

This is the 1st affidavit
of Barry Neufeld in this case
and was made on 12th May 2026

Court File No: CHI-S-S-41392
Chilliwack Registry

In the Supreme Court of British Columbia

Between:

BARRY NEUFELD

Petitioner

and

**BRITISH COLUMBIA TEACHERS' FEDERATION
OBO CHILLIWACK TEACHERS ASSOCIATION
AND BRITISH COLUMBIA HUMAN RIGHTS TRIBUNAL**

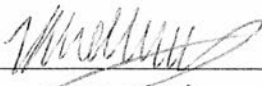
Respondents

AFFIDAVIT OF THE PETITIONER

I, Barry Neufeld, of [REDACTED], Province of British Columbia, SOLEMNLY AFFIRM THAT:

1. I am the petitioner in the Petition filed April 10, 2026.
2. Attached hereto as **Exhibit "A"** are the transcripts of the hearing in this matter before the British Columbia Human Rights Tribunal dated November 25-29, 2024; December 2-6, 2024; February 24, 2025; and March 10, 2025.
3. I affirm this affidavit *bona fide*, for no improper purpose, and in support of my Petition.

AFFIRMED BEFORE ME at
Chilliwack, British Columbia this
12th day of May, 2026.


 Kyra Chabot

Commissioner for Taking Oaths
 in the Province of British Columbia
 Chilliwack Law Courts
 46035 Yale Road, Chilliwack, BC

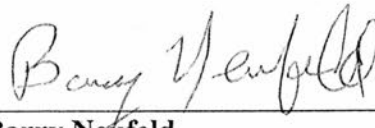

 Barry Neufeld

EXHIBIT A

Exhibit A
reference to in the Affidavit
of Barry Newfeld
sworn/affirmed before me
this 12th day of May 2024
[Signature]
A Commissioner for taking Affidavits
for British Columbia

**IN THE MATTER OF THE *HUMAN RIGHTS CODE*,
RSBC 1996, C. 2010 (as amended)**

**AND IN THE MATTER of a complaint before
The British Columbia Human Rights Tribunal**

BETWEEN:

British Columbia Teachers' Federation obo Chilliwack
Teachers' Association

COMPLAINANT

AND:

Barry Neufeld

RESPONDENT

AND:

B.C.'s Human Rights Commissioner

INTERVENOR

**PROCEEDINGS AT B.C. HUMAN RIGHTS TRIBUNAL HEARING
(VOLUME I)**

ORIGINAL

THERE IS A PUBLICATION BAN IN EFFECT PROHIBITING THE
PUBLICATION OF ANY INFORMATION THAT COULD IDENTIFY THE
TEACHERS WHO TESTIFIED, OR MAY HAVE TESTIFIED, IN
CONNECTION WITH THIS COMPLAINT: CHILLIWACK TEACHERS'
ASSOCIATION V. NEUFELD (NO. 2), 2024 BCHRT 180 [CTA
(NO. 2)]; AMENDED BY LETTER DATED FEBRUARY 25, 2025.

File: CS-003172

**IN THE MATTER OF THE *HUMAN RIGHTS CODE*,
RSBC 1996, C. 2010 (as amended)**

**AND IN THE MATTER of a complaint before
The British Columbia Human Rights Tribunal**

BETWEEN:

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AND:

B.C.'s Human Rights Commissioner

INTERVENOR

**PROCEEDINGS AT B.C. HUMAN RIGHTS TRIBUNAL HEARING
(VOLUME I)**

ORIGINAL

Tribunal Members:	Devyn Cousineau, Robin Dean, Laila Said Alam
Counsel for the Complainant:	Lindsay Waddell, Alanna Tom, Stefanie Quelch
Counsel for the Respondent:	James S.M. Kitchen
Counsel for BC's Human Rights Commissioner:	Maria Sokolova

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By videoconference
November 25, 2024

(VIDEOCONFERENCE COMMENCES) [9:30:48]

THE CHAIR: Good morning, everyone. My name is Devyn Cousineau. I'm vice chair of the B.C. Human Rights Tribunal. My pronouns are she/her. In this hearing you can call me Vice Chair Cousineau or Ms. Cousineau. It looks like we may be still missing a couple of people; so I just want to make sure we have the complainant's counsel here before we get started.

UNIDENTIFIED SPEAKER: Also, it's not letting [indiscernible] our office. It's only [indiscernible].

THE CHAIR: Good morning.

UNIDENTIFIED SPEAKER: Okay. So Stefanie's got -- let me try again and see what's going on, and we'll work from there. If you don't -- I'm going to try it, and then -- sorry?

THE CHAIR: Oh. Ms. Quelch is on the -- you're on the call.

UNIDENTIFIED SPEAKER: Yeah. Hold on.

THE CHAIR: Good morning. I can see Stefanie Quelch has joined. Is counsel for the teachers' union having difficulty?

UNIDENTIFIED SPEAKER: [Indiscernible].

THE CHAIR: I think they can't hear me. Can everyone else --

UNIDENTIFIED SPEAKER: I did receive an email that says they're having some difficulties.

THE CHAIR: Okay. Thank you. You can hear me; right?

UNIDENTIFIED SPEAKER: Hi.

THE CHAIR: Oh, there we go.

UNIDENTIFIED SPEAKER: Good morning, everyone. Sorry. We're trying to use a different computer so that we can see all three of us, but we're having some technical difficulties; so we might just have to switch out the computer. So sorry. Just hang tight for us.

THE CHAIR: Okay.

UNIDENTIFIED SPEAKER: Just a minute.

THE CHAIR: Sure.

UNIDENTIFIED SPEAKER: Thank you.

UNIDENTIFIED SPEAKER: [Indiscernible] on here and then -- and then Stefanie will be --

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1 CNSL L. WADDELL: Can you guys hear us now?

2 THE CHAIR: I can hear you, yes.

3 CNSL L. WADDELL: Okay. All right.

4 THE CHAIR: Okay. We can't see you though.

5 CNSL L. WADDELL: Oh. Okay. Now can you see us?

6 THE CHAIR: Okay. We can see you. We can hear you.

7 And it looks like Mr. Kitchen is just having a
8 quick call to Mr. Neufeld, and then we'll get
9 started.

10 CNSL L. WADDELL: Sounds good.

11 THE CHAIR: All right. I'm going to get started now.

12 Back to where I began -- my name is

13 Devyn Cousineau, pronouns are she/her. I'm

14 vice chair of the B.C. Human Rights Tribunal.

15 I'll let my co-panelists introduce themselves.

16 Go ahead.

17 MEMBER DEAN: Hi, everyone. My name is Robin Dean.

18 I'm a member of the B.C. Human Rights Tribunal,

19 and you can call me Ms. Dean or Member Dean. My
20 pronouns are she/her.

21 MEMBER ALAM: Good morning. My name is Laila Said

22 Alam. You may refer to me as Member Alam, and my
23 pronouns are she and her.

24 THE CHAIR: We've been designated pursuant to the
25 authority of section 27.1 of the *Human Rights*
26 *Code* to hear and decide the complaint of British
27 Columbia Teachers' Federation on behalf of
28 Chilliwack Teachers' Federation -- sorry --
29 Teachers' Association and Barry Neufeld CS001372.
30 We are joining you today from the unceded
31 ancestral territories of the Musqueam, Squamish,
32 and Tsleil-Waututh Nations.

33 This hearing is being recorded. We are
34 using the Tribunal's external recording
35 equipment. This recording is the official record
36 of the proceedings. If you need a copy of the
37 recording for a purpose related to the complaint,
38 you can apply to the Tribunal using a Form A
39 participant access to audio request. The
40 Tribunal doesn't automatically transcribe its
41 proceedings; so we won't be providing a
42 transcript.

43 No other recording is permitted during this
44 hearing. So that -- that means that no one who's
45 on the call as a participant may record, and no
46 one who's observing as a member of the public may
47 record any part of this proceeding.

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1 If for some reason you get disconnected or
2 you're having trouble with technology -- and I
3 think we've -- some of us have already had our
4 first test -- I just want to make sure you have
5 the phone number for the case manager, Britt.
6 She will be standing by to assist. Her phone
7 number is [REDACTED] If you are a party and
8 we see that [REDACTED] disconnected, we will
9 pause the proceeding and wait for you to
10 reconnect.

11 So now I want to go around and have everyone
12 introduce themselves for the record. When you do
13 this, I'm going to ask you to spell your name,
14 tell me the pronouns that you use, and let me
15 know if there's anyone else in the room with you
16 that I cannot see. It's important that we know
17 who's on the call. So I'll start with the
18 complainant's counsel.

19 CNSL L. WADDELL: Thank you, Madam Chair.
20 Lindsay Waddell, W-a-d-d-e-l-l, pronouns she/her,
21 counsel for the complainant. I'll let my
22 co-counsel introduce themselves.

23 CNSL A. TOM: Alanna Tom, A-l-a-n-n-a, last name
24 T-o-m, also counsel for the complainant, and I
25 use the pronouns she and her.

26 CNSL S. QUELCH: Stefanie Quelch, Q-u-e-l-c-h, also
27 counsel for the complainants, and I also use the
28 pronouns she and her.

29 CNSL L. WADDELL: And before we mute off, I will say
30 that currently there's nobody in here that you're
31 unable to see; however, my assistant Belinda, who
32 is assisting us with technology -- we're going to
33 need to make a computer swap at some point this
34 morning, perhaps on a break -- may pop into the
35 hearing room to assist us with that. And at
36 different points in the hearing, the articling
37 students in our office may come in to take notes
38 and listen for learning purposes, but I can
39 advise the Tribunal when that happens.

40 THE CHAIR: Thank you. And it looks like we also have
41 Reid Clark for the Teachers' Association; is that
42 right? Go ahead. You can introduce yourself,
43 Mr. Clark.

44 REID CLARK: Thank you. My name is Reid Clark. I'm
45 the president of the Chilliwack Teachers'
46 Association. R-e-i-d C-l-a-r-okay. . And my
47 pronouns are he/him.

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1 THE CHAIR: Thank you. Anyone else joining from the
2 complainant's side? No? Okay. Thank you.
3 And now for Mr. Neufeld, and I'll start with
4 you, Mr. Kitchen.
5 CNSL J. KITCHEN: Good morning. My name is
6 James Kitchen, and I'm the counsel for the
7 respondent, Barry Neufeld.
8 THE CHAIR: Thank you. And that's K-i-t-c-h-e-n for
9 the record, James.
10 CNSL J. KITCHEN: Yes. I'm showing up as "unknown
11 user." Let me see if I can -- that would be nice
12 if I could fix that. I had some problems this
13 morning too. I tried to sign in with my account,
14 but I couldn't; so I joined as a guest, which
15 looks like I'm --
16 THE CHAIR: You're showing up okay on our end. Your
17 name is there. You do have --
18 CNSL J. KITCHEN: Okay.
19 THE CHAIR: You have a parentheses. It says
20 "unverified," but so does everyone; so that's --
21 that's nothing to be concerned --
22 CNSL J. KITCHEN: Well --
23 THE CHAIR: -- about.
24 CNSL J. KITCHEN: -- thank you -- thank you for
25 telling me that because I'm showing up as
26 "unknown user" on my end; so that's good that you
27 can all see that it's me.
28 THE CHAIR: Okay. And we have -- it looks like
29 Mr. Neufeld is joining. Good morning. Oh,
30 you're muted. We can't hear you, Mr. Neufeld.
31 Your microphone is muted.
32 CNSL J. KITCHEN: Barry, you'll see a little mic
33 symbol there up in the top sort of right-hand
34 corner-ish area. Or you should.
35 BARRY NEUFELD: There we go. Yes. My name is
36 Barry Neufeld, last name N-e-u-f-e-l-d.
37 THE CHAIR: Thank you. And is there anyone -- anyone
38 else in the room there with you, Mr. Neufeld?
39 BARRY NEUFELD: No. I'm by myself.
40 THE CHAIR: Okay. Thank you. And anyone else
41 joining, Mr. Kitchen, on your end?
42 CNSL J. KITCHEN: No, not today, and probably not
43 throughout the proceedings. I'll probably be
44 alone. My associate, Jody Wells, may join a
45 couple times briefly, but if she does, she'll
46 be -- she'll be in her own room by herself
47 anyways; so -- and she'll, you know, show up on

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1 the screen; so -- but other than that, it's just
2 going to be me and Mr. Neufeld.

3 THE CHAIR: Thank you. All right. And now counsel
4 for BC's Office of the Human Rights Commissioner.

5 CNSL M. SOKOLOVA: Thank you. Maria Sokolova, and
6 that's S-o-o-kay. -o-l-o-v-a, first initial M,
7 pronouns are she and her. I'm by myself here,
8 but my colleague Sarah Khan, KC, will be here for
9 the second week of the hearing.

10 THE CHAIR: Thank you. There's one other person that
11 appears -- has joined by video, but his camera is
12 not on and is just showing as "meeting guest
13 external." If that's you, can you please
14 identify yourself; otherwise, I'm going to remove
15 you.

16 Okay. I'm --
17 CNSL J. KITCHEN: I don't know about you, but I'm --
18 I'm actually seeing several of those --

19 THE CHAIR: Yes. I'm going --

20 CNSL J. KITCHEN: Okay.

21 THE CHAIR: -- to explain that in just a moment. So
22 we're going to talk about members of the public
23 observing in a moment. But in general, all the
24 members of the public who have been granted
25 access to this proceeding have been granted audio
26 access, and I see that there's one person here
27 who's joined by video, and since I don't know who
28 they are, they're being removed from the meeting.

29 We have a number of members of the public
30 who have joined us by audio, and I think we've
31 given notice to the parties of everyone we're
32 expecting. Member Dean is watching the -- the
33 phone numbers to make sure that it's -- that
34 these are folks that have been granted access.

35 Member Dean, do you want to just confirm who
36 we have this morning.

37 MEMBER DEAN: Sure. I see that we have Carly Hymen
38 [phonetic] here, Christopher Di Armani
39 [phonetic], Tara MacIsaac [phonetic], and
40 Stephanie Goodwin [phonetic].

41 THE CHAIR: Okay. Thank you. And so just -- all
42 members of the public, as we know, are required
43 to comply with the Tribunal's terms and
44 conditions for the virtual hearing room. This
45 includes no recording of any part of the
46 proceeding and no sharing connection login
47 details with anyone who has not been granted

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1 access through the Tribunal's process. I
2 understand that we are continuing to receive
3 requests from members of the public to observe
4 the hearing, and the case manager will be
5 reviewing those requests every day closer to the
6 end of the day in sort of a single sitting, and
7 we'll do our best to give access for the next day
8 or possibly another business day. So we're
9 continuing to process those as they come in, but
10 due to workload and volume, they won't be
11 immediately processed.

12 Just before I move on -- oh, just one more
13 thing about members of the public -- if you are
14 joining us as a member of the public on the
15 phone, we'll be letting everyone in at the
16 regularly-scheduled start times and after we
17 resume after a break. If you're trying to
18 connect during the proceeding, during someone's
19 testimony or while the proceeding is underway, we
20 may not grant access because it can be disruptive
21 to be granting access during the proceeding. So
22 please make sure that you're joining in a timely
23 way when the proceeding is starting.

24 Please note, for everyone who's on the call,
25 there is a publication ban in this proceeding
26 which prohibits any person from publishing the
27 names of teachers who testify or who may testify
28 in this complaint.

29 And so, Ms. Waddell, before -- later on in
30 my introductory remarks, we'll return to the
31 issue of how we want to manage the teachers'
32 names in this proceeding, but -- so we'll come
33 back to that in a moment, but for now I'll
34 highlight the publication ban for those of you
35 who are new to the complaint.

36 All right. I have a few more things to go
37 over in my opening, and then if there's any
38 preliminary issues, we can deal with that. Just
39 before I continue on, this same person is trying
40 to reconnect again. I'll let them in one more
41 time and see if they can be identified;
42 otherwise, I'm not going to continue to interrupt
43 the proceeding.

44 Hello. I've just granted access to someone
45 in the hearing. Can you identify yourself,
46 please. No. All right. Oh. Meeting guest
47 external, last call, and then I'm removing you.

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1 ADRIENNE SMITH: This is Adrienne Smith [phonetic].
2 My pronouns are she and her, and I'm an observer.

3 THE CHAIR: Oh, okay. Ms. Smith, do you have video
4 access right now or audio?

5 ADRIENNE SMITH: Audio only. I'm using a telephone.

6 THE CHAIR: Okay. All right. My apologies. You were
7 showing up as someone on video. All right.
8 That's fine. Thank you. I'm just going to mute
9 you now. All right.

10 So the other things I want to go over in my
11 opening -- I'm going to talk briefly about the
12 hearing schedule. We're going to talk about
13 issue identification; evidence, including
14 witnesses and documents; and I'll just confirm --
15 touch briefly on the plan for closing
16 submissions; and then I'll come to you for any
17 preliminary issues.

18 So hearing schedule -- first, thank you both
19 very much for preparing a hearing schedule. We
20 have two weeks to complete this evidentiary
21 portion of the hearing, and based on your
22 schedules, I expect we'll be able to do that. If
23 necessary, we'll check in about scheduling while
24 we go to make sure that we're on track.

25 Throughout the hearing, I encourage everyone
26 to do what you need to do to be comfortable. If
27 you need to stand up and move around, stretch,
28 please do. We'll take regular breaks in the
29 morning -- a morning break around 11:00. Then
30 we'll take an hour for lunch around 12:30. And
31 we'll take another afternoon break around 3:00.
32 If anyone needs other breaks, you can let me
33 know.

34 All right. I want to touch briefly on the
35 issues in the proceeding. Of course the issues
36 will be guiding everything we do for the next two
37 weeks and all the evidence that we hear; so it's
38 important to start off on the same page. The
39 complainants have withdrawn their allegations of
40 retaliation under section 43 of the Code. So
41 that means that the only issues remaining are the
42 allegations of discrimination in employment under
43 section 13 and the allegations of discriminatory
44 publications under section 7.

45 We've set out the specific legal issues and
46 thresholds earlier in my letter dated -- or
47 letter dated September 13th, but I'll briefly

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1 review them again now. So first the complaints
2 proceeding on behalf of a class that's been
3 defined as members of the Chilliwack Teachers'
4 Association who identify as LGBTQ. So that's the
5 class. In employment discrimination under
6 section 13, the burden is on the complainants to
7 prove class members have characteristics
8 protected by the Code. I don't understand that
9 to really be in dispute here.

10 Second, a connection to employment. This is
11 of course very much in dispute. So the
12 complainants must prove that Mr. Neufeld's
13 comments were sufficiently connected to the class
14 members' employment to come within the scope of
15 section 13 of the Code.

16 And then third, that those comments -- if
17 there is a sufficient connection to employment,
18 third, the complainants have to prove that those
19 comments caused the class members adverse impacts
20 in their employment. And then the final element
21 of the analysis requires a connection between
22 protected characteristics and adverse impacts.

23 Under section 13, I do not understand that
24 Mr. Neufeld advances a defence of bona fide
25 occupational requirement; so the burden on all
26 the legal issues remains on the complainant.

27 Under section 7, which is the part of the
28 Code prohibiting discriminatory publications, the
29 complainants must prove under 7(1)(a) that
30 Mr. Neufeld's publications had a discriminatory
31 effect or were intended to have a discriminatory
32 effect on the class. And then under 7(1)(b),
33 they must prove that in the view of a reasonable
34 person aware of the context and circumstances,
35 Mr. Neufeld's publications expose the class or
36 tend to expose the class to detestation and
37 vilification on the basis of their gender
38 identity or expression and/or sexual orientation.
39 This is an objective test.

40 Throughout the analysis, I expect in the
41 closing submissions we'll hear more about the
42 balancing and consideration of *Charter* values,
43 including Mr. Neufeld's *Charter* rights to free
44 expression and any other *Charter*-related issues
45 the parties want to raise. In saying this, the
46 Human Rights Tribunal does not have jurisdiction
47 to apply the *Canadian Charter of Rights and*

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1 *Freedoms*, but we engage in *Charter* values
2 balancing as an administrative tribunal. So I
3 expect we'll hear about that in your closing
4 submissions.

5 And, finally, the last issue will relate to
6 remedy. In the event that the Tribunal finds
7 that the complaint is justified, we'll also have
8 to decide what remedies are appropriate. And in
9 this case, the complainants are seeking a
10 declaration; a cease and refrain order; an order
11 for expenses incurred because of discrimination;
12 orders to compensate members of the class for
13 injury to their dignity, feelings, and
14 self-respect; an order for Mr. Neufeld to pay
15 interest on monetary orders; and an order that
16 Mr. Neufeld participate in training and education
17 to combat homophobia and transphobia before
18 running for election as a school trustee again.
19 And in their evidence, the complainants must
20 establish the basis for these orders as well.

21 So those are the issues as we've identified
22 them. The next two weeks, as I've said, is about
23 receiving the parties' evidence related to these
24 issues. And I want to talk briefly about how we
25 will be approaching the evidence in this hearing.

26 So proceedings before the B.C. Human Rights
27 Tribunal are less formal than a court of law, but
28 of course still resemble court in a number of
29 ways. In particular, under section 27.21 of the
30 *Human Rights Code*, the Tribunal has authority --
31 has discretion to admit any evidence that is
32 necessary and appropriate, regardless of whether
33 it would be admissible in a court of law. And
34 the exception is for any privileged material. In
35 other words, the rules governing admissibility of
36 evidence may in some circumstances have a more
37 limited application in our proceedings, although
38 we generally work to avoid the dangers associated
39 with some evidence in our rulings.

40 In this hearing, we'll admit evidence that's
41 necessary and appropriate for us to resolve the
42 issues I've just described. Where a party
43 objects to evidence, we'll hear submissions, if
44 necessary, and then make our decision. And once
45 we make a decision in the proceeding, that
46 decision is final for the purpose of this
47 proceeding.

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1 So now I want to talk briefly about
2 witnesses. And, Ms. Waddell, I think we're not
3 scheduled to have any of the teacher witnesses on
4 today, but I do want to confirm with you how you
5 would like to approach the publication ban and
6 the teacher witnesses in this proceeding. Go
7 ahead.

8 CNSL L. WADDELL: Thank you, Member Cousineau. So for
9 starters I wanted to just identify that I think
10 there's a slight addition to the publication ban
11 that was made after its initial pronouncement,
12 which was that it protects not just names, but
13 identifying information. I don't have the date
14 that that amendment was made in front of me, but
15 if the Tribunal's not easily able to put their
16 hands on it, I'm happy to get that during the
17 break.

18 And, further to that, we would like to refer
19 to the teachers testifying by their first names
20 only so as to avoid having their last name
21 available to the members of the public who are
22 attending -- although my friend of course has
23 access to it, as does Mr. Neufeld. And we -- you
24 know, I'm providing my friend with advance notice
25 that we will be objecting to questions that get
26 at the precise names of schools or -- or things
27 that might be used to identify precisely where
28 someone works, for example. We don't see the
29 relevance of that type of questioning, and it's
30 part of ensuring that they can be safe and that
31 identifying information is not available to
32 members of the public attending.

33 I don't expect that that will be an issue.
34 There probably won't be much questioning on that
35 type of subject matter, but I wanted to advise
36 the Tribunal that that will be our intended
37 approach. Our desire is to ensure that folks
38 testifying are not subject to further harm simply
39 by virtue of offering up their testimonies here.
40 And so that is probably all I need to say about
41 the teacher witnesses.

42 THE CHAIR: Thank you.

43 Mr. Kitchen, any questions or concerns?

44 CNSL J. KITCHEN: Well, I -- I do have some concerns.
45 I think some of these things are redundant,
46 and -- and that might not matter if there was no
47 practical impact -- redundant insofar as, if

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1 there is a ban, then the presumptive approach to
2 that ban is -- is to go and presume that the ban
3 will be adhered to, that it will be followed by
4 those attending the hearing. Right? That's --
5 that's the idea.

6 And -- and I would be completely open to
7 the -- to the chair sort of impressing upon those
8 listening the severity of, you know, breaching
9 that ban. That's how I've always dealt with it.
10 I've never had those bans breached or -- or, you
11 know, contravened. It's never been a problem.
12 In my experience, people get the point that, you
13 know, if you can't talk about A's name or
14 identifying details, then, you know, you really
15 can't, and you're going to be in a lot of trouble
16 if -- if you do. And you're probably going to be
17 found out if you do because of course, as you've
18 noted, we have the names and contact details of
19 everybody listening. So it's not like we have --
20 we have anonymous listeners who can -- who can
21 then, you know, go and share this stuff
22 without -- with impunity.

23 So that's -- that's -- that's the idea. And
24 part of the reason we do that is so that in the
25 hearing we can be free -- right? -- to refer to
26 people by their -- by their full names, if that's
27 the most convenient; to be able to ask relevant
28 questions about who they are and where they work
29 and what they do, and -- and I think that is
30 going to be relevant in -- or potentially
31 relevant in this case because of course, you
32 know, I'm going to have to ask questions about
33 where the teachers work -- presumably they work
34 in the district -- and -- and stuff like that.
35 We have to get into the details of whether or not
36 they'd met the burden to establish the employment
37 connection and the adverse effects.

38 So, I mean, some of these details may be
39 relevant. I'm not going to go after them if I
40 don't need to. I'm not going to go after them
41 just to annoy people. But I may need to, and I
42 need to be free to. And I -- and I am free to
43 because we have the protection from the ban.

44 I wasn't a part of the ban process. I --
45 I've -- I've been involved in those processes
46 many times, almost always with -- with children,
47 which is where those bans usually occur. It's

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1 pretty rare that they occur with adults. But,
2 having said that, I take no issue with the fact
3 that there is a ban. I'm not challenging it or
4 opposing it. I -- I agree with my friend that
5 identifying details need to be covered by the
6 ban; otherwise, the purpose is defeated. There's
7 no point in protecting somebody's name if you
8 don't also protect identifying details. So I'm
9 going to agree with her on that.

10 But, you know, we have a -- we have an adult
11 witness -- three adult witnesses. I need to be
12 able to interact with them in a normal fashion in
13 a hearing, you know, in -- in light of the fact
14 that they -- they are adults and they're expected
15 to be able to -- if they're going to come in as
16 witnesses, they're expected to be able to
17 interact with me and give me -- give me details
18 that I may need that are actually relevant.

19 So that's -- that's what I would say; just
20 let the ban do its thing. Impose upon the -- the
21 listeners the severity of the breaching it and
22 the importance of following it, and then within
23 those bounds inside the hearing, we're -- we're
24 free to do what's -- what's relevant.

25 THE CHAIR: All right. Thank you. I would like to
26 deal with any disputes about the types of
27 questions when or if those questions arise; so
28 we'll just leave that for now. But I just want
29 to come back to the proposal that we just refer
30 to the witnesses by their first name. Is there
31 any prejudice to you, Mr. Kitchen, if we just use
32 the first names for these witnesses? I take your
33 point about the -- the ban is meant to be -- we
34 should expect it to be effective. But is there
35 any prejudice to you in the process if we just
36 use the teachers' first names to give that extra
37 layer of security?

38 CNSL J. KITCHEN: Well, I mean, I could -- you know,
39 when I'm -- when I'm asking them questions, I can
40 refer to them as -- as [REDACTED]
41 and -- and --

42 THE CHAIR: Yeah. That's what I'm asking. So --

43 CNSL J. KITCHEN: But -- but -- no. Like -- yeah. My
44 only concern is -- is you may -- you may -- I may
45 just without -- without meaning to, in my oral
46 submissions, you know, end up using their whole
47 name.

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1 THE CHAIR: All right.

2 CNSL J. KITCHEN: And so I just -- and I'm not going
3 to do that on purpose, but I can -- I can see
4 that happening, and I -- I -- I'm raising that
5 now so that, you know, we don't have a problem
6 later where -- where I'm being sanctioned when I
7 shouldn't be because I've -- you know, I've gone
8 and used their -- their whole name just because
9 that's what I normally would -- so when you say
10 "prejudice," I mean, that's just how I would
11 normally do it; right? So I could see myself
12 doing it without meaning to.

13 THE CHAIR: All right.

14 CNSL J. KITCHEN: Right? And I -- I can't -- I should
15 not and can't be sort of, you know, held
16 account- -- or liable for doing so.

17 THE CHAIR: Okay.

18 CNSL J. KITCHEN: Right? So -- but when speaking to
19 the witness, if they want me to -- well, I mean,
20 first of all, anytime a witness says, hey, can
21 you call me by my first name, Bob, I'm going to
22 do that --

23 THE CHAIR: All right.

24 CNSL J. KITCHEN: -- out of respect. There's no
25 problem there. So...

26 THE CHAIR: Okay. Thank you. So then I'm going to
27 propose we proceed as follows: We will refer to
28 the teachers by their first names. I'll impress
29 upon everyone the publication ban before each
30 witness gives their evidence. We'll deal with
31 any objections to questions related to
32 identifying information if or when they arise.
33 And, Mr. Kitchen, if you find that you are having
34 the occasional slip with the last name, then that
35 may be understandable. I'll just ask everyone to
36 do their best, and we'll use first names.

37 All right. Now, I just want to talk briefly
38 about the documents and make sure that we have
39 everything that you're expecting us to have. And
40 I thank you all for the work that you've done to
41 prepare books.

42 So from the complainants, we have a few
43 things, and we've just received -- I think we
44 have the most recent version of everything. We
45 have a complainant's book of documents re
46 publications and statements, which lists
47 48 documents and is 189 pages. We have

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1 12 videos. And we have a book of documents
2 re various documents, which is 203 pages listing
3 51 documents. And then finally we have a book of
4 documents re expert evidence, 1,436 pages,
5 listing 23 documents.

6 Is that everything we should have from the
7 complainants?

8 CNSL L. WADDELL: That's correct, Member Cousineau.
9 And I'll just -- if I may jump in quickly to
10 advise my friend [indiscernible] the chance to
11 chat about the documents that are in our books.
12 So I thought I would quickly provide the Tribunal
13 with his position so you know right off the bat
14 what is going in by way of -- what we can let in
15 by way of agreement and then what -- what he
16 objects to, and therefore you will need to bear
17 that in mind as we proceed through the hearing.

18 THE CHAIR: Thank you.

19 CNSL L. WADDELL: So, first of all, I just want to
20 confirm the most recent books should have been
21 sent to you over the weekend. And the primary
22 difference with those books is for each tab where
23 there's a video we've also provided a transcript,
24 and what we did in the revised books was we
25 cleaned up those transcripts. They were
26 initially generated using AI. So they've now
27 been cleaned up. And just to make the cleanup
28 timely, we included only those portions that were
29 salient to us, rather than cleaning up the
30 entirety of the transcript.

31 So with respect to the book of documents
32 regarding publication and statements, my friend
33 has indicated that he consents to everything in
34 that book except for the following: Tab 29,
35 Tab 30, Tab 43, and Tab 44. So those four
36 documents we will need to address as the hearing
37 progresses, but he's indicated -- and he can of
38 course correct me if I'm wrong -- but that he's
39 agreeable to have the rest of the documents in
40 that book go in by way of agreement.

41 With respect to the book of documents
42 including various documents, he is prepared to
43 consent to a short number of things in that book;
44 so I will provide you with that list. So these
45 are things that -- that my friend is prepared to
46 have go in by way of agreement. Everything else
47 he objects to and we'll need to deal with in the

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1 course of the hearing, or they simply won't go
2 in. So the respondent consents to in the various
3 documents book: Tab 7, Tabs 21 and 22, Tab 26,
4 and Tabs 35 to 51. He is also prepared to
5 consent to one document within Tab 5, so not all
6 of Tab 5, but page 25 within Tab 25 [sic], he's
7 prepared to have go in by way of agreement.

8 And of course on the expert -- the book of
9 documents respecting the expert report, my friend
10 objects to the expert as a whole; so that --
11 everything in that book we'll -- we'll have to
12 deal with in due course.

13 Have I captured that, Mr. Kitchen?

14 CNSL J. KITCHEN: Very close, I think. Did you say 21
15 and 22?

16 CNSL L. WADDELL: Yes.

17 CNSL J. KITCHEN: Okay. It's -- it's actually 20 and
18 21.

19 CNSL L. WADDELL: Ah. My apologies. Okay.

20 CNSL J. KITCHEN: So 20 -- 20 is that Chilliwack News
21 release, and 21 is the email from Mr. Klettke.
22 So those -- those two are fine. 22 is not
23 according to --

24 CNSL L. WADDELL: Okay.

25 CNSL J. KITCHEN: So...

26 CNSL L. WADDELL: Okay. Thank you for that
27 clarification.

28 CNSL J. KITCHEN: I think -- I think -- and then you
29 said -- what was it? -- 30 --

30 CNSL L. WADDELL: 35 to 51 were the -- were the ones
31 that you emailed me about.

32 CNSL J. KITCHEN: No. 33 to 51. And they're all
33 very -- they're all just SOGI material; so -- so
34 there's really no, you know, distinction and --
35 and character between them all. So that's --
36 that's -- that's why they're -- that's why that
37 group.

38 CNSL L. WADDELL: Thank you.

39 THE CHAIR: All right. Thank you very much for the
40 work you've done in advance to reach that
41 agreement. That's very helpful.

42 The way that we will deal with marking
43 these -- entering and marking exhibits in the
44 proceeding, including from the joint books, is
45 that throughout the proceeding we will keep a
46 record of the documents that have come in. And
47 then at the end, we'll mark the book as a single

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1 exhibit, excluding anything that has not come in.
2 So what that means is I -- we've made note now of
3 the documents that are coming in by consent. If
4 there are documents coming in through a witness
5 and you have an objection to that, please raise
6 your objection at that time, and we'll make a
7 ruling. If a document is put to a witness, they
8 talk about it, and then we move on, I will make
9 note that the document is being admitted. So if
10 you have a concern about a document, please raise
11 it when we're talking about it, and we'll make a
12 decision; otherwise, I'll proceed on the
13 understanding that if a witness has been put to a
14 document and testified about it, that it's going
15 to come in, and I'll mark the books at the end of
16 our time together in these next couple of weeks.

17 And just while we're on that subject too,
18 I'll say that if, you know, during the course of
19 the hearing when you want to put a document or a
20 video up to a witness, you can let me know, and
21 I'll put it on our shared screen. Yes?

22 CNSL J. KITCHEN: Well, that -- we -- we hadn't
23 discussed the video issue. So, Ms. Waddell, I
24 think -- I think the only video I would be
25 objecting to is the one that corresponds with
26 the -- the particular -- if there's a video to
27 this -- maybe there isn't, but there's that
28 American interview, and I -- so I objected to the
29 transcript on the basis that it was, you know,
30 out of jurisdiction. So if there's a video with
31 that, which I think it is, then I would be
32 objecting to that video. But I think the rest of
33 the videos would all be fine. That's my
34 understanding. I haven't actually looked at the
35 videos, but I think they'd be fine.

36 CNSL L. WADDELL: Thanks, Mr. Kitchen. I presumed
37 that your -- your objection to that would apply
38 to both. And we put -- you know, we've labelled
39 them -- both transcripts and the videos at the
40 same tab; so I --

41 CNSL J. KITCHEN: Yes.

42 CNSL L. WADDELL: -- just presumed it would apply to
43 both. Thank you.

44 CNSL J. KITCHEN: Good. Good. Thank you.

45 THE CHAIR: Thank you. Okay.

46 And so for documents that we have from
47 Mr. Neufeld, we have a book of documents related

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1 to the proposed expert witness, which contains a
2 document from the McCreary Centre Society. It's
3 85 pages. And I understand this is only
4 necessary if we are admitting the expert evidence
5 and will likely relate to cross-examination.

6 And then we also have a Respondent's Book of
7 Documents Number 2, which contains two documents
8 and is five pages. And then -- this isn't
9 evidence, but I'll acknowledge we also have
10 the -- Mr. Kitchen's written submissions
11 regarding the complainant's proposed expert
12 opinion evidence, and -- and we have that as
13 well.

14 Is that everything we should have from you,
15 Mr. Kitchen?

16 CNSL J. KITCHEN: Well -- and this is a preliminary
17 matter. I sent in some submissions, I believe --
18 well, last -- last Monday, I think the 18th, or
19 maybe it was the 19th -- about the Commission's
20 proposed social fact evidence. So of course
21 that's not an exhibit. That's just submissions,
22 but I should -- but I should make sure that the
23 chair has that.

24 THE CHAIR: Yes, we have that. And I'm going to come
25 back to that --

26 CNSL J. KITCHEN: Okay.

27 THE CHAIR: We're going to come back to that topic in
28 a moment.

29 CNSL J. KITCHEN: Thank you.

30 THE CHAIR: But that's all the documents we should
31 have for the hearing; right?

32 CNSL J. KITCHEN: Yes, yes. Well, I -- and I don't
33 have my friend's position on -- on my documents.
34 I'm assuming she's going to not consent to the --
35 to Book Number 2 there, the five-pager. And then
36 the other one -- one of the documents there is a
37 repeat of what she has; so that isn't an issue.
38 I don't have her position on the longer one
39 there, the 85-pager. We don't have to deal with
40 that now, I suppose, because that depends if the
41 expert gets in, but I just put that out -- I
42 don't -- I don't -- I don't know if she's going
43 to consent to that or not. I don't necessarily
44 expect her to.

45 THE CHAIR: Okay.

46 CNSL L. WADDELL: Sorry. I can -- I can say just a
47 few things on that. I hadn't -- because my

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1 understanding, Mr. Kitchen, was that both of your
2 books were -- were aimed at cross-examination --
3 you know, one of them particularly relating to an
4 expert witness who your primary position is ought
5 not to testify at all -- I won't consent to
6 either book at the outset because it may be that
7 the -- for example, you know, the expert's not
8 qualified, we don't hear from her, in which case
9 there's no sense in my agreeing to have that
10 admitted. But I don't think anything turns on
11 the fact that I'm not consenting initially
12 because my understanding is you're going to put
13 these to people in cross, and they'll probably go
14 in there. So -- sorry -- I didn't prepare a
15 position for you more formally on that simply
16 because my understanding is you were going to put
17 these to our witnesses on cross and -- and have
18 them entered that way.

19 THE CHAIR: Okay. Thank you.

20 Before we move on, Mr. Neufeld, you've just
21 placed something in front of your camera. I
22 wonder -- I imagine that was a --

23 BARRY NEUFELD: Sorry.

24 THE CHAIR: -- mistake. Okay. Thank you.

25 All right. And we also have the book of
26 articles from the Commissioner, which is
27 452 pages. And, as I said, I just want to come
28 back to that in a moment.

29 But is there anything else we should have
30 from the Commissioner, Ms. Sokolova?

31 CNSL M. SOKOLOVA: No. That's all.

32 THE CHAIR: Okay. Thank you.

33 CNSL M. SOKOLOVA: No. That's all. Thank you.

34 THE CHAIR: Okay. Thank you.

35 So, briefly, thank you as well for coming up
36 with a schedule for closing submissions. We'll
37 return to this of course at the end of the
38 hearing. We'll confirm the schedule at that
39 time, but I also want to confirm at the outset
40 that the schedule you've proposed is good and
41 we've set aside March 4th to hear oral arguments,
42 supplementary to your written submissions.

43 And now is when I want to just talk very
44 briefly about the dispute over the Commissioner's
45 book of secondary sources. I understand that
46 Mr. Neufeld objects to these sources. And I
47 don't -- unless the parties feel otherwise, I

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1 don't see this as an issue that we should spend
2 evidentiary time resolving. I think this is
3 something we can come to at the end of the
4 hearing and discuss the most efficient way for
5 receiving submissions and resolving the issue.
6 So that's what I propose to do is really to leave
7 it until the end of this hearing, and then we'll
8 figure out whether the issue is addressed in your
9 closing submissions or if you want to have a
10 separate schedule for submissions about the
11 secondary sources. But I don't think we need
12 hearing time to do this.

13 Mr. Kitchen, any concerns with that
14 approach?

15 CNSL J. KITCHEN: Well, there is a timing concern
16 because of course the idea would be if -- and I
17 guess this would depend on how -- you know, what
18 reasons you've relied on for admitting it, but --
19 but if you were to -- to admit it, the
20 respondent's initial position is that, well,
21 whatever basis you've relied on to admit it would
22 equally apply to any rebuttal, social fact,
23 evidence he wanted to put in. Has to be relevant
24 obviously.

25 But -- so that's -- that's -- that's the
26 issue. Because if it's admitted, we need time to
27 get ours in. And by "time," I just mean it
28 has -- it has to come in -- in fact -- well, it
29 really should come in before anybody just to have
30 their submissions. Right? I have to do mine in
31 January. My friend has to do hers at some point
32 in January and February. The Commission has an
33 opportunity to -- to respond to -- like -- like,
34 all the evidence has to be in before we do
35 submissions -- written submissions, I mean;
36 right? So I -- I don't know if we'd have time at
37 the end.

38 But what I would suggest is at the very end
39 of the hearing, if we can find the time on the
40 last day, is -- is to have some -- some oral
41 argument about that, and then the Commission make
42 a decision within -- I don't know -- a reasonable
43 time -- 7 -- 7 days, 10 days, 14 days --
44 whatever -- so the parties can then know, okay,
45 this is going in or this isn't going in. And if
46 it is going in -- right? -- then we have -- you
47 know, you can give us two weeks, let's say, to

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1 get our materials in, and then -- you know, which
2 would be presumably sometime in early January.

3 Then the materials are in. We can rely on
4 them in our brief. My friend's got notice. The
5 Commission's got notice. And, you know, they can
6 go through -- they can go through whatever I put
7 in and be able to give submissions back to -- you
8 know, in -- in -- in response -- or in --
9 sorry -- in -- well, sorry. The complainant has
10 to go first. Sorry. Their commissions --
11 their -- their -- their submissions go first.
12 They need to have my documents before they do
13 that.

14 THE CHAIR: Okay.

15 CNSL J. KITCHEN: Otherwise it's just, you know, not
16 fair. So the whole purpose of me saying this is
17 we have to deal with this issue now, as in, like,
18 in December so that we have time with the current
19 schedule we have to get documents in. Everybody
20 has them. They can respond to them in their
21 submissions.

22 THE CHAIR: All right. Understood. Thank you. So
23 what I'm going to propose -- and, Ms. Sokolova,
24 I'll just make sure that it works for you too --
25 is that -- let's just see how we're doing
26 timing-wise in these next couple of weeks. We'll
27 come back to this at the end. And if it looks
28 like we're going to have some time on the last
29 day, then we can set aside some time for argument
30 about it. And we'll of course endeavour to have
31 a decision for you as soon as we can. And if it
32 looks like we're not going to have time to have
33 argument during this evidentiary part of the
34 hearing, then we'll figure out a quick schedule
35 for submissions to resolve it sooner rather than
36 later. But let's just see how much time we have
37 left.

38 Is that all right on your end for the
39 Commissioner?

40 CNSL M. SOKOLOVA: Yes, that's good. We're prepared
41 to deal with it anytime. I mean, we came here --
42 we're here today prepared to deal with it, but
43 I -- I wasn't expecting that we would, but we are
44 prepared. So anytime you want that dealt with,
45 we're good.

46 THE CHAIR: Thank you very much.

47 And I think this was probably just a slip of

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1 the tongue, Mr. Kitchen, but just to clarify in
2 case there's any confusion, you referred to us as
3 the "Commission" -- and it can be -- it can be
4 confusing, especially for people coming outside
5 of B.C. -- B.C.'s Office of the Human Rights
6 Commissioner is a completely independent body
7 from the B.C. Human Rights Tribunal. We are two
8 entirely different organizations. The Tribunal
9 of course being the adjudicative body, and the
10 Commissioner being an independent office of the
11 legislature with a separate mandate under the
12 *Human Rights Code*. So I think it was just a slip
13 of the tongue, but it tweaked in my brain that
14 sometimes people may have a misconception that
15 there's some relationship between the two bodies,
16 and there is not, other than we both have
17 mandates under the same legislation.

18 CNSL J. KITCHEN: And I apologize in advance because I
19 may do that a couple more times just because
20 we're in front of the Tribunal, but the
21 Commission's here; so I got to -- I got to bounce
22 back and forth in my mind. I understand what
23 you're saying, and I agree with you. I just --
24 yeah. It was -- it must have been a slip. I
25 don't even remember saying it.

26 THE CHAIR: Yeah.

27 CNSL J. KITCHEN: Hopefully that won't happen again,
28 but it might.

29 THE CHAIR: That's fine.

30 All right. I think the last thing from me
31 for now is an exclusion of witnesses order. The
32 exclusion of witnesses from the hearing is done
33 to preserve the integrity of the proceeding and
34 the integrity of their testimony -- that is, to
35 guard against their evidence being affected or
36 influenced by evidence given by other witnesses.
37 So I order that all witnesses, with the exception
38 of the parties, be excluded from the proceeding
39 until they've testified. This includes any
40 witnesses that may be called in reply.

41 And then once a witness has completed their
42 testimony, they can connect as a member of the
43 public if they've been given access in that way,
44 or they can leave. But they must not discuss
45 their evidence with any other witnesses,
46 particularly with witnesses who have not yet
47 testified. So I expect counsel likely will have

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1 prepared their witnesses in advance for that, but
2 I just want to confirm that I'm making an order
3 for the exclusion of witnesses to preserve their
4 testimony.

5 All right. And those are all the
6 preliminary issues on my agenda. And so before
7 we turn to opening statements, I'll check in and
8 ask you if you have any other preliminary issues
9 to address. Ms. Waddell?

10 CNSL L. WADDELL: Is to say that on the subject of a
11 scheduling, we of course sent out sort of a
12 revised schedule this past week identifying, in
13 an effort to preserve as much time on Friday,
14 give the Tribunal some room to make a
15 determination about Dr. Saewyc's evidence, that
16 we would deal with qualification and threshold
17 admissibility issues today and then preserve
18 Friday for her evidence. And I just wanted to
19 identify -- because I know my friend identified
20 some concern about whether Friday was going to be
21 enough time. Unfortunately, it's all the time
22 that we have with Dr. Saewyc. She has surgery on
23 Monday -- the -- the following Monday; so we
24 can't schedule her then, and she's not available
25 on the Thursday.

26 If as we, you know, proceed through the week
27 though, you know, he still has this concern, you
28 know, we could -- we'd propose that we start a
29 little bit early on the Friday or, subject of
30 course to the Tribunal's willingness to do it, we
31 could stay a little bit late -- not a ton late,
32 but a little bit. So those are ways to create a
33 little bit more time if it's necessary for
34 Dr. Saewyc's actual evidence. And I just wanted
35 to identify that unfortunately we don't have her
36 available on the Monday, as my friend indicated
37 he was concerned about finishing up on the
38 Friday.

39 THE CHAIR: Thank you. All right. Let's deal with
40 this if or when we need to, depending on the
41 admissibility of evidence and the scope of
42 admissible evidence. And then if there's a
43 concern, as you suggest, we can talk about how we
44 might squeeze a few more minutes out of the day.
45 But generally if the evidence is admitted, I
46 would hope that a day is enough to have her
47 testify.

23

Opening statement for Complainants by Cnsl L. Waddell

1 Mr. Kitchen, any other preliminary issues
2 from your end?

3 CNSL J. KITCHEN: No.

4 THE CHAIR: Okay. Thank you.

5 Ms. Sokolova, anything I've missed from the
6 Commissioner?

7 CNSL M. SOKOLOVA: No. Thank you.

8 THE CHAIR: No? Okay. Thank you.

9 In that case, I'll turn it over to you now
10 for your opening statements. Each party can make
11 an opening statement of up to 20 minutes, and
12 then the Commissioner has an opening statement of
13 up to 10 minutes. And then we'll take a break
14 after the opening statements.

15 Ms. Waddell, whenever you're ready, go
16 ahead.

17 CNSL J. KITCHEN: Chair, I'm sorry --

18 THE CHAIR: Oh.

19 CNSL J. KITCHEN: -- just before we get started, I
20 just want to understand the order. Is it going
21 to be the complainant, the Commission, and then
22 the respondent?

23 THE CHAIR: Are you giving your opening -- sorry. I
24 should have actually confirmed. Are you giving
25 your opening statement now, or do you want to
26 give it at the beginning of the respondent's
27 case?

28 CNSL J. KITCHEN: You know what, I'll -- I'll give it
29 at the beginning of the respondent's case because
30 I think that's probably better for scheduling and
31 for order as well. So let's do that. I won't --
32 I won't give mine today.

33 THE CHAIR: Okay.

34 CNSL J. KITCHEN: I'll do it next Monday.

35 THE CHAIR: All right. In that case, the answer to
36 your question I think is, yes, we'll have the
37 Commissioner today, and then you'll go next week.
38 Okay.

39 CNSL J. KITCHEN: Thank you.

40 THE CHAIR: Go ahead, Ms. Waddell.

41

42 OPENING STATEMENT FOR THE COMPLAINANT:

43

44 CNSL L. WADDELL: Thank you. The Chilliwack Teachers'
45 Association, which I'll refer to as the "CTA" in
46 these proceedings, and the BCTF, which is the
47 British Columbia Teachers' Federation, jointly

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Opening statement for Complainants by Cnsl L. Waddell

bring this complaint on behalf of LGBTQ2S+ members of the CTA, alleging, as the Tribunal has already noted, that the respondent, Neufeld, who was at all material times a trustee at the Board of Education in Chilliwack made statements and publications which violate sections 7(1)(a), 7(1)(b), and 13 of the *British Columbia Human Rights Code*. We are of course no longer pursuing allegations of retaliation.

Now, Mr. Neufeld served as a trustee at the Board of Education in Chilliwack for multiple terms, until November of 2022 when he was unsuccessful in seeking re-election. And until the fall of 2017, he appears to have fulfilled his role as trustee largely without incident. On October 23rd, 2017, however, Mr. Neufeld made the first of a series of Facebook posts and public statements opposing a set of educational resources collectively referred to as "SOGI 123" -- I'll explain what those are in a moment -- which he described as a weapon of propaganda aimed at forcing the biologically absurd theory that one's gender might not match one's sex on children, and likened supporting children to choose -- that's his word -- their gender to child abuse.

Now, the *Human Rights Code* and the *School Act* and the *Teachers Act* and related regulations require teachers to provide inclusive instruction for all students in a safe learning environment. The term "SOGI" refers to Sexual Orientation and Gender Identity. And it doesn't refer to any specific sexual orientation or gender identity, but it's just used to note that all of us have a sexual orientation and a gender identity and to affirm that these -- these two concepts of sexual orientation and gender identity are distinct and separate.

Since 2016 -- so about a year before Mr. Neufeld's first post -- all school districts in the province of British Columbia have been required to deliver education using a new curriculum which requires a focus on diversity and inclusion. And all school districts are -- were then also required to have anti-bullying and anti-harassment policies in place. Now, these -- these have nothing -- this new curriculum that

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Opening statement for Complainants by Cnsl L. Waddell

1 B.C. implemented has nothing directly to do with
2 SOGI 123. It is entirely separate and was
3 implemented on a province-wide level.

4 SOGI 123, which Mr. Neufeld -- many of his
5 posts are about, is a set of educational tools
6 and resources that were developed through
7 collaboration between the Ministry of Education,
8 an organization called the ARC Foundation, and
9 UBC's Faculty of Education. And these tools and
10 resources are aimed at supporting the provision
11 of an inclusive learning environment for all
12 students.

13 SOGI 123 provides information and resources
14 in three key areas, and those areas reflect what
15 was -- what came to be expected of educators and
16 school systems in 2016. One of those areas was
17 policies and procedures, one of them is inclusive
18 learning environments, and one of them is
19 resources. So SOGI 123 is not a curriculum or a
20 course of study, but it is a set of tools and
21 resources designed to align with B.C.'s new
22 curriculum in a variety of subject areas and to
23 be a set of resources that teachers or
24 administrators might use as they seek to fulfil
25 their new mandate in the delivery of education
26 under the new curriculum.

27 Now, through his many Facebook posts, public
28 statements, and media interviews while a trustee,
29 Mr. Neufeld conveyed a number of messages. And
30 I'm -- I'm going to paraphrase them with the goal
31 of being a bit more brief. He conveyed that
32 SOGI 123, as I've already said, is a weapon of
33 propaganda. That SOGI 123 reflects an evil
34 ideology. That SOGI 123 grooms children in
35 preparation for child predators. That SOGI 123
36 sets children up for further abuse and
37 victimization. That it is a dangerous grooming
38 ideology. That SOGI 123 or trans ideology is
39 akin to what the Nazis or Russians did in turning
40 teenagers against their parents.

41 He conveyed that there are probably many
42 more victims in public schools today because of
43 SOGI 123 than there were in residential schools.
44 He conveyed that "genderfluid ideology" -- his
45 term -- is an organized and sinister attack on
46 nuclear family values. That parents should take
47 their children out of public schools before

1 activist teachers destroy young bodies and
 2 families. That gender ideology being presented
 3 in schools today is akin to Canada's history of
 4 residential schools. That books publishing "the
 5 gay and transgender lifestyle" showing up in
 6 school libraries is tantamount to child abuse.
 7 That normalizing the discussion of gender roles
 8 is grooming. That supporting or encouraging
 9 children to change gender is child abuse. That
 10 "transgenderism" -- again, his word -- is a
 11 biologically absurd theory. That gender
 12 confusion is actually a sexual addiction. The
 13 suggestion that children might consider rejecting
 14 their own gender or gender identity is
 15 gaslighting and child abuse. That it is child
 16 abuse to support the idea of transitioning. And
 17 that people who encourage children to transition
 18 are child abusers.

19 He conveyed the message that most kids who
 20 present as gender dysphoric are actually on the
 21 autism spectrum and that most people with gender
 22 dysphoria will simply grow out of it. He
 23 conveyed the message that trans people are
 24 deceivers, that transgenderism is false, and that
 25 to say that one's sex and gender might not align
 26 is a lie. The idea that gender is on a spectrum
 27 or that you can change it is similarly a lie.
 28 That gender transition surgery is a horrible
 29 practice that results when physicians ignore God.
 30 That there will be no transgender persons in the
 31 kingdom of God. That transgenderism is
 32 dangerous. That transgenderism is a dangerous
 33 ideology. And that the trans agenda is eugenics.
 34 That gay couples should not be able to adopt
 35 children and that those who support same-sex
 36 parents or families are radical cultural
 37 nihilists.

38 Publications conveying these and other
 39 messages are what the complaint alleges amount to
 40 discriminatory publications, hate speech, and/or
 41 discrimination respecting employment in relation
 42 to the class.

43 In addition to asserting his *Charter* right
 44 to freedom of expression in response to this
 45 complaint or in his defence, we expect that
 46 Mr. Neufeld will say that he harbours no ill will
 47 toward members of the LGBTQ2S+ community and that

27

Opening statement for Complainants by Cnsl L. Waddell

1 he is acting not with the intention of harming
 2 anyone, but in an effort to protect them from
 3 harm that he believes to be associated with "the
 4 trans agenda," SOGI 123, and/or exposure to
 5 transgender people or ideas.

6 Whatever Mr. Neufeld's intention, we say
 7 that his publications and statements clearly
 8 indicate discrimination or an intention to
 9 discriminate, contrary to 7(1)(a); tend to expose
 10 LGBTQ2S+ teachers in the District to detestation
 11 and vilification on the basis of sexual
 12 orientation and/or gender identity; and/or
 13 discriminate against LGBTQ2S+ teachers in
 14 relation to their employment. In effect then,
 15 whether or not an intention, Mr. Neufeld made
 16 Chilliwack schools a place in which LGBTQ2S+
 17 teachers felt unsafe both to be themselves and to
 18 support LGBTQ2S+ teachers -- or students, rather.

19 Far from discharging his role -- his
 20 legitimate role as a trustee, we say that
 21 Mr. Neufeld utilized his profile as a member of
 22 the Chilliwack Board of Education to disseminate
 23 discriminatory and at times hateful messages,
 24 leading those in the District's employ fearing
 25 for their own physical and emotional safety and
 26 the safety and wellbeing of their students and
 27 for their ability to discharge their duty --
 28 their statutory duty to provide an inclusive
 29 learning environment for all.

30 Now, this case is not about Mr. Neufeld's
 31 beliefs. Mr. Neufeld's beliefs are his own, and
 32 this is -- this matter is not about whether he is
 33 entitled to them, however ill-informed we may
 34 feel they are. Rather, this case is about
 35 whether in making and publishing statements as a
 36 school board trustee Mr. Neufeld's conduct
 37 violates the Code's prohibitions against
 38 discriminatory publications, hate speech, and
 39 discrimination regarding employment.

40 I was going to spend some time going over
 41 the legal framework for each of the three
 42 sections of the Code that we will be arguing have
 43 been breached here; however, the Tribunal has
 44 kindly done it for me, and so I won't spend time
 45 on that, and I'll just go straight to our
 46 evidence and tell you a bit about what we expect
 47 you will hear and see over the next week as the

1 complainant enters its case.

2 To establish violations of sections 7(1)(a),
3 7(1)(b), and section 13 of the Code, we intend to
4 tender evidence from a variety of sources.
5 First, we will rely on documentary evidence,
6 primarily the plain language of the posts and
7 statements themselves, which are contained in the
8 complainant's first book that's entitled "Re
9 Publications and Statements."

10 Second -- sorry. In addition to that book
11 of course, we will also rely on some of the
12 documents you will find in our other large-ish
13 book entitled "Complainant's Book of Documents:
14 Various Documents." That book contains media
15 coverage of these events, documents relating to
16 school board meetings, and various other types of
17 correspondence.

18 In addition to the documentary evidence, we
19 will rely on evidence from two individuals who
20 were members of the CTA at the relevant time who
21 will provide testimony about their experience as
22 LGBTQ2S+ members of the class in and around the
23 time of the publications and statements at issue.

24 Next, we will call evidence from the former
25 president of the BCTF, Glen Hansman, who will
26 provide evidence about SOGI 123, what it is, what
27 it isn't, and the subject matter of Mr. Neufeld's
28 posts.

29 We will also be calling Ed Klettke, who was
30 the president of the CTA during much of the time
31 period in question. And Mr. Klettke will testify
32 about some of the publications and statements,
33 the impacts they had on teachers in the District
34 and members of the class, and some of the steps
35 taken both by the complainant and the District to
36 address Mr. Neufeld's statements.

37 And, finally, we will be asking the Tribunal
38 to qualify Dr. Elizabeth Saewyc as an expert on
39 the impacts of stigma on sexual and gender
40 minority populations. Dr. Saewyc is a professor
41 and director at the school of nursing at the
42 University of British Columbia and a scholar with
43 decades of experience conducting research in this
44 and related areas.

45 Dr. Saewyc has provided testimony as an
46 expert witness in a variety of proceedings for
47 and has published and taught extensively in a

29

Opening statement for Intervenor by Cnsl M. Sokolova

1 number of fields which inform her opinion here.
2 Those include health impacts on adolescent youth
3 populations. Those include impacts of stigma on
4 sexual and gender minority groups. Those include
5 methodological courses on research and other
6 matters, all of which bear on her ability to
7 provide the opinion in question here.

8 Now, we'll address the merits of the
9 response objections to Dr. Saewyc's evidence in
10 due course after she has testified about her
11 qualifications, but for now we will simply say
12 that we are confident that she is sufficiently
13 qualified and that her evidence will assist the
14 trier of fact.

15 And when the evidence of both parties is in
16 of course, we will be asking the Tribunal to make
17 the orders that Member Cousineau has already
18 outlined and will ensure that the evidence
19 tendered here provides adequate foundation for
20 the remedies that we will ultimately seek at the
21 end of the hearing.

22 Those are our opening comments, and I'll
23 turn it back to, I think, the Commissioner's
24 counsel.

25 THE CHAIR: Thank you. Just before we do, a small
26 question for you, Ms. Waddell -- very small
27 question. I know that the case is brought by the
28 BCTF on behalf of the Chilliwack Teachers'
29 Association. When we're writing and talking
30 about the complainants in this case, is it your
31 preference that we say the "complainants" or the
32 "BCTF" or the "Chilliwack Teachers' Association"
33 or -- or how do we kind of distinguish between
34 the two, or do we treat them totally separate?

35 CNSL L. WADDELL: If you could, we would appreciate if
36 you could refer to both -- so you could say
37 BCTF/CTA -- because they are both the
38 complainant.

39 THE CHAIR: Okay.

40 CNSL L. WADDELL: So the CTA is a local of the BCTF.

41 THE CHAIR: All right. Thank you. Small but
42 important point.

43 CNSL L. WADDELL: Thank you.

44 THE CHAIR: All right. Ms. Sokolova, for the
45 Commissioner, go ahead.

46
47 OPENING STATEMENT FOR THE INTERVENOR:

30

Opening statement for Intervenor by Cnsl M. Sokolova

1
2 CNSL M. SOKOLOVA: Thank you. I'm appearing for the
3 intervener, British Columbia's Human Rights
4 Commissioner. And as noted, due to our
5 schedules, I'm representing the Commissioner this
6 week, and my colleague Sarah Khan will be
7 representing the Commissioner during the second
8 week of this hearing.

9 So I'm going to outline the Commissioner's
10 reasons for participating in the hearing. Then
11 I'll give an overview of the Commissioner's
12 background and role and her view of the law under
13 section 7 of the *Code*.

14 The Commissioner is participating in this
15 hearing because the interpretation of section 7
16 of the *Human Rights Code* has implications beyond
17 the direct interests of the parties to this
18 complaint, and her interest also includes
19 ensuring that applications of the *Code*, including
20 section 7, take into account the ways in which
21 marginalized communities -- in this case,
22 transgender and nonbinary people -- are
23 discriminated against.

24 Courts and tribunals in Canada have already
25 found that unfortunately hate and discrimination
26 against transgender people continues, and as the
27 rights of transgender people are increasingly
28 recognized and respected in our society, hate and
29 discrimination by some people against them also
30 rises. It is a long-standing pattern that as
31 people gain recognition for their human rights,
32 they simultaneously face increased backlash.
33 We're seeing that play out against transgender
34 people in Canada, and this is causing tremendous
35 harm, both individual and societal.

36 Here the respondent, Mr. Neufeld, is alleged
37 to have made statements equating gender-affirming
38 care for transgender children and youth with
39 child abuse, among other things. We endeavour to
40 assist the Tribunal to understand the underlying
41 logic, context, and impact of statements that
42 liken support for gender-affirming care for
43 transgender children and youth to child abuse.
44 And as noted by this Tribunal, being transgender
45 is not a moral choice. It's not a measure of
46 integrity. It's not in any way analogous to
47 being a child abuser, pedophile, or groomer.

31

Opening statement for Intervenor by Cnsl M. Sokolova

1 It's simply one part of the person's identity.
2 However, we don't take any position on whether
3 the respondent engaged in hate or discriminatory
4 speech contrary to section 7 of the *Human Rights*
5 *Code*, and we hope instead that our participation
6 will assist the Tribunal in your decision-making
7 process.

8 We had planned to call expert evidence in
9 this proceeding, but due to a serious medical
10 issue with our expert, we're no longer doing so.
11 However, we will be relying on academic articles
12 reflecting social fact in final submissions,
13 subject of course to our discussion at the --
14 with the Tribunal at the end of this hearing or,
15 alternatively, in submissions.

16 We may have some cross-examination questions
17 for the complainant's evidence, Dr. Saewyc,
18 relating to her areas of expertise. And
19 depending on her responses and any evidence that
20 she gives, we will determine if any further
21 questions are required. I don't anticipate that
22 this will be lengthy or that it will affect the
23 time estimates provided by the parties for their
24 evidence.

25 Some background about the Commissioner --
26 the Commissioner, Kasari Govender, KC, is an
27 independent officer of the legislature with a
28 mandate under section 47.12(1) of the *Human*
29 *Rights Code* to protect and promote human rights
30 in the province. From 2002 until 2019, B.C. was
31 without a Human Rights Commissioner. In 2018 the
32 provincial government created the Office of the
33 Human Rights Commissioner, and Ms. Govender was
34 appointed by legislative assembly and formally
35 assumed her role on September 3rd, 2019. And she
36 was reappointed by legislative assembly for a
37 second five-year term on May 15th, 2024.

38 The legislative assembly reinstated the role
39 of the Commissioner to specifically focus on
40 systemic discrimination and the root causes of
41 inequality. It is within the Commissioner's
42 discretion to intervene as a right in any case
43 before the Tribunal. The Commissioner fulfils
44 this mandate by exercising her discretion where
45 areas of human rights law are unsettled or in
46 cases that have a systemic impact.

47 This is the first -- this is the

32

Opening statement for Intervenor by Cnsl M. Sokolova

1 Commissioner's first intervention before the
2 Tribunal, but she has sought and been granted
3 leave to intervene in seven other proceedings
4 before B.C. courts, among them the prior judicial
5 review proceedings related to this complaint.
6 She also made submissions in the July 2024
7 hearing before this tribunal about the Tribunal's
8 jurisdiction over online hate and discriminatory
9 speech.

10 In this proceeding, the Commissioner will
11 submit that section 7 of the Code specifically
12 targets discriminatory speech and hate speech.
13 It states that a person must not publish, issue,
14 or display publications that indicate
15 discrimination or an intention to discriminate
16 against a person, a group, or speech that is
17 likely to expose a person or a class of persons
18 to hatred or contempt because of a characteristic
19 protected by the Code. Transgender people are
20 protected through the characteristics of gender
21 identity and expression.

22 Hate speech and discriminatory speech
23 covered by section 7 limits certain types of
24 public speech, although it doesn't apply to
25 private speech or speech intended to be private.
26 Speech which adversely impacts a person in
27 connection with a characteristic protected by the
28 Code is also prohibited in other areas regulated
29 by the Code -- for example, housing access to
30 services, and employment.

31 Under section 7(1)(a), there is case law
32 explaining what is covered by the discriminatory
33 speech provision of section 7 of the Code. These
34 cases show that this section is violated where
35 there is an intention to discriminate, even if
36 that real world effect is only intended but not
37 actually achieved. The scope of section 7(1)(a)
38 is limited to communications that disclose an
39 intention to generate some real discriminatory
40 effect beyond merely being offensive.

41 While section 7(1)(a) contemplates some
42 level of restriction on freedom of expression, in
43 order to further the purposes of the Code,
44 matters of legitimate public interest and public
45 comment are not covered. The speech must also be
46 more than an expression of an opinion.
47 Therefore, to establish a violation of

1 section 7(1)(a), a complainant must show that the
2 publication had a discriminatory effect or likely
3 effect or was intended to do so.

4 As noted in the Commissioner's prior
5 submission about the terms of her participation
6 in this hearing, depending on how the evidence
7 unfolds, the Commissioner's submission may
8 include a discussion of how to identify whether
9 speech is a matter of legitimate public interest
10 and how to ensure that the interpretation of
11 section 7(1)(a) aligns with the equality analyses
12 under other sections of the *Code*.

13 Section 7(1)(b) -- the test for hate speech
14 under section 7(1)(b) is whether in the view of a
15 reasonable person aware of the context and
16 circumstances, the speech exposes or tends to
17 expose a person or class of people to detestation
18 and vilification on the basis of a prohibited
19 ground of discrimination, including gender
20 identity and expression. Hate speech creates
21 both individual and societal harm. At an
22 individual level, hate speech humiliates and
23 degrades its targets with negative psychological
24 and social consequences. At the societal level,
25 hate speech can desensitize society to claims
26 that its target group is inferior, subhuman, or
27 lawless, and in doing so, lay the groundwork for
28 discrimination, marginalization, and violence
29 against that group.

30 The Supreme Court of Canada has provided
31 helpful illustrations of detestation and
32 vilification. They go far beyond merely
33 discrediting, humiliating, or offending the
34 victims, and extend to accusing people of
35 disgusting characteristics, inherent
36 deficiencies, or immoral propensities which are
37 too vile in nature to be shared by the person who
38 vilifies.

39 Exposure to hatred can also result from
40 expression that equates the targeted groups with
41 groups traditionally reviled in society, such as
42 child abusers or pedophiles. Some other
43 hallmarks of hate include denying a group's very
44 existence, associating the group with social
45 problems, and claiming that they are liars or
46 immoral. Hate speech also forces a group to
47 argue for their basic humanity or social standing

34

Opening statement for Respondent by Cnsl J. Kitchen

1 as a pre-condition to participating in the
2 purposeful aspects of our society.

3 The Commissioner's position will be that in
4 claims involving allegations of discrimination on
5 the basis of gender identity or expression,
6 determinations under both section 7(1)(a) and
7 section 7(1)(b) of the Code must be made with due
8 consideration of the unique context of such
9 claims.

10 Moreover, when determining under
11 section 7(1)(a) whether speech is a matter of
12 legitimate public interest or under 7(1)(b)
13 whether speech vilifies or exposes to
14 detestation, the Tribunal can consider the
15 rhetorical function of that speech and its
16 intended effect, including equating respect for
17 gender diversity with child abuse and the moral
18 panic that such statements will create.

19 In conclusion, in this hearing the Tribunal
20 will hear from a range of witnesses from both
21 parties, review arguments, and determine whether
22 the respondent has breached section 7. The
23 Commissioner's position will be that this
24 determination must be cognizant of the unique
25 forms of anti-transgender hate and
26 discrimination. Thank you.

27 THE CHAIR: Thank you.

28 CNSL J. KITCHEN: Chair, forgive me. I'm going to
29 change my election and -- and give my opening
30 now.

31 THE CHAIR: Okay.

32 CNSL J. KITCHEN: Thank you.

33 THE CHAIR: Sorry. Just before you do, Mr. Kitchen,
34 because I just want to address one quick thing.
35 It looks like --

36 CNSL J. KITCHEN: Sure.

37 THE CHAIR: -- Mr. Neufeld has a large microphone up
38 to the camera, and I just want to confirm,
39 Mr. Neufeld, whether that's a microphone and
40 whether you're recording the proceeding.

41 BARRY NEUFELD: No. That's -- that's my microphone.
42 I'm not recording.

43 THE CHAIR: Oh, okay. That's just for your
44 participation. Thank you.

45 All right. Go ahead, Mr. Kitchen.

46
47 OPENING STATEMENT FOR THE RESPONDENT:

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Opening statement for Respondent by Cnsl J. Kitchen

1
2 CNSL J. KITCHEN: Thank you. Tribunal members, I
3 think it's important to ask ourselves what this
4 case is really about, what is really going on.
5 Of course we -- we usually do that. That's often
6 what the framing of the case is all about with
7 lawyers and opening statements and even closing
8 statements, but it applies especially to this
9 case. From the respondent's perspective, this
10 case really arises out of a clash of ideas and
11 beliefs that should be left to play itself out in
12 the marketplace of ideas and in the political
13 arena.

14 In this clash though, in this debate, one
15 side is using its power to influence institutions
16 to censor, cancel, and penalize the other side.
17 This is done in part by claiming that the ideas,
18 beliefs, and ideologies held by certain people or
19 particular groups must not be opposed or
20 criticized because those ideologies and beliefs
21 are too closely bound up with the identities of
22 some of these people that hold those beliefs.

23 The issue in this case then is -- there's
24 many issues, but the issue -- the central issue
25 is where to draw the line -- the line between
26 permissible criticism of and opposition to ideas,
27 ideologies, and beliefs, and impermissible a
28 position to or criticism of persons on the basis
29 of their protected characteristics. In deciding
30 where to draw that line, consideration must be
31 given to free expression in particular. And as
32 part of that, the three core values that underpin
33 free expression, which are truth-seeking,
34 democratic discourse, and self-actualization.
35 And while the third is relevant to this case,
36 really what's really important is truth-seeking
37 and democratic discourse. And I will pause to
38 emphasize the "seeking" part of truth-seeking.

39 As the tribunal has mentioned, truth is no
40 defence. And I can appreciate that. It's not
41 necessarily about which side is true. And of
42 course as Justice McLachlin, as she then was,
43 commented on, we have to be very difficult about
44 who are the arbiters of truth, and obviously
45 nobody has a monopoly on the truth. But the
46 point is truth-seeking. And there's a truth that
47 one side holds that they are seeking to

36

Opening statement for Respondent by Cnsl J. Kitchen

1 promulgate in society, and which they are
2 permitted to do, and there's another side that is
3 seeking what they think is their truth, as -- as
4 the phrase often is. They have a truth in their
5 mind, and they are trying to seek it, and they're
6 trying to promulgate it amongst society, as they
7 should be permitted to do in the marketplace of
8 ideas, which is protected by free expression in
9 this nation.

10 And I don't just say that simply as a -- as
11 a 2(b) of the *Charter* aspect. The -- the -- the
12 value, as we often call it nowadays, of free
13 expression is meant to permeate everywhere. It's
14 meant to permeate in the common law. It's meant
15 to permeate even to a degree in private law.
16 It's meant to permeate through our institutions
17 and our tribunals and our adjudicators, whether
18 they're at the tribunal level or they're at the
19 Labour Board level or they're at the professional
20 disciplinary level. And so it's not necessarily
21 about a strict technical legal application of the
22 *Charter*, going back to your opening comments,
23 because I don't actually think that's really the
24 way to conceptualize this case.

25 This case isn't about how to balance free
26 speech with -- or free expression -- sorry --
27 with otherwise discriminatory expression. There
28 is no need for that if the proper delineation is
29 done. There's no need to balance if we just
30 initially perform the proper analysis, which
31 we're required to. The Supreme Court of Canada
32 suggests that the very first thing we should do
33 when we're looking at what is ostensibly a
34 conflict of rights -- i.e., free expression of
35 the respondent and the right to be free of
36 discrimination of the complainants in this
37 case -- we have to ask ourselves, is there
38 actually a conflict of rights? Did we actually
39 have to balance these two and compromise?
40 Because is there -- is there actually a conflict?

41 And in this case, there isn't. If we go
42 through that analysis and we do the
43 delineation -- draw the line, as I said -- then
44 we don't have to worry about that. But where we
45 draw the line, how we draw the line obviously
46 must be informed by a number of things, but free
47 expression generally as a value in our society --

37

Opening statement for Respondent by Cnsl J. Kitchen

1 as a value that everybody in society benefits
2 from and must have equal access to.

3 For example, this is not a case involving a
4 direct conflict, such as in a situation where you
5 would have the pronoun issue, where you have -- a
6 transgender-identifying person says, These are my
7 pronouns. This is my new name. This is what I
8 want to be called. And somebody says to them, I
9 can't do that. It would violate my conscience.
10 And of course if that person was forced to do it,
11 it would be a violation of their conscience. And
12 that's a very serious thing that we don't permit
13 in western civilization generally, which is why
14 we have not just freedom of expression, but also
15 freedom of conscience. And compelled speech
16 overlaps over both, and it's regarded as one of
17 the most repugnant forms of -- of denying
18 people's individual fundamental freedoms.

19 And so in that case, you would have to
20 balance. You would have to figure out a
21 compromise. The transgender person has a right
22 to be free of discrimination. We got to figure
23 out how to define that, what's the scope of that,
24 what are the limits to that. And it really is
25 running up against this other person's right, not
26 only to free expression, but also to their
27 conscience. They can't in their mind lie. How
28 do we balance those two? We don't need to do
29 that in -- in that case. I've been in cases
30 where that has to be done. We don't have to do
31 that here because we don't have comments from
32 Mr. Neufeld that are directed at persons on the
33 basis of their protected characteristics. And
34 I'm going to get into that a little more.

35 I'll just pause to note, we have a
36 decision -- the preliminary decision in this
37 case, and I believe it's 2021 BCHRT 6 -- I think
38 is it. That's a decision by the tribunal member
39 Kathleen Smith. And she -- she effectively
40 prejudges this issue. And -- and fortunately
41 she's not on this panel; so there's not an issue
42 of -- of bias in the form of prejudgment with the
43 three tribunal members that we have, but I -- I
44 raise this because, in my submission, you're not
45 bound by findings that she has preliminarily made
46 in her decision without having gone through a
47 hearing on the merits.

38

Opening statement for Respondent by Cnsl J. Kitchen

1 In paragraph 116 and 127 of that decision,
2 she -- she makes conclusions that, well, you
3 know, the complainants might be able to make out
4 their case because there's derogatory language,
5 she says, in direct reference to LGBT persons.
6 And then she goes on to list some of the words
7 that my two friends have just listed.

8 In paragraph 127, she says something
9 interesting. She says -- in the -- I think it's
10 the second to last sentence, she says, "As set
11 out above, the statements use strong language in
12 reference to LBG -- LGBTQ and transgender issues
13 and persons." Then she continues on with the
14 list. Now, it's funny that she uses the word
15 "issues" there. She almost comes to the point
16 that she should have come to if she was
17 accurately conceptualizing the situation. Had
18 she said, the statements use strong language in
19 reference to LGBT and transgender beliefs or
20 ideas or ideologies, she would have hit the mark.

21 The respondent's position is that properly
22 contextualized and understood and interpreted in
23 light of free expression, none of Mr. Neufeld's
24 comments attack LGBTQ persons.

25 Getting the answer right on where to draw
26 this line will have far-reaching repercussions
27 beyond gender identity and gender expression
28 because, as you well know, religion or religious
29 beliefs and political beliefs are also protected
30 in the Code. People are protected from
31 discrimination on the basis of political beliefs
32 and religious beliefs that they hold; however,
33 that does not immunize their beliefs, their
34 ideologies, their ideas from criticism, even
35 harsh criticism, in the marketplace of ideas.

36 Political beliefs, such as being pro-life or
37 being somebody who's really big into
38 environmentalism or somebody who identifies as a
39 communist or somebody who is a vegan -- I could
40 go on, and I could go on, and I could go on -- we
41 could get into the religious beliefs -- somebody
42 who identifies as Christian, Muslim, Islam, Sikh,
43 Bahá'í -- their beliefs, their ideas, their
44 ideologies are not immune to criticism and can't
45 be because otherwise free expression couldn't
46 function. Nobody's ideas, beliefs, and
47 ideologies are protected characteristics unable

39

Opening statement for Respondent by Cnsl J. Kitchen

1 to be criticized in the free marketplace of
2 ideas.

3 There is -- and I'll -- I think I'll have to
4 probably end here because I'm nearing my time --
5 there is criticism directed towards the teaching
6 of beliefs and ideologies from Mr. Neufeld. But
7 teaching certain beliefs and ideologies is not a
8 protected characteristic, even if those beliefs
9 and ideologies that you teach you also happen --
10 happen to hold and identify with. Although let's
11 be clear that the -- that the teaching of the
12 beliefs and ideologies that are criticized in
13 this case are taught by people of any number of
14 identities, of a very diverse and wide-ranging
15 identities -- some with no identity that would
16 really be triggered as a protected
17 characteristic, some with more than one -- some
18 with obviously LGBT-type identities, and some
19 with not. Any disdain towards those who teach
20 these ideas, if any -- and I don't know if there
21 is any evidence of that -- is directed at the
22 fact that they are teaching a particular set of
23 beliefs or ideas, not at who they are or what
24 their characteristics are.

25 There's -- I -- and I think this will be the
26 last thing I say. There's going to be a lot of
27 consternation, I think, from both sides about
28 something that is not mere semantics.
29 Mr. Neufeld never called teachers, let alone
30 teachers who identify as LGBT, child abusers. He
31 said it was child abuse to teach a particular
32 idea.

33 And I'll just raise for you -- because I
34 think this has to be in your mind -- what would
35 we do if somebody said it was child abuse for a
36 Christian at a VBS to teach kids -- quite young
37 kids -- that they are born sinners and that they
38 will burn in hell for all eternity if they do not
39 accept Jesus Christ as their lord? Is that -- is
40 that permissible expression, or is it
41 impermissible religious discrimination? I think
42 the question answers itself. And I think you
43 have to keep that in mind because if you get this
44 wrong on where to draw this line you will set a
45 precedent that you won't like and society won't
46 like, and, I dare say, the complainants won't
47 like.

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1 Those are my submissions in opening. Thank
2 you.

3 THE CHAIR: Thank you. We're going to take a break
4 now and come back with Dr. Saewyc. Just before
5 we do, and as you're kind of thinking and
6 preparing over the break, I want to confirm for
7 you that we have all -- for Dr. Saewyc, we've
8 reviewed Mr. Kitchen's arguments. We've also
9 reviewed the qualifications set out in her CV and
10 attached sort of list of things. So I just want
11 to save you some time. It's not necessary to --
12 potentially save you some time -- it's not
13 necessary to go line-by-line through her
14 qualifications. We've reviewed them. But
15 certainly if there's areas where you want to
16 drill down or you think something requires
17 further expansion, then by all means. Because I
18 see we've set aside 2 hours and 45 minutes, and I
19 want to be clear on what we've already prepared
20 ourselves for.

21 And I also want to understand whether the
22 idea is that within this 2 hours and 45 minutes
23 we'll be able to complete the parties'
24 submissions on the admissibility of the experts
25 so we're able to kind of walk away at the end of
26 the day with all your arguments. Is that --

27 Ms. Waddell, I'll start with you -- is that
28 your understanding of how we're spending our time
29 today?

30 CNSL L. WADDELL: It is. But this is Mr. Kitchen's
31 objection really; so I think perhaps more turns
32 on what his view is. But I will just say, since
33 I have the mic right now, that in the interest of
34 time what I was hoping to do with Dr. Saewyc was
35 to do -- as is common for this aspect of a
36 hearing, to do a fair bit of leading to get her
37 to quickly sum up the parts of her CV that I
38 think will be most salient. And I will invite my
39 friend if at any point that -- he has trouble
40 with that leading to let me know. But usually
41 with the qualifications, you can go fairly
42 quickly, A, not by going through every line,
43 which I don't intend to do, but, B, by leading,
44 say, more than -- than one would in -- in the
45 remainder of a witness's evidence.

46 THE CHAIR: Thank you.

47 Mr. Kitchen, is that your understanding of

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1 how we're going to use the time, that this should
 2 include some time for final arguments on the
 3 issue?

4 CNSL J. KITCHEN: Yes. I -- I -- I don't expect to be
 5 much more than half an hour on cross, maybe not
 6 even that. I'd like to have half an hour for --
 7 for submissions. This is a pretty important
 8 point of the respondent. And I would imagine the
 9 complainant would want to have about that much
 10 time as well. I mean, I'm confident we can get
 11 through here this afternoon, but -- yeah, that's
 12 what I'm thinking.

13 THE CHAIR: All right. Thank you. Well, then we're
 14 all on the same page.

15 All right. Let's take a 15-minute break
 16 now. And I'll ask everyone to come back with the
 17 witness at -- this is testing my math because
 18 it's 11:07 -- at 11:25. It will be an 18-minute
 19 break, and we'll come back with the witness.
 20 Thank you, all.

22 (PROCEEDINGS ADJOURNED FOR MORNING RECESS) [11:07:30]
 23 (PROCEEDINGS RECONVENED) [11:26:42]

25 THE CHAIR: Good morning, everyone. Welcome back.

26 And welcome to Dr. Elizabeth Saewyc. I can
 27 see you there. Good morning.

28 DR. ELIZABETH SAEWYC: Good morning.

29 THE CHAIR: I'm just confirming -- looking around, we
 30 have counsel for the complainants and Mr. Clark,
 31 and we have counsel for Mr. Neufeld and
 32 Mr. Neufeld. Okay. Thank you.

33 So I'm going to speak to you now,
 34 Dr. Saewyc, for a moment to introduce you to
 35 those of us sitting here on the panel and the
 36 rest of us on the call. My name is
 37 Devyn Cousineau. I'm vice chair of the B.C.
 38 Human Rights Tribunal, and I'm joined by members
 39 Robin Dean and Member Laila Alam, and we are the
 40 members of the Human Rights Tribunal that have
 41 been designated to hear and decide this
 42 complaint.

43 We're joined by a number of people on the
 44 video call. The only people permitted to join us
 45 by video with video and audio access are the
 46 parties and participants in the proceeding. So
 47 you should see in one room there counsel for the

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1 B.C. Teachers' Federation and Chilliwack
 2 Teachers' Association, which are Lindsay Waddell,
 3 Alanna Tom, and Stefanie Quelch. You should also
 4 see Reid Clark, who's a representative from the
 5 Chilliwack Teachers' Association. He's giving
 6 instructions. Barry Neufeld is there. He's got
 7 his hand up.

8 I'll come to you in a moment, Mr. Neufeld.
 9 Oh, actually, why don't I just come to you now.
 10 Is there an issue?

11 BARRY NEUFELD: I am getting messages from several
 12 members of the public that they are being blocked
 13 out of watching the video.

14 THE CHAIR: Well --

15 BARRY NEUFELD: Some were in and were kicked out after
 16 45 minutes.

17 THE CHAIR: All right. Well, as we've been over, the
 18 members of the public do not have access to the
 19 video. So we are granting access to people who
 20 have been approved through the audio, and as far
 21 as I can --

22 BARRY NEUFELD: They're --

23 THE CHAIR: -- tell -- as far as I can tell --

24 BARRY NEUFELD: They're getting --

25 THE CHAIR: -- everyone's in.

26 BARRY NEUFELD: -- kicked --

27 THE CHAIR: Sorry?

28 BARRY NEUFELD: They're getting kicked out of the
 29 audio.

30 THE CHAIR: Okay. Well, that's -- that's unfortunate.
 31 It's nothing we're doing here. They may just --

32 CNSL J. KITCHEN: I wonder if --

33 THE CHAIR: -- be --

34 CNSL J. KITCHEN: -- at the break -- I -- are they --
 35 I don't know how you're doing the breaks, chair.
 36 Is -- is -- are all the audio people getting
 37 kicked off on the break and then they have to
 38 rejoin when the break ends, or are they always
 39 connected like we are with the video?

40 THE CHAIR: Everyone should be kicked out. And, in
 41 fact, the next break I'm going to do a bit
 42 differently. But when we leave the proceeding,
 43 my understanding is that everyone may have been
 44 disconnected, and then they have to reconnect
 45 when we come back after a break.

46 So, Mr. Neufeld, if that's what's happening,
 47 then members of the public have to reconnect

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1 after breaks at the designated time. Other than
2 that, we're doing what we can. We're letting
3 people in as we said we would at the beginning of
4 when the hearing begins.

5 BARRY NEUFELD: What -- what time are we breaking for
6 lunch, and what time are we starting up again?

7 THE CHAIR: We're breaking from 12:30 until 1:30.

8 BARRY NEUFELD: Thank you.

9 CNSL J. KITCHEN: Of course that may vary a little bit
10 depending on -- we're not going to interrupt the
11 witness in the middle of a sentence at 12:30.

12 Chair, is it -- is that -- my -- based on
13 what you said at the beginning, my understanding
14 was that people were just going to always stay
15 connected once they connected, you know, but they
16 weren't going to be admitted until -- you know,
17 like, unless it was first thing in the morning
18 or -- or lunchtime or whatever. If there's a way
19 to keep people connected, you know, that would --
20 that would obviate that problem. That's what I
21 thought we were going to be -- that's what
22 typically of course happens in these types of
23 hearings is whoever's connected stays connected,
24 and we just sort of turn off our -- whatever it
25 is -- if -- our mics and our cameras if we need
26 to -- in this case, they won't -- and so that we
27 can just come back when the break is over. We
28 don't have to try to reconnect.

29 THE CHAIR: We can do that during the shorter breaks,
30 but during the longer breaks I'm going to close
31 down the hearing room so that everyone's not in
32 the hearing, and because then we can connect
33 first and let people in and just make sure we're
34 always monitoring. But we're not disconnecting
35 anyone. I can tell you that. So if they're
36 being disconnected, it's an issue on their end,
37 and it's not anything that we're doing.

38 But, yes. Point taken. So perhaps for the
39 short breaks going forward, we can leave the
40 hearing room open with videos and cameras off so
41 people don't risk getting disconnected. For
42 longer breaks, they'll just have to come back at
43 the scheduled time.

44 And so, Dr. Saewyc, returning to you,
45 that's -- you've now had a bit more insight into
46 who is on the call. We have James Kitchen here
47 as well, who's counsel for Mr. Neufeld. And we

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1 have Maria Sokolova, who's counsel for BC's
2 Office of the Human Rights Commissioner, who's an
3 intervener in the proceeding. We also, as you've
4 heard, have a number of members of the public who
5 are observing the proceeding. They have audio
6 access and not video access. So they are
7 listening and have agreed and are bound by the
8 terms and conditions of participating in these
9 proceedings, which include no recording of any
10 type. So that's everyone who's on the call.

11 As you know, you're here this morning to
12 answer some preliminary questions about your
13 qualifications and the expert opinion that the
14 complainants are seeking to rely upon. And so
15 both parties counsel, I expect, will have some
16 questions for you.

17 And before I turn it over to them, I just
18 have a couple of housekeeping things. The first
19 is to ask you to kindly spell your full name for
20 the record and tell us what pronouns you use. Go
21 ahead.

22 DR. E. SAEWYC: Right. My name is Elizabeth Saewyc.
23 That is spelled E-l-i-z-a-b-e-t-h, last name
24 Saewyc, S-a-e-w-y-c. And my pronouns are
25 she/her.

26 THE CHAIR: Thank you. And is it Dr. Saewyc? Is that
27 your title?

28 DR. E. SAEWYC: That is correct. I do have a PhD.

29 THE CHAIR: Okay. Thank you. Dr. Saewyc, you're
30 being called as an expert in this proceeding. As
31 an expert, you have a duty to help this tribunal
32 and not to be an advocate for any party. Do you
33 understand that duty and solemnly promise to give
34 evidence that is true, independent, impartial,
35 and free from bias?

36 DR. E. SAEWYC: I do.

37
38 DR. ELIZABETH SAEWYC, a
39 witness called for the
40 Complainant, affirmed.

41
42 THE CHAIR: All right. Thank you. I'm going to turn
43 it over now to the complainant's counsel, who
44 will ask you their questions.

45 Go ahead.
46 CNSL L. WADDELL: Thank you.
47

45

Dr. Elizabeth Saewyc (for Complainant)
In chief by Cnsl L. Waddell on qualifications

1 EXAMINATION IN CHIEF BY CNSL L. WADDELL on
2 qualifications:
3

4 Q Dr. Saewyc, if at any point you can't hear me
5 because I've turned my head down, just please let
6 me know. I can't see very much because we had a
7 technological issue this morning; so I won't be
8 able to see if you put your hand up to try and
9 get my attention. So just pipe up.

10 A Okay.

11 Q All right. Dr. Saewyc, we retained you on behalf
12 of the complainant to answer four questions, one
13 of which had two sub questions; is that right?

14 A That is correct.

15 Q Okay. And those were -- I'm just going to read
16 the questions out, and then I'm just going to ask
17 you one or two questions about them before I go
18 to your CV.

19 "What are the harms associated with
20 homophobic or transphobic speech directed at
21 LGBTQ2S+ people?" That was one of the questions;
22 is that right?

23 A Yes.

24 Q Okay. And then there were two sub questions:
25 "Are there particular harms or risks associated
26 with speech that connects LGBTQ2S+ people with
27 child abuse, pedophilia, or grooming?"

28 A Yes.

29 Q Okay. And then the other sub question was: "Are
30 there particular harms or risks associated with
31 speech directed toward people who support or
32 provide care for transgender and nonbinary
33 people?"

34 A Yes.

35 Q Okay. "Are there harms when homophobic or
36 transphobic speech occur in or relate to the
37 workplace?"

38 A Yes, that's the next question.

39 Q "If public or political figures make transphobic
40 or homophobic statements, is there evidence that
41 this affects LGBTQ2S+ people in their workplace?"

42 A Yes.

43 Q Okay. And the last question was: "Are there
44 harms associated with homophobic or transphobic
45 speech in educational environments?" Is that
46 right?

47 A Yes, that was the last question.

46

Dr. Elizabeth Saewyc (for Complainant)
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1 Q Okay. And when we approached you to answer these
2 questions, did you feel that you had the
3 appropriate experience and expertise to answer
4 them?

5 A Yes. Based on -- on my research and my knowledge
6 of other people's research, yes.

7 Q Okay. And did we ask you to offer any opinions
8 specifically about Mr. Neufeld's speech?

9 A No.

10 Q Okay. All right. I'd like to turn now to your
11 curriculum vitae.

12 So for everybody else's benefit, I don't
13 know that we need to use screen share, but I'm
14 just going to identify where you will find this.
15 So for the Tribunal and for Mr. Kitchen, this
16 will be in our complainant's book of documents
17 re expert evidence at Tab A.

18 And I just want to identify, Dr. Saewyc,
19 that the copy that we are working with here is
20 dated November 12th, 2024. Is that an up-to-date
21 CV?

22 A Yes. That's the -- I -- I tend to update my CV
23 monthly or whenever there's a change in things
24 happening, and that is the most recent update.

25 THE CHAIR: Sorry. Just a moment. I --

26 CNSL L. WADDELL: Oh --

27 THE CHAIR: -- think -- I'm glad that you clarified
28 that, Ms. Waddell. I think we're not looking at
29 the right one. Let me just... Just a moment.

30 All right. We're with you. And I just want
31 to also confirm -- it sounds like everyone else
32 has a copy of the document in front of them so we
33 don't need to put it on the shared screen; right?
34 Dr. Saewyc, you've got it?

35 A Yes, I do.

36 THE CHAIR: And, Mr. Kitchen, you've got it? Okay.

37 CNSL J. KITCHEN: Yes.

38 THE CHAIR: All right. We won't put it on the shared
39 screen.

40 Go ahead. We're with you.

41 CNSL L. WADDELL: Okay. Thank you.

42 Q So, Dr. Saewyc, you are currently a professor and
43 director of the school of nursing out at the
44 University of British Columbia; is that correct?

45 A That is correct.

46 Q Okay. And am I right that the school of nursing
47 is somehow in the faculty of applied science?

47

Dr. Elizabeth Saewyc (for Complainant)

In chief by Cnsl L. Waddell on qualifications

1 A Yes, it is a --

2 Q Okay.

3 A -- department -- well, a school within the
4 faculty of applied science.

5 Q Okay. Can you tell us what academic degrees you
6 possess, please.

7 A So I have a bachelors of science in nursing with
8 honours and a master's of nursing and a PhD in
9 nursing science that were conducted separately --
10 the -- the BSN at the University of Minnesota in
11 the United States, and the master's of nursing
12 and the PhD at the University of Washington in
13 Seattle, also in the United States.

14 Q And for those of us -- I mean, we're all, other
15 than you, laypeople. For those of us who are
16 laypeople when it comes to nursing, is there
17 any -- any distinction between nursing science
18 and community health nursing?

19 A The nursing science -- so -- so the doctoral
20 education focuses on research methodology and a
21 variety of types of research that people conduct
22 in order to both inform health research generally
23 and -- and nursing research and practice and
24 policy more specifically. So in that regard,
25 there is a difference in that the focus is on
26 research methodologies and the variety of types
27 of research. But as my area of expertise is
28 community health nursing or public health
29 nursing, predominantly in my master's degree, a
30 lot of the nursing science or -- or the research
31 has focused around population health.

32 Q Thank you for that.

33 Now, before you came to be a professor and
34 the director of the school of nursing at UBC,
35 what other academic positions did you hold,
36 either at UBC or elsewhere?

37 A So -- so prior to coming to UBC 20 years ago, I
38 was an assistant professor and then an associate
39 professor at the University of Minnesota. And --
40 and then I was recruited as an associate
41 professor to UBC. And then I was promoted to
42 being a professor in 2009. And I became the
43 director at the school for a five-year term in
44 2017, and -- and then was renewed as director of
45 the school in 2022.

46 Q Okay. Now, as you will hear, I think, in a bit,
47 the respondent here has some concerns about your

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1 qualification, your objectivity, and a few other
 2 issues. And I -- I want to start with
 3 qualifications. So one of the things the
 4 respondent is concerned about is -- is whether
 5 your experience is limited to just working with
 6 adolescents. And so could I ask you, beginning
 7 with the courses that you have taught and then
 8 perhaps going into peer-reviewed publication or
 9 research, to highlight for us experience you have
 10 had that is not limited to adolescent sexual
 11 minority populations.

12 A Certainly. So in my teaching at -- at UBC, I
 13 have been responsible for teaching the various
 14 bachelor's public health nursing courses. So it
 15 used to be Nursing 413: Fostering Population
 16 Health Promotion; and then for the post RN
 17 students, Nursing 414: Population Health
 18 Promotion; as well as when we changed our
 19 curriculum in 2017, community health nursing
 20 and -- and primary care and the health impacts of
 21 climate change course, which is one of our
 22 undergraduate electives. All of these courses
 23 are focused on people across the life course and
 24 include adults as well as adolescents.

25 I do also provide guest lectures in our --
 26 our current courses that our -- our primary
 27 healthcare course, which includes a guest lecture
 28 every term that we teach the course, which is
 29 twice a year, on 2SLGBTQ+ people's health across
 30 the life course. And -- and then I also teach
 31 guest lectures in -- in pediatrics, and then a
 32 guest lecture in the health impacts of climate
 33 change, which is across -- again, across the full
 34 spectrum of ages.

35 In terms of my research, while much of it
 36 does focus on youth, it -- it does not focus
 37 exclusively on adolescents. And -- and the
 38 definitions here in Canada from the -- the
 39 federal government are that adolescence goes up
 40 to age 18 or 19, depending on the province and --
 41 and your age of majority, but that youth actually
 42 extends up to age 30. While -- while not all of
 43 my research with adolescents and young people and
 44 youth goes up to age 30, a fair amount of it does
 45 actually include young adults in the ages of 19
 46 to 25 or 19 to 30. I also have some research
 47 that focuses on university-based populations, in

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1 which case of course they would be 18 to whatever
2 age, but generally in the 18 to 25-year-old age
3 range.

4 I have conducted some research over the
5 course of my career that focuses on adults
6 specifically, and that would include a study back
7 in 2009 about LGBTQ+ people speaking out about
8 violence that was supported by the
9 Vancouver Foundation and was solely with adults
10 18 and over. I've included research by the
11 Canadian Institutes of Health Research -- funded
12 by them -- that looks at the accidental death of
13 friends and young men's responses to that, which
14 again was with adult -- young adults, but still
15 adults only.

16 A number of the research studies that I've
17 been involved with related to homeless youth
18 include populations into the -- the -- adulthood,
19 including up to age 27. And the -- I have
20 conducted some research specifically focused on
21 the -- the parents of 2SLGBTQ+ young people,
22 and -- and their families, and so those also
23 include research with adults.

24 I have also conducted research that focuses
25 on healthy relationships for 2SLGBTQ+ people that
26 includes adolescents, but also young adults in --
27 at universities and in the community, and have
28 been involved in research around captaining
29 inclusion or -- or improving the inclusiveness of
30 B.C. rugby teams in the young adult division,
31 where -- people involved in that research went up
32 to age 30, 35.

33 There have been some research that I have
34 done that focuses on the experiences of
35 healthcare settings related to transgender
36 surgery experiences. And since those are almost
37 exclusively offered to adults, those surveys,
38 both here in B.C. and in Ontario, involved people
39 primarily between the ages of 18 and 65, I
40 believe, although we might have had someone a bit
41 older than that.

42 And I have been involved in mentoring some
43 graduate students in their research across a
44 variety of different projects that does include
45 research with, for example, transgender people
46 who -- the research was from the linguistics
47 department, and they were looking at voices,

50

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1 and -- and specifically only with adults.

2 Q Okay. And can I -- I just want to make sure
3 that -- for the benefit of the Tribunal and the
4 respondent, that they are able to sort of see
5 which studies and research you've just talked
6 about. I take it that you are -- all of the
7 things that you just listed are under Heading B
8 that begins at page 20 of your CV. Is that
9 right?

10 A So the -- the research projects, yes, those would
11 be under the -- the "Research Or Equivalent
12 Grants and Contracts." But -- but, likewise, I
13 guess the products of those research in terms of
14 the publications and reports that have come out
15 of that research would be found at the end of my
16 CV in the section on publications, which I
17 believe starts at -- I'll have to scroll. Sorry.
18 I -- this is the university's formal CV
19 structure, and they do -- when they say
20 "curriculum vitae," they really do want all of
21 the academic life experiences. So it does
22 include all of the presentations and students
23 I've supervised and -- you know, like, all of the
24 different things that I've done, including
25 consultations. So, yes. Publications -- the
26 formal publications record starts on page 135.

27 Q Okay. And just before we leave the -- the
28 research -- I'll call it the "research table,"
29 are there particular line items -- and you've
30 probably talked about them, but are there
31 particular line items that you want to draw our
32 attention to, either that you just referred to or
33 that you haven't yet referred to, but sort of
34 fall under the same category? And this is just
35 so that the Tribunal and -- and Mr. Kitchen can
36 place a little star next to specific things that
37 you've talked about.

38 A Okay. So then I -- I would say that the -- the
39 first one to put a star next to is in that
40 first -- or the second table on -- on page 21
41 that has the National Institutes of Alcohol Abuse
42 for the US NIH.

43 Q Okay.

44 A The Research Site For College Health, that was a
45 randomized trial of university students.

46 Q Thank you.

47 A On the next page, the CIHR-ICE, Institute for

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Gender and Health, on *Rural and Northern Sexual Health Team: Building Interdisciplinary Capacity* -- that included young adults in addition to adolescents.

Two down from that, the Michael Smith Foundation Research Team Planning Grant was looking at designing safety interventions for individuals in violent relationships, and that included adults as well as -- as -- as adolescents, but predominantly adults.

On page 23, the Vancouver Foundation, *Preventing the Transition of At-Risk Youth Into Injection Drug Use* was with homeless and -- and marginalized youth that ranged in age from 16 to 25.

The one just below that, the CIHR Operating Grant, *Guys Un-Limited*, was a CIHR study that I led that -- looking at young men's health services, and again that was 19 to 25. The -- the last one on that table, the BCEOHRN Research Capacity Development Grant, looking at the *Profile of Young Adult Workers in an Olympic Host Community* in Whistler, was with adults solely.

On page 24, the next one, the Vancouver Foundation, *Being Heard, Being Safe: LGBTQ+ People Speak Out About Violence*, that was the one I mentioned that was all adults that was funded by the Vancouver Foundation. And further down that same page, three from the bottom, CIHR Operating Grant, *Young Men's Responses to the Accidental Death of a Friend*, was the research that was again adult men, but young men, and responding to their friends.

On page 26, the CIHR Planning Grant, *Partnerships Health -- Health System and Improvements on Implementing and Evaluating Mindfulness Approaches in Community-Based Primary Healthcare Settings*, this was -- I was a collaborator on this grant by Dr. McKay in Toronto. And, again, that was with youth, and that included adults up to age 30. Further down in that same page was the *Increasing Access to Mental Health Services for Street-Involved Youth*, also led by Dr. McKay, and again that involved street-involved youth into their 20s.

On the next page, 27, CIHR, the Open Operating Grant, *Reducing Stigma, Promoting*

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1 *Resilience: Population Health Interventions For*
2 *LGBTQ Youth* -- this was a multi-year --
3 five-year, large, multi-project study that
4 involved a variety of different projects, many of
5 which involved adolescents in school, but also
6 involved survey research with school
7 superintendents and principals, as well as the
8 first of our *Canadian Trans Youth Health Surveys*,
9 which was a survey of young people ages 14 to 25
10 across Canada who are trans and gender diverse.

11 Further down on that same page, the HRSDC
12 *Homelessness Prevention Program Study* involved
13 working with four organizations and included
14 surveys of youth workers and social service
15 providers who are all adults, as well as young
16 people in the 19 to 25-year-old age range.

17 Let's see. Next would be on page 29, the
18 CIHR Foundation Scheme. So this is a seven-year
19 grant that has just ended called *Improving Health*
20 *Equity for LGBTQ+ Youth in Canada and Globally:*
21 *Addressing the Roles of Family and Culture*. And
22 this is again a very large-scale, long-term,
23 multi-project funding portfolio -- or funding
24 grant that provided the funding for a variety of
25 different projects that I led, including the 2019
26 and the most recent 2024 iterations of the
27 *Canadian Trans Youth Health Survey* and a variety
28 of other projects that involved youth beyond and
29 young adults up to age 30.

30 On page 30, the Public Health Agency of
31 Canada Grant on *Preventing Gender-Based Violence:*
32 *The Health Perspective Targeted Call on Fostering*
33 *Healthy Relationships Among LGBTQ2+ Youth in B.C.*
34 was a grant to provide -- to develop and evaluate
35 an intervention on healthy relationships that was
36 offered in GSAs and in schools, but also in
37 community organizations and at universities, so
38 included young adults.

39 The SSHRC Insight Grant that's directly
40 below that called *Stressors Experienced By*
41 *Parents of Sexual and Gender Minority Youth in*
42 *Collective Communities -- Collectivist*
43 *Communities* -- sorry -- is a research grant that
44 has -- was conducted with the parents of sexual
45 and gender minority youth, so again research with
46 adults.

47 On page 31, CIHR Project Grant, *Developing*

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1 *an Adapted Gender Minority Stress Model to*
 2 *Explain Alcohol Use and Harms Among Transgender*
 3 *Adults who Drink*, a study that was led by
 4 Sarah Dermody in Ontario that I am a
 5 co-investigator on -- again, solely with adults.

6 The one just below that, the UBC Community
 7 University Engagement Support Grant on *Captaining*
 8 *Inclusion in B.C. Rugby* was a study that I led
 9 that was with the young adult league in -- from
 10 B.C. Rugby and the community league.

11 The one just below that, the
 12 Community-University Engagement Support with
 13 trauma-informed counselling and wraparound
 14 services as part of Dan's Legacy is for mental
 15 health and substance use services for young
 16 people between the ages of 16 and 25.

17 And then on page 32, the Canada First
 18 Research Excellent Fund, *Migrant Integration in*
 19 *the Mid-21st Century: Bridging Divides*, is
 20 actually a large study across multiple
 21 universities where I am a co-chair of the health
 22 and wellbeing working theme of that, and that
 23 includes a variety of different studies that
 24 include youth -- that's -- the predominant part
 25 of our work involves our youth school surveys at
 26 the moment, but also includes projects related to
 27 adult migrants, including LGBTQ2+ seniors who are
 28 migrants.

29 Further down in the contracts on page 36,
 30 the B.C. Ministry of Health *Homeless and*
 31 *Street-Involved Youth Survey* at McCreary Centre
 32 Society that I was involved with included young
 33 people up to age 21, I believe. And, again,
 34 Vancouver Foundation also provided funding for
 35 that, which is just below.

36 On page 37, the Provincial Health Services
 37 Authority funding for the *Transgender Surgery*
 38 *Experiences Survey*, which I previously mentioned,
 39 was all -- all adults, and subsequently, the --
 40 the further funding for qualitative interviews of
 41 people who had experienced surgery.

42 The Department of Children and Youth Affairs
 43 Ireland, which was a landscape knowledge and gap
 44 analysis of research conducted on sexual and
 45 gender minority youth in Ireland and Europe. And
 46 their definition of youth also includes young
 47 adults. I believe theirs is up to age 25.

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At the end of that same page is the B.C. Rugby Association funding to evaluate captaining inclusion, which is with the young adult divisions.

Then starting on page 38, the Employment and Social Development Canada SSLP contract was *Proposals for the Supports for Student Learning Programs: Barriers Faced By LGBTQ2+ Students*, and they were looking at not just high school students, but students in post-secondary and -- and the trades. So they were interested in young adults.

And then finally, the last on that in section B is the Languages Sciences Funding. This is a UBC internal grant that was a support for a master's student in linguistics called *Gender Diversity in the Voice Project*, which was funding to support developing a -- a series of -- of recordings and a corpus, as they call it in linguistics, of adult gender-diverse voices as part of that master's student's thesis.

Q Thank you. Now, I'm going to get you to skip ahead a bit, and now if we can go to your refereed publications, which I think should start at page 135. And here what I'd ask you to do is to just draw our attention to publications either that flow from some of the work you've just pointed us to or any other publications that you feel bear on the work that we had you do to prepare your expert report in this particular case. Does that make sense?

A Sure. So -- so these are numbered; so hopefully that makes it a little easier to -- to see them. The number -- and -- and they are in the order of most recent publication and then going back to the -- the latest publications first with peer-reviewed papers, and then articles published in -- in journals, and then a variety of others.

So on that -- on the second page of that, so Number 14 is -- is a systematic review that was done that focused on sexual minority adolescents up to age 19, which in most of the world, 18 and 19 year olds are adults.

Number 15 was a paper from our -- part of that foundation grant, and this was a study among South Asian gay and bisexual young men. So they were adults, all of them, 19 to 25 year olds.

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Number 18 comes from our *Canadian Trans Youth Health Surveys*. It was the Quebec data, and -- and so was collaborators from our team, and I was part of that. And these are 14 to 25 year olds, so it does include adults.

Likewise, Number 23 from that same group is -- is from our *Canadian Trans Youth Health Survey* from 2019. Number 24 is also from our *Canadian Trans Youth Health Survey*.

Number 41 on the next page, *Conceptualizing Gender* from the *Canadian Trans Youth Health Survey* was from our 2014 survey, and again included young people. In fact, the majority of the young people in that survey were 19 to 25; so they were adults.

Number 49 is actually a -- a commentary as part of a large group effort and organization of bringing together health professionals and researchers about suicide prevention for Canadian sexual and gender minorities, and the majority of the content was actually focused on adults. I was one of the few people as part of that initiative who were focusing on youth and young adults, and then others were focusing on older adults across the full age range.

On the next page, page 54, the *Access to Primary Healthcare Services for Youth Who Are Homeless and Street-Involved* involved the *Homeless and Street-Involved Youth Survey* and interviews with qualitative -- qualitative interviews with students. This was one of my master's students who was primarily conducting this research. And, again, the interviews were all with young adults, and the research included both youth and young adults.

Number 72, *Assessing the Impacts and Outcomes of Youth-Driven Mental Health Promotion*, is from -- research from one of my former doctoral students, who was doing research up north looking at older adolescents and young adults and mental health promotion.

On page 141, Number 79, is from our *Canadian Trans Youth Health Survey*, as was Number 81 and Number 82. So these are all from our 2014 *Canadian Trans Youth Health Survey* -- likewise, Number 90 and Number 91. And these are papers that focus on the full age range. Number 95 also

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1 was from the *Canadian Trans Youth Health Survey*.

2 Number 97 was again the -- the -- if I'm
3 remembering correctly, this was a commentary
4 about the different types of research we've done
5 that did include the -- the perspectives of young
6 people and young adults, but also included some
7 students at Van Tech Secondary and a project we
8 were doing there, so definitely adolescents up to
9 age 18 or 19, but then some of it was also the
10 *Canadian Trans Youth Health Survey* and *Homeless*
11 *and Street-Involved Youth Surveys*.

12 Number 103 was a paper from that young men's
13 response to the death of friends, so all
14 adults -- young adults. And Number 104 was again
15 from Dr. Jenkins' dissertation with adolescents
16 and young adults in the north. And the paper by
17 Tozer and I and the team there at Number 105 was
18 about -- from our Youth Injection Prevention
19 Project with street-involved and homeless youth,
20 who were again young adults.

21 Number 112 on the next page is from that
22 *Young Men's Response to the Accidental Death of a*
23 *Friend* papers. And, again, Number 129 on the
24 next page.

25 143 was a paper that leads with
26 Sara Mackenzie -- was from that randomized
27 control trial of problem drinking and -- and
28 reduction in -- in problem drinking that was all
29 university students across the United States and
30 Canada. And, again, 147 was from that same
31 study, as was 150 and 151.

32 Under "Peer-Reviewed Conference
33 Proceedings," Number 1 with Greyson and
34 colleagues was the research with parents focusing
35 on the information needs and seeking of parents
36 of transgender children.

37 Under "Peer-Reviewed Published Abstracts" --
38 there are -- are just a few of them, and I -- I
39 think oftentimes they actually are repeats of
40 the -- the publications in peer-reviewed journal
41 articles because often we present at a conference
42 first, publish the abstract, and then publish the
43 peer-reviewed paper. But one of them that is --
44 is different is Number 20, Milman and colleagues.
45 That's an abstract from the trans and -- the
46 *Ontario and B.C. Trans Surgical Experiences*
47 *Survey*.

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Number 25 is from an NIH study on sexual and gender minority youth and involved experiencing violence, and that included -- this specific paper was, if I'm remembering correctly, when we were in the first phase of that, which was interviewing the 18 and older young people as part of a large-scale longitudinal NIH study.

I have "Invited Book Chapters," so under that the -- the first one is a book chapter that draws on our *Canadian Trans Youth Health Survey*. The Book Chapter Number 2 with Fatawu Abdulai and Ranjit Dhari is the chapter on 2SLGBTQIA+ clients in a public health community -- community health nursing textbook, which covers public health nursing across the life course.

Likewise, Number 5 with Carla Hilario is a chapter in one of the standard nursing textbooks for baccalaureate, the *Canadian Fundamentals of Nursing*, and it was a chapter on sex, gender, and sexuality, which includes the full age spectrum.

Number -- Number 6 was a -- a chapter in the community health nursing when I wrote it by myself, rather than updating it. The previous one was the update, the next edition.

Number 7 was a chapter on homeless and street-involved indigenous LGBTQ2S+ youth in B.C. that focused from our 2006 and 2014 *Homeless and Street-Involved Youth Surveys* that were conducted by the McCreary Centre Society that I was a co-PI on, and those included adolescents up to age 19. And -- and that included young adults in the 2006 survey, and I believe it was possibly older than 2019. I'm sorry. I've done three of these surveys, and I do tend to mix them up a bit, but it does at least include youth who are considered adults in our society. Again, Number 14 was the previous edition, the fourth edition of the community health nursing.

And then Number 19 was a book chapter on HIV, disease, and gay, lesbian, bisexual, and transgender people that I co-wrote with a -- a former faculty member here now who's currently at the University of Ontario, which -- as part of a textbook on the person with HIV/AIDS and nursing care, which was about the life course and was predominantly about adults.

Under "Peer-Reviewed Special Reports," we

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1 did have one called *The XY Factor*. It's Number 5
2 on that list. That was boys' and young men's
3 health in B.C. that pulled together a variety of
4 different data across a variety of different data
5 sources and did include young adults.

6 And under the -- the "Non-Refereed
7 Publications," the only thing I would mention is
8 that I was asked to do a commentary on the binary
9 of sex as part of a special topic in nursing
10 inquiry, and that included research about --
11 across the ages and across the species because it
12 included references to other species as part of
13 that.

14 In "Community Reports," there are a number
15 of reports that are from and emerge from the
16 variety of research that has been conducted.
17 And -- and some of those -- one of the most
18 recent that do include research with young adults
19 is Number 5 with the lead author Sinclair,
20 Godwin, et cetera. I am the senior author on
21 that. And this is a report commissioned by the
22 Office of the B.C. Representative For Children
23 and Youth that involved not just conducting
24 analysis with the *B.C. Adolescent Health Survey*
25 and *Homeless and Street-Involved Surveys* and the
26 *Canadian Trans Youth Health Survey*, which do
27 include adults, but we also interviewed youth who
28 had experienced government care, and they were
29 all adults -- young adults.

30 Number 10 is the 2019 *Being Safe, Being Me*
31 report of the *Canadian Trans Youth Health Survey*.
32 Number 11 is the same report in French because
33 it's funded federally, and it's a national study.
34 Number 14 is actually the provincial report for
35 the Atlantic provinces. And there are others,
36 like Number 17 and 18, which were all the
37 provincial reports.

