

**CANADIAN
HUMAN RIGHTS
TRIBUNAL**



**TRIBUNAL CANADIEN
DES DROITS
DE LA PERSONNE**

BETWEEN/ENTRE:

RICHARD WARMAN

Complainant

and/et

CANADIAN HUMAN RIGHTS COMMISSION

Commission

and/et

CRAIG HARRISON

Respondent

BEFORE/DEVANT:

MICHEL DOUCET

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 THE JPR ARBITRATION CENTRE/THE ARBITRATION PLACE,
390 BAY STREET, 3RD FLOOR, TORONTO, ONTARIO,
ON MONDAY, JUNE 12, 2006, AT 9:30 A.M. LOCAL TIME

CASE FOR HEARING

IN THE MATTER of the complaint filed under section 13 of the Canadian Human Rights Act by Richard Warman dated November 23, 2003, against Craig Harrison. The complainant alleges that the respondent has engaged in a discriminatory practice on the grounds of religion, race, colour, national and/or ethnic origin in a matter related to the usage of a telecommunication undertaking.

APPEARANCES/COMPARUTIONS

Mr. Giacomo Vigna	on behalf of the Canadian Human Rights Commission
Mr. Richard Warman	on his own behalf
Ms Susen Holmes	on behalf of the Respondent
Ms Barbara Kulaszka	on behalf of Marc Lemire

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Toronto, Ontario

1
2 --- Upon commencing on Monday, June 12, 2006
3 at 10:15 a.m.

4 REGISTRY OFFICER: Order, please.

5 All rise.

6 Be seated.

7 The case for hearing today is in the
8 matter of a complaint filed under section 13 of the
9 Canadian Human Rights Act by Richard Warman dated
10 November 23, 2003, against Craig Harrison.

11 The complainant alleges that the
12 respondent has engaged in a discriminatory practice on
13 the grounds of religion, race, colour, national and/or
14 ethnic origin in a matter related to the usage of a
15 telecommunication undertaking.

16 The Presiding Member of the inquiry
17 is Michel Doucet.

18 The Tribunal now calls for
19 appearances, please.

20 MR. VIGNA: Giacomo Vigna for the
21 Canadian Human Rights Commission. I'm assisted by Roy
22 Cordingley to help me out on the matter.

23 MR. WARMAN: Good morning. My name
24 is Richard Warman, W-a-r-m-a-n.

25 THE CHAIRPERSON: Good morning.

1 MS KULASZKA: Mr. Chair, I'm Barbara
2 Kulaszka. I represent Mr. Marc Lemire.

3 THE CHAIRPERSON: Yes.

4 And this is Susen Holmes.

5 MS HOLMES: Yes, Susen Holmes.

6 THE CHAIRPERSON: And Mr. Harrison.

7 MS HOLMES: Mr. Craig Harrison.

8 THE CHAIRPERSON: Right.

9 So, before we get into this matter of
10 Richard Warman and Craig Harrison, I believe that there
11 is a motion that is going to be heard asking the
12 Tribunal to quash a subpoena which was issued and you
13 will be addressing the Tribunal on that issue?

14 MS KULASZKA: Mr. Chair, thank you.

15 THE CHAIRPERSON: Maybe if you -- do
16 you want to move up to the --

17 MS KULASZKA: I can move up to the
18 microphone here.

19 MOTION BY MS KULASZKA:

20 THE CHAIRPERSON: Yes.

21 MS KULASZKA: I was served with a
22 subpoena on behalf of my client Mr. Marc Lemire on
23 Friday at noon and I have included that subpoena in my
24 materials.

25 This a motion which Mr. Lemire is

1 bringing to set aside that subpoena.

2 The grounds are that the subpoena is
3 unnecessary to the full hearing of the complaint and
4 that Mr. Lemire, in fact, has no material whatsoever to
5 give the Tribunal that is not already before it.

6 And, lastly, that it is an abuse of
7 the process at this very late date to be served on the
8 Friday before the hearing for this information in the
9 circumstances of this case.

10 The subpoena asked -- as far as I can
11 see it was issued on June 6th, it asked for Mr. Lemire
12 to:

13 "...appear to give testimony and
14 it requested the production of
15 all information within the
16 possession of Marc Lemire
17 related to the use of the
18 pseudonym "rump" and
19 "realcanadianson" on the
20 Freedom-Site message board.

21 The information should
22 include but not..."

23 (As read)

24 I think it should say not be limited

25 to,

1 "...all the information
2 identified by Mr. Lemire in
3 paragraph 5 of the attached
4 request by the complainant."

5 (As read)

6 I have also -- I have attached that
7 request by Mr. Warman. This I suppose were his
8 submissions as he requested the subpoena.

9 At paragraph 5 he quotes from
10 Mr. Lemire's particulars which are filed in his own
11 case which is now before the Tribunal which deal with
12 these very messages.

13 It's the same messages, only in that
14 case he is being held responsible allegedly as the web
15 master of the Freedom-Site where the message board was.

16 In this case they're alleging that
17 Mr. Craig Harrison posted the messages.

18 Mr. Lemire's particulars stated:

19 "To participate and read
20 messages..." (As read)

21 which was the message board in
22 question:

23 "...a person had to fill out a
24 form to create a new user
25 profile. This required a login

1 name, first name, last name and
2 email address. Optional
3 information was a city, province
4 and home page. The board
5 required email verification
6 meaning that a password to the
7 message board was sent to the
8 email address specified. The
9 password was required to gain
10 access to the board." (As read)

11 So, to gain access to the board you
12 had to put in a first name, a last name, you had to
13 choose a login name and you had to have an email
14 address.

15 The only thing that was verified by
16 the system was the email address because it was all
17 automatic, the system would automatically send you a
18 password to this email address, so it had to be real or
19 you wouldn't get a password. Once you had the
20 password, then you could log in.

21 Now, in the case of Craig Harrison I
22 have attached some documents that were disclosed to
23 Mr. Lemire by the Commission and Mr. Warman in his own
24 case and they're attached.

25 If you could just -- I'm sorry,

1 they're not numbered -- but if you could flip over
2 past -- in the documents attached past the actual copy
3 of the subpoena, you'll see that there is -- I think
4 there's three pages called message search results.

5 These were disclosed by the
6 Commission and Mr. Warman to Mr. Lemire in his own case
7 and they show -- and the allegation is that Mr. Warman
8 himself did a search on the message board and he did
9 that search on November 23rd, three years ago, in 2003,
10 and he searched for the words Craig and Harrison and he
11 came up with 72 -- sorry, 71 documents -- 71 messages
12 on the message board.

13 And when you look at that it shows
14 the conference, which is kind of the chat room where
15 the message was posted, it shows the topic and it shows
16 the date that the message was posted.

17 Now, I have included in those
18 materials two of those messages, they are Nos. -- 52 is
19 one of them, so if you -- and 14 is the other. So, all
20 those messages are numbered. I have included copies of
21 No. 14 and No. 52.

22 And if you turn the page you will see
23 the first one, the topic:

24 "Why Are you People All so
25 Yellow"

1 The conference is the immigration
2 conference room, the login name is realcanadianson, the
3 email address is given and then the post.

4 The second message I've included also
5 shows a topic, it shows the conference room was media
6 propaganda, and the login name was rump.

7 Now, it shows that when you did the
8 search Craig and Harrison, those are the messages that
9 came up. And what the system did when it did a search
10 it found the first name Craig and the second name
11 Harrison and it searched not only the login name or the
12 email, it searched for the name Craig and Harrison.

13 So, Mr. Warman obviously knew who he
14 was looking for. Where he got the name Craig Harrison,
15 obviously I don't know, but he did, he puts the name in
16 and there are various fields that are searched and, of
17 course, it searched the names.

18 So, again, if you look back to see
19 what was required to get into the message board you had
20 to put in a first name, a last name, a login name and
21 an email address.

22 So, obviously, in this case, Craig
23 was the first name, Harrison was the second name, the
24 login name was rump and in another case it was
25 realcanadianson and the email address was the one

1 given, susen@sympatico.ca.

2 This is all the information that the
3 system has on Craig Harrison. The system did not
4 verify the identity of anyone.

5 Anyone could put in any false name
6 and I think we all know how many people put in their
7 real names in these systems.

8 The only thing it verified
9 automatically was an email address, it didn't check to
10 see who owned the email address, whether it was
11 registered to Craig Harrison, it was just an automatic
12 system that sent it to the email address, the person
13 got the password and they were able to enter the
14 message board.

15 I think the Commission and Mr. Warman
16 think that the system has some sort of information that
17 somehow verifies the identity of Craig Harrison or rump
18 or realcanadianson. It doesn't. They have all the
19 information the system has, it's right here.

