

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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1 through the investigator. The investigator can contact
2 the respondent and let them know what needs to be done
3 to have the matter resolved, which is what you did.

4 MR. STEACY: In essence, yes.

5 That is a generalization, but, yes.

6 MS KULASZKA: In the Guille case, as
7 well, you state at paragraph 23:

8 "The investigator reviewed the
9 material on CAERS' website and
10 it would appear that the
11 documents are the actual
12 complaint forms made by Richard
13 Warman. As such, the
14 reproduction of the said
15 material has been used for
16 educational purposes and not to
17 elicit hatred and/or contempt
18 within the ambit of section 13
19 of the Act."

20 Of what relevance is why the material
21 was posted?

22 Say that it was for educational
23 purposes. Is intent relevant under this Act?

24 MR. STEACY: No.

25 MS KULASZKA: So why did you even

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1 include this in your report?

2 MR. STEACY: It's context. It's the
3 context of what and why the information was on that --

4 MS KULASZKA: You are speaking about
5 intent, Mr. Steacy, not context.

6 MR. STEACY: No. If intent -- if it
7 was otherwise, the recommendation would have been to
8 dismiss without the proviso that there had been a
9 technical violation.

10 MS KULASZKA: So you are looking at
11 motivation -- intent.

12 MR. STEACY: No.

13 MS KULASZKA: So if your motivation
14 is for education, and your motivation isn't hostile,
15 that makes all the difference to you.

16 MR. STEACY: I wouldn't paraphrase it
17 like that, no.

18 I don't look at motivation, and I
19 don't look at intent, I look at the facts of the case
20 that are presented by both parties, and, as our Act is
21 remedial, if there is a way to resolve the issues that
22 are being complained of for both the respondent and the
23 complainant, then, as an investigator, I will try to
24 pursue that in any case. If I can resolve it that way,
25 then I do that. If I can't, I can't.

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1 It's a matter of the facts that are
2 presented by the parties in the case.

3 I don't look at motivation or intent.

4 MS KULASZKA: In this case, the
5 material was reproduced, and you said that it has been
6 used for educational purposes and not to elicit hatred.
7 That goes to the intent of using the information.

8 MR. STEACY: That is the position of
9 the respondent, that that is the reason they had it on
10 the website.

11 MS KULASZKA: So you really don't
12 have any problem with racist material being posted, as
13 long as it is for a good purpose.

14 MR. STEACY: I can't answer that
15 question.

16 It is not my job as a civil servant
17 to have problems with or not problems with anything
18 that is posted on any website. If somebody complains
19 that there is a violation of section 13(1), I am given
20 a file and I process that file regardless of who the
21 complainant is or who the respondent is.

22 I do the same thing with any file
23 that I get. If it's a complaint on religion, colour,
24 national or ethnic origin, disability, I process the
25 file and the complaint that is given to me. It is not

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1 my job to say who is right or who is wrong. It is not
2 my job as an investigator to do that. I gather facts,
3 provide the information in a report, and, yes, there is
4 a recommendation for the commissioners, but the
5 commissioners make the ultimate decision, not me.

6 MS KULASZKA: But you would agree
7 that this complaint included such things as this
8 posting:

9 "Lousy kikes. They are always
10 bitching about the holohoax.
11 Hitler should have gassed them
12 all and we shouldn't have this
13 problem. The same with the
14 worthless gypsies."

15 It was that kind of thing, wasn't it?

16 MR. STEACY: Pardon me?

17 MS KULASZKA: It was those kinds of
18 postings.

19 THE CHAIRPERSON: Where are you
20 reading from?

21 MS KULASZKA: I am reading from the
22 actual complaint.

23 It is the same tab, and it is the
24 third page from the front.

25 MR. STEACY: That was what was being

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1 complained of by Mr. Guille in his complaint. Those
2 are his allegations as to what was there.

3 MS KULASZKA: Did you view that
4 online?

5 MR. STEACY: I am trying to remember
6 now. I don't recall if I viewed that specific posting,
7 but when I went in and looked at the website, there
8 were postings, yes.

9 MS KULASZKA: In this complaint,
10 CAERS said that the matter was trivial, frivolous,
11 vexatious or in bad faith, and they provided you with a
12 posting from Stormfront.org. It was by a user with the
13 pseudonym Fenrisson. Correct?

14 MR. STEACY: Yes.

15 MS KULASZKA: You talk about that at
16 paragraph 7 of your report, and you quote from the
17 Fenrisson post that had been provided to you by CAERS,
18 and the post says:

19 "For the rest of us we can use
20 the CHRC to our advantage. As
21 it costs no more than the price
22 of an envelope you can file a
23 claim against someone without
24 fear of legal retaliation as you
25 are protected by the CHRC from

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1 such. Should someone who comes
2 after our own say or do
3 something that even remotely
4 contravenes the rules of the
5 commission...they may find that
6 they are suddenly swamped with
7 dozens of claims against them.
8 If nothing else it bogs down an
9 already stressed system designed
10 to destroy us, all for the price
11 of a letter."

12 Did you ask Mr. Guille if he had
13 written that post?

14 MR. STEACY: I believe I asked him if
15 he was aware of the post when I sent him the
16 respondent's summary of the information that they
17 provided. I don't recall if I asked him if he wrote
18 that, but I do recall asking him if he was aware of it.

19 MS KULASZKA: And was he?

20 MR. STEACY: He indicated that he
21 wasn't.

22 MS KULASZKA: The Fenrisson post is
23 located at Tab 17 of the large binder, which is R-17.
24 It is page 5, at the bottom.

25 Perhaps your assistant could give you

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1 an idea of what that posting is, so you could identify
2 it.

3 Were you given a copy of the entire
4 posting?

5 --- Pause

6 MR. STEACY: Could you repeat the
7 question, please?

8 MS KULASZKA: I just wanted you to
9 identify the posting as the one that you were given by
10 CAERS.

11 MR. STEACY: Yes.

12 MS KULASZKA: That is the posting?

13 MR. STEACY: Yes.

14 MS KULASZKA: I would like to produce
15 that posting.

16 THE CHAIRPERSON: Just page 5?

17 MS KULASZKA: I think we could just
18 produce pages 5 and 6. The rest of it really isn't
19 necessary.

20 THE CHAIRPERSON: But is it a
21 continuum?

22 MS KULASZKA: It is part of a whole
23 thread that this Fenrisson --

24 Unless you want the whole thread --

25 THE CHAIRPERSON: I am a little

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1 concerned when we don't include the whole thread,
2 because it may become an issue as to what date it was,
3 or whatever, and you are able to see that from the
4 front page and so on.