38 Number 15 is the *Survey of Experiences With*
39 *Surgical Readiness Assessment and*
40 *Gender-Affirming Surgery for People Living in*
41 *Ontario*. So that's the report from that study
42 that was mentioned.

43 Number 16 was a follow-up of *Homeless and*
44 *Street-Involved Youth Survey*, looking at *Sexually*
45 *Exploited Boys: What We Know and Don't*.

46 Number 19 was -- and -- and 20 were the
47 reports from the surgery experiences of

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trans and -- and gender diverse people in Canada with a focus on British Columbia and the qualitative research interviews that were conducted -- again, all with adults. Number 21 was -- was the provincial reports.

Number 24 is that *National Inventory of School District Interventions and Support of LGBTQ Student Wellbeing*, which was surveys -- a national survey of school leadership that included superintendents and principals and is adults.

Number 27 is a report about our 2014 *Homeless and Street-Involved Youth Survey*. Number 29 was the *Being Safe, Being Me* report from 2014. And Number 32 was the report about the four organizations partnered to address youth homelessness in Vancouver. And Number 35 is the community report about urban young men's [indiscernible] health and social services. That was part of that CIHR paper -- or study. I also have the homeless and street-involved youth research in Number 44 and 45.

And I think that's pretty much all of them, other than under Number 8, "Papers Submitted," we do have a couple other papers that are currently under review that --

Q And just --

A -- involve --

Q -- to confirm, are you now looking at page 161 when you're talking about the --

A Yes.

Q -- papers submitted? Okay.

A Yes. Sorry. Yes, 161. Two of the papers -- one led by Monica Rana, and one led by Claudia Lefebvre -- are both involving young adults in -- in the research in addition -- with -- with Claudia Lefebvre, it was also adolescents because that's the *Canadian Trans Youth Health Survey*.

Q Thank you.

Now, you've also testified as an expert witness before and provided expert reports in other proceedings; is that right?

A That is correct.

Q Okay. And have you appeared -- just to get a sense of the types of proceedings, have you acted as an expert witness in court proceedings?

60

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1 A Yes, I have. Do you want me to describe them?

2 Q Yeah. Just give us a general --

3 A Okay.

4 Q -- sense of the types of things that you've been
5 qualified as an expert in in --

6 A Okay.

7 Q -- court proceedings.

8 A Right. So I was -- I was tapped for court
9 proceedings in Alberta around adolescent
10 development and -- and sexual behaviours and
11 sexual exploitation of adolescents for a criminal
12 court proceeding.

13 I was also tapped as an expert witness in
14 Alberta for a *Charter* challenge court case a
15 number of years ago related to schools and GSAs
16 and school policy that was brought -- that case,
17 I did not end up testifying in court, although I
18 provided the original opinion because the
19 elections happened, and the government changed,
20 and they -- they changed the law, and the court
21 case got withdrawn.

22 I have provided expert testimony, at least
23 in expert advice, but not in -- in actual
24 testimony, to the Canadian Human Rights
25 Commission as they were doing a -- hearing a
26 complaint that ultimately was settled before
27 going to the hearing.

28 I also have provided expert testimony for
29 both the Saskatchewan and the Manitoba court
30 cases by Egale Canada and their local
31 community -- like, the Regina Pride Society
32 and -- I'm forgetting which one in -- in
33 Manitoba -- or not Manitoba -- New Brunswick
34 about the school policies. Those have not gone
35 to hearing yet, but the expert reports have been
36 submitted.

37 Q Can I just interrupt and ask what the nature of
38 the opinions sought from you in those cases was.

39 A Generally, the nature of the opinions were about
40 the -- the impact of the experiences of stigma,
41 discrimination, and -- and violence in schools,
42 the -- the health disparities for LGBTQ2S+ youth,
43 their experiences of discrimination and enacted
44 stigma, the harms associated with bullying, and
45 the harms associated with -- with policies
46 that -- the specific policies that were involved.

47 I've also been asked to provide expert

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1 testimony for a B.C. College of Nurses and
 2 Midwives -- that's the regulatory college --
 3 disciplinary hearing related to a -- a complaint
 4 about discriminatory communication and
 5 unprofessional behaviour, in which they were
 6 asking me about the experience of trans and
 7 nonbinary people in healthcare, about nursing
 8 practice standards, nursing ethics, and the --
 9 the research related to the -- the health
 10 disparities and harms experienced by trans and
 11 nonbinary people, especially related to
 12 discrimination in healthcare, but also in the
 13 general public.

14 And -- and then most recently, I was asked
 15 to provide expert testimony for a case from the
 16 Ontario Human Rights Tribunal this summer that
 17 was about a mayor and city council declining to
 18 support a pride proclamation in one year, where
 19 they previously had. And my -- the questions
 20 that -- that I was asked to report about was
 21 the -- related to the -- the prevalence or -- or
 22 the widespread nature of pride celebrations,
 23 the -- the potential purpose of -- of them,
 24 and -- and the impact of them in terms of
 25 community, wellbeing, and -- and the impact of
 26 discriminatory comments or -- or the negative
 27 comments about 2SLGBTQ+ people, but mostly about
 28 the experiences of stigma and discrimination in
 29 society and the harms -- physical harms that that
 30 creates for people.

31 Q I think those are my questions. I just want to
 32 take one minute to review my notes here.

33 A Oh, I -- I should say, just to be complete, I did
 34 also provide expert testimony as a nurse in
 35 family court related to a patient that I had had
 36 on my patient load back when I was at the
 37 clinic -- Young Women's [indiscernible] and
 38 Pregnancy Clinic in Seattle once I became faculty
 39 at the University of Minnesota. But I didn't
 40 assume that that would be what you were looking
 41 for, but that -- that was also a court case.

42 Q Thank you.

43 Thank you, Dr. Saewyc. Those are my
 44 questions in direct with respect to your
 45 qualifications.

46 THE CHAIR: Thank you. Seeing the time, I expect it
 47 will make sense to take the lunch break now,

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1 Mr. Kitchen, and come back with your questions?

2 Is that...?

3 CNSL J. KITCHEN: Sounds good to me.

4 THE CHAIR: Okay.

5 And, Ms. Sokolova, I think you may have
6 mentioned in your opening that you may have some
7 questions. Do you anticipate having some
8 questions?

9 CNSL M. SOKOLOVA: Just one or two questions. So we
10 can actually deal with that right now if that
11 would be efficient.

12 CNSL J. KITCHEN: That's fine with me.

13 THE CHAIR: I expect it would, yeah. Go ahead. Thank
14 you.

15

16 QUESTIONS BY THE INTERVENOR on qualifications:

17

18 Q Thank you, Dr. Saewyc. I just wanted to ask you,
19 does your expertise include being able to comment
20 on whether certain speech about transgender
21 people creates a moral panic about them?

22 A Yes. I -- I mean, I don't specifically do
23 research about moral panics, but it is -- it
24 is -- definitely been part of the -- the social
25 science that I am familiar with and have read.
26 And one of the research projects that I had been
27 recently involved in was looking at
28 misinformation and disinformation, and -- as --
29 as part of -- this was funded by Health Canada.
30 So, yes, I guess I -- I could. I mean, I would
31 not have a lot to say on -- on, like, that, the
32 functions and structures of it. But, yes, I
33 could speak to the extent to which something is
34 grounded in the existing evidence base, yes.

35 Q Would you agree with me that a moral panic is
36 defined as a situation where a condition,
37 episode, or person emerges as a significant
38 threat to social values in the literature?

39 CNSL J. KITCHEN: Objection.

40 THE CHAIR: Just a moment. Sorry. Go ahead, Mr. --
41 oh.

42 CNSL J. KITCHEN: That's leading. Unpermissible.

43 CNSL M. SOKOLOVA: Well --

44 THE CHAIR: Sorry --

45 CNSL M. SOKOLOVA: -- it's a cross-examination
46 question.

47 THE CHAIR: So --

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1 CNSL J. KITCHEN: Hold on. Okay. So -- so we're
2 approaching this from the point of view of the
3 Commissioner is crossing the expert.
4 THE CHAIR: Well, it's not the Commissioner's expert.
5 And now, I -- I'll admit I haven't refreshed
6 myself recently on the earlier rulings of the
7 Tribunal regarding the role of the Commissioner;
8 so if necessary, I can do that. But it's not the
9 Commissioner's expert.

10 So I take it, Ms. Sokolova, that your
11 position is you'll be cross-examining?

12 Mr. Kitchen, is there an objection to that
13 approach?

14 CNSL M. SOKOLOVA: I can ask it in a direct form.
15 We're not -- you know, we're not attached to
16 the -- the answer here in -- in the sense. I'm
17 just trying to get a sense of what Dr. Saewyc --
18 the extent to which she can comment on this issue
19 in case I have further questions later after her
20 testimony if it's allowed.

21 THE CHAIR: Thank you.

22 CNSL J. KITCHEN: Which of course I'm fine with, but
23 just -- just to be able to comment on the
24 question from the chair -- the -- the -- I think
25 the obvious tone of just even the first question,
26 but especially the -- the first two questions is
27 that the Commission is going down a path of --
28 of -- of adopting or co-opting this expert as
29 somehow their own, in which case we're no longer
30 in the context of cross-examination. We're in
31 the context of under the guise of
32 cross-examination trying to -- trying to actually
33 perform an examination in chief because this is
34 not a party that's adversarial to the expert.
35 It's a party who's -- who's non-adversarial to
36 the expert and, in fact, trying to adopt the
37 expert as their own. So that -- and that's why I
38 objected because I think in that context only
39 open-ended questions are permitted, not leading
40 questions, because that would be reserved for
41 cross-examination, and I don't think this -- this
42 is -- to be fair, I don't think this is a
43 cross-examination scenario.

44 THE CHAIR: All right. Well, I think for the
45 purpose -- I know there's just a couple of
46 questions on qualifications, and Ms. Sokolova has
47 indicated she's prepared to ask it in a more

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open-ended way, which I think is the practical way through this issue. If Dr. Saewyc is qualified and is returning for evidence, then before she does, we'll kind of address the issue of how the Commissioner can approach her questions and -- in terms of whether she's allowed to cross-examine or not. But I don't think we -- my sense is we don't need to decide that right this moment because there's probably a different way through these questions.

So, Ms. Sokolova, if you could --

CNSL M. SOKOLOVA: Sure. And --

THE CHAIR: -- reword --

CNSL M. SOKOLOVA: -- I don't anticipate at the end of the expert evidence, if we are -- if the expert is allowed in, that we would have a lot of questions or that we would hijack the case or co-opt the witness. It's just in terms of if I have a few questions, I would like to kind of get a sense of what the witness is able to comment on.

Q So, in your view, Dr. Saewyc, how is moral panic defined in the literature that you've studied?

CNSL J. KITCHEN: Hold on. Sorry. But that question, to me, seems to be a substantive one that can only be asked after she's already been qualified as an expert -- the scope of her expertise would -- that -- that, you know, captures moral panic. You know, and -- and, you know, with all fairness to the -- to the witness, she tends to give long answers, which I don't have a problem with generally, but, you know, her answer, if it went on for more than a couple sentences, would get into a lot of substance that she just -- she just can't actually talk about until we're on the other side of this and she's been qualified to talk about moral panics.

CNSL M. SOKOLOVA: I mean, my -- my sense of it is asking it now because if we're determining the scope of the witness's qualification, we're kind of determining, you know, when I say moral panic, what does she mean, what do I --

CNSL J. KITCHEN: Hold on.

CNSL M. SOKOLOVA: -- mean?

CNSL J. KITCHEN: I --

CNSL M. SOKOLOVA: What is the scope of what she's --

CNSL J. KITCHEN: I lost --

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1 CNSL M. SOKOLOVA: -- qualified --

2 THE CHAIR: Sorry --

3 CNSL J. KITCHEN: -- your audio.

4 CNSL M. SOKOLOVA: -- to do?

5 CNSL J. KITCHEN: Was that just me, or is it anybody
6 else?

7 THE CHAIR: What did you say, Mr. Kitchen? You lost
8 her?

9 CNSL J. KITCHEN: I -- I lost audio on -- on Maria.

10 Was that just me that lost that?

11 THE CHAIR: I think so, yeah. I could hear her.

12 Yeah. Okay. Try -- try again, Ms. Sokolova.

13 CNSL J. KITCHEN: Sorry. That's about the second or
14 third time that's happened, which -- it hasn't
15 mattered until now that that's happened to me.
16 Sorry. So --

17 THE CHAIR: Okay.

18 CNSL J. KITCHEN: -- Maria, I'll ask you to repeat
19 that. I'm sorry.

20 CNSL M. SOKOLOVA: Sorry. The reason for asking that
21 now was because if we're talking about qualifying
22 the expert, I'm just curious -- so that we're all
23 on the same page that, you know, when we discuss
24 moral panic, is she qualified to talk about the
25 same thing that I'm asking about. But I'm also
26 content -- this was my only other question -- to
27 leave it to the substantive part if everybody's
28 content with that. Or, you know, we can -- we
29 can talk about the scope of the definition
30 quickly now just so that we're all on the same
31 page should she be qualified.

32 THE CHAIR: All right. Well, I -- I think in the
33 interest of just dealing with this now, I'll
34 allow the question to be asked. But I appreciate
35 your objection, Mr. Kitchen, that, you know, in
36 terms of its substance and any weight we might
37 give to the substance of the answer, that's --
38 we're in the qualifications portion of the
39 hearing, and it should be related to those -- the
40 weight goes to her qualifications and not to the
41 answer that she's giving. So I appreciate that
42 might seem like a very thin slice, but I think
43 it's fair enough to ask the question, and we'll
44 just deal with it as a matter of weight.

45 So, Dr. Saewyc, if you can remember the
46 question, please go ahead with your answer.

47 A So in terms of the literature definitions of

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1 moral panics, I can't immediately call to mind a
2 specific -- you know, like, oh, so-and-so says
3 this; this is the definition, because this is not
4 my primary area of -- of research. I would say
5 my understanding of moral panic, as -- as a
6 definition, is when a -- a -- an issue or group
7 is identified as a -- a serious problem or a -- a
8 danger or a threat to society, to the wellbeing
9 of some people, without -- out of proportion
10 to -- to any potential evidence in -- in reality
11 related to that or -- or without necessarily a --
12 a solid basis for that, and that this concern
13 is -- is creating a -- a sense of threat to
14 society's functioning and to safety.

15 CNSL M. SOKOLOVA: Okay. Thank you. I don't have any
16 further questions.

17 THE CHAIR: All right. Thank you. We're going to
18 take a break now for an hour until 1:30. During
19 this break, because it's a bit of a longer one, I
20 will remove everyone individually from the
21 meeting. So please don't disconnect yourself.
22 I'm going to do that, and then I'll -- that
23 allows me to control the meeting room when we
24 come back in so I can see who's coming back in
25 and -- and so on.

26 Go ahead, Mr. Kitchen.

27 CNSL J. KITCHEN: Just so I understand, so -- so those
28 who are listening to the audio, they have a link
29 that they can click on to get audio access, and
30 that link just always brings them back in. Like,
31 it's -- it's a reusable link they can just keep
32 using over and over again?

33 THE CHAIR: Yeah, correct. So when you reconnect, you
34 may be in the lobby. The reason that I want to
35 remove everyone now is that that ensures that
36 when I reconnect everyone's in the lobby and I
37 can control everyone coming in at the same time.
38 So if you're experiencing a delay, it may be
39 because you're in the lobby and I'm -- I'm
40 waiting for everyone to join before we start the
41 meeting, or it may be that you're attempting to
42 connect in the middle of the proceeding and I'm
43 not inclined to interrupt the proceeding to -- to
44 let people in. So -- but the link is the same
45 for the -- it should be the same for the two
46 weeks. So once you have it once, you should be
47 good to use it at all times.

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Proceedings

1 Yes, Ms. Waddell?

2 CNSL L. WADDELL: Sorry. I'm too far away from the
3 computer to actually use the hand up feature.
4 Since we're going into a break -- I know
5 Dr. Saewyc's done this before, as she just
6 testified, but perhaps just for the benefit of
7 the people listening in so they have a sense of
8 how the procedure works, you could caution the
9 witness, given that we're going to be on a break
10 and she is under cross-examination.

11 THE CHAIR: Thank you. Well, I think we had been
12 deliberately vague as to whether she was under
13 cross-examination, but for the sake of -- but if
14 you're going to --

15 CNSL L. WADDELL: Well, let's err on --

16 THE CHAIR: -- pin us --

17 CNSL L. WADDELL: -- the side --

18 THE CHAIR: -- down --

19 CNSL L. WADDELL: -- of caution.

20 THE CHAIR: Okay. Dr. Saewyc, you may be under
21 cross-examination right now, and so long as
22 you're under cross-examination, you're not
23 allowed to talk to anyone about your evidence --
24 that includes any of the lawyers for the
25 complainants or any of the other participants in
26 this proceeding. So, please, during this break,
27 do not talk to anyone about your evidence, and --
28 and please come back at 1:30, and -- and we'll
29 carry on.

30 So I will remove everyone from the meeting
31 now and see you back here at 1:30. Thank you.

32
33 (WITNESS STOOD DOWN)

34
35 (PROCEEDINGS ADJOURNED FOR NOON RECESS) [12:33:49]

36 (PROCEEDINGS RECONVENED) [1:30:13]

37
38 DR. ELIZABETH SAEWYC, a
39 witness, recalled.

40
41 THE CHAIR: Hi, everyone. Welcome back. I just want
42 to make sure we have everyone that we need. I
43 can see complainant's counsel there and
44 Dr. Saewyc and counsel for the intervenor.

45 Mr. Kitchen, your camera is off. There you
46 are. Thank you.

47 CNSL J. KITCHEN: There we go.

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Dr. Elizabeth Saewyc (for Complainant)

Cross-exam by Cnsl J. Kitchen on qualifications

1 THE CHAIR: Mr. Neufeld has not rejoined. Are we
2 waiting for him?

3 CNSL J. KITCHEN: Well, we can get started without
4 him. Last I knew he was -- he was going to be
5 joining. So I don't know. I don't know what to
6 tell you. But we can -- we can proceed without
7 him, and -- and if he's still not here, you know,
8 in half an hour, I guess I'll have to follow up
9 with him, but...

10 THE CHAIR: Okay. I'll let him in when he -- when he
11 comes if he's a few minutes late, but if you're
12 content to go ahead, then I think we should.

13 Dr. Saewyc, are you ready to continue now
14 with the questions?

15 A Yes.

16 THE CHAIR: Okay. Thank you. Go ahead, Mr. Kitchen,
17 when you're ready.

18 CNSL J. KITCHEN: Thank you.

19

20 CROSS-EXAMINATION BY CNSL J. KITCHEN on
21 qualifications:

22

23 Q Good afternoon, Dr. Saewyc.

24 A Good afternoon.

25 Q I have that right -- is it "Say-wick" or
26 "Say-uh-wick"?

27 A It's "Say-uh-wick."

28 Q Saewyc.

29 A The -- the "uh" is just barely, barely there.
30 You're -- you're very close.

31 Q Okay. Sorry. I got to get to my -- I'm going to
32 get to my questions here. I think we'll save
33 that for the end.

34 Okay. Is it fair to say that you spent the
35 first half of your career in the United States of
36 America?

37 A No. I spent the first five years of my -- well,
38 I became a nurse in 1996. So my academic career,
39 it would be the first ten years or so. And then
40 the last 20 years, I've been in Canada.

41 Q Because it was about 2006 you came to UBC?

42 A 2004.

43 Q 2004. Okay. Okay.

44 A Although I would note that I was actually
45 conducting research in Canada as part of an NIH
46 US-funded grant that included research from the
47 *B.C. Adolescent Health Survey* from 1992 and 1998,

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Dr. Elizabeth Saewyc (for Complainant)
Cross-exam by Cnsl J. Kitchen on qualifications

1 and that study began in 2001.
2 Q And then since -- I'm going to -- well, I'm going
3 to say "move," but I don't actually know that
4 that's true. In 2004 you came to work at UBC.
5 Did you actually physically move here? Like,
6 you're -- you're a resident here now in Canada?
7 A Yes. I'm a dual citizen.
8 Q Well, yeah, I would have -- I would have guessed.
9 Okay. But you -- you know what I mean though
10 when I -- when I say you've moved? Like, you
11 have actually --
12 A Yes. I -- I have --
13 Q You --
14 A -- for the last --
15 Q You reside in the Vancouver area?
16 A For the last 20 years, I have lived in Canada, in
17 British Columbia, yes.
18 Q So is it fair to say, since living in Canada,
19 you've -- you've -- just like you said, you did
20 Canadian research when you were in the US. Is it
21 fair to say that since you've been in Canada
22 you've done a fair amount of American research?
23 A Yes. I've continued to do American research,
24 while also doing Canadian research.
25 Q Right. In -- in your report and -- okay. So I'm
26 going to have questions for you about your report
27 and your CV. Do you have those up in front of
28 you?
29 A I do have my CV. Are you wanting to provide
30 the -- the PDF of -- of the report?
31 Q Well, if you don't have it, probably what I'll do
32 is screen share.
33 A I have the -- I have the -- I have the Word
34 document. It's just that I'm not sure the page
35 numbers will be exactly the same; so...
36 Q Well -- well --
37 A But the sections are the same; so that's fine.
38 Q Yeah. Yeah. And it's pretty short; so that
39 probably won't be --
40 A Right.
41 Q -- a problem.
42 Okay. So you mention in -- so this is --
43 this is page 2. So it's immediately under the --
44 under the B, "Facts and Assumptions."
45 A Right.
46 Q You say that you assume, fairly so, that the
47 materials provided to you labelled as the

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Dr. Elizabeth Saewyc (for Complainant)

Cross-exam by Cnsl J. Kitchen on qualifications

1 "Decision 2021 BCHRT 6" provide an accurate
2 factual account of statements that Mr. Neufeld
3 made, and I take no quibbles with that
4 assumption. But isn't it fair to say that
5 throughout the rest of your report you assume
6 that Mr. Neufeld's comments, as they appear in
7 that decision from the Tribunal, are homophobic
8 and transphobic?

9 A No, it's not fair to assume that. Some of them
10 would appear to be so based on -- on definitions
11 of transphobic and -- and homophobic speech, but
12 it was not -- that wasn't what I was asked to
13 answer. That wasn't the opinion -- I -- I
14 didn't -- I wasn't asked to make that
15 determination. I thought that was what the
16 Tribunal's supposed to do.

17 Q You would agree with me that -- so now I'm
18 going -- there's B, there's C, and then
19 there's -- then there's Number 1. Okay?

20 A Right.

21 Q So this is on page 3 for me, but --

22 A Right.

23 Q But you would agree that that question says,
24 "What are the harms associated with homophobic
25 and transphobic speech?"

26 A Yes.

27 Q So you're not -- you're not assuming -- well,
28 let's go back to your answer because you --
29 you -- you said, I think, something along the
30 lines of, well, perhaps some of them are. So did
31 you -- did you assume that some of them are and
32 some of them weren't?

33 A I didn't make assumptions about them. I actually
34 wasn't even looking at them and actually
35 answering these questions. I was reporting about
36 the research and the literature.

37 Q Well, yes, I saw -- I mean, I -- I -- I saw that
38 you didn't make any references to what he said.
39 Well, let me ask you this -- you were -- you were
40 provided with the decision, and -- and, you know,
41 you said you've based your opinion on the factual
42 assumption that the materials in that decision
43 are -- are an accurate factual account. Did
44 you -- did you actually review Mr. Neufeld's
45 statements in that decision?

46 A I did review them; although I do not believe I
47 reviewed them before I wrote this report.

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Dr. Elizabeth Saewyc (for Complainant)

Cross-exam by Cnsl J. Kitchen on qualifications

1 Q Okay. Do you -- you take no position on whether
2 or not they are because you just -- because, I
3 mean, ultimately, I suppose you -- you really
4 can't because you wrote your report before you
5 even looked at them. So you take no position.
6 Is that fair?

7 A I don't -- like, I -- I wrote based on the -- my
8 understanding of what I'm supposed to be doing is
9 providing information about the research and the
10 science to answer these questions for the
11 Tribunal. I do -- you know, subsequently I have
12 looked at them and -- and identified whether some
13 of them might actually meet my definition of
14 transphobic, but I don't -- from my
15 understanding, that's not my -- I mean, it's not
16 my responsibility to make that determination.
17 That's the Tribunal. Am I wrong in that?

18 Q Well, that remains to be seen.

19 And you would agree with me that you -- that
20 you did not provide a definition of -- or a
21 description of what homophobic or transphobic
22 actually means in your report?

23 A No, I did not.

24 Q Would you agree with me that there's no one set
25 definition, there's no -- there's no consensus
26 definition from some authoritative source that
27 everybody would agree with?

28 A No, I'm not sure I would agree with that. There
29 are a number of dictionaries that provide
30 definitions of -- of homophobic and -- and
31 transphobic and homophobia and transphobia and
32 others. I think there have been a variety of
33 places where --

34 Q Can you give me an example.

35 A Off the top of my head? I'm pretty sure I've
36 seen it in the Merriam-Webster Dictionary and
37 in --

38 Q Wouldn't you agree with me that the reason you
39 just said "my definition" of homophobia and
40 transphobia is because there is disagreement
41 as -- as between experts as to what that actually
42 means?

43 A I'm not sure that I would say that there's
44 disagreement; although when it comes to -- to
45 research, there's a lot of nuance, and there are
46 variations in terms of people's wording choices,
47 and so I don't think there's, like, absolute

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Dr. Elizabeth Saewyc (for Complainant)

Cross-exam by Cnsl J. Kitchen on qualifications

1 unanimous, everyone will say, it means this,
 2 because people will use slightly different
 3 wording choices. But generally speaking, people
 4 do -- at least experts tend to define homophobic
 5 and transphobic speech in pretty similar ways in
 6 terms of what that involves. Scientists have a
 7 tendency to use very precise terminology in a lot
 8 of different places or -- or develop a variety of
 9 different approaches to describing it within
 10 their particular disciplines. So any particular
 11 term has varying definitions, if you're talking
 12 about sociology or psychology, that are slightly
 13 different, but they mostly draw on the same terms
 14 and -- and meanings.

15 And I did, without necessarily defining it
 16 directly, speak about what homophobic and
 17 transphobic speech was in my -- my opinion if you
 18 look at -- I believe it will still be your
 19 page 3, on the paragraph that says, "Decades of
 20 research in Canada and beyond," I identify that
 21 2SLGBTQ+ people have persistently been
 22 stigmatized for their sexual orientation and/or
 23 gender identity and gender expression.

24 The next sentence talks --

25 Q Well --

26 A -- about --

27 Q -- could I -- could I ask you a question about
 28 that?

29 A Yeah.

30 Q I guess that goes without saying. I mean, that's
 31 a -- that's effectively a truism. But -- but how
 32 does -- but what does -- what does, you know,
 33 sort of the obvious fact that, you know, LGBT
 34 people have been -- have been stigmatized at
 35 times in the last however many decades -- what's
 36 that got to do with homophobia and transphobia?

37 CNSL L. WADDELL: Sorry. I'm just going to object for
 38 a minute because this feels like it's really
 39 getting into the merits of Dr. Saewyc's report,
 40 which I don't think she ought to be
 41 cross-examined on twice. Is this -- I -- I don't
 42 see the relevance of this line of questioning to
 43 what we are engaged in at this stage, which is
 44 about qualification and admissibility.

45 THE CHAIR: Mr. Kitchen?

46 CNSL J. KITCHEN: Yeah. You know, that's fair.

47 Q Dr. Saewyc, there's a fair number of references

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Dr. Elizabeth Saewyc (for Complainant)

Cross-exam by Cnsl J. Kitchen on qualifications

1 to American politics and American data on your
2 report. Wouldn't -- wouldn't you agree with
3 that?

4 A Yes. There are a number of research studies that
5 have come from the United States, in part because
6 the United States conducts huge amounts of
7 research on lots of different topics in health
8 and sociology compared to Canada just because
9 it's so much bigger and has much larger funding
10 pools for scientists.

11 Q Right. Would you -- isn't it fair to say that
12 the bulk of your research is to do with people
13 under the age of 25, with some to do with people
14 under the age of 30, and then a little more
15 that's to do with people of all ages? Is that
16 fair?

17 A Yeah, that's -- that's fair. Oh, to clarify
18 though, I do very, very little research about
19 people under the age of, say, 10 or 12.

20 Q Right. Well, I mean, I -- I -- I'm in the midst
21 of raising adolescents, and -- yeah -- I
22 wouldn't -- I wouldn't have called them that
23 prior to they -- when they hit that -- that
24 magical period.

25 Is it fair to say that you really like doing
26 media interviews?

27 A I'm not sure that that's fair to say in terms of
28 like doing them. It is --

29 Q Okay.

30 A -- a part of my responsibility as a scientist to
31 disseminate the research. And because prior to
32 being an academic I was a journalist, I am sort
33 of knowledgeable about those approaches to
34 disseminating research.

35 Q How long were you a journalist?

36 A Let me see. It was a relatively short time
37 period and for small newspapers. From 1985 to
38 1990 or so.

39 Q Did you -- were you a journalist for any -- any
40 sort of recognizable mainstream media?

41 A Only to the extent that you would consider the
42 *Stillwater Gazette* and the *North Shore News* -- or
43 the -- the *North St. Paul News*, small weekly
44 newspapers in Minnesota, recognized. These are
45 similar to I think the *North Shore News* here.
46 They -- they are the small weekly -- my
47 particular responsibility as a journalist was the

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Dr. Elizabeth Saewyc (for Complainant)

Cross-exam by Cnsl J. Kitchen on qualifications

1 municipality, the Water Commission, the school
2 district -- or the school board meetings, the
3 mayor's council meetings, that sort of thing,
4 the -- call it the government beat -- briefly.
5 Q Well, then would you agree with me then that
6 you've done a lot of media interviews?
7 A Yes, I -- I would say I have done -- I guess it
8 would depend on a lot -- as for whom? I mean --
9 Q Well, you've done -- you've listed 34 pages worth
10 of media interviews single-spaced in your CV,
11 haven't you not?
12 A Yes. So I guess --
13 Q Over the -- over the past 29 years?
14 A Yes. So as an academic, I would say it's -- it's
15 above average. It's -- it's certainly not a lot
16 for, say, politicians perhaps, but it's a fair
17 amount. Yes.
18 Q Now, when you elected to -- to mention so much
19 about violence in your report, were you aware
20 that there was -- there was no violence that has
21 occurred as a result of Mr. Neufeld's expression?
22 A No.
23 Q You didn't know one way or the other?
24 A No.
25 Q So you didn't assume there was?
26 A No.
27 Q And you -- and you didn't assume there wasn't?
28 A Correct.
29 Q You would agree with me that most teachers are
30 above the age of 25, would you not?
31 A Since in order to get a teacher's licence, you
32 need a bachelor's degree, which means you would
33 graduate at age 22, chances are that the
34 majority, more than 51 percent are over the age
35 of 25, correct.
36 Q You would -- you would only -- you would only say
37 it's a majority; you wouldn't say it was most?
38 A Can you specify what constitutes "most" when you
39 say most? Like, what percentage are we talking
40 about here?
41 Q Well, you know, I'm not trying to be cagey. When
42 I -- when I say -- when I say "most," I mean -- I
43 mean something less than almost all and something
44 more than majority.
45 A Yes. Just based on the -- the general population
46 of age of teachers, if they go from 22 to 65,
47 yes.

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Dr. Elizabeth Saewyc (for Complainant)

Cross-exam by Cnsl J. Kitchen on qualifications

1 Q Okay. Now -- now, would you agree with me that a
2 majority of teachers are above the age of 30?

3 A I don't know.

4 Q You don't know?

5 A I don't know what the demographics are here in
6 B.C.

7 Q Do you -- do you think it's fair to say that
8 51 percent of teachers are under the age of 30?

9 A I don't know. It could be, but I don't know.

10 Q And is it fair to say, you mention -- a long
11 time -- or alongside mentioning violence, you
12 often -- not necessarily always, but often
13 mention exclusion in your report. And I think I
14 understand what that means. I mean, I -- I do
15 practice human rights law, and I do have clients
16 that are excluded. I know what it looks like
17 legally speaking; so I think I know what you
18 mean. And you can explain it to me if you think
19 you need to, but is it fair to say, you did --
20 you did -- you didn't know one way or the other
21 if there was any exclusion as a result of
22 Mr. Neufeld's expression in this case?

23 A Yes, I -- it's fair to say that. I am not aware
24 of any of the specific potential outcomes of
25 Mr. Neufeld's speech. I was providing
26 information about the research.

27 Q Would you agree with me that your opinion and all
28 the research supporting it would only be useful
29 if, going back to what you said -- you said, you
30 know, it's not my job to decide if there's
31 homophobic or transphobic expression; it's the
32 Tribunal's job. Wouldn't you agree with me
33 that -- that -- that your opinion and all the
34 research supporting it really only becomes useful
35 after there has been a determination that there's
36 been homophobic or transphobic expression?

37 CNSL L. WADDELL: Sorry. I just -- I want to object
38 here. I think what Mr. Kitchen is asking -- and
39 he can correct me if I'm wrong, but -- is for the
40 witness to speak to where her evidence might fit
41 into the legal analysis, which is not something
42 that she is qualified to do. And I -- I am of
43 the same view as my previous objection, which is
44 that I'm not sure about the relevance of this.
45 In addition to that threshold issue of she's not
46 a legal expert, I'm unclear about the relevance
47 of this line of questioning as well. And I'm

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1 sorry. I've tried to let both of these things go
2 because I don't want to interrupt repeatedly, but
3 I do want to make sure that we're sticking to
4 stuff that's relevant and, in particular,
5 relevant to qualification and admissibility here.
6 CNSL J. KITCHEN: Well, I -- I think -- chair, I'm
7 going to -- I'm going to stop here because I want
8 to ask you something because I know this is done
9 different ways in hearings. And I -- I have a
10 tendency to give my response to the objection
11 right away, but I've had chairs and judges say,
12 now, hold on now. I need to step in in the
13 middle. So I want to check in with you because
14 obviously this will come up many times. Are you
15 okay with me giving my response immediately, or
16 would you prefer me to wait until you've had
17 something to say in between?

18 THE CHAIR: It's fine for you to go ahead and give
19 your response immediately if you -- generally
20 speaking, I would ask for your response if I am
21 considering the objection may have some merit
22 warranting a response. If you give me a minute
23 if I am not inclined to allow the objection, you
24 may not need to speak. So it's fine if you jump
25 in, but -- but I'll always invite you to give
26 submissions if -- if I think there's something
27 for you to respond to. So go ahead. And -- and,
28 also, we haven't covered this before, but since
29 we're starting two weeks before, if -- if
30 you're -- if an objection is arising during
31 cross-examination and you'd like me to exclude
32 the witness for the arguments, we can do that;
33 though of course I hope we'll save that for when
34 it's truly necessary just for expedience.

35 Anyways, go ahead, Mr. -- Mr. Kitchen.

36 CNSL J. KITCHEN: Well, Ms. Waddell, in -- in response
37 I think I would say, you know very well the
38 question is relevant, and you've objected because
39 it is a question you don't like because it goes
40 to whether or not -- and of course this is why
41 it's relevant -- it goes to whether or not the
42 expert evidence is necessary and relevant, which
43 obviously I've given you notice that I'm going to
44 be arguing.

45 So now, as far as, you know, her legal
46 opinion, no, I'm not asking for a legal opinion.
47 I think -- I think it's fair to say, I'm -- I'm

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1 not asking for that here. I think -- I think it
2 is generally, at least for the purposes of this
3 cross-examination, within her expertise as
4 someone who talks about the effects of
5 discrimination because that's -- that's literally
6 what she's doing -- stigma, harm, violence,
7 exclusion -- all this -- stress, anxiety -- all
8 the rest of it. And the -- and, you know, these
9 sort of go without saying, although I understand
10 you might want an expert to fill in what exactly
11 that looks like. So my question is -- is not a
12 legal one. It's one that -- that -- that I think
13 she can answer as somebody who -- who works in
14 this area.

Q So I'll ask it again, and of course -- I mean,
16 you know, maybe the Tribunal chair has to step
17 into this, but my question, Dr. Saewyc -- don't
18 answer until we hear from the Tribunal, but my
19 question is, isn't it fair to say that since, as
20 you've acknowledged, you're not here to decide
21 whether or not there's homophobic and transphobic
22 speech, you haven't assumed it one way or the
23 other, and you've implicitly acknowledged that
24 you can't or you shouldn't, that what you have to
25 say about the effects of homophobic and
26 transphobic speech are not helpful or useful
27 until after it's already been established that
28 there is homophobic and transphobic speech to
29 begin with?

THE CHAIR: All right. I will step in here. And I'm
31 going to uphold the objection. In my view,
32 Mr. Kitchen, what you're really -- the heart of
33 your question is about, as you said, relevance,
34 necessity. These are legal arguments and
35 thresholds. So it's not for the witness to tell
36 the Tribunal what her evidence may be relevant to
37 or useful for the Tribunal to decide. Those are
38 arguments for the lawyers to make.

I mean, if you're -- I gather a different
40 way of phrasing your question which may avoid
41 the -- the issue may be around confirming that
42 the premise of these opinions are that there has
43 been some discriminatory or harmful or homophobic
44 or transphobic speech that she's speaking to the
45 effects of. And then the -- the lawyers can make
46 arguments about when that may arise in my
47 analysis. So if you -- if you want to reframe it

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1 to kind of focus on her research and her
2 qualifications, that's fine, but the relevance
3 and necessity will be legal arguments for the
4 end.

5 CNSL J. KITCHEN:

6 Q Dr. Saewyc, you have -- you have not produced any
7 academic or scholarly publications in the area of
8 moral panic; is that right?

9 A That is correct.

10 Q You haven't done any media interviews in the area
11 of moral panic?

12 A Not as a specific topic. It is possible that in
13 some of the research that -- or some of the
14 interviews that I have done in talking about
15 misinformation related to 2SLGBTQ+ people and in
16 commenting to journalists as they've asked
17 questions that I might have characterized --
18 and -- and not just about LGBTQ+ people. I
19 recall that I -- I have been asked to do
20 interviews about sexual health education for
21 adolescents a number of years ago in Ontario
22 about their -- their -- changes to their
23 curriculum, and I may have used the term "moral
24 panic" in relation to misinformation in responses
25 about a case, but not in terms of -- of
26 specifically as research that I had done, no.

27 Q Can you point me to which media interview in the
28 list of 34 pages of media interviews in which you
29 would have discussed moral panic?

30 A No, I'm afraid I can't. If -- if I had done so,
31 it would be a -- a brief comment in the case of
32 an interview, and I'm not even sure it would have
33 been quoted.

34 Q Fair to say, you haven't done any keynote
35 addresses or public presentations primarily on
36 the topic of moral panic?

37 A No, I have not.

38 Q Fair to say, you don't teach any classes that
39 feature prominently about -- or where moral panic
40 features prominently in them?

41 A No.

42 Q Have you ever been qualified as an expert before
43 a tribunal or a court to speak to moral panic
44 in -- you know, well, generally or in the context
45 of -- of LGBT issues?

46 A No.

47 Q Fair to say, in the plain English understanding

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1 of the word "expert," that you're not an expert
 2 in moral panic? Is that fair?
 3 A Yes, that would be fair.
 4 Q I'm on page 120 of 163 of your CV.
 5 A All right. Hang on. Let me go to...
 6 Q Which -- I don't know which page that is, but --
 7 in the PDF.
 8 THE CHAIR: It's page 133 of the PDF.
 9 CNSL J. KITCHEN: There you go.
 10 Q Let me know when you're there.
 11 A 120 of -- okay. So this would be the section of
 12 "Expert Panels and Consultations." Yes.
 13 Q Yes, yes. The -- the first case there, that's
 14 the PT case, you weren't admitted by the Court of
 15 Queens Bench, as it then was, as an expert; is
 16 that right?
 17 A So this would be the first one retained by legal
 18 counsel for the government of Alberta?
 19 Q Yeah, it's the first one there.
 20 THE CHAIR: Oh, sorry. I'm not with you. You said it
 21 was on --
 22 CNSL J. KITCHEN: Oh.
 23 THE CHAIR: -- page 120 --
 24 CNSL J. KITCHEN: Well --
 25 THE CHAIR: -- of the CV? Oh --
 26 CNSL J. KITCHEN: No --
 27 THE CHAIR: -- I think I'm --
 28 CNSL J. KITCHEN: -- it's --
 29 THE CHAIR: -- in the -- I'm in the wrong page again.
 30 Just a moment. Sorry. Just bear with me one
 31 moment. Sorry. I have two --
 32 CNSL J. KITCHEN: It should be 12- --
 33 THE CHAIR: Okay. Yeah.
 34 CNSL J. KITCHEN: -- -4 of the -- of the -- yeah, 124
 35 of the PDF.
 36 THE CHAIR: Okay. Sorry. With you now. Yeah. Go
 37 ahead.
 38 CNSL J. KITCHEN: Thank you.
 39 Q So, yes. It's the very first item there where
 40 it -- where it starts off by "Retained by legal
 41 counsel for the government of Alberta." The
 42 Court of Queens Bench never qualified you or
 43 admitted you as an expert in that case. Is that
 44 fair to say?
 45 A Since there was no hearing, I had provided the
 46 written testimony -- or written affidavit, and I
 47 believe I also provided a written affidavit in

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Dr. Elizabeth Saewyc (for Complainant)

Cross-exam by Cnsl J. Kitchen on qualifications

1 response for the injunction -- the -- the initial
2 injunction. But, no, there was no actual hearing
3 because of the provincial election; so they did
4 not -- at least as I understand law, I guess that
5 means they wouldn't have qualified me in that
6 case.

7 Q You have been qualified at least once before,
8 haven't you?

9 A Yes, I have.

10 Q In fact -- in fact, you were -- you were
11 qualified in that Ontario Human Rights Tribunal
12 decision involving Borderland Pride?

13 A Yes. In June. Yes.

14 Q So we know you were qualified in that one. Okay.
15 I'm going to work my way backwards because I
16 think that might be easiest for both of us.
17 So -- so you were qualified in that one.

18 What about this *Charter* challenge in
19 New Brunswick here? That's second from the
20 bottom. So that's one up. You say your
21 affidavit was provided. So I take it then that
22 you weren't qualified or admitted by the court to
23 actually be an opinion expert witness?

24 A I have not yet, if that means actually being
25 there for -- for the -- the hearings. The
26 hearings are apparently being scheduled in
27 January or March.

28 Q And then we have the Saskatchewan, the UR Pride
29 Society case. Have you been accepted or
30 qualified or admitted by the court to be an
31 expert witness in that case yet?

32 A There has not been a hearing, and I have not
33 given testimony, no. I -- I guess -- because I
34 don't -- I don't know the law specifically about
35 if expert testimony, the written testimony is
36 considered by the judge in making decisions --
37 does that constitute being considered an expert
38 or not.

39 Q Well -- and I'll invite your -- your counsel of
40 course to chime in here. What I mean by
41 "admitted" or "qualified" or "accepted" is simply
42 a reference to the court saying that you can
43 now -- for example, that's -- we're going through
44 that process right now. We -- you know, us
45 lawyers call it the "qualification process";
46 right? So you're either admitted or you're not
47 admitted. If you're not admitted, you know, you

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won't see me again. If you are admitted, then, you know, later this week we're going to have a discussion, and you're actually going to give me your opinion. Right? You can only do that if you -- if you've actually been admitted. So showing up and going through the qualification does not count. It's only at the end of the qualification that you're actually qualified, and then you end up giving your opinion.

And, you know, if -- if my -- if my friend wants to, you know, provide you more, but that's -- I think that's a fair definition. And that's -- that's what I meant, and I just -- I -- I -- I could have told you that, but I just assumed that you had -- had known that because you had been qualified.

A Okay. So -- so in that case, as there has been no hearing for the Saskatchewan *Charter* challenge, I have not given any testimony there in terms of in -- in court.

Q Okay. I'm working my way up. So now above the UR Pride Society case, we're into the B.C. College of Nurses cases. Is this the Amy Hamm case?

A Yes.

Q Okay. And you -- again, I'm going to ask you the same thing. So I know -- I know you -- I know you've sort of provided, you know, something in writing, I would imagine, but is it -- is it -- is it correct that you have not yet been admitted or qualified or accepted by that tribunal to actually provide your opinion in -- in testimony?

A That is not correct. I was qualified and --

Q Okay.

A -- provided testimony in that case.

Q Okay. What were you qualified as?

A I was qualified as an expert in nursing practice, nursing education, nursing code of ethics, and in research about 2SLGBTQ+ people and their health, and in relation to stigma and discrimination and its impact on health.

Q Okay. I think my last question in this vein -- we've got one more case above this. This is 2020, and it says this family court case in B.C. Now, I may or may not know what this one is, but based on the limited information you provided, I don't know. Were you qualified or accepted as --

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1 as an expert and went ahead and -- and gave your
2 opinion in that case?

3 A In that case, I provided the affidavit, and I was
4 not asked to testify. No. It didn't end up
5 going to hearing.

6 Q So you would agree with me that you've only been
7 qualified by a court or tribunal to actually come
8 in and give your opinion evidence three times in
9 total?

10 A I was also qualified in Alberta in the --

11 Q 1994 -- no. Sorry. 2014.

12 A 2000 --

13 Q 2015. Yes, that -- that's -- that's the third
14 one. When I said "three," that was the third one
15 I had in mind.

16 A The one in terms of the -- the criminal case?

17 Q Yes.

18 A Yes.

19 Q So you would agree with me, you've been --

20 A Well, there's also the Seattle case family law;
21 so I guess that would be four times.

22 Q Where's that one?

23 A That would have been in 2000 -- it was after I
24 was on faculty at the University of Minnesota and
25 before I became faculty at UBC. I may not have
26 actually put that in my CV. As a brand new
27 faculty member, I was still figuring out what was
28 supposed to be included where. But that would
29 have been Seattle family court, and it was in a
30 child welfare case.

31 Q Okay. So you've been -- you've been qualified as
32 an expert to provide opinion evidence by a court
33 or judge -- sorry -- by a court or tribunal three
34 times in Canada?

35 A Yes.

36 CNSL J. KITCHEN: Those are all my questions. Thank
37 you.

38 THE CHAIR: Thank you.

39 Ms. Waddell, is there anything arising?

40 CNSL L. WADDELL: I have just one question, but I just
41 need to find something to ask that question.

42 THE CHAIR: All right. Go ahead.

43 I see, Mr. Neufeld, you have your hand up.

44 I'd like to just give Ms. Waddell a chance to ask
45 her final question. Is this an urgent issue that
46 we need to address? You're muted.

47 BARRY NEUFELD: I'll wait for her to finish her

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1 question.

2 THE CHAIR: Thank you. I'll come back to you in a
 3 moment.

4 CNSL L. WADDELL: Thanks for your patience, everyone.

5
 6 RE-EXAMINATION IN CHIEF BY CNSL L. WADDELL on
 7 qualifications:

8
 9 Q So just a clarifying question or two if you're
 10 able to answer it, Dr. Saewyc. The court case
 11 that my friend was just asking you about, which
 12 is colloquially referred to as A.B. C.D. -- is
 13 that -- does that ring a bell with you,
 14 Dr. Saewyc?

15 A I am familiar with the case, but that is not the
 16 case that I was involved in.

17 CNSL L. WADDELL: Okay. Thank you.
 18 All right. Those are my questions.

19 THE CHAIR: Thank you.

20 Dr. Saewyc, I'm going to let you go in a
 21 moment.

22 I just want to make sure -- Mr. Neufeld, is
 23 your issue something to do with Dr. Saewyc, or
 24 can I -- can I let her go and then come back to
 25 you?

26 BARRY NEUFELD: Well, I think it's important. This is
 27 independent legal advice. My former lawyer sent
 28 me this text. He says:

29
 30 The Tribunal won't send out the audio link
 31 using that goofy one-link request rule, and
 32 there's supposed discretion. Who gets
 33 decide who gets to listen? This is
 34 disgraceful. I would refuse to participate
 35 without an open hearing and walk out until
 36 they open the hearing to the public. I
 37 assume James is equally outraged at this
 38 misconduct. Yes?

39
 40 THE CHAIR: Okay. Thank you, Mr. Neufeld. So I take
 41 it that doesn't have to do with Dr. Saewyc; so
 42 I'll come back to that in a moment.

43 Dr. Saewyc, those are the questions that we
 44 have for you today. Thank you very much for your
 45 time. Counsel for the BCTF and Chilliwack
 46 Teachers' Association will be in touch with you
 47 if -- if you're required back here on Friday.

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1 Very much appreciate your time. You're free to
2 disconnect from the call today. Thank you.
3 A Thank you very much.

4
5 (WITNESS EXCUSED)

6
7 CNSL J. KITCHEN: Chair, I have two issues.

8 THE CHAIR: Go ahead.

9 CNSL J. KITCHEN: One -- and I know -- I know this is
10 a bit of a demand on -- on you, but do you expect
11 you'd have a decision for us regarding Dr. Saewyc
12 by, let's say, Wednesday morning?

13 THE CHAIR: Well, there's two things that we're going
14 to give you. Could we give you a bottom line yes
15 or no decision by Wednesday morning? Maybe.
16 Could we give you our full --

17 CNSL J. KITCHEN: Yeah.

18 THE CHAIR: -- written reasons? That, I'm less sure
19 of. Yes.

20 CNSL J. KITCHEN: No. I don't expect that. No.

21 THE CHAIR: Okay.

22 CNSL J. KITCHEN: I wouldn't expect that until the
23 final decision at the end -- at the end of all
24 this. I wouldn't ask you -- I just want to know,
25 yea or nay, is she --

26 THE CHAIR: Yes.

27 CNSL J. KITCHEN: -- coming or not. That's --

28 THE CHAIR: I think --

29 CNSL J. KITCHEN: -- all.

30 THE CHAIR: -- that's a reasonable time estimate,
31 Wednesday morning?

32 UNIDENTIFIED SPEAKER: I think so, yes.

33 THE CHAIR: Yeah. Yeah.

34 UNIDENTIFIED SPEAKER: Yeah.

35 THE CHAIR: Yes, that's right.

36 CNSL J. KITCHEN: Okay. So the second issue -- and, I
37 mean, I was planning to raise this. I just
38 didn't want to, I mean, do it in the middle of
39 cross-examination of Dr. Saewyc. Okay. I'll
40 have to ask this just so I understand -- I can
41 see two people on the screen -- well, not -- I
42 can see two boxes on the screen with phone
43 numbers in them. Am I correct then that there's
44 only two people right now that are -- that are
45 listening to the proceedings?

46 THE CHAIR: That is correct.

47 CNSL J. KITCHEN: Okay. So that's obviously

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1 Mr. Neufeld's concern and -- and Mr. Jaffe's
2 concern, and it is -- it is mine as well. Maybe
3 not -- maybe not as colourful about it as
4 Mr. Jaffe, but of course he doesn't have to -- he
5 doesn't have to deal with you guys for the next
6 two weeks. So I'm not going to -- I'm not going
7 to use that kind of language, but I -- I -- I --
8 I am -- I am concerned, you know, that -- that
9 there's only two people on because obviously
10 there's -- there's -- there's a large -- not only
11 a large number that obviously would have
12 requested to join today -- and I -- and I get
13 that maybe they can't get in till tomorrow. I
14 understand that. And -- and -- and I acknowledge
15 as much in my email to the Tribunal last week.

16 But I am concerned that there's -- I don't
17 know -- what? -- half a dozen or ten or so people
18 that -- that were signed up and authorized for
19 today and -- and -- and that wanted to get in
20 here and -- and have been trying to get in here
21 and have apparently had problems, and -- and now
22 we only have two. And --

23 THE CHAIR: All right.

24 CNSL J. KITCHEN: -- I -- I do -- I do find that
25 concerning because there -- there's -- there's --
26 I mean, you're -- you're the ruler of your
27 courtroom. That's -- and I acknowledge that, and
28 I -- I respect that. But -- but -- but you are
29 required to -- to -- to comply with -- with the
30 open court principle. And -- and -- and -- and
31 there's -- there's a balance to work out there,
32 but I -- I'm concerned we're not meeting that --
33 that requirement --

34 THE CHAIR: All right.

35 CNSL J. KITCHEN: -- you know, at -- at the moment.

36 THE CHAIR: I want to address this because we've been
37 over this several times. I know this has been an
38 ongoing concern for Mr. Neufeld. We've addressed
39 it in both our pre-hearing calls, where we went
40 over exactly the process to follow for gaining
41 access to the Tribunal's proceeding.

42 As of today, including a number of
43 last-minute requests on Friday, we have seven
44 members of the public who have been approved, who
45 have submitted their form, and who have been
46 granted access via a telephone number. So
47 that's -- there's seven people, two of whom are

1 on the call, five of whom are not on the call. I
2 don't know the reasons they're not on the call.
3 As far as I'm aware, it's nothing on the
4 Tribunal's end. Everyone is provided the same
5 link and the same directions about how to join
6 the link. If they're having difficulty, they've
7 been in touch with the case manager, as I
8 understand it, and she's doing her best to
9 support. There's nothing more that I can do in
10 this proceeding.

11 We continue to get requests. The case
12 manager is addressing those in the course of her
13 work and doing her best to keep up with those.
14 Once a day she's going to process them at the end
15 of the day with the hopes of getting login
16 information for tomorrow. Aside from that,
17 there's really nothing more that we can do.
18 They've been given contact information. They've
19 been given the link. If it's not working, they
20 have to contact the case manager. It appears
21 that maybe five people aren't here, and I
22 don't -- I have no way of knowing what the
23 reasons for that are, but as far as I'm aware,
24 it's nothing that -- no one's been denied access.
25 Everyone who's come has been admitted.

26 So I'm not sure what else there is to do at
27 this stage. We've been over how you get access.
28 There's support from the Tribunal to be -- to
29 access it. You know, there's nothing more I can
30 do.

31 CNSL J. KITCHEN: Well, I -- I -- I would say this --
32 you -- as far as I understand, you practiced law
33 before you became a tribunal member, and -- and
34 so you -- I think you would have personal
35 knowledge of what I'm about to say. When
36 we're -- when we're -- you know, if it's morning
37 chambers and you're in a -- you're in a great big
38 courthouse, you can come and go from courtroom to
39 courtroom. If you're -- if you're a lawyer,
40 you're going to bow, but if you're -- if member
41 of the public, you can come and go in and out of
42 the courtroom. You got to be quiet obviously,
43 but you can come and go. You don't need to give
44 your name. You don't -- I mean, you got to go
45 through security in the beginning obviously to
46 make sure you're not bringing in something you
47 shouldn't into the courthouse, but you can come

1 and go from the courtroom unannounced pretty much
2 as many times as you want, as long as you're very
3 quiet and you're not disturbing anything.
4 That's -- you know, that's -- that's -- that
5 is -- that's the bar, right, that's been set in
6 this country for 100 years when it comes to the
7 open court principle.

8 And so, you know, we kind of already have a
9 problem with the fact that you were asking people
10 to sign up and to give all this information in
11 order to -- to -- to, you know, just to listen.
12 They're not even appearing. They're just --
13 they're just listening. But now we have this
14 added restriction where you can only let people
15 in if they're here at the -- if they're here
16 right, you know, when we come back from lunch at
17 1:30, and then if not, then they can't come in
18 until maybe the break. And so you have that
19 whole hour and a -- hour and 15 minutes,
20 something happens in court, and it's -- it's
21 basically secret, except for -- except for the
22 two people that -- that got here right at the
23 break. And, you know, that's a problem.

24 And I -- and I get it. You know, people
25 should be responsible, and they should be here at
26 the end of the break, but they're not. And
27 they're not -- they're not in the courthouse
28 either. They come and go from the courtroom.
29 That's how it works. And it should be the same
30 here.

31 Now, I take your point. You made a point
32 about how it's -- it's potentially interrupting
33 to come in and out. I get that. If there was a
34 ding and all of a sudden we saw -- we saw -- we
35 saw a head pop up -- yes, I've been on these
36 hearings. I've experienced that. I think that
37 distraction of course is worth it to satisfy the
38 open court principle, but I take your point.
39 That's not happening here. We don't have any
40 head shots coming up. We don't have any dings.
41 People are coming in. They're -- they're --
42 they're not making noise when they show up. I
43 mean, when I do this in Ontario, it's on Zoom,
44 and it's a little bit of a mess, but that's not
45 like that here.

46 And so, you know, in my -- in my respectful
47 submission, there should be no limitation on

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1 people joining only at certain times of the day.
2 They should be able to join the moment they press
3 that link because they're members of the public,
4 and we need to allow them access and not expect
5 them to always know when the breaks are and to
6 always be here right at the end of the break.
7 And then, you know, they can't get in. They're
8 trying to get in. They can't get in. And then
9 they give up, and they go away. And that's to be
10 expected, and that's -- as far as I'm concerned,
11 that's -- that's unacceptable. So I think the
12 best way to deal with this is to simply allow
13 people, when they click the link, to -- to -- to
14 get in. And I would ask you to give that
15 direction to -- to -- I'm sorry -- I -- I think
16 her first name is Britt -- whoever's -- case
17 manager, I think you called her -- to give that
18 direction to her. People --

19 THE CHAIR: That's not -- okay. I'm going to stop you
20 right here because I don't want to spend too much
21 hearing time on this. I -- I have your point on
22 this and -- and the importance of public access
23 to the Tribunal and your views on how you should
24 handle it.

25 The case manager's not involved in admitting
26 and not admitting people other than to process
27 the paperwork that's required. And, I mean, I
28 won't -- the purpose of these two weeks together
29 is not to litigate the Tribunal's process for
30 enabling access to its online proceedings. We
31 have policies and procedures in place that I
32 intend to follow.

33 In terms of granting access and not -- and,
34 again, I don't want to get into it, but one of
35 the reasons that we require people and we
36 disclose the names of people who are
37 participating is because, unlike in open court
38 when you can see who's coming in and you can see
39 who's listening to your evidence, you can't see
40 who's coming in. So I think it's a matter of
41 basic courtesy the Tribunal gives notice of who's
42 coming in case that raises an objection, in case
43 it's a witness, in case it's someone known to the
44 parties, that you could object in the same way
45 you would if you saw someone walk into a
46 courtroom that you knew shouldn't be there. So
47 that's the reason the Tribunal does that.

1 When people join in -- I don't know if you
2 can't hear it on your end. On our end there is a
3 ding and a voice that announces, "Unknown
4 participant is now --" so it does disrupt our end
5 of the proceeding to let people in at any time.
6 So there's reasons that the Tribunal does it this
7 way that we're not going to be revisiting in the
8 course of this proceeding. All I can say,
9 Mr. Kitchen -- and this is for you as well,
10 Mr. Neufeld -- is that we're doing our best to
11 grant access to as many people as we can in a way
12 that's not disrupting the flow of the
13 proceedings.

14 So I expect we'll have more people back
15 tomorrow. We'll continue to let people in if
16 it's not during testimony. There's some latitude
17 around coming back on breaks. We've been letting
18 people in a bit late. But I'm not inclined to be
19 disrupting for people constantly coming in and
20 out. Member Dean also has to check and make sure
21 it's someone on her list.

22 So we're doing our best. No one's been
23 denied. In the course of this last hour, no one
24 has been denied entry because they're coming in
25 out of time. So, as I said, I don't know what's
26 going on with the five people who aren't here.
27 We'll continue to do our best, but we're going to
28 follow the Tribunal's processes and not
29 relitigate them -- or litigate them at all
30 because it's really not the time or place. So
31 we're doing our best. There's public access in
32 the ways that we've given everyone multiple
33 opportunities to understand and comply with, and
34 that's what we're going to continue to do. So
35 for now, as I say, no one's been denied access
36 this last hour. If they can't get in, I don't --
37 I couldn't tell you why.

38 All right. So I want to turn now to the
39 arguments about the expert evidence and just
40 check in about how we want to do this.
41 Mr. Kitchen, you expected you'd need about half
42 an hour. Do we need a short break before
43 arguments, or are you ready to -- is everyone
44 ready to proceed? Anyone need a break? No?
45 Okay. It looks like everyone's ready to proceed.
46 So -- and I'll just confess here, I'm not --
47 I'll -- I'll take your views on who should go

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Submissions by Cnsl L. Waddell (for Complainant)

1 first. I know it's the complainant's burden to
2 qualify their expert, but it's Mr. Kitchen's
3 objection. So I think it makes sense for -- I
4 don't know who should go first here.

5 Ms. Waddell?

6 CNSL J. KITCHEN: Well, just to chime in, I mean,
7 typically how I've seen it done is Ms. Waddell
8 would go, I would go, and then she would have a
9 chance to reply.

10 THE CHAIR: Yeah. That's what I'm thinking.

11 Ms. Waddell?

12 CNSL L. WADDELL: If that's -- yeah, that's fine. I
13 have no -- I don't particularly care who goes
14 first. So I'm prepared to go first, but if that
15 is in fact the case, I'd like a couple minutes.

16 THE CHAIR: All right. Well, why don't we just -- we
17 can just turn our cameras and mics off and come
18 back maybe in five minutes. Would that be enough
19 time? Or do you need a bit more? Ten minutes?

20 CNSL L. WADDELL: Ten's great. Thank you.

21 THE CHAIR: Ten. Okay. We'll turn off our cameras
22 and mics and come back in ten minutes.

23 CNSL L. WADDELL: Thank you.

24

25 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS) [2:28:11]

26 (PROCEEDINGS RECONVENED) [2:38:14]

27

28 THE CHAIR: All right, everyone. Come on back.

29 All right. Ms. Waddell, are you ready?

30 CNSL L. WADDELL: I am.

31 THE CHAIR: Go ahead.

32

33 SUBMISSIONS FOR COMPLAINANT:

34

35 CNSL L. WADDELL: Thank you. So first I -- I want to
36 note that, while generally I accept the role of
37 going first because the complainant bears the
38 burden of establishing most of the *Mohan*
39 criteria, which I'll review in a second, there is
40 one factor in relation to which the complainant
41 does not bear the burden, and that is with
42 respect to Mr. Kitchen's objections with respect
43 to bias and impartiality. For that factor, it is
44 the party raising that issue that bears the
45 burden. So what I propose to do is -- is I will
46 review my general submissions on Dr. Saewyc's
47 evidence. I will not spend a lot of time being

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Submissions by Cnsl L. Waddell (for Complainant)

1 responsive to Mr. Kitchen's anticipated
2 arguments, and I will not address bias or
3 impartiality at first instance.

4 I'll then hear from Mr. Kitchen and in my
5 reply can address his arguments on bias and
6 impartiality. And -- and I have no issue if he
7 would like the opportunity to reply on that point
8 because he will have been the -- the initiating
9 party on it, if that -- if that makes sense and
10 is acceptable to the Tribunal.

11 THE CHAIR: Yes. Thank you.

12 CNSL L. WADDELL: Okay. So the complainant seeks to
13 tender Dr. Elizabeth Saewyc as an expert in the
14 impact of stigma on sexual and gender minority
15 populations. The law respecting expert evidence
16 and its admissibility, not to be confused with
17 weight, is fairly well known and for the most
18 part, with a few exceptions, I think my friend
19 and I are in agreement.

20 The primary test is set out in the Supreme
21 Court of Canada's decision in *Mohan*, and its most
22 recent and fulsome iteration is in the
23 *White Burgess* case. It is not, I would say, in
24 the *Transport Canada* case that I think my friend
25 will -- will take you to. While that does of
26 course apply *Mohan*, it does so in a particularly
27 unique set of circumstances. So our submission
28 is that the cases of greatest interest to the
29 Tribunal in terms of leading authority should be
30 *White v. Burgess* and -- and *Mohan*, most of which
31 is covered in *White v. Burgess*.

32 So what those cases say is that expert
33 evidence will be admissible, first, when it's
34 relevant; second, when it will assist the trier
35 of fact; third, when it is not covered by some
36 exclusionary rule that would prohibit its
37 admission; and, fourth, where the expert is
38 properly qualified. And these are threshold
39 requirements that were set out by the Supreme
40 Court of Canada initially in *Mohan* and then
41 expanded upon in *White v. Burgess*. However,
42 while those threshold requirements are -- are
43 important of course, even when expert evidence
44 appears as though it will be admitted based on
45 those *Mohan* criteria, any trier of fact retains
46 the discretion to exclude evidence if its
47 probative value is outweighed by its prejudicial

1 effect.

2 So that is the governing law; however, we
3 are in an administrative law proceeding here --
4 not in a criminal proceeding, not in a civil
5 court. What that means is that the rules of
6 evidence are usually more relaxed. And, in
7 particular, the Tribunal, like many
8 administrative decision-makers, takes a more
9 relaxed approach to expert evidence and most
10 commonly issues findings relating to
11 admissibility where experts are concerned in
12 advance of having them testify and instead tends
13 to deal with concerns along the lines of those
14 Mr. Kitchen has raised when considering weight.
15 In short, the Tribunal, although certainly not
16 bound to do so, most often favours hearing from
17 the expert, after which they will address
18 concerns around everything from expertise to
19 bias, et cetera, when they weigh that evidence.

20 And in addition to the Tribunal's practice
21 in this regard, it's informed by section 27.2 of
22 the Code, which expressly grants this Tribunal
23 the ability to accept evidence, including expert
24 evidence, that would otherwise be inadmissible in
25 a court. So even if something does not meet the
26 *Mohan* criteria, this Tribunal expressly has the
27 authority to consider it and admit it into
28 evidence, as long as it's necessary and
29 appropriate in the case.

30 The only exception to that rule is
31 27.2(2) -- or, sorry -- (3), which is where it's
32 evidence to which privilege would apply, the
33 Tribunal doesn't have the discretion to -- to
34 ignore the rules of evidence, as it were.

35 So, further to this, the Tribunal has
36 utilized that -- that type of approach in cases
37 like *Cook* and in cases like *Campbell*, which I
38 will refer to probably in -- in dealing with some
39 of my friend's concerns, but we say this is
40 pretty well established and, regardless of
41 whether you apply the strict *Mohan*, *White v.*
42 *Burgess* criteria and that approach or take the
43 more flexible approach that is commonly used
44 where Tribunal proceedings are concerned, it's
45 our submission that Dr. Saewyc's report is
46 admissible and that she is properly qualified to
47 give evidence in the area that I've identified.

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Submissions by Cnsl L. Waddell (for Complainant)

1 Speaking to relevance, I've identified the
2 subject matter for which we have sought to tender
3 her. We submit that her CV and her extensive
4 experience as a researcher and academic in
5 nursing science and research methodologies, among
6 other things, clearly are more than sufficient to
7 meet the relatively low threshold required to
8 qualify her at this initial stage of the
9 proceedings. So the threshold for relevance at
10 this stage, considering admissibility, is
11 relatively low. Residual concerns about
12 qualification or quality of knowledge are
13 generally addressed at the weighting stage after
14 the evidence is admitted.

15 Now, as we noted at the outset of this
16 hearing, the Tribunal here is going to need to
17 determine, among other things, whether
18 Mr. Neufeld's statements and publications had or
19 were likely to have an adverse impact on LGBTQ2S+
20 teachers, and Dr. Saewyc's evidence is directly
21 and logically relevant to that issue. In the
22 course of my directive for today, I read out the
23 questions posed of -- of Dr. Saewyc, and we say
24 there's no question that they directly bear upon
25 matters the Tribunal must determine here.

26 THE CHAIR: Sorry, Ms. Waddell. Can I just clarify on
27 that one. So are you talking about adverse
28 impact under section 13? Is that what you're
29 saying her evidence will assist with?

30 CNSL L. WADDELL: In our view, her evidence is
31 relevant to all three -- particularly 13, but
32 also 7(1)(a) and, to a limited extent, 7(1)(b).
33 Primarily 7(1)(a) and section 13.

34 THE CHAIR: So just on that point, so under
35 section 13 --

36 CNSL L. WADDELL: Mhmm.

37 THE CHAIR: -- the argument will be along the lines
38 that we can rely on her opinion to decide whether
39 there's been an adverse impact on the class in
40 their employment?

41 CNSL L. WADDELL: Yes.

42 THE CHAIR: Okay.

43 CNSL L. WADDELL: Yes.

44 THE CHAIR: Okay. Go ahead. Sorry.

45 CNSL L. WADDELL: Okay. That's all right.

46 In terms of necessity, which is the second
47 criteria -- and although it's often referred to

1 as necessity, what it's really about is whether
2 or not the expert's evidence will assist the
3 trier of fact -- and here what decision-makers
4 look for is whether the expert possesses
5 knowledge and expertise that will be helpful to
6 the Tribunal and that it cedes the knowledge and
7 expertise that the Tribunal or trier of fact
8 itself may have. We say that Dr. Saewyc
9 possesses knowledge and expertise in what the
10 literature has to say and what the research has
11 to say about the impacts of stigma, as we've
12 previously described it, and that she therefore
13 possesses the knowledge -- certainly possesses
14 knowledge and skill going beyond that which the
15 Tribunal has and that she will therefore be of
16 assistance -- necessary assistance to the
17 Tribunal in this case.

18 Further, we say that there's no exclusionary
19 rule that would apply to Dr. Saewyc's opinion.
20 The most common one cited is where an expert
21 usurps the role of the trier of fact by opining
22 on the very issue that the -- the Tribunal or
23 court must determine. We say it's evident from
24 Dr. Saewyc's report itself and from her testimony
25 today, both in direct and in cross, that she has
26 not been asked to opine on the ultimate issue the
27 Tribunal must decide in this case. She has not
28 done so, despite not being asked, and nor, we
29 say, is there any other exclusionary rule which
30 on its face could be applicable to her evidence.

31 So that -- those are my submissions on
32 the -- the basic *Mohan* criteria. I said that I
33 would particularly await to hear -- I'm not going
34 to make submissions about bias or impartiality
35 because that is Mr. Kitchen's burden. And I will
36 reply to -- to his specific arguments in relation
37 to -- to the *Mohan* criteria. On the subject
38 of -- so those are the threshold criteria, save
39 for any matters to do with bias.

40 On the residual discretion that examines
41 whether or not the opinion's probative value
42 outweighs its prejudicial effect, it's our
43 submission that there is no prejudicial effect
44 that can possibly flow from Dr. Saewyc's opinion.
45 Its probative value is -- is significant, and
46 that that -- that balancing exercise, to the
47 extent that the Tribunal may choose to engage in

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Submissions by Cnsl L. Waddell (for Complainant)

1 it -- because of course we say that section 27.2
2 of the *Code* provides the Tribunal with much
3 broader discretion and the ability to depart from
4 the *Mohan* criteria and this balancing exercise --
5 but we say in any event that balancing exercise
6 can only weigh in favour of admitting
7 Dr. Saewyc's evidence in addressing any concerns
8 that may arise at the stage of determining how
9 much weight to give that evidence.

10 So those are my initial submissions, and
11 I'll -- I will respond and reply to my friend as
12 appropriate.

13 THE CHAIR: All right. Thank you.

14 Just give me one moment, Mr. Kitchen, before
15 you begin.

16 CNSL J. KITCHEN: Yes.

17 THE CHAIR: Sorry, Ms. Waddell. One more question
18 before we go on, and -- and it goes to the
19 necessity criteria. Without kind of a
20 line-by-line review of the report, I wonder
21 whether some of the -- the opinions and the
22 conclusions in the report are already in some of
23 the jurisprudence about the effects of hate
24 speech, the purposes underlying Section 7, the
25 harmful impacts of discriminatory speech, and so
26 on. So I'm wondering to what extent you say that
27 Dr. Saewyc's opinions add to what is already
28 well-established in the case law regarding these
29 kinds of issues.

30 CNSL L. WADDELL: You may choose to take judicial
31 notice of what has -- so the mere fact that
32 another tribunal member or court has made a
33 finding relating to social fact evidence does not
34 oblige you of course to follow it. And so for
35 that reason, we have tendered -- to the extent
36 that there is overlap -- because I -- I agree
37 with you -- we have tendered an expert to provide
38 that evidence independently. It may be -- and
39 this is often the case in -- in matters where
40 applications are brought to have a tribunal
41 member or to have a decision-maker take judicial
42 notice -- it may be that it is open to the
43 Tribunal to take judicial notice of some of the
44 facts contained in Dr. Saewyc's report, either
45 instead of or in addition to. However, that is
46 never a foregone conclusion, and for that reason
47 we considered it prudent to ensure that we

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Submissions by Cnsl J. Kitchen (for Respondent)

1 provided the Tribunal with the first-hand
2 evidence that we felt it needed to draw those
3 conclusions afresh, should that be necessary.

4 Have I answered your question?

5 THE CHAIR: Yes. Thank you. Do you have any
6 questions?

7 UNIDENTIFIED SPEAKER: No.

8 THE CHAIR: Do you have any questions? Okay.

9 Okay. Thank you, Ms. Waddell.

10 Mr. Kitchen, go ahead when you're ready.

11

12 SUBMISSIONS FOR RESPONDENT:

13

14 CNSL J. KITCHEN: Thank you. I'm going to start with
15 necessity because I think that's really the --
16 that's really all the Tribunal really needs to
17 look at in this case. Not that I want you to
18 turn there, but just to let you know where I'm
19 at, I'm at page 3 in my brief. I'm just quoting
20 some bullet points that we have here from the
21 *Mohan* case.

22 To be admissible, evidence must be necessary
23 to enable the trier of fact to appreciate the
24 matters in issue due to their technical nature.
25 If on the proven facts a judge or jury can form
26 their own conclusions without help, then the
27 opinion of the -- of the expert is not necessary.
28 The subject matter of the inquiry must be such
29 that ordinary people are unlikely to form a
30 correct judgment about it if unassisted by
31 persons with special knowledge.

32 Now, of course the Tribunal is first
33 permitted to use common sense. Reading from
34 paragraph 76 of that 2021 BCHRT 6 decision --
35 that's the earlier one in this case --
36 Kathleen Smith said:

37

38 I agree with the BCTF that the Tribunal may
39 use common sense and experience to recognize
40 that certain activities, including hate
41 speech or statements that undermine the --
42 or -- and deny the very existence of
43 transgender or LGBT people, inflict harms.
44 So much is -- is obvious. If there's -- if
45 there's -- if there's discrimination,
46 there's harm.

47

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Submissions by Cnsl J. Kitchen (for Respondent)

1 And so the Tribunal's able to use common sense;
2 that's one thing. But -- but the other side of
3 that is also that the Tribunal's a specialized
4 body. If we look at the -- paragraph 67 of the
5 *British Columbia Teachers' Association v. Neufeld*
6 2023 BCSC 1460, which is the judicial review of
7 the Tribunal decision I just mentioned -- if you
8 look at paragraph 67 -- it's very quick, but
9 the -- but the court just says the obvious when
10 they say that the Tribunal is a specialized body,
11 which is accurate. They are. And as you
12 probably saw in my brief, that is, after all, the
13 underlying rationale for the deference that's
14 often built in to the reasonableness standard of
15 review. So the Tribunal is able to use both
16 common sense and its specialized knowledge to
17 figure things out.

18 Now, what is ultimately -- and I'm going to
19 deal with the fact that my -- my friends suggest
20 it's more than this. But what is ultimately the
21 utility of this report, if any? The only utility
22 to this report is if this was a damages case.
23 This is not a damages case. The purpose of
24 this -- of this -- now, I -- I understand that,
25 you know, the complainants want to -- you know,
26 want to -- want to sort of bludgeon my client
27 with some \$50,000 bill to donate to a charity
28 that he could never afford. But probably I
29 would -- I would guess that that's not really
30 what they're after. They're after the
31 declaration. And I can -- I can make sense of
32 that. I've been on the other side of that
33 myself. And they're after the -- the cease and
34 desist order. Again, I can make -- I can make
35 perfect sense of that. I think -- I think those
36 two remedies are -- are sensible, reasonable
37 remedies, and they reveal that that's what the
38 case is -- is really about.

39 You know, the point of this case is to make
40 a point. It's -- it's -- it's not to compensate
41 the teachers. And -- so this isn't a damages
42 case. We're not trying to assess how much damage
43 happened to the teachers. If -- if there was
44 discrimination, how much do we award? Is it
45 20,000? Is it -- is it 50,000? Is there -- is
46 there -- is there something extra to consider?
47 You know, whatever. We're not assessing any of

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Submissions by Cnsl J. Kitchen (for Respondent)

1 that. That's not what this case is about.

2 The point of the case is to establish that
3 Mr. Neufeld said is discriminatory and to make
4 him stop and to set a precedent so other people
5 can't say -- that's -- that's obviously the --
6 that's the point of the case. And Dr. Saewyc's
7 report doesn't help that. It says the obvious --
8 right -- that if there's discrimination, then
9 there's stigma and there's harms. Okay? And it
10 says a bunch of stuff that's completely
11 irrelevant to this case about violence and
12 exclusion, none of which happened, and I'll get
13 into that when I get into relevance, but -- but
14 that's -- that's really the thrust.

15 And if we were trying to quantify -- if the
16 case was partly about trying to quantify what
17 damages the teachers encountered if there was
18 discrimination, sure, she might be helpful in
19 figuring out what that is. But the actual
20 issues -- to go back to my opening comments, the
21 actual issues in the case are whether or not
22 there was actually discrimination to begin with.

23 THE CHAIR: Sorry, Mr. -- Mr. Kitchen, you're losing
24 me there just a little bit because the teachers
25 are asking for damages. So I'm -- and I
26 appreciate you -- you're characterizing that as
27 secondary to their bigger aims, but that is an
28 issue that I identified in my opening that we're
29 going to have to decide. So I'm not sure I -- I
30 understand if you say that Dr. Saewyc's report is
31 relevant to damages, which we have to decide, or
32 whether -- I'm just not following because I think
33 damages are part of this case, unless --

34 CNSL J. KITCHEN: Well, as I --

35 THE CHAIR: Go ahead.

36 CNSL J. KITCHEN: Well, as I understand the -- the --
37 the complainant's remedies sought, the -- the
38 damages would be some sort of -- some sort of
39 training, if you want to call that damages. I
40 don't know -- I don't know that I would, but is
41 the \$50,000 donation to a -- to an LGBT charity.

42 THE CHAIR: I'm --

43 CNSL J. KITCHEN: That's -- that's --

44 THE CHAIR: Sorry.

45 CNSL J. KITCHEN: No.

46 THE CHAIR: And I just want to make sure we're all on
47 the same page. That may have -- in the -- in the

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Submissions by Cnsl J. Kitchen (for Respondent)

1 complainant's remedies, the document where they
2 set out the remedies they're seeking, I thought
3 they were seeking damages for injury to dignity,
4 feelings, and self-respect. That wasn't
5 necessarily a donation.

6 Ms. Waddell, can you just set me straight on
7 what the teachers are asking for.

8 CNSL L. WADDELL: Yes. Sorry. That -- that is
9 correct. So we are seeking damages for class
10 members for injury to dignity, feelings, and
11 self-respect.

12 Mr. Kitchen, just so that you know, the -- I
13 believe the figure that you're talking about,
14 that is stuff that Mr. Neufeld has posted about
15 online which was related to confidential
16 settlement discussions. Unfortunately, he chose
17 to publish that.

18 CNSL J. KITCHEN: Well, hold --

19 CNSL L. WADDELL: -- so --

20 CNSL J. KITCHEN: -- on. Hold on now. I -- I didn't
21 read it from that. I -- I -- I -- I read it from
22 the amended complaint I had; so I -- you know,
23 whether or not that happened, I mean, I -- I
24 don't -- I don't know. I wasn't a part of it,
25 and that's not where I got it from, just so you
26 understand.

27 CNSL L. WADDELL: Okay. Well, whatever the case, we
28 are pursuing damages for injury to dignity,
29 feelings, and self-respect for class members. We
30 have not set out any -- any particular amount,
31 but hopefully that assists a little bit.

32 CNSL J. KITCHEN: Well, it does. And -- and I guess
33 what I would say to you, the panel, is that --
34 and I'll come to this at the end -- I mean, if
35 there's any room for qualification here at all,
36 it's -- it's to speak to that issue only. It's
37 not to speak to the -- to the -- to the -- which
38 of course then begs the question, you know, is it
39 really -- is it really worth the time and the
40 effort and the trouble? I suppose if we -- if we
41 narrow their qualification, then -- then -- then
42 it might be.

43 So if we're going to talk about adverse
44 impacts to the teachers -- so, I mean, obviously
45 we have to -- there's a number of other steps
46 that the -- the expert's not going to help with.
47 That's fine. But if we -- if we talk about

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Submissions by Cnsl J. Kitchen (for Respondent)

1 adverse impacts, the only people that can do that
2 in this case reasonably so is the teachers
3 themselves. We're -- we're presumably going to
4 hear evidence of -- of alleged adverse impacts --
5 okay -- from the teachers themselves, from the
6 people that, you know, would have suffered them.
7 And the Tribunal's going to hear that. They're
8 going to -- they're going to -- they're going to
9 decide what to do with that. They're going to
10 decide the other relevant parts of the test. And
11 then -- and then they're going to sort out if --
12 if the test for discrimination has actually been
13 made out.

14 In this case, the sort of high-level,
15 generalized, non-specific discussion from
16 Dr. Saewyc, you know, probably about half of
17 which just isn't relevant because it's talking
18 about pronouns and violence and exclusion and
19 things that just -- just didn't happen in this
20 case, unless I'm going to be terribly surprised
21 by the evidence -- it's -- it's -- it's just not
22 helpful. The Tribunal doesn't need that. They
23 decide cases all the time about -- whether it's a
24 teacher or somebody else in an employment
25 context. You know, has there been an adverse
26 impact or not? There's a ton of case law on
27 this. It's not a complicated test. It's not
28 that difficult to apply. And so it's completely
29 unnecessary to have an expert to try to -- to try
30 to figure that out.

31 So my friend gave you a few cases; a couple
32 of them I'm going to comment on. The first one
33 is *Cook v. Citizens' Research Institute* 2001
34 BCHRT 39. And at paragraph 18, we see these
35 types of comments that I've just made from the
36 tribunal member. And this is -- Mr. Tom Patch
37 says in paragraph 18:

38
39 Dr. Artz' evidence about the level and
40 nature of violence, and its causes, will
41 not, in my opinion, assist me to determine
42 the issues that are before me.
43

44 All right. So what are the -- what are the
45 issues that are before you? And -- and of course
46 we've heard from Dr. Saewyc, and she said, well,
47 I'm not here to determine the ultimate issue,

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Submissions by Cnsl J. Kitchen (for Respondent)

1 whether or not there's actually been
2 discrimination or not, which of course begs the
3 question as to how she can say that, and then we
4 can talk about how she's going to actually speak
5 to whether or not there's been discrimination or
6 not by speaking to whether or not there's been
7 adverse effects or not. But leaving that aside,
8 what are the issues before you and -- and -- and
9 can she assist you in that?

10 Going down to paragraph 19, tribunal member
11 says, second line from the bottom:

12
13 The evidence that she will give is unlikely
14 to assist me in determining the issues that
15 are before me and would merely lengthen --
16 merely lengthen the hearing.

17
18 Well, that's the issue here; right? And that --
19 that brings us obviously to the prejudice. Well,
20 of course there's always prejudice with adding
21 length to a hearing, and not just -- not just
22 purely time, but financial cost. Right? There's
23 cost to the respondent, who again is obviously a
24 retired, impecunious man who's -- who's, you
25 know, not going to be in a position to pay
26 anything at the end of this.

27 I don't think it's any secret that --
28 that -- that he's fundraising in order to pay me.
29 So there's an issue about the fact that, you
30 know, we got to go through all this time and
31 expense to go through this -- this -- this
32 evidence that just really isn't helpful.
33 Regardless of whether or not it's relevant, it
34 isn't helpful. We -- you know, we potentially
35 got to get transcripts at the end and -- and all
36 the rest of it. It's an access to justice thing
37 partly.

38 I mean, my friend says, well, usually these
39 experts are just let in. Well, first of all, I
40 don't know where the authority is for that.
41 Second of all, I think that's a little bit --
42 little bit at odds with sort of the -- some of
43 the fundamental goals of the Tribunal about, you
44 know, increasing access to justice and allowing,
45 you know, vulnerable parties to -- to -- to both
46 bring -- bring complaints and defend themselves
47 before the Tribunal at the -- at the least amount

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Submissions by Cnsl J. Kitchen (for Respondent)

1 of cost. Of course that's -- that's -- any
2 tribunal is trying to achieve that.

3 You know, to just sort of say, oh, well, you
4 know, we're just going to let it in, and then
5 we'll -- then we'll deal with it at weight.
6 Well, that totally undermines the -- the -- the
7 lost time and -- and -- and cost. It's -- it's a
8 significant extra cost to take a whole day, to
9 prep for a whole day on an expert, to potentially
10 get that -- that transcript and deal with that on
11 appeal and all the rest of it. It's -- it's --
12 it's -- it's -- it's no small matter, in other
13 words.

14 Now, I -- I understand maybe it is to the
15 BCTF and the CTA. I understand, you know, the
16 resources that they have. I mean, you know, they
17 have -- they have three counsel here today.
18 But -- but we can't just ignore the fact that
19 Mr. Neufeld is -- is -- is -- is impecunious,
20 and -- and any extra day that he has to have a
21 lawyer deal with an expert is a serious matter.

22 Okay. Relevance. If you decide that
23 there's somehow some necessity, then we have to
24 decide -- well, and -- and obviously there's some
25 overlap here with relevance and -- and necessity,
26 but in addition to not necessary, I'd say that
27 the evidence is irrelevant. So, again, one of my
28 friend's cases, *Pinch v. Morwood*, 2016 BCSC 75,
29 at paragraph 12 provides an excellent -- I think
30 excellent phraseology around what really
31 relevance is. And Madam Justice Dillon says the
32 relevance -- at paragraph 12:

33
34 The relevance criteria for admissibility of
35 expert opinion evidence is generally said to
36 be whether the evidence is logically
37 probative of an issue that is required to be
38 proved. Put another way, does the proposed
39 expert opinion evidence relate to a fact in
40 issue in the trial to the extent that it
41 tends to prove it?
42

43 Again, going back to the issue of -- of whether
44 or not there's been discrimination in employment
45 and whether or not there's been discrimination in
46 publications -- her evidence is not probative to
47 that. It does not help you to decide that. All

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Submissions by Cnsl J. Kitchen (for Respondent)

1 it does is say, well, assuming that you've
2 already decided that, I can say that there's
3 stigma and there's negative effects, et cetera,
4 et cetera. Again, basically a truism. Certainly
5 not something that the -- that the Tribunal is
6 not already very specialized in. It's not
7 relevant to the -- to the -- to the real key
8 issues.

9 And -- and -- and I can grant that maybe --
10 maybe damages becomes an issue at the end of
11 this. But really what -- what are -- what are
12 the big issues? What are -- what are we going to
13 spend our time talking about and arguing about?
14 What's the evidence going to be about? What's
15 the Tribunal going to have to focus on? It's --
16 it's -- it's the issue of -- of liability, if I
17 could use that phrase. It's the issue of
18 liability to begin with, not what the damages are
19 going to be at the end.

20 Again, going back to my brief at page 2,
21 just to -- just to quote a little bit from *Mohan*,
22 more than mere logical relevance is required.
23 Again, its probative value has to be more than
24 its prejudicial effect. Well, going back to my
25 comment about -- about the length of time and the
26 resources and -- and -- and all of that to deal
27 with it, the last bullet point on that page --
28 again, this is from *Mohan*:

29
30 Otherwise logically relevant evidence will
31 be excluded if it involves an inordinate
32 amount of time that is not commensurate with
33 its value.
34

35 Well, I understand we might only be one day with
36 her; although it looks like it's going to be an
37 extended day. There's 1,436 pages in that book
38 of documents. Now, I understand the first
39 100-and-something pages of that is her CV and
40 [indiscernible] or so pages of that is -- is --
41 is the report. So that -- that still leaves
42 about 1,300 pages of material that -- I suppose
43 it's somehow expected that counsel for the
44 respondents going to go through all that and be
45 able to cross-examine on all that, that the
46 Tribunal's going to have to go through that -- to
47 some degree. Maybe they're not going to read

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Submissions by Cnsl J. Kitchen (for Respondent)

1 every single word in there, but that's 1,300
2 pages of material. That's a lot of material. So
3 we talk about inordinate amount of time -- well,
4 I mean, maybe there's only so much hearing time
5 that's put into that. There's a lot of other
6 time to deal with that.

7 If we look at the report itself -- I'm going
8 to go through it a little bit -- if you were to
9 admit this, even if you were to admit it for the
10 very limited purpose of -- of trying to assess
11 damages at the -- at the end, which isn't really
12 the issue, and -- and the Tribunal doesn't need
13 any help with anyways -- we'd have to strike
14 about half of this. It's just completely
15 irrelevant.

16 The -- on page 4 there's a whole -- whole
17 paragraph -- large paragraph about violence.
18 Now, again, maybe my -- maybe my friend plans to
19 call evidence from the teachers that they
20 suffered violence as a result of Mr. Neufeld's
21 speech. I mean, that would be news to me. I --
22 I don't expect that. So if I'm right about that,
23 then that paragraph -- it's not because it's bad
24 scholarship or untrue or -- or whatever. I'm
25 not -- I'm not going to challenge that that
26 doesn't happen, but it's just not relevant to
27 this case.

28 This -- this -- well, even -- even
29 exclusion -- again, unless -- unless -- unless
30 there's evidence that one of these teachers lost
31 their job or lost pay or lost shifts or was
32 excluded from socials or was excluded from
33 training days or was excluded from the lunchroom
34 or was excluded in some way on the basis of
35 protected characteristic, there's no exclusion in
36 this case.

37 We have some -- we have some hearsay on
38 pages 6 and 7 that would have to be struck. On
39 page 8 we get into the -- the deadnaming and
40 pronoun issue. Again, that's fine. Obviously we
41 have cases about that. I have cases about that.
42 But it's not relevant to this case. It's
43 completely, completely irrelevant. It's not
44 even -- it's not even relevant or useful
45 tangentially. It's just -- it's just got nothing
46 to do with the case in this case. Again,
47 unless -- unless there's going to be evidence

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Submissions by Cnsl J. Kitchen (for Respondent)

1 called by the teachers that they got -- they got
2 deadnamed or misgendered, you know, directly as a
3 result of Mr. Neufeld's speech, which -- which I
4 highly doubt that's the case, it's completely
5 irrelevant.

6 And then we have section 3 -- or, sorry --
7 Question 3. This whole section is irrelevant.
8 It is a complete waste of time, completely
9 irrelevant to be talking about President Donald
10 J. Trump in the United States, whether -- whether
11 former or current. It's just -- it's -- it's --
12 it's irrelevant to be talking about the President
13 of the United States in comparison to
14 Trustee Neufeld. Now, if we wanted to talk about
15 some low-level Canadian politician, like a
16 municipal politician or another school board
17 trustee or, heck, maybe an MLA, maybe we'd have a
18 little bit of comparisons that would -- would --
19 would -- would, you know, meet the -- the
20 threshold for relevancy. But talking about Trump
21 and Pence? No. No. It's -- it's just a waste
22 of time political discussion.

23 We also have a lot that's about students.
24 Now, again, if this complaint was from students
25 that had of said, Mr. Neufeld's speech caused us
26 to experience discrimination, well -- well, of
27 course then all of a sudden, you know,
28 Ms. Saewyc's report would look a whole lot more
29 relevant. Her expertise and her qualifications
30 would look a whole lot more relevant because
31 that's actually her area. And I'm going to get
32 into that. But we got -- we got -- we got a
33 paragraph that stretches over pages 10 and 11 and
34 another paragraph at the end of page 11 that's
35 entirely about students. That's -- that's not
36 relevant enough to teachers to be -- to be worth
37 spending any time on. And, I mean, throughout
38 the report, we have a number of spots where the
39 focus is exclusively on students. As one might
40 expect, that is the core of her expertise.

41 So it's difficult to see how something can
42 be relevant if we'd have to go in and strike half
43 of it to begin with because half of it is already
44 irrelevant just -- just logically. We don't even
45 have the logical relevance that we're talking
46 about in *Mohan*. So, you know, at what point do
47 we say, well, where's the value in the rest of

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Submissions by Cnsl J. Kitchen (for Respondent)

1 it, even if we -- if we had to cut off half of it
2 that's not logically relevant?

3 Now, when it comes to qualifications,
4 there's a lot of discussion from tribunals and
5 courts, especially lately, to say, well, you
6 know, look, you don't need to be some sort of
7 high-end specialist in exactly the area you're
8 talking about. You know, we don't -- we don't
9 need to get -- I think my friend's case was --
10 was all about, you know, whether or not you got
11 to be a specialist in a particular medical area
12 in order to be an expert, or can you be a
13 generalist and still give an expert in that
14 area -- or give -- give an opinion in that area
15 because you got the required expertise? And
16 I've -- I've seen this a lot in cases that I've
17 done personally and cases -- cases I've read.

18 I think what I would say here is obviously
19 the core of -- of the expertise of Ms. -- of
20 Dr. Saewyc is adolescents. It is young people
21 under the age of 25. Is there enough peripheral
22 expertise to discuss adults? Yes, I would say
23 generally to get her past the bare threshold of
24 qualifications in the first *Mohan* four factors.
25 Where I would say you need to consider that is --
26 is when we get into the gatekeeping function.

27 I -- I -- I won't necessarily -- and just
28 quickly on -- on bias -- I don't have a lot to
29 say about that actually. To Dr. Saewyc's credit,
30 she -- she said, look, I'm not here to decide
31 the -- the ultimate issue. I haven't decided
32 that. I've just -- I've just -- I'm just talking
33 about it generally. There's -- there's slight
34 indici of -- of -- of some bias with -- with the
35 sort of strange preoccupation with, you know,
36 what I'll generally call right-wing politicians
37 in the US, but I don't think it rises to the
38 level that it's going to -- it's going to -- it's
39 going to exclude her report. Or the way she
40 talks about legislation in the US, which is of
41 course also irrelevant, would have to be struck.
42 It's got nothing to do with this case.

43 I guess my concern -- part of my concern
44 is -- is just even the way these -- these
45 questions are phrased is they're already rather
46 adversarial. And -- and one of the problems
47 with, you know, excluding an expert witness --

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Submissions by Cnsl J. Kitchen (for Respondent)

1 it's not necessarily a bias -- is that -- is the
2 evidence really just going to be a reworking of
3 counsel's argument? Is it going to be more
4 advocacy? Regardless of whether or not the
5 expert herself is personally biased, is -- is
6 what she's going to get into more advocacy? And
7 that's where I see some prejudice and I -- and I
8 see some piling on and I see some inadmissible
9 reworking of -- of -- of the complainant's
10 argument because built into these questions --
11 right -- are these -- are these pejorative, you
12 know, emotionalized strong words, homophobia and
13 transphobia -- or homophobic and transphobic.
14 They're built right into the questions. I say
15 the questions almost set Ms. -- Dr. Saewyc up to
16 be an advocate even without meaning to, even if
17 she's not biased because the questions are so
18 adversarial -- and not to mention vague of course
19 because we don't have a definition of what those
20 things actually mean.

21 So -- and the gatekeeping function matters.
22 There's a reason why this is a second -- second
23 step with the court. I -- I -- I don't disagree,
24 the Tribunal is not strictly bound by the same
25 rules of evidence as a criminal court. We always
26 go through this when we go into tribunals. At
27 the same time, the tribunal is a -- is a -- is a
28 serious proceeding, as I think you've already
29 indicated, and as I think -- you know, the
30 parties are treating it that way, as they ought
31 to. This is -- this is a -- a -- you know, on
32 the spectrum of quasi-judicial, this -- this
33 tribunal is fairly close to judicial on that
34 spectrum, as it should be, which means that, you
35 know, we don't -- we don't just say, oh, well,
36 we'll let it in and put it to weight.

37 I think the -- the Tribunal should -- I
38 think it does have more self-respect than that --
39 to say, okay, well, you know, let's actually
40 perform a final gatekeeping function. Even if we
41 think it somehow is relevant or half of it's
42 relevant, somehow it might assist us a little
43 bit -- so it's, I guess, a little bit
44 necessary -- you still have to perform that final
45 gatekeeping function. And -- and, you know, the
46 fact that it's on the edge of her expertise
47 should be -- should be weighed into that. The

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Submissions by Cnsl J. Kitchen (for Respondent)

1 fact that only half of it is even logically
2 relevant should be weighed into that. I think --
3 I think the -- the -- the -- the advocacy of the
4 report should be -- should be weighed into that.

5 And, lastly, I think there's -- there's a
6 lack of reliability here at some point too. We
7 have someone who was asked if she was an expert
8 in an area that she clearly isn't. And she said,
9 well, yes, I am. And then predictably enough,
10 I -- I brought her through all the -- all the
11 relevant areas where she might be able to
12 establish that she's an expert in moral panic.
13 And, I mean, to her credit, she -- she
14 acknowledged that she's not. And then she
15 admitted on cross-examination that she's not an
16 expert in moral panic even though she had just
17 said she was. That raises reliability
18 concerns -- serious reliability concerns.

19 Is it -- is it -- is it proper for this
20 tribunal to be relying on an expert that
21 cannot -- cannot decide in what they are an
22 expert and what they're not? Somebody who thinks
23 they can just becomes an expert in something
24 because they might have talked about it once in a
25 media interview years ago in which they can't
26 even remember. That's a problem. That's a
27 problem that can't be overlooked. Right? You --
28 you need somebody who -- who knows what lane
29 they're in and -- and -- and -- and how to stay
30 there and knows what the parameters is. You
31 know, a serious credible reliable expert would
32 have said, no, I'm not an expert in that. I --
33 I've seen this type of thing before. I was --
34 I -- I -- I was shocked she said yes because she
35 clearly isn't. And that -- you know, that raises
36 concerns. And that's something to weigh in the
37 gatekeeping phase of whether or not, okay, do we
38 let this person in even if they barely meet some
39 of these initial thresholds.

40 And when I asked her if she would agree with
41 me that the majority of teachers are above the
42 age of 30 -- there's two things going on there.
43 One, she says, well, I don't know. Well, of
44 course I think -- I think the reasonable answer
45 is that, yes, the majority of teachers are above
46 age 30. I don't -- I don't think anybody's going
47 to credibly try to contest that. I think that's

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Submissions by Cnsl J. Kitchen (for Respondent)

1 just logically obvious. And so, you know, she --
2 she sort of evades the question by saying, I
3 don't know. I mean, really? Does she not know?
4 Does -- does any of us not know that? But it
5 also begs the question, you know, if -- if she
6 really doesn't know, then she's so uninformed
7 about teachers that she can't give an answer on
8 that and can't give what I would submit is the
9 obviously right answer -- is that, well, no, a
10 majority of teachers that -- which of course that
11 means, you know, above 50 percent -- are above
12 the ages of 30. That raises -- again, raises
13 questions about reliability.

14 I'll -- I'll close with this: This case is
15 about -- it should be about exclusively the fact
16 evidence. We have lots of it to get through. I
17 think -- I think, you know -- you know, even --
18 even speaking as -- as an adversary on the
19 respondent's side, I expect all of it to be
20 relevant to the issues. Even if I, you know,
21 disagree with -- with how we deal with that
22 evidence, it looks like it's going to be
23 relevant.

24 We're going to hear from the actual
25 teachers, you know. And then we're going to hear
26 from at least one teacher on -- on our side.
27 We're going to hear from two school board
28 trustees on our side. There's going to be a lot
29 of relevant, useful fact evidence in this case.
30 That's what this case is about, the fact evidence
31 and the issues that I've raised with you, about
32 whether or not there actually is liability here.
33 Dr. Saewyc's not going to meaningfully help with
34 that. All she's going to do is serve to add
35 added cost and delay.

36 And the delay does matter. I mean, it could
37 be Friday morning, and I could still be
38 cross-examining my -- my -- my friend's
39 witnesses. I mean, here it is, it's -- it's
40 almost 3:30. We haven't even started with their
41 first fact witness yet. And -- and that's not my
42 friend's fault. And, you know, that's just how
43 the day has gone. That's to be expected. That's
44 how we go.

45 We need to finish within those two weeks, as
46 you've said yourself, and -- and -- and I think
47 we should. I think we need to because the facts

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Submissions by Cnsl J. Kitchen (for Respondent)

1 are important, the issues are important. Dr. --
 2 Dr. Saewyc's not going to assist with that. If
 3 she's not admitted, then, you know, we're
 4 probably going to fill this week, and even if we
 5 don't, then great. My witnesses are ready to go.
 6 There will be more time to cross-examine
 7 Mr. Neufeld next week.

8 That's -- that's what this case is about,
 9 and I -- so whatever limited value you might find
 10 in this, I think -- I think it's outweighed by
 11 the added cost and the added delay, and I think
 12 we should get focused on the facts and the issues
 13 and the fact witnesses and not get distracted.

14 THE CHAIR: Thank you. Just a very quick question for
 15 you on your argument, Mr. Kitchen, and that is --
 16 I mean, as I -- I asked your friend about whether
 17 she would agree that much of the -- the
 18 information in here is set out in case law or in
 19 other places. Are you -- do I understand part of
 20 your argument to be that some of this evidence
 21 related to the -- related to stigma, related to
 22 the harms of discrimination, to the harms of
 23 transphobic or homophobic speech -- you know,
 24 without deciding what's happened here -- that
 25 those harms and the nature of how stigma operates
 26 are facts that we can take notice of? I mean,
 27 the relevant part -- let me put this another way:
 28 The parts of this -- this report that may bear
 29 on -- on the issues that we have to decide, do
 30 you say that the report's not necessary because
 31 we can take notice of those -- those facts that
 32 are set out in her report?

33 CNSL J. KITCHEN: No, I wouldn't -- I wouldn't say
 34 that. I'm not a big fan of judicial notice. I
 35 think it's often overused, especially lately.
 36 What I would say is -- is something that's very
 37 similar. Okay? The -- the general facts;
 38 systemic facts; underlying facts; social facts;
 39 the general case law, as you say; the general
 40 issues have been -- have been dealt with
 41 extensively by this tribunal for the last --
 42 what? -- 20, 25, 30 years now. Right? So, I
 43 mean, you know, it's -- I mean, if this was 1998,
 44 it might be a little different; right? This is
 45 not that new. I -- you know, I understand that
 46 the -- the -- the -- gender identity and
 47 expression's only been protected in the -- in the

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Submissions by Cnsl J. Kitchen (for Respondent)

1 Code for 10 or 15 years, but there's been --
2 there's been a lot. I mean, I -- I'm -- I mean,
3 I'm -- I'm familiar with some of this case law.
4 I've done work in this area. There's --
5 there's -- there's a lot out there.

6 So -- so my point is not that you can
7 necessarily take -- take notice of things that
8 aren't proved in the case. It's that you can
9 say, okay, we need to perform an analysis about
10 stigma and effects of discrimination, and we can
11 do that because we're a specialized body, as the
12 court says. We've got a ton of experience with,
13 you know, literally the panel members doing it
14 themselves. I mean, obviously, chair, you got a
15 lot of experience with this.

16 And then -- and then, you know, all the
17 cases you can pull on; right? Not just at the
18 tribunal level, but at the -- at the -- at the
19 court level. There's -- there's a lot to pull on
20 judicially -- I don't mean from judicial notice
21 of certain facts, but you can -- you can look to
22 other cases and say, okay, we've got the -- the
23 facts in this case are similar enough to the
24 facts in these case -- the -- the issues are --
25 are the same. Some of the harms suffered are the
26 same. The -- the analysis -- not necessarily
27 judicial notice, but the analysis that the
28 Tribunal's going to perform, they -- they know
29 how to do it. They've done a lot of it. They
30 have a lot of other material and cases to draw
31 from. They don't need help from an expert in
32 that area.

33 THE CHAIR: Okay. Thank you.

34 I -- I see the time. We've blown through
35 our scheduled break, but I -- we took a short one
36 earlier; so hopefully everyone's doing okay.

37 Ms. -- Ms. Waddell, do you want to do your
38 reply argument now, or would you like a break
39 first?

40 CNSL L. WADDELL: I'm happy if we take a break first.

41 I can organize my thoughts.

42 THE CHAIR: Okay. And so I'm going to -- is ten
43 minutes enough of a break right now so that we
44 can kind of finish this, and then -- is it
45 wishful thinking that we start with Mr. Hansman
46 at around 4:00-ish?

47 CNSL L. WADDELL: No. I think we can aim to do that.

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Reply submissions by Cnsl L. Waddell (for Complainant)

1 THE CHAIR: Okay. All right. So let's take a
2 ten-minute break. I'll do the same thing we did
3 before, which is just to turn our cameras and
4 mics off, and we'll come back at just before
5 3:40. Thank you.
6

7 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS) [3:28:46]
8 (PROCEEDINGS RECONVENED) [3:39:07]
9

10 THE CHAIR: All right, everyone. Come on back. All
11 right. I think we're mostly back here.

12 Ms. Waddell, are you ready?

13 CNSL L. WADDELL: I am. I just wanted to check in and
14 make sure that Mr. Neufeld was back or that we
15 can proceed without him before we do.

16 CNSL J. KITCHEN: We're good.
17

18 REPLY SUBMISSIONS FOR COMPLAINANT:
19

20 CNSL L. WADDELL: Okay. All right. So first, in
21 response to my friend, I -- I note that there
22 were some points made in his written brief that
23 were not made in oral argument. I will address
24 them unless he tells me he has abandoned them.
25 The first is on the subject of -- of relevance.
26 One of the points -- and I'll address my friend's
27 oral submissions on relevance, but one of the
28 points made in his brief was that the speech at
29 issue in this case doesn't connect LGBTQ2 people
30 with -- with child abuse, pedophilia, or
31 grooming. Instead, it connects SOGI ideology,
32 the respondent says, with abuse, and for that
33 reason some or all of Dr. Saewyc's evidence was
34 irrelevant.

35 And I simply wanted to say in responding to
36 that that the parties clearly disagree about how
37 the speech at issue in this case is to be
38 characterized and understood, but that doesn't
39 actually have any bearing on the relevance of
40 Dr. Saewyc's evidence at this threshold stage.
41 Remember, we're just looking at admissibility
42 right now. Her evidence touches on a number of
43 issues relevant to the legal analysis the
44 Tribunal must undertake. Mr. Neufeld has not
45 conceded a nexus. He has not conceded an adverse
46 impact. And both of those aspects of the
47 discrimination test, at least under section 13,

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Reply submissions by Cnsl L. Waddell (for Complainant)

1 are things the Tribunal must determine, and on
2 that basis we say her report is plainly relevant.

3 He also in -- in his written submissions
4 made a -- a submission to the effect that
5 Dr. Saewyc admits there's nothing of value to be
6 gained from her answer to Question Number 2
7 because she said there's limited research on
8 workplace discrimination. Again here, I'd note,
9 my friend didn't make any submissions on this,
10 and he didn't cross-examine Dr. Saewyc on this
11 subject; so I will presume that this is
12 abandoned. If my friend indicates otherwise, I
13 will make a brief submission on it.

14 CNSL J. KITCHEN: No --

15 THE CHAIR: Mr. Kitchen --

16 CNSL J. KITCHEN: No, I -- I haven't abandoned any of
17 that; so I think --

18 CNSL L. WADDELL: Okay.

19 CNSL J. KITCHEN: -- it's fair for my friend to
20 respond to it.

21 CNSL L. WADDELL: Okay. So I think my -- my first
22 point on that is that my friend did not
23 cross-examine Dr. Saewyc on this piece of her
24 report and whether, in fact, there is value to be
25 gleaned. But in any event, a plain reading of
26 this aspect of her report, which is where she's
27 dealing with Question 2. Here she acknowledges
28 that there is limited research on workplace
29 discrimination. We say that's quite clearly not
30 an admission that there's nothing of value to be
31 gained from that section of her report. Indeed,
32 an expert is required to acknowledge the
33 limitations of this nature that are associated
34 with their opinion, and this acknowledgment, in
35 our view, only serves to bolster Dr. Saewyc's
36 credibility and the value of her opinion. So
37 that -- that is our response on that point.

38 Now, as to my friend's submissions on
39 relevance that were actually made orally, first
40 of all, I have already addressed his submission
41 with respect to relevance insofar as Mr. Kitchen
42 says that the Tribunal only needs to hear from
43 impacted teachers here. There -- no assistance
44 is offered by something broader, and I think he
45 called it more vague. With respect, we'd say
46 that that submission represents an impoverished
47 understanding of the test for discrimination and

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Reply submissions by Cnsl L. Waddell (for Complainant)

1 the different forms of discrimination and
2 discriminatory publications that are out there.
3 He seems very focused on direct forms of
4 discrimination -- someone losing their job or --
5 or experiencing direct violence. Dr. Saewyc's
6 evidence of course is aimed at a -- the more
7 expansive understanding of the different ways in
8 which individuals may be adversely affected by
9 speech in this particular case. And it's the
10 sort of stuff that this Tribunal considers as
11 relevant in many, many cases -- almost all cases
12 which do not involve direct discrimination, of
13 which this is one.

14 Also on the subject of relevance, we would
15 say -- I would submit that most of my friend's
16 arguments under this heading are in actual fact
17 issues he sees with the merits of the opinion,
18 which only serves to underscore why we say the
19 expert evidence should be admitted here and that
20 concerns should be addressed and argued at the
21 stage of weight.

22 All right. Now, on the subject of
23 qualification, here my friend makes a few
24 arguments. First, he says that Dr. Saewyc is not
25 properly qualified because her study, expertise,
26 and scholarship are largely focused on
27 adolescents, and -- and he did cross-examine her
28 a little bit about this. There's no question
29 that much of Ms. -- Dr. Saewyc's research has
30 been conducted in relation to youth; however,
31 this does not disqualify her as an expert in the
32 present case. Indeed, my friend did not
33 cross-examine her about whether research on
34 youth, to the extent that she relies on it, might
35 be informative or helpful in other contexts. And
36 here we'd say that the Tribunal's decisions in --
37 Tribunal's decision in -- in *Cook* and the B.C.
38 Supreme Court's decision in *Pinch* and also
39 *Lax Kw'alaams* are informative.

40 For *Cook* I would refer the Tribunal to
41 paragraph 10. My friend took you to a different
42 section of *Cook*. But at paragraph 10, the
43 Tribunal talks -- this is the section on
44 qualification of this particular expert, who
45 ultimately did not testify for other reasons.
46 But on the question of qualification, there was
47 an issue with respect to how specialized her area

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of study was. There she was being called to speak specifically to effects of gay bashing, but she had done work on violence more broadly. And there the Tribunal said that while -- accepting that while gay bashing had not been the central focus of her scholarship, she had acquired expertise on the subject through her research on bullying and violence among children.

Also in -- in *Pinch*, which is a B.C. Supreme Court decision, there a doctor was permitted to provide expert evidence not just on the standard of care expected of a doctor, but also expected of a nurse, despite having no training or professional experience as a nurse. There at paragraph 17 the court said that:

At the stage of determining admissibility, the reliability of the opinion as an aid to the trier of fact is key. Once it is established that an expert possesses sufficient skill, knowledge, or experience concerning the subject matter, the qualification inquiry is over. Deficiencies in the knowledge of the witness are factors affecting the weight of the evidence, but do not go to admissibility.

So this, in our respectful submission, is -- again weighs in favour of admitting and addressing any concerns Mr. Kitchen and his client may have at the stage of weight.

The real test of qualification, the B.C. Supreme Court talks about at paragraph 30 of *Pinch*. At the bottom of paragraph 30, the -- the court, rather, says:

The real test of qualification is whether the expert's knowledge, skill, or experience is sufficiently reliable to be of assistance to the trier of fact.

And we say that is so in this case.

Also helpful on the subject of qualification, we say, is the *Lax Kw'alaams* case. Here I would refer the Tribunal to paragraphs 5 and 6 in *Lax Kw'alaams*. This is of course an Indigenous rights in title case. And here the

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1 court says:

2
3 Looking at qualification, the threshold test
4 has never been that the preferred expert
5 must have academic training in the precise
6 subdiscipline or on a specific issue that
7 arises at trial.
8

9 And so here, again, we say that -- that it is --
10 my friend is -- is unnecessarily taking issue
11 with qualification by taking a very narrow
12 approach and asking whether Dr. Saewyc's primary
13 area of academic focus is exactly the question
14 posed in -- of her in this case. That is not
15 necessary. It is not the test at the threshold
16 stage of examining qualification.

17 Next under qualification, my friend made
18 more ample submissions in writing and -- and
19 added a few words orally on the subject of -- of
20 bias. In written submissions, the bias argument
21 was framed -- because bias falls under
22 qualification -- as that first that she presumed
23 for the purposes of preparing her report that the
24 statements described in the Tribunal's
25 application to dismiss decision were, in fact,
26 made or true. My friend cross-examined
27 Dr. Saewyc on that, and I think it was apparent
28 from her answers that she was not measuring
29 whether or not Mr. Neufeld's speech met her own
30 definition of -- of hate speech or homophobic
31 speech or transphobic speech; rather, she was
32 providing information about what the research
33 said, and -- and therefore there simply is no
34 bias argument to make here.

35 He -- my friend also made an argument
36 that -- that bias was somehow evident in -- I
37 think what he called her preoccupation with US
38 politicians or the like. And this I think is
39 reflected in his written submissions, where he
40 says there's sort of bias indicated in what he
41 calls Dr. Saewyc's comparison of a speech by
42 Dr. Trump -- or by President Trump to a speech by
43 Mr. Neufeld. And here we'd say, first of all,
44 Dr. Saewyc's report does not compare -- it's not
45 comparing, as she testified, Mr. Neufeld's speech
46 with anything. She was not assessing
47 Mr. Neufeld's speech.

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1 And, two, she's not drawing any analogies to
2 President Trump with respect to anything. What
3 she was reporting on were studies examining
4 effects of speech by President Trump and others
5 and looking at the impacts that those had. So,
6 first, we say he's misapprehending what
7 Dr. Saewyc is actually doing and saying. But in
8 any event, there is no preoccupation with -- with
9 US politicians at all, nor any indication of
10 bias. She's simply, as she noted, articulating
11 what the studies and the literature say.

12 And lastly on the subject of -- of bias,
13 before I say one quick thing about moral panic,
14 my friend toward the end of his submissions said
15 that -- that she -- trying to read my own notes
16 here -- but effectively, the questions were
17 adversarial, which led her to craft an opinion
18 that was argument or advocacy. And, with
19 respect, my friend did not cross-examine her on
20 whether she was engaging in advocacy in any way,
21 shape, or form, and as such I'd say he's not
22 entitled to make arguments about that, having not
23 put that position to the witness.

24 Very last point in reply, on the question --
25 my friend asked some -- some good questions of
26 the witness on the subject of moral panic, I
27 think to address Ms. Sokolova's cross-examination
28 questions. And I just want to clarify, at least
29 what my notes -- and they are just my notes --
30 say, but my friend's arguments seem to suggest
31 that Dr. Saewyc -- he had concerns about the
32 reliability of her evidence and report because
33 she professed to be an expert in moral panic. In
34 fact, I don't think that Dr. Saewyc ever
35 professed to be, in the course of testifying, an
36 expert on moral panic, but rather Ms. Sokolova
37 asked her whether her area of expertise would
38 allow her to comment on whether certain speech
39 could give rise to moral panic or something along
40 those lines, which is a far cry from asking her
41 to declare that she's an expert in moral panic.
42 To the contrary, she responded to my friend's
43 questions quite clearly and was -- you know,
44 indicated what she could say and what she
45 couldn't say and was quite clear that she was not
46 an expert on that subject. So we -- we simply
47 say that there is no issue there.

