

**CANADIAN  
HUMAN RIGHTS  
TRIBUNAL**



**TRIBUNAL CANADIEN  
DES DROITS  
DE LA PERSONNE**

**BETWEEN/ENTRE:**

<b>Complainant</b>	RICHARD WARMAN	<b>Plaignante</b>
	<b>and/et</b>	
<b>Commission</b>	CANADIAN HUMAN RIGHTS COMMISSION	<b>Commission</b>
	<b>and/et</b>	
<b>Respondent</b>	ELDON WARMAN	<b>Intimé</b>

**BEFORE/DEVANT:**

PAUL GROARKE	CHAIRPERSON/ PRÉSIDENT
LINDA BARBER	REGISTRY OFFICER/ L'AGENTE DU GREFFE

<b>FILE NO./N° CAUSE:</b>	T998/11804
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CANADIAN HUMAN RIGHTS TRIBUNAL/  
TRIBUNAL CANADIEN DES DROIT DE LA PERSONNE

HEARING HELD IN HEARING ROOM NO. 1 OF THE CANADIAN HUMAN RIGHTS  
TRIBUNAL, 160 ELGIN STREET, 11TH FLOOR, ON TUESDAY, APRIL 26,  
2005, AT 9:30 A.M. LOCAL TIME

CASE FOR HEARING/CAUSE DEVANT ÊTRE ENTENDUE

IN THE MATTER of the complaint filed under section 13(1) of the  
Canadian Human Rights Act by Richard Warman, dated June 1, 2003,  
against Eldon Warman. The Complainant alleges that the  
Respondent has engaged in a discriminatory practice on the  
grounds of religion and national and ethnic origin in a matter  
related to the usage of a telecommunication undertaking.

APPEARANCES/COMPARUTIONS

Richard Warman	on his own behalf
Valerie Phillips Monette Maillet	Counsel for the Canadian Human Rights Commission

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1 Ottawa, Ontario

2 --- Upon resuming on Tuesday, April 26, 2005  
3 at 9:30 a.m.

4 RESUMED: RICHARD WARMAN

5 THE CHAIRPERSON: Good morning. Ms  
6 Phillips, do you have any other questions that you want  
7 to ask, or are you fine with the witness as things  
8 stand?

9 MS PHILLIPS: I am fine, but I  
10 believe that Mr. Warman has some additional comments.

11 THE CHAIRPERSON: I was going to ask  
12 a question myself, just about bringing us up to date.

13 You will remember that at one point I  
14 asked if these postings were still on the web, and you  
15 made a comment, I think suggesting that there were  
16 probably further postings, since these just took us to  
17 the date of the complaint.

18 So I was going to ask Mr. Warman if  
19 he could talk about that and let me know what the  
20 situation is.

21 MR. WARMAN: I will admit that I  
22 haven't gone back to extensively research after the  
23 time of the filing of the complaint.

24 The last date that I have is in 2003.  
25 I am not aware that Mr. Eldon Warman continued in this

1 vein of submissions to that particular Canadian  
2 Taxation group. I should say that I am not aware of  
3 any ongoing submissions of that nature.

4 THE CHAIRPERSON: I think it has a  
5 little bit to do with what the parties are asking for  
6 in terms of a remedy. I am not entirely sure, really,  
7 what the Commission is seeking.

8 You know that this went on until  
9 2003.

10 MR. WARMAN: Yes.

11 THE CHAIRPERSON: Do you want to add  
12 anything to your evidence?

13 MR. WARMAN: Yes. I have two  
14 documents that I downloaded this morning. Both of them  
15 are from Eldon Warman's website, so my submission would  
16 be that they are within the knowledge of Eldon Warman  
17 and that there would be no prejudice, given that they  
18 come from his own website.

19 They, essentially, just go to the  
20 identification of his use of two out of the three  
21 e-mail addresses.

22 THE CHAIRPERSON: I'm sorry, they go  
23 to the use of...?

24 MR. WARMAN: They go to his use of  
25 two of the three e-mail addresses that have been

1 identified in the previous evidence.

2 THE CHAIRPERSON: Has Ms Phillips  
3 seen that material?

4 MS PHILLIPS: Yes.

5 THE CHAIRPERSON: Can I take a look  
6 at that material before we enter it?

7 Can you tell me what I am looking at,  
8 Mr. Warman?

9 MR. WARMAN: Which document are you  
10 looking at?

11 THE CHAIRPERSON: "Magna Carta  
12 Kanata."

13 I don't think that is referring to a  
14 subdivision of Ottawa.

15 MR. WARMAN: No. The "Magna Carta  
16 Kanata" project was mentioned very briefly in passing  
17 in Matthew Lauder's article in the Guelph Multicultural  
18 Centre as being one of Eldon Warman's projects.

19 If you look at the bottom left-hand  
20 corner, it indicates that it is from Eldon Warman's  
21 personal website.

22 THE CHAIRPERSON: The "detax"  
23 website, yes.

24 MR. WARMAN: Then, for everyone's  
25 convenience, I have highlighted on the last page --

1 THE CHAIRPERSON: Just so it's clear  
2 for everyone, I don't know if I like the term "his  
3 personal website". It is the "detax" website, and it  
4 is certainly registered in his name. I think that's  
5 sufficient. Somehow I am not sure that it is exactly  
6 right to call it his personal website.

7 But go on, please. I don't think  
8 there is anything to worry about there, I just want the  
9 record to be clear in terms of how I am dealing with  
10 the evidence.

11 Go on, you were going to say?

12 MR. WARMAN: On page 10 of 10 --

13 THE CHAIRPERSON: The last page?

14 MR. WARMAN: Yes. His name is given  
15 as "Eldon-Gerald: Warman", and underneath it his  
16 contact e-mail is listed as "warmael@hotmail.com".

17 THE CHAIRPERSON: Does his name  
18 appear as the author of this document?

19 MR. WARMAN: Yes, that's the last of  
20 it. That is his signature at the end of the document.

21 THE CHAIRPERSON: Is it basically the  
22 same situation that we discussed yesterday, you go to  
23 the "detax" website and you see a series of "clickable"  
24 headings, and this would be one of them?

25 MR. WARMAN: In fact, what I did was



1 just go and do a Google search on that e-mail address,  
2 and that was one of the links that came up. So I went  
3 directly from the Google site, clicked on the link, and  
4 went directly to the "detaxcanada" website -- to this  
5 specific page.

6 THE CHAIRPERSON: But this is  
7 clearly, from the e-mail address, a document that is on  
8 the "detax" website.

9 MR. WARMAN: Yes.

10 THE CHAIRPERSON: Do you have any  
11 comments, Ms Phillips?

12 MS PHILLIPS: No, I don't.

13 THE CHAIRPERSON: I don't see any  
14 difficulty entering this.

15 We will deal with the second one  
16 separately.

17 THE REGISTRAR: The document entitled  
18 "Magna Carta Kanata MM A.D.", downloaded from the site  
19 "www.detaxcanada.org/carta.htm", with the date at the  
20 bottom of the page of 26/04/05, will be filed as  
21 Complainant Exhibit C-1.

22 EXHIBIT NO. C-1: Document  
23 entitled "Magna Carta Kanata MM  
24 A.D.", downloaded from the  
25 "www.detaxcanada.org/carta.htm"

1 website on 26/04/05

2 THE CHAIRPERSON: Thank you.

3 I see that the other document  
4 contains some fairly strong language, Mr. Warman.

5 MR. WARMAN: Yes.

6 THE CHAIRPERSON: Is this also from  
7 the "detaxcanada" website?

8 MR. WARMAN: Yes, it is. This is the  
9 main sort of home page. There are two sort of  
10 introductory pages, for lack of a better expression,  
11 and then this is the actual main body of the website --  
12 the opening home page, if you will.

13 THE CHAIRPERSON: "Just Say `No!' to  
14 Income Tax". So when you go to the "detaxcanada"  
15 website, this is what you find?

16 MR. WARMAN: You would find another  
17 page, which would say "To enter this website click  
18 here", there would be another sort of listing of  
19 materials on a second page, which would then say "To  
20 enter DetaxCanada click here", and then, when you would  
21 click on that, you would finally come to this index  
22 page.

23 THE CHAIRPERSON: All right. I am  
24 with you.

25 MR. WARMAN: The only item that I

1 wished to refer you to was on page 11 of 13.

2 THE CHAIRPERSON: I actually think  
3 this is helpful. At least it helps to provide some  
4 kind of background to what we are dealing with here.

5 MR. WARMAN: On page 11 of 13 it  
6 states: "This Web Page And Its Contents Presented By:  
7 Eldon-Gerald of the Warman family." It then gives his  
8 P.O. Box, and underneath that it says "Send E-Mail To"  
9 and then there is a hotmail symbol. When you click on  
10 that hotmail symbol, the address that comes up is --

11 THE CHAIRPERSON: I'm sorry, I have  
12 lost you. What page should I be on?

13 MR. WARMAN: Page 11 of 13.

14 THE CHAIRPERSON: I see. "This Web  
15 Page And Its Contents Presented By..."

16 MR. WARMAN: And then it gives his  
17 P.O. Box address, and then underneath that it says  
18 "Send E-Mail To", and then it lists the little hotmail  
19 symbol. If you click on that, it brings up the e-mail  
20 address "warmael@hotmail.com".

21 THE CHAIRPERSON: Okay. It's not  
22 here, so I am going to add that to my copy.

23 Is it "egwarman"?

24 MR. WARMAN: No, this is "warmael".

25 THE CHAIRPERSON: Oh, the same one,

1 "warmael@hotmail.com".

2 MR. WARMAN: Yes.

3 Then, just below that --

4 THE CHAIRPERSON: "OutGun", yes.

5 MR. WARMAN: When you click on that,  
6 it gives you "egwarman@outgun.com".

7 THE CHAIRPERSON: I gather -- and  
8 perhaps I am turning to counsel -- that this is the  
9 same address that the Commission and the Tribunal have  
10 been using for Mr. Warman. Is that right?

11 MS PHILLIPS: The e-mail that we have  
12 been using to correspond with him?

13 THE CHAIRPERSON: Yes.

14 Was this the same address?

15 MS PHILLIPS: I haven't corresponded  
16 with --

17 THE CHAIRPERSON: The affidavit of  
18 service. I don't mean correspondence.

19 Isn't this the address that was --

20 MS PHILLIPS: No, it's not.

21 THE CHAIRPERSON: It's a different  
22 address?

23 MS PHILLIPS: It's a different one.

24 THE CHAIRPERSON: I'm sorry, I see  
25 what you are saying.

1 MS PHILLIPS: The post office box --  
2 I think that Madam Registrar and I both initially sent  
3 some letters to that address, which were returned, and  
4 then we sent them to his home address, which were also  
5 returned. Then we process served him at his home  
6 address.

7 THE CHAIRPERSON: I am just looking  
8 for anything else that would confirm that this, indeed,  
9 comes from Mr. Warman.

10 I don't think there is any real  
11 difficulty. I have no problem entering this.

12 Do you have any comments, Ms  
13 Phillips?

14 MS PHILLIPS: No, thank you.

15 THE CHAIRPERSON: Mr. Warman, are  
16 there references to Jews or Freemasons, or are there  
17 anti-Semitic remarks in this?

18 I gather there is nothing you are  
19 aware of.

20 MR. WARMAN: There is certainly  
21 nothing as egregious as the Google postings. There are  
22 passing references, but nothing --

23 THE CHAIRPERSON: Oblique references?

24 MR. WARMAN: Yes, nothing reflective  
25 of his Google postings.

1 THE CHAIRPERSON: Would you, offhand,  
2 know where there is an oblique reference, just so I am  
3 familiar with it?

4 If you don't, don't worry about it.

5 Basically, from looking at it  
6 briefly, this sets out the program, if I can use that  
7 term, of the detax movement.

8 MR. WARMAN: Yes. It is sort of a  
9 very brief introduction, and then he gives links to his  
10 further materials.

11 THE CHAIRPERSON: It suggests that  
12 there is no moral or legal obligation to pay taxes, and  
13 that judges are treasonous.

14 MR. WARMAN: Yes.

15 THE CHAIRPERSON: "The DetaxCanada  
16 program is a free ministry  
17 teaching God's LAW - And its  
18 implementation via the ANGLO-  
19 SAXON Common Law..."

20 All right. If you have nothing  
21 further to add --

22 MR. WARMAN: I just noticed one  
23 further thing. On page 5 of 13, similar to the Kyburz  
24 case, there is an appeal for financial donations.

25 THE CHAIRPERSON: What page?

1 MR. WARMAN: Page 5 of 13. From the  
2 top to the middle of that page it states:

3 "Any financial help is accepted  
4 with much appreciation....postal  
5 money orders work the best for  
6 me."