5 MS KULASZKA: Then, could we produce
6 the whole thread?

7 THE CHAIRPERSON: Is there an
8 objection?

9 MR. VIGNA: No, I don't have an
10 objection, but it is not related to this witness,
11 obviously.

12 THE CHAIRPERSON: All right. We will
13 produce the whole tab.

14 MS KULASZKA: Mr. Steacy, do you have
15 any proof that Mr. Guille wrote that posting?

16 MR. STEACY: I never indicated in the
17 report that he did write that posting.

18 MS KULASZKA: And you had no proof
19 that he was aware of it?

20 MR. STEACY: He indicated that he had
21 no awareness of it.

22 MS KULASZKA: Do you know who
23 Fenrisson is?

24 MR. STEACY: I have an idea of who he
25 is.

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1 MR. VIGNA: Mr. Chair, I object to
2 speculation on matters that Mr. Steacy doesn't know
3 anything about.

4 THE CHAIRPERSON: He just said that
5 he has an idea of who it is. Perhaps he knows.

6 MR. STEACY: In stating that I have
7 an idea of who he is, I haven't gone into any great
8 detail to track down who specifically, to make sure
9 that what I found --

10 I haven't verified it. So for me to
11 say that it is specifically an individual, I can't do
12 that because I haven't verified it.

13 THE CHAIRPERSON: So your concern is
14 that you would be --

15 MR. STEACY: Saying that I know who
16 it is, when it isn't that person, because I haven't
17 taken the steps to determine if it is that individual.

18 THE CHAIRPERSON: Is it really
19 relevant, Ms Kulaszka?

20 MS KULASZKA: No. I don't want him
21 naming somebody if he doesn't --

22 THE CHAIRPERSON: It might be a false
23 accusation.

24 MS KULASZKA: No, I don't want that.
25 What steps would you take to identify

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1 who Fenrisson is?

2 MR. VIGNA: Mr. Chair, I don't think
3 that is relevant. Indirectly, it goes, again, to
4 investigation techniques.

5 But, even before that, what is the
6 relevance of finding out what the steps are to find out
7 who Fenrisson is in terms of the constitutional
8 argument or even the case on the merits?

9 THE CHAIRPERSON: Do you need the
10 steps themselves, Ms Kulaszka?

11 We have heard a lot about these steps
12 already, haven't we?

13 MS KULASZKA: It would show the
14 extent to which they can identify somebody making these
15 postings.

16 THE CHAIRPERSON: And then what?
17 The purpose being?

18 Is there a broader purpose?

19 MS KULASZKA: Yes, there is a broader
20 purpose that I would like to base an argument on.

21 THE CHAIRPERSON: Go on. You are
22 afraid to say --

23 MS KULASZKA: My concern is that the
24 postings by Mr. Warman were made under the pseudonym
25 "Axe to Grind" --

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1 THE CHAIRPERSON: Yes.

2 MS KULASZKA: -- and was there any
3 way they could find out who was making those postings.

4 Did they realize it was Mr. Warman?

5 Did you know that Mr. Warman was
6 making posts on Stormfront.org?

7 THE CHAIRPERSON: We are on a
8 different line now.

9 MR. STEACY: No, I didn't become
10 aware of it until it was in the Tribunal documentation.

11 MS KULASZKA: Did you know that he
12 made posts on VNN?

13 MR. STEACY: No, I did not.

14 MS KULASZKA: Were complaints
15 subsequently made about those postings?

16 MR. STEACY: There is a complaint in
17 process right now, yes, from Mr. Lemire about Mr.
18 Warman's postings.

19 MS KULASZKA: Mr. Kulbashian, did he
20 lay a complaint?

21 MR. STEACY: Mr. Kulbashian has put
22 in several complaints.

23 MS KULASZKA: Okay. Let's go back to
24 the Fenrisson post. How did you use the Fenrisson post
25 in the Andrew Guille complaint?

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1 MR. STEACY: It was part of what was
2 provided by the respondent in their defence as to what
3 was happening with the complaint.

4 MS KULASZKA: Did you rely on the
5 Fenrisson post for any of your findings and
6 recommendations?

7 MR. STEACY: No.

8 MS KULASZKA: Why did you find the
9 complaint to be frivolous?

10 MR. STEACY: Based on the definition
11 and the policy and procedure guidelines that the
12 Commission has under that section, that is sort of
13 where it fell.

14 MS KULASZKA: Why?

15 MR. STEACY: Because the complainant,
16 in pursuing the complaint, had suggested -- or in his
17 documentation said that he was looking for a specific
18 remedy, and when the respondent covered that or
19 decided -- agreed that they would fix what he was
20 complaining of, he continued with the complaint.

21 MS KULASZKA: Does that make it
22 vexatious?

23 MR. STEACY: It would depend on all
24 of the specifics of the case.

25 MS KULASZKA: But, in this case, you

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1 did recommend that the complaint was vexatious.

2 MR. STEACY: I think my
3 recommendation is the specific section of the Act, and
4 those are the --

5 We have certain prescribed --

6 When we make a recommendation, we
7 have prescribed recommendation wording that the
8 Commission requires we use.

9 THE CHAIRPERSON: Ms Kulaszka, I want
10 to be fair to this witness, who cannot read the text at
11 this time. I think it would be fair to let him read
12 the exact statement that is made at paragraph 27.

13 MS KULASZKA: Yes. Paragraph 27
14 states:

15 "It is recommended, pursuant to
16 paragraph 41(1)(d) of the
17 Canadian Human Rights Act, that
18 the Commission not deal with the
19 complaint because:

20 - The complaint is trivial,
21 frivolous, vexatious, and/or
22 made in bad faith and;
23 - The matter has been
24 redressed."

25 THE CHAIRPERSON: Let's even put the

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1 punctuation in here. I think it's important:
2 "...trivial, frivolous, vexatious, and/or made in bad
3 faith and;..." -- the next line -- "The matter has been
4 redressed."

5 MR. STEACY: The first part of that,
6 preceding "The matter has been redressed" -- the first
7 part of that is the wording from the Act, and it is
8 required wording that I, as an investigator, have to
9 us, or that any other investigator has to use under
10 that section of the Act.

11 MS KULASZKA: You have in paragraph
12 25 of your report:

13 "Mr. Guille would like CAERS to
14 remove the hate messages from
15 its website and an undertaking
16 by CAERS to prevent future
17 publication of hate messages on
18 its website. He would also like
19 CAERS to issue a public apology
20 and is seeking \$5,000 in
21 damages."

22 Is that right?

23 MR. STEACY: Yes, that's what he
24 indicated he was seeking.

25 MS KULASZKA: That is what Mr. Guille

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1 wanted. He wanted it to go to a tribunal, and those
2 were the remedies he wanted.