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1 In closing, my friend said that he -- you
2 know, he had many questions which led him to have
3 concerns, but we would say in many respects he
4 did not put those questions to the witness, and
5 as such, unless she was provided with the
6 opportunity to respond, those -- those questions
7 left unanswered which were not posed to the
8 witness cannot form the basis for argument about
9 why her -- why her report ought not to be
10 admitted. Those are our comments in reply.
11 THE CHAIR: Thank you.
12 CNSL L. WADDELL: Well, reply and on bias response.
13 My friend may have something to say on the bias
14 front.
15 THE CHAIR: Mr. Kitchen, do you have any -- anything
16 arising just on the bias issue, not the other
17 arguments?
18 CNSL J. KITCHEN: No.
19 THE CHAIR: No. Okay. Thank you. In this case,
20 we're coming up to 4:00. We're a bit behind
21 schedule, but that's okay. Do we have
22 Mr. Hansman ready to join? It looks like Ms. Tom
23 is making a call or a text.
24 THE CHAIR: Good afternoon, Glen Hansman. Can you
25 hear me okay?
26 GLEN HANSMAN: I can hear you, yes.
27 THE CHAIR: Okay. Thank you. My name is
28 Devyn Cousineau. I'm vice chair of the B.C.
29 Human Rights Tribunal, and I'm joined on this
30 panel by Member -- Tribunal Member Robin Dean and
31 Tribunal Member Laila Alam, and we've been
32 designated to hear and decide this complaint of
33 discrimination.
34 I want to start by orienting you to everyone
35 who's on the call with us today and explain how
36 that part of our video conference experience is
37 going to work. You should see -- in one of the
38 boxes labelled -- helpfully labelled
39 "Complainant's Counsel," you should see
40 Ms. Waddell, Alanna Tom, and Stefanie Quelch.
41 They're all sitting in a room together. You
42 should also see Reid Clark from the Chilliwack
43 Teachers' Association, who's joining as an
44 instructing client. We have Barry Neufeld here
45 and his lawyer, James Kitchen. And we have
46 Maria Sokolova, who is counsel for B.C.'s Human
47 Rights Commissioner.

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1 That is everyone who is a participant -- a
2 direct participant in the proceeding and who is
3 joining us with access to the video of the call.
4 We also have some members of the public who are
5 observing by audio. Right now we just -- we have
6 two members of the public joining, but I expect
7 you'll be back tomorrow, and there may be --
8 there may be more tomorrow. So -- but they're
9 just on audio access only. And everyone is bound
10 by the terms and conditions of participating in
11 this proceeding, which include no recording of
12 any part of the proceeding.
13 Is there anyone in the room there with you?
14 G. HANSMAN: No. I'm alone in the room.
15 THE CHAIR: Okay. Thank you. And do you have any
16 papers or anything in front of you that you might
17 be referring to?
18 G. HANSMAN: I don't, no.
19 THE CHAIR: Okay. In that case, I will start by
20 asking you to please spell your full name for the
21 record and tell us the pronouns that you use.
22 G. HANSMAN: Yeah. My pronouns are he/his. My name
23 is Glen Hansman. It's Glen with one N, G-l-e-n,
24 and Hansman is H-a-n-s-m-a-n.
25 THE CHAIR: Thank you. And I should have mentioned
26 that there's an exception to the recording, and
27 that's our recording. The Tribunal is recording
28 the proceeding, which will be our official record
29 of the proceeding. And I just want to make sure
30 that we're picking up his voice. Your voice is a
31 bit muffled on our end; so I'm just going to --
32 G. HANSMAN: Oh, okay.
33 THE CHAIR: -- make sure that we can --
34 G. HANSMAN: I'll come a little closer to the mic.
35 Are you able to hear me now?
36 THE CHAIR: Yes, thanks.
37 G. HANSMAN: Okay.
38 THE CHAIR: Okay. Mr. Hansman, before I turn it over
39 for the questions that you're going to answer,
40 I'm going to ask you to take an oath to tell the
41 truth. You're about to give evidence to the B.C.
42 Human Rights Tribunal. The Tribunal depends on
43 you telling us the truth, and the law requires
44 that you do so. So before you testify, I must
45 ask, do you solemnly promise to tell the truth,
46 the whole truth, and nothing but the truth?
47 G. HANSMAN: Yes, I do.

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Glen Hansman (for Complainant)
In chief by Cnsl L. Waddell

1 THE CHAIR: And do you understand that a breach of
2 this promise is an offence under the law?
3 G. HANSMAN: I understand.

4
5 GLEN HANSMAN, a witness
6 called for the Complainant,
7 affirmed.
8

9 THE CHAIR: Okay. Thank you. We're scheduled to go
10 today until 4:30, and then we'll -- we'll adjourn
11 for the day. And I expect you've been well
12 prepared by counsel for the complainants.
13 They'll ask you questions, and then Mr. Kitchen
14 will have questions. We may have a handful of
15 questions for you as well. So basically you're
16 answering questions. Okay?
17 So I'll turn it over now to complainant's
18 counsel to go ahead.
19

20 EXAMINATION IN CHIEF BY CNSL L. WADDELL:
21

22 Q Hi, Mr. Hansman. Can you hear me all right?

23 A I can. I'm just going to pin you here so I can
24 see the whole screen. Okay.

25 Q Okay. Could you just introduce yourself a bit
26 and give us a sense of your career up to today.

27 A Yes. I moved to Vancouver in 2000 and started
28 working for the Vancouver School Board in
29 September of 2000. Initially, I was a teacher
30 teaching on-call, but ended up September -- later
31 on September 2000 teaching in an elementary
32 school, where I remained for the next five years.
33 I worked primarily with English language learners
34 and students with disabilities. And that's
35 similar to do -- to what I do right now. I am
36 still teaching in an elementary school in
37 Vancouver. I work primarily with neurodiverse
38 students, students with disabilities, and English
39 language learners.

40 During that initial period of time though
41 working for the Vancouver School Board, I became
42 involved with some work on behalf of my local,
43 what was at the time known as the Vancouver
44 Elementary School Teachers' Association. They
45 had been looking for a representative on a
46 committee that the Vancouver School Board had
47 struck in the 2001/2002 school year to develop

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1 what became -- it was known at the time as an
2 LGBTQ policy, but became the first iteration of
3 the school district's SOGI policy that's now
4 several versions on, but has been in place
5 since -- officially since February 2004.

6 During the -- my years at the school I've
7 been at and doing that volunteer work on behalf
8 of the union when the school board policy was
9 passed, I was involved with the implementation of
10 that, doing training for principals and
11 vice principals and school counsellors. And that
12 led to me taking on a position with Vancouver
13 School Board as their anti-homophobia and
14 diversity consultant. It was a teacher
15 consultant position with the collective
16 agreement, and I assumed that role in the fall of
17 2005.

18 Concurrent with that, I also was taking on
19 more responsibilities in my BCTF local. And in
20 January 2007, I became full-time local president
21 for the Vancouver Elementary School Teachers'
22 Association.

23 Q Mr. Hansman, can I just -- I just want to back
24 you up and ask one quick question. So when you
25 talked about your initial work with VESTA, being
26 a rep on a committee to deal with something in
27 the 2001/2002 school year, and you -- you
28 initially described it as a LGBTQ policy, and
29 then you described it as a SOGI policy, which was
30 put in place in 2004 -- I just want to ensure
31 that we understand what you're talking about when
32 you're talking about a SOGI policy in 2004. Was
33 this -- was this an anti-bullying policy? Was
34 it -- I'm just going to -- because later on
35 you're going to talk a bit about SOGI 123, and I
36 just want to put this in context.

37 A Sure. Well, since the 1980s, the Vancouver
38 School Board had had an anti-racism policy in
39 place and had a general non-discrimination
40 policy. But in the early 2000s, a number of
41 former students; current students; and
42 stakeholder groups, including the teachers in
43 Vancouver, had made submissions to the trustees
44 at that day expressing concerns about school
45 climate for lesbian, gay, bisexual, trans,
46 questioning youth. And the trustees in 2001
47 decided that they would act on those concerns and

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1 decided that they would strike a committee to
2 look at the issue further and craft policy for
3 the trustees to consider.

4 So under the terms of the local collective
5 agreement in Vancouver, when the employer wishes
6 to have -- teach representation on committees, it
7 contacts the local. There's actually two teacher
8 locals in Vancouver. I belong to one of them.
9 The local put out a call for reps, and I was
10 appointed to that. So the -- the -- the project
11 that was undertaken was crafting a policy that --
12 or the version that was adopted in February 2004
13 included a non-discrimination statement that set
14 out the School District's commitment to improve
15 school climate for students, staff, and family
16 who are part of the LGBTQ community. There was
17 reference to professional development
18 opportunities that would be available for staff,
19 and that was part of what I became involved with
20 afterwards -- and talked about resources that
21 would be available in schools and the ongoing
22 commitment for the -- the School District.

23 And so Vancouver and Victoria were the first
24 two school districts in the province to adopt
25 such policies. And since that time, every school
26 district in the province has done so with --

27 Q Thank you --

28 A -- lots of variation between them.

29 Q Yeah. That's helpful. So I -- I'm sorry. I
30 interrupted and got you off track by asking that
31 question. You had told us about some of your --
32 your training work in the fall of 2005, I think,
33 right before I interrupted you.

34 A Oh, well --

35 Q Sorry. We got to 2007. My apologies.

36 A Sure. Yeah. The policy was adopted in February
37 2004, along with an action plan and some
38 funding -- some initial funding, anyway, to do
39 some training for key employee groups that the
40 board had identified. And myself and a handful
41 of other people were asked by the School District
42 to do the training for all principals and
43 vice principals initially, along with school
44 counsellors from both the secondary and
45 elementary level. And that took place in -- from
46 the -- the spring of 2004 and onwards for the
47 next several years, just to get to everybody, and

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1 then as new people came into those roles, to
2 onboard those individuals.

3 But in 2005 the District had decided in its
4 budget to create a standalone position as part of
5 their social responsibility and diversity team,
6 which also handled things like child abuse
7 prevention programs, sexual health programs, the
8 antiracism consultant in a -- in a parallel role.
9 And so we were -- we were a team, and myself and
10 a colleague job shared [indiscernible] that
11 position. I was in that -- in that role for a
12 year and a half, until I took on the union role
13 for my local.

14 Q All right. And after you took on that, tell us a
15 little bit about what your -- your career
16 trajectory looked like after you took on the
17 full-time role -- full-time [indiscernible] for
18 your local.

19 A Well, some of the work that the District had
20 started had -- had continued. I had been
21 involved with planning and helping put on
22 conferences within the District, professional
23 development opportunities, as well as
24 opportunities for youth to get together in the --
25 in the aftermath of policy being adopted. I was
26 working in my local office at the local
27 bargaining table. Our local and the Vancouver
28 School Board agreed to new language in our
29 collective agreement that expanded the
30 non-discrimination clause to include reference to
31 gender identity and gender expression.

32 And I gradually became more involved with
33 work that was happening provincially. And I -- I
34 ran for and was elected for provincial executive
35 at the B.C. Teachers' Federation in 2009 for the
36 first time. In the years leading up to that, I
37 was still advising. Because my role at the -- at
38 the School District, I had the opportunity to
39 advise on some of the Safe Schools documents that
40 the Ministry of Education had put out in the --
41 that was following up on what was called the Safe
42 Schools Task Force that occurred around
43 2002/2003, and various things that went out to
44 schools and school districts to advise on how to
45 incorporate a variety of things, from antiracism
46 to anti-bullying work in schools.

47 And then around 2006 on behalf of -- 2007,

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1 rather, on behalf of the BCTF, I provided advice
2 to the Ministry about how the first iteration of
3 the code of conduct ministerial order should be
4 worded, and that was released in tandem with the
5 ERASE Bullying Strategy provincially when
6 Christy Clark became premier.

7 Q Now, I'm just going to interrupt you there and
8 ask if you can just explain the ministerial
9 order. So, you know, I have the fortune to work
10 with teachers' unions, and I have some of the
11 structure and the acronyms down, but most of the
12 rest of the people that you are giving evidence
13 before don't have that knowledge; so -- on things
14 like that. If you could just explain what that
15 code of conduct ministerial order is, and then
16 I'll let you resume -- get back to the rest of
17 your story.

18 A Yeah. No. Absolutely. Well, there's the -- the
19 School Act, which is the -- the main piece of
20 legislation that guides conduct in schools, sets
21 out that the -- the -- the purpose of the
22 education system, duties and responsibilities, a
23 variety of things that pertain to how the
24 business of schools is conducted in this
25 province.

26 Connected to that are a variety of
27 regulations, which generally are approved by
28 cabinet without having to go through the
29 legislature. And in addition to that, every
30 ministry -- minister has the ability to set out
31 ministerial orders and -- or many in the
32 education sector. The one I'm referring to is
33 Ministerial Order 276/07. It was adopted in
34 2007, and what it does -- it sets out -- the
35 first version of it set out the minimum standards
36 that every school and school district must have
37 in place in terms of having a code of conduct at
38 the school level and at the school district and
39 what it had to contain.

40 Q Okay. That's great. Thank you.

41 So why don't we go back to -- I -- I think
42 what I'd like to do is have you take us through
43 the rest of your career with the BCTF. Perhaps
44 take us through to today. And then I'm going
45 to -- then we'll back up, and I'll ask you to
46 pick up the development of -- of SOGI 123 --

47 A Okay.

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In chief by Cnsl L. Waddell

1 Q -- if that works.

2 A I was on the BCTF executive for a total of
3 11 years. My first year on BCTF executive I -- I
4 was what -- what is called a "member at large."
5 So I was still in my local office, but would
6 attend meetings -- executive committee meetings
7 and other governance structure meetings within
8 BCTF.

9 And then after a year of doing that, I was
10 elected to a full-time relief position, second
11 vice president of the BCTF. I was in that role
12 for three years. Then I was elected as the first
13 vice president of the B.C. Teachers' Federation.
14 That role I was also in for three years. And
15 then finally I was the president of the BCTF from
16 July 1st, 2016, until the end of June 2019.

17 When that role concluded, I was still on the
18 executive committee here as past president, but
19 that is sort of similar to member at large. I
20 got fully released; so I was back to teaching as
21 of the fall of 2019. And during that school
22 year, I would still be released for BCTF
23 responsibilities from time to time, but otherwise
24 the reins had been handed over to somebody else.
25 And so since then, I've been back teaching in
26 Vancouver, doing similar work that I had been
27 doing when I first started teaching.

28 Q Okay. Thank you for that. So I said I would
29 back you up. What -- can you -- can you tell us
30 the story of SOGI 123 sort of from the start --
31 what is it, and then maybe take us through its
32 history.

33 A Well, there's several words that leave to it --
34 that lead to it. One was the province's Safe
35 Schools Task Force from the early 2000s. This
36 was something that was done mainly by the
37 Ministry of Education, but also sort of
38 spearheaded by a B.C. liberal MLA by the name of
39 Lorne Mayencourt. The task force travelled
40 around the province. I attended the hearing in
41 Vancouver in the early 2000s. And its report
42 came out around the time of the VSB's policy
43 being adopted. And it identified that in every
44 community around the province that the task force
45 visited that folks came forward to express
46 concern about harassment and bullying that exist
47 in B.C. schools. And consistently one of the

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1 forms of bullying that was mentioned was bullying
2 that was directed at LGBTQ youth in schools.

3 The code of conduct ministerial order that I
4 mentioned did come into play in 2007, but it was
5 unclear what the enforcement mechanism was. So
6 when I was at the BCTF in those initial years
7 being fully released, there was lots of dialogue
8 with ministers around making sure that every
9 school district in the province fully implemented
10 that. And also we and other organizations
11 advocated for more to be done on school climate
12 for LGBTQ youth in particular.

13 This was happening in tandem with a revision
14 to all the K-12 curriculum in British Columbia
15 when George Abbott was the minister of education.
16 As a BCTF table officer, vice president, and then
17 president, those were things that we met
18 regularly with -- with the deputy minister,
19 assistant deputies, and with the various
20 ministers of education that overlapped with my
21 time. And one of the main thrusts of the new
22 curriculum was -- was to work with First Nations
23 community and the First Nations Education
24 Steering Committee in particular to make sure
25 that all the work that was being done around the
26 Truth and Reconciliation Commission and the truth
27 as treaties -- First Nations people were
28 incorporated throughout the curriculum, that the
29 settlement that had been reached between Peter
30 and Murray Corren with the Ministry of Education
31 around 2007 was taken into account. That's
32 [indiscernible] that related to making sure that
33 LGBTQ people were not omitted from future
34 curriculum revisions.

35 And we had -- sort of leading up to when
36 Minister Mike Bernier became Minister of
37 Education -- eventually making the case that the
38 Province had to take sort of a -- more of a
39 hands-on-the-reins approach with the -- with the
40 student code of conduct order, and with efforts
41 to make sure that schools were being more
42 proactive around school climate for a variety of
43 vulnerable populations in the school system,
44 including LGBTQ youth.

45 And so when I was president of the BCTF, had
46 just become president, the Province updated the
47 B.C. *Human Rights Code* to include gender identity

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In chief by Cnsl L. Waddell

1 and gender expression in the summer of 2016.
2 That was something that the BCTF had advocated
3 for; many other organizations had as well. And
4 flowing from that, conversations were had within
5 the sector about how to operationalize that
6 within K-12 schools in the province. And
7 Minister Bernier in the fall of 2016 signed off
8 on revisions to Ministerial Order 276/07 to make
9 it consistent with the changes to the B.C. *Human*
10 *Rights Code*, and also included a couple lines
11 stipulating that gender identity, sexual
12 orientation, and gender expression had to be
13 referenced in all school codes of conduct. And
14 also there was a deadline set for the end of 2016
15 for all school districts to actually have that in
16 place.

17 When that was announced in the fall of 2016,
18 it was announced that there would be provincial
19 support to be put in place with that because a
20 lot of school districts and professionals in the
21 field were expressing a willingness to do this,
22 but weren't sure where to start and were looking
23 at -- for advice on best practices or model
24 language in terms of policy development, as well
25 as guidance for what's actually to happen in
26 schools. And so shortly after the announcement
27 about the ministerial order, the Province also
28 announced what would be called SOGI 123, which
29 has many different components to it.

30 Q Okay. Just a question there -- so you said
31 shortly after those revisions to that ministerial
32 order, the Province announced SOGI 123. Had --
33 was that sort of they were announcing that it was
34 going to be a thing then, that there would be
35 SOGI 123, or -- or had they already developed it
36 at that point in time?

37 A Well, there had been, like, several years of
38 discussions about what can be done together in
39 the sector. The model that was being considered
40 was sort of one similar to what already existed
41 at the K-12 Aboriginal Education -- what is known
42 as the K-12 Aboriginal Education Partners Table,
43 which includes what we generally refer to as the
44 stakeholder and rights-holders' groups within
45 K-12. By "rights-holders" I mean the First
46 Nations Education Steering Committee and Métis
47 Nation B.C. And then the stakeholder groups

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would include the BCTF, the B.C. Confederation of Parent Advisory Committees, the B.C. School Trustees Association, B.C. Superintendents Association, B.C. Principals' and Vice-Principals' Associations, as well as CUPE B.C. and -- and some of the other groups, depending on what -- depending on what table.

And so for over 20 years, those parties, along with the Ministry of Education and the Province, had been leaning around work to improve school climate -- climate and school outcomes for First Nations, Inuit, and Métis students in British Columbia. And bringing everyone in together in the same room and providing support materials and a network and different opportunities was proven effective on reconciliation efforts and the curriculum rollout. And so there had been sort of parallel to that all the same organizations meeting to talk about how can similar work be done to improve school climate for LGBTQ students in British Columbia.

And so when SOGI 123 was sort of officially struck, there had already been ongoing conversations about how we could work together, the power of the network, the importance of all the organizations having a -- not necessarily a unified voice on everything, but all being very clear that this -- we were all committed to doing this work, that we were committed to doing it together, and so SOGI 123 became sort of a vehicle for that.

CNSL L. WADDELL: For the panel, I'm going to suggest -- although I'm of course open to different views -- that we end the day now because I think it's a -- it's a logical point before I move to a new subject. Otherwise, we'll -- we'll be starting something and then dropping it midway through. But I'm in the panel's hands.

THE CHAIR: I think that makes good sense. We're at 4:25. So we're going to adjourn here very shortly.

Mr. Hansman, thank you for joining us to get your testimony started. I will remove you from the meeting in a minute, and then I'll ask that you log back on tomorrow morning at 9:30, and

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Proceedings

1 we'll continue on.
2 And for the rest of you, I'll just ask you
3 to stay just so that we can deal with any final
4 issues for the day, and then I'll -- I'll let you
5 go for the day.
6 So thank you, Mr. Hansman. We will see you
7 back here tomorrow morning at 9:30.
8 A Okay. Thank you.
9 THE CHAIR: Bye.
10 CNSL L. WADDELL: Thank you.

11
12 (WITNESS EXCUSED)

13
14 THE CHAIR: Just before we break for the day, because
15 I will always come back to the schedule at the
16 end of the day, I know we're running a bit behind
17 time, and -- and I think that's been reasonable
18 today. So I guess we'll just see how we go
19 tomorrow and where we might catch it up.
20 Is there anything else anyone needs to
21 address before we adjourn for the day?
22 Ms. Waddell, I'll start with you.
23 CNSL L. WADDELL: No, not at this time. Thank you.
24 THE CHAIR: Thank you. Mr. Kitchen?
25 CNSL J. KITCHEN: No, nothing from me.
26 THE CHAIR: Okay. Ms. Sokolova?
27 CNSL M. SOKOLOVA: No.
28 THE CHAIR: Okay. In that case, thank you all for
29 your work today. We'll reconvene tomorrow, 9:30.
30 I am going to remove you from the meeting. So
31 you just wait until I remove you from the
32 meeting, and then that will allow you to rejoin
33 tomorrow by the lobby. Thanks very much. Good
34 night.
35 CNSL M. SOKOLOVA: Thank you.

36
37 (PROCEEDINGS ADJOURNED TO NOVEMBER 26, 2024
38 AT 9:30 A.M.) [4:27:10]
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Reporter's certificate

REPORTER'S CERTIFICATE

I certify that the proceedings from timestamp 9:30:48 to timestamp 4:27:10 inclusive are a true and accurate transcript of these proceedings recorded on sound recording apparatus, transcribed to the best of my skill and ability in accordance with applicable standards.

A handwritten signature in black ink, appearing to read 'A Okondo'.

Anna Okondo
Authorized Reporter

**IN THE MATTER OF THE *HUMAN RIGHTS CODE*,
RSBC 1996, C. 2010 (as amended)**

**AND IN THE MATTER of a complaint before
The British Columbia Human Rights Tribunal**

BETWEEN:

British Columbia Teachers' Federation obo Chilliwack
Teachers' Association

COMPLAINANT

AND:

Barry Neufeld

RESPONDENT

AND:

B.C.'s Human Rights Commissioner

INTERVENOR

**PROCEEDINGS AT B.C. HUMAN RIGHTS TRIBUNAL HEARING
(VOLUME II)**

ORIGINAL

THERE IS A PUBLICATION BAN IN EFFECT PROHIBITING THE
PUBLICATION OF ANY INFORMATION THAT COULD IDENTIFY THE
TEACHERS WHO TESTIFIED, OR MAY HAVE TESTIFIED, IN
CONNECTION WITH THIS COMPLAINT: CHILLIWACK TEACHERS'
ASSOCIATION V. NEUFELD (NO. 2), 2024 BCHRT 180 [CTA
(NO. 2)]; AMENDED BY LETTER DATED FEBRUARY 25, 2025.

File: CS-003172

**IN THE MATTER OF THE *HUMAN RIGHTS CODE*,
RSBC 1996, C. 2010 (as amended)**

**AND IN THE MATTER of a complaint before
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COMPLAINANT

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Barry Neufeld

RESPONDENT

AND:

B.C.'s Human Rights Commissioner

INTERVENOR

**PROCEEDINGS AT B.C. HUMAN RIGHTS TRIBUNAL HEARING
(VOLUME II)**

ORIGINAL

Tribunal Members:	Devyn Cousineau, Robin Dean, Laila Said Alam
Counsel for the Complainant:	Lindsay Waddell, Alanna Tom, Stefanie Quelch, Chris Fenje
Counsel for the Respondent:	James S.M. Kitchen
Counsel for BC's Human Rights Commissioner:	Sarah Khan, Maria Sokolova

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By videoconference
November 26, 2024

(VIDEOCONFERENCE COMMENCES) [9:30:03]

GLEN HANSMAN, a witness,
recalled.

THE CHAIR: Good morning, everyone. It's November 26th, and I am recalling the case of *British Columbia Teachers' Federation on behalf of Chilliwack Teachers' Association v. Barry Neufeld*, CS-001372. I am just going to start by making sure we have everyone we are expecting on the line here. I can see complainant's counsel. I can only see Ms. Tom for now. Are you -- oh, no. Sorry. You have two connections. That's why.

CNSL L. WADDELL: Yeah. And -- sorry -- we have done that just so that we have a separate line in for document sharing. I hope that's all right.

THE CHAIR: Yeah.

CNSL L. WADDELL: Ms. Tom is going to be involved with your screens a little bit.

THE CHAIR: Okay. That's fine, yes. Good morning.

So I see Ms. Waddell, Ms. Quelch, and Ms. Tom in the room there together. I see Reid Clark back this morning. Good morning.

Mr. Neufeld, I can see you there, and Mr. Kitchen as well. I see Ms. Sokolova and Glen Hansman. And I see we're also joined -- it looks like Robin Toscza. Yeah.

CNSL L. WADDELL: Sorry. I was going to introduce Robin. Robin Toscza is the second vice president of the BCTF and is our instructing client from the BCTF for the day.

THE CHAIR: Okay. Thank you.

We also have some members of the public who are on the line listening via audio access. And Member Dean is just -- yeah. She is just cross-referencing all of the numbers to make sure that it's who we have expected.

All of the members of the public who are joining today are required to comply with the terms and conditions of observing a virtual

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hearing. That includes no recording of any kind during the hearing. And I will also remind everyone that there is a publication ban in this case, which prohibits the publication of the names or other identifying information of the teachers who testify or may testify for the BCTF and Chilliwack Teachers' Association in this proceeding.

For the members of the public as well, please be aware that we will let people in and out at the start times -- the regular start times of the Tribunal proceeding, being 9:30 in the morning. I will leave the line open for our morning break, but then we will close it for our lunch break, so come back around 1:30. If you are trying to come in or enter and exit outside those times, we may not admit you because it's disruptive to the proceedings.

All right. Are there any other preliminary matters to address before we continue with Mr. Hansman? I am looking at counsel shaking their heads. Okay. Excellent.

Mr. Hansman, are you ready to continue?

A I am, yes. Are you able to hear me?

THE CHAIR: Yes. Thank you. Just a moment.

Actually, before we do -- everything good? Okay.

All right. Go ahead, then, with your questions, Ms. Waddell.

CNSL L. WADDELL: Thank you.

EXAMINATION IN CHIEF BY CNSL L. WADDELL, continuing:

Q So, Mr. Hansman, yesterday we got through some of the background leading up to SOGI, and you talked about changes to the Ministerial Order. I am wondering if you can sort of pick up -- I think we would have left off just shortly before SOGI was actually formally launched, and perhaps you want to pick up there and continue telling us about SOGI's development and then launch. SOGI 123, rather.

A Yeah. No. So my time provincially at the BCTF overlapped with several different ministers of education. When I came on as second vice president of the BCTF, initially had a few meetings with the Minister Margaret MacDiarmid. We didn't overlap for very long. There was a

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1 cabinet shuffle, and George Abbott became the
2 minister of education.

3 During his time, we had, between the
4 Federation and the Ministry of Education, lots of
5 conversations about curriculum redesign. In the
6 past when BC's K to 12 curriculum was revised,
7 which happens every number of years, it had been
8 done just a few subject areas at a time, maybe
9 just a few grade levels at a time. Mr. Abbott
10 was very keen on proceeding with an overhaul from
11 top to bottom, all subjects at the same time,
12 K through 12. And as the Federation, we were
13 very much interested in doing this as well for a
14 number of reasons. But as part of those
15 conversations, we had also raised topics related
16 to school climates.

17 Of course, bargaining was underway during
18 the time with Mr. Abbott, and there was numerous
19 conversations as well about school climate and
20 outcomes for Indigenous students in B.C. schools.
21 This was all prior to the Truth and
22 Reconciliation Commission of Canada releasing its
23 Calls to Actions, but there were definitely lots
24 of conversations about that as well.

25 Minister Abbott stepped aside for a little
26 while. Gordon Campbell resigned as premier, and
27 so there was a leadership race within the B.C.
28 Liberal Party. Mr. Abbott threw his name in.
29 Ultimately, he was unsuccessful. Christy Clark
30 became the leader of the party. Minister Abbott
31 became minister of education again.

32 But Premier Clark, when she came in,
33 launched what was called the ERASE Bullying
34 strategy. It is something she had talked about
35 in the -- in her campaign to become leader. What
36 it included was an online anonymous reporting
37 tool, that is still in existence today, if
38 students feel that they are the subject of
39 bullying or harassment or violence at school.

40 It also included a lot of training around
41 violent threat response. That was done by a man
42 called Kevin Cameron as well as some individuals
43 who had been doing sort of similar work around
44 abuse prevention, gang -- responding to gangs,
45 deterring students from being associated with
46 gangs, and having systems put in place in school
47 districts.

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1 We as the Federation were in support of that
2 work. I attended some of the initial training
3 and rollouts associated with that. But with
4 Minister Abbott and then his successor, Don
5 McRae, we also were urging government to move
6 ahead with a specific strategy around
7 anti-homophobia and anti-homophobe --
8 anti-transphobia in schools and also for the
9 Province, the Ministry of Education, to take a
10 more leadership role to make sure that the
11 already in existence code of conduct order was
12 actually being implemented in all schools and
13 school districts around the province.

14 The BCTF, prior to me being elected at the
15 provincial level, had filed a provincial
16 grievance, which had been subject to a judicial
17 review. The Federation had expressed concerns
18 that many school districts were ignoring the
19 existing Ministerial Order 276/07.

20 Ultimately, the arbitrator and then the B.C.
21 Court of Appeals found that there is no nexus
22 with the collective agreement, so the grievance
23 didn't really go anywhere. But we still kept the
24 political conversations going in addition to all
25 the other conversations that were happening on
26 curriculum implementation, reconciliation
27 efforts, collective bargaining, and the myriad of
28 other things that we as a union and the body
29 representing teachers as professionals, we had
30 talked about.

31 Don McRae was succeeded by Peter Fassbender,
32 and it was under Minister Fassbender that the new
33 curriculum was officially launched. It was sort
34 of phased in. And despite, you know, acrimony
35 and disagreements related to collective
36 bargaining, it was a space where government and
37 Federation were working together positively.

38 There had also been, in that period of time
39 when George Abbott was still minster, an overhaul
40 of what had been the -- or became the teacher
41 regulation act. A switch from the B.C. College
42 of Teachers to the present configuration of the
43 Teacher Regulation Branch and the B.C. Teachers'
44 Council. I was a B.C. Teachers' Council member
45 for three years during that period of time. It's
46 the -- the body that oversees the standards for
47 conduct and competence for B.C. teachers. It

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1 sets the standards for the teachers education
2 programs in B.C. and has some other
3 responsibilities as well.

4 Q Can I just -- can I just jump in, Mr. Hansman,
5 and ask you two quick questions about --

6 A Sure.

7 Q -- about the new curriculum. The first is when
8 you talk about -- I think you said it was rolled
9 out under Peter Fassbender. Can you give us a
10 year on that, when the new curriculum was
11 formally introduced?

12 A Yeah. 2014 was the official launch year.

13 Q Okay.

14 A But it wasn't a hard start. It was sort of a
15 soft start. In --

16 Q Okay.

17 A -- part because it had never been done before
18 where every single subject area at every grade
19 level was changing simultaneously. And so there
20 was a bit of phase in and additional
21 non-instructional days added to the school
22 calendar so teachers could prepare.

23 Q Okay. And then my other question about that was
24 just going to be for those of us who may not have
25 seen what the curriculum looked like before
26 versus now, the B.C. curriculum, can you just, in
27 the broadest of strokes, give us a sense of what
28 sort of the -- the sea changes were in
29 introducing this new curriculum.

30 A Well, one big difference was Ministry
31 documents -- all the curriculum documents spoke
32 to one another. What I mean by that is that in
33 the past because had it been done in a piecemeal
34 fashion -- a couple subject areas, maybe a few
35 grade levels at a time over a significant period
36 of years -- there was a lot of sort of
37 inconsistency around how the -- the curriculum
38 itself was set out. There might have been a bit
39 of overlap.

40 There was concern, certainly on our end,
41 that there was too much, especially at the
42 secondary level, for people to actually get
43 through. So the main thing was -- one of the
44 main things was that it was a more coherent set
45 of things.

46 The other big thread was weaving in First
47 Nations knowledges and understandings through all

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1 the subject areas at most of the grade levels.
2 The curriculum all lives online now. They are
3 not printed documents like they used to be in the
4 past. So any parent, any member of the public
5 can access it.

6 And also there had been a settlement that
7 was the outcome of a -- a complaint at this
8 Tribunal between the Province and Peter and
9 Murray Corren to make sure that in the spaces
10 where there were sort of matters related to
11 identity or historical wrongs or -- in social
12 studies in particular, that 2SLGBTQ+ people would
13 not be omitted. There was no decision of the
14 Tribunal, but there was a settlement reached
15 between the parties.

16 And so there was certainly references in the
17 new curriculum to sexual orientation and gender
18 identity, and in the social studies curriculum,
19 that's -- that's still in place now, there is
20 opportunities, say, at the Grade 4 or 5 level for
21 students to learn about apologies that provincial
22 Liberal governments have made on a number of
23 issues from the Chinese head tax to residential
24 schools and -- and also references to progress in
25 human rights in Canada over the decade. So there
26 is a reference to the -- the legal fight for
27 same-sex marriage, for example, in this province
28 and in -- in Canada more broadly.

29 So those are sort of the -- the main things,
30 in addition to sort of modernizing it to make
31 sure it referenced sort of current understandings
32 on many other things. So those were the main
33 changes. Probably the most pronounced being
34 believing of Indigenous knowledges and
35 understandings in all subject areas and at all
36 grades.

37 Q That's helpful. Thank you very much, and sorry
38 to get you off track.

39 A Yes.

40 Q I just wanted to make sure --

41 A No. Yeah.

42 Q -- that everybody had an understanding of -- of
43 what the new curriculum changed.

44 All right. So I think I interrupted you
45 shortly after that rollout in or around 2014 or
46 2015.

47 A So after Peter Fassbender, Mike Bernier, an MLA

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1 from the Peace region, became the minister of
2 education. This was in 2016. Suzanne Anton, an
3 MLA from Vancouver -- I forget which riding --
4 was the attorney general.

5 I think I mentioned yesterday that in the
6 summer of 2016, the B.C. Human Rights codes was
7 expanded to include gender identity and
8 expression. This is something that the
9 Federation had advocated for, in addition to many
10 other organizations. We don't take credit for
11 it, but we were one of -- one of the voices.

12 And Minister Bernier had expressed an
13 openness to proceeding with what the BCTF and
14 others had been seeking, namely some provincial
15 leadership within the education sector that --
16 addressing school climate for 2SLGBTQ+ students
17 and staff and families would be something that
18 the Ministry of Education would take a leadership
19 role in.

20 What that would look like was sort of
21 ambiguous initially. There were some meetings
22 between the Federation, BCTF -- when I say "the
23 Federation," I mean the BCTF. Sorry. It's sort
24 of -- sort of internal organization speak. But
25 BCTF would have bilateral meetings with Ministry
26 staff or in concerts with ministry staff,
27 representatives from the B.C. Confederation of
28 Parent Advisory Councils or representatives from
29 the B.C. School Trustees Association or some of
30 the partner groups or rights holders
31 organizations.

32 And then that led up to in the fall of 2016,
33 Minister Bernier decided that he would, A,
34 update -- revise the Ministerial Order 276/07 to
35 include the provisions that I mentioned
36 yesterday, mainly that every school and school
37 district code of conduct had to refer to every
38 prohibited grounds of discrimination under the
39 *B.C. Human Rights Code*.

40 And, just for clarity, there was another
41 line added that schools could not omit reference
42 to sexual orientation, gender identity, and
43 gender expression. And there was a timeline set
44 out for school districts to be in compliance, and
45 that was by the end of that calendar year, so by
46 the end of 2016.

47 I was invited to the press conference for

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1 this. The news release is still on the
2 government web page with photographs and video.
3 There is a quote from me and some of the other
4 stakeholder organizations in the press release.

5 At it, there were also representatives from
6 an organization called the ARC Foundation. And
7 the press release makes reference to the Ministry
8 partnering with the ARC Foundation to do some
9 collaborative work around what it was now calling
10 SOGI. The SOGI 123 moniker, like I mentioned
11 yesterday, wasn't, you know, immediately floated
12 that day, to my recollection anyway. It wasn't
13 in the press release. But soon thereafter,
14 that's what it became. And we as a Federation
15 continued to meet with Ministry staff, folks from
16 the ARC Foundation, and partner groups around how
17 to sort of get this off the ground.

18 But the idea that we had in our head around
19 having sort of a parallel thing with the K to 12
20 Aboriginal education partner's table didn't quite
21 come to be, but we were certainly all, as
22 organizations, still working together to make
23 this a success. And we were very appreciative to
24 Minister Bernier for -- and Minister Anton for
25 making both the changes to the *Human Rights Code*
26 and -- and then moving forward with rolling
27 things out in K to 12.

28 Q Okay. So that's -- it sounds like that covers
29 sort of the history leading up to SOGI 123. Why
30 don't we shift now to you giving us a picture of
31 SOGI 123, what it is, what its aims are, how it
32 does that, what its not.

33 A Well, the part that folks don't -- on one level
34 it's a website. On the website, there -- at
35 least initially in those first few years -- I
36 haven't gone onto the current one for quite some
37 time, but initially there were some sample school
38 district policies that could -- that school
39 districts from around the province that maybe
40 didn't have a standalone policy that -- that
41 addressed homophobia and transphobia and the
42 school experience of LGBTQ student, staff, and/or
43 families, that school districts could draw upon
44 for their own purposes.

45 So I think there was one -- definitely the
46 Vancouver one was there. There was one from
47 Langley. So there was that. There were sample

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1 policies. There was also some sample lesson
2 plans that teachers and other educators could
3 make use of if they wish.

4 There were what we call "learning bursts,"
5 some short videos that had been filmed around the
6 time of the launch and at -- at a -- an initial
7 conference that was held in -- in Burnaby. I was
8 in attendance with that. Mr. -- Minister
9 Bernier, a variety of folks -- just to -- the
10 videos were intended to be used by teachers in
11 professional development settings or for parent
12 advisory councils to watch, just sort of
13 explaining -- you know, giving some background
14 information, explaining some of the terminology,
15 and sort of setting out the purpose around --
16 that it's the school -- the school district's
17 responsibility to proactively make sure that all
18 students feel that they are safe and that they
19 belong and feel included at school. And that
20 this was work being collectively around the
21 province to help make sure that that happens.

22 So the website itself was fairly simple.
23 Eventually more things were added like Q and As
24 as questions came up or suggestions around
25 practices that educators might put into place.
26 But the -- the main thing, which wouldn't
27 necessarily be seen on the web page, was bringing
28 people together.

29 And so -- yesterday I talked about the work
30 that I had been involved with at the Vancouver
31 School Board in the early to mid-2000s providing
32 training opportunities, professional development,
33 going out to PAC meetings, doing lunch and learns
34 for school staffs at lunchtime around the city,
35 responding to emails, connecting people to
36 resources.

37 That was sort of replicated at a provincial
38 level. And so the -- the Ministry staff and --
39 and the staff at what became SOGI 123 brought
40 together what were called "SOGI leads" from every
41 school districts. So every school district was
42 asked by the Ministry to identify at least one
43 person who would be the conduit of information
44 and perhaps be the go-to person in the districts
45 to -- to help get things off the ground in school
46 districts.

47 And so they would be brought together

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1 provincially to -- to compare notes, to exchange
2 ideas around practices that worked, to share
3 resources that they thought were effective, to
4 problem solve around things that might come up.
5 And those -- those sorts of gatherings still --
6 still occur, including the school year --

7 Q So, I guess --

8 A -- so it's, like, building -- building that
9 network of bringing people and helping people
10 feel confident in the work that they are doing
11 and just sort of reinforcing that this is
12 something that the Ministry of Education
13 supports, and -- and it's -- it's going forward.
14 Q So I just want to jump in with one question sort
15 of related to SOGI leads, which you just talked
16 about, and then also sort of the -- the purpose
17 of supporting the work that people do.

18 You talked about rolling things out. Are
19 the -- were the lesson plans and the other
20 content of SOGI 123 that you talked about, did
21 teachers -- required or were they required to use
22 those at any point?

23 A No. Under the teachers collective agreement,
24 individual teachers have jurisdiction around what
25 they use in the classroom. I mean, we -- we all
26 are obligated to implement the B.C. curriculum
27 set out by the -- by the Province, but what
28 resources we use is largely decided by individual
29 teachers. How we construct our lessons,
30 individual teachers.

31 But the point of having those sample lesson
32 plans on the SOGI 123 website were for them to be
33 exemplars because what certainly I have heard
34 for -- over many years, including back when I was
35 in the consultant role for the Vancouver School
36 Board, was people were wanting to do the work,
37 willing to do the work but not sure where to
38 start. So these were just sort of starting
39 points for people to use. But it was -- some of
40 those lesson plans came from earlier work that
41 another organization, Gay and Lesbian
42 Educators -- Gay and Lesbian Educators of B.C.,
43 later the Pride Education Network, had developed.

44 They weren't the most innovative things in
45 the world. There wasn't sort of -- the lesson
46 plans themselves weren't breaking new ground.
47 What -- the breaking ground part was, here was a

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1 website that had the Ministry's logo on it
2 saying, you know, We -- we offer these, and, you
3 know, You have our stamp of approval to -- to
4 make use of this sort of thing.

5 So it's -- it's to give people confidence
6 that they had the support of the Ministry of
7 Education and -- and whoever else they feel the
8 need -- the support of.

9 Q Okay. Is there any particular reason why having
10 the stamp of the -- the approval from the
11 Ministry or the Ministry's logo is -- was
12 important?

13 A Well, I don't want to pretend that homophobia and
14 transphobia don't exist out in the community and
15 haven't for a -- for a long time. From when I
16 started teaching, I knew many LGBTQ teachers who
17 were afraid to be out at work or teachers who
18 might have a child in their class that has two
19 moms or two dads or a different family
20 combination but felt reluctant to, you know, use
21 books that feature different family combinations
22 just -- for -- for worry about the blowback
23 from -- from parents or externally.

24 You know, whether there was a real -- a real
25 thing that would come up or this was just an
26 internalized -- or a worry, it's going to depend
27 on an individual's circumstance, so I can -- I
28 can only speculate. But the -- one thing that
29 was fresh around the time of the SOGI 123 launch
30 was a study coming out of the University of
31 Manitoba that had been done in partnership with
32 the Manitoba Teachers' Society that was a
33 nationwide survey of -- of teachers to inquire
34 into the comfort level of teachers, their sense
35 of preparedness, their knowledge around where to
36 access materials, and -- and there were still a
37 lot of people who -- who were either reluctant to
38 do this work or afraid to do this work, perhaps
39 because of the -- the climate in their school,
40 real or perceived worries about how the broader
41 community would react.

42 And, of course, here in British Columbia,
43 there -- there had already been a series of
44 situations such as the -- the book banning case
45 coming out of Surrey, Chamberlain versus the
46 Surrey school board, which played out in the
47 media over a number of years but eventually was

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1 resolved in the favour of Mr. Chamberlain.

2 In the '90s there had been protests here in
3 this province in response to, my understanding
4 anyway, the -- the very notion of talking
5 about -- even mentioning gay and lesbian people
6 existing, let alone using picture books in
7 primary classrooms that -- that might have a
8 child with two moms in it and that sort of thing.
9 And so people read the news too, and, you know,
10 right now there's live situations playing out.
11 But those sorts of things could dissuade someone
12 from doing that.

13 So having that -- you know, having a website
14 saying Province of British Columbia and also
15 referencing the different partner groups saying,
16 you know, Collectively, we're doing this work.
17 We have your backs. Go forth and do it. For
18 many people, in my view, it will help.

19 And, likewise, individual school
20 districts -- having school districts pass
21 policies and employers saying, We support you in
22 this work. This is work we're doing as a school
23 districts, is also important.

24 Q Okay. So that's helpful to give us a sense of
25 what SOGI is and was, and you have given us the
26 history leading up to it. Is there anything that
27 you can tell us about how it was rolled out? You
28 know, for example, was it all at once? Was it
29 piloted? Did it take place, you know, over time?
30 Anything of that nature about it, how it was
31 rolled out and where would be helpful.

32 A Yeah. Well, there was bits and pieces sort of
33 added, but the website wasn't and hasn't been a
34 static thing. As questions came up from the
35 field, especially when those networks were
36 brought together, some Q and A documents sort of
37 came up, some news stories related to it that
38 sometimes referred to, like, the SOGI 123
39 curriculum.

40 There wasn't a SOGI curriculum, per se, but
41 that's, I mean, just sort of -- in the general
42 public's, you know, understanding -- like, to me
43 the B.C. curriculum is this thing that the
44 Ministry of Education sets out, math, social
45 studies, physical and health education, French,
46 et cetera. It's laid out there. But I get that
47 the general public might conflate, you know, a

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1 lesson plan with curriculum or a book with
2 curriculum. I am not particularly hung up on
3 that. But, you know, SOGI 123 isn't a -- a
4 curriculum in the, you know, exact sense of the
5 word. Though there are -- there were definitely
6 some sample lesson plans, but not -- not an
7 extensive bank of them initially. There was some
8 Q and A material added later. Terminology,
9 glossaries that were -- were added. And then
10 over time some of the partner organizations like
11 the B.C. -- [indiscernible - background noise]
12 association and the B.C. Confederation of Parent
13 Advisory Councils created their the own Q and As,
14 I guess, in response to queries that they were
15 getting from the field. And those things were
16 posted on the SOGI 123 website.

17 Then more learning bursts were created over
18 time or when government changed over in 2017 from
19 the B.C. Liberals to the B.C. NDP -- I wasn't
20 involved in this decision, but
21 Minister Bernier's, you know, face was no longer
22 featured in any of the videos. I guess all
23 governments want to put their stamp on things.
24 And -- yeah -- it continues to evolve I'm
25 assuming.

26 Q All right. I want to shift to something quite
27 different now and ask you when you became aware
28 of or came to know who Mr. Neufeld was?

29 A Okay. Well, I had never heard of Mr. Neufeld
30 prior to a post that was being circulated online.
31 We have never met in person, but we have been in
32 the same public space in 2019 at the B.C. Supreme
33 Court.

34 But I became aware of Mr. Neufeld when Patti
35 Bacchus, who had been a Vancouver trustee -- she
36 was -- had been the chair of the Vancouver School
37 Board -- publicly commented on a post that
38 Mr. Neufeld had made.

39 Q Okay. And in the course of -- so it sounds like
40 Ms. Bacchus drew -- or her -- her comments drew
41 Mr. Neufeld's post, or some of them, to your
42 attention. Do you -- do you remember -- what, if
43 anything, do you remember about those posts?

44 A Well, I remember seeing an initial post that
45 was -- it was a short paragraph. It commented
46 negatively on the work that was being done. In
47 it Mr. Neufeld made comment about same-sex

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1 families, made reference to Paraguay and Russia
2 as jurisdictions that dealt appropriately with
3 such matters. And there was a line in it
4 around -- at the risk of being labelled a
5 homophobe.

6 Q Okay. So I will just get you to pause there. We
7 are going to do some screen sharing now and put
8 some documents in front of you and ask you if you
9 have seen them. I don't know if the panel needs
10 to enable that feature for Ms. Tom in order for
11 us to do that or if it's enabled or how that
12 might work?

13 THE CHAIR: Well, let's find out.

14 Ms. Tom, why don't you give it a try there?
15 I'm just going to -- there you go.

16 A I'm just going to change my pin here.

17 THE CHAIR: All right. Yeah, that's fine. Can you
18 just let me know what book we are in here.

19 CNSL L. WADDELL: Yeah. So we are in our -- the
20 Complainant's Book of Documents re Publications
21 and Statements at Tab 1.

22 Now, Mr. Hansman, some of the writing is
23 going to be small, so let us know if you -- if
24 zooming is going to help. But if you can just
25 take a minute to review what's on the screen
26 there and tell us, A, whether you have seen this
27 post before and, B, whether it's the one that you
28 were just describing.

29 A Yeah. I have seen this post before. It's the
30 one I was describing. I am able to see the --
31 the image clearly and read the text clearly, but
32 the -- the part underneath, I am not -- we will
33 have to zoom in.

34 Q Okay.

35 A Yes. Okay.

36 Q All right. And can you -- can you tell us what
37 your reaction was when you saw this post?

38 A Well, I was -- I thought it was heinous. This
39 is -- you know, I am not too hung up what private
40 individuals -- you know, there is a lot of
41 different views on many different topics held by
42 people across Canada, but this is a post by
43 someone who is an elected official, specifically
44 someone who is a school trustee. And the public
45 education system has the obligation to create
46 safe and inclusive spaces for all students.

47 And so to me, this coming from a school

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1 trustee was quite shocking given those
2 responsibilities, especially since I am sure that
3 trustees are aware of the standards that their
4 employees are held to -- teachers in
5 particular -- given the standards set out for
6 them through the Teacher Regulation Branch.

7 And so I -- yeah -- was not impressed and
8 don't think this is something appropriate coming
9 from a school trustee who, in my view, should be
10 helping setting the tone in the school district
11 and to make sure that all schools are welcoming
12 for the students that we serve.

13 Q Now, do you remember seeing any other post by
14 Mr. Neufeld?

15 A Later -- I don't know the exact timeline. I know
16 I was contacted by the media soon after that this
17 one was -- was posted, but, you know, down the
18 road there were -- there are other ones too, for
19 sure, that were either forwarded to me or I would
20 see recirculated on -- on social media as well.

21 Q Okay. And when you saw that post, you were in
22 what position for the BCTF?

23 A I was the president of the BCTF at the time.

24 Q Okay. And you just said that the media contacted
25 you. Did they contact you in your capacity as
26 the BCTF president at the time?

27 A Yes.

28 Q Okay. And can you tell us what -- did you -- did
29 you do the media interview? And can you tell us
30 just in general terms what you said and how that
31 went.

32 A Well, I -- I expressed my disapproval. I used
33 very strong terms to express that. And -- and I
34 made reference to the -- the fact that in the
35 Federation's view this is not the sort of
36 statement that we should be seeing from a school
37 trustee.

38 Q And at this point in time, have you seen other --
39 had you been privy to other people, general
40 members of the public, complaining about
41 SOGI 123, or was this sort of the first criticism
42 that you were made aware of?

43 A This was the first one from a school trustee that
44 I am aware. I mean, members of the public
45 comment on things all sorts -- all the time,
46 which -- which they do, which is their right to
47 do. I -- I don't recall seeing any sort of

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1 specific criticism of SOGI 123 as yet.

2 Even back when I was doing the
3 anti-homophobia consultant work with the
4 Vancouver School Board, part of that role was
5 going to PAC meetings and, for sure, I
6 encountered anomalies that weren't supportive of
7 the work being done, so -- but had I seen
8 anything sort of online specific or hadn't -- no.
9 Had I personally received any letters from the
10 public? No. But I am -- I don't doubt that
11 there were members of the public that weren't
12 trustees that expressed non-supportive views of
13 the work that was being done.

14 Q All right. And so after being made aware of that
15 post and making your media statement, did the
16 BCTF or you in your capacity as the president of
17 the BCTF, take any steps to address the
18 statement?

19 A Well, I had commented publicly. The -- the media
20 comes to the Federation on any number of issues
21 related to education. This was just one of many.
22 We have a high -- BCTF has a profile in the media
23 on -- on any number of things, but there wasn't
24 sort of immediate steps that were done.

25 However, over the weeks that followed, there
26 were more statements and our local in Chilliwack
27 and the CUPE local in Chilliwack proceeded with
28 the -- the complaint here.

29 Q Okay.

30 A And/or grievances under the collective agreement.

31 Q Okay. And do you remember anything about the
32 posts that followed or nothing specific?

33 A Nothing specific. I know there was an -- sort of
34 apology that was -- that was done. There were
35 some forums that were organized in the Chilliwack
36 area. Though, I don't know Mr. Neufeld's
37 involvement with those, other than being a
38 speaker at one or two of them.

39 This was just a small part of what I was
40 doing on a day-to-day basis, all the other
41 things. So, you know, I wasn't perusing the
42 internet every day to see what he had to say on a
43 day-to-day basis. But there -- you know, there
44 were eventually other statements and statements
45 made by other individuals after that initial
46 post.

47 Q Okay. And you talked about the initial post.

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1 You talked about your media interview, and you
2 said that you used, I think, some strong words to
3 describe Mr. Neufeld. Did Mr. Neufeld reach out
4 to you after you did that interview at all?
5 A Not after the initial interview, no. Eventually
6 there was a post on a blog or -- like, a -- like,
7 a news blog in the Fraser Valley making reference
8 to defamation proceedings potentially being
9 launched and a demand for me to retract my
10 statements to the media.

11 I had made -- when the Chilliwack teachers
12 had launched this complaint, I was asked for
13 comment by the media, and I had -- had said a few
14 things. I provided quotes on that as well.
15 And -- but I didn't hear directly -- I've never
16 heard directly from Mr. Neufeld.

17 But then a day or two after that Fraser
18 Valley News blog post, we did receive -- the
19 Federation did receive a letter from
20 Mr. Neufeld's legal counsel at the time, and --
21 and concurrently with that, a defamation
22 complaint being filed in the B.C. Supreme Court,
23 so the notice of that.

24 Q Were there any -- any impacts or -- of the CTA
25 and BCTF having filed that complaint in terms of
26 response from either the public or -- or teachers
27 or anybody?

28 A Whether it was a response from the complaint
29 being filed or whether it was just sort of the --
30 some of the -- the public opposition to schools
31 doing this work at all, it's hard to separate
32 those out. I mean, there were protests organized
33 in various communities around B.C., not
34 necessarily with Mr. Neufeld's involvement.
35 There were other -- other players, some of whom
36 had been protesting and organizing on the same
37 topic for many a decade in this province, so that
38 wasn't new necessarily.

39 But there was one protest outside of the
40 BCTF building that -- that occurred. There had
41 been some smaller ones too, just sort of people
42 showing up with billboards. But then there was a
43 larger one that was organized. I am not aware of
44 Mr. Neufeld being at that, though.

45 Q Okay. I just want to get -- do another document
46 share to ask you about something that may or may
47 not be connected to that protest.

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1 Alanna, if you can go to -- we are going to
2 put up Tab 8 in the Various documents book.
3 CNSL J. KITCHEN: And you are going to share that here
4 on the screen or...
5 CNSL L. WADDELL: Yeah.
6 CNSL J. KITCHEN: Okay.
7 CNSL L. WADDELL:
8 Q So that's the -- this is a news article. So
9 that's the heading. And then I will get Ms. Tom
10 to go to the substance of it. And if you can
11 just have a read, Mr. Hansman, and you can ask us
12 to scroll through to the next page if need be,
13 and then I am going to ask you if -- if this is
14 the rally you were talking about or if this is
15 something different?
16 A Yes. This is the -- this -- I -- I am familiar
17 with this article. This is from News 1130,
18 now -- now known as CityNews Vancouver. And
19 that's a photograph from outside of the BCTF on
20 the street.
21 Q And prior to this -- I see the article is dated
22 April of 2018. Is that about the time that you
23 recall the rally taking place?
24 A Yes.
25 Q Okay. And do you remember whether there had been
26 SOGI 123-related rallies in front of the BCTF
27 before this -- this one?
28 A Not of this size. There had been, like, some
29 five or -- some gatherings of five or six people
30 that occurred a couple times. People would show
31 up for a couple of hours, and then they would go
32 on their way. But this -- my recollection,
33 anyway, is this was the first sort of large one
34 that occurred.
35 Q Okay.
36 CNSL J. KITCHEN: Ms. Waddell, are you -- are you
37 seeking to have this article entered?
38 CNSL L. WADDELL: Yes.
39 CNSL J. KITCHEN: Okay. I take it you were -- you
40 were on your way do that?
41 CNSL L. WADDELL: Yes. Thank you.
42 CNSL J. KITCHEN: Okay. Okay.
43 THE CHAIR: Okay. And just --
44 CNSL L. WADDELL: Yeah. Yeah.
45 THE CHAIR: I will just jump here just to clarify. I
46 mean, yes, of course, it's always helpful to say
47 it, And now I would like this entered, but as I

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1 said at the outset, absent an objection, once we
2 go through a document, I will make a note that
3 it's going to be entered. So, Mr. Kitchen, do
4 object if you have an objection. Otherwise, I
5 will proceed on the assumption that this is
6 coming in now.

7 CNSL J. KITCHEN: Well, I -- I would caution against
8 that assumption. We -- every document that I
9 haven't consented to -- I shouldn't say "every."
10 Almost all of them I will be objecting to. There
11 was a very small number, maybe one or two, that I
12 just didn't know enough about. For example,
13 there's a Facebook post with no name attached to
14 it that if my friend was to tell me it was
15 actually authored by one of the witnesses, I
16 would -- you know, I would then form a consent
17 position. Right now I have no position.

18 But pretty much the rest of them, I
19 haven't -- I oppose. So the best presumption is
20 that I do oppose.

21 THE CHAIR: Okay. So --

22 CNSL J. KITCHEN: And that's why I raised that. And
23 that's why -- that's why I raised that -- that's
24 why I asked Ms. Waddell where she was going with
25 this because we are going to have to go through
26 the process on -- on almost all of these because
27 I oppose almost all of them.

28 THE CHAIR: Okay. So can you tell me, then, the basis
29 of your objection to this is what I'm saying.
30 When you object, say, I object, and tell me the
31 reason for the objection. So what's the
32 objection?

33 CNSL J. KITCHEN: Well, I haven't yet heard the basis
34 for my -- that's why I asked my friend, like,
35 what her basis is for bringing it in; right? I
36 mean, I guess we can go one way or the other. If
37 I am going to object, then I will have to have a
38 right of reply when I hear why she wants it in if
39 you want to hear from me first. But it might be
40 more helpful to hear from her what her basis for
41 getting it in, and then I can, you know, give
42 my -- give my objections in response, and then
43 she can reply. That -- I am in your hands as to
44 which way to do that, but, you know, I think it's
45 better if she gets to go first and say, Well,
46 this is why I want to put this in. I think
47 that's more normally how it's -- how it's done.

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1 THE CHAIR: Well, I mean, I am fine for Ms. Waddell to
2 do that, but what I'll say in terms of my normal
3 practice is if a witness has, you know,
4 identified -- I understand Mr. Glen --
5 Mr. Hansman is not the author of this article and
6 isn't identifying it in that way --

7 CNSL J. KITCHEN: Right, right.

8 THE CHAIR: -- but if they have spoken to it, and I
9 can see what it is, and it's clear what it is,
10 and it's come up in the context of evidence that
11 situates its relevance, then I ask you to please
12 state your objection to why this document
13 shouldn't come in so I can -- and then we will
14 deal with it from there, and I will get
15 submissions, you know, from parties as we need.

16 But I don't think -- I don't think it's
17 necessary that the complainants establish every
18 time the full basis for why they are seeking to
19 admit a document that I can plainly see what it
20 is. So, again --

21 CNSL J. KITCHEN: Well, I would --

22 THE CHAIR: -- is it --

23 CNSL J. KITCHEN: -- I would respectfully disagree.

24 Of course, it's --

25 THE CHAIR: Okay. I know you disagree.

26 CNSL J. KITCHEN: -- [indiscernible - cross talk].

27 THE CHAIR: But can you tell me what is the basis for
28 the objection to this document? Can you just
29 give me some category of objection, and then I
30 will get submissions on it.

31
32 SUBMISSIONS BY CNSL J. KITCHEN:

33
34 CNSL J. KITCHEN: Yes, of course. Look, listen.
35 This -- this is a media article about -- about a
36 rally, and Mr. Hansman has identified the picture
37 in the rally as -- as a rally that he is talking
38 about. But the existence of these rallies are
39 themselves not relevant. Why are we talking
40 about this? Where is the relevance of -- of the
41 rallies? I haven't -- you'll notice I haven't
42 objected yet to any of my friend's questions.
43 She is going all over the place, and
44 Mr. Hansman -- I honestly think that's relatively
45 fine. Expect for maybe time, I really don't
46 care.

47 But when we get to these -- these media

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Submissions by Cnsl J. Kitchen

1 articles, they serve no purpose. They bring
2 no -- they bring no relevance.

3 THE CHAIR: Okay.

4 CNSL J. KITCHEN: You know, where is the connection --
5 I mean, he mentioned -- Mr. Hansman -- again,
6 right -- you know, there's -- we can imagine
7 scenarios in which there's a connection. If
8 Mr. Neufeld is there leading the rally, right,
9 well, now, obviously we have some relevance;
10 right? But as Mr. Hansman has said, Mr. Neufeld
11 wasn't there as far as he knows.

12 So where is the connection? Where is the
13 relevance? Or are we just sort of trying to
14 create all this nebulous stuff that's -- that's
15 going to, you know, bog us down. And that's --
16 that's all I see, to be frank, is -- is a bunch
17 of peripheral nebulous stuff that's not really
18 relevant that's going to bog us down when it
19 comes to the actual issues; right?

20 THE CHAIR: Okay. So the --

21 CNSL J. KITCHEN: Where is -- where is the picture of
22 someone saying, I am here because of Mr. --
23 Mr. Neufeld or a billboard that has quotes
24 Mr. Neufeld said? You know, I agree with
25 Mr. Neufeld. Like, this rally at this point has
26 got nothing to do with Mr. Neufeld. It has got
27 nothing to do with these issues.

28 You know, do I -- do I see a placard that
29 says, Fire all Chilliwack teachers that identify
30 as gay and trans? Right? There is no -- I am
31 giving these examples because I am trying to
32 figure out in my own mind what would make this
33 relevant?

34 THE CHAIR: All right.

35 CNSL J. KITCHEN: If I was my friend, I would --

36 THE CHAIR: Yeah. Okay. Mr. -- Mr. --

37 CNSL J. KITCHEN: -- these are the things I might say
38 to make it relevant.

39 THE CHAIR: -- Kitchen. I have the point. The
40 objection is to relevance. Sorry. I am just
41 going to cut you off there because it's going to
42 take too long -- I have your objection. It's
43 relevance.

44 Ms. Waddell, what is your response to the
45 objection on the relevance?

46

47 SUBMISSIONS BY CNSL L. WADDELL:

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Reply submissions by Cnsl J. Kitchen

1
2 CNSL L. WADDELL: Sure. This is relevant to the story
3 of a bit of the blowback and some of the impacts
4 of Mr. Neufeld's speech. And I will say this may
5 put my -- my friend's mind at ease a little bit,
6 you know, we are seeking to -- to enter this,
7 one, to pin down the date of the rally by virtue
8 of the date of the news story. And, you know,
9 the fact that it occurred and when it occurred.

10 I am not seeking to have it admitted for all
11 of the truth of the details contained in it
12 because it is hearsay. But, you know, I am
13 seeking to have it admitted for the fact that
14 this was -- this was news, the date, and to
15 corroborate some of Mr. Hansman's evidence that
16 he just gave. So that -- I don't know if that
17 puts my friend's mind at ease all, but -- yeah --
18 I don't intend to spend any more time on it.

19 THE CHAIR: Thank you. Mr. --

20 CNSL J. KITCHEN: Well --

21 THE CHAIR: -- Kitchen, do you have a reply?

22
23 REPLY SUBMISSIONS BY CNSL J. KITCHEN:

24
25 CNSL J. KITCHEN: I do, yes. So in reply, I would say
26 that that's no answer to what I have -- I have
27 said because my whole problem is there is no
28 connection between Mr. Neufeld and this rally,
29 this picture, or this news article, which means
30 it's not relevant which means it shouldn't be
31 admitted. That's -- that's the issue.

32 If my friend had of established a
33 connection, you wouldn't be hearing from me.
34 Okay? I am not just going to object to documents
35 just to -- just to pound away at the Tribunal or
36 the other side or to waste time. I am objecting
37 to -- to documents that are not relevant because
38 they are not connected to Mr. Neufeld and the
39 issues in this case.

40 THE CHAIR: Okay. Thank you, Mr. Kitchen.

41 I am going to admit the document. It's
42 relevance will be a matter of weight in the final
43 weighing of evidence and the burden, of course,
44 will be on the complainants to establish some
45 relevant connection. But for --

46 CNSL J. KITCHEN: Now --

47 THE CHAIR: -- the purpose of this proceeding, I am

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1 going admit this document.

2 CNSL J. KITCHEN: Can I -- can I have some reasoning
3 from you simply as guidance because obviously
4 this issue will come up, and it would be nice for
5 me to hear from the Tribunal, the Chair on where
6 her mind is on what makes this relevant.

7 THE CHAIR: Well, as I just said, the relevance will
8 be sorted as a matter of weight, and as general
9 guidance, it's what I said at the beginning of
10 this proceeding. The Tribunal has discretion to
11 admit evidence as necessary and appropriate.

12 We have heard from Ms. Waddell that the
13 purpose -- the intended purpose of this article
14 is to establish the date of this rally and
15 corroborate some of Mr. Hansman's testimony about
16 what was happening at this time. I will leave it
17 to them to weave this together in their argument
18 about how that is going to help me decide the
19 issues in this case. But for now I'm content
20 that there is no real prejudice to the -- to the
21 respondent and there is potentially some
22 probative value in terms of the timeline that is
23 being established here and the events that are
24 going on as context for the complaint. And --
25 and that's all I will say about it at this point.
26 And as I say, you can argue it -- I mean, this --
27 nothing may end up turning on this, and we may
28 accept evidence that nothing turns on, and that
29 is going to be part of this process.

30 CNSL J. KITCHEN: Well, yes, of course. If there is a
31 minimum level of -- of relevance, things get
32 admitted and then we decide, you know, how
33 relevant they are on weight. But, I mean, that's
34 the thing. The answer I heard from you goes to
35 weight, not to admissibility. We do not admit
36 evidence that is -- does not meet a minimum level
37 of relevance.

38 So, I mean, I guess my objections are going
39 to -- are going to continue. I am going to have
40 to continue to put them on the record because,
41 you know, that's what we have to do is build a
42 record here. So I -- that's all. I just wanted
43 guidance from you on to how it -- how it passed
44 the relevance on admissibility.

45 I get the weight bit. And I get that my
46 friend is saying there is not going to be any
47 weight on the actual content, the truth of it. I

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1 get all that. But we haven't established how we
2 get over the initial threshold of relevant enough
3 to be admitted; right?

4 We don't just admit documents because we
5 feel like it. Notwithstanding the fact that the
6 rules of evidence in court doesn't apply, we -- I
7 would submit the Tribunal should still guard
8 against admitting documents just for the heck of
9 it because it might be relevant down the road.
10 I -- I don't think that's a really good way to do
11 this.

12 THE CHAIR: Thank you, Mr. Kitchen.

13 CNSL J. KITCHEN: I will say that -- that's it for
14 now.

15 THE CHAIR: Thank you.

16 Go ahead, Ms. Waddell.

17 CNSL L. WADDELL: All right. So I -- unless the
18 Tribunal requires something more from me in
19 relation to the document, I was just going to
20 move on with my next question.

21 THE CHAIR: Yes. Thank you.

22 CNSL L. WADDELL: Okay.

23 CNSL J. KITCHEN: Well, hold on. Are we going -- are
24 we going to identify -- are we going to give
25 that, like, an exhibit number?

26 THE CHAIR: As I explained at the beginning,
27 Mr. Kitchen, I am going to mark the books as
28 exhibits at the end of the proceeding. For now I
29 am keeping track of which documents within it
30 have been admitted, and at the -- and I suggest
31 you do the same. And then at the end, we will go
32 through the index and the book of documents. We
33 will identify those that have not been admitted,
34 and we will take those -- or we will note that
35 they are excluded from the record, and I am just
36 going to mark the books once.

37 So I am -- so just keep track -- I am
38 keeping track of the documents that are coming
39 in.

40 CNSL J. KITCHEN: Right.

41 THE CHAIR: So just --

42 CNSL J. KITCHEN: Okay. So Tab 8 --

43 THE CHAIR: Tab 8 -- Tab 8 of the --

44 CNSL J. KITCHEN: -- has been admitted. Okay.

45 THE CHAIR: Yeah. Go ahead.

46 CNSL L. WADDELL: Thank you.

47

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Glen Hansman (for Complainant)

In chief by Cnsl L. Waddell

1 EXAMINATION IN CHIEF BY CNSL L. WADDELL, continuing:

2
3 Q All right. Mr. Hansman, did -- can you tell us a
4 little bit about how -- or whether reaction to
5 the CTA and BCTF's case, this case, whether it
6 had any impact on you, either as -- in your
7 capacity as the president of the BCTF or
8 personally.

9 A Well, it certainly took up more bandwidth than it
10 should have. There was collective bargaining
11 playing out. The BCTF had in the fall of 2016
12 won at the Supreme Court of Canada a matter
13 related to the restoration of thousands of
14 clauses back into our collective agreement that
15 had been legislated away in 2002. That resulted
16 in the restoration of about 4,000 teaching
17 positions across the province. And so there was
18 a lot of work being done around hiring and
19 recruiting and a myriad of other things going on.

20 And so to have all this sort of other stuff
21 happening, it -- it seemed vexatious given that
22 the Province was moving ahead with -- had moved
23 ahead with the B.C. Human Rights Codes changes;
24 there was buy in from within the sector in terms
25 of that project. And so it -- it ate up some
26 time unnecessarily.

27 But also, of course, it's -- it's unpleasant
28 to -- to be seeing this sort of reaction to -- to
29 work that you support, especially when, in -- in
30 my view, it's focussed on making sure that
31 schools are safe and inclusive spaces for others.

32 CNSL L. WADDELL: So I think I am more or less done
33 with this witness. What I was going to ask is if
34 we could take the morning break or even just a
35 very short break so I can check my notes, confer
36 with my co-counsel, ask any final question if I
37 have one or two, and then I can turn the witness
38 over to Mr. Kitchen for cross-examination.

39 THE CHAIR: All right. Mr. Kitchen, as between taking
40 the morning break now or a shorter break, would
41 you be ready to go right into cross-examination
42 if we just take a short break now, or would you
43 rather have a longer -- a 15-minute break and
44 come back with cross?

45 CNSL J. KITCHEN: I would -- I would prefer to have a
46 full break now, and then -- if that's okay with
47 my friend, and then she can --

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1 THE CHAIR: Okay.

2 CNSL J. KITCHEN: And then if she has any more, she
3 can finish up and then we can immediately jump
4 into cross --

5 THE CHAIR: All right.

6 CNSL J. KITCHEN: -- if that's works.

7 THE CHAIR: Yeah. That works.

8 CNSL L. WADDELL: That's -- that's fine.

9 THE CHAIR: Yeah. All right. Well, we will take a
10 15-minute break now. During this break we will
11 just turn our cameras and mics off. I will leave
12 the line open. And we will come back in
13 15 minutes. Thank you.

14
15 (WITNESS STOOD DOWN)

16
17 (PROCEEDINGS ADJOURNED FOR MORNING RECESS) [10:34:28]

18 (PROCEEDINGS RECONVENED) [10:49:55]

19
20 GLEN HANSMAN, a witness,
21 recalled.

22
23 THE CHAIR: All right, everyone. Come on back. There
24 we go. It looks like we have everyone we are
25 expecting.

26 Ms. Waddell, do you have some more
27 questions?

28 CNSL L. WADDELL: Thanks, Madam Chair. I just have
29 one.

30
31 EXAMINATION IN CHIEF BY CNSL L. WADDELL, continuing:

32
33 Q Mr. Hansman, if you know, as SOGI 123 was being
34 developed or in its development, was there any
35 reliance on research or any particular research
36 that went into the development of the materials
37 or that informed their development?

38 CNSL J. KITCHEN: He is muted.

39 THE CHAIR: Oh, you are muted.

40 A Sorry about that. Yes. I mean, in B.C. there --
41 through the UBC School of Nursing, there is the
42 work of Dr. Elizabeth Saewyc through the Stigma
43 and Resiliency Among Youth Centre that uses a lot
44 of the data from the B.C. Adolescent Health
45 Survey, which secondary students in most school
46 districts participate in every four years.
47 Certainly in a lot of the data from that as --

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1 about the school experience of youth.

2 There have been the University of
3 Manitoba -- the recent one that had been done
4 around the time that it was launched. But, of
5 course, there's also decades worth of research
6 coming out of education faculties at universities
7 across Canada and elsewhere that talk about the
8 experience of 2SLGBTQS+ students in schools.

9 And then the BCTF as a union is very much
10 alive to the experience of teachers who are part
11 of the 2SLGBTQS+ community and what it is like
12 for them to work in the education system. And
13 so, yes, everyone involved is aware of that work.
14 And the impact of SOGI 123 continues to be
15 studied, my -- my understanding is, through the
16 work of Dr. Saewyc.

17 Q Okay. And I just want to ask two clarifying
18 questions about the answer you provided there.
19 You started out by talking about the -- about
20 the -- the youth centre out at UBC that looks at
21 data collected from the students, and you -- you
22 talked about, you know, reliance on that. And I
23 think, but I want to just confirm that you were
24 talking about reliance on data from the --
25 whatever it's called -- the health survey, the
26 secondary school health survey. Am I -- am I
27 understanding of what you were referring to when
28 you said reliance on that; correct?

29 A Yeah. It's called "the B.C. Adolescent Health
30 survey."

31 Q Okay.

32 A It's done through the McCreary society for youth
33 in partnership with the Ministry of Education.
34 And that's done every four years. The most
35 recent survey --

36 Q Okay.

37 A -- was done in 2023.

38 Q Okay. And when you talked about -- you also
39 talked in answering this question, and you
40 referenced it earlier, a study out of Manitoba
41 involving teachers. Is that the Every Teacher
42 Project --

43 A Correct. Yes.

44 Q -- or -- okay. Okay.

45 A Yeah.

46 Q Those are my questions. Thank you.

47 THE CHAIR: Thank you.

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Cross-exam by Cnsl J. Kitchen

1 All right. Mr. Hansman, the next part of
2 this process is that Mr. Kitchen will have some
3 questions for you in cross-examination. And, of
4 course, as the witness, your job here is to
5 answer the questions. If you don't understand a
6 question, you can ask for clarification. If you
7 don't know the answer, that's also a fine answer
8 as well. If there is an objection at any point,
9 I will just ask you to -- to wait until we
10 resolve the objection. Depending on the nature
11 of the objection, it may be necessary that I ask
12 you to step out of this meeting room for a
13 moment. And if that arises, I will give you
14 instructions about how we are going to do that, but
15 I just want to flag that that's something that
16 may come up. Do you have any questions about the
17 process?

18 A I don't. No.

19 THE CHAIR: Okay. Go ahead, Mr. Kitchen, when you are
20 ready.

21 CNSL J. KITCHEN: Thank you.

22
23 CROSS-EXAMINATION BY CNSL J. KITCHEN:

24
25 Q Mr. Hansman, is it fair to say you were heavily
26 involved with the development of SOGI 123?

27 A To a certain extent. I was heavily involved at
28 the sort of -- the policy level and the direct
29 discussions with ministers, deputy ministers, and
30 assistant department ministers, and some Ministry
31 staff.

32 And I was there on the ground for some of
33 the initial rollout events, like the press
34 conference that I discussed that was held in fall
35 2016 as well as a couple of the initial
36 subsequent launch events and everything. But --
37 and participating in the filming of some of the
38 videos. But beyond that, I didn't have too much
39 direct involvement.

40 I was asked by the -- the folks from the ARC
41 Foundation to be involved in one of the hiring
42 panels for a staff that they -- they hired. And
43 I was sometimes consulted on some of the
44 materials that was -- that were put on the
45 website. But the -- the time I had in my
46 day-to-day work didn't allow me to contribute
47 more than that, so it wasn't -- yeah.

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Cross-exam by Cnsl J. Kitchen

1 Q You weren't involved in generating the content of
2 it?

3 A I was involved in some of the content. And the
4 videos -- I appear in some of the videos, but I
5 by no means produced the videos or edited them.
6 I didn't write any of the lesson plans or
7 anything like that. Some of the Q and A material
8 I recall being floated by me at some point. And
9 then discussions. I also provided suggestions
10 around --

11 Q Can I stop you there? I'm very sorry.

12 A Sure.

13 Q I have got this issue with Teams, and I don't
14 know if it's just because Microsoft is having
15 issues. But every -- every hour or so, I miss
16 about five seconds of audio.

17 So you said Q and A, and then I lost you.
18 If you could just --

19 A Oh.

20 Q -- repeat that for me, roughly.

21 A Sure.

22 Q It doesn't need to be exact.

23 A Okay. Yeah. The Q and A -- some of the Q and As
24 would have been floated by me. Whether they used
25 my suggestion or not is another matter.

26 And also I recall suggesting which school
27 district policies be chosen as -- as exemplars to
28 go on the website. So I recall that Vancouver
29 and Langley's were two of the ones that were
30 chosen.

31 Q Did you -- did you review the content before it
32 was launched initially?

33 A No. The website -- I -- some of it, but it's --
34 the -- the website itself was a collaboration
35 between the Ministry and the folks at SOGI 123.

36 Q Is it -- would it be fair to say that if you
37 reviewed the content, you would readily
38 understand it?

39 A Yes. I don't recall there being parts of it that
40 I didn't understand, no.

41 Q You would agree with me that you were heavily
42 involved in promoting the adoption --

43 A Yes.

44 Q -- of the SOGI -- okay.

45 It's fair to say you -- you advocated with
46 those who had the political authority to
47 implement it?

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Cross-exam by Cnsl J. Kitchen

1 A Absolutely.
2 Q Fair to say in getting these resources
3 development -- getting these resources developed
4 and into the schools is something that was very
5 important to you?
6 A Yes. Yeah. There was a need there, and without
7 provincial leadership on this, it was being left
8 to individual school districts. But from our
9 perspective as the BCTF, 2SLGBTQ students and
10 staff and families are in schools regardless of
11 what school district they are in, and so it
12 shouldn't -- implementation of the Code and
13 inclusion and safety for those people shouldn't
14 be dependent upon whether an individual school
15 district prioritizes that. So, yeah, definitely
16 Ministry leadership on this was very important to
17 us as the Federation.
18 Q When you say "code," you mean the *B.C. Human*
19 *Rights Code*?
20 A Correct.
21 Q Okay. I believe there may have been at points --
22 at times another code was referenced, and -- does
23 that sound right to you? Or the only code that
24 you have ever talked about today and yesterday is
25 just the *B.C. Human Rights Code*?
26 A No. I have talked about both --
27 Q What is the other one?
28 A -- *B.C. Human Rights Code*, which prior to the
29 summer of 2016 had mentioned sexual orientation
30 but not gender identity expression, but after --
31 Q Right. Right.
32 A -- the summer of 2016 had added. And I have also
33 been talking about Ministerial Order 276/07,
34 which are the standards for student code of
35 conduct.
36 Q Student code of conduct. Okay. That's the other
37 code besides the *Human Rights Code*?
38 A Correct. And it's that latter one, the
39 Ministerial Order, that Minister Bernier revised
40 and signed off in the fall of 2016 after -- a
41 couple of months after the *B.C. Human Rights Code*
42 had been revised and expanded.
43 Q So is it fair to say -- or it is fair to say,
44 isn't it, that you were -- you were at least
45 familiar with how the resources were developed?
46 A Yes.
47 Q Okay. And generally that was, I believe -- I

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1 believe you talked about this yesterday.
2 Generally that was the ARC Foundation, I think
3 the education department at UBC, and then the
4 provincial department of education. Are those
5 the three players that were involved in
6 generating the content of it?

7 A Correct. Though some of the lesson plans -- I
8 think I might have mentioned this earlier --
9 were -- were borrowed from previously written
10 ones that had -- that had existed for a while
11 through what had been Gay and Lesbian Educators
12 of B.C., later known as the Pride Education
13 Network.

14 So they -- they had developed back in the
15 early 2000s a collection of lesson plans and
16 lists of suggested books and everything. And so
17 my understanding is that some of the lesson plans
18 were -- were borrowed. I can't speak to the
19 current ones on the website because I haven't
20 been on it for quite some time.

21 Q Right. I get it. It was -- okay. So -- so the
22 SOGI -- the resources themselves were first
23 publicly rolled out, given to all the districts,
24 and started to be utilized by the districts in
25 the 2017, 2018 school year?

26 A Yes. Yeah. When -- the first order of business
27 after Minister Bernier signed off on the revised
28 Minister Order 276/07 was for all school
29 districts to be in compliance with that. Meaning
30 they had to update their district and school
31 codes of conduct.

32 And then as the SOGI 123 website was
33 launched and that network that I spoke of -- SOGI
34 leads being identified and -- and brought
35 together -- that all commenced in early 2017.

36 Q Was there any sort of pilot project with the
37 SOGI 123 resources prior to the public rollout in
38 2017?

39 A Not specifically under the SOGI 123 banner, but
40 many school districts already had SOGI leads in
41 place, some of them staff positions like the one
42 that I held in 2005 and 2006. And so in effect
43 that is the pilot. It was work that had been
44 underway for quite some time in several school
45 districts. The difference now being all school
46 districts had to come aboard.

47 Q I want to ask you about input that may or may not

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1 have been sought from members of society when the
2 resources were developed. So to your knowledge,
3 were any religious minorities consulted in
4 developing the content of the resources?

5 A Not to my knowledge, no.

6 Q Any ethnic minorities?

7 A No. Not to my knowledge. In terms of
8 organizations or individuals? Sorry. Could you
9 clarify.

10 Q Yeah, no, no, no. I am talking organizations.
11 So let's get a little more specific. Like, so,
12 for example, was there a Persian community or
13 cultural group that was consulted?

14 A No. The consultation that occurred was through
15 the usual channels of the stakeholder groups,
16 including the B.C. Federation of Parent Advisory
17 Councils, and then the rights holder
18 organizations.

19 Q Okay. How about a Nigerian cultural or community
20 group?

21 A No.

22 Q Okay. Any Eastern orthodox community or cultural
23 group?

24 A No. Not that I am aware of.

25 Q Okay. Any Jewish groups?

26 A No specific Jewish groups that I am aware of, no.

27 Q Okay. Any Muslim community or religious groups?

28 A No.

29 Q Any Sikh religious or community groups?

30 A No. As far as I am aware, it was just the usual
31 stakeholders and rights holders organizations.

32 Q Okay. Were there any biologists or sexologists
33 or psychologists or psychiatrists that were
34 consulted?

35 A Consulted for the SOGI 123 materials, or the --

36 Q Yeah.

37 A -- the *Human Rights Code* changes?

38 Q For the development of the SOGI resources.

39 A That I am not sure. I am not sure. I mean, I do
40 know that the -- the team at the UBC School of
41 Nursing, the centre that I discussed previously,
42 was involved in conversations. And I don't know
43 what process that the Province used before they
44 made the changes to the *Code* other than the BCTF
45 was one of the organizations that advocated for
46 that change. The *B.C. Human Rights Code* I am
47 talking about.

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1 Q I noticed you use the -- well, I have at least
2 three instances of this written down. You used
3 two terms, homophobia and transphobia, and at
4 least once you said anti-homophobia and
5 anti-transphobia. So at least three times you
6 mention these phrases, but without any
7 explanation or definition as to what they mean.
8 Do you just -- do you just assume everybody
9 should know what homophobia and transphobia
10 means?

11 A No. Though in a couple of the instances that I
12 used the term anti-homophobia, that was part of
13 my job title with the Vancouver School Board. I
14 didn't choose that job title. That was the one
15 selected for me by my employer. My job title was
16 the anti-homophobia and diversity consultant.
17 But, no, I don't --

18 Q Well --

19 A -- assume -- don't assume that everyone
20 necessarily knows what the term transphobia means
21 or what the word homophobia means.

22 Q I -- you can correct me if I am wrong, but it
23 seems like I can only infer that it means more
24 than the literal English definition of it. I
25 mean, we all know that arachnophobia means fear
26 of spiders because arach means spiders in some
27 sort of biological way and phobia means fear.

28 So I -- I can only infer that when you use a
29 phrase like homophobia, you don't actually mean
30 fear of gay people. You mean something else. Is
31 that fair?

32 A No. For some people there may be a fear of gay
33 and lesbian people, but I wouldn't say everything
34 is based on fear. It could be based on
35 misunderstanding or ignorance or lack of
36 knowledge. Sometimes hate. Though, hopefully
37 that's not the majority of the time.

38 But the -- the terminology is imprecise
39 and -- and evolving over time. There's terms
40 being used today that I myself would not have
41 encountered, say, 25 years ago. Nonbinary, for
42 instance, was not a term I was familiar with
43 25 years ago. Likewise, with transphobia. It
44 wasn't a term in circulation. But humans always
45 try to find new words to capture new
46 understandings, and over time I imagine that
47 language will continue to evolve over the years

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1 to come.

2 Q Would you agree with me that part of the reason
 3 it's imprecise is because it means more than what
 4 the literal definition of the word would be,
 5 which is literally fear of gay people? Is that
 6 part of the reason that it's imprecise?

7 A Well, I don't know if that's the literal meaning.
 8 It's the -- the etymology of the word, but
 9 it's -- the word homophobia has been in
 10 circulation for many decades, and it's used in
 11 different ways. But it's -- if you prefer -- I
 12 actually think, you know, anti-LGBTQ is probably
 13 a more precise terminology, but there's many
 14 different -- there's many variations in
 15 circulation. But if there's confusion between
 16 two or more people around the terminology that's
 17 being used, that's a good basis for a dialogue.

18 Q You would agree with me that it is at least
 19 somewhat common for people to be called a
 20 homophobe if they express, you know, views at all
 21 like Mr. Neufeld's expressed in that post that
 22 you referenced, the 2017 post? Would you agree
 23 with me that people -- people, regardless of
 24 where -- regardless of whether or not they
 25 identify as LGBT, that -- that term is used to
 26 label people who say things something like what
 27 Mr. Neufeld said?

28 A Yes.

29 Q And you would agree with me that the term is
 30 pejorative when used that way?

31 A What do you mean by "pejorative"?

32 Q It's not -- it's not meant merely as a
 33 description, but it's also meant to insult or --
 34 let's go with insult. It's also meant to insult
 35 the person.

36 A No. I think it is often used in just a
 37 description.

38 Q Often. Okay. So is it -- is it sometimes used
 39 to --

40 A [Indiscernible - cross talk] -- oh, for sure.
 41 Yeah. For sure it could be used that way. But
 42 it is not just used that way. It could just be a
 43 simple actual description [indiscernible - cross
 44 talk] --

45 Q No. I will grant you that. No. Obviously
 46 sometimes it's just -- it's just a description.

47 A In the same way that if someone was describing

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1 something as being racist, a comment being
2 racist, they are not necessarily meaning that
3 as -- in a pejorative way. They are just
4 describing their honestly held belief that the
5 thing presented to them is racist.

6 Q Right. And I would -- I would grant you that
7 too. But you would agree with me that at least
8 sometimes terms like transphobe, homophobe,
9 racist is -- is used as a label against someone
10 to denounce them and their views?

11 A In a -- in some instances.

12 Q Yeah. No. And some is all I am looking for
13 because I think -- I think that's all that's
14 fair.

15 Now -- okay. So I used transphobe there.
16 Would you -- would you say, you know, transphobe
17 is similar to homophobia -- or homophobe -- well,
18 homophobia, you would -- would you agree with me
19 that transphobia is like homophobia insofar as
20 it's imprecise and developing over time?

21 A Yeah. I -- I prefer the term anti-trans hate or
22 just anti-trans speech [indiscernible -
23 background noise]. So the -- the phobe piece, I
24 think that's probably what we are -- we are hung
25 up on here is -- is not -- is confusing. But
26 it's a formulation that's been in use for a few
27 decades. Or the homophobia one anyway. But
28 there are other terms in circulation, which
29 perhaps will overtake it over -- over time.

30 Q So you would -- would you equate anti-trans
31 speech with transphobia?

32 A Yes. I think it -- yes. Anti-trans speech is a
33 more precise language. But there is other
34 formulations that different people use, so...

35 Q Now, since we seem to be on the same page that
36 it's difficult to give a definition to
37 transphobia or anti-trans speech, and I am going
38 to -- tend to go with anti-trans speech because
39 that seems to be your preferred phraseology, and,
40 frankly, I think it's a -- I think it's a little
41 more clear and helpful.

42 So I am going to run you through some
43 examples to see if we can parse out what that --
44 you know, what this is, what fits in -- within
45 this category of anti-trans speech.

46 CNSL L. WADDELL: And just to -- I am presuming,
47 Mr. Kitchen, that you are just asking the witness

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1 about his -- if you are giving examples, the
2 witness is not an expert, of course, but you are
3 just asking about his understanding of these
4 examples and would he qualify them as anti-trans
5 speech, for example?
6 CNSL J. KITCHEN: Yeah. I mean, I think he can only
7 go so far to speak on behalf of anybody else. I
8 mean, maybe to some degree but not as an expert
9 opinion witness, obviously, so...
10 CNSL L. WADDELL: Okay.
11 CNSL J. KITCHEN:
12 Q So, again, Mr. Hansman, my friend raises a fair
13 point. You are probably familiar with this that
14 I can't get your opinion insofar as, you know,
15 opinion evidence is not generally admissible
16 unless you are qualified as an expert. I am
17 asking for your views. I mean, you have
18 identified how important this is and how involved
19 with this you have been, and you even had the --
20 what was the title you were given? The
21 anti-homophobia something or other?
22 A It's the -- yeah. The title at the time -- I
23 still have the business card somewhere -- was the
24 anti-homophobia and diversity consultant. It was
25 a teaching position under our collective
26 agreement, so it was a job at the district level.
27 It's now called the SOGI district resource
28 teacher. The present person in that role, that's
29 what their -- their title is.
30 Q Okay. So would you agree with me that in that --
31 you know, at least from being in that role, you
32 developed a really deep understanding of what
33 anti-homophobia is?
34 A Yes.
35 Q Okay. Would your understanding of
36 anti-transphobia or anti-trans speech -- would it
37 be similar?
38 A There is -- there is some overlap. I can
39 elaborate, if you wish.
40 Q Yeah. Sure. I am -- obviously there's overlap,
41 but, I guess I am wondering if, you know, your
42 knowledge of anti-homophobia would -- would
43 translate into having a similar level of
44 knowledge about what anti-transphobia is?
45 A I've -- in my -- despite the nomenclature that
46 was used, a lot of the work that I did in that
47 previous role related to the school experience of

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1 trans students. Making sure that they were safe,
2 that their pronouns and name were being used
3 correctly.

4 I worked with families whose child maybe was
5 in attendance at a school in a different school
6 district, but because of the work that was being
7 done in Vancouver, wanted to move their child
8 into a school in Vancouver. And so what those
9 students experienced ranged from just personally
10 not feeling safe, though not necessarily being
11 exposed to violence or name calling or anything
12 like that, to people who did indeed experience
13 violence and/or verbal harassment on a regular
14 basis. So they could take a variety of forms.

15 Q Okay. So fair to say there is -- there is no gap
16 in your knowledge and experience with, let's say,
17 anti-gay speech as there would be with anti-trans
18 speech? There -- there is no gap there? Like,
19 you dealt with -- with both together the same
20 amounts, maybe even the anti-trans even more? Is
21 that fair?

22 A Well, I would say there is a gap in that I don't
23 have lived experience as a trans person. There
24 are many trans and nonbinary people in my life,
25 but at the end of the day, I don't have their
26 lived experience.

27 Q Okay.

28 A But you are correct in that in the job that I
29 had, there was a mix of both. For example, the
30 training that was done for principals and vice
31 principals and school counsellors in Vancouver
32 back in the -- 2004 or 2005 or so, a lot of that
33 was -- was focussed on the experience of trans
34 youth in schools, making sure that they were
35 safe, how to field questions from those
36 children's parents and support them and support
37 their child as well as handling questions from
38 staff and other families. Making sure that a
39 washroom was available. Practical matters.

40 There had been teachers transitioning
41 genders, employees of the school district, making
42 sure that their rights were respected and that
43 they are -- their workplace experience as
44 employees in the school district were being --
45 was being positive as well. So, yeah, I do have
46 experience in that, but I don't have the lived --
47 I don't have the lived experience. So there is

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1 definitely a gap, and I do have to check myself
2 from time to time or someone will educate me on
3 something that maybe I have -- you know, I've
4 said in a certain way or an assumption I have
5 made, and so I have my own learning and will
6 continue to have my own learning to do.

7 Q So lived experience -- is it fair to say, then,
8 just going on what you said, that lived
9 experience is pretty important?

10 A Absolutely. Yeah. Likewise, with the experience
11 of Indigenous students in the school system or
12 people who are on the receiving end of racism. I
13 have never been on the receiving end of racism.
14 I have been witness to it. I have had to handle
15 it and sort it out when it's involved students.
16 I have seen the impact on people. But I haven't
17 been on the receiving end experience of racism.

18 Q So would you agree with me that the lived
19 experience of one person is sort of equally valid
20 or equally valuable or equally -- equally
21 important as somebody else's lived experience?

22 A Yeah. Everybody's experience is -- it's their
23 experience and their perspective of how -- it
24 shapes how they see the world and how they view
25 themselves and how they feel about themselves and
26 others. Yeah. Absolutely. The decisions they
27 make.

28 Q Do you think it's -- do you think it's possible
29 for those lived experiences to come into conflict
30 with each other?

31 A They do all the time. Absolutely. The same with
32 people from a -- within a religious group or
33 within an ethnic group. You know, these are not
34 monolith populations where everybody's
35 experienced the same thing or has the same belief
36 system on any number of issues.

37 Q Right. So you would agree with me the -- what I
38 am going to call "the LGBTQ community" just
39 because that is a common phraseology that I see,
40 and I am sure you can appreciate I am coming at
41 this from the outside, so, you know, I am going
42 to use that phrase because I just -- I see it a
43 lot.

44 A Yeah. That's fine.

45 Q So you would agree the LGBTQ community is not a
46 monolith?

47 A No. Absolutely not.

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1 Q There is -- there is various different beliefs
2 amongst various different members of the LGBT
3 community. Is that fair?
4 A On every possible metric, for sure.
5 Q Right. So when it comes to their religious
6 beliefs, there might be differences?
7 A Their -- who they vote for --
8 Q [Indiscernible - cross talk].
9 A What they prioritize in their lives. You know...
10 Q What about -- what about beliefs about gender?
11 Would there -- could there be different beliefs
12 amongst one LGBT community member and another
13 about gender?
14 A For sure there are, yes. There are also people
15 within the LGBTQ community that I am sure have
16 deeply entrenched racist views as well or
17 attitudes towards Indigenous people.
18 Q Now, why would you say that? Are you supposing
19 that, or do you have -- do you have direct
20 knowledge of that?
21 A Within every group there is a probably a wide
22 range of views. For sure there is a wide range
23 of views. But, yes, I have heard -- definitely
24 heard people who are -- gay men, for instance,
25 who are very clear that they won't date certain
26 ethnic groups.
27 Q Okay. So you're -- okay. So you would infer
28 from that that there is -- there is -- there is a
29 level of racism amongst, you know, all other, you
30 know, people groups or -- I will just say people
31 groups --
32 A Yeah.
33 Q -- because I think that's...
34 A Racism has not gone away in Canada. That's my
35 point. And there is no -- there is no group that
36 is free from that. And racism, like homophobia,
37 exists in schools.
38 Q Do you think -- do you think religious bigotry
39 still exists in -- now -- and by -- I guess,
40 there is two ways to understand that because
41 there is -- there is what you perceive to be
42 religious bigotry towards you from a religious
43 person who disagrees with you, and then, of
44 course, there is religious bigotry that a
45 religious person might feel like they are
46 receiving. So, you know, feel free to tell me
47 what definition you want to use because I am just

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1 pulling a phrase out.

2 Would you agree with me -- so racism is not
3 dead in Canada. You would agree homophobia is
4 not dead in Canada. Would that be fair?

5 A That would be fair, yeah.

6 Q Transphobia is not dead in Canada?

7 A No, nor is various forms of discrimination and
8 hate directed at any of the protected groups
9 listed under the *B.C. Human Rights Code*.

10 Q So -- let's see if I can come up with a better
11 phrase. Anti-religious belief speech is -- is
12 still a thing in Canada?

13 A Well, it depends what you mean by that. So --
14 yeah. Your earlier -- your earlier comment I
15 would agree with what you said, the -- both
16 forms. But there are those who separate
17 criticism of a belief system versus targeting
18 individuals because of their belief system.

19 Q Right. You would agree with me, then, that it's
20 acceptable to criticize someone's beliefs? It's
21 just not acceptable to criticize the person based
22 on their identity?

23 A I think it might depend on the context. You
24 might have to give me a specific example. I
25 mean, is it fair to criticize, say, some of the
26 laws in the Book of Leviticus and state that
27 those are wildly absurd and not applicable to,
28 like, modern day life or something, sure.
29 Somebody could say that, but that doesn't -- I
30 don't see that the same as sort of saying, You,
31 person of faith, I am going to deny you
32 employment or, like, scratch your car or, like,
33 do violence to you because of your -- your faith
34 or how you identify as a person of faith.

35 Q Right. I guess it's not anti-Semitic to say that
36 Leviticus is just full of terrible, awful, you
37 know, backwards ideas?

38 A I agree.

39 Q You are going to -- please forgive my note
40 taking. I am not the fastest at it. So any
41 time -- I know you can't really tell what I am
42 doing, but often times when I am looking down, I
43 am just taking notes.

44 So I will just give another example. So
45 let's say someone criticizes a verse in the
46 Quran -- and here I am not familiar. You know, I
47 know Leviticus is a part of the Old Testament. I

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1 think we all know that. The Quran I am a little
 2 less familiar with, so I will just say verse. I
 3 don't know if there is books in it.

4 But let's say somebody criticizes a verse in
 5 the Quran. You would agree with me that's not
 6 Islamophobia?

7 A If by "Islamophobia" it's -- yeah. They are not
 8 attacking a person or a group of people. I mean,
 9 as far as I am aware, we don't have laws in
 10 Canada protect -- that say that criticism of a --
 11 of a belief system is...

12 Q Yeah. Blasphemy laws. We have no blasphemy
 13 laws?

14 A No.

15 Q Right. And it would be bad if we did insofar as
 16 it would -- it would hinder free speech. Would
 17 you agree with that?

18 A It would be problematic, and it is good that
 19 those laws were removed. And within --

20 Q Right.

21 A -- the context of BC's school system, the *School*
 22 *Act* states that schools are secular and
 23 nonsectarian, so...

24 Q Right. And you would agree with me it's
 25 important in the school system to allow
 26 criticism, critique, expressed opposition to the
 27 ideas and beliefs -- you know, the various
 28 religious and ideological beliefs that are out
 29 there? It's -- you would agree with me it's good
 30 that, you know -- you know, obviously provided
 31 it's the right context. Maybe not necessarily in
 32 the middle of math class. But let's say
 33 generally when it's in social studies for -- I
 34 think you used that example. In social studies
 35 you would agree with me it's good that kids feel
 36 free and safe to be able to -- to be able to
 37 criticize or oppose an ideology or belief system?

38 A No, not necessarily.

39 Q Not necessarily?

40 A I wouldn't -- I wouldn't go as far to sort of,
 41 like, make a blanket statement like that.

42 Q Okay. Okay.

43 A I mean, there's questions of age appropriateness,
 44 does this relate to the B.C. curriculum or not,
 45 how it's done, the onus on the school system
 46 to -- to maintain safe space for students. The
 47 onus on school districts as employers to maintain

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1 safe and discrimination-free environments for
2 it's employees. So, yeah, I wouldn't -- I
3 wouldn't agree with that particular blank --
4 blanket statement.

5 Q Okay. Okay. It depends on the context?
6 A Depends on -- on the context. I mean --
7 Q Right. So it --
8 A -- there is no --
9 Q -- it might not be appropriate for a Grade 3
10 classroom? I mean, again, depends on the
11 context.

12 A You would have to give me -- you would give me a
13 specific -- I mean, there are --
14 Q Well, I mean, let's say we're doing --
15 A -- world religion -- comparative religion courses
16 that exist in some school districts. Critical
17 thinking is woven throughout the B.C. curriculum
18 at different grade levels, so there would be a
19 number of variables that have to be weighed
20 including, you know, age appropriateness and the
21 audience and -- and what's being -- what's being
22 said.

23 Q Right. I think we --
24 A I can't -- I can picture a Grade 3 classroom
25 where people are going to pick apart the Book of
26 Leviticus, for example. But I have had Grade 7s
27 express views like, Abortion is bad, or something
28 like that. And that's --

29 Q Right.
30 A -- that's their -- their view, and that's the --
31 the view of the -- how -- of the family at home.
32 And so in -- in a modern public education system,
33 there's many instances where we can expect that
34 the -- you know, the values and conversations at
35 home will come into -- into a classroom, and
36 sometimes the views expressed will be in tension
37 with one another, or it may depart from what is
38 taught under the B.C. curriculum.

39 Q Right. Like, so, for example, in Grade 7 you
40 might get -- you might get two girls. One says
41 she is -- she is pro-choice. The other says she
42 is pro-life, and there is a bit of a debate. I
43 mean, they are not -- you know, they are not
44 screaming and yelling and calling each other
45 names. They are just debating each other's
46 ideas. That might happen. Probably pretty rare
47 in a Grade 7 classroom, but it might happen.

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1 A It might happen.
2 Q You teach elementary school; is that right?
3 A Correct, yes.
4 Q So the grades that you were -- that you
5 generally -- what are the grades that you
6 generally have taught over your career?
7 A Over my career I have -- I have taught them all
8 except for kindergarten.
9 Q Oh, okay.
10 A Predominantly -- predominantly I have worked with
11 what we call "intermediate students," so Grade 4,
12 5, 6, and 7.
13 Q Okay. 4, 5, 6, 7. So --
14 A Yeah.
15 Q -- older --
16 A I have taught --
17 Q -- elementary, I guess?
18 A Yeah. I have done it all except for
19 kindergarten.
20 Q So you have done a little bit of high school?
21 A Yes.
22 Q So if we are talking a Grade 11 social studies
23 class, you know, it would be -- it would be
24 appropriate to -- again, you know, obviously if
25 it's on topic. Okay? I am sort of assuming it's
26 on topic. We are just not randomly discussing
27 this. But it's on topic. We are going through
28 ancient history or we're going through religions
29 or world religions or whatever, different
30 cultures at different times, whatever. Something
31 like that in a Social Studies 11 class. Would it
32 be appropriate and acceptable for somebody to
33 pipe up and -- and criticize, you know, ancient
34 Jewish beliefs, to use the Leviticus example. I
35 call them ancient -- I mean, some obviously
36 ultra-Orthodox Jews still follow those beliefs
37 today, but we will just call them more ancient
38 beliefs. It would be fair -- it would be fair to
39 criticize that?
40 A Potentially. Again, it depends on how it is
41 done, it's relevance, whether that person's
42 making a connection to current people or
43 something like that. Like, let's say how women,
44 perhaps, were treated in the ancient civilization
45 that was being discussed, and perhaps the
46 treatment of woman was tied to a religious belief
47 system at that time. And it may be, perhaps,

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1 that religious belief system extends into the
2 present day as well. But it may be perfectly
3 fine for that conversation to happen. But there
4 may also be a point where it crosses the line,
5 and so that's the --
6 Q Well --
7 A -- the teacher's role in that class to kind of
8 keep things on track.
9 Q Right. And to go back to what you said, you
10 said -- you said -- you used the word "separate."
11 You said we have got to separate the criticism of
12 a belief system from criticizing the people
13 themselves. You would agree with me you said
14 something very close to that?
15 A Are we talking about -- what are we talking
16 about? Sorry. Can you say that again.
17 Q I am just reading back to you your answer because
18 I've got it --
19 A Yeah.
20 Q -- written down here. You said we -- you said we
21 need separate the criticism of a belief system
22 from criticism of -- I think you said the people
23 or the individuals.
24 A Generally, yes. Yeah.
25 Q Yeah. Okay. Okay. Well -- so --
26 A If we're -- if we are talking about just, like,
27 a -- like, a student, absolutely, or a general
28 member of the public.
29 Q Well, I suppose obviously [indiscernible - cross
30 talk] --
31 A There's a different threshold, for example --
32 Q Yeah.
33 A -- for people who work in the system, within the
34 education system. We are -- we are subject to a
35 higher standard in terms of -- like, I might have
36 a deeply held personal view on something that may
37 be connected to a religious belief, but some of
38 those I may not be able to bring into the
39 classroom. And sometimes the Teacher Regulation
40 Branch here deals with situation like that,
41 like -- [indiscernible - cross talk] --
42 Q What do you -- what do you mean by "bring into
43 the classroom"? What does that mean?
44 A Well, let's say, for example, I was somebody who
45 because of my belief system felt that gay and
46 lesbian people were, you know, morally wrong,
47 that their lifestyle, to use that term --

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1 Q Is sinful?
2 A -- is objectionable, a sin --
3 Q Yes.
4 A -- I would not be able to express that view in a
5 classroom. In fact, my -- if I did, my employer
6 would probably intervene and act on that, and I
7 would probably run afoul of --
8 Q Even if that was a religious belief?
9 A -- [indiscernible - cross talk] branch.
10 Q Even if that was your religious belief, you are
11 not allowed to express it?
12 A Correct. That is -- that's how that works in
13 this province, yes.
14 Q And even if that religious belief was based in
15 Judaism or Islam?
16 A Correct. Yeah.
17 Q Not just -- not just Christianity?
18 A Correct.
19 Q Okay. Okay. So -- so --
20 A I am sure *Kempling v. College of Teachers* will --
21 you will come across that at some point.
22 Q I am sure I could educate myself.
23 So if a -- so if a -- we are -- we are in
24 Grade 11 or 12 social studies, and, you know, a
25 Jewish student says -- I don't think they tend to
26 use the word -- well, no. I do think they use
27 the word "sin." Maybe as not as much as
28 Christians, but I think the word comes up.
29 So let's say they were to say, Well, it's --
30 it's -- you know, I believe as a Jewish person
31 that it's sinful for a man and a man to have sex.
32 Would that be permissible, or would they -- would
33 that person be sort of, you know, cautioned or
34 reprimanded?
35 A I am -- I am not aware of students being
36 reprimanded for that or a -- or a comment of that
37 nature.
38 Q But is it permissible for students to say that?
39 A I am not aware of a prohibition of the kind of...
40 Q Okay. But it's impermissible for a -- for a
41 Jewish or a Muslim teacher to say, you know,
42 Well, you know, there's different beliefs about
43 these things, and, you know, for example, my
44 religious belief is that it's -- it's immoral or
45 sinful for two woman to have sex. If that was --
46 if that was said -- again, I am talking in
47 context. Okay. I am not talking -- again,

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1 everything we are doing is sort in context. It's
2 not random while we are talking about math class.
3 It's in the context of a social studies class in
4 which this has come up.

5 If a teacher says that -- a teacher says,
6 Well, you know, in my faith, you know, my -- my
7 particular religious belief system as a Muslim or
8 a Jew or a Sikh or a Christian is that it's
9 immoral or sinful for two women to have sex. If
10 they said that in the classroom as part of the
11 discussion, that would be impermissible?

12 A Correct.

13 CNSL L. WADDELL: And -- sorry -- I just want to
14 confirm, as you ask these, Mr. Kitchen, you are
15 asking for the witness's views about whether he
16 think it's permissible or not? Not asking for a,
17 you know --

18 CNSL J. KITCHEN: Yes. Yes, Ms. Waddell --

19 CNSL L. WADDELL: -- a legal [indiscernible - cross
20 talk] --

21 CNSL J. KITCHEN: -- I am. That's -- that hasn't
22 changed.

23 CNSL L. WADDELL: Okay.

24 CNSL J. KITCHEN: Okay.

25 CNSL L. WADDELL: Yeah. Thanks.

26 A In my view, that would not be permissible.

27 CNSL J. KITCHEN:

28 Q But it would be permissible to criticize the
29 Islamic belief system that women should not do
30 certain things that men do? Let's get a little
31 bit more specific. In -- there is a Jewish
32 belief, for example, that the testimony of a
33 woman needs to be corroborated by the testimony
34 of a man. If somebody was to criticize that
35 belief and to say, Well, I believe that we
36 should -- you know, we should believe women
37 without -- without anything from a man, and
38 that -- you know, and that's -- that's a terrible
39 belief that the Jews -- or that some Jews hold
40 that, you know, the testimony of a woman cannot
41 be valid without validation from a man. I think
42 that's -- I think that's immoral. I think that's
43 wrong. That's permitted? If a teacher said
44 that, that would be permitted?

45 A Again, it's going to depend on the context, but
46 in general the onus on the school system and us
47 teachers as employees, we have to the err on the

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1 side of nondiscrimination regardless of what our
 2 personal belief system is. And --
 3 Q So it would be -- it would be anti-Semitism or
 4 religious discrimination towards Jews to suggest
 5 that their -- their belief -- some -- that --
 6 that the Jewish belief that some Jews hold, that
 7 the testimony of a woman has to be corroborated
 8 by a man, you would say that's -- again, this is
 9 in your view speaking as a teacher. Okay? This
 10 is why I established your experience because we
 11 are not trying to get your opinion. We are just
 12 trying to get your views as a teacher. You would
 13 say, you know, that's -- that's unacceptable and
 14 probably crosses the line with the Code?
 15 A Not necessarily, no. And I don't think that's
 16 necessarily my view.
 17 Q Okay. So it -- depending on the context, it may
 18 be acceptable for someone to say, you know, Look.
 19 I don't believe that. I think -- I think that's
 20 an immoral belief that some -- that Jewish belief
 21 that a woman needs a corroboration from a man to
 22 be believed. I think -- you know, I think that
 23 belief is immoral, and I disagree with that
 24 belief. It would be okay -- in some contexts it
 25 would be okay for a teacher to say that?
 26 A Actually I don't think anyone would say it that
 27 way or anything like that, but I think it would
 28 be -- I would expect that there probably are
 29 people who say that they -- the death penalty is
 30 not something that is appropriate or that women
 31 in all contexts should have equal rights to
 32 access and decision making and employment as men,
 33 and any number of things like that.
 34 Q Right. And it wouldn't be Islamophobic to say
 35 that belief even though there's a lot of --
 36 there's a lot of Islamic beliefs around women not
 37 being able to do those types of things?
 38 A It's going to depend on the context.
 39 Q Right. Yes. No. Of course.
 40 But to some degree, we would expect a Muslim
 41 student to tolerate open criticism in the -- in
 42 the right context in the classroom of beliefs he
 43 himself may hold or she herself?
 44 A I think the same would be true of any number of
 45 people, yeah. There is many, many instances
 46 where the values of an individual student or the
 47 values that their family might share may -- may

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1 differ from what is taught in BC's secular and
 2 nonsectarian school system.
 3 Q So depending on the context, there may be times
 4 in which it's expected for -- for people to
 5 tolerate criticism of ideas that they
 6 themselves -- beliefs that they themselves hold?
 7 A That -- that happens all the time, but it's going
 8 to depend also on a person's role. So it's one
 9 thing if a student is saying something and how
 10 that is dealt with. It depends on the context,
 11 whether there is a pattern, you know, intent, all
 12 those things. It's a different matter if it's an
 13 employee of the school district given --
 14 Q Right. Yeah. Context matters. You would agree
 15 with me that students -- we let students say more
 16 than we let teachers say?
 17 A Yes. Yeah. There is a different standard for
 18 employees of a school district than the students
 19 themselves.
 20 Q But when it comes to -- and I am just going to,
 21 you know, focus pretty narrowly here. When it
 22 comes to -- to give your example, when it comes
 23 to gay people, there is absolutely no tolerance
 24 for criticism of their beliefs?
 25 A Of gay people's beliefs? I am not -- I am not
 26 sure what you mean by "gay people's beliefs."
 27 Q Well, the example you had is that somebody said,
 28 you know, I believe it's immoral or sinful for --
 29 for men to have sex with men and women to have
 30 sex with women. You would say -- you said it's
 31 not permissible for someone to express that
 32 belief?
 33 A No. I said it would be -- that wouldn't be
 34 permissible for an employee of the school
 35 district to say that. So a teacher, that
 36 wouldn't be permissible in the school
 37 environment. Or in --
 38 Q Right. So it's -- it's --
 39 A -- any way connected to their role --
 40 Q -- it's in -- right.
 41 A -- as a teacher.
 42 Q But it is -- it is permissible for -- for a gay
 43 person to say, I think it's perfectly moral
 44 for -- for me to have sex with somebody of the
 45 same-sex. It's okay for them to say that; right?
 46 A I can't see a teacher -- I'm not sure how that
 47 would come up in a classroom.

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1 Q You don't -- you don't think a lesbian teacher
2 has ever said, Look. I think it's -- I think
3 it's perfectly acceptable that I have sex with
4 my -- with my same-sex partner?
5 A Generally teachers wouldn't be talking about
6 their personal sex lives.
7 Q Okay.
8 A That would open up another set of issues. But if
9 you are talking about someone, like --
10 Q Well -- okay. But --
11 A -- being open as a lesbian in the classroom --
12 Q Yeah. Is it not --
13 A -- any more than, like -- let's say a male
14 teacher makes reference to his wife. It could be
15 that students assume that that male teacher and
16 his wife might be having sex at some point, but
17 it wouldn't be appropriate for that male teacher
18 to be talking about the fact that he has sex with
19 his wife.
20 Q Right. It's -- it's implied. So -- so fair to
21 say that if someone -- someone identifies as
22 lesbian and then also, as we just do as people,
23 happen to refer to her wife or her spouse or her
24 partner, you know, meanwhile -- not necessarily
25 wife. That term probably isn't used much.
26 But she openly identifies as a lesbian.
27 Everybody -- everybody understands that. She is
28 very open about it. She is proud of it. And --
29 and then, you know, she happens to mention her
30 spouse or partner -- you know, most of us -- most
31 of us most of the time as adults tend to have a
32 partner or a spouse -- that, you know, it's --
33 it's implied that, okay, they have a conjugal
34 relationship. You know, they're not -- they're
35 not just besties. They have a conjugal
36 relationship.
37 So it's permissible for them to say that, I
38 think it's perfectly moral and morally acceptable
39 for me to be lesbian. If they said that, that
40 would be -- that would be okay? I mean, you
41 would agree with me that that -- that is said at
42 times?
43 A Yeah. That's -- that's fine, yes.
44 Q Yeah.
45 A That's who they are.
46 Q Right. But if -- if -- if another teacher just
47 said -- and track with me on this. I am not

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1 talking about somebody who goes up and says,
 2 Well, I think you are bleepity bleep bleep
 3 because of this. You know, and there's --
 4 there's this big sort of attack on the person and
 5 somebody is just being a jerk.