20 And Mr. Warman himself used the
21 system, he knows how it works, he went there often and
22 you have got the best evidence right from him, together
23 with the very documentation which he ran off.

24 It's an abuse of process -- the
25 subpoena was an abuse of process, it is an abuse of

1 process. They've had this information for three years
2 and Friday before the hearing starts, at noon, I get
3 served with this, with a subpoena for my client.

4 It's also an abuse because he himself
5 is subject to a complaint for these very messages in a
6 separate hearing. It gives Mr. Warman an opportunity
7 to harass him. It's an abuse of process and there's
8 absolutely no reason for it, they have the information.

9 The only thing that was verified was
10 the email address. They've got the email address, they
11 can go to Bell Sympatico and use their powers of
12 subpoena to find out who owned that email address.

13 And those are my submissions.

14 I would ask that the subpoena be set
15 aside.

16 And as the law states, I have
17 included the case of -- the Harris case. Once the
18 subpoena is challenged, it's up to Mr. Warman to prove
19 that Mr. Lemire can give material evidence. And I say
20 he has not met the onus, he has not met the onus at
21 all. Anything that he could tell you is here and
22 you've got the best evidence.

23 THE CHAIRPERSON: Thank you very
24 much.

25 I will certainly look into your

1 submissions -- your written submissions that you have
2 submitted to the Tribunal.

3 MS KULASZKA: Thank you.

4 THE CHAIRPERSON: -- on this issue
5 and you will have also an opportunity to reply after
6 the Commission and Mr. Warman will make their
7 presentation on this preliminary motion.

8 Is there anything that Mr. Warman or
9 Mr. Vigna...?

10 MR. VIGNA: I will follow...

11 THE CHAIRPERSON: Ms Holmes also, if
12 you have any presentation to make or submissions to
13 make on this issue, you will be allowed to do it; if
14 not --

15 SUBMISSIONS BY MR. WARMAN:

16 MR. WARMAN: Thank you, Mr. Chair.

17 Essentially what the subpoena is
18 seeking, as you know, based on information that
19 Mr. Lemire filed pursuant to the case that is ongoing
20 against him individually, he indicated that in order to
21 register for a client name or an account name or a
22 pseudonym, whatever term you want to use, on the forum,
23 you had to fill in a new user profile and that would
24 require a login name, the pseudonym, the first name
25 that the person wished to use, the last name and the

1 email address.

2 And then the board would require an
3 email verification, meaning that a confidential
4 password would be sent to the email address used to
5 register and the person seeking to use that account
6 would have to verify by usually clicking on a link that
7 usually comes back to the original website forum and
8 authenticates that, yes, that person is the actual
9 person at that email address that wants to establish
10 this account.

11 So, essentially what we're asking for
12 is that Mr. Lemire provide the information that he's
13 described in his own case was necessary to register the
14 two accounts that Mr. Harrison is alleged to have
15 posted under in this case. The information would
16 include the first name, the last name, the email
17 address used.

18 And essentially we had a brief
19 discussion with Ms Kulaszka beforehand, and what myself
20 and counsel for the Commission attempted to discuss in
21 terms of trying not to inconvenience her client to any
22 greater extent than is absolutely necessary, would be
23 that if Mr. Lemire were willing to provide an affidavit
24 attesting to the following facts for myself -- and I'll
25 leave it to the Commission to confirm that -- but I

1 believe the Commission as well, we would be quite happy
2 if Mr. Lemire would submit an affidavit attesting to
3 the first and last names used to register those two
4 pseudonym accounts, the email address or the addresses
5 used to register those two accounts, confirmation that
6 that email address was then used to confirm the
7 registration in those two accounts, or that, in fact,
8 the password that was sent to that email address was,
9 in fact, then used to confirm the registration on the
10 forum.

11 And we have also asked, but it's not
12 crucial for the IP address, that is the internet
13 protocol address -- which is the specific sort of
14 computer address in the same way that your house has a
15 street address -- that was used to access those two
16 accounts at the time when those two accounts were used
17 to post messages on the forum.

18 So, with regard to the lateness of
19 the request, we did first seek to do this sort of the
20 easy way, if you will, we sought simply an order from
21 the Tribunal that Mr. Lemire produce documents, we
22 sought, you know, from the very first not to
23 inconvenience to any greater extent than was absolutely
24 necessary.

25 What we asked for was essentially

1 this same information. We were quite willing to accept
2 it by electronic format, to review it and, you know,
3 provided that the material was comprehensible to -- or
4 appeared to be comprehensible on its face as meaning
5 what it appeared to mean, then we wouldn't even have
6 needed to call Mr. Lemire.

7 Unfortunately, I say unfortunately
8 solely in terms of the request that we made of the
9 Tribunal, Member Jensen in a ruling dated 5th April,
10 2006, indicated that she did not feel, in fact, that
11 the Tribunal had the ability to compel the production
12 of third party documents. That's contained at the
13 decision 2006-CHRT-19.

14 Mr. Lemire himself is aware that we
15 were seeking the production of these documents he
16 posted on a U.S. website called storefront with regard
17 to the fact that these documents had been sought from
18 him and had not been successful in obtaining an order
19 from the Tribunal.

20 So, there is no question of surprise,
21 that this was somehow documents that were unknown that
22 we would be looking for from him.

23 And what the Tribunal -- when we
24 requested the subpoena, we were issued instructions to
25 first amend the statement of particulars to include

1 Mr. Lemire and to give a will-statement of what he as a
2 witness would potentially have to say. We were then
3 required to serve it on Mr. Harrison and then to await
4 a decision of the Tribunal as to whether or not --

5 THE CHAIRPERSON: Was it served on
6 Mr. Harrison?

7 MR. WARMAN: I think it was through
8 the Tribunal.

9 MR. VIGNA: What is the question?

10 THE CHAIRPERSON: Was the request
11 served on Mr. Lemire (sic)?

12 MR. WARMAN: I believe it was, in
13 fact, submitted to the registry and then conveyed to
14 Mr. Lemire.

15 THE CHAIRPERSON: If you look at
16 the --

17 MS KULASZKA: Mr. Lemire.

18 MR. WARMAN: Sorry, Mr. Harrison.

19 MS KULASZKA: Mr. Lemire received no
20 notice whatsoever.

21 MR. WARMAN: Excuse me, sorry, I
22 misspoke.

23 THE CHAIRPERSON: Sorry.

24 MR. WARMAN: To Mr. Harrison.

25 THE CHAIRPERSON: To Mr. Harrison,

1 not Mr. Lemire.

2 MR. WARMAN: Yes. Sorry. If I said
3 Mr. Lemire, I misspoke myself.

4 THE CHAIRPERSON: Okay. So, it's
5 Mr. Lemire here.

6 MR. WARMAN: Thank you.

7 So, just to give you some idea that
8 the issue has been around for a while we have been
9 seeking to obtain the documents.

10 The reason that it came sort of
11 towards the last minute is because we were unsuccessful
12 in the first instance and we were required to go
13 through a different process and, unfortunately, both
14 Mr. Vigna and myself were at a hearing for the past --
15 sorry, two weeks before the last week out of town and,
16 thus, sort of the final steps in obtaining or
17 requesting issuance of the subpoena brought it down to
18 the wire unfortunately. There was no intent to
19 inconvenience Mr. Lemire to any greater extent than is
20 absolutely necessary.

21 And as I said, you know, we would be
22 quite happy with a compromise of an affidavit, provided
23 he is willing to submit that.

24 THE CHAIRPERSON: Thank you.

25 Mr. Vigna?

1 SUBMISSIONS BY THE COMMISSION:

2 MR. VIGNA: Mr. Chair, I didn't speak
3 at first because the request was made by the
4 complainant, but the Commission supports the request in
5 the sense that in terms of the relevancy of this
6 witness, I want to particularly draw your attention
7 that the whole defence in this case is an issue of
8 identity and I think it's important that Mr. Lemire be
9 called.

10 If not the whole defence, a good part
11 of the defence is the issue of identity.

12 THE CHAIRPERSON: You mean, a good
13 part of the complaint --

14 MR. VIGNA: The complaint, yes.

15 THE CHAIRPERSON: Or the defence of
16 the respondent?

17 MR. VIGNA: Yeah, the respondent.

18 So, the issue of Marc Lemire coming
19 to testify here would be highly relevant, I submit to
20 you, because he was the person that operated the
21 website on which the postings were made by the
22 respondent and who better than himself would have
23 knowledge of how the website works, how you get on the
24 website and, like Mr. Warman explained, how to proceed
25 to get on the website.

1 So, in that sense, in itself it
2 becomes highly relevant and the request for a subpoena
3 for this individual would be highly important,
4 particularly because the letter of particulars of the
5 respondent where it becomes clear, not three years ago
6 like counsel for Mr. Lemire says, but even close to the
7 hearing when the issue of the identity is being
8 challenged.