3 MR. STEACY: Yes.

4 MS KULASZKA: In that investigation,
5 at paragraph 11, you stated that you also interviewed
6 Matthew Lauder.

7 Is Matthew Lauder a regular
8 consultant for the Commission?

9 MR. STEACY: He is not a consultant
10 for the Commission.

11 MS KULASZKA: Is he someone who you
12 would consult with on an informal basis?

13 MR. STEACY: As I said, he is not a
14 consultant. We don't have consultants, per se, like
15 that.

16 MS KULASZKA: Is he someone you would
17 phone for information?

18 MR. STEACY: Not on a regular basis.
19 This is the first time he has ever been spoken to as a
20 witness in a case.

21 MS KULASZKA: Why did you phone him?

22 MR. STEACY: Because there had been
23 some indication within the documentation I received in
24 the file that Matthew Lauder was aware of who Mr.
25 Guille was, and it was done in an attempt to verify the

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1 position of the respondent, or not verify the position
2 of the respondent.

3 MS KULASZKA: In essence, you did a
4 very large investigation of the complainant in this
5 case.

6 You go to the police, you go to
7 Matthew Lauder -- correct?

8 MR. STEACY: I wouldn't characterize
9 it as a large investigation on the complainant.
10 Certain issues were raised about the complainant, and
11 if those issues had been raised about the respondent, I
12 would have done the same thing to verify that
13 information.

14 It was done in the process of
15 verifying facts.

16 MS KULASZKA: In the case of Mr.
17 Warman, he has laid many complaints with the Commission
18 under section 13, and you must be aware that he has
19 given a speech to the ARA, and probably elsewhere,
20 about how he is using these complaints to disrupt his
21 opponents. Maximum disruption he calls it. It keeps
22 them busy. They are so busy defending themselves that
23 they haven't got time to do anything else.

24 Have you ever investigated Mr. Warman
25 for how he is using these complaints?

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1 MR. STEACY: I am aware of what has
2 been in the press about him and what he has said in the
3 press, and in investigation reports there is
4 information about Mr. Warman and his activities.

5 MS KULASZKA: Have you ever
6 investigated his activities?

7 MR. STEACY: Specifically, I have
8 never investigated Mr. Warman's activities. It's not
9 my job to investigate Mr. Warman's activities.

10 MS KULASZKA: But if a future
11 complaint is made by Mr. Warman and the respondent
12 gives you this type of information and says that it is
13 frivolous and vexatious, you would investigate that,
14 would you not?

15 MR. STEACY: Yes, I would.

16 MS KULASZKA: The Fenrisson post came
17 up in another one of your investigations, did it not?

18 MR. STEACY: I don't believe so. I
19 know that it was referred to in another investigation,
20 but I don't believe that I was the investigator in that
21 case.

22 MS KULASZKA: Do you know who that
23 was?

24 MR. STEACY: My recollection is that
25 it was probably Sandy Kozak.

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1 MS KULASZKA: Why would the Fenrisson
2 post be relied upon to dismiss a complaint?

3 MR. STEACY: I didn't investigate
4 that case. You would have to speak to Ms Kozak.

5 MS KULASZKA: When a complaint is
6 received, there is a form letter that is sent to the
7 respondent, and a number of things are asked for.

8 We will go to that form letter so
9 that we can see exactly what it is.

10 You are familiar with that letter?

11 MR. STEACY: Yes. It is generally
12 called our notification letter.

13 MS KULASZKA: An example in this case
14 is at Tab 1 of R-1.

15 Page 1 of 2 is what you would call
16 the notification letter?

17 Did you do any work on the Marc
18 Lemire case?

19 MR. STEACY: Against FreedomSite?

20 MS KULASZKA: Any work on this case,
21 yes.

22 MR. STEACY: FreedomSite, no, I did
23 not.

24 I was away on leave when this case
25 was investigated.

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1 MS KULASZKA: Page 2 of the
2 notification letter states as follows:

3 "At this time, I would
4 appreciate received by March 9,
5 2004 your position regarding the
6 allegations including, but not
7 limited to, the following:
8 1. Do you own and/or control
9 the www.freedomsite.org and
10 http://chat.freedomsite.org
11 websites? If not, who owns
12 and/or controls these websites?
13 What is..."

14 I won't repeat the URLs. They give
15 the two URLs:

16 "...present Internet address
17 (URL)?
18 2. What is the purpose of the
19 www.freedomsite.org?
20 3. What is the intent of the
21 information/documentation posted
22 on the websites?
23 4. Who is responsible for
24 editing and/or posting the
25 content of the

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1 information/documentation on the
2 websites?

3 5. How are the documents (e.g.)
4 being posted on the
5 www.freedomsite.org and..."

6 I will just say "freedomsite.org
7 websites."

8 "6. Who is your present
9 Internet Service Provider (ISP)?
10 Where is it located? Please
11 provide a copy of the ISP's
12 arrangement. Please provide a
13 copy of the agreement with ISP."

14 We will go back to these questions.
15 What is the purpose of Point 3, which
16 is:

17 "What is the intent of the
18 information/documentation posted
19 on the websites?"

20 MR. STEACY: The question is being
21 asked to determine the purpose of the website.

22 MS KULASZKA: And why would you ask
23 that?

24 MR. STEACY: I guess that it was
25 asked to determine whether it was structured to elicit

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1 hatred and/or contempt and possibly violate section 13
2 of the Act.

3 MS KULASZKA: But isn't that your job
4 as an investigator?

5 MR. STEACY: Is it my job as an
6 investigator to make that determination?

7 MS KULASZKA: Yes. Isn't it your job
8 to --

9 MR. STEACY: Yes, but I have to
10 gather information from both parties. I can't just
11 say, "Oh, there it is...", without understanding the
12 nature of the information or why that information was
13 posted.

14 As an investigator you are gathering
15 facts, and both parties have a right to provide a
16 position.

17 MS KULASZKA: Why do you ask who the
18 ISP is?

19 MR. STEACY: We want to know who the
20 ISP is in order to determine, in some cases,
21 jurisdiction. As well, if there is information that
22 could be deemed in violation of section 13, and we
23 can't get the cooperation of the parties to have that
24 information removed, one thing we could do is go to the
25 ISP and ask them to remove it.

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1 That would be done, obviously, well
2 after the complaint has been heard by the Commission
3 and/or the Tribunal.

4 MS KULASZKA: But, in some instances,
5 like the B.C. White Pride case, there was no decision.
6 In fact, that letter was written before there was any
7 kind of decision by the Tribunal.

8 MR. STEACY: That could be done.

9 As I said, the investigative powers
10 that we have are fairly broad, and it depends on the
11 nature of the case.

12 MS KULASZKA: What do you mean by the
13 ISP's arrangement?

14 MR. STEACY: The service contract
15 that the individual has with their ISP.

16 MS KULASZKA: What are you looking
17 for in that arrangement?

18 MR. STEACY: To see if the ISP
19 contract has a statement about what an individual can
20 or cannot present on their website.