6 I am talking -- I am talking somebody -- and
 7 let's -- and I am going to use this example
 8 because I have literally dealt with this in my
 9 practice. Okay? Let's say a new Nigerian
 10 teacher walks in the room, and she happens to
 11 innocently say, Oh. Okay. Well, you know, as
 12 a -- as a Christian, I think that that's --
 13 that's immoral and sinful. You know, that's --
 14 that's my belief system. And she just -- she
 15 just says it. Okay? And track with me because
 16 this is not -- I don't think -- I don't think
 17 this is an outlandish example. This is -- this
 18 is how a lot of Nigerian Christians talk. I deal
 19 with this in my practice.

20 Let's say that happens. Is that -- is that
 21 an acceptable expression of that person's
 22 beliefs, or is it -- is it impermissible?

23 A It will depend on the context, but it could bump
 24 up against her obligations under her collective
 25 agreement and also the --

26 Q Because she has obligations --

27 A -- standard to --

28 Q -- to never criticize the ideas and beliefs of
 29 LGBT people; is that right?

30 A No. That's --

31 CNSL L. WADDELL: I am just going to -- I am just
 32 going interject. Mr. Kitchen -- or, rather, the
 33 panel, I would ask Mr. Kitchen to let the witness
 34 be permitted to respond. He has been interrupted
 35 on a number of occasions. I appreciate we are
 36 using an online platform. Sometimes it's
 37 difficult to avoid that. But Mr. Hansman wasn't
 38 finished his answer there when Mr. Kitchen
 39 interrupted.

40 THE CHAIR: Thank you. Mr. Hansman, do you want to
 41 complete your answer?

42 A Sure. The -- in this hypothetical example, it
 43 may depend whether this was a first time or a
 44 repeated thing, but that individual could be
 45 running afoul of the nondiscrimination clause in
 46 teachers collective agreements, her obligations
 47 in the standards for B.C. educators, as set out

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1 by the B.C. Teachers' Council, that any -- anyone
 2 holding a teaching certificate in this province
 3 is beholden to and could be also running afoul of
 4 policies of her employer. So how it's handled by
 5 a school district as employer may depend on
 6 whether this is a first time thing or if it's a
 7 repeated thing, so, yes, context specific.

8 Q But the reason for that -- the reason for that,
 9 you would agree with me, is because the
 10 motivation here is to prevent the expression of
 11 beliefs that are in opposition to LGBT beliefs?

12 A No. Public services in this province, my
 13 understanding, are subject to the requirements of
 14 the *B.C. Human Rights Code*, which contains
 15 protections for a number of people on a number of
 16 protected grounds, ability, sex, age, gender
 17 identity, a number of things.

18 And similarly, school districts have
 19 policies that talk about nondiscrimination in the
 20 school districts' publications to maintain
 21 discrimination-free environments. Collective
 22 agreements, including teachers' collective
 23 agreements, have clauses that relate to that as
 24 well and --

25 Q Right. And I -- look. I --

26 A -- most [indiscernible - cross talk] --

27 Q -- I appreciate that.

28 THE CHAIR: Sorry, sorry. We're just -- we are
 29 running up against the issue again of
 30 [indiscernible - cross talk] --

31 CNSL J. KITCHEN: Now, hold on. Look. The -- there
 32 has got to be some back and forth here because
 33 the witness is going to keep repeating himself
 34 apparently to the point where we run out of time.
 35 So I am not looking to interrupt him just for the
 36 sake of being a jerk and interrupt him or because
 37 he is saying something I don't like.

38 But at some point, we get the same
 39 repetitive answer, and we run the clock, and then
 40 I can't -- I can't get an answer that's actually
 41 responsive to my question. So we've got two
 42 problems. One, he is repeating himself. Two,
 43 this isn't responsive to my question. So there
 44 needs to be some back and forth here.

45 THE CHAIR: Go ahead, Ms. Waddell.

46 CNSL L. WADDELL: I was simply going to say your point
 47 has no bearing on -- on whether you are entitled

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1 to interrupt the witness or not. And I would
 2 note that you are asking very similar questions
 3 that are all hypothetical, and so, yes, the
 4 witness's answers are consistent to most, which
 5 is that it's context specific. Anyway, I leave
 6 that with the Tribunal to...

7 THE CHAIR: From my perspective, the answers are
 8 responsive to the questions. If there is some
 9 repetition in the answers, it may reflect
 10 repetition in the questions from a different -- a
 11 slightly different angle, so I think it's fair to
 12 let the witness finish his answer, and then you
 13 can go on to your next question, Mr. Kitchen.

14 Mr. Hansman, was there anything...

15 A Only that the fourth layer would be probably the
 16 most crucial one, the standards for B.C.
 17 educators.

18 CNSL J. KITCHEN:

19 Q I am -- I am not trying to be difficult with you.
 20 What I am trying to get at is the motivation or
 21 the underlying purpose or the underlying
 22 objective or -- or the goal of all of that is
 23 to -- let's -- okay. Let's put it this way.
 24 Maybe not the goal. Maybe it is. Maybe it's
 25 not. But let's talk about effect.

26 The effect of applying and implementing
 27 these policies, collective agreements, codes,
 28 laws, regulations is to prevent people expressing
 29 their beliefs if those beliefs are in opposition
 30 to LGBT beliefs. Is that not the effect of all
 31 these things that you are talking about?

32 A I'm not sure by what you mean by "LGBT belief."

33 Q Would --

34 A But --

35 Q Okay. No. And I -- and I take that, but let me
 36 ask you this just to help this out a little bit.
 37 Would you characterize it to be an anti-LGBT
 38 belief for someone to believe that it's immoral
 39 or sinful for men to have sex with men or for
 40 women to have sex with women?

41 A There are many people who hold that view. The
 42 issue is where that view intersects with the
 43 deliveries -- delivery of services within a
 44 school system and the obligation on the school
 45 system to maintain safe and inclusive spaces for
 46 students and the obligations of school districts
 47 as employers to maintain safe and

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1 discrimination-free environments for --
2 Q And I get all that.
3 A [Indiscernible - cross talk] --
4 Q Yeah. I get all that, you know, but that's not
5 answering the question.
6 A I believe I've answered the question.
7 Q Well, of course you do. You would say there is
8 no such thing as LGBT beliefs?
9 A LGBTQ folk are not monolithic. I think we had
10 this conversation earlier.
11 Q Right. They share different beliefs about
12 gender, for example. You agreed with that. So
13 let's talk a little bit more about gender, then.
14 You would agree with me that at least some
15 people who identify as transgender believe that
16 they can -- they can identify as -- as different
17 genders. You know, from one point in their life
18 to another point in their life, they can identify
19 as one gender and then -- and then change to
20 identify as a different gender. You would agree
21 with me that some -- at least some transgender
22 people believe that?
23 A Yes.
24 Q And you would agree with me that there's plenty
25 of non-transgender people that also believe that?
26 A Yes.
27 Q Is it -- is it -- would you agree with me it's
28 fair to call that the belief that you -- that a
29 person can change their gender? Is that fair?
30 A Yes. Or as some would -- some trans folk in my
31 life have described it, they are -- they are
32 becoming the gender that they were all along, but
33 they were mislabelled previously. But, again,
34 it's going to depend on the individual.
35 Q And you would agree with me there is some people,
36 whether trans or not, that believe that there are
37 more than two genders?
38 A I have known people my entire life that don't use
39 "he" or "her" or have transitioned, so yes. I
40 have students who use "they/them" or different
41 pronouns. Friends, coworkers, people in my life
42 who do as well. So yes, people exist and live
43 their lives who aren't -- who don't identify as
44 female or male. And in this country and this
45 province currently, even on birth certificates X
46 marker can be used on birth certificates,
47 passports, so -- yeah. It's the current law in

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1 Canada.

2 Q And you would agree with me that some people,
 3 both trans and non-trans, believe that people can
 4 identify as a gender that is different from their
 5 sex?

6 A Depending how you, you know, define those terms.
 7 What I would say is that there are people who may
 8 have been identified by a doctors or parents at
 9 birth as one gender, one [indiscernible - audio
 10 distortion] -- pronouns and perhaps a name that
 11 might traditionally go along with those pronouns
 12 that later on in life at some point decide to
 13 live differently than they had up until that
 14 point.

15 Q You said something about "identified." I've
 16 sometimes heard the phrase "assigned" --
 17 "assigned at birth." Sex assigned at birth. Is
 18 that -- is that what you are referring to?

19 A Yes. Let's say, you know, baby's born, and based
 20 on how the doctor or the parents -- whatever is
 21 assigned to them at birth. So it's a terminology
 22 that some people use that you are referring to,
 23 yeah.

24 Q So do you believe sex is a thing that just is
 25 when the baby comes out of its mother's womb, or
 26 do you think it's something that is arbitrarily
 27 assigned?

28 A Well, the terms "sex" and "gender" continue to
 29 evolve over time as well.

30 Q Okay. So "sex" doesn't have a -- like, a --
 31 like, a fit -- like, a -- like, a set definition?
 32 It's -- it's --

33 A Well, this is human -- human terminology in
 34 English that continues -- continues to change.

35 Q Right. When I say "sex," I mean, I don't mean
 36 sexual intercourse. I am talking sex in the --
 37 in the sense of, like, identifying, you know, the
 38 sex of -- of, you know, We got -- We got, you
 39 know, two parakeets, and we got to -- we got to
 40 decide if it's a -- you know, if it's a -- if we
 41 have a male and a female, because we want to
 42 take -- we want to create more parakeets or
 43 something. I am talking about it in that sense.

44 You would -- you would say that people --
 45 you don't -- you don't believe people are -- are
 46 just born with a -- with an innate physical
 47 biological sex, but rather that it's something

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Glen Hansman (for Complainant)
Cross-exam by Cnsl J. Kitchen

1 that's imposed upon -- imposed upon them?

2 A That's not how I would describe it.

3 Q Okay.

4 A I -- I would say that generally, to use your
5 assigned at birth example, that generally when
6 the children are born, if the doctor sees a
7 vulva, female will probably be what shows up on
8 the birth certificate. And if the doctor or
9 parents see that there is a penis and testicles,
10 it will probably be male that is put on the birth
11 certificate. But life is more complicated than
12 that.

13 And regardless of how someone is identified
14 at birth by the doctors or parents, some people
15 later on at some stage begin using different
16 pronouns, now view themselves as a gender
17 different than what had been assigned to them.
18 And currently in Canada, some people are born
19 with X on their birth certificate and may not --
20 and may stay with that. We'll see. Or go with
21 something else over time or --

22 Q Okay.

23 A -- likewise -- it's really going to depend on the
24 person. And under the laws currently in Canada,
25 as I understand them, that is permitted and
26 recognized.

27 Q So you believe that when a -- when a baby is born
28 with a penis and testicles -- and, again, you
29 know, putting -- putting aside -- obviously there
30 are intersex people. They're -- they're -- you
31 know, they are physically biologically ambiguous
32 because of some defect. Okay. Genetic or
33 otherwise.

34 So putting -- putting that aside, you
35 would -- you would -- you believe that when a
36 baby is born with, you know, fully intact typical
37 or regular genitalia and -- and hormones and
38 chromosomes and -- and all that, that -- that
39 any -- any one of these -- any one of these --
40 any one of these, you know, male babies that are
41 born with a -- with a penis and testicles may --
42 may actually, in fact, be -- like, their gender
43 may be woman. Or their gender may not -- not be
44 man, let's put it that way. Be a little more
45 inclusive, I guess. Their gender may not -- may
46 not be man or boy?

47 A I think I have already answered this. I

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1 described what generally happens, my
2 understanding is what generally happens. I am
3 not a medical professional, so I have never been
4 in a delivery room, but trans and nonbinary
5 people exist. They exist in our school system,
6 and we as a school system have the obligation to
7 ensure safe and inclusive spaces for them.

8 Q What do you --

9 A [Indiscernible - cross talk] --

10 Q -- mean by that, "exist"? Help me understand
11 that.

12 A We have trans and nonbinary students in schools.
13 There are trans and nonbinary --

14 Q No. I know that, but what --

15 A -- employees in the school system. So that's
16 what I mean --

17 Q What is --

18 A -- by "exist." They are there just as we have
19 Indigenous students in our school. Just as we
20 have students with red hair or brown hair in our
21 schools --

22 Q Well, and freckles --

23 A -- so that's --

24 Q -- and ones --

25 A There are --

26 Q -- who are white --

27 A [Indiscernible - cross talk] --

28 Q -- and ones that are short and --

29 A [Indiscernible - cross talk] --

30 Q Yeah. Like, we have -- we have humans.

31 A Yeah.

32 Q I mean, every -- every person is one human person
33 in our school, and they have all types of
34 characteristics. I mean, everybody -- everybody
35 exists in the physical world if they have a body.
36 You would agree with that; right?

37 A Mm-hmm.

38 Q Okay. So I just want to understand what -- you
39 know, because I have heard this phraseology
40 before, this idea that trans people exist --
41 well, of course they do because they are people,
42 so every person exists. So I don't -- I don't --
43 I don't -- like, is there -- I don't
44 understand --

45 A I can --

46 Q -- what is going on.

47 A -- clarify for you. Sure. I will clarify for

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1 you.

2 There are students enrolled in British
 3 Columbia public schools who are transgender and
 4 nonbinary. Likewise, school districts have
 5 employees who are transgender and nonbinary.
 6 School districts also have employees who are
 7 lesbian and gay and bisexual. School districts
 8 also have employees that come from any number of
 9 the groups that are identified --

10 Q Under the human rights --

11 A [Indiscernible - cross talk] -- as being a
 12 protected characteristic. So that's what I mean
 13 by "exist." They are there. They are enrolled
 14 or they are employees, and there are certain
 15 obligations of the school system for them.

16 Q Right. And I suppose that goes without saying.
 17 But -- because everybody is there. When you say
 18 that a transgender student exists, do you mean by
 19 that -- or transgender students -- let's go --
 20 let's go plural.

21 When you say that transgender students
 22 exist, is it fair to say that what you mean by
 23 that is that there are -- there are, you know,
 24 biological girls that identify as boys and
 25 biological boys that identify as girls, and
 26 regardless of what their biology is, they
 27 identify as something else all together? You
 28 would say there's -- there's -- there's students,
 29 teachers -- students and teachers who identify as
 30 a gender that is different than their sex?

31 A I think I answered this. I have said that there
 32 are trans and nonbinary students who are enrolled
 33 in the school system --

34 Q No. No. I am trying --

35 A -- what is --

36 Q I am trying to --

37 A -- what is --

38 Q -- ask what the definition is.

39 A I am trying to answer your question, sir.

40 Q Well, no. You just --

41 A What is --

42 Q -- keep -- you just keep giving me the same legal
 43 stuff over -- I get it. I am not -- I am not
 44 here to debate with you whether or not the *Human*
 45 *Rights Code* exists or it should exist. I want to
 46 get your understanding -- your non-legal
 47 understanding, because, first of all, you are not

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Submissions by Cnsl L. Waddell

1 a lawyer, so that's not helpful to any of us.
2 And normally my friend would pipe up and say, He
3 can't give legal opinion. You shouldn't be
4 asking for it anyways.

5 I want -- I want your thoughts as a person
6 who knows a fair amount about this. That's what
7 I am looking for. Not this repetition of the
8 Code says this, the Code says -- that's not
9 helpful.

10 THE CHAIR: Okay. Just a moment. Ms. Waddell, go
11 ahead.

12 CNSL L. WADDELL: I was just going to suggest perhaps
13 that we exclude the witness for a moment to -- to
14 discuss how to resolve this.

15 THE CHAIR: All right. Mr. Hansman, I am going to
16 disconnect you from the meeting. As soon as I do
17 this, please click on the link to rejoin. This
18 should put you in the lobby, and then I will
19 re-admit you when -- when the objection is
20 resolved. All right? So I will remove you from
21 the meeting and then click to rejoin and that
22 should bring you back into the lobby. Just bear
23 with me for a moment while I find all the
24 buttons. Okay. I am going to remove you now.

25
26 (WITNESS STOOD DOWN)

27
28 THE CHAIR: All right. Go ahead, Ms. Waddell.

29
30 SUBMISSIONS BY CNSL L. WADDELL:

31
32 CNSL L. WADDELL: Sure. I -- I don't have an
33 objection, per se, beyond the -- he is
34 interrupting the witness again and -- and now
35 arguing with the witness. But I have let this
36 subject matter go for quite some time. I'm not
37 sure of its relevance.

38 I appreciate in a cross-examination you can
39 take a very broad approach to relevance, so I
40 am -- you know, Mr. Kitchen, you may be able to
41 persuade me, but I -- I am going to offer the
42 observation that your questions are very, very
43 long. And -- and so you are getting -- from my
44 perspective, you are getting answers that are
45 long. And it -- maybe you are going some place,
46 but the witness does not understand because
47 you're -- you're not asking short, clear

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Submissions by Cnsl J. Kitchen

1 questions.

2 So anyway, I -- I -- I want the -- I want
3 the interrupting of the witness to stop, and I
4 want Mr. Kitchen to be able to wrap up his -- his
5 cross-examination, and if there is relevance to
6 this line of questioning, I am all for it. But
7 I'm not sure what the witness's personal belief
8 system -- what the relevance of that is to this
9 proceeding.

10 THE CHAIR: Thank you. Mr. Kitchen, can you help me
11 with the relevance of this line of questioning
12 about Mr. Hansman's beliefs and understandings of
13 gender and sex and so on. I mean, what does his
14 understanding of these topics contribute to the
15 issues that we have to decide?

16
17 SUBMISSIONS BY CNSL J. KITCHEN:

18
19 CNSL J. KITCHEN: Well, while he is no expert, he is
20 someone with significant knowledge of these
21 topics and issues. And, you know, I -- I can
22 only guess that he is the only witness that has,
23 you know, what I would say, just on the face of
24 it, is a deep knowledge and experience with
25 SOGI 123 and all the beliefs underlying it,
26 and -- and, you know, dealing with, you know,
27 what he would call "antidiscrimination" in the
28 schools. He has got, it seems like, two decades
29 worth of experience on that, you know, as a
30 teacher and as a union guy and as the guy who
31 promoted SOGI. And so it seems to me that he
32 is -- he is the best witness the complainants
33 have for speaking to this stuff.

34 Presumably I am not going to be able to fairly
35 cross-examine the teachers -- the teacher
36 witnesses on this stuff as much. I don't really
37 know much about them. The will-says are very
38 vague of course. But -- but that's -- so that's
39 part of the reason why I am going down --
40 because, of course, I have -- I have to ask these
41 questions, and -- and I think Mr. Neufeld [sic]
42 is the best suited to answer them.

43 So -- and -- and -- he is not struggling
44 with -- with understanding my questions. You
45 know, lately his responses have been, Well, I
46 have already answered that, and then he just
47 gives -- feeds me the same stuff about the

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Submissions by Cnsl J. Kitchen

1 protections and the codes and the
2 antidiscrimination and -- which is fine. I
3 understand that that's a rhetorical tool, and I
4 don't actually think it's necessarily bad for
5 witnesses to employ those rhetorical tools;
6 right? That's -- you know, it's what -- what
7 witnesses get coached to do. I get that. Okay.
8 But at the same time, you know, cross-examining
9 lawyers, they wade through that. That's just --
10 that's just how -- how this adversarial system
11 works.

12 So, you know, if my -- if my witness is
13 going to continue to say, Well, I have already
14 answered that, which is to say, I am not going to
15 answer your question, and then he feeds me an
16 answer to a question he wished I would have
17 asked, you know, three times in the row, well,
18 there is -- you know, the cross examiner's going
19 to say, Okay. Well, look, this is really what I
20 want you to answer. You haven't answered my
21 question.

22 The same thing may come up with my friend.
23 If -- if she gets one of my witnesses that, you
24 know, does the broken record thing and just keeps
25 feeding the rhetoric that they -- that they want
26 to feed. And she needs to wade through that and
27 challenge that and say, Well, look, I need you to
28 answer my question. That's how this works. It's
29 how it should work.

30 And so, you know, I am not interrupting the
31 witness by cutting him off because I don't like
32 him giving any explanation and I just want to get
33 "yes" or "no" answers all the time like in the
34 movies, it's because he is saying the same thing
35 over and over again, and by doing that, evading
36 my -- my actual question. And I think I should
37 have some leeway to do that. I mean, obviously
38 it can get abusive. I understand that. I have
39 seen it be abusive, and I have been the lawyer
40 who is objecting to it. I don't think we are
41 there yet.

42 And, you know, the -- the witness at the --
43 he needs to answer the question. And it's fine.
44 I need to let him answer. I get that. And I
45 have, except for when he is repeating himself
46 over and over again. But he needs to -- he needs
47 to actually answer the question; right?

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Submissions by Cnsl J. Kitchen

1 And -- and, you know, I am not one to go to
2 the Tribunal Chair and say, Well, Chair, can you
3 make the witness answer the question? My
4 approach is to just, you know, deal directly with
5 the witness. I think that's more effective. I
6 could have at this point been like, Well, Chair,
7 I think you need to direct the witness to answer
8 the question because he is not answering the
9 question. He said he has, but he hasn't; right?
10 So that's where we are at.

11 THE CHAIR: Okay. Thank you. But to return to my
12 question, it was about the relevance of
13 Mr. Hansman -- I take all the --

14 CNSL J. KITCHEN: Oh.

15 THE CHAIR: -- everything you said about the
16 difficulty with the witness, sir, but what is the
17 relevance of Mr. Hansman's personal views and
18 understandings of sex, gender, what it is to be
19 trans? I mean, where -- what issue does this
20 relate to in the discrimination analysis?

21 CNSL J. KITCHEN: Well, I hope you were listening to
22 my opening statement, and that's why I changed my
23 mind to -- to give it yesterday so that -- so
24 that everybody was well aware of my theory of the
25 case because I figured that might come up when it
26 comes to relevance.

27 And as I made clear in my opening, the issue
28 in this case is whether or not people are
29 permitted to criticize the beliefs of other
30 people by expressing their beliefs in opposition.
31 Because, as Mr. Hansman quite accurately pointed
32 out, we separate criticism of belief systems from
33 criticism of people who may or may not hold those
34 belief systems. That's how it works. That's how
35 it should work. No one should be exempt of that.
36 Okay? That's my theory of the case.

37 Now, you may -- you may fully disagree with
38 me at the end in your decision. In fact, I would
39 not be surprised if you do. But that's my theory
40 of the case. Okay?

41 THE CHAIR: Okay. But -- sorry --

42 CNSL J. KITCHEN: And so I am --

43 THE CHAIR: Can I --

44 CNSL J. KITCHEN: -- I am -- so --

45 THE CHAIR: I just -- I need you to focus on what I am
46 asking you. What is --

47 CNSL J. KITCHEN: No. No.

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Submissions by Cnsl J. Kitchen

1 THE CHAIR: -- Mr. Hansman's --

2 CNSL J. KITCHEN: Look. I'm not -- I -- I am
3 answering your question.

4 THE CHAIR: Okay.

5 CNSL J. KITCHEN: It's relevant because who is better
6 suited to talk about these beliefs? He -- he
7 indirectly identified that, you know, he has
8 lived experience as a gay man but not as a trans
9 person, but he has knowledge -- direct knowledge
10 about both; right? I think that's -- I think
11 that's fair; right? And, look, maybe -- I
12 don't -- I don't really know anything about these
13 teachers. Maybe I am going to get a teacher who
14 identifies as trans, and I can start asking them
15 about their trans beliefs, and so we will -- we
16 will go through this again, and, again, it would
17 be fair.

18 But I think it's fair to ask Mr. Hansman
19 because he was so instrumental behind SOGI, and
20 he has been so involved in this in his career. I
21 mean -- so he is a good witness to be able to
22 explore these belief systems with. And he has
23 been able to answer -- you know, when he wants
24 to, he has been able to answer the questions
25 quite well.

26 So, yes, what he believes about this matters
27 because -- no. While he cannot speak for other
28 people, he can speak from a -- from a place of
29 knowledge about beliefs -- about -- about LGBT
30 beliefs, and he has been. And that needs to be
31 explored in this case; right?

32 Because we're -- again, going back to what I
33 said -- we are not dealing with Mr. Neufeld who
34 said, you know, Well, you know, I am not going to
35 use your pronoun, or, you know, I think -- I
36 think trans people shouldn't be teachers because
37 they are terrible people. These aren't the types
38 of statements that we had in this -- by the way
39 if we did, we wouldn't be here probably. Okay?
40 Right? We had statements that were him
41 expressing his beliefs that were in opposition to
42 trans beliefs. Okay?

43 Now, I understand my friend is going to say
44 well, No. No. No. These aren't beliefs. This
45 is just their identity. I get that. That's the
46 legal issue, though, that needs to be hashed out
47 in this case. Okay? That's where I am going

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Reply submissions by Cnsl L. Waddell

1 with this. And so I need to -- I need to be
2 permitted to explore that.
3 THE CHAIR: Ms. Waddell, do you want to respond to
4 that?

5
6 REPLY SUBMISSIONS BY CNSL L. WADDELL:

7
8 CNSL L. WADDELL: So I get where you were going with
9 the various -- you have asked a lot of questions
10 about beliefs and put a number of scenarios to
11 him to get at what I understood to be your theory
12 of the case. I didn't object to any of that.

13 But I -- I remain unclear about how the -- I
14 remain unclear about the relevance of your most
15 recent question, and I -- I suspect the challenge
16 is in the language that you are perhaps choosing,
17 which makes certain assumptions. But I still am
18 not clear about the relevance of this. I -- you
19 asked the witness a lot of questions about, you
20 know, acceptance of different views, and
21 particularly in relation to when people express
22 anti-trans views, for example. And, you know, he
23 has answered all of those. So the decision's, of
24 course, not mine. It's the -- the Tribunal's,
25 but I --

26 CNSL J. KITCHEN: I haven't actually --

27 CNSL L. WADDELL: -- [indiscernible - cross talk] --

28 CNSL J. KITCHEN: I haven't actually got into --

29 THE CHAIR: Just -- sorry.

30 CNSL J. KITCHEN: Sorry. Go ahead.

31 CNSL L. WADDELL: Sorry.

32 THE CHAIR: Can you let her finish.

33 CNSL L. WADDELL: Mr. Kitchen, if I can just finish.
34 I am almost done. Don't worry.

35 Anyway, I still don't see the relevance.
36 And just -- just to clarify for the record, I
37 don't take you to be interrupting out of -- in an
38 effort to harass the witness at all. I think
39 you're frustrated, and I understand that. I'm
40 not suggesting that it's -- it's something
41 malicious or anything of that nature, just to
42 clarify.

43 CNSL J. KITCHEN: No. I get that. All right.

44 THE CHAIR: So -- sorry. Mr. Kitchen, did you have
45 one more thing to --

46 CNSL J. KITCHEN: Just -- just I haven't actually
47 brought him through examples of anti-trans speech

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1 yet. I am -- I am getting there. That will
2 probably be the next line of my questioning
3 but --

4 THE CHAIR: Okay. Can --

5 CNSL J. KITCHEN: And --

6 THE CHAIR: Go ahead.

7 CNSL J. KITCHEN: But part of this -- you got to
8 remember part of this is time; right? I am
9 trying to be respectful of time; right? So --

10 THE CHAIR: Right.

11 CNSL J. KITCHEN: -- I'm -- I'm going to be a while
12 with this witness yet, and if -- if I have to
13 constantly sit there while he says the same thing
14 over and over again, I mean, it might only be
15 90 seconds here and 90 seconds there, but it adds
16 up over time.

17 THE CHAIR: Right. So where are we roughly in your
18 cross-examination in terms of the length? Are
19 we -- are we almost there, or we got a ways to go
20 yet?

21 CNSL J. KITCHEN: Yeah. I am probably about a third
22 of way through.

23 THE CHAIR: Okay. Well, in that case, I think it is
24 important to kind of scope some of the relevance
25 of these questions. We are really struggling as
26 a panel with the relevance of questions about
27 Mr. Hansman's understanding of sex and gender
28 because at the end of the day, it's not
29 Mr. Hansman's views that are determinative of
30 your argument.

31 I understand you want to argue about whether
32 people are permitted to criticize other people
33 and distinguishing between beliefs and identity.
34 And those are legal issues. And Mr. Hansman's
35 personal views of those are -- are, with the
36 deepest of respect to his experience, not
37 determinative of those -- those things in this
38 proceeding. So -- so we are struggling with the
39 relevance.

40 It's nearly lunchtime. So what I am going
41 to propose is that you continue with your
42 questions until 12:30, and then we will have more
43 of a chance to talk about, you know, looking back
44 on some of the questions, and if there's a lot
45 more questions in the same vein, we may have to
46 have another discussion about the relevance. But
47 why don't we just continue for the next

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Cross-exam by Cnsl J. Kitchen

1 ten minutes or so, and -- and then we will
2 reconvene after lunch and see where we're --
3 where we're at with the cross. But I do -- I
4 mean, I think you may be called upon again if
5 there's lots of different lines of questioning
6 where Mr. Hansman's is being asked about things
7 that are properly the subject of legal argument
8 that we may -- we may meet again in this space to
9 talk about the relevance of the questions and
10 whether this is the best use of the witness's
11 time.

12 CNSL J. KITCHEN: Sure. Yeah.

13 THE CHAIR: But we will let -- let him for the last
14 ten minutes or so, and -- and -- and then we will
15 regroup after lunch. So I am letting Mr. Hansman
16 back in right now.

17 CNSL J. KITCHEN: Thank you.

18
19 GLEN HANSMAN, a witness,
20 recalled.

21
22 THE CHAIR: Hello, Mr. Hansman. Thank you for your
23 patience. I am just going to wait until your
24 video comes back on because I can't see you yet.
25 There you are. Thank you.

26 We are just going to continue with questions
27 until about 12:30, and then we are going to take
28 a break for lunch, so kindly continue answering
29 questions. Go ahead. Go ahead, Mr. Kitchen.

30 CNSL J. KITCHEN: I can't see him; so...

31 THE CHAIR: You --

32 A I may -- I might have to say something so it -- I
33 pop up.

34 CNSL J. KITCHEN: Thank you. There you are. Good.
35 Okay.

36
37 CROSS-EXAMINATION BY CNSL J. KITCHEN, continuing:

38
39 Q Let's go down a different vein. Well, I mean, I
40 might come back to this, but let's -- let's see
41 if we can do some stuff here in the next seven or
42 eight minutes.

43 I said earlier that was I was going to give
44 you examples of anti-trans speech, and then I
45 got -- I got off on a -- on a rabbit trail as so
46 happens with cross examining. Would it be --
47 well, let's -- let's try to delineate between

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1 anti-trans speech and not anti-trans speech.
 2 Okay? So that's -- that's part of what I'm --
 3 what I'm curious to know here.
 4 By anti-trans speech, would you agree it
 5 would be -- what you mean is -- is speech that
 6 would be offside the *B.C. Human Rights Code*, the
 7 collective agreement, the -- the obligations to
 8 be safe and inclusive -- the stuff that you have
 9 been mentioning -- would you agree with me that
 10 anti-trans speech is the stuff that's offside of
 11 the stuff that you have been mentioning?
 12 A And school district policies that we're subject
 13 to.
 14 Q Yeah. Yeah. So school district policies,
 15 regulations, the *Code*, the collective agreements,
 16 whatever else we can come up with for legislative
 17 instruments --
 18 A Yes. It might be -- it may be statements that
 19 are advocating violence against trans people or
 20 that are inciting violence or hatred. It could
 21 be comments that deny the existence of trans and
 22 nonbinary people. It could -- it could be a
 23 range of things. It will -- it will depend on --
 24 on the statement or -- or the act.
 25 Q Well, yeah. No, no, no. Yes, of course. That's
 26 why I want to give you the examples. Let's say
 27 somebody says, Well, I don't believe someone can
 28 change their genders. If somebody says that, is
 29 that anti-trans speech?
 30 A It might be. Is it someone in the school system?
 31 Q Yeah. Let's say -- let's say -- let's say it --
 32 yes. Someone in the school system. I pick your
 33 example.
 34 A Sure. So -- yes. Yes. I would say yes.
 35 Q Okay. Let's -- okay. Let's assume all my
 36 questions are in the school system because,
 37 really, that's what's relevant to the case.
 38 A Okay.
 39 THE CHAIR: Sorry. And just so clarify, I just want
 40 to make sure everyone is on the same page, when
 41 you say "in the school system," Mr. Kitchen, you
 42 mean someone employed by a school district or who
 43 is working for the school district not a student
 44 or -- who in the -- what do you mean by "in the
 45 school system"? I think that's important to the
 46 answers.
 47 CNSL J. KITCHEN: Let's talk -- let's talk not

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1 students. Let's talk teachers, principals,
2 superintendents, school board trustees. Let's --
3 let's say adults functioning in the school
4 system. I think that's a, you know -- I think we
5 can conceptualize that category pretty well.
6 Q Okay. So -- so that's anti-trans speech.
7 What -- and, again, we are talking adults in the
8 school system. Teachers, principals, school
9 trustees, superintendents, et cetera.
10 A Okay.
11 Q If someone says, I believe there are only two
12 genders, is that anti-trans speech?
13 A It could be, yes. Yeah. Probably.
14 Q If someone says that, Anybody who is trying to
15 change their gender, that's immoral. I
16 believe -- I believe it's immoral for anybody to
17 try to switch their genders. If somebody says
18 that, is that anti-trans speech?
19 A Probably, yes. My asterisk beside each of these
20 is going to depend on, you know, is there a
21 history of comments like this from this
22 individual, what was the context in what they
23 said, but, yes, they -- they -- I would say
24 generally --
25 Q Let's --
26 A -- that would fall within that -- that ambit.
27 Q Okay. Okay. So --
28 A And also what the response to them might be in --
29 it may be dependent on the context as well. If
30 this was a first-time thing that somebody, an
31 employee, that list that you did, you know, that
32 might be a conversation with the employee between
33 the employee and the employer. If this was an
34 ongoing repeated thing, it would be handled quite
35 differently, I am sure.
36 Q Okay. Okay. I am talking -- I mean, I -- you
37 know, I will take it out of my hypothetical
38 Nigerian woman example, and -- and we -- we will
39 get a little more concrete with -- you know, I am
40 talking -- I am talking about somebody, not
41 necessarily precisely like Mr. Neufeld, but
42 somebody who is repeatedly expressing their
43 beliefs. Okay? So it's not like it's a mistake.
44 It's not a one-off. It's not like they -- you
45 know, in the example of -- the Nigerian woman
46 example, it's like she doesn't realize that she
47 is potentially offending somebody because

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1 literally that happens. Again, I deal with it.
2 So I am not talking -- I am talking about
3 somebody who says, like Mr. Neufeld, This is what
4 I believe. I believe this. I believe this. I
5 believe this. And three years later, I believe
6 this. And that's -- that's the context in which
7 I am talking about.
8 I think this probably goes without saying,
9 but I will ask you. So if somebody -- if
10 somebody says, Look. I think it's -- I think
11 it's -- I think it's bad. I think it's a bad
12 policy. I think it's bad for development. I
13 think it's bad if -- if somebody -- if somebody
14 teaches a child that they could change their
15 genders. If somebody says that, is that
16 anti-trans speech?
17 A It -- it might be, but that's -- in any event,
18 that's not what we really do in the -- in the
19 school system. We are not -- no one is
20 counselling students to change genders in the
21 school system. We are not --
22 Q Well, but isn't --
23 A -- [indiscernible - cross talk] but we are doing
24 work to make sure that schools are safe and
25 inclusive spaces for trans kids. And -- and the
26 general student population will learn about trans
27 folk as they learn about a variety of forms of
28 diversity that exist in schools and in Canadian
29 society.
30 Q But don't the -- don't the SOGI resources
31 contain, you know, comments, materials,
32 statements that a person -- that a child can
33 identify with a different gender?
34 A Oh, for sure. Yes. Yeah.
35 Q Okay.
36 A I just want to draw the distinction between that
37 and, say, counselling someone to --
38 Q Right. Right. Right. Okay. Yes.
39 A -- change gender --
40 Q Okay. Yeah.
41 A -- that -- that --
42 Q When I mean teach, I don't mean -- yeah. I don't
43 mean counsel. I don't mean in the sense that,
44 like, Come on over here and let me tell you that
45 in my assessment I think you are actually a boy.
46 I don't mean that. I mean teaching the idea to
47 children that, you know, Look. You may actually

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Glen Hansman (for Complainant)

Cross-exam by Cnsl J. Kitchen

1 be able to identify as a different gender than --
 2 than the -- the gender that your parents told you
 3 were when you were young. That kind of thing.

4 If -- if someone said, Look, I think it's --
 5 I think it's a terrible idea to teach kids that,
 6 similar to what Mr. Neufeld said, would you --
 7 would you classify that as anti-hate -- or
 8 anti-trans speech?

9 A Yeah. It could be. Though I will say that
 10 Mr. Neufeld said significantly more than that.

11 Q No. No. Of course he did. Yes. Well, I am
 12 trying to use examples that -- that capture what
 13 he said. I mean, I did -- I think he said, you
 14 know, There is only two genders. I think he
 15 said, I don't believe one can switch. I think
 16 he -- and, you know, of course I'm paraphrasing.
 17 I think he -- I think he said that, you know,
 18 People -- people can't actually change their
 19 genders. I mean, these are -- these are things
 20 that he said?

21 A He made comments about same-sex families. Made
 22 allusions to Russia and Paraguay. Made all sorts
 23 of statements.

24 Q Yeah. Do you have any more examples?

25 A I am sure you have a lot of them to put into
 26 evidence, so...

27 THE CHAIR: I am noting the time here. I know that
 28 was just a brief stint.

29 CNSL J. KITCHEN: Oh, yeah.

30 THE CHAIR: Mr. Kitchen, is --

31 CNSL J. KITCHEN: No, it's fine.

32 THE CHAIR: That's okay? All right.

33 So we are going to take a break now for
 34 lunch. Mr. Hansman, you are still under
 35 cross-examination, and so for so long as you are
 36 under cross-examination, you are not allowed to
 37 talk to anyone about your evidence. That
 38 includes the lawyers for the BCTF and Chilliwack
 39 Teachers Association. So over the lunch break, I
 40 am sure you will find other topics to talk about.
 41 I will ask everyone to come back, please, at
 42 1:30. And when we come back -- over the lunch
 43 break, the panel is going to talk about the
 44 relevance of some of these lines of questioning
 45 because if we are only -- while you were gone
 46 Mr. Hansman, Mr. Kitchen estimated he was about a
 47 third of the way through his questions, just so

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1 you know where we are at. And so we are going to
2 confer about the relevance of some of these lines
3 of questioning, which may help with the -- with
4 the time management of the remainder of the
5 cross, if we can give some scope. But we will
6 come back and deal with that after lunch.

7 So I am going to now remove everyone from
8 the meeting. Please wait for me to remove you so
9 that that ensures that you come back into the
10 lobby when we reconvene at 1:30. Thanks very
11 much. Bye.

12
13 (WITNESS STOOD DOWN)

14
15 (PROCEEDINGS ADJOURNED FOR NOON RECESS) [12:34:04]
16 (PROCEEDINGS RECONVENED) [1:31:03]
17

18
19 GLEN HANSMAN, a witness,
20 recalled.
21

22 CNSL J. KITCHEN: Ms. Waddell, can you hear me?

23 THE CHAIR: I can hear you.

24 CNSL L. WADDELL: Yeah. Can you hear me?

25 CNSL J. KITCHEN: Yes. I got your email. Can we have
26 a -- can we have a call after we are done here
27 today?

28 CNSL L. WADDELL: Yeah. Yeah. You bet.

29 CNSL J. KITCHEN: Okay. I just got it just now. I
30 might have responded to you, but I didn't have
31 time.

32 CNSL L. WADDELL: No, no, no, no. I didn't expect --
33 I just needed to get it out the door, so don't
34 worry. You put it out of your mind until you are
35 finished today.

36 CNSL J. KITCHEN: Okay.

37 THE CHAIR: All right. Welcome back, everyone. Just
38 give me a moment while I make sure everyone is
39 muted and organized.

40 CNSL J. KITCHEN: Now, Chair, I just want to let you
41 know -- I know we are going to have a discussion
42 about timing and all of that, and I can
43 understand that. I have been through my notes,
44 and I am going to revise what I said before the
45 lunch break that I am about a third. I am
46 probably a little over halfway through because I
47 have covered a lot more of my notes than I

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1 realized, which happens with me because I get
2 going on it.

3 So I think I have been with the witness for
4 an hour and half. I am probably another hour,
5 maybe an hour and a half, somewhere in between
6 there.

7 THE CHAIR: All right. Thank you for that revised
8 estimate. We did -- the panel did meet briefly
9 over the lunch break to review our notes and
10 discuss the -- the questions and the evidence
11 elicited so far, and we did want to take a few
12 minutes at the beginning before we continue with
13 the questions to talk to -- to talk with counsel
14 about that.

15 So, Mr. Hansman, I am going to exclude you
16 again for a moment while I just talk to counsel.
17 And just as we did before, please click to
18 rejoin, and I will let you in when we are through
19 the discussion. Okay? So bear with me. I just
20 have to find you to remove you. Okay. All
21 right. Be back in a moment.

22 Oh, sorry. And other people are now joining
23 as well. Now, can you all hear that message we
24 get when an unknown participant joins? Do you
25 hear an automated message? No? Okay. That's --
26 that's fine. I just -- I wasn't sure. So when
27 a -- when a person joins by audio, we get -- we
28 get an announcement that they have joined, so
29 sometimes you may notice that I am pausing or
30 not -- not talking at the beginning because we
31 are waiting for those messages to finished.

32
33 (WITNESS STOOD DOWN)

34
35 CNSL J. KITCHEN: On that point, can I ask you a
36 question? When I -- when I mute and unmute, do
37 you get a ding on your end?

38 THE CHAIR: No.

39 CNSL J. KITCHEN: Okay. Good.

40 THE CHAIR: No.

41 CNSL J. KITCHEN: Good.

42 THE CHAIR: All right.

43 CNSL L. WADDELL: Can I --

44 THE CHAIR: Yes. Go ahead, Ms. Waddell.

45 CNSL L. WADDELL: Sorry. Your -- your mention, Member
46 Cousineau, of people coming and going reminded
47 me -- I just wanted to advise the Tribunal that

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1 our BCTF instructing client may not be able to
2 stay for the full day, so Robin may just drop out
3 at some point. And I just wanted to advise the
4 Tribunal that you needn't worry when that
5 happens. It's not a lost connection. It's
6 intentional.

7 THE CHAIR: Okay. Thank you for that. One less thing
8 to keep track of.

9 All right. So I did -- we did want to kind
10 of touch base not only because of, you know,
11 the -- obviously the cross-examination of
12 Mr. Hansman, and it sounds like we still have a
13 ways to go on that, but to also, you know, set
14 some parameters around the evidence that we will
15 find necessary and appropriate from any witness
16 in this case.

17 And, Mr. Kitchen, we understand, you know,
18 where some of your questions are coming from in
19 terms of your legal argument and, as you said
20 when we spoke last, about distinguishing between
21 criticisms of beliefs and criticisms of people
22 and -- and what is permissible and what is not --
23 so we understand the foundation of that, but in
24 our view, I mean, much of those -- those
25 arguments are legal arguments and not rightly the
26 subject of evidence, really, from any witness.

27 So, for example, we have had a number of
28 questions eliciting Mr. Hansman's views and
29 opinions about, you know, what constitutes
30 anti-trans hate; what constitutes anti-trans
31 speech; definitions of transphobia; definitions
32 of homophobia, gender, and sex; trying to, you
33 know, define LGBTQ2S+ beliefs, and distinguishing
34 the person. And all of those types of questions
35 are eliciting evidence that is essentially
36 Mr. Hansman's opinions about the answers to those
37 questions, which, of course, is not something
38 that the Tribunal would ultimately put any weight
39 on even if we were called upon to ask -- answer
40 some of those questions. So -- I am just
41 reviewing my notes here.

42 So -- so -- and even -- so our expectation
43 of any witness is that their views about what
44 constitutes discrimination -- I mean, that's
45 the -- that's the question for us. And any
46 witness's views about that are not going to be
47 particularly necessary or appropriate. I think

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1 because you are in cross-examination, it's
2 appropriate to give you some latitude and --
3 and -- and go for a bit, but -- but we are also
4 in a time constraint as you are well aware of.
5 So we want to give some guidance that in general
6 the type of evidence that will be helpful will be
7 fact evidence from the witness about things they
8 have direct knowledge of that pertain to one of
9 the issues we have to decide under Section 7 or
10 Section 13 of the Code. And it may be that
11 that's -- it's quite narrow because I think a lot
12 of the real disputes in this case are legal ones
13 about, as you say, appropriate balancing and
14 where to draw the lines, and the opinion of any
15 single witness on those questions are not -- is
16 not going to help us decide them. So --

17 CNSL J. KITCHEN: Well, can I -- can I respond to
18 that?

19 THE CHAIR: Yes. Yeah.

20 CNSL J. KITCHEN: I find that frustrating because you
21 are essentially telling me that I should be
22 arguing in a vacuum at the end, right, which is
23 setting me up to fail because I am going to make
24 these arguments, and then I won't have any facts
25 to point to, and then, of course, you, in your
26 decision, can say, Well, Mr. Kitchen didn't have
27 any facts to connect this to. He didn't ask the
28 witnesses this. He didn't elicit evidence about
29 this.

30 This is from my perspective -- and you may
31 be able to correct me if I am wrong in your
32 decision -- is not something that has been very
33 much explored in other cases around this issue.
34 It's normally just, Well, you said something that
35 these people really found hurtful and painful,
36 and so, you know -- and your intent doesn't
37 matter because it's all about the effect of
38 discrimination and the effect was they felt
39 invalidated. They felt like they didn't exist.
40 They felt this. They felt that. They felt this.
41 And then that's it. So there was discrimination.

42 And I appreciate that you said that it was
43 an objective test a little while ago, and I agree
44 that. It is an objective test. But at the same
45 time, in order for -- in order for you to draw
46 where that objective line should be, in order for
47 me to argue where it should be, we need evidence

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1 to help us with that.

2 And, I mean, I'm planning obviously to get
3 all kinds of evidence from my witnesses. But I
4 would have thought it was fair to get evidence
5 from the people who are saying, you know, this
6 heinous. This is shocking. This is -- I am
7 presumably going to hear all kinds of stuff from
8 the teachers about how this undermined their
9 dignity and made them feel -- I mean, they are so
10 scared that they couldn't even have their names
11 in -- in this proceeding, so clearly they feel
12 really, really awful. And so we need to explore
13 this.

14 I am really concerned about the fact that
15 you seem to have already decided what is
16 explorable. This -- this argument I am making is
17 at least somewhat novel. In this case we are
18 going to have more opportunity to explore it than
19 I think in any other case because of the kind of
20 witnesses that we have; right? We have multiple
21 witnesses on my side that are going to speak to
22 this and multiple witnesses on the complainant's
23 side that are going to speak to this; right?

24 And this is not a case where, you know,
25 Mr. Neufeld is Whatcott 2.0, and we got a bunch
26 of objectively terrible things that he said about
27 trans people. He hasn't said terrible things
28 about trans people. He has said things that he
29 believes that is in opposition to what I say are
30 trans beliefs. We need to explore that. It's
31 not a waste of the Tribunal's time. In fact, I
32 would say it's the best use of the Tribunal's
33 time.

34 Furthermore, I am concerned about the fact
35 that you are saying, Okay. Well, we are not
36 going to let this -- this -- this evidence in
37 because it's not useful. Meanwhile, we have let
38 in a media article that's completely not useful.
39 We may yet hear that you are going to let in
40 an -- expert evidence that's obviously really not
41 useful.

42 So we need to make sure that we are
43 consistently drawing the line on what is useful.
44 And, you know, if we are going to let in evidence
45 that's not useful on one side, then obviously we
46 have to -- we have to apply that same standard to
47 the other side. Thank you. Those are my

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1 concerns.

2 THE CHAIR: Okay. I still -- I think what I am still
3 missing from you, Mr. Kitchen, what I am not
4 understanding, is you are saying, This issue --
5 this is a novel issue. We need evidence and
6 facts to speak to this issue.

7 The issues have -- we have defined the
8 issues several times throughout this proceeding,
9 and they relate to allegations under Section 7
10 and 13 of the *Human Rights Code*. So I think I
11 might have some idea of what you are talking
12 about when you are talking about it being a novel
13 issue and that sort of thing. But I am not
14 exactly sure where -- could you be more precise
15 what you are saying is the novel issue that
16 requires opinion evidence from witnesses about
17 the types of the things you are asking about.

18 CNSL J. KITCHEN: The -- the argument -- and, again, I
19 could be wrong because maybe there is cases I am
20 unaware of, but the somewhat novel argument is --
21 is that -- you know, look, the problem here is
22 that we have created this bubble around LGBT
23 people that includes non-criticism of their
24 beliefs because we are operating under this --
25 this idea that their beliefs and their -- their
26 identity are exactly the same. And, of course,
27 because you can't criticize their identity,
28 therefore, you cannot criticize their beliefs.
29 And -- and that's why we get into this mess;
30 right? Where somebody says, Well, I don't
31 believe you can switch genders. Somebody else
32 says, Well, that really hurts my feelings.
33 That's anti-trans speech. That's discrimination.
34 That's -- that's discrimination in publication.
35 That's discrimination in employment. And then we
36 get a case like this. That's the problem.
37 Right.

38 We are not dealing with a case where
39 somebody has said, you know, I don't -- you know,
40 I think it's -- I think it's gross if Susan, who
41 now identifies as Bob, is going into the girls
42 washroom; right? If we are in that scenario,
43 then we are not in the scenario where somebody is
44 criticizing transgender beliefs. They are --
45 they are attacking the transgender person. Okay?

46 So the analysis is a lot more simple in
47 other words; right? It's really, Does -- you

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1 know, is that person's speech somehow protected?
 2 Probably it isn't. Maybe it is, but probably it
 3 isn't. The analysis is pretty simple.

4 This isn't the situation here. Okay? And
 5 this -- again, I think the reason you are
 6 struggling is because we have this paradigm where
 7 any criticism of a transgender belief, gender
 8 theory, gender ideology -- that's what
 9 Mr. Neufeld is calling it -- is just sort of
 10 automatically an attack on the identity and
 11 therefore discriminatory. And I am challenging
 12 that and saying, Well, this is the problem. If
 13 we draw the line properly, informed by the values
 14 of free expression protected by Section 2(b) of
 15 the *Charter*, then we -- we will draw that line in
 16 a more accurate better place where -- where we
 17 will be able to actually protect criticism of
 18 beliefs, of ideas while meanwhile still
 19 protecting people as we should be doing. Okay?

20 THE CHAIR: Okay.

21 CNSL J. KITCHEN: That's what I am going after. And
 22 so I would say, you know, you need to err on the
 23 side of letting the evidence in because if this
 24 issue is confusing for you, then it would be
 25 better if we had the evidence in at the end so
 26 you could wade through that evidence and decide,
 27 you know, where you land on it and whether or not
 28 I am just out to lunch by suggesting that this is
 29 a better way to look at it.

30 THE CHAIR: Okay. Thank you. That's helpful because
 31 it confirms I think I do understand your argument
 32 and what arguments you are going to be making.
 33 And where I am still struggling is how -- and
 34 I -- and I feel confident that my panelists share
 35 the concern -- is how the evidence -- the opinion
 36 evidence of any single witness is going to be
 37 necessary or appropriate to define those lines.
 38 So, you know, that's -- that's -- that's the
 39 concern. But I --

40 CNSL J. KITCHEN: Because you need to hear from the
 41 people who have these beliefs; right?

42 THE CHAIR: Well -- I'm sorry.

43 CNSL J. KITCHEN: You -- your --

44 THE CHAIR: Just -- sorry. No. No. Just --

45 CNSL J. KITCHEN: -- [indiscernible - cross talk]

46 Mr. Hansman --

47 THE CHAIR: Can I just finish for a second? Sorry.

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1 Because we don't here have, you know, a
2 statistically sound cross-section of every group
3 that holds different beliefs that we could
4 determine somehow -- you know, that we could rely
5 on as a body of evidence to make decisive views
6 about one thing or another. We have a number of
7 individuals who were involved in events giving
8 rise to this complaint. We have teachers who are
9 alleging they were adversely impacted in their
10 employment, are going to talk about that. But --
11 which is appropriate. These are the facts at
12 issue in the complaint.

13 But we don't have a cross-section of people
14 that we can use as a body of evidence to decide,
15 you know, broad social issues. That's not what
16 the function of the evidence -- the witnesses in
17 this proceeding are. And so that's -- that's,
18 again, the concern I have.

19 So it won't be necessary or appropriate to
20 be hearing from a number of witnesses about their
21 opinions on where lines should be drawn. That's
22 not how legal standards are applied; right?
23 That's not how -- I am not familiar with that as
24 a legal process.

25 So I think -- again, Mr. Kitchen, I return
26 to -- I think your submissions here -- which are
27 fair enough, and I understand your submissions
28 and your argument, and there may well be merit to
29 it. But they are essentially legal arguments and
30 not this -- properly the subject of fact evidence
31 in this hearing.

32 But, sorry, just before I come back to you,
33 I want to give Ms. Waddell a chance to weigh in,
34 if there's -- if her client takes a -- takes a
35 position on the issue.

36 CNSL L. WADDELL: Sure. I think that -- from my
37 perspective, that was a helpful exchange, and
38 I -- I think I understand where Mr. Kitchen is
39 going, and -- and I think he is entitled to go
40 there. But I tend to agree that I think it is a
41 question of legal argument, or a question for an
42 expert witness, which is not who this witness is.
43 So -- yeah.

44 So, again, I agree with generally one should
45 afford latitude on cross-examination, but I also
46 agree that I just don't see how this line of
47 questioning could conceivably assist his -- his

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1 theory or -- or detract from ours, for that --
2 that matter, and he is entitled to do that as
3 well on cross. So -- yeah. That's all I have to
4 say at the moment.

5 THE CHAIR: Okay. Mr. Kitchen, last word can go to
6 you.

7 CNSL J. KITCHEN: The only thing I will say that I
8 haven't already said is that, you know, based on
9 your comments, I have to wonder what -- what of
10 value that Mr. Neufeld -- sorry -- Mr. Hansman
11 said in examination in chief. I mean, what was
12 he called here for? He said very little about
13 anything Mr. Neufeld said. He said very little
14 about how he felt about it. I mean, most of what
15 he talked about was SOGI; right? And so I am --
16 I am, you know -- and, again, presumably he is --
17 he is the best witness for that. That's what he
18 spent almost all his testimony on. He is
19 obviously very involved in the development of it.
20 So if I want to explore the beliefs that underlie
21 what is -- what is in those resources, what
22 better witness to do that with than Mr. Hansman?
23 Otherwise, his examination in chief was
24 essentially useless to you as well, which I -- I
25 didn't -- I didn't tend to think it was
26 initially; right?

27 So I guess I am confused as -- as to this --
28 this idea that, you know, This just isn't useful
29 because we've decided it isn't. I really
30 struggle with that.

31 THE CHAIR: All right. Well, I think -- I mean, in
32 fairness, in terms of what was put to Mr. --
33 what -- what Mr. Hansman testified about in
34 direct, I think it's fair, as you have done, to
35 be asking him questions about the process, about
36 what SOGI is, what the process was for developing
37 it, how it's implemented in the classrooms, how
38 it's used as a resource by educators. I mean,
39 those are facts; right? And -- and --

40 CNSL J. KITCHEN: Yeah. But a lot of those facts
41 aren't actually really relevant to the --

42 THE CHAIR: That's fine.

43 CNSL J. KITCHEN: -- to the issues.

44 THE CHAIR: Yeah. That's fine. And you can argue
45 about that. You didn't object; so we didn't get
46 into it. But you can argue about how -- where
47 that fits in. But -- but where we are trying to

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1 suggest your time is not well spent is around
2 eliciting opinions about -- from witnesses about
3 different belief systems and how lines should be
4 drawn in society and what the rules should be of
5 engagement on those different areas. The
6 opinions of the witnesses in this proceeding on
7 those issues are not relevant. They -- that is
8 legal argument that you will have a full
9 opportunity to pursue. That's all.

10 CNSL J. KITCHEN: Think -- think of it this way --
11 this is the last thing I will say. Think of it
12 this way, if -- if we are doing a
13 belief-orientated case. Okay? We are coming in
14 and we are arguing *Amselem*; right? The Tribunal
15 would say, I need the evidence from the
16 witnesses. Right? I am -- I am not seeking
17 their opinions. I am seeking their evidence of
18 their beliefs and how they -- how they wrestle
19 through their beliefs and what they believe to be
20 something that is -- you know, something that
21 shouldn't be challenged or is challenged or -- or
22 when somebody expresses an opposing belief, it's
23 unacceptable or it is acceptable. Like, I'm
24 not -- it's not opinion so much as it is I am
25 getting their direct knowledge and evidence of
26 their beliefs like we would in any other
27 belief-orientated case. We would have to have
28 that evidence or else no argument could be made.

29 You can't argue in a vacuum that somebody's
30 religious beliefs have been violated or not
31 violated unless you have the evidence to begin
32 with. We actually have a lot of Tribunal -- I do
33 a lot of religious discrimination cases. That's
34 a huge issue; right? As soon as you are arguing
35 in a vacuum because you don't actually know what
36 beliefs are in play, then you are actually then
37 wasting everybody's time, and, of course, the
38 person who is asserting the beliefs is going to
39 be -- is going to lose.

40 THE CHAIR: Okay.

41 CNSL J. KITCHEN: Right? So that's -- that's the
42 disparity. That's the problem; right? You are
43 saying it's not useful, and I'm -- you know what
44 I'm saying? It's a belief-orientated case. It's
45 about Mr. Neufeld's beliefs versus the beliefs of
46 people who are saying, As soon as you express
47 beliefs opposing ours, it's discrimination.

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1 Well, then we need to parse out the beliefs,
 2 and that's not opinion. That's a matter of plain
 3 old fact evidence. I will say no more. Thank
 4 you.

5 THE CHAIR: Okay. Thank you. And for clarity, if
 6 Mr. Neufeld wants to lead evidence about his
 7 sincerely held religious beliefs, I agree
 8 that's -- and you want to ground a 2(b) -- a 2(a)
 9 values argument in that, feel free. Some limited
 10 questions about a witness's personal beliefs --
 11 maybe that's relevant. I don't know.
 12 Ms. Waddell, I see your hand.

13 But people's beliefs about what
 14 discrimination is or where lines should be drawn
 15 is opinion evidence going to the ultimate issue
 16 that is neither necessary nor appropriate.

17 Ms. Waddell, did you have your hand up
 18 there?

19 CNSL L. WADDELL: I did. And -- sorry -- I don't want
 20 to drag the debate out, but I just -- I wanted to
 21 note -- and I appreciate that Mr. Kitchen hasn't
 22 been on this case from the start -- but to my
 23 knowledge, Mr. Neufeld has never in the course of
 24 these proceedings asserted freedom of religion or
 25 political belief in his defence. He has raised
 26 freedom of expression as the issue. And so from
 27 our perspective, this case actually -- I
 28 appreciate that my friend may feel like the law
 29 as it is is based on a set of beliefs, and that
 30 may be what he is trying to get at. But beyond
 31 that, this case is not actually about a belief
 32 case. It is about Section 7 and Section 13,
 33 which have nothing do with belief, and freedom of
 34 expression is a very different ground than
 35 *Amselem*, which I think my friend just referred
 36 to, and freedom of religion.

37 So I just wanted to offer that as I don't
 38 think this case is actually about belief. I
 39 appreciate that Mr. Neufeld's posts, which are
 40 the focus of this, may have been informed by his
 41 belief, but that has not been something that he
 42 has -- freedom of religion -- religious belief,
 43 for example, is not something that he has ever
 44 levied in his defence.

45 THE CHAIR: Okay. Thank you.

46 CNSL J. KITCHEN: Let me put -- I will be making no
 47 2(a) argument, so --

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Glen Hansman (for Respondent)
 Cross-exam by Cnsl J. Kitchen

1 THE CHAIR: Okay.

2 CNSL J. KITCHEN: -- my friend need not worry.

3 THE CHAIR: Okay. So I think to sum up, we are not
 4 inclined to spend a lot of time with
 5 hypotheticals or opinion evidence. We -- we are
 6 more interested in fact evidence related to
 7 Section 7 and Section 13 of the *Human Rights*
 8 *Code*, and -- and we will -- we will leave it
 9 there. Okay. I am going to let Mr. Hansman back
 10 in.

11 GLEN HANSMAN, a witness,
 12 recalled.

13
 14 THE CHAIR: Hi, Mr. Hansman. Thank you for your
 15 patience. Are you back with us?

16 A I'm here, yes.

17 THE CHAIR: Okay. Thank you for your patience. Are
 18 you ready to continue?

19 A Mm-hmm.

20 THE CHAIR: Okay. Go ahead, Mr. Kitchen.

21
 22 CROSS-EXAMINATION BY CNSL J. KITCHEN, continuing:

23
 24 Q A simple one to get us started. You would agree
 25 with me, Mr. Hansman, that school trustees have
 26 no authority to prevent teachers from teaching
 27 SOGI 123 resources; is that right?

28 A Individual trustees? No.

29 Q Well, that raises an interesting point because --
 30 and you correct me if I am wrong, but my
 31 understanding from what you have said is that a
 32 board as a whole -- all the trustees acting as a
 33 whole, even then, wouldn't be able to prevent
 34 teachers from utilizing SOGI 123 resources. I
 35 mean, in the year 2024, let's say.

36 A Yeah. I would agree with that, but what I would
 37 say is that a Board as a whole could pass
 38 policies and procedures that stall that work or
 39 create road blocks, might utilize processes that
 40 already exist around the vetting of what teaching
 41 resources might be procured in a school district.
 42 But that would be a decision of the Board as a
 43 whole. Could be subject to a grievance or some
 44 other challenge, but what a Board collectively
 45 might do is distinct from what an individual
 46 trustee has authority to do.

47 Q Right. Thank you. So the Board could hinder it.

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Glen Hansman (for Respondent)
 Cross-exam by Cnsl J. Kitchen

1 They couldn't prevent it. Would that be a fair
 2 way to sum that up?
 3 A Correct.
 4 Q Okay. I am going to -- going to be bringing you
 5 to some of these SOGI resources, but I just want
 6 to go through my other questions so that we don't
 7 have to bounce back and forth.
 8 A Are you going to be sharing your screen?
 9 Q Well, actually -- well, yes. If you don't -- do
 10 you have that -- this is the Book of Documents.
 11 Do you have the Book of Documents from
 12 Ms. Waddell?
 13 A I do not, no.
 14 Q No. Okay. All right.
 15 THE CHAIR: If I would like us to share the screen on
 16 our end, we can do that, Mr. Kitchen, if that
 17 would be easier for you, or you can do it.
 18 CNSL J. KITCHEN: Well, I think I better do it so I
 19 have control of it. Perhaps you can help me,
 20 though, because I haven't done it before in
 21 Teams.
 22 THE CHAIR: There is a "share" button at the top next
 23 to the "leave" button.
 24 CNSL J. KITCHEN: There it is. Thank you.
 25 THE CHAIR: And if you just make sure to share your
 26 window and not your screen. It will make sure we
 27 don't read your emails inadvertently.
 28 CNSL J. KITCHEN: Okay. Hold on. Let's see if I
 29 can... okay. Wrong screen.
 30 THE CHAIR: Okay. That's -- yeah.
 31 CNSL J. KITCHEN: Yeah. I got to get the other screen
 32 here. There it is.
 33 THE CHAIR: That's it.
 34 CNSL J. KITCHEN:
 35 Q Okay. So you can -- you can see me -- you can
 36 see that scrolling up and down on your screen?
 37 A I can, yeah. It's a bit --
 38 Q Okay.
 39 A -- small. I don't know if you are able to
 40 enlarge it.
 41 Q Yeah. No, I am. I am able to enlarge it, and --
 42 A Okay.
 43 Q -- I will. So I'll just close this, and then --
 44 that might be a little too large. How's that?
 45 A Yes. That's great. Thank you.
 46 CNSL L. WADDELL: And, Mr. Kitchen, I'm sorry. I
 47 don't want to slow you down. If you are able to,

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 Cross-exam by Cnsl J. Kitchen

1 it would be helpful to just say something about
 2 where you are taking the witness.
 3 CNSL J. KITCHEN: That's --
 4 CNSL L. WADDELL: Like -- yeah. Just so that I can --
 5 CNSL J. KITCHEN: I was just about to do that.
 6 CNSL L. WADDELL: Yeah. I use hard copies because I
 7 am old-fashioned. So I just need to be able to
 8 follow along. Thank you.
 9 CNSL J. KITCHEN: Yeah. I would if I had a better
 10 printer. We are at -- what are we at here? We
 11 are at page 131. Let's figure out what tab that
 12 is. That's going to be Tab...
 13 UNIDENTIFIED SPEAKER: 38?
 14 CNSL J. KITCHEN: Tab 41, I think.
 15 UNIDENTIFIED SPEAKER: 41.
 16 CNSL J. KITCHEN: It looks like Tab 41, page 131.
 17 Q Now, do you recognize this at all, this "10 Key
 18 Components for Effective SOGI Inclusive Policies
 19 and Procedures"? Does this look at all familiar
 20 to you?
 21 A Yeah. This looks like it's the previous SOGI 123
 22 logo. So this looks like something from around
 23 probably 2018.
 24 Q Okay. Great. Because that's --
 25 A It looks like it's something from the website.
 26 Q Yes. Well, yeah, it very much looks like it is.
 27 I can't confirm that because these aren't my
 28 documents. These are counsel's documents, but
 29 they have been admitted on consent, so I am
 30 assuming they are just SOGI stuff. So that's
 31 helpful to me.
 32 So I am looking here at some of these
 33 things. We have -- I think we have ten of these
 34 things on this page, so, for example,
 35 self-identification. And you mentioned
 36 earlier -- you said something about practical
 37 when it comes to pronouns. So -- and I get that.
 38 And I -- we were having a discussion about that
 39 when you weren't here, about that issue and some
 40 others. What I am curious about is the right to
 41 self-identification. So can you just tell me a
 42 little bit about what that is, what that means.
 43 A Well, this is consistent with what exists in
 44 several school districts, including the school
 45 district I worked for. Let's say, just
 46 hypothetical, a student has been enrolled in that
 47 school district from kindergarten through until

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 Cross-exam by Cnsl J. Kitchen

1 Grade 5, and in their Grade 6 year, perhaps they
 2 have started the process of transitioning --
 3 perhaps socially transitioning, so nothing
 4 medical or anything like that. Just some
 5 students might test the water with friends, or if
 6 school feels like a safe setting, they might test
 7 the waters there first before anywhere else.
 8 What this document speaks to is the autonomy
 9 of that student, and as is the practice with my
 10 school district, if a student wishes to have
 11 the -- their name changed on the registration
 12 system and on other documents, that's up to them
 13 to make that decision, likewise with pronouns.
 14 Q So would you agree with me that the belief
 15 underlying this is that a student can -- to go
 16 back to your existence comment, and I want to
 17 explore that a little more with you. But would
 18 you agree with me that there's -- the underlying
 19 belief here is that a student can identify as a
 20 different gender than they used to? That's the
 21 belief underlying this. Wouldn't you agree with
 22 that?
 23 A Yeah. Students can, and they do. This isn't a
 24 hypothetical. There are real-life examples
 25 where --
 26 Q No. Yes, of course.
 27 A -- where you see policies that are in place,
 28 there are students currently in the system or
 29 formerly in the system who have done just that,
 30 yes.
 31 Q Is it fair to say that the belief, then, is that
 32 the existence of this person is somehow changed?
 33 Is that where the existence language comes from?
 34 Like, they're -- they have changed their
 35 existence from, let's say, a -- let's say there's
 36 a male -- male/boy -- biologically male/boy. He
 37 identifies as a boy, and then he identifies as a
 38 girl. She transitions, as you said, to a girl.
 39 And I am just going to go with the boy and girl
 40 example because it's simple. I know that we have
 41 talked about other genders --
 42 A Sure.
 43 Q -- but let's just do that one because --
 44 A Yeah.
 45 Q -- because it's simple. So we've got the
 46 biological boy. He identifies as a boy, but then
 47 he transitions, starts identifying as a girl. Is

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1 the belief behind that, then, that the existence
 2 of that student has changed?
 3 A Well, they're still alive. How they are -- the
 4 name and how they are identifying is different.
 5 So I am not sure we're aligned on how we're
 6 framing things, but I don't think we're saying
 7 opposite things either, so --
 8 Q Let's --
 9 A -- you gave a [indiscernible - audio distortion]
 10 example, and this does -- does happen.
 11 Q Yeah. No. Exactly. I am trying to get a little
 12 more concrete, a little less hypothetical.
 13 But let's say somebody says, Well, you know,
 14 that boy is -- is still a boy. You know, that
 15 boy just so happens to be, you know, a family
 16 friend, and I watched him grow up, and I know he
 17 was a boy, you know, and so, you know, I don't
 18 have any doubts that he was a biological boy, and
 19 so he is a boy, and he isn't actually a girl. He
 20 can't become a girl. If someone says that, you
 21 would regard that as sort of anti-trans speech
 22 towards that boy?
 23 A I have no doubt that some people in that
 24 particular person's life might believe that or
 25 may express that, but at the end of the day, the
 26 way it works in school districts in this province
 27 is that it's the student who gets to make that
 28 decision.
 29 Q Right. So in other words, from your perspective,
 30 nobody is -- it's not permissible for anybody to
 31 say, Well, that boy is actually a boy. He is not
 32 a girl?
 33 A Someone might say that. I am sure people do say
 34 that.
 35 Q Let's say some -- somebody in the school system
 36 says, Well, I mean, I believe that boy is a boy
 37 because I have known him as a boy, and he is
 38 still a boy. He is not a girl.
 39 A If it was somebody working in the school system
 40 or an adult connected with the school system in
 41 that way, then that would be a problem.
 42 Q As far as you're concerned, would that be denying
 43 that boy's existence? Is that where that type
 44 of -- that phraseology comes in?
 45 A Well, first of all, it's the student who gets to
 46 make the self-determination of that. Second
 47 guessing what has -- the internal dialogue that

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Glen Hansman (for Respondent)
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1 has led that student -- people don't do these
2 things casually. There's probably been an
3 extended period of thought and processing that
4 goes on behind that. It could involve that
5 child's family or other trusted people in that
6 person's life, but at the end of the day, it's
7 that -- it's that student's determination. So,
8 again, it's going to be the context of that
9 person, how vociferous they are with their
10 comments, what the nature of their employment,
11 how they respond afterwards if the employer
12 intervenes.

13 Q But the idea is we don't tolerate or accommodate
14 people expressing their beliefs that that boy is
15 still a boy?

16 A In the same way that if somebody was denying a
17 student's family history with the residential
18 school system or other facets of how someone
19 might identify or something else that really is
20 not up to them to decide, so -- but no doubt that
21 some people have made comments like that. What
22 happens afterwards is going to depend on the
23 context.

24 Q I used to follow this story closely, but I keep
25 seeing the headlines that apparently one of our
26 ministers, Randy Boissonnault, if I am saying his
27 name -- has identified as an Aboriginal person in
28 the past, and apparently he's not. Again, I am
29 just grabbing this from the headlines. So
30 apparently somebody has -- has sort of, you know,
31 said, Well, I don't think you are Aboriginal, and
32 apparently they're right. So I am struggling
33 with that example because isn't it a matter of,
34 like, fact -- fact -- I won't use "truth" yet,
35 but I might go there. Isn't it a matter of fact
36 whether somebody is or isn't Aboriginal?

37 A Different First Nations communities in this
38 province have different practices around who is
39 recognized or not. In some cases it depends on
40 connection to the land, participation in the
41 community. It varies from nation to nation
42 across Canada. So it's not -- I don't think it's
43 necessarily analogous.

44 Q Okay. Well, you were the one that used it as the
45 analogy, so that's why I was --

46 A No. I wasn't referring to Indigenous identity.
47 I was referring to someone who, say, was

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Glen Hansman (for Respondent)

Cross-exam by Cnsl J. Kitchen

1 espousing, like, residential school denialist
2 views or something like that. Sorry if I was
3 unclear.

4 Q Yeah. Well, I don't know what a residential
5 school denialist is, but we got to rein it in, so
6 we won't go there.

7 Is it a matter of fact whether or not that
8 boy is still a boy or has become a girl?

9 A It is up to the student to decide what name and
10 pronouns that they are using at the school, and
11 they are able to change those on school records.
12 They can, and they do.

13 Q So the factual reality is not a part of that
14 determination?

15 A The determination of what was on their birth
16 certificate or how they were identified when they
17 were born is --

18 Q No, no, no. The transition --

19 A -- [indiscernible - cross talk] --

20 Q Like, the -- he now identifies as a girl, but --
21 like, that -- and you are identifying a process
22 for me, and I appreciate that because I don't
23 really know how it works. Is -- is -- like, does
24 he, in fact, become a girl, or is just that
25 question just not even a relevant question to be
26 asking in the transition process?

27 A That's not a question that the school would be
28 asking the student. So all I can comment on is
29 the process that's in place, and how it is done
30 in schools in B.C. How it's done in the medical
31 sphere, that -- others can talk to you about
32 that.

33 Q At .8 down here -- you can see that? .8?

34 A Yes.

35 Q Where my mouse is there?

36 A Yeah, yeah.

37 Q We have:

38
39 Classroom materials and activities will
40 contain positive evidence and accurate
41 information about sexual and/or gender
42 diversity.

43
44 Is it, then, accurate information to say to the
45 students that there are more than two genders?

46 A There are more than two genders.

47 Q That's a fact?

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Glen Hansman (for Respondent)
 Cross-exam by Cnsl J. Kitchen

1 A I have many people in my life who identify by a
 2 gender other than male and female. So as far as
 3 I am concerned, there are more than two genders,
 4 yes. And the law in this province and --
 5 Q Where did that belief system come from?
 6 A [Indiscernible - cross talk] --
 7 Q Do you know where that belief came from?
 8 THE CHAIR: Sorry. You're just talking over -- I
 9 didn't catch what Mr. Hansman said, the last part
 10 of his answer, so just a moment.
 11 CNSL J. KITCHEN: Well, he was just going to say more
 12 about the laws and all that, and that's fine.
 13 THE CHAIR: Well, Mr. Kitchen --
 14 CNSL J. KITCHEN: No. That's fine. We will --
 15 THE CHAIR: -- he is --
 16 CNSL J. KITCHEN: -- let him say it. We will let him
 17 say it. I am just concerned about time.
 18 THE CHAIR: Okay.
 19 CNSL J. KITCHEN: Because it's not fair to me to, you
 20 know, 25 minutes from now, say that we have run
 21 out of time. That's all. That's all my concern
 22 is. We can let him talk as much as we want.
 23 THE CHAIR: Mr. Hansman, did you complete your answer?
 24 A I think I have completed my answer. Yeah.
 25 THE CHAIR: Okay. Go ahead, Mr. Kitchen.
 26 CNSL J. KITCHEN:
 27 Q What is the source of the belief system that
 28 there's more than two genders?
 29 A I'm not sure what you mean by that question.
 30 Q Where did the belief originate from? And if you
 31 don't know, you don't know, but it sounds like
 32 you might know.
 33 A No. To me -- I'm not sure I am computing the
 34 question. It's sort of like asking, There is red
 35 and blue. What is the belief system that allows
 36 for purple?
 37 Q Well, some people believe that there's God. Some
 38 people believe there isn't God. Right? Some
 39 people believe we are alone in the universe.
 40 Some people think there's all kinds of other
 41 alien life. People have belief systems. You
 42 know, usually they can identify the source of
 43 their belief. You know, there's a lot of people
 44 who believe there's only two genders, and they
 45 might believe it because of the Bible. They
 46 might believe it because of their ancestral
 47 tradition. They might believe it because of, you

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Submissions by Cnsl L. Waddell

1 know, a prophet from 2,000 years ago. They might
2 believe it from any number of things; right?
3 They believe there's just two genders, male and
4 female. And there's people that obviously
5 believe differently. So the people that believe
6 differently, what is the source of the belief?
7 Where did it come from?

8 A That the people are there --

9 CNSL L. WADDELL: Can I just --

10 THE CHAIR: Go ahead.

11 CNSL L. WADDELL: I was just going to object and ask
12 if we can exclude the witness one more time?

13 THE CHAIR: Okay. Mr. Kitchen, would you mind just
14 stopping your screen share for a moment because
15 for some reason it's made us unable to --

16 CNSL J. KITCHEN: Yeah.

17 THE CHAIR: -- to see Mr. Hansman. There you are.
18 Mr. Hansman, you know the routine here. I am
19 going to exclude you for a moment, and then I
20 will reconnect you in a moment. So I am going to
21 remove you from the meeting now. Thank you.

22 A Okay. Thank you.

23

24 (WITNESS STOOD DOWN)

25

26 THE CHAIR: Yes, Ms. Waddell.

27

28 SUBMISSIONS BY CNSL L. WADDELL:

29

30 CNSL L. WADDELL: So I think, if I understand my
31 friend's questioning correctly, he wants to argue
32 that -- or elicit evidence to the effect that the
33 understanding that there's more than one gender
34 is a belief rather than a fact or it's not -- to
35 use the -- it's not a real thing, I think. And
36 to the extent that he's trying to go there -- and
37 that's -- you know, it's an argument that he is
38 entitled to make, but if he is asking this
39 witness to -- to contribute to that, that is in
40 the nature of expert opinion evidence. He would
41 need to call someone to, you know, say, No. In
42 fact, there's only, you know, two genders or two
43 sexes, and he has not done that. He has not
44 tendered expert evidence.

45 And so he is trying to somehow get to that
46 through lay witnesses who are not experts. And
47 this witness's, you know, views in that regard

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Submissions by Cnsl J. Kitchen

Reply submissions by Cnsl L. Waddell

1 are -- are -- don't contribute to where he is
2 trying to go. Where he's -- I have no issue with
3 where he is trying to go. I disagree with it,
4 but that's -- he is entitled to do that, but I
5 just don't think this evidence actually is
6 admissible to that point or appropriate for a lay
7 witness to give, so I think the evidence he is
8 trying to elicit is really in the nature of
9 expert evidence, which Mr. Neufeld chose not to
10 tender.

11 THE CHAIR: Mr. Kitchen?

12
13 SUBMISSIONS BY CNSL J. KITCHEN:

14
15 CNSL J. KITCHEN: I take the point we've got to be
16 careful about the line on expert evidence. I get
17 that. Here's the thing: Mr. Hansman believes
18 this thing as a fact. Okay? Now -- just like
19 people believe it as a fact that God exists.
20 People believe it as a fact that -- I mean, I
21 used a couple of examples. I could give a lot
22 more. People don't just believe these things as
23 beliefs. They believe them as facts, right.
24 People believe it's a fact that there's only two
25 genders. Other people believe otherwise; right?
26 So when I am asking, What is the source of your
27 belief, right, I get that we need to be careful
28 to not go too far with that with expert evidence,
29 but if the person I am asking actually believes
30 that, that's a fair question. Right? If we had
31 somebody up who says, I believe this as fact --
32 like, I believe as fact the world was made
33 6,000 years ago. Well, what's the source of your
34 belief for that? Well, you know, in Genesis
35 blah-blah blah-blah blah. Right? Like, that
36 would not be expert evidence. You are asking the
37 person who holds the belief as fact where the
38 belief came from. If you go too far, yes, we
39 stray into expert evidence. We haven't gone too
40 far. I am not going to go too far. That would
41 take way too long. We don't have that kind of
42 time. I am not going to do that. So I take my
43 friend's point. There is a line at which, you
44 know -- and probably pretty quick. There's a
45 line at which we can't cross that was going into
46 expert evidence, but he has said he believes this
47 thing as fact. I need to be able to ask at least

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1 a couple sort of surface level questions about
2 that.

3 THE CHAIR: Ms. Waddell, do you have a reply to that?

4 UNIDENTIFIED SPEAKER: You are on mute.

5
6 REPLY SUBMISSIONS BY CNSL L. WADDELL:

7
8 CNSL L. WADDELL: Sorry. Simply that, again, his --
9 what informs his view -- because I think there is
10 some confusion, at least on my end, in your use,
11 Mr. Kitchen, of the terms "fact" and "belief"
12 because some people actually don't -- some people
13 would view those as mutually exclusive, and I
14 think that's some of the challenge that you had
15 with the witness this morning, but I still don't
16 see how the foundation of this witness's factual
17 understanding in that regard has any bearing on
18 the legal issues in this case. Anyway, that's --

19 THE CHAIR: Thank you. So -- and just -- so --
20 Mr. Kitchen, again, and this is along the lines
21 of what we have already discussed, and I am
22 cognizant of how much time we are taking up with
23 this. But to go over the issues -- the fact
24 issues that we have to decide under Section 13
25 are protected characteristics, connection to
26 employment, adverse impact, connection to adverse
27 impact; right? So that's the Section 13 issues.
28 The Section 7 --

29 CNSL J. KITCHEN: Right.

30 THE CHAIR: -- issues are indicating discrimination
31 likely to expose to hatred and contempt. So
32 where does Mr. Hansman's -- accepting even if
33 it's a fact that you are asking about, where does
34 Mr. Hansman's -- the root of Mr. Hansman's
35 understanding of genders fall into the analysis?
36 Where is that helping us on one of those issues
37 that I have just listed?

38 CNSL J. KITCHEN: The other side has claimed it is
39 discrimination in publication for Mr. Neufeld to
40 say that he thinks gender -- gender ideology or
41 gender theory -- those are the phrases he uses
42 most of the time -- are bad ideas, junk science,
43 shouldn't be taught to kids because they are bad
44 ideas. The other side has said this is
45 discriminatory. Right? So of course we have to
46 explore whether or not these -- this theory --
47 this ideology, you know, is it -- is it -- what

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1 does it look like on the other side? Right?
 2 They -- they -- the complainants and their
 3 witnesses are going to come in and say, Well,
 4 this is discriminatory because it's --
 5 it's somehow, you know, excluding us or exposing
 6 us to something. Right? What Mr. Neufeld is
 7 saying is not, "Trans people are bad. I wish
 8 trans people would all go away." He is saying,
 9 "I think gender ideology, gender theory, is a bad
 10 idea, and it shouldn't be taught to kids." Okay?
 11 He says that. He thinks it's fine. There is
 12 lots of people that think it's fine. Most people
 13 would just say it's free speech, but the
 14 complainants have come in and said, No. It's
 15 discrimination. Okay. They are the ones making
 16 the claim. So I am going in and saying, Okay.
 17 Let's figure that out. Why do you think it's
 18 discrimination?

19 THE CHAIR: Okay. I mean --

20 CNSL J. KITCHEN: Right. So -- like, you asked me,
 21 you know, where does it come in it? Like, it
 22 sounds like you've already assumed that, Well,
 23 any criticism of what you say is their beliefs is
 24 discrimination. There is really -- there is no
 25 analysis. And I am saying there needs to be an
 26 analysis so that we can do exactly what
 27 Mr. Hansman said, which is separate the criticism
 28 of the beliefs from the criticism of the people
 29 who hold them on the basis of who they are as
 30 people. Okay? And I --

31 THE CHAIR: All right.

32 CNSL J. KITCHEN: I think it's regretful that this is
 33 so difficult for the Tribunal to understand. I
 34 think part of that is because this issue has not
 35 been dealt with. We've just assumed that any
 36 criticism of the beliefs that LGBT people hold is
 37 a criticism of their identity, and therefore it's
 38 excluding them, and therefore it's
 39 discrimination.

40 THE CHAIR: Okay.

41 CNSL J. KITCHEN: And if that -- if that's the simple
 42 line of analysis that we are going to go on, then
 43 you are going to continue to tell me that
 44 everything I am trying to elicit is irrelevant.
 45 But I am trying to tell you that that's just it.
 46 We need to elicit that evidence so we can do this
 47 proper analysis and go back and see if whether or

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1 not our assumptions are wrong. And if all
 2 along -- what we have done is we have immunized
 3 criticisms of a particular belief system, even
 4 though we don't do that with everybody else's
 5 belief systems that are tied to their identity
 6 such as Muslims or Jews or Sikhs or Christians or
 7 vegans or communists or what have you. Okay?

8 So I guess I would ask you to indulge me.
 9 Maybe -- maybe you really do think that I am
 10 completely out to lunch, and you will say so in
 11 your reasons. But at least indulge me and
 12 Mr. Neufeld and the public enough to let it be
 13 explored. I am very intentional about doing this
 14 as respectfully as I can. I hope you have
 15 noticed that. Okay? I am not haranguing
 16 Mr. Hansman for these beliefs. I am asking him
 17 where they are coming from, which is fair. He
 18 might just say, Well, don't you know? I mean,
 19 that's just the way it is now. Fine. Fair
 20 answer. I will move on. Right? But maybe he
 21 has something helpful to say about, Well, you
 22 know what? This originated in the 1950s from
 23 blah-blah-blah who thought blah-blah-blah.
 24 Right? And we can get an idea, right, of where
 25 all this came from. It's not like we have been
 26 talking about, you know, the idea that there's
 27 been more than two genders -- we weren't talking
 28 about that at the B.C. Human Rights Tribunal in
 29 the 1960s or '70s when it first came out; right?
 30 It is a relatively new issue. Okay?

31 THE CHAIR: Okay. All right. I am just going to
 32 interrupt there in the interest of time. All I
 33 asked you, Mr. Kitchen, was what part of the
 34 legal analysis this evidence relates to, and I
 35 appreciate you have said a bunch of stuff that
 36 you want to explore. We will give you some
 37 latitude here for a few more questions. I don't,
 38 respectfully, feel I have an answer to the
 39 question, but I think in the interest of moving
 40 on, carry on with a few more questions. I will
 41 note that Mr. Hansman has --

42 CNSL J. KITCHEN: Well --

43 THE CHAIR: -- already said that, as far as I am
 44 concerned -- as far as I have understood his
 45 testimony, you have asked him about, you know,
 46 different genders and so on, and the basis for
 47 his belief, and he says, I know people in my life

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1 that have these -- that have multiple genders,
2 you know, and he has referred to that a number of
3 times as a foundation for what he is telling you.
4 So it may just be that you don't get the answer
5 that you are looking for, but in --
6 CNSL J. KITCHEN: Yeah.
7 THE CHAIR: -- the interest of moving on, we will --
8 you can --
9 CNSL J. KITCHEN: Well, can --
10 THE CHAIR: Yeah?
11 CNSL J. KITCHEN: Can I just say this -- okay. If
12 what you are looking for is, Take me to the legal
13 test. Okay? Well, in order for there to be
14 discriminatory publication or hate speech, a
15 protected characteristic has to be identified.
16 Okay. So the scope of the protected
17 characteristic obviously matters. Okay? If
18 someone says, you know, I don't think Jesus rose
19 from the dead, and I think he is a complete
20 lunatic, and I think anybody that believes that
21 is somebody who believes in fairy tales. Well,
22 now we are attacking me personally, but -- so
23 forgive me. Sorry.
24 Let's say -- let's say, Look. I think -- I
25 think this Christian belief that Jesus rose from
26 the dead is just completely out to lunch; right?
27 And somebody says, Well, that's discrimination on
28 the basis of religion. That's my religious
29 belief. Right? The scope of the protected
30 characteristic does not extend that far; right?
31 It only extends to protect the person; right? So
32 it is part of establishing the legal test. The
33 complainants can't establish that there has been
34 hate speech until they actually establish that a
35 protected characteristic has been engaged.
36 Protected characteristic hasn't been engaged
37 unless the protected characteristic has somehow
38 been impinged in some way.
39 THE CHAIR: Okay. And so then --
40 CNSL J. KITCHEN: Right? Has the person been
41 excluded? Has the person been told that they are
42 bad because of who they are? Or has the person
43 simply taken offence and gotten really upset
44 because the belief that they have has been
45 insulted or opposed or criticized; right?
46 THE CHAIR: Okay. So your view --
47 CNSL J. KITCHEN: So it is part of the actual --

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1 THE CHAIR: Sorry. Mr. Kitchen, we need to move on.

2 CNSL J. KITCHEN: -- legal test.

3 THE CHAIR: We need to move on. If I understand it
4 correct --

5 CNSL J. KITCHEN: You know what? Look --

6 THE CHAIR: Sorry. Just --

7 CNSL J. KITCHEN: You keep asking me, and I keep
8 trying to help you understand. Like, you have
9 to -- you have to decide what the scope is of
10 what is protected as part of the legal and part
11 of the test. Is there an adverse impact?
12 Objectively is there an adverse impact? You
13 might feel really upset when your belief is
14 opposed or insulted. Does that mean objectively,
15 legally that there has been discrimination?
16 That's part of the legal test. So I am trying to
17 help you by -- I know you are probably annoyed
18 because I keep saying this. I am trying to help
19 you. I look at the legal test -- and to me it's
20 obvious that this is part of the legal test
21 because we got to know where to draw the scope.
22 We got to know if there is an adverse impact or
23 not, objectively; right? Well, how do we do
24 that? Well, we have to decide has the person
25 been attacked or has their beliefs been attacked?

26 THE CHAIR: Okay.

27 CNSL J. KITCHEN: Right?

28 THE CHAIR: We're -- okay. We are hearing evidence
29 right now. We are hearing now -- what I take
30 from what you just said is that Mr. Hansman's
31 opinion about the scope of the protected
32 characteristic is -- in his views is relevant
33 evidence. I've said you can ask a couple more
34 questions about that and then move on. And so I
35 am going to let Mr. Hansman back in now.

36
37 GLEN HANSMAN, a witness,
38 recalled.
39

40 THE CHAIR: Thank you, Mr. Hansman, for your patience.

41 Are you back with us?

42 A I'm back. I am, yes.

43 THE CHAIR: Okay. Go ahead, Mr. Kitchen.

44

45 CROSS-EXAMINATION BY CNSL J. KITCHEN, continuing:

46

47 Q Do you think it's unfair of Mr. Neufeld to --

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1 when he says -- when he says things like gender
 2 ideology, gender theory, which I think it's fair
 3 to say we all generally understand that to mean
 4 the idea that there's more than two genders, you
 5 can switch your genders, you can self-identify as
 6 whatever gender you want. That's what he is
 7 talking about. Do you think it's unfair when he
 8 labels those things as "gender ideology" or
 9 "gender theory"?
 10 A That in and of itself, I am not sure if that's
 11 unfair. Though -- I mean, there are others who
 12 may say that holding on to the belief that there
 13 are only two genders is also a gender ideology,
 14 so --
 15 Q That's fair.
 16 A Yeah. Yeah.
 17 Q Okay. Yeah.
 18 A Yeah.
 19 Q Now --
 20 THE CHAIR: Sorry to interrupt -- I just can't see
 21 Mr. Hansman yet. Is --
 22 CNSL J. KITCHEN: Yeah.
 23 A Sorry. I am here.
 24 THE CHAIR: Mr. Hansman, is your camera on?
 25 A My camera is on, yes.
 26 THE CHAIR: I can hear you. I just can't see you.
 27 A Okay. No. My camera is on.
 28 THE CHAIR: Okay. Maybe try turning it off and on
 29 again.
 30 A Sure. It's back on again now.
 31 THE CHAIR: There you are.
 32 CNSL J. KITCHEN: There we go.
 33 THE CHAIR: Okay. Thank you. All right. Carry on.
 34 CNSL J. KITCHEN:
 35 Q You would agree with me that we have two
 36 conflicting or opposing beliefs here. We have
 37 the belief, you know -- what's called the "old
 38 belief" that there is only two genders and you
 39 can't switch them, and the new belief that, Well,
 40 no, there might be more than -- that there is
 41 more than two, and, yes, you can change from one
 42 to the other. Would you agree with me that we
 43 have a conflict between these two beliefs?
 44 A I have no doubt that there -- yeah. There's
 45 totally -- there are -- I don't know if there's
 46 necessarily conflict, but there's different
 47 conceptualizations of gender and sexuality and

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1 any number of things. And like we spoke about
2 earlier, humans are always trying to create words
3 to describe complex sets of emotions and
4 experiences and things. So those -- terminology
5 will continue to evolve, but I do acknowledge
6 that there's some people who disagree strongly to
7 the very notion that others recognize more than
8 two genders.

9 Q Now, is this a matter of everybody is sort of
10 equally right or equally wrong, and there is no
11 real, like, you know, one theory is better than
12 the other or one theory is not more true than the
13 other? Or is this a situation where, you know,
14 one group is sort of, you know -- actually, their
15 beliefs is less wrong, less true, and the
16 other -- the other, you know, beliefs really are
17 more accurate or more truthful or more closer to
18 the mark? Is -- would you say that the belief
19 that there's more than two genders and you can
20 change them is a better, more accurate, more
21 truthful belief system then, you know, the belief
22 system, There's only two genders, and you can't
23 switch them?

24 A Well, I think we have covered this in that there
25 are trans and nonbinary people in Canada, in our
26 schools. They're there. And so I will
27 default -- I recognize them. They're there. I
28 teach them. I work with them. The ones who are
29 my friends or family members, I care for them.
30 So to deny the fact that they are who they are is
31 dehumanizing, and I object to the perspective
32 that they somehow shouldn't be who they are, live
33 how they are living, or that somehow they are
34 doing something nefarious or inappropriate or for
35 untoward reasons.

36 Q From your perspective, that's what -- is that
37 what Mr. Neufeld said? He's said, Hey, these
38 people are doing something terrible by -- by
39 identifying as a different gender. They're doing
40 something nefarious or immoral.

41 A Well, I don't want to put words in his mouth.

42 Q Okay.

43 A His -- you know, his words are there on the
44 public record, and -- but I don't agree with his
45 perspective.

46 Q Right. But you would agree with me that his
47 perspective is basically that, you know, these

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1 people are doing something that they believe is
2 true, but I believe is not true?
3 A I don't want to speak on his behalf.
4 Q Well, no. I am asking your perspective of what
5 he said. I mean, you know, you are familiar
6 enough of what he said to say that it's heinous
7 and shocking and dehumanizing --
8 A Yeah.
9 Q -- so, I mean, you must have some idea of what he
10 said. You've obviously formed pretty strong
11 opinions --
12 A Yeah.
13 Q -- about them. So I am asking you, do you
14 think -- do you think it's a fair summary of what
15 he is saying that when he's -- you know,
16 basically he is saying, you know, Look. I think
17 these people are -- from my perspective, I think
18 they are living in a lie because they're
19 believing something that isn't true. Do you
20 think that's a fair summary of what he is saying?
21 A That and that individuals that work in the system
22 that support those students are somehow doing
23 something wrong, and Mr. Neufeld has also made
24 comments about same-sex families as well.
25 Q So you would say it's not supporting the person
26 to tell the person that, Look. In fact, you
27 know, you can't switch your genders, and it might
28 actually be really good for you to learn --
29 A No.
30 Q -- how to be comfortable with the gender you are?
31 You would say that's not supportive?
32 A That's not our role in the education system.
33 Q Okay. So -- so is it fair to say that the only
34 thing that's supportive is to affirm that new
35 gender identity that the person has
36 self-identified with?
37 A To respect the student and make sure that they're
38 safe, to make sure that they are treated in a
39 nondiscriminatory fashion while at school, and to
40 help them thrive with their -- with their
41 learning.
42 Q And that would not include suggesting to them
43 that maybe they would be better off just sticking
44 with the gender that they have been?
45 A Correct. That's not our -- we shouldn't be
46 wading into that.
47 Q Right. Okay. That would be unsupportive to do

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1 that?

2 A Correct.

3 Q Okay.

4 A It would be not appropriate for somebody in the
5 education system to be doing that. Those
6 conversations might happen with a medical
7 professional or a psychologist. That's -- that's
8 somebody else's jurisdiction. That's not an
9 educator's turf.

10 Q But the educator also can't just take no
11 position. They can't just say, Look. I am not
12 going to say one thing or the other. You know, I
13 can't support you in doing this, but I am
14 certainly not going to dissuade you either.
15 Like, they can't take a hands-off approach; isn't
16 that fair? I mean, if they did that, then they
17 wouldn't be able to -- they wouldn't start using
18 the pronouns and the new names and calling them
19 "she" and "her." Like, you would agree with
20 me -- I'm sorry. This question is long. So let
21 me back up. You would agree with me that that
22 person can't simply take a completely neutral
23 perspective and do nothing?

24 A Well, I am -- well, it's not doing nothing.
25 The -- what we were speaking about earlier, if a
26 student tells school administration or the team
27 at the school, the team of adults at the school,
28 that they would now like to be known by a
29 different set of pronouns than what had been used
30 previously or a different name or both, then the
31 school would respect that.

32 Q They don't have any choice in the matter, isn't
33 that --

34 A They have an obligation to respect that.

35 Q Yeah. Okay.

36 A Yeah.

37 Q So you're --

38 A [Indiscernible - cross talk] -- a student being
39 asked to change their records, that would be
40 another sort of layer to things, and, again, the
41 school would have to respect that.

42 Q So even if a teacher had beliefs -- had sort of
43 traditional sort of bi-gender beliefs or whatever
44 that we call that, they would have no choice?
45 They would have to -- they would have to go with
46 the new -- the new pronouns and the new name and
47 the new gender identity. They wouldn't have a

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1 choice even if they believed otherwise
2 themselves?
3 A Correct.
4 Q I can take you there if we need to, okay --
5 because I am not sharing my screen right now, but
6 I don't think I need to. In the SOGI material,
7 it says, "Individuals may choose washrooms and
8 change rooms that match their gender identity."
9 That doesn't surprise you; right?
10 A No. That's been the practice in my school
11 district for over two decades.
12 Q And:
13
14 Integrative and inclusive activities will
15 enable students to join teams and groups
16 that they feel correspond with their gender
17 identity.
18
19 A Mm-hmm.
20 Q I think that sound -- okay. And now, that last
21 one, Join teams and groups that -- so that would
22 mean that -- again, I am going to use the duo
23 example because it's simple. That would mean,
24 you know, we have a boy. He now identifies as a
25 girl. And he says, I am a girl, and my name is
26 Jennifer, and I want to be called she/her. And
27 the school says, Okay. And then he says, Okay.
28 Well, I want to be on the -- I want to be on the
29 girls' team. I want to be on the girls'
30 volleyball team. And -- is that what this is a
31 reference to when it says "join teams and groups
32 that they feel correspond with their gender
33 identity"?
34 A That would be one example, yes.
35 Q Okay. And then similarly use the change rooms
36 and washrooms that match their gender identity.
37 So the idea here is that if a boy comes and says,
38 I identify as a girl. You know, I would like to
39 use the girls' washrooms, the girls' change rooms
40 because that corresponds with my gender identity,
41 the school would say, Well, yes. That's how this
42 works. Yes, you can go use the girls' washrooms
43 and change rooms?
44 A Yeah.
45 Q That's what -- okay. So correct me if I am
46 wrong, but doesn't that mean that the belief
47 animating this is that when that boy says that he

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1 identifies as a girl, that he is actually, in
2 fact, a girl?
3 A Yes.
4 Q Okay. Okay. Earlier you alluded to this -- I
5 didn't really explore it much, but you said --
6 because we talked -- we talked about how, you
7 know, this is the way it works in the school
8 system, and maybe in the public, it would be a
9 little bit different. Do you recall that?
10 A Sorry. Say that again.
11 Q We -- well, I was asking you about if people said
12 certain things, would it be permissible or
13 impermissible? Would it be anti-trans or not?
14 And you said, Well, you know, are we talking
15 about somebody in the school system? So let me
16 ask you this just to get our grounding again.
17 Would you say that there are different
18 obligations and requirements for somebody who is
19 in the school system as opposed to someone who is
20 not?
21 A Yes, absolutely.
22 Q Okay. So things that may be permissible -- and I
23 am talking a little more hypothetical, but I can
24 give some real examples. Something that may be
25 permissible for Joe Blow in the streets to say,
26 if Mr. Joe becomes a trustee, he now can't say
27 because he is an elected official?
28 A For most regulated professions in this province,
29 there is a different bar for them, especially in
30 service-providing professions. Teaching is kind
31 of an even higher bar. And so anyone who has a
32 teaching certificate, it's a different standard
33 than, say, a member of the general public.
34 Likewise --
35 Q Well, I agree with you --
36 A -- there's a higher standard of --
37 [indiscernible - cross talk] --
38 Q -- on that.
39 A -- works in the system. Yeah.
40 Q Yeah. Well, no. Well --
41 A If I was -- if I was Glen Hansman, not a teacher,
42 you know, maybe I -- pick a job for me. I work
43 at a cafe somewhere. You know, what I post
44 online might not run me afoul with something --
45 with my employer. It might, but --
46 Q That's the private --
47 A -- it wouldn't run me afoul of different thing --

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1 of different things.

2 Q Yeah. Right. So in other words, what Amy
 3 Hamm [phonetic] might be able to say in the
 4 streets, she can't say as a nurse. That's fair?
 5 Is that what you are getting at?

6 A That's -- yeah, that's an example.

7 Q And you would agree with me that from your
 8 perspective, what Mr. Neufeld can say as the old
 9 guy at the cafe shop, he can't say when he's a
 10 school board trustee?

11 A Yeah. Or what Mr. Neufeld might say now that he
 12 is no longer a trustee is -- yeah -- not --

13 Q Well --

14 A -- not subject to the sorts of things -- the same
 15 sort of provisions when one has the trustee hat
 16 on, given all the responsibilities.

17 Q So, of course, when you talk about teachers --
 18 because of course the complaint in this case is
 19 not from the place of students. It's from the
 20 place of teachers. So you would -- you would say
 21 that what -- what is a hateful -- let's just use
 22 the word "discrimination." So you would say what
 23 is a discriminatory statement from Mr. Neufeld,
 24 the standard is higher for him when he is a
 25 trustee, vis-à-vis teachers -- I'm talking from
 26 the teacher's perspective; right? What is
 27 discriminatory towards teachers, that bar shifts
 28 if he says it as just a member of the public or
 29 now he says it as a school board trustee?

30 A Yeah. Well --

31 CNSL L. WADDELL: I don't want to -- sorry. I don't
 32 want to keep objecting, so maybe I will just --
 33 maybe you can tweak the question, Mr. Kitchen,
 34 but that really sounded like you were asking the
 35 witness to opine on a legal question. Maybe
 36 there is a way you can make it less asking him to
 37 draw a legal conclusion.

38 CNSL J. KITCHEN: Well, it's his perspective. I get
 39 that. And I get that that's not the law, and I
 40 am not going to ask him, Well, what do you think
 41 the law says, because that's not going to be
 42 helpful.

43 THE CHAIR: So to be clear, you are asking for his
 44 opinion about whether there is a higher standard
 45 on Mr. Neufeld when he is a trustee as to when he
 46 is a general member of the public? Is that what
 47 you are asking, his opinion about that?

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1 CNSL J. KITCHEN: Yes. Yeah. And, again, not a legal
 2 opinion. I am just -- I am getting his -- he is
 3 a teacher. He led the BCTF. He's -- you know, I
 4 am just getting his perspective.

5 THE CHAIR: Okay. Go ahead and answer the question,
 6 Mr. Hansman.

7 CNSL J. KITCHEN:

8 Q So --

9 THE CHAIR: Wait. Sorry. He can answer the question.
 10 Go ahead.

11 CNSL J. KITCHEN:

12 Q Oh, yeah. No, yeah.

13 A Sure. From my perspective, whether one is an
 14 employee of a school district, a unionized
 15 employee, or an employee in a -- [indiscernible -
 16 audio distortion] -- who is a school trustee, we
 17 all have the responsibility to work towards
 18 inclusion and nondiscrimination within the
 19 schools, and regardless of our personal beliefs
 20 on a particular group of people or a topic, we
 21 have to -- our educator hat never comes off, and
 22 we have the obligation to uphold those
 23 responsibilities in the school district. If we
 24 no longer have those responsibilities in the
 25 district -- let's say I was no longer a teacher,
 26 or should I ever become a trustee, if I was no
 27 longer a trustee, then that's a different matter.
 28 But while one is wearing that hat, whether as an
 29 employee or somebody who is intimately
 30 responsible for what goes on in the school
 31 district, we have that obligation in my view.

32 Q You were the president of the BCTF when this
 33 complaint was filed; is that right?

34 A Correct.

35 Q You were there for the -- either the only person
 36 or the driving person in making that decision; is
 37 that correct?

38 A To file it?

39 Q No. To file the complaint against --

40 A I was not involved in the filing of the
 41 complaint, no. The complaint was filed by our
 42 local. And our political officers, president and
 43 the vice presidents, we aren't involved in those
 44 sorts of day-to-day operations, unless there are
 45 staff that the Federation decided to deny, you
 46 know, moving forward with something like that,
 47 then we would have the authority to look to

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1 review that decision, but no, I didn't. It was
 2 not I that filed it, but I was aware it was being
 3 filed and definitely supported it being filed.
 4 Q Okay. You were aware before it was filed that it
 5 was going to be filed?
 6 A I'm not sure. I'm not sure. But --
 7 Q Okay. But nonetheless, you supported it --
 8 A -- I am aware of -- like, of course.
 9 Q In the -- so somebody in the executive over at
 10 the Chilliwack Teachers' Association would have
 11 made that decision?
 12 A Yes.
 13 Q My friend may object to this, and I will leave it
 14 with her. As far as who is paying for the
 15 complaint, is that the Chilliwack Teachers'
 16 federation, the B.C. Teachers Federation, or is
 17 it sort of a joined thing?
 18 CNSL L. WADDELL: Sorry. I don't know about the
 19 relevance, but I also don't know that anything
 20 turns on it, so --
 21 CNSL J. KITCHEN: He --
 22 CNSL L. WADDELL: What is the relevance?
 23 CNSL J. KITCHEN: He said he supported it. I was just
 24 going to ask him if he -- if he, you know -- if
 25 he put that support in action by authorizing that
 26 the BCTF pay for it. That's all I was going to
 27 ask.
 28 CNSL L. WADDELL: But what's -- sorry. What's the
 29 relevance of the question, though, I guess is
 30 the --
 31 CNSL J. KITCHEN: Well, it just gauges the level of
 32 his support as the president of the BCTF. That's
 33 all. I am just trying to figure out how much he
 34 supports it because I suspect it's a great deal,
 35 and that's all. That's --
 36 THE CHAIR: All right. Well, clearly, the BCTF is
 37 here, and their lawyers are here. I am not sure
 38 that information about the financial -- you know,
 39 who is paying for what is helpful to the issues.
 40 So can -- let's move on.
 41 CNSL J. KITCHEN:
 42 Q Fair to say that the support from the BCTF came
 43 from more than just sort of nice words and
 44 saying, Hey. We support you guys. Go get them.
 45 There was tangible things that the BCTF decided
 46 to do to support this complaint? Is that --
 47 A Is that a question to me, or is that to --

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1 Q Yeah. No. I am asking -- well --
2 A Okay.
3 Q -- correct me if I'm wrong -- well, okay. The
4 dates I have -- you were president of the BCTF
5 from 2016 to '19; is that right?
6 A Correct, yeah.
7 Q Okay. Okay.
8 A I basically had July 1st until the end of June at
9 the -- in the last tour, yes.
10 Q So as president of the BCTF, you decided to sort
11 of put your money where your mouth is, if you
12 will, and say -- and get behind this complaint
13 and support it. That was your decision as the
14 president?
15 A In terms of making public comment on it, for
16 sure. When media called about it, I could have
17 declined the opportunity to comment on it, but I
18 proceeded. I commented on it, yes.
19 Q Do you think it's inappropriate for other public
20 officials besides -- like, outside of the school
21 system -- so we got, you know, municipal
22 councillors, MLAs, et cetera. Do you think it's
23 inappropriate if they express some of the beliefs
24 that I went through earlier that you identified
25 as anti-trans speech? So, for example, if an MLA
26 said, Well, you know, look. I -- I, and some of
27 my constituents that I represent, believe that
28 there's only two genders and you can't switch
29 them. Do you think it -- do you think it's -- do
30 you think it's anti-trans speech if -- and,
31 again, this is not a legal question. I am just
32 asking you if you think it's anti-trans speech,
33 not whether you think it's discriminatory speech.
34 Do you think it's anti-trans speech for an MLA to
35 say those same things?
36 A I haven't made comments about individual MLAs or
37 MPs or anything like that --
38 Q Okay. So you don't --
39 A -- on this matter. I am sure there are MLAs and
40 MPs that do hold that belief, but I haven't
41 commented on that. I -- in my role at the
42 Federation, I tended to just stick to matters
43 that are related to -- what was directly related
44 to the K to 12 system.
45 Q Nearly there. What are we on here? I want to --
46 just going to bring you to one other spot I think
47 in here. I didn't quickly find exactly what I am

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1 looking for, so -- if we need to go there, we
 2 can. I don't know that we need to.

3 I read somewhere in the SOGI -- I think it
 4 was fairly early on -- in the resources here
 5 where it said, you know, We -- we -- we -- it
 6 said something -- I think it was in the plural
 7 sort of second person or something like that. It
 8 said, We don't -- or Teachers don't teach -- when
 9 they teach about religions, they teach about
 10 them. They don't teach people to believe in
 11 them. And, you know, similarly, what we are
 12 doing with SOGI is we are not teaching people to
 13 believe in this. We are just -- we are teaching
 14 about it, which I think -- I think you made a
 15 comment that was pretty similar to that. We are
 16 not counselling people to do this. We are just
 17 teaching them about it. Does that sound fair?
 18 Does that sound accurate, what I have just said
 19 about SOGI generally from what you know about it?

20 A Well, I'm not -- I'm not familiar with that
 21 particular section, but it doesn't -- it doesn't
 22 surprise me. You know, if one was teaching the
 23 physical and health education curriculum at the
 24 Grade 6, 7 level where students are learning
 25 about the physical, social, and emotional changes
 26 related to puberty, the topic of sexual identity
 27 is included in there, and so as part of that,
 28 yes, you would be teaching, talking about
 29 different identities that people might use,
 30 heterosexual, gay, lesbian, et cetera. But you
 31 are not necessarily saying, You all must use one
 32 of these labels, or, You must necessarily embrace
 33 these labels or anything like that. That's not
 34 the role of education. Yeah. That's --

35 Q Right. So -- can --

36 A I don't --

37 Q Can --

38 A I don't disagree with any of those statements.
 39 Don't teach students "should be" any of those
 40 religions, yeah.

41 Q You can --

42 A Teachers aren't counselling students to be
 43 straight or lesbian or counselling them to change
 44 their gender identity.

45 Q But they are --

46 A But teaching that people -- that gay and lesbian
 47 exist, that straight people exist, that trans

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1 people exist, yes. That they are -- be nice to
 2 them.
 3 Q Shouldn't we just be nice to them because they
 4 are human beings?
 5 A We should all be nice to one another because we
 6 are human beings. Unfortunately, sometimes
 7 people aren't nice to other human beings because
 8 of who they are.
 9 Q And then if they do --
 10 A -- [indiscernible - cross talk] --
 11 Q If they do, it's okay to be mean back to them?
 12 A I'm not sure what your point is, sir.
 13 Q Mr. Neufeld says something you don't like, and
 14 you say back to him, Well, he shouldn't be around
 15 children. That's kind of mean, isn't it?
 16 A No. That's an honest-held belief. We have, as
 17 people connected with the education system, the
 18 obligation to make sure that schools are safe and
 19 inclusive for all the kids that are in our care.
 20 So if --
 21 Q So it's okay for you to say your honestly held
 22 beliefs --
 23 THE CHAIR: Sorry. Mr. Kitchen, just let him finish
 24 his answer. I just want to hear the end of the
 25 answer. Go ahead, Mr. Hansman.
 26 A Given the nature of the things that Mr. Neufeld
 27 was posting -- not just the text, but some of his
 28 memes -- those were things that, as I said
 29 earlier, highly objectionable and run counter to
 30 the obligation of the school system.
 31 Q Would you --
 32 A And, yes, I definitely -- I definitely used
 33 strong words, and I have no regrets about that.
 34 Q I can tell. But you would -- well, you just said
 35 you used strong words. So you would agree with
 36 me there that there's an insinuation that, like,
 37 it's not safe for the kid -- for him to be around
 38 the kid. Right? You would agree with me that's
 39 the insinuation? That's a fair insinuation?
 40 A I don't -- I don't necessarily agree that that's
 41 the case --
 42 Q Okay. Okay.
 43 A -- but, in any event, this has already been dealt
 44 with by the Supreme Court of Canada.
 45 Q Well, from the point of defamation, yes, of
 46 course, it has. I agree with you on that, and
 47 we're not going to discuss that because that's

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1 not the issue here.

2 So you -- so just to go back to my question
 3 because my question was -- you don't think it's
 4 mean -- and I am using "mean." I know it's a
 5 very little kid term, but you used the term, and
 6 I think it's fair. You don't think it's mean to
 7 say to Mr. Neufeld when he expresses his -- his
 8 beliefs -- you don't think it's mean to say back
 9 to him that he shouldn't be around kids because
 10 -- and because -- the reason you gave is because
 11 it's your honestly held belief, so it's not mean?

12 A I believe it was entirely appropriate for me to
 13 engage in very firm and vociferous counter speech
 14 in defence of students and the obligation of the
 15 school system to make sure that schools are safe
 16 and nondiscriminatory and inclusive.

17 Q But it's not okay for him to engage in strong
 18 counter speech to protect what he thinks should
 19 be protected?

20 A The sort of speech that Mr. Neufeld engaged in is
 21 not speech that is -- given his role with the
 22 school system, it's not defensible.

23 Q From your perspective it's not defensible. I can
 24 understand that.

25 A Yeah. That's definitely my perspective.

26 Q And you are entitled to that perspective, and you
 27 are entitled to express that perspective.

28 A Yeah. Mr. Neufeld --

29 Q I guess what I am understanding is --

30 A Well, so he is entitled to his perspective. I
 31 don't dispute...

32 Q But he is not --

33 A Right --

34 Q He is not entitled to -- even though it's his
 35 firmly held belief, like, you -- it's just firmly
 36 held belief that he shouldn't be around kids and
 37 therefore you are justified in saying it, but
 38 even though it's his firmly held belief that it's
 39 bad for kids to be told they can switch their
 40 genders, he is not allowed to say it? That's
 41 your perspective?

42 A Given -- given our obligations legally in the
 43 school system in this province.

44 Q So, really, it doesn't matter about whether or
 45 not it's right? It just matters about what the
 46 law is?

47 A I agree with the law of this province. So in my

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1 view, it's correct. I appreciate the fact that
 2 others may have a different view.
 3 Q But if the law were to change -- so, for example,
 4 in this case, let's say Mr. Neufeld wins and the
 5 law were to change -- and I don't know whether or
 6 not him winning this case would be a change of
 7 the law or not, but I am going to venture a guess
 8 that you'd probably view it that way. Let's put
 9 it this way -- and, again, not your legal
 10 opinion.

