

**CANADIAN
HUMAN RIGHTS
TRIBUNAL**



**TRIBUNAL CANADIEN
DES DROITS
DE LA PERSONNE**

BETWEEN/ENTRE:

RICHARD WARMAN

Complainant

le plaignant

and/et

CANADIAN HUMAN RIGHTS COMMISSION

Commission

la Commission

and/et

MARC LEMIRE

Respondent

l'intimé

and/et

ATTORNEY GENERAL OF CANADA;
CANADIAN ASSOCIATION FOR FREE EXPRESSION;
CANADIAN FREE SPEECH LEAGUE;
CANADIAN JEWISH CONGRESS;
FRIENDS OF SIMON WIESENTHAL CENTER
FOR HOLOCAUST STUDIES;
LEAGUE OF HUMAN RIGHTS OF B'NAI BRITH

Interested Parties

les parties intéressées

BEFORE/DEVANT:

ATHANASIOS D. HADJIS

CHAIRPERSON/
PRÉSIDENT

LINE JOYAL

REGISTRY OFFICER/
L'AGENTE DU GREFFE

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

HEARING HELD AT THE DAYS INN, 1677 WILSON AVENUE, TORONTO,
ONTARIO, ON FRIDAY, FEBRUARY 2, 2007 AT 10:05 A.M. LOCAL TIME

CASE FOR HEARING

IN THE MATTER of the complaint filed by Richard Warman dated November 23rd, 2003 pursuant to section 13(1) of Canadian Human Rights Act against Marc Lemire. The complainant alleges that the respondent has engaged in a discriminatory practice on the grounds of religion, sexual orientation, race, colour and national or ethnic origin in a matter related to the usage of telecommunication undertakings.

APPEARANCES/COMPARUTIONS

Richard Warman	On his own behalf
Giacomo Vigna	For the Canadian Human Rights Commission
Barbara Kulaszka	For the Respondent
Simon Fothergill	For the Attorney General of Canada
Paul Fromm	For the Canadian Association for Free Expression

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1 Toronto, Ontario

2 --- Upon resuming on Friday, February 2, 2007

3 at 10:05 a.m.

4 MR. VIGNA: Mr. Chair, I just want
5 want to mention I spoke to the customs official for the
6 document. I'll provide the name. She had a concern,
7 mostly, with the number, which was her BlackBerry. So
8 the name is Ann Kline.

9 THE CHAIRPERSON: Ann?

10 MR. VIGNA: K-L-I-N-E.

11 THE CHAIRPERSON: Interesting name.

12 MR. VIGNA: The only thing that was
13 of concern which was blacked out was the number, which
14 was her BlackBerry.

15 THE CHAIRPERSON: That's right. You
16 dually noted the name, Ms Kulaszka?

17 MS KULASZKA: Ann Kline.

18 THE CHAIRPERSON: Yes. I assume it's
19 not the fashion designer.

20 MR. FOTHERGILL: I wonder if I could
21 address a couple of housekeeping matters.

22 I've had a discussion with Ms
23 Kulaszka and she advises me she can accommodate my
24 request to have Dr. Tsesis testify on Monday, February
25 26th, for which I'm very grateful. And Professor Downs

1 I think we now expect to testify on Tuesday, February
2 27th.

3 In both cases we ask -- their
4 schedules are exceptionally busy and we will be asking
5 that each of them complete their testimony, if at all
6 possible, within a single day, even if it means
7 starting early and finishing late.

8 THE CHAIRPERSON: Excellent.

9 MR. FOTHERGILL: The only point I
10 wish to raise is that I need to participate in a
11 conference call with the Ontario Superior Court at noon
12 today, so I may simply have to take my leave slightly
13 early before the lunch break.

14 THE COURT: That's fine. Have we
15 worked out the situation with Dr. Mock and Dr.
16 Persinger? I had the 19th and 20th for Dr. Mock, and
17 Persinger the 21st and 22nd. Is that accurate?

18 MS KULASZKA: I think that is as much
19 as we can do at this point.

20 MR. VIGNA: I spoke to Dr. Mock the
21 other day, and I told her 19, 20 and 21 if need me.

22 THE CHAIRPERSON: And Bernard Klatt
23 hopefully at the end of next week?

24 MR. VIGNA: In addition to Bernard
25 Klatt, Mr. Chair, I will reiterate my request for the

1 disclosure of the documents that were produced
2 yesterday, the WHOIS document that was --

3 THE CHAIRPERSON: The background
4 documents, WHOIS. Mr. Warman?

5 MR. WARMAN: Pursuant to another
6 housekeeping matter. Yesterday I had indicated that I
7 would take a look and see if I had any of the FS
8 Announce materials, the Freedomsite Announce materials
9 in relation to material that may be held by my counsel
10 in a defamation suit against Mr. Fromm.

11 Having given it further thought last
12 night, my indication is that I will not be doing that
13 and I will explain the reasons why on two bases: The
14 first one is, is that I take the position they are
15 completely and utterly irrelevant to any of the subject
16 matter that is before this Tribunal on the basis that
17 they relate to a defamation suit against Mr. Fromm and
18 have nothing to do with whether Mr. Lemire communicated
19 or caused to be communicated hate messages pursuant to
20 section 131.

21 The second is, having had the
22 opportunity to review the material of the respondents
23 that was provided to me yesterday, I note that tab 2
24 visually is all of the materials in question -- are
25 already there.

1 THE CHAIRPERSON: Already?

2 MR. WARMAN: Already there in the
3 binder of the respondent's material.

4 THE CHAIRPERSON: I don't quite
5 recall what had been undertaken on your part. Can you
6 just help me? We were talking about stuff that arose
7 from tab 3, was it not? What was the FS Announce
8 materials that you undertook to look into? Just remind
9 me.

10 MR. WARMAN: I'm sorry. Ms Kulaszka
11 had mentioned something to the effect of -- it was in
12 relation -- page that listed FS Announce and whether I
13 had ever seen that material. I had yes.

14 I stand to be corrected. But there
15 was a question as to why or if that material had been
16 disclosed, and I said no, but that I would take a look.

17 THE CHAIRPERSON: Because you thought
18 you did not have it in your possession but it may have
19 sent to your lawyer.

20 MR. WARMAN: Indeed. Yesterday I
21 said, well, I can try and inquire with my lawyer. But
22 today, having given the matter further thought last
23 night, I'm objecting on both of those grounds.

24 THE CHAIRPERSON: Are you satisfied
25 with that, Ms Kulaszka, or are you going to go into

1 this further in which case I need to see the material
2 more closely?

3 MS KULASZKA: Maybe we can deal with
4 it as we go along and take Mr. Warman to that tab and
5 we go through the material.

6 THE CHAIRPERSON: Okay. I remember
7 we had the discussion, but because of the initial
8 answer that he had nothing to disclose, I sort of put
9 that aside in my notes here.

10 CROSS-EXAMINATION BY MS KULASKZA (cont'd)

11 MS KULASZKA: Mr. Warman, if we can
12 go back to the respondent's binder, tab 3. And if we
13 could go to the end of that tab and three pages back.
14 It's the user account for Lucie Aubrac.

15 Why did you sign up this account?

16 MR. WARMAN: To be quite honest, I
17 don't recall.

18 MS KULASZKA: Did you make any
19 postings with it?

20 MR. WARMAN: No, I did not. In fact,
21 that's indicated on the sheet itself under "MSGs
22 posted". It states, "zero".

23 MS KULASZKA: Why did you use a false
24 name?

25 MR. WARMAN: I believe we canvassed

1 this yesterday, but signing up for what I believed to
2 be a neo-Nazi forum using my own name, I did not feel
3 would be conducive to obtaining information.

4 MS KULASZKA: What is a neo-Nazi
5 forum?

6 MR. WARMAN: That would be my
7 description for the FreedomSite forum.

8 MS KULASZKA: The message board you
9 mean?

10 MR. WARMAN: The message board forum.

11 MS KULASZKA: Why is it neo-Nazi?

12 MR. WARMAN: Why do I think it's
13 neo-Nazi? Because the topics discussed in there are
14 largely similar to those beliefs held by the Nazi
15 regime during World War II, ergo, extreme and obsessive
16 hatred of non-whites, Jews, homosexuals, the various
17 other targets of the Nazi regime.

18 MS KULASZKA: So people on that
19 website or the message board basically had similar
20 beliefs, would you say?

21 MR. WARMAN: Well, there were on
22 occasion postings that were not concordant with the
23 overall milieu, but in general they appeared to be sort
24 of a breeding ground for that kind of material.

25 MS KULASZKA: So how would Jews and

1 other visible minorities be exposed to hatred on this
2 message board?

3 MR. WARMAN: By calls for their
4 genocide, I guess, would be the first example that I
5 would think of.

6 MS KULASZKA: So your interpretation
7 is to be exposed to hatred, they don't have to read it.

8 MR. WARMAN: Oh, absolutely. It's
9 not my interpretation. I would say it's the court's
10 and tribunal's decisions.

11 MS KULASZKA: If in a private
12 conversation people make the same comments, nobody's
13 been exposed to hatred, are they?

14 MR. WARMAN: In a private
15 conversation between two individuals not taking place
16 on the Internet, no.

17 MS KULASZKA: If you go to a page
18 before you can see the Freedom site --

19 MR. WARMAN: Sorry, I should clarify
20 that. In the event that one of those individuals was a
21 member of the target community, then yes, obviously.

22 MS KULASZKA: Go to the page before,
23 to the Freedom site Interactive Web Board New User
24 Information. You had testified before you didn't
25 recognize it, but in fact you used this board, did you

1 not?

2 MR. WARMAN: I indicated that I
3 didn't recall it, but yes, I did sign it, as I've been
4 corrected, on the account Lucie Aubrac.

5 THE CHAIRPERSON: Which message
6 board?

7 MS KULASZKA: It's just the sheet
8 before, it's got 295 on top.

9 THE CHAIRPERSON: Yes, the
10 FreedomSite interactive.

11 MS KULASZKA: This is where a new
12 user would sign up. So let's go to the page before,
13 Mr. Warman.

14 When you clicked on the home page,
15 the message board, this is the page you would get, is
16 that correct, the page that has 294 on top? It says,
17 "Freedom-Site Interactive webboard.freedomSite.org
18 Welcome".

19 MR. WARMAN: I don't remember
20 exactly, but it's reasonable.

21 MS KULASZKA: So to log-in you had to
22 do something, and you testified that you would go in as
23 a guest and that gave you the right to read the
24 postings, correct?

25 MR. WARMAN: Yes.

1 MS KULASZKA: Now, when you signed up
2 as Lucie Aubrac, in fact you didn't use the guest tab
3 there, you had to click "new user", correct?

4 MR. WARMAN: Again, I don't exactly
5 recall but it stands to reason.

6 MS KULASZKA: Did you understand
7 nothing was verified when you signed up on the message
8 board except the e-mail?

9 MR. WARMAN: I wasn't aware of what
10 the verification or non-verification process was, or
11 what steps were taken on the part of the FreedomSite.

12 MS KULASZKA: You're very familiar
13 with message boards, though, aren't you?

14 MR. WARMAN: I have used them in the
15 past.

16 MS KULASZKA: And you never use your
17 real name, you testified?

18 MR. WARMAN: I don't recall ever
19 using my real name to sign up to a message board.

20 MS KULASZKA: So you must know, in
21 fact, the names aren't verified?

22 MR. WARMAN: Again, you are asking me
23 a hypothetical question. I don't know what any given
24 board does or does not do.

25 MS KULASZKA: From your experience.

1 MR. WARMAN: Again, you are asking a
2 question outside my knowledge. I'm sorry, I can't
3 answer.

4 MS KULASZKA: Any board that you have
5 signed up on, you used a false name and that was the
6 name that appeared when you posted your messages,
7 correct?

8 MR. WARMAN: Well, pseudonym, yeah,
9 sure.

10 MS KULASZKA: Let's go over to --
11 we'll go back to Lucie Aubrac and now we'll go over to
12 the next page which is, "Nineties Are Over (Rob
13 Simpson)".

14 You testified that you did not sign
15 up as "Nineties are Over", correct?

16 MR. WARMAN: That's correct.

17 MS KULASZKA: Would you agree the
18 sign up of "Lucy Aubrac" and "Nineties Are Over" a very
19 similar?

20 MR. WARMAN: No.

21 MS KULASZKA: In fact, the only thing
22 given was an e-mail address and a false name.

23 MR. WARMAN: Well, to the extent
24 there is a false name given in both, and there is an
25 e-mail address given in both -- I have no objection to

1 saying yes, that's correct.

2 MS KULASZKA: In --

3 MR. WARMAN: Sorry, no, actually I
4 can't say that. I don't know whether the first name
5 Rob Simpson was accurate or not accurate. So I
6 shouldn't say that.

7 MS KULASZKA: In September and
8 November of 2003, that fall, as you're investigating
9 the FreedomSite message board running off the messages
10 and other materials that were subsequently disclosed to
11 the Commission, did you use any kind of software which
12 would make you anonymous on the web?

13 MR. WARMAN: I don't recall if I did
14 or not. It's possible. I have used them in the past.

15 MS KULASZKA: Do you use software now
16 or any technique that makes you anonymous on the web so
17 that a webmaster cannot tell your real Internet
18 protocol address?

19 THE CHAIRPERSON: Mr. Vigna?

20 MR. VIGNA: I have a little objection
21 in terms of today's situation versus the time of the
22 complaint. How is it relevant? We're getting a bit
23 out of bounds. But if there's certain relevance I
24 won't object strongly. I want to make sure we don't go
25 out of bounds from what is relevant to the complaint.

1 THE CHAIRPERSON: I am a bit
2 perplexed. What is the relevance of that?

3 MS KULASZKA: We'll go ahead, maybe
4 we'll come back to it.

5 Let's look at tab 3, the Ann Cools
6 posting, Mr. Warman.

7 THE CHAIRPERSON: We are using a lot
8 of tab 3, it's always three pages back, four pages
9 back.

10 MS KULASZKA: I apologize. It's very
11 hard in cross-examination.

12 THE CHAIRPERSON: Because there are a
13 lot of individual documents, I think the other ones are
14 numbered in sequence.

15 Can we just make the effort like we
16 did earlier with the Commission's book? At least let's
17 start with this tab. They are all one-sided sheets
18 here. Can we all just put a number on each sheet?

19 MS KULASZKA: This is the first page
20 at tab 3.

21 THE CHAIRPERSON: I want everybody
22 right now at tab 3 to start writing numbers in
23 sequence, 1 through -- to the end. From that moment on
24 I want you to just refer to page numbers, okay, Ms
25 Kulaszka? I'm tired writing in my notes three pages

1 back, or forward. I count 13 sheets.

2 MS KULASZKA: I count 13.

3 MR. FROMM: I was wondering if the
4 witness could be asked to take his hand away from his
5 mouth because the responses are coming across muffled
6 and, in some cases, hard to understand.

7 THE CHAIRPERSON: Mr. Warman, I
8 kind've had the same thought at one point. Would you
9 perhaps bring the microphone closer and be clearer in
10 your answers?

11 MS KULASZKA: Mr. Warman, just going
12 back to pages 9 and 10 of tab 3, do you recognize those
13 pages enough to be produced?

14 MR. WARMAN: Sorry, can you just give
15 me a moment, please.

16 THE CHAIRPERSON: We had produced 11
17 yesterday.

18 MS KULASZKA: 11 was produced.

19 THE CHAIRPERSON: I have no problem
20 producing them as well. There's been a fair bit of
21 identification here. I don't think there's --
22 Mr. Vigna, do you disagree this reflects the user
23 log-in sheet for the message board of freedomsite.org?

24 MR. VIGNA: I just would like to know
25 at what point in time pursuant to the message board --

1 THE CHAIRPERSON: Perhaps we can get
2 an agreement on that. Are you familiar with when this
3 was printed off, Ms Kulaszka?

4 MS KULASZKA: This was disclosed --

5 THE CHAIRPERSON: No, not disclosed.
6 I think he means when it was printed.

7 MR. VIGNA: When it was on the
8 website.

9 THE CHAIRPERSON: It's a version of
10 what period?

11 MS KULASZKA: It's probably from
12 2003.

13 THE CHAIRPERSON: It's from 2003?

14 MS KULASZKA: Right. The message
15 board was taken down in 2004. It's from, very
16 generally, 2003.

17 MR. WARMAN: Sorry, Mr. Chair, which
18 documents are we --

19 THE CHAIRPERSON: Pages 9 and 10.
20 You said you had seen log-ins, something like this. I
21 would like to be able to produce it so we don't have to
22 leave it in abeyance.

23 MR. WARMAN: I believe if my
24 recollection is correct, that my testimony was that I
25 don't recall these documents exactly, but that had

1 seemed reasonable.

2 THE CHAIRPERSON: We'll go with that.
3 Enough to produce, with all those provisos that have
4 been indicated in the testimony. You should get
5 someone to refer to these documents with greater
6 detail, Ms Kulaszka, if you can.

7 MS KULASZKA: Yes, we'll do that with
8 Bernard Klatt.

9 Mr. Warman, let's go back to page 1.
10 This is the posting about Ann Cools that was posted on
11 September 5th, 2003. Did you post that posting?

12 MR. WARMAN: I believe my answer has
13 already been no.

14 MS KULASZKA: You filed an affidavit
15 in response to a motion by Marc Lemire to have you
16 added as a respondent based on this posting. And you
17 stated -- and you can see this on pages 3 to 5 of tab
18 3, paragraph 9.

19 THE CHAIRPERSON: Just a moment,
20 please.

21 MR. VIGNA: Page 3?

22 MS KULASZKA: Page 3, paragraph 9 of
23 the affidavit of Richard Warman, dated August 28th,
24 2006. You stated:

25 "During the fall of 2003 I would

1 completely turn off and unplug
2 my computer, including the modem
3 used to access the Internet
4 after each use."

5 Is that correct?

6 MR. WARMAN: Yes, that's correct.

7 MS KULASZKA: Is that true?

8 MR. WARMAN: Yes, it is.

9 MS KULASZKA: What kind of computer
10 were you using at that time?

11 MR. WARMAN: It was a laptop and the
12 exact trademark name of it, or company name, I don't
13 know. I can't remember off the top of my head.

14 MS KULASZKA: What operating system
15 were you using?

16 MR. WARMAN: I was using Windows '98,
17 I believe.

18 MS KULASZKA: What browser did you
19 use?

20 MR. WARMAN: I believe it was
21 Internet Explorer.

22 MS KULASZKA: How many browsers do
23 you use?

24 MR. WARMAN: During what period?

25 MS KULASZKA: During this time

1 period.

2 MR. WARMAN: Back in 2003?

3 MS KULASZKA: The fall 2003.

4 MR. WARMAN: To the best of my
5 recollection, I only used one.

6 MS KULASZKA: And who was your
7 Internet service provider?

8 MR. WARMAN: At the time it was
9 Rogers.

10 MS KULASZKA: Your testimony is you
11 did all of this work from your personal home?

12 MR. WARMAN: No, that's not my
13 testimony.

14 MS KULASZKA: With respect to the
15 investigations done at the FreedomSite, what locations
16 did you do this research?

17 MR. WARMAN: If you are asking me to
18 remember where I accessed the computer to look at the
19 FreedomSite from four years ago, I can easily say that
20 I don't recall. I know I did it from my home address,
21 but in terms of the other access points, I certainly
22 can't remember those.

23 MS KULASZKA: Where did you make the
24 printouts that were disclosed to the respondent in this
25 case?

1 MR. WARMAN: Those were made at home.

2 MS KULASZKA: On your own personal
3 computer, your own personal printer?

4 MR. WARMAN: As I recall.

5 MS KULASZKA: At that time you worked
6 with the Canadian Human Rights Commission. Did you do
7 any of that work during work hours?

8 MR. WARMAN: No, I did not. And I
9 should say -- I don't have my CV in front of me, but if
10 there was a period where I wasn't working at the -- I
11 don't want to say yes, I was working at the Commission
12 without having my CV in front of me and saying, okay,
13 it was from here to here when I was actually there. So
14 there is no mistake.

15 THE CHAIRPERSON: While at work you
16 did not print off material that you were preparing or
17 that you would later utilize for your complaints?

18 MR. WARMAN: No.

19 MS KULASZKA: In this time period,
20 September/October/November 2003, did you provide any
21 information from the FreedomSite or its message board
22 in CD form to the Commission?

23 MR. WARMAN: Well, I know there's the
24 CD with relation to JRBooksOnline, but that was the
25 fall of 2004, I believe. And apart from that, I would

1 have to go through their file, their disclosure file,
2 to see whether I did or didn't.

3 MS KULASZKA: Could you undertake to
4 do that?

5 MR. VIGNA: What's the undertaking?

6 THE CHAIRPERSON: I do want to be
7 clear.

8 MR. VIGNA: Because I don't want to
9 have work done unnecessarily. For example, yesterday
10 there was a request made and it was in a tab in the
11 respondent itself. So I want to make sure if there is
12 undertakings, they have to be relevant at least.

13 MS KULASZKA: I'm asking in the fall
14 of 2003 did he provide any information from the message
15 board or from the -- the FreedomSite message board or
16 the FreedomSite itself to the Commission in electronic
17 form on a CD.

18 THE CHAIRPERSON: To Mr. Vigna:
19 You'll be able to look through the Commission's records
20 and see? Is that what your undertaking is?

21 MR. VIGNA: -- being asked for a
22 CD-ROM for FreedomSite? I think there's one from
23 JRBooksOnline that was given. I have to verify
24 FreedomSite. That's what's being asked?

25 THE CHAIRPERSON: It's pertaining to

1 Freedomsite, Ms Kulaszka?

2 MS KULASZKA: Yes, Freedomsite and
3 its message board.

4 MR. VIGNA: What I can say at that
5 point, though, everything we had in terms of CD-ROMs,
6 to my knowledge, were given to the respondent.

7 THE CHAIRPERSON: The question is
8 more specific, I gather. It's more information, but
9 we're in the context of the hearing now and the
10 question that has been asked is the date that it was --
11 not the fact that the electronic form -- that the
12 material in electronic form was communicated to the
13 Commission, but whether that communication took place
14 in the fall of 2003. Any electronic form.

15 MR. VIGNA: Usually the CD-ROM is
16 they have a handwritten date. So the date it was
17 actually given, and I suppose it was but we don't have
18 a stamp.

19 THE CHAIRPERSON: So it might be
20 difficult for you to ascertain that?

21 MR. VIGNA: I'll try to see what we
22 have in terms of as close as possible. But

23 I remember seeing the manuscript on
24 the CD-ROM, which was from the complainant's
25 handwriting, I suppose. He probably gave around that

1 time, I suspect, but we don't have like a stamp that we
2 received it.

3 MS KULASZKA: Mr. Warman, you claim
4 in your affidavit that you did not know Ann Cools and
5 have very little knowledge about her other than, "I
6 understand her to be a member of the Senate." Isn't
7 Ann Cools one of the most vocal opponents of what she
8 would term the homosexual agenda?

9 MR. WARMAN: That's what you've
10 indicated in the past.

11 MR. VIGNA: Mr. Chair, I object to
12 the relevance of this line of questioning because I
13 don't see how this relates to the complaint before the
14 Tribunal. There is an attempt to bring character
15 evidence regarding other issues that have nothing to do
16 with this hearing, and now the views of Ms. Cools, or
17 Senator Cools or --

18 THE CHAIRPERSON: I don't take that
19 question as being anything with regards to the views of
20 Ann Cools. I gather the question was -- and to that
21 extent, I can't allow it. It's simply to challenge the
22 previous assertion by this witness that he doesn't know
23 who Ann Cools is.

24 I think the respondent is simply
25 trying to say, well, yes, she has a certain notoriety

1 or fame. Is that what your question is about? If it's
2 beyond that, it's not relevant.

3 MS KULASZKA: No, I'm not asking what
4 her views were. Isn't she well-known?

5 THE CHAIRPERSON: Notwithstanding
6 that assertion from respondent's counsel, do you --

7 MR. WARMAN: Not to me. I maintain
8 paragraph 4 of my affidavit.

9 MS KULASZKA: How could you have such
10 little knowledge of Ann Cools when you say you've been
11 fighting racism and homophobia for 15, 16, 17 years?

12 MR. WARMAN: I can tell you that I
13 know who Mr. Lemire is. I know a number of individuals
14 within that milieu, but I do not know every person who
15 holds such views, I'm sorry.

16 MS KULASZKA: Ann Cools is a very
17 influential person who spoke out very strongly against
18 what would be called the homosexual agenda. You must
19 know her.

20 THE CHAIRPERSON: I have his answer.
21 You can make your arguments later.

22 MS KULASZKA: Mr. Warman, how do you
23 explain the fact that the FreedomSite message board
24 logs show the same I.D., the same Internet protocol
25 address for all the messages you were researching on

1 the days and times you were researching them, the same
2 address shows for the Ann Cools posting of September
3 5th, 2003?

4 MR. WARMAN: I don't know that that's
5 actually the case. I'm sorry, that's outside my
6 knowledge.

7 MS KULASZKA: Would you agree that
8 you have a history of posting racist messages on
9 message boards?

10 MR. VIGNA: Objection. The question
11 is clearly badgering the witness. It's character
12 evidence and there's no evidence whatsoever about
13 what's being alleged here in the question.

14 THE CHAIRPERSON: I'm not quite sure
15 that qualifies as such. What I don't understand is
16 what you mean by "racist postings".

17 MS KULASZKA: What Mr. Warman would
18 classify as racist postings.

19 THE CHAIRPERSON: Have you made
20 postings, Mr. Warman, that would -- are you saying
21 would otherwise be in breach section 13, Ms Kulaszka?
22 Is that what you are saying?

23 MS KULASZKA: Maybe we could go
24 through tab 4 and we could go through other postings on
25 other sites.

1 If we go to tab 42 in the
2 respondent's binder, Mr. Warman. Let's look at some of
3 the postings you've made on two websites.

4 One is Vanguard News Network forum.
5 Can you tell me what that is?

6 THE CHAIRPERSON: Can I just back up
7 a second? Tab 3 -- and I don't know if you've actually
8 produced them or whether we can -- page 1, I gather
9 this witness does not recognize?

10 MR. WARMAN: Sorry?

11 THE CHAIRPERSON: We have to not
12 forget to do that, Ms Kulaszka, each time. So tab 1
13 you did not recognize?

14 MR. WARMAN: No, I'm not familiar.

15 THE CHAIRPERSON: So that will have
16 to be dealt with by you, Ms Kulaszka, at a later point.

17 Page 2 and following the affidavit,
18 that's in the record already.

19 MS KULASZKA: That's in the record
20 already. It was basically to be handy and available
21 for the witness.

22 THE CHAIRPERSON: All right. It's
23 part of the book so we have to consider pages 1 through
24 4.

25 MS KULASZKA: From pages 2 to 8.

1 THE CHAIRPERSON: Okay.

2 MS KULASZKA: That affidavit and the
3 submissions of Mr. Warman.

4 THE CHAIRPERSON: That's fine. This
5 is all the material that's important to the Tribunal.

6 And we dealt with 9 and 10 and 11; 12
7 is not produced; and 13, never actually dealt with it
8 at all.

9 Now, you are taking me to which page?

10 MS KULASZKA: We'll go to tab 4.

11 THE CHAIRPERSON: Boy, a lot of pages
12 there too. Are they all in sequence here, the page
13 numbers?

14 MS KULASZKA: There should be page
15 numbers on the bottom.

16 THE CHAIRPERSON: Yes, there are.
17 That's great. So we'll be working with the page
18 numbers at the bottom. Okay. So which page are you
19 taking us to?

20 MS KULASZKA: Page 1.

21 THE CHAIRPERSON: Page 1.

22 MS KULASZKA: Mr. Warman, what is the
23 Vanguard News Network forum?

24 MR. WARMAN: I understand it to be a
25 U.S. neo-Nazi forum.

1 MS KULASZKA: What website is it
2 associated with?

3 MR. WARMAN: The Vanguard News
4 Network website itself.

5 MS KULASZKA: Would you monitor that
6 website and its message board quite often?

7 MR. WARMAN: I have in the past
8 monitored its forum. The website itself, not so much.

9 MS KULASZKA: What is your purpose
10 with going to that forum?

11 MR. VIGNA: Mr. Chair, I would like
12 to make an objection. In terms of the Vanguard News
13 Network, it's not the site or a forum that's the object
14 of this Tribunal. If there's any character evidence
15 that has to be lead, it has be at least related to the
16 object of the evidence being before the Tribunal.