9 As far as the chronology for the
10 issuance of the subpoena it is pretty much what
11 Mr. Warman explained. There is also the fact that the
12 subpoena which was sent last week, we sent it as a
13 result of the request that was being made that an
14 amended statement of claim be made before the subpoena
15 be sent and that's why it was sent on Friday.

16 And actually the Commission sent it
17 to avoid any further delay. We put it for Wednesday
18 the 13th or 14th because we were conscientious of the
19 fact that it was sent close to the hearing dates and we
20 were hoping that we would get some response so that we
21 would call the individual either tomorrow or Wednesday.

22 And the issue of abuse of process and
23 all that, I would simply respectfully submit to you,
24 Mr. Chair, that there is no abuse of process here, it's
25 a witness which is relevant, he is the one that

1 operated and was most familiar with the website, how
2 you log in the website and how the email works and all
3 that.

4 So, the Internet protocol address
5 also is something that would be highly relevant for him
6 to testify on.

7 And, finally, as far as Bell
8 Sympatico, we did also file a subpoena to Bell
9 Sympatico and we sent it to them also last week because
10 of the request that was being made to amend the
11 statement of particulars and we are hoping to have
12 someone tomorrow to come from Bell Sympatico. We are
13 still waiting for the documents regarding Bell
14 Sympatico.

15 But there is an issue of identity
16 that needs to be clarified, and even if at the end of
17 the day we don't have these witnesses, I submit to you
18 respectfully that we still have some evidence to prove
19 identity, but since there is the additional evidence,
20 why should the Tribunal be deprived of full and ample
21 evidence on a key issue which is raised in the defence
22 of the respondent and, in that sense, the request is
23 highly legitimate and highly relevant.

24 That's all I have to say, Mr. Chair.

25 THE CHAIRPERSON: Ms Holmes, do you

1 have anything you want to add at this point?

2 SUBMISSIONS ON BEHALF OF RESPONDENT:

3 MS HOLMES: Just a little bit. I'm
4 in agreeance (sic) with Ms Kulaszka -- I'm sorry if I
5 didn't pronounce your name right -- Mr. Lemire being
6 here has absolutely nothing to do with this.

7 If Mr. Lemire was sitting in my house
8 in front of my computer or had a webcam attached to my
9 computer, that's the only proof you're actually going
10 to get who actually sent any of this.

11 An IPS address or whatever, it just
12 shows the computer where any such messages came from.
13 Does it show who posted these messages or sent them?
14 No, it shows nothing, doesn't show...

15 We've already said we've had viruses
16 in our computer. Did a virus send it? We let other
17 people use our computer. Was it someone else?

18 Mr. Lemire being here is not going to
19 prove any such -- anything about anybody posting
20 anything. It might be prove, yes, a person using the
21 name Craig and Harrison and using my email address may
22 have sent that, but it does not show who has done
23 anything.

24 I agree, I do not think that
25 Mr. Lemire has anything to do with this.

1 Thank you.

2 THE CHAIRPERSON: Thank you.

3 Ms Kulaszka, just before you make a
4 reply, I don't want to go into the facts of the issue
5 here.

6 You are asking me to set aside the
7 subpoena. Maybe you didn't have the opportunity to
8 look that over. The subpoena was issued by the
9 Tribunal I agree by my colleague Ms Karen Jensen in
10 this case, and just looking at the issue, it is a legal
11 question and if you are able to answer it at this
12 point, please go ahead; and if not, if you want to make
13 further submissions during the morning you can do so
14 also by writing or any of the parties.

15 Just looking at the question of,
16 since this was issued by my colleague, what is my
17 jurisdiction to set it aside at this point, are we in
18 front of the proper forum to ask that issue -- to
19 address that issue.

20 Now, if you are not ready to answer
21 at this point, it is all right.

22 SUBMISSIONS BY MS KULASZKA:

23 MS KULASZKA: I wasn't given much
24 opportunity I can tell you to do this.

25 THE CHAIRPERSON: I understand that.

1 MS KULASZKA: But it's not an
2 administrative act, the Tribunal has discretion.

3 THE CHAIRPERSON: Mm-hmm.

4 MS KULASZKA: Mr. Lemire wasn't given
5 any notice about this, so he wasn't given any
6 opportunity to make submissions at the time.

7 He is now challenging the subpoena
8 and when the subpoena is challenged and really his
9 only opportunity is before you, otherwise I don't know
10 how he would do it, run to the Federal Court, we would
11 have to ask for an adjournment of this hearing.

12 I think you do have the jurisdiction
13 over your process and when that subpoena is challenged,
14 you have the opportunity at this point to hear why the
15 subpoena should not be enforced.

16 Technically can you set it aside? I
17 think you can because at this point the matter is being
18 heard by all sides. So, it's like a two-stage process.

19 Also, you have the complete
20 jurisdiction not to require compliance. You can simply
21 let it be known that you will not enforce compliance of
22 the subpoena given the fact that there is no material
23 evidence to be given by Mr. Lemire and that it's an
24 abuse.

25 I think you have full jurisdiction

1 over your process to do that.

2 THE CHAIRPERSON: Thank you.

3 MS KULASZKA: And if I can make a
4 reply.

5 REPLY SUBMISSIONS BY MS KULASZKA:

6 MS KULASZKA: Obviously the identity
7 seems to be the crucial issue here and it's clear that
8 Mr. Lemire doesn't -- the system does not have any
9 evidence of the identity of who Craig Harrison is.
10 This could be a completely made up name.

11 The only thing that was verified was
12 the email address, but who owned the email address,
13 whether somebody was using the email address, obviously
14 the system doesn't know that. I mean, the only real
15 evidence you could get about that is through Bell
16 Sympatico.

17 Any evidence that Marc Lemire could
18 give is contained in the documents which I assume have
19 also been disclosed in this case: the email address,
20 the two login names and Mr. Warman keeps talking about
21 the two accounts. Whoever signed up used the name
22 Craig Harrison with these messages obviously because
23 the search results showed Craig Harrison, that was the
24 first and last name registered.

25 He changes -- whoever it is

1 registers -- uses two login names, rump and
2 realcanadianson, but it's not two accounts, it's not
3 like there's an account.

4 THE CHAIRPERSON: Okay.

5 MS KULASZKA: And those are my
6 submissions.

7 Is it an abuse of process?

8 This case has been ongoing for three
9 years and in March they have to ask for an adjournment,
10 all of sudden I think they start realizing they have
11 problems with, I don't know what the problem is in this
12 case, but a problem with the identity and they should
13 have known that a long time ago and they should have
14 had their case together before this.

15 And it would greatly inconvenience
16 Mr. Lemire to have to come here and give this evidence.
17 You've got the best evidence.

18 THE CHAIRPERSON: Can you just
19 elaborate on that if you want to, or is that...

20 MS KULASZKA: He would have to come
21 here to Toronto. He has been given money, I think he
22 was give \$23, that wouldn't even cover the parking
23 here.

24 THE CHAIRPERSON: He is not from
25 Toronto?

1 MS KULASZKA: He's not from Toronto.
2 He would have to take time off work. He has two little
3 kids and to go back through all these documents, I
4 mean, what is it that they want?

5 You have to extract this information.
6 It's not like -- maybe being lawyers they simply don't
7 understand, we're used to dealing with documents,
8 produce your documents. This isn't a document system,
9 it's a computer system, and so you have to extract
10 information. It's not a simple procedure.

11 THE CHAIRPERSON: And if you would
12 just allow me to ask a question of Mr. Warman while you
13 are still there.

14 Are those documents you are referring
15 disclosed, are they now in the disclosure?

16 MR. WARMAN: I'm sorry?

17 THE CHAIRPERSON: The documents that
18 you were referring to in your presentation, you were
19 asking -- you started off by saying that you had asked
20 Ms Jensen to order the disclosure of documents.

21 MR. WARMAN: Yes.

22 THE CHAIRPERSON: Are those
23 documents --

24 MR. WARMAN: Those documents were the
25 same documents that are now the subject of this email.

1 THE CHAIRPERSON: Okay.

2 MS KULASZKA: Yes. I can only assume
3 that the documents I produced here which were disclosed
4 to Mr. Lemire are also the subject of this complaint,
5 so you already have the documents here.

6 THE CHAIRPERSON: Okay.

7 MS KULASZKA: Thank you.

8 THE CHAIRPERSON: Is there anything
9 else -- well, okay, Mr. Warman.

10 FURTHER SUBMISSIONS BY MR. WARMAN:

11 MR. WARMAN: Mr. Chair, if I may, the
12 documents that have been disclosed pursuant to the
13 disclosure process and Ms Kulaszka's motion, I'm sure
14 you can appreciate that there is a lot of difference
15 between me saying I downloaded these documents, I did
16 this and this is what I think it means versus the
17 person who actually runs the website forum saying this
18 is the way it was set up, this is what I did to control
19 the website forum, this is what you had to do pursuant
20 to the way I structured it and this is what was entered
21 and this is why these results turned up the way they
22 did.