11 You would disagree if the law that came out
 12 of this case was that Mr. Neufeld is allowed to
 13 say things like, There's only two genders, and
 14 you shouldn't be teaching kids that there's more
 15 than two. You would, then, disagree with that
 16 law?

17 A Law is not neutral. I wouldn't argue that the
 18 law is neutral. I am saying that I agree with
 19 how -- the laws that relate to this as they
 20 currently stand, and just the lay of the
 21 landscape, given any number of decisions over the
 22 past several decades, from the Surrey book
 23 banning case to the Jerbrand [phonetic] one to
 24 the *Kempling* one that set out all sorts of issues
 25 related to this.

26 Q Is it fair to say you agree with the law because
 27 currently the law allows you to express your
 28 firmly held beliefs, even if you use strong
 29 language, but they don't allow the expression of
 30 firmly held beliefs that oppose you?

31 A No. I don't think that's a fair summary of my
 32 perspective. I will say that I -- the Federation
 33 did advocate for -- over a number of years for
 34 the changes to the *Human Rights Code*. Those were
 35 put in place, and then we worked with the
 36 Province to operationalize that change within the
 37 K to 12 sector.

38 CNSL L. WADDELL: And -- sorry. Can I just interject
 39 for a moment. Do others have a window that is
 40 open on the share screen?

41 THE CHAIR: Yeah.

42 CNSL J. KITCHEN: Oh, sorry. I haven't -- I haven't
 43 stopped it. I'm sorry.

44 THE CHAIR: There we go. Thank you.

45 CNSL J. KITCHEN: Yeah. I have stopped it now.

46 Q Okay. I may need to open it again. Mr. Hansman,
 47 I am nearly there. Fair to say that -- and you

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1 can speak to yourself or just to teachers
2 generally or schools generally as you have quite
3 liberally -- fair to say that Judaism is not
4 taught as if it's true? It's not taught as if
5 it's fact; is that correct?
6 A Like in a comparative religions course or
7 something or...?
8 Q Yeah, yeah, yeah. Social Studies 11, whatever.
9 It's taught as, This is a belief system that some
10 people did believe and still believe. It is a
11 belief system that exists in the world of ideas.
12 It's taught from that perspective and not from
13 the perspective of "This is fact." Is that fair?
14 A Yeah. That's how it's done in the public system,
15 for sure, in those courses that -- that exist.
16 And likewise, let's say, in Grade 7 social
17 studies, part of that curriculum is ancient
18 civilization, so part of that you might be
19 comparing two or more different -- like, let's
20 say the Maya or ancient Korea or something like
21 that and you might compare belief systems or
22 mathematical systems or day-to-day practices,
23 economics, trading practices, any number of
24 things.
25 Q I assume -- we can probably go through these
26 examples pretty quick. Same with Hinduism or
27 Sikhism or Islam or Christianity or Baha'i or any
28 other belief system, it's not taught from the
29 perspective that it's true. It is only taught
30 from the perspective that it is a system of ideas
31 and beliefs that are out there that some people
32 believe?
33 A Yeah. In the independent school system in this
34 province, it may lean towards more, you know,
35 These things are true.
36 Q Right.
37 A But in the public system, Section 76(1) of the
38 *School Act* talks about the secular, nonsectarian
39 nature of the school system. So it's -- these
40 are beliefs that people have, but it's -- it's
41 done from that perspective, not in a
42 proselytizing manner.
43 Q Right. Similar with, I am going to say, sort of,
44 Indigenous cultural or spiritual beliefs. Those
45 are taught a fair amount now, are they not?
46 A Not -- it depends what you mean by "spiritual
47 beliefs," but, like, knowledges and

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1 understandings; traditional practices and
 2 understandings about, like, relation to land or
 3 perhaps stories from various communities about,
 4 like, the origins of the earth or where people
 5 came from or where different mountains came from
 6 and that kind of thing.

7 Q Yeah. Like, the great Bear Spirit lives on, you
 8 know, mountain X kind of thing?

9 A Yeah.

10 Q That's why I uses the word "spiritual." I am
 11 using it very vaguely and -- I have done some
 12 Aboriginal work, and that word tends to be --

13 A Ceremonial practices like --

14 Q Ceremonial. There you go.

15 A -- [indiscernible - cross talk] and things.

16 Q Those are -- those are not taught from the
 17 perspective of, These things are true. They are
 18 taught from the perspective of, These are beliefs
 19 that some Aboriginals or Indigenous people did
 20 hold or still hold or -- there's all these
 21 different groups, but it's taught from the
 22 perspective of, Hey, these are the beliefs that
 23 are or were out there that some people believe?

24 A Sure. That's a fair summary.

25 Q They are not taught as truth or fact?

26 A Correct.

27 Q And this is different from, sort of, you know,
 28 the -- the idea that 2 plus 2 equals 4. That's
 29 not taught as just a belief system that some
 30 people hold. It's taught as truth and fact. Is
 31 that fair?

32 A Mm-hmm.

33 Q But isn't it fair to say that in the SOGI
 34 resources, the idea or belief that there are more
 35 than two genders is taught as fact, not simply a
 36 belief that some people hold?

37 A Well, there are more than two genders, so...

38 Q Right. So that's exactly how it's taught; right?
 39 It's taught to the students like, There is more
 40 than two genders. Like, you know, Time to -- you
 41 know, This is what you -- this is part of your
 42 learning? Okay. It's fair to say that it is
 43 taught from that same perspective that this is --
 44 this is fact that people can identify as -- as
 45 different genders?

46 A Well, people can identify by different genders
 47 from what they might have been assigned earlier

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1 on in life, yes, or outside of the traditional,
 2 to use your words, male/female binary breakdown,
 3 yes.

4 Q It's taught from the perspective of fact that
 5 when a person who used to be a boy now identifies
 6 as a girl, that he really is a girl. That's
 7 taught as fact?

8 A Well, it is a fact that we have trans people in
 9 our schools and communities, and we want to make
 10 sure that they're safe and respected and can
 11 learn and thrive while at school, so that's part
 12 of that proactive work.

13 Q And I really appreciate that. We have heard that
 14 many times, but that's not quite what I asked.
 15 Is -- is it regarded as a fact and taught as a
 16 fact that not only is that person a trans person,
 17 but when that person who used to be a boy
 18 identifies as a girl, that he really is a girl?

19 A That's how --

20 CNSL L. WADDELL: The witness has already -- the
 21 witness has already been asked and has answered
 22 this question.

23 CNSL J. KITCHEN: No, he has not.

24 CNSL L. WADDELL: Yes, he has.

25 CNSL J. KITCHEN: There is a difference between simply
 26 saying he is a trans person --

27 Q Okay. Let me ask you this -- maybe this will be
 28 helpful. Just track with me on this. When --
 29 when there's a boy who identifies as a girl, and
 30 we say he is a -- we say he is a trans girl;
 31 right? Is that the terminology? We see he is a
 32 trans person, but he is a trans girl?

33 A No. It depends how the person identifies. Like,
 34 look, I will --

35 Q Okay.

36 A -- cut to the chase here. I will take you
 37 through an example of someone I know very well --

38 Q Okay.

39 A -- a family friend. That person transitioned
 40 when they were in Grade 5, and they are known to
 41 the world as a boy, and they've started a new
 42 high school. They do not, nor should they have
 43 to, go for the rest of their life outing
 44 themselves as somebody who transitioned earlier.
 45 They live as a boy. They are a boy. They are on
 46 the boys' basketball team. They are carrying on
 47 with their life. They are not forever more

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1 having to declare themselves as a trans person.
2 They might decide --
3 Q Okay so they're not -- they're not --
4 A -- [indiscernible - cross talk] --
5 Q They're not a transgender person?
6 A Well, they are. But they don't have to let
7 everyone under the sun, moon, and stars know
8 that. He is a boy. When he was younger, he had
9 been identified as a girl, but he is a boy, and
10 living as a boy and just wants to do boy things,
11 and he is not interested in being a transgender
12 activist that has to educate every single one of
13 his peers and teachers. He just wants to live
14 his life, get good grades in math, and maybe
15 score a few more goals in basketball.
16 Q Is it fair to say that he is both, then, a
17 transgender person and a boy? I mean, like, I --
18 that's -- I am summarizing what I thought you
19 just said to me. Like, yes, he still is a
20 transgender person, but he is a boy, but he is
21 both, I guess. Is that fair? Because that
22 sounds like what you just said.
23 A I am not going to debate his identity or
24 existence. He is a boy.
25 Q Well --
26 A When he was younger, he was -- identified as a
27 girl. He is a boy. And the school system and
28 the Province regards him as a boy, and he will
29 probably live out the rest of his life as a boy.
30 If he makes a different decision --
31 Q And we --
32 A -- down the road, that's up to him.
33 Q And from your perspective, we cannot tolerate
34 somebody saying that, Look, in reality, this
35 person is still a girl because they were -- they,
36 you know -- they were born a girl, and they can't
37 ever be anything other than a girl. If somebody
38 says that, from your perspective, we can't
39 tolerate that?
40 A Someone who works in the school system or is
41 connected to the school system, absolutely not.
42 Q Okay. But we can tolerate it if a member of the
43 public says it?
44 A That's also not something I would welcome, but
45 that's -- I don't think that's what we are
46 concerning ourself with here.
47 THE CHAIR: Mr. Kitchen, I am just noting the time.

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1 We are about due for an afternoon break, but how
2 are we doing in terms of your cross? Are we
3 almost done?

4 CNSL J. KITCHEN: Nearly. Look, I'm -- we can take a
5 break, or we can keep going. It doesn't matter
6 to me. I don't mind if you want to take a break.
7 I am not quite done. I am close, but, you know,
8 if you want a break, I don't want to -- I don't
9 want to keep us from that.

10 THE CHAIR: All right. I think it's a good time for a
11 break. And, Mr. Kitchen, you can review your
12 questions and finish up hopefully in short order
13 after the break.

14 Mr. Hansman, you remain under
15 cross-examination. We are going to take a break
16 for 15 minutes. For this short break, we will
17 turn our cameras and mics off, and we will come
18 back and finish up with the questions for
19 Mr. Hansman. Thank you. 15 minutes.

20 CNSL L. WADDELL: Sorry.

21 CNSL J. KITCHEN: Oh, it's okay.

22 THE CHAIR: Coming back.

23 CNSL L. WADDELL: Sorry. I was just going to -- I
24 know Mr. Hansman has been a witness before, but I
25 was just going to suggest that you caution -- I
26 mean, you told him he was under
27 cross-examination. I can assure you he knows
28 what that means, so...

29 THE CHAIR: Yes. Thank you. I didn't --

30 CNSL J. KITCHEN: I am not concerned if that helps.

31 THE CHAIR: I didn't complete the sentence.

32 CNSL L. WADDELL: Yeah. Sorry.

33 THE CHAIR: If Mr. Hansman is still listening, please
34 don't talk to anybody about your evidence as we
35 talked about before.

36 CNSL L. WADDELL: Okay. Thanks.

37 A I have been in many arbitrations. No problem.

38
39 (WITNESS STOOD DOWN)

40
41 THE CHAIR: Thank you. Okay. 15 minutes.

42 B. NEUFELD: I have a housekeeping question.

43 THE CHAIR: Sorry?

44 CNSL J. KITCHEN: Maybe you can ask me.

45 THE CHAIR: Okay. Too many false starts. We're back.

46 B. NEUFELD: I have a housekeeping question.

47 Something surprised me this morning. An email to

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1 James Kitchen popped up on my Microsoft Teams
2 sidebar. Did everybody see that?

3 THE CHAIR: No.

4 CNSL J. KITCHEN: No. I didn't see it. So I don't
5 think anybody else would have.

6 THE CHAIR: It didn't come up --

7 B. NEUFELD: Okay. I hope --

8 THE CHAIR: -- here.

9 B. NEUFELD: Okay.

10 CNSL J. KITCHEN: I think it's just because you are
11 signed into Microsoft, and those things happen on
12 your end.

13 UNIDENTIFIED SPEAKER: Yeah. Okay.

14 THE CHAIR: Okay. Last call before break. Anything
15 else? No? Okay. 15 minutes starting now.
16 Thank you.

17

18 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS) [3:03:47]

19 (PROCEEDINGS RECONVENED) [3:19:40]

20

21 THE CHAIR: All right, everyone. Come on back. All
22 right. Mr. Hansman, are you there? Thank you.
23 Okay. Okay. I am just making sure everyone is
24 muted. Okay. Okay. Mr. Hansman, are you ready
25 to continue?

26 A I am, yes.

27

28 GLEN HANSMAN, a witness,
29 recalled.

30

31 THE CHAIR: Go ahead, Mr. Kitchen.

32 CNSL J. KITCHEN: Thank you.

33

34 CROSS-EXAMINATION BY CNSL J. KITCHEN, continuing:

35

36 Q Mr. Hansman, I have been through the -- there is
37 many media interviews that have been entered as
38 part of the case against Mr. Neufeld. Were you
39 aware of that? You are not aware of the
40 documents in this case?

41 A I haven't seen the -- the binder of documents,
42 no.

43 Q Have you -- have you either watched or read the
44 transcripts of any of the media interviews that
45 Mr. Neufeld has done over the years?

46 A Some of them, yeah. Though, I mean, over time,
47 some of the media interviews perhaps related more

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1 to the proceedings that were -- eventually ended
2 up at the Supreme Court of Canada and not
3 necessarily what led to the complaint here.
4 Q Okay. Well, I will just tell you because you
5 might need to know. Many of the actual things
6 that he said that the complainants are
7 complaining about in the case are actually from
8 those media interviews, so that's why I am
9 bringing it up. That's why it's relevant. You
10 know, it strikes me as interesting, and here is
11 why: Because when I read through these
12 interviews, they are generally with three people.
13 There could be -- there could be more that I am
14 just forgetting, but generally they are with Drea
15 Humphrey of the Rebel News; Tanya Gaw of whatever
16 organization she is a part of; and Laura-Lynn
17 Tyler Thompson, who runs some sort of video media
18 based in B.C.
19 A Yeah, yeah.
20 Q You recognize all three of those names?
21 A Yes, yeah.
22 Q Okay. And you would agree with me, to your
23 knowledge, there have been no human rights
24 complaints brought against those individuals by
25 the BCTF or the CTA; is that right?
26 A Not to my knowledge, no.
27 Q Okay. And you haven't -- there is no -- as far
28 as -- and I know this question is obvious, but I
29 am going to ask it. To your knowledge, the BCTF
30 and the CTA has not brought a human rights
31 complaint against myself, Mr. Kitchen?
32 A No, no.
33 Q Is it --
34 A Unless [indiscernible - cross talk] there's
35 happening I'm unaware of. But I'm not -- I'm not
36 in an elected role anymore, so I'm not -- yeah,
37 not specifically about you. But if there's
38 something -- some other complaints in the works,
39 I wouldn't have knowledge of it.
40 Q Well, I would --
41 A I am out of the game, as it were.
42 Q Well, is it fair to say that because, you know,
43 presumably the BCTF -- and I know you are not
44 there anymore, but you would agree with me that
45 the BCTF must care about what Mr. Neufeld is
46 saying in those media interviews to have actually
47 been making a complaint about those statements in

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1 those interviews. That's fair; right?
2 A Oh, absolutely. Especially -- I mean, because of
3 Mr. Neufeld's role as an elected school trustee.
4 Q Right. So it's fair to say, based on what you --
5 based on what you said earlier, that, you know,
6 the -- the -- the BCTF and the CTA, you know,
7 what they care about is school board trustees and
8 not what media people or lawyers are saying
9 online?
10 A No. If we were, there would be many more human
11 rights complaints filed, but I am not aware of
12 the BCTF or locals scanning the internet
13 regularly for what people are saying online and
14 then filing human rights complaints.
15 Q The reason I find that interesting is because, as
16 I have gone through the comments -- or --
17 sorry -- as I have gone through the material, the
18 things - this is ubiquitous. Universally the
19 things said by Drea Humphrey, Tanya Gaw, and
20 Laura-Lynn Tyler Thompson are of -- are of a
21 more -- a more -- of a stronger nature -- of a
22 nature that I would guess would be found to be
23 even more offensive or hurtful on the part of
24 LGBT identifying individuals. So I guess it's
25 just fair to say that no matter how strong the
26 language would get from a media interview, from a
27 journalist interviewing Mr. Neufeld, the BCTF --
28 what they care about is what Mr. Neufeld says?
29 A None of those individuals were school trustees or
30 are presently.
31 Q If one of them was elected, though -- if Drea
32 Humphrey was elected to the -- to the Chilliwack
33 or Abbotsford board as a trustee, is it fair to
34 say that the BCTF would then take a great
35 interest in her prior media statements?
36 A Probably more -- probably would be more
37 interested in what statements she was making
38 while she was serving in her role as trustee.
39 Q Okay. So you would expect her to stop, and any
40 of her prior comments about the stuff that I have
41 been saying about how, you know, it's foolish to
42 think you can change your gender or something
43 like that -- if she said that, you know, you
44 would expect her to stop that the moment she
45 became a school board trustee?
46 A Well, you know, I am just engaging in speculation
47 here. I mean, there is no live thing, but just

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1 consistent with what I've said earlier,
 2 Mr. Neufeld was a school trustee when he said
 3 quite a few of the things that he said. I am
 4 sure he has carried on saying some things or
 5 related things or expanded upon it once he was no
 6 longer a trustee, but that's not the matter here.
 7 What the Federation does in the future is up to
 8 the decision-makers who are currently there.

9 CNSL J. KITCHEN: Those are all my questions. Thank
 10 you for your time.

11 THE CHAIR: Thank you. Ms. Waddell, do you have
 12 anything arising?

13 CNSL L. WADDELL: No re-direct.

14 THE CHAIR: Okay. Thank you. Mr. Hansman, thank you
 15 very much for -- for all your time and for your
 16 evidence today. That concludes your time here as
 17 a witness. I will just ask that you please not
 18 to talk to anybody else about your evidence who
 19 may be testifying in this proceeding, and that's
 20 done, of course, to safeguard their testimony if
 21 they are coming after you. But other than that,
 22 you are welcome to leave the proceeding, and if
 23 you want to observe as a member of the public,
 24 you are welcome to do that as well. Thank you
 25 very much.

26 A Thank you for your time.

27 THE CHAIR: Take care.

28 A Bye-bye.

29
 30 (WITNESS EXCUSED)

31
 32 THE CHAIR: Do we have the next witness able to get
 33 started this morning -- this afternoon?

34 CNSL A. TOM: Yes, we do. We have Ed ready for us. I
 35 will ask that he log in shortly. I am also going
 36 to log myself back in as "Complainant's
 37 Documents" because I will be showing some
 38 documents to our next witness --

39 THE CHAIR: Thank you. And just --

40 CNSL A. TOM: -- just --

41 THE CHAIR: Just before we begin, I want to clarify
 42 that the next witness is not a teacher to whom
 43 the publication ban applies, or are they a
 44 teacher to whom the publication ban applies?

45 CNSL A. TOM: They are not a teacher to whom the
 46 publication ban applies.

47 THE CHAIR: Okay. So in that case, I confirm that we

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1 are using their full name, as we would any
2 witness. Okay. Thank you.
3 CNSL A. TOM: Thank you.
4 CNSL J. KITCHEN: Sorry. I was speaking, and I was
5 muted. Ms. Waddell, there's a large number of
6 documents in the "Various" book. Are you
7 planning to -- are you planning to get some of
8 those in with Mr. -- is it Klettke? Mr. Ed
9 Klettke? Is that his name?
10 CNSL A. TOM: That is his name, yes, and we are, yes.
11 CNSL J. KITCHEN: Okay.
12 CNSL L. WADDELL: Not all of them, but some.
13 CNSL J. KITCHEN: Okay. Okay. And then some more
14 with the teachers in the next couple of days?
15 CNSL L. WADDELL: A few, yeah.
16 CNSL J. KITCHEN: Okay.
17 CNSL L. WADDELL: Not a ton.
18 CNSL J. KITCHEN: That makes sense. Okay. Thank you.
19 CNSL A. TOM: Apologies. He was just having trouble
20 logging in here, so one moment. He should be
21 with us in a couple minutes.
22 THE CHAIR: Thank you.
23 CNSL J. KITCHEN: Ms. Waddell, just thinking of
24 timing, do you think you might finish today in
25 direct, or you are going to be going into
26 tomorrow morning with Mr. Klettke? Oh, sorry.
27 Yeah.
28 CNSL L. WADDELL: That's okay. Ms. Tom is going to do
29 Mr. Klettke today, so I will just let her give
30 her best guesstimate.
31 CNSL A. TOM: I don't think that we are going to be
32 done in direct today.
33 CNSL J. KITCHEN: Okay. I expect my cross to be
34 shorter with him, just so you know. I don't
35 really know what you have planned for him, but
36 just so you -- I mean, you know, I know I was
37 long with Mr. Hansman. I expected I would be. I
38 expected I would be a lot shorter with
39 Mr. Klettke, and then maybe a little bit longer
40 with the teachers, depending on what we got.
41 That was my guess. Because I know we are already
42 looking like we are going to run out of time, but
43 I am hopeful we won't.
44 THE CHAIR: Thank you.
45 CNSL L. WADDELL: Thank you.
46 CNSL A. TOM: Thanks.
47 THE CHAIR: Maybe while we are waiting for

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1 Mr. Klettke, maybe I will ask complainant's
2 counsel about the videos that have been, I think,
3 all admitted now by consent.

4 CNSL J. KITCHEN: Except for one.

5 THE CHAIR: Except for one. Apologies. Is it your
6 intention to watch any of these videos during the
7 proceeding, or would it be helpful for us to
8 watch some of them in advance, or do you expect
9 us to watch them afterwards, or how do you intend
10 to proceed with the videos?

11 CNSL A. TOM: Our intention is just to take folks to
12 the relevant points of the transcripts of various
13 videos. So I think it would be helpful to watch
14 potentially those portions that are identified in
15 the transcripts as being quite relevant. Some of
16 them are very long, so probably you don't want to
17 listen to the whole thing or -- [indiscernible -
18 audio distortion].

19 THE CHAIR: Okay.

20 CNSL L. WADDELL: We included the -- yeah. Sorry. We
21 included the video in case there were any
22 concerns about the transcript and/or the Tribunal
23 decided that it wanted -- you know, for some of
24 the transcripts, they are -- we only transcribed
25 the relevant portions, but if for any reason the
26 Tribunal were to want to see, you know, before or
27 after that, you do have the whole thing. So
28 that's -- but we are not -- we weren't intending
29 to -- unless -- Ms. Tom can correct me if I am
30 wrong, but we weren't intending to actually show
31 the videos in the course of the hearing.

32 THE CHAIR: Okay. Thank you. That's helpful. All
33 right. I see we have -- the witness has joined
34 us, so I will just let him in here.

35 ED KLETTKE: Hello there.

36 THE CHAIR: Hello. Just a moment. I have got to find
37 you on my screen. There you are. Just a moment.
38 I am going to pin you. Good afternoon, Ed
39 Klettke. I can see you have joined. My name is
40 Devyn Cousineau. I am vice chair of the B.C.
41 Human Rights Tribunal. I am joined by Tribunal
42 members Robin Dean and Laila Alam. We are the
43 panel that's been designated to hear and decide
44 this human rights complaint.

45 I am just going to give you a brief
46 orientation to what you have entered into here
47 and who is on the call. You should see a few

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1 people on video. You should see a room with
2 complainant's counsel, likely known to you. We
3 have Alanna Tom, Lindsay Waddell, and Stephanie
4 Quelch joining as counsel for the BCTF and
5 Chilliwack Teachers' Association. And we also
6 have Reid Clark here from the Chilliwack
7 Teachers' Association. And I think we no longer
8 have the BCTF person. And then you should see as
9 well on video Barry Neufeld, the respondent in
10 this matter, and his lawyer, James Kitchen. And
11 the last person on video is Maria Sokolova, who
12 is counsel for the intervener, B.C.'s Office of
13 the Human Rights Commissioner. And then we have
14 a number of members of the public who are
15 observing using audio access. So they are -- you
16 may see kind of an empty screen there. Those are
17 members of the public observing the proceeding.
18 All members of the public are required to follow
19 terms and conditions of observing the hearing,
20 which include no recording of any kind.

21 We at the Human Rights Tribunal are
22 recording the proceeding. That's the official
23 record of the human rights hearing, but that's
24 the only recording that's permitted. Is there
25 anyone else there in the room with you?

26 E. KLETTKE: No. There is no one else in the room
27 with me.

28 THE CHAIR: Okay. Thank you. And do you have any
29 documents or anything in front of you that you
30 may be referring to?

31 E. KLETTKE: I do have some notes on the couch beside
32 me.

33 THE CHAIR: Okay. Before you pick up or go to those
34 notes, can you please just let us know that
35 that's what you intend to do, and then we can
36 decide when that may be appropriate or not. But
37 in the meantime, we will just -- I will just ask
38 you to answer the questions as best you can and
39 if you are asking to look at some notes, please
40 let us know, and we will deal with that.

41 E. KLETTKE: Certainly.

42 THE CHAIR: All right. So now I am going to ask you
43 to please spell your full name for the record and
44 tell us the pronouns you would like us to use.

45 E. KLETTKE: Okay. The name I am commonly called is
46 Ed Klettke. Last name is Klettke, K-l-e-t-t-k-e,
47 he and his.

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Ed Klettke (for Complainant)
In chief by Cnsl A. Tom

1 THE CHAIR: Thank you, Mr. Klettke. You are about to
2 give evidence at the B.C. Human Rights Tribunal.
3 The Tribunal depends on you telling us the truth,
4 and the law requires that you do so. So before
5 you testify, I must ask: Do you solemnly promise
6 to tell the truth, the whole truth, and nothing
7 but the truth?

8 E. KLETTKE: I do.

9 THE CHAIR: And do you understand that a breach of
10 this promise is an offence under the law?

11 E. KLETTKE: Yes.

12
13 ED KLETTKE, a witness called
14 for the complainant,
15 affirmed.
16

17 THE CHAIR: Okay. I expect you have been prepared in
18 terms of what to expect today, but just briefly,
19 Ms. Tom is going to have some questions for you.
20 Our day today runs until 4:30. Then I expect we
21 will be asking you to come back tomorrow morning
22 at 9:30 to finish Ms. Tom's questions, and then
23 Mr. Kitchen will have questions for you as well.
24 So we appreciate you just answering the questions
25 as best you can.

26 A All right. I will try my best.

27 THE CHAIR: Go ahead, Ms. Tom.

28
29 EXAMINATION IN CHIEF BY CNSL A. TOM:
30

31 Q Great. Thanks. Trouble with having two
32 computers and mics on. I will use just the --
33 [indiscernible - audio distortion] on here.

34 Okay. Thanks for being here, Mr. Klettke.
35 Can you just introduce yourself and tell us about
36 what your profession is.

37 A Yes. I am Ed Klettke. I was a -- I am a retired
38 secondary teacher. I have been in the Chilliwack
39 School District for -- I was in the Chilliwack
40 School District for 37 years, arriving in 1984
41 and retiring in June of 2020.

42 Q And so what's your involvement with the local
43 union in Chilliwack?

44 A Well, my involvement with the local union started
45 at the school level. I was a staff rep and a
46 professional development rep during my years
47 teaching math at Chilliwack Secondary. In 2012,

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Ed Klettke (for Complainant)

In chief by Cnsl A. Tom

1 I ran for the position of second vice president
2 and was successful. That was a volunteer
3 position that I continued for three years,
4 getting elected each year. In 2015, I was
5 elected as first vice president. That is a
6 release position, so I was seconded from my
7 position at Chilliwack Secondary. Subsequently
8 elected for the next two years. And then 2018,
9 May of 2018, I was elected president of the
10 Chilliwack Teachers' Association and was again
11 elected two more years until I retired in 2020.

12 Q And as the local president and the first vice
13 president in particular, what were some of the
14 responsibilities that you had to the CTA members?

15 A Well, I guess I would summarize those
16 responsibilities in three categories. Contract
17 support would be one, member support wellness
18 would be a second, and professional development
19 would be a third. And so contract development
20 obviously involves enforcement of the contract
21 with the school district and negotiating it as
22 well. Member support wellness is about health
23 and safety, health and wellness, talking to
24 members about concerns. And professional
25 development and conferences -- working with
26 teachers to improve their teaching practices
27 and -- [indiscernible - audio distortion].

28 Q Just to make sure that everybody is on the same
29 page, when you say "the contract," do you mean
30 collective agreement between the teachers and
31 the --

32 A Yes.

33 Q -- district?

34 A Yes, yes. That's fair.

35 Q And so going back to your time as a teacher, and
36 you can also speak to this as your -- in your
37 role as a released officer -- as a teacher, what
38 duties are owed generally to whom?

39 A Well, you know, I always considered obligations
40 to myself first, to do my best as a teacher, act
41 in the best interest of the students. Within
42 that lies an obligation to students clearly, and
43 to parents. Obviously I am hired by the
44 district, so I have obligations to the district.
45 There are expectations, rules, responsibilities,
46 and roles that I need to carry out as an
47 employee. And also obligation to the Ministry of

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Ed Klettke (for Complainant)

In chief by Cnsl A. Tom

1 Education Certification Branch, which provides me
2 my certification to teach in British Columbia.
3 Q And I just want to go through some of those
4 obligations in a little bit more in detail. Can
5 you expand on the obligations to the employer?
6 A Certainly. Well, in my view, you know, there
7 is -- when you -- when you accept a position, you
8 are accepting a series of expectations, roles,
9 and responsibilities. So I would endeavour to do
10 my best to teach the students as I could, to
11 follow the ethics of my union and the standards
12 of the certification branch.
13 Q Can you tell us what the duty of fidelity is?
14 A The duty of fidelity is sort of loyalty to your
15 employer, sort of the duty of being honest, not
16 getting involved in conflicts of interest, acting
17 in the best interest of the employer.
18 Q And now turning to the standards of the
19 regulator, can you talk a little bit more about
20 what those standards include.
21 A Well, it's been a while since I have been
22 involved in the union, but the standards were
23 often brought up from time to time, including,
24 you know, things like ethics -- you know, ethics
25 and integrity, obviously a big part of the
26 standards; using effective practices;
27 professional learning; respect for First Nations
28 history. There is -- I believe there's nine,
29 unless they have been updated since I left.
30 Q And what happens if, as a teacher, you don't
31 fulfill your obligations to either students,
32 parents, or the employer?
33 A Well, in most circumstances, there is -- it
34 usually starts as a complaint of some sort, and
35 typically it goes to the district and starts an
36 investigation into that complaint.
37 Q And after that complaint, it's investigated?
38 A Well, the district then makes a determination as
39 to whether there is a need for discipline or not.
40 There's a couple of things they do. Sometimes
41 they will put a letter of expectation in the
42 teacher's file. Sometimes there will be some
43 sort of district-level discipline. That varies
44 depending upon the results of the investigation.
45 Q What kinds of disciplinary results could occur?
46 A Well, from the district -- the district can
47 certainly suspend a teacher, right, and, I mean,

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Ed Klettke (for Complainant)

In chief by Cnsl A. Tom

1 the discipline can go right up to termination.

2 Q And do you know what role the school board plays
3 in the disciplinary process for individual
4 teachers?

5 A Generally the school board is involved in
6 hearings for suspensions and terminations. There
7 is a clause in the contract that provides
8 teachers the opportunity to have a hearing in
9 front of the entire board.

10 Q So if a teacher is investigated and then
11 disciplined, and that discipline includes some
12 amount of suspension or potentially a
13 termination, the teacher then has the option to
14 have a board hearing. And so what happens at
15 that board hearing?

16 A They were -- they were not common in my time at
17 the Chilliwack Teachers' Association, but I was
18 involved in a few. Generally, not unlike what we
19 are experiencing today where, you know, the --
20 the union and the teacher would come before the
21 board. We would present our case. Then usually
22 the human rights department of the district would
23 present their case, and the board would make a
24 determination whether to support HR's decision or
25 not.

26 Q So can the board change the discipline that's
27 imposed upon a teacher?

28 A I did not experience that, but, yes, I believe
29 they can.

30 Q And turning now to how that interacts with the
31 regulatory system, does the board have any
32 involvement in the professional regulator?

33 A Well -- the board itself? I am not sure of the
34 involvement of the board, but certainly the
35 district does provide the discipline reports to
36 the provincial certification body, and in some
37 cases, the certification branch will launch their
38 own investigation as well.

39 Q And what happens if that occurs, and there is an
40 investigation at the regulatory body?

41 A Well, similar to what happens at the district
42 level, the investigation proceeds, and then a
43 determination is made whether to proceed with
44 discipline, and if discipline, what sort of
45 level. And, again, you know, there can be -- you
46 know, something like a notice given to the
47 teacher, a warning, a suspension up to the

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Ed Klettke (for Complainant)

In chief by Cnsl A. Tom

1 pulling of the certification, the removal of
2 certification for either a period of time or
3 permanently.

4 Q So if a teacher is disciplined by the employer,
5 then it's possible for them to be disciplined
6 again at the regulatory level?

7 A Certainly, yes, that does happen that they are
8 disciplined by both bodies.

9 Q And when you say "pull their certificate," what
10 does that -- what does that mean?

11 A Well, public school teachers in B.C. require
12 certification from the Ministry of Education.
13 And so if the commissioner for regulation
14 determines that the teacher's certification needs
15 to be suspended or terminated, then that prevents
16 a teacher from teaching in public schools in B.C.
17 from that point on or for the period of the
18 suspension.

19 Q So if someone loses their teaching certificate,
20 can they be a teacher elsewhere in the country?

21 A It makes it very difficult to be a public school
22 teacher elsewhere as there are
23 information-sharing agreements between the
24 provinces. I am not privy to all the provinces
25 that are part of that, but it does make it very
26 difficult to be a public school teacher.

27 Q Is that record of the suspension at the
28 regulatory level made public?

29 A Oh, definitely. Like, all -- the findings of the
30 commissioner for teacher regulation is published
31 and is often followed up on by newspapers around
32 the province.

33 Q Going now to your role as an elected officer for
34 the Chilliwack Teachers' Association, can you
35 just tell us a little bit more about your role
36 and relationship with the employer.

37 A Well, the -- the Chilliwack Teachers' Association
38 represents all the public school teachers in
39 Chilliwack. So our role is to communicate with
40 the -- the employer about employment situations,
41 concerns that we have, breaches of contracts that
42 we think might be taking place. We -- we
43 negotiate the contract with them. You know,
44 we -- we deal with them on a variety of issues
45 that come forward from them.

46 Q Does the Teachers' Association ever collaborate
47 with the Board of Education?

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Ed Klettke (for Complainant)
In chief by Cnsl A. Tom

1 A Yes, yes. The teachers' union has
2 representatives on a variety of board committees,
3 primarily -- the ones I recall are the budget
4 committee and the education and policy committee.
5 So we -- we always participated in those
6 committees, as did many other partner groups in
7 the district, including parents and students and
8 other unions. So we certainly took part in, you
9 know, two of the bigger parts of the boards,
10 which is policy and budget. And we did
11 communicate with the board chair, vice chair, and
12 occasionally trustees throughout the year.
13 Particularly when they were interested in hearing
14 sort of the teachers' perspective on certain
15 matters.

16 Q Can you give us an example of when they might be
17 seeking the teachers' perspective.

18 A You know, when there is a topic that comes up --
19 you know, something, for example, like the
20 foundation skills assessment. Although I don't
21 know how much that happens anymore. It's been
22 around for such a long time. But certainly when
23 it was new and very controversial, we would often
24 have conversations with trustees about, you know,
25 what -- you know, what the challenges teachers
26 had with that particular assessment. So we did
27 from time to time, you know, email or have phone
28 conversations with trustees, most often the board
29 chair or vice chair.

30 Q And did you regularly attend board meetings in
31 your capacity as an elected officer of the CTA?

32 A Yes. I attended a lot of board meetings through
33 those six years.

34 Q Why?

35 A We felt it was important to understand how the
36 board operated and what they were doing. You
37 know, we wanted to be able to keep our finger on
38 the pulse of education in Chilliwack and be able
39 to report back to our members, you know, what was
40 going on, and why it was going on. We felt it
41 was very important.

42 Q And so what was your relationship with Barry
43 Neufeld when you were an elected officer of the
44 CTA?

45 A Well, I would say prior to October of 2017, I
46 didn't really have a lot of interactions with
47 him. You know, I don't recall -- I think I did

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Ed Klettke (for Complainant)

In chief by Cnsl A. Tom

Submissions by Cnsl A. Tom

1 have a couple of brief conversations with him,
 2 likely at, you know, one of those committee
 3 meetings that we -- that we often attended
 4 together. But the relationship definitely
 5 changed after October 23rd, 2017, because of
 6 the -- the Facebook post, that occurred on that
 7 day. And so the relationship was somewhat
 8 fractured after that day.

9 Q And do you recall what the post was about?

10 A Yes. The post -- Mr. Neufeld had some concerns
 11 about a resource called SOGI 123, and he put
 12 together a post, and he said it was time to not
 13 sit on his hands and sort of state his mind. It
 14 was a post that was not well-received by our
 15 members and the public. It was -- it was quite a
 16 shocking admission from a school trustee, mainly
 17 because he seemed to be, you know, not in
 18 compliance with the B.C. *Human Rights Code*, and
 19 it was -- it was a very stunning day for our
 20 members.

21 Q Can you tell us about some of the things that
 22 members told you.

23 A Oh, my goodness. We had --

24 CNSL J. KITCHEN: Hold on. Objection.

25 THE CHAIR: Thank you. Mr. -- Mr. Kitchen, I take it
 26 you are objecting to hearsay?

27 CNSL J. KITCHEN: Yeah. I --

28 THE CHAIR: Okay.

29 CNSL J. KITCHEN: We -- I don't see how we could do
 30 that here.

31 THE CHAIR: Thank you. Ms. Tom?

32
 33 SUBMISSIONS BY CNSL A. TOM:

34
 35 CNSL A. TOM: Yeah. I understand the objection. In
 36 this case in particular, hearsay, I think, is
 37 important because it is a class complaint. It's
 38 a representative complaint. We aren't going to
 39 have every single teacher impacted by
 40 Mr. Neufeld's statements appear as a witness.
 41 Mr. Klettke's evidence may not be weighted very
 42 heavily, but in his capacity as an elected
 43 officer and someone who regularly manages
 44 relationships of the teachers with their
 45 employer, his evidence meets a threshold of
 46 reliability and, in any event, the Tribunal is
 47 entitled to take into evidence anything that it

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Ed Klettke (for Complainant)
Submissions by Cnsl J. Kitchen

1 finds appropriate and necessary, and I would say
2 that this is one of those cases where hearsay is
3 going to be coming in as a necessity.

4 THE CHAIR: And so just to be clear, Ms. Tom, in terms
5 of the use that you are going to ask us to make
6 of -- obviously, I don't know what Mr. Klettke is
7 going to say in answer, but supposing he
8 testifies about things that other teachers told
9 him about the post and the use you are going to
10 be asking us to make of that is what?

11 CNSL A. TOM: This is going to go towards the impact
12 that Mr. Klettke witnessed on behalf of his
13 members. Obviously we have the individual
14 teachers to also speak about the impacts that
15 they may have experienced. And we just think
16 that it's important for a broader picture to be
17 painted, given that it is a class complaint, than
18 just our individual witnesses.

19 THE CHAIR: Thank you. Mr. Kitchen, do you want to
20 reply?

21
22 SUBMISSIONS BY CNSL J. KITCHEN:

23
24 CNSL J. KITCHEN: Yes, of course. Look, we all know
25 the rules around this. If it's hearsay, it's got
26 to -- if we are going to let it in under the
27 exception, it's got to be necessary and reliable.
28 It's obviously not necessary because we can hear
29 from the teachers themselves; right? And so in
30 this case, interestingly enough, we are actually
31 going to hear from three real teachers. So, you
32 know, we are going to hear from the people
33 themselves, which is great, even if -- but, I
34 mean, even if they hadn't have called teachers as
35 witnesses, it still wouldn't be necessary because
36 the fact is they could have and they should have,
37 and that's how it works. You don't get to just
38 either get with our traditional evidence or
39 evidence in place of the real thing. You don't
40 get to bring in evidence through hearsay that
41 way. It's not necessary in this case. And it's
42 -- I mean, this is as unreliable as any other
43 hearsay. We have -- we have no way to verify
44 this, or, you know -- where is the indicia of
45 reliability? I mean, it's literally, like, Oh,
46 well, they said this to me. I mean -- and by the
47 way, anything that might have been said would

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1 have been years ago, so it's highly unreliable.
2 I really don't think there's much to say about
3 this. It's really obvious that this is
4 impermissible.

5 THE CHAIR: Thank you. I -- we appreciate the dangers
6 with relying on hearsay evidence in terms of the
7 truth of its contents. We will allow the
8 question, and we will allow the answer, and the
9 parties can make arguments about weight at the
10 end of the day. In particular, we are
11 considering that this is a representative
12 complaint brought by the Chilliwack Teachers'
13 Association on behalf of its members, so there's
14 going to, to some extent, be speaking on behalf
15 of members, but we are mindful of the dangers of
16 relying heavily on that kind of evidence. So
17 Mr. --

18 CNSL J. KITCHEN: Chair?

19 THE CHAIR: Yes.

20 CNSL J. KITCHEN: Chair, I would suggest we stand down
21 and get some submissions on this because I can't
22 see how this is acceptable. This is classic
23 hearsay.

24 THE CHAIR: Yes. And, Mr. Kitchen, we --

25 CNSL J. KITCHEN: You are saying that you are mindful
26 of the dangers, and, We are going to, you know,
27 decide what we put on it for weight. I mean,
28 hearsay is inadmissible. You have to meet the
29 exception to bring it in, and then you do the
30 weight analysis. But we are at the same problem
31 we were at before where it just seems like
32 everything and anything is admissible. And
33 notwithstanding the fact that the rules of
34 evidence don't apply, that should not be the case
35 in front of the B.C. Human Rights Tribunal.

36 So I would suggest we stand down and allow
37 the parties to get some cases together, and we
38 can properly argue this tomorrow morning. I -- I
39 can't see how this is fair to just let in hearsay
40 without at least going through a process where we
41 get some cases, and we have argument on this.

42 THE CHAIR: All right. Thank you for that view,
43 Mr. Kitchen. As I said in the opening statements
44 of this proceeding, the Tribunal exercises its
45 authority to admit evidence under section 27.2 of
46 the *Human Rights Code* that is necessary and
47 appropriate, even if it would not be admissible

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Ed Klettke (for Complainant)
Submissions by Cnsl J. Kitchen

1 in a court of law. This is part of the
2 Tribunal's character as an administrative body.
3 So I don't think it's --

4 CNSL J. KITCHEN: Well, I --

5 THE CHAIR: Thank you, Mr. Kitchen. I don't think
6 it's a good use of our limited time together to
7 stand down and discuss this further. You can
8 make your arguments about the weight of this
9 evidence at the -- at the end of the hearing.

10 CNSL J. KITCHEN: Well, I might have been a little
11 more accepting of that position except for we
12 just went through a cross-examination where we
13 stopped and talked a lot about how the evidence I
14 was trying to elicit shouldn't be admitted, so,
15 you know --

16 THE CHAIR: Mr. Kitchen --

17 CNSL J. KITCHEN: -- I -- I see different standards
18 here applied. I have -- it's my job to put this
19 on the record -- okay? -- to be an advocate and
20 say, Look. We don't seem to have the same
21 standard applied here. If we are just going to
22 let everything in on both sides, fine. But if we
23 are going to actually not let some things in on
24 the other side, then we need to be applying that
25 same threshold and that same standard to the
26 other side, or we got a problem.

27 THE CHAIR: Mr. Kitchen, with all due respect, we told
28 you that we found most of your evidence that you
29 elicited through cross-examination to be
30 irrelevant, and we allowed you to continue to
31 elicit it. So I don't -- I think you are
32 misreading the situation if you think there has
33 been a double standard here. And, in any event,
34 it's not the role of the panel to debate this
35 with you. When we make a decision about
36 evidence, the decision is final --

37 CNSL J. KITCHEN: And -- look, I am just trying to --

38 THE CHAIR: -- and -- Mr. Kitchen --

39 CNSL J. KITCHEN: -- help the panel. Okay? That's
40 all.

41 THE CHAIR: Mr. Kitchen. Sorry. Stop talking over
42 me. When we make a decision about evidence, that
43 decision is final. Your objection is a part of
44 the record because it's been argued, but we are
45 not going to go -- we are not going to spend more
46 time on this.

47 So, Mr. Klettke, please go ahead and answer

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Ed Klettke (for Complainant)

In chief by Cnsl A. Tom

1 the question. Mr. Kitchen, your objection is
2 well on the record. Let's carry on with the next
3 question.

4 A Could I have the question repeated, please.

5 CNSL A. TOM: Yeah. Absolutely.

6

7 EXAMINATION IN CHIEF BY CNSL A. TOM, continuing:

8

9 Q Can you tell us what teachers were telling you
10 about the post.

11 A Well, the day was October 23rd, 2017, and it's
12 well remembered because of the number of phone
13 calls, emails, Facebook posts, people coming into
14 the office. It was a very busy day for our
15 office. Teachers were stunned, shocked,
16 dismayed, hurt. They had a whole range of
17 emotions that day. We heard from teachers that
18 identify as trans. We heard from teachers who
19 identify as gay, lesbian. We had teachers
20 contact us who we don't know how they identify,
21 but they were very concerned about the things
22 that Mr. Neufeld had put in his post,
23 specifically because, you know, his position as a
24 trustee and, you know, the influence that he has
25 as a trustee, and they were absolutely gobsmacked
26 by the post and, of course, the subsequent ones
27 that followed.

28 Q Did you give any advice to your members about how
29 they should respond?

30 A Well, one of the pieces of advice that we shared
31 was not to denigrate Mr. Neufeld or any other
32 trustees publicly. Our advice was that that
33 would not be a wise choice as there could be
34 discipline that might follow.

35 Q Why would it not be -- how could it lead to
36 discipline?

37 A Well, you know, the -- the employee-employer
38 relationship, the duty of fidelity, and fiduciary
39 duty, I'm not sure exactly what level it comes in
40 at, but we were concerned that if a teacher came
41 back harshly -- with harsh words against
42 Mr. Neufeld, that that teacher might have some
43 discipline levelled towards them from -- from the
44 district.

45 Q What did the Chilliwack Teachers' Association do
46 in response to the post?

47 A We did a number of things. I believe we released

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Ed Klettke (for Complainant)

In chief by Cnsl A. Tom

1 a statement the next morning. At that point I
2 was the vice president of the Chilliwack
3 Teachers' Association. And so we worked
4 together -- Lee-Anne Clarke and I worked together
5 to put out a statement the next day. I believe
6 we filed a grievance on October 23rd, one related
7 to -- I believe it's Clause E1, no
8 discrimination. And we started, you know,
9 brainstorming on how we could support members
10 through this very, very difficult time because
11 our members were hurting. They were shocked.
12 They were confused. They were angry. They
13 wanted to do something. They wanted us to do
14 something. They thought that this was just so
15 wrong that a trustee was saying these things, and
16 they wanted -- they wanted it to stop.

17 Q After that initial post of October 23rd, do you
18 recall any other comments or posts from
19 Mr. Neufeld that you came across?

20 A Oh, there were many, and we certainly heard about
21 most of them from our members, who would send us
22 emails and call us and text us when more posts
23 would come out. There were certainly ones -- off
24 the top of my head I can remember the one about
25 him seeing himself as a prophet and then
26 comparing what was happening with parental rights
27 to, you know, the horrors of residential schools,
28 and there were a number of other ones.

29 There were ones where he referred to, you
30 know, Anyone supporting SOGI 123 is -- that is
31 child abuse, and, you know, terms such as
32 grooming and sex activists were commonly used in
33 subsequent posts and speeches and interviews.

34 Q Did you ever see any other non-social media
35 literature or statements from Mr. Neufeld?

36 A Certainly. You know, in terms of literature,
37 there was an election in the fall of 2018, and
38 there were certainly lots of flyers about -- even
39 prior to that, at rallies there would be flyers
40 that were put out by the anti-SOGI group that had
41 formed. And, you know, there were some people
42 that would pass these out at grocery stores, at
43 schools for a while until, I think, it was
44 stopped. There were a number of publications
45 that were put out in support of their position.

46 Q Do you recall any particular ones around the
47 election?

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Ed Klettke (for Complainant)
In chief by Cnsl A. Tom

1 A Most definitely. One stands out in my mind very
2 clearly because I was going into my wife's
3 elementary school on a Sunday morning. We were
4 putting together some materials for her
5 classroom, and I often helped her on the
6 weekends. And so we were in the school. We
7 worked for, you know, usually about an hour or
8 two hours. We came out, and we found -- an
9 election brochure had been put on the windshield
10 of our car. And I found that one particularly
11 ironic. It was claiming that certain candidates
12 would protect the innocence of children, and I
13 thought ironic seeing that that's -- you know,
14 that my wife was in on a weekend working hard,
15 doing her best to meet the needs of her students,
16 and yet she comes out and finds herself, you
17 know, and teachers in general being criticized by
18 this election material.

19 Q I want to take you to a document here. So I am
20 just going to share my screen.

21 A Am I supposed to be seeing something yet?

22 Q No. My Teams is being a little bit --

23 A Okay.

24 Q -- difficult, so just bear with me a second here.

25 A Okay. I can now see the brochure. And your
26 question?

27 Q Is this the brochure that you found on your car
28 windshield?

29 A Yes.

30 Q This is at the Book of Documents re Statements
31 and Publications at Tab 14. Do you recall any
32 other flyers circulating?

33 A Oh, there were -- there were a number of them.
34 We started a little collection in the CTA office
35 because, you know, we received them from a
36 variety of sources. And I had mentioned earlier
37 that there were some that were -- that were
38 actually being passed out at schools, at certain
39 schools. And sometimes some were being, you
40 know, flung off overpasses. There were a variety
41 of materials that were being distributed in the
42 community, certainly in -- for a good part of
43 2018.

44 Q I am going to take you to some documents again
45 here. We are now in the Book of Documents re
46 Various Documents at Tab 23. Do you recall
47 seeing this flyer?

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Ed Klettke (for Complainant)
Submissions by Cnsl J. Kitchen
Submissions by Cnsl A. Tom

1 A Yes. I -- yes, I do recall seeing that flyer.

2 Q Where?

3 A I believe -- I believe it was brought -- I am not
4 100 percent certain, but I think it was brought
5 to our office.

6 Q Do you remember approximately when?

7 A No, I don't.

8 THE CHAIR: Before we move on, Mr. Kitchen, are you
9 objecting to that document?

10 CNSL J. KITCHEN: Yes.

11 THE CHAIR: Okay. Can you state the basis of the
12 objection.

13

14 SUBMISSIONS BY CNSL J. KITCHEN:

15

16 CNSL J. KITCHEN: Well, we have no verification or
17 validation of what it is. We have no idea who
18 wrote it, when, where it's from. He says he has
19 seen it, so that gives us something, but he can't
20 say when, and, you know, guesses are not going to
21 suffice. We have no idea if this is in any way
22 connected with Mr. Neufeld, other than it was, I
23 guess, circulating around the time of his last
24 election. That's -- that's not enough. If
25 something in there said, I am writing this as
26 part of Barry's team. You know, I listened to
27 Barry, and he -- again, I am giving these
28 examples to try to help -- show both the Tribunal
29 and the other side what relevance actually looks
30 like. Okay? So if we had something in there
31 that connected it to Barry -- right? If we had a
32 witness who could say, You know what? I was at
33 my door that day, and Barry handed this to me.
34 And then, of course, I could ask Barry, and we
35 could see if that was actually true, but, you
36 know -- like, we have nothing connecting this to
37 Barry Neufeld, which means it is not relevant.
38 And there is -- and, of course, you know -- okay.

39 So we got to look at the prejudice and the
40 probative value; right? Look at the prejudice.
41 We know nothing about it other than it was
42 apparently circulating during the election.
43 Other than that, we have no idea if there is any
44 connection to it to Mr. Neufeld. So there is
45 prejudice there, and letting this in, not only
46 because it's prejudicial to him, but it's
47 prejudicial to the process to have in documents

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Ed Klettke (for Complainant)
Reply submissions by Cnsl J. Kitchen
In chief by Cnsl A. Tom

1 that just don't have any probative value because
2 we know so little about them. We got to get
3 something that makes it relevant, which is
4 something that connects it to him. There is
5 nothing here.

6 THE CHAIR: Thank you. Ms. Tom?

7

8 SUBMISSIONS BY CNSL A. TOM:

9

10 CNSL A. TOM: Sure. I am not asserting that
11 Mr. Neufeld wrote the document. For the purposes
12 of authentication, you know, what we are required
13 to show is that the document is what it purports
14 to be. I asked Mr. Klettke about flyers and
15 literature that he has seen. He has identified
16 this as a flyer that he saw approximately around
17 election time or thereabouts. Its relevance goes
18 to the kind of climate that was circulating
19 around the school and the education environment
20 in Chilliwack at the time, especially immediately
21 before the election and after Mr. Neufeld's
22 various posts.

23

24 REPLY SUBMISSIONS BY CNSL J. KITCHEN:

25

26 CNSL J. KITCHEN: Just briefly, I would say it's a
27 stretch to call this a "flyer." It's an 8 by 11
28 piece of paper. And I get the climate argument,
29 but it's prejudicial to Mr. Neufeld to suggest
30 without any evidence that he has actually caused
31 this climate. Right? There has got to be a
32 connection to him to say, Okay. There's this
33 climate, and you know what? It's arguable caused
34 by him because, you know, Here's the factual
35 connection between him and this publication or
36 him and this rally. It's the same problem we had
37 last time. There's no connection. It means
38 there's no relevance. Means the probative value
39 does not outweigh the prejudicial effect to the
40 proceeding and to Mr. Neufeld.

41

42 THE CHAIR: Okay. Thank you. As I understand the
43 complainant's position, they are not taking the
44 position that Mr. Neufeld wrote this document.
45 They are tendering it for the purpose of
46 establishing a context in which -- in which
47 Mr. Neufeld's statements have arisen. The
witness has identified it as a paper that he saw

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Ed Klettke (for Complainant)

In chief by Cnsl A. Tom

1 around the time of the events in this complaint.
 2 Anything else about what we make of this document
 3 is going to have to be a matter for argument and
 4 weight. And, you know, obviously the
 5 complainant's bearing the burden of establishing
 6 some -- you know, what this document means in the
 7 context of the questions that we are asked to
 8 decide. So we will admit the document. Go
 9 ahead, Ms. Tom.

10
 11 EXAMINATION IN CHIEF BY CNSL A. TOM, continuing:

12
 13 CNSL A. TOM:

14 Q So, Mr. Klettke, I am going to take you to some
 15 other flyers here. I am just going to share my
 16 screen. This one is a bit hard to read. We are
 17 at the same book of documents. We are now at
 18 Tab 27. Are you able to read that, Mr. Klettke?

19 A Yeah, I -- well, I can read it well enough to
 20 recognize it, for sure.

21 Q Okay. In what context have you seen this before?

22 A Well, as it says, it's -- there's urgent -- an
 23 urgent call out to people to come to a school
 24 board meeting. In -- well, starting in late
 25 2017, early 2018, school board meetings became
 26 quite contentious, and I recall that this was a
 27 document that was attempting to get more people
 28 to attend those meetings and assert their --
 29 their claims.

30 Q I'll bring out the next tab, which is Tab 28.

31 THE CHAIR: Sorry. Just before we move on,
 32 Mr. Kitchen, is there an objection to this
 33 document?

34 CNSL J. KITCHEN: No. And I will say, because there
 35 is a connection in the document with
 36 Mr. Neufeld --

37 THE CHAIR: Okay. Thank you.

38 CNSL J. KITCHEN: -- which makes it relevant. So now
 39 that it's been identified, I don't object to it.

40 THE CHAIR: Thank you. Go ahead, Ms. Tom.

41 CNSL A. TOM:

42 Q Okay. I will go back to sharing my screen here.
 43 There we go. All right. We are now at Tab 28 of
 44 the same volume, the same book of documents. Are
 45 you able to see that clearly, Mr. Klettke?

46 A Yes, yeah. This one was after the election in
 47 the fall of 2018 when there was -- where there

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Ed Klettke (for Complainant)
In chief by Cnsl A. Tom

1 was a new board elected. Mr. Neufeld was
2 reelected to that board. There was a new chair,
3 vice chair. And the meetings continued to be
4 quite contentious. And, again, this one refers
5 to a decision of the -- of the board to, I
6 believe, remove Mr. Neufeld's school liaison
7 responsibilities, meaning that he -- you know,
8 part of the role of trustees is to have a number
9 of schools that they liaise with, sort of a
10 connection between the local school and the
11 school board. And because of a decision of the
12 board, Mr. Neufeld no longer had these
13 responsibilities. That greatly upset him, and I
14 believe this is a document informing his
15 supporters of what -- how they see this -- this
16 issue.

17 Q Do you recall where you received this flyer?

18 A It says, "School Board Meeting December 11th,"
19 but no, sorry, I do not recall.

20 Q Did you ever see Mr. Neufeld in person do public
21 speaking events or rallies?

22 THE CHAIR: Sorry. Mr. Kitchen?

23 CNSL J. KITCHEN: Well, are we seeking to enter that
24 or...?

25 THE CHAIR: Do you have an objection?

26 CNSL J. KITCHEN: No. But I just --

27 THE CHAIR: Do you want me to keep --

28 CNSL J. KITCHEN: But I --

29 THE CHAIR: Yeah. Yeah. Do you want me to keep
30 checking with you every time, or do you want to
31 just raise an objection if you have one, and if
32 not, then we will --

33 CNSL J. KITCHEN: Well, I -- well, if my friend just
34 wants to say, you know, absent any objection, I
35 want to have that admitted, I am just going to --
36 you know, if I am not going to have an objection,
37 I am going to say no, and then we will know.
38 Like, I need to know we have gone through the
39 process, it's been admitted. And I know what you
40 said earlier about, you know, We are going to
41 admit them separately. I get that, but at this
42 point -- like, if she carries on, I have no idea
43 if she is even asking for it to be admitted;
44 right? I need to know that. I need to know that
45 the Tribunal has accepted it.

46 THE CHAIR: Okay. Thank you. Ms. Tom, perhaps as you
47 move to the next document, just some words to

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Ed Klettke (for Complainant)
In chief by Cnsl A. Tom

1 that effect.

2 CNSL A. TOM: Sure thing. Yes, I am seeking to have
3 the previous document admitted, if that can be
4 marked as an exhibit.

5 THE CHAIR: Okay. Thank you.

6 CNSL A. TOM:

7 Q So, Mr. Klettke, did you ever attend any speeches
8 or rallies where Mr. Neufeld spoke?

9 A Yes. There was a -- there was a rally held at
10 the Evergreen Hall in Chilliwack. It was hosted
11 by Culture Guard, and I did attend outside.
12 There was a bit of an anti -- well, the two sides
13 had sort of protesters outside the Evergreen
14 Hall. And I did enter the Evergreen Hall at one
15 time to listen to the beginning of the proceeds,
16 but it was suggested that -- for our safety, that
17 we should probably leave the building. So I did
18 not get to hear the entire -- the entire
19 presentation.

20 Q Who suggested that you should leave?

21 A The RCMP.

22 Q Did you ever see a video afterwards of the speech
23 that Mr. Neufeld did?

24 A Yes. I have viewed a video of the speech at the
25 Evergreen Hall.

26 Q Was it posted online somewhere, or how did you
27 come across that?

28 A I don't -- well, I am pretty sure it was posted
29 online. I would think that's how we would have
30 come to it; so...

31 Q I am going to take you to the transcripts of the
32 videos rather than playing them out for you. So
33 I am just going to share my screen. We are in
34 the Book of Documents re Publications and
35 Statements at Tab 3, page 11. Do you recall
36 seeing --

37 A Yes. I can see it.

38 Q [Indiscernible - cross talk] --

39 A It's small on my screen.

40 Q I will make it a little bit bigger for you there.
41 I am not going to propose to have you read out
42 into the record the entire transcript, but I
43 would just like you to, if you could, go to the
44 paragraph under the timestamp of 8:36 to 9:10?

45 A You would like me to read that?

46 Q Yes, please.

47 A All right. Mr. Neufeld says:

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Ed Klettke (for Complainant)
In chief by Cnsl A. Tom

1
2 I am thankful my fellow trustees and my MLAs
3 agree that I have a democratic right to
4 speak my mind. It is obvious that the
5 supporters of SOGI are the true bullies and
6 want to shut down any further discussion.
7 It frightens me that these people want
8 exclusive influence over their children.
9

10 Q Thank you. This one was entered on consent, but
11 in case it's not clear, I would like to have that
12 marked as an exhibit.

13 Are there any other speaking events at that
14 you recall seeing or listening to?
15 A One that comes to mind is a speech at the art
16 gallery. I don't know what organization posted
17 the rally, but there -- there was a speech. And
18 like a lot of the things that occurred, there was
19 sort of a counter-rally as well. So the video
20 was difficult to hear because there was a lot
21 of -- there were horns honking and people
22 yelling, but Mr. Neufeld at that rally, I
23 believe, called for the resignation of Education
24 Minister Whiteside, a former B.C. Trustee
25 Association president -- I don't recall her
26 name -- and Willow Reichelt, who was a trustee on
27 the Chilliwack Board of Trustees. She may have
28 been the vice chair at that point.

29 Q I am just going to take you to part of that
30 transcript. One moment, please. So we are at
31 the Book of Documents Re Publications and
32 Statements at Tab 31. This is page 185. Can you
33 please read out the first paragraph there.

34 A The first paragraph:

35
36 But these last three years have shaken my
37 faith in public education. If the Ministry
38 will not re-examine SOGI 123, I will warn
39 parents to take their children out of public
40 education systems before activist teachers
41 destroy young bodies with drugs and destroy
42 families by turning children against
43 parents.
44

45 CNSL A. TOM: So I am about to head into a different
46 line of questioning, and it is 4:25. So I am
47 just wondering if it would be better to just call

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Ed Klettke (for Complainant)
Proceedings

1 it a day now, and we can start up with
2 Mr. Klettke tomorrow morning.

3 THE CHAIR: Yes, Mr. Kitchen?

4 CNSL J. KITCHEN: Just briefly.

5 THE CHAIR: Yes.

6 CNSL J. KITCHEN: Ms. Tom, were you planning to ask a
7 question about this paragraph?

8 CNSL A. TOM:

9 Q Was this the speech that you recall hearing in
10 front of the art gallery or seeing after the
11 fact?

12 A Yes, I believe that's the speech. Yes, it is.

13 CNSL J. KITCHEN: Okay. My concern with this is that,
14 you know, these documents are in by consent.
15 There is little to no probative value of having
16 the witness simply reading them out and then
17 saying, you know, Did you just read that,
18 basically; right? I mean, it serves the
19 rhetorical purpose of trying to make Mr. Neufeld
20 look bad. I get that. But that's just it.
21 There is very little probative value to that.
22 What I would have expected is my friend to ask a
23 question. What is your response to this? What's
24 your thoughts on this? What part of this is a
25 concern? What do you disagree with? What's --
26 you know, whatever. Right? And totally fine. I
27 am not going to say a word about that.

28 But to simply take him to passages and read
29 them for the rhetorical effect of "Oh,
30 Mr. Neufeld is so bad." It's not a good use of
31 time. It's -- the probative value is basically
32 nothing, and I don't think it's a permissible
33 practice, and I can certainly say that I have
34 seen that in other hearings where that has not
35 been allowed.

36 THE CHAIR: Okay.

37 CNSL J. KITCHEN: So --

38 THE CHAIR: Thank you, Mr. Kitchen. If it becomes --
39 if it becomes too time-consuming, we can revisit
40 it. But for now, I will let the complainant's
41 counsel put their case in as they see fit, and if
42 they want to highlight certain parts of the
43 evidence, that's their prerogative. If --

44 CNSL J. KITCHEN: Right. But --

45 THE CHAIR: If they are going -- --

46 CNSL J. KITCHEN: -- to [indiscernible - cross talk]
47 earlier --

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Ed Klettke (for Complainant)
Proceedings

1 THE CHAIR: If they are going far over their --

2 CNSL J. KITCHEN: It's for argument. It's not for
3 evidence.

4 THE CHAIR: If they are going far over their estimated
5 time with the witness, then I will -- then we
6 will revisit the practice, but -- but for present
7 purpose --

8 CNSL J. KITCHEN: But do you understand my concern?
9 It's for argument, not for evidence, and that was
10 a concern for you earlier today.

11 THE CHAIR: Well, Mr. Klettke is being asked about the
12 statements that are at issue in this complaint
13 that we are going to have to decide about and
14 when he was exposed to them and what they were
15 and identifying passages from them. So I --

16 CNSL J. KITCHEN: Right. And questions about what he
17 thinks about it are fine, but to ask him to read
18 it into the record, not okay because it's for
19 argument. And, again, I am going to -- I have to
20 keep beating this drum. We need to have the same
21 standard apply to both sides.

22 THE CHAIR: Mr. Kitchen, this is evidence. Okay?
23 What we make of the evidence is argument. So if
24 he is reading the evidence, that's evidence. If
25 we are asking him what he thinks about the
26 evidence and what the Tribunal should do with the
27 evidence, that's argument. So maybe we are just
28 going to have to agree to disagree on what the
29 difference between evidence and argument is, but
30 I think we are going to leave it there for today.
31 I will talk to the parties briefly about other
32 matters.

33 But, Mr. Klettke, those are the questions we
34 are going to have for you today. I will ask you
35 to log in tomorrow morning at 9:30 to continue.
36 And I will also ask you throughout the proceeding
37 not -- to make sure that you're not talking about
38 your evidence with other people who may be
39 witnesses after you. This is to preserve the
40 integrity of their testimony, and there will be
41 additional cautions for you when you are under
42 cross-examination, but for now, that's the only
43 one. I just want to make sure that you are not
44 talking to anyone who might testify after you
45 about -- about the proceedings. Do you have any
46 questions before -- before I let you go for the
47 day?

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1 A No, I don't think -- no, I don't have any
2 questions at this point.
3 THE CHAIR: Thank you. I will remove you from the
4 meeting.
5 A All right.
6 THE CHAIR: And then we will see you back here at 9:30
7 tomorrow morning. Everyone else, just hang on
8 for a moment. Thank you.
9 A All right.

10
11 (WITNESS STOOD DOWN)
12

13 THE CHAIR: All right. Before we break for the day, I
14 wanted to come back to the issue of expert
15 evidence. I know we were -- we've been planning
16 and hoping to give you our decision on
17 Dr. Saewyc's evidence by tomorrow morning. It --
18 I will just foreshadow that may not happen. We
19 are still working on it, but we will do our best.
20 We are aware of the -- that you all need to know
21 whether she is required to come and going to
22 testify on Friday. So we're working on it, but I
23 can't promise that we will keep our deadline of
24 tomorrow morning. I just want to give you notice
25 of that. Is there anything else before we
26 adjourn for the day? Complainant's counsel?
27 Mr. -- no? Mr. Kitchen?

28 CNSL J. KITCHEN: No.

29 THE CHAIR: No.

30 CNSL J. KITCHEN: Ms. Waddell, I am going to call you
31 here as soon as we are done.

32 THE CHAIR: Okay. All right. Well, in that case,
33 thanks everyone for your work today. I am going
34 to remove you from the meeting and see you back
35 here at 9:30 tomorrow morning. Thank you.

36 UNIDENTIFIED SPEAKER: Hi. Sorry. I only just got
37 your text. I never saw it until just now. I was
38 having a bit of a nap while these people were
39 yammering.

40
41 (VIDEOCONFERENCE CONCLUDES) [4:30:33]
42

43 (PROCEEDINGS ADJOURNED TO NOVEMBER 27TH, 2024 AT 9:30
44 A.M.) [4:30:33]
45
46
47

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Reporter's Certificate

1 REPORTER'S CERTIFICATE

2
3 I certify that the proceedings from timestamp
4 9:30:03 to timestamp 4:30:33 inclusive are a true
5 and accurate transcript of these proceedings
6 recorded on a sound recording apparatus,
7 transcribed to the best of my skill and ability
8 in accordance with applicable standards.
9

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16 Kayla Velthuis-Kroeze
17 Court Reporter, Certificate Number 633
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File: CS-003172

**IN THE MATTER OF THE *HUMAN RIGHTS CODE*,
RSBC 1996, C. 2010 (as amended)**

**AND IN THE MATTER of a complaint before
The British Columbia Human Rights Tribunal**

BETWEEN:

British Columbia Teachers' Federation obo Chilliwack
Teachers' Association

COMPLAINANT

AND:

Barry Neufeld

RESPONDENT

AND:

B.C.'s Human Rights Commissioner

INTERVENOR

**PROCEEDINGS AT B.C. HUMAN RIGHTS TRIBUNAL HEARING
(VOLUME III)**

ORIGINAL

THERE IS A PUBLICATION BAN IN EFFECT PROHIBITING THE
PUBLICATION OF ANY INFORMATION THAT COULD IDENTIFY THE
TEACHERS WHO TESTIFIED, OR MAY HAVE TESTIFIED, IN
CONNECTION WITH THIS COMPLAINT: CHILLIWACK TEACHERS'
ASSOCIATION V. NEUFELD (NO. 2), 2024 BCHRT 180 [CTA
(NO. 2)]; AMENDED BY LETTER DATED FEBRUARY 25, 2025.

File: CS-003172

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AND:

B.C.'s Human Rights Commissioner

INTERVENOR

**PROCEEDINGS AT B.C. HUMAN RIGHTS TRIBUNAL HEARING
(VOLUME III)**

ORIGINAL

Tribunal Members:	Devyn Cousineau, Robin Dean, Laila Said Alam
Counsel for the Complainant:	Lindsay Waddell, Alanna Tom, Stefanie Quelch, Chris Fenje
Counsel for the Respondent:	James S.M. Kitchen
Counsel for BC's Human Rights Commissioner:	Sarah Khan, Maria Sokolova

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Videoconference
 November 27, 2024

(VIDEOCONFERENCE COMMENCES) [9:31:54]

THE CHAIR: Good morning, everyone. It's November 27th, and we're recalling the case of *B.C. Teachers' Federation obo Chilliwack Teachers' Association v. Barry Neufeld*, CS-001372. I can see complainant's counsel there. Good morning. Mr. Clark, good morning. I can see Mr. Kitchen. Good morning. I don't think I see --

CNSL L. WADDELL: We can't hear the hearing.

THE CHAIR: Oh, you can't hear me? Can anyone else hear me?

UNIDENTIFIED SPEAKER: Yes, I can hear you.

THE CHAIR: Yes. Okay.

CNSL J. KITCHEN: Yes, I can hear you.

THE CHAIR: Thank you. Okay. Complainant's counsel can't hear. I'll just wait until they -- while they're working on their audio. I don't see Mr. Neufeld connected yet.

ED KLETTKE: If it's okay, maybe I'll go try and find a light because I look a little dark --

CNSL L. WADDELL: Okay.

CNSL J. KITCHEN: Yeah, I was just going to say --

CNSL L. WADDELL: Can you guys hear us now?

THE CHAIR: Yes, we can hear you. Yes.

CNSL J. KITCHEN: Yes.

THE CHAIR: Yes. Can you hear us?

CNSL L. WADDELL: Yes. Sorry. We just got audio.

THE CHAIR: Okay. Thank you. You've just missed my announcement of the date, recalling the case, and identifying some of the people we have on the line. Mr. Klettke's here. He's going to work on the lighting situation in his room. I can see Ms. Sokolova is here as well. Good morning. And we have some members of the public.

So, as I said, Mr. Neufeld is -- is not here yet, but I imagine he'll be here in a few minutes. I'm just going to mute everyone. That's a more efficient way than going one by one through the members of the public. So you've all been muted, but when it's your turn to talk, please unmute yourself.

Mr. Kitchen, do you want us to wait for

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1 Mr. Neufeld before we get started?
2 CNSL J. KITCHEN: No. No.
3 THE CHAIR: Okay.
4 CNSL J. KITCHEN: But, yeah, I -- we do need to see
5 Mr. Klettke's face. It was -- it was -- it was
6 sort of borderline yesterday, but he's almost
7 blacked out this morning. It's just because of
8 the lighting. I know how it works. But --
9 THE CHAIR: Okay.
10 CNSL J. KITCHEN: -- he's going to need some
11 significant light so we can see him.
12 THE CHAIR: Thank you.
13 And someone's just joined the call, and
14 their phone number doesn't appear. I believe
15 it's a member of the public, "meeting guest."
16 Last time that was Adrian Smith (phonetic).
17 Adrian Smith, is that you again? Can you unmute
18 yourself and confirm?
19 ADRIAN SMITH: Yes, I'm here today.
20 THE CHAIR: Okay. Thank you. Your phone number isn't
21 showing up, so we're not able to cross-reference
22 it with our list. Thank you. And here's
23 Mr. Neufeld.
24 ED KLETTKE: Oh, here we go. We can -- we can kind of
25 see -- well --
26 THE CHAIR: You may have to close the blinds behind
27 you, Mr. Klettke. That may help us a bit as
28 well.
29 CNSL J. KITCHEN: Yeah.
30 THE CHAIR: All right. Before we continue with --
31 with questions, are there any preliminary issues
32 that we need to deal with this morning?
33 CNSL J. KITCHEN: There we go.
34 THE CHAIR: Nothing? Okay. Yeah, that -- that looks
35 good. Thank you. Mr. Klettke, are you ready to
36 continue? Oh, you're muted.
37 CNSL J. KITCHEN: Just --
38 ED KLETTKE: Is that better?
39 THE CHAIR: Yes, that's better. Thank you.
40 CNSL J. KITCHEN: I'm just curious for our scheduling.
41 I take it I'm -- I guess here I'm talking to
42 Ms. Waddell and Ms. Tom. I take it you're taking
43 probably some time -- and not that I'm rushing
44 you, because I'm not, but you're probably going
45 to finish with Mr. Klettke sometime this morning.
46 Is that what you're thinking? And then I'll be
47 able to start my cross this morning?

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Ed Klettke (for Complainant)
in chief by Cnsl A. Tom

1 THE CHAIR: You're muted.

2 CNSL A. TOM: Okay. Yes, that's the plan.

3 CNSL J. KITCHEN: Okay. Okay. And then you have -- I
4 imagine you have one of your teacher witnesses
5 lined up for today, and then -- okay.

6 CNSL A. TOM: Yeah. Yeah.

7 CNSL J. KITCHEN: I think I was about three or four --
8 three and a half or four hours with Mr. Hansman.
9 My guess with -- I mean, I have -- you haven't
10 finished with him yet. My guess would be the
11 two-hour range with Mr. Klettke. We'll see how
12 it goes. So I would imagine we would get -- we
13 would get all the way through, you know, at least
14 the first teacher witness today. Just for -- so,
15 I mean, I -- you know, there's no way we'd get to
16 the third one, for example, and the reason I
17 bring that up is just in case you've got all
18 three of them waiting around. Whoever's the
19 third one probably doesn't have to worry about
20 coming up today.

21 CNSL A. TOM: Thank you for that.

22 THE CHAIR: All right. Thank you. And, sorry. Just
23 before we come back to Mr. Klettke, we don't have
24 a decision for you yet on the expert, but we're
25 working on it. We'll get it to you as soon as we
26 can.

27 Mr. Klettke, are you ready now to continue?

28 ED KLETTKE: Yes, I am.

29 THE CHAIR: Okay. Thank you. Go ahead, Ms. Tom, when
30 you're ready.

31 CNSL A. TOM: Great. Thank you.

32

33 ED KLETTKE, a witness,
34 recalled.

35

36 EXAMINATION IN CHIEF BY CNSL A. TOM, continuing:

37

38 Q So, Mr. Klettke, I just wanted to follow up on a
39 question that you answered yesterday. You
40 mentioned a rally held at the Evergreen Hall that
41 was organized by Culture Guard. And I just
42 wanted you to confirm what Culture Guard is for
43 those who may not know.

44 A Culture Guard is an organization based in Langley
45 founded by Kari Simpson. And it's an
46 organization that has sort of anti-trans,
47 anti-gay messaging, both print and website

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Ed Klettke (for Complainant)
in chief by Cnsl A. Tom

1 literature, and they hosted that event in the
2 Evergreen Hall in November.
3 Q And you also noted yesterday that there was one
4 post that you found particularly impactful where
5 Mr. Neufeld said he was in the role of a prophet.
6 And I just want to make sure that we're talking
7 about the same posts. So I'm going to take you
8 to a document now. I'm going to screen-share
9 from one of the complainant's documents. I'm
10 going to be in the Book of Documents re
11 Publications and Statements, and we're at Tab 4,
12 page 20.
13 A Yes, this is the post that I was referring to.
14 Q Can you tell us why that one in particular
15 remains with you in your memory?
16 A Well, I don't think you had the -- the part of
17 the post -- well, the part that you -- you showed
18 was the part where he -- he says that he's been
19 sort of forced into the role of a prophet. But
20 towards the end of that post, he makes somewhat
21 of a comparison between the current situation and
22 sort of oppression of parental rights, I believe
23 was his -- was his position, and compared that to
24 that of First Nations people in residential
25 schools. And both components, but more so the
26 latter component of that post, concerned my
27 members and members of the public.
28 Q What was the nature of those concerns?
29 A Well, I believe they -- they felt that that was
30 sort of an outrageous claim, to take something
31 like First Nations residential schools and make
32 that comparison. It seemed -- it seemed
33 excessive and insensitive, and -- and teachers
34 were -- were shocked and upset by it.
35 Q Moving along in time now, do you recall early in
36 twenty -- 2018 -- sorry -- receiving an email
37 from the then president of the district parent
38 advisory council, Justine Hodge?
39 A Yes. The email was -- was sent to the president
40 of the Chilliwack Teachers' Association, but I
41 did -- I was forwarded the email, and I did read
42 it, yes.
43 Q I'm going to pull this document for us now.
44 We're at Tab 5 of the same document. So --
45 sorry -- same book, so Book re Publications and
46 Statements. Is this the email that you saw --
47 A Yes, this is -- this is the email I saw.

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Ed Klettke (for Complainant)
in chief by Cnsl A. Tom

1 Q Thank you.

2 CNSL A. TOM: And just for clarity, we are not going
3 to ask for every single one of these to be
4 entered because of the tribunal members' process
5 identified at the outset, which is that books
6 will be marked at the end of the hearing after we
7 determine whether witnesses have been taken to
8 things. So we started to deviate from that
9 process toward the end of the day yesterday, and
10 I just want to confirm what process the tribunal
11 wants us to follow. Because we were initially
12 under the impression that we would put documents
13 to witnesses, and then if someone spoke to them
14 and authenticated them, they would go in, or they
15 would go in by way of the agreement but be
16 indicated at the outset, and that Mr. Kitchen
17 would, when a document is presented to a witness,
18 identify any objection he has at that time.

19 THE CHAIR: Yes.

20 CNSL J. KITCHEN: Well --

21 THE CHAIR: Oh, sorry. Just a moment. Yes. And at
22 the end of the yesterday -- so I understand we're
23 in the publications book going through documents
24 that are being admitted by consent, and so the
25 issue is more of concern in the other book of
26 various documents where Mr. Kitchen's indicated
27 he may have objections to some of the documents.
28 And he's asked that before moving away from a
29 document, Ms. Tom say that she's seeking to admit
30 it; and then upon hearing those words, if he has
31 an objection, he should speak up and say the
32 objection.

33 But as far as I'm concerned, that's not
34 necessary for those documents that are coming in
35 by consent. I think Mr. Kitchen has just asked
36 for some clear messaging when there's a contested
37 document seeking to be admitted so that he can
38 make his objection if he wants to.

39 Right?

40 CNSL J. KITCHEN: Well, I think it would be easier
41 with everybody if I just pipe up and make my
42 objection because that's -- that's what it sounds
43 like everybody would prefer. The only reason I
44 wasn't doing that is I don't want to interrupt
45 counsel as they're sort of, you know, just
46 starting to or in the middle of their process of
47 asking their questions to identify the document.

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Ed Klettke (for Complainant)
in chief by Cnsl A. Tom

1 It's really just out of courtesy. I mean, we can
2 just -- as soon as we get to a document that I
3 haven't already consented to, I'll just say, "I
4 object to this," and then we can go through the
5 process. I got --

6 THE CHAIR: Okay.

7 CNSL J. KITCHEN: -- no problem doing that. I just
8 didn't want to interrupt.

9 THE CHAIR: Okay. Great. Yes. All right. Well,
10 then in that case, you can -- you can just go
11 through the documents, and, Mr. Kitchen, please
12 do say -- raise an objection if you have one to a
13 document; otherwise, I'm making note that they're
14 coming in.

15 CNSL J. KITCHEN: Yeah.

16 THE CHAIR: Okay.

17 CNSL J. KITCHEN: No, that's fine. I'm -- yeah. I'm
18 going to object to every document I haven't
19 consented to.

20 THE CHAIR: Okay.

21 CNSL J. KITCHEN: So -- unless I have new information.

22 THE CHAIR: Thank you.

23 Go ahead, Ms. Tom.

24 CNSL A. TOM:

25 Q Sure. So in response to Ms. Hodge's email that
26 we just pulled up, did the Chilliwack Teachers'
27 Association do anything?

28 A Well, we certainly had some -- some conversations
29 with Ms. Hodge about the email and sort of
30 discussed our concerns with her. I believe we --
31 we had some conversations with the BCTF about the
32 safety of our released officers because we were
33 concerned that Mr. Neufeld was suggesting that
34 his supporters push back against Ms. Hodge and
35 her -- her statements, her position. And we were
36 concerned that the same thing would happen with
37 the CTA released officers.

38 Q And turning now to talk a little bit about the
39 relationship with the board, can you talk about
40 whether or not board meetings were any different
41 after Mr. Neufeld began to make his statements in
42 October 2017?

43 A Yes. I would say that the board meetings changed
44 radically between -- after the post. Before the
45 post, they were sparsely attended. It would
46 likely be a couple of union-released officers,
47 both CUPE and CTA, a couple of parents, maybe.

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Ed Klettke (for Complainant)
in chief by Cnsl A. Tom

1 But it was -- they were very sparsely attended.

2 After his posts, the meetings became
3 contentious, very difficult for the chair to
4 maintain order. There were at times overflow
5 into the outer hallway. There was a need for
6 security. There was certainly some concern for
7 safety and that there were a number of -- a
8 number of people on both sides that were very
9 vocal in their -- in their statements, and -- and
10 it -- and it -- and it did get a little bit scary
11 at times, and security was -- was certainly
12 needed. And that continued for some time
13 through -- into 2018 and 2019.

14 Q Had there ever been security at school board
15 meetings before?

16 A Not that -- not that I was aware of. I don't
17 think it was ever needed because there was --
18 there were very few people there.

19 Q Was your relationship with the board any
20 different as a [indiscernible - background noise]
21 officer of the CTA?

22 A Yes, certainly after the posts. You know, we --
23 we released a statement the day after the
24 October 23rd post, and we took actions
25 afterwards. And, yes, the -- the relationship
26 with the board was -- was different after that
27 point. It -- you know, not -- not that we were
28 communicating daily or anything, but certainly
29 the communication was -- was -- was more
30 strained. And I would say when we were on
31 committees together, although obviously we
32 continued to do our best work in the interests of
33 students, it just -- the conversations were a
34 little bit more strained, and, you know, the --
35 there -- it just didn't have the same feel.

36 Q Despite that relationship becoming more strained,
37 after Mr. Neufeld was elected in 2018, did you
38 try and reach out to Mr. Neufeld and maybe repair
39 that relationship?

40 A Yes. Yes, I did. I sent Mr. Email -- or
41 Mr. Neufeld an email, you know, suggesting
42 that -- that we cooperate in the best interests
43 of Chilliwack students. I think I probably
44 acknowledged that, you know, we had had some --
45 some difficult circumstances, and I was hoping
46 that, you know, we could mend some fences and --
47 and try and [indiscernible - automated message]

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Ed Klettke (for Complainant)
in chief by Cnsl A. Tom

1 our relationship.
2 Q I'm going to take you to a document now. We're
3 in the Book of Documents re Various Documents at
4 Tab 21. So what's the date on this email?
5 A It says October 24th, 2018.
6 Q Is this the email that you were speaking about
7 earlier, just now?
8 A Yes. Yes.
9 Q Thanks.
10 CNSL A. TOM: I would like to have that marked as an
11 exhibit and entered, please.
12 CNSL J. KITCHEN: No. It's already in on consent.
13 THE CHAIR: Thank you.
14 CNSL A. TOM: Oh, thank you. Great.
15 Q And why did you want to reach out to Mr. Neufeld?
16 A Well, it had been -- that was in October of 2018.
17 It had been almost a full year of a very
18 contentious, difficult time for the school
19 district. The school district was sort of being
20 portrayed in a very negative light in -- in the
21 media, and, you know, it was -- it was time for
22 us to -- to try and turn things around and -- and
23 make a change for the positive. And that was,
24 you know, my attempt to do so.
25 Q Did Mr. Neufeld respond?
26 A I don't believe so, no.
27 Q I'm going to take you to some documents that are
28 in the first Book of Documents Re Publications
29 and Statements, and these are to do with some of
30 the board meetings. So the first is at Tab 7,
31 page 31. If you could just, to yourself, read
32 the second-to-last paragraph. Do you recall
33 being at the board meeting where Mr. Neufeld said
34 this?
35 A Yes, I believe I was at that meeting.
36 Q Do you recall what your reaction was?
37 A Well, I -- I sort of recall a gasp from the
38 gallery, actually, and I don't know if I
39 participated in that gasp or not. But, you know,
40 when he again mentioned the -- a parallel with
41 the Aboriginal residential schools, I think
42 people were quite shocked by that, including
43 myself.
44 Q I'm going to go to a later board meeting now.
45 This one is at Tab 18, page 99. And so you said
46 that it became hard for the board chair to
47 control meetings and that security at some times

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Ed Klettke (for Complainant)
in chief by Cnsl A. Tom

1 was -- was necessary. Is this one of those
2 instances? And I'm looking at the -- this
3 paragraph right under the ellipsis in the middle
4 of the page under the timestamp 15:32 to 18:38.
5 A Yes, this -- this would be one of a number of
6 meetings where security was a problem. I believe
7 there was a member -- it was during the
8 question-and-answer period when a member of the
9 public was asking a question, and there was sort
10 of a back-and-forth between the member of the
11 public and the board chair, Dan Coulter. And it
12 became a bit heated, and then Mr. Coulter stopped
13 the meeting and requested that -- that that
14 person leave the meeting. And this was -- this
15 was, you know -- wasn't -- this is -- this was
16 the -- the sort of thing where security was
17 actually called in this case because by this time
18 security had -- they had -- I believe it was a
19 district person who was -- who was doing it at
20 that time. I don't -- can't recall if they had
21 uniformed security at that point or not, but they
22 eventually did.

23 But it looks like he's calling Mark, which
24 is a school district employee, to -- to perform
25 some security and to remove people from the
26 meeting.

27 Q And further down the page, these last two
28 paragraphs here under the timestamp 1:19:40, do
29 you recall Mr. Neufeld saying this at the board
30 meeting?

31 A Yes, I -- I believe they were debating a
32 statement of the board, and they were -- there
33 was probably a motion on the floor, and they were
34 looking to get a vote, a board affirmation of
35 this statement. And so Mr. Neufeld was sharing
36 his perspective on certain components of that --
37 that decision.

38 Q And then the last board meeting I'm going to take
39 you to is at Tab 24. Could you just read that
40 first paragraph out, please.

41 A Okay. It says:

42
43 It seems that local communities have lost
44 control of public education and is now being
45 controlled by activist unions. Trustees who
46 are not union [indiscernible - background
47 noise] are muzzled and stifled. After

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in chief by Cnsl A. Tom

1 spending a career working with neglected,
2 abused, and traumatized kids, most of them
3 foster kids, and because I'm a former foster
4 child myself, I will never give up fighting
5 to protect vulnerable, traumatized, and
6 easily manipulated children from being used
7 as guinea pigs in state-sponsored
8 experimentation.
9

10 Q Were you present at the board meeting where
11 Mr. Neufeld said this?

12 A I believe so, yes.

13 CNSL J. KITCHEN: Is there a question coming?

14 THE CHAIR: I think she just asked the question,
15 Mr. Kitchen. Thank you.

16 CNSL J. KITCHEN: She asked if he was present. That's
17 not a question about the substance of what was
18 read into the record.

19 THE CHAIR: Mr. Kitchen, we went over this yesterday.
20 It's fine for them to read parts of this into the
21 record. It's not taking up undue time, and she's
22 asked a question. And --

23 CNSL J. KITCHEN: It's not fine because rhetorical
24 effect is not what we're here for. We're here
25 for the issues. This is not a rhetorical
26 exercise. This is a legal exercise, and it's
27 costing an enormous amount of resources to do it.
28 We need to do it properly. Having witnesses read
29 things into the record for rhetorical effect is a
30 misuse of the process. My friend is fully
31 entitled to do this if she has a question about
32 what the witness thought of it, what a particular
33 word or phrase or sentence meant to him, why he
34 finds it such a problem, et cetera. That's --
35 that's the meat of it. That's what matters in
36 discrimination. Being shocked is actually
37 completely irrelevant.

38 THE CHAIR: Okay. Thank you, Mr. Kitchen.

39 CNSL J. KITCHEN: But if he --

40 THE CHAIR: We have your -- we have your point --

41 CNSL J. KITCHEN: No, I -- look, I wasn't done yet,
42 Chair. Okay? This -- this is an issue, and I
43 would have thought that you would have understood
44 that it was an issue. This is an issue that I've
45 faced before occasionally, and it's not
46 permissible. If I was to do something like this,
47 I would be told to either ask a question or stop

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Ed Klettke (for Complainant)
in chief by Cnsl A. Tom

1 doing this, which would be fair. So we -- I'm
2 not going to -- I'm going to have to pipe up
3 every time this happens. If my friend's got a
4 question, go right ahead. I mean, you know what?
5 When I'm in these hearings, normally what counsel
6 does is says, you know, "Mr. Kitchen, a
7 question's coming. Don't worry." I literally
8 was in a hearing where senior counsel would, out
9 of courtesy and because it's the right thing to
10 do -- would say that, and so I wouldn't object.
11 He -- he'd have it read, he'd ask some questions,
12 we'd move on. It was done right; no problem.
13 Okay? Because he wasn't doing it for rhetorical
14 effect. He was actually getting the -- getting
15 the witness to give valuable evidence to the
16 tribunal. That's not happening here. Thank you.

17 THE CHAIR: Thank you. We have your point on this.
18 These interruptions are taking more time than it
19 takes to read the -- the paragraph. And so I'm
20 going to ask that you refrain from making this
21 point again. We've ruled on it. We've said it's
22 fine. And you can raise it in argument if
23 there's been some prejudice to you. Okay?

24 CNSL J. KITCHEN: I will raise it at every point that
25 I need to to build the record that needs to be
26 built.

27 THE CHAIR: Thank you.

28 Go ahead, Ms. Tom.

29 CNSL A. TOM:

30 Q So, Mr. Klettke, given the variety of fora in
31 which Mr. Neufeld made his statements, can you
32 talk about the impact on your members, especially
33 as these comments continued to come out over
34 time?

35 A Well, the -- the impact on the members was -- was
36 very significant. For example, we had a number
37 of trans teachers who felt that Mr. Neufeld, in
38 saying that trans people were psychologically
39 damaged, that he was dismissing them as -- as
40 people that didn't feel accepted, that didn't
41 feel that the -- that a member of the employer
42 group didn't sort of accept them as -- as who
43 they were. We had other members who identified
44 as gay or lesbian that were -- that were also
45 feeling that their employer didn't value them the
46 same as other employers because of their sexual
47 orientation. We had other teachers who I didn't

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Ed Klettke (for Complainant)
Submissions by Cnsl J. Kitchen

1 necessarily know how they -- how they identified
2 that -- that were just feeling -- feeling very
3 difficult to work for an employer that -- that
4 would deal with other employees in that way.
5 And -- and the posts continued, and it -- it
6 just -- it just continued to get worse. And
7 people felt less valued and -- and in some cases
8 afraid of how the employer would deal with
9 situations in the future in terms of their
10 employment status.
11 Q Did you ever have teachers speak to you before
12 about something that a trustee was doing or
13 saying?
14 A No, not that I recall.
15 Q Did teachers tell you that they were changing
16 their practice in any way as a response?
17 A Certainly, yes, there -- there were some teachers
18 that talked to me about changes in practice.
19 There were -- I guess some of -- some of the
20 statements and -- and some of the things that
21 were happening caused some parents to be very
22 fearful of what was going on in classrooms. And
23 they -- they --
24 CNSL J. KITCHEN: Hold on. Hold on.
25
26 SUBMISSIONS BY CNSL J. KITCHEN:
27
28 CNSL J. KITCHEN: I'm going to object because now
29 we've got double hearsay. We established
30 yesterday for that -- for whatever reason we're
31 going to let in hearsay from teachers, but now we
32 got double hearsay because we got parents have
33 told teachers and teachers have told Mr. Klettke,
34 and now Mr. Klettke's telling the tribunal that.
35 So I'm objecting on a -- on a slightly different
36 basis insofar as now we have double hearsay. So
37 if somehow we can let in initial hearsay, fine;
38 but it's a whole nother [verbatim] danger to the
39 process to let in double hearsay. We can't be
40 hearing anything about what parents told teachers
41 and teachers told the witness.
42 THE CHAIR: Ms. Tom, do you want to respond?
43 CNSL A. TOM: Sure. Yeah.
44 Q Could you tell us how you know about the parent
45 concerns?
46 A So I -- I did talk to teachers who had changed
47 their practice because parents had -- had shared

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Submissions by Cnsl J. Kitchen

1 fears of theirs about what was happening in the
2 classroom. And an example might be books that
3 are being read --

4 THE CHAIR: Sorry. Just a moment. Just before we get
5 into the answer, because I think we actually
6 haven't dealt with the objection -- so what I
7 understand from what Mr. Klettke just said is
8 that the way he heard about the parents' concerns
9 was through the teachers. Is that what you're
10 saying, Mr. Klettke?

11 A Yes.

12 THE CHAIR: Okay. So, Ms. Tom, then, can you respond
13 to the objection about double hearsay?

14 CNSL A. TOM: Yes.

15
16 SUBMISSIONS BY CNSL A. TOM:

17
18 CNSL A. TOM: It's not going in for the truth of its
19 contents. It's going in for the fact that it
20 caused the teachers to do something. So the
21 teachers doing something is -- is what the issue
22 is. Whether or not the parents were actually
23 making complaints or getting more concerned,
24 that's -- we're not trying to get that in for the
25 truth.

26 THE CHAIR: Okay. Thank you.
27 Mr. Kitchen?

28
29 SUBMISSIONS BY CNSL J. KITCHEN:

30
31 CNSL J. KITCHEN: The prejudice here is quite
32 extraordinary because no parents will be called
33 as witnesses. Mr. Neufeld cannot possibly cross
34 any parents. At least I can cross the teachers.
35 So we get this hearsay evidence that should be
36 inadmissible. We get it into the record; that's
37 fine. At least I can cross actual teachers on
38 this who come from the district so I have some
39 opportunity to respond. So the prejudice is
40 limited in that sense.

41 The prejudice here is outrageous, and I'm
42 not able to deal with it in any way possible
43 because I cannot cross any parents. So
44 there's -- there's absolutely no reliability.
45 There's no necessity because, of course, this
46 isn't about parents to begin with; it's about
47 teachers. And I can't do anything to limit what

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Submissions by Cnsl A. Tom
Submissions by Cnsl J. Kitchen

1 is extreme prejudice towards the respondent
2 through cross-examination.

3 THE CHAIR: Well --

4 CNSL J. KITCHEN: So --

5 THE CHAIR: -- Mr. Kitchen, just in response to what
6 Ms. Tom has just said, she's just said they're
7 not relying on the truth of what the parents felt
8 or didn't feel. So does that change your
9 submissions about the prejudice if that's not
10 coming in for the truth, in which case it's
11 not --

12 CNSL J. KITCHEN: No, it doesn't, because there's
13 still -- there's still prejudice; right? This is
14 why we don't let hearsay in, even if we aren't
15 allowing -- relying on the truth of its contents
16 unless it's necessary and the probative value
17 outweighs the prejudice, because there's still an
18 impact; right? There -- it still clouds the
19 evidence. It clouds the minds of the tribunal.
20 It clouds the process; right? It has the
21 rhetorical effect of making the respondent look
22 bad, to use plain language. And so the prejudice
23 outweighs the probative value, especially in this
24 case, when this isn't about parents at all.

25 Presumably, you -- you must have thought
26 yesterday there's some probative value to hearing
27 about what the teachers told Mr. Klettke because
28 the teachers are the ones ultimately who are --
29 who are claiming the discrimination here. And I
30 can understand that, even if I disagree with it.
31 But there's no probative value to hearing about
32 supposedly what parents thought or said because
33 they're not complainants in the case. So there
34 is -- yes, I would say there's more prejudice if
35 we're relying on the truth of its contents, of
36 course. But there's still significant prejudice
37 even if we're not, and there's no probative
38 value; right? And I can't do anything to limit
39 the prejudice because I can't cross-examine any
40 teachers.

41 THE CHAIR: Okay. Thank you.

42 Mr. Klettke, in your answer, I'm going to
43 ask that you just focus on what the teachers were
44 telling you about their practices rather than the
45 source of what they were hearing from parents and
46 that sort of thing. So go ahead. Can you focus
47 on what the teachers told you they were changing

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1 in the classroom.

2 A Yes. All right. Thank you.

3 So the teachers told me that they needed to
4 change some practices around books that they read
5 at the carpet because they were receiving
6 questions, and they -- they felt very concerned
7 about -- about upsetting parents, upsetting
8 [indiscernible]. So -- and -- and they were now
9 sort of challenging, you know, is this -- is this
10 book okay? I've been reading it for years, and
11 now based on -- on what they were hearing, they
12 were -- they were challenging sort of their
13 own -- their own decisions and wondering if they
14 should be reading them. And so there were
15 definitely some -- some practices and some books
16 were set aside because they felt that -- that
17 they might cause -- with the heightened emotion
18 in the community, that they might generate undue
19 attention.

20

21 EXAMINATION IN CHIEF BY CNSL A. TOM, continuing:

22

23 Q Were these books specifically SOGI-related?

24 A Some of them -- some of them were, yes. But I
25 think sometimes they -- you know, the
26 SOGI-related label is -- is unclear. And I think
27 what one person reads out of a -- out of a book
28 is different than what someone else reads about
29 from a book. So I think there definitely would
30 have been some SOGI -- clearly SOGI-related books
31 that -- that they were concerned about. But
32 it -- it probably -- well, no, it translated into
33 other books as well that they were concerned
34 could be perceived as SOGI-related books.

35 Q Can you give us an example?

36 A Well, I'm not an elementary teacher, but one of
37 the books that I did hear about several times is
38 a book called *Red*, and it's a book about a
39 crayon. And this book can be looked upon by some
40 as just a story about -- it's about a crayon,
41 actually. I believe the crayon is red but it's
42 in a blue wrapper. Something like that. Its --
43 its wrapper doesn't match the colour of the
44 crayon. And it's just -- it's -- it's really a
45 story about not judging a book by its cover.

46 So, you know, a teacher might -- might
47 choose to use a book like that, you know, in a

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1 class maybe where there's a student who has a
2 male student with very long hair who keeps
3 getting confused as a girl, and they might choose
4 to -- to have that book which, you know, helps
5 students understand that, you know, a book is not
6 always -- you know, shouldn't be judged by its
7 cover.

8 Q And in your capacity as first vice president and
9 local president, did you find that teachers were
10 coming to you with more requests for health and
11 wellness-related concerns because of
12 Mr. Neufeld's statements?

13 A There definitely was an increase in -- in stress
14 in teachers during that time. There's -- there's
15 no doubt that there were additional concerns.
16 There were additional pressures put on the
17 teachers. And, yes, there were additional
18 requests for just -- it was a very busy time in
19 our office.

20 Q Just a question about your understanding of SOGI
21 now. So you talked about one of the books that
22 some teachers may or may not choose to use now
23 that may or may not be seen as SOGI-related. In
24 your understanding, are any of the resources
25 listed on the SOGI 1 2 3 website mandatory for
26 teachers to use?

27 A No, the -- the resources are not mandatory.

28 Q From your perspective as a teacher and an
29 educator, what's the value in having those
30 resources available?

31 A Well, the value would be that teachers could
32 choose to use them in situations where they would
33 be educationally effective. Teachers -- public
34 school teachers welcome all students into their
35 classroom. We are a very inclusive institution.
36 But, you know, the -- and there's diversity.
37 Diversity is a reality in our population. And so
38 sometimes there are situations that -- that occur
39 in the classroom where the teacher, you know,
40 wants to deal with a particular situation. If we
41 go back to the -- to the -- to the boy with --
42 with very long hair who gets confused as a girl,
43 that might be a situation where the teacher, you
44 know, wants to -- wants to develop more tolerance
45 in the class for that situation and wants the
46 students to learn that you know what? Sometimes
47 boys have long hair, and that's okay, and that

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1 we're all welcome and -- and we're all valued in
2 the classroom and that there's not to be, you
3 know, the snide comments or -- or laughing about
4 someone who appears to be a bit different.

5 So I think what teachers found valuable
6 about the resources is that they could look at
7 them and see if they fit a particular situation
8 or a particular class, or maybe even a particular
9 student, and make a professional judgment on
10 whether that resource would be effective in -- in
11 the classroom.

12 Q Just returning to my notes to make sure that I
13 haven't missed any questions.

14 Those are all my questions. Thanks.

15 THE CHAIR: Thank you.

16 Mr. Kitchen, do you need a break before you
17 start cross-examination, or are you ready to
18 begin?

19 CNSL J. KITCHEN: No, let's begin, and then we can
20 take our morning break whenever the time comes.
21 And, yeah, you probably picked up when I get into
22 my cross, I'm not very good at watching the
23 clock. So at any point that we get to where you
24 think we should have a morning break, just
25 interrupt me, and I'm fine with that.

26 THE CHAIR: Okay. Thank you.

27 Mr. Klettke, we'll go till 11:00, and then
28 we'll take a 15-minute break. And I'm sure
29 you've been told what to expect at this part of
30 the proceeding. Mr. Kitchen's going to ask you
31 questions in cross-examination. If you don't
32 understand a question, you can ask for
33 clarification. If you don't know the answer to
34 the question, that's -- that's a fine answer.
35 And if at any time you need a break, you can let
36 me know. If there's an objection to one of the
37 questions, please wait until we've resolved the
38 objection before continuing on. It may be
39 necessary for some of these objections to exclude
40 you from the proceedings while we deal with them,
41 and if that situation arises, I'll let you know
42 what to do.

43 A All right.

44 THE CHAIR: Do you have any questions about this part
45 of the process?

46 A No.

47 THE CHAIR: No. Okay. Thank you.

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1 Go ahead, Mr. Kitchen.

2 CNSL J. KITCHEN: Thank you.

3

4 CROSS-EXAMINATION BY CNSL J. KITCHEN:

5

6 Q Mr. Klettke, I'm probably going to bounce around
7 a little bit. I might somewhat go from back to
8 front and start with your most recent evidence
9 and work backwards.

10 Were you aware -- this is going to your
11 testimony about security and events at the school
12 board meetings. Are you aware of the time
13 where -- and I'm going to use this term loosely.
14 You let me know if you don't understand or you
15 don't agree with it. But let's say the -- the
16 anti-Neufeld protesters, sort of the
17 pro-SOGI 1 2 3/anti-Neufeld protesters, were you
18 aware of the time when they gained access to the
19 room in which the trustees were having their
20 board meeting, and they stood behind Mr. Neufeld
21 and sort of held up signs and -- and said things
22 and stood immediately directly behind him while
23 he was seated there? Do you recall that time?

24 A I -- my recollection of that meeting is a bit
25 fuzzy. I do recall someone coming into a meeting
26 and someone walking around with a sign, but my
27 recollection was that it -- it was an
28 anti-SOGI 1 2 3 person. So it is possible maybe
29 that that occurred twice. That I'm not sure of.

30 Q Okay. So if Mr. Neufeld said that there was a
31 group of protesters opposed to him -- presumably
32 pro-SOGI but opposed to him that came in and
33 stood behind him and, you know, said some things
34 and held some signs and sort of stood there just
35 right behind him -- if he was to say that, would
36 you disagree with him?

37 CNSL A. TOM: Speculative. If Mr. Neufeld were to say
38 something about a meeting, would Mr. Klettke
39 disagree?

40 THE CHAIR: Go ahead.

41 CNSL J. KITCHEN: Is it okay if I go ahead?

42 THE CHAIR: Yeah.

43 CNSL J. KITCHEN: Well, I would have thought my friend
44 would understand what I'm doing. This is the
45 rule in *Browne v. Dunn*, of course. If
46 Mr. Neufeld's going to give testimony that might
47 contradict Mr. Klettke's, the idea is that

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1 counsel may bring Mr. Klettke to those things to
2 get him to respond to them so that I can satisfy
3 the rule in *Browne v. Dunn* and we don't have to
4 sort of recall the witness or exclude or prevent
5 me from asking -- asking my witness if he
6 disagrees with Mr. Klettke. And so I'm going to
7 do my best to do that in every situation that I'm
8 sort of aware of. I can't -- I can't say that
9 I'm going to necessarily cover all of them
10 because there might be things that Mr. Neufeld
11 would say that I don't quite anticipate that
12 would contradict Mr. Klettke's testimony. But to
13 the degree that I'm aware of it, the obligation
14 is on me to raise it now in cross so that I can
15 bring my -- my -- my witness to it next week and
16 have him talk about, "Well, here's -- here's how
17 I disagree with what Mr. Klettke said." So
18 that's what I'm doing here.

19 THE CHAIR: Okay. Thank you. I suspect that this may
20 be clearer when you're doing this, if you can be
21 clear that -- to say something to the effect that
22 "I expect Mr. Neufeld is going to testify that
23 da, da, da. Are you aware of this circumstance,
24 or do you disagree with what he's going to say?"
25 Just the wording of the question I think is
26 important to foreshadow that you expect
27 Mr. Neufeld is going to testify to something
28 different.

29 CNSL J. KITCHEN: Well, no, of course. That's why --
30 that's why I said, you know, "If Mr. Neufeld were
31 to say." I would have thought that was obvious,
32 but I take your point. I can say, you know, "I
33 anticipate Mr. Neufeld saying something along
34 these lines." That's fine.

35 THE CHAIR: Does that address the concern, Ms. Tom?
36 Okay. Yes. Thank you.

37 So, Mr. Klettke, do you remember the
38 question, or do you want it to be restated?

39 A Yes, I'd like it restated, please.

40 THE CHAIR: Go ahead, Mr. Kitchen.

41 CNSL J. KITCHEN:

42 Q I anticipate Mr. Neufeld commenting on an
43 instance where he was at a school board
44 meeting -- and I think it was probably somewhere
45 in the range of 2018-ish, 2019-ish, the range
46 we've been talking about -- where he's going to
47 say, you know, some protesters who were obviously

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1 opposed to him, presumably there to support
2 SOGI 1 2 3, you know, breached the room and came
3 in and stood -- stood behind him in a way that
4 he -- you know, caused him some concerns and, you
5 know, had some signs and -- and -- and made some
6 noise. So I anticipate him -- I anticipate him
7 saying that. Okay? So what I'm asking you is in
8 the event he says that, would you disagree with
9 him, or would you agree with him?
10 A I don't -- I don't recall that specific incident.
11 I do recall generally at least one incident where
12 people entered the -- the board meeting room and
13 sort of breached security. But I don't recall
14 that specific circumstance.
15 Q Okay. So you -- just to be clear, you would not
16 disagree with him?
17 A I would not disagree with him, no. That -- that
18 certainly could -- could have happened given the
19 [indiscernible].
20 Q Mr. Neufeld never said anything about trans
21 teachers being psychologically damaged, did he?
22 A I don't know if he specifically pointed out trans
23 teachers, but I believe he did say that trans
24 people are psychologically damaged.
25 Q Okay. Where in the record did he say that?
26 A I would have to check my notes to look -- to look
27 that up.
28 Q Well, why don't you do that.
29 A Right -- right now you want me to do that?
30 Q Yeah, I want to know where Mr. Neufeld said that
31 trans people are psychologically damaged.
32 A Okay. I assume that it would have been in the --
33 in the record already, but I can certainly -- do
34 you -- are we going to take a break for me to do
35 this?
36 Q Fair to say -- well, hold on. Maybe. But fair
37 to say that's your paraphrasing of what he said?
38 A Well, I'd have -- I'd have to check my sources to
39 see if that's an exact quote or a paraphrase.
40 Q Well, that's fine with me if you want to check
41 your sources.
42 CNSL J. KITCHEN: What do you think, Chair? Or I
43 guess -- obviously we got to hear from Ms. Tom,
44 obviously.
45 THE CHAIR: Okay. Thank you.
46 Ms. Waddell, are you trying to say
47 something?

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1 CNSL L. WADDELL: I was just going to say if we are
2 going to take a break, either you can continue or
3 we could take the morning break and provide the
4 witness with the book so that he can locate
5 whatever -- whatever it is that you're asking him
6 about.

7 THE CHAIR: Okay. Mr. Kitchen?

8 CNSL J. KITCHEN: Well, I think that's fair. He
9 should have -- yeah, he should have the books in
10 front of him in any event, and he should be able
11 to -- you know, because I might ask him a
12 question like this again. So to be fair to the
13 witness, he should be able to, you know, go to
14 anywhere in the books where we have admitted --
15 already admitted documents. So, you know, I
16 think that's fine. I guess my only thing is,
17 like, if this comes up again, I'm not going to --
18 I'm not going to -- I'm not going to consent to a
19 break to allow him to do that. Of course I'll
20 give him a couple minutes to go through the
21 books, but I think we should break, he gets the
22 books, he has them, and then if this issue comes
23 up again, he takes sort of a minute to go through
24 the book, see if he can find it. If he can't,
25 then, you know, we would need to move on.

26 THE CHAIR: All right. So, Mr. Kitchen, do you want
27 to move on with your questions until we take a
28 break at 11:00, or do you want to take a break
29 now and deal with this?

30 CNSL J. KITCHEN: Well, no, I -- yeah, I think we
31 might as well just take the morning break now,
32 and then, you know, during that break, he can --
33 he can get a -- he can get digital copies of the
34 books and then have them ready to go.

35 THE CHAIR: All right.

36 CNSL L. WADDELL: So the --

37 THE CHAIR: Go ahead.

38 CNSL L. WADDELL: I was just going to say if we
39 proceed that way, the only thing is you've got to
40 be okay with us emailing him a link to the books
41 if he doesn't already have them. We won't
42 communicate anything else, but because he's in
43 cross --

44 CNSL J. KITCHEN: I trust you on that. You're not --

45 CNSL L. WADDELL: Yeah.

46 CNSL J. KITCHEN: You're not going to send an email
47 telling him what to say. I trust that. Don't

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1 worry.

2 CNSL L. WADDELL: Okay.

3 THE CHAIR: All right. So we're going to take the
4 morning break now. I think we should make it a
5 20-minute break just to give everyone a few
6 extra minutes to send things. And, Mr. Klettke,
7 you have some homework over our break. So the
8 complainant's counsel is going to send you a book
9 of documents. I take it you're going to send
10 over the book of publications and statements.
11 That's the book that you can be looking in. For
12 the most part, these contain the statements that
13 are at issue in this complaint. And then when we
14 come back, you can -- we'll come back to this
15 question.

16 But you're under cross-examination right
17 now, and so as you heard Ms. Waddell just allude
18 to, while you're under cross-examination, you're
19 not allowed to talk to anyone about your
20 evidence. This includes your lawyers or anyone
21 else. So I'm going to give you this caution
22 every time we take a break, but this is just our
23 first -- our first time. Do you have any
24 questions, Mr. Klettke, about what's going to
25 happen next?

26 A No. I understand you're going to send me some
27 documents, and I'm to look for that statement.

28 THE CHAIR: Yeah. Let's take 20 minutes, and then
29 we'll come back at about 10:45. Okay. Thank
30 you.

31 CNSL J. KITCHEN: Thank you.

32 THE CHAIR: And -- sorry. During this break, I'll
33 just turn the cameras and mics off. It's a short
34 break. So you can stay connected. Just turn
35 your cameras and mics off, and then we'll call
36 you back when the 20 minutes have passed. Thank
37 you.

38
39 (WITNESS STOOD DOWN)

40
41 (PROCEEDINGS ADJOURNED FOR MORNING RECESS) [10:24:26]
42 (PROCEEDINGS RECONVENED) [10:46:05]
43

44 ED KLETTKE, a witness,
45 recalled.
46

47 THE CHAIR: All right, everyone. Come on back.

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1 All right. Mr. Klettke, were you able to
2 access the documents?

3 A Yes, I was able to access the documents. And I
4 found some notes that I had written. And what I
5 can -- would you -- would you like me to answer
6 now?

7 CNSL L. WADDELL: Can I --

8 THE CHAIR: In a moment.

9 CNSL L. WADDELL: Can I just --

10 THE CHAIR: Yeah, just a second. Go ahead,
11 Ms. Waddell.

12 A Yeah.

13 CNSL L. WADDELL: Sorry. I was just going to say, for
14 my friend's sake, I forwarded -- I can't imagine
15 you would have had time to review, but I
16 forwarded the link. So it would have had -- and
17 I said -- I'll just read you so you know what I
18 said. But because it was the link that had all
19 the books, I just said, "Please go into this
20 link. The book you are currently being
21 questioned -- being asked about is the one
22 entitled 'Complainant's Book of Documents Re
23 Publications and Statements.' Let us know if you
24 have difficulty accessing it." I heard nothing
25 in response. So that was the extent of my
26 communication on that.

27 And then while everybody was out, there was
28 noise coming from Mr. Klettke's window, and so we
29 unmuted ourselves and told him that he was
30 unmuted. We didn't say anything else. So I just
31 wanted to advise counsel of those communications.

32 CNSL J. KITCHEN: Yeah, no, I heard that. That's
33 fine.

34 THE CHAIR: Thank you.

35 CNSL L. WADDELL: Okay.

36 THE CHAIR: I don't see that -- oh, there he is.
37 Okay. Mr. Neufeld's back. All right.

38 Mr. Kitchen, are you ready to continue?

39 CNSL J. KITCHEN: Well, I'm wondering -- because it
40 looks like there's two windows there in the
41 corner behind Mr. Klettke, and I'm wondering if
42 he can close what looks like the one on the side
43 of him. I just -- I don't need to see his face
44 perfectly, but I am struggling.