17 THE CHAIRPERSON: On this front I
18 don't even know what the evidence is. You say
19 character. I don't even know where it takes us.
20 Perhaps you could explain to us, Ms Kulaszka.

21 I hear your objection, Mr. Lemire.

22 MS KULASZKA: Would you agree,
23 Mr. Warman, that message boards -- this message board,
24 the message board of stormfront.org --

25 THE CHAIRPERSON: Ms Kulaszka, you

1 haven't answered my question. What is the relevance
2 this line of questioning? It's put -- everything I've
3 seen until now is related to the complaint. I don't
4 know what this VNN, or Vanguard News Network, forum is
5 and what it has to do with this case.

6 MS KULASZKA: These are two message
7 boards very similar to Freedomsite where Mr. Warman has
8 posted. I would like to go through a few threads where
9 he has posted and ask him -- well, I would like him to
10 leave the room.

11 THE CHAIRPERSON: But I will not
12 allow him to leave the room because he's a party to
13 this case so --

14 MS KULASZKA: I would like to ask him
15 what is happening in these threads.

16 THE CHAIRPERSON: What's the
17 relevance to the big picture of this file?

18 MS KULASZKA: What it does is, it
19 would explain to the Tribunal what a message board is
20 and how it's being used. Because -- and it's very
21 valuable information. It's not clear from the evidence
22 given on the Freedomsite how these message boards
23 actually work.

24 This one is very similar to the
25 Freedomsite, and Mr. Warman has participated in it and

1 he can say what is happening on message boards.

2 MR. WARMAN: Mr. Chair?

3 MS KULASZKA: How is he using the
4 message board?

5 THE CHAIRPERSON: How is he using the
6 message board?

7 MS KULASZKA: How is he using the
8 message board?

9 THE CHAIRPERSON: How is that
10 relevant?

11 MS KULASZKA: It goes to the
12 constitutional issue. It also goes to whether these
13 postings fall under section 13, message board postings.
14 And this is an issue that's never been dealt with by
15 the Tribunal before because most of these people don't
16 have legal counsel who can make legal arguments about
17 what kind of messages actually fall under section 13
18 because there is a new area.

19 MR. WARMAN: Mr. Chair?

20 THE CHAIRPERSON: Yes.

21 MR. WARMAN: I would like to make
22 submissions.

23 THE CHAIRPERSON: Yeah. I'm still --
24 but I'm not quite clear I understand, Ms Kulaszka. You
25 made several points --

1 MS KULASZKA: Section 13 of the Act.

2 THE CHAIRPERSON: It's always great
3 to go to the section. What's required here is that
4 someone cause or communicate -- or cause to be
5 communicated repeatedly messages that expose a person
6 to hate or contempt. That's just a short form. And
7 the section now includes the Internet.

8 MS KULASZKA: Now, on the Internet
9 you can have a website, like the Freedomsite, or the
10 Globe & Mail, and postings are made on the website.
11 They are open to any member of the public. They simply
12 go to website and they can click and see anything.
13 It's open to the public.

14 My submission is going to be the
15 message board is very different. A message board you
16 have to click on -- you have to ask for the message
17 board, then you are given certain rules about the
18 message board.

19 Most message boards will have rules.
20 You have to log-in either as like the Freedomsite, as a
21 guest, or you can create a user file or user log-in
22 name so that you can actually make postings yourself.
23 Then after you log-in using whatever process is used,
24 you are into the message board.

25 So this raises several issues under

1 section 13. What is the intent of people on message
2 boards? What do they think is happening? What does
3 happen on message board?

4 THE CHAIRPERSON: I have a sense of
5 where you're going.

6 MS KULASZKA: Does it fall under
7 section 13?

8 THE CHAIRPERSON: How does that
9 relate now to this tab?

10 MS KULASZKA: Because these are
11 several threads where Mr. Warman himself is a
12 participant, so I'm using him to establish how message
13 boards can be used.

14 THE CHAIRPERSON: So it's not at all,
15 based on what I'm hearing from you, an issue of
16 character?

17 MS KULASZKA: No.

18 THE CHAIRPERSON: It's more procedure
19 how message boards work.

20 MS KULASZKA: It's how they work,
21 what's happening on the message board.

22 THE CHAIRPERSON: It is your position
23 that these message board entries were made by this
24 witness?

25 MS KULASZKA: That's correct.

1 THE CHAIRPERSON: Okay.

2 MS KULASZKA: And I don't think
3 that's in dispute. He's given testimony before other
4 tribunals that he, in fact, is Axetogrind. That was
5 his handle.

6 THE CHAIRPERSON: Mr. Warman?

7 MR. WARMAN: Well, I mean, it's hard
8 for me to understand what the relevance is because it's
9 disingenuous to say that message boards haven't been
10 considered by the Tribunal. They have been considered
11 in the Kouba case, the Bahr case, the Kyburz case,
12 Tremaine case, the Winnicki case, the Harrison case and
13 the Warman case.

14 THE CHAIRPERSON: And each of those
15 files, I gather from the earlier submission, are
16 decisions from the Canadian Human Rights Tribunal only.
17 None of them have been reviewed by the Federal Court.
18 The Federal Court has not made a finding in any of
19 those files with regard to this position that's been
20 adopted by this respondent.

21 This respondent opted to raise this
22 argument, and it's arguably said that it's never been
23 contested before by any of those respondents in the
24 manner that she proposes to contest before there
25 Tribunal.

1 These are decisions by my colleagues,
2 which may or may not bind -- I may or may not feel
3 myself bound by those decisions. Please don't raise
4 that as res judicata. I do not accept that submission.

5 MR. WARMAN: That wasn't what I was
6 trying to say. I was simply stating the argument that
7 this has never somehow been considered by the Tribunal
8 is inaccurate.

9 THE CHAIRPERSON: Message boards have
10 come before the Tribunal. I don't know to what extent
11 they have been contested. I heard a case last week, as
12 you are a fully aware, there was no respondent there.
13 I don't know how the other cases took place.

14 MR. WARMAN: But the second point is
15 that in terms of relevance, these boards are not the
16 Freedomsite board. The facts before you are those
17 related to Freedomsite board.

18 If Ms. Kulaszka has any more
19 questions has any more questions in relation to the
20 Freedomsite board, I'm quite happy to answer those to
21 the extent I can. But to bring in other message boards
22 which are completely unrelated to the facts which are
23 before you in this case, they're irrelevant.

24 THE CHAIRPERSON: Why can't we use
25 the message boards that are already in evidence in the

1 complaint form, Ms Kulaszka, to get that information in
2 front of me on how message boards work?

3 MS KULASZKA: Number one, he's an
4 excellent witness to give this kind of testimony
5 because he does participate very heavily in message
6 boards. We've got the threads here and he is, of
7 course, the witness for the Commission. So it makes it
8 that much more powerful, doesn't it?

9 And also, a message board is a
10 message board. They basically all use the same kind of
11 software. What's happening is the same on the
12 FreedomSite, the same on these sites, and I could
13 establish that with Mr. Warman.

14 THE CHAIRPERSON: You did not
15 participate in the other message board; is that
16 correct?

17 MR. WARMAN: No, I did not. But to
18 the extent that she is indicating that, the material in
19 here has been used in past cases and it is my belief
20 that the only purpose that it is here now is to be
21 entered as bad character evidence and that does not
22 have any relevance to what is going on here before us
23 and the facts that are before you.

24 THE CHAIRPERSON: I see your point as
25 well, Mr. Warman. Ms Kulaszka, though, I don't mind

1 getting the important technical information, but if I
2 see you heading off in a direction of just trying to
3 establish some kind of character evidence on this
4 because the case turns on the material. You know, I've
5 repeated it in other case under section 13.

6 The focus has to be on the complaints
7 that have been filed against the respondent with the
8 material that's at issue here. I'm not going to go
9 into the collateral issues. If it's helpful to me to
10 see how material can be entered through a witness that
11 has entered material onto a message board, to that
12 extent I'll allow it.

13 MS KULASZKA: Yes, I think it's very
14 valuable evidence.

15 THE CHAIRPERSON: Don't try to argue
16 afterwards -- just because it goes in that way don't
17 turn around afterwards and say, now look what he said
18 here. Don't go there, all right?

19 I count on Mr. Vigna and Mr. Warman,
20 in case that type of argument is made later, that it be
21 raised. But I will allow it for the purpose you
22 indicated to me: How one can participate on message
23 boards and the rules relating to the placing of
24 messages on message boards.

25 MS KULASZKA: Thank you. Mr. Warman,

1 let's go to page 1. You've admitted in other tribunal
2 hearings that you are, in fact, Axetogrind; is that
3 correct?

4 MR. WARMAN: That that was a
5 pseudonym I used, yes.

6 MS KULASZKA: This was a post from
7 May 2004. Message boards basically all use the same
8 kind've format, do they not? Could you explain how a
9 message board works?

10 MR. WARMAN: To the extent they are
11 divided in the pyramid-like fashion of message board,
12 subtopics, then threads and individual postings --

13 MS KULASZKA: So you could go into --

14 THE CHAIRPERSON: I'm sorry, can I
15 interrupt? What were the categories as you've defined
16 them?

17 MR. WARMAN: Well, the forum itself,
18 and then underneath that topics.

19 THE CHAIRPERSON: Then?

20 MR. WARMAN: Underneath that perhaps
21 subtopics.

22 THE CHAIRPERSON: Then?

23 MR. WARMAN: Then threads, then
24 individual postings.

25 THE CHAIRPERSON: Thank you. Go

1 ahead, Ms Kulaszka.

2 MS KULASZKA: Maybe we could just use
3 an example of what Mr. Warman just said from their
4 own -- I think they gave a tab of the conferences on
5 the FreedomSite that shows that, if I could just find
6 it -- it would be tab 20 in HR-2. If we could just
7 have a look at that, that would probably help explain
8 what Mr. Warman just said.

9 Mr. Warman, do you see that?

10 MR. WARMAN: I do.

11 MS KULASZKA: At this point the
12 conferences were in a message board, the FreedomSite
13 message board, correct?

14 MR. WARMAN: Yes.

15 MS KULASZKA: So the first thing you
16 would see is "Conferences". Is that the equivalent of
17 topics?

18 MR. WARMAN: Sure.

19 MS KULASZKA: Do you know what these
20 little plus and minus signs are?

21 MR. WARMAN: Yes, you can click on
22 them to expand that particular topic.

23 MS KULASZKA: So in this exhibit the
24 conference "Jokes and Trivia" has a negative sign
25 beside it. Does that mean it's been expanded?

1 MR. WARMAN: That's my understanding
2 of it, yes.

3 MS KULASZKA: But you printed this
4 off, correct?

5 MR. WARMAN: I did, yes.

6 MS KULASZKA: So under "Jokes and
7 Trivia" it says, "Black jokes, more black jokes, Jewish
8 jokes", et cetera. Now, they have plus signs in front
9 of them. What did that mean?

10 MR. WARMAN: It's my belief they
11 could be expanded further.

12 MS KULASZKA: So these would be what
13 we would call subtopics, right? So under "Jokes" we
14 found "black jokes"; that would be a subtopic by the
15 previous statement?

16 MR. WARMAN: I think that's accurate.

17 THE CHAIRPERSON: Subconference, in
18 this case.

19 MS KULASZKA: Now, there's numbers --
20 let's go to the top. Three down, "Canadian Heritage
21 Alliance, 27". I'm not sure you know, but do you know
22 what that means?

23 THE CHAIRPERSON: I missed it.

24 MS KULASZKA: At the top, there's
25 Freedomsite mailing list, it says, "(505)".

1 THE CHAIRPERSON: Yes, I have one of
2 the holes of my hole punch through it so it's hard to
3 see. Third item down says, "Canadian Heritage
4 Alliance".

5 MS KULASZKA: Right, then "_27_".
6 Do you know what that meant?

7 MR. WARMAN: No, I don't, I'm sorry.

8 MS KULASZKA: So somebody going onto
9 a message board chooses the conference or topic and
10 then what happens?

11 THE CHAIRPERSON: Is somebody going
12 on to visit or participate?

13 MS KULASZKA: Visit. At this point
14 they are visiting the message board. If they had
15 entered as a guest all they can do is read, correct?

16 MR. WARMAN: Well, that would depend
17 on how the forum was structured.

18 MS KULASZKA: And how is Vanguard
19 structured? Can you simply enter to read only or are
20 you forced to create a user account?

21 MR. WARMAN: No, you don't have to be
22 any member of the public with view the website.

23 MS KULASZKA: So it's quite different
24 from the Freedomsite?

25 MR. WARMAN: No, I wouldn't agree

1 with that.

2 THE CHAIRPERSON: It's no different?

3 MR. WARMAN: I will not agree with
4 that.

5 MS KULASZKA: How do you get onto the
6 message board on Vanguard?

7 MR. WARMAN: You type in the URL
8 address and usually what I would do is hit "return"
9 after that.

10 MS KULASZKA: Do you go to a home
11 page?

12 MR. WARMAN: That is an option, or
13 you could go directly there.

14 MS KULASZKA: And at the home page
15 what do you do?

16 MR. WARMAN: I don't recall exactly.
17 I'm sorry. I'm presuming there would be a message
18 board link.

19 THE CHAIRPERSON: I may have
20 misunderstood. I thought the evidence was that the
21 message board on Vanguard works similar to the message
22 board on the Freedom site? I thought you said guests
23 can view it without registering. Did I misunderstand
24 your evidence?

25 MR. WARMAN: That's correct, but in

1 this case the only difference is is that in the case of
2 the Freedom site -- and again I don't recall the pages
3 so I can't say for certain, but it's possible you
4 actually had to click a button that said "guest" and
5 you are taken to the forum as opposed to this one where
6 you can just go straight in.

7 THE CHAIRPERSON: By typing in the
8 URL and --

9 MR. WARMAN: Bookmark. Again, to be
10 clear, my evidence is I don't recall exactly whether I
11 could access the Freedom site directly from a bookmark
12 or not.

13 THE CHAIRPERSON: Okay.

14 MS KULASZKA: We'll go back to
15 Axetogrind. This is a -- says, "Originally posted by
16 T. Garrett, LOL" and it talks about girlfriends and
17 beer and other things like that. It's signed "TG".

18 And then over on page 2 it says,
19 "Some of us WN women are here but some of us also don't
20 think --"

21 MR. WARMAN: Mr. Chair? I'm sorry.

22 THE CHAIRPERSON: I wasn't even
23 following that part yet. Is there something related to
24 the document?

25 MR. WARMAN: It's going into content.

1 Again, if there's a question about the actual method by
2 which a message is posted or quoting a previous message
3 or anything like that, I'm quite happy to answer that
4 without any objection.

5 But if we are starting to go into
6 content, then, again, that is just going directly to
7 the question of character in terms of what the message
8 actually is. It's quite possible -- it's quite open to
9 Ms Kulaszka to ask the question without structuring it
10 in such a way by just saying, there's a response there,
11 or, there's a quote from a previous message or, is that
12 a quote from a previous message, that kind of thing
13 without going into content.

14 THE CHAIRPERSON: What's the basis on
15 which I -- this line of questioning?

16 MS KULASZKA: I wasn't trying to --
17 I was trying to make it clearer because --

18 THE CHAIRPERSON: Okay, so let's hear
19 the question.

20 MS KULASZKA: -- if someone isn't
21 familiar with message boards, they actually wouldn't
22 know which part was his post and which part -- or
23 what's happening.

24 THE CHAIRPERSON: So which part is
25 the first -- would you repeat your question? Repeat

1 the question again.

2 MS KULASZKA: Okay. Mr. Warman, you
3 are Axetogrind. You've made a post here, correct?

4 MR. WARMAN: Yes, that's correct.

5 THE CHAIRPERSON: So the post begins
6 with the number 14 at the top right corner, page 1.

7 MS KULASZKA: Is that correct?

8 MR. WARMAN: Yes.

9 MS KULASZKA: And it ends where?

10 MR. WARMAN: On page 2 at the -- on
11 the right-hand side where there's a "quote" box about
12 two inches down from the top.

13 MS KULASZKA: It says, "quote".

14 THE CHAIRPERSON: Yeah, I see that.

15 MS KULASZKA: Now, what is the part
16 that you actually wrote yourself?

17 MR. WARMAN: The portion of it that
18 is three lines immediately above the "quote" on page 2.

19 MS KULASZKA: So it's the part that
20 says, "Some of the us" and ends "drag like that".
21 Correct?

22 MR. WARMAN: Exactly.

23 MS KULASZKA: So what is the part
24 before that, this very large three-paragraph section
25 that ends, "Cheer TG"?

1 MR. WARMAN: That is a portion of a
2 previous posting. In fact, you can see it immediately
3 above that was responded to and that was included in
4 the posting.

5 MS KULASZKA: Does this happen every
6 time you post, that -- let me go back.

7 You are actually responding to TG; is
8 that correct?

9 MR. WARMAN: Yes.

10 MS KULASZKA: So he makes a few
11 statements and you come back and you're making a little
12 comment about what he said, correct?

13 MR. WARMAN: That's correct.

14 MS KULASZKA: So you are having a
15 little conversation?

16 MR. WARMAN: I wouldn't quite
17 describe it that way, but it's a response to the
18 previous post.

19 MS KULASZKA: And how did you get his
20 posting to appear in your posting?

21 MR. WARMAN: It was posted in that
22 message by hitting the "quote" button that immediately
23 quotes the previous message and then provides you with
24 the opportunity for you to make your comments.

25 MS KULASZKA: So TG has -- puts in

1 his posting. To make your posting you hit the "quote"
2 button that's underneath, just under "TG"?

3 MR. WARMAN: That's my recollection.

4 MS KULASZKA: And does that open up a
5 box that you can type in?

6 MR. WARMAN: I believe it does, or
7 some other method by which you can enter your own
8 comments.

9 MS KULASZKA: This conversation seems
10 to be about females; is that correct?

11 MR. WARMAN: That's correct.

12 MS KULASZKA: So "Better future" is
13 talking also about the same topic. He says, "This is
14 the story of my life".

15 Then the next posting -- they are
16 having a conversation, isn't that correct, about the
17 topics of females?

18 MR. WARMAN: They are sort of
19 consistent posts in relation to that thread. I'm not
20 sure I would call it a discussion of a conversation.

21 MS KULASZKA: What would you call it?

22 MR. WARMAN: Successive posts in
23 relation to a particular topic.

24 THE CHAIRPERSON: So when it comes on
25 the topics and threads underneath, if the topic is, I

1 don't know, raptors, basketball -- one person says, did
2 you see that play by so-and-so last week, the other one
3 can say, yes, I did, but I thought the other player is
4 better, but then a third person may talk about someone
5 else, the coach is not performing well and it would
6 still be under the same thread.

7 Do I understand that correctly, or
8 could be under the same thread.

9 MR. WARMAN: Yes.

10 MS KULASZKA: Now, in making this
11 posting, what was your intent? Were you just having
12 fun or -- you're just commenting on TG>.

13 MR. WARMAN: I'm just wondering if
14 she could specify some relevance to the question,
15 please.

16 MS KULASZKA: It's your intent. What
17 was your intent in making the posting?

18 MR. WARMAN: Perhaps I should have
19 been more specific. If she could specify some
20 relevance to this case before the Tribunal.

21 THE CHAIRPERSON: I did limit the
22 nature of that question on the Vanguard material.

23 MS KULASZKA: I'm going back to
24 section 13. Section 13 requires that the message -- a
25 hate message be made repeatedly. So in the Taylor

1 case, John Ross Taylor had made a series of messages
2 that could be considered hate propaganda.

3 THE CHAIRPERSON: Okay. So you are
4 saying that was your intent in posting a posting? Not
5 this specific posting but --

6 MS KULASZKA: No, no. So when --

7 THE CHAIRPERSON: When you post,
8 Mr. Warman, on any website -- would that be more
9 appropriate -- what is your intent?

10 MS KULASZKA: Well, your intent could
11 change with every posting, I suppose. I'm not trying
12 to be in inflammatory. It's an easy answer. He read
13 TG, what he wrote, and he just gave back a
14 light-hearted reply, isn't that correct?

15 Is that correct, Mr. Warman?

16 THE CHAIRPERSON: Can you repeat that
17 question again?

18 MS KULASZKA: Was your intent simply
19 to reply to TG and give a kind of a light-hearted
20 reply?

21 MR. WARMAN: Whether it was
22 light-hearted or not is one thing, but it was intended
23 to reply to T. Garrett.

24 MS KULASZKA: Okay. Let's go onto
25 page 3. This is also from the VNN forum. First

1 posting is by Commander NSM. Do you know who that is,
2 just from your own research?

3 MR. WARMAN: I'm sorry, can you
4 repeat that? I just didn't hear you.

5 MS KULASZKA: The first posting is
6 by -- and this thread is Commander NSM. Do you know
7 who that is from your own research?

8 MR. WARMAN: I believe it's an
9 individual named -- and I'm not sure if I'll get his
10 first name right, but Jeff Schoep.

11 MS KULASZKA: And who is Jeff Schoep?

12 MR. WARMAN: I believe him to be the
13 head of a neo-Nazi group in the United States called
14 the National Socialist Movement.

15 MS KULASZKA: So he puts in a posting
16 where, if that's correct then, his organization has
17 been mentioned by the ADL and he gives a link, correct?

18 MR. WARMAN: That's what it appears
19 to be, although I can't say that I actually viewed the
20 link.

21 MS KULASZKA: So next posting is by
22 an S.EBanks. He says:

23 "The ADL are writing articles
24 about your group. It shows you
25 must be doing something right".

1 So he's replying to Commander NSM,
2 correct?

3 MR. WARMAN: That's what it would
4 appear.

5 MS KULASZKA: The next posting is
6 Fritz Kuhn. And he reproduces what S.EBanks says and
7 then he comments. And he's quite angry at S.EBanks,
8 isn't he?

9 MR. WARMAN: I'm not clear he's
10 actually angry at S.EBanks. It's quite clear he
11 doesn't approve of groups like the NSM.

12 MS KULASZKA: So he tells S.EBanks
13 off, correct?

14 MR. WARMAN: Well, you know, I've
15 given you my interpretation of it.

16 MS KULASZKA: Well, he says to
17 S.EBanks:

18 "The ADL needs groups like the
19 NSM for fundraising. Nothing
20 like photos of uniformed Nazis
21 in the streets to get those
22 frightened donors to pony up the
23 cash. Foxman should send you a
24 cut of the profits".

25 Right?

1 MR. WARMAN: That is what's posted
2 there.

3 MS KULASZKA: So the next posting is
4 Karl Ramstrom. And he posts a photograph. It appears
5 to be some sort of group. Do you recognize anyone in
6 that photograph?

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

8 MS KULASZKA: We're back to S.EBanks.
9 So he's replying to Fritz Kuhn, correct?

10 MR. WARMAN: That's what it appears
11 to be, yes.

12 MS KULASZKA: He would reproduce as
13 part of what Fritz Kuhn had said and he's disagreeing
14 quite vehemently with what he said.

15 MR. WARMAN: So it would appear.

16 MS KULASZKA: So he says:

17 "More of a case of Foxman
18 sending you a cut of the
19 profits. After all, you were
20 doing the Jews' work slighting
21 off white people who were
22 getting off their back sides and
23 actually doing something".

24 The next posting is Tomasz Winnicki,
25 and you are familiar with Mr. Winnicki, correct?

1 MR. WARMAN: I have some knowledge of
2 him, yes.

3 MS KULASZKA: And how do you have
4 knowledge of him?

5 MR. WARMAN: He was the subject of a
6 complaint that I filed under the Canadian Human Rights
7 Act.

8 MS KULASZKA: And what happened in
9 that case?

10 MR. VIGNA: Mr. Chair, I think we are
11 going out of bounds again. You allowed the question
12 based on the modus operandi of the message board. And
13 I don't see that ruling being respected.

14 THE CHAIRPERSON: Unless it was a
15 preliminary question. I know about Mr. Winnicki.

16 MS KULASZKA: It was just to
17 establish he knew who he was.

18 THE CHAIRPERSON: We all know.

19 MS KULASZKA: For the record, not
20 everybody knows. If this goes to a higher court --
21 everybody here maybe knows.

22 THE CHAIRPERSON: Perhaps this
23 shouldn't form -- it's part of our jurisprudence.

24 Mr. Winnicki was a respondent in a
25 complaint filed before the Canadian Human Rights

1 Tribunal and the object of the decision in the Canadian
2 Human Rights Tribunal.

3 MS KULASZKA: So would you agree
4 Mr. Winnicki says, "Is everything written --"

5 MR. WARMAN: Mr. Chair, I'm going to
6 renew the objection. What we are going to is into the
7 actual content of what is written and not: Does this
8 appear to be a disagreement with the previous post.
9 Does this appear to be an agreement with the first
10 post? Does this say -- does this quote from a previous
11 post?

12 We're going into the exact content.
13 And, again, I really think we are going to the question
14 of outside of what you permitted it for which is, how
15 does the forum actually work.

16 THE CHAIRPERSON: I think how does
17 the forum work, includes, if I understood the ultimate
18 argument that will be made, that the forum works as a
19 discussion or conversation. I think that was the
20 question that was put to you at one point, that you
21 weren't prepared to agree with but --

22 MS KULASZKA: He wasn't --

23 THE CHAIRPERSON: That's your
24 position, though, right? And that's the argument
25 you'll be leading so --

1 MS KULASZKA: It's a discussion, it's
2 a conversation. People argue back and forth. And the
3 first thread we went through, Mr. Warman didn't agree
4 it was a conversation.

5 THE CHAIRPERSON: And your submission
6 is that -- of that nature it is not caught by section
7 13?

8 MS KULASZKA: That's right. So right
9 now I'm trying to establish this clearly is a
10 conversation going on.

11 THE CHAIRPERSON: All I would say is
12 we've had limited time. So once you've established
13 your point through any number of pages here, maybe we
14 can move onto the next point.

15 MS KULASZKA: So would you agree with
16 me this is a conversation back and forth? Would you
17 agree, this entire thread?

18 MR. WARMAN: I think what the nature
19 of threads are is they can be conversations between
20 people. They cannot be conversations between people.
21 It all depends on the individuals who are using those
22 threads and what posts they are making. And I think
23 that should be self-evident.

24 In this specific case, there is some
25 back and forth between these individuals on this topic

1 that was started by Mr. Schoep.

2 MS KULASZKA: It's obvious they are
3 having a back-and-forth conversation. They could be
4 sitting in a room and could say all these things back
5 and forth; isn't that correct?

6 MR. WARMAN: Again, I'm not sure that
7 I would classify this as a conversation, but there is
8 back and forth between these individuals, although,
9 again, there are changes within the material.

10 MS KULASZKA: Well, what's
11 conversation to you if this isn't? One person doing
12 all the talking?

13 MR. WARMAN: To me, a conversation
14 takes place in real life.

15 MS KULASZKA: This is a conversation
16 in text, isn't it?

17 MR. WARMAN: That's not how I
18 describe it.

19 MS KULASZKA: Isn't a message board
20 somewhere where people from anywhere in the world could
21 talk with other people?

22 MR. WARMAN: I'm sorry?

23 MS KULASZKA: A message board on the
24 Internet, on a website on the Internet, allows people
25 from anywhere to talk to other people from anywhere and

1 have a conversation with them.

2 MR. WARMAN: Well, that's predicated
3 on a couple of things: A, that an individual has
4 Internet access, so it's limited even there; and, B, it
5 depends on how the rules of the forum are actually
6 structured. Each forum will differ according to the
7 whims of the person who has created it.

8 MS KULASZKA: But the purpose of a
9 message board -- in fact they have been called chat
10 rooms, isn't that right? That's another word for
11 message board.

12 MR. WARMAN: That's my understanding.

13 MS KULASZKA: Chat room, an
14 electronic room where people are chatting with each
15 other, correct?

16 MR. WARMAN: That is one description
17 of it.

18 MS KULASZKA: If we go over to page
19 5. In fact, you could be sitting in a room with these
20 people and you pipe up and it's part of the
21 conversation, isn't it?

