on the internet as this an electronic  
4 copy of the King James Bible, versus, for instance, the  
5 use by someone like Fred Phelps in the United States  
6 who runs, I believe it's called the South Borough  
7 Baptist Church and who would use those passages then to  
8 then extrapolate and say, and for that reason we should  
9 persecute, prosecute, deport, exterminate Jews --  
10 sorry, not Jews, but gays and lesbians.

11 It is very different in terms of what  
12 the intent -- what the desire is and what the context  
13 is within those messages and what purpose it is that  
14 they are used to.

15 So, sorry, I think that addresses  
16 your first -- that was the context writings, and the  
17 second question was...?

18 MS MAILLET: I can't remember now. I  
19 started with one, at the middle there was two and I  
20 think I got back to one question again, so...

21 The next item I'd like to deal with  
22 is Ms Shi suggested in her cross-examination that one  
23 of the motives for you filing these complaints is that  
24 you do it because it's fun and that you have financial  
25 interests in filing these complaints.

1 I'd like you to address those issues.

2 MR. WARMAN: Certainly. When I talk  
3 about the human rights work that I do as fun, it is in  
4 the sense that --

5 MS SHI: I'm sorry, maybe I am a bit  
6 late, I was jotting it down.

7 This question about fun was found in  
8 Mr. Warman's speech which was previously disclosed, it  
9 was in the speech. I'm not sure, and this issue of  
10 whether he had fun doing it clearly has direct bearing  
11 on whether he has had pain and suffering while being  
12 exposed to the messages.

13 I don't think that the connection is  
14 a convoluted one, so I'm not sure why my friend thinks  
15 she's entitled to do re-examination on it.

16 And I would submit that the -- well,  
17 I'm not going to object to the financial interest one,  
18 but I do object to ask Mr. Warman about the fun comment  
19 because that should have been anticipated.

20 THE CHAIRPERSON: I am going to  
21 sustain that objection. I am also of the view that  
22 that could have been reasonably anticipated from the  
23 contents of the speech, however, the question with  
24 respect to financial interest will be permitted.

25 MR. WARMAN: If I was attempting to

1 do this pursuant to a financial interest, I think I  
2 would have to have my head examined. The human rights  
3 and specifically the work that I have conducted against  
4 hate groups and spread of hate propaganda has cost me  
5 tens of thousands of dollars, it has consumed  
6 innumerable hours of my life, it has taken away from  
7 other far more pleasurable activities that I could  
8 engage in than reading hate propaganda and seeking to  
9 counter it.

10 It has taken away time from my  
11 family, from academic pursuits, certainly from just a  
12 general sort of in terms of the hours that we are  
13 allotted within our lives, it has taken up a fair deal  
14 of that over the past, certainly within the past,  
15 extensively within the past five years and to a lesser  
16 extent over the past 15 years.

17 I can only reiterate that the work  
18 that I do has absolutely nothing to do with any pursuit  
19 of financial gain and that if I devoted the number of  
20 hours that I had to a reasonably paying job, I would be  
21 a much richer man right now.

22 MS MAILLET: Those are all my  
23 questions, Madam Chair.

24 THE CHAIRPERSON: Thank you, Ms  
25 Maillet.

1 THE CHAIRPERSON: May I have a  
2 minute, please.

3 Can I just ask, Mr. Warman also has  
4 the right to re-examination of himself.

5 MS SHI: Right.

6 THE CHAIRPERSON: So, I'd like to ask  
7 you, Mr. Warman, if you would like to provide any  
8 re-examination of yourself.

9 MR. WARMAN: Sure. If I could just  
10 have maybe five seconds just to go through some notes.  
11 --- Short pause

12 I think that's fine.

13 THE CHAIRPERSON: Did you have an  
14 issue you wanted to raise, Ms Shi?

15 MS SHI: Yes, just a brief one.

16 EXAMINATION

17 MS SHI: Mr. Warman, you were  
18 testifying just now about the privately laid  
19 information against you. Yes?

20 MR. WARMAN: Yes.

21 MS SHI: Isn't it true that the  
22 information, although it was privately laid, did go  
23 before a justice of the peace before the indictment was  
24 issued?

25 MR. WARMAN: Yes, it did.

1 MS SHI: That's right. And the  
2 indictment was issued?

3 MR. WARMAN: In fact the -- yes, it  
4 did.

5 MS SHI: Before it was withdrawn?

6 MR. WARMAN: By the Crown, yes.

7 MS SHI: By the Crown on the day when  
8 you appeared in court?

9 MR. WARMAN: No, in fact, I never  
10 appeared in court.

11 MS SHI: No, I'm sorry, on the day  
12 when the charge came up.

13 MR. WARMAN: Yeah, it was withdrawn  
14 at the first hearing of it.

15 MS SHI: Right, thank you.

16 Those are my questions.

17 THE CHAIRPERSON: Is that called  
18 re-re-examination?

19 MS SHI: I guess it's cross  
20 re-examination, I guess or re-cross-examination.

21 THE CHAIRPERSON: Okay.

22 MS SHI: Mr. Fromm is ready any time.

23 THE CHAIRPERSON: Can we hang on just  
24 a minute, please. Ms Hartung, the Registry Officer  
25 informs me that she needs a minute to get things set up

1 to begin your case, Ms Shi, so shall we take a  
2 five-minute break.

3 REGISTRY OFFICER: Order, please.

4 --- Upon recessing at 2:45 p.m.

5 --- Upon resuming at 3:05 p.m.

6 REGISTRY OFFICER: Order, please.

7 All rise. Please be seated.

8 THE CHAIRPERSON: Okay, we are ready  
9 to begin with the respondent's case.

10 MS SHI: Madam Chair, just one  
11 matter. I was looking at the exhibits that have only  
12 been marked for identification purpose and it occurs to  
13 me that there are a significant number of them whose  
14 identification may be part of routine, and I wonder if  
15 we could just try to do them one after the other  
16 quickly, but if my friend has concern about one we'll  
17 just leave it and I will have Mr. Fromm speak to it and  
18 identify it properly.

19 Would that be expeditious?

20 THE CHAIRPERSON: You haven't had a  
21 chance...

22 MS SHI: It just occurred to me, I'm  
23 sorry, and I didn't want to make my friend to say yes  
24 or no without, again, much time to look at, like last  
25 time.

1 MS MAILLET: Well, perhaps if we can  
2 just -- it doesn't take time long to identify a  
3 document, so I don't see why we have to identify them  
4 all at once.

5 MS SHI: Okay, sure.

6 THE CHAIRPERSON: Just go through  
7 them in the course of the testimony.

8 FREDERICK PAUL FROMM, SWORN:

9 EXAMINATION

10 MS SHI: Mr. Fromm, are you aware of  
11 a website called the Vanguard News Network or, in  
12 short, VNN?

13 MR. FROMM: Yes, I am.

14 MS SHI: What is it?

15 MR. FROMM: Vanguard News Network is  
16 a discussion group out of the United States and it's  
17 run by a fellow in Missouri named Alex Lindner and it's  
18 a place that contains views that would be generally  
19 considered fairly right of centre.

20 MS SHI: How do you access the  
21 website?

22 MR. FROMM: If you put Vanguard News  
23 Network into your search engine, Google for instance,  
24 it will generate a page that takes you to VNN, and that  
25 page has a banner across the top: No Jews, Just News.

1                   And then there is a box you can click  
2                   on that gives their mission statement and it's called:  
3                   Who are We?, and it has, Alex Lindner is the editor and  
4                   various writers, and it gives their mission statement.

5                   And I'm reading from what I  
6                   downloaded:

7                   "We are a group of disgusted and  
8                   disaffected writers driven out  
9                   of academia by the Semitical  
10                  correctness that has denatured  
11                  our culture. We have come  
12                  together on the internet to  
13                  claim the American mind from the  
14                  Jews. In short, we are the  
15                  anti-bodies and..." (As read)

16                  MS SHI: Just a moment, please, Mr.  
17                  Fromm, there is an objection.

18                  MS MAILLET: Just, I haven't seen  
19                  this document, I don't know if he's reading from  
20                  something that is in the book of documents.

21                  MS SHI: Not as far as I know and I  
22                  think this is just to refresh his memory. If you would  
23                  like to get a copy, I have no problem with that.

24                  THE CHAIRPERSON: I think that would  
25                  be appropriate. Could you provide a copy now?

1 MS SHI: Should I do that now?

2 THE CHAIRPERSON: If you can believe,  
3 I have something in my eye that I have to get out, can  
4 you believe it?

5 MS MAILLET: We will take the same  
6 time to make a copy.

7 THE CHAIRPERSON: Yes, and if there  
8 are any other notes, if those could be also provided,  
9 please.

10 REGISTRY OFFICER: Order, please.

11 --- Upon recessing at 3:15 p.m.

12 --- Upon resuming at 3:20 p.m.

13 REGISTRY OFFICER: Order, please.

14 All rise. Please be seated.

15 THE CHAIRPERSON: Ms Shi?

16 MS SHI: Mr. Fromm, you were just now  
17 reading from a page of notes.

18 MR. FROMM: Yes. This was I  
19 downloaded from the cover page of VNN.

20 MS SHI: Yes.

21 MR. FROMM: And there is a box you  
22 can click on that says Who Are We? And there's a list  
23 of the writers, and then what I would consider the  
24 mission statement: What we are, and I'm reading it:

25 "We are a group of disgusted and

1 disaffected writers driven out  
2 of academia and journalism by  
3 the Semitical correctness that  
4 has denatured our culture. We  
5 have come together on the  
6 internet to reclaim the American  
7 mind from the Jews. In short,  
8 we are the anti-bodies and our  
9 advent heralds the day a white  
10 political force rises and  
11 reasserts civilization." (As  
12 read)

13 MS SHI: Madam Chair, I am in your  
14 hands whether -- or in my friend's hands as to whether  
15 we mark this as an exhibit.