7 Then it gives his name and P.O. Box  
8 address.

9 THE CHAIRPERSON: Yes.

10 We will have that marked.

11 THE REGISTRAR: The document entitled  
12 "Just Say `No!' To Income Tax - DetaxCanada",  
13 downloaded from "www.detaxcanada.org/index1.htm", with  
14 the date 26/04/05, will be filed as Complainant Exhibit  
15 C-2.

16 EXHIBIT NO. C-2: Document  
17 entitled "Just Say `No!' To  
18 Income Tax - DetaxCanada",  
19 downloaded from  
20 "www.detaxcanada.org/index1.htm"  
21 on 26/04/05

22 THE CHAIRPERSON: Is there anything  
23 else, Mr. Warman, that you want to add in terms of  
24 evidence?

25 MR. WARMAN: No. If there are no

1 further questions, that is the sum total of my  
2 evidence.

3 THE CHAIRPERSON: All right. You can  
4 have a seat, Mr. Warman.

5 MR. WARMAN: Thank you.

6 --- The witness withdrew

7 THE CHAIRPERSON: Ms Phillips, is  
8 that the case for the Commission?

9 MS PHILLIPS: Yes. I believe that  
10 Mr. Warman will begin with closing submissions when you  
11 are ready.

12 THE CHAIRPERSON: That is the case  
13 for you, as well, Mr. Warman?

14 MR. WARMAN: Yes.

15 THE CHAIRPERSON: Who would like to  
16 go first?

17 I have some questions.

18 In all fairness, I would prefer to  
19 hear from the Commission first, if you don't mind.

20 MS PHILLIPS: That's fine.

21 THE CHAIRPERSON: The first question  
22 I have -- and I do want you to go through whatever you  
23 have prepared, but I want to go to the Commission first  
24 because I want to understand very clearly what you want  
25 from me.



1 MS PHILLIPS: As I stated in my  
2 opening, Dr. Groarke, the Commission and the  
3 Complainant are seeking a cease and desist order --

4 THE CHAIRPERSON: I know.

5 MS PHILLIPS: -- and a penalty.

6 THE CHAIRPERSON: But I need much  
7 more specific information. In terms of a cease and  
8 desist order, what would that consist of?

9 Is it a matter of somehow getting  
10 these documents off the web? Is it a matter of somehow  
11 ordering Mr. Warman to stop posting these kinds of  
12 notices?

13 MS PHILLIPS: The orders in the  
14 past -- I think we could look to the case law perhaps  
15 for the exact wording of what has been used in the past  
16 by the Tribunal, but they have been more general. They  
17 have been very much in line with the wording of the  
18 Act, and there has been something to the effect --

19 THE CHAIRPERSON: The wording of  
20 section 13?

21 MS PHILLIPS: Section 54, and then  
22 section 54 refers to 53(2)(a), which talks about cease  
23 and desist.

24 THE CHAIRPERSON: We can deal with  
25 that, but before I hear from you, Mr. Warman --

1                   We haven't even discussed liability.  
2                   Are we talking about somehow  
3 physically removing these documents from the web?

4                   MS PHILLIPS: No, we are talking  
5 about an order that Eldon Warman will cease to continue  
6 this practice.

7                   THE CHAIRPERSON: Is it possible to  
8 have this kind of material removed from the web?

9                   MS PHILLIPS: We would use your  
10 order, if it is given, to discuss with Google, where  
11 most of the postings are located at the moment --

12                   THE CHAIRPERSON: I suppose that  
13 Google is an American company, or a multinational, so  
14 there are all sorts of legal difficulties in terms of  
15 the Tribunal ordering them to remove material. Is that  
16 right?

17                   MS PHILLIPS: But the order wouldn't  
18 be against Google, the order would be against Eldon  
19 Warman, and it would be up to Google whether or not  
20 they would want to assist the Commission and the  
21 Complainant in removing the material.

22                   In the Zundel case, I believe it was  
23 Member Pensa who talked about cease and desist orders  
24 and the reality that sometimes they are ineffectual,  
25 but that there is still benefit in making that order,

1 and not solely for the purpose of finding someone in  
2 contempt later on.

3 THE CHAIRPERSON: I think my concern  
4 is quite the other way.

5 I don't want to get ahead of myself.  
6 Certainly, yesterday, I was trying to remain as neutral  
7 as I could be. Obviously some of the material, on its  
8 face, is quite offensive, it seems to me, for anyone  
9 who has any kind of sensitivity to these issues, but I  
10 want to remain neutral, and I still haven't made a  
11 decision.

12 But if I decide that there is  
13 liability and find in favour of the  
14 Commission/Complainant, then I want to do as much as I  
15 can.

16 If cease and desist orders are vague  
17 and ineffective, I would like the Commission to advise  
18 me how we can provide a remedy that is effective.

19 I did wonder, as Mr. Warman went  
20 through this material, where we end up at the end of  
21 the day.

22 As I say, I still want you to discuss  
23 liability in your submissions, but I want to know where  
24 we are going in terms of this hearing and what you need  
25 at the end of the day.

1                   A general cease and desist order, if  
2 one finds liability, I don't think that is very  
3 difficult. I think, obviously, the Tribunal could do  
4 that, and obviously, if it is in the general terms of  
5 the Act, there is no issue as far as that is concerned.  
6 But is that going to do the job?

7                   MS PHILLIPS: What I can say -- and  
8 perhaps Mr. Warman could assist me -- is that Mr.  
9 Warman has previously filed complaints with Internet  
10 service providers about materials that have been  
11 posted, and they have generally -- the larger companies  
12 can't possibly be aware of all of the material that is  
13 posted on their news groups and servers --

14                   THE CHAIRPERSON: Absolutely.

15                   MS PHILLIPS: -- and generally what  
16 we have found is, when it is brought to their  
17 attention, they are more than willing to remove it, and  
18 also give a notice, because there is generally a  
19 standard --

20                   THE CHAIRPERSON: We will come to  
21 you, Mr. Warman. I want to hear from counsel.

22                   MS PHILLIPS: I think he can assist,  
23 but there is generally a standard contract, when you  
24 sign up for an e-mail account, for example, when you  
25 sign up with a server for your own web page, and there

1 is a standard clause within it about offensive material  
2 being posted.

3 Generally, the larger IPSS and  
4 Internet companies will see the posting of this  
5 material as a breach of that contract that they have  
6 with their client.

7 So, in practical terms, your cease  
8 and desist order, if it is given, while it won't be  
9 against Google, I think they would recognize it, and  
10 they would recognize that Mr. Warman has, in fact,  
11 breached the terms of the Google news group conditions  
12 of posting, and I don't think it would be difficult to  
13 remove them.

14 THE CHAIRPERSON: Would a cease and  
15 desist order, for example, list the postings, or would  
16 it be a general order, and then it would be for the  
17 Commission and Mr. Warman to pursue it?

18 There is no point in hiding these  
19 things. Again, if Eldon Warman were here, I think I  
20 would put it to him. The most offensive posting is,  
21 obviously, the posting which refers to soap and  
22 lampshades. It is obviously extremely offensive.

23 I do have a question about judicial  
24 notice, but I want to know, is it a general cease and  
25 desist order, or do you, for example, list that

1 particular posting, in the fervent hope that the  
2 provider would then remove it?

3 MS PHILLIPS: I think it would be  
4 prudent to be a little more general in the order.

5 The materials demonstrate that there  
6 are years worth of postings, and possibly two more  
7 years worth that we don't know of. The last that we  
8 have in our documents is from 2003.

9 So I think it would be helpful to be  
10 more general and to speak of the fact that --

11 THE CHAIRPERSON: I will come to you,  
12 Mr. Warman. I just want to work through this slowly  
13 and sort out what I am dealing with here.

14 If you give a general cease and  
15 desist order -- I just want to understand the  
16 situation -- does it then make its way to Google  
17 eventually, and do they simply exercise their editorial  
18 abilities in going back and removing material, or does  
19 that posting stay on the web?

20 MS PHILLIPS: Could I have one  
21 moment?

22 THE CHAIRPERSON: Mr. Warman, while  
23 Ms Phillips is consulting --

24 MR. WARMAN: I wanted to bring your  
25 attention to two specific paragraphs in the Kyburz

1 decision which deal with the questions you are asking.

2 MS PHILLIPS: That is the same thing  
3 that Ms Maillet has brought to my attention.

4 THE CHAIRPERSON: Who would like to  
5 refer me to --

6 MR. WARMAN: I would draw your  
7 attention to tab 7 of the joint book of authorities.  
8 At page 19 of 28, paragraph 83 gives the specific  
9 example of the order that was made in that case by the  
10 panel in the Warman v. Kyburz decision.

11 THE CHAIRPERSON: This does refer to  
12 some material that was already posted.

13 MR. WARMAN: Yes, it does.

14 THE CHAIRPERSON: Do you have  
15 experience, Mr. Warman, in terms of enforcing these  
16 orders?

17 MR. WARMAN: I do.

18 In this case Yahoo, after a couple of  
19 contacts with them, and finding the right person within  
20 their legal section to speak with, was co-operative and  
21 did, in fact, take down the Yahoo forum, because Mr.  
22 Kyburz had declined to do so.

23 THE CHAIRPERSON: Are you confident  
24 that an order in these kinds of general terms would be  
25 sufficient to remove the kind of material we have been

1 dealing with?

2 MR. WARMAN: With regard to that  
3 question, I would refer you to paragraph 86, which is  
4 on the next page. It talks about the fact that in the  
5 Kyburz case the Commission had asked for an order that  
6 Mr. Kyburz contact "archive.org". "archive.org"  
7 attempts to be a giant archive of the Internet, or as  
8 much of the Internet as they can access, through, for  
9 lack of a better word, little robots that go through  
10 and scan websites all over the Internet.

11 They are attempting to amass a  
12 library of the Internet, if you will.

13 THE CHAIRPERSON: So that they can do  
14 some kind of keyword search and then remove --

15 MR. WARMAN: It is more for a  
16 historical record.

17 The purpose of "archive.org" is  
18 simply to be a historical record of the Internet.

19 But, in this case, what I would  
20 specifically draw your attention to is the fifth line  
21 from the bottom, where it starts at the right-hand  
22 side, "It seems to us..."

23 THE CHAIRPERSON: I'm sorry, what  
24 paragraph is that?

25 MR. WARMAN: It's paragraph 86. It's



1 about five lines from the bottom.

2 THE CHAIRPERSON: I see. "It seems  
3 to us..."

4 MR. WARMAN: "...that a request  
5 from the Commission to  
6 Archive.org, accompanied by a  
7 copy of this decision, is much  
8 more likely to be effective, and  
9 thus we decline to make the  
10 order requested. In the absence  
11 of statutory authorization, the  
12 Tribunal cannot make an order  
13 against a non-party to this  
14 proceeding. However, we would  
15 encourage the proprietors of the  
16 Archive.org web site to give  
17 serious consideration to  
18 removing the offending material  
19 from the site."

20 So if there was a finding of  
21 liability by the Tribunal, then I would suggest that an  
22 order or a statement similar to that in the decision  
23 would be --

24 THE CHAIRPERSON: I just want to  
25 understand. I don't know the net nearly as well as you

1 do.

2 If the material is removed from the  
3 "archive.org" site, what does that mean? It means that  
4 when someone else gets on the web and searches Google  
5 they can't find it?

6 MR. WARMAN: In this case, because  
7 "archive" regularly goes through and takes images of  
8 websites, there were archived copies of Mr. Kyburz's  
9 website, "patriotsonguard", stored on the "archive.org"  
10 website, which people could go and reference to see  
11 what his website looked like on date X, date Y, date Z.

12 THE CHAIRPERSON: I understand. So  
13 this is just shutting down another source.

14 MR. WARMAN: Yes, exactly.

15 THE CHAIRPERSON: But in terms of  
16 actually having the postings removed, that is really a  
17 matter for Google, or whatever the host --

18 MR. WARMAN: Yes. In parallel to the  
19 Kyburz decision here, you might suggest something like,  
20 "It seems to me that a request from the Commission to  
21 Google.com, accompanied by a copy of this decision",  
22 and then mirroring the words from the Kyburz decision.

23 The Commission could then take  
24 that --

25 THE CHAIRPERSON: In these cases, I

1 am wondering if the Commission does up a formal order.

2 My concern is very simple. And we  
3 are going to have to go back to liability in a minute,  
4 but, as I say, I want to know where I am going here.

5 If there is going to be an order, I  
6 wasn't very clear at the outset as to what kind of  
7 order you are looking for. I have a much better idea  
8 now, but my concern would be that, if there is going to  
9 be an order, it should be an effective order.

10 I don't think it serves the public or  
11 the system of justice very well if we go through this  
12 exercise and there is a finding of liability, you  
13 obtain an order, and nothing happens.

14 If we are going to go through this  
15 exercise, it is a serious legal exercise, and the  
16 material -- the specific material -- or at least some  
17 of the material to which you referred, if it's  
18 offending, should be removed. I am just expressing  
19 concerns about going through the forum, but not the  
20 substance of the exercise.

