

1 Mr. Vigna had gotten up to object,
2 but the witness says that he doesn't know.

3 I don't know if that was in the
4 evidence. That's what I am saying, it might have been
5 in the evidence that I heard in that case, Ms Kulaszka.

6 MS KULASZKA: If someone is a
7 respondent at a hearing, in a complaint before the
8 Commission, and they are also the subject of either a
9 criminal charge or a search warrant, do you have an
10 arrangement with the police to exchange information
11 regarding that person?

12 MR. VIGNA: Mr. Chair, I object to
13 the question.

14 THE CHAIRPERSON: Why?

15 MR. VIGNA: Unless the question is
16 made more clear, because I don't quite understand --
17 Maybe the question could be better
18 specified. Then I wouldn't have a need to object.

19 MS KULASZKA: It is clear that in
20 several of these cases this is to be remedial
21 legislation. It is to ameliorate discrimination, and
22 yet, when we look at these cases, very often police
23 officers are being called to testify, and they are
24 using evidence that police powers have been used to
25 garner, and this evidence is being put forward in front

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1 of hearings to do with remedial legislation.

2 So I am trying to get at: What is
3 the relationship between the police and the Commission
4 in these cases.

5 THE CHAIRPERSON: Right. So let's
6 hear your question.

7 MS KULASZKA: That's my question.
8 What is the relationship between the police and the
9 Commission in these types of cases?

10 MR. VIGNA: Mr. Chair, I would object
11 under section 37, in terms of information that is
12 provided as part of the investigation.

13 It is known to the Tribunal, as part
14 of several hearings, that police officers were called
15 in Tribunal hearings. I don't think we need to know
16 more than that.

17 In any civil proceeding, it doesn't
18 impede a police officer, as a witness of certain facts,
19 to be called before the civil proceeding, also.

20 But if we go further than that, in
21 terms of trying to find out about investigation
22 techniques, and what has been said between the police
23 and --

24 THE CHAIRPERSON: I think what is
25 being alluded to, if I understood Ms Kulaszka's

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1 comments just before the question, is whether some sort
2 of protocol exists, or an understanding, between these
3 two actors on this stage, if I could use the term.

4 I think that is the point of her
5 question.

6 Is that correct, Ms Kulaszka?

7 MS KULASZKA: Yes.

8 THE CHAIRPERSON: I don't know to
9 what extent --

10 Let me back up a bit. That would
11 also, for them, be part of their ultimate submissions
12 on the larger question.

13 That is the specific question, Mr.
14 Vigna. Are you invoking section 37 to prevent this
15 witness from telling us if there is some sort of
16 understanding in place between police forces in Canada
17 and the Commission on the exchange of information?

18 Would that be the question, Ms
19 Kulaszka?

20 MS KULASZKA: Yes, the exchange and
21 use of information.

22 THE CHAIRPERSON: That is the
23 question.

24 Are you objecting under section 37,
25 Mr. Vigna?

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1 If you are, I would ask you to
2 specify to me the specific public interest being
3 invoked.

4 MR. VIGNA: If the question is
5 limited to only that specific question, but not to go
6 any further into the details, I will not object. But
7 if it goes further, I will object based on public
8 interest and investigation techniques.

9 THE CHAIRPERSON: I am going to ask
10 you to specify that every time from now on, just so it
11 is clear on the record.

12 You heard the question, sir?

13 MR. STEACY: Yes, I think I am clear.

14 We don't have any specific written
15 agreements with any police forces on the sharing of
16 information.

17 MS KULASZKA: Is there any kind of
18 oral agreement?

19 MR. STEACY: Yes.

20 MS KULASZKA: What is that?

21 MR. VIGNA: I object, Mr. Chair, on
22 the grounds that I mentioned earlier, investigation
23 techniques and the public interest.

24 MS KULASZKA: The question is the
25 same, except, is it written or oral?

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1 He said there was no written. I
2 asked was there oral, and he said yes.

3 So it's the same question.

4 MR. VIGNA: But she is asking
5 further, in terms of what the agreement is.

6 THE CHAIRPERSON: Are you invoking
7 section 37 of the Canada Evidence Act, that the
8 information should not be disclosed on the grounds of a
9 specified public interest?

10 And that specified public interest
11 is...?

12 MR. VIGNA: Jeopardizing the
13 investigations and the operations of the Commission, as
14 well as potential criminal investigations.

15 THE CHAIRPERSON: That is the answer.
16 They have invoked section 37. You will have it on the
17 transcript, Ms Kulaszka.