16 MS MAILLET: I would like it marked  
17 as an exhibit.

18 THE CHAIRPERSON: All right. I am  
19 agreeable to that.

20 REGISTRY OFFICER: The document  
21 entitled Vanguard News Network, Who We Are, I have one  
22 page of two, will be marked as respondent Exhibit R-21.

23 EXHIBIT NO. R-21: Document  
24 entitled Vanguard News Network,  
25 Who We Are, page 1 of 2.

1 MS SHI: Thank you.

2 Mr. Fromm, are you aware that there  
3 are postings on VNN?

4 MR. FROMM: Yes.

5 MS SHI: Have you read any of the  
6 postings?

7 MR. FROMM: I have read a few.

8 MS SHI: How do you access the  
9 postings?

10 MR. FROMM: If you're not signed up  
11 as a member --

12 MS SHI: Can you explain a bit about  
13 signing up as a member, what do you mean?

14 MR. FROMM: Okay. When you go beyond  
15 the main page there is the opportunity to click on to,  
16 I think they are called forums, you click on to that,  
17 then it gives you a menu of forums, there is general  
18 issues, things like music, self defence, I may not have  
19 the name exactly right, but debate or opposition, like  
20 if you don't agree with some of the things on VNN, you  
21 can click on that and say your piece,

22 And so you would click on one of  
23 those that might interest you, let's say, general  
24 discussion, and there would be a variety of threads,  
25 the people post topics that are of interest to them,

1 and without joining you can click on some of them.

2 And reason I hesitate is the first  
3 time I went to VNN I had heard that an American friend  
4 of mine had been trashed in pretty salty language and I  
5 went to try to find this posting, and I found I  
6 couldn't go without a certain place without joining.

7 So, the general public can see some  
8 of what's there but they can't see it all, and if you  
9 wish to, you know, go further, you have to join, sign  
10 up.

11 MS SHI: And what does that involve?

12 MR. FROMM: It involves selecting a  
13 name, selecting a password and waiting for approval.  
14 You submit your name, your password and send that in,  
15 and at some point, you know, you may get approved and  
16 then you can -- at that point you can access most -- I  
17 guess you can access all of what is on the site and you  
18 can make postings yourself, answer postings.

19 MS SHI: I'm sorry, how do you make a  
20 posting?

21 MR. FROMM: You would click on start  
22 -- you go to one of the categories that you are  
23 interested in, let's just say general issues, and  
24 click, create a new thread and post your information  
25 there.

1 MS SHI: And that is after you have  
2 joined as a member?

3 MR. FROMM: That is after you have  
4 joined, yes.

5 THE CHAIRPERSON: Can I just ask a  
6 question.

7 MS SHI: Of course.

8 THE CHAIRPERSON: Mr. Fromm, do you  
9 have any idea of how approval is granted for becoming a  
10 member?

11 MR. FROMM: No, I don't.

12 THE CHAIRPERSON: Sorry, Ms Shi, go  
13 ahead.

14 MS SHI: That's all right, thank you.

15 Mr. Fromm, could you please turn to  
16 tab 37 of that big volume in front of you, please,  
17 starting at page 207.

18 MR. FROMM: Yes.

19 MS SHI: I can advise you that you  
20 can take it from me that this is a speech, notes of a  
21 speech that Mr. Warman gave to the Anti-Racist Action  
22 group on or about July 6, 2005 and I will simply refer  
23 to the Anti-Racist Action group as the ARA, all right?

24 Yes?

25 MR. FROMM: That's what it says on

1           that first page, on page 207.

2                       MS SHI: Right.

3                       MR. FROMM: But my understanding is  
4           that the speech was, in fact, given in early August.

5                       MS SHI: Oh, all right. Now, keeping  
6           that speech -- if you could put your finger in it, I  
7           would like you then to turn to tab 36.

8                       Could you please take a look at all  
9           the documents in that tab for a moment and then I will  
10          ask you some questions.

11                      MR. FROMM: The information comes  
12          after the tab; does it?

13                      MS SHI: Yes, it does.

14                      MR. FROMM: So, 36 is what begins  
15          with page 192?

16                      MS SHI: Right, it looks like this.

17                      MR. FROMM: Okay, yes.

18                      MS SHI: Do you recognize them?

19                      MR. FROMM: Yes, I do.

20                      MS SHI: All right.

21                      Madam Chair, I am going to go through  
22          it quickly first with the witness for identification  
23          purposes and then I will ask further questions on it.

24                      So, Mr. Fromm, just very quickly, if  
25          you could identify for us these pages and go through

1           them and tell us just briefly what you understand them  
2           to be.

3                           THE CHAIRPERSON: Mr. Warman?

4                           MR. WARMAN: Madam Chair, I'm sorry,  
5           I just need to express a concern that there appear to  
6           be four separate documents within this one tab and I'm  
7           not sure how Ms Shi is proposing to identify them,  
8           whether singly or as some sort of group.

9                           MS SHI: Well, what I thought I would  
10          do is have Mr. Fromm tell me one and for each complete  
11          document we will probably mark it.

12                          THE CHAIRPERSON: Do they all belong  
13          together in some sort of a way?

14                          MS SHI: Well, they are documents  
15          that, in effect, all come from the ARA website and that  
16          is why they were put together, so...

17                          THE CHAIRPERSON: Yes.

18                          MS SHI: I think the confusion comes  
19          from the fact that part of it is in the form of an  
20          e-mail from Mr. Fromm to me.

21                          THE CHAIRPERSON: Right.

22                          MS SHI: But my understanding, and  
23          Mr. Fromm will testify to that, the information was  
24          also downloaded from the ARA but it was just put into  
25          the form of an e-mail.

1                   What the e-mail contains is the  
2 information about a conference where Mr. Warman spoke.

3                   THE CHAIRPERSON: I understand. I am  
4 just thinking, for clarity sake, is your point Mr.  
5 Warman that you prefer to see this broken up in your  
6 separate exhibits.

7                   MS SHI: I have no problem with that.

8                   MR. WARMAN: Yes, I believe that  
9 would be easier to do, or easier.

10                  THE CHAIRPERSON: Okay. So, the  
11 first two pages belong with the second two pages?

12                  I will let you go through that and  
13 make that decision as you see fit with the witness.

14                  MS SHI: Well, if I am not mistaken I  
15 think the first five pages belong together, they are  
16 just direct downloads from the website.

17                  Mr. Fromm, could you please identify  
18 the document contained on page 192 to 196, please.

19                  MR. FROMM: Yes. Those first five  
20 pages of this tab are an article that appeared on the  
21 Anti-Racist Action website and reported the ARA's  
22 counter demonstration outside the Metro West Detention  
23 Centre on July 25, 2004.

24                  MS SHI: Mr. Fromm, just a moment,  
25 please, Mr. Warman has an objection I think.

1                   MR. WARMAN: Madam Chair, I wonder if  
2 my colleague could establish the relevance of this  
3 document, I believe especially in light of Madam  
4 Chair's direction that any questions around violence or  
5 non-violence of ARA is not at issue in this case,  
6 please.

7                   THE CHAIRPERSON: Ms Shi?

8                   MS SHI: If you see on page 3 it's a  
9 picture of Mr. Winnicki the respondent, and in Mr.  
10 Warman's speech to the ARA he also attempted to put Mr.  
11 Winnicki's face up to the ARA crowd.

12                   I know that you have ruled that I'm  
13 not -- that it is irrelevant whether the ARA is a  
14 violent group, but you also said that I could ask  
15 questions and I quote:

16                   "...about the ARA and Mr.  
17 Warman's involvement with it."

18                   (As read)

19                   And here I'm drawing a parallel that  
20 Mr. Warman, it seems like his action and that of the  
21 ARA has some sort of a synchronization, if I could put  
22 it that way, as well this article talks about the event  
23 that is captured on that CBC program, on the video that  
24 we have seen earlier and I think that it is very ironic  
25 that Mr. Warman has accused my client of retaliation

1           when he is the one who, in my view -- his actions are  
2           in some ways in sync with that of the ARA, put Mr.  
3           Winnicki's picture up at that conference was not  
4           exactly an act of good will.

5                       MR. WARMAN:  If I could just point  
6           out that the picture was in fact -- the fact of the  
7           matter is that it was never displayed and that is the  
8           testimony that has been entered.

9                       MS SHI:  I didn't say it was, I said  
10          it was intended, and that is not disputable and he  
11          didn't do it because he decided not to do it, he didn't  
12          put the picture on because he couldn't.

13                      I think that I understand, Madam  
14          Chair, your concern about the evidence going too wide  
15          but this has to do with Mr. Warman's relationship with  
16          the ARA with respect to my client and I think that has  
17          to be something that the Tribunal should be a little  
18          bit concerned about.

19                      THE CHAIRPERSON:  Okay.  On that  
20          basis, Ms Shi, I am going to rule this admissible,  
21          and I'm reserving my ruling with respect to the weight  
22          it will be granted.