45 A How's that?

46 Q I think that's going to be -- yes. Yeah, I can
47 live with that. Thank you. That's better.

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1 A Okay.
2 THE CHAIR: Okay. So maybe, Mr. Kitchen, you can just
3 ask your question again now --
4 CNSL J. KITCHEN: Yes.
5 THE CHAIR: -- of Mr. Klettke whenever you're ready.
6 CNSL J. KITCHEN:
7 Q Going back to our discussion before the break,
8 I -- you said something along the lines of
9 Mr. Neufeld said that trans people were
10 psychologically damaged. And then I asked you if
11 it was fair to say that that was your paraphrase
12 of what he said, and then you said, "I don't
13 know. I got to -- I got to check." So that's
14 where we are. So if you did get a spot where he
15 said that children are psychologically -- or,
16 sorry -- trans kids or trans people are
17 psychologically damaged, you can take us there.
18 So that's where we're at now.
19 A All right. So what I discovered is that I
20 [indiscernible] notes that said trans people have
21 underlying psychological problems.
22 Q Oh, okay.
23 A And I had made this note in an area near his
24 Culture Guard speech.
25 Q Okay. So would you like to change that --
26 A I apologize for not muting, but I was attempting
27 to find the spot in that speech where he talked
28 about trans people having underlying
29 psychological problems.
30 Q So would you like to change your testimony from
31 psychological damage to underlying psychological
32 problems, I think you said?
33 A Well, you know, I'm not sure, because I had that
34 in my mind that I heard that before as well, but
35 my thought may -- I mean, this -- this quote in
36 the Culture Guard video about underlying
37 psychological problems may be the one thing I was
38 thinking of, but for some reason, psychological
39 damage came to my mind. So I guess -- I guess,
40 yes, I should maybe change my testimony just
41 because I was paraphrasing.
42 Q Okay. And you would -- you would agree with me
43 that underlying psychological problems are not
44 Mr. Neufeld's words; they are -- they are your
45 words. They are your -- your, you know,
46 estimation or summary or paraphrase of what he
47 said?

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1 A Yes.
2 Q Okay.
3 A Unless -- unless I was given more time to -- to
4 seek more detail about the Culture Guard speech
5 [indiscernible].
6 Q Sure. Okay. You know what I'm going to do now
7 is do some screen-sharing here. Okay. Can you
8 see a PDF that's got that Red book? Do you see
9 that? I'm scrolling up and down. Do you see
10 that?
11 A Yes.
12 Q Okay. This is the book you were talking about;
13 right?
14 A Yes.
15 Q Okay. And just to be clear, this is the book
16 that you said some teachers -- because I think
17 your -- I think my friend asked you for an
18 example -- and by the way, when I say -- when I
19 say -- when I say "my friend," I'm talking about
20 Ms. Tom. Okay? Because she's the --
21 A Okay.
22 Q -- she's the lawyer that -- that's just lawyers
23 being weird. That's what we do. When she asked
24 you about can you give an example, this was the
25 book you went to. And so just to be clear, your
26 evidence was that some teachers actually had been
27 using this book and were concerned and so -- so
28 stopped using it. Do you know that, or is that
29 just something you were supposing, first of all?
30 Let's go with that.
31 A I do know that there are teachers that stopped
32 using books of this nature after Mr. Neufeld's
33 post.
34 Q Okay. And that likely includes this book? Is
35 that fair?
36 A Yes, I would say it likely includes this book.
37 Q Okay. You're familiar with this book?
38 A I haven't read it for a long time, but, yes, I'm
39 aware of it.
40 Q Okay. But you have read it, and that's why you
41 were able to tell us a little bit about the story
42 that you did tell us about the crayon; right?
43 A I believe I read portions of it, but I think most
44 of my knowledge about the book is what teachers
45 have told me about it. Elementary teachers.
46 Q Right. But, I mean, you did say -- correct me if
47 I'm wrong. You said that it's -- you know, it's

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1 about a crayon who is blue with a red wig. Well,
2 I think you said something about that. Does that
3 sound right?
4 A Yes.
5 Q Okay. So you would recognize the book if you saw
6 it, then?
7 A Yes.
8 CNSL J. KITCHEN: I'm going to want this tab here --
9 what is this? Tab 50. I'm going to want this
10 entered as an exhibit.
11 THE CHAIR: I think it's already in on consent as part
12 of the SOGI materials, isn't it?
13 CNSL J. KITCHEN: No, I did not consent to -- maybe --
14 THE CHAIR: You said all the way to 51.
15 CNSL J. KITCHEN: You know what? I did. Okay. Well,
16 there's no dispute about this one. What I meant
17 by that -- I think actually -- you know what? I
18 apologize. I think you might have had it right,
19 Ms. Waddell, because I think you were the one who
20 said 31 to 49, and then I said all the way to the
21 end, because what I was thinking was all the SOGI
22 materials. I hadn't initially consented to the
23 books. So we have one more book. I'm probably
24 not going to object to that, but certainly my
25 position right now is that I hadn't consented to
26 it. So 50 should go in on consent, then, because
27 both of us wanted it.
28 CNSL L. WADDELL: Yeah, and I'll just -- I'll just
29 say, Mr. Kitchen, anything -- if it's in our
30 books and you want it entered, of course we're
31 fine with that. So --
32 CNSL J. KITCHEN: Yeah, I -- yeah. I understand.
33 Q Okay, Mrs. Klettke, this is -- sorry --
34 Mr. Klettke. I'm sorry. This is -- this is a
35 copy of the book Red. Do you recognize the front
36 there and how it looks the same as -- oh, we lost
37 it -- looks the same as this one?
38 A Yes.
39 Q Okay. So this is actually a photocopy of the
40 entire book. Does this look familiar to you? I
41 expect it does.
42 A Yes, it does. Although I notice I think I've got
43 it backwards. I got -- he has a red label, but
44 he's a blue crayon. I think I got the colours
45 reversed.
46 Q Okay. I'm just going to scroll through the whole
47 book just so you can see where it's going, and

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1 you can see that there's nothing sort of, you
2 know, hidden in -- in these various pages.
3 21 pages long. I've just briefly gone through
4 the book, and it certainly looks like this is an
5 authentic copy of the book because it doesn't
6 look like there's anything that's not part of the
7 book. Have you seen anything yet that might give
8 you cause to think that it's not part of the
9 book?
10 A I'm not familiar enough with the book to be able
11 to identify anything that would be missing.
12 Q No, yeah, I'm talking about anything added.
13 A Oh, I don't know if I'm familiar enough with it
14 to -- to notice if something was added either.
15 It's -- it's -- I'm a -- I'm a trained secondary
16 math teacher, and I learned a lot about
17 elementary school in the office, but --
18 Q Okay. Well, let's -- let's slow down, then. Do
19 you have any reason to think these -- these first
20 two pages you're seeing right here are not part
21 of the book?
22 A No.
23 Q Do you have any reason to think that this page is
24 not part of the book?
25 A No.
26 Q Do you have any reason to think that this page is
27 not part of the book?
28 A No.
29 Q Do you have any reason to think that this page is
30 not part of the book?
31 A No.
32 Q Do you have any reason to think that this page
33 here is not part of the book?
34 A No.
35 Q Do you have any reason to think that this page
36 here is not part of this Red book?
37 A No.
38 Q Do you have any reason to think that this page is
39 not part of the book?
40 A No.
41 Q Do you have any reason to think this page is not
42 part of the book?
43 A No.
44 Q Do you have any reason to think that this page is
45 not part of the book?
46 A No.
47 Q Okay. Let's speed this up just a little bit.

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1 I'm going to go through these pages here. Do you
2 have any reason to think the last ten pages that
3 I scrolled you through are not part of this book?

4 A No.

5 Q Okay.

6 CNSL J. KITCHEN: I'd like to have the -- this PDF
7 here, which is a full copy of the *Red* book,
8 entered as an exhibit.

9 THE CHAIR: Have you sent --

10 CNSL L. WADDELL: Mr. Kitchen, could you provide us
11 with a copy of that, please?

12 CNSL J. KITCHEN: Yeah. Oh, yeah, absolutely. Well,
13 did you want a copy? Do you want to stand this
14 down, I'll give you a copy, and then we can --
15 and then you can give comments on it?

16 CNSL L. WADDELL: No, I -- no, I don't think we'll
17 interrupt your cross. I think we'll simply
18 say -- I'll say I expect that we will be fine
19 with it going in, but we'll review it on a break
20 and raise the issue if upon review we have
21 concerns.

22 THE CHAIR: And, Mr. Kitchen, you'll also have to send
23 it to the tribunal. We don't have this.

24 CNSL J. KITCHEN: No, yes, of course. I think it's --
25 I think it's better if we -- if we deal with this
26 now. You know, if we just stand down for
27 five minutes, I'll email this over to the
28 tribunal and Ms. Waddell, and then we can just
29 recall as soon as Ms. Waddell's satisfied that
30 she's had a look at it.

31 THE CHAIR: All right. Well, why don't we stand down
32 just for five minutes, and you can -- can you
33 send it to the case manager, please, and to
34 Ms. Waddell. We'll just turn our cameras and
35 mics off to do that, and we'll deal with it when
36 we -- when we come right back. So --

37 CNSL J. KITCHEN: Okay. Thank you.

38 THE CHAIR: -- Mr. Klettke, you caught that? We're
39 going to stand down just for five minutes just to
40 get us all a copy of this book. Thank you.

41

42 (WITNESS STOOD DOWN)

43

44 (PROCEEDINGS ADJOURNED FOR RECESS) [10:58:06]

45 (PROCEEDINGS RECONVENED) [11:04:56]

46

47 ED KLETTKE, a witness,

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1 recalled.

2

3 THE CHAIR: All right, everyone. Come on back.

4 CNSL L. WADDELL: Sorry. Can we just have a couple --
5 we're just still reviewing the document. Can we
6 just have a couple more minutes?

7 THE CHAIR: Yes, of course. Why don't you come back
8 on camera when you're ready. We'll wait. Thank
9 you.

10 CNSL L. WADDELL: Okay. Thank you. Thanks.

11 CNSL J. KITCHEN: I'll just -- Chair, I just wanted to
12 make a point to help my friend. If my friend
13 were to produce what she thinks is a -- is a --
14 is a more full or more authentic copy just to
15 correct the record, I don't think I'd have an
16 issue with that. So...

17 THE CHAIR: Okay.

18 CNSL J. KITCHEN: It looks -- I mean, this -- what I
19 have, as far as I can tell, is full. I'm not --
20 I'm certainly not aware that there's anything
21 else and I'm trying to put in only part of the
22 book or whatever.

23 THE CHAIR: Okay.

24 CNSL J. KITCHEN: So if she -- if she has a more
25 fulsome, official version of it, I wouldn't take
26 issue with it. I'd want her to send it to me,
27 but I wouldn't take issue with it.

28 THE CHAIR: All right. I think maybe we just need a
29 couple more minutes to look at it. We'll be
30 right back.

31 CNSL J. KITCHEN: Yeah.

32 All right. Come on back.

33 CNSL L. WADDELL: So I'll just say we've reviewed the
34 PDF, and it's close to correct. There's a red
35 page that is not actually in colour. It's white
36 in Mr. Kitchen's version. There's a couple pages
37 that are out of order, and then there is one
38 final image at the end of the book that isn't
39 there. We've just screen-shotted the one that's
40 actually missing at the end, and we'll just email
41 it to everyone. I don't think anything turns on
42 it, Mr. Kitchen, but, yeah, there you go.

43 CNSL J. KITCHEN: You're going to be sending the
44 missing page or just the whole --

45 CNSL L. WADDELL: Yeah.

46 CNSL J. KITCHEN: -- the whole -- okay.

47 CNSL L. WADDELL: I don't think we can share the whole

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1 book without breaching copyright. We've just
2 screen-shotted the last page, and we'll send
3 it -- send that.

4 CNSL J. KITCHEN: Well, thank you.

5 CNSL L. WADDELL: If you want -- if you want us to
6 tell you what pages are out of order, we could do
7 that, but it would take a minute or two.

8 CNSL J. KITCHEN: You know, I don't think anything
9 turns on that.

10 CNSL L. WADDELL: Yeah, I didn't think so. Okay.

11 CNSL J. KITCHEN: Okay.

12 THE CHAIR: All right.

13 CNSL J. KITCHEN: Okay, good. Thank you.

14 THE CHAIR: In that case, we'll admit *Red: A Crayon's*
15 *Story* as Exhibit 1 in the proceeding. It's 21
16 pages, but I gather we're going to be adding a
17 missing page once we receive it from Ms. Waddell.
18 Okay. Thank you. Go ahead.

19 CNSL J. KITCHEN: So basically we'll end up amending
20 the exhibit to add the missing page, is how I
21 would --

22 THE CHAIR: Correct.

23 CNSL J. KITCHEN: -- view that.

24 THE CHAIR: Yeah.

25 CNSL J. KITCHEN: Okay.

26

27 EXHIBIT 1: *Red: A Crayon's Story* - 21 pages

28

29 CNSL J. KITCHEN: Okay. Thank you.

30 Q Okay, Mr. Klettke, I think this is going to some
31 things you said yesterday. You said the school
32 board -- and I'm going to be careful that we know
33 what we're -- know what we say when we say the
34 school board. You said the school board is
35 involved for hearings of suspensions or
36 disciplines -- or disciplinary measures for
37 teachers. Does that sound right?

38 A Yes.

39 Q And by "school board," what you mean is the board
40 of trustees?

41 A Yes, I do. Yes.

42 Q Right. So there's a hearing. A board of
43 trustees are in the room or on the screen.
44 There's a teacher there, probably a teacher's
45 lawyer, and then, you know, there's some back and
46 forth, and then -- kind of like this, and then --
47 and then -- and then the trustees would make a

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Ed Klettke (for Complainant)
cross-exam by Cnsl J. Kitchen

1 decision. Is that -- is that fair? That --
2 A Yes.
3 Q Okay.
4 A That's -- that's correct.
5 Q And you said -- you said those are not -- those
6 were not common in your time?
7 A No. Because they're generally used for
8 suspensions and terminations.
9 Q Right, which is -- which is relatively rare. Is
10 that fair?
11 A Yes, I'd say that's fair.
12 Q Okay. And you said you attended a few of these?
13 A Yes.
14 Q Okay. And help me again with the -- sort of the
15 timing of when you -- and -- and the ones you
16 attended, did you attend them all in your
17 capacity as an executive of the teachers'
18 association, or did you ever attend them just
19 simply as a teacher to be there and observe?
20 A No, I would have attended as a released officer
21 of the Chilliwack Teachers' Association.
22 Q Okay. Can you give me the years in which --
23 actually, give me the years in which you were an
24 executive on the CTA.
25 A I was -- I was elected in 2015 as the first vice
26 president.
27 Q Okay.
28 A And so I was a released officer from -- for the
29 next school year, and then I retired in June of
30 2021.
31 Q So for those roughly six years between 2015 to
32 2021, you were an executive on the CTA?
33 A Yes.
34 Q And it would have been during those years that
35 you would have attended hearings before the
36 Chilliwack school board?
37 A Yes.
38 Q Do you recall how many?
39 A I recall one very clearly. There may be -- there
40 may have been others.
41 Q What was the one -- without breaching
42 confidentiality, what was the -- what was the one
43 that you particularly remember? What was that
44 about?
45 A It was about a middle school teacher who had been
46 disciplined and was being suspended.
47 Q Being suspended. Okay. What had that -- again,

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Ed Klettke (for Complainant)
cross-exam by Cnsl J. Kitchen

1 without breaching confidentiality, just give me
2 very bare bones. What did that teacher -- what
3 did that teacher -- had done that was worthy of
4 discipline and was the basis for the suspension?
5 A The teacher was accused of making contact with
6 students.
7 Q Okay. I see. That's fine. Say no more. I
8 understand.
9 And there may -- there may have been more,
10 but you don't remember?
11 A I don't remember them as specifically as that
12 one, no, but there were a couple of other serious
13 cases, and I'm struggling to remember if they
14 went to a hearing with the board or not.
15 Q Because some of these -- some of these get
16 resolved before they go to a hearing?
17 A Yes.
18 Q Okay.
19 A And some teachers decline that option.
20 Q The ones that are resolved, are the school board
21 trustees involved in that, or do they not get
22 involved until there is actually a hearing?
23 A My understanding -- I'm not privy to their
24 conversations between HR and the board, but my
25 understanding is they get involved at the hearing
26 stage.
27 Q I'm sorry. I didn't catch that. They involve
28 what?
29 A That they get involved at the hearing stage.
30 Q Okay. Okay. Prior to that, it's sort of the
31 school board lawyers and the union lawyers would
32 try and resolve something. Is that fair?
33 A Yes.
34 Q Okay. Okay. Sorry. Just go back -- so one
35 hearing --
36 A [Indiscernible] lawyers always involved.
37 Q Well, it could be union reps and -- yeah. All
38 right. Yeah.
39 A Yeah.
40 Q One hearing, maybe more. You're just not sure
41 because you don't know if they got settled or if
42 they went to a hearing?
43 A Yes.
44 Q Okay. Is it fair to say during your six years
45 there that there were no disciplinary hearings
46 involving LGBT-identifying teachers facing
47 discipline for either being LGBT teachers or

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Ed Klettke (for Complainant)
cross-exam by Cnsl J. Kitchen

1 having expressed LGBT ideas or beliefs? Is that
2 true?
3 A That there were no hearings?
4 Q Yes.
5 A There were no hearings.
6 Q Okay.
7 A In those cases.
8 Q Also fair to say in your six years you're not
9 aware of any case in which an LGBT-identifying
10 teacher was disciplined, with or without
11 involvement of the board -- disciplined on the
12 basis of identifying as LGBT or expressing LGBT
13 ideas or beliefs? Is that fair?
14 A Yes, that's fair.
15 Q You referenced emails from teachers that you said
16 were upset. Some of the words you used were
17 "gobsmacked," "stunned," "shocked," some other
18 words. But it is -- it is fair to say that none
19 of those emails are in the record, to your
20 knowledge?
21 A So in the record of this proceeding?
22 Q Yeah.
23 A Not to my knowledge. I just was emailed the
24 book. It would be in that book that was emailed
25 to me?
26 Q And I'll let my friend -- well, I can tell you as
27 an officer of the court and because I've --
28 because I've reviewed this stuff, there are no
29 emails from any teachers expressing any of the
30 things that you mentioned. I wanted the -- I
31 just wanted to hear from you if you were aware of
32 anything different or you were surprised about
33 that.
34 A I'm not aware of what's -- fully what's in the
35 book of records at this point.
36 Q Did you -- any of these emails you got from
37 teachers that were -- that were upset about Barry
38 Neufeld's post, did you forward any of them to
39 the BCTA?
40 A I may have. I don't recall.
41 Q But it's your evidence that these emails exist?
42 A Oh, yes, these emails exist --
43 Q Okay.
44 A -- without a doubt.
45 Q Okay. You said something in your evidence here
46 just now that -- or not just now, but, you know,
47 earlier today. You said, "We thought that" --

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Ed Klettke (for Complainant)
cross-exam by Cnsl J. Kitchen

1 this is you. You're speaking in the plural
2 about, I think, the CTA and the teachers, and
3 you're speaking in response to Mr. Neufeld's
4 post. You're saying, "We thought that what
5 Mr. Neufeld said" -- and I'm paraphrasing here
6 from what you said. "We thought that what
7 Mr. Neufeld said might lead to discipline." Do
8 you recall saying that?

9 A Yes.

10 Q Is it fair to say that you had no reasonable
11 basis for that belief?

12 A No, I believe I had reasonable basis for the
13 belief.

14 Q You think you had reasonable basis to believe
15 that the school board, that the board of
16 trustees, may discipline LGBT-identifying
17 teachers because they were LGBT or because they
18 expressed LGBT ideas or beliefs?

19 A I'm -- I'm wondering if there's two different
20 situations where I've said something like that.
21 I recall mentioning being -- some of our teachers
22 being disciplined in terms of breaching their
23 duty of fidelity. Is that from that element of
24 my evidence?

25 Q No, it's not. What gave you the reasonable
26 basis -- people have all kinds of irrational
27 fears. That's fine. We get it. In fact, in --
28 in Nova Scotia, there's a protection for an
29 irrational fear of contracting a disease in the
30 Human Rights Code in Nova Scotia. So it's fine.
31 We sometimes protect that type of stuff. I'm
32 talking reasonable, rational basis. What gave
33 you the reasonable, rational basis to suppose
34 that there was a threat of discipline for
35 LGBT-identifying teachers on the basis of the
36 fact that they identified as LGBT or expressed
37 LGBT ideas or beliefs?

38 CNSL L. WADDELL: Sorry. I just want to, yeah,
39 clarify. I don't think you're putting the
40 witness's actual evidence in direct to him. I
41 think you're missing a part of it.

42 CNSL A. TOM: Yeah, so in -- in Mr. Klettke's direct
43 evidence, he was speaking about being concerned
44 that if teachers spoke out against Mr. Neufeld
45 directly, that that could lead to discipline.

46 CNSL L. WADDELL: So if you want to ask him about
47 that, that's fine, or -- but -- but what you just

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Ed Klettke (for Complainant)
cross-exam by Cnsl J. Kitchen

1 put to him was not actually his evidence. He
2 was -- his evidence was about discipline if
3 teachers spoke out.
4 CNSL J. KITCHEN:
5 Q Teachers did -- teachers did speak out in email
6 and in phone calls to you. And as far as -- as
7 far as you're aware -- you tell me if not -- but
8 teachers did speak out in emails and in phone
9 calls and in social media their opposition to
10 Mr. Neufeld; is that right?
11 A Yes. What I was referring to was advice to
12 teachers not to denigrate -- directly denigrate
13 Mr. Neufeld or any other trustees publicly.
14 Q Okay. So let me -- let me ask you this, then:
15 Your concern, then, that they might be
16 disciplined was not because they would identify
17 as LGBT or express LGBT ideas or express their --
18 their opposition to Mr. Neufeld's beliefs and
19 ideas, but simply because if they denigrated
20 Mr. Neufeld, they would be breaching a more,
21 let's say, neutral provision to not denigrate
22 trustees. That was actually your concern, then?
23 A That was the concern I expressed at that time --
24 Q Okay.
25 A -- yes.
26 Q Okay. Okay. And that could -- that could have
27 been any teacher. It's got nothing to do with
28 their identity or their beliefs. It's just any
29 teacher who just said really nasty things about a
30 trustee, you would be concerned that they might
31 get disciplined?
32 A Yes, it would apply to all the teachers.
33 Q And fair to say you wouldn't regard that
34 discipline as -- as -- as discriminatory in the
35 sense that, you know, it was -- it was an attack
36 on their identity or their expression of their
37 beliefs, but simply because they're breaching,
38 again, a more neutral provision that nobody,
39 regardless of what they believe or anybody else
40 believes, should be denigrating a trustee?
41 A Sorry. Could you repeat that question, please?
42 Q Sure. So your concern was not that teachers,
43 whether LGBT or not, would get disciplined for
44 expressing their beliefs in opposition to
45 Mr. Neufeld; what you were concerned about is if
46 they denigrated him as a trustee, being
47 disciplined for having denigrated a trustee.

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Ed Klettke (for Complainant)
cross-exam by Cnsl J. Kitchen

1 That was your concern.

2 A Yes.

3 Q Okay. Did you hear from any teachers that
4 expressed concerns that aligned with
5 Mr. Neufeld's concerns or, in other words, wrote
6 to you and said, "Well, you know, actually, I
7 think -- I think Mr. Neufeld's got a point. I'm
8 kind of glad he raised this, and, you know, this
9 is an opportunity for me to let you know that I
10 have some concerns similar to his." Did you ever
11 receive any communications like that from any of
12 your members?

13 A Yes, I recall receiving a couple of emails of
14 that type.

15 Q Okay. I anticipate Mr. Neufeld potentially
16 saying that there were a fair number of teachers
17 that actually felt that way but were, you know,
18 afraid or concerned to -- to -- to speak up or
19 speak out because they might -- you know,
20 might -- might land them in some hot water.
21 Would you -- you know, from -- from -- from what
22 you know about your members and all of this,
23 would you -- would you tend to disagree with
24 Mr. Neufeld that that was in fact occurring, or
25 would you agree that that may in fact be
26 happening?

27 A Sorry. Could you -- can you repeat that again?
28 I'm --

29 Q Sure. No, I -- no problem.

30 A Yeah.

31 Q The long questions are tough. I tell my
32 witnesses all the time, "Look, you're going to
33 get long questions. Ask it to be repeated." I
34 anticipate Mr. Neufeld saying something along the
35 lines of, you know, "Look, there was -- there
36 was -- there were some teachers that shared my
37 concerns. They agreed with me. They were scared
38 to speak up. They were -- you know, they were --
39 they were -- they were concerned that any number
40 of people, other teachers, unions, the school
41 board, the public, whatever, they -- they were --
42 they were concerned that if they spoke up and
43 said, You know, actually, I got -- I got -- I
44 got -- kind of got the same concerns as
45 Mr. Neufeld, that they would -- they would, you
46 know, sort of face trouble, to keep it general.
47 They would face trouble from any number of --

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Ed Klettke (for Complainant)
cross-exam by Cnsl J. Kitchen

1 of -- of people."
2 And so -- and so they did -- they didn't --
3 they didn't actually say anything. They --
4 they -- unlike the teachers that you heard from
5 that did say something, they didn't say anything.
6 Would you -- would you -- would you agree with
7 Mr. Neufeld that that -- that that -- that that
8 was probably happening, or would you say, "No,
9 I -- you know, I really don't think that was
10 likely to be happening?" Where would -- where
11 would you land --
12 CNSL L. WADDELL: Sorry. I'm just going to suggest --
13 there's -- there's several different things in
14 there, and I'm just wondering -- I think you're
15 going to get the same thing from the witness of
16 "can you repeat it?" Can you just maybe break it
17 down into parts, its component parts, and then
18 you will know what he's agreeing or not agreeing
19 with?
20 CNSL J. KITCHEN: Well, I don't -- I don't know if --
21 if it's something that can be broken down.
22 CNSL L. WADDELL: Well, so you've got -- you've got
23 one piece which is about, you know, Mr. Neufeld
24 will say that there were, you know, teachers
25 expressing to him that they shared his views. So
26 that's one piece. And then --
27 CNSL J. KITCHEN: Oh, no, yeah, okay --
28 CNSL L. WADDELL: -- you've got --
29 CNSL J. KITCHEN: -- I can do that.
30 CNSL L. WADDELL: And then you've got a separate piece
31 around that they were fearful of it might land
32 them in hot water. I think if you separate
33 those, you might get the answers you're looking
34 for faster.
35 CNSL J. KITCHEN: Yeah, I don't know about that, but I
36 can do that.
37 Q Okay. So you got -- let's back up and I'll ask
38 you to -- we'll break it down on your end as
39 well. So you -- did you receive emails from
40 teachers -- and it could have -- by way, it could
41 have been phone calls or some other medium. You
42 let me know. But did you receive communications
43 from teachers that said, "You know what? I agree
44 with Mr. Neufeld"? Did --
45 A Yes.
46 Q Did you receive -- okay.
47 A We did receive some communications --

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Ed Klettke (for Complainant)
cross-exam by Cnsl J. Kitchen

1 Q Okay.
2 A -- from teachers who agreed with Mr. Neufeld.
3 Q Did you receive any communications from teachers
4 that suggested along the lines that, you know,
5 "We really should just leave Mr. Neufeld alone
6 because, you know, he's just -- he's just
7 expressing his beliefs, and, you know, what's --
8 what's -- sort of, you know, what's the big deal?
9 Why are we going to oppose this?" Did you
10 receive anything like that?
11 A I don't recall the emails being phrased in that
12 way.
13 Q Okay. No, that's fine. I didn't -- yeah, I
14 didn't expect so. I just -- did you receive --
15 okay. Did you receive any emails from any
16 teachers suggesting that they were concerned to
17 express their agreement or support of -- of -- of
18 Mr. Neufeld?
19 A There may have been teachers in that
20 circumstance, but I don't recall receiving emails
21 from them.
22 Q Okay. So if Mr. Neufeld says that he was aware
23 of teachers who were in that circumstance, that
24 agreed with him, supported him, but were
25 concerned to speak up and therefore didn't, would
26 you -- would you agree with him that -- would you
27 have -- would you have reason to disagree with
28 him if he said that?
29 A No.
30 Q Okay. And, again, just so you understand what's
31 going on here is -- is I'm giving you an
32 opportunity to -- to -- to respond to what
33 Mr. Neufeld may say because that's -- that's --
34 you know, in law we -- that's what we do. That's
35 fair to the witness; right? So that's why I keep
36 going through this rather strange exercise.
37 Do you recall -- I'm only going to ask you
38 about this because my notes come after this event
39 in your testimony. Do you recall the email
40 involving Justine -- I think it's "Hodge" or
41 "Hodge"? I think she's the leader of the parent
42 advisory council. That was at -- that was at
43 Tab 5. It was -- it was an email that my friend
44 brought you to. Do you recall that? Do you know
45 what I'm talking about?
46 A Yes. Yes, I do.
47 Q I have it in my notes that, you know, right after

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Ed Klettke (for Complainant)
cross-exam by Cnsl J. Kitchen

1 you talked about that, you said, "We were
2 concerned for the safety of CTA personnel." Does
3 that sound right?
4 A Yes, that sounds right.
5 Q I don't think you used the word "personnel." And
6 you understand when I say "CTA" I'm talking about
7 the Chilliwack Teachers' Association?
8 A Yeah, and the released officers I think I was
9 specifically talking about with that.
10 Q Fair to say that there was no -- that fear was
11 not -- that concern was not realized that nobody
12 got -- nobody -- nobody got -- I'll just use the
13 word "hurt." Nobody -- nobody got hurt or
14 attacked or anything like that in connection with
15 Barry's comments?
16 A No.
17 Q Fair to say you didn't have a -- a -- a
18 reasonable basis for that concern?
19 A We didn't have a -- can you repeat that? Sorry.
20 Q Yeah, no. Isn't it fair to say that you did not
21 have a reasonable basis for that concern?
22 A No, I believe we had a reasonable basis for the
23 concern.
24 Q You were concerned that the people who supported
25 Barry Neufeld or agreed with the things he said
26 would -- would cause physical harm to CTA
27 personnel or members?
28 A Yes, we certainly had conversations about our
29 physical safety.
30 Q Okay. Fair to say none of those concerns were
31 ever materialized?
32 A I'm no longer in the office, but I --
33 Q During -- during your time --
34 A -- [indiscernible- overlapping speakers] --
35 Q During --
36 A -- when I was in office --
37 Q Yeah.
38 A -- yeah, it was -- it was not realized.
39 Q Okay. You would agree with me that Barry Neufeld
40 never advocated for violence in any way towards
41 LGBT-identifying people?
42 A Not directly, no.
43 Q He didn't indirectly either, did he?
44 A There -- there is one post -- I believe it was
45 his first post -- that some people interpreted as
46 potentially involving violence. He made
47 references to Russia and Paraguay where LGBTQ

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Ed Klettke (for Complainant)
cross-exam by Cnsl J. Kitchen

1 people are not dealt with very well and sometimes
2 with violence. And so some people connected
3 those -- the reference to those two countries
4 with violence.
5 Q Who are those people?
6 A Sorry. L -- you're -- you're talking -- we're
7 talking about LGBTQ [indiscernible].
8 Q No, no, but can you -- can you identify those
9 people for me?
10 A Which people --
11 Q And you don't --
12 A -- connected --
13 Q -- you don't need to use names. Can you -- you
14 know, but -- but we need a -- we need to find a
15 way to identify these people you're talking
16 about. Are you one of these people?
17 A Yes, I think at times I've interpreted that --
18 that connection to Russia and Paraguay, although
19 it's not direct, as something that -- that --
20 that does sort of imply that maybe we should be
21 treating these people like -- treating LGBTQ
22 people like they are treated in Russia and
23 Paraguay.
24 Q Okay. So you -- you interpreted -- just to be
25 clear, you interpreted Mr. Neufeld's -- I'm going
26 to bring you to the post, but just -- do I
27 understand your position? You interpreted
28 Mr. Neufeld's first post in October 2017 as
29 indirectly advocating for other people to engage
30 in violence towards LGBT people?
31 A I think what Mr. -- sorry. Could you repeat that
32 question?
33 Q Sure. You interpreted -- hold on. To be fair to
34 you, I'm going to bring you to the post. There's
35 a couple different copies of this around. The
36 one I have is not the greatest, but I think you
37 can read it. Well, it's the -- actually, it's
38 the same one that's the -- that the complainants
39 have. Okay. Can you see that? I know it's a
40 little fuzzy, but can you see that?
41 A Yes, I can see that.
42 Q Okay. Let's find the bit here about...
43 CNSL L. WADDELL: I think it's down at the bottom,
44 Mr. Kitchen.
45 CNSL J. KITCHEN: Yeah, I was -- yeah, I was just
46 about to read it.
47 Q He says:

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Ed Klettke (for Complainant)
cross-exam by Cnsl J. Kitchen

1
2 If this [indiscernible], count me out.
3 I belong in a country like Russia or
4 Paraguay, which recently had the guts
5 to stand up to these radical cultural
6 nihilists.
7

8 Fair to say that that statement is -- has
9 everything to do with stating where Mr. Neufeld
10 belongs, according to him, and not advocating for
11 violence towards LGBT people? Isn't that right?
12 A I believe that by saying that he wants to go --
13 possibly go to a country like Russia or Paraguay,
14 he feels the way -- in those -- the way those
15 countries dealt with LGBTQ people is the correct
16 way to deal with them, is a better way to deal
17 with them. And when I said it was indirectly
18 connected, then you could make the connection
19 that if he feels that that's the right way in
20 Russia and Paraguay, then maybe it's a right way
21 to do it -- to deal with it here.

22 Q Okay. So you think it's rational for an LGBT
23 person to say that this gave them reasonable
24 cause to fear for their safety because
25 Mr. Neufeld was advocating for violence towards
26 them?

27 A I think it would be fair to say that LGBTQ
28 teachers talked to me about concerns about these
29 two countries and the connection to violence in
30 those two countries.

31 Q Fair to say that there's no -- no reasonable fear
32 of violence towards LGBT people from Mr. Neufeld
33 himself?

34 A No.

35 Q Okay. So the fear is that somebody's going to
36 interpret this comment in a particular way that
37 will encourage them to then go out and commit
38 violence against LGBT people on the -- on the
39 basis that they are LGBT people?

40 A Yeah, I guess that's possible. That's an
41 indirect --

42 Q Well, I mean, of course, anything's possible, but
43 is it -- is it -- is it -- is it reasonable to --
44 to -- to expect that as a -- as a -- as a
45 reasonable possibility? Not a -- not a sort of,
46 you know, logical possibility; right? I mean a
47 reasonable possibility. Your position is that

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Ed Klettke (for Complainant)
cross-exam by Cnsl J. Kitchen

1 that's a reasonable possibility?
2 A I had conversations with my members that had --
3 where we discussed that possibility.
4 Q In describing school board meetings, you said,
5 you know, after his posts, they were no longer
6 sparsely attended. Now they were -- now they
7 were, I think you said, contentious. They were
8 attended much more. And you again mention this
9 concern for safety. So I'm just asking if you
10 can be a little more specific about that. You
11 were -- you were -- you were concerned for the
12 safety of LGBT people if they attended these --
13 these board meetings?
14 A I --
15 Q Let's say teachers. Sorry. Just --
16 A Yeah --
17 Q -- I said "people." I meant teachers.
18 A Yeah. I think I was -- I was concerned about the
19 safety of all the people that attended the
20 meetings, and particularly the members that I --
21 that I represented.
22 Q Did your members attend any of these meetings?
23 A Yes.
24 Q Okay. Did members who you were aware of that
25 identified as LGBT attend these meetings?
26 A I don't always know how people identify --
27 Q Yeah, I know. That's why I said to -- you know,
28 to your knowledge.
29 A But I -- I would -- I would think so, yes.
30 Q Okay. And no reports of any violence experienced
31 by those people; right?
32 A No.
33 Q When you said both sides were vocal, you mean --
34 you mean those who opposed Mr. Neufeld were very
35 vocal, and those who supported Mr. Neufeld were
36 very vocal. Is that -- is that fair?
37 A Yes, that's fair.
38 Q Any violence ever break out between these two
39 sides?
40 A Not that I recall.
41 Q Sorry. Just give me a second. I think I'm
42 almost there.
43 A That's fine.
44 Q I think -- correct me if I'm wrong, but did
45 you -- you know, after -- after Mr. Neufeld is
46 giving some of his comments in late 2017, early
47 2018, did you send out any messages to your

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Ed Klettke (for Complainant)
cross-exam by Cnsl J. Kitchen

1 members inviting them to let you or a CTA
2 executive know their concerns, thoughts,
3 oppositions, positions regarding Mr. Neufeld's
4 post? Did you -- did you invite feedback, in
5 other words?
6 A I don't specifically recall asking for feedback
7 on Mr. Neufeld, but it wasn't unusual for us to
8 reach out to members and remind them of the
9 various ways that they can share [indiscernible -
10 automated message].
11 Q Fair to say you welcomed feedback from members
12 who opposed Mr. Neufeld or were concerned about
13 what he said?
14 A We welcomed feedback from all our members.
15 Q So the members who -- who wrote in support of
16 Mr. Neufeld and the -- and the members who wrote
17 in opposition to him or out of concern for it,
18 you actively told both members that, you know,
19 "We're glad to hear from you. Please continue to
20 let us know"?
21 A I don't recall -- I don't recall using that
22 phrase.
23 Q Okay. Fair to say you didn't respond by saying,
24 "Look, we don't want to hear your concerns. We
25 don't want to hear what -- you know, if you don't
26 like what Mr. Neufeld said, suck it up. We won't
27 want to hear it." Fair to say you didn't say
28 anything like that?
29 A I would -- I would think it would be unlikely
30 that we would have said so.
31 Q You just -- your memory's poor on this, I guess,
32 it sounds like?
33 A It's a long time ago, and there's lots of emails
34 and -- and calls.
35 Q Right.
36 A But I just -- it would be unusual for us to tell
37 any member, you know, "Please don't share your
38 thoughts with" --
39 Q Right. So you didn't tell any LGBT members
40 that -- you know, that you didn't want to hear
41 their concerns and they should just suck it up
42 and keep teaching?
43 A Not that I recall, no. That would be highly
44 unlikely.
45 Q Yes, of course.
46 Those are all my questions. Thank you.
47 THE CHAIR: Thank you.

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Ed Klettke (for Complainant)
re-exam by Cnsl A. Tom

1 A Thank you.

2 THE CHAIR: Ms. Tom, anything arising?

3 CNSL A. TOM: Can we have a moment to discuss and
4 recall our thoughts and review notes to see if
5 there are questions for redirect?

6 THE CHAIR: Sure. Yeah. Let's just turn off our
7 camera -- oh, sorry. I've been muted. Somehow
8 we did have a dialogue, but you weren't aware of
9 it. So we'll just turn off our cameras and mics
10 for a couple of minutes while you review your
11 notes, and then you can call us back when
12 you're -- you're ready.

13 Okay, Mr. Klettke, we're almost done. We
14 just -- a few more minutes here.

15 A All right.

16 THE CHAIR: Thank you.

17 A Thank you.

18

19 (WITNESS STOOD DOWN)

20

21 (PROCEEDINGS ADJOURNED FOR RECESS) [11:42:02]

22 (PROCEEDINGS RECONVENED) [11:48:00]

23

24 ED KLETTKE, a witness,
25 recalled.

26

27 THE CHAIR: All right, everyone, come on back.

28 All right. Ms. Tom, do you have any
29 questions?

30 CNSL A. TOM: We do. I just have two questions.

31

32 RE-EXAMINATION BY CNSL A. TOM:

33

34 Q Mr. Klettke, prior to your testimony today, had
35 you been provided with the link that Ms. Waddell
36 sent you on a break today?

37

38 A No.
39 Q Are you able to say that you're familiar with the
40 book of documents or books of documents that are
41 in the record or at issue in this hearing?

42 A No, not yet. I'm not sure if I'm supposed to
43 look into them further, but no, I wasn't
44 familiar -- I'm not familiar with
45 [indiscernible].

46

47 Q Okay.
Those are all my questions.

THE CHAIR: Thank you.

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1 Thank you, Mr. Klettke. Those are all of
2 the questions we have for you. We really
3 appreciate your time and energy coming to give
4 evidence in this proceeding. I know it's not
5 always a fun experience, but it's certainly
6 important that people come and give their
7 evidence. So we appreciate your time. You're
8 now free to leave the proceeding. If you want to
9 continue to observe as a member of the public,
10 there's a process to do that. The only thing I
11 ask for you -- from you is that please do not
12 discuss your evidence with anyone else who may be
13 testifying after you in the proceeding. Okay?

14 A Yeah, all right. Thank you very much.

15 THE CHAIR: Thank you. Good-bye.

16 A Bye.

17
18 (WITNESS EXCUSED)

19
20 THE CHAIR: All right. We're at 11:50. Does it make
21 sense to take an early lunch break and come back
22 with the next witness, or do you want to get
23 started with the next witness now?

24 CNSL A. TOM: Yeah, because of the earlier time
25 estimate around Mr. Kitchen's cross being two
26 hours, we --

27 CNSL J. KITCHEN: Yeah.

28 CNSL A. TOM: -- don't have our witness ready right
29 now. So if we could just take the lunch break
30 early, that would be really helpful.

31 THE CHAIR: All right.

32 CNSL J. KITCHEN: And I apologize for that. It
33 went -- it just went smoother than I thought it
34 was going to go.

35 THE CHAIR: Don't apologize for taking less time. I
36 think everyone's -- everyone's fine with that.

37 All right. Well, we'll take our lunch
38 break. Just before we do, we just have two
39 questions related just to the -- some
40 logistics -- logistical questions about the
41 proposed expert evidence. And the first one is
42 for counsel for the complainants. In the hearing
43 schedule, you had indicated you required two
44 hours and 45 minutes for Dr. Saewyc's direct
45 evidence, and we're wondering what the basis of
46 that time estimate is and how much time you think
47 you need -- you're seeking beyond -- for her

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1 evidence beyond what's written in her report.

2 CNSL L. WADDELL: So having engaged in more prep, I
3 think we can shorten that time estimate to -- to
4 two hours. It may be that we can even come in
5 under two hours, but I'd rather leave a buffer.
6 So, yeah, that's -- and, you know, I think it
7 would be helpful for the tribunal to hear about
8 the content of her report in direct, but I
9 appreciate -- and there are two studies that have
10 been released since her report was issued that
11 she will talk about.

12 But if the -- you know, there are of course
13 other ways to deal with expert evidence, and if
14 the panel, because we're short on time, would
15 like us to reconsider presenting the bulk of her
16 opinion in direct, we can -- we can take that
17 under advisement as well.

18 THE CHAIR: Okay. Thank you. And the next question
19 we have is for Ms. Sokolova, which is -- and,
20 sorry, I've got to find you in my windowpane
21 here -- if Dr. Saewyc is permitted to testify,
22 will you be seeking to ask her questions, and if
23 so, do you have a time estimate on how much time
24 you would be requesting?

25 CNSL M. SOKOLOVA: Yes. So we were going to determine
26 that after hearing her evidence, but, to be
27 honest, the plan wasn't to ask more than five or
28 six questions. So I was thinking that, you know,
29 if we were to ask her questions, it would be
30 fairly quick. You know, maybe 10 minutes, maybe
31 15 minutes, depending on whether they're -- we're
32 dealing with objections to questions we're
33 asking. I'm not sure at this time that we plan
34 to ask her anything, but it's a possibility.

35 THE CHAIR: Okay. Thank you.

36 And then, Mr. Kitchen, you've also in -- the
37 schedule estimates two hours and 45 minutes for
38 your cross. Is that your reasonable time
39 estimate?

40 CNSL J. KITCHEN: Yeah, I'd be surprised if I went
41 longer than that, but it would just -- it
42 would -- you know, would depend on what she's
43 like as a witness, you know, which we just saw;
44 right? Big difference between Mr. Hansman and
45 Mr. Klettke just in the way they act as
46 witnesses. So I could be a little longer, but I
47 would doubt it. I would doubt it.

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1 THE CHAIR: Okay. Thank you.

2 CNSL J. KITCHEN: You know, it also -- I mean, it just
3 depends too. Is she going to come in on the
4 full, or are we going to, you know, maybe let her
5 in for something a little less or only part of
6 her report? You know, then we're -- obviously
7 we're going to -- we're going to be cutting that
8 down.

9 That may be premature because I don't know
10 if you're obviously going to let her in, but I
11 just raise this in case we forget. We may have
12 an issue -- or I may have an issue with
13 Ms. Sokolova -- Sokolova treating the witness as
14 a hostile witness and cross-examining her
15 because, of course, then she would be able to ask
16 leading questions. And, of course, if the
17 fundamental nature of the cross-examination, or,
18 as I should say, the questioning is not a
19 cross-examination but -- but really an additional
20 examination in chief, then she -- and I'm not
21 opposed to that, by the way. I'm not opposed to
22 her examining the witness in chief. But, you
23 know, we'll need to follow the rules for that,
24 and the questions will need to be open-ended and
25 not leading.

26 THE CHAIR: Yes. And I did review the tribunal's
27 records, and I see that the tribunal had -- oh,
28 pardon me -- the tribunal had granted the
29 intervenor leave to cross-examine the expert
30 witness in a previous -- in a previous decision.
31 Now, hearing, Mr. Kitchen, that you may object to
32 that manner of proceeding, I think there can be
33 some space for determining whether it's --
34 cross-examination is the appropriate way or
35 whether you can ask questions more on the nature
36 of direct. But I think let's leave that for if
37 or when we let the expert testify.

38 And, Ms. Sokolova, you can consider whether
39 you're still seeking to cross or whether we can
40 avoid this issue by just having open-ended
41 questions. Okay? But we don't need to resolve
42 that --

43 CNSL M. SOKOLOVA: I agree.

44 THE CHAIR: -- right now. Okay. Yes.

45 CNSL M. SOKOLOVA: Yeah.

46 THE CHAIR: All right. Well, then, let's take a
47 one-hour lunch break. Let's -- or one hour and

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1 five minutes, let's call it. Come back at 1:00.
2 And I take it the next witness will be [REDACTED]
3 Okay. All right. I'm going to, f
4 break, remove everyone from the meeting. So
5 please wait for me to remove you, and then I'll
6 reopen the hearing room at 1:00. Thank you.
7

8 (PROCEEDINGS ADJOURNED FOR NOON RECESS) [11:55:35]
9 (PROCEEDINGS RECONVENED) [1:01:48]
10

11 THE CHAIR: Good afternoon, everyone. Welcome back.
12 I can see complainant's counsel here, and
13 Mr. Kitchen and Mr. Neufeld are back, and
14 Ms. Sokolova is back. I do not see a witness
15 joining us yet. We'll check in with you,
16 complainant's counsel.

17 CNSL L. WADDELL: Yeah, sure. We have our next
18 witness lined up. I just wanted to address one
19 issue quickly with the tribunal and see if we
20 could get a quick decision. I have not had the
21 chance to canvass my friend about this.

22 So we became aware that a nonparty to this
23 litigation had hosted a One Drive link to X,
24 which included many materials relating to this
25 matter, including things protected by the
26 publication ban. I spoke to my friend about that
27 yesterday so that the main things were the -- our
28 witness list and our witness will-says. He was
29 good enough to take immediate steps to reach out
30 to the individual, who's not his client, and it
31 appears that those materials have now come down
32 just overnight. So that was great quick action.

33 But that material was out in the public
34 domain. How public it is I don't know, but,
35 anyway, it -- the post was originally made in
36 late October. Because that material was
37 available and because of the concerns that --
38 that led us to seek an anonymization order and
39 publication ban in the first place, I know we
40 discussed at the outset using first names to
41 refer to the teachers. We would like to ask --
42 and, I mean, if my friend consents, I probably
43 don't need to say more, but, you know, if he
44 doesn't consent, then we're in the tribunal's
45 hands.

46 If we can try, as awkward as it may be, to
47 simply refer to the teachers in the course of

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1 their -- their direct and cross as Teacher A
2 today, next one would be Teacher B, and the next
3 one would be Teacher C so that members of the
4 public who are attending and who may have had
5 access to that material that was in the public
6 domain for a month cannot identify -- cannot
7 match names with -- the full names which
8 they've -- which, you know, some people have been
9 able to access. So I'm not sure if that makes
10 any sense. I did not get a chance to ask my
11 friend for his position on this, and if he needs
12 a couple minutes to think about it, I'm totally
13 fine with that. But I know -- we understand that
14 even if everybody were in agreement about this,
15 it may be clunky; there might be a slip. But
16 that -- that is our ask to protect the anonymity
17 of the witnesses.
18 THE CHAIR: Thank you.
19 CNSL L. WADDELL: Just the teacher witnesses,
20 obviously.
21 THE CHAIR: Yes. Thank you.
22 Mr. Kitchen?
23 CNSL J. KITCHEN: I have some thoughts. It would be
24 helpful to know -- and, you know, I understand I
25 could have -- I could have found this out myself,
26 but I just didn't -- I just didn't think it was
27 going to come up. When the publication ban was
28 sought originally, was it -- was it opposed by
29 the respondent, or was it consented to?
30 THE CHAIR: Well, Ms. Waddell can answer. As I
31 recall, it was opposed, but, Ms. Waddell, do
32 you --
33 CNSL J. KITCHEN: That's what I thought, but --
34 THE CHAIR: -- remember differently?
35 CNSL L. WADDELL: Yeah. Yeah. And there were two
36 publication bans. There was an initial one that
37 was interim in nature until our formal
38 application could be determined because --
39 CNSL J. KITCHEN: Right.
40 CNSL L. WADDELL: -- there were some things that were
41 happening in the interim, but once the actual
42 application proper was heard, it was opposed.
43 CNSL J. KITCHEN: Here are my thoughts: One, I have
44 an issue with referring to people not by their
45 name, whatever that name is. I mean, you know,
46 people have a name, and, of course, obviously in
47 a case like this, people sometimes change their

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1 names. But, you know, I -- so I referred to
2 Mr. Klettke this morning as Mr. Klettke and
3 Mr. Hansman as Mr. Hansman. And I could have
4 called them Glen and Ed; you know, it wouldn't
5 have mattered. But -- but I had to have some way
6 to refer to them, that they knew what I was
7 talking about, they knew and I knew what I was
8 talking about. And so nobody had to use up any
9 mental space to figure out who was referring to
10 who and what are we calling them and any of that.
11 We -- and we were able to therefore have a very
12 good conversation and get to the issues and get
13 some evidence. And, of course, that's how it
14 goes a thousand times a day across courtrooms all
15 across the country.

16 So if we were to go with something like
17 this, that's practical problem number one, is I
18 have no simple way to refer to this person, and
19 it's going -- it's going to be a prejudice to me,
20 however minor, but not nothing. And, you know,
21 it also takes up mental space for the witness,
22 and we need to be getting to the issues.

23 Now, we've already -- I've already consented
24 to, effectively, a modification of the
25 publication ban to not use the last names of
26 these witnesses. And, you know, I said, look,
27 I'll make -- I'll make best efforts, and I
28 will -- I will -- and I -- you know, I have
29 something in front of me to help me sort of stay
30 really focused on only ever using their first
31 names. Just a second. I'm just circling
32 something here. So that's already a
33 modification, and we did that notwithstanding the
34 fact that, you know -- with a ban in place, and
35 people are punishable under that ban if they
36 breach it. So there's that.

37 Another point I would say is these names
38 that we're working with -- I won't say them out
39 loud yet because we don't have a decision on this
40 yet, but these names that we're working with are
41 not unique names. You know, we don't have
42 Hermiones and -- and -- and Olgas and Gertrudes.
43 And, like, we don't -- we don't have really
44 unusual names here. We have -- at least two of
45 these names, if not three, are really, really,
46 really common and generic. It really only would
47 be their last names that would -- that would

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1 actually tend to -- to identify them because
2 those are a little more -- those are a little
3 more unique.

4 So as far as the identification issue --
5 again, obviously we have the publication ban. So
6 that's -- I mean, that's kind of it right there.
7 We have -- we have our ban, which is already
8 pretty exceptional. These are adult witnesses,
9 and it's very exceptional to have adult witnesses
10 be anonymized. So we already have that. We've
11 modified that to say we're not going to use last
12 names. I'm going to do my darnedest to not use
13 anybody's last name here. You know, I think I
14 can do pretty good on that.

15 On top of that, the -- the -- the first
16 names are generic. Fourth, we have the issue of
17 just practicality. It's going to cause us a lot
18 of confusion and prejudice to the cross-examining
19 lawyer, not to mention trouble for the witness.

20 On top of all that, you know, at some point,
21 you know, as much as the respondent wants to be
22 as agreeable as possible, wants to move this
23 process forward and not get hung up on things
24 that we shouldn't. I can't -- I can't indirectly
25 or tacitly condone this -- the underlying thrust
26 of all this is that these teachers are exposed to
27 the threat of violence. If there was evidence
28 brought to that effect in the initial
29 application, I don't know. I didn't see it. I
30 apologize for that, but I was not counsel then.
31 I cannot implicitly or tacitly condone that
32 underlying idea that these people are really in
33 threat of violence. And I'm not just saying that
34 out of thin air. You know, we've -- we've been
35 through two witnesses that have been unable to
36 provide anything that would substantiate any sort
37 of position that these people are actually
38 rationally, reasonably at the threat of any
39 violence from anybody anywhere for any reason.

40 So I can't -- and this isn't me trying to be
41 a jerk. I just -- I have to preserve my own
42 position. At this point, I've seen no evidence
43 of that. I can't tacitly acknowledge that there
44 might be evidence of that or that that might be a
45 real thing by -- by acquiescing to that -- to
46 this just to try to be as polite and civil as I
47 can.

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1 So my position, for all those reasons, is we
2 use these people's first names, and we do our
3 darnedest to make sure that's all we use, and I
4 think everything will be fine.

5 THE CHAIR: Thank you, Mr. Kitchen.

6 Ms. Waddell, you can have the last word on
7 this one.

8 CNSL L. WADDELL: Sure. I agree with my friend that
9 the -- the names are generally pretty generic.
10 So I don't dispute that. And we appreciate his
11 willingness to sort of, you know, agree to the
12 process we described at the outset where we'd use
13 first names first. And absent this particular
14 breach and having the full names of those
15 witnesses at least available to some for a month,
16 we would -- I mean, we were the ones who proposed
17 using first names. So obviously that would be
18 all right. And I'm also sympathetic to -- you
19 know, he has a good point in practically, it's
20 going to be difficult and cumbersome. I don't
21 think it will be difficult for the witness, but I
22 think it will be difficult both for Mr. Kitchen
23 and for Ms. Tom who's going to be leading the
24 witnesses in direct. You know, this is something
25 that we have only just thought of trying to adapt
26 to now, which is why I didn't have a chance to
27 ask my friend for his position in advance.

28 So I think those are both valid points. We
29 would maintain that because of this previous
30 breach, it would be preferable from our
31 perspective to try our best to use, you know,
32 Teacher A or Ms. A or that kind of stuff, but
33 we -- you know, it's an unusual ask. We
34 acknowledge that. So we're -- we're in the
35 tribunal's hands. But those are my thoughts in
36 reply.

37 THE CHAIR: Thank you.

38 Mr. Kitchen, yes?

39 CNSL J. KITCHEN: The last thing I'll say, I don't --
40 I don't want to argue about this, but I'll
41 just -- I'll just put it on the record to remind
42 the tribunal, of course -- and I consented to the
43 last names, but any time we redact any name of
44 any witness at all in any way, it is a
45 presumptive violation of the open court
46 principle, and we have to meet the high threshold
47 to justify that violation. And we met -- we met

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1 the threshold presumably somehow with the last
2 names; right? We're not meeting it now with the
3 first names. I didn't want to harp on that
4 because this is less about the law and little
5 more about the practicalities, and I get that.
6 But that -- that -- that is the law, is that we
7 would -- we would be violating the open court
8 principle if we don't use these -- these -- these
9 people's first names.

10 THE CHAIR: Okay. Ms. Waddell, do we know who
11 violated this publication ban?

12 CNSL L. WADDELL: So we know who -- the individual who
13 posted, and we will be bringing an application
14 to -- you know, for costs and to -- perhaps other
15 things to try and address it. But the individual
16 was on one of Mr. Neufeld's earlier witness
17 lists, and it was -- you know, our position is
18 and will be that it's not just a violation of the
19 publication ban, although that's the one that's
20 of concern to us for the purpose of making sure
21 we bear that in mind as we hear from the teacher
22 witnesses who were -- they're the subject of
23 that -- you know, they're the protected subject
24 matter of that publication ban, if you will. But
25 there's also material there that we say is in
26 violation of the implied undertaking, all the
27 complainant's document disclosure, for example.

28 So, anyway, we'll be -- so I just mention
29 that because it's -- there's a little bit more
30 than just the publication ban. There's also
31 another issue. But we do know who made the post,
32 and we have our views about how it got to that
33 individual, but, you know, we'll endeavour to
34 flesh all that out when we've -- can call
35 together an application when we're not in the
36 hearing room.

37 THE CHAIR: Thank you. What I'm wondering is whether
38 the individual who posted the information is one
39 of the members of the public who's listening in
40 on the proceeding.

41 CNSL L. WADDELL: Not that we are aware of. So the
42 individual's name is Pierre Barns (phonetic).
43 And we have been today keeping an eye on the list
44 of people that the tribunal said would be
45 attending. We, of course, don't know which one
46 of them are on here, but I don't think I saw his
47 name on the list of attendees for today.

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1 THE CHAIR: Okay. They're not. All right. Well,
2 obviously this is of profound concern to the
3 tribunal. I mean, whether you agree with it or
4 not, the ban has been in place for some time and
5 has been very clear and was done because the
6 complainants persuaded the tribunal that the
7 teachers testifying or who may testify in this
8 proceeding faced some prospect of harassment in
9 connection with their participation in the
10 proceeding. And that's obviously an issue that
11 was made some time ago -- or a decision that was
12 made some time ago. So to hear that their names
13 have been posted on the internet for a month
14 as -- on the witness list is frankly egregious,
15 and it does change, potentially, our assessment
16 of what may be necessary to preserve the
17 publication ban and its effect in this
18 proceeding.

19 At the outset of this proceeding,
20 Mr. Kitchen, we were inclined to agree with you
21 that the ban is the ban and people are expected
22 to comply with the ban, and we trust that the
23 members of the public who are here are going to
24 comply with the ban. And we added a layer of
25 protection that's now no longer potentially very
26 useful in circumstances where people may have the
27 full witness list anyway.

28 So it does potentially shift our assessment
29 of how to proceed. We don't want to become, you
30 know, unwieldy in this proceeding in our efforts
31 to give effect to the tribunal's orders, but in a
32 circumstance where someone has flagrantly
33 violated that order, it calls into question
34 whether that may happen again.

35 So -- yes, Mr. Kitchen?

36 CNSL J. KITCHEN: Well, just two points. My friend
37 and I have talked about this. There's no
38 suggestion that -- that I personally was involved
39 in that. I had no knowledge. I didn't share any
40 of the materials with anybody I shouldn't have.
41 In fact, I don't know -- I don't know what
42 happened, but I wasn't involved in it. My
43 friend's going to suggest it was -- it was the
44 respondent himself, and I should probably --
45 she's probably going to be able to, you know,
46 make a case for that, I would imagine. So --
47 but -- so that's important just to -- just to

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1 note based on the severity of your comments.

2 The other thing I think I need to note,
3 based on the severity of your comments is that,
4 you know, we need to be careful with presuming
5 that everybody knows about the existence of the
6 ban. Remember, everybody who's not a lawyer is
7 going to -- is going to just have normal
8 knowledge of how things work, and normal
9 knowledge of how things work is the -- they
10 wouldn't, of course, call it the open court
11 principle, but just their, you know, knowledge as
12 a human being living in Canada, their -- their
13 understanding of court proceedings is that it's
14 all open, and you can name names, and you can --
15 you can look at documents, and names aren't going
16 to be secret or redacted or -- or whatever.

17 So we need to be careful with -- with
18 presuming that this person knew and then
19 flagrantly violated it; right? Because when you
20 say --

21 THE CHAIR: Right.

22 CNSL J. KITCHEN: -- "flagrantly violated," the
23 assumption there is that they knew and just said,
24 "To hell with it. I'm going to do it anyways."

25 THE CHAIR: All right.

26 CNSL J. KITCHEN: Right? And we -- so have had no
27 knowledge of that; right? And it's -- I mean,
28 look, that person I know was on the former
29 witness list, I haven't spoken to them about
30 being a witness. That -- they're off the list.
31 I took them off the list immediately.

32 CNSL L. WADDELL: Yeah, that was --

33 CNSL J. KITCHEN: So --

34 CNSL L. WADDELL: And just to -- in Mr. Kitchen's
35 defence, that was not one of Mr. Kitchen's
36 witness lists. That was a witness list from when
37 that individual was -- from one of the lists
38 disclosed when Mr. Neufeld was self-represented.
39 So I just want to make that clear for -- for
40 Mr. Kitchen's benefit.

41 CNSL J. KITCHEN: Yeah, so I don't -- I don't know one
42 way or the other, but I'm just cautioning you, I
43 think it would be unwise to presume this person
44 flagrantly violated it because they just said, "I
45 don't care about the tribunal, and I don't care
46 about these bans." I think -- I think it's
47 altogether likely that this person just didn't

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1 know. And there's a reasonable basis for that
2 because 999 times out of 1,000 when it comes to
3 court cases, adult witnesses' names are not
4 secret. They're not anonymized.

5 So just -- that needs to be taken into
6 account here when you're thinking, okay, people
7 are running around not following the tribunal's
8 orders in flagrant violation of it because
9 they -- because they just don't -- they don't
10 care and they have no respect for the process,
11 et cetera. I expect -- and we'll have to wait to
12 see if we get evidence otherwise -- I expect it's
13 an honest mistake; just not knowing.

14 THE CHAIR: Okay. Thank you. Well, that, I think,
15 bolsters our concern. Assuming everyone's acting
16 honestly and in good faith, it seems that there
17 is some risk that they maybe don't understand the
18 publication ban and may be inclined to violate
19 it.

20 CNSL J. KITCHEN: No, not misunderstand; unaware of
21 its existence.

22 THE CHAIR: Or are --

23 CNSL J. KITCHEN: Let's be --

24 THE CHAIR: -- unaware --

25 CNSL J. KITCHEN: Let's be clear on it.

26 THE CHAIR: -- of the existence or whatever may be,
27 Mr. Kitchen, as you've said. And I appreciate
28 that I'm -- you're taking a position opposite to
29 what I'm about to say, which is that in order to
30 ensure that the -- that going forward the
31 publication ban is effective for the purposes for
32 which it was granted, we will ask counsel to
33 proceed as Ms. Waddell has suggested, using just
34 Teacher A, B, C, and D. If there is an honest
35 mistake along the way, that's fine.

36 Speaking to, Mr. Kitchen, your point about
37 the names being generic, I think that's -- you're
38 absolutely right about that, and that's why using
39 first names only would have been sufficient. But
40 in circumstances where people may have the
41 witness list with first and last names, it's
42 really of no potential comfort because they'll be
43 easily identified by their first name only.

44 So in circumstances where the list has been
45 online for a month and we have no way of knowing
46 who's seen it, we are persuaded to take steps
47 to -- sorry -- to make -- to make sure that

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1 it's -- it's respected in this proceeding by
2 adding this extra layer of safety.

3 So that's how --

4 CNSL J. KITCHEN: Well -- and I'm not going to -- I'm
5 not going to challenge you on that, but I -- I
6 didn't expect you to do that. So I didn't -- I
7 didn't sort of say what we would do if that
8 happened. I understand from that that I'm
9 supposed to refer to this person that comes up
10 as, you know, "Teacher 1, can you tell me this.
11 Teacher 1" -- like --

12 THE CHAIR: Well, you don't have to say their name
13 every time. I think it will be obvious who
14 you're talking to. So maybe you could just ask
15 your question and --

16 CNSL J. KITCHEN: Well, so what I -- how about -- can
17 we anonymize them so that we use initials?
18 Because I've been part of proceedings where we do
19 that. We use initials; right? So if it's, you
20 know, GK, so, you know, "Look, GK, what about
21 this?"

22 THE CHAIR: Okay. But how --

23 CNSL J. KITCHEN: You know, at least we have some
24 identifier, right, so we don't sound like fools.
25 I mean --

26 THE CHAIR: Okay.

27 CNSL J. KITCHEN: -- we have -- we also have to guard
28 against mocking this proceeding.

29 THE CHAIR: Okay. All right. All right. Just let --

30 CNSL J. KITCHEN: And it -- and it becoming a mockery
31 of itself by me referring to people as Teacher 1,
32 Teacher 2. I mean, we talked yesterday about
33 dehumanization. I mean -- I mean, heck, I have a
34 concern for that, maybe motivated by different
35 people than everybody else on this hearing, but
36 at some point I have a concern about
37 dehumanization of the people that I have -- I
38 have to question and -- and talk to them as if
39 they're robots and not human beings, and I have
40 no human name for them. I have to call them
41 Teacher 1, Teacher 2 as if we're in some sort of
42 dystopia where people don't have names anymore.

43 THE CHAIR: All right. Mr. Kitchen --

44 CNSL J. KITCHEN: So -- and the reason -- the reason
45 I'm saying this is I'm proposing --

46 THE CHAIR: You're proposing initials.

47 CNSL J. KITCHEN: -- initials --

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1 THE CHAIR: Yes, I heard that.

2 CNSL J. KITCHEN: -- because initials still seek to
3 identify people with -- with -- with humanized
4 ways and a way that I can make sense of and the
5 witness can -- can -- can make sense of. I've
6 done that in hearings similar to these. We have
7 similar issues. We got -- we got -- we got
8 people scared because they're -- the LGBT-type
9 issues, okay, and we've used anonymization.
10 There's a very famous case in BC where
11 anonymization was used. And you know what? They
12 can be different initials than the actual
13 initials of the person, although that would be --
14 that would be more helpful. That -- that --
15 that, I think, is still more manageable. So I
16 would suggest that that's -- if we're going to do
17 what we're going to do and not use first names or
18 last names, can we -- can we switch to initials?

19 CNSL L. WADDELL: May I offer a response?

20 THE CHAIR: Well, I don't know if that's necessary.
21 It's not helpful to use their actual initials
22 because the concern is that we have the witness
23 list and -- and we're trying to avoid people
24 identifying people from the witness list. If you
25 would find it more manageable, Mr. Kitchen, to
26 use other made-up initials, I don't have an
27 objection to that, and I suspect Ms. Waddell
28 wouldn't either, but I think we are now getting
29 more rather than less confusing. But if you
30 would find that easier, we can do that. But
31 using the person's initials doesn't address the
32 concern that we --

33 CNSL J. KITCHEN: How about --

34 THE CHAIR: -- we have --

35 CNSL J. KITCHEN: -- just the first initial? We --
36 we -- we -- well, yes.

37 THE CHAIR: We're looking for a solution that doesn't
38 allow someone sitting with the witness list to
39 identify who's speaking. That's what we're
40 looking for. So if you have a solution that --

41 CNSL J. KITCHEN: We have no evidence that that's at
42 all happening. That witness list --

43 THE CHAIR: Okay. We've already made --

44 CNSL J. KITCHEN: -- has been taken down --

45 THE CHAIR: -- the decision --

46 CNSL J. KITCHEN: -- and we --

47 THE CHAIR: -- Mr. Kitchen. We cannot spend more

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1 time --
2 CNSL J. KITCHEN: I know, but the decision --
3 THE CHAIR: -- arguing about this.
4 CNSL J. KITCHEN: -- is absurd. So I have to --
5 THE CHAIR: Okay. Thank you --
6 CNSL J. KITCHEN: -- respond to it.
7 THE CHAIR: -- for your opinion about the --
8 CNSL J. KITCHEN: Okay?
9 THE CHAIR: -- decision, but once we make a decision,
10 it's final. So now I'm just trying to see --
11 CNSL J. KITCHEN: Well, I understand that, but you're
12 making unprecedented decisions. So I'm going
13 to -- I'm going to respond to them with a
14 solution, upholding your decision. You said your
15 decision is effectively no first names. Fine. I
16 get it. Okay. I'm not trying to challenge that.
17 As absurd as it is, unprecedented as it is, I'm
18 not trying to challenge that. I'm offering
19 solutions for how to manage this unprecedented
20 scenario we're in by saying, well, can I avoid
21 saying Teacher 1, Teacher 2, Teacher 3; right?
22 So maybe, for example, we could just use the
23 first initial of the teacher. So I could just
24 say, you know, hey -- I'm going to use a
25 different initial. "Hey, G.," you know. Like,
26 just one initial. And -- and you know what? It
27 can be -- it can be different. I have to agree
28 with the witness and Ms. Waddell or whoever's --
29 you know, we have to agree before we ever started
30 asking the witness any questions -- we have to
31 agree on a letter to identify them as and just
32 say, "Hey, we're going to refer to you as Z." It
33 will be like Men in Black. Z, X, Y; right? So
34 at least they have a name.
35 THE CHAIR: I think that's what was --
36 CNSL J. KITCHEN: Okay?
37 THE CHAIR: -- proposed, but Ms. Waddell has her hand
38 up. So go ahead --
39 CNSL J. KITCHEN: Okay.
40 THE CHAIR: -- Ms. Waddell.
41 CNSL L. WADDELL: Sure. Look, Mr. Kitchen, we are
42 very open to -- we're really not trying to make
43 stuff difficult. I know it's going to be
44 challenging for both sides. If there is
45 something that makes it easier but that does not
46 actually connect it to the person -- so just to
47 use an example, you know, if we use their first

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1 initial, two of them have the same first initial.
2 So that's a problem --
3 CNSL J. KITCHEN: Okay.
4 CNSL L. WADDELL: -- with the -- it's not going to
5 solve your problem. But then it means that the
6 third person is easily identifiable to someone
7 who does have access to that witness list. So --
8 CNSL J. KITCHEN: Well, what about -- what about --
9 what about -- what about A, B -- no, no, not --
10 X, Y, X?
11 CNSL L. WADDELL: Sure. Yeah, that's -- that's
12 totally fine.
13 THE CHAIR: I think --
14 CNSL L. WADDELL: Whatever's -- and if you want to
15 say -- you know, if you want to ask them what
16 their pronouns are and they -- they would
17 rather -- you would like to use Ms. So-and-so or
18 Mx. or whatever, that's fine too, as long as it's
19 not -- it can't be connected to their, you know,
20 initials that will give away their identity
21 should someone actually have access to that
22 witness list. So X, Y, Z is totally fine.
23 CNSL J. KITCHEN: I'll just -- if the concern is
24 really about somebody having the witness list in
25 hand and listening to this proceeding with the
26 witness list in hand, it doesn't matter what we
27 call them. They will know who they are by the
28 order in which we call them unless we change the
29 order of it. Just throwing that out there that
30 we're getting now to a place where, you know, is
31 it possible to achieve what's trying to be
32 achieved.
33 THE CHAIR: Okay. Thank you. I'm not sure --
34 CNSL L. WADDELL: Mr. Kitchen --
35 THE CHAIR: -- that the witness list reflects the
36 order of the witnesses. But, in any --
37 CNSL L. WADDELL: And I was just --
38 THE CHAIR: Go ahead.
39 CNSL L. WADDELL: If I may --
40 CNSL J. KITCHEN: I'm not -- I'm not sure either. I'm
41 just -- I'm just raising that as a possibility.
42 Okay.
43 CNSL L. WADDELL: Well, the -- that would only be
44 possible if someone had our schedule for
45 witnesses --
46 CNSL J. KITCHEN: Okay. So --
47 CNSL L. WADDELL: -- if someone --

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1 CNSL J. KITCHEN: -- so as far as you know, though,
2 nobody does. I mean, I don't know. I haven't
3 seen this; right? But if -- so, as far as you
4 know, nobody has the schedule?
5 CNSL L. WADDELL: Well, no. Sorry. Our -- like, I
6 mean the -- the schedule that we have exchanged
7 in preparation of this hearing and provided to
8 the tribunal, and you did the same, that's the
9 only thing that talks about their order.
10 CNSL J. KITCHEN: Okay. If that's true and if that's
11 not on the -- on the -- on the Web, then we're
12 okay.
13 CNSL L. WADDELL: I wasn't looking for that because
14 that was disclosed to you, and I didn't think
15 that any of this documentation came from you.
16 So --
17 CNSL J. KITCHEN: Well, yeah, and I --
18 CNSL L. WADDELL: -- if you haven't shared that --
19 CNSL J. KITCHEN: I haven't seen what you showed me.
20 I -- I have the -- I have the schedule here, and
21 I haven't shared it with --
22 CNSL L. WADDELL: Okay.
23 CNSL J. KITCHEN: I haven't shared it with anybody
24 besides, you know --
25 CNSL L. WADDELL: Okay.
26 CNSL J. KITCHEN: -- my -- that's me. It's with me,
27 and that's it.
28 CNSL L. WADDELL: Yeah. Okay. Then I haven't seen it
29 out there either --
30 CNSL J. KITCHEN: Okay.
31 CNSL L. WADDELL: -- at least at this point, but, as
32 you know, I haven't been through all of it.
33 So -- yeah, so I don't think the order is going
34 to give them away because we don't --
35 CNSL J. KITCHEN: Okay.
36 CNSL L. WADDELL: Yeah. There's no -- yeah.
37 THE CHAIR: All right.
38 CNSL L. WADDELL: My apologies, Member Cousineau, for
39 interrupting.
40 THE CHAIR: I think we've now arrived at a decision.
41 We will refer to the teachers -- Mr. Kitchen, you
42 can choose the letter. It doesn't really matter
43 to us, but it should be a random letter. And
44 that's how we'll proceed. So you suggested X, Y,
45 Z?
46 CNSL J. KITCHEN: Yeah. Yeah. And so, I mean, I --
47 really, the letters are up to my -- whatever --

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1 whatever my friend uses for the letter in the --
2 I'm going to use in cross.
3 THE CHAIR: You're going to use it. Okay.
4 CNSL J. KITCHEN: Okay? So --
5 THE CHAIR: Well, then I'm going to ask that we start
6 at the beginning of the alphabet so I don't have
7 to keep singing the whole alphabet to remember
8 where we're at. So we can start at A. And so
9 the first witness who will testify will be
10 Teacher A.
11 And, Ms. Waddell, I understand that we are
12 following the schedule that you've set out.
13 CNSL L. WADDELL: Correct. So it is --
14 THE CHAIR: Just so that we know who it is.
15 CNSL L. WADDELL: Yes.
16 THE CHAIR: Okay.
17 CNSL L. WADDELL: And that -- so that -- Mr. Kitchen,
18 you've got the schedule in front of you?
19 CNSL J. KITCHEN: I do, yes.
20 CNSL L. WADDELL: Okay.
21 THE CHAIR: Okay.
22 CNSL L. WADDELL: So you can see who that first person
23 is and -- and know that that is the person that
24 we are calling now?
25 CNSL J. KITCHEN: Yes. And I'm -- I have a document
26 for -- for your second witness, and if we get to
27 them this afternoon, I'm going to -- I'm going to
28 have to figure out how we go about redacting that
29 or what have you. No, no, I guess we don't
30 have --
31 THE CHAIR: We shouldn't need --
32 CNSL J. KITCHEN: -- to worry about --
33 THE CHAIR: -- to redact any documents.
34 CNSL L. WADDELL: I don't think we need to worry
35 about --
36 CNSL J. KITCHEN: Nobody can see anything.
37 CNSL L. WADDELL: Yeah.
38 CNSL J. KITCHEN: So I guess we're going to be okay on
39 that, then.
40 CNSL L. WADDELL: I think you're okay. Yeah.
41 THE CHAIR: Yeah. All right. Can we have the witness
42 join now, please.
43 CNSL A. TOM: I've asked Teacher A to log in. So
44 [indiscernible] come up. I guess that's okay
45 [indiscernible]. Yeah, and so he's joining
46 shortly, and I'm also going to be joining
47 [indiscernible].

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1 THE CHAIR: All right. You cut out there, Ms. Tom,
2 but I think I get the gist of the witnesses
3 joining. I think, Ms. Tom, the -- that was just
4 you that joined for your document sharing; is
5 that right?

6 Good afternoon. I see that someone has just
7 joined -- joined us. If you can turn your camera
8 on, I'll introduce everyone to you, and we'll get
9 started. Your camera and microphone are off.

10 There you are. Thank you. Good afternoon. Can
11 you hear me okay? Okay. Thank you. My name is
12 Devyn Cousineau. I'm vice chair of the
13 B.C. Human Rights Tribunal. I am joined by
14 tribunal members Robin Dean and member Laila
15 Said-Alam. We are the members of the tribunal
16 that have been designated to hear and decide the
17 human rights complaint of the *B.C. Teachers'*
18 *Federation and Chilliwack Teachers' Association*
19 *v. Barry Neufeld*.

20 I'm going to start by letting you know
21 everyone who's on the call here with us. There
22 are a group of people who are joining by video.
23 You should see a group with complainant's counsel
24 in the room. That's Lindsay Waddell, Alanna Tom,
25 and Stefanie Quelch. They're counsel for the
26 BCTF and Chilliwack Teachers' Association. You
27 probably know them. We have Reid Clark joining
28 as an instructing client from the Chilliwack
29 Teachers' Association, and Robin Toscza, who is
30 an instructing client from the BCTF.

31 Then you should also see Barry Neufeld on
32 camera, and he is represented here by his lawyer,
33 James Kitchen, who's also on camera.

34 And finally the last person who's on video
35 is Maria Sokolova, who's counsel for the
36 intervenor, B.C.'s office of the Human Rights
37 Commissioner.

38 So this is everyone who is on camera and who
39 has video access to the video portion of the
40 proceedings. We also have a number of members of
41 the public who are observing the proceeding via
42 audio. So they are connected with audio access.
43 They are required to as -- and, I mean,
44 everyone's required to follow the terms and
45 conditions of participation in an online
46 proceeding at this tribunal, which includes no
47 recording of any kind. We are recording the

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Proceedings
in chief by Cnsl A. Tom

1 proceeding using the tribunal's recording
2 equipment, and that is for the purpose of an
3 official record, and it's kept and maintained by
4 the -- by the Human Rights Tribunal.

5 We have spent some time today discussing the
6 publication ban in this complaint, which
7 prohibits anyone from publishing names or
8 information that could identify teachers
9 testifying or who may testify in this proceeding,
10 including you. And we've just completed some
11 discussion about how to make sure this ban is
12 effective.

13 And we are going to -- as part of that,
14 we're not going to call you by name in this
15 proceeding. We're going to call you Teacher A.
16 Okay? So this is a bit of a new part of -- a new
17 experience for some of us. So we're all
18 committed to doing our best to call you
19 Teacher A. And if there are some honest
20 slip-ups, that may be unavoidable, but that's --
21 those are the efforts everyone's going to make to
22 ensure the publication ban is effective for you.

23 Do you have any questions so far about what
24 I've explained? No. Okay. Ordinarily here I
25 would have you spell your name for the record.
26 I'm not going to do that. I can see -- I know
27 what your name is. But what pronouns would you
28 like us to use?

29 TEACHER A: I use she and they pronouns. Either are
30 fine.

31 THE CHAIR: Thank you. All right. Now, before I
32 invite the lawyers to start asking their
33 questions, I'm going to have you take an oath to
34 tell the truth.

35
36 TEACHER A, a witness called
37 for the Complainant,
38 affirmed.
39

40 THE CHAIR: Thank you. I expect you know what's going
41 to happen now. Complainant's counsel, I think
42 Ms. Tom, is going to ask you questions, and then
43 when she's done her questions, Mr. Kitchen will
44 have questions as well. I think we should aim
45 for a break around 2:45, so just over an hour,
46 and we'll take a 15-minute break. But if you
47 need -- if you need other breaks, you can also

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Teacher A (for Complainant)
in chief by Cnsl A. Tom

1 let us know. Okay? Okay.

2 Go ahead, Ms. Tom, when you're ready.

4 EXAMINATION IN CHIEF BY CNSL A. TOM:

6 Q Teacher A, can you just tell us how you identify?

7 A Yeah. I identify as a queer human in the world.

8 Q What's your education?

9 A I am a secondary teacher. Do you want me to get
10 into degrees?

11 Q Yes, if you could.

12 A Sure. Yeah. So I initially gained a bachelor of
13 fine art from the University of the
14 Fraser Valley. I then went to film school at
15 Langara College. I went on to Simon Fraser
16 University to do a bachelor of education in
17 secondary teaching. So that would also be
18 referred to as the professional development
19 program or PDP. And I'm currently in the last
20 leg of my master's at SFU.

21 Q What's your master's program?

22 A It's master's of education -- or master's of arts
23 in education.

24 Q And can you just tell us a little bit about the
25 structure of the professional development
26 program?

27 A Yeah. So it was my -- you have to have,
28 obviously, those degrees to -- to get into the
29 program. And then the program is about a year of
30 coursework, and then there's two very immersive
31 practicums.

32 Q Where did you do your practicums?

33 A My short practicum was done in Abbotsford, and
34 then my longer one was in Chilliwack.

35 Q And when did you graduate from that -- the
36 professional development program?

37 A It would have been -- so my graduation, because
38 of the structure of the university, was after I
39 finished the program. So the -- I finished in
40 December 2018 and then graduated the following
41 June when they held the next graduate --
42 graduation.

43 Q And when did you start teaching?

44 A Right away. The day after I finished my
45 practicum, I started.

46 Q And where did you start after you had finished
47 your practicum?

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Teacher A (for Complainant)
in chief by Cnsl A. Tom

1 A [REDACTED] as a contract

2

3 Q What is a contract TTOC?

4 A It's -- it's a teacher teaching on call who is
5 guaranteed by contract to work every day or be
6 compensated regardless. It also comes with
7 benefits.

8 Q Do you know what school or position you're going
9 to be taking from day to day, or is it just
10 whatever comes your way?

11 A I think now you -- you probably would, but at the
12 time, it -- teachers weren't as scarce as they
13 are now. So it was -- it's more likely to get
14 teaching positions that are regular now, but then
15 it was -- I could be at a different school every
16 day of the week.

17 Q Are you still employed at the Chilliwack School
18 District?

19 A Yes.

20 Q And what's your current role?

21 A I am a helping teacher.

22 Q And turning now to some specific questions, do
23 you remember when you first heard about
24 Mr. Neufeld?

25 A Yeah. I think that the first time that I had
26 heard about him was around the time that I was --
27 maybe just before or around the time that I was
28 going into the PDP, professional development
29 program.

30 Q And in what context did you hear about him?

31 A His posts had become very notorious online, and a
32 few groups that I was in, some parent groups and
33 then some groups specific to queer people in
34 Chilliwack, were being shared.

35 Q Do you remember what those specific posts were
36 about or what they said?

37 A Typically, they -- they tended to focus on trans
38 people, trans kids, the queer community in
39 general, never in a good light.

40 Q I'm going to take you through some of the posts
41 now. So I'm going to share my screen, and I'd
42 just like to ask you some questions about them.
43 So the first one I'm going to is Tab 8 of the
44 Book of Documents Re Statements and Publications,
45 and that's at page 82.

46 A Mm-hmm.

47 Q Is this visible for you? Is this legible?

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Teacher A (for Complainant)
in chief by Cnsl A. Tom

1 A Yeah.

2 Q Do you recall seeing this post?

3 A I do, yes.

4 Q Do you recall seeing the full -- the full post
5 with the photo at the bottom?

6 A Mm-hmm.

7 Q And what was your reaction to this post?

8 A I mean, it's -- I think this one, like many of
9 the ones that I saw, are very hurtful, obviously.
10 Being a teacher teaching in Chilliwack, which is
11 the place that he was speaking about, in many of
12 his posts I thought they were very dismissive of
13 evidence-based approaches to health care and very
14 dismissive of people's pain in general.

15 Q What do you mean "dismissive of people's pain"?

16 A People who are in a position of transition, it's
17 not an easy time in their life. So to make it
18 more painful for people by demonizing it or
19 demonizing the physicians who help them is very
20 painful for the people going through that and the
21 people who support them.

22 Q I'm going to take you to another one. This is at
23 Tab 10, page 85 of the Book of Documents Re
24 Statements and Publications. Do you recall
25 seeing this post?

26 A Yes.

27 THE CHAIR: Sorry. Sorry, Ms. Tom. Sorry to
28 interrupt. Very small point. The page numbers
29 that you're saying don't seem to align with -- I
30 don't know where the page numbers are coming
31 from. They don't align with the PDF page
32 numbers. It's fine because we're using the tabs,
33 but just for the record, I'm seeing this is at
34 page 37, and I think you said 89. Am I missing
35 something?

36 CNSL A. TOM: Oh, is it -- it's because of the
37 condensed transcripts. We kept the Bates
38 numbering the same because we -- we thought that
39 Mr. Kitchen had begun reviewing the documents in
40 their first iteration. So it is page 37 on the
41 PDF. Sorry. But the Bates numbering at the top
42 here is page 85.

43 CNSL L. WADDELL: So in the middle there, that black
44 lettering in the middle top of each page.

45 THE CHAIR: Okay. Thank you. That helps me to
46 understand what you're referring to. Okay. Go
47 ahead.

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Teacher A (for Complainant)
in chief by Cnsl A. Tom

1 CNSL A. TOM: Sorry. Apologies. Yes.

2 Q And can you tell us about what your reaction to
3 this post was?

4 A Yeah. I think I was -- I was really struck by
5 the -- the comment near the bottom there about
6 trying to protect the majority of children. And
7 that was very upsetting. As -- as a parent, as a
8 teacher, we can't pick and choose the children
9 that we protect. And I think in -- in this case,
10 he was talking about people's comfort rather than
11 their safety, which is the case for many queer
12 and -- and trans children. It's safety on the
13 line, not their comfort.

14 Q And can you tell us about your reaction
15 specifically to this line here that I'm hovering
16 over, starting with "but I am opposed to
17 indoctrinating all society"?

18 A Yeah. I don't -- I don't know where this school
19 of thought comes from, that, you know -- that
20 teachers or -- or that anybody wants all of the
21 population to be queer or trans. That's what I
22 get when I read that, and -- but I don't think
23 that's the case.

24 Q Can you tell us your reaction to this commentary
25 being connected specifically with this image
26 here?

27 A Yeah. The -- I mean, the alignment with harming
28 or indoctrinating kids with a resource like
29 SOGI 1 2 3 is -- is wildly ridiculous, in my
30 opinion. I think it's a very thinly veiled
31 attack on the existence of -- and the rights of
32 the queer and trans community. And I think that
33 when public figures especially dehumanize people
34 by using language like this, it directly harms
35 them and creates a stigma that then creates
36 unsafe environments for people.

37 Q Let me take you to another post here now. This
38 is at Tab 17. I'm just going to enlarge this a
39 little bit. Do you recall seeing this post?

40 A Yes.

41 Q And what was your reaction to this post?

42 A Again, it's -- it's very misleading. Yeah. I --
43 this one particularly is very upsetting. Also
44 it's suggesting that, like, the elites will
45 destroy all gay kids, you can't make somebody
46 change their -- their gender identity. You can't
47 create trans people.

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Teacher A (for Complainant)
in chief by Cnsl A. Tom

1 Q The next one I want to take you to is at Tab 23.
2 Do you recall seeing this post?

3 A Yes.

4 Q And what was your reaction to this?

5 A Similar to the other ones, it just, I mean, at
6 this point was making me sad and very upset that
7 this is the type of mis- and often disinformation
8 that's being shared publicly. I think it's
9 also -- it's also proving that science has no --
10 no hold in a lot of these posts.

11 Q Can you tell us about your reaction specifically
12 to this phrase here that begins with "they beg us
13 to believe that their delusion is actually a
14 human right"?

15 A Yeah. I think that this is a very divisive post.
16 I think that it's very harmful to the --
17 especially the trans community who would have
18 viewed it or to parents of trans children and
19 anybody in the community who supports trans
20 people. And suggesting that it's a delusion
21 and -- and then using that as a -- as a right to
22 ignore people's human rights, I think that kind
23 of othering is very harmful.

24 Q When you say harmful to anybody in the community,
25 what are you speaking about?

26 A The queer community and the ally community.

27 Q The next post I'm going to take you to is at
28 page 159, Tab 25. Do you recall seeing this
29 post?

30 A Yes.

31 Q Can you tell us your reaction specifically to
32 this last paragraph here?

33 A Yeah. Again, I think that the alignment of
34 SOGI 1 2 3 resource with forced or indoctrination
35 of children is -- is extremely harmful.
36 Everybody has a sexual orientation and gender
37 identity. I don't -- I don't really understand
38 why people like Barry are outraged about this
39 program. It has been proven to be beneficial to
40 all kids, not even just queer kids.

41 Q Have you ever in your teaching career suggested
42 that a student go to a gender clinic?

43 A No. I haven't suggested that they go to a gender
44 clinic.

45 Q Is that your role as a teacher?

46 A My role as a teacher is to educate, to provide
47 support where needed. And if there was a child

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Teacher A (for Complainant)
in chief by Cnsl A. Tom

1 who was seeking advice, I would connect with them
2 with the right outside agency to help them with
3 that journey.

4 Q Do SOGI resources, in your knowledge, suggest
5 gender clinics?

6 A No. No, not at all. It's also age-appropriate
7 based on the grade that the child is in. There's
8 no -- as far as I'm aware, there's nothing in any
9 of the resources that are provided on the
10 SOGI 1 2 3 website that have anything to do with
11 gender-affirming care, even.

12 Q The next post I'm going to take you to is at
13 Tab 35. [Indiscernible]. Do you recall seeing
14 this post?

15 CNSL J. KITCHEN: I'm sorry. What tab are we on?
16 Sorry. I just missed that.

17 CNSL A. TOM: Sorry. We're at Tab 35, Mr. Kitchen.

18 CNSL J. KITCHEN: Thank you.

19 A Yeah. Yeah.

20 CNSL A. TOM:

21 Q Can you tell us your reaction to this
22 paragraph here:

23
24 Care of the body must be in harmony
25 with care of the soul. Abortion,
26 euthanasia, and gender transition
27 surgery are horrible practices that
28 result when the physicians ignore God.
29

30 A Yeah, I mean, I think putting those three things
31 together in a sentence is -- is very misleading
32 as well. And I -- and I think that what this
33 section of the post does is -- is also ignore
34 research that, you know, has been ongoing for --
35 for decades, best practices that have been
36 going -- ongoing for decades, and highlight
37 the -- the church or the bible as the -- the only
38 thing that we should be looking to.

39 Q I'm taking you now to another post which is at
40 Tab 36. Do you recall seeing this post?

41 A Yes.

42 Q And what's your reaction to this? What was your
43 reaction?

44 A I mean, to me, this is another way of attacking
45 schools for -- for supporting children. I think
46 that it's dismissive again of people's
47 experiences, and I think it's another way of

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Teacher A (for Complainant)
in chief by Cnsl A. Tom

1 calling teachers groomers, which again is very
2 harmful.
3 Q The next post I'm going to take you to is at
4 Tab 47 of the same book.
5 A Mm-hmm.
6 Q Do you recall seeing this post?
7 A Yes.
8 Q And what is your -- what was your reaction to
9 that post?
10 A Well, this one, it's just very clearly spelled
11 out that he's calling teachers groomers. I mean,
12 there's not a lot of subtext here. But, yeah,
13 very -- very dismissive of the good work that
14 teachers do. And very harmful to the reputation
15 of teachers.
16 Q I'm going to go back a bit now to Tab 4 of the
17 same book. Do you recall seeing this post in
18 December 2017?
19 A Yes.
20 Q It's a long one. I'm just going to take you to
21 this page, which is page 22 in the PDF. Can you
22 tell us what your reaction was to reading this
23 particular paragraph at the top here that starts
24 with "one person mentioned"?
25 A Yeah. This one is particularly upsetting,
26 especially, you know, how much time and effort
27 was put into crafting something so ugly and
28 hateful. Just need a minute. The -- the idea
29 that something is inherently wrong with queer or
30 trans people is very, very upsetting rhetoric to
31 be putting into the world. And then trying to
32 create division, as he does in the second
33 paragraph here, is even more upsetting.
34 Q Why is that even more upsetting to you?
35 A Because it's -- throughout history, we've relied
36 on each other for safety in our community. So to
37 try to create more division between people who
38 identified as gay or lesbian and the transgender
39 community is very vicious. And very untrue.
40 Q Shortly after seeing this post, do you recall
41 seeing a flyer about transgender people in the
42 community?
43 A Yes.
44 Q Do you recall what it looked like?
45 A Yeah, it was black and white. Had a person in a
46 Ku Klux Klan outfit on it.
47 Q Where did you see that?

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Teacher A (for Complainant)
in chief by Cnsl A. Tom
Submissions by Cnsl J. Kitchen

1 A I saw it in a couple places. I saw it physically
2 in my friend's yard. She lives in Sardis. And
3 I -- it was sent to me by a couple people who had
4 also had them appear in the area that they live.

5 Q I'm going to take you to a document, and this is
6 at the second book of documents, the documents re
7 various documents, and it is at Tab 2. And it's
8 at page 9.

9 CNSL J. KITCHEN: I'm going to be objecting to this
10 one, but...

11 THE CHAIR: Okay. Thank you. We'll just get -- make
12 sure that she's identified --

13 CNSL J. KITCHEN: Yeah.

14 THE CHAIR: -- it, and then we can hear the objection.

15 CNSL J. KITCHEN: Exactly.

16 THE CHAIR: All right.

17 CNSL A. TOM:

18 Q So, Teacher A, can you please tell us if this is
19 the flyer that you saw?

20 A Yeah, that's -- that's the one.

21 Q Did you keep a photo of it or take a copy of it
22 when you saw it at first?

23 A It was sent to me on my phone, but I'm on -- I've
24 had two phones since then. This definitely is
25 not the kind of thing that I would choose to
26 keep.

27 CNSL A. TOM: I would like that to be entered as an
28 exhibit.

29 THE CHAIR: Okay. Go ahead, Mr. Kitchen.

30

31 SUBMISSIONS BY CNSL J. KITCHEN:

32

33 CNSL J. KITCHEN: Okay. So -- and we may need to ask
34 the witness some more questions to verify this,
35 in fairness to my friend and the witness. But
36 from what I just heard, she did not personally
37 encounter this. This was sent to her by someone
38 else, and she has a picture of it because someone
39 sent it to her on her phone. So it sort of adds
40 an additional layer of unreliability there as
41 opposed to her -- if she had just picked it up
42 herself. Now, if I'm wrong on that, we can
43 clarify that with questions, but that's sort of a
44 starting point.

45 So -- and like I said before -- and forgive
46 me if I -- if I missed the timing of this. I
47 don't know if we established a time for when this

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Teacher A (for Complainant)
in chief by Cnsl A. Tom
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1 was encountered. But, of course, the fact that
2 it was sent to somebody on their phone, we have
3 no -- we have no -- we have no timing for when
4 is -- this is out in the world.

5 So then we get to the fact that if we look
6 at the thing itself, it's got nothing to do with
7 Barry. So there is no logical relevance. We
8 could fill a room, I expect, with documents,
9 internet posts, whatever content, whatever you
10 want, that says things that the complainants
11 don't like, that this witness doesn't like. And
12 I don't say doesn't like to down-play. Hates --
13 you know, really bothers them, really upsets
14 them, whatever adjective you want to use. We --
15 we could -- we could -- we could fill a room
16 with -- with that stuff that they don't -- that
17 they oppose. Okay? And we couldn't possibly say
18 that all of it is logically relevant to this
19 case, is logically relevant to Barry, which means
20 we can't say that any of it is unless -- unless
21 it itself, the particular document, has a
22 connection to Barry because.

23 So, for example, we had one document here
24 this morning where it said -- at the top, there's
25 a quote from Barry. Okay. So we have at least a
26 little bit of a connection to Barry. We have no
27 idea who the author is. We have no idea if they
28 know Barry. We have no idea if they were
29 inspired by Barry. So it's -- you know, it's --
30 it's obviously very low value, but -- but, okay,
31 we have at least some logical relevance. This
32 document, like another one that I've seen that
33 my -- my friend has sought to have entered, has
34 no logical relevance because it has no connection
35 to Barry. Nothing to do with Barry. Nothing to
36 do with Chilliwack, Chilliwack trustees, Barry
37 Neufeld. Heck, it doesn't even say anything
38 about SOGI 1 2 3. Even then that wouldn't get us
39 across the line, but it doesn't even say anything
40 about that. It has absolutely no connection to
41 the person or the posts at issue in this case.

42 It has -- it has nothing but a rhetorical
43 value. And, again, this is not a rhetorical
44 exercise; right? This is a quasi-judicial
45 proceeding where we admit documents that are
46 admissible because they have logical relevance to
47 the issues. This has none. On top of the fact

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Teacher A (for Complainant)
in chief by Cnsl A. Tom
Submissions by Cnsl J. Kitchen

1 that, if I understand what -- what just occurred,
2 this is effectively hearsay insofar as she didn't
3 even encounter this document physically herself.
4 She got it from somebody who sent it to her.

5 THE CHAIR: I think she testified --

6 CNSL J. KITCHEN: It's --

7 THE CHAIR: -- she did -- just on that last point,
8 because I want to make sure I have your accurate
9 submissions --

10 CNSL J. KITCHEN: Yeah, okay.

11 THE CHAIR: -- based on her testimony --

12 CNSL J. KITCHEN: So maybe --

13 THE CHAIR: -- she testified she saw it at her
14 friend's yard physically. So just -- I don't
15 know if that changes --

16 CNSL J. KITCHEN: Okay.

17 THE CHAIR: -- your submissions, but -- and with the
18 timing, the question was whether it was shortly
19 after the December 2017 post.

20 CNSL J. KITCHEN: Okay.

21 THE CHAIR: So --

22 CNSL J. KITCHEN: All right. So we got -- we got --
23 we got timing, and we got physical location. It
24 doesn't help anything. It doesn't change
25 anything. There's no connection. Even with
26 those things, there's -- there's no connection.
27 But if she had have given us a story that -- and,
28 again, of course, I'd be able to cross on this,
29 and I would be right now -- I don't -- but I
30 don't know if there's any purpose to it right
31 now. If she would have said, "You know what?
32 Somebody came by and was campaigning for Barry
33 and handed this to me," we have a connection.
34 Okay. I would cross on that. But we have a --
35 and the reason I give that example is apparently
36 those examples are needed because we keep letting
37 in stuff that has no connection to Barry. And so
38 I'm giving examples of what a connection to Barry
39 might look like so that we can distinguish
40 between what is a connection to Barry and what
41 does not have a connection to Barry. This has no
42 connection to Barry. It's not admissible.

43 THE CHAIR: Thank you.

44 CNSL J. KITCHEN: Thank you.

45 THE CHAIR: Ms. Tom?

46 CNSL A. TOM: Sure.

47

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Teacher A (for Complainant)
in chief by Cnsl A. Tom
Submissions by Cnsl J. Kitchen

1 SUBMISSIONS BY CNSL A. TOM:

2
3 CNSL A. TOM: I'm not arguing that Mr. Neufeld
4 personally authored this. One of the questions
5 in this case is about hate speech. As -- as I'm
6 sure you know, the test is objective about
7 whether or not certain speech exposed people to
8 hatred. And so things that happen out in
9 community with a close temporal nexus to
10 Mr. Neufeld's speech are logically relevant for
11 showing whether or not his speech did or tends to
12 have an effect of exposing the class members to
13 hatred. So there is logical relevance.

14 CNSL J. KITCHEN: One -- one short thing in -- in
15 response.

16 THE CHAIR: Thank you. Go ahead, Mr. Kitchen.

17
18 SUBMISSIONS BY CNSL J. KITCHEN:

19
20 CNSL J. KITCHEN: As you know, I'm not from B.C., but
21 I would guess we have upwards of 3 million people
22 that live within a 100-kilometre radius of the
23 area we're talking about. I've been to the Lower
24 Mainland if -- I think it's still called that --
25 a couple times. You know, I've driven around
26 Chilliwack, Abbotsford, Vancouver. You -- you --
27 you have a -- you have an enormous amount of
28 people in that -- in that area of B.C. I think
29 over half of the British Columbia population.
30 Okay? So we're not talking about a community
31 like Fort Nelson, okay, which is small and
32 identifiable and discrete. We're talking about a
33 massive area of millions of people, and we're
34 going to suggest that a random document that's
35 got nothing to do with Barry is actually really
36 connected to Barry because, you know, the
37 whole -- all 3 million people in this community
38 that we're going to call the Lower Mainland is --
39 is -- is connected to Barry? It's absurd. It's
40 absurd; right?

41 I get my friend's point: to establish that
42 there's a climate. What climate has Barry
43 created; right? And that's -- that's the onus
44 they have to me; right? What -- what -- what --
45 what climate has Barry created? Barry hasn't
46 created the climate for this document because
47 this document has nothing to do with Barry;

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Teacher A (for Complainant)
in chief by Cnsl A. Tom
Submissions by Cnsl J. Kitchen

1 right? So you want to talk about prejudice --
2 prejudicial value, right, you're prejudicing not
3 only Mr. Neufeld, but you're prejudicing the
4 procedure because if we admit this, then we're
5 admitting a document that we honestly have no
6 idea -- if we're being fair, we honestly have no
7 idea if this has anything to do with Barry. But
8 if we admit it, then it creates this suggestion
9 that it really does have something to do with
10 Barry, even though there's been absolutely no
11 evidence that it does; right? That's prejudice
12 to the respondent.

13 The respondent is entitled to a fair
14 proceeding. He can't answer this. I can't cross
15 anybody on this. I have no idea where this came
16 from. If I can't cross on it because I have no
17 idea where it came from, that should be a pretty
18 obvious sign that the prejudice far outweighs the
19 probative value of it. It's inadmissible. It
20 will only serve to prejudice the proceeding and
21 the respondent. And the last thing we need is
22 any more prejudice to the proceeding. Thank you.

23 THE CHAIR: Thank you. For this one, I just need a
24 moment. We're just going turn our cameras and
25 mics off, and we'll come back in a couple
26 of minutes. Just a minute.

27
28 (PROCEEDINGS ADJOURNED FOR RECESS) [2:15:04]

29 (PROCEEDINGS RECONVENED) [2:18:50]
30

31 THE CHAIR: Everyone, we're back. I know you've --
32 you've had some discussions without us. Thank
33 you. We were politely ignoring you. We are
34 persuaded not to admit this document. There's
35 not enough of a factual foundation to connect it
36 to the issues in this complaint and its
37 prejudicial value given its contents is quite
38 high. So in the absence of a factual foundation
39 to connect it to the issues, we won't admit it.

40 And thank you for your patient, Teacher --
41 patience, Teacher A. I should have explained at
42 the outset we may encounter objections. You're
43 doing exactly what I would ask you to do, which
44 is just wait until we've sorted them out, and
45 then we'll come back to you for the next
46 question.

47 Okay. Go ahead, Ms. Tom.

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Teacher A (for Complainant)
in chief by Cnsl A. Tom

1 CNSL A. TOM: Thanks.

2

3 EXAMINATION IN CHIEF BY CNSL A. TOM, continuing:

4

5 Q So, Teacher A, can you tell us whether or not in
6 response to Mr. Neufeld's comments you ever
7 posted publicly online?

8 A No. I -- I -- so I'm trying to think back to
9 these times. And I'm sure that there was some
10 back-and-forth private messages between myself
11 and -- and people who were also viewing this
12 content, but, no, I don't think that I would ever
13 put myself in -- I wouldn't make myself a target
14 like that.

15 Q What do you mean by make yourself a target?

16 A It's no secret that -- that Barry doesn't enjoy
17 queer or trans people, and being a queer person
18 myself, that automatically makes me a target.
19 But extending that, it -- I'm not looking to be
20 doxxed by anyone.

21 Q Can you tell us what you mean by doxxing?

22 A Yeah. So my understanding of doxxing is when
23 somebody takes a photo or something that somebody
24 has said and puts it out to the -- the wider
25 community or on the internet in a slanderous way.

26 Q I want to go back to when you were in your
27 professional development program, and if you
28 could cast your mind kind of back to that time
29 when you were first encountering these -- these
30 statements. What impact, if any, did it have on
31 how you felt about entering the teaching
32 profession?

33 A Yeah, I was -- I was concerned about entering the
34 teaching profession. It's -- I almost didn't do
35 it, honestly, because of the -- the political
36 climate in Chilliwack at the time. So it was a
37 scary step to take.

38 Q What persuaded you that you wanted to take the
39 step or that it was okay for you to take the
40 step?

41 A Well, I still have -- have reservations about --
42 about teaching, even now, because it's -- it's
43 not easy to be an out queer teacher in a place
44 like Chilliwack or, at least, what it has become
45 over the last, you know, ten years or so.
46 Ultimately, I have a family and -- and need to
47 support them, which is one of the big reasons for

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Teacher A (for Complainant)
in chief by Cnsl A. Tom

1 going into the teaching field, especially after
2 having spent a lot of money on education. And I
3 ultimately just love -- I love the students. I
4 love the classroom. I love creating pieces of
5 learning.
6 Q And then when you became a teacher in Chilliwack
7 and you were starting as a contract TTOC, you
8 said, how -- what impact, if any, did
9 Mr. Neufeld's statements have on that transition
10 as you began to be in the workplace?
11 A Sorry. Can you repeat the question?
12 Q Sure. Yeah. So as you were entering the
13 profession in Chilliwack and you were starting as
14 a contract TTOC, I think you said at first, how
15 did those statements impact your entry into the
16 profession?
17 A Yeah, so I -- when I initially came into
18 teaching, I chose to not be out. I was
19 definitely urged by many of the -- the
20 professional teachers in my life and -- and as
21 well as in the professional development program
22 to really consider whether I wanted to be out in
23 a place like Chilliwack. As I was doing my
24 training in 2017, yeah, the comments that Barry
25 was making at the time and has continued to make
26 had -- had an impact. It made people in my life
27 ask me to reconsider.
28 Q Ask you to reconsider what?
29 A Reconsider going into teaching, reconsider -- and
30 ultimately I decided to not be out. But it
31 was -- it was a real fear not only for myself but
32 for people who cared for me.
33 Q Were you out personally in most of your life
34 other than as a teacher at that time?
35 A Yes.
36 Q Can you tell us what it was like to be not out at
37 work but out in life?
38 A Yeah, I mean, as -- as you can imagine, it was --
39 it was tough. It was a lot of missing barbecues
40 and -- and get-togethers and other things where
41 you would bring a partner or -- or a family
42 member. It was avoiding a lot of conversation in
43 the staff room about, you know -- about husbands
44 or, you know, even about extended family. It was
45 very isolating, I would say.
46 Q Did you eventually decide to come out at work?
47 A Yes.

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Teacher A (for Complainant)
in chief by Cnsl A. Tom

1 Q When did you do that?
2 A Right about the time that I started working with
3 the -- the GSA at [REDACTED]. So that
4 would be around the [REDACTED] permanent
5 position. I felt a little bit more secure in my
6 role.
7 Q Did having a permanent position play a role in
8 you feeling like you were able to be out at work?
9 A Yeah. Yeah, definitely. I think it's always --
10 always in the back of -- of your mind, you know,
11 am I going to be not hired because of who I am
12 and who I love?
13 Q Can you just tell us what a GSA is? Sorry. I
14 just...
15 A Yeah. So there's a couple different breakdowns
16 for it. Some people call it a gender and
17 sexuality alliance. It could also be called a
18 gay-straight alliance. It's basically an
19 affinity space for queer, trans, Two-Spirit,
20 nonbinary, and allied people to gather and be in
21 community with one another.
22 Q And when approximately did you begin working with
23 the GSA?
24 A My first year of my continuing contract.
25 Q Do you know which year?
26 A I have to do math. Would have been two thousand
27 and -- the year after COVID began. So I guess
28 2020, 2021.
29 Q So September 2020, you began your continuing
30 contract?
31 A Twenty -- I think so. Either 2020 or 2021. I'd
32 have to look at...
33 Q And previous -- prior to that, had you been
34 involved in GSAs in your -- in your work before?
35 A No. During my practicum, there was a GSA that
36 was being run by a couple of teachers in the
37 school, and I would kind of look in longingly
38 occasionally, but, no, I wasn't -- wasn't really
39 involved.
40 Q Why did that change?
41 A I think I was -- I felt more secure with myself.
42 I felt more secure with my job situation.
43 Q And when you say you looked in longingly, why --
44 why do you say it that way?
45 A Because I should have been there, but I couldn't
46 be.
47 Q What do you mean by you should have been there?

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Teacher A (for Complainant)
in chief by Cnsl A. Tom

1 A As a queer teacher, it's important for other
2 queer, trans, Two-Spirit, nonbinary youth to see,
3 you know, happy, healthy adults in roles like
4 teachers or leadership. I think the rhetoric
5 that has been passed around for a very, very long
6 time is that, you know, being a queer, trans,
7 Two-Spirit, nonbinary-identified person just kind
8 of leads nowhere, and I think it's important for
9 youth to see that that's not true. We're --
10 we're here. We have families. We have great
11 jobs. We have education. We're not confused.
12 Q What does it mean to you to feel safe in your
13 workplace?
14 A Safety to me means being able to talk about my
15 family and not have people roll their eyes or
16 create uncomfortable silences or not invite you
17 to things because of who you are. Safety is
18 being able to be who you are without retaliation.
19 Q Had you experienced that in your workplace?
20 A Yeah. Yeah, definitely.
21 Q Can you tell us about that?
22 A Yeah. The -- the staff room can be a very
23 unfriendly place for people who don't fit into
24 the mainstream. So definitely a lot of -- a lot
25 of comments under the breath from some of the
26 staff. A lot of walking into conversations and
27 then people abruptly stopping talking where you
28 know they were talking about you. Those are a
29 couple of examples. Being not invited or
30 uninvited to events or gatherings based on who I
31 was potentially going to bring.
32 Q Has that happened to you?
33 A Yes.
34 Q Can you tell us about that?
35 A Yeah. There is friendships that were -- that
36 were created when I was not out that were very
37 quickly dissolved, not by me, when I did come
38 out.
39 Q These were work friendships?
40 A Yes.
41 Q Did you ever consider teaching in another
42 district?
43 A Definitely, yes. I -- as soon as I graduated, I
44 considered teaching in the district closer to
45 Vancouver, but ultimately my family lives here
46 and my children go to school here. It wasn't
47 really an option.

355

Teacher A (for Complainant)
in chief by Cnsl A. Tom

1 Q I'm just noting the time and also wondering if
2 you'd like a break.

3 A Yeah, that would be great.

4 THE CHAIR: All right. Why don't we take a 15-minute
5 break here. So for this break, we're just going
6 to turn our cameras and our mics off, and then --
7 is 15 minutes enough time, Teacher A? Yeah.
8 Okay. So we'll just turn our cameras and mics
9 off, and then we'll call you back after 15
10 minutes. Okay. Thank you.

11
12 (WITNESS STOOD DOWN)

13
14 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS) [2:36:13]
15 (PROCEEDINGS RECONVENED) [2:55:17]
16

17 THE CHAIR: All right, everyone. Come on back. All
18 right. Teacher A, are you ready to continue?
19 Yeah. Okay.

20 Ms. Tom, go ahead when you're ready.

21
22 TEACHER A, a witness,
23 recalled.
24

25 EXAMINATION IN CHIEF BY CNSL A. TOM, continuing:
26

27 Q And, Teacher A, can you tell us what your
28 awareness is around SOGI resources?

29 A Yeah. I work with SOGI resources often. They
30 have not -- not really been plentiful in the last
31 several years, but there are starting to be more
32 created. Yeah. I'm excited to see more.

33 Q And why do you think there haven't been very many
34 created until recently?

35 A I think that there has been a real fear, a fear
36 of -- of using these resources. There's been a
37 real fear of -- especially by queer teachers
38 to -- to use them especially. But, yeah, I think
39 that the -- the fear that's been percolating over
40 the last several years is -- it seems to ebb and
41 flow. There will be a lot of fear for a couple
42 of years, and then something will happen and
43 things will get better, and then unfortunately I
44 think that we're, you know, in a -- in a
45 downswing again currently. Did --

46 Q A downswing --

47 A -- that answer your question, Alanna? Sorry.

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Teacher A (for Complainant)
in chief by Cnsl A. Tom

1 Q Yeah, no, you're fine. A downswing in terms of
2 less fear or a downswing in terms of more fear?
3 I just want to --
4 A More fear. I think that the -- the -- the shift
5 that's happened again in the political climate
6 in -- in Chilliwack and in the broader Canada and
7 US and even in Europe has created a lot more
8 fear.
9 Q Had you personally ever faced pushback or
10 criticism as a result of using SOGI resources?
11 A Yeah, definitely. I think using SOGI resources
12 is -- is one of them. Being who I am is -- is
13 another one. I've had students removed from my
14 class by their parents.
15 Q And how did you know that that was because you
16 had been using SOGI resources?
17 A I was directly told that that's why.
18 Q What impact did that have on you?
19 A Well, I mean, it definitely didn't feel good. I
20 think that SOGI resources are such great tools to
21 help all students feel safe in a place like a
22 school or a classroom. So the idea that there
23 were people out there that, you know, not only
24 didn't want, you know, kids to feel safe, but
25 also that they would remove their -- go as far as
26 to remove their children so they wouldn't have to
27 learn, I guess, how to support others was -- was
28 really upsetting.
29 Q Had the parent of that particular student ever
30 come to you before to try and discuss things with
31 you, or it just --
32 A No.
33 Q -- was --
34 A Never in person. We never had one-on-one
35 conversations with parents about SOGI. No.
36 Q And in terms of your involvement with the GSAs,
37 have you ever faced criticism or pushback as a
38 result of your involvement with those?
39 A Yes, definitely.
40 Q Can you tell us a little bit more about that?
41 A Yeah. I've received many emails about my -- my
42 work in the schools. I have received lots of
43 comments and criticism from teachers within the
44 schools. And sometimes those are -- are verbal,
45 sometimes it's body language, and sometimes it's
46 not responding to an email or not agreeing to --
47 to help, you know, cover a table during a

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Teacher A (for Complainant)
in chief by Cnsl A. Tom
Submissions by Cnsl J. Kitchen

1 lunchtime event so that I could use the washroom.
2 Sometimes they're -- they're microaggressions
3 like that, and then sometimes it's direct --
4 directly verbalized.

5 Q Can you tell us first just about what you mean by
6 not agreeing to cover a table for you at a
7 lunchtime event?

8 A Yeah. I would -- I would often have tables in
9 the foyer of the school that I worked in that
10 would have support for kids who are part of the
11 GSA and -- and then the kids that couldn't make
12 it to the GSA for whatever reason or weren't out
13 or comfortable being in that space yet. So I
14 would have resources available. I would have
15 flyers for events that were coming up. And, you
16 know, the table was very rainbow, and the -- many
17 of the teachers in the school refused to sit at
18 that table.

19 Q Can you tell us about some of the directly
20 verbalized comments that you received?

21 A Yes. I'd -- I'd really rather not, but I can if
22 we need to. They're very painful to recall.

23 Q Take your time.

24 A Some of the -- some of the things that were said
25 were, you know, surface-level, harmless. You
26 know, like, "Oh, you're -- you're teaching that?"
27 Or "you're that teacher." And some of them were
28 a little bit more pointed and cut a little bit
29 deeper like what -- you know, "Why are you -- why
30 are you teaching this?" Or "who do you think you
31 are?"