18 MS KULASZKA: You were the
19 investigator on a complaint filed by Andrew Guille
20 against an Alan Dutton, were you not?

21 MR. STEACY: Yes, I was.

22 MS KULASZKA: During the course of
23 writing your report you contacted the police in London,
24 did you not?

25 MR. STEACY: Yes, I did.

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1 MS KULASZKA: I will read from your
2 investigator's report.

3 For the Tribunal, that is found in
4 R-3, at Tab 3. The pages aren't numbered, but the
5 investigator's report is four pages from the back.

6 Mr. Steacy, I am going to read from
7 paragraph 10 of your investigator's report. It is
8 found at page 3 of 5.

9 THE CHAIRPERSON: This is the
10 investigation report in the Andrew Guille file.

11 MS KULASZKA: That's right.

12 This was a complained filed by Andrew
13 Guille against Mr. Dutton. Right?

14 MR. STEACY: I believe it was
15 actually against "recomnet".

16 Mr. Dutton is the Executive Director
17 of the organization that runs that website.

18 MS KULASZKA: I am looking at page 1,
19 which is the actual complaint, and the respondents were
20 Alan Dutton, Helmut-Harry Loewen, Dale Cornish and
21 Analogue Echo.

22 MR. STEACY: I believe that Analogue
23 Echo was taken out of the actual complaint.

24 The rest of what you have there
25 sounds correct.

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1 MS KULASZKA: At paragraph 10 of your
2 investigator's report you wrote:

3 "On July 13, 2006, the
4 investigator interviewed Sgt.
5 Don McKinnon of the London
6 Police Force. He indicated that
7 Mr. Guille's contention that he
8 is not a member of any white
9 supremacist or neo-Nazi
10 organization is technically
11 correct because none of these
12 organizations compile membership
13 lists. However, he advised that
14 Mr. Guille is known by the
15 police to be closely associated
16 with white supremacist
17 organizations in the
18 southwestern Ontario region. He
19 indicated that he also has
20 pictures of Mr. Guille partying
21 with white supremacists at
22 several different rallies that
23 they have held in southwestern
24 Ontario."

25 To get that information did you just

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1 call up Sgt. McKinnon?

2 MR. STEACY: Yes.

3 MS KULASZKA: And he freely gave you
4 this information?

5 MR. STEACY: Yes.

6 MS KULASZKA: Is he a member of the
7 Hate Crimes Unit down there?

8 MR. STEACY: I believe so.

9 MS KULASZKA: Is it understood,
10 basically, that if you need information, they will
11 freely give that information to you concerning people
12 of interest?

13 MR. STEACY: I wouldn't characterize
14 it that they would freely give me any information.

15 MS KULASZKA: Are there any rules
16 about confidentiality of this type of information that
17 the police may have on people?

18 MR. STEACY: You would have to ask
19 the police.

20 MS KULASZKA: But as far as your
21 experience at the Commission is concerned, they will
22 basically give you any kind of information you want
23 about someone?

24 MR. STEACY: No, that's not correct.

25 MS KULASZKA: Have you been refused

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1 information?

2 MR. STEACY: Yes.

3 MS KULASZKA: What kind of
4 information?

5 MR. VIGNA: Objection, Mr. Chair.
6 Section 37. What kind of information is being obtained
7 or refused, I think it would be part of the
8 investigative privilege.

9 THE CHAIRPERSON: Say that again?

10 MR. VIGNA: Section 37. Public
11 interest. The information that would be disclosed or
12 not disclosed, I think, would be all part of the same
13 privilege, the public interest privilege, that this
14 type of information does not need to be put in the
15 public domain.

16 THE CHAIRPERSON: Okay. You have
17 mixed up the terms, but I gather you are invoking the
18 exact same reasons that you just invoked earlier,
19 section 37?

20 MR. VIGNA: Yes.

21 THE CHAIRPERSON: It is noted for the
22 record.

23 Ms Kulaszka?

24 MS KULASZKA: How often do you think
25 you would use the police as a source of information in

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1 doing your investigations?