21 MS KULASZKA: Would that be called an
22 Acceptable Use Policy?

23 MR. STEACY: It might be.

24 MS KULASZKA: If someone did provide
25 you with that agreement or arrangement, and you found

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1 that there was no Acceptable Use Policy in it, would
2 you contact the ISP and ask them why they don't have
3 such a clause?

4 MR. STEACY: We might.

5 MS KULASZKA: Have you done that?

6 MR. STEACY: I haven't.

7 MS KULASZKA: To your knowledge, have
8 other people at the Commission?

9 MR. STEACY: I don't know.

10 MS KULASZKA: Would you like to take
11 a break at this time?

12 THE CHAIRPERSON: That would be fine.

13 MR. VIGNA: I was wondering about Mr.
14 Goldberg and what time I should tell him to be here
15 tomorrow, because, for sure, he will not be needed
16 today.

17 THE CHAIRPERSON: I think it is quite
18 clear that he will not be needed today.

19 MR. VIGNA: I will call him at the
20 break, if that is agreeable.

21 MS KULASZKA: That's agreeable.

22 --- Upon recessing at 3:20 p.m.

23 --- Upon resuming at 3:50 p.m.

24 MS KULASZKA: Mr. Steacy, you were
25 talking before about context and how important it is

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1 when you do your investigation. What value do you give
2 freedom of speech when you investigate one of these
3 complaints?

4 MR. STEACY: Freedom of speech is an
5 American concept, so I don't give it any value.

6 MS KULASZKA: Okay. That was a clear
7 answer.

8 MR. STEACY: It's not my job to give
9 value to an American concept.

10 MS KULASZKA: I will give you an
11 example. The AOL complaints you spoke about earlier
12 and you said that they dealt with postings about the
13 same-sex marriage debate.

14 Is that right?

15 MR. STEACY: Yes.

16 MS KULASZKA: Did you give any kind
17 of consideration to the fact that people were
18 participating in a political debate at the time?

19 MR. STEACY: Yes.

20 MS KULASZKA: How did you do so?

21 MR. STEACY: In evaluating the
22 information or the postings that were given by the
23 posters, what was looked at were the arguments that
24 were being made by the complainant and/or the
25 respondent, and basically the positions of the parties.

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1 In one case, one of the respondents
2 put the issue forward of freedom of expression. That
3 was part of his defence, and what he had posted was
4 what he had posted. That information was provided to
5 the complainant for his comment, and, again, based on
6 the facts raised or the information provided by both
7 parties, that is what was presented in the
8 investigation report.

9 I didn't make a value judgment as to
10 whether or not the complainant or the respondent --
11 that the positions they were taking were right or
12 wrong, I presented both parties' positions.

13 My job is not to evaluate the intent
14 or the reasons why the individual posted what he
15 posted, or evaluate the reasons why the complainant is
16 complaining. He has made an allegation and my job is
17 to investigate whether it happened and, based on the
18 pertinent facts, I come up with a recommendation, and
19 that recommendation is presented to the Commission and
20 the Commission makes the decision to deal with it or
21 not to deal with it, and it recommends what it is
22 allowed to recommend.

23 MS KULASZKA: Do you take into
24 account, for instance, in that case, that there is a
25 political debate, it is very heated, and that people

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1 might get emotional about it?

2 MR. STEACY: Yes, that was one of the
3 factors that was taken into account in one of the
4 cases.

5 But, at the same point in time, the
6 comments and how far they went, and where they went,
7 and the level of the intensity that they went, was also
8 factored into the position of the parties.

9 MS KULASZKA: So if someone claims
10 freedom of speech for what they said, it is rejected
11 out of hand?

12 MR. STEACY: If somebody is claiming
13 freedom of expression, it is not rejected.

14 As I said, freedom of speech is an
15 American concept, it is not a Canadian concept. If
16 somebody said, "I am doing this because of freedom of
17 speech," I would equate that to somebody raising a
18 freedom of expression concept.

19 MS KULASZKA: But you do realize that
20 freedom of expression is protected under the Charter of
21 Rights in Canada.

22 MR. STEACY: To a point it is.

23 MS KULASZKA: Yes, so I am asking you
24 if you try to balance these values, these rights, in an
25 investigation of section 13.

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1 MS DAVIES: Mr. Chair, is the witness
2 being asked to do a constitutional analysis?

3 It is not his job to determine
4 whether section 13 is constitutional, he just applies
5 it.

6 THE CHAIRPERSON: Yes, I understand
7 that. That is clear, but I think it is important to
8 understand how the Commission undertakes its
9 investigations.

10 I think that is what is being asked
11 for here, on what basis does he exercise his duties to
12 make recommendations.

13 That's understood.

14 It is certainly quite enlightening to
15 hear what he is saying. Go ahead.

16 MR. STEACY: What specific type of
17 language am I allowed to use?

18 THE CHAIRPERSON: You are free to use
19 any language you want.

20 MR. STEACY: I mean profane language.

21 THE CHAIRPERSON: Oh, it's
22 permissible, given the nature of the subject matter.
23 You may use profane language.

24 MR. STEACY: If, for example, a
25 posting says, "Every gay person should be taken out and

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1 whacked because they are butt fuckers," like was in
2 some of the postings, in my interpretation, in the
3 training I received, that goes beyond what is
4 allowable.

5 If somebody writes in a posting, "I
6 disagree with gay marriages because my religious
7 beliefs tell me that it's against my religion," that's
8 freedom of expression.

9 MS KULASZKA: Do you take into
10 account on message boards that people are sitting in
11 their homes and they perceive message boards as being a
12 private space?

13 MR. STEACY: No.

14 MS KULASZKA: Do you take into
15 account the fact that they believe they are conversing
16 with other people?

17 MR. STEACY: Yes, I do.

18 MS KULASZKA: How do you take that
19 into account?

20 MR. STEACY: Regardless of the fact
21 that you are conversing with somebody else, you don't
22 have the right to say absolutely anything you desire,
23 especially when it's in a written format.

24 MS KULASZKA: Would you agree that a
25 lot of this material, like the example you just gave,

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1 is almost barroom talk?

2 If you were in a bar, you could hear
3 this kind of talk.

4 MR. STEACY: Yes, but that doesn't
5 mean it's acceptable.

6 MS KULASZKA: No, it doesn't mean
7 that it's acceptable, but it is the equivalent, isn't
8 it?

9 MR. STEACY: No.

10 MS KULASZKA: Except one is written
11 and one is oral.

12 MR. STEACY: Yes.

13 MS KULASZKA: I am going to give you
14 an example. This is something from my personal
15 experience. This is a friend who had retired and her
16 husband was driving her crazy, because he had retired,
17 too, and she was complaining to someone I know about
18 it, and she said, "You know, I think I'm going to have
19 to shoot the bugger." She was talking about her
20 husband, because he kept following her around their
21 apartment.