32 Q Has your home ever been vandalized?

33 CNSL J. KITCHEN: Objection.

34 THE CHAIR: Yes, Mr. Kitchen?

35
36 SUBMISSIONS BY CNSL J. KITCHEN:

37
38 CNSL J. KITCHEN: Struggling with the relevance of
39 that. So far we've been talking about a lot of
40 teacher-teacher interactions with -- which, of
41 course, that's questionable if that's relevant
42 with Mr. Neufeld, but at least it's within the
43 school system. You know, and then we had
44 questions about general life. That was really
45 getting on the edge of it. Now we got -- now we
46 got a question about her home being vandalized.
47 It's not relevant at all, absent establishing

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Teacher A (for Complainant)
in chief by Cnsl A. Tom
Submissions by Cnsl A. Tom

1 some basis for it, of course. And that's getting
2 a little more prejudicial. So I think we're -- I
3 think we're straying beyond where we should be
4 going.

5 THE CHAIR: Thank you.
6 Ms. Tom?

7
8 SUBMISSIONS BY CNSL A. TOM:

9
10 CNSL A. TOM: I'm just a bit -- it's relevant because
11 it's an impact on a teacher. She's in the
12 community of Chilliwack while -- she may have
13 been in her home or where she may have been in
14 the community while certain things happened and
15 certain impacts are felt, those are relevant.
16 And I believe that you've asked for us to present
17 evidence about the impact on teachers from the
18 teachers directly.

19 THE CHAIR: Okay. Mr. Kitchen, you can have a final
20 reply on that.

21 CNSL J. KITCHEN: Well, I don't know what she's going
22 to say, of course. Presumably, she's going to
23 say no; but if she says yes, then it could just
24 linger there in the air as to what's going on
25 with that. If her answer was "yes, and I know it
26 was Teacher B because, you know, Teacher B
27 doesn't like me because I'm this and, you know,
28 it was found out and, you know, there were
29 charges laid and, you know, I think that person
30 is connected with Barry because, you know, that
31 person shared one of Barry's posts," that answer
32 would be permissible. Okay? Like the detailed
33 example I just gave. But if the answer is yes,
34 now it just lingers there. And so if my -- if my
35 friend is queuing up for something that I'm -- I
36 don't know about, but, you know, queuing up for
37 some example that she knows is -- is -- is --
38 exists, if it's relevant, I guess it's fine.

39 But if it's -- if it's not relevant, if
40 that's not what she's queuing up for, how
41 about -- how about this? How about we exclude
42 the witness and I can hear from my friend if
43 she's queuing up for something. Because if she's
44 queuing up for something relevant, I can't
45 object. Okay? But if she's -- if she's, you
46 know, just throwing it out there for it to linger
47 in the air, it's not -- it's not relevant. It's

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Teacher A (for Complainant)
Proceedings

1 not permissible. It's too prejudicial. So I
2 would -- I would suggest we exclude the witness
3 and I can hear from my friend if she's queuing up
4 for an example.

5 THE CHAIR: All right. Teacher A, I'm just going to
6 remove you from the meeting for a moment while we
7 deal with this issue. I'll remove you from the
8 meeting, and then I'll ask you to right away just
9 click the link to rejoin, and that will put you
10 in the lobby so that when we're done, I'll just
11 let you back in. Okay? Okay. So you don't do
12 anything. I'm going to remove you now, and then
13 you'll just come right back into the lobby. Just
14 a moment. There you are.

15
16 (WITNESS STOOD DOWN)
17

18 THE CHAIR: Okay. I think -- I don't know that we
19 need to spend a ton of time on this, but I just
20 wanted to give Ms. Tom the opportunity if there's
21 anything more you wanted to add to what you said.

22 CNSL A. TOM: Sure. I am going to a specific example.
23 You know, that is where we're going with this. I
24 wasn't intending to let it linger in the air, if
25 that provides you any comfort.

26 CNSL J. KITCHEN: Okay. But is it -- is it going to
27 be another Ku Klux Klan rhetorical kind of thing,
28 or are we going to actually see something
29 connected to Barry? Because it's -- you know, we
30 got -- we got to have -- we got to have some
31 relevant -- it's got to be relevant. It's got to
32 be connected to Barry, or else the prejudice is
33 just -- it's just too high. So if you've got an
34 example of someone vandalizing her house and you
35 think they were connected to Barry, I mean, by
36 all means, it's relevant, and I'll get to cross
37 on it. But if it's not connected to Barry, then
38 I -- I -- I have to say that it -- it can't go in
39 because it's -- it's prejudicial to keep popping
40 these examples up of people saying or doing
41 terrible things, and they have no connection to
42 Barry, and they're just being put there for
43 rhetorical effect, which my friend should very
44 well know, and it's -- it's an -- you know, it's
45 an abuse of process, as far as I'm concerned.

46 So I guess -- and I don't know what's going
47 to -- I don't know what's going to be said, but

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1 if it -- if it's simply going to be something
 2 like the Ku Klux Klan thing that's not connected
 3 to Barry, then it's -- it's not acceptable. If
 4 it is connected to Barry, fine. Have at her.
 5 It's fair.
 6 THE CHAIR: Okay.
 7 CNSL J. KITCHEN: So, I mean --
 8 THE CHAIR: Well, let's --
 9 CNSL J. KITCHEN: -- I think my friend knows what I'm
 10 talking about, and they need -- they need to, you
 11 know, use this process properly.
 12 THE CHAIR: Okay. I think Ms. Tom was about to talk
 13 about that.
 14 So go ahead, Ms. Tom. Do you want to
 15 explain where you --
 16 CNSL A. TOM: I do believe that the witness is going
 17 to connect this with Mr. Neufeld, if that again
 18 provides you any comfort.
 19 CNSL J. KITCHEN: Can you -- can you -- can you give
 20 me -- can you give me a detail? Because if -- I
 21 mean, and I'm not going to object to the
 22 question; right?
 23 CNSL A. TOM: Well --
 24 CNSL J. KITCHEN: When you -- when you get there,
 25 obviously --
 26 CNSL A. TOM: -- I'm not giving evidence, Mr. Kitchen.
 27 So --
 28 CNSL J. KITCHEN: Well, no, but this is -- I know, but
 29 this is -- this is off the record. Can you --
 30 can you -- can you -- can you give me an idea of
 31 where you're going to go? I'm not going to
 32 object. If you're going there, it's fair to go
 33 there. But can you give me an idea? Because
 34 I'm -- I have to -- I have to --
 35 THE CHAIR: Okay. We get -- we have your point --
 36 CNSL J. KITCHEN: -- protect this continued --
 37 THE CHAIR: -- Mr. Kitchen. Let's hear --
 38 CNSL J. KITCHEN: -- you know, let's just --
 39 THE CHAIR: -- the -- okay.
 40 CNSL J. KITCHEN: -- throw stuff out there --
 41 THE CHAIR: Okay.
 42 CNSL J. KITCHEN: -- and say it's --
 43 THE CHAIR: All right.
 44 CNSL J. KITCHEN: -- connected even though it's not.
 45 THE CHAIR: All right. I just -- I don't want us --
 46 these objections are becoming very
 47 time-consuming. So I want to get your point --

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1 CNSL J. KITCHEN: Well, listen --
2 THE CHAIR: -- Mr. Kitchen, and then --
3 CNSL J. KITCHEN: -- the objections are --
4 THE CHAIR: -- and then move on --
5 CNSL J. KITCHEN: -- time-consuming --
6 THE CHAIR: No --
7 CNSL J. KITCHEN: -- because putting in irrelevant
8 evidence is time-consuming. Let's be clear --
9 THE CHAIR: No. Okay.
10 CNSL J. KITCHEN: -- about that.
11 THE CHAIR: All right. But they're also
12 time-consuming because the submissions are taking
13 up a lot of time.
14 So, Ms. Tom, can you just -- what kind of
15 evidence do you expect the witness to give that
16 may link this to Mr. Neufeld?
17 CNSL A. TOM: I expect Teacher A to give evidence that
18 her home was vandalized, and it happened shortly
19 after she had a conversation with a former
20 colleague of hers who she knows to be connected
21 with or have affinity with Mr. Neufeld.
22 THE CHAIR: Okay. And just to make sure I understand
23 your -- your argument, at the end will be that
24 this is -- that the tribunal should be concluding
25 that the impacts of Mr. Neufeld's speech extend
26 into the community and that this is one such
27 example of the impacts of the speech? Is that
28 right?
29 CNSL A. TOM: It also goes to why teachers are afraid.
30 THE CHAIR: Because this kind of behaviour can be
31 connected to Mr. Neufeld?
32 CNSL A. TOM: Yes.
33 THE CHAIR: Okay. Just a moment.
34 CNSL J. KITCHEN: Chair, as weak and loose as that is,
35 I think that's fine because that at least gives
36 me something I can cross on. Going back to my
37 concerns earlier with the Ku Klux Klan thing, I
38 can't cross on that. If -- if she -- if she can
39 connect it to -- to Mr. Neufeld, or at least
40 there's an honest, good-faith belief that she can
41 based on what Ms. Tom has just said, then I think
42 it's fine because I'll be able to cross on it.
43 I'll be able to question Barry on it, et cetera.
44 So I think that's fine.
45 THE CHAIR: All right. So the objection's withdrawn.
46 I'm going to let the witness come back into
47 the -- into the room now.

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Teacher A (for Complainant)
in chief by Cnsl A. Tom

TEACHER A, a witness,
recalled.

THE CHAIR: Thank you, Teacher A. I'll just wait for
your camera to come back on, and then we're going
to continue. There we go. You're ready? Okay.
Go ahead. Ms. Tom is going to ask her question
again.

EXAMINATION IN CHIEF BY CNSL A. TOM, continuing:

Q Teacher A, has your home ever been vandalized?

A Yes. I've had -- I've had an incident where
there were -- was garbage thrown all over my
lawn.

Q Do you know who threw the garbage all over your
lawn?

A I have serious suspicions as it followed an
altercation that I had with someone who was part
of Barry's fan club. We were discussing his
politics and some of the things that he was
sharing. That then turned into assaults on my
character and my life and the -- what made me
think that it was them was they called me a
garbage person and said that I should watch my
back. And then the very next day my entire lawn
was filled with garbage.

Q What kind of garbage?

A Garbage that you would -- household garbage.
Looked like they had taken their household
garbage and emptied a few of them onto my lawn.

Q And how do you know that this person is, as you
say, a member of the Barry fan club?

A They were not shy to tell me that, that they
were -- they were a faithful follower, I think
was the term that they used.

Q Has that ever happened to you before?

A No.

Q Has it ever happened to you since that time?

A No.

Q In terms of your --

CNSL J. KITCHEN: Ms. Tom. Okay. Sorry. You're
moving on. Okay.

So I have a concern here, Chair, because the
obvious question to be asked is who is this
person. That was not asked.

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Teacher A (for Complainant)
in chief by Cnsl A. Tom

1 THE CHAIR: All right. Well, it's up --

2 CNSL J. KITCHEN: And so --

3 THE CHAIR: Okay.

4 CNSL J. KITCHEN: No, I get that. I get that. But --
5 but this is -- this is my concern, because
6 it's -- it's just out there now that this person,
7 who may or may not exist because we -- we don't
8 have the name, okay -- and I think it's fitting
9 to -- and it's fine that she doesn't know she --
10 you know, there's -- there's no conviction. We
11 don't know for sure. She has her suspicions. I
12 think that's fair. But -- but if my friend is
13 not going to elicit the name of this person, then
14 we still have the problem of it's just out there.
15 It's just hanging out there without any
16 connection to Barry. Okay? Because that's great
17 that they're a fan. We don't know if they're a
18 teacher. I think she said -- I think she said
19 colleague. And -- and, again, if we need to put
20 a publication ban on the name of that teacher,
21 fine by me, okay, if we have a concern about
22 that. I think she said colleague, so -- so -- so
23 if it is a teacher, that's highly relevant. We
24 got to get that in there.

25 That reduces -- that reduces the -- well,
26 pretty much eliminates the prejudice, I would
27 say. There's still a lot of prejudice to my
28 client because we -- we don't know -- we don't
29 know who this person is; right? I think it's
30 incumbent upon my friend to put the name -- in
31 fact, I would think it would help her case to put
32 the name of the person in there. We can protect
33 that person's identity if we need to, okay, and
34 then it's not hanging out there. It's now
35 actually been connected to Barry. Okay? Because
36 we have no idea who -- who this person is. Okay?
37 We need to have some idea who the person is for
38 there -- for the -- for us to remove the
39 prejudice and make this line of questioning fair
40 as opposed to irrelevant sort of fishing-type
41 stuff. Okay? That's -- that's -- that's what I
42 think -- or I -- or I can ask the question. I
43 don't think that's probably the best way to do
44 it. I think my friend should ask the question.
45 That's the fair way to do this.

46 THE CHAIR: Well, I think you hit the nail on the head
47 in the last part. This is Ms. Tom's direct

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Teacher A (for Complainant)
in chief by Cnsl A. Tom

1 examination. You'll certainly have the full
2 opportunity to ask the question if you think
3 that's necessary in cross-examination --
4 CNSL J. KITCHEN: Well -- well, we could --
5 THE CHAIR: -- so --
6 CNSL J. KITCHEN: -- get into a situation where she
7 says, "Well, I'm not going to tell you."
8 THE CHAIR: Well, then I think we can't do
9 hypothetical scenarios here. You'll have the
10 opportunity to ask the question. If she's not
11 going to tell you, then we'll deal with that
12 bridge when we get to it. But for now, this is
13 Ms. Tom's --
14 CNSL J. KITCHEN: All right.
15 THE CHAIR: -- examination, and -- and she can -- she
16 can continue on.
17 CNSL A. TOM:
18 Q Do you feel comfortable naming the person who you
19 suspect threw garbage on your lawn, Teacher A?
20 A I mean, I could certainly name the name that they
21 went by. I don't know if that's their actual
22 name or not because I didn't have a close
23 personal friendship with them. So I -- I could
24 certainly give you the name that they introduced
25 themselves as.
26 Q Would you like to?
27 A Yeah. It was Karen. That's the extent of -- of
28 the information I have on that person's identity.
29 Q Do you know the approximate year of that
30 incident?
31 A That was -- yeah, it was, I would say, late 2017,
32 early 2018. I don't have an exact day for you.
33 Q Just going back to your experiences now in school
34 as -- as a teacher, do you have any specific
35 examples of including SOGI or sexual orientation
36 alone or gender identity alone in your lessons
37 and receiving criticism for that from your
38 employer?
39 A I'm very cautious to speak about my employer. I
40 don't know the rules around that.
41 THE CHAIR: You can -- you can answer the questions in
42 this proceeding. I mean, I'm not going to give
43 you legal advice about that, but you're under
44 oath, and you're being asked questions. So it's
45 the expectation that you'll answer those
46 questions to the best of your ability.
47 Go ahead, Mr. Kitchen.

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Teacher A (for Complainant)
in chief by Cnsl A. Tom

1 CNSL J. KITCHEN: We should -- Chair, it might be
2 helpful to the witness to explain sort of the
3 litigation privilege. I mean, I don't think --
4 you know, my understanding is that nobody --
5 nobody can use what she says here against her
6 as -- as far as her employer is -- is -- is
7 concerned -- because it's -- it's litigation
8 privilege. That's -- that's how I view it. I
9 mean, I think that's -- you know, that's --
10 that's -- that's what protects the witness to
11 allow to -- for her to speak candidly and freely.

12 THE CHAIR: Thank you, Mr. Kitchen.

13 Ms. Tom, is there anything you want to add
14 to that? Oh, sorry.

15 CNSL A. TOM: Yeah.

16 THE CHAIR: I missed it. I looked down. Did you
17 shake your head no, Ms. Tom?

18 CNSL A. TOM: Oh, I said no.

19 THE CHAIR: Okay.

20 CNSL A. TOM: Sorry.

21 THE CHAIR: Sorry. I missed that.

22 All right. Go ahead, Teacher A, and answer
23 the question.

24 A There were definitely times that -- and
25 specifically a time that I wanted to do a lesson
26 and had been excited about it, and it was not
27 received as well as it could have. Again, I'm
28 really uncomfortable talking about my superiors
29 in this format.

30 CNSL A. TOM:

31 Q Can you just give us just a general understanding
32 of -- about what was not well received?

33 A Yeah. So the specific lesson was humanities,
34 looking at protest, what -- historically why
35 people have protested. Opened licence for kids
36 to research a cause and make their own protest
37 sign. There was one that said "support trans
38 kids," and that one was not -- not well-liked.

39 Q And can you just tell us generally what you mean
40 by "not well-liked"?

41 A It was -- I feel really uncomfortable going any
42 further with this. I'm sorry. I don't want to
43 name anybody, and by doing this, I feel like I
44 would.

45 CNSL J. KITCHEN: Chair, if I may, foreseeing a
46 problem on cross-examination -- and I say this
47 partly for the witness's benefit because I think

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Teacher A (for Complainant)
in chief by Cnsl A. Tom

1 it would be tough on her if I'm trying to, you
2 know, send questions at her about this and -- and
3 she doesn't want to answer. I think -- you know,
4 because I am going to have to question about
5 this. If she's -- if she's that uncomfortable,
6 we just -- we just strike this portion from the
7 record and -- and, you know, I don't need to
8 cross on it because it's not -- it's not part of
9 the record. Because otherwise I'm going to have
10 to cross on it, and then you're going to have to
11 tell the witness she has to answer the question
12 because she has to, and -- and we're just putting
13 the witness in this sort of, you know, painful
14 state. I think the best way to just -- is to
15 strike this from the record.

16 THE CHAIR: Ms. Tom?

17 CNSL A. TOM: Would it be permissible to just take a
18 minutes to have a conversation with
19 -- sorry -- with our witness?

20 THE C have a conversation with your witness?

21 CNSL A. TOM: Yes.

22 CNSL L. WADDELL: And just find out what -- what the
23 discomfort is and whether it is possible to
24 continue or whether, per Mr. Kitchen's
25 suggestion, we -- we just need to strike the
26 portion.

27 THE CHAIR: Mr. Kitchen, any concern with that?

28 CNSL J. KITCHEN: Yeah, as -- and not that I mistrust
29 my friends, because I don't. I just don't -- I
30 don't know that it's possible to have that kind
31 of conversation without -- without breaking the
32 rule. Because, I mean, you're -- you're
33 literally talking about her evidence.

34 CNSL A. TOM: She's not under --

35 THE CHAIR: She's not under --

36 CNSL A. TOM: -- cross-examination --

37 THE CHAIR: -- cross.

38 CNSL A. TOM: -- though. She's in direct.

39 CNSL J. KITCHEN: Right. Well, but you can't coach
40 her on her evidence in direct. I mean, you
41 know --

42 CNSL L. WADDELL: I'm not --

43 CNSL J. KITCHEN: -- which I'm not saying you will
44 intend to. I'm just saying that -- that -- that
45 the risk of that is just -- of it happening
46 completely in good faith I think is too high for
47 that conversation to occur. I mean, I wouldn't

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1 put myself in that situation. I couldn't -- I
2 couldn't have -- I mean, you're talking with your
3 witness about their evidence. You're coaching
4 them in the middle of their direct examination.
5 Which you can -- which you can do before you get
6 started, I think, but -- it's fine. We do that.
7 But -- but in the middle of it, I -- I don't
8 think that's okay.

9 THE CHAIR: All right. Well, we have -- we have
10 experienced legal counsel here who's aware of
11 what their -- their role is. I think from the
12 sounds of it, it would be useful for Teacher A to
13 talk with them briefly about the concern and
14 maybe get some advice about what her testimony
15 is, what the -- the context of her testimony and
16 how it may be used outside this proceeding, and
17 then we can go from there.

18 But, of course, the understanding is that
19 there's no coaching in terms of the answers or
20 the nature of the evidence that's going to be
21 given in the proceeding. But given that they're
22 not under cross-examination, I'm not -- I don't
23 share Mr. Kitchen's concerns about -- about
24 having the conversation in the first place.

25 CNSL J. KITCHEN: I have another suggestion. Because
26 I think perhaps what she should be doing is
27 getting independent legal counsel. I don't --
28 you know, I don't think she should be getting
29 counsel from -- from the lawyers who are going to
30 be questioning her about her evidence. It -- you
31 know, but we have other lawyers here. She can
32 get independent legal counsel. If that's what
33 we're looking for is advice, I mean, I don't want
34 to deny her that. I think -- I think that --
35 that's what I was trying to give her myself when
36 I said there's -- there's -- there's some
37 privilege over this. My concern is that -- and
38 I -- you've said what you've said. I just don't
39 see how it's fair for the -- for the -- for the
40 lawyers that will be questioning her to be
41 discussing her evidence with her in the middle of
42 this. But if it's a matter of getting her
43 advice, I mean, let's get her some independent
44 legal advice from somebody who's not the lawyers
45 who are going to be questioning her and
46 counselling her on her evidence. Without --
47 without intention, but just in effect, I think

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in chief by Cnsl A. Tom

1 that's inevitable.

2 THE CHAIR: Okay.

3 CNSL J. KITCHEN: That's all.

4 THE CHAIR: Thank you. I'm going to leave that up to
5 Teacher A. You can have that conversation with
6 counsel. If your advice is going to be to get
7 independent legal advice, you can tell us to
8 come -- when we come back if you need more time
9 for that. But in the meantime, I'm going to
10 allow you to have the conversation. We're going
11 to turn off our cameras and mics for -- do you
12 want a longer break, or do you just want a
13 few minutes, Ms. Tom, Ms. Waddell?

14 CNSL L. WADDELL: Few minutes.

15 CNSL A. TOM: Yeah.

16 THE CHAIR: Just a few minutes? Okay. So we'll just
17 turn off our cameras and mics, and you can turn
18 yours back on when it's time to return. Thank
19 you.

20

21 (WITNESS STOOD DOWN)

22

23 (PROCEEDINGS ADJOURNED FOR RECESS) [3:25:46]

24 (PROCEEDINGS RECONVENED) [3:28:30]

25

26 TEACHER A, a witness,
27 recalled.

28

29 THE CHAIR: All right. Come on back, everyone. All
30 right. Ms. Tom, what would you like to do?

31 CNSL A. TOM: We will strike that section of questions
32 about this from the record.

33 THE CHAIR: All right. So --

34 CNSL A. TOM: And this being just the -- just the --
35 we should make sure that everybody's clear about
36 what this is. So this is about a time she wanted
37 to do a particular lesson and was excited about
38 it, but it wasn't received well.

39 THE CHAIR: All right. Thank you.

40 We'll disregard that part of your evidence.

41

42 CNSL A. TOM:

43 Q Teacher A, did you ever attend any school board
44 meetings where Mr. Neufeld was present?

45 A No. I attended my first board meeting this year,
46 in fact, but I often watch them.

47 Q Did you live-stream them or -- or watch them --
 the recordings after the fact?

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in chief by Cnsl A. Tom

1 A Both. The -- typically I wouldn't get to it
2 until later, so I would watch it on YouTube.
3 Q Why did you feel like watching them on YouTube?
4 A I didn't feel like I could be in that space
5 physically. I didn't think that it was
6 emotionally or -- and potentially even physically
7 safe to be in that space. And I don't -- I don't
8 think that I could have sat there. I really like
9 the ability to pause or -- or fast-forward in
10 a -- in an at-home format.
11 Q Can you tell us why you didn't feel emotionally
12 or potentially physically safe attending in
13 person?
14 A Yeah. I think that the climate I -- I could
15 imagine in the -- those -- those -- during those
16 meetings was heavy and not -- not necessarily an
17 emotionally safe place for a queer person. A lot
18 of the things that were said, I was really glad
19 that I was physically removed from that space
20 because it would have been visibly upsetting.
21 Q Can you help us understand why you felt it
22 necessary to watch them at all if they were so
23 upsetting?
24 A Yeah. I think that it's important to know what's
25 happening in your community. And being in
26 education, these things directly -- directly
27 impact me. They affect me directly.
28 Q When you say "these things," do you mean anything
29 that happens in a board meeting -- do you
30 differentiate between things people say and --
31 and specific votes on motions at the floor or...?
32 A Yeah, I think that the -- the harmful rhetoric
33 that has come up in a lot of those specific board
34 meetings and objections to motions and the --
35 yeah, the -- what's being said in those
36 particular board meetings when Barry was involved
37 were upsetting.
38 Q Can you give us any examples?
39 A Well, I think that the -- the legacy has
40 definitely lingered. And a lot of the -- the
41 people in the -- the stands which, you know,
42 they -- they turn the mics off and you can't
43 necessarily hear them, but you still can, and
44 then you hear their responses. And in particular
45 with Teri Westerby, who's currently on the board,
46 the long-lasting impacts that now are affecting
47 him that --

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Teacher A (for Complainant)
in chief by Cnsl A. Tom

1 Q Can you tell us what you mean?

2 CNSL J. KITCHEN: I'm sorry. I didn't -- I didn't
3 quite hear that. Say that again.

4 CNSL A. TOM:

5 Q Oh, can I -- could you just expand on what you
6 mean by the long-lasting impacts are now
7 affecting Trustee Westerby?

8 CNSL J. KITCHEN: That's hearsay.

9 THE CHAIR: Ms. Tom?

10 CNSL A. TOM: From her perspective, how she sees the
11 legacy and what she means by the legacy and the
12 continuing impacts is not hearsay. If you'd like
13 me to rephrase to not mention Trustee Westerby, I
14 could, but I don't think that her view of any
15 potential impact on another person is hearsay
16 because it's not what someone else is saying or
17 their experience.

18 THE CHAIR: I think it's --

19 CNSL J. KITCHEN: Well, okay --

20 THE CHAIR: I think -- sorry. Just a second. I'll
21 tell you if I need anything, Mr. Kitchen.

22 If you're asking the witness about what the
23 impacts are on -- on this trustee, I agree
24 that's -- if it's about what the impacts were on
25 this particular trustee, it is hearsay, and it's
26 hard to see that that will be necessary or
27 appropriate in this case. Can you rephrase to --
28 and I understand what you're saying about her
29 perspective on how it affected another trustee,
30 but I'm not quite sure that's very helpful
31 either. So can we -- can we bring it back to
32 focus on what the -- the impact on the teacher in
33 these meetings?

34 CNSL A. TOM: Absolutely. Yeah.

35 Q Teacher A, can you tell us about how the
36 continued legacy -- first let me ask you what you
37 mean by the continued legacy.

38 A Yeah. I think that when you're in a position of
39 power like Barry was on -- on the school board,
40 it -- it offers an opportunity for other people
41 to be emboldened by some of the -- some of the
42 comments that he made.

43 CNSL J. KITCHEN: I'm -- I'm so sorry. I've had this
44 problem with Teams because of whatever --
45 whatever got buggered up here at the beginning of
46 the week, but I -- I missed about five or six
47 seconds there, and they might have been

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Teacher A (for Complainant)
in chief by Cnsl A. Tom

1 important. So I'm just going to please ask if
2 she could repeat herself in any way that she
3 wants.
4 A So what -- I was saying that the -- the ongoing
5 comments that Barry had made, particularly on --
6 in these Facebook posts but also in person,
7 emboldened the wider community to -- to do the
8 same. And that ripple effect went through the
9 board, through the people viewing, into the
10 schools, into the broader community.
11 CNSL A. TOM:
12 Q And you said that you had recently attended your
13 first board meeting in person.
14 A Yes.
15 Q Can you tell us about what difference, if any,
16 there is between going there in person now versus
17 your experience of watching them while
18 Mr. Neufeld was a trustee?
19 A Well, the one I went to I think was half an hour.
20 It was very quick. They got through the agenda
21 very quickly. It was positive. It was
22 uneventful in a good way. There was no
23 protesting. It was very peaceful.
24 Q I want to circle back to some -- some of
25 Mr. Neufeld's statements and ask you to answer
26 some questions about them. These ones are
27 slightly different in that you'll see what -- how
28 they're different. But I'm just going to
29 screen-share now. I'm going to the Book of
30 Documents Re Statements and Publications at
31 Tab 11. Do you recall seeing this post?
32 A Looks familiar, yes.
33 Q In particular, can you tell us about your
34 reaction to this highlighted paragraph?
35 A I mean, it's another example of -- of a very
36 thinly veiled comment that teachers are groomers.
37 It's disregarding the work that this teacher is
38 doing. Hang on. I'm just trying to -- it's very
39 small print.
40 Q I'm just going to enlarge it here for you.
41 A This is not the post that I thought it was. No,
42 I did not -- this one -- I don't recall seeing
43 this one.
44 Q I'm going to take you to another post, ask you
45 some questions. This is at Tab 12, and the
46 page number at the top is 87. The page number in
47 the PDF is 39. Do you recall seeing this post?

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Teacher A (for Complainant)
in chief by Cnsl A. Tom

1 A Yeah, I think so. Looks familiar.

2 Q In particular, do you recall seeing this
3 paragraph that's highlighted?

4 A Yes, I do recall this and conversations that came
5 out of it.

6 Q Can you tell us what your reaction to that
7 particular paragraph was?

8 A Yeah. It was -- I mean, the -- the rhetoric that
9 both Barry and -- and Heather Maahs upheld was
10 ultimately harmful not only to queer teachers but
11 parents of queer students, allies in the
12 community. I think that the traditional values
13 that are being touted in many of these posts are
14 also meant to imply that same-sex marriages or
15 same-gender marriages are not as valued as
16 heterosexual marriages or families.

17 I think that's one of the things that SOGI
18 sought to do, was to open up those conversations
19 and reflect what society actually looks like,
20 which is that some same-gender people are
21 married. They're great parents. Their families
22 are strong. The implications that many of these
23 posts make are very, very upsetting to me in
24 general because I do have a wife, and I don't
25 think that I'm any less qualified to raise
26 children than the heterosexual people in this
27 community.

28 Q I'm not going to ask you about your -- the impact
29 on your family, but, rather, the impact on you as
30 a parent and your status as a parent and a
31 teacher in this district.

32 A Yeah. I think that it is really upsetting that
33 for a long time, for too long, I couldn't be the
34 teacher that I would have wanted for my children
35 out of fear because of the political climate in
36 Chilliwack that Barry helped to create. The --
37 watching my children -- watching my children have
38 teachers who were out in the past was really
39 wonderful and one of the reasons that I was able
40 to get to where I am now. Watching them interact
41 with -- with people who had that strength,
42 watching students feel that connection and
43 support.

44 Q Why do you say that you weren't able to be the
45 teacher that you wanted to be?

46 A Because I was afraid. I was afraid. I wasn't --
47 I didn't feel like I could be my authentic self

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Teacher A (for Complainant)
in chief by Cnsl A. Tom

1 as a teacher and, you know, still -- still have a
2 job or still have connections within the school.
3 And although I was never fired, there were
4 definitely situations that made that -- that ran
5 true in that there were relationships that were
6 severed when I came out. There were very
7 uncomfortable instances in my place of work.

8 Q And why is it important to be able to be your
9 authentic self as a teacher?

10 A Because I think that teachers teach with their
11 heart, and a lot of our personality goes into --
12 into that. And without being able to be our
13 authentic self, you're not really able to show up
14 fully. I think that the -- the youth in our
15 schools right now need to see out teachers,
16 authentic teachers who are going to show up every
17 day, even if it's uncomfortable, and show them
18 that they can grow up and be teachers if they
19 want, or wherever their path might take them.
20 They can show up authentically in the world as
21 well.

22 Q Something you touched on earlier was that
23 Mr. Neufeld's role in leadership was -- was
24 important in -- in how impactful his statements
25 were. Can you just expand on that a little bit?

26 A Yeah. I think that as a person in power and, you
27 know, trustees, teachers, other people in the
28 educational system, we're bound by -- by the
29 Charter of Rights and Freedoms. We are bound by
30 professional standards and ethical standards.
31 We -- we don't get to pick and choose who we show
32 up for. And when you have a platform like that,
33 it comes with a lot of responsibility, and that
34 responsibility means that you're not creating
35 unsafe spaces for people.

36 Q In your experience, how did Barry's statements
37 create an unsafe space?

38 A The -- the political climate that's created when
39 a person in power makes not only suggestive but,
40 you know, outright harmful comments about queer
41 and trans people, that -- it has a ripple effect.
42 It makes other people feel like they can say the
43 same things. That creates an unsafe space. If I
44 can't go into a space and feel just as -- as
45 comfortable and -- and secure there as a, you
46 know, cis heterosexual person, that's creating a
47 space that's not safe. If...

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Teacher A (for Complainant)
in chief by Cnsl A. Tom

1 Q And so is there a difference in your mind between
2 Mr. Neufeld making his comments during the time
3 when he was a trustee versus if he were to make
4 the same kinds of statements now?

5 A I mean, I would -- I would feel like they were
6 equally as upsetting to -- to hear, but I think
7 that -- yeah, I think that when you're in a
8 position of power, you -- and you have a platform
9 and an audience and you know that people follow
10 you, it's your responsibility to -- to feed the
11 good wolf; right? To give energy to good instead
12 of spreading misinformation and creating toxicity
13 and mistrust around teachers.

14 I think that suggesting that teachers want
15 anything but the best for their students is not
16 helpful to anybody. And we certainly don't do
17 this for the money. We -- it's a lot of extra
18 work. As I said, we teach with our hearts.

19 Q I want to ask you a couple of more questions.
20 Have you felt any concerns about appearing as a
21 witness in this matter?

22 A Yes. Many.

23 Q Can you tell us about those?

24 A Yeah. Well, the -- the first one is having to
25 relieve a lot of these things. That's not
26 enjoyable. But also the -- the real fear of
27 being attacked, you know, whether that's verbally
28 or physically. We've definitely seen an upswing
29 in violence against queer, trans, Two-Spirit,
30 nonbinary people, and this is no exception to
31 that. There's definitely an opportunity to
32 target me, target my family. So it definitely
33 was a careful and very weighted decision.

34 Q And what tipped that scale in favour of
35 appearing?

36 A Ultimately, there needs to be accountability.
37 It's important for people to know that they can't
38 say harmful things that creates fear and mistrust
39 and -- and, yeah, I think that there needs to be
40 accountability. We need to make sure that this
41 doesn't happen again. And I don't know another
42 way than putting it all on the line and appearing
43 here. I also feel like it's the least I could do
44 for my community.

45 Q What do you mean by that?

46 A I mean there's -- there's people dying in this
47 community, and more children especially will

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1 continue to die if we deny gender-affirming care,
2 which is a lot of -- many of these comments made
3 by Barry point to that being, you know, the --
4 the ultimate goal. So if I am uncomfortable for
5 an afternoon or a couple of days, then that's the
6 least I could do.

7 CNSL A. TOM: Those are all my questions. Noting the
8 time and expecting that Mr. Kitchen will not
9 finish cross-examination in half an hour and -- I
10 wonder if it would be okay to end the day here.

11 THE CHAIR: Mr. Kitchen, do you have a view?

12 CNSL J. KITCHEN: Well, I'm glad we agree to that, but
13 I still don't know yet if you're going to admit
14 the expert. If we had till the end of the day
15 Friday just to hear the teacher -- three teacher
16 witnesses, I would think that was great, but this
17 is -- I'm just going to check. It is Wednesday.
18 We've only got one more day left with teacher
19 witnesses. With the length of my cross that I
20 expect, we wouldn't get to number three at all
21 tomorrow. That would depend on who number two
22 and three is and how long they go and the things
23 they say, obviously, but if it's at all like this
24 one, there's no way we're going to get through
25 the third one. We may not even get through the
26 second one, which I -- which I think would be
27 fine. We'd get -- we would get through them by
28 the end of the day Friday, I think. If we have
29 Friday. But we may not have Friday because you
30 may let in the expert, and then -- and then the
31 expert can't come on Monday; right?

32 THE CHAIR: All right.

33 CNSL J. KITCHEN: I guess we'd have to stop with the
34 teachers and come back with the teachers next
35 Monday, and then we just -- you know, we -- we --
36 we wouldn't finish with my case, likely enough.

37 THE CHAIR: All right.

38 CNSL J. KITCHEN: So that's all. That's -- you know,
39 otherwise, I would say no problem; right?

40 THE CHAIR: Got it.

41 CNSL J. KITCHEN: And I don't really have concerns
42 about time, but I know -- I know it's important
43 to you. You said you really wanted to finish the
44 two weeks.

45 THE CHAIR: All right. Thank you.

46 CNSL J. KITCHEN: So it's a -- it's a half an hour.

47 THE CHAIR: Thank you.

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1 Teacher A, are you comfortable proceeding
2 for another half an hour, or would you rather we
3 stopped here for the day?

4 A I'd rather we stopped here for the day.

5 THE CHAIR: All right. We're going to stop here for
6 the day. I appreciate, Mr. Kitchen, you're
7 raising concerns about the schedule because, as
8 you know, I have set -- I want to make sure we
9 finish on time, but I think it's fine for us
10 to -- to stop here for the day with Teacher A.
11 I'm going to ask everyone to stay on the line for
12 a moment.

13 Teacher A, thank you for your evidence
14 today. I'm going to ask you to come back
15 tomorrow morning, please, at 9:30. At 9:30,
16 Mr. Kitchen is going to ask you his questions in
17 cross-examination. I am going to ask -- this is
18 going to apply kind of throughout your evidence
19 and afterwards -- that you please don't talk to
20 anyone who may be a witness in this proceeding
21 about your evidence. There may be people
22 testifying after you, and we want to make sure
23 that they're not being influenced by -- by
24 anything that has come before them. Okay? So
25 don't share anything about your evidence with
26 people who may be a witness, and we'll come
27 back -- you can come back tomorrow morning, and
28 Mr. Kitchen's going to ask you his questions.
29 Okay? Do you have any questions for me about the
30 process or next steps?

31 A No.

32 THE CHAIR: No. Okay. I'm going to remove you from
33 the meeting now, and I'll see you back here
34 tomorrow morning at 9:30. Thank you.

35 A Thank you.

36
37 (WITNESS STOOD DOWN)

38
39 THE CHAIR: I wonder -- I just need a couple of
40 minutes, and then I want to come back and deal
41 with a couple of things before we adjourn for the
42 day. So if you'll indulge us for a couple of
43 minutes, we're going to turn our cameras and mics
44 off, and we'll be right back.

45
46 (PROCEEDINGS ADJOURNED FOR RECESS) [4:0052]
47 (PROCEEDINGS RECONVENED) [4:01:51]

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1
2 CNSL L. WADDELL: This may or may not relate to the
3 things the tribunal wants to talk about, but we
4 just, in looking at the calendar for tomorrow,
5 realized that this witness is only available for
6 the morning. She's presenting on something in
7 the afternoon. So I don't know if -- if that's
8 going to be enough time for Mr. Kitchen to get
9 his cross in. I mean, it should, but I just
10 wanted to raise that, that they're only released
11 until, I'm going to guess, 1:00 or noon. Noon.
12 Okay.

13 THE CHAIR: Okay. Well, that gives us about three
14 hours, just under three hours, hopefully.

15 Mr. Kitchen, that's sufficient?

16 CNSL J. KITCHEN: Well, no, that's -- if we start at
17 9:30, it's only two and a half hours. Because
18 she -- she has to go at 12:00; is that right?
19 12:00, noon?

20 THE CHAIR: Oh, 12:00. Sorry. I thought you said
21 1:00.

22 CNSL L. WADDELL: I didn't -- I was looking at
23 Ms. Tom. I said 1:00 thinking it's a school;
24 that's when a presentation would start. But
25 these guys think it starts at noon. We can -- we
26 can confirm with the witness, but I just wanted
27 to alert, like, the -- i.e., pin down the precise
28 time, but it could be -- it could be 12:00; it
29 could be 12:30.

30 THE CHAIR: Do you know whether -- and I haven't
31 consulted with my co-panelists on this,
32 obviously, so with an asterisk, do you know
33 whether it might be possible to start half an
34 hour early at 9:00 if we're concerned about time?

35 CNSL L. WADDELL: That's not a problem on our -- yeah,
36 our -- on our end, and we can confirm with the --
37 well, she's under cross, but presumably you have
38 no -- Mr. Kitchen, you would be fine if we
39 inquired about whether she could be available
40 half an hour earlier?

41 CNSL J. KITCHEN: Can you -- well, yeah, but can
42 you -- can you confirm with her also right now,
43 if at all possible, what time she has to be done
44 at? I mean, that's helpful to know.

45 CNSL L. WADDELL: Yeah.

46 CNSL J. KITCHEN: Well, and furthermore, if she could
47 come back, I mean, I don't want to -- I don't

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1 want to split, but if there's a better -- a
2 better day for her, I -- let me say this: So
3 just -- I got -- I really didn't know the volume
4 of what you were going to get into; right? Like,
5 so I got about -- you know, and no matter what
6 side I'm -- on the case I'm on, this -- this is
7 valuable evidence. We're actually getting to
8 the -- we're getting to the meat of this. Okay.
9 I got about 12 pages of notes.

10 You know, one of the reasons I was so short
11 with -- with Mr. Klettke is I wasn't going to ask
12 him a lot of the detailed questions I asked
13 Mr. Hansman. I can see a lot of those same
14 questions, similar questions that I had to
15 Hansman, going to this witness, you know, plus --
16 plus all of this factual stuff I have to cross
17 on. So I am -- you know, I'm thinking three to
18 four hours. You know, and if there's objections
19 and she needs breaks and whatever, which I
20 want -- you know, I'd like to accommodate her
21 breaks if she needs them, you know, I -- you
22 know, and then this -- I mean this with all due
23 respect. If she's struggling in examination in
24 chief, which it seemed to me that she was, I
25 would expect her to struggle even more in cross,
26 no matter how kind I will be with her, and I will
27 try to be. So I expect some delay on that.

28 You know, so this could -- this could easily
29 turn into, you know, four or five hours total,
30 like, when we factor in all the breaks and all
31 the talking and all the objections. So we can
32 try to squeeze it in tomorrow morning. If
33 she's -- if she doesn't need to be out till 12:30
34 and we started at 8:30, that's four hours, you
35 know, and -- you know, and unless I'm -- unless I
36 got something that's really important I can't get
37 to and she has to come back for that, we can see
38 if we can squeeze it in in four hours. But I
39 think anything less than four hours, we're
40 pushing it.

41 THE CHAIR: All right. Well, she testified in direct
42 for two and a half hours. And you're proposing
43 not quite but almost double that in cross. And I
44 appreciate we don't know the pace yet of how
45 we're going to do this. I think that the best we
46 can do for now is to say that we'll start
47 tomorrow at 9:00. We can't start, unfortunately,

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1 tomorrow at 8:30, but we can start tomorrow at
2 9:00 and -- and see how far we can get. And if
3 worst comes to worst and she has to go and it's
4 in the middle of cross, we'll just cross that
5 bridge when we come to it. She may just need to
6 stand -- stay in cross and we'll find another
7 time for her to come so you can finish,
8 Mr. Kitchen. But I think that's probably the
9 best --

10 CNSL J. KITCHEN: That's --
11 THE CHAIR: -- we can do.

12 CNSL J. KITCHEN: Well, I'm okay, but -- but -- but I
13 need to -- I need to know up front is that
14 actually possible? Like, is it -- is it actually
15 possible for the witness to come back at some
16 point?

17 CNSL L. WADDELL: We don't know yet. We've just sent
18 a message. So --

19 CNSL J. KITCHEN: Okay.

20 CNSL L. WADDELL: -- we will advise when we find out.

21 CNSL J. KITCHEN: I don't mind holding off on my cross
22 and, like, with start with another teacher
23 witness and I -- you know, like, and we cross
24 this one at some other point that's better for
25 her schedule. I'm okay with that.

26 THE CHAIR: Okay.

27 CNSL J. KITCHEN: If that -- if that helps. Well, I'd
28 rather that, honestly, than having my cross split
29 up. I mean, if the cross gets split up, so be
30 it. I guess my -- my ultimate concern is that
31 I -- I can't -- I actually can't finish my cross
32 because she can't come back or, you know --
33 whatever. That's -- that's -- that's my -- I
34 need to be able to finish my cross. Not for 12
35 and a half hours. That's not what I mean. I
36 think that would be unreasonable. But I need to
37 be able to finish my cross if I'm three hours and
38 45 minutes in and there's -- there's still
39 something significant I need to get to.

40 So -- and -- and to your -- I take your
41 point, but with Mr. Hansman, I think we were an
42 hour and 15 minutes maybe in direct, and I was --
43 I had almost four hours in cross. And, I mean,
44 considering that the witness talked about -- that
45 doesn't surprise me at all. So I don't think
46 that's a good marker for saying, well, if they
47 were only two hours in direct, we shouldn't be

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1 any more than four in cross. I don't think
2 that's a really good -- a good gauge --

3 THE CHAIR: Okay.

4 CNSL J. KITCHEN: -- on that.

5 THE CHAIR: All right.

6 CNSL L. WADDELL: Well, so one -- one thing I --
7 sorry, Member Cousineau. If I could just say one
8 thing in response. So, you know, with -- with
9 Mr. Hansman, we just -- you know, it's cross. We
10 let my friend go pretty liberally on a whole
11 bunch of subjects that, in our view, have zero to
12 do with this case. We are not going to take the
13 same approach with the teacher witnesses. We
14 will be objecting to irrelevant evidence that
15 does not go -- is not attached to a legal issue
16 because there is absolutely no -- these are
17 not -- not people whose job it is to testify.

18 And so, you know, one potential way to
19 perhaps trim things is to deal with objections on
20 particular subjects before she starts on cross.
21 It could be written submissions overnight, have
22 the tribunal -- maybe the tribunal disagrees with
23 me on everything and you get to cross on all of
24 it, or maybe we -- you know, maybe the tribunal's
25 preference is to just deal with stuff as it comes
26 up. But I just -- I'm putting that out there as
27 please do not take the fact that, you know, we --
28 we took a sit back and let you go on for four
29 hours with Mr. Hansman as that we'll take the
30 same approach with the teacher witnesses. We
31 won't. We'll -- we'll really want it to be
32 focused. So --

33 CNSL J. KITCHEN: Well, I can -- look, I expect you to
34 guard those witnesses more, and I can appreciate
35 that. As I -- that's why I said we need time for
36 objections because I -- honestly, I would expect
37 more from you in this -- in these circumstances.
38 You'd get more from me. I get that. So that's
39 why I'm saying, you know, we need -- we need some
40 time, and we need to build in for that. It's not
41 a simple, like, this is going to be smooth. It
42 was smooth with Mr. Hansman. I mean, he's a
43 sophisticated witness; right? It's not going to
44 be smooth with this witness. So...

45 THE CHAIR: Is there any value in -- if it -- I'm
46 trying to wrestle a bit, Ms. Waddell, with your
47 suggestion that we could deal with some of these

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1 broad objections in advance. I don't know
2 whether you're able to kind of identify the
3 category of questions that you anticipate
4 objecting to. I mean, it's hard, of course, to
5 deal with objections in the abstract
6 hypothetical, but if there are categories of
7 questions that you know categorically you will
8 oppose, then maybe there's some prospect that we
9 could make some progress on that today. Can you
10 give us -- can you foreshadow where you're going
11 to have objections?

12 CNSL L. WADDELL: I think I need a tiny bit of time to
13 think about it, but what I could do -- and even
14 if the tribunal looks at it and just thinks it's
15 too complicated and you can't do it in advance,
16 I'm happy to, like, try and very quickly reduce
17 those to writing of just, like, a list of topics
18 that I expect we would object on and -- and send
19 it to both the tribunal and my friend. And, I
20 mean, he could reply in writing or we could
21 arrive early tomorrow and -- and talk through
22 them, and/or you might see them and say, no, I
23 think that's too complicated. We'll just have to
24 deal with them as they arise.

25 But if that's helpful, I'm happy to do that
26 without any expectation that you will actually
27 [indiscernible] in advance. I'm just trying to
28 think of any way to -- I don't -- I don't like
29 objecting and I don't want to do it a lot, but,
30 you know, as my friend indicates, you know, these
31 are -- are not folks who want to testify, so
32 we'll be taking a pretty aggressive approach
33 where relevance is concerned.

34 THE CHAIR: All right. I think that that may be
35 helpful, Ms. Waddell, if you could do that. I
36 mean, we'll see what we -- yeah.

37 Mr. Kitchen?

38 CNSL J. KITCHEN: I do think it's a good idea because
39 I have no idea what she's -- what -- what -- what
40 Ms. Waddell's going to give me, and she might --
41 she might give me stuff like, you know, you can't
42 ask her about her -- her sex life, to which I'm
43 going to say, absolutely not. I totally agree.
44 I totally agree. I'm not going to do that. So I
45 don't -- I don't know what my friend anticipates
46 that I'm going to do that's totally irrelevant.
47 She might anticipate I'm going to do all kinds of

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1 terrible things I'm not planning to do. But it
2 would be good to get that out of the way.

3 So that's helpful, but -- but you -- I
4 would -- and that's all it's useful for because
5 you can't rule on -- you can't rule on objections
6 categorically beforehand. I mean -- I mean,
7 it's -- from my perspective -- I know my friend's
8 saying, well, everything's irrelevant. I mean,
9 of course we say that about each other's cases.
10 I mean, you know, as far as I'm concerned, I
11 heard a lot of hurt feelings today, and that's
12 actually irrelevant to -- to the legal test. I
13 mean, straight off the commission's website.
14 Hurt feelings isn't enough; right? And that's
15 95 percent of what I heard.

16 So, you know, I mean, what she thinks is
17 relevant and what I think is relevant is
18 completely apart on a case like this. Of course
19 it is, right, considering the kind of case. So
20 you can't rule on objections beforehand. We have
21 to deal with them in -- in the moment. But --
22 but -- but having a list from my friend of, like,
23 like, I -- "Mr. Kitchen, I'd like to know if you
24 plan to do this because I'm not going to be okay
25 with this," I do think that's helpful. I will
26 respond to that, and maybe we can find some --
27 some consensus on things that are just, you
28 know -- relevance is not what I'm -- if my --
29 maybe my -- what my friend is concerned about is
30 not so much relevance but me just be abusing --
31 abusing the witness, and I -- you know, I want to
32 work with my friend on that because I have no
33 interest in abusing a witness's -- I'm going to
34 use the word fragile, and again I mean that with
35 respect. You know, I've had lots of fragile
36 witnesses, and I've had kids, and I've had all
37 the rest of it, and, you know, I -- I -- I -- you
38 know, I -- I'm going to go hard with a guy like
39 Hansman because he can handle it, but a witness
40 like this, you know, I'm going to -- I'm going to
41 ask hard questions, but, you know, I'm not going
42 to explore areas that shouldn't be explored
43 that's just going to upset her. There's no value
44 to that.

45 THE CHAIR: Thank you. That's -- that's good to hear.

46 All right. So, Ms. Waddell, if you could
47 send a list of anticipated objections, we'll take

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1 a look at it. I likely will agree with you,
2 Mr. Kitchen, that there's not likely to be big
3 things we can deal with in a vacuum, but if there
4 are categories that -- that make sense, maybe we
5 will. But let's plan to please start at 9:00.

6 As for the scheduling, and I know you need
7 to talk to the witness, I'm going to leave that
8 to you, and I'm sure you can communicate with
9 Mr. Kitchen about whether it's going to make more
10 sense for -- for Teacher A to come back and
11 complete cross in one sitting another day. So
12 you can work that out tonight, and we'll come
13 back to the -- to the schedule. We are a bit
14 behind, but I've seen worse. So I still remain
15 optimistic.

16 If we did want to give you -- we're now in a
17 position to give you our decision about the
18 expert witness. Not the full reasons, which we
19 expect will come to you if -- if the right people
20 are in the tribunal's office right now, we expect
21 to give you reasons tomorrow morning. But the
22 bottom-line decision is that we are admitting the
23 evidence of Dr. Saewyc, and she should be
24 prepared to come and testify on Friday. We would
25 hope and expect that the complainant's direct
26 examination could conclude within two hours, and
27 then the intervenor can have a few minutes if
28 necessary, and we can -- we'll deal with this
29 issue of cross versus direct versus how the
30 questions are going to be asked. And then the
31 remainder of the time the -- most of the
32 remainder of the time will be for you,
33 Mr. Kitchen, leaving a few minutes for reply.

34 CNSL J. KITCHEN: Are we going to -- are we going to
35 start at 9:00 on Friday?

36 THE CHAIR: If the parties think that's necessary to
37 ensure that we finish -- let me just make sure my
38 co-panelists can do this. Yeah, that's fine.
39 Then we can do that. Yeah.

40 CNSL J. KITCHEN: Yeah. Because that witness can't
41 come back. Like, we don't --

42 THE CHAIR: Right.

43 CNSL J. KITCHEN: We already know she can't come back.

44 THE CHAIR: Yeah. So we can start at 9:00 on Friday
45 as well. And like I said, we have put together
46 some reasons, but we just need a few key staff to
47 help us put them out in the world.

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1 Yes, Mr. Kitchen.
2 CNSL J. KITCHEN: You're admitting the entire report.
3 You're not going to strike any portions of it?
4 THE CHAIR: That's right. Yeah.
5 CNSL J. KITCHEN: Okay.
6 THE CHAIR: Okay. Anything else before we adjourn for
7 the day? Ms. Waddell?
8 CNSL L. WADDELL: I just thought you said that the
9 tribunal had a couple of things. Or was the
10 other thing scheduling? Maybe we've already
11 addressed it.
12 THE CHAIR: I think it was scheduling.
13 CNSL L. WADDELL: Or maybe I misheard. Okay.
14 THE CHAIR: Check my notes. Am I forgetting anything?
15 No? No? Okay. No, nothing else. Thank you.
16 Mr. Kitchen, anything else?
17 CNSL J. KITCHEN: I have a -- I have a witness
18 that's -- that was supposed to go Monday because
19 he's a teacher and he has to take a day off.
20 That's obviously not going to happen. We're
21 going to -- we're going to -- we're going to
22 clearly still be with the -- the -- the
23 complainant's case come Monday. So we'll -- I --
24 yeah, I'm just -- I'm just saying I'll have to --
25 we'll have to -- I'm going to sort out how I'm
26 going to -- I'll have to change my schedule, in
27 other words. That's what I'm trying to -- I'll
28 have to change my schedule because we're -- I'm
29 clearly not starting until at least Tuesday next
30 week, so -- which is fine. I'm just -- you know,
31 I'm going to have to move things around.
32 THE CHAIR: Okay. And, I mean, as you do that, if
33 there are people whose schedules are more rigid,
34 then I'm sure we'll work with you to accommodate.
35 You know, if certain people have more limited
36 availability, we can -- we can work with you on
37 that. But we'll have a better idea, obviously,
38 at the end of the day tomorrow where we're at and
39 how -- how much time we're likely to need next
40 week for the complainant's case.
41 CNSL J. KITCHEN: Okay.
42 THE CHAIR: Okay. Ms. Sokolova, anything on your end?
43 CNSL M. SOKOLOVA: No, that sounds good to me. Thank
44 you.
45 THE CHAIR: Okay. All right. Thank you, everyone,
46 for your work today. I'm going to remove you
47 from the meeting, and we are back here tomorrow

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Reporter's certificate

1 at 9:00. Thank you.

2
3 (PROCEEDINGS ADJOURNED TO NOVEMBER 28, 2024,
4 AT 9:00 A.M.) [4:17:13]
5
6
7

8 REPORTER'S CERTIFICATE
9

10 I certify that this is a true and accurate
11 transcript of these proceedings recorded on sound
12 recording apparatus, transcribed to the best of
13 my skill and ability in accordance with
14 applicable standards.
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File: CS-003172

**IN THE MATTER OF THE *HUMAN RIGHTS CODE*,
RSBC 1996, C. 2010 (as amended)**

**AND IN THE MATTER of a complaint before
The British Columbia Human Rights Tribunal**

BETWEEN:

British Columbia Teachers' Federation obo Chilliwack
Teachers' Association

COMPLAINANT

AND:

Barry Neufeld

RESPONDENT

AND:

B.C.'s Human Rights Commissioner

INTERVENOR

**PROCEEDINGS AT B.C. HUMAN RIGHTS TRIBUNAL HEARING
(VOLUME IV)**

ORIGINAL

THERE IS A PUBLICATION BAN IN EFFECT PROHIBITING THE
PUBLICATION OF ANY INFORMATION THAT COULD IDENTIFY THE
TEACHERS WHO TESTIFIED, OR MAY HAVE TESTIFIED, IN
CONNECTION WITH THIS COMPLAINT: CHILLIWACK TEACHERS'
ASSOCIATION V. NEUFELD (NO. 2), 2024 BCHRT 180 [CTA
(NO. 2)]; AMENDED BY LETTER DATED FEBRUARY 25, 2025.

File: CS-003172

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RESPONDENT

AND:

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INTERVENOR

**PROCEEDINGS AT B.C. HUMAN RIGHTS TRIBUNAL HEARING
(VOLUME IV)**

ORIGINAL

Tribunal Members:	Devyn Cousineau, Robin Dean, Laila Said Alam
Counsel for the Complainant:	Lindsay Waddell, Alanna Tom, Stefanie Quelch, Chris Fenje
Counsel for the Respondent:	James S.M. Kitchen
Counsel for BC's Human Rights Commissioner:	Sarah Khan, Maria Sokolova

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By videoconference
November 28, 2024

(VIDEOCONFERENCE COMMENCES) [9:05:50]

THE CHAIR: [Recording commences] -- Robin Dean and Member Laila Alam. We are the panel that's been designated to hear and decide the human rights complaint that I named at the beginning of the proceeding today. I'm going to let you know a little bit about who's on the call and what the rules and expectations are for folks on the call. You should see a few people on video. You should see a room called "complainant's counsel." These may be people you know. Lindsay Waddell, Alanna Tom, and Stefanie Quelch are counsel for the BCTA and Chilliwack Teachers' Association. You should see Reid Clark, who's an instructing client from the Chilliwack Teachers' Association, and Robin Tosczak, who's an instructing client from the BCTF.

Then you should -- you've seen and already heard from James Kitchen, who is counsel for Mr. Neufeld. When Mr. Neufeld arrives, he will also be on video, but he has not signed in yet this morning. And then, finally, the last person that you should see on video is Maria Sokolova. She is counsel for the intervenor, B.C.'s office of the Human Rights Commissioner.

So those are all of the participants in the complaint and the only people with -- with full video access to the proceeding. We also have a number of members of the public who are joining and observing by audio. So they are on audio -- have audio access to the proceeding. Everyone who is joining by audio has been disclosed to the parties just in case there's any concerns or objections and also has agreed to and are required to follow the tribunal's terms and concerns for observing a virtual hearing, which include no recording of any kind.

We at the Human Rights Tribunal are recording the proceeding. This is the official record of the proceeding and will be used only for purposes related to this -- resolving this complaint.

This is now for everyone's benefit. I'll

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1 remind everyone there's a publication ban in this
2 complaint prohibiting the publication of names or
3 information that could identify the teachers
4 giving evidence in this proceeding or who may
5 testify in this proceeding, and that includes the
6 witness this morning.

7 In order to add an extra layer of protection
8 for the teacher witnesses, we are not using your
9 name. We are -- you are Teacher B. So we're not
10 trying to be impersonal, but that's why we're not
11 using your name. It's a bit awkward. So I can't
12 promise there won't be the occasional slip, but
13 we're all committed to doing our best, and you'll
14 be Teacher B.

15 Do you have any questions for me about the
16 process or who's on the call so far? Okay.
17 You're muted, but I could read your lips saying
18 "I don't think so." See if you can unmute. You
19 should be able to see at the top of the screen an
20 icon that says "mic," and if -- if you press
21 that, it should unmute you. I can't do it on my
22 end, I don't think, unfortunately.

23 CNSL L. WADDELL: We can take a -- why don't we take a
24 minute if we can -- can we call the witness and
25 just see if we can chat her through it?

26 THE CHAIR: Yeah.

27 CNSL L. WADDELL: Okay.

28 THE CHAIR: Go ahead. We'll just wait.

29 CNSL L. WADDELL: Thanks.

30 THE CHAIR: Thank you.

31 CNSL L. WADDELL: Yeah.

32 TEACHER B: Did you hear -- can you hear me now?

33 THE CHAIR: Yes.

34 TEACHER B: Yay. Sorry about that.

35 THE CHAIR: Yes.

36 TEACHER B: I'm not that good with Apple.

37 THE CHAIR: No, that's -- that's fine. Thank you.

38 Great. First technological challenge out of the
39 way. There's always something. All right. So
40 we've gone over who's on the call. And in terms
41 of what to expect this morning, as you probably
42 know, you're going to be answering questions from
43 complainant's counsel and then -- and then
44 answering questions from Mr. Kitchen. We're --
45 I'm going to propose we take a 15-minute break
46 around 10:45, but if you need other breaks before
47 then, you can let us know. All right. I would

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Teacher B (for Complainant)
in chief by Cnsl A. Tom

1 normally now ask you to spell your full name for
2 the record, but I'm not going to do that, as we
3 discussed, but I will ask what pronouns you'd
4 like us to use.

5 TEACHER B: I go by she or they. So either.

6 THE CHAIR: Okay. Thank you. All right. And now I'm
7 going to ask you to take this oath to tell the
8 truth.
9

10 TEACHER B, a witness called
11 for the Complainant,
12 affirmed.
13

14 THE CHAIR: Thank you. The complainant's counsel will
15 ask you questions now.
16 Go ahead.
17

18 EXAMINATION IN CHIEF BY CNSL A. TOM:
19

20 Q Teacher B, can you just tell us how you identify?
21 A So I usually go by she or they. I use the they
22 to try and make everyone feel comfortable with
23 using either/or.

24 Q And what's your profession?

25 A I'm a teacher at a middle school here in
26 Chilliwack.

27 Q And when did you start teaching?

28 A So I got my degree in 2004, and by 2005 -- or I
29 think it was 2004 I actually started TOCing in
30 Surrey.

31 Q And TOCing, just for everybody's benefit, stands
32 for?

33 A Oh, sorry. Teachers on call. Teaching -- being
34 a substitute teacher.

35 Q All right. And so you said you started in Surrey
36 teaching on call. And where did you -- where
37 have you worked since then?

38 A So I --

39 Q Which districts? Not schools. Sorry.

40 A Yes. I moved from Surrey in 2006 to Chilliwack
41 because I was with my wife, and so we wanted to
42 put down roots here.

43 Q And have you stayed in the Chilliwack school
44 district since 2006?

45 A Okay. So I went to Fraser Cascade for a couple
46 of years because when I -- after I had my kids
47 when I came back, I ended up getting a job in

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Teacher B (for Complainant)
in chief by Cnsl A. Tom

1 Fraser Cascade. And then I ended up back in
2 Chilliwack in -- I can't remember right now off
3 the top of my head. 2017, 2018 is when I came
4 back to Chilliwack, I believe. Yeah.
5 Q So you said that you came back to teaching after
6 having your kids. Did you take a long break to
7 have your kids, or how long was your break from
8 teaching?
9 A It was about three years. I kind of figured I
10 was going to leave teaching and become a
11 stay-at-home mom. So it wasn't until, like, 2013
12 when I started going back to teaching.
13 Q Teacher B, do you know who Mr. Neufeld is?
14 A Yes. I met him when I moved into my house, and
15 he was our direct neighbour.
16 Q And when was that?
17 A I think it was two thousand -- oh, gosh. [REDACTED]
18 (phonetic) was born, so it was 2013 -- no,
19 2014, I think. Yeah.
20 Q Did you know that Mr. Neufeld was a school board
21 trustee for the Chilliwack School District at
22 that time?
23 A I knew, but it didn't really mean anything to me.
24 I didn't work in the Chilliwack district at that
25 point.
26 Q And did you ever see any comments or statements
27 that Mr. Neufeld made online?
28 A So the original comments were in October, and I
29 remember it coming out on my -- I was in
30 Inclusion Chilliwack, and then I was also
31 following the Chilliwack Progress on Facebook.
32 So I saw that he was calling anybody that
33 supported queer kids an abuser. And -- and it
34 was, like -- it was really devastating because I
35 honestly didn't know he was like that. He seemed
36 like a really nice, kind neighbour who would
37 shovel the snow for us sometimes.
38 Q I just want to take you to one of these posts.
39 So I'm going to share my screen now. And this is
40 at the Book of Documents Re Statements and
41 Publications, and it's at Tab 1. I'm going to
42 make that bigger just so that you can see the
43 text. Is this the post that you recognize from
44 October?
45 A Yeah.
46 Q And I just want to take you to this highlighted
47 paragraph here where it starts with "I have to

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Teacher B (for Complainant)
in chief by Cnsl A. Tom

1 say that I support traditional family values."
2 A So this one he -- he pretty much -- this is what
3 I was saying where he says for allowing little
4 children to change gender is nothing short of
5 child abuse. So that was like -- even though it
6 wasn't specifically towards me, it was towards
7 people in my circle.
8 Q And I just want to highlight this last sentence
9 of the highlighted paragraph, "children are being
10 taught that heterosexual marriage is no longer
11 the norm." Can you --
12 A That's not true.
13 Q -- tell -- can you just tell us about the impact
14 of that statement on you?
15 A It's frustrating because it's facts that are,
16 like -- can I see the post again you've
17 submitted?
18 Q Yes. Sorry.
19 A Because I was like -- there we go. Okay. So
20 calling it a biologically absurd theory and that
21 the -- that heterosexual marriage is no longer
22 the norm, it is still the norm. And, yeah, it's
23 just, like, information. We're not, you know,
24 trying to get children to change. We just want
25 them to be themselves. But I live in a
26 nonheterosexual marriage, so it's -- it's not
27 that it's the norm, but it's normal.
28 Q Did you make the connection that that's -- that
29 this person who had made this post was your
30 neighbour?
31 A Yeah. Yeah. I was sitting on my computer that
32 night, like, super devastated. I just -- I guess
33 I thought he was a nice old man, and it turned
34 out that he had a whole lot of hate.
35 Q Did you have any in-person contact with
36 Mr. Neufeld following that post?
37 A So it was actually late at night, I think,
38 because my wife had already gone to bed when
39 someone knocked on my door. And I went over, and
40 it was him at the front door. And he first
41 started, like, asking me where my wife was and
42 being, like, "Oh, I just borrowed her ladder the
43 other day when I locked myself out of my house."
44 And I was like, okay. And then he's, like, "So I
45 guess you've seen what's online, and I wanted you
46 to know that I'm not going to bring protesters to
47 your house." And that was kind of upsetting to

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Teacher B (for Complainant)
in chief by Cnsl A. Tom

1 me because it didn't even occur to me that
2 someone would send protesters to someone's house.
3 And when he finished saying how it was -- it
4 was, like, around the time when he said my -- not
5 beliefs, but my way of life. There it is. Okay.
6 So he was like, "I don't have a problem with you
7 or your way of life," and that was when I kind
8 of, like, was like, do you even know that I'm a
9 teacher? Because, like, I knew he knew I was
10 gay, but I didn't talk to him enough that he knew
11 I was a teacher. And was like, "What you said
12 isn't okay. I work with transgender youth and
13 adults, and I was friends, and what you said
14 isn't okay." And I closed the door.

15 Q Did protesters ever come to your house?

16 A "Protesters" may be a little strong of a word,
17 but after that incident, I had multiple people
18 from the anti-SOGI movement knocking on my door,
19 lost, trying to find his house. And yes, our
20 complex is quite confusing, the numbers, but it
21 only happened for that year, and it happened
22 weekly where, like, Heather Maas would knock on
23 my door and be like, "Oh, is Barry here?" And I
24 was like, "No. Next door." And it was upset --
25 it's upsetting to the point where I struggled to
26 actually open my door anymore to strangers
27 because I never know what they're thinking or
28 going to say.

29 Q How did you know they were anti-SOGI people?

30 A I followed the Inclusion Chilliwack and the
31 Inclusion B.C. websites or Facebook groups, and I
32 followed the Chilliwack Progress newspaper quite
33 closely on Facebook. But -- yeah, when we used
34 to get it.

35 Q So you recognized them by sight as people --

36 A Yeah.

37 Q -- who were being -- okay. Did you ever have any
38 in-person contact with Mr. Neufeld after him
39 knocking on your door that one evening?

40 CNSL J. KITCHEN: I'm really sorry. I got booted out
41 again. Ms. Tom, I'd just ask you to repeat the
42 beginning part of your question. Sorry.

43 CNSL A. TOM: Sure. No, that's fine.

44 Q Did you ever have any in-person contact with
45 Mr. Neufeld after him knocking on your door that
46 evening?

47 A No. I avoided him as much as possible, like,

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1 looking out my windows to make sure he wasn't
2 wandering around because I just didn't want to
3 deal with it.

4 Q I wanted to take you to some additional posts,
5 and I just want to ask first whether or not there
6 are any particular statements from Mr. Neufeld
7 that stand out to you in particular.

8 A So the posts I remember specifically are usually
9 surrounding autism or special needs kids, posts
10 that are, like, talking about chopping off parts
11 of children's bodies and accusing SOGI reps of,
12 like, supporting that kind of thing. And I am my
13 school's SOGI rep, and it's absolutely not true.

14 Q I'm going to share my screen now, and I'm going
15 to take you to the Book of Documents Re
16 Statements and Publications at Tab 29 -- sorry --
17 Tab 15. Make this a bit bigger because that's
18 tiny. Is this the post you recall about autism?

19 A It's -- it's one of the posts. And this is
20 probably the most upsetting of the posts. There
21 was multiple things said in this -- the post that
22 was very upsetting.

23 Q I want to take you to a couple of highlighted
24 paragraphs here. So the first one is up here
25 where it starts with:

26
27 The only reason I spoke out against the
28 learning resources included in
29 SOGI 1 2 3 is because of my concern to
30 keep vulnerable children safe from an
31 untried social experiment.

32
33 A It's -- the SOGI resources are quite useful and
34 helpful, and I'm absolutely positive that it does
35 not experiment with children. It pretty much
36 just gives information.

37 Q Can you tell us about the impact of the next
38 statement here where it says:

39
40 But what is so tragic and ironic is
41 that a large proportion of kids who
42 present as gender dysphoric are
43 actually on the autism spectrum.

44
45 A Yeah. So out of the five people in my house,
46 four of us have autism diagnoses. So it's not --
47 he didn't just hit me on the being queer front;

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1 he also was talking about autistic people quite a
2 bit. And I believe this article was the one that
3 goes on to be like -- that you -- teachers and
4 people are confusing gender identity and autism.
5 Yeah, there:

6
7 These children are mostly autistic, not
8 gender dysphoric. It is -- it is
9 disturbed and mentally ill children,
10 especially autistic,
11 obsessive-compulsive, sexual abuse
12 survivors, and post-traumatic stress
13 syndrome kids that I'm worried about.
14

15 Autistic people are people. We -- our gender --
16 our gender identity is not that -- not different
17 than a typical person's. You can't mistake
18 autism signs and gender dysphoria. They're quite
19 different things.

20 Q Is this also the post referencing chopping off
21 perfectly good body parts?

22 A There was a number of them that kept talking
23 about chopping off body parts. I don't know
24 where this idea of us doing that or supporting
25 that in schools came from. We encourage people
26 to be themselves. We -- like, it's just -- he's
27 taking it to this, like, sexual level that it's
28 really not part of.

29 Q Can you tell us about the impact of this post on
30 you?

31 A So this post was very -- it hit home almost more
32 than the queer posts because I know how -- well,
33 because I have three children that all have
34 diagnoses and struggle and it made fun of. And
35 an adult, especially an adult that's supposed to
36 be a leader in our community, shouldn't be
37 spouting stuff about body parts getting chopped
38 off. Like, it's not even a -- a consideration in
39 middle and high school.

40 Q I'm going to take you to another post here, and
41 this is at Tab 11 of the same book of documents.
42 This -- do you recall seeing this post?

43 A Yeah. Yeah. Because I believe this lady, this
44 Kathy Jones, was quite involved in most of the
45 progress and stuff. Because, like, I remember it
46 mostly because of her face. So this Kathy Jones
47 looked critically at SOGI 1 2 3 primary, saying

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1 so, that it promotes same-sex marriages,
2 traditional marriage -- "question traditional
3 marriage, teach children to question traditional
4 gender expectations, disrespect and dishonour to
5 parents and the values they teach." And so;
6 yeah, so it's not just the highlighted, but,
7 like, promoting is -- is not what we do. We're
8 saying these are the families that are out there,
9 and this is what it looks like, but we don't say
10 "everybody should go do that right now." No.
11 But for me, the part that upset me the most
12 wasn't even the part you've highlighted. It's,
13 like, the line directly under it where he talks
14 about sodomy being taught in SOGI 1 2 3. And I
15 don't know where that even came from, honestly.
16 It's upsetting because I know the SOGI curriculum
17 so well that it's just -- it's not true.
18 Q And what's the impact of having these statements
19 said by someone who, as you say, is a leader in
20 the community about the curriculum and the
21 lessons and resources that you know as
22 SOGI 1 2 3?
23 A I'm sorry. Can you repeat the question?
24 Q Sure. What's the impact of a leader in the
25 community putting out statements like this about
26 the lessons and the resources included in
27 SOGI 1 2 3?
28 A It's very frustrating. Parents read this stuff,
29 and they think what he's saying is actually true.
30 It's -- it's upsetting because I know the
31 curriculum was very well thought of and very
32 highly researched, the SOGI 1 2 3 stuff. It's
33 just resources. It's great resources. And why
34 can't we be okay with traditional marriage and
35 gay marriage? Because, like, everybody is
36 acceptable in school, and this is showing that he
37 says these people are wrong.
38 Q I'm going to take you to another post here.
39 We're going to go to Tab 12. I'll just increase
40 this here. Do you recall seeing this post?
41 A Yes.
42 Q I'll increase it a little bit more. That's --
43 A I remember this post because I was watching
44 the -- the election, all the stuff online, and
45 this was shared then.
46 Q I'm going to scroll down to this highlighted
47 paragraph here. Can you tell us about the impact

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1 of this statement on you?

2 A It's -- it's again talking about how heterosexual
3 marriage isn't the norm. In my experience, it's
4 very typical. If not, we're -- what are we going
5 to replace it with, well, we don't need to
6 replace it. We can just have -- all of the
7 different types of families are allowed. And
8 saying it's unscientific ideology of nonbinary
9 gender? It's -- it's a natural thing in our
10 world that's, like, how can you say it's not the
11 norm and it's unscientific? It's -- it's not --
12 like, I find his posts quite ridiculous,
13 especially as a person who goes by nonbinary
14 pronouns.

15 Q I'll take you to another post here. This is at
16 Tab 26 of the same book. Do you recall seeing
17 this post?

18 A I actually really vividly remember this crossing
19 my -- my timeline because I was just -- just so
20 floored by the whole story. And then his
21 comments on the story was, like -- so, like, he
22 says, "She's probably already modified, damaged
23 her body so much that she can never have children
24 unless her breasts are useless." Again, the
25 obsession with body parts. "She'll probably
26 threaten suicide," which to me is like raising it
27 to a whole new level of upsetting. Sorry. And
28 like I said before, it's not something that we
29 deal with in schools. That is something that's
30 very private, and we're not chopping breasts off.

31 Q I'm going to take you to one last post. This is
32 at Tab 46, so at page 297 in the Bates numbering
33 and page 173 of the PDF.

34 A So I remember this one quite vividly because it
35 compares -- so I'm going to read the line first
36 before I talk about it:

37
38 While it is tragic that so many
39 children were abused in residential
40 schools years ago, there are probably
41 more victims in our public schools in
42 today's sexually-charged school
43 environments.

44
45 Q Can you talk about the impact of -- of a
46 statement like that?

47 A As a teacher with our curriculum which worked

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1 really, really, really hard to include Indigenous
2 goals and stuff in it, this is disgusting to
3 compare residential school survivors to victims
4 he doesn't even know about. Like, who -- it just
5 says victims in our public schools and talks
6 about it being sexually charged. I've never
7 experienced that myself. And it's ridiculous
8 that he would compare the residential school
9 children who were very, very seriously hurt and
10 killed to imaginary queer people.
11 Q Can you tell us about how you learned of -- of
12 the post?
13 A So I think I already said that I saw it on
14 Facebook and in the Chilliwack Progress. And in
15 the Chilliwack Inclusion group, actually, people
16 would share some of his things that he would say,
17 and I believe that's how I would come across
18 them.
19 Q And when the statements were being made, did
20 these have an impact on your experience in the
21 workplace?
22 A He created this culture where it was okay to say
23 extremely inappropriate things. I've had
24 multiple other teachers feel -- feel like they
25 can say the same kind of stuff he's saying as a
26 leader in our community and as a leader in our
27 school district.
28 Sorry. Can you repeat the question?
29 Q Sure. Did the statements have an impact on you
30 in your workplace?
31 A Yeah. Okay. And it also embrazened (verbatim)
32 children. So children started saying slurs in
33 the hallways, and I've had arguments with other
34 teachers. It's -- so I've worked in three
35 different districts, and the atmosphere in the
36 Chilliwack district is -- it's very different
37 than, like, Fraser Cascade or Surrey.
38 Q Can you tell us what you mean by how the -- the
39 environment is different or the atmosphere is
40 different?
41 A So when I was working in Surrey, there were,
42 like, posters up everywhere. That's when all the
43 kids were saying "that's so gay" as a bad thing,
44 and there was, like, posters inside our staff
45 room and on doors for the kids to see about not
46 using it that way and that, you know, you
47 shouldn't equate it to a negative thing.

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1 And then when I went to Fraser Cascade, I
2 was floored in a good way because every single
3 school I walked in had rainbow flags at every
4 entryway. There were poster boards saying
5 "support gay marriage," and there was, like --
6 there was GSAs.

7 And it -- and then coming back to
8 Chilliwack, it's not the same. Like, there's no
9 flags. There's -- yeah. I've had -- so one time
10 when I -- yeah.

11 Q Do you want us to take a couple minutes for a
12 break?

13 A Yes, please.

14 THE CHAIR: Okay. We'll just turn our cameras and
15 mics off. We'll come back in five minutes, and
16 if you need more time, you can let us know.
17 Okay? Turn your camera and mic off and take a
18 few minutes. Thank you.

19
20 (WITNESS STOOD DOWN)

21
22 (PROCEEDINGS ADJOURNED FOR RECESS) [9:43:33]

23 (PROCEEDINGS RECONVENED) [9:49:03]
24

25 THE CHAIR: All right, everyone. Come on back. I'm
26 just going to wait for Mr. Kitchen to be back,
27 and then I'll check in with you, Teacher B.
28 There we go.

29 CNSL J. KITCHEN: Hold on just a second. Just a
30 second. I'm sorry about that. I anticipated
31 that break to be a little longer.

32 THE CHAIR: Teacher B, are you okay to continue, or do
33 you need a few more minutes?

34 A I'm good.

35 THE CHAIR: Ready? Okay.
36 Go ahead, Ms. Tom.

37
38 TEACHER B, a witness,
39 recalled.
40

41 EXAMINATION IN CHIEF BY CNSL A. TOM, continuing:
42

43 Q So, Teacher B, before we took a break, you were
44 talking about working in the Fraser Cascade and
45 Surrey district where there are rainbow flags and
46 poster boards supportive of gay marriage. Can
47 you talk about the impact of being in a school

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1 with those flags and poster boards?

2 A They made me feel safe. They made me feel
3 supported by the school district; that it was
4 everyone's ideal to have everyone be celebrated.
5 And I didn't worry -- well, when I was in the
6 Fraser Cascade district at the time, I was like,
7 oh, the world's gotten so much better. But then
8 when I came back to Chilliwack, I realized it was
9 a district thing, not a time thing.

10 Q What does it mean to you to be safe at work?

11 A So before I came out professionally, I wouldn't
12 correct people. I would -- I would say my -- I
13 wouldn't say "my wife"; I would say "my partner."
14 I wouldn't correct people when they automatically
15 assumed that partner meant a man and they would
16 use male pronouns. I would work very hard to use
17 non -- non-gendered pronouns when I talked about
18 it, and everybody can just assume the rest.
19 Because then I didn't have -- it was very
20 personal.

21 Once I -- so I didn't even -- wasn't until I
22 came out professionally that I understood the
23 difference between safe in the closet and the --
24 the safe -- that I don't feel safe being out
25 because of public statements like -- like the
26 things he says.

27 Q Can you just help us understand that a little bit
28 more about what you mean by it wasn't until you
29 came out professionally that you understood the
30 difference?

31 A So I came out professionally, like, right after I
32 got hired by the Chilliwack district again
33 because my children were reaching school age, and
34 the contract that I got was in the exact same
35 school as my daughter. So I had to talk to them
36 about, you know, "We don't celebrate Father's
37 Day; we celebrate momma's and mommy's day." And
38 it was just -- and my kids were going to be
39 talking about me, and I figured it was just
40 something that didn't -- I couldn't hide anymore.

41 Q Were you concerned about talking about your
42 family in that way and outing yourself?

43 A So when I first came out, it wasn't like it was,
44 like, an everyday topic. I wasn't a part of the
45 GSA in the school at the time. It was -- it was
46 kind of quiet. It wasn't until I actually took
47 on the GSA at the school I'm at now that --

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1 actually, it was right before -- because I
2 started going to the meetings -- that I started
3 getting the negative feedback publicly of posts
4 by various individuals about -- one specific
5 individual about me that had a police file saying
6 very similar things. And -- and all of a sudden,
7 I didn't feel safe because of, yeah, people that
8 support anti-SOGI stuff.

9 Q What did it feel like to you that it felt like
10 you couldn't hide who you were anymore and that
11 it was no longer a choice to come out at school,
12 at your workplace?

13 A It was really scary. I -- yeah. Sorry. So once
14 I came out, I started connecting with other queer
15 teachers in the Chilliwack district and realized
16 I wasn't alone, and that helped quite a bit. But
17 it came along with people saying things about me.
18 And the -- the -- the admin even told me to take
19 a step back when the video from the -- that one
20 person with the police file came out, and I was
21 like, how can I step back? It's who I am.

22 Q I just want to talk about that a little bit more.
23 So can you just tell us -- you said that there
24 was someone who -- who posted a video, and there
25 was a police file. Can you just explain what
26 that -- what that incident or situation was
27 about?

28 A So every year I teach a lesson on the acronym,
29 pretty much, just explaining what each letter in
30 the acronym LGBTQIA2 meant. And I'm not sure how
31 it got out, but one of the parents found out --
32 or no. It was a stepparent or something. And he
33 made a video talking about how I just teach the
34 gay agenda and cut body parts off, and I'm
35 encouraging people to cut body parts off. And
36 that was when they said, you know, "You should
37 think about stepping back." And instead of
38 stepping back, I became the leader of the GSA.

39 Q And when you say the admin, you mean the
40 principal or vice principal of your school?

41 A Yeah.

42 Q Do you remember when approximately this happened?

43 A So it might have been the end of 2020, the
44 beginning of 2021. It was just after COVID.

45 Q And in taking a step forward and becoming more
46 involved with the GSA, did you ever face
47 criticism for doing that?

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Teacher B (for Complainant)
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1 A So I -- so the criticism came when a parent saw
2 one of my posters for an event that I was
3 holding.

4 Q And what form did the criticism take?

5 A Sorry. I lost my train of thought.

6 Q That's okay. Do you want me to repeat the
7 question?

8 A Yes, please.

9 Q Sure. So what form did the criticism take
10 regarding your involvement with the GSA?

11 A There we go. So I -- one of the things I did
12 when I became the GSA lead was to create days
13 that I called "ally days." And the goal of that
14 was just to get kids interested in learning about
15 different things and what the acronym means
16 and -- and things like that. And I had done it
17 for a couple -- like, I had done it the year
18 before, but because I was holding the ally day
19 before I got any money from my club, all I had
20 left was candy instead of prizes. Like, in the
21 past, I had, like, buttons and stickers and --
22 and bracelets and stuff. And when I went on to
23 the -- into my document, I changed "prizes" to
24 "candy."

25 And a parent who had never had me as a --
26 his kid had never had me as a teacher, and the
27 parent -- the kid also did not attend my GSA at
28 all -- he took a picture of my poster and posted
29 it online. And then -- and that poster had my
30 name on it. And that was -- so I had never put
31 my name on it before, but I was hoping that I
32 could get them to sign -- to sign up in advance,
33 and I told them to come talk to me on the poster.
34 But the parent took that picture and sent it
35 into, I believe, Rebel News, and the picture of
36 my post was posted on Facebook and -- with my
37 name on it. And everybody was calling me a
38 groomer, like, in so many different ways.

39 Q I'm going to take you to a document now, and it
40 will be in the Book of Documents re Statements
41 and Publications at Tab 48. So is this your
42 poster?

43 A Yes. Yeah.

44 Q And here, this little grey screen, this little
45 grey box --

46 A Yeah.

47 Q -- what's underneath that?

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in chief by Cnsl A. Tom

1 A That's my name.
2 Q Do you recall seeing that Mr. Neufeld had
3 reposted this?
4 A I can't even remember how I found out it was
5 posted initially. I think it might have been
6 either my wife or maybe someone at school. I
7 just -- it never occurred to me that people could
8 take a fun activity with prizes in such a -- a
9 way to -- to call me a groomer, using my own
10 name, calling me an abuser for giving out prizes
11 for trivia. And this was the main part where he
12 actually used my name and said specifically that
13 I was a groomer.
14 Q Did you receive any other comments from other
15 people about this poster afterwards?
16 A Yeah. I had emails come in from -- it wasn't
17 even from Chilliwack; it was, like, Maple Ridge
18 or Surrey or somewhere -- pretty much saying I'm
19 a groomer, saying -- and sharing my poster and --
20 yeah. To my work email.
21 Q I'm going to take you to another document here.
22 And now we're in the book of Documents Re Various
23 Documents at -- at Tab 22. I'll enlarge this
24 because it's super tiny.
25 CNSL J. KITCHEN: Tab 22, you said?
26 CNSL A. TOM: Tab 22, yeah.
27 CNSL J. KITCHEN: Thank you.
28 CNSL A. TOM:
29 Q So -- and then under this black box, what is
30 this?
31 A I assume it's my work email.
32 Q This is -- do you recall seeing this email?
33 A Yeah. I went and told admin and the union right
34 away.
35 CNSL A. TOM: I believe this is one of the contested
36 documents. I would like to seek to have this
37 admitted as an exhibit.
38 CNSL J. KITCHEN: Just give me a second here. I got
39 to get it a little bit bigger.
40 A That document has my school name on it.
41 CNSL J. KITCHEN: Chair, is it all right if I just ask
42 the witness a couple questions to confirm the
43 understanding of this?
44 THE CHAIR: Well, it probably wouldn't be appropriate
45 for you to ask those questions now. Do you want
46 me to defer the decision on admitting the
47 document until you've had a chance to do that in

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1 cross-examination? We can come back to this
2 document later if you have some questions.
3 CNSL J. KITCHEN: Well, maybe. Just -- how about
4 this. I'm sorry. I was -- I was looking in the
5 wrong book because I thought we were still in the
6 publication book. Ms. Tom, I think I heard her
7 say -- there's a blacked-out -- the problem is
8 there's a blacked-out email. So the blacked-out
9 email is -- is the witness's email address. Is
10 that what -- is that what he said when she said
11 "my work email" and that's why -- I can't read it
12 because it's -- okay. Okay. And -- and -- and
13 the "NH" is just a random person from the public.
14 Is that -- that's accurate? Okay. Right. And
15 she -- and she did just testify that this is --
16 this is the email she received. She recognizes
17 is. Okay. Then it's -- it's been identified.
18 It's going to have to go in.

19 THE CHAIR: Okay. Thank you. So 22 will come in.

20 CNSL J. KITCHEN: Yeah, that's -- that's all -- that's
21 the kind of questions I wanted to ask. That was
22 it. I just wanted to make sure --

23 THE CHAIR: Okay.

24 CNSL J. KITCHEN: -- we're -- it's been identified.

25 That's all.

26 THE CHAIR: Thank you.

27 CNSL A. TOM:

28 Q So, Teacher B, what happened after you received
29 this email? You said that you went and told your
30 admin about it.

31 A I was -- it -- I was taken into a meeting with
32 administration where we talked about how to keep
33 me safe in the school district with these kinds
34 of things happening. And my admin actually said
35 that she would, like, go through all my emails
36 and make sure there was no more emails like that.
37 And I was like, "Oh, no, it's fine. I'll just
38 send it away if it happens again" kind of thing.

39 Q Has it happened again since then?

40 A No.

41 Q I want to go back a little bit to the questions
42 about -- about work culture. So your initial
43 experience as a teacher was in Chilliwack, and
44 then you took a break for parenthood, and then
45 you went to Fraser Cascade, and then you came
46 back to Chilliwack. Can you tell us about
47 whether or not there were any differences in work

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in chief by Cnsl A. Tom

1 culture between your first experience in
2 Chilliwack in or around 2005 and returning in or
3 around 2017, 2018?

4 A I felt more -- it was more open in -- in
5 previous years. I did take three or -- a
6 couple years' break. So I did actually notice
7 quite a big difference once the things were said
8 out loud because it just gave a -- a model for
9 other people to say these things, including
10 teachers.

11 Q Why have you stayed in Chilliwack?

12 A Mostly because my wife grew up here. And when I
13 met her, I ended up moving to Chilliwack. We did
14 move away for a little bit, but it was always the
15 goal to go back. I am also a very
16 community-minded person. I work in Girl Guides
17 as a leader. I -- so -- sorry. Can you repeat
18 the question?

19 Q Yeah, just why you stayed in Chilliwack --

20 A My -- okay. So we put down roots. Like, my
21 wife's mom lived in the house she grew up in
22 until just a couple years ago. And as soon as I
23 started -- and I already had worked previously
24 here, so I kind of already knew a lot of the
25 systems and how everything worked. And, like I
26 said, I was a community -- part of the community,
27 and the longer I stayed in the community, the
28 deeper my connections are and now to the point
29 where I feel it's my home. It's where I belong.

30 Q And you've told us that you're very familiar with
31 the SOGI resources. Have you ever felt concerned
32 about using them in your teaching?

33 A Absolutely not. They're quite informative, and
34 they have great videos, and they've got great
35 lesson plans. And -- and it's really about
36 inclusion and about how everyone is included,
37 including the queer kids, including the autistic
38 kids, including everyone.

39 Q And do you use them in your -- in your teaching
40 practice?

41 A So in my one year -- I do one lesson a year in
42 Grade 6 in my inclusion unit, and so I do use the
43 SOGI videos and things like that on that --
44 during that lesson each year.

45 Q Have you ever faced criticism for using SOGI
46 resources?

47 A So I've had instances where HR has talked to me

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1 about not -- so they've gotten me in trouble for
2 sharing the gender unicorn, for example. And the
3 gender unicorn is a very universally accessible
4 worksheet. Like, it explains the differences
5 between sexual orientation and gender identity in
6 a way that makes sense to the kids. And I used
7 it, and I actually ended up having a kid withdraw
8 from my class, and HR had a big, long meeting
9 with me, and I had a -- I've had letters on my
10 file because -- and -- yeah. Like, multiple
11 times. Usually within a month after I do my
12 acronym lesson.

13 Q Specifically about doing lessons that include
14 content around sexual orientation and gender
15 identity?

16 A Mostly. I have had people come after me for
17 other reasons when I suspect it's -- it's because
18 I'm gay and -- yeah.

19 Q Why do you suspect it's because you're gay?

20 A So it's pretty obvious when -- when a student
21 doesn't like the fact that I'm gay. And it's
22 quite difficult to deal with, I have to say.
23 What was the question again?

24 Q Just why -- why you suspect that you've been in
25 trouble because you're gay.

26 A Yeah. So it's -- it's -- students that are
27 really homophobic, they will go to the principal
28 and -- about anything. And I've been pulled into
29 HR for that kind of thing. And I -- I deeply
30 suspect that it's because I'm gay, but they were
31 just, like, watching everything I did to see if
32 they could get me in trouble for something.

33 Q Do you tell your students that you're gay?

34 A So I think for two years now I started putting it
35 in my take-home package for the first week of
36 school just so that the parents in my class are
37 aware that I am queer and that the acceptance --
38 or the GSA club meets in my classroom at lunch,
39 so it will be around in the classroom.

40 Q Why did you feel it was necessary to include that
41 in your introductory package?

42 A I felt that if I did it at the beginning of the
43 year, that if they had a major issue with it,
44 that they could ask for their kid to change
45 classes, and it's much easier to do at the
46 beginning of the year. Instead of being in
47 January and the kid has decided he hated me

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Teacher B (for Complainant)
in chief by Cnsl A. Tom

1 because he found out I was gay.
2 Q Going back to Mr. Neufeld's statements, did you
3 ever respond publicly or push back on what he was
4 saying?
5 A Because he was technically one of my employers, I
6 was not allowed to talk about how he affected me.
7 I'm not allowed to -- to speak against my
8 employer, and he was, I feel, a very strong
9 representative of my employer, and they allowed
10 it to continue to happen.
11 Q What were you -- when you say you weren't allowed
12 to, what were you afraid was going to happen if
13 you did? Or were you afraid that something was
14 going to happen?
15 A I was under the understanding that I just wasn't
16 allowed to criticize my employer. And I just
17 wanted to be really careful about who goes out
18 publicly that I've said or done.
19 Q I just want to take you to a different topic
20 altogether, and this is at the respondent's
21 second book of documents at Tab 2. I'm going to
22 share this on the screen. Is this a news article
23 about you?
24 A Yeah, it is.
25 Q And when did that news article come out?
26 A Was it 2013? Yeah. So that was in the point
27 when I thought I was going to be running a day
28 care and staying [indiscernible - automated
29 message]. And I had shared a post of -- a
30 breastfeeding post, and it had gotten taken down
31 because -- who knows why, because Facebook does
32 stupid things. And so it became a story, and the
33 CBC ended up calling me and asking for my
34 reaction. And I gave it.
35 Q And I just want to scroll down here. This has
36 your name, and I'm not going to read it out loud,
37 but can you just tell us whether this is the name
38 that you used professionally?
39 A No. No. When I worked in the school district, I
40 always went by [REDACTED] -- or, sorry -- my full
41 name, not my sh [REDACTED] Short form was more of
42 a personal thing with my friends and family.
43 Q And after this news article, did anybody connect
44 Teacher B the teacher with the mom in this post?
45 A Not that I'm aware of. I -- I never had any
46 questions about it. I did start using it a
47 couple years ago as a lesson in my classroom

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Teacher B (for Complainant)
in chief by Cnsl A. Tom

1 about how whatever you say publicly never goes
2 away on the internet, and to think very carefully
3 before you say things publicly because it doesn't
4 go away.

5 Q And for you, is there a difference between being
6 out professionally and being out personally?

7 A Oh, yeah. Oh, yeah. Personally, I would say
8 "wife." Personally, I would talk about my -- my
9 family, whereas professionally I kind of -- it's
10 not really part of being a teacher. Like, wasn't
11 really all that important.

12 Q And were you able to keep a separation between
13 those two lives?

14 A Yeah. Yeah. Yeah, when I came out
15 professionally, I had to start, like, mixing
16 those two people back together again, and it's
17 been quite an interesting thing to be out
18 publicly.

19 Q What do you mean by "it's been an interesting
20 thing"?

21 A Just the people that hate without even meeting me
22 and people that will send me emails without
23 knowing who I am or the situation at all. It's
24 just -- it's intense. Having to deal with people
25 talking about you all the time publicly. My poor
26 children have to deal with the stress I have for
27 that too. So...

28 Q And as a queer teacher, and now an openly queer
29 teacher, can you just talk about the impact of
30 that on you and being in the same district where
31 Mr. Neufeld was making his statements?

32 A So when I first got hired back to the district, I
33 ended up asking the union for a meeting where we
34 talked about what would happen if he were -- if I
35 were to encounter him at work, and that it might
36 upset me to the point where I would need someone
37 to cover my class. And so that was like -- so
38 there was that piece. Can you repeat the
39 question? I got confused there.

40 Q Sure. Yeah. Can you just talk about the impacts
41 on you as a queer teacher working in the same
42 district where Mr. Neufeld was making the
43 statements?

44 A So part of the -- he's a leader. He should be
45 saying inclusion is good for everyone in every
46 area. And the -- the teachers that have come at
47 me because they don't want to use gender-neutral

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Teacher B (for Complainant)
in chief by Cnsl A. Tom

1 pronouns, he gave them the -- he made it okay to
2 talk about in public when it shouldn't have been
3 something that needed to be discussed in public.
4 And just listen to what people want you to call
5 them.

6 Q Were there any other impacts of Mr. Neufeld's
7 statements while you were working in the same
8 district?

9 A My kids had -- went to the Christmas market last
10 year, and they encountered him picketing out
11 front. I -- I take quite a bit of time off to
12 the point where I run out of sick days each year;
13 so, like, every time there's a SOGI -- anti-SOGI
14 rally, I will take a day off for my mental health
15 because I don't want to deal with it. And my
16 wife has to pick up quite a bit of the -- of the
17 load of our parenting and taking care of our
18 house because I'm dealing with so much. And
19 it -- and it really affects my functioning quite
20 a bit. And my poor children just want it to be
21 over and the stress be done.

22 Q Have you felt concerns about testifying in this
23 proceeding?

24 A Yes. Yes. I'm -- I'm scared of getting doxxed.
25 I still live in the house. He knows where I
26 live. It -- it -- it's -- it's been really hard
27 to make the decision to testify.

28 CNSL A. TOM: Those are all my questions for
29 Teacher B.

30 THE CHAIR: Thank you. I'm going to suggest we take
31 the morning break now, and then we'll come back
32 with Mr. Kitchen's questions. So we're going to
33 take a break now for 15 minutes. Teacher B, I'll
34 repeat myself, I'm sure, later, but I know
35 there's going to be other people testifying after
36 you. I'm just going to ask that you please don't
37 talk about your evidence or anything that's going
38 on in this proceeding with anyone who's
39 testifying after you. And then -- and then once
40 Mr. Kitchen's questions begin, I'll give you some
41 additional cautions during our later breaks. But
42 that's all I need to tell you for now. So I'll
43 just -- we'll just turn our cameras and mics off,
44 and we'll come back in 15 minutes. Okay? Thank
45 you.

46
47 (WITNESS STOOD DOWN)

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Teacher B (for Complainant)
cross-exam by Cnsl J. Kitchen

1
2 (PROCEEDINGS ADJOURNED FOR MORNING RECESS) [10:26:12]
3 (PROCEEDINGS RECONVENED) [10:42:41]
4

5 THE CHAIR: All right, everyone. Come on back.
6 Teacher B, if you're there, your -- your video's
7 still off.

8 They may not be back quite yet, so we'll
9 just wait. You're back. Thank you.

10 Yes, Ms. Tom?

11 CNSL A. TOM: Sorry. Yeah, I just -- in reviewing my
12 notes, I just had a clarifying question for
13 Teacher B if that's okay.

14 THE CHAIR: Yeah, go ahead.

15 CNSL A. TOM: Sure.

16
17 TEACHER B, a witness,
18 recalled.
19

20 EXAMINATION IN CHIEF BY CNSL A. TOM, continuing:
21

22 Q So you mentioned that you approached the union
23 and said that you may get very stressed if you --
24 if you saw Mr. Neufeld when you were at work. To
25 your knowledge, is that something that trustees
26 do, is they visit schools?

27 A Yeah. Usually they come to, like, lots of the
28 events and stuff. And I was -- as a TOC -- when
29 I originally started, I was going to be a TOC,
30 and I could have easily been TOCing in a room
31 that he was the trustee for and show up during
32 his -- yeah, in a school.

33 Q And so when you say he was a "trustee for," what
34 do you mean?

35 A He was a trustee for a -- like, they -- the
36 trustees all get a certain amount of -- I think
37 it's -- I don't know if it's more than one school
38 or how it works, but they're, like, designated to
39 different schools, and they'll pop in and come
40 and watch assemblies and things like that.

41 CNSL A. TOM: Thanks. That was it to clarify.

42 Thanks.

43 THE CHAIR: Thank you.

44 All right. Teacher B, the next part of this
45 process is for Mr. Kitchen to ask you questions.
46 This -- I'm sure you've been told this is called
47 cross-examination. One of the purposes of

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Teacher B (for Complainant)
cross-exam by Cnsl J. Kitchen

1 cross-examination can be to test your evidence.
2 So it's not unusual that many people find this to
3 be a difficult process. And so as I said before,
4 if you are needing breaks, you can let me know.
5 If you don't understand a question, you can ask
6 for it to be clarified, and if you don't know the
7 answer to a question, that's -- that's a fine
8 answer as well. So your job is just to do the
9 best you can answering the questions.

10 If there's an objection, if one of the BCTF
11 and Chilliwack Teachers' Association lawyers
12 objects, then I'll just ask you to wait until we
13 resolve the objection. Sometimes we may -- I may
14 ask you to remove yourself from the proceeding
15 while we deal with the objection, and if that
16 comes up, I'll tell you what you have to do. But
17 I just want you to be prepared that you may be
18 asked to kind of step out while we deal with
19 things, and then we'll bring you back in. Do you
20 have any questions about this part of the
21 process?

22 A No.

23 THE CHAIR: Okay. Go ahead, Mr. Kitchen, when you're
24 ready.

25 CNSL J. KITCHEN: Thank you.

26
27 CROSS-EXAMINATION BY CNSL J. KITCHEN:

28
29 Q Just a housekeeping matter. Would you -- would
30 you prefer if I called you Teacher B or just B?

31 A I don't care.

32 Q Okay. Good. Thank you. That makes it easier
33 for me. Okay. Okay, B, you got your teaching
34 degree in 2004. That's right?

35 A Yeah.

36 Q You started -- you started teaching that same
37 year?

38 A There was a strike in September. So I started
39 that year, but it was, like, October, November, I
40 think.

41 Q And then -- okay. And at this point you were --
42 you were in Chilliwack at this point?

43 A I moved to Chilliwack --

44 Q I mean teaching.

45 A -- in two thousand -- in teaching? Yeah --

46 Q Like, you started teaching -- go ahead.

47 A 2006.

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Teacher B (for Complainant)
cross-exam by Cnsl J. Kitchen

1 Q Okay. So -- so from when you started teaching in
2 2004 to 2006, you were teaching in --
3 A Sorry. Till two -- okay. So I get really
4 confused with numbers really easily. So 2004 is
5 when I got my degree. That --
6 Q Okay.
7 A -- year I got hired by Surrey right away. And
8 then --
9 Q Okay.
10 A -- got -- within a couple of weeks, I got hired
11 by Chilliwack because they were really desperate
12 for TOCs back then.
13 Q So fair to say late 2004 you started teaching in
14 Chilliwack?
15 A I think it was 2005.
16 Q Fair to say --
17 A It might have -- I'd say it will be somewhere
18 around there, whether it's December 2004 or
19 January 2005.
20 Q Okay. So let's just say early 2005.
21 A There we go.
22 Q Okay. And you taught there for what? A year and
23 a half? Until sometime in 2006?
24 A I taught till two thousand and -- in the school
25 district, I left in 2010, and I came back to the
26 district in -- or, no -- I went to Fraser Cascade
27 in 2013.
28 Q Okay. So hold on. So you're in Chilliwack from
29 about early 2005 until sometime in 2010. You're
30 teaching for those five years or so in
31 Chilliwack?
32 A Yeah.
33 Q Okay. And then 2010 you go somewhere else; then
34 you take some time off; and then you come back to
35 Chilliwack to teach, that is, in 2017. Is that
36 accurate?
37 A Yes. Yeah.
38 Q All right. I need to close that so I don't get
39 any more of those dings.
40 You said at one point -- this is -- I'm kind
41 of -- somewhat going chronologically through your
42 evidence. So you said at some point fairly early
43 on -- you were talking about the kids, I think
44 just kids generally, and you said, "We just want
45 them to be themselves." Do you recall that?
46 A Yeah.
47 Q Okay. I'm going to screen-share some -- well,

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Teacher B (for Complainant)
cross-exam by Cnsl J. Kitchen

1 actually, let me -- let me ask you this: Do
2 you -- you don't have a -- you don't have a copy
3 of any of the books of documents in this case?
4 Like --
5 A Not -- not in front of me, no.
6 Q Yeah, you'd need -- you'd need me to share the
7 screen if you -- so -- for you to see it. Okay.
8 I'll try to go through this chronologically here.
9 I don't know if I'm going chronologically. Okay.
10 I'm going to share my screen here. Can you
11 see -- can you see this that I'm scrolling up and
12 down?
13 A Yeah.
14 Q Okay. Let's go to the top of this so you
15 understand where this is coming -- I don't know
16 if you've seen this, so we should -- this has
17 been entered as an exhibit, so it's -- it's part
18 of the record in this case, but we don't yet know
19 if you've seen it.
20 CNSL L. WADDELL: Mr. Kitchen -- sorry. Can you just
21 tell us what you're -- give us a reference to the
22 record as you're taking the witness to something?
23 CNSL J. KITCHEN: So I'm at page 23. Now, of course,
24 that's -- that's the Bates -- and the Bates
25 numbering you haven't changed; is that right?
26 From either version?
27 CNSL L. WADDELL: That's correct. And just --
28 CNSL J. KITCHEN: Okay.
29 CNSL L. WADDELL: If you start with which volume
30 you're looking at as well.
31 CNSL J. KITCHEN: Sorry. I'm in the publications
32 book.
33 CNSL L. WADDELL: Okay. Thanks.
34 CNSL J. KITCHEN:
35 Q So I'm not quite sure of the tab, but we're in --
36 we're in page 23. Now, do you know who Justine
37 Hodge is or Hodge?
38 A I feel like she might have been the DPAC lead.
39 Q Yeah. Yeah, that's right. And so there's --
40 there's -- there's something here from
41 Mr. Neufeld in response to her. And so -- so I
42 can tell you, you know, truthfully that -- that
43 these comments we're seeing here on page 24 are
44 Barry Neufeld's comments. Okay? That's already
45 been established. And he says here, "I do not
46 hate transgender children. They can't help the
47 way they feel. They should certainly not be

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Teacher B (for Complainant)
cross-exam by Cnsl J. Kitchen

1 bullied or teased." Do you agree with
2 Mr. Neufeld when he says "they can't help the way
3 they feel"?
4 A I guess, yes.
5 Q Okay. When he says "I do not hate transgender
6 children," I take it you -- you disagree with him
7 because you believe he does?
8 A I don't think he's -- I don't think that he sees
9 it that way. I think in -- in his mind he -- he
10 sees that he's trying to help.
11 Q Okay. And, in fact, that is what he would say.
12 But is it -- I -- so I guess it's fair to say
13 from your perspective you don't think he is
14 helping?
15 A No.
16 Q Okay. So he says, "They certainly should not be
17 bullied or teased." So I got a couple questions
18 about that. You would agree with him when he --
19 when he says transgender children should not be
20 bullied or teased?
21 A No child should be, yeah.
22 Q Including transgender children; right?
23 A Yeah. All children, including transgender
24 children and queer children, yes.
25 Q Yeah. Including Nigerian children?
26 A Canadian children, I assume? B.C. --
27 Q Well, I --
28 A [Indiscernible - overlapping speakers] because
29 it's a B.C. thing, our education.
30 Q Well, let's say -- let's say there's a kid
31 that's -- you know, he's from Nigeria, he's
32 really proud of his Nigerian heritage, and this
33 is known just because he talks about it. Kids of
34 Nigerian descent shouldn't be bullied either;
35 right?
36 A No one should be bullied. Bullying is wrong.
37 Q Right. Including -- including kids of Nigerian
38 descent; right?
39 A Any child ever.
40 Q Right. Including a kid of Nigerian descent;
41 correct?
42 CNSL A. TOM: I believe the witness has answered the
43 question.
44 THE CHAIR: I think this question's been asked and
45 answered a couple of times.
46 CNSL J. KITCHEN: Well, Chair, with all due respect,
47 you could logically say it has because she --

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Teacher B (for Complainant)
cross-exam by Cnsl J. Kitchen

1 she -- the witness keeps giving the rhetorical
2 answer that all kids shouldn't be. But when I
3 ask including Nigerian kids, the question is --
4 the answer if -- if it's -- if it's responsive to
5 the question is, "well, yes, of course those kids
6 too." If I'm not getting that answer and I'm
7 just getting the rhetorical answer of all kids,
8 then I'm not getting an answer responsive to the
9 question. I'm just getting a rhetorical
10 response. And so it's fair for me to continue to
11 ask the witness until the witness gives what is
12 obviously a very simple answer that she doesn't
13 want to give to the question.

14 So I don't think it's accurate, you know,
15 really to say that she's answered the question
16 just because, you know, logically all kids,
17 including Nigerian kids. You know, this type of
18 exercise is common, of course, in
19 cross-examination with -- with some types of
20 witnesses, and it shouldn't come as any surprise
21 to this tribunal that this type of thing would
22 occur. And so I need to have the latitude to
23 press the witness to confirm, you know, that in
24 fact the sky is blue instead of just saying, you
25 know, some sort of generic thing that, well, you
26 know, all atmospheres have colours. So I -- I --
27 I don't think it's accurate or fair to say that
28 she's answered the question.

29 CNSL L. WADDELL: Mr. Kitchen, you can -- you can ask
30 a different -- you can't repeat the question, but
31 you can ask it a different way. You can say, "So
32 is that a yes?" For example; right? You just --
33 you just don't get to keep answering -- just
34 because you don't like how she answered it, you
35 can't simply continue to repeat the question.
36 That's our reply.

37 THE CHAIR: Okay. Thank you. I agree. I accept,
38 Mr. Kitchen, you can try a question a couple of
39 times, and then if you're not getting the answer
40 that you expect or want, I would ask you to try
41 it a different way so that we're not just
42 repeating the question over and over again, which
43 I don't think is the appropriate way to get where
44 you're trying to go. So if you can just ask it
45 in a different way, that would be fine.

46 CNSL J. KITCHEN:

47 Q All right. So, B, we're on the same -- we're on

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Teacher B (for Complainant)
cross-exam by Cnsl J. Kitchen

1 the same page that no kid should be bullied or
2 teased; right?
3 A Yeah.
4 Q And that would include -- that would include
5 Jewish children; correct?
6 A Mm-hmm.
7 Q Well, this is a technical point, but for the --
8 for the purposes of building a good record, and
9 you hear lawyers say this all the time, it's
10 really helpful if you say "yes" instead of
11 "mm-hmm."
12 A Okay. Yes.
13 Q And it would include children of Persian descent?
14 A Yes.
15 Q And it would include children of Nigerian
16 descent; correct?
17 A Yeah.
18 Q Okay. Now, going back to your answer, you can't
19 read Mr. Neufeld's mind; I'm not going to ask you
20 to. But suffice to say -- and you correct me if
21 you think I'm wrong, but suffice to say that you
22 and what you think about what Mr. Neufeld says --
23 you don't really believe him when he says that
24 transgender kids should not be bullied or teased?
25 Or do you believe him?
26 A Transgender children should not be teased. So I
27 guess if that's how you say it, yeah.
28 Q No, no, but when he says it, do you believe him?
29 A I believe he thinks that, yeah.
30 Q Okay. I'll scroll up here. [Indiscernible] --
31 see if I can find it in this version. Okay.
32 Here we go. Here we go. Now, here in the -- and
33 sorry for all the different colours. It's just
34 to help me not waste time trying to get to where
35 I want to go. And -- and, again, I can tell you
36 as a matter of fact that these are Barry
37 Neufeld's words here. He says here in the
38 green --
39 THE CHAIR: Sorry. Mr. Kitchen, before you go on, can
40 you tell us where you are in the -- do you know
41 what tab we're at?
42 CNSL J. KITCHEN: Sorry?
43 THE CHAIR: Can you --
44 CNSL J. KITCHEN: Page 13.
45 THE CHAIR: Page 13. Okay.
46 CNSL J. KITCHEN: I'm on page --
47 THE CHAIR: And what is this from?

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Teacher B (for Complainant)
cross-exam by Cnsl J. Kitchen

1 CNSL J. KITCHEN: I'm still in the publications book.
2 THE CHAIR: Right. Sorry. But what is this -- what
3 is this speech from? A board meeting, I take it?
4 CNSL J. KITCHEN: This is a speech culture --
5 THE CHAIR: Oh, Culture Guard.
6 CNSL J. KITCHEN: Well, it's called a Culture Guard
7 event in -- November 21st of 2017.
8 THE CHAIR: Okay. Thank you.
9 CNSL J. KITCHEN:

10 Q And just for your benefit, B, the parties in the
11 case have agreed that this is an accurate
12 transcript of what he said. So Mr. Neufeld says:

13
14 I believe children should be gently
15 encouraged to be comfortable with their
16 bodies, to accept their own biology --
17 their own biology -- which can never be
18 completely changed, and to love
19 themselves.
20

21 Now, is there any part of that statement that you
22 disagree with?

23 A If it was just taking the words, I would say I
24 agree with it, but when he says "biology," he's
25 not looking at actual nature or biology. He's
26 making -- like, he's -- he's taking it in this
27 way that there's only two genders. So he -- even
28 though he says that we should -- they should --
29 he says they should accept the biology, what he
30 means by that is that they should accept that
31 they were the gender they were assigned at birth,
32 whereas I say it's part of who you are. Always
33 biologically part of who you are.

34 Q So you would agree with me that at least from
35 your perspective, it's -- it's -- it's readily
36 apparent -- like, just from this statement alone,
37 you can infer that it's -- it's readily apparent
38 to you -- you can -- you can quickly infer that
39 he believes there's only two genders?

40 A Yeah.

41 Q Okay. Now, I'm going to -- I'm going to -- well,
42 I think it's already clear from your testimony,
43 but I'm going to -- I'm going to infer just from
44 that statement that's not what you believe;
45 correct? You believe there's more than two
46 genders; is that right?

47 A Yeah.

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Teacher B (for Complainant)
cross-exam by Cnsl J. Kitchen

- 1 Q Okay. And is it fair to say that you -- you
2 think your belief is right and his belief is
3 wrong?
- 4 A So the Government of Canada actually has three
5 genders and can be female, male, or X. So he's
6 wrong.
- 7 Q Okay. So -- okay. So from your perspective,
8 this is not -- this is not a battle between two
9 competing theories; this is a battle between his
10 misinformation and your correct information?
- 11 A Can you repeat that again?
- 12 Q Yes. From your perspective, you would say this
13 is not merely a contest or a battle between two
14 competing theories about the world. You -- you
15 would rather say that this is a contest between
16 his belief, which is wrong -- it's incorrect --
17 and your belief that is in fact correct?
- 18 A Yeah.
- 19 Q Okay.
- 20 A Yes.
- 21 Q Now, I'm going to ask you this not as some sort
22 of, you know, academic or professor or scientist
23 or researcher, but that you did say repeatedly
24 you were very familiar with SOGI 1 2 3 resources.
25 And I will -- I will take you there, and we can
26 go there for this question if we need to. But
27 this -- this belief that there's more than two
28 genders, do you know -- and it's okay if you
29 don't, but do you know where the belief came
30 from?
- 31 A It's not a belief. It's part of our laws, as far
32 as I know.
- 33 Q You would -- and I don't ask you this as a
34 lawyer. It's just sort of a cultural question,
35 if you will. You would agree with me it was --
36 to use your phrase, you said it's part of the
37 law. You would agree with me that the -- the
38 acknowledgment or recognition that there's more
39 than two genders was not always part of the law?
- 40 A Yeah, no, it wasn't always part of the law.
- 41 Q Okay. So -- so we -- we -- we get the belief,
42 and then we get the law. So let's talk about, I
43 guess, even before the -- before it became law,
44 you would agree with me it's pretty recent that
45 it became law, like, last 10, 15 years? Is that
46 fair? 5, 10, 15 years?
- 47 A Yeah, I think so.