2 MR. STEACY: It would depend on the
3 case.

4 MS KULASZKA: Is it a regular feature
5 of your investigations?

6 MR. STEACY: Again, it would depend
7 on the case.

8 MS KULASZKA: What would it depend
9 on?

10 MR. STEACY: It would depend on the
11 information that was gathered during the investigation
12 process.

13 In the normal course, I don't pick up
14 the phone and call any police department on a section
15 13 complaint.

16 MS KULASZKA: Why did you call police
17 in this instance?

18 MR. STEACY: Based on the information
19 that was put forward by the respondent, and the fact
20 that they had, in their documentation, intimated that
21 Mr. Guille was involved with white supremacist
22 organizations, and Mr. Guille had said no, that he
23 wasn't, basically the information in the file came back
24 that -- I was sort of in the situation where I had
25 one -- it was a "he said/he said" sort of situation,

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1 and I attempted to verify the validity of the
2 statements.

3 MS KULASZKA: What did it matter who
4 Mr. Guille was?

5 MR. STEACY: It mattered in the sense
6 that the respondent had raised it as an issue to the
7 veracity of the complaint.

8 MS KULASZKA: The veracity of the
9 complaint?

10 MR. STEACY: Basically they were
11 alleging that the complaint was trivial or frivolous,
12 vexatious, and made in bad faith.

13 MS KULASZKA: In fact, you found that
14 there had been a violation of section 13 on that
15 website.

16 It was "recomnetwork", was it not?

17 MR. STEACY: Yes. I found that there
18 had been a technical violation of section 13.

19 MS KULASZKA: In fact, there were
20 many postings on that website that were quite racist,
21 were there not?

22 MR. STEACY: There were postings on
23 the website that would have fallen within the test of
24 13(1), yes.

25 I don't remember the exact number.

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1 THE CHAIRPERSON: Did you just say
2 that you made a finding that there was a technical
3 violation of section 13?

4 MR. STEACY: Yes, sir.

5 THE CHAIRPERSON: But your ultimate
6 recommendation, as I read it here, was that the
7 complaint be dismissed. Right?

8 MR. STEACY: Yes.

9 MR. VIGNA: I would refer you to
10 paragraph 22, Mr. Chair.

11 THE CHAIRPERSON: I see. The summary
12 is there.

13 MS KULASZKA: Yes, it starts at
14 paragraph 21, which states:

15 "In this context, CAERS appears
16 to have technically violated
17 section 13 of the Act by
18 allowing postings containing
19 hatred to appear on its website.
20 As well, CAERS allowed many of
21 the links to neo-Nazi and white
22 supremacist organizations
23 contained within Mr. Warman's
24 complaints to remain active,
25 thereby allowing Internet users

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1 to directly access the potential
2 hate websites. During the
3 course of investigation, Alan
4 Dutton, Director of CAERS,
5 stated in an interview with the
6 investigator that he was not
7 aware that the hyperlinks were
8 active. He also stated that as
9 for the postings, these were
10 being placed on Recomnetwork.org
11 in order to embarrass CAERS and
12 prevent them from carrying out
13 their anti-racist work. He then
14 stated that Recomnetwork.org was
15 taking steps to install filters
16 that would prevent these
17 harassing postings."

18 Is that correct?

19 MR. STEACY: Yes.

20 MS KULASZKA: So your summary was
21 that, although section 13 had been violated, CAERS had
22 taken steps to prevent individuals from posting
23 material that could be considered offensive and/or
24 hateful and had reorganized its website so that
25 postings could not occur without being monitored.

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1 Is that right?

2 MR. STEACY: Yes. As well, they
3 killed the hyperlink, so that if you clicked on it you
4 couldn't go to the link.

5 MS KULASZKA: Your recommendation was
6 that the Commission shouldn't deal with the complaint,
7 and one of the reasons was that the matter had been
8 redressed.

9 MR. STEACY: Yes.

10 MS KULASZKA: Is this a typical
11 procedure for the Commission, that if the respondent
12 has redressed the situation complained of, and the
13 material is removed, that, in fact, the recommendation
14 is that the matter not go to a tribunal?

15 MR. STEACY: Typical? Again, it will
16 depend on all of the facts of the case.

17 MS KULASZKA: I have just given you
18 the facts.

19 MR. STEACY: Based on the facts that
20 I put in that investigation report, I made a
21 recommendation.

22 MS KULASZKA: Yes, and that is what I
23 am saying to you. The matter had been redressed. They
24 had removed the hyperlinks. They had reorganized their
25 website to make sure that the postings couldn't appear,

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1 or they were removed --

2 Were they removed?

3 MR. STEACY: The postings were
4 removed, yes.

5 MS KULASZKA: Would it be the policy
6 of the Commission that, at that point, the complaint
7 should not go to a tribunal?