21 MR. WARMAN: If I may, my personal  
22 experience in contacting larger corporate entities who  
23 host material or run these kinds of forums has usually  
24 been fairly positive, in that they have been, in fact,  
25 fairly responsive, particularly when it is backed up

1 with some form of judicial decision.

2 I would presume that if there were a  
3 finding of liability, the Commission would then take  
4 the step of registering that decision with the Federal  
5 Court.

6 THE CHAIRPERSON: Yes.

7 MR. WARMAN: And particularly when it  
8 is backed up with an order from a tribunal and the  
9 Federal Court, they are much more willing to act on it.

10 The last point I would make is, of  
11 course, that the order would be proscriptive for the  
12 future, in that it would say "You may not make these  
13 kinds of postings in the future". That is one of the  
14 primary goals, to stop the recurrence of this, if Eldon  
15 Warman was so inclined to continue these kinds of  
16 activities.

17 THE CHAIRPERSON: I think what would  
18 happen is, one might in one's decision make the kind of  
19 statement that was made in Kyburz, but I wonder if it  
20 wouldn't be more appropriate at the end of the day for  
21 the Commission to draft a formal order, which could be  
22 signed by the member, and then you could, of course,  
23 file that, presumably, with the Federal Court and do  
24 what you need with it.

25 Would that make sense?

1 MS PHILLIPS: That's fine. If there  
2 is a finding of liability, yes, we could do that.

3 THE CHAIRPERSON: I did want a sense  
4 of where we are going. Can we go back to the more  
5 general issues on liability?

6 I do have some other questions about  
7 the penalty. I have already raised that with you.

8 Who would like to go first?

9 I wanted to clarify, as I said, where  
10 we were heading in terms of an order.

11 Do you want Mr. Warman to go first,  
12 Ms Phillips, in terms of general submissions?

13 MS PHILLIPS: That's fine.

14 CLOSING SUBMISSIONS BY THE COMPLAINANT

15 MR. WARMAN: After witnessing the  
16 horrors of the Holocaust and World War II, Canada and  
17 the international community came together in an attempt  
18 to establish a legal framework through documents such  
19 as the Universal Declaration of Human Rights, and later  
20 agreements, like the International Covenant on Civil  
21 and Political Rights, to attempt to ensure that such  
22 carnage would never again take place.

23 Article 1 of the Universal  
24 Declaration of Human Rights states that:

25 "All human beings are born free

1 and equal in dignity and  
2 rights."

3 Article 7 holds that:

4 "All are equal before the law  
5 and are entitled without any  
6 discrimination to equal  
7 protection of the law. All are  
8 entitled to equal protection  
9 against any discrimination in  
10 violation of this Declaration  
11 and against any incitement to  
12 such discrimination."

13 Concerned with the enduring plague of  
14 bigotry, the United Nations later enacted the  
15 International Covenant on Civil and Political Rights  
16 that Canada adhered to in 1976. Under article 20(2) of  
17 the Covenant, Canada, as a party, undertakes that: any  
18 advocacy of national, racial or religious hatred that  
19 constitutes incitement to discrimination, hostility or  
20 violence shall be prohibited by law.

21 THE CHAIRPERSON: I'm sorry, which  
22 covenant is that?

23 MR. WARMAN: It is article 20(2) of  
24 the Covenant on Civil and Political Rights.

25 THE CHAIRPERSON: Do you have a legal

1 reference for that?

2 I can find one.

3 MR. WARMAN: I'm sorry, I don't have  
4 one here. Perhaps my colleague does.

5 MS PHILLIPS: I have copies of the  
6 two international covenants.

7 THE CHAIRPERSON: I would like to  
8 have those in front of me.

9 MS PHILLIPS: I have one copy, but I  
10 could make more.

11 THE CHAIRPERSON: You can continue,  
12 Mr. Warman.

13 Ms Phillips, could you see that I do  
14 receive those?

15 Do you have a copy for me?

16 MS PHILLIPS: Yes, I do.

17 THE CHAIRPERSON: Thank you.

18 This was tying in with what, article  
19 2 of the Universal Declaration?

20 MR. WARMAN: Articles 1 and 7.

21 THE CHAIRPERSON: Article 7 refers to  
22 incitement.

23 MR. WARMAN: Yes.

24 For the purposes of this case, part  
25 of Canada's efforts to fulfil these obligations has

1        been the enactment of section 13 of the Canadian Human  
2        Rights Act, prohibiting the dissemination of hate  
3        messaging via the Internet that is likely to expose  
4        persons to hatred or contempt on the basis of their  
5        religion.

6                                Having heard the evidence that has  
7        been submitted, I am confident that the material before  
8        you is sufficient to find that it constitutes matters  
9        that are likely to expose members of the Jewish faith  
10       to hatred or contempt and that Eldon Warman was  
11       responsible for its communication.

12                                No segment of our society should have  
13       to suffer this kind of vilification as an impediment to  
14       their ability to make for themselves the lives that  
15       they are able and wish to have.

16                                In contemplating the appropriate  
17       remedies, in addition to the requested cease and desist  
18       order, when considering the possible imposition of a  
19       penalty under section 54(1)(c), I believe that the  
20       Tribunal should have regard to the fact that the  
21       Respondent has made no effort to take responsibility  
22       for his deeds.

23                                Instead, he has been obstructionist  
24       from the beginning to the end of this process, and has  
25       made every possible effort to stymie it, from returning



1 materials, and claiming to be deceased, to his  
2 self-admitted efforts to avoid service of documents.

3 Given the evidence that has been  
4 entered against the Respondent, I would respectfully  
5 suggest that it is entirely open to the Tribunal to  
6 draw an adverse inference from his decision to boycott  
7 the Tribunal hearing.

8 In addition, I would bring the  
9 Tribunal's attention to Eldon Warman's admission in his  
10 e-mail to "Mary Dufford" that "their case is based upon  
11 some articles that I put on the news groups..."

12 The Respondent cannot be permitted to  
13 thumb his nose at laws put in place pursuant to  
14 Canadian society's common understanding that hate  
15 propaganda is fundamentally poisonous to our  
16 communities.

17 With this in mind, Martin Luther King  
18 Jr. once said:

19 "Morality cannot be legislated  
20 but behaviour can be regulated.  
21 Judicial decrees may not change  
22 the heart, but they can restrain  
23 the heartless."

24 I realize that neither persistent  
25 human rights work nor the Tribunal will ever fully

1 eradicate the scourge of hatred. Despite this, I  
2 believe it is imperative for all of us to stand in  
3 solidarity with those who are targeted, because history  
4 has taught us that the cost of silence and inaction  
5 whenever any group within our community is under attack  
6 is ultimately far greater still.

7 I think that this is a message that  
8 the Tribunal has a unique role in fulfilling, and I am  
9 hopeful that the Tribunal will send a strong message  
10 that in Canada groups that are targeted will receive  
11 the full protection of the law.

12 Although they were written in 1965,  
13 the words of the Special Committee on Hate Propaganda  
14 in Canada are as apropos now as they were then, and,  
15 sadly, deal with many of the same things as this  
16 hearing today.

17 The Committee was comprised of then  
18 McGill Law Dean Maxwell Cohen, Professors Mark  
19 MacGuigan, Pierre Trudeau, and three others. They  
20 wrote:

21 "Canadians who are members of  
22 any identifiable group in Canada  
23 are entitled to carry on their  
24 lives as Canadians without being  
25 victimized by the deliberate,

1 vicious promotion of hatred  
2 against them. In a democratic  
3 society, freedom of speech does  
4 not mean the right to vilify.  
5 The number of organizations  
6 involved and the numbers of  
7 persons hurt is no test of the  
8 issue: the arithmetic of a free  
9 society will not be satisfied  
10 with oversimplified statistics  
11 demonstrating that we are  
12 casting stones and not many are  
13 receiving hurts. What matters  
14 is that incipient malevolence  
15 and violence, all of which are  
16 inherent in 'hate' activity,  
17 deserves national attention.  
18 However small the actors may be  
19 in number, the individuals and  
20 groups promoting hate in Canada  
21 constitute 'a clear and present  
22 danger' to the functioning of a  
23 democratic society."

24 In closing, I wish to thank the  
25 Tribunal and its staff for your time and consideration.

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1 Thank you.

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

4 I have some questions, but I want to  
5 ask the Commission a number of questions, and then I  
6 will come back to you, Mr. Warman, to see if you have  
7 anything to add to what Ms Phillips has to say.

8 MS PHILLIPS: Would you like me to  
9 proceed with my closing and then ask the questions?

10 THE CHAIRPERSON: Yes.

11 CLOSING SUBMISSIONS ON BEHALF OF THE CANADIAN HUMAN  
12 RIGHTS COMMISSION

13 MS PHILLIPS: I would note at the  
14 outset that I have made copies of my closing arguments  
15 because I am referring to a number of passages and case  
16 law.

17 THE CHAIRPERSON: I would appreciate  
18 that.

19 Do I have a copy?

20 MS PHILLIPS: I have it here. I  
21 wasn't sure if you would --

22 THE CHAIRPERSON: Obviously it would  
23 assist. Thank you.

24 MS PHILLIPS: I will also endeavour  
25 not to repeat some of the statements made by the

1 Complainant about the purpose of the legislation.

2 I would like to start by saying that  
3 repeated public messages of hate are detrimental to the  
4 fabric of Canadian society. The type of material seen  
5 by the Tribunal over the course of this hearing offends  
6 the very essence and engages the basic purpose of the  
7 Act.

8 Eldon Warman has the right to hold  
9 opinions, but when he made a conscious, informed choice  
10 to systematically and publicly post those messages of  
11 hatred and contempt on the Internet, through news  
12 groups and websites, he violated section 13 of the Act.

13 The material in question is extreme  
14 and has long been recognized to adversely impact  
15 society, and raises very serious public interest  
16 concerns.

17 The Complainant referred to the Cohen  
18 committee report that was published in the sixties.  
19 The Supreme Court of Canada referred to that report in  
20 the Taylor decision, which is at tab 2 of the book of  
21 authorities. They stated that individuals subjected to  
22 racial or religious hatred may suffer substantial  
23 psychological distress; that the damaging consequences  
24 include a loss of self-esteem, feelings of anger and  
25 outrage, and strong pressure to renounce cultural

1 differences.

2 They stated that:

3 "Hate propaganda can operate to  
4 convince listeners, even if  
5 subtly, that members of certain  
6 racial or religious groups are  
7 inferior. The result may be an  
8 increase in acts of  
9 discrimination, including the  
10 denial of equal opportunity in  
11 the provision of goods, services  
12 and facilities, and even  
13 incidents of violence."

14 The Supreme Court of Canada states:

15 "This intensely painful reaction  
16 undoubtedly detracts from an  
17 individual's ability to, in the  
18 words of s. 2 of the Act, 'make  
19 for himself or herself the life  
20 that he or she is able or wishes  
21 to have'."

22 Mr. Warman cited the covenants that  
23 Canada is a signatory to in the international fora, and  
24 I want to mention that section 13 was not only examined  
25 under the Constitution in Taylor, but under the laws of

1 international law in 1983, when Mr. Taylor made a  
2 complaint to the United Nations Human Rights Committee,  
3 alleging a violation of the freedom of expression  
4 guaranteed in the International Covenant on Civil and  
5 Political Rights.

6 That decision is referred to in the  
7 Taylor decision. The committee stated that the  
8 complaint --

9 THE CHAIRPERSON: Can you give me a  
10 reference in the Taylor decision where they refer to  
11 that?

12 MS PHILLIPS: The Taylor decision is  
13 at tab 2, paragraph 44.

14 THE CHAIRPERSON: Thank you.

15 MS PHILLIPS: The complaint was  
16 rejected on the ground that "the opinions which Mr.  
17 Taylor seeks to disseminate through the telephone  
18 system clearly constitute the advocacy of racial or  
19 religious hatred which Canada has an obligation under  
20 article 20(2) of the Covenant to prohibit".

21 THE CHAIRPERSON: I'm sorry, I am not  
22 quite following you. What happened at the UN  
23 committee?

24 MS PHILLIPS: The UN committee  
25 rejected the complaint, stating that his complaint, and

1 the opinions that he wished to disseminate, were  
2 contrary to Canada's obligation under article 20(2) of  
3 the International Covenant on Civil and Political  
4 Rights, which has to do with racial discrimination.

5 THE CHAIRPERSON: I am not following  
6 somehow.

7 What was the complaint to the United  
8 Nations?

9 MS PHILLIPS: The complaint to the  
10 United Nations committee was that section 13 of the  
11 Human Rights Act violated the complainant's freedom of  
12 expression, basically, internationally.

13 THE CHAIRPERSON: I understand.  
14 Was it a committee on human rights?  
15 I am not sure if that is the right  
16 term, but that's where the complaint went?