22 MR. WARMAN: Again, there is back and
23 forth going on. I'm not sure I'd describe it as a
24 conversation.

25 MS KULASZKA: Well, I'll leave it for

1 argument --

2 THE CHAIRPERSON: I think that would
3 be helpful.

4 MS KULASZKA: -- could recognize it
5 as a conversation.

6 Okay. We'll go over to page 6. This
7 is another thread. This is another posting by you,
8 Axetogrind.

9 MR. WARMAN: That's correct.

10 MS KULASZKA: You've reproduced a
11 quote from what appears to be a posting by Thexter 3D?

12 MR. WARMAN: That's correct.

13 MS KULASZKA: And who is Thexter 3D?

14 MR. WARMAN: I understand that to
15 have been the pseudonym used by Mr. Winnicki.

16 MS KULASZKA: Then it goes over to
17 page 7, goes over to page 8. It's a very, very large
18 quote. Why would you quote that whole thing? Why
19 would you reproduce it in a post?

20 MR. WARMAN: I would suggest it's
21 likely because I hit the button "quote", in order to
22 reply to it.

23 MS KULASZKA: So you are replying to
24 that post, and you want to make sure other readers know
25 what you are talking about, correct?

1 MR. WARMAN: No, I don't believe that
2 was the case. I think it was probably the easiest
3 button to hit in order to reply to it, and that
4 reproduces the entirety of it.

5 MS KULASZKA: Did you have to hit the
6 "quote" button to reply to it?

7 MR. WARMAN: I can't see it on these
8 ones, but on some boards there was a possibility of
9 hitting a "reply" or a "quote" button.

10 MS KULASZKA: So on most message
11 boards you could just enter your message, correct?

12 MR. WARMAN: I certainly have not
13 visited enough boards to state that on most message
14 boards in the world what is or is not the case.

15 THE CHAIRPERSON: Because I noticed
16 that just before when Mr. Winnicki -- on the previous
17 one, this was a sixth post. There wasn't a quote
18 there, nor was there with the photo, nor did
19 Mr. S.E.Banks incorporate a quote either.

20 So there must be some way to get it
21 on without putting a quote in. Could it be,
22 Mr. Warman, that it's this button on the top left
23 corner that says "post reply"? Would that just be a
24 reply? Do you see that?

25 MR. WARMAN: Yes.

1 THE CHAIRPERSON: Above the pseudonym
2 you were using?

3 MR. WARMAN: Yes, I believe that's
4 accurate.

5 MS KULASZKA: It looks as if you are
6 also able to hit the "quote" button then enter the
7 quote. Some people, they are editing the quote. They
8 are not putting the whole thing in; is that right?

9 MR. WARMAN: I believe that's
10 accurate, yes.

11 MS KULASZKA: Examples of page 4,
12 S.EBanks only puts in part of Fritz Kuhn's quote.

13 Now, back to page 8 is the portion
14 starting "Jesus". Is that your quote, or your post,
15 sorry?

16 MR. WARMAN: I believe that's
17 correct. Well, yes, although as soon as you hit the
18 portion that's underlined it goes to material that's
19 from another website.

20 MS KULASZKA: Right. But which part
21 is your quote? It starts at, "Jesus, good luck."
22 Where does it end, your actual post?

23 MR. WARMAN: Well, it depends on what
24 you mean by "post". The material that I personally
25 typed in or the material that I quoted from another

1 website?

2 MS KULASZKA: Well, you're replying
3 to Thexter 3D so you've hit a "quote" button and all
4 the material on 6, 7 and a large part of 8 is actually
5 what Thexter 3D wrote; is that correct?

6 MR. WARMAN: Yes.

7 MS KULASZKA: Starting at "Jesus --"
8 this is when you starts writing. This is your post.

9 MR. WARMAN: Yes, there's been a
10 line-and-a-half and the rest of it is from another
11 website.

12 MS KULASZKA: Did you copy that into
13 your post?

14 MR. WARMAN: I believe I probably
15 did.

16 MS KULASZKA: What is your purpose
17 when you copied that into your post?

18 MR. WARMAN: To include it within the
19 post.

20 MS KULASZKA: But for what purpose?
21 Isn't it obvious you are providing information to the
22 people in the forum; is that correct?

23 MR. WARMAN: It's intended to provide
24 information from another website.

25 MS KULASZKA: That's right. So the

1 topic is -- looks like Winnicki's -- the trouble he's
2 having with his postings, correct? You found an
3 interesting article about it in the newspaper; is that
4 correct? So you've included it in the forum so that
5 everybody will see it. You are exchanging information
6 you found with other forum members, correct?

7 MR. WARMAN: No. Actually it's from
8 another website. It appears to be -- I can just say I
9 copied that from another website and the URL link is
10 immediately below sort of first line-and-a-half.

11 MS KULASZKA: Oh. So it comes from
12 recomnetwork.org?

13 MR. WARMAN: That's correct.

14 MS KULASZKA: And do you know what
15 that is?

16 MR. WARMAN: I do. It's another
17 website.

18 MS KULASZKA: Is that the website of
19 the Canadian Anti-Racism, Education and Research
20 Society?

21 MR. WARMAN: Mr. Chair, again, we're
22 going off the beaten track. This is not a question
23 with regard to how the forum works. It's a question
24 with regard to the content of the material that is
25 contained within this.

1 THE CHAIRPERSON: Is it really
2 relevant? Does it make a difference?

3 MS KULASZKA: Well, he says it's
4 another website. I'm asking him is that what the
5 website is?

6 THE CHAIRPERSON: You know, we're not
7 going to get anywhere if we engage in these types of
8 minor points.

9 MS KULASZKA: Yes, I didn't think it
10 was a big deal.

11 THE CHAIRPERSON: It goes both ways.
12 I read the material. It's Canadian Human Rights
13 Commission -- it's a reference to activities by the
14 Human Rights Commission. I get it. Material that
15 is -- that goes -- that reflects activities by the
16 Canadian Human Rights Commission against material that
17 is used as being in violation of section 13. A quote
18 about that activity made it onto this website. I get
19 it. Please, move on.

20 MS KULASZKA: Sir, you provided not
21 only the information but you provided the link. So if
22 somebody was interested in that they could hit that
23 link and go directly to the original source of that
24 little article; is that correct?

25 MR. WARMAN: I believe it is.

1 MS KULASZKA: So we go over to page
2 9, you have a posting by Kind Lampshade Maker, and he
3 makes a posting about Canada and didn't have a very
4 nice experience there.

5 Over to the next page there's another
6 posting by you, Axetogrind. And the first of the
7 heading is, "Is the WCOTC dead?" Where does that come
8 from?

9 MR. WARMAN: I'm sorry. Can you
10 refer me to where it is?

11 MS KULASZKA: It's page 10 and
12 there's a posting by you as Axetogrind. The first
13 line, "Is the WCOTC dead?" What is that question?

14 THE CHAIRPERSON: What is WCOTC? Is
15 that what you mean?

16 MS KULASZKA: No. Did you write
17 that?

18 MR. WARMAN: I don't recall whether
19 that was part of the -- it's possible that I did,
20 because I see up at the top left that there's a
21 different title in the overall thread.

22 THE CHAIRPERSON: Hold on. Well, Ms
23 Kulaszka, okay. This is a different thread.

24 MS KULASZKA: Is it a new thread or
25 what is it?

1 MR. WARMAN: To the best of my
2 knowledge, this is not related to any of the previous
3 materials.

4 MS KULASZKA: So this is like a new
5 thread?

6 MR. WARMAN: Well, it appears to be
7 from a different thread.

8 THE CHAIRPERSON: Just as it appears
9 to me, Mr. Warman, the bold lettering here, it's got
10 some kind of symbol next to it which I can't quite see,
11 kind of like a book or sheet of paper. That would be
12 the name of the thread in which this is being written?

13 MR. WARMAN: Well, that could be an
14 individual title within the broader thread, so you can
15 title your postings.

16 MS KULASZKA: You can title your own
17 postings?

18 MR. WARMAN: Yes.

19 THE CHAIRPERSON: So it could be a
20 little that is placed on this posting, okay.

21 MR. WARMAN: Within the broader --

22 THE CHAIRPERSON: Okay. To use my
23 analogy earlier, Toronto Raptors is the thread then you
24 make a little title on your own posting saying, they
25 can't score for the life of them. They can't make

1 baskets for the life of them.

2 MR. WARMAN: Right.

3 MS KULASZKA: The next posting is Rob
4 Roy and he quotes a portion of what you have written;
5 is that correct?

6 MR. WARMAN: That's correct. Sorry,
7 it looks like he quotes the entirety of it.

8 MS KULASZKA: Yes, it looks like he
9 just hit the "quote" button. And he makes a reply to
10 you, correct?

11 MR. WARMAN: That's correct.

12 MS KULASZKA: And it's obvious that
13 you had provided a link in your posting and it's
14 obvious he had clicked on that link and read it,
15 correct?

16 MR. WARMAN: That's what it appears
17 to be. I can't say for certain what he did or didn't
18 do.

19 MS KULASZKA: Now, on page 12, is
20 that the PDF that he's referring to?

21 THE CHAIRPERSON: I'm sorry, PDF?

22 MS KULASZKA: Yes, on page 10.

23 THE CHAIRPERSON: Oh, I see.

24 MS KULASZKA: Mr. Warman makes his
25 post, he provides a link to

1 "onepeoplekojac.com/lampman.PDF". And I'm just
2 reproducing on page 12. Is that the PDF that users of
3 the forum are referred to?

4 MR. WARMAN: If I recall correctly,
5 yes.

6 MS KULASZKA: Why would you include
7 that PDF in your post?

8 MR. VIGNA: Mr. Chair, once again,
9 objection. It's a question on the content not --

10 THE CHAIRPERSON: Generally speaking,
11 why would one include a PDF?

12 MR. WARMAN: A link to another
13 document.

14 THE CHAIRPERSON: A link to another
15 document, yeah.

16 MR. WARMAN: Because someone wished
17 to bring the material therein to the attention of
18 the -- someone who might read the post.

19 MS KULASZKA: So they are transferred
20 to another website and they can actually see a PDF, the
21 actual document, correct?

22 MR. WARMAN: That's how I understand
23 it works.

24 THE CHAIRPERSON: Yes. Okay. It was
25 on a website, it was on something.com/namePDF.

1 MS KULASZKA: So what is a PDF?

2 MR. WARMAN: It's a means of saving
3 documents, as I understand it.

4 THE CHAIRPERSON: Their images.

5 MS KULASZKA: So an actual image of
6 the document, it's not scanned in. I shouldn't say
7 that. It's an actual image of the document as it
8 exists in paper form, correct?

9 MR. WARMAN: Well, that's very broad.
10 I know PDF documents can be changed.

11 THE CHAIRPERSON: We got into that a
12 little bit the other day, Ms Kulaszka, with our own
13 material. I can say I'm familiar that you can make
14 PDFs from an electronic document as well as from
15 something that gets scanned.

16 MS KULASZKA: That's true. In this
17 case it was a letter, was it not? It's reproduced on
18 page 12.

19 MR. WARMAN: Yes.

20 MS KULASZKA: Is that what the PDF
21 looked like referred to in your posting?

22 MR. WARMAN: Yeah, I believe I've
23 already said that, as I recall.

24 THE CHAIRPERSON: So this one looks
25 like it would have been scanned or something like that,

1 because it has a handwritten signature on it. So it's
2 less likely to have been straight off a word processing
3 text without a signature. Of course, anything is
4 possible electronically.

5 MS KULASZKA: Do you know who
6 Elizabeth Lampman is?

7 MR. WARMAN: I do.

8 MS KULASZKA: Who is she?

9 MR. VIGNA: Mr. Chair, again,
10 objection.

11 THE CHAIRPERSON: How is that
12 relevant, Ms Kulaszka, what we're getting at here?

13 MS KULASZKA: For the record, he
14 knows her.

15 THE CHAIRPERSON: Please. So is it
16 someone from the Commission? I don't even know. Is it
17 someone from the Commission? Yeah, I see. Canadian
18 Human Rights. So it's someone at the Commission,
19 right?

20 MR. VIGNA: I don't want to get into
21 it, but I think it's a respondent, but I don't see the
22 relevance.

23 THE CHAIRPERSON: So far we've been
24 going well, Ms Kulaszka, but I don't see the relevance
25 of getting that information for the purpose of which

1 you are proceeding.

2 MS KULASZKA: Okay, we'll move onto
3 the next series of VNN postings.

4 This starts on page 13. It's a
5 posting by Kepler. Would you agree that this posting
6 that goes onto about -- goes on quite a long time.
7 Goes to page -- from page 13 to page 19. Would you
8 just confirm that?

9 THE CHAIRPERSON: Moving back up. I
10 think we've identified all these previous documents
11 previously sufficiently so I think they can be
12 produced, everything from page 1 through 12.

13 MS KULASZKA: Do you want to wait
14 until we go to the end of the tab?

15 THE CHAIRPERSON: Okay. As long as
16 we don't forget. It's a long tab.

17 MS KULASZKA: Maybe we could do it
18 after this posting. That would be the VNN forum
19 postings.

20 THE CHAIRPERSON: Okay.

21 MS KULASZKA: So Mr. Warman, if you
22 could just confirm this thread goes from page 13 to
23 page 19, correct?

24 MR. WARMAN: It would appear.

25 MS KULASZKA: Would you agree this is

1 a discussion, quite a heated discussion about NSM
2 leader Jeff Schoep, correct?

3 MR. WARMAN: Sorry, I'm not sure --
4 has the document actually been identified in terms
5 of -- because I can say that I know part of this but I
6 can't say I know all of it.

7 MS KULASZKA: Well, page 14 you are
8 the poster Axetogrind, correct?

9 MR. WARMAN: Yes, that's correct and
10 I can say I recall that portion of the posting.

11 THE CHAIRPERSON: It appears
12 reasonable -- I see 27, 28. I'm looking at the posting
13 numbers, 29, 30. Right up until page 19, it looks like
14 it's the same thread after that Axetogrind posting had
15 been placed. I'm satisfied with that.

16 MS KULASZKA: Are you satisfied this
17 is the conversation --

18 THE CHAIRPERSON: I'm satisfied this
19 an extract from the thread on VNN forum.

20 MS KULASZKA: Okay. Part of the
21 problem is the witness would just -- it's obviously
22 there is a conversation going back and forth which he
23 made a few postings.

24 It's obvious it's a conversation,
25 isn't it, Mr. Warman? It would go so much faster --

1 MR. WARMAN: Actually, I don't
2 believe it would, A; and, B, I believe that my previous
3 answer has been that I don't believe these types of
4 things to be conversations. They are back and forth in
5 electronic format, but I certainly would not consider
6 the type of name or, if you will, as they are usually
7 described to me anything close to a normal
8 conversation.

9 THE CHAIRPERSON: Ms Kulaszka, we are
10 not going to get anywhere on that. Please move on.

11 MS KULASZKA: So on page 14 you make
12 a posting and you're commenting on the same subject
13 matter as Kepler, correct?

14 MR. WARMAN: In the loosest sense,
15 yes.

16 MS KULASZKA: In the next posting by
17 Ronald Anderson, he is replying to you, correct?

18 MR. WARMAN: At least partially, yes.

19 MS KULASZKA: Well, he even addresses
20 you; isn't that right?

21 MR. WARMAN: Yes, that's correct,
22 that's why I said, at least partially.

23 MS KULASZKA: And he includes your
24 quote. He reproduces it, correct, from the top of page
25 14?

1 MR. WARMAN: At the tail end of page
2 15, yes.

3 MS KULASZKA: Then Spandau, he also
4 replies to your quote?

5 MR. WARMAN: Yes.

6 MS KULASZKA: And after he reproduces
7 your quote and he says, "Here's my 2 cents", and he
8 goes on, correct?

9 MR. WARMAN: Yes.

10 MS KULASZKA: Now, you re-post and
11 you are replying to all these postings, correct?

12 MR. WARMAN: No. It's replying to a
13 specific post previously, number 23, I believe. Sorry,
14 you're right, because the comment that follows that
15 indicates that it's for both of them.

16 MS KULASZKA: Okay. On the next page
17 it's Spandau. He also has reproduced your quote from
18 page 16 and he's replying to you, correct?

19 MR. WARMAN: He's reproduced part of
20 the post. But, yes, it appears he's replying.

21 MS KULASZKA: And this is the second
22 time he's gotten into this conversation, correct? This
23 first posting is on page 15.

24 MR. WARMAN: In this extract.

25 MS KULASZKA: Then a Ronald Anderson

1 post, and then the person -- would you agree what has
2 been the subject of a conversation is the -- is it the
3 National Socialist Movement and Jeff Schoep?

4 MR. WARMAN: Roughly, yes.

5 MS KULASZKA: So he has post as
6 Commander NSM, correct?

7 MR. WARMAN: Well, that would be my
8 understanding of it, although I can't say for certain
9 what he did or didn't do.

10 MS KULASZKA: At this point the
11 conversation is kind degenerating, would you agree? He
12 starts calling Ronald Anderson names, correct?

13 MR. WARMAN: I believe the thread
14 degenerated long before that post.

15 MS KULASZKA: Well, at this point
16 Commander NSM starts calling Ronald Anderson names,
17 correct?

18 MR. WARMAN: I believe there were
19 names, including epithets used prior to that, in fact,
20 throughout the thread or the excerpt thereof that
21 you've provided.

22 MS KULASZKA: But he's speaking
23 directly to Ronald Anderson and making derogatory
24 comments about him, correct? He says, "No offence,
25 Ronnie, but your secret is out." Correct? He's

1 talking right to him.

2 MR. WARMAN: Yes. Well, he's
3 replying to him.

4 MS KULASZKA: And Ronald Anderson
5 comes back and he is replying directly to the Commander
6 NSM post, Schoep's post, and he's angry he's been
7 called names and he starts making derogatory comments
8 about Jeff Schoep, correct?

9 MR. WARMAN: I believe had actually
10 made previous derogatory comments but --

11 MS KULASZKA: I didn't ask you about
12 previous comments. I asked about this post.

13 MR. WARMAN: Actually, what you asked
14 is whether he started making derogatory comments.

15 MS KULASZKA: And the posting on page
16 18, that's what we're talking about right now.

17 THE CHAIRPERSON: Page 8. Go on
18 ahead.

19 MS KULASZKA: Then on page 19 someone
20 with the handle, the member, "Euronight, get in on it",
21 and he reproduces the quote by Commander NSM and he
22 gives him his own opinion on what he calls "silly NSM",
23 correct?

24 MR. WARMAN: That's correct.

25 MS KULASZKA: So generally this whole

1 thread was a very heated discussion concerning NSM and
2 whether they were a positive or negative influence; is
3 that correct?

4 MR. WARMAN: I would describe it as a
5 series of rants.

6 MS KULASZKA: Well, that's an
7 emotional response, Mr. Warman.

8 MR. WARMAN: It's quite unemotional
9 actually in describing.

10 THE CHAIRPERSON: Doesn't start
11 arguing. It's clear Mr. Warman takes a position that
12 differs from yours, and it's been established, Ms
13 Kulaszka. You needn't pursue that line. That's
14 argument. You will make that point later.

15 He characterizes these forums
16 differently than you do. I get the message. No pun
17 intended.

18 MS KULASZKA: Maybe we could produce
19 those documents from pages -- that would be tab 4,
20 pages 1 to 19. Those would be Vanguard News Network
21 Forum postings.

22 THE CHAIRPERSON: Yes, they're all
23 produced.

24 MS KULASZKA: The next series of
25 postings --

1 THE CHAIRPERSON: Mr. Vigna?

2 MR. VIGNA: I'm not going to object.
3 I just want to make sure for the record for later on
4 when we refer it to, it was for limited purposes that
5 you described it. It's not for the contents.

6 THE CHAIRPERSON: Didn't I tell you
7 to be vigilant and raise any objections later on?

8 MR. VIGNA: But to refer to the
9 transcripts. By saying it I'll be able to review it.

10 THE CHAIRPERSON: I don't think Ms
11 Kulaszka intended to use it in the way she thought she
12 would use it. Don't be too concerned.

13 MS KULASZKA: We'll start the next
14 series of postings.

15 THE CHAIRPERSON: Why don't we take a
16 small break. We'll take a five-minute break and come
17 right back.

18 --- Recessed at 11:40 a.m.

19 --- Resumed at 11:46 a.m.

20 THE CHAIRPERSON: Please continue.

21 MS KULASZKA: I just consulted with
22 my client and I've told him about the restrictions that
23 were put on the use of these postings.

24 These postings obviously, in my
25 submission, could also be used to impugn the

1 credibility of Mr. Warman. And as a witness -- he is
2 being called as a witness -- the credibility of a
3 witness is always in issue.

4 THE CHAIRPERSON: How do you intend
5 to impugn his credibility?

6 MS KULASZKA: His allegation here, of
7 course, is that my client has violated section 13 and
8 yet Mr. Warman is going on message boards and writing
9 messages that also, as we go along here, could be
10 clearly stated to be contrary to section 13.

11 He's also encouraging people on these
12 forums to support these views. He's not going on there
13 as a positive force. He is -- certainly in some last
14 threads, he's the worst one on the thread. Other
15 people are condemning NSM and Jeff Schoep and he is
16 encouraging these people to support the National
17 Socialist Movement.

18 THE CHAIRPERSON: How does that go to
19 his credibility as a witness here? Why should I not
20 believe him as much as I have until now because of that
21 fact? How is his credibility affected by that?

22 MS KULASZKA: How is he a credible
23 witness when he comes to this forum stating that he is
24 attempting to stop discrimination when he himself by
25 night is doing the exact same thing and encouraging

1 discrimination?

2 THE CHAIRPERSON: The issue on
3 credibility here, as I see it, is he has led evidence
4 with regard to what he viewed on the Internet over the
5 first two days.

6 So actually it's be less believing --
7 how should his evidence be less credible on account of
8 the fact that he has made postings of that sort on the
9 web? I think perhaps -- let me elaborate. You also
10 you alluded to something else in some of your material
11 at one point.

12 You suggested, I think at one point,
13 there was a broader argument about individuals like
14 Mr. Warman being able to access the Internet, put other
15 messages on or -- there was also a concern at one
16 point, I might have raised it in one of my rulings, not
17 having seen the evidence, perhaps Mr. Warman had placed
18 some of the material on the message boards that is now
19 being impugned for which responsibility is being
20 ascribed to Mr. Lemire, your client. Now, I can see it
21 there.

22 MS KULASZKA: That's right. We're
23 making allegations, despite his denials, that
24 Mr. Warman posted the Ann Cools message on September
25 5th, 2003. We'll be calling evidence from Rogers and

1 Bernard Klatt, and I think -- it's my submission it
2 will be very clear he did make that posting.

3 Then Mr. Warman comes to this
4 Tribunal and tries to hold the webmaster responsible
5 for the postings on the FreedomSite message board, and
6 up to yesterday every message on that board was
7 included.

8 Then he and Mr. Vigna now are taking
9 the position it's only the messages that they have
10 reproduced in this binder. But that was not their
11 position up to yesterday.

12 THE CHAIRPERSON: I know, we've been
13 down that road.

14 MS KULASZKA: And he's going to
15 dispute the Rogers evidence now on that basis.

16 Obviously it also goes to the
17 liability of Mr. Lemire because there are webmasters
18 who have a message board where there are literally
19 thousands of messages.

20 What is asked here is that you are
21 going to find Mr. Lemire responsible for these messages
22 even though he didn't write them.

23 THE CHAIRPERSON: I know, Ms
24 Kulaszka. I just raised that argument. I sensed you
25 would be raising that argument. I saw it in the

1 material.

2 My point is how is the fact that
3 Mr. Warman has put these messages on the web affecting
4 his credibility as you've brought it up?

5 Look, can we just call the apple what
6 it is? It seems quite obvious based on Mr. Warman's
7 evidence from the outset, that he declares himself as a
8 person who monitors these websites that he defines as
9 being in violation of section 13. And it would seem
10 quite evident he adopts pseudonyms, he indicated that.

11 It would seem quite evident, based on
12 his prior evidence -- and you could correct me on this,
13 Mr. Warman, as a witness -- but it seems quite evident
14 that one of the methods he uses to gather the
15 information is to pose as a participant on these
16 message boards.

17 If that's the conclusion I can draw
18 from the fact that you were on these message boards and
19 you expressed opinions that clearly don't reflect what
20 your opinions on these issues as you expressed them
21 today, clearly a difference there. I gather that's why
22 he does that.

23 So -- and we know why. Now,
24 whether --

25 MS KULASZKA: We don't know what his

1 intent is.

2 THE CHAIRPERSON: I'm not
3 pre-supposing his evidence. If you want to put that
4 question to him, we can get that answer from him.

5 But once we've established that,
6 what's the benefit to you? There is the benefit, you
7 bring it just now, that here is a person who has placed
8 messages on message boards yet now tries to impugn the
9 entire message board. I heard that argument from you.
10 I saw it somewhere in your material and you just said
11 it now.

12 Beyond that, where does it get us,
13 other than engaging in a personal battle between these
14 two individuals or more? I don't know.

15 MS KULASZKA: Certainly with the
16 Canadian Immigration Poem. This is a posting, the
17 posting by Marc Lemire on Stormfront. This is an
18 exhibit in the Commission's case.

19 THE CHAIRPERSON: Yes.

20 MS KULASZKA: It doesn't come
21 directly from the Stormfront message board, if you
22 notice the URL. It's been closed. We'll be leading
23 evidence that nobody at the Commission was ever able to
24 find that posting on Stormfront -- Hannya Rysk for it.
25 She couldn't find it. The only person who allegedly

1 found it was Mr. Warman.

2 THE CHAIRPERSON: Right. Okay.
3 How -- you still haven't explained to me how
4 establishing that Mr. Warman wrote these comments that
5 we'll see whether he shares these opinions that he
6 wrote, or for what purpose he put those opinions on.
7 How does that demonstrate to me anything with regard to
8 those other issues you bring up?

9 MS KULASZKA: Well, it goes to the
10 liability of people who run message boards. They are
11 attempting -- there has to be some intent in this
12 section. It was held in the Taylor case that there
13 were repeatedly -- the way they upheld the
14 constitutionality of this section because it brought in
15 intent.

16 THE CHAIRPERSON: On the issue of
17 intent, on that one I have authority right up to the
18 Federal Court and Supreme Court of Canada; that
19 discriminatory practices do not require intent under
20 the Canadian Human Rights Act.

21 MS KULASZKA: This is the Supreme
22 Court of Canada that said there had to be a series of
23 messages. Not one message.

24 THE CHAIRPERSON: You didn't say
25 messages. You didn't say messages. You used the word

1 intent just now.

2 MS KULASZKA: That was the way --

3 THE CHAIRPERSON: I don't want to
4 argue the case.

5 MS KULASZKA: That's a legal
6 argument.

7 THE CHAIRPERSON: That's my point.
8 Many of these things are pure argument. I think I'm
9 just summarizing expectations of what I would expect
10 these witnesses to say why he posed this way. Why did
11 he become Axetogrind and why did he make those
12 postings?

13 If you want to put those questions, I
14 will have Mr. Warman answer the questions. We know
15 where it's going. How does it help us in the bigger
16 pictures to get to your final argument?

17 MS KULASZKA: The bigger picture, for
18 the most part, under the Canadian Human Rights Act
19 someone has been aggrieved by discrimination. Someone
20 has been denied a public service and --

21 THE CHAIRPERSON: There are numerous
22 provisions in the Act. Section 5 is public service,
23 section 7 is in the context of employment, 9 deals
24 with --

25 MS KULASZKA: Section 13 deals with

1 fundamental rights in a democracy, freedom of speech.
2 And there is no requirement that the complainant be
3 discriminated against. And Mr. Warman is making a
4 career of going after people who are filing postings on
5 message boards.

6 THE CHAIRPERSON: So how does the
7 fact that he himself posted on Vanguard News Network
8 have any bearing on that?

9 MS KULASZKA: He's no better than the
10 people he's going after. Why is he doing this?

11 MR. VIGNA: Mr. Chair, I think that's
12 objectionable in terms of consideration.

13 There's a Perera case from 1989 that
14 clearly mentions that the motivations of the
15 complainant are not relevant. It's Perera versus
16 Canada 1989, 102 NR 397.

17 THE CHAIRPERSON: The intention of
18 discriminators in Canadian discrimination law is not a
19 factor. Every one of my decisions states that, Ms
20 Kulaszka, because discrimination -- we look at
21 discriminatory effect in Canadian law.