23                      MS SHI:  Thank you.

24                      So, could we please mark that as an  
25          exhibit, tab 36 from page 192 to 196, please.

1                   REGISTRY OFFICER: The five-page  
2 document from pages 192 to 196 taken from the ARA  
3 website ARA/YL action against CAF Zundel a success!  
4 will be marked as respondent Exhibit R-22.

5                   EXHIBIT NO. R-22: Five-page  
6 document from pages 192 to 196  
7 taken from the ARA website  
8 ARA/YL action against CAF Zundel  
9 a success!

10                  THE CHAIRPERSON: I would like to  
11 make it clear on the record that the basis for my  
12 ruling that this is admissible is the relationship  
13 between Mr. Warman and Mr. Winnicki as it was portrayed  
14 in the speech that Mr. Warman gave and as this evidence  
15 may relate to that.

16                   Go ahead, Ms Shi.

17                   MS SHI: Thank you.

18                   Now then, continue to the next five  
19 pages 197 to 201, Mr. Fromm.

20                   Can you tell me what that is?

21                   MR. FROMM: These pages 197 to 201  
22 were downloaded from the ARA website in late July and  
23 are what I would call a conference call for the ARA  
24 conference which was to be held in Toronto in early  
25 August of 2004, so it is a document that gives when it

1 will start registration, some of the --

2 MS SHI: Did you say 2004, Mr. Fromm?

3 MR. FROMM: I should say 2005.

4 MS SHI: Thank you.

5 MR. FROMM: Gives some of the  
6 workshops that would be held, and what was of  
7 particular interest why I e-mailed this e-mail to you,  
8 on the bottom of page 199, Who is the featured keynote  
9 speaker, and that is Richard Warman, a lawyer from  
10 Ottawa.

11 MS SHI: Right. Could I please have  
12 that marked as Exhibit 23, please.

13 THE CHAIRPERSON: Mr. Warman, are you  
14 objecting?

15 MR. WARMAN: No, sorry. My only  
16 question is that I appear to be missing page 200.

17 MS SHI: I was hoping I was the only  
18 one, but I seem to be missing page 200 too. I  
19 apologize, you will have it first thing tomorrow  
20 morning. I'm not too sure how this happened and if at  
21 that time Mr. Warman has any problem with the document,  
22 obviously, he should have the right to make submissions  
23 on it.

24 But it simply is a continuation of  
25 the description -- may have a moment, I may have the

1 page here.

2 MR. FROMM: Here, it's in mine, it's  
3 just the timetable for the weekend. (handed)

4 MS SHI: Well, it also has a  
5 paragraph describing Mr. Richard Warman and I don't  
6 want to ask for another break to go photocopy, could I  
7 just quickly circulate it to see if my friend and Mr.  
8 Warman has any objection to that page.

9 MS MAILLET: Perhaps what we could do  
10 is ask Ms Warsame if she can go make a copy.

11 MS SHI: I'm grateful for that.

12 THE CHAIRPERSON: That is a very good  
13 suggestion. Thank you Ms Warsame.

14 MS SHI: So, we will hold this down  
15 then.

16 THE CHAIRPERSON: We will move on to  
17 something else until...

18 MS SHI: Yes.

19 Mr. Fromm, let's go back to the  
20 speech that I had asked you to look at earlier. I had  
21 told you that this is notes of the speech that Mr.  
22 Warman gave to the ARA conference and you said it  
23 happened at 2005.

24 So, have you had a chance to read the  
25 speech?

1 MR. FROMM: Yes, you provided it to  
2 me near the end of the lunch hour.

3 MS SHI: Right. Now, I would like to  
4 take you to page 210 and I would like to refer you to  
5 the full paragraphs, the second -- first and the second  
6 full paragraphs, they both end in brackets [Winnicki  
7 image 1] and the second one is [Winnicki image 2].

8 Do you see it?

9 MR. FROMM: Yes, I do.

10 MS SHI: What can you tell us about  
11 the relationship between Mr. Warman and Mr. Winnicki?

12 MR. FROMM: Well, going by the text  
13 here it would seem that having spoken at some length  
14 about him, and I'll -- this according to him, what a  
15 bad person what a bad person Mr. Winnicki is, showing  
16 these images to a sort of group like the ARA that has a  
17 long history of violence, was really targeting Mr.  
18 Winnicki.

19 MR. WARMAN: Objection.

20 MR. FROMM; Here's the bad guy and  
21 here's a picture of him.

22 THE CHAIRPERSON: Can you stop for  
23 just a moment, please, Mr. Fromm.

24 MR. WARMAN: Mr. Fromm is attempting  
25 to give opinion evidence and not factual evidence.

1           It's clear this is not within his own realm of  
2           knowledge, his own factual basis knowledge, he's saying  
3           what he's extrapolating this to mean from my speech.

4                         Mr. Fromm, I need not say that Mr.  
5           Fromm has not been qualified as an expert witness.

6                         THE CHAIRPERSON: Ms Shi?

7                         MS SHI: Well, I could ask the  
8           witness to give us testimony as to his knowledge about  
9           their relationship and perhaps he could clarify for us  
10          a bit more as to how he comes to that conclusion.

11                        When people talk about people's  
12          relationship, I think inevitably there is a bit of a  
13          mix of knowledge and extrapolation.

14                        Perhaps I could ask the witness to be  
15          clear about that, as to what he knows about their  
16          relationship.

17                        THE CHAIRPERSON: To be clear here, I  
18          think this is going to be an issue that is going to  
19          come up and I think we need to be clear that the law  
20          recognizes that when lay people are giving evidence  
21          that there is sometimes a blur between fact and opinion  
22          but the further that we stray from factual personal  
23          knowledge and the closer we get to the real issue that  
24          the trier of fact has to decide, the more we get into  
25          dangerous territory for a lay witness to be providing

1 opinion on.

2 So, I would like you to as much as  
3 possible to keep your questions to personal information  
4 and opinion that may arise out of that personal  
5 information is fine, but I need it to be based on the  
6 personal information that Mr. Fromm has of the  
7 situation and not his read of the document.

8 MS SHI: That's right.

9 Mr. Fromm, I guess what I would like  
10 to ask you is, I brought you to the paragraph to give  
11 you a bit of a context as to the subject that I would  
12 like to talk about, but please focus your testimony to  
13 your knowledge.

14 Tell us what you know about the  
15 relationship between Mr. Warman and Mr. Winnicki.

16 MR. FROMM: By way of answer, if I  
17 can go back to page 194 of the previous document.

18 MS SHI: Surely.

19 THE CHAIRPERSON: Sorry, back to  
20 page..?

21 MR. FROMM: Page 194, that's at tab  
22 36.

23 MS SHI: Exhibit...

24 THE CHAIRPERSON: It is not yet an  
25 exhibit.

1 MS SHI: That is an exhibit, is it  
2 exhibit twenty...

3 THE CHAIRPERSON: Oh, this one is.

4 REGISTRY OFFICER: 22.

5 MS SHI: 192 to 196 has been marked  
6 as R-24 (sic). That's the first half of the tab.

7 MR. FROMM: In that exhibit, at the,  
8 I guess at the page after the text report on the  
9 confrontation, there is this page that had a number of  
10 pictures of people who had been in the -- among the  
11 free speech protestors, our side at that demonstration,  
12 several of us are named, Paul Fromm, Melissa Gill,  
13 others like Tom Winnicki whose No. 1 there are not  
14 named, but their picture is there, and there's the  
15 exhortation:

16 "Check out these goons and  
17 provide information on these  
18 people if you know them." (As  
19 read)

20 This is part of a pattern the ARA has  
21 followed for nearly 15 years. Somewhere around 1994,  
22 there were posters put up by the ARA in downtown  
23 Toronto with the pictures of a number of people that  
24 they didn't like, myself included, and they had my,  
25 among other information about me, my licence plate

1 number.

2 MS SHI: Mr. Fromm, I think Madam  
3 Chair would like the focus to be on the ARA with  
4 respect to its relationship with Mr. Warman.

5 I don't know if I'm getting you a bit  
6 confused, I was asking you to talk about the  
7 relationship with Mr. Winnicki and Mr. Warman, but I  
8 would like you to keep -- when you discuss the ARA, to  
9 confine it within the context of its relationship with  
10 Mr. Warman.

11 MR. FROMM: Okay. And, again, I'm  
12 not sure if this is exactly responsive, but it seemed  
13 to me that what the text here says, the posting of a  
14 picture of Mr. Winnicki was consistent with a long  
15 pattern of the ARA of targeting people, putting up  
16 pictures about, so on.

17 As far as what Mr. Warman's  
18 relationship with Mr. Winnicki is, I have tracked this  
19 back to 2003 from press reports, from things that Mr.  
20 Winnicki has told me, from legal documents I have  
21 examined, and there's been a series of views of Mr.  
22 Warman against Mr. Winnicki, complaints to his internet  
23 service provider in London in 2003, a complaint to the  
24 Canadian Human Rights Commission and, again, I suppose  
25 that's what we are dealing with today, and various

1 complaints about his postings to the London police and  
2 I believe to the Ontario Provincial Police.

3 So, there is a long history of bad  
4 blood there.

5 MS SHI: Thank you. Madam Chair, Ms  
6 Warsame very nicely came back with page 200. I wonder  
7 if we could take a look at it now, please.