17 MS PHILLIPS: The United Nations  
18 Human Rights Committee.

19 THE CHAIRPERSON: All right, I  
20 understand the situation now.

21 MS PHILLIPS: Therefore, both our  
22 highest national court and the international committee  
23 with the authority to rule on the validity of section  
24 13 have upheld the section and have affirmed its  
25 purpose.



1                   Finally, it is worth noting that just  
2 last month, in a message on the International Day for  
3 the Elimination of Racial Discrimination, March 21,  
4 2005, the Secretary General of the United Nations, Mr.  
5 Kofi Annan, made the following statement:

6                   "Despite decades of efforts to  
7 eradicate it, the virus of  
8 racism continues to infect human  
9 relations and human institutions  
10 in all parts of our globe.  
11 Today the old strains of this  
12 disease, such as  
13 institutionalized  
14 discrimination, indirect  
15 disadvantage, racist violence,  
16 hate crimes, harassment and  
17 persecutions are compounded by  
18 new forms of discrimination,  
19 seemingly defying many of the  
20 gains we have made..."

21                   He went on to give the example of the  
22 use of the Internet for the propagation of racism as an  
23 example of these new forms of discrimination.

24                   If we could move to the test under  
25 section 13, the first component is whether the

1 Respondent communicated or caused to be communicated  
2 the material in question.

3 There are a number of previous  
4 decisions by the Tribunal and the courts that are  
5 helpful in making this determination.

6 THE CHAIRPERSON: This is going to  
7 the wording of the section, obviously.

8 MS PHILLIPS: The first principle is  
9 that proof of legal ownership of the website is not  
10 required.

11 That was held in the Zundel decision,  
12 which is at tab 3, paragraph 39.

13 In that case the Tribunal stated --

14 THE CHAIRPERSON: I am sorry to do  
15 this, but I don't know when I should come in.

16 Obviously there is an issue about  
17 freedom of expression or free speech, and I think we  
18 all believe in a vigorous political debate, and there  
19 are some political issues that are somehow aired in  
20 this kind of communication, but am I right in thinking  
21 that the significant reference to section 13, as far as  
22 arguments of freedom of expression are concerned, is  
23 the reference to exposing individuals to hatred or  
24 contempt?

25 Is it that decisive?

1 MS PHILLIPS: I'm sorry, I don't  
2 understand the question.

3 THE CHAIRPERSON: I have to respect  
4 the Charter as much as anyone else. We do live in a  
5 country which has, I would assume, a historical record  
6 which respects freedom of expression and that there  
7 should be broad public debate. When people engage in  
8 public debate on, for example, political issues, often  
9 they exaggerate. They will overstep the bounds of  
10 civility. That, in itself, is to be expected and  
11 accepted.

12 I noticed that Mr. Warman and  
13 yourself referred to the international covenants, or  
14 the language in international statutory instruments,  
15 which speak of incitement. So I would have thought --

16 I regret that we don't have the  
17 Respondent here. I am not sure what he would say in  
18 his defence. He might say that "I live in a free  
19 country", ostensibly, "and it is my right to say what I  
20 think". The response is that where the limit comes in  
21 is when you incite other people to somehow mistreat  
22 other individuals.

23 Is that fair?

24 MS PHILLIPS: Yes. I understand what  
25 you are saying.

1 Under this legislation the term is  
2 "expose", and I am going to talk about the  
3 interpretation of that in the next section.

4 I think there has been a very  
5 vigorous debate at the Supreme Court level on the  
6 constitutionality of section 13, including all of these  
7 terms -- hatred, contempt, expose, likely, repeated.

8 All of these terms were dealt with  
9 quite comprehensively, and that decision is in our  
10 material at tab 2. They found that this section  
11 constitutes a reasonable limit to freedom of expression  
12 in Canada, and that was revisited by the Tribunal --

13 THE CHAIRPERSON: But in terms of  
14 someone in my position, in terms of what I am to allow  
15 the Respondent to do, where I draw the line is that  
16 when we get into material which somehow has the  
17 potential for bringing --

18 It is actually a liberal test, I mean  
19 in the classic liberal sense. It is the potential of  
20 harm to other people that justifies the legislation.

21 MS PHILLIPS: Correct. The portion  
22 of the test I was just discussing is the communication  
23 part of it, but I will then go on to --

24 THE CHAIRPERSON: It was just because  
25 you referred to the UN and these general issues.

1 Obviously, in this kind of case, the first issue that  
2 comes up is freedom of expression.

3 It seems to me that that is dealt  
4 with, as I say, by virtue of the fact that the section  
5 talks about exposing individuals to hatred and  
6 contempt.

7 So we are going beyond something more  
8 than the mere expression of ideas.

9 You are with me when I make those  
10 kinds of comments?

11 MS PHILLIPS: Yes.

12 THE CHAIRPERSON: All right, if you  
13 want to continue, please --

14 MS PHILLIPS: At the moment, I am  
15 talking about the first part of the test, which is the  
16 communication part.

17 THE CHAIRPERSON: Yes.

18 MS PHILLIPS: I was stating that the  
19 case law is helpful in breaking down this part of the  
20 test, and there are four principles that I want to  
21 mention.

22 The first is that proof of legal  
23 ownership of the website is not required. That was  
24 stated in the Zundel decision.

25 I mention that because many of the

1           postings were on public news groups.

2                               The second is that authorship of the  
3 material is not required. That was stated in the  
4 Kyburz decision.

5                               I mention that because, as you saw  
6 yesterday, the Respondent included postings by other  
7 authors in his messages.

8                               In Kyburz they stated:

9                                       "...section 13 of the Act does  
10 not require authorship. The  
11 discriminatory practice is made  
12 out when a respondent  
13 communicates matter that is  
14 likely to expose a person or  
15 persons to hatred or contempt by  
16 reason of the fact that they are  
17 identifiable on the basis of a  
18 prohibited ground of  
19 discrimination, whether or not  
20 the respondent wrote the  
21 material himself."

22                               The third point is positive steps  
23 that it takes to actually find the material on the  
24 website.

25                               In Kyburz they discussed this issue

1 and stated:

2 "The fact that a web site is a  
3 somewhat passive medium,  
4 requiring the reader to take  
5 positive steps in order to  
6 access the posted material does  
7 not detract from the fact that,  
8 in up-loading the material to  
9 the web site, Mr. Kyburz  
10 communicated the material in  
11 issue."

12 THE CHAIRPERSON: I'm sorry, I didn't  
13 quite catch the third point. What was the third point  
14 again?

15 MS PHILLIPS: The general third point  
16 is that it is irrelevant that you have to take positive  
17 steps to find the material on the Internet.

18 There was a discussion in Kyburz  
19 about -- I believe in that case there was a warning on  
20 the first page.

21 They are talking about the nature of  
22 websites, and I am bringing this up because --

23 THE CHAIRPERSON: Does that go to  
24 privacy, or is that just a matter, somehow, of the  
25 meaning of communicating?

1 MS PHILLIPS: Communicating. It goes  
2 to communication.

3 The nature of the Internet is that  
4 you often have to seek out material. You have to  
5 search for it.

6 Mr. Warman testified yesterday that  
7 he used Google to find some of these documents.

8 In the Kyburz decision, Chairperson  
9 Mactavish stated that that is irrelevant, that it is  
10 still communicating. It is communicating the material  
11 in a public forum. It is an inherent characteristic of  
12 Internet sites and of news group postings, like we saw  
13 yesterday, that they are public.

14 THE CHAIRPERSON: I am with you so  
15 far. I don't see any of this as a problem, unless  
16 there is some case law which somehow defines  
17 "communicating" in an unusual sense.

18 MS PHILLIPS: The very last point I  
19 have is that section 13 says "repeatedly", and the case  
20 law in Schnell found --

21 THE CHAIRPERSON: I think the idea is  
22 that somehow, I guess, the violation is in yourself.  
23 The word "communicate" suggests that the person who is  
24 communicating is doing something, but, of course, what  
25 they are doing is placing it on the website.



1 MS PHILLIPS: Right.

2 THE CHAIRPERSON: I suppose the  
3 communication does not take place until someone  
4 receives the message on the other end. I suppose it is  
5 some argument like that.

6 MS PHILLIPS: There have only been  
7 three Internet cases, and this material is coming out  
8 of those three, and there have been discussions of the  
9 nature of communication via the Internet.

10 THE CHAIRPERSON: But, then, the way  
11 I put it legally is, I suppose, it is almost an offer  
12 to communicate.

13 Strictly speaking, it is not  
14 communicated until someone reads it, and it is  
15 different from a conversation, in that it is not Eldon  
16 Warman on the phone talking to someone; he puts  
17 material somewhere which then can be accessed.

18 I suppose, strictly speaking, it is  
19 not communicated until the point where someone has  
20 accessed it.

21 But, then, I suppose that the  
22 Complainant accessing it -- there is communication  
23 there. Somehow the communication closes.

24 MS PHILLIPS: I think the basic  
25 message in Kyburz is that, by posting it on a public

1 forum, regardless of whether an actual victim reads  
2 it --

3 THE CHAIRPERSON: If no one ever read  
4 it, it would still be communicating? It would be like  
5 saying something; if there is no one there to listen,  
6 you have still said it somehow.

7 MS PHILLIPS: Because it is in a  
8 public forum.

9 THE CHAIRPERSON: All right. What  
10 was the fourth point?

11 MS PHILLIPS: The fourth point is  
12 repetition, which goes to the wording of section 13.

13 In the Schnell decision, Chairperson  
14 Sinclair stated that, by its very nature, the Internet  
15 allows for repeated public communication once a message  
16 is posted.

17 There is overwhelming evidence that  
18 it is the Respondent, Eldon Warman, who communicated or  
19 caused to be communicated the material which is the  
20 subject of this complaint.

21 Eldon Warman signed his own name to  
22 the messages in question. The evidence demonstrates  
23 that each document is from Eldon Warman and lists his  
24 e-mail addresses.

25 We received some further evidence

1 this morning about these e-mail addresses actually  
2 being posted on the "detaxcanada" website, which is  
3 registered to him.

4 The majority of the references on the  
5 news groups referenced his detax program and gave the  
6 website address. He signs his name at times as "Detax  
7 Author and Consultant".

8 The materials have similar language  
9 and tone to them.

10 At tab B44 we saw a "Whois Search",  
11 which noted that the "detax" website is linked to Eldon  
12 Warman in Calgary, the same address where the  
13 Commission personally served the Respondent.

14 I also want to mention that a "Whois  
15 Search" was accepted in the Schnell decision as  
16 evidence of the registration of a website.

17 THE CHAIRPERSON: Is it a situation  
18 where -- one would like even stronger or more  
19 unequivocal evidence, but in the absence of anything to  
20 suggest otherwise, the evidence would seem to be  
21 sufficient to indicate that Eldon Warman was the person  
22 who wrote this material.

23 Would that be a fair way to put it?

24 MS PHILLIPS: I think, on the balance  
25 of probabilities, yes.

1 THE CHAIRPERSON: So the natural  
2 inference from what we have and the references to the  
3 e-mail addresses, which are consistent, and the sort of  
4 cross-referencing -- because you have references to the  
5 "detax" website and to the e-mail addresses.

6 It is almost prima facie. It's  
7 almost that there is a prima facie case, where, in the  
8 absence of other evidence, I think one would draw the  
9 natural inference that, indeed, Eldon Warman was -- I  
10 don't know if the word "author" is the right word, but  
11 was the source of this material.

12 You are with me on that?

13 MS PHILLIPS: Yes, I agree.

14 THE CHAIRPERSON: Do I go through a  
15 prima facie analysis in this situation?

16 MS PHILLIPS: Definitely. I am just  
17 going through the elements of the test --

18 THE CHAIRPERSON: All right, you can  
19 come to that then.

20 MS PHILLIPS: The next element is the  
21 Internet.

22 As you know, the legislation was  
23 amended, and this complaint was filed in June of 2003,  
24 so the most recent version of the Act applies.

25 Section 13(2) clarifies that section

1 13 applies to the Internet.

2 Richard Warman gave evidence that he  
3 observed all of the documents produced on the websites  
4 and downloaded these himself before providing them to  
5 the Commission.

6 We have seen the use of e-mail  
7 addresses, websites and Google. They are all  
8 components of the Internet.

9 The third and final part of the test  
10 is whether the material is likely to expose a person or  
11 persons to hatred or contempt by reason of the fact  
12 that those persons are identifiable on the basis of a  
13 prohibited ground of discrimination.

14 The Commission submits that the test  
15 to be used in determining this was set out by the  
16 Tribunal in the Nealy v. Johnson case, which is cited  
17 in our book of authorities, and was cited with approval  
18 in the Supreme Court of Canada case of Taylor, which is  
19 at tab 2.