22 Now, with regard to why Mr. Warman is
23 doing that. Mr. Warman, I made an assertion. Are you
24 prepared to abide by that assertion on that front so we
25 can move on on this point?

1 MR. WARMAN: To the narrow --

2 THE CHAIRPERSON: The point being,
3 why did you assume the pseudonym Axetogrind and go on
4 this website? What was your intention?

5 MR. WARMAN: To use it as a method to
6 gather evidence pursuant to filing of complaints under
7 section 13 of the Canadian Human Rights Act or broader
8 information regarding the neo-Nazi movement.

9 THE CHAIRPERSON: And when you made
10 the kinds of comments on that website, did you share
11 those views personally or were they your views?

12 MR. WARMAN: No, they were not.

13 MS KULASZKA: How does this protect
14 Mr. Warman if intent is not a defence under the
15 Canadian Human Rights Act? We don't care what his
16 intent was.

17 THE CHAIRPERSON: That's a great
18 argument. That's my point, Ms Kulaszka. I have the
19 information I need and pursuing this just wastes my
20 time, wastes the Tribunal's time. That is a solid
21 argument that you can put before the Tribunal. We
22 don't need any more facts to establish that.

23 Ms Kulaszka, we've a time restraint.
24 We have to be judicious on the use of the time. I know
25 where you are going with this and you can make the

1 argument, whether or not you engage in a personal
2 battle.

3 As I also used to say, quite
4 frequently in the case involving Mr. Kulbashian who is
5 here in the room when this type of suggestion was made
6 of why has a complaint not been filed against
7 Mr. Warman. I said, go ahead and file a complaint
8 against Mr. Warman. That's not my issue. My issue is
9 the complaint, the issue Mr. Warman has filed against
10 Mr. Lemire.

11 And in the event you do file a
12 complaint against Mr. Warman with the Commission, and
13 the Commission chooses to not deal with your complaint,
14 for whatever reason, then you have the recourse under
15 the legislation to seek judicial review of their
16 decision before the Federal Court.

17 That's not my issue here. My issue
18 here is the human rights complaint that Mr. Warman has
19 filed against Mr. Lemire and FreedomSite. And you've
20 raised as a defence the broader constitutional issues
21 and arguments on the interpretation of the statute.
22 Those are fine and you can make those based on the
23 evidence that is already before me, including the last
24 two answers that we got from Mr. Warman.

25 I need to move through this file in a

1 fair way that doesn't get caught up in collateral
2 issues, Ms Kulaszka. I know you understand what I'm
3 saying.

4 MS KULASZKA: As long as my position
5 is clear. This case is about holding a webmaster
6 liable, and if it's going to be held that just because
7 you have a message board you're going to be held liable
8 for postings that are -- could be posted by police
9 officers, by Richard Warman, people in the anti-racism
10 industry who are targeting you and post those things,
11 and you really have no way of proving it.

12 And in this case, of course,
13 Mr. Lemire had saved the logs, and I submit we'll be
14 able to prove Mr. Warman posted the Ann Cools posting.

15 THE CHAIRPERSON: That's fine. I
16 understand your argument. I just raised it before to
17 you.

18 MS KULASZKA: I hope I will be able
19 to use these postings to show that Mr. Warman is very
20 capable of posting racist postings.

21 THE CHAIRPERSON: That's why I accept
22 it from a procedural point of view. I raised this
23 myself earlier, Ms Kulaszka. That's clear. That's the
24 point you are making, that Mr. Warman, who clearly does
25 not share his views based on his evidence over the last

1 four or five days, nonetheless was able to put some
2 information on these websites that he criticizes.
3 That's understood. And you can make any inferences and
4 arguments from that thereafter. Let's not go on on
5 this forever.

6 MS KULASZKA: Okay. We'll go back to
7 page 20 of tab 4.

8 THE CHAIRPERSON: Page 20 of tab 4.

9 MS KULASZKA: This is where postings
10 from Stormfront start.

11 Mr. Warman, what is stormfront.org?

12 MR. WARMAN: It's a website.

13 MS KULASZKA: Do you visit that
14 website?

15 MR. WARMAN: I have visited it in the
16 past, yes.

17 MS KULASZKA: And you've posted on
18 their message board using the name pogue mahone; is
19 that correct?

20 MR. WARMAN: I have.

21 MS KULASZKA: Have you used any other
22 names?

23 MR. WARMAN: Stormfront.org is not
24 the subject of these proceedings. If she can establish
25 some relevance to the question.

1 THE CHAIRPERSON: Ms Kulaszka, we
2 just had the discussion. Are you going to follow the
3 same flight plan you had from the outset? If your
4 point is to establish what you've already established
5 with the other website, it's been done. Mr. Warman was
6 able to participate in these discussions.

7 MS KULASZKA: It seems that your
8 posting starts on 21 as pogue mahone; is that correct?

9 MR. WARMAN: Again, if she could just
10 establish some relevance to the question in regards to
11 the operation of the website, how this forum operated.

12 THE CHAIRPERSON: I think all we're
13 doing is we're repeating the same sort of evidence we
14 got earlier.

15 MR. WARMAN: Exactly.

16 THE CHAIRPERSON: It is repetitive,
17 and it is starting to try my patience, but it is in
18 accordance with my earlier ruling. But you are trying
19 my patience, Ms Kulaszka, if that's all we're trying to
20 get at.

21 I'm not limiting your ability to
22 enter your evidence, but it's just repetitive. The
23 point is he's able to put that kind of material on the
24 web. Do I care what the actual material is? Is that
25 important for the case here?

1 MS KULASZKA: Perhaps I can ask him,
2 are your investigations solely on your own accord or
3 are you working for someone?

4 MR. VIGNA: I don't see the relevance
5 of the question. It's not a royal inquiry on
6 Mr. Warman or on Commission practices. It's always --
7 we always have to go back to the main core of the
8 debate, which is the complaint and the object of the
9 evidence before you.

10 THE CHAIRPERSON: This objection --
11 this question is in a different line. Do you have
12 another objection?

13 MR. WARMAN: I do.

14 "Irrelevance of complainant's
15 motivation. An inquiry into
16 complainant's motivation for
17 filing a complaint is irrelevant
18 to the tribunal's determination
19 of whether or not the complaint
20 has merit or whether or not the
21 tribunal's enabling legislation
22 is constitutionally valid.
23 Complainant is required to
24 demonstrate only that there are
25 reasonable grounds to support

1 his or her allegations."

2 Again, Perera v Canada.

3 THE CHAIRPERSON: Can you cite that
4 for me?

5 MR. WARMAN: Yes. Bracket --

6 THE CHAIRPERSON: How do you spell
7 Perera?

8 MR. WARMAN: P-E-R-E-R-A v Canada
9 (Canadian Human Rights Commission) 1989 102 NR 397.

10 THE CHAIRPERSON: Not the most
11 obvious source. Do you have copies of that decision?

12 MR. WARMAN: We can provide them
13 after lunch perhaps.

14 MS KULASZKA: The question I just
15 asked, of course, does go to a different aspect of the
16 argument.

17 THE CHAIRPERSON: Yes.

18 MS KULASZKA: And that is the
19 investigative techniques being used to investigate
20 alleged violations of section 13 which appear on
21 message boards.

22 THE CHAIRPERSON: So it's going to
23 the constitutional issue?

24 MS KULASZKA: Yes.

25 MR. WARMAN: Sir?

1 THE CHAIRPERSON: Yes.

2 MR. WARMAN: Investigative technique
3 of course would be relevant to the Commission's
4 operation.

5 My investigative techniques are
6 clearly not the subject of the Charter or
7 constitutional limits or anything else for that matter.
8 It's clear that the Commission's investigative
9 techniques may be reviewed. The government is subject
10 to the Charter. The government is subject to the full
11 panoply of that kind of thing.

12 Me -- again, my motivation, my
13 intents in filing these complaints is completely
14 irrelevant to the matters that are here before the
15 Tribunal to be considered.

16 MS KULASZKA: And I believe I just
17 asked Mr. Warman if he worked for someone --

18 THE CHAIRPERSON: Sorry?

19 MS KULASZKA: -- in investigating and
20 doing this work on the message boards.

21 THE CHAIRPERSON: Okay. Let's go
22 back to the question.

23 Given your last answer, Mr. Warman,
24 it becomes relevant. Were you at the time that these
25 visits to the FreedomSite website, right? Is that what

1 you are asking, Ms Kulaszka? Or to the Stormfront?

2 MS KULASZKA: Just, generally, when
3 he goes on Stormfront, on VNN forum, on the FreedomSite
4 message board, is he doing this as an individual or
5 does he actually work for the Commission or for some
6 other governmental agency?

7 MR. WARMAN: Again, objection in
8 relation to the relevance of the question. But if the
9 desire is to ask if any of the postings that have been
10 submitted as evidence pursuant to the complaint were
11 ever done pursuant to anyone else or anything else
12 other than my own personal interest in filing the
13 complaint, the answer I'm quite happy to say is no.

14 THE CHAIRPERSON: I have the answer,
15 Ms Kulaszka.

16 MS KULASZKA: So are you saying you
17 do not work for the Canadian Human Rights Commission?

18 MR. WARMAN: Ms Kulaszka, I believe
19 you heard the answer.

20 MS KULASZKA: This was a clear
21 question.

22 MR. WARMAN: Mr. Chair?

23 THE CHAIRPERSON: Yes, sir.

24 MR. WARMAN: There clearly is
25 absolutely no relevance to my current employment status

1 no matter who it's for. I have quite openly said, and
2 again at the risk of repeating the answer that I just
3 gave, that at the time I was investigating these
4 materials for the purpose of filing the complaint
5 against Mr. Lemire, it was on my initiative, my own
6 time, everything was done pursuant to my own personal
7 interest in filing a complaint against him. Whoever I
8 may work for now is completely irrelevant to this
9 complaint.

10 MS KULASZKA: Would you agree you
11 have an active e-mail at the Canadian Human Rights
12 Commission?

13 MR. VIGNA: What is the relevance
14 that question? Let's say hypothetically that he's an
15 employee of the Commission. Does that give him less
16 rights as a citizen to make a complaint based on
17 section 13? I would respectfully submit to you it
18 doesn't.

19 So what is the relevance of asking
20 whether he has an active e-mail? It's very well known
21 that people leave and they have active e-mails for
22 ages.

23 THE CHAIRPERSON: This question comes
24 up a lot, Ms Kulaszka. Can you tell me exactly what
25 you stand to gain by knowing whether Mr. Warman is

1 working at the Commission or not?

2 MS KULASZKA: The Commission has the
3 power to initiate their own complaints against anybody
4 under section 13. But they don't seem to be doing
5 that. Instead, Mr. Warman is the one who is filing
6 virtually every complaint under section 13.

7 Does he work for the Commission or is
8 there an understanding with the Commission?

9 THE CHAIRPERSON: What is the
10 ultimate relevance in that information?

11 MS KULASZKA: It's an abuse of the
12 process.

13 THE CHAIRPERSON: How?

14 MS KULASZKA: Because it's a way of
15 protecting the Commission. You are just hearing the
16 arguments that protect the Commission. If they can
17 have an understanding with Mr. Warman it protects them,
18 because otherwise they would have to call an open
19 employee of the Commission, an open investigator who
20 says, I went on VNN, I posted all this racist stuff and
21 I'm basically acting as an agent provocateur, got him
22 to say this. How many of these other people are
23 policeman, these posters? How many are real posters?

24 THE CHAIRPERSON: So it's going to
25 your Charter argument?

1 MS KULASZKA: Oh, absolutely.

2 THE CHAIRPERSON: Thank you. That's
3 the first time I've heard it in such a clear way. The
4 answer to that comment.

5 MR. WARMAN: Exactly. The first
6 thing is, that if Ms Kulaszka wishes to take me to any
7 of the messages that have been tendered in evidence
8 pursuant to this case, which is the evidence before
9 you, of course, then I'm quite happy to go there and
10 have her ask me questions, did you post that message?
11 In fact, I can quite easily say right now I didn't post
12 any of them.

13 THE CHAIRPERSON: We've moved beyond
14 that. At the time you were viewing these documents,
15 preparing the case, were you employed by the
16 Commission?

17 MR. WARMAN: And I've already said
18 that the entire preparation of this file was done
19 pursuant to my own personal interest, on my own time,
20 in the interests of filing the complaint.

21 And, further, in relation
22 specifically to her question about who may be able to
23 file these complaints and whether an employee of the
24 Commission is somehow prohibited from filing the
25 complaint.

1 Section 40 sub (1) of the Canadian
2 Human Rights Act states explicitly:

3 "Subject to subsections (5) and
4 (7), any individual or group of
5 individuals having reasonable
6 grounds for leaving a person is
7 engaging or has engaged in a
8 discriminatory practice may file
9 with the Commission a complaint
10 a form acceptable to the
11 Commission."

12 THE CHAIRPERSON: No one is denying
13 that, Mr. Warman.

14 MR. WARMAN: But what --

15 THE CHAIRPERSON: Listen to what
16 she's saying. She intends to raise an argument on the
17 Charter challenge, which is to the effect that the
18 Commission as -- perhaps as a method to avoid appearing
19 as state action being involved in the process of filing
20 these complaints, calls upon the services of yourself
21 or others, to file the complaint. Am I stating --

22 MS KULASZKA: That's right.

23 THE CHAIRPERSON: That's her
24 argument. And in order for her to be able to elicit
25 evidence on that in cross-examination she is asking you

1 at the time that you filed your complaint were you --
2 and gathering this evidence -- were you an employee of
3 the Commission or, and I guess it's implicit in her
4 question, was there an arrangement that you act for on
5 behalf of the Commission in putting together this case.

6 And now, what is the objection to
7 that particular question in light of that relevance?

8 MR. WARMAN: I've stated at least two
9 occasions in the past 10 minutes that all the
10 information that was gathered pursuant to the complaint
11 filed against Mr. Lemire was done on my own without any
12 other involvement of anyone else and for the sole
13 purpose of filing the complaint against Mr. Lemire.

14 THE CHAIRPERSON: Then I will ask one
15 more question and I would like you to answer it. Was
16 there an understanding between you and the Commission
17 that you act for or on behalf of the Commission?

18 MR. WARMAN: I believe that my answer
19 encompassed that, but if I want to make it absolutely
20 clear the answer is no.

21 MR. VIGNA: Mr. Chair, I just want to
22 make one thing clear. These questions deal also with
23 the constitutional challenge and my colleague,
24 Mr. Simon Fothergill, might be --

25 THE CHAIRPERSON: We'll get a

1 transcript. He had to step out. I wasn't going to
2 interrupt the proceeding for him to step out and take
3 his call.

4 MR. VIGNA: I just want to make a
5 point on this constitutional argument. The argument
6 that is being raised by the respondent, and we'll be
7 submitting this at the end, are matters that are for
8 judicial review, are not matters for the Tribunal --

9 THE CHAIRPERSON: I've heard that
10 objection from yourself and Mr. Fothergill. It depends
11 how it's presented and treated by Tribunal at that
12 point. We're clear on that.

13 Let me be abundantly clear, I've said
14 it repeatedly in my previous rulings. Far be it from
15 the Tribunal to review Commission conduct. I'm very
16 happy letting the Federal Court do that. But this is a
17 different question being put forth here.

18 So we have the answer to the
19 question, Ms Kulaszka. I don't want you to pursue this
20 any further. We have the answer to your question. And
21 you also have the answer of how you may proceed in your
22 final arguments or when we get to the Charter portion
23 of this complaint.

24 MS KULASZKA: Let's go back to tab 20
25 of page 4. Why do you post --

1 MR. WARMAN: I'm sorry, can I just
2 have a moment?

3 THE CHAIRPERSON: Tab 20.

4 MS KULASZKA: Sorry, tab 4, page 20.

5 MR. WARMAN: Sorry, page 20?

6 THE CHAIRPERSON: Ms Kulaszka?

7 MS KULASZKA: In this case stormy
8 white makes a posting on page 20, and on page 21 you
9 make a posting with the name pogue mahone, correct?

10 MR. WARMAN: Yes.

11 MS KULASZKA: Why do you frequent the
12 stormfront.org message board?

13 MR. WARMAN: In order to monitor it
14 in relation to concerns that participants may be in
15 violation or may be engaging in behaviour that is in
16 violation of section 13 of the Canadian Human Rights
17 Act and/or the Criminal Code of Canada.

18 MS KULASZKA: What techniques are you
19 using to do this monitoring?

20 MR. WARMAN: Observation.

21 MS KULASZKA: You're not just reading
22 these posts though, are you?

23 MR. WARMAN: I think it's clear
24 through the previous information that has already been
25 tendered there have been posts in the past, yes.

1 MS KULASZKA: So you are reading the
2 posts but you are also participating in the forum,
3 correct?

4 MR. WARMAN: On occasion, yes, I have
5 in the past.

6 MS KULASZKA: Why do you -- you've
7 given testimony, you have no intent to be racist or
8 discriminatory. Why are you posting messages that are
9 obviously racist and discriminatory? Is that part of
10 your investigative techniques?

11 MR. VIGNA: Mr. Chair, I don't want
12 to be obstructive but the question --

13 THE CHAIRPERSON: Excuse me, sir.
14 Whoever made that comment -- counsel is making an
15 objection. Go ahead.

16 MR. VIGNA: The question that's being
17 asked today is related to the motivations, and the case
18 law that is being referred to by Mr. Warman earlier
19 clearly indicates that the motivation for making a
20 complaint is not relevant.

21 THE CHAIRPERSON: She didn't ask what
22 the motivation was for making the complaint. It was
23 motivation for making these posts.

24 MR. VIGNA: Well --

25 THE CHAIRPERSON: Well, no.

1 MR. VIGNA: I'll wait to see --

2 THE CHAIRPERSON: How does it assist
3 him in achieving the objectives he just described for
4 his reasons to visit the website? I'll allow the
5 question. Go ahead.

6 MR. WARMAN: I don't agree with your
7 premise, so I'm not sure I can answer the question.

8 THE CHAIRPERSON: It might be helpful
9 to repeat the question, Ms Kulaszka. It's been a
10 couple of minutes. Say it again.

11 MS KULASZKA: What premise don't you
12 accept?

13 MR. WARMAN: You indicated that the
14 postings that I had made were self-evidently
15 discriminatory, and I don't agree with that.

16 MS KULASZKA: How would you describe
17 your postings?

18 MR. WARMAN: I would describe them as
19 being not discriminatory.

20 MS KULASZKA: You will often pose as
21 a female. Why do you do that?

22 MR. WARMAN: Because it's part of a
23 pseudonym and an alternate identity in order to provide
24 information that is different from my own.

25 MS KULASZKA: Do you also do it

1 because females seem more trustworthy, less
2 threatening?

3 MR. WARMAN: It never came to mind,
4 but if that's what you say.

5 MS KULASZKA: Well, I'm not the
6 witness, you are. In the previous postings where you
7 were clearly supporting Jeff Schoep, the leader of NSM,
8 other posters believed that this group was basically
9 crazy. You supported the group very strongly. Why did
10 do you that as part of your investigative technique?

11 MR. WARMAN: Mr. Chair, I'm sorry, if
12 she can just testify how this question goes to the
13 structure of a message board or to the operation of a
14 message board? Because I believe that was the
15 permission given for questions on this.

16 MS KULASZKA: At this point we are
17 talking about how he is obtaining the information he
18 gets, how he's monitoring message boards. It goes to
19 the Charter argument, the liability of webmasters, the
20 liability of webmasters of message boards, and the
21 restriction of freedom of speech because message boards
22 are one of the few places where ordinary people can get
23 on-line and talk about many, many things.

24 THE CHAIRPERSON: Can you repeat your
25 question to me again? I lost track.

1 MS KULASZKA: I've asked him that in
2 a previous posting, many of the posters were very
3 against this NSM movement. They felt -- they wore Nazi
4 uniforms, they looked ridiculous, they were crazy.

5 Whereas Mr. Warman supported the
6 group and said that everyone should support this group.
7 And I'm saying, why would he make a posting like that
8 as part of his investigative technique? What is the
9 purpose of doing that? What is he trying to achieve if
10 this is part of his investigative technique on these
11 web boards?

12 THE CHAIRPERSON: In a broader
13 sense -- Mr. Warman, before you object. Let's just
14 move on.

15 In a broader sense, when you take on
16 these personas, whether it be a woman or man, and adopt
17 positions that, again, I surmise are not yours, it is
18 for what purpose?

19 MR. WARMAN: It is for the purpose of
20 gathering information.

21 MS KULASZKA: How does that help
22 gather the information? The other participants do not
23 suspect you for being a person who is against what they
24 have written.

25 MR. WARMAN: Exactly.

1 THE CHAIRPERSON: That's correct?

2 MR. WARMAN: Yes.

3 THE CHAIRPERSON: And that they
4 then -- you are able to -- but you're still
5 participating -- what more comes out of it by
6 participating?

7 MR. WARMAN: Because if you are
8 communicating with someone off-line and they look at
9 you and you don't have any postings, then there is an
10 automatic suspicion you are probably -- or the red
11 flags go up.

12 So if you just come on a board and
13 you say -- you start engaging in private conversations
14 with people and you say, oh, you know, hi, and you
15 start attempting to gain or surmise information,
16 there's an automatic suspicion if you've never
17 participated.

18 So by participating you gain the
19 ability that when people look at you, they don't go oh,
20 you've never posted so I'm worried about you.

21 THE CHAIRPERSON: So the thread would
22 stop at that point?

23 MR. WARMAN: Or even if you are just
24 talking privately like --

25 THE CHAIRPERSON: Like private

1 conversations?

2 MR. WARMAN: Yeah, either through
3 private messaging or through e-mail, people would
4 automatically get suspicious of you if you didn't have
5 any posts.

6 MS KULASZKA: So you are trying to
7 gain the trust of people on the forum, correct?

8 MR. WARMAN: It's attempting to
9 establish a profile that would not automatically arouse
10 suspicion.

11 MS KULASZKA: Are you also attempting
12 to get people to agree with what you are saying?

13 MR. WARMAN: No, not personally.

14 MS KULASZKA: Have you initiated
15 personal contacts with people that you have spoken to
16 on the forum through private e-mail?

17 MR. WARMAN: I don't know that I
18 have, but other people have communicated with me and I
19 have responded. I can say that with certainty.

20 MS KULASZKA: And how many times
21 would that occur?

22 MR. WARMAN: I'm sorry, I have no
23 idea, no recollection.

24 THE CHAIRPERSON: You know, I have
25 some understanding of this because I've done other

1 cases and -- but I think it's important for the record
2 we establish the private messaging. This is the
3 ability for participants on message boards to --

4 MR. WARMAN: Speak off-line.

5 THE CHAIRPERSON: To speak off-line.
6 That's what you meant earlier by off-line?

7 MR. WARMAN: Yes.

8 THE CHAIRPERSON: Perhaps you can
9 show me how can that occur? By clicking a button on
10 these pages or is it some other way?

11 MR. WARMAN: Again, sticking within
12 most forums, you can PM someone usually by clicking on
13 their name and there's usually a box that says PM this
14 person or something along those lines.

15 THE CHAIRPERSON: Page 25 I see
16 Mr. Lemire did a posting. If you click on Mr. Lemire's
17 name --

18 MR. WARMAN: In this case, I don't
19 recall like specifically in relation to Stormfront off
20 the top of my head. But usually there is some way you
21 can establish private messaging communication back and
22 forth.

23 THE CHAIRPERSON: And private
24 messaging, if my understanding is correct then, it's
25 like instant messaging that many people engage in,

1 young people, where you communicate sort of constantly.
2 You see one line, then you see the underneath it and
3 the question.

4 MR. WARMAN: I think in this case
5 it's more -- it would be more accurate to say that
6 people have like their own little mailbox on the
7 website.

8 THE CHAIRPERSON: I see.

9 MR. WARMAN: Your persona has a
10 little mailbox so you can send individual messages back
11 and forth.

12 THE CHAIRPERSON: Okay, so it's not
13 that rapid fire instant --

14 MR. WARMAN: That's not what I'm
15 talking about.

16 THE CHAIRPERSON: Private messaging
17 is more like these types of messages but they can only
18 be viewed by the participants in the message.

19 MR. WARMAN: Yeah, the person that
20 you would send it to would be able to view it when they
21 log back onto the board kind of thing.

22 THE CHAIRPERSON: So it's kind of
23 like e-mail then. The way e-mail is when two people
24 speak, send e-mails back and forth to each other.

25 MR. WARMAN: But e-mail within a

1 particular forum.

2 THE CHAIRPERSON: It's being operated
3 through the forum rather than through your normal
4 e-mail software.

5 MR. WARMAN: That's what I
6 understand.

7 MS KULASZKA: So if I understand you
8 correct, this kind of off-line e-mailing was a very,
9 very, very small part of your technique?

10 MR. WARMAN: It wasn't enormous.

11 MS KULASZKA: Well, try and be more
12 accurate. I see here the pogue mahone, as of 2003 --
13 this is page 21 -- it shows you had already posted 93
14 postings on the forum. Compared to that at that time,
15 how many off-line communications would you have posted?

16 MR. WARMAN: It would be less than
17 that, I could say, quite easily.

18 MS KULASZKA: 10?

19 MR. WARMAN: I would say under 50 for
20 sure.

21 MS KULASZKA: Under 40?

22 MR. WARMAN: I can say under 50 for
23 sure. Beyond that, I can't be more specific.

24 MS KULASZKA: So in that case that is
25 a very extensive part of your technique. You are

1 initiating private conversations with people on the
2 forum, correct?

3 MR. WARMAN: No, I wouldn't agree
4 with that.

5 THE CHAIRPERSON: Was your evidence
6 just before that you had not initiated any private
7 messages?

8 MR. WARMAN: No, I wouldn't say that
9 with any degree of certainty.

10 THE CHAIRPERSON: I thought you had
11 said that. I misquoted. So what is the actual
12 situation? You did initiate?

13 MR. WARMAN: I may have initiated
14 private conversations with individuals. They weren't
15 extensive. And other individuals initiated private
16 conversations with me, and again they weren't all that
17 extensive.

18 MS KULASZKA: We look at the posting
19 on page 21 which you made as pogue mahone. You state:

20 "I can't resist throwing in my 2
21 cents worth on this one."

22 So this is a discussion?

23 MR. WARMAN: Mr. Chair -- yes,
24 certainly. Sorry, well, it's a response to a previous
25 posting.

1 THE CHAIRPERSON: Which one you just
2 read?

3 MS KULASZKA: On page 21 of tab 4.
4 It's the posting by pogue mahone, and that's Richard
5 Warman.

6 THE CHAIRPERSON: It's a reply. I
7 understand.

8 MS KULASZKA: Then at the end of that
9 posting you say:

10 "I would love to here from the
11 TCS boys on this one."
12 So you are inviting a response,
13 correct?

14 MR. WARMAN: Yes, indeed. Well, from
15 a specific subset of individuals.

16 MS KULASZKA: And in this particular
17 posting I think it's very clear you are trying to get
18 information.

19 MR. WARMAN: It was intended, yes, to
20 gather information.

21 MS KULASZKA: That you could use in a
22 section 13 complaint, correct?

23 MR. WARMAN: Not necessarily. I
24 mean, not all information that I was attempting to
25 obtain was pursuant a section 13 complaint. Some may

1 have simply been attempting to gain a better
2 understanding of what the perspectives within the
3 neo-Nazi and white supremacist movements were on
4 different topics.

5 MS KULASZKA: Well, this posting
6 deals with Alex Kulbashian. Did you not lay a
7 complaint against Kulbashian?

8 MR. WARMAN: Mr. Chair, again we're
9 going directly into the topic, the subject matter of a
10 post. I've given my answer in relation to what was
11 attempting to be done, and I think that's certainly
12 within the extent of the questions you permitted.

13 THE CHAIRPERSON: Argumentative. In
14 the previous question, Ms Kulaszka, you asked him, or
15 there was an answer that whether he used it to get
16 information for a complaint and he said yes, or, get a
17 better my understanding. If this is to get information
18 for the complaint then it fits within his previous
19 answer.

20 MS KULASZKA: Further down is stormy
21 white. He's replying to you, Lucy or pogue mahone.
22 He's talking directly to you, correct, on the message
23 board. He replies to you.