8 REGISTRY OFFICER: Mr. Fromm, is  
9 there a copy there?

10 MR. FROMM: No, I took the copy out  
11 so you could copy.

12 MS SHI: Could we mark that as an  
13 exhibit, please, page 197 to 201.

14 THE CHAIRPERSON: Yes.

15 REGISTRY OFFICER: The five-page  
16 e-mail to Ms Shi from Paul Fromm including information  
17 regarding the ARA network conference 2005 will be  
18 marked as respondent Exhibit R-23, it is found at the  
19 back of tab 36 of the respondent's book of documents,  
20 Volume I.

21 EXHIBIT NO. R-23: Five-page  
22 e-mail to Ms Shi from Paul Fromm  
23 including information regarding  
24 the ARA network conference 2005.

25 MS SHI: Thank you.

1 THE CHAIRPERSON: Can you give me  
2 just two minutes to get myself organized here, Ms Shi.

3 MS SHI: May I proceed?

4 THE CHAIRPERSON: Mm-hmm, you may.

5 MS SHI: Thank you. Mr. Fromm, could  
6 I take you to page 5 of the speech, or page 211.

7 MR. FROMM: Okay.

8 MS SHI: In the second complete  
9 paragraph towards the second half it talks about --  
10 well, I'll just read it:

11 "Adding fuel to the fire of  
12 concern about this person...",  
13 And I understand that this is talking  
14 about Mr. Winnicki,

15 "...is the fact that last  
16 September 12, Tomasz Winnicki  
17 and three other individuals were  
18 stopped in Toronto in Winnicki's  
19 car while they were travelling  
20 to the last demonstration  
21 outside a Toronto West Detention  
22 Centre in support of imprisoned  
23 Holocaust denier Ernst Zundel.  
24 As a result of that stop, Mr.  
25 Winnicki has now been charged

1 with numerous offenses, after  
2 throwing knives, a bow and  
3 arrows and body armour were  
4 found in the vehicle. The  
5 demonstration they were headed  
6 for, of course, was one where  
7 Anti-Racist Action Toronto was  
8 going to be attending to ensure  
9 that public support for one the  
10 of the world's worse Holocaust  
11 deniers would not go unopposed."

12 (As read)

13 Mr. Fromm, do you know anything about  
14 this demonstration?

15 MR. FROMM: Yes, I do, I organized  
16 it.

17 MS SHI: And do you know what  
18 happened at the demonstration with respect to the ARA?

19 MR. WARMAN: Objection. I fear that  
20 -- and again perhaps I should properly just wait for  
21 the question, but I fear that Ms Shi may be leading Mr.  
22 Fromm to a question concerning the violence or  
23 non-violence of the group Anti-Racist Action.

24 MS SHI: Where I am going is the fact  
25 is Mr. Fromm was at that demonstration, not only he

1 organized it, he was there, as you will see on the  
2 video, and I'm establishing the foundation as to why I  
3 want to enter that CBC program as an exhibit, and  
4 that's because it doesn't just show ARA as a violent  
5 group, but it shows in the speech how Mr. Warman  
6 characterized that action and then put it in the  
7 context with respect to Mr. Winnicki.

8 It goes to show the relationship  
9 between Mr. Warman and ARA, and in this case it's  
10 particularly germane because it is with respect to ARA  
11 and Mr. Winnicki at the same time.

12 And that is why I feel that that  
13 demonstration is particularly germane, because when you  
14 read this passage you can't help but get the feeling  
15 that Mr. Warman was applauding what the ARA did, and I  
16 would like to submit as evidence as to what he was  
17 applauding for.

18 I think that is extremely pertinent  
19 and it falls squarely within your direction that I  
20 could adduce evidence and ask questions about ARA's  
21 relationship with the witness.

22 I think what was ARA and Mr. Warman's  
23 involvement with them, and this will show the nature of  
24 the involvement.

25 I have made no secret that it is our

1 view that Mr. Warman incites other young people into  
2 violence, and this case it is particularly bad because  
3 it was in the context of, there is an underlying  
4 message that, isn't it great what you guys did, you got  
5 Winnicki charged.

6 And that is why I want to show the  
7 video, to show what happened.

8 THE CHAIRPERSON: What does that have  
9 to do with the messages in question?

10 MS SHI: It has to do with, among  
11 others, the claim of retaliation, and I go back to the  
12 argument, but I won't belabour the point that we went  
13 through extensively this morning, again, as to the  
14 claim of pain and suffering, the sensitivity, the  
15 character, the credibility of the witness, that if this  
16 evidence does show that Mr. Warman is the kind of  
17 person who incites young people to commit violence, I  
18 would submit that I don't think I need any law to say  
19 that it doesn't lie in his mouth to say, I got hurt by  
20 voluntarily going into a website and looking at some  
21 messages.

22 I don't know how else I can put it.  
23 It seems to be a very, very simple intuitive idea that  
24 this Tribunal, in my respectful submission, has to  
25 consider that Mr. Winnicki posts a few words calling

1 Mr. Warman Jew and it's retaliation, that's worth  
2 \$30,000 in compensation.

3 But Mr. Warman at the same time in  
4 his value judgment believes that he could go and  
5 applaud a bunch of people in the ARA for their, as you  
6 saw -- you have seen the video. a pretty violent  
7 demonstration that resulted in the police arresting the  
8 ARA.

9 They not only were very aggressive at  
10 the demonstration, they chased Mr. Fromm and his friend  
11 to Jack Astor's.

12 THE CHAIRPERSON: I think I have to  
13 talk to you about the fact that that's too far out of  
14 the realm of the relevance, the issue of the violence  
15 that went on in that demonstration, and there has been  
16 no evidence led to this point to establish that Mr.  
17 Warman was involved in that violence.

18 MS SHI: He applauds it. I am  
19 submitting to you if you read it, he is certainly not  
20 saying to them, don't do it kids, he says:

21 "The demonstration they were  
22 headed for, of course, was one  
23 where Anti-Racist Action Toronto  
24 was going to be attending to  
25 ensure that public support for

1                                   one of the world's worst  
2                                   Holocaust deniers would not go  
3                                   unopposed." (As read)

4                   THE CHAIRPERSON: I don't hear any  
5                   mention in there of violence and nor should -- I mean,  
6                   that is not the issue.

7                   MS SHI: But, Madam Chair, the  
8                   violence had already happened, Mr. Warman is applauding  
9                   what they did, he calls it their way of putting up  
10                  opposition.

11                  This speech was given about I think  
12                  about a year after that violent incident happened and  
13                  this is the way Mr. Warman characterizes it to this  
14                  group of people that did that, and this is the same Mr.  
15                  Warman who then puts to these people, or tried to  
16                  anyway, Mr. Winnicki's picture together with his  
17                  messages that I would submit Mr. Warman full well knows  
18                  the ARA doesn't like.

19                  So, I submit to you this is not  
20                  evidence just for, look at how bad the ARA is, but this  
21                  is very, very narrow of ARA behaviour and Mr. Warman's  
22                  own, not just reaction, but his interaction with the  
23                  ARA with respect to an incident that involved Mr.  
24                  Winnicki.

25                  If I am going to be allowed to

1 explore Mr. Warman's relationship with the ARA which is  
2 based on your ruling this morning, I should be able to,  
3 this falls four square within it.

4 THE CHAIRPERSON: Okay.

5 MS SHI: Thank you.

6 THE CHAIRPERSON: Ms Maillet.

7 MS MAILLET: Yes, Madam Chair, it's  
8 my submission that this falls squarely dealing with the  
9 nature of the ARA and whether or not it's a violent  
10 organization.

11 If we want to talk about a photo  
12 that's put to a group or intended to put to group or  
13 talk about a demonstration, it really wouldn't matter  
14 if her point wasn't getting to the nature of that  
15 organization, and my submission is that Ms Shi is  
16 trying to go through the back door what she can't do  
17 through the front and she's trying to establish what  
18 the nature of the ARA is.

19 If they are talking about people  
20 inciting violence, that's exactly what she's looking  
21 for (a) by trying to have Mr. Fromm testify about the  
22 nature of the ARA and what they did at the  
23 demonstration and how violent or non-violent they are  
24 and by showing the video again that we have already  
25 seen.

1                   So, it's my submission that that goes  
2 directly to the nature of the ARA and not Mr. Warman's  
3 relationship with them.

4                   MR. WARMAN: I just close the  
5 submission on that point by saying that, in fact, Mr.  
6 Fromm's testimony has just been that the ARA's posting  
7 of their photo on their website pre-dates the speech  
8 that was given. The ARA was already clearly in  
9 possession of the photo of Mr. Winnicki long before, I  
10 won't say long -- prior to my attempting, but not  
11 actually doing, posting a photo of him on a screen  
12 while making a speech.

13                   THE CHAIRPERSON: I must confess that  
14 the whole process is becoming very circuitous and a  
15 very winding path around and about things, and I think  
16 what is important when we get to this stage is to focus  
17 on what we are really about here, and that was my hope  
18 this morning in giving my ruling was to say what we are  
19 really looking at here are whether these messages  
20 really are likely to he expose an identifiable group to  
21 hatred and contempt, and whether or not, once we have  
22 looked at that, then whether or not there has been any  
23 damages for which there needs to be compensation.