20 The first portion of the test is  
21 "likely" -- whether something is likely to expose  
22 someone to hatred or contempt.

23 In Nealy, the Tribunal stated:

24 "...that it is not necessary  
25 that evidence be adduced that

1 any particular individual or  
2 group took the messages  
3 seriously and in fact directed  
4 hatred or contempt against  
5 another or others, still less  
6 that anyone has in fact been  
7 victimized in this way. It is  
8 enough to prove that the matter  
9 in the messages is more likely  
10 than not to spark a positive  
11 reaction amongst some of the  
12 listeners to it which will  
13 likely in turn manifest itself  
14 in 'hatred' or 'contempt'  
15 towards the targets of the  
16 messages."

17 That is Nealy, tab 4, page 16.

18 The next word in the test is the word  
19 "expose". In Nealy, the Tribunal stated that "expose"  
20 is a more passive word, as opposed to "incite", which  
21 is the word we were discussing earlier, and indicates  
22 "that an active effort or intent on the part of the  
23 communicator or a violent reaction on the part of the  
24 recipient are not envisaged". Rather, "expose" means  
25 to leave a person unprotected, to leave open to

1       ridicule, censure or danger, creating the right  
2       conditions for hatred or contempt to flourish, leaving  
3       the identifiable group open or vulnerable to ill  
4       feelings of hostility or putting them at risk to be  
5       hated.

6                       THE CHAIRPERSON:   Where are you  
7       quoting from?

8                       MS PHILLIPS:   That is also Nealy, tab  
9       4, page 16.

10                      THE CHAIRPERSON:   I certainly take  
11       the point, although I suppose that some of what we have  
12       heard would seem to be inciteful.  So it would actually  
13       meet some kind of even stronger test.

14                      MS PHILLIPS:   I would agree.

15                      The third word in the test that is  
16       examined by the Tribunal is "hatred".  In Nealy, again,  
17       tab 4, this time at page 15, the Tribunal stated:

18                                "With 'hatred' the focus is a  
19                                set of emotions and feelings  
20                                which involve extreme ill-will  
21                                towards another person or group  
22                                of persons.  To say that one  
23                                'hates' another means in effect  
24                                that one finds no redeeming  
25                                qualities in the latter.  It is

1 a term, however, which does not  
2 necessarily involve the mental  
3 process of `looking down' on  
4 another or others. It is quite  
5 possible to `hate' someone who  
6 one feels is superior to one in  
7 intelligence, wealth or power.  
8 None of the synonyms used in the  
9 dictionary definition for  
10 `hatred' give any clues to the  
11 motivation for the ill will."

12 The next word is "contempt", which  
13 is, again, Nealy, tab 4, page 15.

14 THE CHAIRPERSON: I don't know that  
15 you have to worry that much about this. We are dealing  
16 with hate, I would assume. I suppose you could read in  
17 contempt, but it seems to me that what we are talking  
18 about is an expression of hatred. And it seems to me,  
19 if I could use, I suppose, a philosophical term, that  
20 the term "hatred" is primitive. I think people just  
21 know what the word "hate" means, and I find it hard to  
22 believe that anyone could read this material and not  
23 think that it was expressing hatred.

24 Correct me if I am wrong, but if  
25 there are issues in this case, I don't think that's



1 where they lie.

2 MS PHILLIPS: That's fine. I just  
3 wanted to review the case law.

4 THE CHAIRPERSON: I appreciate that.

5 MS PHILLIPS: Perhaps I could briefly  
6 review the facts --

7 THE CHAIRPERSON: I am learning as we  
8 go.

9 MS PHILLIPS: I would like to review  
10 the facts as they relate to the test.

11 You were discussing the establishment  
12 of a prima facie case, and I will review the evidence  
13 as it relates to the test.

14 The materials have some general  
15 characterizations of persons of the Jewish faith.  
16 Sometimes the Respondent speaks of Talmud Jews, or  
17 Zionist Jews, but often he speaks of Jews as a whole.

18 I will review some of the material  
19 that was read in by Mr. Warman; however, it was just  
20 yesterday, so I am sure it is still fresh in your  
21 memory.

22 The materials present a consistent  
23 theme that Jews are part of an evil conspiracy to  
24 enslave and exploit non-Jews; that Jews are evil and  
25 dangerous; that they have no redeeming qualities and

1 are in fact criminals. He disparages Jewish religious  
2 texts and diminishes or denies the Holocaust.

3 The following are some examples of  
4 enslavement of non-Jews by Jews.

5 In Exhibit HR-9 he states:

6 "Karl Marx, a Jew, wrote the  
7 program, and that directly out  
8 of the books of the Talmud.  
9 Sigmund Freud and Pavlov, Jews,  
10 conditioned the minds of the  
11 stupid 'Goy' to cower down and  
12 accept the despotic program of  
13 the Talmud."

14 In Exhibit HR-44 he states:

15 "...I do fear greatly for my  
16 grandchildren, and the world in  
17 which they must try to live  
18 their lives with value and  
19 meaning - and, not as slaves of  
20 Zionist Jew banksters."

21 The next theme is Holocaust denial or  
22 diminishment.

23 At HR-10 he states:

24 "You may not be a Jew; but,  
25 you're sure acting like one.

1 Sure, lots of people died in the  
2 German death camps - mostly  
3 Germans who had a different  
4 political view than the  
5 Zazis...as well as many Khazar  
6 Jews who had taken over most of  
7 the businesses in the towns and  
8 villages and were raping and  
9 pillaging the people just like  
10 their big Zionist brothers are  
11 now doing to Canada."

12 In that same exhibit he goes on to  
13 state:

14 "No one seems to be able to find  
15 any more than about 2,000,000  
16 million Jews in all of Europe in  
17 1940. They keep pretty good  
18 records of such things there.  
19 Unless they did a lot of  
20 breeding in the prison camps,  
21 the holocaust of 6,000,000 is a  
22 huge exaggeration...the story  
23 seems to serve the purpose of  
24 laying a guilt trip on even the  
25 countries that helped stop the

1                   Zionist inspired and paid for  
2                   Nazi regime, so that all of the  
3                   western world can have its  
4                   pockets picked and its pantries  
5                   looted by these thugs."

6                   Then, at HR-24 there was the  
7                   Holocaust denial article that Mr. Warman briefly  
8                   summarized, which talked about no Holocaust order ever  
9                   being given in Germany, and that the Holocaust has  
10                  given Israel an advantage internationally.

11                  Then, there are many examples of  
12                  general discriminatory messages against Jews and their  
13                  religious teachings.

14                  At HR-12 the Respondent refers to the  
15                  collection of Jewish laws and traditions, called the  
16                  Talmud. He states:

17                         "...A collection of books  
18                         originating in Babylon during  
19                         the captivity of Judah (around  
20                         550BC). The term translated to  
21                         English is: 'The Wisdom of the  
22                         Rabbim' (More like 'The evil  
23                         trash of the Rabbim of the  
24                         Synagogue of Satan')."

25                         He went after one particular

1 contributor to the news group, who he identified as  
2 Jewish, at HR-21, stating:

3 "Joe the JewBoy,  
4 Thanks for bringing back this  
5 reminder for the People of  
6 Canada and the United States to  
7 read and refresh their memory of  
8 what your NAZI-ZIONIST JEWS have  
9 done to the People of America.

10 It's too bad we don't have a  
11 greater need for soap and  
12 lampshades..."

13 At HR-47 he calls Jews mass  
14 murderers, evil criminals, robbers, jackboot thugs,  
15 extortionists, liars, genocidialists, frauds,  
16 exploiters.

17 At HR-22 he states:

18 "Aren't these Zionist Jews  
19 'lovely!' specimens of this evil  
20 and exceedingly decadent MASS  
21 MURDERING cult !!!!!"

22 There are also themes of conspiracy  
23 that run through the material. For example, he blames  
24 Jews for the Depression of the 1920s.

25 At HR-11 he states:

1 "The international bankers (read  
2 Jews) withdrew money from  
3 circulation, and directly  
4 instigated the depression."

5 At HR-41 we reviewed the W-FIVE  
6 transcript, which included some insertions and comments  
7 from Eldon Warman in the text. He stated at page 2 --

8 THE CHAIRPERSON: Can I stop you  
9 there? I asked you a question about judicial notice,  
10 and you did, of course, refer to the passage. I am  
11 aware, as are the parties, of at least the apparent  
12 significance of those kinds of references. Do I need  
13 evidence, or can I simply draw that inference? Am I  
14 entitled to?

15 MS PHILLIPS: I think the test for  
16 judicial notice is if facts are so notorious that no  
17 evidence is needed to prove them.

18 I don't have the exact quote in front  
19 of me, but I think that notice can be taken of common  
20 facts, and since the Holocaust happened over 50 years  
21 ago and there has been quite --

22 THE CHAIRPERSON: I am referring  
23 to -- of course, all of it is disturbing. The  
24 reference is presumably to the fact that lampshades  
25 were made of human skin.

1                   Can I work on the assumption, for  
2                   example, that an ordinary member of the public, in  
3                   reading this material, would draw that conclusion?

4                   I don't know if I need evidence or  
5                   whether --

6                   I still have to be neutral and fair.  
7                   Can I draw --

8                   This kind of material is offensive  
9                   with or without it, but I think it does go --

10                  That particular reference is deeply  
11                  disturbing, but I am not sure whether I can work on my  
12                  own knowledge of the significance of that reference or  
13                  whether I need it from someone else.

14                  MS PHILLIPS: I would argue that the  
15                  facts of the Holocaust, and a lot of information  
16                  subsequent to the Holocaust, would be considered  
17                  notorious in Canadian society.

18                  I would also argue that, within the  
19                  context of the Human Rights Tribunal, whose very laws  
20                  and systems came out of World War II and the  
21                  Holocaust -- the very first declaration of human rights  
22                  came out as a result of the Holocaust.

23                  I think that, within this context,  
24                  the Cohen committee report that is referred to by  
25                  Taylor specifically references the Holocaust. I think

1           there are a number of Canadian parliamentary documents  
2           that reference the Holocaust and the damage that hate  
3           messaging -- the context of hate messaging and the  
4           Holocaust.

5                           THE CHAIRPERSON:  If I said that if  
6           something is a known and notorious fact and would be  
7           known to an ordinary member of the public -- some test  
8           like that?  Would that give me the right to refer to  
9           that sort of common understanding, that these kinds of  
10          references carry those kinds of implications?

11                          MS PHILLIPS:  That is my  
12          understanding of the test.

13                          THE CHAIRPERSON:  Would the  
14          Commission encourage me to make that kind of --

15                          MS PHILLIPS:  Yes.

16                          THE CHAIRPERSON:  Thank you.

17                          MS PHILLIPS:  I was just finishing  
18          the quote on conspiracy --

19                          THE CHAIRPERSON:  I suppose, if we  
20          had the Respondent here -- just to think it through, I  
21          suppose --

22                          I suppose it is very difficult to  
23          know how he would respond.

24                          He would, at least, be aware of the  
25          implication, one would assume, in those statements.



1                   Let's not worry about it. Continue  
2 with your submissions.

3                   MS PHILLIPS: Exhibit HR-41 was the  
4 W-FIVE transcript, and there were a number of  
5 conspiracy theories running through his comments on  
6 that transcript.

7                   The first was:

8                   "This is one of the first clues  
9 that the Anti-Defamation League  
10 of B'nai B'rith, the Zionist Jew  
11 cult of evil, is actually the  
12 father of these CTV sponsored  
13 lies."

14                   The second is the question: "Is  
15 lying Jew an oxymoron?"

16                   In the third he refers to a federal  
17 minister, Elinor Kaplan, stating:

18                   "Elinor Kaplan represents all  
19 one would expect in a Zionist  
20 Jewess whore. Here, she is  
21 boasting about further robbing  
22 Canadians of their lives..."

23                   There is also a quote that infers a  
24 threat of violence or even genocide. At HR-44 he  
25 states:

1 "My life DOES NOT revolve around  
2 Jew hatred - it is just very  
3 stupid of anyone in North  
4 America to not recognize that  
5 the people who are destroying  
6 our countries and putting  
7 millions of our people in grave  
8 jeopardy are ZIONIST-NAZI  
9 Jews....Are all Jews in the  
10 category of Zionists? I think  
11 not. But, those other Jews had  
12 better damned well come out with  
13 whom they choose to side, or  
14 they all will be categorized as  
15 'WORLD TERRORISTS', and could  
16 very well be subject to total  
17 extermination..."

18 I think the evidence before you is  
19 unambiguous in its meaning. There is a basic message  
20 that Jewish people are the enemy, that they are part of  
21 an evil conspiracy to enslave and exploit non-Jews,  
22 that they are evil and dangerous, and that they have no  
23 redeeming qualities.

24 As I mentioned earlier, Eldon Warman  
25 disparages Jewish religious texts and diminishes or

1 denies the Holocaust.