23 So, that would just be my only
24 contention with regard to the actual document before
25 you.

1 THE CHAIRPERSON: Okay. I will
2 certainly take this into consideration, unless there is
3 anything else, I will look into the matter.

4 We will go on with the hearing at
5 this point and I certainly will allow you to go on.

6 Mr. Lemire will not have to stay here
7 today. I will take this into consideration and give my
8 decision tomorrow morning on the issue of setting aside
9 the subpoena, unless there is any submissions that the
10 parties want that to be done before noon, then we will
11 have to adjourn until noon to give me an opportunity
12 to --

13 MS KULASZKA: I ask if a decision
14 could be given earlier than that.

15 THE CHAIRPERSON: Then if we do
16 that --

17 MR. VIGNA: Mr. Chair --

18 THE CHAIRPERSON: Yes.

19 MR. VIGNA: -- I don't think
20 Mr. Lemire is here today. We called him only for
21 tomorrow possibly the 14th.

22 THE CHAIRPERSON: He is not here
23 today?

24 MS KULASZKA: He's not, no, I am here
25 today.

1 THE CHAIRPERSON: Okay.

2 MS KULASZKA: But he would have to
3 appear tomorrow. If you could give your decision
4 today.

5 THE CHAIRPERSON: Well, we could work
6 around that also, if there is any problem and certainly
7 I would like to have the opportunity to go over your
8 request, I just got it this morning.

9 Also I just got the arguments also of
10 Mr. Warman, Mr. Vigna and Ms Holmes this morning and
11 also I will have to look at the rulings that were give
12 by my colleague Ms Jensen, and I would certainly
13 appreciate to be able to look at this matter fully, and
14 certainly I would not at this point compel Mr. Lemire
15 to be here tomorrow morning before the decision is
16 rendered.

17 I will deal whatever the decision
18 will be. If I decide that the subpoena should go
19 ahead, I will deal with the issue when he should be
20 here to give evidence in that order.

21 So, there would be no necessity for
22 Mr. Lemire to be here tomorrow morning at nine,
23 o'clock, so it will give me the opportunity to address
24 the issue fully.

25 I think it is an important issue,

1 it's setting aside a subpoena rendered by the Tribunal
2 and certainly I would want to fully look into the
3 matter before making a decision on this.

4 So, if Mr. Lemire is not here -- if
5 he would have been here it might have been different
6 because it is the issue of keeping somebody here an
7 extra 24 hours, whatever my decision is.

8 If he is not here, I would rather
9 wait until tomorrow morning and fax that or email that
10 decision to your office, and also to other counsel and
11 Ms Holmes.

12 So, I will have a decision by
13 tomorrow morning --

14 MS KULASZKA: Thank you.

15 THE CHAIRPERSON: -- before the
16 opening of the hearing.

17 So, we can go on today with the other
18 issues.

19 Is there any other preliminary
20 matters that you would want to address at this time?

21 Mr. Vigna?

22 MR. VIGNA: I just want to mention
23 how I would like to proceed for the hearing. I want to
24 have Mr. Warman testify today. I was hoping to have
25 somebody from Bell Sympatico tomorrow, and even there

1 I'm waiting for a phone call from an individual but
2 I'll keep the Tribunal informed, and then Mr. Lemire,
3 all depending on the Tribunal's decision, would be
4 scheduled for Wednesday.

5 So, the initial thinking was not to
6 have him here waiting until Wednesday, it was to have
7 him here tomorrow or Wednesday, because I mentioned
8 specifically 13 or 14 to contact him and it was sent to
9 the lawyers to figure out the best time.

10 THE CHAIRPERSON: Okay. Well, my
11 expectation is that we have four days set aside this
12 week until Thursday to hear this matter, and I
13 certainly fully expect that this matter will roll
14 around and we will have all the evidence in.

15 You can be excused, I am sorry, if we
16 have finished dealing with the issue of Mr. Lemire.

17 MS KULASZKA: I just want to say, if
18 you decide you will enforce the subpoena, then I ask
19 that it should just be an affidavit.

20 THE CHAIRPERSON: Well, okay, thank
21 you very much.

22 And certainly an affidavit -- again,
23 I guess you did discuss this matter with Mr. Warman and
24 Mr. Vigna I understand as well.

25 MS KULASZKA: Yes. Basically they

1 just want the information that's already in the
2 documents before you.

3 THE CHAIRPERSON: And would you
4 object to --

5 MR. WARMAN: Sorry, I'm a little
6 concerned about the characterization that it's the
7 information that's in the documents before us.

8 Again, it's the difference between me
9 testifying and Mr. Lemire testifying or submitting an
10 affidavit, in fact.

11 So, again, we discussed the matter,
12 we offered submitting the information via an affidavit
13 and I'd be quite happy to work with --

14 THE CHAIRPERSON: Is there a
15 possibility of doing it by written question to
16 Mr. Lemire?

17 MR. WARMAN: Sir, the information is
18 essentially what we asked for.

19 THE CHAIRPERSON: Well, no, I am not
20 saying that I am not setting the order aside, I want to
21 delve into it because of what was just raised by
22 counsel that it could be done by affidavit.

23 MR. WARMAN: Yes. And, in fact, that
24 is what we attempted to offer as a compromise to
25 prevent Mr. Lemire from having to come here

1 unnecessarily.

2 So, again, myself and I believe
3 Commission counsel would be quite content to simply
4 have an affidavit, provided that was acceptable to the
5 other parties.

6 THE CHAIRPERSON: And, Ms Holmes,
7 would you object if it is in written form?

8 MS HOLMES: Doesn't matter, it's
9 still not going to prove anything, but that's fine.

10 THE CHAIRPERSON: Thank you.

11 MS KULASZKA: Yes, that's the point,
12 it doesn't prove anything, anything more than what
13 you've got already before you in Mr. Warman's
14 testimony.

15 THE CHAIRPERSON: I understand that,
16 but deciding on the evidence, I guess I will do that at
17 the end of the hearing and see if the evidence is there
18 to establish whatever is being raised here, but I was
19 just inquiring on your last request at the end when you
20 said that it could be done by affidavit, if there is an
21 issue on compellability.

22 MS KULASZKA: Did you want further
23 submissions from us on whether you can set aside or
24 simply indicate that you will not be compelling --

25 THE CHAIRPERSON: I have seen that in

1 your request and I understand what you are raising
2 there.

3 I was just looking at the issue, you
4 said at the end that if I was not going to set aside
5 the subpoena, that I should order that it be done, that
6 the evidence be submitted by affidavit.

7 MS KULASZKA: Yes, I want to make
8 that alternative submission. mission

9 THE CHAIRPERSON: Okay. So, do you
10 want to add something to that or is that it?

11 MS KULASZKA: No. The written
12 affidavit obviously cost wise is much better, if I lose
13 this motion.

14 THE CHAIRPERSON: And, again, what I
15 was inquiring is that Mr. Warman and Mr. Vigna were
16 saying that, well, they could submit written questions
17 to you for Mr. Lemire if that would be the way that we
18 would be going and those could be answered by
19 affidavit; is that what you were thinking about, or
20 whatever?

21 MS KULASZKA: Well, what they want is
22 what's in those documents. They want the email address
23 which is already in the documents, they want the login
24 names, that's already there, the name that was signed
25 in is Craig Harrison, that's already there because

1 Mr. Warman did the search. I don't know what else they
2 want.

3 THE CHAIRPERSON: Okay. Well, I will
4 deal with the matter on that basis.

5 MR. VIGNA: We also want to know the
6 procedure, which I respectfully submit, would also be
7 in the knowledge of Mr. Lemire.

8 THE CHAIRPERSON: Thank you,
9 Mr. Vigna.

10 Okay. If there is nothing else,
11 counsel, you can be excused.

12 MS KULASZKA: Thank you. I will just
13 stay here.

14 THE CHAIRPERSON: If you want to
15 stay, no problem.

16 So, at this point we will go ahead
17 with the hearing.

18 Now, Mr. Vigna, you wanted to make
19 another preliminary remark or...

20 MR. VIGNA: Very briefly, but before
21 I go into that I would like to ask for exclusion of
22 witnesses for the --

23 THE CHAIRPERSON: Exclusion of
24 witnesses is being asked, is there anybody...

25 So, I will ask anybody that is a

1 witness, unless he's a party or somebody advising
2 counsel to please leave the room. I don't know if
3 there is any witnesses in the room, and we will have a
4 notice on the board.