24 MR. WARMAN: I believe it was a she
25 actually.

1 MS KULASZKA: We'll go onto page 22.
2 This case you re-produce a post by Marc Lemire,
3 correct?

4 MR. WARMAN: Yes, it appears to be.
5 It's a reply to a posting.

6 MS KULASZKA: It's,
7 "Re ARA to attack Zundel rally
8 on Sunday in Toronto."

9 Did you write that or was that a
10 heading that was already on the forum?

11 MR. WARMAN: I'm not sure. I
12 certainly -- no, it appears to have been the actual
13 title of a thread. If you look at the top left-hand
14 corner of page 22, or even if you look within the sort
15 of box that's about three inches down.

16 THE CHAIRPERSON: That's what I saw
17 it.

18 MS KULASZKA: Now this is a call to
19 action against Holocaust denier Ernst Zundel. The
20 whole quote goes from 22, 23, 24 to the top of page 25.
21 And you re-posted that, correct?

22 MR. WARMAN: I replied to a message
23 from Mr. Lemire and that was the quote that came up.

24 MS KULASZKA: But you chose to
25 re-produce, re-post that quote, correct?

1 MR. WARMAN: In the broadest sense in
2 that I hit the "quote" button and that came up yes, and
3 that I could have done other things, yes.

4 MS KULASZKA: And you didn't edit it
5 in any way, correct?

6 MR. WARMAN: I can't say that with
7 any certainty, I'm sorry.

8 MS KULASZKA: This posting by Marc
9 Lemire seems to be -- it comes from a site called
10 ontario.indemedia.ca. Have you ever seen this before?
11 It seems to be released by anti-racist action.

12 THE CHAIRPERSON: Hold on a second.
13 This is a posting by pogue mahone, right? You said
14 it's a posting by Marc Lemire. Oh, because it was
15 originally posted by Marc Lemire.

16 MS KULASZKA: Yes, Marc Lemire has
17 made a posting and Mr. Warman is replying to that post.
18 He hits the "quote" button so that he re-posts Marc
19 Lemire's posting, then he replies to it.

20 You can see Richard Warman's reply on
21 25. States, "that's funny and stay safe." It ends
22 there. Is that correct, your actual writing?

23 MR. WARMAN: I believe so, yes.

24 MS KULASZKA: Had you previously seen
25 this released by ARA?

1 MR. WARMAN: At the time? I'm not
2 sure.

3 MS KULASZKA: Do you recognize it at
4 all?

5 MR. WARMAN: As being contained
6 within this, yes.

7 MS KULASZKA: And you had not seen it
8 in its original form.

9 MR. WARMAN: My answer was that I
10 don't recall if I have or not.

11 MS KULASZKA: On page 25, at the
12 bottom is a posting by Marc Lemire, correct?

13 MR. WARMAN: That's what it appears
14 to be, yes.

15 MS KULASZKA: Would you agree that he
16 is one of the very few people who actually uses his
17 real name on the forum?

18 MR. WARMAN: There aren't a lot of
19 people who appear to use an actual name as opposed to
20 an overt pseudonym, something that is quite clearly a
21 pseudonym and not what I would consider a traditional
22 name.

23 MS KULASZKA: So, again, it's very
24 clear that Marc Lemire is someone who is very open on
25 the Internet, very honest about who he is. He uses his

1 image, his real name.

2 THE CHAIRPERSON: You asked this
3 question yesterday. Time is flying. I'll find it for
4 you where you asked this very question.

5 MS KULASZKA: On this posting he
6 gives an account of what happened, correct? He's
7 telling the other forum members what happened at the
8 protest?

9 MR. WARMAN: There's a small portion
10 thereof that appears to begin that.

11 MS KULASZKA: Pardon?

12 MR. WARMAN: I said, there's a small
13 portion there in that appears to begin that.

14 MS KULASZKA: So "begin that", begin
15 what?

16 MR. WARMAN: What you just indicated
17 to me, a description of what has transpired.

18 MS KULASZKA: Yes. Most of that
19 posting is a report about what happened at the protest,
20 correct?

21 MR. WARMAN: Well, I actually don't
22 know what most of the posting is because it gets cut
23 off.

24 MS KULASZKA: Well, the portion that
25 is reproduced, that's what he's talking about, isn't

1 it?

2 MR. WARMAN: I believe that was my
3 answer.

4 THE CHAIRPERSON: Ms Kulaszka, I'm
5 being informed the court reporter needs a break.

6 MS KULASZKA: We'll take a lunch
7 break.

8 THE CHAIRPERSON: How about 1:45?

9 MS KULASZKA: That's fine.

10 THE CHAIRPERSON: Are you on track?

11 Mr. Lemire, I know you keep
12 interfering, but I'm speaking to your counsel.

13 Two weeks are dedicated to the
14 Charter challenge.

15 MS KULASZKA: It's okay, Marc.

16 THE CHAIRPERSON: Ms Kulaszka knows
17 we have to stay within the frame.

18 MS KULASZKA: I can guarantee this
19 initial phase will be done by next Friday. Our three
20 fact witnesses shouldn't take that long. So there's a
21 lot of time. This is the most important part for our
22 case here.

23 THE CHAIRPERSON: I'm not saying it's
24 not. I understand how important it is. You should be
25 sensing that. But it doesn't help things to just go

1 over the same things over and over. And it doesn't
2 help things when you have objections either when I have
3 the answer that I need for you to establish your point.

4 Okay, so we'll take a break until
5 1:45.

6 --- Recessed at 12:38 p.m.

7 --- Resumed at 1:50 p.m.

8 MS KULASZKA: Okay, Mr. Warman, I
9 think we were at 26.

10 THE CHAIRPERSON: Just a moment,
11 please. Yes?

12 MS KULASZKA: If I could just raise a
13 preliminary matter. I hesitate to ask, showing up 10
14 minutes late.

15 THE CHAIRPERSON: I was
16 accommodating.

17 MS KULASZKA: Yes, I apologize. I
18 was wondering if there was any way we could just have a
19 little teeny-weeny break in the afternoon and if we
20 could break a little early, like 4:30.

21 THE CHAIRPERSON: Take a break, and
22 take a break?

23 MS KULASZKA: We don't need to take a
24 break.

25 THE CHAIRPERSON: Going all the way

1 until 4:30 might be a bit long for you. Certainly --
2 you know, I don't mind. You gave me an undertaking
3 before lunch that by the end of next week we'll be on
4 track.

5 You have to understand, we have
6 experience at this. We often make expectations that we
7 are going to meet or targets and we end up going long.
8 That's why I'm concerned that we run out of time, then
9 we're going to have to try to reschedule.

10 I'm trying to keep everyone -- not
11 just your side, trying to keep Mr. Vigna on track too,
12 and everyone else. You gave me an undertaking this
13 morning that you will be on track next week.

14 MS KULASZKA: Yes.

15 THE CHAIRPERSON: If you tell me by
16 taking a break at 4:30 we'll still be on track with the
17 way you've set out your case, that's fine with me.

18 MS KULASZKA: I don't know if anybody
19 else is traveling?

20 THE CHAIRPERSON: Yes, I'm traveling.
21 Others are, I'm sure.

22 MS KULASZKA: I'd appreciate that.

23 We're back, Mr. Warman, at tab 4,
24 page 26. The first posting seems to be about -- this
25 whole thread seems to be about the video of a raid on

1 my place last May, correct?

2 MR. WARMAN: That's listed as the
3 title.

4 MS KULASZKA: That's the title?
5 That's the thread?

6 THE CHAIRPERSON: I see that.

7 MS KULASZKA: The next posting is der
8 totenkopf. Do you know who that is?

9 MR. WARMAN: It's my personal belief
10 that it's an individual by the name of Charon Paul
11 Donnelly.

12 MS KULASZKA: How do you find out who
13 these people are? Because they are not giving their
14 real names.

15 MR. WARMAN: Usually they post
16 sufficient information about themselves that it's
17 possible to identify them.

18 MS KULASZKA: Just in the posting
19 itself or on other message boards as well?

20 MR. WARMAN: Oh, well, anywhere.

21 MS KULASZKA: Just somewhere on the
22 Internet?

23 MR. WARMAN: Not just the Internet.
24 They could attend events, that kind of thing.

25 MS KULASZKA: Next posting is by

1 pogue mahone, and that's yourself?

2 MR. WARMAN: Yes.

3 MS KULASZKA: You agree this whole
4 thread they are talking about the video, correct?

5 MR. WARMAN: Well, in these small
6 like three-and-maybe-and-a-half posts,
7 four-and-maybe-a-half posts appear to be, yes.

8 MS KULASZKA: Next e-mail, page 28
9 and the title of this thread is "Re: Edmonton and area
10 WNs," and what is a "WN" from your knowledge of this
11 forum.

12 MR. WARMAN: Well, I certainly would
13 not want to testify as an expert witness, but my
14 understanding of WN is that it stands for white
15 nationalist.

16 MS KULASZKA: I accept you are not an
17 expert.

18 And you posted on the bottom of page
19 29 and you re-posted again. And would you agree that
20 your post on the bottom of page 29 is in -- it's like a
21 form of banter?

22 MR. WARMAN: With whom?

23 MS KULASZKA: Well, you say, "Hey,
24 look, cancer, the self-carving freak is back." The
25 post before that was cancer.

1 MR. WARMAN: Yes, it is.

2 MS KULASZKA: Is that who you are
3 referring to or -- I guess you are not referring to the
4 disease. You are referring to cancer, the person who
5 just gave the post ahead of you, right?

6 MR. WARMAN: Yes, the pseudonym.

7 MS KULASZKA: So you are being very
8 playful, correct?

9 MR. WARMAN: Well, I'm not sure I
10 would describe it as playful, but the comment speaks
11 for itself, I believe.

12 MS KULASZKA: Then you post the next
13 post as well. You actually re-post the preceding post
14 that you posted and you're asking about George Burdi.
15 So is this part of your investigative technique, you
16 ask questions about various people you are
17 investigating?

18 MR. WARMAN: It can be.

19 MS KULASZKA: But the people on the
20 forum, at least the ones that are genuine posters, they
21 actually believe you are pogue mahone and you are one
22 of the --

23 MR. WARMAN: I can't really answer as
24 to what people believe, I'm sorry.

25 MS KULASZKA: But the reason you are

1 making the posts you are, you say you are not a racist,
2 you're not trying to discriminate. So you are doing
3 this for a reason and you've said you are doing it --
4 so they trust you basically, correct?

5 MR. WARMAN: I've indicated that it's
6 for the purposes of gathering information and so that
7 it forms a profile that does not arouse immediate
8 suspicion.

9 MS KULASZKA: Correct. You are
10 trying to earn their trust. Isn't that another way of
11 putting it?

12 MR. WARMAN: I believe my answer
13 speaks for itself.

14 MS KULASZKA: And on page 31, 32 at
15 the top is another posting by you, and in this case you
16 would agree that your posting, it would be contrary to
17 section 13, correct?

18 MR. WARMAN: Mr. Chair?

19 THE CHAIRPERSON: Yes.

20 MR. WARMAN: At the risk of sounding
21 repetitive, this is clearly going into the content of
22 the posting and in not in any way, shape or form
23 related to the operation of a message board, how it
24 works, how one re-posts.

25 THE CHAIRPERSON: I did enlarge the

1 scope of this type of questioning after further
2 discussion. We got into the Charter component to this.
3 But we have been down this path in the sense that --
4 just a moment, please.

5 We expanded a bit on it. We did
6 elaborate on the scope. Now, the scope here I gather
7 is to demonstrate again that Mr. Warman using -- in
8 making these posts uses language that certainly
9 possibly may be in breach of section 13. That's the
10 point of your question, Ms Kulaszka?

11 MS KULASZKA: That's my question.
12 I've asked him -- I have not repeated the -- he doesn't
13 want me to repeat the posting. I haven't repeated the
14 posting. I've simply pointed to the posting on page 32
15 and asked him, would you agree that this is a posting
16 which could be in violation of section 13?

17 THE CHAIRPERSON: Mr. Warman?

18 MR. WARMAN: If I could just have a
19 minute to get what it is. I would like to refer her to
20 a specific part of the record that is already in
21 existence.

22 MR. FOTHERGILL: Mr. Hadjis, I
23 apologize for my absence around noon today, but am I
24 given to understand this is relevant to the Charter
25 challenge in some way?

1 THE CHAIRPERSON: Right. I'm not
2 going to recite it again. Perhaps you can speak to
3 Mr. Vigna about what we discussed earlier.

4 MR. WARMAN: Sorry, I guess the short
5 answer is no.

6 MS KULASZKA: Mr. Warman, you are not
7 a policeman, are you?

8 MR. WARMAN: No, I'm not.

9 MS KULASZKA: You are not a member of
10 any police or security force?

11 MR. WARMAN: No, I'm not.

12 MS KULASZKA: If we can turn to page
13 33. And this is a posting of Paul Fromm. Is this the
14 same Paul Fromm who is acting as an agent today for the
15 Canadian Association for Free Expression?

16 MR. WARMAN: I'm sorry, but as a
17 party I just need to take a moment. I'm sorry, what
18 page?

19 MS KULASZKA: Page 33. Mr. Fromm's
20 posting appears to be a report about a hate trial that
21 had opened in Toronto concerning Marc Ehms of Toronto,
22 correct?

23 MR. WARMAN: That's what it appears
24 to be.

25 MS KULASZKA: Pardon?

1 MR. WARMAN: That is what it appears
2 to be.

3 MS KULASZKA: Yes, if you could speak
4 up. You are not close to your microphone. Maybe you
5 could bring your microphone closer.

6 I notice under -- that is Mr. Fromm's
7 image, correct, photograph?

8 MR. WARMAN: It would appear.

9 MS KULASZKA: Under that image it
10 says "posts 1,204". Can you tell me what that is?

11 MR. WARMAN: My understanding is is
12 that indicates the number of posts Mr. Fromm has made
13 on this forum.

14 MS KULASZKA: Up to that point.

15 MR. WARMAN: Indeed.

16 MS KULASZKA: So the website seems to
17 have a counter counting how many posts you are putting
18 on the message board, correct?

19 MR. WARMAN: That's my understanding.

20 MS KULASZKA: If we could just go
21 back to page 25. At the bottom is a posting by Marc
22 Lemire, the respondent in this case. As of that date
23 in June 2002 it showed 409 postings; is that correct?

24 MR. WARMAN: Yes.

25 MS KULASZKA: As part of your

1 investigation, say, with Marc Lemire, would you go back
2 and look at those 409 postings?

3 MR. WARMAN: Not necessarily all of
4 them.

5 MS KULASZKA: Did the system have the
6 ability for you to do that?

7 MR. WARMAN: You could find previous
8 posts by individuals, yes.

9 MS KULASZKA: Do you know how many of
10 his postings you would have read?

11 MR. WARMAN: No, I'm sorry, I don't.

12 MS KULASZKA: But he's someone
13 obviously you were monitoring, correct?

14 MR. WARMAN: No, I wouldn't describe
15 it as monitoring. He was someone I was aware of.

16 MS KULASZKA: So when did you start
17 monitoring him?

18 MR. WARMAN: I wouldn't describe it
19 as having ever "monitored" him.

20 THE CHAIRPERSON: The "him" we are
21 talking about again is?

22 MS KULASZKA: Marc Lemire.

23 THE CHAIRPERSON: Just to be clear,
24 because you also mentioned Mr. Fromm earlier.

25 MS KULASZKA: I had gone back to Marc

1 Lemire's posting on page 25.

2 So he really wasn't a person of
3 interest to you for a long time; is that correct?

4 MR. WARMAN: Perhaps you can define
5 what you mean "by a long time".

6 MS KULASZKA: Well, Mr. Lemire's
7 website, I believe, has been up since 1996 and your
8 complaint was laid in 2003 and now you are telling me
9 you didn't monitor Marc Lemire. You were aware of him.
10 So when did he become a person of interest to you?

11 MR. WARMAN: At the very least,
12 certainly shortly before I filed the complaint against
13 him.

14 MS KULASZKA: So out of hundreds of
15 Stormfront postings you have entered one into evidence,
16 is that correct, of Marc Lemire?

17 MR. WARMAN: I believe so.

18 MS KULASZKA: If we could go back to
19 the thread that starts on 33. Turn to page 34.

20 Would you agree Paul Fromm issues
21 a -- posts a report on this trial. He states that he
22 was present at the court and gives an account of what
23 happened at the courtroom and thereafter various forum
24 members are reading his post and commenting on it,
25 correct?

1 MR. WARMAN: I can indicate there are
2 subsequent posts after it.

3 MS KULASZKA: For example, on 3 of 5
4 Jessey Destruction says:

5 "I was talking with a friend
6 from Germany. I showed him this
7 article and says, 'We're
8 becoming more and more like
9 Germany.'"

10 Correct?

11 MR. WARMAN: That is correct.

12 MS KULASZKA: On the next page, page
13 36, pogue mahone, which is you, you post -- you re-post
14 the previous message by der totenkopf, you and
15 basically agree with her, correct?

16 MR. WARMAN: No, I don't believe
17 that's what the post implies.

18 MS KULASZKA: What do say it implies?

19 MR. WARMAN: I believe it speaks for
20 itself.

21 MS KULASZKA: Well, der totenkopf
22 says, "But yet Ice-T is allowed." Do you know who
23 Ice-T is?

24 MR. WARMAN: I believe he's a
25 musician.

1 MS KULASZKA: "Ice-T is allowed the
2 song 'cop killer' or NWA's fuck the police, this is
3 clearly a law to bring down the 'white race'".

4 And your reply was:

5 "Exactly. When will white cops
6 understand that they should
7 stand by" in caps "THEIR RACE."

8 So you were supporting her, correct?

9 MR. WARMAN: First off, I think it's
10 a him; and, secondly, no, I believe the answers that
11 I've given in the past make it clear that those were
12 not my actual beliefs.

13 MS KULASZKA: I'm not talking about
14 your actual beliefs. I'm talking about the posting you
15 made.

16 THE CHAIRPERSON: I think your
17 question, if I understand correctly, Mr. Warman, do you
18 accept the undertaking that Ms Kulaszka has that the
19 statement that you provided here at posting number 6
20 indicates support of the quote that is just above it to
21 which you are replying?

22 MR. WARMAN: And I've answered no,
23 that I don't believe that that's the case.

24 MS KULASZKA: What is it then?
25 What's your understanding then?

1 MR. WARMAN: I believe it indicates a
2 purported message that white cops -- it is a question
3 as to when white cops will understand that they should
4 stand by their race.

5 MS KULASZKA: I think the discussion
6 at this point indicates the people were frustrated.
7 They think white people are getting charged with hate
8 and they are pointing out -- Ice-T would probably be a
9 black rapper; is that correct?

10 MR. WARMAN: Well, I understand him
11 to be a black musician, yes.

12 MS KULASZKA: These are quite
13 notorious songs, are they not, "Cop Killer"?

14 MR. WARMAN: I'm not sure.

15 MS KULASZKA: Have you ever
16 investigated rap songs?

17 MR. WARMAN: In what sense?

18 MS KULASZKA: For the purposes of
19 section 13.

20 MR. WARMAN: I'm not aware -- I've
21 never seen anything like that that would cause me to
22 believe there is a section 13 violation in relation to
23 the Canadian jurisdiction of the Canadian Human Rights
24 Act.

25 MS KULASZKA: So you've never made

1 any investigations into that particular area, correct?

2 MR. WARMAN: I have not personally
3 gone looking for it. None of it has ever come to my
4 attention.

5 MS KULASZKA: In the Winnicki case, I
6 believe an argument was based on it and was entered
7 into evidence.

8 MR. WARMAN: Oh, it was indeed, yes.

9 MS KULASZKA: So you became aware of
10 it then, correct?

11 MR. WARMAN: No, I believe -- well,
12 if I want to be clear, my answer was that I had not
13 become aware of it in terms of that there would be a
14 possible violation of the Canadian Human Rights Act.
15 So did I become aware of it? I'm aware of the genre of
16 music and the defence that was raised by Mr. Winnicki's
17 counsel.

18 MR. VIGNA: Mr. Chair, I have an
19 objection to this line of questioning regarding rap
20 music on the relevance that it's sort of argumentative
21 in terms of questions.

22 Where is the relevance in terms of
23 the Internet of rap music and whether it institutes
24 hate in virtue of section 13?

25 MS KULASZKA: I'm just trying to find

1 out the limits of Mr. Warman's interests.

2 You're basically just interested in
3 Stormfront and VNN and political -- what you would call
4 neo-Nazi, anti-Semitic, Fascist, white supremacist --
5 have I missed my -- websites, correct?

6 MR. WARMAN: No, that's not the case.

7 MS KULASZKA: Do you investigate
8 other kinds of websites?

9 MR. WARMAN: If they came to my
10 attention and I had reason to believe. I should also
11 note that Fascism is not a ground that is covered under
12 the Canadian Human Rights Act.

13 MS KULASZKA: Could I ask you what
14 other websites you monitor in your investigations?

15 MR. WARMAN: First off, there is no
16 sort of -- I guess the easiest answer is to say that if
17 something is brought to my attention then I will
18 evaluate it as to whether it is of interest to me or
19 not, and we'll proceed on that basis depending on how I
20 view the material and particularly how egregious the
21 material may be.

22 MS KULASZKA: So does somebody always
23 bring something to your attention? You don't look for
24 material yourself?

25 MR. WARMAN: No, I have looked at a

1 variety of different material.

2 MS KULASZKA: So what other kinds of
3 websites have you looked at?

4 MR. WARMAN: Homophobic websites,
5 websites promoting hatred of Christianity, websites
6 that -- well, there's a wide variety.

7 MS KULASZKA: Turn to the next page,
8 37, the heading here is "Happy Birthday der totenkopf".
9 And you say that's a man, not a woman?

10 MR. WARMAN: My understanding is that
11 unless I'm unaware of gender-change surgery he has
12 undergone, he is in fact a male.

13 MS KULASZKA: I misunderstood your
14 testimony before. I thought you said he was a woman.

15 MR. WARMAN: No, I believe my
16 testimony has been consistent that it's my
17 understanding he is an individual named Charon Paul
18 Donnelly.

19 THE CHAIRPERSON: That's my
20 recollection of what you said.

21 Sir?

22 MR. FROMM: As I'm somewhat
23 knowledgeable about that case, perhaps I could assist
24 the recorder. It's not Charon, it's Ciaran, and it's
25 spelled C-I-A-R-A-N.

1 MS KULASZKA: Now, this thread is
2 about happy birthday greetings, correct? Jessey
3 Destruction has a great big happy birthday, correct?

4 And white Calgary says on the next
5 page, "Happy birthday, man, 88."

6 What's 88 mean in your understanding
7 on the use of this forum?

8 MR. WARMAN: My understanding is that
9 it is short for the letters "HH", which is short for
10 Heil Hitler.

11 MS KULASZKA: And you, yourself have
12 used "88" in your postings, correct?

13 MR. WARMAN: Do you have anything in
14 particular you'd like to point me to I'd be happy to,
15 but it's quite possible, yes.

16 MS KULASZKA: Well, example is page
17 5, "der totenkopf".

18 MR. WARMAN: Indeed.

19 MS KULASZKA: As Axetogrind?

20 MR. WARMAN: Yes.

21 MS KULASZKA: Back on page 38, Celtic
22 warrior says, "Happy Birthday." And I noticed this
23 earlier on the main page. White westerner says, "Yes,
24 a very happy birthday you to." Exterminant says,
25 "Happy Birthday, SS88". He has even a bigger message

1 in big, big caps, "HAPPY BIRTHDAY BUDDY."

2 Then pogue mahone comes on and says,
3 "Happy B Day, your present is in the mail."

4 Did you actually send a present to
5 this person?

6 MR. VIGNA: Mr. Chair, I object again
7 to the relevance of the question. It's on the contents
8 of the -- not the website object of this tribunal.

9 THE CHAIRPERSON: Mr. Vigna, every
10 time you object on these points, it just delays the
11 process even further. We know where we're going with
12 this. The quicker we let Ms Kulaszka complete this --
13 the evidence can come in and then you can argue all you
14 want at the end that it's irrelevant and I shouldn't be
15 considering it for any aspect of this case. Go ahead.
16 Just let her, it will just be quicker.

17 MR. WARMAN: I did not mail him a
18 birthday present, no.

19 MS KULASZKA: You didn't mail a
20 present, but did you give a present?

21 MR. WARMAN: No, I did not.

22 MS KULASZKA: You didn't, in fact,
23 just lay a complaint against this person and they got
24 it later?

25 MR. WARMAN: I don't recall the exact

1 date. I'm quite happy to look it up if you want. But
2 I had filed -- or it's quite possible I filed the human
3 rights complaint against them, Federal section 13 hate
4 complaint.

5 MS KULASZKA: Against der totenkopf,
6 right, the person who used that handle?

7 MR. WARMAN: Mr. Donnelly, yes.

8 MS KULASZKA: Is that what you are
9 referring to in your posting?

10 MR. WARMAN: No. In fact, it was
11 just basically put there as a joke, as in the cheque is
12 in the mail.

13 MS KULASZKA: The next posting, boy
14 white, "Happy B day bro. Hope we can meet up soon."

15 Next posting, "Happy birthday, old
16 man."

17 I submit you to what this whole
18 thread shows is the people who go on those forums get
19 to know each other, don't they?

20 MR. WARMAN: I'm sorry, that's a very
21 broad question.

22 MS KULASZKA: They get to know each
23 other. They are talking about various topics, they get
24 to know each other's views, they become friends.

25 MR. WARMAN: I certainly wouldn't

1 submit a number of individuals saying happy birthday to
2 someone necessarily means that they are friends or they
3 actually know each other.

4 MS KULASZKA: Mr. Warman, most
5 people -- you know, maybe your posting was just a joke
6 and you didn't mean it, but most of those people
7 probably on that thread actually meant it; is that
8 possible?

9 MR. WARMAN: Lots of things are
10 possible in the world, madam.

11 MS KULASZKA: Next thread, Vaughan
12 Vancouver. They are talking about if someone would
13 like to organize a pre-Zundel protest in Vancouver, and
14 how many of you would actually show up.

15 Somebody replies back on the bottom
16 of page 41, "I would."

17 And the next one he says, "Count me
18 in."

19 And the next one says, "It may be he
20 doesn't want to commit. He needs some decent cash."

21 Then Estate comes on and says, "Hey,
22 88, too bad."

23 He makes a comment, "Who is Estate?"

24 MR. VIGNA: Mr. Chair, I have to
25 object on this one because I know the history behind

1 this -- there was an objection made in the Bahr file
2 regarding Estate; that somebody for police -- it's a
3 police informant and we're invoking privilege on the
4 identity of Estate.

5 MS KULASZKA: I believe the identity
6 of Estate has been established in previous tribunal
7 proceedings. It's tab 12.

8 MR. VIGNA: Tab 12?

9 MS KULASZKA: Tab 12 is an excerpt of
10 the transcript of the Bahr case in -- or before the
11 Canadian Human Rights Tribunal. Just go through that.
12 The excerpt from the transcript starting at page 558.
13 Mr. Fromm was acting as an agent for Mr. Bahr. He
14 states at the bottom line, 21, 22:

15 "From your investigation were
16 you able to identify who Estate
17 was?"

18 And at that point he is
19 cross-examining Mr. Camp, who was a police officer.

20 "MR. WARMAN: Madam Chair, I'm
21 objecting on the ground that
22 that goes to the issue of the
23 police investigative techniques.

24 MR. FROMM: Excuse me? How
25 is Mr. Warman privy to police

1 investigation techniques?

2 THE CHAIRPERSON: We did
3 canvas the identity of proud 18
4 so I'm going to allow that
5 question. Do you have an
6 answer, Sergeant Camp?

7 MR. CAMP: I refuse to
8 answer on the ground that it is
9 an ongoing investigation for
10 officer safety.

11 THE CHAIRPERSON: Thank you.

12 MR. CAMP: In fact, any post
13 that is brought up by Estate
14 won't be answered.

15 THE CHAIRPERSON: Okay, that
16 is your answer.

17 MR. FROMM: Would you maybe
18 direct the witness to answer the
19 question?

20 The witness has answered the
21 question. It's a total
22 non-answer."

23 On the last page:

24 "MR. FROMM: I would like to ask
25 Sergeant Camp if he can identify

1 a person who posts on Stormfront
2 under the name Estate?