22 In an oral conversation it's
23 humorous, but what if she had put that on a message
24 board?

25 MR. STEACY: I would think that the

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1 police might think there had been a death threat made.

2 MS KULASZKA: That's right. It would
3 stop being funny. It would stop being a little
4 profane, but funny, a bit of a joke, and it would
5 become quite serious, simply because it's written.

6 Is that right?

7 MR. STEACY: Yes.

8 MS KULASZKA: Do you ever take into
9 account that context?

10 MR. STEACY: Yes, I do, and I have.

11 MS KULASZKA: Do you take into
12 account the fact that people who post on a message
13 board are not part of a large-scale scheme to promote
14 hatred?

15 MR. STEACY: Again, it depends on the
16 case. It depends on what was posted on the board. It
17 depends on what the allegations of the complaint are.

18 MS KULASZKA: But you are aware that,
19 in the Taylor case, John Ross Taylor had a party called
20 The Western Guard Party and that taped telephone
21 messages were part of their outreach program?

22 It was an outreach program. It was
23 regular. It was organized. It was a campaign to reach
24 the public, wasn't it?

25 MR. STEACY: I am historically aware

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1 of what went on. I am also aware that the Court found
2 that it violated the law.

3 MS KULASZKA: Yes, but you are
4 familiar with the Taylor case just by the fact that you
5 do section 13 investigations.

6 MR. STEACY: That's correct.

7 MS KULASZKA: And you are aware that
8 the Supreme Court held that it had to be part of a
9 large-scale scheme in the public?

10 MR. STEACY: I am not specifically
11 aware that it said it that way, but I will take your
12 word for it, if that's what was written.

13 MS KULASZKA: How many cases that you
14 have done have dealt with bulletin boards or message
15 boards?

16 MR. STEACY: I would say no more than
17 15.

18 MS KULASZKA: Out of how many?

19 MR. STEACY: Out of, probably, 30.

20 MS KULASZKA: So half?

21 MR. STEACY: I wouldn't say it was
22 half, because one case involved nine -- it was what we
23 call a combined complaint, so it would be one. There
24 was one complainant against AOL, plus eight other
25 conjoined respondents.

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1 They were the individuals who had
2 been posting on the AOL bulletin board.

3 MS KULASZKA: In your policy
4 guidelines that you referred to, is there any mention
5 of freedom of speech or how it should be taken into
6 account in section 13 investigations?

7 MR. STEACY: I don't recall. I would
8 have to review it again.

9 MS KULASZKA: Is there any mention of
10 freedom of conscience?

11 MR. STEACY: No.

12 MS KULASZKA: I want to go to R-3,
13 which is the small binder, at Tab 1, the fourth page.

14 Mr. Steacy, this is a letter signed
15 by you, which is dated May 17, 2006, and it is with
16 respect to a complaint that was laid by the respondent
17 in this case, Marc Lemire.

18 It is about complaints against the
19 Peel Regional Police, the Canadian Broadcasting
20 Corporation and the Bell Globemedia Publishing company.

21 Do you remember that complaint?

22 MR. STEACY: Yes, I do.

23 MS KULASZKA: It says under "The Peel
24 Regional Police," at the bottom of the first page of
25 the letter:

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1 "You allege that the Peel
2 Regional Police is
3 discriminating against First
4 Nations peoples and White people
5 by repeatedly sending emails via
6 their computer systems, which
7 would likely contravene section
8 13 of the CHRA.

9 It would appear that this was
10 a private email that was sent by
11 employees of the Peel Regional
12 Police to employees of the Royal
13 Canadian Mounted Police. As
14 such, the sending of the said
15 email would constitute private
16 communication. In *Canada (Human*
17 *Rights Commission) v. Taylor*,
18 the Supreme Court of Canada
19 explored the purpose of s. 13
20 stating that by focussing upon
21 'repeated' telephonic messages,
22 s. 13(1) directs its attention
23 to public, larger-scale schemes
24 for the dissemination of hate
25 propaganda. You did not provide

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1 any documentation or evidence
2 that would indicate that this
3 email was disseminated to the
4 general public or was made
5 accessible to the general public
6 by the Respondent.
7 Consequently, it does not appear
8 that your complaint falls under
9 s. 13 of the *Canadian Human*
10 *Rights Act.*"

11 Do you remember writing that?

12 MR. STEACY: Yes, I do.

13 MS KULASZKA: So in that paragraph
14 you do refer to Taylor, and that what is required is a
15 public, larger-scale scheme for the dissemination of
16 hate propaganda.

17 MR. STEACY: Yes.

18 MS KULASZKA: You would agree that
19 these were e-mails, or a private e-mail, and it was
20 about ethnic jokes, was it not?

21 MR. STEACY: My recollection of the
22 e-mail is that it was lyrics of a song, or portions of
23 lyrics of a song that had been passed in an e-mail.

24 MS KULASZKA: I think it was a series
25 of jokes about Indians. Whether there were lyrics, I

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1 don't know. I think it was jokes.

2 The police were sending this joke
3 around their e-mail systems. Right?

4 MR. STEACY: That's what Mr. Lemire
5 indicated or alleged.

6 MS KULASZKA: How does that compare
7 to a message board where you actually have to sign in
8 or log in to get into the message board?

9 MR. STEACY: The difference is that
10 anybody could log in or sign into the message board,
11 where the Peel Regional Police is restricted by the
12 Peel Regional Police and its IT and its scope of
13 business.

14 MS KULASZKA: But you realize that
15 the e-mails weren't restricted to the Peel Police, they
16 had sent it to the RCMP. They had friends in the RCMP
17 and beyond.

18 MR. STEACY: Mr. Lemire indicated
19 that it had been forwarded through e-mail, yes.

20 MS KULASZKA: So it wasn't restricted
21 to Peel.

22 MR. STEACY: It was restricted within
23 an e-mail and not just --

24 The general public, in that sense,
25 didn't have access to those e-mails.

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1 MS KULASZKA: A message board is
2 really the same thing, it's a private space for the
3 people who join that message board.

4 MS DAVIES: Mr. Chair, I think that
5 is argument, not a question.

6 THE CHAIRPERSON: Yes, it was sort of
7 argument.

8 Could you make it more of a question,
9 Ms Kulaszka?

10 MS KULASZKA: Would you not agree
11 that a bulletin board or a message board, where you
12 actually have to join, open an account, or sign in, is
13 essentially the same as an e-mail system?