5 Okay. So, if we are ready to go into
6 the hearing, I just wanted to address a few preliminary
7 remarks before we do that, just to explain to the
8 parties, and I understand that some of you have been
9 before the Tribunal on various occasions and you know
10 very well how the Tribunal functions.

11 The Tribunal is certainly a
12 quasi-judicial body. In that aspect, it follows the
13 rules of procedures for the court and also the rules of
14 evidence before a court.

15 We will start off this morning with
16 the complainant, Mr. Warman, and the Commission,
17 Mr. Vigna, will make their case. They will present
18 their evidence, they will call their evidence and they
19 will be allowed to examine those witnesses and put
20 through those witnesses the evidence, the documentary
21 evidence that they want to submit to the Tribunal.

22 Now, if any party -- and, Ms Holmes,
23 certainly I address this to you -- if any party have
24 any objections concerning some questions that are being
25 asked or documents being put through, you can raise

1 those objections.

2 You will have to explain to the
3 Tribunal why you are doing those objections and the
4 other party will be allowed to rely and respond to
5 those and I will be the one deciding on the merits of
6 the objections.

7 After the complainant have called
8 their witnesses and does their examination of their
9 witnesses, you will be allowed, Ms Holmes to
10 cross-examine those witnesses and ask them questions
11 about the evidence that they are giving or any other
12 matter pertaining to this hearing, and the counsel for
13 the Commission and Mr. Warman will have a right to
14 reply after your cross-examination, and the reply will
15 raise -- you will not be able to raise any new issues
16 that were not covered in the examination-in-chief, you
17 will only be able in reply to ask questions to clarify
18 issues that were raised in cross-examination.

19 And once the case for the Commission
20 and the complainant is done, it will be your case and
21 you will be able to call your witnesses and put into
22 evidence at that time your documents.

23 You can put your documents also in
24 evidence through the Commission and Mr. Warman's
25 witnesses, if you feel that that is the proper time to

1 do it.

2 At the end of the day when the
3 evidence of both parties -- of the three parties will
4 have been submitted to the Tribunal, both parties will
5 be able to make closing arguments and submit to the
6 Tribunal their factual or legal arguments to the
7 Tribunal.

8 Also I would like to address when I
9 start off a hearing the question of the conduct at the
10 hearing. I certainly like to run a tight ship.

11 We have four days before us to go
12 over this matter and it is important that every minute
13 of this hearing is used to present evidence and
14 documentary evidence, so there is no place in this
15 hearing at this point, if we wanted to have that done,
16 for any interference by anybody into the process that
17 the Tribunal will be using.

18 People can object to questions and
19 certainly we will do that in an orderly fashion, and I
20 will not hesitate at any point to just adjourn the
21 hearing for an hour or more if I feel at one point that
22 we are losing focus on what we are supposed to be doing
23 here, and I certainly expect that everybody will
24 collaborate on that point and that during those four
25 days that everything will roll along nicely and we will

1 be able to get everything in with no need to fix any
2 other dates later on down the road to continue with
3 this hearing.

4 Now, if it is necessary at the end of
5 the day to get more dates, then we will address that
6 then, but I certainly believe that we will be able to
7 go through this matter at this point.

8 So, if there is any questions at this
9 point on the procedure, feel free to ask them; if not,
10 well, we will start the hearing.

11 Ms Holmes, any questions?

12 MS HOLMES: No, that's fine.

13 THE CHAIRPERSON: No.

14 Mr. Vigna?

15 MR. VIGNA: No.

16 THE CHAIRPERSON: Mr. Warman?

17 MR. WARMAN: No, thank you.

18 THE CHAIRPERSON: No.

19 So, Mr. Warman, it is your case at
20 this point.

21 MR. WARMAN: Mr. Chair, if I may
22 note, in the absence of a podium, if I may use --

23 THE CHAIRPERSON: Sure, go ahead.

24 REGISTRY OFFICER: Mr. Warman, I
25 believe there's one at the back there.

1 MR. WARMAN: Sorry.

2 THE CHAIRPERSON: Go ahead.

3 Good morning. In essence, what is
4 before us is a complaint under section 13 of the
5 Canadian Human Rights Act and at the core of section 13
6 it talks about it being:

7 "A discriminatory practice for a
8 person or group of persons,
9 acting in concert, to
10 communicate repeatedly by virtue
11 of telephone or the Internet any
12 matter that is likely to expose
13 a person or persons to hatred or
14 contempt by reason of the fact
15 that those persons are
16 identifiable on the basis of a
17 prohibited ground of
18 discrimination such as race,
19 sexual orientation, religion..."

20 (As read)

21 et cetera.

22 I think at its very essence this is
23 simply a restatement of what has often been described
24 as the Golden Rule, that thou shalt not distribute hate
25 propaganda against thy neighbour on the basis of

1 immunable characteristics such as race, religion,
2 ethnicity, et cetera.

3 I believe that the evidence that will
4 be laid before you during this hearing will show that
5 the respondent has failed to respect that Golden Rule.

6 In the material there are repeated
7 calls for the murder of blacks and other non-whites and
8 a variety of other individuals based on those exact
9 immunable characteristics that I've described.

10 People sometimes ask whether these
11 words are not perhaps closer to rants and whether they
12 should simply be ignored and whether this might not
13 better by being ignored simply go away.

14 And I think that the former Minister
15 of Justice, Irwin Cotler, talked about the power of
16 words in a presentation that he made to a conference of
17 the Canadian Bar Association in Winnipeg recently.

18 He quoted the Supreme Court from
19 their decision in Andrews where they said:

20 "The Holocaust did not begin in
21 the gas chambers it began with
22 words." (As read)

23 And I think that speaks to the power
24 of words and why these kind of words, experience has
25 shown us repeatedly, should not in fact be ignored.

1 The reasons for the protections
2 against the dissemination of hate propaganda through
3 telephone hate lines and the Internet I believe relate
4 to section 2 of the Act about the very purpose of the
5 quasi-constitutional legislation itself.

6 Section 2 says that:

7 "The purpose of the Canadian
8 Human Rights Act is to extend
9 the laws in Canada to uphold the
10 principle that all individuals
11 should have an opportunity equal
12 with other individuals, to make
13 for themselves the lives they
14 are able and wish to have, and
15 to have their needs accommodated
16 consistent with their duties and
17 obligations as members of
18 society without being hindered
19 in or prevented from doing so by
20 reason of discrimination." (As
21 read)

22 In essence, that people should have
23 the right to live their lives, to fulfil their
24 obligations and contribution to society to the best of
25 their abilities without being the subject of hate

1 propaganda.

2 I think that over the next few days
3 counsel for the Commission, Mr. Vigna, and I will
4 present our cases to the best of our ability.

5 And that is my opening submissions.

6 THE CHAIRPERSON: Thank you.

7 Are there any opening submissions on
8 your part, Mr. Vigna?

9 MR. VIGNA: Very briefly, Mr. Chair.

10 I will echo the comments of
11 Mr. Warman. We are different parties in these
12 proceedings, but in this particular case the evidence
13 will be in common as well will be the remedy that we
14 seek if the complaint is upheld.

15 I will just basically state that the
16 Tribunal will have to determine essentially if there
17 has been a violation of section 13 of the Canadian
18 Human Rights Act, that the allegations that are being
19 made that the nature and content of the material on the
20 website Freedom-Site and other sites, it is alleged by
21 the respondent, would likely expose individuals who are
22 Jewish, Aboriginal, French, Italian, Portuguese or
23 black to contempt.

24 And I will simply state that in terms
25 of the section 13 there is basically, I would say, four

1 ingredients to the section 13.

2 Firstly, the Tribunal will have to
3 decide whether the respondent, Mr. Craig Harrison,
4 communicated or caused to be communicated messages
5 found on the website; were the messages communicated by
6 way of Internet; there is the element of repeatedly; is
7 the subject matter of messages likely to expose a
8 person or persons to hatred or contempt by reason of
9 the fact that they are identifiable on the basis of a
10 prohibited ground of discrimination -- and there you
11 have to look at section 3 and also section 2, which is
12 basically the core section which exposes the
13 philosophical layout for the Canadian Human Rights Act.

14 As far as the subject matter or the
15 content or the nature of the material that would be put
16 before you, fundamentally through excerpts of the
17 website in the binder by the testimony of Mr. Warman, I
18 respectfully submit that there is no need to have
19 expert evidence, the material itself is blatant and
20 evident in terms of its discriminatory character.

21 And when you look at the impact that
22 such material on the Internet can have, it's very
23 important for the legislator to fight such material and
24 that is why section 13 -- specified in section 13.2
25 that it also includes the Internet and that's why the

1 key phrase, so for greater certainty the Internet would
2 be covered.