3 MR. CAMP: I won't identify
4 who but I can state it was a
5 police officer that posted on
6 Stormfront as Estate.

7 THE CHAIRPERSON: So that is
8 the moniker, then, Estate?

9 MR. CAMP: Moniker of
10 Estate. That is correct. The
11 reason I can't give the identity
12 is because of the officer may be
13 involved in future undercover
14 operations and Stormfront and
15 the members of the Canadian
16 Discussion have a tendency to
17 post pictures of individuals on
18 Stormfront they feel are a"

19 -- and we don't have the last page. That deals with
20 the issue that we want.

21 MR. VIGNA: My objection is on the
22 name. The police officer is not a problem.

23 THE CHAIRPERSON: So, Ms Kulaszka,
24 based on this document, we can produce the three pages
25 since we don't need to refer to them. Any objection to

1 that?

2 MR. VIGNA: No, Mr. Chair.

3 THE CHAIRPERSON: Those three pages
4 indicate that the name Estate is of a police officer, I
5 gather, from that police force?

6 MS KULASZKA: Can I just consult with
7 Mr. Fromm? He was the agent there.

8 THE CHAIRPERSON: I don't know if it
9 has any bearing on the fact it's from one police force
10 or another.

11 MR. VIGNA: I said police informant,
12 but I meant police officer.

13 THE CHAIRPERSON: I see. So you've
14 established, Ms Kulaszka, it was a police officer?

15 MS KULASZKA: Yes, that's sufficient
16 for this case.

17 Now, going back to tab 12,
18 Mr. Warman, before we continue. Mr. Fromm asked
19 Sergeant Camp:

20 "From your investigation, were
21 you able to identify who Estate
22 was?"

23 And you stated that the bottom of
24 page 658:

25 "Madam Chair, I'm objecting on

1 the ground that that goes to the
2 issue of the police
3 investigative techniques."

4 And Mr. Fromm raised the question:

5 "How is Mr. Warman privy to
6 police investigation
7 techniques?"

8 How did you know Estate was a police
9 officer?

10 MR. WARMAN: In fact, I did not.

11 MS KULASZKA: Then why did you make
12 an objection?

13 MR. WARMAN: Because the concern was,
14 as I was aware of it, was that there had been doubts
15 within the neo-Nazi community expressed as to the bona
16 fide of Estate as an actual member of the that
17 neo-Nazis. In other words, they had suspicions about
18 him already.

19 So on the basis of that, I was
20 concerned that if in fact those were accurate that that
21 would go to the question of police technique.

22 MS KULASZKA: But you are not a
23 policeman and you investigate all the time.

24 MR. VIGNA: Mr. Chair, I object to
25 this line of questioning.

1 THE CHAIRPERSON: I didn't understand
2 your answer, Mr. Warman. Could you repeat it so I can
3 understand what you meant?

4 MR. WARMAN: There had already been
5 expressions of doubt expressed on -- I can't remember
6 exactly where I saw it, but on the neo-Nazi boards at
7 the very least, about the identity of the person named
8 Estate. So it was quite clear that there was a
9 probability or a possibility, at the very least, that
10 this person was somehow affiliated with police or
11 security apparatus.

12 So on that basis that was the nature
13 of the objection, that it could go to that question.

14 THE CHAIRPERSON: Okay. Let me just
15 read it again. That was at tab 12, right?

16 So your response here is that you
17 objected at page 658 of transcript in the Bahr case to
18 the question posed by Mr. Fromm because based on what
19 you had observed previously you suspected that --

20 MR. WARMAN: There was a possibility
21 he was affiliated with a police or security operation.

22 THE CHAIRPERSON: I have the answer.

23 MS KULASZKA: Mr. Warman, you say,
24 "I'm objecting on the ground that it goes to the
25 issue." You were very, very sure of it. You didn't

1 get up and say, you know, this perhaps could be some
2 sort of police issue. You were very certain, weren't
3 you? You already knew who Estate was.

4 MR. WARMAN: No, and in fact to this
5 day I don't know who Estate was.

6 MS KULASZKA: Who is Sergeant Camp?

7 MR. WARMAN: Sergeant Camp was the
8 head of the Edmonton Police Hate Crime Service.

9 MS KULASZKA: Did you know --

10 MR. WARMAN: -- unit, excuse me. I
11 know him through the work I've done around section 13
12 complaints in regard to hate group activity.

13 MS KULASZKA: Have you ever laid any
14 complaints against persons with Sergeant Camp or his
15 unit?

16 MR. WARMAN: I believe I have, yes.

17 MS KULASZKA: Pardon?

18 MR. WARMAN: Yes.

19 MS KULASZKA: So you would agree that
20 part of your technique is you investigate, you find
21 material, and it was done in this case as well, you'll
22 lay a section 13 complaint and then you'll lay
23 complaints with the police, correct?

24 MR. WARMAN: If I believe there has
25 been a violation of both section 13 of the Canadian

1 Human Rights Act and any relevant section of the
2 Criminal Code I will quite definitely file both
3 complaints.

4 MS KULASZKA: Now, have any of the
5 police -- did any of these complaints with the police
6 result in actions by the police?

7 MR. WARMAN: Yes.

8 MS KULASZKA: In which cases?

9 MR. WARMAN: The case of Mr. Bahr,
10 who was subsequently charged under what I understand to
11 be section 319 sub (2) of the Criminal Code, and there
12 was also a complaint filed in relation to Mr. Donnelly
13 and another woman named Ms. Beaumont in British
14 Columbia that the police, I believe, have followed up
15 and have in fact executed a search warrant at their
16 residence.

17 MS KULASZKA: Any others?

18 MR. WARMAN: Those are the ones I can
19 think of off the top of my head.

20 THE CHAIRPERSON: Did you file any
21 against the respondent in this file?

22 MR. WARMAN: Yes. In fact, the
23 letters have already been canvassed.

24 THE CHAIRPERSON: So to your
25 knowledge, there was no follow-up on that one?

1 MR. WARMAN: No.

2 MS KULASZKA: How about
3 Mr. Kulbashian?

4 MR. VIGNA: Mr. Chair, I don't see
5 what the relevance of these questions are. There's a
6 royal inquiry on the complaints on various individuals
7 that do not deal with this complaint before you today.
8 How is that relevant?

9 MS KULASZKA: I think it's relevant.
10 I'm laying the groundwork basically for Mr. Fromm's
11 evidence. What happens is Mr. Warman lays a complaint
12 under section 13, then he goes to the police. The
13 police will raid the person's home, seize all the
14 equipment. They will use police powers basically to
15 get equipment and interrogate, if possible, the person
16 and then that evidence is used in the section 13
17 hearing. The Kulbashian case is one example.

18 MR. VIGNA: Mr. Chair, the argument
19 is not very persuasive. The only evidence on which you
20 will have to decide this complaint is the evidence
21 that's before you, and it ends there.

22 THE CHAIRPERSON: This is going into
23 the second two weeks.

24 MR. VIGNA: But even in the second
25 two weeks I don't see how this relates to the

1 constitutional argument. I mean, we can put just about
2 anything and say it's a constitutional argument. But
3 how does it relate to the constitutional argument
4 whether an individual makes complaints to the police
5 and the Human Rights Commission?

6 THE CHAIRPERSON: Would you like to
7 elaborate, Ms Kulaszka?

8 MS KULASZKA: It goes to the
9 challenge of the effect of this law, because under this
10 law you don't need intent, you don't need mens rea, you
11 have no defence of truth, you have no defence of
12 commentary on religious or political matters.

13 So if you can get a complaint to the
14 police and the police go and raid the house, get
15 evidence, take the accused and arrest him, and then
16 that evidence is used in a section 13 complaint, this
17 is -- and if this is repeated, it is obvious it's a
18 strategy that's being used by the Commission.

19 They are using the police in a way to
20 get evidence. And certainly the Kulbashian case, in
21 the Bahr case, the police are being called in the
22 section 13 cases as witnesses and evidence that they
23 have obtained in the criminal process are being used
24 against people under section 13.

25 So you are using police powers under

1 the Criminal Code but you are using them under a
2 civil -- under allegedly civil and remedial
3 legislation.

4 MR. VIGNA: Mr. Chair, can I reply to
5 that? It's not the first time that in a civil
6 proceeding you have police officers that will come to
7 testify to factual events. I mean, even in the case,
8 for example, of an assault, and this is a where there
9 is criminal charge and, subsequently, it can be a civil
10 suit, if they call the police to testify at the civil
11 proceeding there won't be an argument that they are
12 using the police to present evidence at the civil
13 proceeding.

14 The evidence that's going to be
15 before you is basically on a case by case -- the
16 constitutional argument is being put forward to you,
17 Mr. Chair, I submit respectfully, it has to be put --
18 that type of argument has to be assessed on a
19 case-by-case basis on the application of perhaps an
20 unconstitutional manner in a particular case.

21 But we cannot invoke it at large and
22 say the legislation is unconstitutional because there
23 is a certain case that police officers came and
24 testified. I think in every single case there has to
25 be an assessment and there has to see if there was an

1 application that was unconstitutional; not that the
2 legislation isn't constitutional.

3 THE CHAIRPERSON: I see what you are
4 saying. But on the other hand, it's arguably relevant
5 to the case that is being put forth by the respondent.
6 This is the argument that they intend to invoke. It
7 seems to me some of it you can certainly raise at the
8 end and say this is not -- shouldn't form part of the
9 analysis to be made. But this is the argument that the
10 respondent is raising.

11 MR. VIGNA: It has to be relevant.

12 THE CHAIRPERSON: It is. To the
13 extent -- this is an argument which I'm not prepared to
14 say is an illegitimate argument at this time. So if
15 that's an argument that will be raised by the
16 respondent, and she's just indicated what the relevance
17 is of this information to that argument, we can go in
18 that area.

19 Look, the standard test is relevance
20 versus prejudicial effect. What's the prejudicial
21 effect here? That I can't disabuse myself of the fact
22 of evidence that was in the Kulbashian file that I
23 heard myself, or all the other files that are all on
24 the record, decisions that have been issued in Bahr and
25 all these other files? I don't see it. There's not no

1 relevance. Sorry for the double negative.

2 There is no absence of -- complete
3 absence of relevance to an argument that is being
4 raised by the respondent. The only prejudicial effect
5 I see right now is that we're delaying the process with
6 these constant objections. I'm ruling on this point
7 right now. She can proceed in this manner.

8 Mr. Warman, I know you are standing
9 but unless you have something different to say than
10 what Mr. Vigna just said, my ruling stands.

11 THE WITNESS: I'm actually just
12 hoping for a clarification. Ms Kulaszka had indicated
13 it was the Commission that was using this process in
14 order to, I guess, amass information in this fashion.
15 But the evidence has been quite clear that the
16 complaints have been filed by me, so I'm just hopeful
17 there may be some clarification.

18 THE CHAIRPERSON: I believe she said
19 it earlier, Mr. Warman. Her thesis is that the
20 Commission does not object to the manner in which you
21 have proceeded to collect the information on your own
22 and then use as benefits, if you will, from that
23 process to proceed in the manner that these files have
24 proceeded. And she intends to make a global argument
25 on that basis with regard to the broader issue.

1 I understand where she's going. I
2 certainly understand what the other side is replying.
3 But we are still at the point of gathering the
4 evidence. Let's proceed.

5 MS KULASZKA: Mr. Warman, this
6 technique was used in the case of Glenn Bahr, I think
7 you've already said, and he was charged under 319 as
8 well, correct?

9 MR. WARMAN: I'm not sure what
10 technique you are referring to.

11 MS KULASZKA: The technique of -- or
12 your usual strategy: Lay a section 13 complaint and as
13 well complaint to the police, just as you did against
14 Mr. Lemire; is that correct?

15 MR. WARMAN: If I have grounds to
16 believe there is a violation of both acts then I have
17 no hesitation in filing complaints under each.

18 MS KULASZKA: So you did so against
19 Mr. Bahr, correct?

20 MR. WARMAN: Yes, that's correct.

21 MS KULASZKA: Person named
22 Mr. Donnelly?

23 MR. WARMAN: Yes.

24 MS KULASZKA: Woman named Beaumont?

25 MR. WARMAN: That's correct.

1 MS KULASZKA: A man named Kulbashian.

2 MR. WARMAN: I don't recall off the
3 top of my head in terms of whether that's the case for
4 that one.

5 MS KULASZKA: Yeah, I believe the
6 police officer was called at the hearing. You were
7 there.

8 MR. WARMAN: Oh, he was, yes. But in
9 terms of whether I personally filed a criminal
10 complaint or whether the police were already aware of
11 the individual in conducting their own investigation.
12 I guess that's where I would say that, you know, I
13 don't know what the -- whether in fact I did file a
14 complaint or what the order came in.

15 MS KULASZKA: Person named
16 Richardson?

17 MR. WARMAN: Again, any answer would
18 be the same for that.

19 MS KULASZKA: And Kouba?

20 MR. WARMAN: Whether I filed a formal
21 complaint against him, or certainly I did make my
22 concerns known about his conduct to the Edmonton
23 police. I certainly wouldn't argue with that.

24 MS KULASZKA: Would that answer go
25 also for Kulbashian and Richardson, you made your

1 concerns known to them?

2 MR. WARMAN: Yes, but whether --
3 again, what the exact order was, whether the police
4 were already aware of these individuals and already
5 investigating them. I have certainly made concerns
6 known about those individuals to the London police.

7 MS KULASZKA: So actually, you work
8 quite close with the police, wouldn't you say?

9 MR. WARMAN: If I have a concern that
10 an individual or group has violated section 319 or any
11 other section of the Criminal Code I will contact the
12 police. So if that's what you mean by working quite
13 closely with them, that's certainly the case.

14 MS KULASZKA: Do you exchange
15 information with them?

16 MR. WARMAN: No. In fact, it's more
17 like a black hole. I provide my concerns, support them
18 with the information, and that's usually the way it
19 works.

20 MS KULASZKA: Going back to this
21 thread. I think we ended on 42, and we've established
22 that Estate was actually a policeman. Turn the page.
23 There's a post by Jessey Destruction and the next post
24 is by pogue mahone, which is you.

25 THE CHAIRPERSON: Sorry, I've lost

1 the page.

2 MS KULASZKA: We're at page 43.

3 Maybe we'll go to the end of it. Turn to page 44.

4 There's a posting by Marc Lemire. He states:

5 "Help free Ernst Zundel. Visit
6 the Freedomsite."

7 And again he's used his real name.

8 At the bottom, you have a post by pogue mahone. You
9 state:

10 "You don't get something that
11 has been posted by the person
12 ahead of you,"

13 -- named Louis.

14 Louis gets back to you on page 45.

15 He says:

16 "Which sentence did you not
17 understand?"

18 You get back to him.

19 Well, Louis says:

20 "I was trying to make two points
21 that are somewhat related."

22 You get back to him. You say:

23 "In that case I better say both.

24 You lost me."

25 I'm just reading parts of your post.

1 Then Marc Lemire replies to you as pogue mahone and
2 tries to help elucidate this discussion.

3 At the bottom his post he has -- he
4 signs off "Marc" and then he has the ad, "Visit the
5 Freedomsite."

6 Was that a typical thing for Marc
7 Lemire to do, to add at the bottom a kind of ad for his
8 website?

9 MR. WARMAN: I'm not sure. Of
10 course, signature lines can change depending on when
11 you make the post. Each individual poster can create
12 and change their signature line.

13 THE CHAIRPERSON: Signature lines,
14 are those automatic? The ones that come up
15 automatically, is that what you mean?

16 MR. WARMAN: Usually like a standard
17 signature block that appears --

18 THE CHAIRPERSON: So you can organize
19 your message, like e-mails, so it can always post the
20 same signature line? Is that how it works?

21 MR. WARMAN: That's my understanding.

22 MS KULASZKA: Because I notice in the
23 previous post by Marc Lemire on 44 he also, at the end,
24 has an ad for the Freedomsite and gives the address on
25 Carlton Street.

1 THE CHAIRPERSON: The same signature
2 line.

3 MS KULASZKA: So it looks like it's a
4 regular automatic thing.

5 Finally, the last post is by pogue
6 mahone, by you, and you say:

7 "Okay, thanks, I get it now."

8 And you ask about Lauder, is he still
9 around, what a joke that guy is. In fact, you know
10 Lauder, don't you? He's a fellow human rights activist
11 as you testified, I think, correct?

12 MR. WARMAN: I do know him, yes,
13 that's correct.

14 THE CHAIRPERSON: I'm sorry?

15 MS KULASZKA: That's the last posting
16 on page 47?

17 MR. WARMAN: Yes, it is.

18 MS KULASZKA: Is this the same
19 Matthew Lauder whose postings are included in this case
20 in HR-4 on the Freedom site?

21 MR. WARMAN: I believe so, yes.

22 MS KULASZKA: This small green binder
23 anyway.

24 THE CHAIRPERSON: That's HR-3.

25 MS KULASZKA: Is it HR-3. It's HR-3,

1 sorry. Is that correct?

2 MR. WARMAN: I understood that, yes.

3 MS KULASZKA: We go to the next
4 posting thread. It starts off by unreal pride.

5 MR. WARMAN: Sorry, I guess there
6 is -- just in relation to that last posting, there is
7 one thing; that in past cases when people have changed
8 their little avatar -- and avatar in this case meaning
9 a little photograph or the little -- I don't know
10 whether it's a wolf under Louis -- that can have the
11 effect of going back and changing other posts that are
12 still on the page, on Stormfront specifically.

13 So there can be sort of retroactive
14 changes in terms of the avatar. So I'm not sure if
15 that same thing would apply to the signature block as
16 well.

17 THE CHAIRPERSON: Okay.

18 MS KULASZKA: What is that in
19 relation to?

20 THE CHAIRPERSON: The signature at
21 the bottom of page 46. That's what you are alluding
22 to?

23 MR. WARMAN: Yes, and also at 44.

24 MS KULASZKA: Well, do you have any
25 evidence Mr. Lemire changed his image? There's a

1 photograph. Is that what you are talking about, the
2 image?

3 THE CHAIRPERSON: No, he's referring
4 to the signature line.

5 MS KULASZKA: But the point he's
6 making is if you change the image then you can change
7 everything and it will be retroactive right back
8 through your postings, all through your postings.

9 THE CHAIRPERSON: My understanding is
10 from what you said, and correct me if I didn't
11 understand you right, was that to your knowledge it's
12 possible -- when one changes his photo, for instance,
13 on one of these message boards, it will end up changing
14 the photo even for previous entries where perhaps you
15 had a picture of something else before.

16 MR. WARMAN: Yes.

17 MS KULASZKA: And you are raising the
18 possibility that the signature line on message
19 number -- from message 100 onwards on that date will
20 end up changing the signature line on messages 1
21 through 99 as well?

22 MR. WARMAN: Yes.

23 THE CHAIRPERSON: That's what he's
24 proposing.

25 MS KULASZKA: That's why I asked.

1 Does he have any evidence that Marc Lemire changed his
2 image and changed the look of his postings?

3 MR. WARMAN: Well, I would have to go
4 through the entirety -- I mean, at this point, I would
5 have to compare with -- well, perhaps the easiest thing
6 to do is just to go and look at the exhibit.

7 So, yes, I would submit that he had
8 in fact at some point changed between the date 09 --
9 February 2004 -- and I'm not sure who printed this off,
10 so it's 2/3/2006.

11 THE CHAIRPERSON: Which tabs are you
12 referring to?

13 MR. WARMAN: I'm sorry, tab 16 of --

14 THE CHAIRPERSON: Of --

15 MR. WARMAN: HR-2.

16 THE CHAIRPERSON: That's post number
17 103.

18 MR. WARMAN: In fact, I would state
19 that he would have had to have because he was posting
20 certainly prior to the time that I had filed a Human
21 Rights complaint against him.

22 MS KULASZKA: I actually don't see
23 any difference. He's got his little ad for the
24 Freedom site at the end.

25 MR. WARMAN: Yes, but you can see at

1 your tab 4 at the top of page 44 there's a change in
2 that there is no -- Marc Lemire is under attack by the
3 Canadian "Human Rights" Commission, and there's a book
4 which is clearly not present at tab 16 of HR-2.

5 THE CHAIRPERSON: As I read this,
6 Mr. Warman, I see that from -- when this posting was
7 made, posting 103, was made the signature line was what
8 we see here. The signature line at posting 409, which
9 is at tab 4 of the respondent's book, R-1 at page 44,
10 is different. But that was posting 409, which
11 presumably came 300 posts later. So your comment was
12 that there is a retroactive effect in changing the
13 signature line.

14 MR. WARMAN: No, I said there can --
15 there's a possibility.

16 THE CHAIRPERSON: But this does not
17 demonstrate that necessarily.

18 MR. WARMAN: No, and that's not what
19 I was saying. What I was asked was do I have any
20 information that Mr. Lemire changed his signature line
21 at any point.

22 THE CHAIRPERSON: I understood the
23 question to mean retroactively. So perhaps I
24 misunderstood. Is that what you are asking?

25 MS KULASZKA: Yes.

1 THE CHAIRPERSON: Retroactive effect.

2 MS KULASZKA: He brought this out of
3 no where. I don't know exactly what point he's trying
4 to make, actually.

5 My point was that Mr. Lemire always
6 had his Freedomsite and the address, the mailing
7 address, at the end of his postings. That is the same
8 with the posting in the Commission's exhibit as well.

9 MR. WARMAN: I quite happily agree
10 with that.

11 THE CHAIRPERSON: Okay. So you are
12 acknowledging, Mr. Warman, that Marc Lemire put his
13 freedomsite.org reference and address at the end of his
14 messages. Both those, the one that you pointed out to
15 us, posting 103, as well as posting 409, on the
16 stormfront.org message board?

17 MR. WARMAN: Yes, these three
18 messages all have that.

19 MS KULASZKA: Mr. Warman, you just
20 referred to tab 16 of HR-2, the big binder of the
21 Commission and you were looking at Marc Lemire's
22 Stormfront posting. You said, "I don't know who
23 printed that off." Is that true?

24 MR. WARMAN: No, it's not. I was
25 referring to your tab 4 where the date at the bottom,

1 because I didn't know that that goes day/month/year or
2 month/day/year.

3 MS KULASZKA: So you did print off
4 tab 20, correct?

5 MR. WARMAN: Tab 16?

6 MS KULASZKA: Tab 16.

7 MR. WARMAN: Yes, I did, yes.

8 MS KULASZKA: Mr. Warman, do you
9 think to the ordinary Canadian this whole process would
10 bring the administration of justice into disrepute when
11 you were bringing a complaint against Mr. Lemire
12 regarding the FreedomSite? Many of the postings on the
13 website are by a man named Matthew Lauder. He's your
14 fellow human rights activist, as you've defined him.
15 You've known him for years. You've worked with him.
16 Is that correct? And yet you clearly said yesterday
17 you didn't include his postings that are on the
18 FreedomSite in your complaint.

19 Do you think to an ordinary Canadian
20 this would bring the administration of justice into
21 disrepute?

22 MR. WARMAN: I'm sorry, but I can't
23 agree with your premise.

24 MS KULASZKA: What's the premise?

25 MR. WARMAN: Well, your premises is,

1 A, that in fact Lauder's postings are somehow involved
2 in this complaint when, in fact, absolutely none of
3 them are being relied on to demonstrate a section 13
4 violation by Mr. Lemire.

5 MS KULASZKA: Mr. Warman --

6 THE CHAIRPERSON: I think the
7 question is, do you think it brings the administration
8 of justice in disrepute to not include Mr. Lauder's
9 postings in your complaint. I thought that was the
10 question. Am I right?

11 MS KULASZKA: Maybe I could back up.
12 We're going back over the same point about, I brought a
13 motion for particulars and then I received a ruling and
14 then the Commission and Mr. Warman came back and they
15 stated the entire FreedomSite and the entire message
16 board was the subject of this hearing.

17 And attached to one of the letters, I
18 believe it was the October 2nd letter, it was made
19 clear by the Commission that the postings of Matthew
20 Lauder were being included and, in fact, I think I
21 wrote a letter in response stating that.

22 Would they be -- would they be
23 included? Because he was noted as an infiltrator
24 and -- yes, here it is. It was Schedule A to the reply
25 and response to counter motion filed by the Commission.

1 THE CHAIRPERSON: Is it something I
2 would have in front of me?

3 MS KULASZKA: Yes, just give me the
4 date here. November 8th it was faxed, signed by
5 Mr. Vigna, dated November 8th. And it is the reply and
6 response to counter motion.

7 This was -- basically it was a reply
8 to the motion -- well, it was two matters combined
9 together. But November 8th will give you the date.
10 November 8th, 2006. I'll wait until you have it
11 because it's quite important to see it.

12 The Commission included printouts
13 from the FreedomSite and stated that all of these were
14 being included, and Matthew Lauder's articles were
15 included. Do you have it?

16 THE CHAIRPERSON: I have it. I'm
17 seeing the reference to Schedule A in the reply.
18 That's paragraph 7.

19 MS KULASZKA: Yes, if you look at
20 paragraph 7, the titles in themselves, the literature
21 announced in the website indicate prima facie that the
22 literature announced and found to be considered to be a
23 violation of section 13. See Schedule A.

24 When you look at Schedule A you can
25 see -- at the bottom of page 2 you'll see Matthew

1 Lauder. Matthew Lauder is the director of anti-racism
2 program at the Guelph and District Multicultural
3 Centre. And under that paragraph are listed a full
4 page of articles, and so to the next page, page 4.

5 THE CHAIRPERSON: Okay. I see that.

6 MS KULASZKA: Now, actually the first
7 notice I received that they would not include Matthew
8 Lauder's materials I believe was at this hearing when I
9 went through the printout of the FreedomSite in HR-3.

10 THE CHAIRPERSON: So what's the
11 question you want to put to Mr. Warman?

12 MS KULASZKA: I asked him whether
13 this would bring the administration of justice into
14 disrepute.

15 MR. VIGNA: Mr. Chair, this is
16 question of legal, either for a judge of fact or -- of
17 the case to decide, or a lawyer that's being called as
18 an expert. I don't see how an ordinary witness, which
19 is what he's being called here for, can answer the
20 question that's being asked.

21 THE CHAIRPERSON: What I wanted to
22 say to you, Ms Kulaszka, no matter what Mr. Warman says
23 in answer to that question, does it make a difference?
24 That's more something that I or a court would be
25 deciding, right? Is it more a rhetorical question that

1 you're putting to him?

2 MS KULASZKA: No, it's -- people
3 watching this process being begin to see it as being
4 extremely unfair and they don't like what is going on,
5 where police are going onto forums, Mr. Warman going
6 onto forums. They are making all sorts of wild
7 statements, and then they seem to have some sort of an
8 immunity.

9 THE CHAIRPERSON: This is a great
10 argument. I can tell you right now what his answer is.

11 What you are saying -- Ms Kulaszka,
12 you are saying to Mr. Warman: I put it to you that
13 your decision not to include Mr. Lauder's material in
14 your complaint or in the evidence you that are leading
15 to support your complaint, is in violation -- brings
16 the administration of justice in disrepute under the
17 Charter. His reply will be: Do you agree with that
18 proposition?

19 MR. WARMAN: Well, the first thing is
20 she citing a Commission document and not my document,
21 so I believe the question would be better directed at
22 the Commission.

23 THE CHAIRPERSON: But the fact that
24 this has occurred in this file.

25 MR. WARMAN: No, I don't personally

1 believe that.

2 THE CHAIRPERSON: But you do and you
3 will try to convince me of that at some point later on.

4 MS KULASZKA: Was it your decision
5 not to include Matthew Lauder in this complaint in this
6 hearing?

7 MR. WARMAN: Meaning in the same way
8 that I didn't name anybody else and that I only named
9 Mr. Lemire and Mr. Harrison? Yes.

10 MS KULASZKA: You initially laid a
11 complaint against the entire FreedomSite; isn't that
12 correct? You actually issued a complaint against a
13 non-person, against a URL.

14 MR. WARMAN: Well, we can argue all
15 day about what the nature of the FreedomSite was, but
16 the complaint did initially name Mr. Lemire,
17 Mr. Harrison and the FreedomSite.

18 MS KULASZKA: Correct, and I brought
19 a motion to have that dismissed on grounds that it was
20 not a legal person; is that correct?

21 MR. WARMAN: I believe you did, yes.

22 MS KULASZKA: And at the last minute
23 you withdrew the complaint against the FreedomSite URL,
24 correct?

25 MR. WARMAN: I withdrew the complaint

1 against -- the portion of the complaint against the
2 FreedomSite, that's correct.