14 MR. STEACY: No, I wouldn't agree.

15 MS KULASZKA: Why not?

16 MR. STEACY: Because an e-mail
17 system, such as the RCMP or the Peel Regional Police
18 would have, would be something that you are given
19 access to through a required worksite, and it is
20 restricted within that worksite; whereas a message
21 board can be open to, and is often open to anybody who
22 wishes to join.

23 There is a difference. I believe
24 there is a difference in access and requirement of
25 access and restriction of access.

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1 MS KULASZKA: But you would agree
2 that access is restricted.

3 MR. STEACY: It is more restricted in
4 e-mail and who has the ability to have access to e-mail
5 or an internal work e-mail than an external bulletin
6 board that is put on an internet website.

7 MS KULASZKA: So even though access
8 to a bulletin board is restricted, you still contend
9 that it is a public, large-scale scheme for the
10 dissemination of hate propaganda.

11 MR. STEACY: Yes.

12 MS KULASZKA: In that same letter you
13 talk about the media organizations and their websites,
14 and you state:

15 "In regards to your complaints
16 against the media organizations
17 and their websites, it would
18 appear that the information on
19 the media websites is a fair and
20 accurate report of events."

21 Is that right? You said that?

22 MR. STEACY: That's correct.

23 MS KULASZKA: And those media reports
24 reproduced the jokes.

25 MR. STEACY: I believe so.

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1 MS KULASZKA: So we are back, again,
2 to what you call context.

3 Is that right?

4 MR. STEACY: We are back to the end
5 use of what was on the websites of the media.

6 MS KULASZKA: That's right. The
7 jokes were reproduced in the article, and on their own
8 they contravene section 13.

9 Would you think that?

10 MR. STEACY: If they were standing on
11 their own, yes, they would contravene section 13.

12 MS KULASZKA: But because they were
13 included in a report in a newspaper, instead you said
14 that it was okay because it was a fair and accurate
15 report of events.

16 MR. STEACY: They weren't put on
17 there to elicit hatred and/or contempt.

18 MS KULASZKA: So the intent was not
19 to incite hatred.

20 MR. STEACY: They weren't there to
21 elicit hatred and/or contempt.

22 MS KULASZKA: Do you think that makes
23 a difference to an Aboriginal person reading those
24 jokes?

25 MR. STEACY: I can't really answer

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1 that question.

2 MS KULASZKA: Wasn't that the point
3 of section 13, that the intent didn't matter, that the
4 harm was already there, no matter what the intent was?

5 MS DAVIES: Mr. Chair, I don't think
6 the witness can speak to legislative intent.

7 MS KULASZKA: I am trying to get at
8 how this investigation was handled, and exactly how the
9 Commission is handling these things.

10 I think that, over and over, they are
11 looking at intent.

12 THE CHAIRPERSON: I know, but the
13 last question was a bit more argument.

14 It is something, I am sure, that you
15 can raise in your arguments, Ms Kulaszka. I don't know
16 whether this witness could provide an answer to your
17 question.

18 MS KULASZKA: Okay. Your letter goes
19 on:

20 "Therefore, it does not appear
21 that the information on the
22 media websites constitutes the
23 communication of hate messages
24 under the *Canadian Human Rights*
25 *Act* as it was merely posted to

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1 report the news."

2 You wrote that.

3 MR. STEACY: Yes.

4 MS KULASZKA: "In this context,
5 the media organizations which
6 you have cited within your
7 letter would be considered
8 broadcasting undertakings and
9 therefore, would be exempted
10 pursuant to s. 13(2) of the
11 CHRA..."

12 I won't read that whole section, but
13 the very last part of that provision says that
14 subsection 13(1) does not apply in respect of a matter
15 that is communicated in whole or in part by means of
16 the facilities of a broadcasting undertaking.

17 What kind of definition of
18 "broadcasting undertaking" is the Commission using?

19 MR. VIGNA: Mr. Chair, here again we
20 are asking for almost a legislative interpretation.

21 THE CHAIRPERSON: There is another
22 thing, too. I don't want us to get into a judicial
23 review of this decision, as well.

24 I don't know if you have or have not
25 reviewed it, but I won't be judicially reviewing the

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1 decision not to deal with the complaint here.

2 MS KULASZKA: I will ask another
3 question.

4 THE CHAIRPERSON: Broadcasting
5 undertaking, I mean --

6 MS KULASZKA: Why is a website by a
7 newspaper or the CBC a broadcasting undertaking?

8 There is virtually no difference
9 between websites. A blog, the website of the Globe and
10 Mail, they are all on the internet and they are all
11 viewed through exactly the same protocols.

12 MR. STEACY: If the information, per
13 se, had been on a blog or on a bulletin board site and
14 had been posted that way, and it had not been removed,
15 or it was still there, in that sense, in our process,
16 we would have taken a complaint against that portion of
17 the website.

18 And we have entertained complaints
19 against media broadcasting organizations that have
20 dualfold websites, where they have their news/media
21 portion of the website and an area where they entertain
22 chat room/bulletin board facilities.

23 So if the information had been there,
24 and that's what had been complained of, we probably
25 would have taken a complaint under section 13.1. But

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1 this was in their media broadcasting area.

2 MS KULASZKA: But you would agree
3 that a website put up by the CBC or the Globe and Mail
4 uses the same software and the same protocols that any
5 other website in the world would use.

6 MR. STEACY: I don't know what they
7 use to put up their website, but I would assume that it
8 is similar to most any other website.

9 MS KULASZKA: Is it your evidence to
10 me that, so long as it is the CBC, the Globe and Mail,
11 the National Post, basically they can put up anything
12 they want and you are never going to say that section
13 13 applies to them?

14 MR. STEACY: That's not correct, no.

15 MS KULASZKA: What if they put up a
16 very outrageous article on what you call their
17 broadcasting portion of their website?

18 MR. STEACY: It would depend on what
19 they put on it, and it's not my decision to determine
20 whether or not we would take a complaint. Somebody
21 would have to come to us and say, "I want to make a
22 complaint."

23 MS KULASZKA: But you understand what
24 I am asking you. You say that you applied an
25 exemption. Once the exemption applies, then section 13

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1 doesn't apply. It doesn't matter what the material
2 constitutes.

3 MR. STEACY: It is to that specific
4 portion of the website.

5 We have other respondents in other
6 portions of the Act where part of the respondent is
7 federally regulated and part of the respondent is
8 provincially regulated. So if somebody was to complain
9 about something on the portion that is provincially
10 regulated, we can't take a complaint against that
11 portion of the respondent that is provincially
12 regulated. But if someone was to complain about the
13 federal regulation portion of the organization, we
14 would take a complaint.

15 MS KULASZKA: But your jurisdiction
16 doesn't come from that, it comes from the fact that the
17 internet is being used.