3 The evidence will be fundamentally of
4 Mr. Richard Warman, who will testify about the fact
5 that he has been monitoring for a certain number of
6 years this type of material on the Internet.

7 He will explain in this particular
8 complaint what he did, how he extracted the information
9 from the Internet and printed it out, and it will be
10 found and we will go through the 38 documents in the
11 binder.

12 You will also be led in the testimony
13 of Mr. Warman to how to put the different pieces of the
14 puzzle which is circumstantial evidence to prove the
15 identity of the respondent in terms of the connection
16 with the material which he is alleged to have put on
17 the website, and I will also bring to your attention
18 the fact that we will be presenting evidence which is
19 strictly for the purposes of identity, which is a
20 newspaper article dealing with the criminal conviction,
21 as well as criminal records --

22 MR. HARRISON: Nothing to do with it.

23 MR. VIGNA: As well as the criminal
24 record --

25 MR. HARRISON: Bullshit.

1 MR. VIGNA: -- which is for purposes
2 of identity, since the subject matter was mentioned in
3 the Internet website itself.

4 And, finally, there will be the --
5 tomorrow we will expect to have the testimony of
6 someone from Bell Sympatico. We are trying to get
7 somebody from Toronto rather than from Montreal, we'll
8 deal with that administrative issue, but it's strictly
9 on the issue of identity.

10 And depending on your ruling, we
11 might have Mr. Marc Lemire who will testify
12 fundamentally on this issue of identity.

13 I would also like to respectfully
14 submit to you that you will find at the end of the
15 hearing that there is enough circumstantial evidence
16 that will put it together will leave only one logical
17 conclusion in terms of identity, and as far as the
18 subject matter, I think it will be fairly clear that it
19 constitutes hate message in the sense of section 13,
20 section 3 and 2 of the Canadian Human Rights Act.

21 And, finally, we have agreed with,
22 and I would like to finish my preliminary remarks at
23 this point, I would just like to mention that we agreed
24 last Monday on a conference call to Member Jensen and
25 the respondent that there will be one witness called,

1 Hannya Rizk which was the investigator, that there will
2 be an affidavit produced.

3 And I would like to start with filing
4 this affidavit which basically is the contents of a
5 conversation she had with Mr. Harrison regarding the
6 complaint at the time the investigator --

7 THE CHAIRPERSON: Just before we go
8 there, since now we are getting into the evidence part,
9 just before we do that, I would like to ask Ms Holmes
10 if she wants to make an opening statement now or
11 reserve that right at the opening of her case.

12 MS HOLMES: No, thank you.

13 MR. VIGNA: Sorry, Mr. Chair, I
14 realized I went too far.

15 THE CHAIRPERSON: Okay, no problem.
16 You can wait also at the opening of
17 your case also to make your --

18 MS HOLMES: Okay, we will wait until
19 then. thank you.

20 THE CHAIRPERSON: Okay.

21 Now, we will go into evidence. If
22 you want to put that affidavit into evidence, I
23 understand that it's been discussed between the parties
24 and I have seen the correspondence from my colleague
25 and that there is no objection to this evidence being

1 put in by affidavit?

2 MS HOLMES: No, that's fine.

3 THE CHAIRPERSON: Thank you.

4 MR. VIGNA: The affidavit was sent to
5 the respondent and I'm just going to start by producing
6 this as a first exhibit. (handed)

7 THE CHAIRPERSON: Sure, thank you.

8 MR. VIGNA: So, just to explain the
9 affidavit, the first part basically explains --

10 THE CHAIRPERSON: Do you want us to
11 put it into evidence right now?

12 MR. VIGNA: Yeah, as an exhibit.

13 THE CHAIRPERSON: Go ahead.

14 REGISTRY OFFICER: The affidavit of
15 Hannya Rizk dated June 8th, 2006 will be filed as
16 Commission Exhibit HR-1.

17 EXHIBIT NO. HR-1: Affidavit of
18 Hannya Rizk dated June 8, 2006

19 MR. VIGNA: Just briefly on this
20 exhibit, which speaks for itself, Mr. Chair, it's
21 fundamentally for the issue of identity in terms of the
22 answers given to investigator at the time and you would
23 have to cross-reference, if I can say so, with the rest
24 of the evidence, primarily the viva voce evidence of
25 Mr. Warman in relation to that issue.

1 We also filed the investigation
2 report on the issue primarily of identity and the memo
3 of the conversation that the investigator had, as well
4 as a letter sent by the investigator to Mr. Harrison at
5 the time.

6 So, I file this as the first exhibit
7 and I will have Mr. --

8 THE CHAIRPERSON: And all those
9 documents are attached to the affidavit?

10 MR. VIGNA: Exactly.

11 THE CHAIRPERSON: Sorry?

12 MR. VIGNA: They are documents that
13 were disclosed. The affidavit is the only new element,
14 if you want.

15 I will call the first witness,
16 Mr. Warman.

17 THE CHAIRPERSON: Mr. Warman.

18 MR. VIGNA: At this point for the
19 purposes of identification I'd like to present the
20 binders.

21 THE CHAIRPERSON: Sure. And for the
22 purpose of the proceedings, every document will be put
23 into evidence one by one.

24 MR. VIGNA: Correct, Mr. Chair,
25 that's what we intend to do.

1 AFFIRMED: RICHARD WARMAN

2 REGISTRY OFFICER: Please state and
3 spell your name for the record, please.

4 MR. WARMAN: My first name is Richard
5 and my last name is Warman, W-a-r-m-a-n.

6 REGISTRY OFFICER: Thank you. Please
7 be seated.

8 EXAMINATION BY MR. VIGNA:

9 MR. VIGNA: So, Mr. Warman, before we
10 get into the pith and substance of the matter before
11 the Tribunal today, can you just give us a little bit
12 of introduction in terms of your interest in the
13 subject area of hate messages in relation to section 13
14 and what have you done in that area in the past few
15 years, and then we can proceed in terms of the
16 complaint before us today.

17 MR. WARMAN: Certainly. Essentially
18 my interest in the area of hate group activity and hate
19 propaganda began approximately 15 years ago or so, I
20 began monitoring the activities of various sort of
21 individuals that were prominent within the movements
22 and organizations.

23 I essentially sustained that interest
24 and about five or six years ago with the advent of the
25 Internet became increasingly interested in its use by

1 white supremacists and neo-Nazi groups and individuals
2 promoting similar ideas to disseminate hate propaganda.

3 And essentially since then I have
4 engaged -- basically I have spent a lot of time
5 monitoring the Internet for similar kinds of
6 expressions of hate propaganda on the Internet, and
7 essentially this is one example of that.

8 MR. VIGNA: Okay. To get to the
9 subject matter before us today, I would bring you to
10 tab 1 which is the complaint before you.

11 I would like you to look it over
12 firstly and then tell us if you can recognize the
13 document, particularly the signature at the end, and
14 then I'd like to go thoroughly through the different
15 elements of the complaint.

16 So, firstly, can you tell us if you
17 identify the signature?

18 MR. WARMAN: Yes, I can. That is my
19 signature.

20 MR. VIGNA: That's at the last page
21 of tab 1.

22 MR. WARMAN: Yes, it's my signature
23 and it was contained on the formal Human Rights
24 complaint that I submitted to the Canadian Human Rights
25 Commission on the 23rd of November, 2003.

1 MR. VIGNA: Okay. And you recognize
2 that it's a four-page document, but I guess what's
3 related to those are the three pages that are the text.

4 MR. WARMAN: Yes. The front of the
5 first page is what I would identify as a Commission
6 summary of the actual subsequent material that was
7 contained in the letter that I submitted to the
8 Commission.

9 MR. VIGNA: I would like to file,
10 Mr. Chair, that as Exhibit 1, complaint form by the
11 complainant.

12 REGISTRY OFFICER: The complaint form
13 of Richard Warman dated November 23rd, 2003 will be
14 filed as Commission Exhibit HR-2.

15 EXHIBIT NO. HR-2: Complaint
16 form of Richard Warman dated
17 November 23, 2003

18 MR. VIGNA: Now, Mr. Warman, I'd like
19 you to walk us through the document line per line so
20 that we can all have at the same time an outline of the
21 case to come and the further documentary evidence in
22 relation to the complaint form which is basically a
23 summary.

24 So, start from page 1 and walk us
25 through the document, please.

1 MR. WARMAN: Certainly. Essentially
2 what this was was, this was a joint complaint that was
3 filed by me and it identified two separate respondents,
4 the first was an individual named Marc with a "c", last
5 name Lemire, L-e-m-i-r-e, and the first if you pages go
6 through a broad range of material that was available on
7 his website called freedomsite.org, and that's
8 freedomsite(s-i-t-e).org.

9 And then when we get to what is
10 identified as page 4, at the bottom of the page it
11 begins to indicate specific items that I found on the
12 Freedom-Site web forum that I believe were posted by
13 Mr. Harrison.