3 MS KULASZKA: So it appears up until
4 November 8th, Matthew Lauder was included in the case;
5 is that correct?

6 MR. WARMAN: Again, I believe your
7 question is best directed to counsel for the Commission
8 because that's their document.

9 MS KULASZKA: He's not giving
10 testimony. You are the Commission's witness. You are
11 not here as the complainant sitting here giving
12 testimony. You are giving testimony as the witness for
13 the Commission.

14 MR. WARMAN: Actually, I am here in
15 my own capacity giving testimony as the complainant.
16 If you look at the witness statement it's signed with
17 my name on it.

18 MS KULASZKA: I think if we looked at
19 the statement of particulars it's noted you are noted
20 as the witness for the Commission.

21 THE CHAIRPERSON: What's the
22 situation? Mr. Vigna, are you leading evidence of
23 Mr. Warman as Commission witness or not?

24 MR. VIGNA: We're calling him as a
25 Commission witness, obviously, and he's also a witness

1 in his own case.

2 But in relation to the point being
3 raised by my colleague, what I would like to clarify is
4 that the articles that are being mentioned by Ms
5 Kulaszka. It's not just the article itself, it has to
6 be taken into a context.

7 If -- one article can be very
8 innocent in one context and can mean a total different
9 thing in another. For example, if somebody puts an
10 article and invites people to give a certain type of
11 reaction to the article, you can't just give the
12 reaction without the article.

13 THE CHAIRPERSON: Another argument.
14 I appreciate that.

15 MR. VIGNA: I'm being brought into
16 this debate by the questions that are being asked by
17 the respondent.

18 So what the respondent seems to want
19 to do is singularize only certain aspects of the
20 website and saying only these aspects can be
21 considered. I think it's important to look at the
22 whole website to understand the context.

23 THE CHAIRPERSON: Yes, I understand
24 all that. I understand all of that. Please, people.

25 I believe the question that may be

1 asked, and maybe I can shortcut this is simply, the
2 decision to focus in the evidence on those pages of
3 freedomsite.org that have been brought to the attention
4 of the Tribunal in this case was that of the mutual
5 decision of the complainant and the Commission or was
6 it just the Commission's?

7 MR. WARMAN: Well, I provided the
8 material that I provided pursuant to my complaint and I
9 provided the subsequent material following that.
10 Whether the Commission decided to add anything further
11 to that or -- you know, it was their call, not mine.

12 I provided the information that I
13 thought would substantiate a section 13 complaint under
14 the Act. None of that -- you know, it is what it is.
15 It's there, it's been evidence.

16 THE CHAIRPERSON: Ms Kulaszka?

17 MS KULASZKA: Mr. Warman, do you
18 agree with at statement just made by Mr. Vigna that you
19 have to look at things in context to determine if it
20 violates section 13; that in fact one article in one
21 context is not hate propaganda, but that the same
22 article in another context would be?

23 MR. WARMAN: I'm sorry, that's a
24 really broad question. I just wonder if you could
25 narrow a little bit.

1 MS KULASZKA: Do you agree with
2 Mr. Vigna's position that the context of an article
3 determines or helps to determine whether it is a
4 violation of section 13?

5 MR. WARMAN: Well, it's possible.
6 Depends on what the circumstances were. Again, you are
7 asking me a universalist-style, rhetorical question.
8 So I'm giving you a universalist-style, rhetorical
9 answer, unfortunately.

10 MS KULASZKA: I think that's the
11 testimony you gave concerning The International Jew.
12 Is that not correct? You said it would be okay in one
13 context but it's not okay on JRBooksOnline, correct?

14 MR. WARMAN: No, I'm not sure that
15 that was the case. I stated, or if it was then I'll
16 correct my answer.

17 THE CHAIRPERSON: Go ahead.

18 MR. WARMAN: That if a work is
19 on-line then clearly if it's within the jurisdiction of
20 Canada then it becomes a question of whether it's
21 subject to section 13 of the Act. So, you know, that's
22 my answer.

23 MS KULASZKA: Yes. I think the point
24 was that it's a historical work and it's available at
25 virtually any major library, isn't that correct,

1 including Toronto Public Library? Correct?

2 MR. WARMAN: I'm not aware that's the
3 case. You've shown me documents from the catalog that
4 appear to include it, but I've never actually gone
5 there and tried to take it out.

6 MS KULASZKA: I assume those
7 documents are going to be proved and that the book is
8 in these major libraries. Is it still your position it
9 should be banned outright even in the libraries?

10 MR. WARMAN: Not under section 13 of
11 the Canadian Human Rights Act, no.

12 MS KULASZKA: Obviously not. But you
13 do believe the work is hate propaganda, correct?

14 MR. WARMAN: Oh, I do, yes.

15 MS KULASZKA: Then why is it in these
16 libraries?

17 MR. WARMAN: I'm not a librarian. In
18 fact, you are though, so why don't you go talk to your
19 friends.

20 MS KULASZKA: Yes.

21 THE CHAIRPERSON: You have --

22 MS KULASZKA: Yes, I have a Master of
23 Library Science.

24 So it's most interesting, with a
25 website like JRBooksOnline where the person who is

1 putting up these works that you disagree with,
2 nevertheless, is making very old, very kind of rare,
3 and in the case of The International Jew, very
4 historical document available to the common man. Would
5 you agree?

6 MR. WARMAN: I'm sorry, that was a
7 pretty long question. Can you --

8 MS KULASZKA: With a website like
9 JRBooksOnline --

10 MR. WARMAN: Yes --

11 MS KULASZKA: -- is making available
12 to the common man through the Internet works of
13 historical importance and works that are very old that
14 he considers valuable so that these people, ordinary
15 people, can actually read them for themselves; is that
16 correct?

17 MR. WARMAN: I don't believe that's
18 what's being done.

19 MS KULASZKA: Well, you gave
20 testimony that The International Jew in fact is on
21 JRBooksOnline, isn't it?

22 MR. WARMAN: Yes, that's correct.

23 MS KULASZKA: So, therefore, an
24 ordinary person could access that work for free from
25 his home, correct?

1 MR. WARMAN: If they had a computer
2 with Internet access, that is my understanding.

3 MS KULASZKA: Yes. So the common
4 person, then, has access to historical documents that
5 they can read for themselves, correct?

6 MR. WARMAN: People with access to
7 computers that have Internet access have access to the
8 documents that are available on JRBooksOnline, to the
9 best of my understanding.

10 MS KULASZKA: And that goes not just
11 for The International Jew, it goes for many other books
12 that are on-line. There are many books on-line,
13 correct?

14 MR. WARMAN: I've looked at maybe
15 half a dozen or a dozen of them. So there are at least
16 a dozen books on line that I'm aware of.

17 MS KULASZKA: So the Internet really
18 is a remarkable technological advance, is it not, to
19 bring knowledge and information to the world, correct?

20 MR. WARMAN: The Internet is the same
21 as virtually any technology that comes into existence,
22 that it can be used for good and it can be used for
23 evil.

24 MS KULASZKA: Now, I don't want to
25 get stuck on The International Jew, but of course it is

1 a remarkable invention for bringing knowledge to common
2 people, correct? You and I can agree on that?

3 MR. WARMAN: I certainly would never
4 agree that The International Jew is an incredible means
5 of bringing to the common people --

6 MS KULASZKA: I think I said the
7 Internet, didn't I?

8 THE CHAIRPERSON: That's what I
9 understood anyway.

10 MR. WARMAN: I'm sorry. The Internet
11 is a way of bringing knowledge to the common people?

12 MS KULASZKA: Sure.

13 MR. WARMAN: I believe that the
14 Internet is a way of bringing knowledge to individuals
15 with access to the Internet.

16 MS KULASZKA: Would you agree there
17 are many people, Mr. Warman, who can't afford to go to
18 university?

19 MR. WARMAN: Like all over the world?
20 Sure.

21 MS KULASZKA: I mean, you've gone to
22 university for many years and not everybody has these
23 opportunities, correct?

24 MR. WARMAN: Not everyone has the
25 opportunity to go to university. I have no argument

1 with that.

2 MS KULASZKA: Do you assume that
3 everyone who reads The International Jew is going to
4 turn into a raving anti-Semite?

5 MR. WARMAN: I'll object on the basis
6 that's been asked and answered yesterday, quite
7 explicitly.

8 MS KULASZKA: My client points out I
9 asked if you became an anti-Semite and you said no.

10 MR. WARMAN: You then asked me,
11 subsequent to that initial question, as to whether that
12 was an elitist attitude, and I believe this is simply
13 the exact same question, having been rephrased by you,
14 with one or two different words thrown in.

15 MS KULASZKA: If someone was sitting
16 at home with their access to the Internet and they
17 wanted to understand the position of groups like B'Nai
18 Brith, the Canadian Jewish Congress, anti-semitism and
19 they refer to books like The International Jew showing
20 the attitudes of people in the past that have to be
21 overcome, isn't it helpful that that type of work is
22 available so that people can read it? They might have
23 the opposition reaction to what you think. They might
24 understand the position of these groups much better,
25 actually.

1 MR. WARMAN: I don't believe that the
2 B'Nai Brith nor the CJC would ever make available
3 through their websites The International Jew.

4 MS KULASZKA: That wasn't the
5 question.

6 MR. WARMAN: That's how I understood
7 it. If you could perhaps rephrase it then.

8 MS KULASZKA: What I'm saying is that
9 part of their agenda is to combat anti-semitism,
10 correct?

11 MR. WARMAN: Absolutely, both of
12 those groups.

13 MS KULASZKA: So if someone was
14 studying this subject they could read The International
15 Jew as part of understanding this subject; isn't that
16 correct?

17 MR. WARMAN: It would depend on in
18 what context.

19 MS KULASZKA: Well, we're back to
20 context. Who's going to determine the context?

21 MR. WARMAN: Well, in the case of
22 section 13, I would suggest it's open to the Canadian
23 Human Rights Tribunal and the courts.

24 MS KULASZKA: Let's go back to page
25 48. This is a thread about the National Socialist

1 movement in Canada.

2 THE CHAIRPERSON: Page 48?

3 MS KULASZKA: 48. And on the next
4 page is a posting by you as pogue mahone. You state
5 that you would join the National Socialist Movement in
6 Canada. Commander Schoep has done an excellent job,
7 not just a flash in the pan. You're talking to someone
8 named Rob. Who is Rob?

9 MR. WARMAN: I'm sorry, I don't know.
10 It might have been a previous poster.

11 MS KULASZKA: Previous poster is
12 unreal pride. Is his real name Rob?

13 MR. WARMAN: I'm sorry, I'm sorry.

14 THE CHAIRPERSON: Ms Kulaszka, is
15 this the beginning of the thread, though?

16 MR. WARMAN: It's part way through.
17 Page 2 of 3. So probably Rob appeared prior.

18 THE CHAIRPERSON: I'm just wondering.

19 MS KULASZKA: Okay.

20 "Rob, I've been impressed with
21 your work so far. I am glad to
22 see that you are considering
23 picking up the torch here in
24 Canada. I think the light will
25 shine brightly and there will be

1 many ready carry to it with
2 you."

3 Do you think it was necessary to try
4 and incite someone to join a National Socialist
5 Movement as part of your investigations?

6 MR. WARMAN: I don't think that's the
7 case.

8 MS KULASZKA: Well, could you explain
9 the post?

10 MR. WARMAN: Because if someone is
11 already intent on doing something and my desire is to
12 obtain information about that.

13 MS KULASZKA: But their intent might
14 change if they feel there is no support.

15 MR. WARMAN: In theory it might, but
16 having seen these kinds of things there are lots of
17 sort of individuals who will attempt to start up small
18 groups, and, in fact, I think the example of Western
19 Canada For Us provided a positive proof of the danger
20 of when individuals begin to come together on the
21 Internet and then form up into actual real groups.

22 MS KULASZKA: There is a danger?

23 MR. WARMAN: In these circumstances,
24 when they are forming neo-Nazi or white supremacist
25 groups, yes, in my opinion.

1 MS KULASZKA: You are saying these
2 are dangerous groups?

3 MR. WARMAN: I believe there is a
4 danger that when they start forming up they can form
5 these groups.

6 MS KULASZKA: Then why would you
7 encourage someone to form one of these groups?

8 MR. WARMAN: I don't believe that
9 there's anything more than sort of -- the information
10 that's there is there in order to start obtaining
11 information about the group itself and about the nature
12 of it, about the structure of it and how it's going to
13 operate.

14 MS KULASZKA: And why would you say:
15 "Rob, don't do it. These forums
16 are crawling with police and
17 informers"?

18 MR. WARMAN: Because I think there
19 are lots of people who have already made those posts.
20 And I think in this case, I think if I posted that it
21 would -- well, it would become very difficult to obtain
22 any information that I wished to.

23 MS KULASZKA: How extensively did you
24 post on this web board? Did you use different names?

25 MR. WARMAN: I don't recall if I've

1 used other names than pogue mahone, but pogue mahone,
2 it indicates, has been used to post 93 posts.

3 MS KULASZKA: Did you use any other
4 names?

5 MR. WARMAN: I've just indicated to
6 you I don't recall.

7 MS KULASZKA: How did people find out
8 who you were? How did you they find out you were pogue
9 mahone?

10 MR. WARMAN: You would have to ask
11 that individual how they find that out.

12 MS KULASZKA: We'll go onto page 50.
13 The heading here is "Concern about Richard Warman".
14 Are you the person they are concerned about?

15 MR. WARMAN: You would have to ask
16 that individual.

17 MS KULASZKA: Well, go onto page 52.
18 You post as pogue mahone. It appears this discussion
19 is about you.

20 Just going back to page 51 about how
21 Warman sued the Northern Alliance of London, discussing
22 about the laws of libel. And in your posting you give
23 some advice about contacting a lawyer and what kind of
24 information they would need.

25 MR. WARMAN: In fact, I think that

1 may be a quote from a previous poster. In fact --

2 MS KULASZKA: Where does your post
3 start?

4 MR. WARMAN: If you look at the top
5 of page 52 you can see that it is from the first
6 posting on that page.

7 MS KULASZKA: "Celtic warrior --
8 Canadian law". So your post starts with, "Here's more
9 stuff." From "Recomnetwork." Correct?

10 MR. WARMAN: Yes, I believe so.

11 MS KULASZKA: And you include two
12 posts from recomnetwork.org, correct?

13 MR. WARMAN: Well, one appears to be
14 a link to the home page, then one appears to be a
15 specific URL address or another specific --

16 MS KULASZKA: That's the third time
17 in this series of posts that we've gone to that you
18 keep giving links to that website. Why do you do that?

19 MR. WARMAN: To bring people's
20 attention to information that may be present at those
21 URL links.

22 MS KULASZKA: Okay. It says,
23 "Federal Human Rights Complaint Against Terry Tremaine"
24 posted by Gabriel on Monday, July 18th from the
25 department. Are you Gabriel?

1 MR. WARMAN: I'm just wondering if
2 she can establish some relevance to either the facts
3 before you in this case dealing with the
4 freedomsite.org or, in some way, even remotely, to the
5 constitutional argument that she is seeking to put
6 forward.

7 THE CHAIRPERSON: I'm not even sure.

8 MS KULASZKA: We're at page 52, we're
9 on the bottom, the pogue mahone posting.

10 THE CHAIRPERSON: What posting, by
11 Gabriel?

12 MS KULASZKA: If you look at the very
13 last line of Mr. Warman's posting, it says "Federal
14 Human Rights Complaint Against Terry Tremaine" on the
15 bottom 52.

16 You turn the page over. So the
17 Federal Human Rights Complaint Against Terry Tremaine
18 posted by Gabriel on Monday, July 18th at 11:28 p.m.
19 from the department.

20 I'm asking Mr. Warman if he is
21 Gabriel. Is he the person who posted the complaint on
22 that website against Terry Tremaine. Because, of
23 course, it was Mr. Warman who laid the complaint
24 against Mr. Tremaine.

25 THE CHAIRPERSON: Why is that

1 relevant?

2 MS KULASZKA: We're going to go to
3 recomnetwork.org and we're just going to investigate
4 what is on that website. Because that website also has
5 a message board and the messages were so racist and so
6 discriminatory that, in fact, a complaint was laid
7 against this, and I would to explore it.

8 MR. WARMAN: Mr. Chair, I can
9 elaborate on that a little bit. A complaint was laid
10 against them by a member, and in fact an associate of
11 Mr. Lemire, so I think that's being a little
12 disingenuous about describing it.

13 THE CHAIRPERSON: I have repeatedly
14 said that if anyone has any issue with any other
15 website they should go ahead and file a complaint.

16 MR. WARMAN: Indeed, which is the
17 subject of my objection, which is what does this
18 website have to do with -- apart from the price of tea
19 in China -- from this complaint in this hearing.

20 MS KULASZKA: It shows -- well,
21 Mr. Lemire has suspected that it was Mr. Warman posting
22 all these complaints on this website. As soon as he
23 laid a complaint he would post it on his website.

24 THE CHAIRPERSON: Which website?

25 MS KULASZKA: The one called

1 recomnetwork.org, which is -- we're going to explore it
2 later. I'm just asking if he is Gabriel. I don't
3 think this is -- well, maybe for Mr. Warman this isn't
4 important that he not be exposed as being Gabriel.

5 THE CHAIRPERSON: What's the
6 prejudicial effect?

7 MR. WARMAN: For what it's worth,
8 Mr. Kulbashian attempted to file a complaint against me
9 and CAERS on the basis of these postings, including the
10 postings that were available on recomnetwork. It was
11 dismissed out of hand by the Commission based on
12 section 41 as being trivial, frivolous, vexatious --

13 THE CHAIRPERSON: Mr. Kulbashian, you
14 have no standing here to speak. I invited you to speak
15 on a specific other issue. It's Mr. Lemire's case.
16 Finish.

17 MR. WARMAN: Again, this whole thing
18 is just beating around the bush. All it's trying to do
19 is introduce bad character evidence. They are using it
20 under a cloak of constitutionality. But
21 constitutionality cannot be so expanded that it runs
22 itself.

23 THE CHAIRPERSON: I don't see it as
24 bad character evidence or credibility evidence either
25 for that matter, as I said earlier.

1 What is the controversial about
2 answering this question and letting us move on?

3 MR. WARMAN: Because what has already
4 been done by an associate of Mr. Lemire has been
5 attempted to file a human rights complaint based on
6 postings that were found on the Canadian Anti-Racist,
7 Education and Research Society website.

8 So the whole point of this is simply
9 flogging a dead horse in the nature of, this is
10 something that we will try and use to push back, if you
11 will, and say, oh, you know this is some how, some way
12 that we can try and get back at Mr. Warman or anyone
13 else who is involved in the human rights movement in
14 order to --

15 THE CHAIRPERSON: I understand your
16 interpretation. But the interpretation I've been given
17 is that this is demonstrative of how section 13 could
18 catch a lot and, yet, is being used to catch only a
19 certain group. That's the argument that is being made
20 by the respondents.

21 And they are trying to demonstrate --
22 I understand their argument as being -- that,
23 interestingly, a website that has the same material on
24 it, or something like the same material, is not the
25 object of a complaint or when the complaint is filed

1 the Commission chooses to not pursue the matter.

2 Now, I'm mindful of the objections
3 that have been made about how -- it's not my role to
4 review Commission's conduct, but it is being put forth
5 in the discussion of the effect of section 13.

6 MR. WARMAN: And if they can take me
7 to postings that are present on the FreedomSite message
8 board and they can ask me until they are blue in the
9 face: Mr. Warman, are you aware if an anti-racist
10 posted that or someone who is just trying to trick
11 these poor FreedomSite posters who would otherwise have
12 been discussing petunias, and yet were dragged kicking
13 and screaming into this discussion of neo-Nazi subjects
14 against their better wills. You know, anybody can post
15 theoretically anything on a forum. The question is not
16 that.

17 THE CHAIRPERSON: Look, I said it
18 before and I'll say it again. I see some relevance in
19 what they are raising. So if your objection is not
20 relevant, I will not sustain your objection. If
21 there's some other reason you wish not to answer the
22 question, put it forth to me.

23 Before I even get into this whole
24 debate again with Ms Kulaszka, she has already
25 indicated what the relevance is.

1 So the question that was simply put
2 was: Are you in a position to tell us whether you were
3 the person known as Gabriel on that recomnetwork
4 website?

5 MR. WARMAN: No, I'm not.

6 THE CHAIRPERSON: You are not the
7 person?

8 MR. WARMAN: I am not.

9 THE CHAIRPERSON: Or you are not in a
10 position to say?

11 MR. WARMAN: I am not the person.

12 THE CHAIRPERSON: That's it. Thank
13 you.

14 MS KULASZKA: Why didn't you just
15 answer that?

16 THE CHAIRPERSON: Because everyone
17 has their guard up, Ms Kulaszka. Let's just get the
18 evidence.

19 MS KULASZKA: Do you know who Gabriel
20 is?

21 THE CHAIRPERSON: Sorry, who is?

22 MS KULASZKA: Do you know the person
23 who posted as Gabriel?

24 THE CHAIRPERSON: Time out. I
25 promised the court reporter we would take a break 10

1 minutes ago. I'm sorry. So, please remember your
2 question and we'll come right back. Ten minutes.

3 --- Recessed at 3:31 p.m.

4 --- Resumed at 3:48 p.m.

5 MR. WARMAN: Mr. Chair, just a
6 housekeeping matter. Out of an abundance of caution --
7 and I'm not sure it's even all that relevant any more
8 because the question hasn't asked and answered.

9 There were two complaints filed
10 against me by Mr. Kulbashian, one of which has already
11 been dismissed under section 41. So whether it was one
12 or the other, I just want to put on the record one of
13 them has been dismissed. So whether it was the
14 original one in conjunction with the CAERS website or
15 the second one, I just want to make it clear that my
16 information originally may have been incorrect.

17 THE CHAIRPERSON: Okay. It's on the
18 record. I don't see how it's relevant to Ms Kulaszka's
19 questions. Go ahead.

20 MS KULASZKA: Mr. Warman, would you
21 agree that these postings have made you vulnerable to
22 complaints, correct?

23 MR. WARMAN: Only in the sense that
24 complaints have been filed, and if you were to ask me
25 whether I felt they made me open to legitimate

1 complaints, the answer would be no.

2 MS KULASZKA: Well, go back to page
3 52 and I think we were dealing with "Federal Human
4 Rights Complaint Against Terry Tremaine posted by
5 Gabriel from the department".

6 Do you know what "from the
7 department" means.

8 MR. WARMAN: I'm sorry, which page?

9 MS KULASZKA: Sentence starts on page
10 52 of tab 4. Says:

11 "Federal Human Rights Complaint
12 Against Terry Tremaine posted by
13 Gabriel on Monday, July 18th,
14 11:28 p.m. from the department".
15 Who is "the department"?

16 MR. WARMAN: I have no idea. That
17 was simply copied from the website.

18 MS KULASZKA: So your testimony is
19 you do not know the person who uses the name Gabriel?

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

21 MS KULASZKA: Now, these two
22 complaints -- well, the next sentence is "Federal Human
23 Rights Complaint Against Tomasz Winnicki of London,
24 Ontario".

25 You laid both of these complaints

1 against these persons, correct, Tremaine and Winnicki?

2 MR. WARMAN: I laid a section 13
3 complaints against each of those individuals, yes.

4 MS KULASZKA: Can you explain how
5 these complaints ended up on recomnetwork.org?

6 MR. WARMAN: I would imagine they
7 were posted there by someone involved in the operation
8 of the website.

9 MS KULASZKA: Where would they get
10 them?

11 MR. WARMAN: Originally it's possible
12 they got them from me, although I can't state for
13 certain as to whether that was the source of the
14 information they then used to post them.

15 MS KULASZKA: Are the complaints not
16 confidential?

17 MR. WARMAN: Not that I'm aware of.

18 MS KULASZKA: So you don't have any
19 problem with Mr. Lemire posting what he did on the
20 Freedomsite?

21 MR. WARMAN: Oh, I believe there are
22 abundant examples of what I believe are problematic in
23 terms of what Mr. Lemire posted on the Freedomsite.

24 MS KULASZKA: I'm concerned with
25 respect to this case. There's been a lot of discussion

1 about the fact that he put up motions, factums.

2 Do you have any complaints about the
3 fact that he put those up on the FreedomSite?

4 MR. WARMAN: Well, I believe it's
5 problematic in that he included material, as I
6 understand it, from Ms. Mock; more specifically, items
7 that had been disclosed and were subject to an implied
8 undertaking that those materials not be used for
9 purposes outside the litigation.

10 MS KULASZKA: You are referring to
11 the CV, correct?

12 MR. WARMAN: I believe so, yes.

13 MS KULASZKA: And that's it. You are
14 not saying any of the documents that were disclosed in
15 this case have been put up on the website. You are
16 just talking about the CV, an expert report, correct?

17 MR. WARMAN: Off the top of my head
18 that's what I'm thinking of.

19 MS KULASZKA: And they were removed,
20 correct?

21 MR. WARMAN: To the best of my
22 knowledge.

23 MS KULASZKA: So I guess I
24 misunderstood. I thought complaints were confidential,
25 but they were not. You don't consider them to be so?

1 MR. WARMAN: I believe that they are
2 public documents, and certainly the "confidential"
3 would imply some sort of structure that could make them
4 confidential.

5 MS KULASZKA: Mr. Lemire points out
6 to me the transcripts of the Bahr case, you testified
7 that pogue mahone was "...one of the pseudonyms that I
8 used to log on to Stormfront." So there were others,
9 correct?

10 MR. WARMAN: In terms of the logging
11 on, yes, it's possible.

12 THE CHAIRPERSON: In terms of logging
13 on?

14 MR. WARMAN: Logging on.

15 THE CHAIRPERSON: Explain that to me.

16 MR. WARMAN: Yes. It's the
17 difference between having the ability to post and
18 access to like a PM, your own little mailbox for the
19 internal mail, and the difference between simply going
20 and observing the website itself.

21 THE CHAIRPERSON: So to observe you
22 sometimes had to log on?

23 MR. WARMAN: No, no, sorry. To
24 observe you didn't need to do anything. You just had
25 to go to the website. If you wanted access to

1 something like a private message box or the ability to
2 post, then you would need to actually create a
3 pseudonym.

4 THE CHAIRPERSON: That was, for
5 instance, pogue mahone.

6 MR. WARMAN: For instance.

7 THE CHAIRPERSON: But now the
8 third -- is there a third classification of
9 registration? You said only for the purposes of
10 logging on I may have had another pseudonym or name.

11 MR. WARMAN: Meaning that I have no
12 recollection of making other posts under other
13 pseudonyms.

14 THE CHAIRPERSON: Okay. But you may
15 have created other psdyneums but not followed up by
16 making posts. Is that what you mean?

17 MR. WARMAN: Yes.

18 MS KULASZKA: And what were they?

19 MR. WARMAN: I've already indicated
20 that I don't recall what they may have been.

21 MS KULASZKA: On page 53, they're
22 basically still discussing you. Paul Fromm has a post
23 at the bottom. He says:

24 "Warman hasn't worked for the
25 Canadian Human Rights Commission

1 since December 2003 but he's
2 papering Ottawa with human
3 rights complaints about websites
4 and posters he doesn't like."

5 Okay. We'll go onto the next thread.
6 This is just a thread about Irwin Coddler.

7 And I think we can skip over to 57
8 where you re-post a post by S88 and then add a comment
9 about "scum and government".

10 We can go over to page 58. This is a
11 posting by you as pogue mahone. You re-post a posting
12 made by Paul Fromm. Paul Fromm had made a post saying:

13 "Are you folks in Ottawa
14 interested in meeting about
15 Zundel and other free speech
16 issues, and including that
17 maniac Warman and the Canadian
18 Human Rights Commission? He's
19 the guy attcking all sorts of
20 patriotic websites, like the
21 Freedomsite, and trying to shut
22 down and complains that his
23 meeting in December was pretty
24 skimpy."

25 Would you agree in this post Paul

1 Fromm sees the Zundel case as a free speech issue?

2 MR. WARMAN: Well, the original
3 post -- the post that's quoted in my post states:

4 "Are you folks in Ottawa
5 interested in meeting about
6 Zundel and other free speech
7 issues?"