18 MR. STEACY: But, also, there is an
19 exemption for 13(2). The broadcasting of their website
20 is exempt.

21 MS KULASZKA: How do you tell the
22 difference?

23 MR. STEACY: Generally, it is pretty
24 obvious what the difference is. You can tell that it
25 is the portion -- because it is usually a rebroadcast

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1 of a news program that had been on television or on the
2 radio.

3 MS KULASZKA: What if, say, in this
4 case, the jokes were not rebroadcast on the radio?

5 MR. STEACY: And they were on another
6 portion of the website? We would probably take a
7 complaint.

8 THE CHAIRPERSON: I would like to get
9 a clarification, Mr. Steacy. This letter came after a
10 full investigation on your part, or was it at some sort
11 of preliminary stage?

12 MR. STEACY: It was more at a
13 preliminary stage. Mr. Lemire had contacted the
14 Commission, saying that he wanted to file a complaint
15 at what we call the intake stage, and it was assigned
16 to me to deal with, and through the analysis portion of
17 what we do to determine whether or not it is a
18 complaint, it was determined, based on the information
19 provided in the letter, that it was not.

20 THE CHAIRPERSON: So had your
21 findings been different -- I am trying to get the
22 procedure straight in my mind -- had your findings been
23 different, you would have sent one of the intake kits
24 to the complainant?

25 MR. STEACY: That's correct.

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1 THE CHAIRPERSON: The proposed
2 complainant.

3 MR. STEACY: He would have been sent
4 an intake kit, and a signed complaint would then have
5 been processed.

6 THE CHAIRPERSON: In one of the
7 examples that you gave earlier of the
8 federal-provincial situation, if someone wanted to file
9 a complaint against his local supermarket, you would
10 immediately recognize that it was not a federal matter,
11 and this would be the type of letter that would go out.
12 Right?

13 MR. STEACY: That's correct.

14 For example, not that I want to
15 really name a respondent --

16 THE CHAIRPERSON: No.

17 MR. STEACY: Hydro, for example. I
18 think it is called Ontario Power Generation. If
19 somebody was complaining about the local hydro
20 switching station, that would be provincial
21 jurisdiction. But if they were talking about Chalk
22 River or if they were talking about Bruce or any of the
23 nuclear power stations, nuclear power falls under
24 federal regulation, so we would entertain a complaint.

25 THE CHAIRPERSON: I understand.

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1 MS KULASZKA: In determining if
2 something is a hate message, do you take into account
3 what is accepted generally in the community for
4 statements?

5 I am going to give you an example. I
6 would ask you to look at R-17, Tab 22.

7 I am going to read some portions of
8 this article.

9 "Canadian politicians,
10 weak-kneed and quivering as
11 always, will continue to pander
12 to vocal minorities until such
13 time as the silent majority
14 awakens from its deep winter
15 slumber. Democracy is meant to
16 serve all, not just those who
17 endlessly demand that their
18 rights supersede the rights of
19 all others."

20 THE CHAIRPERSON: Ms Kulaszka, you
21 should point out for the witness that this appears to
22 be an excerpt from the editorial page, or "Letters to
23 the Editor", of the National Post of Monday, April 23,
24 2007.

25 MS KULASZKA: Yes, I was going to do

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1 that.

2 THE CHAIRPERSON: I'm sorry. I think
3 the witness should know that before you read it to him.
4 I think that's fair.

5 The rest of us can identify the fact
6 that it is an editorial letter.

7 MS KULASZKA: What I am reading from
8 is the National Post of April 23rd of this year. It is
9 the letters section. An article had been written about
10 how easy it was for natives to break the law, and it
11 was written by Lorne Gunter. These are two letters in
12 response to his article.

13 The second letter says:

14 "After having read Lorne
15 Gunter's article, I can't help
16 but wonder: Who is actually in
17 support of these criminals?
18 This whole railroad-blockade
19 fiasco is about money, not land.
20 All one has to do is drive by
21 the nearest reserve and see the
22 condition of the properties:
23 You quickly realize that the
24 residents are a far cry from
25 their Earth-worshipping

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1 ancestors. In many cases, they
2 turn land into garbage dumps.
3 If they truly cared about the
4 land, they would tend it
5 properly.

6 I wonder where native
7 protestors think they will get
8 their handouts from when the
9 economy slows thanks to the
10 blockage of major trade
11 arteries.

12 It seems to me that we the
13 taxpayers are victims at the
14 hands of a bunch of weaklings in
15 government. I shouldn't have to
16 work so that an able-bodied
17 native can sit on the side of a
18 railway track, disrupt society
19 and collect a free cheque from
20 me."

21 That is accepted in the marketplace
22 in the Canadian community. It is a letter published in
23 a newspaper, with mass circulation --

24 MR. VIGNA: Mr. Chair, I object to
25 the statement, in terms of whether it is accepted in

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1 the community or not.

2 THE CHAIRPERSON: I take Ms
3 Kulaszka's question as meaning that this managed to get
4 into the National Post --

5 MS KULASZKA: With a huge
6 circulation.

7 MR. VIGNA: That doesn't mean,
8 necessarily, that it is exempt from liability.

9 THE CHAIRPERSON: You may have a
10 point there.

11 I think your question should be more
12 specific, Ms Kulaszka.

13 MS KULASZKA: I think my point to you
14 is, a national newspaper prints this type of letter,
15 and so far it hasn't been charged. It has passed
16 without any kind of legal repercussions.

17 Say that someone posted these letters
18 on a message board. Would you find them to be contrary
19 to section 13?

20 MR. STEACY: I am not sure.

21 MS KULASZKA: Would it depend if it
22 was on a website like Stormfront?

23 MR. STEACY: What is there is
24 obviously an opinion, but it would depend on what that
25 opinion is trying to achieve. If that opinion is

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1 trying to achieve the elicitation of hatred or contempt
2 and an individual has come to the Commission and has
3 made that as an allegation, we would have to
4 investigate. That's what the Act says.

5 MS KULASZKA: So who actually posts
6 the material, the type of website is very, very
7 important to the Commission, isn't it?

8 MR. STEACY: No. If somebody comes
9 to us and says, "This is on a website," and we believe
10 that it meets the test of 13(1), we will look at it to
11 see if it falls within that. It doesn't matter what
12 the website is or who is running the website at the
13 initial stage.

14 MS KULASZKA: It mattered in the
15 CAERS case, didn't it?

16 MR. STEACY: No, it didn't. We took
17 a complaint against CAERS. If it had mattered the way
18 you have characterized it, we wouldn't have taken a
19 complaint.

20 MS KULASZKA: You took the complaint,
21 but then you recommended that it not be dealt with, and
22 it wasn't.

23 MR. STEACY: I recommended that it
24 not be dealt with because what Mr. Guille was looking
25 for to fix the situation had been done by the

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1 respondent.