14 I conducted a search that will be
15 identified shortly using the first name Craig and last
16 name Harrison.

17 I received in response to that search
18 approximately 70 -- 71, 72 postings that were made
19 under two pseudonyms, the first one being rump, r-u-m-p
20 and the second one being, all one word,
21 realcanadianson.

22 All of the postings using the
23 pseudonym realcanadianson also include the email
24 address susen, s-u-s-e-n, @sympatico.ca.

25 In a posting that we will reach

1 shortly dated 4 December, 2002, a person posting on
2 another website indicated that their name was Craig
3 Harrison, that their email address was the previous
4 susen@sympatico.ca and that he lives in Georgetown,
5 Ontario.

6 And that was originally found on a
7 website called www.canadianheritagealliance.com in
8 their guest book.

9 What essentially follows that are
10 either the full text or excerpts of postings I allege
11 were made by Mr. Harrison that were contained on the
12 Freedom-Site website and any material that follows that
13 in the examples would be supplementary material that I
14 submitted to the Commission and that was disclosed in
15 due course pursuant to further investigation that I
16 conducted for this complaint.

17 MR. VIGNA: I'm going to refer you to
18 always the complaint form and the Freedom-Site which is
19 mentioned at the very beginning at page 2.

20 Can you tell, are you aware if there
21 is a Canadian site?

22 MR. WARMAN: It's run by an
23 individual named Marc Lemire who I understand to be
24 resident in Toronto or the broader Toronto area in
25 southwestern Ontario.

1 It's sort of a conglomeration of a
2 number of different, what I would describe as, white
3 supremacist or neo-Nazi groups including the Heritage
4 Front, and what this specific aspect of it was, was
5 their website forum where individuals could sign up and
6 then make postings.

7 MR. VIGNA: Now, that site in itself
8 there, it contains different sections. If you look at
9 page 2, for example, there is a section called
10 conferences.

11 Can you basically describe to us a
12 bit the visual layout of the site and how it's composed
13 and guide us through the complaint form in terms of the
14 different excerpts of interest in the website.

15 MR. WARMAN: Certainly. Essentially
16 the main page of the website would have -- would be
17 devoted to the Freedom-Site and then there would be a
18 variety of other links to other groups that you could
19 click on and access their portions of the website.

20 One of the things that you could
21 click on was the forum for the website, and by clicking
22 on that, that took you to the website forum page.

23 There were a number of different,
24 what were described as, conferences, essentially sort
25 of the broader headings under which individual threads

1 were posted.

2 These sections were divided into a
3 variety of different things. For example, there was a
4 joke and trivia section and the joke section listed
5 various posting, threads, sort of sub-categories that
6 people could post under with titles such as black
7 jokes, Jewish jokes, spook jokes, niggers, an
8 Englishman, a nigger and a Jew and the wetback and the
9 spic.

10 MR. VIGNA: So, for people who are
11 not familiar with terms like spic, wetback -- and you
12 mentioned another one also.

13 MR. WARMAN: It's my understanding
14 that spook and nigger are derogatory terms for blacks.

15 MR. HARRISON: Lawyers.

16 MR. WARMAN: And that wetback and
17 spic are derogatory terms for people of Mexican or
18 other Hispanic descent.

19 MR. VIGNA: And this information that
20 you are giving us you acquired it, in terms of
21 knowledge, how?

22 MR. WARMAN: Just in terms of
23 observing their use within neo-Nazi and white
24 supremacist movements over the past 15 years.

25 MR. VIGNA: Now, the websites you

1 have mentioned here in the complaint form, can you just
2 go through them briefly and tell us what is the
3 difference or what each one is, which one we should be
4 more concerned with in terms of the respondent?

5 MR. WARMAN: The websites that are
6 indicated -- essentially there is the Freedom-Site,
7 which is simply freedom-site.org; there is the
8 Freedom-Site's forum and the URL for that is set up as
9 <http://chat.freedom-site.org>.

10 There is also the one posting that
11 was contained canadianheritage.com website, but
12 essentially the vast majority of the postings that were
13 found in this case were found on the website, the
14 Freedom-Site's forum.

15 MR. VIGNA: Do you want to describe
16 the pith and substance of the website Freedom-Site, can
17 you tell us what is contained in there?

18 Other than what you have outlined in
19 the complaint, can you tell us what the website talks
20 about? Does it talk about different events or what is
21 the general content of the website?

22 MR. WARMAN: Certainly. My
23 observations led me to believe that it would be
24 described as a conglomeration of material and groups
25 within the white supremacist and neo-Nazi movements and

1 items that were of interest to the members of those
2 groups.

3 MR. VIGNA: Just for general
4 information, is there another parallel website that you
5 can associate to the Freedom site that would be in the
6 States?

7 MR. WARMAN: In terms of being sort
8 of a conglomeration for where people would go within
9 those movements, there's a website called
10 stormfront.org and that's s-t-o-r-m-f-r-o-n-t.org and
11 it essentially -- over the years it's been a number of
12 different things and had different content on it, but
13 it's now all it is, essentially, is just a big
14 international forum for individuals within the white
15 supremacist and neo-Nazi movements to go and exchange
16 information, ideas and organize.

17 MR. VIGNA: I don't have any further
18 questions on the question of the complaint form. I
19 don't know if there is anything else you would like to
20 bring to our attention. If not, we'll go to tab 2.

21 MR. WARMAN: No, I don't believe so.
22 No, thank you.

23 MR. VIGNA: Okay.

24 I would like to bring you to tab 2.
25 Firstly, tell us in the first instance if you recognize

1 the document, then I will go through the questions in
2 relation to the document, if you do recognize it.

3 MR. WARMAN: Yes, I do. This is a
4 document from the Freedom-Site forum, it's a listing
5 of the results when I conducted a search under the
6 forum for Craig and Harrison and these are the results
7 that appeared as a result of that search.

8 I printed it off on the 23rd of
9 November, 2003 and submitted it to the Commission
10 pursuant to my complaint.

11 MR. VIGNA: So, you recognize this
12 document?

13 MR. WARMAN: I do.

14 MR. VIGNA: And this is a document
15 you printed?

16 MR. WARMAN: Yes, it is.

17 MR. VIGNA: Okay. I would like to
18 file this document as I believe 3.

19 REGISTRY OFFICER: List of results
20 for search of names Craig and Harrison printed on
21 23/11/03 will be filed as Commission Exhibit HR-3.

22 EXHIBIT NO. HR-3: List of
23 results for search of names
24 Craig and Harrison printed on
25 23/11/03

1 MR. VIGNA: Can you tell us why you
2 did the search on Craig and Harrison and what the
3 importance of this document is?

4 And we've heard also earlier in the
5 motion mention of the fact that there was a search done
6 by you, so tell us more about this.

7 MR. WARMAN: Essentially what had
8 happened was, when I was going through the Freedom-Site
9 forum I had noted repeated postings by the pseudonym
10 realcanadianson, all of which appeared to be quite
11 clearly in violation of section 13 of the Act and also
12 quite possibly the Criminal Code related to the wilful
13 promotion of hatred as well.

14 Those postings contained an email of
15 susen, s-u-s-e-n, @sympatico.ca and by doing further
16 google searches on that email address, I was able to
17 affiliate it with an individual named Craig Harrison.

18 What I did then was I returned to the
19 Freedom-Site website, conducted a search within their
20 forum, and you can see up at the top the left it says,
21 "message search results-guests".

22 There's a link just underneath that
23 that says "search messages" and then just underneath
24 that, although there's a hole for the hole punch
25 there, it says "message search results for Craig and

1 Harrison".

2 So, it wouldn't just have turned up
3 messages that were related -- that had the word Craig
4 in them, it wouldn't have just turned up messages that
5 were related to Harrison, it would have to be both
6 Craig and Harrison.

7 And that was nature of the search
8 that was conducted.

9 You'll see underneath it it indicates
10 that there were 71 messages that were found. All of
11 those messages that were returned were postings under
12 the pseudonyms realcanadianson and rump, and those
13 pages contain the listing of the links to those posts
14 numbered sequentially from 1 to 71.

15 They begin on 5/13/2002, meaning the
16 13th of May 2002, and that's the date beside post 71
17 that was returned as a result on this search, and they
18 continue until the actual -- two days before the search
19 was conducted being -- sorry, the last date of a post
20 there is the 21st of January, 2003 and that's contained
21 beside the posting numbered 1.

22 MR. VIGNA: Do I understand from what
23 you're saying that when you do the search the way you
24 did, Craig and Harrison, that all the 71 hits that you
25 have here they all have to include necessarily both the

1 word Craig and Harrison?