24                   And what I indicated was that I  
25 really felt that the issue of the violence of the ARA

1 or the non-violence of the ARA was not relevant to the  
2 question of the messages themselves, nor relevant  
3 really to the question of the damage that might have  
4 been suffered by anyone, but that I did feel that there  
5 was an issue with respect to potential pain and  
6 suffering on the part of Mr. Warman insofar as he may  
7 have been engaged in a relationship or have been  
8 involved in a kind of a process, you know, and the  
9 extent to which that spoke to damages.

10 And so that is why I ruled that the  
11 issue of his relationship with the ARA and the whole  
12 process around his laying the complaint and the other  
13 activities that he was involved in and his speech was  
14 relevant.

15 But I am concerned, Ms Shi, that you  
16 are tempting to get back to the issue of the violent  
17 nature of the confrontation that occurred and that, to  
18 me, is not germane to this inquiry, the violent nature  
19 of the confrontation that occurred as a result of the  
20 demonstration around Mr. Zundel, that is too far  
21 outside of the realm of relevance.

22 MS SHI: Per se I agree with you,  
23 Madam Chair, per se violence, and I have listened to  
24 you very carefully this morning and that is why I have  
25 looked at the evidence that I want to adduce and

1 mindful that it has to tie back in, to the extent I  
2 talk about the ARA, it has to be limited to its  
3 involvement with Mr. Warman, but without that video, if  
4 you read this paragraph you don't really know what Mr.  
5 Warman is commending the ARA for doing.

6 THE CHAIRPERSON: What he's referring  
7 to.

8 MS SHI: Yes. And this is really --  
9 Mr. Warman said the ARA already had Mr. Winnicki's  
10 picture on his website.

11 If I may draw an analogy, him trying  
12 to put it up together with Mr. Winnicki's very  
13 unpopular messages in an ARA conference is like waving  
14 a red flag in front of a bull and that is the argument  
15 I intend to make, and consistently then you see him  
16 commending them for making sure that the Zundel's  
17 demonstrators did not go unopposed.

18 Well, how did they achieve that?  
19 What is it that Mr. Warman thought was the good job  
20 that they did? And that is not answerable anywhere  
21 unless we allow the video in.

22 THE CHAIRPERSON: What is the  
23 relationship between the involvement with Mr. Winnicki  
24 and the demonstration?

25 MS SHI: Simply that you can see in

1           this paragraph he ties it in to say that it is during  
2           this trip that Mr. Winnicki got charged.

3                         THE CHAIRPERSON: But then why is it  
4           necessary to show the demonstration?

5                         I mean, what he is saying here is  
6           that Mr. Winnicki was on his way to this demonstration,  
7           and that according to Mr. Warman he was stopped, he was  
8           charged, he was found in possession.

9                         MS SHI: And the ARA made sure that  
10          that demonstration wasn't unopposed and it isn't  
11          wonderful that all this happened, that it wasn't  
12          unopposed and that Mr. Winnicki got charged.

13                        THE CHAIRPERSON: But the  
14          demonstration itself really had nothing to do with Mr.  
15          Winnicki...

16                        MS SHI: Well, to the extent the  
17          video informs as to the violence that occurred, as to  
18          the extremely aggressive way the ARA chased Mr. Fromm  
19          and his friends there and ended up being arrested by  
20          police.

21                        THE CHAIRPERSON: That is back to the  
22          violent nature of the ARA.

23                        MS SHI: Exactly, but it shows the  
24          nature of Mr. Warman's relationship with the ARA, they  
25          did a violence and he applauded them or he encourages

1           them. I mean, what was he commending them for?

2                         THE CHAIRPERSON: I see your point.

3                         MS SHI: What was he commending them  
4           for? He is saying go for it, I think.

5                         THE CHAIRPERSON: Well, this is  
6           another one of those situations where I am going to  
7           rule that this is admissible and I am going to reserve  
8           my judgment on the weight that I will give, if any, to  
9           this evidence.

10                        MS SHI: Thank you. All right.

11                        Could we then please -- Mr. Fromm has  
12           seen the video. If, Madam Chair, you feel that he  
13           needs to identify the video, we could do that very  
14           quickly and I'd like to have the video marked as an  
15           exhibit then, please.

16                        Oh, we are going to need to set it  
17           up. Is it possible to just mark it, because Mr. Fromm  
18           has seen it, I have shown it to him.

19                        It's a video that he's very familiar  
20           with but, if necessary, we could -- I can't believe I  
21           am saying it again -- take a short break so we can set  
22           up the computer to show it.

23                        THE CHAIRPERSON: Well, let's hear  
24           from Commission counsel.

25                        MS MAILLET: If it's going to be

1           admissible and there is no further issue, then we have  
2           seen the document.

3                       Unless Mr. Warman has any objection,  
4           I am fine with consenting to it.

5                       THE CHAIRPERSON:   Okay.

6                       We need a copy of it.

7                       MS SHI:   I'm sorry?

8                       THE CHAIRPERSON:   The Tribunal does  
9           not have a copy of it.

10                      MS SHI:   I think it went with the  
11           computer.  Sorry, I will submit it now.

12                      MR. FROMM:   Is that question still  
13           outstanding about that paragraph at page 211?

14                      MS SHI:   No, I think we have agreed  
15           that you don't need to identify the CD of the CBC  
16           program which was the point of my question, so...

17                      MR. FROMM:   Wasn't this is the one  
18           about Tom Winnicki's arrest?

19                      MS SHI:   It was the one about the  
20           demonstration, I was going up to that, that was the  
21           point, and now that we are going to mark it, I can move  
22           on.

23                      THE CHAIRPERSON:   How long is it  
24           going to take to get it?

25                      MS SHI:   I think she maybe needs to

1 pop it out.

2 REGISTRY OFFICER: Of course another  
3 copy will be provided to the Tribunal for the Chair.

4 MS SHI: Yes.

5 REGISTRY OFFICER: The CD from the  
6 CBC program about Anti-Racist Action found in tab 40  
7 marked for identification as J will now be marked as  
8 respondent Exhibit R-24.

9 EXHIBIT NO. R-24: CD from the  
10 CBC program about Anti-Racist  
11 Action found in tab 40 marked  
12 for identification as J.

13 MS SHI: Thank you.

14 Mr. Fromm, could we please go to tab  
15 40, please.

16 MR. FROMM: Yes.

17 MS SHI: Can you take a look at the  
18 tab and then I am going to ask you to identify it,  
19 please.

20 MR. FROMM: This is excerpts from the  
21 Bible.

22 MS SHI: Can you just quickly go  
23 through every page, please, to make sure.

24 Madam Chair, I am in your hands. I  
25 am wondering if there is a way to expedite this.

1                   Mr. Fromm has checked on the internet  
2 as to these downloads and --

3                   THE CHAIRPERSON: Well then, let's  
4 hear him.

5                   MS SHI: If there is no objection,  
6 perhaps we could enter all these downloads.

7                   MS MAILLET: Perhaps if you could ask  
8 him that.

9                   THE CHAIRPERSON: Yes.

10                  MS SHI: Mr. Fromm --

11                  MR. FROMM: Yes.

12                  MS SHI: Did you check to see if  
13 these were downloaded from the internet?

14                  MR. FROMM: Yes, I did.

15                  MS SHI: Thank you.

16                  Could we please mark that as an  
17 exhibit, please.

18                  REGISTRY OFFICER: The excerpts from  
19 the Bible on women found at tab 40 of the respondent's  
20 book of documents, Volume I, formerly marked for  
21 identification as E will now be marked as respondent  
22 Exhibit R-25.

23                  EXHIBIT NO. R-25: Excerpts from  
24 the Bible found at tab 40 of the  
25 respondent's book of documents,

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Volume I.

MS SHI: So, it's from page 231 to 262.

MS MAILLET: If I just may clarify then, it's excerpts from the Bible on Christians.

MS SHI: Right. Perhaps just call it excerpts from the Bible would be more accurate, if we could. Just restate it that --

REGISTRY OFFICER: The document filed as respondent Exhibit R-25 will be entitled excerpts from the Bible.

MS SHI: Madam Chair, my friend will correct me if I'm mistaken but I believe for tab 41 my friend has said that is excerpts from the book Mein Kampf by Adolph Hitler.

Perhaps we could mark that as an exhibit.

MS MAILLET: Yes, we took no issue with the fact that these were excerpts from that book.

THE CHAIRPERSON: Okay.

Mr. Warman?

MR. WARMAN: Yes, that is right.

REGISTRY OFFICER: The four-page excerpts of Mein Kampf by Adolf Hitler found at tab 41 of the respondent's book of documents, Volume I, will

1 be marked as respondent Exhibit R-26.

2 EXHIBIT NO. R-26: Four-page  
3 excerpts of Mein Kampf by Adolf  
4 Hitler found at tab 41 of the  
5 respondent's book of documents,  
6 Volume I.

7 MS SHI: Thank you.

8 Mr. Fromm, please take a look at tab  
9 42 and then I would like you to answer my question if  
10 you have checked that you downloaded from the internet.

11 MR. FROMM: Yes, on the website,  
12 Islam City, the versions from the Quoran are available  
13 in a number of different languages, as you see on page  
14 268, English, Arabic, Turkish, French, German and  
15 Spanish.

16 MS SHI: Could we mark that as an  
17 exhibit, please.

18 MR. WARMAN: I just ask one quick  
19 point of clarification, is it his testimony that Mr.  
20 Fromm, that is he himself downloaded these documents?

21 MS SHI: No. I want it perfectly  
22 clear (off mike) did the downloading, but I know about  
23 this because Mr. Fromm sat in my office in front of  
24 computer to check them. He did not do the actual  
25 downloading.

