

**CANADIAN
HUMAN RIGHTS
TRIBUNAL**



**TRIBUNAL CANADIEN
DES DROITS
DE LA PERSONNE**

BETWEEN/ENTRE:

Complainant RICHARD WARMAN **Plaignant**

and/et

Commission CANADIAN HUMAN RIGHTS COMMISSION **Commission**

and/et

Respondent TOMASZ WINNICKI **Intimé**

BEFORE/DEVANT:

KAREN JENSEN

CAROL ANN HARTUNG

CHAIRPERSON/
PRÉSIDENTE
REGISTRY OFFICER/
L'AGENTE DU GREFFE

FILE NO./N° CAUSE:

VOLUME:

LOCATION/ENDROIT:

DATE:

PAGES:

T1021/0205

6

TORONTO, ONTARIO

2005/10/20

605 - 768

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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

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

REGISTRY OFFICER: Order, please.

All rise.

Please be seated.

THE CHAIRPERSON: Good morning.

Good morning to everyone.

MS SHI: Good morning.

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

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

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

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

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

SUBMISSIONS

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

Oh yes, first of all, I have produced
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
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

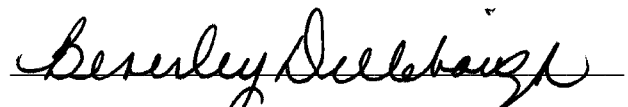
23 at 9:30 a.m.

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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