2 MR. WARMAN: Not the postings
3 themselves. What were returned were these and what
4 the -- the commonality between them was that all of
5 those posts were under the pseudonyms realcanadianson
6 or rump, there were no other postings that turned up
7 pursuant to that search.

8 There's not necessarily an indication
9 within the actual posts of the words Craig and
10 Harrison, but I think it's a fair inference to presume
11 that the name Craig Harrison was used to register the
12 two pseudonyms realcanadianson and rump.

13 MR. VIGNA: Just for our technical
14 knowledge, when you say there is an inference to be
15 made, how do you explain that for someone who is not
16 technically knowledgeable in computers?

17 MR. WARMAN: Yes. Certainly we heard
18 this morning from Ms Kulaszka that in order to register
19 a pseudonym on the website you needed to enter a
20 name -- excuse me, a first name, last name and valid
21 email address before the account could be authenticated
22 by replying to the email that was sent to the email
23 account that you had registered.

24 So, when I say I believe it's a fair
25 inference that the name Craig Harrison was used to

1 register those two pseudonyms, it's because those were
2 the only identities that were pulled up.

3 There were no postings that I was
4 able to identify from realcanadianson or rump that
5 weren't returned and there were no other identities
6 returned whatsoever other than those two specific
7 pseudonyms.

8 And given the fact that they didn't
9 necessarily mention -- in fact, to the best of my
10 knowledge virtually none of them mentioned Craig and
11 Harrison within the text of those actual messages, that
12 is the basis of my belief that Craig and Harrison were
13 the actual first name and last name used to register
14 those accounts.

15 And also -- excuse me, I should also
16 mention that much of the material -- we'll get to this
17 in later exhibits -- but much of the material is
18 self-referential to things that I discovered had
19 actually taken place within the history of Mr. Harrison
20 and that further led me to believe that that was an
21 accurate inference.

22 MR. HARRISON: (mumbling)

23 MR. VIGNA: Now, to follow up on your
24 last statement, if we look at that 3A, I'd like you to
25 look at the tab itself to see if you recognize it, the

1 date, and what is the importance of this tab.

2 And at the same time I would like to
3 say, Mr. Chair, this is for strictly the purposes of
4 identity.

5 MR. WARMAN: I do. This is a copy --
6 essentially after more information was becoming
7 available to me about Mr. Harrison, I then conducted a
8 google search on the name Craig and Harrison in
9 quotation marks, so, again, it couldn't return
10 something that was just Craig or Harrison it had to be
11 Craig Harrison together.

12 One of the things that I had noted
13 from postings was that a lot of the postings claimed
14 responsibility for having committed a violent racist
15 assault back in --

16 MR. HARRISON: It wasn't racist.

17 THE CHAIRPERSON: We'll adjourn at
18 this point.

19 MR. HARRISON: It wasn't racist.

20 THE CHAIRPERSON: We'll adjourn at
21 this point and come back when --

22 MR. HARRISON: Nothing racist about
23 it. Get it? Good.

24 Let's go have a smoke. This guy's a
25 jerk.

1 --- Upon recessing at 11:40 a.m.

2 --- Upon resuming at 12:00 a.m.

3 REGISTRY OFFICER: Order, please. Be
4 seated.

5 Is Craig Harrison in attendance at
6 these proceedings today, or is there anyone in
7 attendance who has been appointed to represent Craig
8 Harrison?

9 Mr. Chair, let the record reflect
10 that no response was received.

11 THE CHAIRPERSON: Thank you very
12 much.

13 We will adjourn until 1:30, take the
14 lunch break at this point.

15 If Mr. Harrison is not present at
16 1:30, the Tribunal will issue a subpoena for his
17 appearance tomorrow morning at 9:30, and if he doesn't
18 show up at that point, well, the Tribunal will make a
19 decision on proceeding without Mr. Harrison being
20 present.

21 But we will issue a subpoena at 1:30
22 if he is not present.

23 So, we will adjourn until 1:30.

24 Thank you.

25 REGISTRY OFFICER: Order, please.

1 --- Upon recessing at 12:05 p.m.

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

3 REGISTRY OFFICER: Order, please. Be
4 seated.

5 Is Craig Harrison in attendance at
6 these proceedings today? Is there anyone in attendance
7 who has been appointed to represent Craig Harrison?

8 Mr. Chair, let the record reflect
9 that no response was received.

10 THE CHAIRPERSON: Thank you very
11 much.

12 Now, for the benefit of Mr. Vigna and
13 Mr. Warman, we will explain what the Tribunal
14 procedures will be at this point since the respondent
15 is not here.

16 We will be serving by process server
17 to Mr. Harrison this afternoon a letter informing him
18 that the hearing of this Tribunal will resume tomorrow
19 morning at 9:30 and that if he is not in attendance at
20 that time that we will proceed without him at the
21 hearing, we will hear the evidence and certainly at
22 that point Mr. Harrison will have -- if he makes the
23 decision not to be present, will have to accept the
24 ruling of the Tribunal and live with his decision, but
25 we will at that time if he is not present proceed

1 without him.

2 So, we will adjourn until,
3 unfortunately, I am sorry about that inconvenience, but

4
5 we will adjourn until tomorrow
6 morning at 9:30.

7 I guess Mr. Vigna has something to
8 add.

9 Yes, Mr. Vigna?

10 MR. VIGNA: It's not in relation to
11 what you just said, just in relation to the logistics
12 and the other witnesses.

13 I want to inform the Tribunal that I
14 received after numerous phone calls the documents from
15 Bell Sympatico.

16 THE CHAIRPERSON: Yes.

17 MR. VIGNA: Unfortunately the
18 respondent is not here, so I'm not able to give him a
19 copy at this point.

20 THE CHAIRPERSON: Well --

21 MR. VIGNA: That's one of the
22 consequences.

23 THE CHAIRPERSON: -- that is one of
24 the consequences. If he is here tomorrow morning, you
25 will serve him with those documents at that time and if

1 he does not appear or if he is not represented at that
2 time, we will proceed without him with the complaint,
3 but he will be served this afternoon with the letter
4 informing him that we will adjourn until tomorrow
5 morning and resume at 9:30.

6 MR. VIGNA: The other thing in
7 relation also to the same issue, you have to
8 understand, we have somebody from Montreal, we've made
9 numerous phone calls now, the closest we can is
10 somebody from Ottawa.

11 The plan that we have and it's
12 conditional to the Tribunal agreeing to it, is that we
13 would put the individual on the train tomorrow morning
14 and would be here probably in the afternoon and then
15 would return at the end of the day.

16 That means that in the event we're
17 not -- we finished with Mr. Warman early in the
18 morning, we wouldn't be able to continue until the
19 arrival of the witness from Ottawa.

20 THE CHAIRPERSON: When do you expect
21 him to be here?

22 MR. VIGNA: They are making
23 arrangements so the person can take the train early in
24 the morning, so they probably would be here at one
25 o'clock, 1:30, around this time.

1 THE CHAIRPERSON: So, we could take
2 the lunch break at that point and resume with him, but
3 he would need to be available for cross-examination
4 also if Mr. Harrison is here tomorrow afternoon.

5 MR. VIGNA: Yeah.

6 THE CHAIRPERSON: There is no
7 possibility of him coming up tonight?

8 MR. VIGNA: That would cost us a lot
9 of money in the sense of a plane would have to booked,
10 the hotel.

11 What I would think, if the Tribunal
12 is okay for them being in the afternoon, if it goes
13 beyond tomorrow, we will make other arrangements.

14 THE CHAIRPERSON: Okay. Well, you
15 will certainly have to make arrangement if it goes
16 beyond tomorrow afternoon to stay.

17 MR. VIGNA: Yeah .

18 THE CHAIRPERSON: If there is
19 something that if we need him for more time tomorrow
20 afternoon, we will have to make arrangements at that
21 point.

22 MR. VIGNA: Yeah. I'll make
23 arrangements just tomorrow, if I see we are not
24 finished, we will extend the stay to the next day.

25 THE CHAIRPERSON: And we will

1 continue tomorrow morning with the evidence of
2 Mr. Warman where it was left off this morning.

3 MR. VIGNA: Right.

4 THE CHAIRPERSON: So, we will adjourn
5 until 9:30.

6 Thank you very much.

7 MR. VIGNA: Thank you, Mr. Chair.

8 --- Whereupon the hearing adjourned at 1:40 p.m.
9 to resume Tuesday, June 13, 2006 at 9:30 a.m.

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I HEREBY CERTIFY THAT I HAVE, to
the best of my skill and
ability, accurately reported and
transcribed the foregoing.

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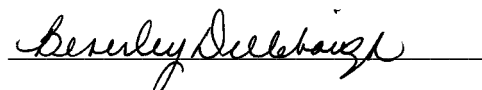
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C.S.R., R.P.R.