1 THE CHAIRPERSON: That is you  
2 speaking. Could we get Mr. Fromm on the record.

3 MS SHI: Mr. Fromm, please clarify,  
4 did you actually download it?

5 I want to clarify my last question,  
6 they were downloaded from the internet.

7 MR. FROMM: This research was done by  
8 counsel, but I did get on the IslamiCity website, did  
9 check that versions from the Quoran are there as seen  
10 on these pages and six different languages.

11 MS SHI: Could we mark that as an  
12 exhibit.

13 THE CHAIRPERSON: Yes.

14 REGISTRY OFFICER: The document found  
15 at tab 42 of the respondent's book of documents, Volume  
16 1, currently marked for identification as G, excerpts  
17 from the Quoran from pages 267 to 279A will be marked  
18 as respondent Exhibit R-27.

19 EXHIBIT NO. R-27: Document  
20 found at tab 42 of the  
21 respondent's book of documents,  
22 Volume 1, currently marked for  
23 identification as G, excerpts  
24 from the Quoran from pages 267  
25 to 279A.

1 MS SHI: Thank you.

2 Mr. Fromm, could we go to tab 43,  
3 please and could you go through this one page by page  
4 and then I am going to identify these pages with you a  
5 few at a time.

6 MR. FROMM: All right.

7 MS SHI: What is pages 280 to 282?

8 MR. FROMM: These are pages from  
9 Shakespeare's play the Merchant of Venice and this  
10 appears to be a book from the library.

11 I have taught that book or taught the  
12 play and the pages here, 280 to 282, are definitely  
13 from part of a scene from the play the Merchant of  
14 Venice

15 MS SHI: Thank you.

16 Could we mark that as an exhibit,  
17 please.

18 THE CHAIRPERSON: Yes.

19 REGISTRY OFFICER: The document found  
20 at tab 43 of the respondent's book of documents,  
21 currently marked as F for identification, entitled  
22 excerpts from the Merchant of Venice pages 280 to 289,  
23 will be marked as respondent Exhibit R-28.

24 EXHIBIT NO. R-28: Document  
25 found at tab 43 of the

1                   respondent's book of documents,  
2                   currently marked as F for  
3                   identification, entitled  
4                   excerpts from the Merchant of  
5                   Venice pages 280 to 289.

6                   MS SHI: I'm sorry, it's only up to  
7                   282, he hasn't identified the rest yet.

8                   REGISTRY OFFICER: So noted.

9                   MS SHI: So, Mr. Fromm, could you  
10                  please then look at page 283 onwards to the end of the  
11                  tab.

12                  MR. FROMM: Yes. This is an internet  
13                  site, [shakespeare.about.com/library/blmerchantsscenes](http://shakespeare.about.com/library/blmerchantsscenes)  
14                  that contains the text of Merchant of Venice and  
15                  printed off here is Act I, title page with the acts and  
16                  scenes and then Act I, Scene I of Merchant of Venice.

17                  MS SHI: Thank you.

18                  MR. FROMM: And this is downloaded  
19                  from the internet.

20                  MS SHI: Thank you.

21                  Could we mark that as an exhibit,  
22                  please.

23                  THE CHAIRPERSON: Yes, we will mark  
24                  it together, I think we will include that as part of  
25                  R-28.

1 MS SHI: Sure, sure. So, they are  
2 all R-28 then.

3 THE CHAIRPERSON: If there are no  
4 objections.

5 MS MAILLET: (nodding)

6 MS SHI: Just a moment, please.

7 Mr. Fromm, could we go to tab 44,  
8 please.

9 MR. FROMM: All right.

10 MS SHI: Can you take a look at it  
11 and tell us where this comes from and what it is.

12 MR. FROMM: These are a series of  
13 searches done on the website of the Toronto Public  
14 Library.

15 The first page, page 290, is search  
16 results for the library's holding, terms, the search  
17 word being Chinaman, so such titles as the Chinaman...

18 MS SHI: Right.

19 MR. FROMM: Chinaman Pacific & R.R.  
20 Co.: short stories.

21 MS SHI: Thank you.

22 And are the rest of them also from  
23 the library?

24 MR. FROMM: Yes, page 291 a search  
25 for the word Chink. Page 292, nigger, page 293 more

1 results for nigger, page 294, the library's holdings of  
2 Shakespeare Merchant of Venice, appears that they have  
3 one.

4 Page 295, the library's holdings of  
5 Mark Twain's novel the Adventures of Tom Sawyer and his  
6 novel the Adventures of Huckleberry Finn, they have  
7 seven copies -- seven holds and two copies.

8 Page 296 is the results of the search  
9 for the term the Quoran and the Toronto Public library  
10 has 34 copies of the Quoran and other titles that have  
11 Quoran in them.

12 Some of these title also being I  
13 guess the text in other languages.

14 MS SHI: Right.

15 MR. FROMM: Page 297 has the search  
16 for the Bible and shows the library's holdings of the  
17 Bible.

18 MS SHI: Could we mark that as an  
19 exhibit, please.

20 THE CHAIRPERSON: Could I ask a few  
21 questions, please.

22 MS SHI: Yes.

23 THE CHAIRPERSON: Did you conduct  
24 this search yourself?

25 MS SHI: It's the same thing --

1           sorry, sorry.

2                           MR. FROMM:  No, this research was  
3           done by counsel but I went on the website of the  
4           Toronto Public Library and checked these were indeed  
5           the result of such a search.

6                           I did those searches because this is  
7           not my original research.

8                           MS SHI:  Can we mark that as an  
9           exhibit, please.

10                          THE CHAIRPERSON:  Yes.

11                          MS MAILLET:  No objections.

12                          MR. WARMAN:  (nodding)

13                          REGISTRY OFFICER:  The document found  
14           at tab 44 of the respondent's book of documents, Volume  
15           I, entitled Toronto Public Library title searches,  
16           pages 290 to 296, will be marked as respondent Exhibit  
17           R-29.

18   EXHIBIT NO. R-29:  Document  
19   found at tab 44 of the  
20   respondent's book of documents,  
21   Volume I, entitled Toronto  
22   Public Library title searches,  
23   pages 290 to 296.

24                          MS SHI:  Thank you.

25                          Mr. Fromm, could you have a look at

1 tab 45, please, and tell me what this is.

2 MR. FROMM: This is available on the  
3 internet and is a search, or perhaps a partial search  
4 of Mark Twain's novel the Adventures of Huckleberry  
5 Finn for the word nigger and there are a number of  
6 passages where that word is used.

7 MS SHI: Could we mark that as an  
8 exhibit, please.

9 THE CHAIRPERSON: Same question, how  
10 did you come to know this document?

11 MR. FROMM: Well, I have taught this  
12 novel and I know the novel very well, but this  
13 particular document was -- the research was done by  
14 counsel and I checked that this is, in fact, available  
15 on the internet and I found it.

16 THE CHAIRPERSON: And did you check  
17 that it was a copy of -- the proper copy of the novel  
18 itself?

19 MR. FROMM: Yes, I recognize all of  
20 those passages as being from Huckleberry Finn.

21 MS SHI: Thank you.

22 REGISTRY OFFICER: The document  
23 currently marked for identification as H found at tab  
24 45 of the respondent's book of documents, Volume I,  
25 entitled excerpts from the Adventures of Huckleberry

1 Finn, pages 298 to 304 will be marked as respondent  
2 Exhibit R-30.

3 EXHIBIT NO. R-30: Document  
4 currently marked for  
5 identification as H found at tab  
6 45 of the respondent's book of  
7 documents, Volume I, entitled  
8 excerpts from the Adventures of  
9 Huckleberry Finn, pages 298 to  
10 304.

11 MS SHI: Could you take a look at tab  
12 46, please, Mr. Fromm.

13 MR. FROMM: Yes.

14 MS SHI: And are you able to identify  
15 that?

16 MR. FROMM: Yes. That's an article  
17 from the Globe and Mail, Stop black youth at random  
18 Toronto councillor suggests and I saw that on line at  
19 globeandmail.com.

20 MS SHI: Could we mark that as an  
21 exhibit, please.

22 REGISTRY OFFICER: The document found  
23 at tab 46 in the respondent's book of documents, Volume  
24 I, downloaded from the globeandmail.com, Stop black  
25 youths at random Toronto councillor suggests, dated

1 Tuesday, August 16, 2005 will be marked as respondent  
2 Exhibit R-31.

3 EXHIBIT NO. R-31: Document  
4 found at tab 46 in the  
5 respondent's book of documents,  
6 Volume I, downloaded from the  
7 globeandmail.com, Stop black  
8 youths at random Toronto  
9 councillor suggests, dated  
10 Tuesday, August 16, 2005.

11 MS SHI: Thank you.

12 Could we go to tab 51, please, Mr.  
13 Fromm, please, it is in the red volume.

14 THE CHAIRPERSON: Tab 51, did you  
15 say?

16 MS SHI: Yes, please, the statement.  
17 Mr. Fromm, do you recognize this?

18 MR. FROMM: Yes, this is an article  
19 obtained over the internet from the National Catholic  
20 Reporter and it's about a visit to the United States by  
21 Cardinal Ratzinger who is now the Pope.