2 In the Zundel decision, which is at  
3 tab 3 of the book of authorities, the Tribunal accepted  
4 some central motifs to anti-Semitism. These include  
5 the following stereotypes: that Talmudic Jews are  
6 obligated by religion to harm, cheat, lie and trick  
7 non-Jews; that Jews are criminals; and that Jews  
8 dominate the world.

9 There is also the use of epithets  
10 such as "Zionist", unsubstantiated assertions of Jewish  
11 control and influence, inversion strategies where those  
12 widely understood as the victims in Nazi Germany became  
13 the aggressors, and the aggressors the victims.

14 In the material before the Tribunal  
15 today there is a repeated pattern of singling out Jews  
16 and ascribing extremely negative characteristics to  
17 them as a group and as individuals.

18 Questions were raised regarding the  
19 existence or extent of the Holocaust, thus attempting  
20 to diminish the horror of the events. These events, as  
21 I mentioned, led to the modern human rights laws and  
22 systems.

23 The messages insinuate that Jews have  
24 a disproportionate degree of power and control in the  
25 media and government, and that Jews pose a menace to

1 the civilized world.

2 It is submitted that the tone and  
3 extreme denigration of Jews distinguishes this from a  
4 legitimate debate and that all of these messages must  
5 be read together in order to capture the intent of the  
6 communication.

7 It is my submission that the  
8 Commission and the Complainant have established a prima  
9 facie case on a balance of probabilities.

10 I am sure you are familiar with the  
11 test which was set out in the Simpsons-Sears case that  
12 it is one which covers the allegations --

13 THE CHAIRPERSON: All too familiar  
14 with it.

15 MS PHILLIPS: Then I won't read it.

16 THE CHAIRPERSON: Is it the idea  
17 under the section that it should be treated, in a  
18 sense, as a form of discrimination?

19 MS PHILLIPS: It is, and then it is  
20 up to the Respondent to prove on a balance of  
21 probabilities that this is not the case, and the  
22 Respondent has chosen not to participate in this  
23 hearing.

24 THE CHAIRPERSON: It is not  
25 immediately apparent to me -- I don't want to spend a

1 lot of time on this, but the factors that generally  
2 exist in a case of discrimination -- in a section 7  
3 complaint -- don't really exist in this kind of  
4 situation.

5 Perhaps it is just a matter of not  
6 worrying about the situation. I don't know if reverse  
7 onus matters one way or the other.

8 Basically, these postings -- this  
9 material is offensive on its face. It speaks for  
10 itself; right?

11 I don't know what the Respondent  
12 would say if he were here. All I can imagine is that  
13 he would say it is some kind of exercise of his right  
14 to express his views.

15 Obviously I am guessing or  
16 speculating, but basically we have documents which, on  
17 the face of them, are offensive, and clearly offend the  
18 proscriptions in the Act.

19 If there is an issue in this case --  
20 insofar as the material is offensive -- it is for Mr.  
21 Warman to somehow explain the material, or demonstrate  
22 that it's not, I would assume. If there was an issue,  
23 I suppose it would be whether it was, indeed, Mr.  
24 Warman who communicated it, but that seems to be taken  
25 care of. It comes down to e-mail addresses, and

1 certainly someone using Eldon Warman's e-mail addresses  
2 posted this material.

3 I think it is a very straightforward  
4 situation. Strictly speaking, the prima facie analysis  
5 may apply, but I don't think there is much for me to  
6 concern myself with there.

7 MS PHILLIPS: There is a bit of a  
8 discussion in the Taylor decision, at tab 2, about  
9 that, and it found that it is a balance of  
10 probabilities and it is the same test.

11 In that case it was racial  
12 discrimination; in this case we are looking at  
13 religious or national or ethnic origin. And the  
14 Simpsons-Sears test still applies.

15 THE CHAIRPERSON: It is just that  
16 normally you are into the prima facie case because, of  
17 course, a complainant has difficulty establishing his  
18 or her case, but I don't see that as an issue here. As  
19 I say, it is material which is, on the face of it,  
20 offensive.

21 If you could continue, please --

22 MS PHILLIPS: I want to speak briefly  
23 about Mr. Eldon Warman's decision not to appear at the  
24 hearing. I would reiterate that both the Commission  
25 and the Tribunal have served Mr. Eldon Warman with

1 documents, and that it was his choice to return those  
2 documents unopened.

3 THE CHAIRPERSON: There still is a  
4 question about the penalty, so I do want to ask you  
5 about that. I am not completely comfortable with the  
6 situation as far as the penalty is concerned.

7 Why don't we deal with -- unless you  
8 are going there now -- deal with any questions --

9 As far as proceeding and hearing the  
10 evidence and finding liability -- as I say, the cease  
11 and desist order -- I am satisfied with the situation.  
12 I think it has been handled as well as it could have  
13 been handled. It is very clear to me that Eldon Warman  
14 is evading service. We have evidence in an e-mail  
15 which suggests that he is actually fully aware -- I  
16 don't know if I should say fully, but he is aware of  
17 the circumstances and the fact that the hearing is  
18 proceeding.

19 I don't think the Commission has  
20 anything to -- I wouldn't concern yourselves with that  
21 issue. I think you are fine.

22 MS PHILLIPS: My concern, really, is  
23 only with your hesitation to award a penalty in the  
24 absence of --

25 THE CHAIRPERSON: Are we at relief?

1 MS PHILLIPS: We are. I was going to  
2 speak briefly about the cease and desist order, but I  
3 think we have discussed that, so I will move to the  
4 penalty.

5 I was going to briefly discuss the  
6 legislative history --

7 THE CHAIRPERSON: There is one other  
8 thing on the cease and desist order that I wanted to  
9 bring up at some point.

10 In all sincerity, it is going to take  
11 me a long time to get to this case. I have a backlog.  
12 I have at least five or six written rulings and  
13 decisions to get to before I get to this case. So it  
14 really is going to be quite some time before I get to  
15 this decision.

16 Is this a pressing situation where  
17 something needs to be done in the meantime?

18 MS PHILLIPS: I would argue that it  
19 is.

20 THE CHAIRPERSON: Do I have the  
21 authority to do something --

22 MS PHILLIPS: You may be able to make  
23 an interim order.

24 THE CHAIRPERSON: I am wondering  
25 about that.



1 MS PHILLIPS: We would have to take a  
2 look at the legislation and the rules of procedure --

3 THE CHAIRPERSON: We are heading  
4 toward a break. Why don't we discuss penalty, and then  
5 I will ask Mr. Warman if he has comments, and we will  
6 take a break and come back.

7 Yes, I would like to hear  
8 submissions. I just want to be open with the parties.  
9 It really is going to be quite some time before I get  
10 to this decision, so I did wonder if it wouldn't be  
11 appropriate to issue something in advance, if the  
12 Commission or the Complainant want to deal with this  
13 matter expeditiously.

14 Of course, that is the word that the  
15 Act uses.

16 On penalty -- it is a very strong  
17 word to use in this kind of setting, and I don't know  
18 if it is far-fetched, but I am uncomfortable with the  
19 fact that --

20 I have a suggestion, and I don't know  
21 if it is far-fetched or not. I am uncomfortable with  
22 the fact that, from all of the evidence and information  
23 before me, I am not -- I would like to be confident of  
24 the fact that Eldon Warman knows he is facing a fine of  
25 up to \$10,000. It is not at all clear to me that that

1 has, in any real sense, been communicated to him.

2 I don't want the parties coming back  
3 to me and advising me that this is not a criminal  
4 proceeding. Obviously I know this is not a criminal  
5 proceeding. But we are still in the situation where we  
6 are moving in some penal or punitive direction. We are  
7 really moving out of the remedial provisions of the  
8 Act.

9 If you feel otherwise, I would very  
10 much like to hear your submissions.

11 What I am expressing are concerns  
12 that I have. I am just exploring the issue. I haven't  
13 reached any view of it.

14 In all honesty, when I sit here, I do  
15 wonder about the fairness of essentially fining -- and  
16 I don't know if that is the right word, but certainly  
17 one view of this would be that this is essentially a  
18 \$10,000 fine. It is a punitive measure, it is not  
19 remedial. We are moving in the direction of something  
20 like the criminal courts. There is a moral  
21 jurisdiction there. It seems to me that any  
22 requirement of notice is much higher when you move in  
23 that direction.

24 I did spend 10 or 12 years in the  
25 criminal courts and I am very familiar with what

1 happens there. I have never seen the situation in my  
2 own personal experience where a court issued a fine of  
3 \$10,000 against an individual who was not present.

4 The parties have advised me, of  
5 course, that criminal courts can issue warrants.

6 It is a different situation, but I  
7 want -- I am not so concerned about the cease and  
8 desist order. The material, from what I have seen --  
9 and I haven't heard from the Respondent, but it is  
10 offensive on the face of it.

11 I think that we have to be very  
12 careful and cautious. I know that the Respondent is  
13 being difficult, if I can put it that way, but I think  
14 that in this kind of situation, where a respondent is  
15 being difficult, it is that much more important for  
16 certainly the Commission and the Tribunal to move  
17 carefully.

18 I am wondering if it is possible to  
19 somehow, at least, try to communicate to the  
20 Respondent, Mr. Warman, that he is facing that kind of  
21 sanction.

22 That's what I was referring to. I  
23 don't know if -- that is, at least, an unusual  
24 suggestion, but I do have concerns.

25 If I had information -- an affidavit

1 of personal service, an e-mail, something which  
2 conveyed to me that Eldon Warman was fully aware of the  
3 fact that he is looking at a penalty in the order of a  
4 fine of up to \$10,000, I don't think I would have any  
5 difficulty proceeding, but I am --

6 I can't help but wonder if even  
7 section 7 of the Charter -- I think it is section 7 --  
8 one has to wonder whether, at least, some of the  
9 provisions of the Charter might not apply.

10 It is a very, very serious thing, it  
11 seems to me, to essentially -- I am trying to use an  
12 equivocal term, but essentially fine someone \$10,000.

13 I am hesitating.

14 MS PHILLIPS: I think perhaps, when  
15 we come back from the break, we can talk a little bit  
16 about the purpose of the penalty and the  
17 jurisprudence --

18 THE CHAIRPERSON: I would like to  
19 hear you on that.

20 MS PHILLIPS: The only thing I would  
21 say at this point is that, as you know very well, there  
22 is a basic tenet in law that laws are knowable. Once  
23 they are posted in the Canada Gazette, they are  
24 knowable. And what is clear is that Eldon Warman knows  
25 that there has been an investigation --

1 THE CHAIRPERSON: That seems clear.

2 MS PHILLIPS: -- and he is aware that  
3 there is the Tribunal hearing that commenced yesterday.

4 THE CHAIRPERSON: I think the e-mail  
5 from the Complainant seemed to establish that.

6 MS PHILLIPS: And I think, based on  
7 that --

8 THE CHAIRPERSON: I am going to use a  
9 term, and it might be a term that is more appropriate  
10 in the criminal context, but the question is whether he  
11 knows that he is in jeopardy. I think that is  
12 probably, if you start looking at the jurisprudence,  
13 the kind of question that comes up.

14 MS PHILLIPS: If we go back to the  
15 criminal analogy, I would say that a police officer in  
16 an arrest situation, for example, do they have to tell  
17 the person they are arresting, "I am arresting you for  
18 assault, and you might be facing five to seven years"?

19 I think they tell them what they are  
20 being arrested for, and it would be their legal counsel  
21 who would give them advice.

22 THE CHAIRPERSON: Let me say this, so  
23 it is clear on the record. Of course, one of the  
24 things that distinguishes this from a criminal case --  
25 and it is a fundamental distinction -- is that you are

1 not looking at a loss of liberty. Certainly the early  
2 Charter jurisprudence assumes that, if you are looking  
3 at anything like a term of imprisonment, that's where  
4 you really get into a major obligation, I would think,  
5 in terms of any kind of Charter requirements.

6 We are not in that situation. It  
7 isn't a criminal case, and I don't want to be  
8 misunderstood. It is just that, as I say, it seems to  
9 me that we are moving out of the remedial jurisdiction  
10 of the Act and we are moving in the direction of the  
11 criminal law.

12 What happens if I grant the order and  
13 if I issue a penalty? Eldon Warman has gone out of his  
14 way, it seems at least, to avoid or ignore the process.  
15 What happens after a \$10,000 penalty is issued? Does  
16 it become an order of the Federal Court, and there will  
17 be some kind of attempt to execute it?

18 MS PHILLIPS: Yes.

19 THE CHAIRPERSON: What happens if he  
20 doesn't pay?

21 MS PHILLIPS: There are a number of  
22 options under the Federal Court, I believe. There are  
23 judgment debtor examinations, there is garnishment of  
24 wages, and then the most extreme is imprisonment.

25 THE CHAIRPERSON: Is there

1 imprisonment? That's what I am concerned about.