8 That would be your recommendation?

9 MR. STEACY: On this case, yes.

10 MS KULASZKA: What kind of directions
11 are you given in these matters?

12 Are you given guidelines about the
13 kinds of actions that you would recommend, given what a
14 respondent has done?

15 MR. STEACY: What would happen is,
16 once I completed my investigation report, the report
17 would be submitted to the Anti-hate Team, and it would
18 be discussed, and if everybody on the team was in
19 agreement with the appropriateness of the report, it
20 would then be disclosed to the complainant and the
21 respondent.

22 If, during the discussion of the
23 Anti-hate Team, members felt that something more was
24 needed, or they didn't necessarily agree with the
25 recommendation, it would be discussed and it could

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1 involve more investigation or it could involve that the
2 investigation report would then be sent on to our Case
3 Support Committee for review.

4 In this case it was determined that
5 the team felt that CAERS had taken the appropriate
6 steps to try to resolve the issues that were being
7 complained of.

8 MS KULASZKA: When you started doing
9 section 13 complaints, what kind of training were you
10 given?

11 MR. STEACY: I wasn't given any
12 specific training, other than the investigative
13 training that I had received at the Commission.

14 MS KULASZKA: What about identifying
15 hate material?

16 MR. STEACY: I wasn't given any
17 specific training by an outside organization or another
18 organization on hate material.

19 MS KULASZKA: What about within the
20 Commission itself?

21 MR. STEACY: It was on-the-job
22 training.

23 MS KULASZKA: So what kind of
24 training were you given?

25 MR. STEACY: I learned on the job. I

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1 learned through what was at the Tribunal with the
2 Zündel case and what had been put forward in Nealy and
3 Taylor. This was the basis for what hatred and the
4 elicitation of hatred and contempt should be.

5 MS KULASZKA: Are you given any kind
6 of policy guidelines that you must follow during an
7 investigation -- general policy guidelines in handling
8 an investigation?

9 MR. STEACY: Yes, we have our
10 Policies and Procedures Manual.

11 MS KULASZKA: In that manual, are you
12 given any direction about what action you should take
13 when a respondent takes down the offensive material?

14 MR. STEACY: I don't believe there is
15 anything specific about that in the manual.

16 MS KULASZKA: Did you speak with Alan
17 Dutton during this investigation?

18 MR. STEACY: Yes.

19 MS KULASZKA: On the telephone?

20 MR. STEACY: Yes.

21 MS KULASZKA: In those telephone
22 conversations, you made him aware of your concerns?

23 MR. STEACY: Yes, I did.

24 MS KULASZKA: And asked him how he
25 could redress the situation?

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1 MR. STEACY: Yes, I did.

2 MS KULASZKA: How many conversations
3 do you think you had?

4 MR. STEACY: I had a couple of
5 conversations with him.

6 MS KULASZKA: Did he send you letters
7 indicating what progress was being made to redress the
8 situation?

9 MR. STEACY: I was provided
10 correspondence, yes.

11 MS KULASZKA: Your goal as an
12 investigator under section 13 is what?

13 MR. STEACY: As in any investigation,
14 it is to gather the facts presented by the complainant
15 and the respondent and write a report, so that the
16 facts are before the commissioners, so the
17 commissioners can make a decision.

18 MS KULASZKA: But in this case you
19 went beyond that, didn't you? You actually talked to
20 Alan Dutton and you expressed your concerns.

21 You have a conversation, isn't that
22 right, and he determines how he can have this complaint
23 dismissed?

24 MR. STEACY: The Act allows, at any
25 time during the course of a complaint process, the

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1 Commission to attempt to settle the case.

2 MS KULASZKA: Is that what you were
3 doing?

4 A. Yes, I guess.

5 One of the things we ask a
6 complainant in the complaint process -- in the
7 process -- is what they are looking for to resolve the
8 complaint.

9 As you have stated, our Act is
10 remedial.

11 We ask all complainants what they are
12 looking for to resolve the complaint, and Mr. Guille
13 had outlined that in his correspondence, and it was
14 apparent from the information that had been provided by
15 Mr. Dutton that there appeared to be a possibility of
16 rectifying the complaint through settlement.

17 However, that didn't sort of come to
18 fruition, so there is not a settlement document, there
19 is an investigation report, which sort of outlines the
20 steps that happened -- or what happened, and the
21 recommendation.

22 MS KULASZKA: There are sort of two
23 ways that things can go.

24 The parties can agree to mediate, the
25 Commission can order conciliation, and the third way is

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