22 MS SHI: Could we mark that as an  
23 exhibit, please.

24 THE CHAIRPERSON: Well, same  
25 question, did you download this yourself, Mr. Fromm?

1 MR. FROMM: No, I did not, research  
2 was done by counsel, but I did go to this web page and  
3 see that this article was in fact there.

4 THE CHAIRPERSON: If you could just  
5 follow the same line of questioning, please, Ms Shi, so  
6 that you establish that this witness has personal  
7 knowledge of the document.

8 MS SHI: Sure, Madam Chair. If I may  
9 say though that I didn't ask him because, in my view,  
10 and in my respectful submission, if he had personally  
11 confirmed that the image was on the internet it was  
12 immaterial whether he is the one who actually pushed  
13 the button.

14 THE CHAIRPERSON: But I do need to  
15 hear that he has been there and confirmed it.

16 MS SHI: Oh yes, that he actually saw  
17 it on the internet.

18 THE CHAIRPERSON: Mm-hmm.

19 MS SHI: Thank you.

20 REGISTRY OFFICER: The document  
21 currently marked for identification as I, found at tab  
22 51 of the respondent's book of documents, Volume II,  
23 downloaded from the National Catholic Reporter, "In  
24 rare U.S. visit, Ratzinger urges scholars to 'think  
25 with the church' will now be marked as respondent

1 Exhibit R-32.

2 EXHIBIT NO. R-32: Document  
3 currently marked for  
4 identification as I, found at  
5 tab 51 of the respondent's book  
6 of documents, Volume II,  
7 downloaded from the National  
8 Catholic Reporter, "In rare U.S.  
9 visit, Ratzinger urges scholars  
10 to 'think with the church'.

11 MS SHI: Could you go to tab 53,  
12 please, Mr. Fromm.

13 MR. FROMM: Yes.

14 MS SHI: Have you seen this article  
15 on the internet before?

16 MR. FROMM: This is an article from  
17 the London Free Press. Yes, I have.

18 MS SHI: Could we mark that as an  
19 exhibit, please.

20 MR. FROMM: And I saw -- I found this  
21 myself.

22 THE CHAIRPERSON: Thank you.

23 MS SHI: I was hoping to take credit  
24 for it again.

25 REGISTRY OFFICER: I'm sorry, what

1 tab?

2 MS SHI: 53.

3 REGISTRY OFFICER: Document located  
4 at tab 53 of the respondent's book of documents, Volume  
5 II, downloaded from the London Free Press News, Hate  
6 material called horrific, dated August 9th, 2005 will  
7 be marked as respondent Exhibit R-33.

8 EXHIBIT NO. R-33: Document  
9 located at tab 53 of the  
10 respondent's book of documents,  
11 Volume II, downloaded from the  
12 London Free Press News, Hate  
13 material called horrific, dated  
14 August 9th, 2005.

15 MS SHI: Thank you.

16 Mr. Fromm, could you go to tab 57,  
17 please.

18 MR. FROMM: Yes.

19 MS SHI: Have you ever seen this on  
20 the internet?

21 MR. FROMM: Yes, this is the article  
22 from the Globe and Mail, Eves endorses death penalty as  
23 shift to the right continues.

24 MS SHI: Could we mark that as  
25 exhibit.

1                   MR. WARMAN: Madam Chair, I was just  
2 wondering if we could establish the relevance of the  
3 document to this proceeding.

4                   MS SHI: Absolutely. Madam Chair, I  
5 anticipate to make the argument on the issue of  
6 community standards of tolerance that the tolerance for  
7 free speech is high and it includes tolerating  
8 discussion for committing capital crime at a large  
9 scale, which is within the current framework of  
10 Canadian criminal law is what the death penalty is, the  
11 deliberate killing of a person is murder, is the most  
12 serious crime in the Criminal Code, and this article  
13 shows that our Premier -- former Premier Ernie Eves  
14 advocated it, kill people who have committed certain  
15 crimes.

16                   And that is why this article is in  
17 there.

18                   MR. WARMAN: Sorry, I'm not sure -- I  
19 am still not at all clear what the relevance is to the  
20 complaint under section 13 and 14.1 against Mr.  
21 Winnicki in relation to capital punishment versus hate  
22 messaging which is the issue that I understand to be at  
23 the centre of this hearing.

24                   MS SHI: Well, I have made very clear  
25 that it is my intention to argue that in deciding

1           whether a message is likely to expose an identifiable  
2           group to hatred and contempt, we have to answer the  
3           question likely -- the hatred and contempt has to  
4           emanate from someone, and I intend to argue that this  
5           Tribunal has to decide that it is likely that the  
6           message will cause hatred and contempt to emanate from  
7           the Canadian public.

8                               Now we are going to, I am sure, in  
9           submissions argue about what kind of Canadian public  
10          are really vulnerable, gullible ones or robust ones and  
11          all that is for another day, however, there has to be a  
12          discussion about some kind of community standard, and  
13          to that extent, I think what we currently tolerate in  
14          terms of free speech in our society is very relevant.

15                              If someone serving such high office  
16          as the Premier of Ontario can advocate murder in a  
17          systemic manner, government sponsored murder, I think  
18          that is indicative of the way our society operates.

19                              THE CHAIRPERSON: So, your argument  
20          is that you have to judge whether a particular message  
21          is going to cause -- is likely to expose an  
22          identifiable group to hatred and contempt in the  
23          context of Canadian -- prevailing Canadian values and  
24          that this article speaks, at least to some extent, to  
25          Canadian values.

1                   MS SHI: How robust Canadians are  
2                   that Canadians continue to not support the death  
3                   penalty and, as I said, if you look at the current  
4                   legal framework, advocating the death penalty is  
5                   nothing less than advocating state-sponsored murder and  
6                   I'm sure some opponents of the death penalty really  
7                   believe passionately that that is what it is, and yet  
8                   we allow that speech to happen, and from the high  
9                   government official, no less.

10                   THE CHAIRPERSON: Thank you. If you  
11                   could sit for a minute.

12                   Ms Maillet?

13                   MS MAILLET: Yes, Madam Chair, not  
14                   only in my submission is community standards around the  
15                   death penalty irrelevant to the issues around Mr.  
16                   Winnicki's hate messages, but community standards in my  
17                   submission are not relevant to this hearing.

18                   The test with respect to what exposes  
19                   people to hatred or contempt is not what is the  
20                   community standard, it's as stated in the case law, and  
21                   I'll summarize briefly, but it's whether or not people  
22                   are shown as having no redeeming qualities, whether or  
23                   not they are treated as being inferior and so on, and  
24                   in my submission, whatever the community standards may  
25                   be, which I submit we have no experts in any event to

1 determine what community standards are in this hearing,  
2 that it is irrelevant to the test with respect to what  
3 exposes people to hatred or contempt.

4 THE CHAIRPERSON: I have thought  
5 about this argument because we have had several  
6 teleconferences and we have had several chances to  
7 discuss this and I have come to the conclusion that the  
8 argument that Ms Shi is going to be advancing on this  
9 one is novel, it is one that I don't think has been  
10 considered by this Tribunal or others, and I cannot  
11 make a determination at this point as to whether or not  
12 -- obviously that will be something that will be taken  
13 into account in final decision.

14 So, inasmuch as this piece relates to  
15 the argument that Ms Shi is going to advance with  
16 respect to the influence of community standards, I  
17 determine that this is relevant and I will reserve  
18 judgment as to what weight I will give it, depending on  
19 the decision I make with respect to the strength of the  
20 argument.

21 MS SHI: Thank you. Can we mark that  
22 as an exhibit then, please.

23 REGISTRY OFFICER: Two-page document  
24 found in tab 57 of the respondent's book of documents,  
25 Volume II, downloaded from the globeandmail.com

1 entitled, Eves endorses death penalty as shift to the  
2 right continues by Richard Mackie, dated Thursday  
3 September 4, 2003 will be marked as respondent Exhibit  
4 R-34.

5 EXHIBIT NO. R-34: Two-page  
6 document found in tab 57 of the  
7 respondent's book of documents,  
8 Volume II, downloaded from the  
9 globeandmail.com entitled, Eves  
10 endorses death penalty as shift  
11 to the right continues by  
12 Richard Mackie, dated Thursday  
13 September 4, 2003.

14 MS SHI: Thank you.

15 Mr. Fromm, could you look at tab 58,  
16 please.

17 Have you seen this on the internet?

18 MR. FROMM: Yes, I downloaded that  
19 last week from the web page of the London Free Press  
20 and to discover that their current daily average  
21 circulation is about 125,000.

22 MS SHI: Where is that in the  
23 document?

24 MR. FROMM: That's one paragraph from  
25 the bottom up above external link, the London Free

1 Press currently has a daily circulation of 125,000.

2 MS SHI: 125,000.

3 MR. FROMM: Yes.

4 MS SHI: Thank you. Could we mark  
5 that as an exhibit, please.

6 REGISTRY OFFICER: The document found  
7 at tab 58 of the respondent's book of documents, Volume  
8 11, one page which appears to be the information  
9 regarding London Free Press downloaded from the net,  
10 will be marked respondent Exhibit R-35.

11 EXHIBIT NO. R-35: Document  
12 found at tab 58 of the  
13 respondent's book of documents,  
14 Volume 11, one page which  
15 appears to be the information  
16 regarding London Free Press  
17 downloaded from the net.