2 MS PHILLIPS: That was discussed in  
3 the Taylor decision. The possibility of contempt -- in  
4 fact, Mr. Taylor, I believe, spent a year in prison for  
5 contempt.

6 THE CHAIRPERSON: You are getting  
7 there very quickly. That is exactly what I am  
8 concerned about. That's what worries me.

9 If you are in that kind of situation,  
10 then I think the requirements of notice are extremely  
11 high.

12 I was wondering if it was a civil  
13 debt, but it sounds as if it goes beyond a civil debt.

14 MS PHILLIPS: My concerns are  
15 twofold. What is the onus on the Respondent to know  
16 the law, to get his own legal advice or inform himself;  
17 and secondly, what message would this send --

18 You have seen that hate messaging  
19 cases are somewhat unique in this sphere, and we are  
20 talking about even the nature of section 54 and the  
21 penalty that has been added.

22 The danger -- and that was my concern  
23 yesterday in delaying the hearing -- is the message it  
24 might send, unintentionally, to other respondents in  
25 how to avoid having a penalty awarded against you or

1           how to avoid a hearing, et cetera.

2                           I know that that is not at all what  
3           you are intending, but there may be another effect of  
4           going this way.

5                           THE CHAIRPERSON: I want to be clear.  
6           I think the Commission, again, errs on the wrong side.  
7           My very sincere concern is that the Act be respected,  
8           and of course the principles behind the Act, and I do  
9           happen to be a person who believes that the principles  
10          in the international law need to be respected.

11                           I don't want to be interpreted as  
12          being somehow -- I don't know if I should use the word  
13          "soft" on the issue. If we are in the situation where  
14          I find liability and we are talking about --

15                           If I was to find liability -- and I  
16          have something else to say on that, and perhaps I will  
17          say it after the break -- but if I was to find  
18          liability, on the face of it, looking at this material,  
19          it would seem to me that a penalty is appropriate.

20                           So that is not my concern. There  
21          might be an issue about the quantum and I could hear  
22          from the parties on that, but there is not any concern  
23          about the appropriateness of the penalty. My  
24          understanding, such as it is, is that the problem in  
25          this area of the law is that it is hard to police, and



1 that there is a problem with obtaining effective orders  
2 that do somehow keep, for example, the Internet free of  
3 this kind of material. And I am with the Commission  
4 entirely. I don't see how the Tribunal on that kind of  
5 issue could take any other stand.

6 My concerns don't originate there.  
7 The source of my concerns is simply that, before these  
8 kinds of consequences are visited upon an individual,  
9 it seems to me that, historically, if you look at our  
10 jurisprudence and the legal tradition in the country,  
11 one must somehow provide adequate, full and ample --  
12 and I am using the words of the Act, but one must  
13 somehow provide notice to the individual in question  
14 that they are facing those kinds of serious  
15 consequences.

16 That's why I ask, is it unrealistic?  
17 I used the word far-fetched. That is really too strong  
18 a word, but is it unrealistic to make one last attempt  
19 to specifically inform Eldon Warman that he is facing  
20 that kind of penalty?

21 MS PHILLIPS: I think, if the  
22 requirement is personal service, we are going to be  
23 faced with the same --

24 THE CHAIRPERSON: I am also being  
25 mindful, I suppose -- if there is a response from Eldon

1 Warman, it is obviously going to come late, and I want  
2 it to be very clear on the record that I proceeded  
3 cautiously and have given him every opportunity to  
4 respond. What is the harm in some kind of --

5 Is it possible to serve some kind of  
6 notice on Mr. Warman? If he evades service, he evades  
7 service. Ultimately it is his problem, it seems to me.  
8 I just want it to be very clear that I, sitting as the  
9 Tribunal, have gone out of my way to give him every  
10 opportunity to respond to the circumstances that are  
11 before me, and, very specifically, the Commission's  
12 submissions on the penalty of \$10,000 are in order.

13 Can we leave it at that? I have said  
14 a lot, and I want to think about it for a few minutes  
15 anyway. I would like to come back to the  
16 question of --

17 I made a comment on liability. I am  
18 wondering if the best and most expeditious way of  
19 resolving this matter for the Commission, and, I  
20 suppose, for the Complainant --

21 And I do want to say on the record  
22 that I am trying to serve the public interest here.

23 I am wondering if the best way to  
24 serve the needs of justice, if I could put it that way,  
25 would be to make a decision on liability immediately.

1 I certainly wouldn't find liability  
2 without providing written reasons, however short, but  
3 it seems to me that we are into serious issues. I  
4 think the process needs to be taken with a certain  
5 amount of gravity, for lack of another term.

6 I would think that some form of  
7 written decisions would be -- I don't know if I want to  
8 say necessary, but would only be appropriate.

9 I wonder if I shouldn't consider  
10 ruling on the issue of liability. If I made my  
11 decision on liability today, then, in terms of an  
12 interim order, in terms of relief, that would simply  
13 come later.

14 I will provide reasons at some point,  
15 with my decision, but it is going to be a long time,  
16 and to deal expeditiously with the situation, and  
17 that's what the Act tells me to do, should I be  
18 thinking about that, counsel?

19 MS PHILLIPS: My only concern would  
20 be what you have raised as giving another notice to the  
21 Respondent --

22 THE CHAIRPERSON: I wouldn't deal  
23 with -- the question of relief or remedy would still be  
24 there. I am just wondering --

25 MS PHILLIPS: My question is, if

1 notice is given and he decides to respond, does that  
2 leave the hearing open?

3 THE CHAIRPERSON: I am going to take  
4 a break and I am going to ask you to think about it,  
5 and I am going to think about it.

6 As I say, this is a novel -- perhaps  
7 that is the better word to use; I don't want to say  
8 far-fetched -- it is a novel suggestion, but I do have  
9 those concerns, and I think I have to put them on the  
10 record.

11 As a matter of fundamental justice, I  
12 would like to give the Respondent every opportunity to  
13 respond, and very specifically to the request for a  
14 penalty.

15 In terms of the rest of it, I wonder  
16 if, really, the more expeditious and, in a way, the  
17 more responsible way of proceeding isn't to somehow  
18 make a decision now and provide reasons at a later  
19 date.

20 Do you want to add anything, Mr.  
21 Warman?

22 We are going to take a break, and you  
23 will get another chance, but you can see where my  
24 concerns are and what I am thinking.

25 I would like to hear from you, Mr.

1 Warman, on my concerns with respect to penalty, but it  
2 can be after the break. It is entirely up to you.

3 MR. WARMAN: Perhaps it would be most  
4 effective if I confer with my colleagues over the  
5 break.

6 THE CHAIRPERSON: All right. We will  
7 take 20 or 25 minutes. You can call me when you are  
8 ready.

9 MS PHILLIPS: Thank you.

10 --- Upon recessing at 11:05 a.m.

11 --- Upon resuming at 11:40 a.m.

12 MS PHILLIPS: We have had an  
13 opportunity to discuss the options during the break  
14 and, really, the Commission's position is that --

15 Firstly, I would point out that we  
16 reviewed the documents that had been served personally  
17 to Mr. Eldon Warman, and those documents included the  
18 questionnaire and the Statement of Particulars, which  
19 includes the penalty section. It states that the  
20 Commission is seeking the penalty, so that is personal  
21 service with notice.

22 THE CHAIRPERSON: What is the -- I  
23 don't know if the right word is "evidence", but the  
24 information we have on that is what? He returned the  
25 package, but do we know if the package was opened? We

1 don't know?

2 MS PHILLIPS: I don't --

3 THE CHAIRPERSON: I know that you  
4 don't want to give evidence yourself.

5 MS PHILLIPS: Our mailroom opens all  
6 incoming mail, so I don't remember whether the envelope  
7 was opened --

8 THE CHAIRPERSON: Again, I want to be  
9 clear. What we know is that there was personal service  
10 in which he received those documents.

11 MS PHILLIPS: Yes.

12 THE CHAIRPERSON: We know that he  
13 then returned those documents. Whether he looked at  
14 those documents or not, we don't know.

15 MS PHILLIPS: Correct, and I would  
16 submit that if he chose not to open them, despite the  
17 personal service, it was his choice and the onus then  
18 doesn't fall on the Commission.

19 THE CHAIRPERSON: Yes.

20 MS PHILLIPS: The next point, one  
21 which I have already mentioned, is that Kyburz is the  
22 leading authority. It was a three-member panel with  
23 Chairperson Mactavish at the helm. It was a similar  
24 situation, where Mr. Kyburz didn't appear. There was  
25 no requirement for additional notice of the penalty

1 section, and I think the Tribunal in that case was  
2 comfortable in making the penalty, and there was a bit  
3 of discussion --

4 THE CHAIRPERSON: Is there a specific  
5 comment on the issue?

6 MS PHILLIPS: It is not even raised  
7 as an issue of discussion, his notice of the --

8 THE CHAIRPERSON: Obviously, I feel  
9 that it probably should have been.

10 We all have our own sensitivities,  
11 and I do have concerns here.

12 MS PHILLIPS: The penalty section is  
13 at page 21. Tab 7, page 21. That is where the  
14 Tribunal discusses this issue, and it is my  
15 understanding that there is no mention of notice.

16 And section 54 doesn't have an  
17 additional notice requirement.

18 THE CHAIRPERSON: Could I have a  
19 minute here?

20 MS PHILLIPS: Sure.

21 THE CHAIRPERSON: They recognize that  
22 it is not remedial, it's punitive, do they not?

23 MS PHILLIPS: Yes.

24 THE CHAIRPERSON: And we are not  
25 dealing with special compensation here, we are talking

1 about a penalty.

2 MS PHILLIPS: That's correct.

3 THE CHAIRPERSON: "...the nature,  
4 circumstances" -- I am reading from paragraph 95,  
5 "extent and gravity of the discriminatory practice..."

6 MS PHILLIPS: I would also mention  
7 that the failure of Fred Kyburz to appear --

8 THE CHAIRPERSON: I want you to slow  
9 down.

10 "...as well as the wilfulness  
11 or intent of the person who  
12 engaged in the discriminatory  
13 practice..."

14 I see, and then they go through that.

15 It is a little difficult to know  
16 exactly what the situation is. One would assume,  
17 obviously -- I don't think intention is an issue, but  
18 wilfulness might be.

19 What was the penalty in this case?  
20 Was it \$7,500?

21 MS PHILLIPS: Correct.

22 THE CHAIRPERSON: Were they primarily  
23 concerned with the seriousness of the violation of the  
24 Act?

25 MS PHILLIPS: They looked at the



1 ability to pay, and in that case there was an e-mail  
2 from Mr. Kyburz that talked about his financial  
3 situation -- or they alluded to this e-mail. They  
4 stated that the onus is on the respondent to bring  
5 evidence forward on the ability to pay, but despite the  
6 fact that Mr. Kyburz wasn't present, they did take  
7 notice of an e-mail posting that mentioned his  
8 financial situation.

9 THE CHAIRPERSON: Can you refer me to  
10 that specifically?

11 MS PHILLIPS: It is paragraph 98,  
12 page 22.

13 THE CHAIRPERSON: I see, but this  
14 wasn't in response to the complaint. What concerns me  
15 is whether the Respondent has notice that there may be  
16 a penalty assessed against him.

17 So this would be the same situation.

18 MS PHILLIPS: The only discussion  
19 about his failure to appear is on page 3, at paragraphs  
20 2 and 3. They talk about his failure to appear at the  
21 hearing, but they don't talk about it specifically in  
22 relation to his knowledge of the penalty.

23 THE CHAIRPERSON: All right. So your  
24 position is that this is essentially the same situation  
25 as I have in Kyburz, and that I should proceed.

1 MS PHILLIPS: Yes.

2 THE CHAIRPERSON: I think where we  
3 have to go on this is, I think the Commission has to  
4 make a decision.

5 Let's go very carefully here in terms  
6 of how to proceed. Is it a situation where --

7 I don't know if it is practical or  
8 realistic to somehow endeavour to notify the Respondent  
9 that he is facing that kind of penalty. I don't know  
10 if it is, for example, within the ordinary powers or  
11 ordinary practice -- it is certainly not within the  
12 ordinary practice of the Tribunal to somehow provide  
13 that kind of notice. I would assume, if something like  
14 that is to be attempted, it would be the Commission  
15 that has to attempt it.

16 I am thinking this through.

17 If that is the situation, it is for  
18 the Commission to decide for itself what it wants to  
19 do. If the Commission doesn't feel that is appropriate  
20 or necessary, that is really for the Commission to  
21 decide. But that decision would have to be made first,  
22 and then I would have to decide.

23 On this issue, which does concern me,  
24 I am certainly not making any final decision now. I  
25 want to think about the matter.