2 MS KULASZKA: But it wasn't, Mr.
3 Steacy. He wanted \$5,000 in damages. He wanted an
4 apology. He wanted an undertaking that they wouldn't
5 do it again.

6 MR. STEACY: They did the majority of
7 what Mr. Guille asked for, and in the judgment of the
8 Anti-hate Team, when we were going through what was
9 there, what Mr. Guille was asking for had been
10 accomplished by the respondent.

11 If the Commission had decided to
12 recommend conciliation or tribunal, that was their
13 decision.

14 MS KULASZKA: To your knowledge, has
15 the Commission ever not accepted the recommendation of
16 the investigator in a section 13 case?

17 MR. STEACY: Yes.

18 MS KULASZKA: What case would that
19 be?

20 MR. STEACY: Several of the
21 individual complaints against individuals that were
22 involved surrounding the AOL case.

23 MS KULASZKA: So the investigator
24 made a recommendation and the commissioners didn't
25 accept it.

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1 MR. STEACY: They switched the
2 decision, yes.

3 MS KULASZKA: Do you remember the
4 names of those decisions in that case?

5 MR. STEACY: I'm sorry, I am not
6 prepared to give names --

7 MR. VIGNA: I object to the relevance
8 of the names of the complainants that are not
9 relevant --

10 MS KULASZKA: I am asking about the
11 ones that went to the Tribunal.

12 THE CHAIRPERSON: The ones that are
13 public?

14 MS KULASZKA: The ones that are
15 public.

16 We are trying to keep tabs on these
17 cases.

18 THE CHAIRPERSON: I have one concern
19 if they are going to the Tribunal. As I have indicated
20 before, Commission reports --

21 MS KULASZKA: Oh, I thought he said
22 that they had made decisions, that there had been two
23 decisions.

24 THE CHAIRPERSON: Did he say that
25 they were actually final decisions?

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1 MS KULASZKA: Were they final
2 decisions, Mr. Steacy?

3 MR. STEACY: The Commission had made
4 decisions that -- in one case I recommended dismissal,
5 and they recommended conciliation/tribunal.

6 They changed my decision.

7 THE CHAIRPERSON: So they are
8 Commission decisions that you are talking about.

9 MR. STEACY: Yes.

10 THE CHAIRPERSON: My concern, Ms
11 Kulaszka --

12 MS KULASZKA: Yes, I thought they
13 were Tribunal decisions.

14 THE CHAIRPERSON: It is not normally
15 in the record, in front of a tribunal, what the
16 Commission's findings or reports are. Until the case
17 is final, it is not appropriate that it be released.
18 It only comes into evidence for another reason, as I
19 have told you before.

20 MS KULASZKA: Okay. Just to clarify,
21 two of them have gone to a tribunal, but there is no
22 decision.

23 MR. STEACY: No, that's not what I am
24 saying.

25 What I am saying is, there was a

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1 recommendation that I made, which was to dismiss, and
2 the Commission, when they met, changed my
3 recommendation to their decision, which was to send it
4 to conciliation and/or a tribunal.

5 MS KULASZKA: Have any gone to a
6 tribunal?

7 Do you know?

8 MR. STEACY: The ones in that group
9 of files that I recommended go conciliation/tribunal,
10 my understanding is that they have been referred. I
11 don't know if they have been heard by the Tribunal or
12 not.

13 MS KULASZKA: If you go to Tab 2 of
14 R-3, which is the small binder --

15 THE REGISTRAR: Are we producing Tab
16 22?

17 MS KULASZKA: Yes, I would like to
18 produce Tab 22.

19 THE CHAIRPERSON: Yes, all right.
20 The National Post has a website,
21 doesn't it?

22 MS KULASZKA: The National Post has a
23 website.

24 THE CHAIRPERSON: But this is from
25 the newspaper.

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1 MS KULASZKA: This is from the
2 newspaper.

3 THE CHAIRPERSON: But it might have
4 been on the website, too.

5 MS KULASZKA: It might have been on
6 the website. They put a few letters up, but I don't
7 know whether --

8 THE CHAIRPERSON: All right. Go on.
9 This is Tab 2 of R-3?

10 MS KULASZKA: Tab 2 of R-3.

11 Mr. Steacy, this is a letter by
12 Kathryn Lavery. She is an Intake Officer.

13 This was a complaint laid by Glenn
14 Bahr, and it was against Sgt. Stephen Camp of the
15 Edmonton Police Service.

16 Do you know who he is?

17 MR. STEACY: Yes, I do.

18 MS KULASZKA: Have you ever had any
19 contact with him?

20 MR. STEACY: I have spoken to him on
21 the phone, and I have met him.

22 MS KULASZKA: Were you aware of this
23 complaint?

24 It had to do with postings he made on
25 Stormfront.org under the pseudonym "Matt" or "Estate".

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1 MR. STEACY: I am aware of that
2 letter, yes.

3 MS KULASZKA: The complaint was not
4 accepted on the grounds of various sections of the
5 Criminal Code -- section 25(1).

6 Are you aware of this letter?

7 MR. STEACY: Yes, I am aware of the
8 letter.

9 MS KULASZKA: Do you know why the
10 Commission would not open a complaint process to, at
11 least, determine whether Sgt. Camp was required to post
12 the postings he did as part of his job?

13 MR. VIGNA: Mr. Chair, I am not quite
14 sure that I understand the question.

15 THE CHAIRPERSON: Perhaps it is in
16 the context of the provision of the Criminal Code that
17 you are referring to, Ms Kulaszka?

18 MS KULASZKA: Yes. I am asking why
19 they would not have, at least, sent the complaint to an
20 investigator, so that he could investigate whether, in
21 fact, what Sgt. Camp posted was necessary as part of
22 his duties as a peace officer.

23 MR. VIGNA: Mr. Chair, this witness
24 didn't deal with the specific complaint and he would be
25 speculating to advance a response to the question that

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1 is being asked.

2 THE CHAIRPERSON: Unless he has
3 personal knowledge. We can figure that out.

4 If that is the case, he can say that
5 he has no personal knowledge.

6 Do you have any personal knowledge to
7 be able to answer the question?

8 MR. STEACY: I consulted with Ms
9 Lavery on the situation, to the extent that she asked
10 me to review the letter, when she had written it, and
11 she explained the situation to me. But I didn't have
12 any specific input into the Bahr file or the
13 information that came in, per se, to determine whether
14 or not the complaint would have been or would not have
15 been accepted.

16 It was merely to review the content
17 of her letter, to make sure that it made sense.

18 MS KULASZKA: Would that be done as
19 part of the review process, which you talked about, by
20 the Hate Team?

21 MR. STEACY: Yes, and it was also
22 part of my duties as one of the investigators whose
23 primary function is to deal with hate.

24 In this case it came to me, but it
25 could have gone to another investigator.

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