18 MS SHI: Yes, thank you.

19 THE CHAIRPERSON: Can I ask a  
20 question. What is wikipedia?

21 MS SHI: Mr. Fromm, what is  
22 wikipedia?

23 MR. FROMM: Wikipedia, turns out to  
24 be, when you put the London Free Press into the browser  
25 and work your way through the website to the section

1           that deals with the history of it, that is what you now  
2           have across your banner, wikipedia, but this is the  
3           circulation of the London Free Press.

4                       MS SHI: I'm sorry, so...

5                       THE CHAIRPERSON: So, you don't know  
6           what wikipedia means?

7                       MR. FROMM: No, I don't. It's an  
8           on-line encyclopedia.

9                       MS SHI: I would appreciate some  
10          assistance here, I have for my tab 28 checked off,  
11          however, I don't have an exhibit number for it.

12                      Perhaps Madam Registrar could assist  
13          me.

14                      Has it been marked yet?

15                      REGISTRY OFFICER: Sorry, which tab,  
16          please?

17                      MS SHI: Tab 28, please. Was it  
18          marked as R-3.

19                      REGISTRY OFFICER: R-3.

20                      MS SHI: Thank you.

21                      Mr. Fromm, could you go to tab 30,  
22          please. Actually I'm sorry, Mr. Fromm, give me a  
23          moment, please.

24                      Can you please go to tab 31, please.

25                      MR. FROMM: 31?

1 MS SHI: Yes, please.

2 MR. FROMM: Yes.

3 MS SHI: Do you recognize this  
4 article?

5 MR. FROMM: Yes, I do.

6 MS SHI: Have you seen it on the  
7 internet?

8 MR. FROMM: Yes, I have.

9 MS SHI: What is it?

10 MR. FROMM: It's from a series of  
11 articles that were published in the spring of this year  
12 in the London Free Press about the writer's right of  
13 centre movement in that City.

14 MS SHI: Could we mark that as an  
15 exhibit, please.

16 REGISTRY OFFICER: Document found at  
17 tab 31 of the respondent's book of documents, Volume 1,  
18 two pages downloaded from London Free Press Special  
19 Reports, Hate in the forest city is the title, will be  
20 marked as respondent Exhibit R-36.

21 EXHIBIT NO. R-36: Document  
22 found at tab 31 of the  
23 respondent's book of documents,  
24 Volume 1, two pages downloaded  
25 from London Free Press Special

1 Reports, Hate in the forest  
2 city.

3 MS SHI: Thank you.

4 Would you look at tab 35, please, Mr.  
5 Fromm.

6 MR. FROMM: Yes.

7 MS SHI: Have you seen this on the  
8 net?

9 MR. FROMM: Yes, I have.

10 MS SHI: What is it?

11 MR. FROMM: It's another article from  
12 the London Free Press by the reporter Randy Richmond  
13 and it's about the conflict between Richard Warman and  
14 Tom Winnicki.

15 MS SHI: Could we mark --

16 MR. FROMM: It's about this case.

17 MS SHI: Could we mark that as an  
18 exhibit, please.

19 REGISTRY OFFICER: Tab 35.

20 THE CHAIRPERSON: I think it has  
21 already been...

22 REGISTRY OFFICER: No.

23 THE CHAIRPERSON: Has it not? No, my  
24 mistake.

25 REGISTRY OFFICER: The document found

1 at tab 35 of the respondent's book of documents, Volume  
2 I, downloaded from the London Free Press, Supremacist  
3 use of net challenged, 3 pages, will be marked as  
4 respondent Exhibit R-37.

5 EXHIBIT NO. R-37: Document  
6 found at tab 35 of the  
7 respondent's book of documents,  
8 Volume I, downloaded from the  
9 London Free Press, Supremacist  
10 use of net challenged, 3 pages.

11 MS SHI: Thank you.

12 Madam Chair, these are the exhibits  
13 that I thought were very routine and I have finished  
14 and I was going to go to the next thing.

15 I wonder if this is a good time to  
16 stop?

17 Honestly, I am very tired. We sat  
18 late yesterday.

19 THE CHAIRPERSON: Yes. And the next  
20 thing that you are moving to will take...

21 MS SHI: It's going to take a bit  
22 more work, I anticipate some of the other topics that I  
23 go into my friend may have objections as well, and I  
24 would just rather not start now.

25 THE CHAIRPERSON: Mm-hmm.

1 MS SHI: And leave in the middle of  
2 it.

3 THE CHAIRPERSON: Okay. I think then  
4 we can use the remaining time -- not that we have to  
5 use every second -- but we can use this time to have a  
6 discussion about -- a general housekeeping kind of  
7 discussion about time remaining in the case and  
8 anticipated time.

9 Of course it is very approximate, it  
10 will depend on the objections that are raised, it will  
11 depend on all kinds of things, but I am wondering if  
12 counsel has any kind of estimate of what sort of time  
13 we are looking at here.

14 MS SHI: I anticipate to be done with  
15 Mr. Fromm by the end of tomorrow morning and this is  
16 taking into account that I know that my friend takes  
17 issue with some of the documents, she had made it very  
18 clear to me.

19 So, taking that into account, I still  
20 think, and I would like to be done with Mr. Fromm's  
21 in-chief by lunch time.

22 My friend and I have talked about,  
23 and obviously she will tell you if I haven't summed it  
24 up accurately, but we are both quite amenable to the  
25 idea of doing the submissions in writing.

1                   So, that we could be done with the  
2 evidence tomorrow perhaps and then just wouldn't have  
3 to come back.

4                   Obviously it's up to the Tribunal to  
5 decide what is the most appropriate way to do that.

6                   THE CHAIRPERSON: Ms Maillet?

7                   MS MAILLET: Yes, Madam Chair, I  
8 don't imagine that both the Commission and the  
9 complainant together, and Mr. Warman can correct me if  
10 I'm wrong, will be much more than an hour in total  
11 between the two of us, maybe an hour and a half  
12 maximum.

13                   And, yes, I do agree with my friend  
14 that we have discussed this, both of us, as well as Mr.  
15 Warman, as I understand, are totally agreeable to  
16 having final submissions produced to the Tribunal in  
17 writing, unless you decide otherwise.

18                   THE CHAIRPERSON: Mm-hmm.

19                   Mr. Warman?

20                   MR. WARMAN: (nodding)

21                   THE CHAIRPERSON: Well, it sounds as  
22 though there is at least a reasonable chance that we  
23 might be concluded, we might have the evidence wrapped  
24 up by the end of tomorrow.

25                   MS SHI: My friends I think in

1 addition would be to written submissions, but then to  
2 schedule a day for oral submissions as well.

3 THE CHAIRPERSON: I think it would be  
4 safe to say that there are enough contentious issues  
5 and enough complexity that has been added to the case  
6 over time that I think it is important that we have a  
7 full airing of the issues and I have an opportunity to  
8 ask you questions based on your written and oral  
9 submissions, so I think it will be necessary to come  
10 back again.

11 With that in mind, I guess the  
12 pressure is then off to try to wrap up Mr. Fromm's  
13 evidence tomorrow, you know, there will be some  
14 opportunity to continue that, if need be, if we come  
15 back again, although that is always difficult because  
16 then there is memory issues and so on.

17 But that is my thinking at this  
18 point, is that if we are done evidence by tomorrow,  
19 that is fine, then I will invite written submissions  
20 from all counsel and we will schedule an opportunity  
21 for oral submissions.

22 I had thought about doing it by video  
23 conference but, I think in this case, I would prefer to  
24 do it here in Toronto.

25 So, that is what I am thinking of

1 right now.

2 So, I am in agreement that we should  
3 adjourn for the day. We will resume tomorrow promptly  
4 at 9:30, which will enable us hopefully to be done.

5 I presume in terms of leaving  
6 tomorrow, I just want to canvass that with you, for  
7 out-of-town counsel, are there any time restrictions  
8 for you to get to the airport?

9 MS MAILLET: Yes. I am actually  
10 taking the train back at 5:30.

11 THE CHAIRPERSON: Okay.

12 MS MAILLET: That is the last train  
13 available, so...

14 THE CHAIRPERSON: And Ms Warsame, as  
15 well?

16 MS WARSAME: I am fine.

17 MS MAILLET: She's fine. So, I guess  
18 I will make sure I check out in the morning before  
19 coming here, to make it a little quicker afterward, but  
20 I probably need to leave here by four o'clock, 3:30,  
21 four o'clock.

22 THE CHAIRPERSON: Mm-hmm.

23 MS SHI: Perhaps if we start half an  
24 hour earlier, I am quite open to doing that if  
25 necessary.

1 THE CHAIRPERSON: Mr. Warman?

2 MR. WARMAN: No.

3 THE CHAIRPERSON: Do you have any  
4 time constraints in terms of getting airlines?

5 MR. WARMAN: No, I am fine.

6 THE CHAIRPERSON: Okay.

7 MS MAILLET: I hesitate to start  
8 earlier because I will need the time to pack and to  
9 check out.

10 THE CHAIRPERSON: Right.

11 MS MAILLET: So, maybe if we could  
12 take a shorter lunch break.

13 THE CHAIRPERSON: Okay. So, we can  
14 compress things a little bit and move things more  
15 quickly.

16 So, we will start promptly at 9:30  
17 tomorrow morning and we will hope to be done by four  
18 o'clock tomorrow afternoon.

19 Thank you.

20 REGISTRY OFFICER: Order, please.

21 --- Whereupon the hearing adjourned at 4:55 p.m.

22 to resume on Friday, October 21, 2005

23 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.

StenoTran