1                   What we have to deal with are  
2                   submissions from the parties.

3                   I am saying that I have concerns.  
4                   There is an issue there that I would certainly -- if we  
5                   did have the kind of notice that I would like, I would  
6                   have no difficulty awarding -- assuming I find  
7                   liability, but I don't see any problem with the request  
8                   for a penalty. There might be an issue about quantum.

9                   If the Commission feels that it is  
10                  not appropriate to somehow provide the Respondent with  
11                  further notice, that is the Commission's view and I  
12                  have to live with it. I don't know if that has any  
13                  bearing on the penalty at the end of the day.

14                  I would simply listen to any further  
15                  submissions that you have, and listen to Mr. Warman.

16                  I am saying, if you don't think it is  
17                  feasible or appropriate to somehow inform the  
18                  Respondent that he is facing this kind of penalty, then  
19                  I have to leave that decision with you. Then I need to  
20                  hear any other submissions that you have, and I will  
21                  hear from Mr. Warman, and I will consider it in due  
22                  course.

23                  I notice in Schnell that there was at  
24                  least some concern -- and it wasn't this kind of  
25                  situation. In Schnell the Commission didn't ask for a

1 penalty. But I think that the tone of the comments in  
2 Schnell express some understandable hesitation in  
3 awarding a penalty, which, as I say, I think, goes well  
4 beyond the ordinary jurisdiction of this Tribunal.

5 MS PHILLIPS: But Chairperson  
6 Sinclair in Schnell also said that he thought, even  
7 with the addition of a penalty, this section would  
8 still withstand Charter scrutiny.

9 THE CHAIRPERSON: Could that question  
10 even have been before him? He didn't issue a penalty,  
11 so --

12 MS PHILLIPS: It was obiter.

13 I want to be clear, before we  
14 continue, that you are prepared to make an order on  
15 liability and cease and desist today.

16 THE CHAIRPERSON: I raised that as a  
17 possibility, and, again, I was thinking out loud. I am  
18 wondering what the Commission's view is.

19 I am not prepared to do it right this  
20 moment. But, given the discussion and what I have  
21 heard from both parties, and thinking about the  
22 circumstances -- and I did think about them over the  
23 break -- I can't help but wonder if the more -- I hope  
24 I am using the word correctly -- the more responsible  
25 course of action isn't to make a decision on liability

1 before we recess, or before we complete this sitting,  
2 and provide written reasons afterward.

3 If I did that, then there wouldn't be  
4 a question of interim relief. If I substantiated the  
5 complaint, I could certainly orally, on the record,  
6 give you the basis of an order. You could then draft a  
7 much more specific order. That could be signed, and we  
8 could deal with that immediately.

9 I think there is a public interest  
10 that would be served by dealing with that now, rather  
11 than months down the road, after I have gone through  
12 all of the case law.

13 On the penalty, I would think that I  
14 would reserve on that. As you can tell, I have some  
15 concerns about that.

16 Am I expressing the Commission's  
17 views, as well as my own, that it would be, in a  
18 sense -- it would serve the interests of the Act and  
19 the public interest generally to provide a decision --  
20 I am hesitating to say immediately.

21 MS PHILLIPS: Absolutely.

22 THE CHAIRPERSON: I want a little bit  
23 of time. These are serious matters. We could come  
24 back tomorrow, for example. We could come back  
25 tomorrow afternoon. That would give me a chance to

1 review my notes and reconsider the situation, and make  
2 sure that I am absolutely comfortable with my decision.  
3 I could then give you a decision on liability.

4 If I was to substantiate the  
5 complaint, then, of course, we could deal with the  
6 order immediately.

7 I am not sure. Depending on what the  
8 Commission's position is -- if you think it is  
9 practical --

10 And, really, I am in the Commission's  
11 hands. If you don't feel it is appropriate or  
12 practical, that's fine. But if the Commission felt  
13 that it was somehow feasible to advise Eldon Warman of  
14 the fact that he was facing a penalty, that the  
15 Commission was seeking, essentially, a \$10,000 -- I  
16 don't think you would use the term "fine", but a  
17 \$10,000 award -- then, I suppose, I would allow that to  
18 take place, some kind of attempt to provide that  
19 notice, and we could come back and deal with the issue  
20 afterward.

21 If the Commission didn't feel it was  
22 appropriate or feasible to try and provide that kind of  
23 notice, I suppose I could hear from the parties, more  
24 or less, immediately, and then I would probably reserve  
25 on the issue of penalty, and when I issue my written

1 reasons, I could deal with penalty at that point in  
2 time.

3 Obviously it is all important, but in  
4 terms of dealing with it expeditiously, I think the  
5 important thing is the cease and desist order. Am I  
6 right?

7 MS PHILLIPS: Yes.

8 THE CHAIRPERSON: So we could work on  
9 that basis, if that suits you and Mr. Warman. I think  
10 the question is still there on the penalty. To some  
11 extent it depends -- I am throwing it into your court  
12 in saying that I would be much more comfortable if I  
13 knew that Mr. Warman -- that the Respondent, Eldon  
14 Warman, was aware that he is facing something like a  
15 \$10,000 -- I am going to say fine.

16 I am sure that Mr. Eldon Warman would  
17 understand what that means.

18 If you attempted to provide him with  
19 some kind of notice that you were seeking that kind of  
20 penalty, and he chose to essentially ignore personal  
21 service again, I suppose that I would simply take the  
22 position that I, as the Tribunal, have gone out of my  
23 way to see that he is informed of the process and that  
24 he is facing that kind of penalty. If he chooses, yet  
25 again, to ignore the process, he is going to have to

1 live with the consequences.

2 Again, I am more thinking out loud,  
3 but, in all honesty, I suppose that some of my concern  
4 is, if there are issues at a further point in time, if  
5 the matter somehow ended up in Federal Court, I  
6 suppose, in all honesty and frankness, I want it very  
7 clear that Mr. Eldon Warman had every opportunity to  
8 respond to the request for that kind of penalty.

9 I want to be as fair and cautious as  
10 possible. At the end of the day, if he chooses to  
11 ignore the process, he does so at his peril, and there  
12 is nothing I can do about that.

13 When you show me Kyburz, even in  
14 terms of the kinds of factors that one would look at in  
15 determining what penalty is appropriate, obviously the  
16 most significant factor -- or, at least, one would  
17 start, one would assume, with the gravity of the  
18 postings. That is where you would start. But there  
19 are other factors that might come into play, and it is  
20 very hard to assess those factors when the person who  
21 is facing the penalty isn't before you and isn't in a  
22 position to speak to them.

23 But I think the Commission -- and it  
24 falls more properly on the Commission than on Mr.  
25 Warman -- I think the Commission needs to decide



1           whether it is practical or feasible or appropriate to  
2           somehow inform Eldon Warman that he is facing that kind  
3           of penalty.

4                                It really is, very sincerely, your  
5           decision, not mine. I just need to know whether you  
6           feel that is feasible or appropriate before I deal with  
7           penalty.

8                                MS PHILLIPS: On the first issue, I  
9           think that both the Complainant and the Commission  
10          agree that if you are in a position to make a finding  
11          of liability and a cease and desist order within the  
12          next day or two, we would definitely --

13                               THE CHAIRPERSON: You think that  
14          would serve the public interest --

15                               MS PHILLIPS: Yes, and we would be  
16          more than happy to do a draft order.

17                               THE CHAIRPERSON: Mr. Warman, are you  
18          in agreement with that?

19                               MR. WARMAN: Yes, I am.

20                               THE CHAIRPERSON: I am not  
21          exaggerating. I think, in a way, it is even pressing,  
22          isn't it?

23                               If there is a problem with this  
24          material, it shouldn't be left another six months or  
25          eight months, or however long it takes to go through.

1 the rest of the process.

2 If the parties want me to proceed  
3 that way, I want a little bit of time so that I can  
4 review and reflect on the evidence. We could come  
5 back, for example, tomorrow afternoon. That would, I  
6 am sure, be sufficient time, and I could deal with  
7 liability at that time. If I find liability, we could  
8 deal with the cease and desist order.

9 On the other side of it, on the  
10 penalty, you can have a day to think about it, if you  
11 want, and we could simply return to the question of  
12 penalty.

13 If you feel it is feasible to provide  
14 Eldon Warman with some kind of notice, what I would  
15 then do, assuming that I do find liability, is that I  
16 would adjourn so that we could have some kind of  
17 service, and come back and deal with it at a later  
18 point.

19 If you feel it is not appropriate or  
20 feasible to provide him with additional notice, I will  
21 simply hear submissions on penalty tomorrow and, in all  
22 likelihood, I will reserve on that issue so I can  
23 reflect on the matter myself, and that would be dealt  
24 with when I do written reasons.

25 I see that Ms Maillet is in agreement

1 as well.

2 MS MAILLET: Yes.

3 THE CHAIRPERSON: Mr. Warman, does  
4 that all make sense to you?

5 MR. WARMAN: Yes.

6 THE CHAIRPERSON: So we will return  
7 tomorrow afternoon at 1:30, and that should be  
8 sufficient. Hopefully we can deal with everything.

9 MS PHILLIPS: That's fine. Thank  
10 you.

11 THE CHAIRPERSON: Thank you very much  
12 for your submissions today.

13 Mr. Warman, is there something else?

14 MR. WARMAN: One of the issues that  
15 we discussed during the break was the question of what  
16 form service might take. I don't know if it is  
17 appropriate now to deal with it or to wait until --

18 THE CHAIRPERSON: I would assume that  
19 you would attempt to provide personal service.

20 I don't want to overstate my  
21 concerns. The Tribunal had real difficulty with Mr.  
22 Warman. At a certain point I ordered substitutional  
23 service. That was after a process server made many,  
24 many attempts to effect personal service, and when I  
25 made the order for substitutional service, it was

1 already apparent to me that we had an individual who  
2 was evading service.

3 I think a sincere attempt would have  
4 to be made to effect personal service on Mr. Warman,  
5 with some kind of notice or communication advising him  
6 of the fact, very specifically, that he is facing this  
7 kind of penalty.

8 If a reasonable and sincere attempt  
9 is made to provide personal service and it is not  
10 effected, I think I would be satisfied with that. We  
11 are not going to go through orders for substitutional  
12 service or anything like that.

13 I am really concerned about the  
14 substance. I want to make -- I will even say a  
15 "heart-felt" attempt to see that this gentleman is  
16 aware of what he is facing, and give him an opportunity  
17 to reply or make any submissions or comments that he  
18 might have on the subject.

19 If he chooses to evade service yet  
20 again, then he has been given his opportunity and, as I  
21 say, he will have to live with the consequences.

22 I think that a sincere and reasonable  
23 attempt to effect personal service would be quite  
24 sufficient. I think that is all I am talking about.

25 Should we leave it --

1 MR. WARMAN: My only further question  
2 in relation to that is, given the previous history of  
3 success in contacting Mr. Eldon Warman by e-mail,  
4 whether that might be either coupled with it or --

5 THE CHAIRPERSON: If you do that -- I  
6 want to be very careful. I was a little uncomfortable  
7 with the e-mail, because, of course, you sent it under  
8 an assumed name. I don't know if that is a concern or  
9 not, but I would leave it with you, Mr. Warman.

10 I must say that the e-mail that you  
11 did send to him, and the e-mail you received in reply,  
12 was helpful. It seems to me that that is, at the end  
13 of the day, what satisfies me that Eldon Warman is  
14 aware of these proceedings. It is absolutely  
15 unequivocal. But I would not encourage a party to send  
16 e-mail under an assumed name. I really think that  
17 would be inappropriate. I am not completely  
18 comfortable with that.

19 If you want to pursue those methods,  
20 for lack of a better term, I have no comment on the  
21 matter.

22 MR. WARMAN: I think the suggestion  
23 was that the Commission would, in fact, e-mail him,  
24 using the Commission's e-mail address.

25 THE CHAIRPERSON: Oh, I see. I'm

1           sorry, I thought it was --

2                               Personally, I would think that  
3           personal service would be appropriate. But if you have  
4           an e-mail to back it up, obviously --

5                               When I say personal service, I mean  
6           an attempt to make personal service.

7                               It seems to me that if you can't  
8           effect personal service, at the end of the day you have  
9           an affidavit of attempted personal service. And if you  
10          have an e-mail as well, you could again provide an  
11          affidavit. Those affidavits go in, we then proceed,  
12          and it is very clear to everyone concerned -- and I  
13          include Mr. Eldon Warman in that, and anyone who has to  
14          deal with this matter after me -- it is very clear that  
15          he was given full and ample opportunity to respond to  
16          the request for a penalty.

17                               Let's leave it at that and we will  
18          come back at 1:30 tomorrow afternoon.

19          --- Whereupon the hearing adjourned at 12:00 p.m.

20                               to resume on Wednesday, April 27, 2005

21                               at 1:30 p.m.

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

  
\_\_\_\_\_  
Susan B. Villeneuve  
Verbatim Court Reporter

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