8 So certainly if you are asking me to
9 describe Zundel, the Zundel case as a free speech issue
10 from Mr. Fromm's perspective, that would appear to be
11 supported by the text.

12 MS KULASZKA: And you state in your
13 own post underneath:

14 "I would be interested in
15 meetings between Ottawa and
16 Montreal. Also, what's going on
17 with the FreedomSite? Were they
18 on the same server that
19 Stormfront was?"

20 Why are you interested in meetings?

21 MR. WARMAN: Well, because Mr. Fromm
22 makes a rather derogatory posting or derogatory mention
23 of me in the posting that is cited there, and given the
24 fact that either I was -- or I was concerned about
25 Mr. Fromm's defamation of me, that would have been my

1 concern. But, in addition, just in terms of, again,
2 collecting information.

3 MS KULASZKA: Would you attend those
4 meetings?

5 MR. WARMAN: No, I think it's highly
6 unlikely that I would.

7 MS KULASZKA: Would you give the
8 information out to other people who would go to the
9 meetings?

10 MR. WARMAN: In terms of the police?

11 MS KULASZKA: No, other people.
12 Could be police, non-police.

13 MR. WARMAN: Well, it depends on what
14 the message, or what the meeting I thought was about.
15 In this case, I can state quite openly that I don't
16 believe I ever received any information with regard to
17 those meetings.

18 MS KULASZKA: So then you ask about
19 the FreedomSite and you are trying to find out what
20 server they are on, correct?

21 MR. WARMAN: The question is were
22 they on the same server that Stormfront was.

23 MS KULASZKA: And that's information
24 you are trying to get, correct?

25 MR. WARMAN: Yes, although I could

1 probably just as easily have gone and got the
2 information myself. So it may have just been a
3 throw-away line.

4 MS KULASZKA: Underneath you post
5 again:

6 "Yeah, sorry, I see it's still
7 there but the quote before me
8 said the Freedom site is under
9 attack, that's why I thought it
10 might be because they were using
11 the same server Stormfront was.
12 I'm afraid I'm still not any
13 wiser."

14 What is that posting about?

15 MR. WARMAN: If you look at page 58
16 you'll see that the first post is number 11 and you can
17 see that by looking at the top right.

18 MS KULASZKA: Yea, there seems to be
19 one missing.

20 MR. WARMAN: If you look immediately
21 below you can see the number is number 13.

22 MS KULASZKA: Right.

23 MR. WARMAN: So it's obvious that I
24 was referring to complaint number 12, or not
25 complaint -- post number 12 that has been removed from

1 the board.

2 MS KULASZKA: But you're quoting your
3 own message.

4 MR. WARMAN: Yes, but I'm clearly
5 referring to someone else who has said something in
6 between us.

7 MS KULASZKA: Okay, on to the next.

8 With respect to the meetings, have
9 you ever obtained information about the meetings that
10 you gave to somebody else, meetings of say Paul Fromm's
11 group?

12 MR. WARMAN: Can you just give me a
13 sec, please? Sorry.

14 MS KULASZKA: With respect to
15 meetings, you are very interested in meetings. Have
16 you ever shared information about such meetings with
17 other people, not just the meetings you refer to in
18 this posting?

19 MR. WARMAN: Like, in the past have I
20 ever shared information about a meeting with someone
21 else?

22 MS KULASZKA: Yes. When you are on
23 Stormfront, you are trying to get information about
24 these groups, trying to get information about meetings.
25 Have you ever been successful in getting information

1 about meetings?

2 MR. VIGNA: Mr. Chair, I object to
3 the relevance of the question. It's pretty vast and
4 fairly way beyond what's --

5 THE CHAIRPERSON: Right after you
6 stood up, I got a more specific question. Are you
7 still objecting?

8 MR. VIGNA: Yes.

9 THE CHAIRPERSON: She's being more
10 specific about what was on the website.

11 MR. VIGNA: I don't see the relevance
12 to the postings itself, and we're going again to the
13 contents and even beyond the contents.

14 THE CHAIRPERSON: Ms Kulaszka?

15 MS KULASZKA: Well, I could restrict
16 it to meetings held by Paul Fromm or any of his
17 organizations.

18 THE CHAIRPERSON: Mr. Warman?

19 MR. WARMAN: I'm just trying to
20 think. Not that I can think of off the top of my head.

21 MS KULASZKA: The next thread is a
22 discussion about the greatest Canadian. Is that
23 correct?

24 MR. WARMAN: That's what it appears
25 to be, yes.

1 MS KULASZKA: And there's a
2 discussion about whether it should be Paul Fromm or
3 Ernst Zundel, and someone else says there's an effort
4 to deport Zundel. Someone else, "That's terrible,
5 worse than I thought".

6 You, on the next page, on page 61 at
7 the top as pogue mahone state, "I vote for Adrien Arcon
8 too." Who is Adrien Arcon?

9 MR. WARMAN: He was a Francophone
10 National Socialist in Canada who I believe was interned
11 during World War II.

12 MS KULASZKA: So you don't really
13 believe he is the greatest Canadian, correct?

14 MR. WARMAN: Oh, I think that's
15 accurate.

16 MS KULASZKA: You think he is?

17 THE CHAIRPERSON: No.

18 MR. WARMAN: Madam, I think you know
19 what my answer is.

20 THE CHAIRPERSON: My understanding
21 Mr. Warman's answer is that he agrees with your
22 proposition.

23 MS KULASZKA: Okay. So you say,
24 "Well, wait a long time before we see a another leader
25 of his qualities," and "Viva Arcon".

1 Correct?

2 MR. WARMAN: That's correct, yes.

3 MS KULASZKA: So Louis replies and he
4 says:

5 "While I agree Adrien Arcon is
6 certainly a great Canadian and
7 very proud of the fact that he
8 is a fellow Frenchman and that
9 he was a mentor to Ernst Zundel,
10 I would still be more inclined
11 to nominate somebody who is
12 still living."

13 And as we go along there is -- it's a
14 discussion about various people, people suggest
15 Mackenzie King, CD Howe, Robert Borden, et cetera.

16 In your posting you've got "WN".
17 Does that stand for white nationalist?

18 MR. WARMAN: I believe that would be
19 correct, yes.

20 MS KULASZKA: And what is a white
21 nationalist, in your understanding of the term?

22 MR. WARMAN: My understanding of it
23 is an individual or it is a philisophical/political
24 belief that seeks to obtain an all-white homeland.

25 MS KULASZKA: Next posting starts at

1 62. Someone asked if -- where you can download DJ
2 Adolf entire album and Mein Kampf in PD or other
3 format.

4 And you reply:

5 "I think the WCFUers had them
6 for download. Maybe contact one
7 of them".

8 Who are the WCFUers?

9 MR. WARMAN: Short for Western Canada
10 For Us.

11 MS KULASZKA: Did you lay a complaint
12 against them?

13 MR. WARMAN: I did.

14 MS KULASZKA: And you also laid a
15 complaint with the police, correct?

16 MR. WARMAN: Yes.

17 MS KULASZKA: Was that Glenn Bahr's
18 group?

19 MR. WARMAN: Glenn Bahr and Peter
20 Kouba. I should be more specific. There were others
21 involved in it, but those are the two individuals whom
22 I understand to have been the leaders.

23 THE CHAIRPERSON: Just a second, I
24 need to make a note. Thank you.

25 MS KULASZKA: Do you believe that

1 Mein Kampf hate literature?

2 MR. WARMAN: I believe it's
3 anti-semitic without a doubt. As to whether it
4 constitutes hate literature, in terms of what? By what
5 definition?

6 MS KULASZKA: Under section 13.

7 MR. WARMAN: If someone put it
8 on-line.

9 MS KULASZKA: Yes.

10 MR. WARMAN: I would certainly be
11 inclined to include it if there were other grounds to
12 file a complaint.

13 MS KULASZKA: So why were you
14 directing this person to a place where they could
15 download it?

16 MR. WARMAN: If I recall correctly,
17 it was a bit of a back-handed educational attempt, and
18 that it was my understanding that in fact that material
19 had been taken down and that the group had disbanded
20 following a police raid on them, and I can't recall the
21 exact date but that's my recollection of it.

22 MS KULASZKA: And what was the
23 back-handed education that you were going to teach
24 them?

25 MR. WARMAN: Because when William

1 Lyon Mackenzie King attempted to find out the
2 circumstances or find out about the availability, he
3 would have discovered that in fact there had been the
4 subject a police raid and a human rights complaint.

5 MS KULASZKA: Okay. Was Mein Kampf
6 part of the complaint against Mr. Bahr which you laid?

7 MR. WARMAN: No I don't recall.

8 MS KULASZKA: It was not?

9 MR. WARMAN: I don't recall it being
10 mentioned, although it could have been. I don't have
11 the complaint in front of me.

12 MS KULASZKA: The next page William
13 Lyon Mackenzie King gets back to you. He re-posts your
14 message. "Who will they? Where can I contact them?"
15 And did you ever get back to him?

16 MR. WARMAN: No, I did not.

17 MS KULASZKA: On page 64, somebody
18 complaining, "The whole place is starting to look like
19 a CBC News network", and they are suggestions about how
20 to organize news on the forum. And at the bottom of
21 page 65 you say -- someone talks about a new cite by
22 the COTC and you say, "Speaking of the COTC, anyone
23 know what happened to them in Canada?" And who is
24 COTC?

25 MR. WARMAN: It is a neo-Nazi group

1 that was formerly known by that name, the Church of the
2 Creator.

3 MS KULASZKA: Did you really know
4 what had happened to them, or not know?

5 MR. WARMAN: Well, again, in terms of
6 the timelines, if it's post the arrest of Matt Hale,
7 the former leader, I knew he had been arrested for
8 soliciting the murder of a federal judge in the United
9 States and that the entire organization seemed to fall
10 apart shortly thereafter.

11 But you can be certain that when I
12 say someone posted some links a while ago, when I tried
13 them they were down, if someone had offered me further
14 information about further websites that were still in
15 operation, I would have looked at those.

16 MS KULASZKA: The next page there is
17 a post by markW14. He replies to:

18 "Pogue, I'm CI so I honestly
19 don't know how much about what
20 they do here."

21 What is "CI"?

22 MR. WARMAN: My understanding of it
23 it's stands for Christian identity.

24 MS KULASZKA: Do you know who markW14
25 is?

1 MR. WARMAN: No, I do not.

2 MS KULASZKA: But he informs you in
3 this post that:

4 "A young lady named Liz was
5 heading things up out west, I
6 heard, and she would probably be
7 your best bet, or Alex in
8 Montreal, good kid."

9 And you reply:

10 "Yes, I've heard of both of them
11 but they kind of disappeared
12 when COTC fell apart. Not sure
13 Y. Any idea on how to get in
14 touch with anyone who's left in
15 Canada or is there anyone left?
16 I was reading WMNs b and the
17 idea seemed interesting."

18 So at this point you are trying to
19 get information on anybody who's trying to start up
20 something in Canada, correct?

21 MR. WARMAN: Start up or maintain it.

22 MS KULASZKA: Have you ever laid a
23 complaint against the Church of the Creator?

24 MR. WARMAN: I've laid a complaint
25 against the World Church of the Creator, their former

1 entity was present here in Canada.

2 MS KULASZKA: And who was that? An
3 organization or a person?

4 MR. WARMAN: The original complaint
5 was filed against the group and two individuals who I
6 understood to be their leaders, or two leaders of the
7 group.

8 MS KULASZKA: Are the persons Liz and
9 Alex the two people?

10 MR. WARMAN: Well, if they're
11 referring to two individuals, those were the first
12 names of two individuals that were co-named in the
13 complaint against the group, yes.

14 MS KULASZKA: When was this complaint
15 made, after this?

16 MR. WARMAN: No. In fact, I believe
17 the complaint had been filed -- I believe the complaint
18 had actually been filed in 2003.

19 MS KULASZKA: Is the Liz referred to,
20 Elizabeth Lampman?

21 MR. WARMAN: I can only presume who
22 that individual is referring to.

23 MS KULASZKA: That is the person you
24 laid the complaint against?

25 MR. WARMAN: Yes, indeed.

1 MS KULASZKA: Is this the same
2 Elizabeth Lampman who wrote the letter, the PDF letter
3 that appears on page 12 of tab 4?

4 MR. WARMAN: Again, I'm not sure.
5 You know, I can presume they are the same individuals
6 that this person was referring to, but certainly that
7 is the same person that I filed the complaint against.

8 MS KULASZKA: Did you provide this
9 letter by Elizabeth Lampman to anybody outside of the
10 Commission process?

11 MR. WARMAN: It's entirely possible
12 that I did, yes.

13 MS KULASZKA: This was part of
14 mediation, was it not?

15 MR. WARMAN: No, it wasn't.

16 MS KULASZKA: You didn't go into
17 mediation with Ms Lampman?

18 MR. WARMAN: Eventually, yes, but
19 there was not part of that.

20 MS KULASZKA: Did you ever post this
21 letter on the Internet?

22 MR. WARMAN: No, I did not.

23 MS KULASZKA: Who did you give it to?

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

1 MS KULASZKA: Mr. Warman, you need
2 more vitamins.

3 MR. WARMAN: Madam, I think that is
4 simply abusive and not worthy of you as a member of the
5 bar.

6 MS KULASZKA: Mr. Warman, that was a
7 joke.

8 THE CHAIRPERSON: Let's move on.

9 MS KULASZKA: So you don't know who
10 posted that letter, correct?

11 THE CHAIRPERSON: Just remind me
12 where it's located?

13 MS KULASZKA: It's on page 12, the
14 same tab.

15 MR. WARMAN: I would presume it was
16 the group, the One People's Project, or someone
17 involved in that group given -- or at least their
18 website, given that's where it appeared.

19 MS KULASZKA: When you gave this
20 letter over to someone else, did you understand it
21 could be posted on the Internet?

22 MR. WARMAN: In the broadest sense of
23 giving a document to someone else, can they do
24 something with it, yes.

25 MS KULASZKA: In fact, you put a post

1 on Stormfront and you put a link to this document,
2 correct? You promoted it, correct?

3 MR. WARMAN: I put a link to it to
4 make it clear to the individuals reading it that it was
5 present, yes.

6 MS KULASZKA: And what was your
7 purpose in doing that?

8 MR. WARMAN: I guess in essence to
9 attempt to show that individuals were willing to leave
10 the movement and that people should be aware of that.

11 MS KULASZKA: Although you say that
12 in your posting that's not what you did. You made fun
13 of her; isn't that true?

14 The posting you made is on page 10
15 and you say, "With friends like these." And, in fact,
16 the next post -- somebody has clicked on that link and
17 read Ms Lampman's letter and the poster, who is Rob Roy
18 McGregor, says, "Talk about kissing Jew boots." So he
19 didn't learn the right lesson, did he?

20 MR. WARMAN: That individual, no.

21 MS KULASZKA: But at least he said to
22 her credit though:

23 "It sounded like she's young and
24 the parents had a lot to do with
25 her recanting. She'll be back."

1 How old was Ms Lampman when she wrote
2 this letter?

3 MR. VIGNA: I don't know if we should
4 get into the case of Ms Lampman. There's been a
5 settlement and we're getting -- exposing somebody to a
6 public hearing that's not involved. Once again, it's
7 totally irrelevant.

8 I think it's important to preserve
9 the sanctity of the settlement of persons that -- the
10 age of the individual. We're going pretty much far
11 away from the objective and the leeway that you have
12 allowed.

13 THE CHAIRPERSON: I do have some
14 concern. If there was a settlement in this file, Ms
15 Kulaszka --

16 MS KULASZKA: Oh, I didn't ask about
17 the settlement.

18 THE CHAIRPERSON: I know, but the
19 whole point of a settlement is that -- I don't know if
20 there was a confidentiality agreement.

21 MS KULASZKA: I never asked about the
22 settlement. Just asked how old she was at the time.
23 Mr. Lemire just informed that Mr. Warman has written
24 publically in a B'Nai Brith report about that
25 settlement.

1 THE CHAIRPERSON: Okay.

2 MS KULASZKA: We'll go to the next
3 posting at 67.

4 Before we leave that, I want to put
5 to Mr. Warman that someone in good faith wrote that
6 letter and the next thing she knows you posted it all
7 over the Internet on a site where she recants beliefs
8 that probably many of these people believe in.

9 Did it ever occur to you that this
10 might lead to some problems for her? You're a person
11 who is very concerned about your security. How about
12 her security?

13 MR. WARMAN: You've asked a bit of a
14 compound question, so the overall answer is no.

15 MS KULASZKA: You weren't concerned
16 about her security?

17 MR. WARMAN: No. Again, you asked a
18 compound question, so if you wish to break it down then
19 I'll respond to it. But if you are just continuing
20 with it as a global five-part question, then the answer
21 is no.

22 MS KULASZKA: Okay. We'll go back.
23 You agree that you did post, or you put a link to this
24 letter on the VNN or the Stormfront site, correct, on
25 the message board?

1 MR. WARMAN: That's correct.

2 MS KULASZKA: And you made it clear
3 and you said, "With friends like these," correct.

4 MR. WARMAN: That's what it says.

5 MS KULASZKA: So people on this
6 message board click on that link and read the letter,
7 correct?

8 MR. WARMAN: They could do that.

9 MS KULASZKA: Did it ever occur to
10 you that you could put her security in jeopardy?

11 MR. WARMAN: Sorry, can you refer
12 me --

13 THE CHAIRPERSON: Page 12.

14 MR. WARMAN: No, I don't believe it's
15 the type of letter that would do that.

16 MS KULASZKA: Then you don't believe
17 the people who frequent this forum would ever do
18 anything to jeopardize her security, correct?

19 MR. WARMAN: That's not what I said.

20 MS KULASZKA: The truth is,
21 Mr. Warman, you didn't care, correct?

22 MR. WARMAN: If that's a real
23 question and not a rhetorical, the answer is no.

24 MS KULASZKA: If we can go to page
25 67. This seems to be a thread of a "billing a bunker

1 for Rob Defolewa (ph)." Seems to be a discussion about
2 colonizing Antarctic Canada. And at the bottom of page
3 68 there's a posting by Marc Lemire. He said:

4 "Instead talking about
5 Stormfront and not getting
6 anything done except want to
7 move up north you should be
8 standing shoulder to shoulder
9 with us at the free Zundel and
10 other events we have held. PS
11 to the thread starter. Is that
12 you, Terry Wilson? Richard
13 Warman maybe."

14 Who's Terry Wilson?

15 MR. WARMAN: Mr. Wilson was a former
16 member of the London Police Hate Crimes Unit.

17 MS KULASZKA: And were you in fact
18 the person who started this thread?

19 MR. WARMAN: No, madam.

20 MS KULASZKA: Then over on page 70
21 you post:

22 "Who the hell are Terry Wilson
23 and Richard Warman?"

24 Is that correct?

25 MR. WARMAN: That's correct.

1 MS KULASZKA: So you were just having
2 some fun?

3 MR. WARMAN: No, I was seeking to
4 find out if there was information.

5 MS KULASZKA: About you?

6 MR. WARMAN: And Mr. Wilson.

7 MS KULASZKA: What kind of
8 information?

9 MR. WARMAN: Well, that's the
10 question, isn't it?

11 MS KULASZKA: So were you almost
12 inviting one of the people you had complained about to
13 write something nasty about you?

14 MR. WARMAN: No.

15 MS KULASZKA: Because that would be,
16 wouldn't it, under the Canadian Human Rights Act?

17 MR. WARMAN: Well, it would depend
18 whether it violated the Act and the wording of the Act.

19 MS KULASZKA: I've noticed in a few
20 of your postings you have a lot of misspellings. Why
21 do you do that?

22 MR. WARMAN: Because I type fast.

23 MS KULASZKA: Could it be you have a
24 lot of contempt for people on these forums and you
25 think they can't spell and you are trying to be like

1 them?

2 MR. WARMAN: No, I'm not.

3 MS KULASZKA: If you will look at
4 HR-1. That's your complaint. I notice when I looked
5 at your complaint that there were a "sic", "S-I-C",
6 when you reproduced the posts, so I counted them and in
7 your complaint there's 20 of them, correct?

8 MR. WARMAN: I don't know. Would you
9 like me to go through it and count it? Is there any
10 real relevance to that?

11 MS KULASZKA: It's a way of making a
12 person who can't spell very well look stupid, correct?

13 MR. WARMAN: Not in this case, I
14 don't believe so. In fact, this specific purpose of it
15 is to show that the information was typed as written
16 and was not just, in fact, a typo.

17 MS KULASZKA: Okay, we'll go to page
18 71. How many complaints have you made so far under
19 section 13?

20 MR. VIGNA: Mr. Chair, what's the
21 relevance, again, of how many complaints he's made?
22 I'll let it go.

23 THE CHAIRPERSON: Let the record show
24 the member made a hand gesture with his arms stretched
25 out as big picture.

1 MR. WARMAN: It all depends on who's
2 counting exactly, because if I originally file a
3 complaint against a group and a leader, or more,
4 multiple leaders, then sometimes what happens is the
5 Commission breaks that up into three separate
6 complaints. By my count, I filed approximately 15 or
7 16 I would say.

8 MS KULASZKA: And once the Commission
9 breaks them up, how many?

10 MR. WARMAN: I'm sorry, I don't know.
11 You would have to ask the Commission.

12 MS KULASZKA: Okay. On page 71 there
13 is a posting by Estate again. And it's about the
14 pre-Zundel protest held June 18th, '04. He says:

15 "Would have been there, did not
16 even know about it."

17 And we've established he was a
18 policeman.

19 There is second posting at the
20 bottom, then on the top of page 72 there's a posting by
21 you:

22 "Congratulations to all who made
23 it out. Thanks for showing that
24 Zundel is not alone in his
25 struggle."

1 And then Louis replies:

2 "These demonstrations are not
3 for nothing."

4 So on these two pages that we know
5 of, there's five posters and two of them are either
6 police or you, correct?

7 MR. WARMAN: Well, I think if you are
8 going to take something completely out of context, it
9 may be worth mentioning that there appear to be four
10 entire pages, and you can tell that by looking at page
11 71 at the top, approximately six inches -- five or six
12 inches down on the right-hand side. It indicates that
13 it's page 3 of 4. And then it goes 1, 2, 3, 4. And
14 even this page 72 indicates there are at least 25
15 postings.

16 THE CHAIRPERSON: I'm reading these
17 things, too. That's the first thing that came to mind
18 when you posed your chosen. It was postings 21 through
19 25. There must be at least 25 postings, right?

20 MS KULASZKA: Yes. I made it clear I
21 was just referring to these two pages.

22 THE CHAIRPERSON: My sense is, and
23 correct me if I'm wrong, that these message boards I
24 guess don't want to send too much information at one
25 time so they break up the message, I'll say

1 arbitrarily, into groups of five or six it looks like.

2 MS KULASZKA: That finished those
3 postings.

4 You would agree, Mr. Warman, that all
5 the postings we've looked through, there were no
6 hints -- looking at the postings of Estate and you,
7 with the name pogue mahone or Axetogrind, there was no
8 hint that, in fact, you didn't believe what you were
9 writing?

10 MR. WARMAN: Well, I haven't really
11 looked at the postings by Estate so I will only speak
12 for my postings. But I don't know, you would have to
13 go and take a look at all of them.

14 The ones I've read, no, they are
15 designed to blend in, or at least to give the
16 impression that there's no reason to have immediate
17 concern about the individual.

18 MS KULASZKA: So what it means is
19 someone like Craig Harrison could actually be working
20 for the police or the Commission?

21 THE CHAIRPERSON: Please answer the
22 question.

23 MR. WARMAN: I didn't know it was a
24 question. I thought it was a statement. I'm sorry.

25 THE CHAIRPERSON: It's true, it was

1 in the -- well, is it possible?

2 MS KULASZKA: Is it possible that, in
3 fact, someone like Craig Harrison is working for the
4 police or the Commission?

5 MR. WARMAN: I don't believe that's
6 the case, no.

7 MS KULASZKA: But it's possible,
8 isn't it?

9 MR. WARMAN: I don't believe that to
10 be the case, no.

11 THE CHAIRPERSON: Ms Kulaszka, it's
12 4:30.

13 MS KULASZKA: Okay. Thanks. That
14 would be fine. I just didn't notice the time.

15 THE CHAIRPERSON: Right.

16 MS KULASZKA: I would like to produce
17 tab 4.

18 THE CHAIRPERSON: We've been through
19 every single page. I think we just produce the whole
20 tab. Okay.

21 So are we going to be going through
22 the rest of this binder with this witness, or this is
23 your entire binder?

24 MS KULASZKA: Yes.

25 THE CHAIRPERSON: I mean, this is for

1 all the witnesses?

2 MS KULASZKA: No, this is Mr.
3 Warman's binder.

4 THE CHAIRPERSON: Okay, quite a bit
5 ahead of us. Okay.

6 MR. VIGNA: Just for the record, I'll
7 reserve my comments on argument regarding --

8 THE CHAIRPERSON: Of course,
9 Mr. Vigna. I've made that clear. Let's be clear.
10 We're not proceeding through -- in terms of the facts,
11 it's quite obvious it's not rocket science in terms of
12 the facts. It's postings, let's look at them, they are
13 there.

14 What is going to be the more
15 interesting part of this case is going to be
16 essentially by the time we get to the arguments, I
17 think. So be mindful. I want you all to be mindful.
18 Just be aware that you'll have ample opportunity at
19 that stage to make all your arguments and elude to all
20 the facts. And if there some portions that are
21 irrelevant at that point, that's fine, they will fall
22 by wayside.

23 MS KULASZKA: Mr. Lemire is now
24 handing out the binder for Mr. Klatt that will be used
25 next week.

1 THE CHAIRPERSON: The binder of
2 evidence you intend to put in front of Mr. Klatt.

3 MS KULASZKA: Yes.

4 MR. VIGNA: Does the binder contain
5 the documents relating the the disclosure request I
6 made?

7 MS KULASZKA: No, it doesn't. This
8 was prepared before, but Mr. Klatt is coming in this
9 weekend and I'll be able to talk to him then.

10 MR. VIGNA: I just want it reasonably
11 ahead of his testimony. I would like to have it
12 reasonably ahead of his testimony.

13 THE CHAIRPERSON: His testimony is
14 coming later next week, I understand. So hopefully
15 we'll have something by Monday, if possible.

16 MR. VIGNA: That's fine.

17 THE CHAIRPERSON: Is there anything
18 else? Yes?

19 MR. FROMM: Sir, we're developing
20 quite a collection of material here. Is it possible to
21 leave this at the hotel or --

22 THE CHAIRPERSON: Seems to be the
23 case. I'm going to be very legalistic and say we're
24 not responsible. I would not leave anything of any
25 value. I've had my computer stolen from one of these

1 hotels once during the lunch break. Don't leave
2 anything of any value. I'm sure nobody's interested in
3 our binders for the weekend.

4 MR. VIGNA: Mr. Chair, next week
5 we'll have the continuation of Mr. Warman and
6 Mr. Klatt, and who else can we expect?

7 THE CHAIRPERSON: I had that list.

8 MR. VIGNA: I understand Livingston?

9 THE CHAIRPERSON: And Mr. Lemire.

10 MS KULASZKA: Mr. Livingston, Jerry
11 Neumann, Paul Fromm and Bernard Klatt.

12 THE CHAIRPERSON: That's four
13 witnesses. Earlier today you would me three, but it's
14 four.

15 MS KULASZKA: Bernard Klatt is an
16 expert.

17 THE CHAIRPERSON: You were excluding
18 Mr. Lemire from your list. When I asked earlier I
19 thought you said three. It's, four actually, witnesses
20 next week.

21 MS KULASZKA: The three little fact
22 witnesses and Bernard Klatt is the expert.

23 THE CHAIRPERSON: So you propose to
24 be very quick with those others?

25 MS KULASZKA: Yes.

1 THE CHAIRPERSON: Mr. Lemire is one
2 of those three fact witnesses?

3 MS KULASZKA: No. Mr. Livingston.

4 THE CHAIRPERSON: That's it. We'll
5 see each other next week.

6 --- Adjourned at 4:58 p.m.

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16 I hereby certify the foregoing to be
17 the Canadian Human Rights Tribunal
18 hearing taken before me to the best
19 of my skill and ability on the 2nd
20 day of February, 2007.

21

22

Sandra Brereton

23

Certified Shorthand Reporter

24

Registered Professional Reporter

25