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Teacher B (for Complainant)
cross-exam by Cns1 J. Kitchen

1 Q Like -- like, in your adult lifetime is --
2 A Yeah, I think it was, like, 2008 or something
3 that we got the X. Something like that.
4 Q Okay. The -- so the belief that there's more
5 than two genders, before it became law, where did
6 it come from, to your knowledge?
7 A There's lots of different places. So North
8 America had three genders before the Europeans
9 came here. It's something that's been in history
10 for years and years and years. It's not a new
11 belief. It's -- it's always been around. It
12 only became part of the law recently.
13 Q Okay. So there's only three genders, then.
14 There's not more than that?
15 A I would go with whatever a child identifies as.
16 Q At what age -- are there -- are there -- are
17 there any -- any bottom-level age restrictions on
18 that? Like, at what point -- at what -- at what
19 point does a child get old enough that you would
20 go with whatever they identify as?
21 A As soon as they can talk and --
22 Q So --
23 A -- tell me.
24 Q So around age 2. Is that fair?
25 A Depending on the child, yeah, I guess.
26 Q Yeah, yeah. I mean, I guess some -- you would
27 agree with me most kids start talking when
28 they're 2?
29 A I had three autistic children, so I didn't have
30 the same kind of typical children being raised.
31 It wasn't that for my children, but for other
32 children, I could see it being 2, yes.
33 Q Okay. Okay. My daughter's autistic. She
34 started talking when she was 2, and then she lost
35 some of her words, and then she didn't talk, and
36 then she started talking when she was 3. So I
37 take it you had -- you had a similar -- and I
38 don't want you to tell me anything personal.
39 Okay? But I just take it you had a similar
40 experience where your kids might have started
41 talking when they were 3 or 4 or 5 as opposed to
42 2?
43 A Yeah.
44 Q Okay. But you agree with me, I guess -- I don't
45 know what the word is. I don't know if "typical"
46 is the right word or -- but "neurotypical" maybe
47 is the right word. Neurotypical kids start

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Teacher B (for Complainant)
 cross-exam by Cnsl J. Kitchen
 Submissions by Cnsl L. Waddell

1 talking when they're 2 or 3. That's fair?
 2 A Yeah.
 3 Q Okay. So -- so -- so that's the age at which you
 4 would -- you would -- you would -- you would go
 5 with whatever -- whatever a child identifies as
 6 once they're 2 or 3 years old?
 7 A Yeah.
 8 Q Once they're able to talk, which is usually
 9 around 2 or 3 for most kids. Okay. Is that --
 10 are there any limitations on that?
 11 A What do you mean by limitations?
 12 Q Well, yeah, I know. So obviously if it -- if it
 13 was -- if it was a boy and he identified as a
 14 girl, you would go with that; right?
 15 A Yeah.
 16 Q Okay. And if he had -- now, so there's --
 17 there's all these -- that's just -- that's the
 18 binary. That's just the two, and then there's
 19 other genders. And I don't -- I don't know what
 20 they are, but what if he identified as something
 21 else like -- and I'm -- and I'm not trying to be
 22 hypothetical here. My understanding, and you can
 23 tell me if you know anything about this. My
 24 understanding is there are children now
 25 identifying as cats and dogs -- or cats or dogs.
 26 Is that familiar to you?

27
 28 SUBMISSIONS BY CNSL. L. WADDELL:

29
 30 CNSL L. WADDELL: Just before the witness answers,
 31 what is the relevance of this line of -- of
 32 questioning? And not just the cats or dog piece,
 33 but the -- you know, you said this is not based
 34 on hypothetical, but this is all hypothetical,
 35 which I indicated to you in my letter of
 36 yesterday hypotheticals were -- were something we
 37 would object to primarily because it's not
 38 relevant, and it's -- it's time delay. So we
 39 just don't see the relevance to this whole line
 40 of questioning. Not just the last question, but
 41 generally. We've let it go a bit, but --

42 CNSL J. KITCHEN: No, and I --

43 CNSL A. TOM: -- if it's going to be a long rabbit
 44 hole, I think we need to make a decision about
 45 whether it's actually relevant.

46
 47 SUBMISSIONS BY CNSL. J. KITCHEN:

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Teacher B (for Complainant)
Submissions by Cnsl J. Kitchen

1
2 CNSL J. KITCHEN: Right. I gather from you that
3 you're going to find most of my questions
4 irrelevant, whether that's disingenuously or --
5 or -- or, you know, in good faith. Either --
6 either way. But the -- the belief that there are
7 more than two genders -- and eventually we're
8 going to get to the belief that you can switch
9 your gender and all that sort of stuff -- is
10 embedded in the SOGI 1 2 3 curriculum. Nobody's
11 going to deny that. You're not going to deny
12 that credibly. The witness is not going to deny
13 that. The -- the materials speak for themselves.
14 I will take the witness there.

15 This belief system is at the heart of this
16 case because the bulk of Mr. Neufeld's comments
17 are directed at that belief system. So that's at
18 the core of the case. It's -- it's not that it's
19 just relevant; it is the most relevant. So I
20 have to explore that belief system because that's
21 the belief system that Mr. Neufeld spent most of
22 his comments criticizing. Okay? Which you've
23 put into the record, you've complained about. So
24 I have to explore them. Okay?

25 So if this witness didn't know anything
26 about SOGI, didn't use them, didn't say she was
27 very knowledgeable of them, then, you know, it
28 might not be fair; right? Like, I didn't go into
29 that kind of detail with Ed Klettke. It didn't
30 seem like that was -- that was the appropriate
31 thing to do with that witness, especially since,
32 you know, we -- we have Mr. Hansman. He was very
33 familiar. Now we have a teacher who's actually
34 teaching it who's familiar. I mean, this is -- I
35 mean, to me it's obvious that it's -- it's
36 relevant to explore this belief system. I get
37 that you disagree with me. I have to be
38 permitted to -- to -- to go after the case. You
39 made the complaint. You put the case in. You
40 say it's hateful for him to -- to criticize the
41 theory. I have to explore what theory he's
42 criticizing in order to -- in order to -- in
43 order to mount a defence. That's just how it
44 works.

45
46 SUBMISSIONS BY CNSL. L. WADDELL:
47

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Teacher B (for Complainant)
 Submissions by Cnsl L. Waddell
 Submissions by Cnsl J. Kitchen

1 CNSL L. WADDELL: Yeah, I appreciate that -- I'll keep
 2 this short so that the tribunal can make a
 3 response. I hear your view that the belief is at
 4 the core of at least your client's case, and I
 5 would just say I don't think any of what you just
 6 said -- I disagree that a belief system is at the
 7 center of the case, but that's fine. But we
 8 don't -- anything you just said, we don't
 9 disagree with any of that. None of that is in
 10 dispute. We agree that all of the SOGI materials
 11 are premised on what you call a belief and what
 12 your client calls a belief that there are
 13 multiple genders, et cetera, et cetera. So
 14 that's the -- that's my concern around time
 15 wasted. Just even if we accept that for your
 16 defence there's some relevance here, the -- these
 17 are not facts in dispute. But certainly
 18 Mr. Neufeld did not post about cats and dogs, to
 19 my knowledge. Anyway, that -- that is all I'll
 20 say in reply.

21 THE CHAIR: Thank you.

22
 23 SUBMISSIONS BY CNSL. J. KITCHEN:

24
 25 CNSL J. KITCHEN: I -- I -- I take your point on that.
 26 You know, I do not want to spend a lot of time on
 27 this. I just -- I wanted to get that -- where
 28 that -- where that limitation was. Because I do
 29 think that's -- that's helpful. You know, we
 30 need to understand the -- the extent of this
 31 belief system held by the people who are
 32 complaining about the criticism of it; right? It
 33 would be -- it would be the same if it were the
 34 other way around; right? If -- if -- if -- you
 35 know, if -- if we had a Christian who complained
 36 that the criticism of her beliefs led to her
 37 feeling discriminated against, you would be
 38 exploring -- literally I sit on your side on
 39 those types of cases every couple months. Okay?
 40 And -- and -- and I -- of course that's fair for
 41 the other side to explore that. That's just how
 42 it works.

43 So -- but I -- but I take your point that,
 44 you know, we need to try to work through it as --
 45 as fast as we can. And I do not want to dwell on
 46 this. I just want to get sort of the one point
 47 out of the way: Does it include that or not?

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Teacher B (for Complainant)
cross-exam by Cnsl J. Kitchen

1 And that's about it. I'm not going to try to
2 explore it and try to make a big deal out of it
3 because it's scandalous or whatever. That's not
4 what I'm after.

5 THE CHAIR: Okay. Thank you. Just before we make our
6 decision, Mr. Kitchen, would you mind taking down
7 the shared screen so we can see you all just a
8 bit better.

9 CNSL J. KITCHEN: Yes, of course. Sorry.

10 THE CHAIR: Thank you. And -- and, with apologies, I
11 think we just need a moment here. So we're just
12 going to turn our cameras and mics off for a
13 moment. We'll be back in a couple of minutes.
14 You're welcome to leave your cameras and mics on
15 or off. Whatever you prefer. Just a moment.

16
17 (PROCEEDINGS ADJOURNED FOR RECESS) [11:13:43]

18 (PROCEEDINGS RECONVENED) [11:16:43]
19

20 THE CHAIR: Thank you, everyone, for your patience.
21 You can come on back now. Okay. Thank you. So
22 we're in agreement that general kind of questions
23 about the witness's beliefs that are not
24 connected to the -- to the SOGI -- directly to
25 the SOGI materials or the statements that
26 Mr. Neufeld made are not relevant to the case.

27 Mr. Kitchen, if you want to ground your
28 questions in SOGI materials that are in the
29 record or any of Mr. Neufeld's statements, then
30 that would likely be -- be fine, but these kind
31 of hypothetical questions about the witness's
32 understandings of, you know, cats and dogs and
33 that sort of thing, we can't see the relevance to
34 this case, and we're not going to permit that
35 questioning.
36

37 CROSS-EXAMINATION BY CNSL J. KITCHEN, continuing:
38

39 Q B, you would agree with me, then, that
40 identifying as genders does not include
41 identifying as animals? Let me --

42 A No.

43 Q -- let me -- let me try this. No. Okay.
44 Included -- included in the list of possible
45 genders that kids could identify as, animals are
46 not -- identifying as animals are not included in
47 that list of genders that we could identify as?

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Teacher B (for Complainant)
cross-exam by Cnsl J. Kitchen

1 THE CHAIR: Mr. Kitchen, sorry. I'm just going to
2 come back. Sorry. Maybe my ruling wasn't clear.
3 These kinds of questions we're not finding
4 relevant. Is it somehow connected to the SOGI
5 materials that we're talking about or
6 Mr. Neufeld's -- is there something in the SOGI
7 materials that's teaching about animals, or is it
8 something that Mr. Neufeld said? Where -- what's
9 the connection here?

10 CNSL J. KITCHEN: Well, you know, I'm -- it's
11 disappointing that this is so confusing for you.
12 I think we all know that there are children in
13 schools that identify as furries, they identify
14 as cats and dogs, and -- and that this has at
15 least some connection to identifying as -- as
16 different genders, which is part of the reason
17 why it's permitted. I certainly have information
18 in cases that I'm working on where there are
19 litter boxes in schools. I don't think that
20 comes as a surprise to anybody. That's just a
21 reality that we're currently dealing with in the
22 world. So if I want to clarify that -- that --
23 that the many genders that SOGI does refer to
24 doesn't include that, it's a -- it's a fair
25 question. And if she says no, I'm not going to
26 dwell on it. I'm just trying to confirm it
27 doesn't include that. If it doesn't, we stay
28 away from it; right?

29 You have to let me confirm that stuff as
30 opposed to just shutting it down because you have
31 some preconceived idea what's relevant in this
32 case and what's not. Okay? I'm not -- I'm not
33 wasting anybody's time. I'm not trying to be
34 scandalous and say, okay, let's talk about all
35 those furries in schools just for rhetorical or
36 shock value. I'm not going there. I'm just
37 trying to confirm that those things are not part
38 of what she views as all the genders people can
39 identify as. And -- and identifying as more than
40 one gender is -- is -- is in SOGI. Okay? So I'm
41 not trying to be unfair, cause anybody trouble.

42 THE CHAIR: Thank you, Mr. Kitchen. I don't feel
43 confused about the issues. I -- as I said, I
44 don't see this line of questioning as relevant.
45 There's nothing in the record to suggest that
46 SOGI 1 2 3 has anything to do with animals, and I
47 don't understand Mr. Neufeld's comments to be

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Teacher B (for Complainant)
cross-exam by Cnsl J. Kitchen

1 about that. So this isn't kind of a wide-ranging
2 exploration of all issues that may be -- you may
3 be encountering in your practice or in schools.
4 This is a discrete complaint under section 7 and
5 13 of the *Human Rights Code* about Mr. Neufeld's
6 comments, and the questions need to be related to
7 that; otherwise, they're not going to be
8 permitted.

9 CNSL L. WADDELL: I'll also note the -- the witness
10 also answered your question, Mr. Kitchen. So you
11 can move on.

12 CNSL J. KITCHEN: Yeah, no, we're good, and that's
13 exactly what I expected. So, you know, we went
14 through a lot of -- a lot of wasted time with
15 that because it was pretty simple, as expected it
16 would be.

17 Q Teacher B, I know we spent a lot of time on this,
18 but you agree with me, then, that -- hold on.
19 Let's -- let's do it this way. Hold on. I'm
20 going to get there before I share. Okay. You
21 can see my screen again, the bit I'm scrolling
22 in?

23 A Yeah.

24 Q Okay. Oh, that's way too big. Let's try this.
25 Okay. Does this look familiar to you? I'm told
26 this is older SOGI material, but does this look
27 familiar to you?

28 A It doesn't look familiar, but it might be just
29 because it's an older version.

30 Q Yeah, that's -- that's -- that's the evidence we
31 have so far, that this is an older version.
32 Well, and I'm going to -- so I'll -- I'll read --
33 I'll read this, then, and ask you if you think
34 it's -- if you think it's accurate. So 3,
35 Self-Identification:

36
37 Students will have the right to
38 self-identification, which includes the
39 name by which they wish to be addressed
40 and the preferred pronouns that
41 correspond to their gender identity.
42

43 You have no reason to dispute that -- that, you
44 know, this is authentically SOGI-type language?

45 A Yeah, it is.

46 Q Okay. I don't need to read it out loud, I don't
47 think. Number 4, that sounds -- that sounds

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Teacher B (for Complainant)
cross-exam by Cns1 J. Kitchen

1 accurate? That sounds like it's SOGI 1 2 3
2 resource --
3 A Yeah.
4 Q -- content? Yeah. Okay. Number 6, the
5 gender-integrated inclusive activities, is
6 that -- like, you would agree with me that
7 that -- that's consistent with what SOGI 1 2 3
8 resources are today?
9 A Yeah.
10 Q Okay. I think that's probably a better way to do
11 it. Number 8, you would agree that this content
12 here is -- is -- is consistent with -- with
13 SOGI 1 2 3 resource content today?
14 A Yeah.
15 Q Okay. Same with 9? You would -- you would agree
16 that this content here that we're looking at,
17 Number 9, is consistent with SOGI 1 2 3 resource
18 content today?
19 That's a yes?
20 A Yes. Yes.
21 Q Okay. Thank you. Thank you. Thank you. The
22 accurate information about sexual and/or gender
23 diversity here, what would be the accurate
24 information about how many genders there are? I
25 don't -- I mean, I don't need an exact number.
26 Just maybe an estimate.
27 A Can you repeat the question?
28 Q Within the scope of accurate information, okay,
29 is part of that accurate information about gender
30 diversity that there are many genders?
31 A Yes.
32 Q Okay. And do we know what a rough number is?
33 We -- you said three. I asked if there was more
34 than three. You agreed with me that there's more
35 than three. Do you recall that?
36 A Yeah.
37 Q Okay. And, again, I don't -- it doesn't need to
38 be precise. Just what's your understanding of
39 how many -- you know, the -- you know, as far as
40 accurate information in SOGI 1 2 3, what's --
41 what's your understanding of how many genders
42 there are?
43 A When I teach, I talk about females, males, and
44 nonbinary people. Nonbinary --
45 Q Okay.
46 A -- people are -- can be identified by multiple
47 pronouns. I don't know how many there are.

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Teacher B (for Complainant)
cross-exam by Cnsl J. Kitchen

1 There's, like, dozens of new pronouns. But I
2 think they all kind of go under the "they" or
3 gender-neutral gender.
4 Q Okay. I don't want to dwell on this. Is it fair
5 to say that there's -- that there's more than
6 three genders, but it's difficult to pin it down
7 other than say that there's more than three?
8 A Yes.
9 Q Okay. Now, let me ask you this: This -- this
10 belief that there's three or more genders, when
11 you teach -- you -- okay. Let's back up.
12 Let's -- let's clarify a couple things. You --
13 you teach Grade 6 -- I think you said -- you said
14 you teach Grade 6; is that right?
15 A Yeah.
16 Q Okay. Is that -- is that the only grade you
17 teach, or do you sometimes --
18 A The only grade.
19 Q Okay. Do you have -- do you have, like, a
20 homeroom or -- like, where you teach all
21 subjects, or you teach just a certain subject in
22 Grade 6?
23 A I'm a humanities teacher.
24 Q Okay. So, like, social studies, history, that
25 kind of stuff?
26 A English -- so I teach socials, careers, English,
27 and art.
28 Q Okay. Okay. And you said you do -- you do a
29 lesson every year with your -- with your Grade 6
30 students involving the SOGI resources?
31 A I do a lesson on -- or I do multiple lessons on
32 inclusion, and it is one of the parts of that
33 lesson, yes.
34 Q Okay. So the SOGI 1 2 3 resources may feature in
35 more than one lesson throughout the year for you?
36 A I think just one lesson. It depends --
37 Q Okay.
38 A -- whether that might be more than one day. It
39 might be. Depending how the kids are. But
40 like --
41 Q Okay.
42 A -- it's -- it's literally one lesson a year.
43 A Yeah.
44 Q Okay. One lesson that might be a few days, at
45 most?
46 A Actually, no, let me think about that. So when I
47 teach pronouns, I teach the three -- the three

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Teacher B (for Complainant)
cross-exam by Cnsl J. Kitchen

1 main pronouns. So -- but -- so I don't know if
2 you would clarify -- or say that's part of SOGI
3 or if it's just part of grammar.
4 CNSL L. WADDELL: And, Mr. Kitchen, can I just do two
5 things? You -- if you're done with the
6 document -- or if you have more witness for the
7 witness with the document, leave the screen-share
8 up. I was just going to ask if you were going to
9 get rid of the screen-share. But also because I
10 know the record is important to you, am I correct
11 that you were referring to Tab 41, page 131 in
12 your series of questions for the witness there?
13 CNSL J. KITCHEN: It's definitely page 131. I
14 can't -- and Tab 41 sounds about right.
15 CNSL L. WADDELL: Okay.
16 CNSL J. KITCHEN: Let's see here.
17 CNSL L. WADDELL: In the --
18 CNSL J. KITCHEN: Yeah, yeah, yeah. It's Tab 41.
19 You're right.
20 CNSL L. WADDELL: Okay. In the -- the book of various
21 documents?
22 CNSL J. KITCHEN: Yes.
23 CNSL L. WADDELL: Okay. Thank you.
24 CNSL J. KITCHEN:
25 Q The three pronouns are he -- well, the he/him,
26 the she/her, and the they/them?
27 A There's more pronouns on top of that. The
28 they/them I would group a lot of them in there,
29 but there's people that don't agree with any
30 gender; they're called agender. There's -- the
31 main three pronouns are those, but there's also
32 zes or zim. There's tons of other pronouns out
33 there as people try and label what nonbinary
34 means.
35 Q So there's -- there's some kids that -- that
36 identify as no gender?
37 A Mm-hmm.
38 Q Have you encountered a child like that?
39 A No, I have not.
40 Q Okay. And how do you know -- so how do you know
41 about that, then?
42 A How do I know?
43 Q Yeah, how do you know about the -- about the kids
44 that -- like, this isn't -- this isn't a
45 hypothetical. There's -- there's -- there's kids
46 that identify as -- as no gender that you -- you
47 actually know of?

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Teacher B (for Complainant)
cross-exam by Cnsl J. Kitchen

1 A I do research online because I create the
2 lessons, and I will also use SOGI for stuff like
3 that.
4 Q Okay. So you haven't -- you haven't heard of or
5 met a child who's identified as having no gender.
6 You just -- you just know about it from your
7 research online?
8 A Yeah.
9 Q Okay. Well, okay. When you -- when you -- when
10 you do this lesson, you're teaching about the
11 SOGI 1 2 3 stuff, the inclusive stuff, have you
12 ever taught that, like, one of the -- one of the
13 potential options is -- is no gender?
14 A So I have a slide on my -- and it talks about all
15 of the different nonbinary descriptors and -- and
16 pronouns, and I believe it's on that page in my
17 notes.
18 Q Okay. Now, I'm going to share something here
19 that's not in the -- in the -- in the documents
20 yet.
21 CNSL J. KITCHEN: And, Ms. Waddell, I recognize that
22 there's names on this, so this will need to be
23 redacted, but, of course, there's nobody that can
24 see this because everybody's just listening, so
25 that's why I'm sharing it without any concerns
26 for anybody.
27 Q B, do you recognize this as -- you -- you
28 mentioned the gender unicorn. Okay. Is this an
29 accurate depiction of the gender unicorn?
30 A Yeah. Yes, it is.
31 Q Okay. The gender unicorn that you've used, does
32 it -- does it look the same or very similar to
33 this?
34 A It's -- I believe one of the ones that I used
35 might have said "sexually attracted" instead of
36 "physically," but I -- I don't use that one. I
37 use this one that you have up.
38 Q Okay.
39 CNSL J. KITCHEN: I'd like to have this entered as an
40 exhibit, please.
41 THE CHAIR: Okay --
42 CNSL L. WADDELL: Mr. Kitchen, could you provide us
43 with a copy, please?
44 CNSL J. KITCHEN: Yeah, absolutely.
45 CNSL L. WADDELL: And, also, does this have any
46 connection -- other than the topic, is this -- is
47 this a SOGI material? Because, like, you've been

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Teacher B (for Complainant)
cross-exam by Cnsl J. Kitchen

1 telling us that this is about, like, SOGI 1 2 3.
2 Is this a SOGI 1 2 3 document, or is it something
3 different?
4 CNSL J. KITCHEN: Well, that's a really good question.
5 Q B, do you regard this as falling under the
6 umbrella of SOGI 1 2 3 resources?
7 A I don't -- I don't think it was a SOGI resource.
8 It's just a resource that's been around for,
9 like, at least 10, 15 years.
10 Q Okay. So it's a resource that you acquired on
11 your own?
12 A Yeah.
13 Q Okay. And you --
14 CNSL J. KITCHEN: And just hang with me, Ms. Waddell.
15 Q Did you get -- did you -- did you seek permission
16 to use it before you did?
17 A No.
18 Q Okay. But you used it, and then your evidence is
19 that -- and we'll explore this, but just briefly,
20 your evidence was that you got in trouble --
21 I'm -- I'm using "trouble." I think that's the
22 word you used. You got in trouble for using
23 this? Were you -- you --
24 A It was investigated, if that makes --
25 Q Okay.
26 A Like, it was investigated.
27 Q Okay. Which fair to say that that qualifies as
28 in trouble?
29 A I guess, yeah.
30 Q Yeah. Were you -- okay. So -- so the ideas
31 expressed in this document you would agree are
32 consistent with the ideas that are expressed in
33 SOGI 1 2 3?
34 A Yes.
35 Q Okay.
36 CNSL J. KITCHEN: Ms. Waddell, does that satisfy you?
37 CNSL L. WADDELL: It does, as long as we're not
38 heading down a rabbit hole of -- of reviewing
39 this teacher's practices in the classroom. So
40 you've made a connection to SOGI 1 2 3, but
41 the -- the -- what these teachers do in their
42 classroom on a day-to-day basis beyond what may
43 be relevant to the SOGI 1 2 3 materials is, in
44 our view, irrelevant to this proceeding.
45 Unless --
46 CNSL J. KITCHEN: Yeah, I --
47 CNSL L. WADDELL: I mean, she -- she testified about

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Teacher B (for Complainant)
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1 some of that in direct, so -- so that's -- that's
2 fair for cross. I'm just -- I'm just
3 foreshadowing.
4 CNSL J. KITCHEN: Yeah, no, I -- I agree with you, and
5 I don't -- I don't think we're going to have a
6 problem with that.
7 THE CHAIR: All right. Well, if --
8 CNSL J. KITCHEN: Okay.
9 THE CHAIR: If you'd like this entered as an exhibit,
10 you're also going to have to send it to the
11 tribunal. So once we have it --
12 CNSL J. KITCHEN: Yeah.
13 THE CHAIR: -- we can mark it. We don't have it yet,
14 so we'll come back to it --
15 CNSL J. KITCHEN: Yeah.
16 THE CHAIR: -- maybe later.
17 CNSL J. KITCHEN: Is it all right if we do that at
18 lunch as opposed to standing down and doing -- I
19 mean, I -- we could stand down and do it now if
20 you want to, but --
21 THE CHAIR: No, let's do it at lunch. Yeah.
22 CNSL J. KITCHEN: Okay. Okay.
23 THE CHAIR: Thank you.
24 A Can I say that there's words on this one that I
25 didn't -- I don't have on mine? Like, where it
26 says gender fluid, nonbinary, pansexual, demi and
27 sapiosexual, those were not on my copy.
28 CNSL J. KITCHEN:
29 Q Okay. And thank you for that. Do you think it's
30 inappropriate that they are on this copy?
31 CNSL L. WADDELL: Sorry. What -- what's the relevance
32 of the witness's view of the appropriateness of a
33 material that she doesn't use and that isn't in
34 the SOGI materials?
35 CNSL J. KITCHEN: Well, she -- well, she saw it fit to
36 point it out, so it sounds like it's important to
37 her. She -- she clearly knows about this stuff.
38 She's teaching it. She understands it. She --
39 she said herself she's very familiar with this
40 stuff. She's been able to answer my questions
41 with understanding. So, I mean, this is, you
42 know -- I mean, you know, the -- the pansexual,
43 demi, and sapiosexual, I mean, you know, if these
44 things are, you know, conceptually related, which
45 it certainly seems they would be, to the
46 underlying theory of SOGI 1 2 3, then it's --
47 it's -- it's relevant and -- and should be, you

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1 know, at least quickly explored.
2 CNSL L. WADDELL: If you want to take her -- I have no
3 objection if you want to take her to something in
4 SOGI 1 2 3, but I think she just clarified that
5 because you were crossing her and putting --
6 seeking to put this in -- in as -- as an exhibit
7 based on a document that she said she used in a
8 classroom, and upon closer examination, because
9 you haven't provided a copy to us, the witness
10 has said, "Actually, this is not what I used in
11 my classroom. It's got these other words that
12 aren't there." So -- so beyond -- she's -- she's
13 clarified that it wasn't in fact the version
14 that -- that she uses and is different. I don't
15 see how her views on the appropriateness of stuff
16 that is not on the version she uses, is not, to
17 the best of our knowledge, anywhere in
18 SOGI 1 2 3, is relevant to these proceedings.
19 CNSL J. KITCHEN: Well, no, because she might say --
20 that's -- that's why I asked it; right? Like,
21 she might say, "Well, yeah, no, I don't think
22 that should be there for, you know, reasons X, Y,
23 and Z." That's exactly why I asked it, to go to
24 your point.
25 THE CHAIR: All right. I think --
26 CNSL J. KITCHEN: And to --
27 THE CHAIR: -- I think we've heard it --
28 CNSL J. KITCHEN: Hold on. Hold on.
29 THE CHAIR: No, no, no --
30 CNSL J. KITCHEN: And to go to your --
31 THE CHAIR: -- Mr. Kitchen, actually, I'll tell you if
32 I need to hear from you. We've heard enough
33 about this particular issue. I'll let the
34 witness answer the question, and it will just --
35 it will go to weight. I mean, if it's not
36 relevant, it can just go to weight. So,
37 Mr. Kitchen, you can ask your question, and then
38 we'll move on to the next one. Go ahead.
39 CNSL J. KITCHEN: Okay. I had a point to make.
40 THE CHAIR: Okay. But --
41 CNSL J. KITCHEN: Ms. --
42 THE CHAIR: -- the point of what we're doing right now
43 is about objections. The objection has been
44 ruled on in your favour. So we can move on to
45 the next question.
46 CNSL J. KITCHEN: Well, Chair, I'm -- I'm trying to
47 sort something out with my friend, but I can't do

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1 that if you interrupt me.
2 So, look, all I was going to say was,
3 Ms. Waddell, I think it would be fair, if you
4 wanted to, if we -- if we -- if we confirm with
5 the witness which -- which version of the gender
6 unicorn she uses -- of course, we would redact
7 anything that would identify her, her classroom,
8 anything like that. But if you wanted to get a
9 copy that you thought was exactly what she uses
10 and you -- we wanted to put that into the record
11 instead, I would be totally open to that. I
12 think that would be beneficial to both parties if
13 we had the most accurate version of the gender
14 unicorn, i.e. -- when I say "accurate," the one
15 that is exactly the same as the one that she
16 uses. That's what I'm -- that's what I'm
17 proposing. If you don't think it matters, it's
18 fine, but I just -- I propose that as a good idea
19 for both parties.
20 CNSL L. WADDELL: I'll just address that so you can
21 move on and ask the question, but if it's --
22 like, that -- that's your -- your case, your job,
23 Mr. Kitchen. I think this is not a productive or
24 helpful subject, so I'm not --
25 CNSL J. KITCHEN: That's fine.
26 CNSL L. WADDELL: -- going to go and try and gather --
27 but you -- you carry on.
28 CNSL J. KITCHEN: Okay. That's fine.
29 Q Okay. I wasn't trying to be cagey, B. I was
30 just -- you said -- you said those -- those words
31 were -- pansexual, demi, and sapio weren't there.
32 So what I was getting at is are they not there
33 because in -- in -- in -- in -- as far as you're
34 concerned, they shouldn't be there?
35 A They don't exactly match, and it doesn't really
36 make sense to the whole picture.
37 Q Okay. What doesn't match?
38 A Gender fluidity doesn't have anything to do with
39 gender expression. Gender expression is just
40 what you look like on the outside, not --
41 Q You --
42 A -- whether you're nonbinary or not. So there's
43 words in there that don't match up with what it's
44 talking about.
45 Q Okay. Well, you -- okay. So now we -- now we
46 got a few words. You -- but initially you had
47 said pansexual, demi, and sapiosexual shouldn't

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1 be in there, and so that's what I was -- that's
2 what I was initially asking about. So the
3 "physically attracted to" section here, pansexual
4 shouldn't be there, in your view, because...?
5 A Because it's not the only -- like, physically
6 attracted is more of a sexual orientation thing,
7 not a specific pansexual thing.
8 Q Okay. And very briefly help us out. What is --
9 what is pansexualism?
10 A Excuse me?
11 Q What -- what -- what does -- what does pansexual
12 mean?
13 A Pansexual means that you are attracted to people
14 of all genders.
15 Q Including genders that are not simply male or
16 female genders?
17 A That's what all genders means, yes.
18 Q Okay. Okay. Okay. Okay. So it's -- it's a --
19 it's a sexual attraction term. The demi and
20 sapiosexual, just very briefly, what -- what do
21 those mean?
22 A Demi has to do with whether you're romantically
23 in -- attracted to people or if you're physically
24 attracted to people.
25 Q Meaning -- meaning you could be physically
26 attracted to a boy but romantic -- romantically
27 attracted to a girl, as an example?
28 A Not usually, no. It's more like "I don't get
29 physical -- I don't feel physically attracted to
30 certain people, but I can become emotionally
31 attracted to people." So it's not a body thing;
32 it's the person inside.
33 Q It's not a sexual thing. It's -- it's a -- it's
34 an emotional thing? Like -- like, are we talking
35 like --
36 A Emotional one, yeah.
37 Q Okay. Okay. Just very briefly, because I have
38 no idea what it means, the -- the sapiosexual?
39 A I actually haven't heard of that one before.
40 Q Okay. All right. Good. We'll leave -- we'll
41 leave that there.
42 Okay. Let's go back to where we started.
43 Sorry for the weave there. Okay. So Mr. Neufeld
44 says, "I believe children should be gently
45 encouraged to be comfortable with their bodies."
46 So your problem here is that when he says that,
47 he means to accept their own biology, and you

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1 would take issue with that?
2 A Yes.
3 Q Okay.
4 THE CHAIR: Sorry. Mr. Kitchen, again, can you
5 identify where you are in the record so that we
6 can keep good notes and follow along?
7 CNSL J. KITCHEN: Page 13.
8 THE CHAIR: Of the --
9 CNSL J. KITCHEN: Publication book.
10 THE CHAIR: Publications and Tab 3. Thank you. Go
11 ahead.
12 CNSL J. KITCHEN:
13 Q Okay. The bit about which -- their -- their
14 biology which can never be completely changed, do
15 you agree with him that biology can never be
16 completely changed?
17 A I don't, no. People's gender can change and
18 fluctuate throughout their lives. So it does
19 change. It's -- but, like, no one else can make
20 you change. It's just who you are, and as you
21 grow, you learn different things.
22 Q Do you -- do you -- do you think you understand
23 what he means when he says, you know --
24 A I know what he thinks what he means, yes.
25 Q Okay. And what -- and what would that be?
26 What -- what -- what do you understand him to
27 mean?
28 A That people should accept the sexual -- sex
29 assigned at birth as gender.
30 Q Right. So if someone -- if a baby is born with
31 a -- with a -- and let's leave aside the intersex
32 example. We know that that's obviously a thing.
33 You know, people are born without, you know,
34 fully formed, you know, genitalia and -- and --
35 and reproductive organs and all the rest of it.
36 So let's talk a fully intact -- a baby is
37 born fully intact, penis and testicles, so
38 he's -- he's a boy, and -- or he's a -- he's a
39 biological male. Let's -- let's use that term.
40 And so you understand him to be saying that,
41 look, because this person who's -- who's born
42 with -- with intact male reproductive organs, his
43 gender is therefore male and -- and his male
44 anatomy, his male biology, can't be changed. Is
45 that -- that's what you understand him to be
46 saying?
47 A No. Sex assigned at birth and gender are

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1 different things. Sex assigned at birth is when
2 you look at the pieces of a baby and decide
3 whether it's a boy or girl. Gender is something
4 you decide on the inside throughout your life.
5 Q That's the self-identification part of it?
6 A Yeah.
7 Q Okay. And if someone is -- I'm going to -- I'm
8 going to use your terminology just for now,
9 although we're going to come back to that. To
10 use your terminology, if someone is assigned male
11 at birth, if -- if they then -- you know, they're
12 a child -- to go back to your example earlier, if
13 they're a child and they self-identify as the
14 feminine gender, the girl gender, when they
15 have -- when they have done that, is it -- is it
16 your understanding and do you teach that when
17 that person has done that, they are in fact a
18 girl?
19 A Yeah. Yes.
20 Q And that's -- when you -- when you do these
21 lessons and you do these SOGI resources, if --
22 if -- if that question comes up, you would teach
23 the students that, look, if a -- if a person who
24 was assigned male at birth identifies as a girl,
25 they are in fact a girl, and you need to treat
26 them -- or you should treat them, out of respect,
27 as a girl?
28 A You should treat people as the identity they tell
29 you they are, yes.
30 Q Yeah. Okay. Pretty much regardless of what that
31 identity is?
32 A I don't know what you mean by that.
33 Q Well, I asked you -- like, there's no real
34 limitations on that.
35 A I --
36 Q You --
37 A I still don't understand. How is the --
38 Q Can you give me an example of any limitations on
39 that? Like -- like, are there any limitations
40 on, you know, you have -- you have -- you have
41 children that are identifying as something; then
42 they change. Like you said, people can change
43 how they identify for life. Are there -- are
44 there any limitations on what you believe a child
45 can identify as? And -- and then, you know, you
46 respond with saying, "Look, I respect that." Is
47 there any limitations on that?

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1 A I don't know.
2 CNSL A. TOM: Sorry --
3 A Like, if you have a specific example, maybe I
4 could explain it, but otherwise --
5 CNSL J. KITCHEN:
6 Q Okay.
7 A -- I can't explain what you're talking about.
8 Q You haven't encountered --
9 CNSL A. TOM: Mr. -- sorry. Mr. -- I'll let you ask
10 the question, and then --
11 CNSL J. KITCHEN:
12 Q You haven't encountered any situations where
13 somebody's come to you and identified as
14 something and you've been like, "Well, that's,
15 you know -- I can't -- I can't respect that
16 because that's not -- that doesn't make any sense
17 to me" or whatever. You haven't encountered that
18 situation yet?
19 A No, I have not.
20 Q Okay. It's fair to say you have had situations
21 where children that were assigned male at birth
22 or assigned female at birth have -- have
23 identified as the -- I'll use "opposite." I know
24 that's binary language, but I'll use opposite --
25 they've identified as the opposite gender.
26 You've encountered children like that in your --
27 in your Grade 6 class?
28 A Yeah. Many.
29 Q Okay. Can you -- can you give me, like, an
30 estimate of the many?
31 A This year? Last year? In the last --
32 Q Well --
33 A -- ten years? It's different --
34 Q What's --
35 A -- every year.
36 Q Yeah. Okay. I'll try --
37 CNSL L. WADDELL: Sorry. Can I just interject and see
38 if this is okay with you, Mr. Kitchen? But to
39 make sure that we protect the identity of
40 students, can you ask the question so that it's
41 scooping many years as opposed to just the last
42 year or the last two years, which might be a
43 smaller and perhaps identifiable number?
44 CNSL J. KITCHEN: That's not an -- that's -- you're
45 not going to be able to identify anybody with
46 that. So I take --
47 CNSL L. WADDELL: Well, we don't know --

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1 CNSL J. KITCHEN: -- your point.
2 CNSL L. WADDELL: -- how many there are; right? So
3 that's the -- that's the thing. If it's one kid
4 this year, then I think that has potential to
5 identify someone. So I don't want to stop you
6 from getting the information you --
7 CNSL J. KITCHEN: Okay, yeah, but --
8 CNSL L. WADDELL: -- want. I'm just suggesting --
9 CNSL J. KITCHEN: -- if it's -- if it's -- if it's
10 only one -- okay. I take your point if it's only
11 one. You know, we don't know what school she
12 teaches at. We don't know what her name is.
13 Q But it's been more than one this year; is that
14 right, B?
15 A On average, I would say in my own two classes,
16 there's about three nonbinary children each year.
17 But that's not GSA. That's just my two classes.
18 THE CHAIR: Mr. Kitchen, if you're done with the
19 document, would you mind taking it down so we can
20 see everyone a bit better? Thank you.
21 CNSL J. KITCHEN: Yes. Sorry. You -- you might have
22 to remind me again. I'm sorry. I'll do my best.
23 Nothing -- see, nothing changes on my screen, of
24 course, so I don't even realize.
25 Q Three nonbinary children per year in your two
26 classes, on average?
27 A Yes.
28 Q Has that number gone up over the years?
29 A No. It fluctuates --
30 Q Is it --
31 A -- each year, but --
32 Q Okay.
33 A -- about three.
34 Q An average of three every year for the last
35 ten years or so?
36 A I've only really been talking about it for the
37 last, like, five-ish, but, yeah, in the last
38 five years, there's been about three a year.
39 Q Well, and that's the source -- okay. Hold on.
40 When you say "many," you're not just talking
41 about the kids in your class. You're talking
42 about in the -- in the GSA as well?
43 A The GSA is quite a -- is -- is very different
44 than my own classrooms. Yeah.
45 Q Okay. To the degree you're -- you're -- you're
46 able, because -- because you know because you run
47 the GSA, in -- and don't tell me anything about

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1 your middle school. I mean, we know it's in
2 Chilliwack, but don't tell me anything about it
3 that would identify it. I guess you can't tell
4 me how many students are in it. Yeah, how many
5 nonbinary students are you aware of in your
6 middle school? Just rough number.
7 A So it's hard to tell because not all of them will
8 tell you that because they don't feel safe or
9 comfortable to. But the ones in my GSA that I
10 know of, there's probably about 20-ish, maybe
11 more, even. I just -- when I'm talking to
12 acceptance club kiddos, I use gender-neutral
13 pronouns because I know that it's so fluid for
14 all those guys.
15 Q Okay. Let me ask you this just so I can get some
16 idea: Would your middle -- your -- your -- your
17 middle school has hundreds of students, not
18 thousands of students?
19 A Yeah. Yes.
20 Q Okay. Okay. Hold on. I want to make sure I
21 understand nonbinary. Does nonbinary include any
22 child who identifies as a gender that's different
23 from their assigned sex?
24 A Yeah. Yes.
25 Q Okay. So this is -- a boy identifies as a
26 girl -- a male identifies as a girl, a female
27 that identifies as a boy, and then, like, a
28 female that -- that -- that identifies as
29 something altogether --
30 A There's transgender and there's nonbinary.
31 They're both underneath the same umbrella.
32 Transgender is changing from one gender to
33 another, whereas nonbinary is "I don't identify
34 with any of them" or "I identify with all of
35 them."
36 Q Okay. So -- but nonbinary includes the
37 transgender children?
38 A It's kind of the other way around, whereas
39 transgender includes nonbinary people.
40 Q Okay. So when you say there's 20 nonbinary, you
41 mean there's 20 transgender? They're -- they're
42 synonymous?
43 A The transgender kids I don't actually know
44 because most of them are in hiding and too scared
45 to come to acceptance club and be outed.
46 Q No, no, I'm just talking about the ones that you
47 know of. The ones you know of --

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1 A That I know of? There's not a lot of trans out
2 students in middle school. It's a -- it's a
3 really awful place if you're out.
4 Q What are the ages for middle school?
5 A So I have 12-year-olds, and it goes up to
6 Grade 8. So 12 to, like, 15.
7 Q Okay. So middle -- middle school kids are
8 typically from about 12 to 15 years old?
9 A Yes.
10 Q Okay. So just to confirm, there may be a whole
11 lot more than 20. You don't know about them.
12 But you know about roughly 20?
13 A Yes.
14 Q Okay. You said something earlier about -- hold
15 on. What time is it? What are we at? It's five
16 to -- we're good.
17 CNSL J. KITCHEN: You -- Chair, you want to have --
18 you want to have lunch at 12:30?
19 THE CHAIR: I think since we've been a bit early
20 today, I would suggest 12:15 if that's --
21 Teacher B, are you going to keep going till
22 12:15?
23 A Yes.
24 THE CHAIR: Is that all right with you --
25 A Yeah.
26 THE CHAIR: -- Mr. Kitchen?
27 CNSL J. KITCHEN: Yeah, let's do 12:15.
28 Q You said earlier about people have to decide what
29 sex that the babies are when they're born. Do
30 you recall that?
31 A Yeah.
32 Q Okay.
33 A When they're assigned at birth.
34 Q Why --
35 A Or [indiscernible - overlapping speakers]
36 assigned at birth.
37 Q Again, putting aside the -- you know, the obvious
38 and unfortunate example of people who are --
39 their -- their -- their anatomy is confusing
40 because they might have, you know, some female
41 reproductive organs and male reproductive organs.
42 Putting aside -- putting aside that -- that
43 example, we're talking about people who are, you
44 know, intact, fully formed genitalia for just one
45 sex, fail or -- male or female. Why do people
46 have to make a decision about what sex those
47 babies are?

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1 CNSL L. WADDELL: Are you asking -- sorry. For the --
2 if you are asking why medical professionals have
3 to make a decision, this is not an expert
4 witness. If you're asking for the witness's
5 thoughts, I don't see the relevance. But can you
6 explain the relevance of this?

7 CNSL J. KITCHEN: Yeah, sure. It's the -- it's the
8 "assigned at birth" language. You know, that's
9 not -- I'm trying to -- where -- I'm trying to
10 understand the -- the -- the intelligibility --
11 I don't know if that's a word, but I'm trying to
12 make -- I'm trying to make sense of that
13 terminology. That's obviously a terminology
14 that, you know -- that she's used, that other
15 witnesses have used that I think probably
16 actually -- I think probably all your witnesses
17 would use similar language. You know, as far
18 as -- as far as I can tell, and I -- and I may be
19 wrong as I explore this. As far as I can tell,
20 it's -- it's part of the belief system that --
21 that is at issue in this case that people are not
22 born with a sex; they're assigned a sex. And so
23 I'm trying to figure that out. That's all.

24 CNSL L. WADDELL: Okay. So you want the witness to --
25 to answer what her understanding of "assigned at
26 birth means"; is that right?

27 CNSL J. KITCHEN: Yeah, exactly. I'm not -- look --

28 CNSL L. WADDELL: Okay.

29 CNSL J. KITCHEN: -- she's not a medical doctor. I'm
30 not trying to, you know --

31 CNSL L. WADDELL: Okay.

32 CNSL J. KITCHEN:

33 Q Why -- let me -- let me try it this way. Why is
34 the -- is the -- is the language that's used here
35 by you and many others, "assigned at birth,"
36 what's up with that? What does that mean? Where
37 does that come from?

38 A So if you look at the gender unicorn, it's
39 actually one of the first things on there, what
40 gender assigned -- or sex assigned at birth. And
41 that's when they have on their -- like, on their
42 ID as their gender, whereas -- or as their sex.
43 Sex and gender are different. So sex assigned at
44 birth is what the doctors decided when you came
45 out, and gender is what you decide as you grow
46 up.

47 Q Isn't it -- isn't it fair to say that nobody --

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1 again, we're talking about people who have fully
2 formed single-sex reproductive organ. We're not
3 talking about intersex people. Isn't it fair to
4 say that people -- that human beings, when
5 they're born, their sex is not assigned; it just
6 is? Wouldn't that be more accurate?
7 A No.
8 Q So, you know, when -- when a -- when a female is
9 born and -- and you can physically inspect her
10 genitalia and, you know, there's -- there's all
11 the recognizable components of it, she just is
12 female. Isn't that fair? Isn't that accurate?
13 A People assume she's female because they can see
14 her -- her gendered organs. They assume things,
15 but --
16 Q But -- but in what -- sorry. Unless she's
17 intersex, isn't she -- isn't she, without a
18 shadow of a doubt, female?
19 A Her sex is female. Her gender is something she
20 needs to tell us.
21 Q I know. I -- I'm tracking with you on that, but
22 we're talking about the sex thing. Because --
23 because you -- you say the two are separate, and
24 I'm -- I'm rolling with that. Isn't it fair to
25 say that nobody who's born -- they're not
26 intersex, they're born with a fully functional
27 penis and testicles, they're not assigned male;
28 they just are male. Wouldn't that -- wouldn't
29 that be more accurate?
30 A No.
31 Q No. Is it -- so it's -- so it's possible for a
32 human to be born with a fully formed penis and
33 testicles and then be assigned as -- as -- their
34 sex to be assigned as female?
35 A You would have to ask the doctors.
36 Q Well, isn't that -- isn't that what you believe,
37 that that's possible? But, you know, by logical
38 inference, if it's -- if it's -- if it's an
39 assignment and -- and not just an is, that
40 that's -- that that's possible? Isn't the --
41 isn't the whole point of saying it's assigned to
42 allow for that possibility?
43 A I don't understand what you mean by the question.
44 Q Okay. That's fine. So -- okay. So you would
45 agree with me it's not possible to assign a
46 female sex to a baby that's born with a fully and
47 formed penis and testicles? That's not possible.

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1 You would agree with that? You would -- you
2 would agree that doesn't make any sense to do
3 that? That makes no logical sense?
4 A Lots of people will raise their babies as
5 nongendered until they can tell them.
6 Q Right, but we're talking about sex. We're not
7 talking about -- I -- I get it; right? The
8 male -- the male child may identify as a girl
9 with their gender three years later. But we're
10 talking about when they're born, their -- their
11 male sex, separate from their gender, is not
12 assigned; it just is.
13 A It's assigned by the doctors.
14 CNSL L. WADDELL: Sorry. That question has already
15 been asked and answered. As the witness just
16 indicated, it's not something she knows about.
17 It's assigned by doctors.
18 CNSL J. KITCHEN:
19 Q Last question on this. You believe that when --
20 when -- when a -- when a baby is born, their sex
21 is not something that just is; it's something
22 that's decided by somebody else and imposed upon
23 them?
24 A Yes.
25 Q Okay. And that decision, that imposition, that
26 assignment may in fact be wrong?
27 A Yes.
28 Q So the -- the -- the -- the baby born with --
29 with fully functioning male anatomy, male
30 genitalia, may in fact be -- their sex may in
31 fact be female?
32 A Their gender may in fact be female, not sex.
33 Q Right. So -- so when -- so when a -- when a --
34 when a -- when a -- when a child born with male
35 anatomy is -- is assigned male as sex, that --
36 that assignment, then, will always be correct?
37 A No, because when they get older, they can go and
38 change it to X if they'd like.
39 Q But that's gender, not sex. That's -- that's
40 what you told me; correct?
41 A I don't understand.
42 Q Okay. I'm -- I'm -- I'm -- I'm -- for the
43 purposes of the question, I'm agreeing with you
44 that we've separated gender from sex.
45 A Okay.
46 Q Okay? And -- and -- and the -- the terminology
47 that you and others use is that sex is assigned

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1 at birth. And what I'm trying to figure out is
2 how is that -- how is that a reality in the
3 world? Like, how is sex assigned? You agreed
4 with me that when I -- I asked you. I said,
5 "Look, is -- is sex something that's decided by
6 somebody else and then imposed upon the baby?"
7 You agreed with that. And when I said, "Isn't it
8 something that just is," you disagreed.

9 THE CHAIR: I'm sorry. I just --

10 CNSL J. KITCHEN:

11 Q Do you recall that?

12 THE CHAIR: -- I have to jump in here, Mr. Kitchen,
13 because I didn't rule on Ms. Waddell's objection
14 because you said you had one more question, but
15 we're a few questions in. And so I think, in
16 fairness, the objection needs to be resolved on
17 this line of questioning because it's gone on.
18 Do you have a lot more questions about the
19 assigned-at-birth --

20 CNSL J. KITCHEN: Well, I --

21 THE CHAIR: -- issue?

22 CNSL J. KITCHEN: I -- I wouldn't. The witness keeps
23 contradicting herself. And so it's -- it's -- I
24 mean, to be fair to her and to myself, I'm --
25 I'm -- I'm trying to resolve the contradiction.
26 That's all I'm trying to do. And -- and so
27 that's where we're at. We're still at that
28 point.

29 THE CHAIR: Okay. Ms. Waddell?

30 CNSL L. WADDELL: I think, Mr. Kitchen, that part of
31 the challenge is in some of the language you use
32 and perhaps your own lack of understanding. So
33 you keep, for example, asking her questions about
34 what you call fully formed genitalia, which are
35 on the outside and are a piece of the sex that
36 someone may be assigned or denoted at birth. But
37 it may be that someone does not have -- they do
38 not the internal organs associated with those
39 external fully formed genitalia that you keep
40 talking about. And so in that sense, and -- and
41 your questions have also erroneously construed
42 what the term "intersex" means. It does not mean
43 someone, as you suggested yesterday and inferred
44 today, with, like, not fully formed anything or
45 somehow defective anything, but most commonly
46 that term refers to people who have a mix. Okay?
47 So there's a lot of --

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1 CNSL J. KITCHEN: Yeah, no I -- no, listen --
2 CNSL L. WADDELL: [Indiscernible - overlapping
3 speakers] --
4 THE CHAIR: No, no --
5 CNSL J. KITCHEN: -- listen, listen, listen. I
6 take --
7 THE CHAIR: -- no. Let her finish --
8 CNSL J. KITCHEN: -- your point.
9 THE CHAIR: -- her -- Mr. Kitchen --
10 CNSL J. KITCHEN: I did --
11 THE CHAIR: Mr. Kitchen --
12 CNSL J. KITCHEN: No, no --
13 THE CHAIR: Mr. Kitchen --
14 CNSL J. KITCHEN: No --
15 THE CHAIR: Mr. Kitchen --
16 CNSL J. KITCHEN: She --
17 THE CHAIR: Mr. Kitchen --
18 CNSL J. KITCHEN: She is --
19 THE CHAIR: Mr. Kitchen --
20 CNSL J. KITCHEN: -- mischaracterizing --
21 THE CHAIR: Mr. Kitchen --
22 CNSL J. KITCHEN: -- it.
23 THE CHAIR: -- you need to stop talking when I say
24 your name like that, please. Ms. Waddell was not
25 done with what she was saying. So you need to
26 wait until she's done, and then I'll come to you.
27 But I need to hear the full submission from --
28 from Ms. Waddell.
29 CNSL L. WADDELL: So you're -- you're entitled to
30 explore when a witness contradicts themselves.
31 I'm simply eliminating for you that some
32 contradiction that you are perceiving is a
33 product, I think -- I could be wrong -- of your
34 understanding of certain language, which is
35 sometimes different than the witness's. So
36 I'll -- that's all I'll say, but I think that's
37 part of why it seems that there is a
38 contradiction. Maybe there actually is, but I
39 want to articulate for you that the language you
40 are using, the way in which you're using it does
41 match how -- how some of us in this hearing room
42 understand that language. And that may be
43 causing confusion. There you go. That's the end
44 of my objection.
45 THE CHAIR: Okay. Go ahead, Mr. Kitchen.
46 CNSL J. KITCHEN: I -- I largely agree with you.
47 And -- and if -- had you been listening to me,

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1 you would have noticed that I did say putting
2 aside the example of the people who have unformed
3 or formed both; right? So I agree with you.
4 Intersex means that people who might have only
5 partially formed reproductive organs of one sex
6 and then partially formed reproductive organs of
7 another sex inside, you know, like, a malformed
8 penis on the outside and -- and -- and then --
9 and then partially formed ovaries on the inside.
10 I -- I get the medical science of that. I think
11 we all get the medical science of that.

12 So I said about three times in the last half
13 an hour "putting aside those examples," and I'm
14 doing that on purpose to try to bring the
15 clarity; right? If she says to me, "Well, the --
16 yeah, it can be wrong because really this person
17 might be intersex. They might have ovaries
18 inside" -- if that's her answer, fine. We're
19 done. We're -- we're -- we're moving on; right?
20 Because if that's all she's talking about, then
21 I'm tracking with her.

22 But as long as we're in this realm of --
23 we're talking about people who are -- don't --
24 don't fall into that category of intersex and
25 it's -- it's, you know -- as I understand her
26 answer, everybody is assigned a sex, not just --
27 not just -- not just, you know, some people,
28 but -- but everybody is, including all the people
29 who it would be perfectly accurate for.

30 So maybe you're right. Maybe what -- maybe
31 what she's -- what she's thinking about is the
32 intersex example. And I've -- I've tried to say
33 "putting aside that example" to be -- to be
34 clear. Okay? So I get where you're coming from,
35 and if that's -- if that's the case, I would have
36 expected the witness to -- to -- to say that.
37 And maybe now having heard this conversation,
38 that's what she'll say, and we'll all be on the
39 same page.

40 THE CHAIR: All right. Ms. Waddell?

41 CNSL L. WADDELL: Last very, very brief word is the
42 witness has already said twice in response to the
43 same question that that assignment is done by
44 medical professionals. It's not what she does,
45 and that you would have to ask the doctor. So
46 my -- I maintain my objection in addition to the
47 confusion piece, and offering some thoughts on

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1 how that might be cleared up, that this is not
2 something this witness can answer.

3 THE CHAIR: All right. Thank you.

4 I'm struggling with the relevance of this
5 line of questioning. Mr. Kitchen, if you have
6 one, maybe two more questions you want to just
7 wrap it up with, we'll let you do that in
8 cross-examination, but then we need to move on
9 because this witness's understanding of assigned
10 at birth is -- I'm struggling to see what this
11 has to do with anything. But I'll let you finish
12 this line of questioning, and then you can make
13 your arguments about -- about it later on. So
14 one or two more questions at max, and then let's
15 move on.

16 CNSL J. KITCHEN:

17 Q B, when you said that -- that -- that sex is
18 something that somebody else decides and imposes
19 on the person, you're talking about all babies,
20 not just the very small number who may have
21 something atypical about their -- about their
22 anatomy. Is that fair?

23 A I'm sorry. Can you repeat what you just said?

24 Q Yeah. So from your perspective, the sex of every
25 human baby that's born -- not just the very small
26 number that may be atypical and have something
27 atypical about their anatomy, okay? Do you
28 understand what I mean when I say "atypical about
29 their anatomy"?

30 A You keep confusing me by going off on that
31 tangent, and I don't understand what the question
32 is anymore. So can you make it --

33 Q Okay.

34 A -- like a very --

35 Q Okay.

36 A -- simple yes, no, or, like, a quick question
37 that actually makes sense to me instead of
38 rambling about intersex people? I get that
39 they're not included. You've said that a couple
40 times.

41 Q Okay. Okay. Well, your counsel doesn't seem to
42 understand that. So that's -- that's why I keep
43 saying it. I'm trying to make it clear. Okay.
44 So from your perspective when it comes to --
45 comes to all human babies when they're born,
46 their -- their sex is not something that just is
47 as a matter of their anatomy. It's decided by

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1 somebody else and imposed upon them?

2 A It's decided by somebody that's looking at their
3 anatomy, yes.

4 Q All right. And that person may in fact, in -- in
5 the real world in fact, logically, that -- that
6 decision, that imposition, may in fact be wrong?
7 About their sex, not their gender. It may in
8 fact be wrong about their sex?

9 A Yeah. Yes.

10 Q So -- so there -- there may be a boy that's
11 born --

12 THE CHAIR: Mr. Kitchen. That was question number
13 two, and we've -- it's a question I've heard
14 before maybe more than once. So can we move on
15 to the next subject, please.

16 CNSL J. KITCHEN: Just to help you understand -- I'm
17 not going to ask any more questions on this, but
18 you seem to be -- you seem to think that this is
19 irrelevant. So I just need to put it on the
20 record that it is patently obvious that sex is a
21 thing that is, and if people believe something
22 else, if they believe it's something that's
23 assigned or decided or imposed by somebody else,
24 that that's a belief system that's not based on
25 the reality of the world, and therefore it's a
26 belief system that needs to be explored by
27 somebody who has criticized that belief system
28 and is then facing a claim of discrimination for
29 having criticized that belief system. I hope
30 that's plain and clear.

31 CNSL L. WADDELL: Sorry. Was there a question there,
32 Mr. Kitchen?

33 THE CHAIR: This is --

34 CNSL J. KITCHEN: Obviously, there was not. That was
35 a submission to help the Chair comprehend the
36 relevance of my questioning.

37 THE CHAIR: Okay. Thank you. We can go on to the
38 next question, or if you'd rather, think this is
39 the right time for the lunch break, we can -- we
40 can do that rather than starting a new area. Up
41 to you.

42 CNSL J. KITCHEN: Sure. Let's do -- yeah, let's do
43 that.

44 THE CHAIR: Okay. We're going to take an hour now for
45 lunch, or maybe just a bit more. We'll come back
46 at 1:15.

47 Teacher B, right now you're still under

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1 cross-examination, and for so long as you're
2 under cross-examination, you're not allowed to
3 talk to anyone about your evidence. That
4 includes the lawyers for the BCTF and Chilliwack
5 Teachers' Association. So please take this hour
6 to relax and talk about other things, and then
7 we'll come back at 1:15. Okay? Do you have any
8 questions for me about that? No?

9 A No. Sounds good.

10 THE CHAIR: Okay. And maybe, Mr. Kitchen, can you
11 give us an idea of how far along we are in your
12 cross? Are we halfway? Where are we at?

13 CNSL J. KITCHEN: Well, I'm -- I'm hesitant to -- to
14 respond to that because I -- I'm concerned I may
15 be backed into a corner if I -- if I say that I'm
16 not very far in yet.

17 THE CHAIR: No, I'm not -- that's not my intention. I
18 just want to have some idea of what we're coming
19 back to, and also in fairness to Teacher B, let
20 them have an idea of sort of where we're at. But
21 I appreciate things can, you know, go faster or
22 slower than you might estimate.

23 CNSL J. KITCHEN: Yeah, so it really -- it really,
24 really depends. I mean, I've -- I've probably
25 asked 10 to 15 percent of my questions, if that
26 helps. But it -- I can't give you a time. Like,
27 I can give you I've asked 10 to 15 percent, maybe
28 20 percent of my -- at most of my questions.

29 THE CHAIR: Okay.

30 CNSL J. KITCHEN: That's -- I can give you a
31 percentage. I can't give you a time estimate.

32 THE CHAIR: Okay.

33 CNSL J. KITCHEN: We could -- we could -- we could
34 burn right through 50 percent of my questions in
35 half hour if it went smoothly.

36 THE CHAIR: Okay.

37 CNSL J. KITCHEN: Like -- like we did with -- with
38 Klettke.

39 THE CHAIR: Thank you. All right. Well, we're going
40 to take a break now for an hour. I'll ask -- I'm
41 going to remove everyone from the meeting now.
42 So don't disconnect yourself. Let me do it. And
43 then please come back at 1:15.

44 CNSL L. WADDELL: And, sorry, Mr. Kitchen, could you
45 send that document over the lunch --

46 CNSL J. KITCHEN: Yes.

47 CNSL L. WADDELL: -- hour? Yeah. Thank you.

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1 THE CHAIR: Okay. Thank you. Bye.

2
3 (WITNESS STOOD DOWN)

4
5 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)

6 [12:13:44]

7 (PROCEEDINGS RECONVENED) [1:19:20]

8
9 THE CHAIR: Okay. Good afternoon, everyone. Welcome
10 back. I'm just making sure that we recognize
11 everyone in the proceeding. And I see a new face
12 here, Carole Gordon. Counsel, does anyone want
13 to introduce --

14 CNSL L. WADDELL: Yeah, hi. Sorry. I just wanted to
15 identify that for the afternoon, Carol Gordon,
16 who's the first vice president of the BCTF, will
17 be our instructing client on behalf of the BCTF
18 in lieu of Robin Toscza.

19 THE CHAIR: Okay. Thank you. So, Teacher B, that's
20 for your benefit as well so you can know who
21 the -- the new face is. Thank you.

22 All right. I'm just going to -- rather than
23 go through and mute people individually, I'm
24 muting everyone all at once, and then those of
25 you who are meant to -- oh, sorry, Teacher B. I
26 know that caused chaos last time. But those of
27 you who are meant to talk can unmute yourselves
28 when it's your turn.

29 Over the lunch break, I believe we received
30 a copy of the gender unicorn poster. And so
31 we'll admit that as Exhibit 2 in the proceeding.
32 It's one page.

33
34 EXHIBIT 2: Gender unicorn graphic

35
36 THE CHAIR: All right. Teacher B, are you ready to
37 continue? Okay. Let's see if you can get
38 yourself off mute first. Let's see how that --

39 A Can you hear me?

40 THE CHAIR: Yes. Okay. There you go. Yes, perfect.
41 Thank you. All right. Mr. Kitchen, go ahead
42 when you're ready.

43 CNSL J. KITCHEN: Thank you.

44
45 TEACHER B, a witness,
46 recalled.
47

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1 CROSS-EXAMINATION BY CNSL J. KITCHEN, continuing:
2

3 Q B, you lived as a neighbour to Mr. Neufeld for a
4 period of time before that first post of his in
5 October 2017; is that right?

6 A Yeah. Like, four years, I think.

7 Q Okay.

8 A Or maybe he lived -- it was three years and then
9 it -- he only lived there for another year,
10 something like that.

11 Q Okay. So if we had to put a number on it, let's
12 say it was roughly three years that you lived
13 beside him before he made the post.

14 A Yeah.

15 Q Okay. You had some conversations with him?

16 A Very briefly.

17 Q Yeah.

18 A Yeah.

19 Q But fair to say you got to know him enough to be
20 able to form an opinion that he was, in your
21 words, a nice old man?

22 A Yeah.

23 Q Is that you just being generous, or did he -- did
24 he do anything to -- to -- to actually, you know,
25 gain that estimation in your mind? You said
26 something about -- shovelling snow. Did he --
27 did he, for example, do that for you?

28 A Yes.

29 Q Or anyone else? Oh, he -- oh, okay. He did.

30 Okay.

31 A Yeah. He also put lights up on our carport for
32 Christmas.

33 Q Did you ask him to do that, or did you -- did he
34 offer?

35 A No, it's just because on our -- there's, like, a
36 peak, and it looked funny with one side, and he
37 asked if he could put his on there, and I was
38 like, "Yeah, go ahead."

39 Q And fair to say you had no idea what his sexual
40 orientation was, and he had no idea what your
41 sexual orientation was at that time?

42 A I assume, yeah, he doesn't -- didn't know.

43 Q And -- and you didn't know what his was?

44 A No.

45 Q And there was no -- any time that the -- the --
46 the snow was being shovelled and the lights were
47 being put up, nobody was talking about sexual

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1 orientation?
2 A No.
3 Q So do you -- you said he harbours a lot of hate.
4 Do you think he -- do you think he -- he had that
5 hate all along, that time that he lived beside
6 you, or just only after he made the post?
7 A I think he had it all along and it -- it just
8 was -- because you're acquaintances, you don't
9 talk about a lot of things. And usually he dealt
10 with my wife, not me. I'm not really the most
11 social person. So, yeah.
12 Q Okay. Not that I want to elicit hearsay, but is
13 it -- is it fair to say that, again, prior to the
14 post, your wife had a -- had a similarly positive
15 view of him as you've expressed?
16 A Yes.
17 Q Okay. But you think he hates gay people
18 generally?
19 A I think he hates anybody that he terms groomers
20 and abusers. That was my -- my problem with it
21 is --
22 Q Okay.
23 A -- is the way he kept calling me an abuser for
24 being okay with queer kids.
25 Q And, to be clear, he didn't -- he didn't call you
26 by name, identify you and say, "I think" --
27 A Later on he did. In the post with my name on it,
28 yeah, he -- initially, he was just calling all
29 people like me, and then he narrowed it down over
30 the years to just me.
31 Q Okay. So he called you -- he called you directly
32 and exclusively and explicitly you a groomer?
33 A It says in the post that you guys were showing
34 earlier.
35 Q Can you help me out to determine which one that
36 is?
37 A It says "groomers" in quotation marks or
38 something like that.
39 Q Is this the one that talked about Kathy Jones or
40 something else?
41 A I don't know which post it was.
42 Q Okay. Let's -- I'm going to just -- we'll --
43 we'll come back to that at the end. I'll --
44 because typically what happens is, you know, we
45 take a short break and I see if there's anything
46 else arising. And so we'll come back to that.
47 Just give me a second to write this down. Okay.

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1 So let me ask you this: You think -- you
2 think he hates you?
3 A Yes.
4 Q On the basis that you're gay, he thinks he -- you
5 think he hates you on the basis that you're gay?
6 A I think he hates me on the basis that I support
7 trans children and adults.
8 Q Okay. Well, and I appreciate that because it
9 sounds like you're being very fair and
10 charitable. So you would agree with me, then,
11 that he does not -- well, I -- well, of course
12 he's going to say he doesn't hate you in any way,
13 of course. But just to go along with what you're
14 saying for your sake, from your perspective,
15 then, he doesn't hate you -- if he -- you believe
16 he does. Okay. He's not going to say that,
17 but -- but you believe he does. On the basis he
18 doesn't -- as far as from your perspective, he
19 doesn't hate you on the basis that you're gay; he
20 hates you on the basis that you support trans
21 kids?
22 A Yeah.
23 Q And you don't think that extends to him hating
24 you simply because you're gay?
25 A I'm not sure. You'd have to --
26 Q Okay.
27 A -- ask him.
28 Q No -- well, okay. When I do -- and -- and we're
29 going to go through this exercise a couple times.
30 I know it's a little strange. But when I do ask
31 him if -- if he hates you because you're gay,
32 he's going to say no. That's going to be very
33 easy for him to say that. Would you -- would you
34 tend to believe him when he says that?
35 A I think he might think that in his head, that it
36 doesn't equate to hating. But when someone calls
37 me a groomer, I kind of feel like they hate me,
38 whether they believe it or not.
39 Q Fair. But you would agree with me that he's not
40 calling you a groomer on the basis of your sexual
41 orientation, but, rather, on the basis of, to use
42 your words, that you support trans kids?
43 A Yes.
44 Q Okay. Do you recall that when you were talking
45 about he came and he knocked on your door -- you
46 said the day he made the post, he knocked on your
47 door; is that right?

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1 A It was the evening of, yes.
2 Q The evening of. Okay. I put it to you that he
3 was not knocking on your door to inform you or
4 warn you that protesters might come to protest at
5 your house, but actually that protesters might
6 come and protest at his house. If I put it to
7 you that that's what he was saying to you, what
8 do you say to that?
9 A That is not the way I understood it.
10 Q Okay. So when he is going to say that he was
11 coming to that -- to your house to warn you that
12 there might be protesters coming to protest at
13 his house, that he --
14 A He said my house.
15 Q Okay. So you -- he -- he would be mistaken if he
16 was to say that he came to warn you that there
17 would be protesters at his house to protest him?
18 A The way he said it was that he was not bringing
19 protesters to protest me in my own house.
20 Q Right. Wouldn't you agree that's another way of
21 saying that "Look, if there's protesters, it's
22 not because I brought them to protest you. It's
23 because they're here to protest me because of
24 what I posted"?
25 A It never occurred to me that -- until you said
26 that.
27 Q You would agree with me that once you saw his
28 post, your view of him became very coloured?
29 A Yes.
30 Q Your view of him became very negative?
31 A Yes.
32 Q And you would agree with me, then, that it's
33 actually not very surprising that you interpreted
34 what he said in a negative light because you now
35 had a fairly negative view of him?
36 A He literally called people like me child
37 abusers. So can you repeat your question?
38 Q No, I -- well, no, I -- I think you answered it.
39 So that's --
40 A Okay.
41 Q So thank you. Now -- well, I think to be fair, I
42 better bring you to the post. I'm going to see
43 if I can enlarge it here before I bring it up,
44 and then I'm going to see if I can highlight it.
45 Okay. Here we go. That should work. The
46 version I have is very fuzzy, but it should be
47 all right. I'm going to share my screen with you

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1 here. Okay. You would agree with me this is --
2 this is the post? This is the first post in
3 October 2017?
4 A Yes.
5 Q It's got this -- it's got this graphic above it.
6 Does that -- okay.
7 A I've seen that post for sure, yeah.
8 Q Yeah, no, but you would agree with me this is --
9 this is, like, the first post. This is the
10 October 2017 post?
11 A Okay. Sure. Yes.
12 Q Okay.
13 THE CHAIR: And for the record --
14 CNSL J. KITCHEN: This is --
15 THE CHAIR: -- this is Tab 1 of the book on
16 publications. Go ahead.
17 CNSL J. KITCHEN:
18 Q Okay. So he says here, "I agree with the college
19 of pediatricians that allowing little children to
20 choose to change genders is nothing short of
21 child abuse." So now you -- you -- you would
22 agree with me that he's not saying that you or
23 anyone else are child abusers? Let me ask -- let
24 me ask you this way: You would agree with me
25 that that's an inference that you're making, that
26 what he's saying is that people -- that people,
27 including you, that -- that -- that do support or
28 teach this stuff, you're inferring that he's
29 calling you a child abuser. You would agree with
30 me that's an inference you're making from what he
31 said?
32 A Yes, me and my --
33 Q Okay.
34 A -- group of friends for sure.
35 Q Do you think his -- to be clear, you --
36 obviously, I -- I take it you disagree that it's
37 child abuse to teach people -- sorry -- to teach
38 children that they can choose to change their
39 gender?
40 A It's not child abuse to teach children to be who
41 they are, no.
42 Q I would agree with you. I guess everything turns
43 on what that means; right? So -- so I understand
44 the rhetorical point. I get it. But -- but
45 let's be clear. The language is going to matter
46 here. I take it you agree -- or, sorry. I take
47 it you disagree with him. I take it you would

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1 say, "Look, teaching children to choose to change
2 their gender is not child abuse." You would
3 agree with that; right?
4 A It's not child abuse, no.
5 Q It's not -- it's not child abuse to teach people
6 to -- to teach children to choose to change their
7 gender; correct? In your view?
8 A Yes.
9 Q Okay. Okay. I'm going to stop sharing so that
10 we can see everybody again.
11 You told a news reporter by the name of Paul
12 Henderson that Barry was a drunk, did you not?
13 A No.
14 Q Okay. So if Barry was to say -- well, I just --
15 it's not a hypothetical. I anticipate Barry
16 saying that you told a news reporter by the name
17 of Paul Henderson that he was a drunk.
18 A No.
19 Q Okay. Perhaps there's some confusion here. Do
20 you -- do you have any reason to believe that
21 your wife might have said that to Paul Henderson?
22 A I don't know where you're coming with this drunk
23 stuff. I --
24 Q Okay.
25 A I've never seen him drink. I don't drink. Like,
26 I don't know.
27 Q Okay. Okay. He's going to -- he's going to say
28 that you told Paul Henderson that he was a drunk
29 and that it was --
30 A I've never talked to that man in my life.
31 Q To Paul Henderson?
32 A Yeah.
33 THE CHAIR: Sorry. Ms. Waddell is saying something,
34 but you're on mute.
35 CNSL J. KITCHEN: I don't think I'm going any further
36 with that. I think we -- I think we exhausted it
37 because she denied it. So it's --
38 THE CHAIR: Hold on. Let me just make sure that we
39 can hear Ms. Waddell.
40 CNSL J. KITCHEN: Oh, yeah.
41 THE CHAIR: She's muted.
42 CNSL J. KITCHEN: Ms. Waddell, you need to -- you need
43 to unmute.
44 A Are you still there?
45 CNSL J. KITCHEN: Ms. --
46 THE CHAIR: Yeah, she's still muted. It looks like
47 they're working on it.

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1 CNSL J. KITCHEN: Okay.
2 THE CHAIR: Time out. She's called a time-out.
3 CNSL J. KITCHEN: We're still waiting for Ms. Waddell
4 to unmute?
5 THE CHAIR: Yes.
6 CNSL J. KITCHEN: Okay.
7 THE CHAIR: It may not be helpful, Ms. Waddell, but I
8 can remove you from the hearing, and you could
9 reconnect. That's a tried-and-true potential
10 fix. Would that be helpful? Oh, now I don't
11 know if they can even --
12 CNSL J. KITCHEN: Oh, I think they're frozen.
13 THE CHAIR: They're frozen.
14 CNSL J. KITCHEN: I think that's the -- yes.
15 THE CHAIR: Okay. I'm removing them.
16 A Yeah, they are frozen.
17 THE CHAIR: Yeah. I'm going to remove them, and they
18 can reconnect. Okay. We'll just wait for them
19 to come back and get resettled.
20 Okay. There we go.
21 CNSL L. WADDELL: Can you hear us now?
22 THE CHAIR: Yes. Yeah.
23 CNSL L. WADDELL: Okay. Great. Sorry. I was trying
24 to object for, like, a good minute there but
25 couldn't unmute.
26 You know, a question's already out and
27 answer's already out, but my friend was trying to
28 put some sort of -- it was a *Brown v.*
29 *Dunne*-hearsay blend there, which was interesting.
30 In any event, it's already done, so let's just
31 move on, and hopefully we won't lose our audio
32 again.
33 THE CHAIR: Thank you. I'll try and keep a better eye
34 on you for that, Ms. Waddell, but you also have
35 the option of -- if you want to raise your hand,
36 that will really make it pop if you can't get my
37 attention. So -- if that happens again, which
38 hopefully it won't.
39 Okay. Go ahead, Mr. Kitchen.
40 CNSL L. WADDELL: Can you -- and just -- can you hear
41 me now?
42 THE CHAIR: Yes.
43 CNSL J. KITCHEN: Yeah.
44 CNSL L. WADDELL: Okay.
45 CNSL J. KITCHEN:
46 Q B, you said -- we're good?
47 THE CHAIR: No, you're muted now.

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Teacher B (for Complainant)
cross-exam by Cnsl J. Kitchen

1 CNSL J. KITCHEN: Who's muted?
2 THE CHAIR: Ms. Waddell is muted. I think she's
3 trying to say something or test something.
4 CNSL L. WADDELL: Can we unmute again?
5 THE CHAIR: There you are.
6 CNSL L. WADDELL: Okay. So you can hear us now.
7 Okay. So, yeah, we've just got a malfunction in
8 our speaker, I think.
9 THE CHAIR: As long as the three of you don't need to
10 talk, you can leave yourself off mute if you want
11 to leave it like that --
12 CNSL L. WADDELL: Yeah.
13 THE CHAIR: -- so you can jump in.
14 CNSL L. WADDELL: Yeah. Yeah, sure.
15 THE CHAIR: Okay. Go ahead.
16 CNSL L. WADDELL: And I -- and I will say -- sorry,
17 Mr. Kitchen -- if we are type -- we are typing
18 notes -- that's okay. If the noise of the
19 keyboard is irritating, just let us know.
20 We'll -- we'll figure it out.
21 CNSL J. KITCHEN: Okay.
22 CNSL L. WADDELL: Otherwise, we'll leave it on -- off
23 mute.
24 CNSL J. KITCHEN: Yeah, no, I think that's a good idea
25 to -- to leave yourself off mute.
26 Q B, you said Mr. Neufeld came to you and said that
27 he had no problem with you and your way of life?
28 A Yes.
29 Q And that was after -- that was after he made the
30 post?
31 A Yes.
32 Q Okay. But you -- you weren't pleased with that.
33 Is that fair to say? Well, let me ask you this:
34 Was it -- was it in that -- in that -- he said
35 that to you, and then I -- if I recall, you --
36 your response was to say something to him along
37 the lines of you really didn't like that post he
38 made, and then you closed the door on him. Is
39 that a fair summation of that conversation?
40 A Yeah.
41 Q Okay. So it's fair to say that that -- did you
42 believe him when he said that?
43 A I think he believed that he -- yeah, I think he
44 believed himself, yeah.
45 Q Okay. Right, but -- but -- but you -- you didn't
46 believe it?
47 A No.

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Teacher B (for Complainant)
cross-exam by Cnsl J. Kitchen

1 Q Okay. And, again, I want you to speak to your
2 mind, not his. Why do you think he said that to
3 you if he wasn't being sincere?
4 A Because it's kind of the trope that people that
5 don't like queer people say "lifestyle" like it's
6 a lifestyle we choose, and that is just a trigger
7 point if someone says "living your lifestyle."
8 What if I said that about straight people and
9 their lifestyle?
10 Q You think that -- you think that would upset
11 straight people?
12 A I don't know. Would it? I'm not straight, so I
13 don't know.
14 Q Well, I mean -- I mean, I'll -- I guess I can
15 ask -- I mean, I have some witnesses next week
16 that I think are straight, so I suppose I can ask
17 them. Okay. Okay. So hold on. Let's -- so if
18 somebody says -- if somebody uses "lifestyle,"
19 that upsets you?
20 A Yes.
21 Q Okay. And -- I'm sure -- I'm sure we're all
22 familiar that discrimination is not about
23 intention; it's about effect. But just -- just
24 track with me on this. Do you think when
25 people -- just generally people say that, they're
26 intending to upset or offend, or -- or -- or just
27 that's -- that's -- that's the effect regardless
28 of what they intend?
29 A Sorry. I didn't understand. Can you repeat it?
30 Q Okay. Well --
31 CNSL L. WADDELL: Are you just -- are you asking
32 specifically about lifestyle, Mr. Kitchen? Or --
33 CNSL J. KITCHEN: Yeah. Well, I was going to back up.
34 Q So, to be clear, Mr. Neufeld said "way of life,"
35 not "lifestyle"; is that right? Well, those are
36 your words --
37 A [Indiscernible - overlapping speakers] --
38 Q -- that I have written --
39 A -- they're both quite -- they mean pretty much
40 the same thing, I would assume.
41 Q That's what I was going to ask you. Okay. So as
42 far as you're concerned, when Mr. Neufeld says
43 "way of life" or if he says "lifestyle," he
44 really means the same thing. So you -- you
45 understood it to mean the same thing?
46 A Yes.
47 Q Yeah. Okay. Okay. So you don't think he was

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Teacher B (for Complainant)
cross-exam by Cnsl J. Kitchen

1 intending to be mean or offensive or anything,
2 but -- but --
3 A No.
4 Q Okay. But that's -- you just -- that's how you
5 [indiscernible - automated message] it?
6 A Pardon? That little weird thing came overtop of
7 your voice there.
8 Q You -- you received it as offensive or
9 upsetting --
10 A Yes, I did.
11 Q -- that he -- that he said "way of life"?
12 A Yes.
13 Q Okay.
14 THE CHAIR: Sorry. Just a moment. I'm realizing
15 Teacher B seems to be able to hear the voice that
16 says "unknown participant is now joining."
17 A I can. Yes, I can.
18 THE CHAIR: Okay.
19 A So I was like, what is happening?
20 THE CHAIR: Okay. In that case, we've been letting
21 people in at odd times on the understanding that
22 it's not disrupting anyone else other than us.
23 A Okay.
24 THE CHAIR: But if it's disrupting the witness, I'm
25 not going to keep doing that because it's --
26 it's -- it is quite distracting. So --
27 A It is.
28 THE CHAIR: -- we're -- I'm not going to keep
29 admitting people now until the next break. Okay.
30 Sorry about that. I think most other people
31 can't hear it, apparently, but it's -- I don't
32 know why you can.
33 A It's just me? Okay.
34 THE CHAIR: It's just you.
35 CNSL J. KITCHEN: Well, I think --
36 UNIDENTIFIED SPEAKER: I can also hear it.
37 CNSL J. KITCHEN: -- she said she's on a Mac, and, I
38 mean, Microsoft and Mac don't get along. So...
39 THE CHAIR: Okay. Well, there you go. All right. So
40 that was the last -- that was the last person
41 until we -- we reopen for the break. Okay?
42 Sorry about that.
43 CNSL J. KITCHEN: Okay. Good. I'm glad we sorted
44 that out.
45 Q So as far as you're concerned, he was trying to
46 be kind to you, but it -- it just -- it just
47 didn't come off that way to you. Is that fair?

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Teacher B (for Complainant)
cross-exam by Cnsl J. Kitchen

1 A [Indiscernible - background noise].
2 Q Okay. And fair to say you just stopped talking
3 with him after that?
4 A Yeah.
5 Q Okay. Fair to say you -- you -- you really don't
6 like the things that he believes?
7 A I think he's a little too obsessed with
8 children's body parts.
9 Q What do you mean by that?
10 A Post after post talking about body parts being
11 chopped off and stuff like that.
12 Q I take it you are familiar with young -- well,
13 no. I'll try to use your -- your terminology.
14 You're familiar with -- track with me. I'm going
15 to try to compromise with your language. I'm
16 going to ask you to try to compromise with mine a
17 little bit so that we can -- we can communicate
18 enough to be able to get through this exercise.
19 You're familiar with the -- the fact that
20 biological girls, teenage biological girls, so
21 we're talking 14, 15, 16, 17, 18, 19, that range,
22 okay -- so teenage biological girls who then
23 identify as boys, some of them end up having
24 double mastectomies. You're familiar with that?
25 A Only when they're adults. Not when they're in
26 school.
27 Q So to your knowledge, there -- there -- there
28 have been no biological females under the age of
29 18 that have had double mastectomies as part
30 of -- as part of -- as part of a transition to
31 becoming a boy?
32 CNSL L. WADDELL: Are you -- sorry. Are you asking
33 the witness about, like, her knowledge of people,
34 that she met people? Because she's not qualified
35 to speak about the entire world. I just want to
36 be clear about what you're asking her.
37 CNSL J. KITCHEN: Ms. Waddell, I think it is clear. I
38 don't appreciate the interruption. Obviously I'm
39 asking about her knowledge. Okay?
40 THE CHAIR: All right. Well, I'm just going to jump
41 in here on the tone of that response,
42 Mr. Kitchen, was -- which was a bit disrespectful
43 and not appropriate. Counsel's entitled to
44 object, as you well know. So --
45 CNSL J. KITCHEN: Yes, but counsel is not entitled to
46 interrupt. There's a difference. Okay?
47 THE CHAIR: Well, from where I'm sitting, that was an

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Teacher B (for Complainant)
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1 appropriate interjection, and we're going to deal
2 with the objection. And the objection was
3 related to the scope of your question, and if you
4 could make it kind of more clear whether you're
5 asking the witness about her general knowledge of
6 the age of people who can receive a double
7 mastectomy or about people in her life that she
8 knows or -- or what you're -- what exactly you're
9 asking.

10 CNSL J. KITCHEN: The presumption when I ask a
11 question is that I'm asking about her knowledge.
12 Unless there's something in my question that
13 indicates I am asking something outside of her
14 knowledge, then we should presume that I'm asking
15 the question properly; right? Because we don't
16 ask questions about people's outside knowledge
17 unless they're expert witnesses and they're
18 coming in and speaking as academics who have
19 studied the field, et cetera. Okay?

20 So let's presume, unless you have a reason,
21 because I've said something in my question that
22 would indicate to you I've now made my question
23 improper and I'm asking for her outside
24 knowledge, not her direct knowledge, that I am
25 asking for her direct knowledge. Okay?

26 THE CHAIR: Okay.

27 CNSL J. KITCHEN: That's the presumption, which means
28 if somebody is going to interrupt me, then they
29 have not objected in good faith; they're
30 interrupting me. Okay? And so, yes, I'm going
31 to respond to that. That is -- I don't know
32 about your experience, but that's pretty common
33 in my experience. It goes back and forth between
34 counsel. Counsel sometimes object for the
35 purposes of interrupting. It's just how it goes
36 sometimes. And then the other lawyer decides how
37 they're going to respond to that. There's a
38 back-and-forth. Ms. Waddell is very experienced.
39 I'm sure she knows what she's doing. Same on my
40 end. There's going to be some back-and-forth
41 between the two of us when she goes -- when in
42 my, you know, good-faith view she has now entered
43 into interruptions for the sake of interruptions
44 as opposed to good-faith objections.

45 THE CHAIR: All right --

46 CNSL J. KITCHEN: In other words, I didn't say that
47 for the purposes of being disrespectful.

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Teacher B (for Complainant)
cross-exam by Cnsl J. Kitchen

1 THE CHAIR: It may not have --

2 CNSL J. KITCHEN: Is it a little strong -- go ahead.

3 THE CHAIR: Okay. It may not have been disrespectful,
4 Mr. Kitchen, but I'm not sure if you're even
5 aware, but you do have a habit in your -- in the
6 way that you talk of making kind of comments
7 suggesting that counsel's being disingenuous or
8 that can tend towards the disrespectful. And I'm
9 letting it go, but you may notice me kind of
10 interfering a bit more when I think the tone is
11 not to the level that I would expect in this
12 proceeding.

13 Now, before we move on to the next thing,
14 I've run out of all pens. And so I just need a
15 moment to get more writing utensils, and maybe
16 that will just give us -- give us a second to
17 reset. I'm not going to turn off the camera.
18 I'll just turn off the mic while I run and find
19 more pens. I apologize for the interruption.

20 CNSL J. KITCHEN: I've already burned through two, so
21 I can appreciate that.

22 THE CHAIR: All right. Thank you. I've --

23 CNSL L. WADDELL: Can you hear us now?

24 CNSL J. KITCHEN: Yes.

25 CNSL L. WADDELL: Okay. I guess we're still
26 [indiscernible - away from microphone].

27 CNSL J. KITCHEN: So we were supposed to not hear you
28 at that point.

29 A Oh, technology.

30 THE CHAIR: All right. Thank you for that. I've
31 restocked, so we should be good to go for a
32 while. We -- I think where we were, Mr. Kitchen,
33 you were asking about whether Teacher B is aware
34 of any people having a double mastectomy under
35 the age of 18. Was that your question?

36 CNSL J. KITCHEN: Yes, that's pretty close. So I'm
37 just going to ask it again just for the sake of
38 the witness.

39 Q To your knowledge, are you aware of biological
40 females under the age of 18 that have had their
41 breasts removed, so double mastectomy, as part of
42 their gender transition to becoming a boy?

43 A I don't have any knowledge of that, but I tend to
44 deal with children that are 15 and under. And so
45 I never have dealt with any of that.

46 Q Okay. Mr. Neufeld is going to say that he is
47 aware that that practice occurs to some degree.

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Teacher B (for Complainant)
cross-exam by Cnsl J. Kitchen

1 Okay? We don't need to quibble about whether or
2 not it's extraordinarily rare or it's very
3 common, but he's going to say that it -- it
4 happens. Logically, it happens, even if it's
5 rare. Do you have any reason to disagree with
6 him?
7 A I don't understand why you thought that was a
8 logical conclusion.
9 Q Let's try the -- let's try it again. When Mr. --
10 Mr. -- I anticipate Mr. Neufeld saying that he is
11 aware of examples of biological females under the
12 age of 18 having their breasts removed as part of
13 their gender transition to -- to boys. Do you
14 have any reason to disagree with him that that's
15 happening?
16 A I've never seen any evidence that said that, no.
17 Q Okay. So as far as -- as far as you know, that's
18 not happening?
19 A As far as I know.
20 Q Okay. Okay. If it -- if it -- if it -- if -- if
21 you were presented with information that it was
22 happening, would it change your perspective on
23 what Mr. Neufeld said about that?
24 A So I do know that when you want to take -- to
25 transition, you have to jump through a lot of
26 hoops. It's not like you just, Oh, I'm going to
27 cut these off. I don't want them anymore.
28 You -- you have to go through doctors and years'
29 worth of therapy before they say okay. So I -- I
30 assume the doctors would know whether it was
31 appropriate or not.
32 Q There will be a witness next week that will say
33 that she was offered to have her breasts removed
34 before she was 18.
35 A Okay.
36 Q Do you have any reason to disagree with her?
37 A I have no idea. I don't know what you're talking
38 about or who you're talking about or --
39 Q No, I understand. I'm just giving you an
40 opportunity to comment -- well, no, because --
41 because somebody next week is going to say
42 something different than what you're saying now,
43 to be fair to you --
44 A Do you have evidence? Or they're just --
45 Q Well --
46 A -- saying it?
47 Q They're -- they're going to be just saying it.

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Teacher B (for Complainant)
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1 Sort of like you're just saying your stuff today
2 and we -- we presumptively believe you, she's
3 going to be saying her thing next week; right?
4 Like -- like Barry. Barry's going to say, you
5 know, "Hey, I went over to her house to warn her
6 about protesters out my -- outside of my house."
7 I mean, there's no audio recording of that
8 interaction; right? We just have to believe one
9 of you or neither of you about what was said in
10 that example. Okay? So, yeah, she's just going
11 to say it just like you have.
12 But, to be fair to you, I have to alert you
13 to that if I'm going to ask you a question about
14 it. So are there any other body parts that you
15 think Mr. Neufeld is obsessed with, in your
16 words?
17 A There were multiple articles that I've read that
18 talk about body parts, even one where he was
19 like, "She's going to threaten suicide next."
20 Q Right. And then he said -- I don't know if I can
21 remember which one that is, but do you recall the
22 very last line -- line is "I hope she doesn't" or
23 something along those lines?
24 A Yeah.
25 Q You recall that?
26 A Yeah, but it was not an okay thing to say.
27 Q It's not okay to say that she -- he hopes she --
28 that she won't commit suicide?
29 A To talk about her body parts and then saying,
30 "Oh, she's going to threaten suicide. I hope
31 not."
32 Q Right. He -- he -- he hopes that she won't
33 commit suicide.
34 A Okay.
35 Q You understood -- well, is that what you
36 understood --
37 A He was very --
38 Q -- from that post?
39 A -- disingenuous to me.
40 Q Okay. So you think he -- you think he was hoping
41 that she would commit suicide?
42 A Why did he have to bring up suicide at all?
43 Q Well, isn't it true that suicide is a concern
44 amongst transgender youth?
45 A Yes.
46 Q Okay. Might that be why he brought it up?
47 A But what does that have to do with chopping body

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Teacher B (for Complainant)
cross-exam by Cnsl J. Kitchen

1 parts off?
2 Q Well, I would have thought it had a lot to do
3 with it since transgender people do sometimes go
4 through surgery to remove breasts and penises and
5 uteruses and things like that. Would you --
6 would you agree there's -- there's a -- there's a
7 logical connection there insofar as the surgical
8 removal of -- of body parts is sometimes part of
9 the transition protest -- process for transgender
10 people?
11 A It's part of the transition process, but again
12 it's when they're, like, almost adults.
13 Q What is your definition of "almost adults"?
14 A 17, six months away from turning 18 and being an
15 adult to make their own decisions.
16 Q Okay. So when somebody's 16, are they almost an
17 adult?
18 A Everybody has their own perspective, but I
19 believe 16-year-olds are quite capable. It --
20 Q I'm just --
21 A -- tends -- it tends to be when they start
22 growing out a lot of the, I don't know, stuff
23 that I would deal with in middle school.
24 Q So you would agree with me that -- in your
25 estimation there's that at least -- some
26 17-year-old biological females who are -- who
27 are -- who are ready to make the choice to -- to
28 surgically transition by having their breasts
29 removed?
30 A There was just one article that was -- that was
31 shown to me in one of the pieces of evidence that
32 said a 17-year-old, and the court ruled on
33 something. That's -- that's all I know about.
34 Q Right. No, I know, but -- but you -- but you
35 said that -- that people who are six months away
36 are almost adults, and they're ready to make
37 those types of choices for themselves. So
38 that's -- I'm just clarifying. So -- so --
39 A With their doctor's permission, yeah.
40 Q Okay. With -- with their doctor's permission,
41 you would say there are some 17-year-old
42 biological females that are ready to make the
43 decision to remove their breasts as part of their
44 transition to become a boy?
45 A Yes.
46 Q Okay. And -- and -- and you think it's --
47 it's -- you think there's something wrong with

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Teacher B (for Complainant)
cross-exam by Cnsl J. Kitchen

1 Mr. Neufeld for, to use your word, being obsessed
2 with that?
3 A Yes.
4 Q Okay. But there's nothing wrong with you when --
5 when you say that that's okay?
6 A With the doctor's permission.
7 Q With the doctor's permission. And so you say
8 it's okay. And the person who says it's not
9 okay, they're the ones with the problem?
10 A Pretty much.
11 Q Okay. Okay. You've said the phrase "queer kids"
12 a lot. Is that a synonymous term with
13 transgender kids, or does that mean something
14 different?
15 A So if you look at the acronym, the Q means queer,
16 and queer is an easier grammatical [verbatim] way
17 to say all LGBTQIA2S people.
18 Q Okay. So all people who are covered by that
19 acronym are queer?
20 A If they identify that way. Some people don't
21 like it because it's an older term that meant
22 something different in the past.
23 Q It's an older term?
24 A Like most language, comes from before.
25 Q No, but I was under the impression that queer was
26 a new term. At least that's -- I've had -- I've
27 had LGB people tell me that queer is a new term.
28 You would disagree with that?
29 A As far as I know, my whole entire life, queer --
30 LGBTQ was part of the acronym.
31 Q Okay. So -- so it's your understanding that most
32 people covered by the acronym would identify as
33 queer?
34 A Yes.
35 Q Could you tell me what queer means?
36 A So you can be queer in your sexual orientation or
37 queer in your gender identity.
38 Q Or both?
39 A Or both, yeah.
40 Q When you say you could -- you can be queer in
41 your sexual orientation or gender identity, help
42 me understand. What does that mean you can be --
43 you can be queer? Like -- and with reference to
44 what's not queer, help me -- help me distinguish
45 between what's queer and what's not queer.
46 A Straight people are the only ones that are not
47 queer -- well, I guess -- no. So --

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Teacher B (for Complainant)
cross-exam by Cnsl J. Kitchen

1 Q Well, straight -- straight people --
2 A -- there's this --
3 Q -- that -- that -- that are cis -- straight
4 people that are cis are the only ones that are
5 not queer?
6 A Yes, that's a better way to say it.
7 Q Okay.
8 A I was going to say that didn't cover the trans
9 thing.
10 Q All right. Just making notes. I apologize.
11 Okay. Now, you had said that it was not true
12 that you -- you used the word "we," so I'm using
13 the word "you" in plural. Okay? And you had
14 said something about, like, circle of friends.
15 Let's start there. Could you describe to me what
16 you -- what you meant when you said "circle of
17 friends"? Give me an idea of what that -- what
18 that means.
19 A Couple years ago, the school district started
20 having -- we did a collab that was based on SOGI
21 stuff, and -- can you repeat the question again?
22 Sorry. I got sidetracked.
23 Q Well, you said we -- at points you said "we" and
24 you said "circle of friends." I just want some
25 understanding -- and, I mean, I don't -- I don't
26 want you to identify people. I just want some
27 understanding of what you mean when you say that.
28 A So, yeah, I mean queer teachers or allies that
29 are -- that come to our -- our meetings, our
30 collab meetings or our SOGI meetings.
31 Q So sort of -- sort of the ones that are -- that
32 are vocally in support of -- of SOGI and the
33 teaching of SOGI. Is that fair?
34 A Yeah.
35 Q Okay. You had said, "It's not true that we" --
36 that's your word -- "it is not true that we
37 support surgeries for kids." Is it -- is it --
38 is it -- is it fair to say that that statement
39 applies except for those few teenagers who are 17
40 and a half and are ready with their doctor's
41 support?
42 A Yeah.
43 Q Okay. The surgery thing -- so would it be your
44 evidence that when you -- when you're teaching
45 about the SOGI stuff, you're teaching about the
46 pronouns, you're teaching that there's more than
47 two genders, and -- well, let me ask you this. I

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1 don't think I've asked you this yet: Do you
2 teach children that it is possible to change
3 their gender? When you're teaching the SOGI
4 stuff. Not just randomly, but when you're
5 teaching the SOGI stuff.
6 A I guess in a roundabout way I do. I kind of
7 explain that whoever -- whatever they feel they
8 are, that's their truth.
9 Q Right. Even if that's different than what they
10 thought they were last year kind of thing?
11 A Yeah. People change.
12 Q Okay. So -- so you -- so you -- you would agree
13 with me that in a roundabout way, you teach that
14 people can change -- that children can change
15 their genders over time?
16 A I can -- I say that everybody can, yes. Not just
17 children.
18 Q Okay. Fair. When you teach that, do you just
19 simply teach that it's possible and then -- and
20 then you leave all the details as to how out of
21 it? Or do you go into some of the details and
22 how that might happen with people?
23 A No, I do not go into the details.
24 Q Okay.
25 A It's a cursory, one lesson. So I kind of have to
26 go through everything.
27 Q Okay. So -- so I guess if you had a -- and --
28 sorry. What's the -- 15 is the oldest age you
29 deal with?
30 A Yes.
31 Q Okay. So if a 15-year-old came to you and said,
32 "Look, I -- I -- I've been thinking about this
33 for a while. I've identified as this same gender
34 now for a long while, and I really do want to get
35 some surgery to -- to -- to have my body align
36 with my identity," you would not support that?
37 A I would tell them to go talk to their parents and
38 doctor.
39 Q Okay. Okay. That's fair. You mentioned a term
40 "gender-affirming care."
41 A I did.
42 Q Yeah. I have it -- I have it -- well, I think --
43 I think you said it -- I think you said it in the
44 context of saying he's -- he, in reference to
45 Barry -- you know, he -- he's denying them
46 gender-affirming care or affirming --
47 something -- something along those lines. And if

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1 you don't think you did, then that's -- that's --
2 that's okay. But let me ask you this: Does
3 that -- does that -- does that term have meaning
4 for you? The phrase "gender-affirming care,"
5 does that -- like, do you know what that means?
6 Does that have meaning to you, or is that just a
7 jumble of words?
8 A I assume it is listening to what the child says
9 their gender is and affirming them in that.
10 Q Okay. So your understanding of gender-affirming
11 care is when a child comes and they identify as a
12 gender -- gender-affirming care is responding by
13 saying, "Okay. We're going to -- we're going
14 to -- we're going to respect that, and we're
15 going to -- we're going to go with that, and
16 we're going to help you to live that way." That
17 would be --
18 A I don't help them to live that way. I just
19 accept them for who they are.
20 Q Okay. But isn't it helping them if they say that
21 they would like to use different pronouns than
22 they have, and then you say, "I'm going to -- I'm
23 going to -- I'm going to use those pronouns"?
24 Isn't that a form of assistance?
25 A Yeah.
26 Q Okay. You said at one point "I know the SOGI
27 curriculum so well." When you said "SOGI
28 curriculum," was that just a --
29 A Redundancy?
30 Q Did you -- did you just misspeak and you meant
31 the SOGI 1 2 3 resources, or are you referring to
32 something else?
33 A The curriculum and the SOGI resources are very
34 similar things. The SOGI resources are how you
35 can teach some of the curriculum. I occasionally
36 will mix the two words up because, I don't know,
37 I deal with curriculum lots.
38 Q Okay. So some of the -- some of the concepts
39 taught in the SOGI 1 2 3 resources are in fact
40 taught in the regular curriculum?
41 A Identity is extremely a part of the Grade 6
42 curriculum. Like, it's part of English careers,
43 socials. So we talk about not just that part of
44 identity but all the parts of identity in
45 Grade 6. It's quite -- it's, like, my specialty.
46 Q So you would talk about, like, different gender
47 identities just as part of the regular

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Teacher B (for Complainant)
cross-exam by Cns1 J. Kitchen

1 curriculum?
2 A Yeah.
3 Q You said at one point that SOGI is well
4 researched. So you -- fair to say you believe
5 SOGI is well researched?
6 A Yes.
7 Q Okay. And that -- and that's a reference to what
8 we've been talking about, the SOGI 1 2 3
9 resources and -- and -- and, you know, the --
10 the -- the parts of the curriculum that are like
11 the SOGI 1 2 3 you would say has been well
12 researched?
13 A Yes.
14 Q Okay. So it's been well researched that there's
15 more than two genders?
16 A Pretty sure, yeah.
17 Q Okay. I think what's best is if I take you to a
18 few things, to be fair to you. Let's -- okay.
19 I'm going to share my screen, and then I'm going
20 to mention where we are for the sake of
21 everybody. I think we are -- we are at page 14.
22 Let's see what tab that is. This is
23 November 21st, 2017. Barry is speaking at an
24 event, so this is a transcript of what he -- of
25 what he orally spoke. He says:
26
27 I believe it is more rational and
28 healthy to teach and believe what is
29 obvious. While there is a natural and
30 welcome variation in gender
31 expression...
32
33 Let's just -- just try to keep it as simple as we
34 can. You would agree with me that there's a
35 natural and welcome variation in gender
36 expression?
37 A Yes.
38 Q Okay. And then he says, "none of us are
39 completely masculine or totally feminine."
40 A Yeah.
41 Q Do you agree with that? Okay. "Gender is
42 nevertheless rooted in biology."
43 A No.
44 Q Okay. This is where you disagree with him?
45 A It does not -- no, it does -- yeah, gender and --
46 is not biology. If you're saying sex, maybe, but
47 even then that can be changed.

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Teacher B (for Complainant)
cross-exam by Cnsl J. Kitchen

1 Q And, to be clear, this isn't a matter of -- and
2 your -- from your perspective, you're right,
3 you're factually, logically right, and he is
4 wrong?
5 A Yes.
6 Q Okay. So from your perspective, his belief is --
7 well, let me ask you this: So his -- from your
8 perspective, is his belief merely wrong, or is it
9 somehow worse than being merely wrong?
10 A It's worse than being merely wrong because he
11 continues to keep saying it, and it's hurting
12 people.
13 Q It's -- it's -- it's hurting people for him to
14 express his belief that gender is rooted in
15 biology?
16 A Yes.
17 Q Okay. So it's -- it's -- it's -- it's hurtful
18 for people to encounter his beliefs?
19 A Yes.
20 Q Because -- because their beliefs are different?
21 A No, because his are based on, like, nothing. He
22 just spouts stuff.
23 Q Yeah, like, his belief's not based in science or
24 reality; it's just sort of made up?
25 A That's the way it feels like when he talks, yeah.
26 Q Okay. And -- and -- and from -- from your
27 perspective, he should not be allowed to express
28 his beliefs? In disregard, at least?
29 A So expressing your beliefs is one thing, but
30 being a community leader and an example and
31 model, it wasn't something he needed to say
32 anything about. It had nothing to do with him,
33 and it wasn't his business.
34 Q So it's not his business -- if the idea that
35 there's more than two genders are being taught in
36 the school, that's not his business as a school
37 trustee?
38 A I follow the curriculum.
39 Q I'm not -- hold on. Hold on. I'm not suggesting
40 you're not. Because we established the
41 curriculum teaches there's more than two genders;
42 right? We're on the same page on that still?
43 A I don't know if it specifically says that, but it
44 does definitely talk about identity.
45 Q Okay. But --
46 A I'd need it in front of me right now to see it to
47 understand it.

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Teacher B (for Complainant)
cross-exam by Cnsl J. Kitchen

1 Q But definitely fair to say the SOGI 1 2 3
2 resources do teach that there's more than two
3 genders?
4 A Yes.
5 Q Okay. And -- and -- but from your perspective,
6 the fact that the SOGI 1 2 3 resources teach that
7 should be none of his business as a school board
8 trustee?
9 A The curriculum is created by the Province. If he
10 had a problem with curriculum, he needed to go
11 and talk to the Province, not go online and talk
12 about children's body parts.
13 Q But you would agree with me that what he is
14 criticizing, either always or very nearly always,
15 is SOGI 1 2 3, not the curriculum?
16 A SOGI 1 2 3 is a part of the curriculum.
17 Q It's a part of the -- okay. That's a little bit
18 different than what I thought you just said
19 because I thought -- I thought SOGI 1 2 3 was
20 just resources and not part of the curriculum.
21 A So the curriculum will talk about identity and
22 stuff, and then the SOGI 1 2 3 website will say
23 "you can teach identity using these websites."
24 So it is a part of the curriculum. It's just
25 that it's giving us resources so I don't have to
26 go and search a million crazy things on the
27 internet. I can just go, oh, the school
28 districts -- or not the school district -- the
29 Province has already made this. Why -- then I
30 can just follow it.
31 Q So he shouldn't be -- okay. So in other words,
32 he shouldn't be permitted to criticize this
33 aspect of the -- of the -- of the curriculum as a
34 school board trustee?
35 A Again, he should go to the Province instead of
36 just saying things to the newspapers and -- yeah.
37 The newspapers and talking about us and coming at
38 us was, like, the wrong way to go if he wanted to
39 change anything. And I would expect as a trustee
40 he would understand how that works and that he
41 would have gone and fought the Province on the
42 curriculum, not it being a school board thing.
43 Q If the curriculum included nothing about sexual
44 or gender-diverse people -- well, let's pretend
45 it's the 1950s, '60s, whatever -- I don't know --
46 mid-twentieth century, and the curriculum said
47 nothing about gender and sexually diverse people,

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Teacher B (for Complainant)
cross-exam by Cnsl J. Kitchen

1 would you think that you should only quietly go
2 to the Ministry, or do you think it would be
3 right for you to publicly speak out about what
4 you think is a terrible omission in the
5 curriculum?
6 CNSL L. WADDELL: Sorry. I've been letting a lot of
7 this hypothetical stuff go, and I've been hoping
8 that has been speeding up your cross, but I -- I
9 don't understand how the witness's views about a
10 time period when she wasn't alive, to the best of
11 my knowledge --
12 CNSL J. KITCHEN: We can get rid of the time period.
13 CNSL L. WADDELL: -- how that could possibly be
14 relevant to the issues here.
15 CNSL J. KITCHEN: The reason I added the time period
16 is to make it less hypothetical. Okay? Is to
17 make it more real world. If you want me to get
18 rid of the time period and -- and ask her, you
19 know -- pretend it's 2024, here we are, and that
20 stuff's not the curriculum --
21 CNSL L. WADDELL: Sure. I'd be happy with that. I'm
22 happy with that.
23 CNSL J. KITCHEN: Okay. That's fine.
24 Q B, let's say everything was upside down, it was
25 backwards world, and the curriculum said nothing
26 about sexual and gender-diverse people. Do you
27 think it would be right for people to say to you,
28 "Look, you got a problem, you go talk to the
29 Ministry. Stop blabbing about it publicly"? Do
30 you think --
31 A Yes.
32 Q -- it's okay if people said that to you?
33 A Yes.
34 Q You wouldn't -- you wouldn't speak publicly? You
35 wouldn't protest --
36 A I wouldn't be allowed to speak publicly because
37 I'm a teacher and I can't speak against the
38 school board.
39 Q Well, you would agree with me that you're not
40 speaking against the school board if all you're
41 doing is decrying an omission from the
42 curriculum?
43 A Again, I wouldn't go to the media for that. I
44 would go within my circles and up the hierarchy
45 chain of my district and how it works to try and
46 change curriculum. Talking about it in the
47 newspaper doesn't change things. If you want

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Teacher B (for Complainant)
cross-exam by Cnsl J. Kitchen

1 change to happen, you've got to follow the
2 correct procedures.
3 Q You would agree with me that Mr. Neufeld is not
4 talking in the newspapers. He's -- he's talking
5 at events and at board meetings and on Facebook?
6 A Yeah, I guess.
7 Q Okay. So you would agree it's not quite fair to
8 say he's going to the media. He's going to the
9 public. You would agree -- the -- you would
10 agree --
11 A Going to the public for sure.
12 Q Yeah, okay. Sure. Okay. There we go. Okay.
13 So you would say that if there was nothing in the
14 curriculum about LGBT people, that you should not
15 talk about it publicly -- you wouldn't talk about
16 it publicly. You would privately go to the
17 Ministry and say, "This is a problem that needs
18 to be fixed"?
19 A If identity wasn't covered in the curriculum, I
20 would definitely go above my head and -- and
21 figure it out, how to fix it.
22 Q Okay. And then when -- and then when the
23 Ministry ignored you, would you then think it was
24 okay to talk about it publicly?
25 A No.
26 Q No? You would think -- you would -- you would
27 say what should happen is you should just stay
28 quiet and let that omission persist?
29 A I again would continue to do it within the school
30 system, and I would not go publicly with that,
31 no.
32 Q Okay.
33 THE CHAIR: Mr. Kitchen, could you -- if you're done
34 with the document, could you take it off the
35 shared screen, please.
36 CNSL J. KITCHEN: No, I'm not done.
37 THE CHAIR: Okay.
38 CNSL J. KITCHEN: Okay. So you have to understand,
39 you know, I -- I come to this document, I ask a
40 question, and then I ask 15 more, and then I --
41 I'm planning to come back to it.
42 THE CHAIR: That's fine. I'm just --
43 CNSL J. KITCHEN: That's --
44 THE CHAIR: Sometimes you've forgotten. So it's fine.
45 If you're still going, go ahead.
46 CNSL J. KITCHEN: No, I have -- I have forgotten at
47 times.

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Teacher B (for Complainant)
cross-exam by Cnsl J. Kitchen

1 THE CHAIR: Okay.

2 CNSL J. KITCHEN:

3 Q Okay. So he says here -- he says, "These
4 children" -- okay. And, well, we need some
5 context here. Do you understand that when he
6 says "these children," he's talking about the
7 children who are gender dysphoric, they're --
8 they're nonbinary, they don't know how they
9 identify, they're exploring it, they're --
10 they're -- they don't sort of have a set gender
11 identity. They're -- they're trying to figure it
12 out. Would you agree with me that's what he's
13 referring to when he says "these children"?

14 A I think so, yeah.

15 Q Okay. He says, "These children are extremely
16 vulnerable and prone to self-harm." Do you agree
17 with that?

18 A I don't actually know.

19 Q Okay. "And other mental illnesses such as
20 depression and anxiety disorders."

21 A All children have mental illness and anxiety
22 disorders since 2020. Like...

23 Q Yes. That's a good -- good point. Okay. So --
24 but you would agree with me that -- I'm going to
25 use the term "transgender children." We've
26 agreed that means pretty much the same thing as
27 nonbinary? Okay.

28 A Yes.

29 Q You would agree with me that transgender children
30 do have higher rates of mental illness,
31 depression, anxiety, and self-harm?

32 A So they have higher rates if people don't
33 acknowledge their gender identity. If they were
34 acknowledged, the rates aren't as high. And
35 that's why I work so hard to acknowledge the
36 gender they believe in -- themselves to be.

37 Q Well, I don't want you giving me the reasons for
38 why, but I -- I first want you to tell me if you
39 do agree with me. You do -- you do agree with me
40 that --

41 A Can you repeat it?

42 Q -- the rates --

43 A Sorry.

44 Q The rates of anxiety, depression, mental illness,
45 self-harm, suicide, et cetera, all those -- all
46 those social ills, you would agree with me those
47 rates are higher with transgender youth? I ask

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Teacher B (for Complainant)
cross-exam by Cnsl J. Kitchen

1 because I -- just because I thought you knew
2 because you had said, you know, you run the GSA.
3 You're aware there's about 20 kids in the -- that
4 you're aware of that -- that -- that identify
5 this way. So that -- that's why -- it seemed
6 like you -- that was knowledge that was within
7 your purview.

8 A So if a kid doesn't have somebody affirming their
9 gender, yes, there are very, very high depression
10 and anxiety rates; but if there is an adult in
11 their life that is affirming them, it -- it's not
12 the same. So the students that are in my class
13 that I deal with are all students I affirm. So I
14 don't -- I don't actually know anything about
15 their depression or anxiety rates beyond saying
16 they have to be -- if they're affirmed, it's way
17 lower.

18 Q Okay. So your answer to this question would
19 be -- to be fair to you would just be "I don't
20 know"? Like, you just don't know if --

21 A I think it depends. It depends if a person is
22 being supported or not.

23 Q So I guess, to be fair, your answer, then, is
24 it -- it depends?

25 A Yeah.

26 Q Okay.

27 A Can I take a break?

28 Q Oh, yes, absolutely.

29 THE CHAIR: Yeah. We're at 2:30, which maybe -- maybe
30 we're due for a bit of a -- a longer -- we can
31 take our afternoon break now, then. How about
32 that? We'll take a 15-minute break, and -- and
33 I'll ask you to come back at about 2:45. Okay?

34 Same thing I said before, Teacher B, about
35 not talking to anyone about your evidence. Thank
36 you. We'll just turn our cameras and mics off.

37 A No, I did it again.

38
39 (WITNESS STOOD DOWN)

40
41 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)
42 [2:27:05]

43 (PROCEEDINGS RECONVENED) [2:45:25]

44
45 THE CHAIR: All right, everyone. Come on back when
46 you're ready. All right.

47 CNSL L. WADDELL: Okay. You can hear me now; right?

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Teacher B (for Complainant)
cross-exam by Cnsl J. Kitchen

1 THE CHAIR: Yes.

2 CNSL L. WADDELL: I'm just testing out what's working
3 and not working on our audio. I'm just going to
4 hit mute on the speaker and see if you can hear
5 me.

6 THE CHAIR: You're not muted. Oh, no, I can't hear
7 you. We can't hear you.

8 CNSL L. WADDELL: Okay. Great. Our speaker's
9 working. Thank you.

10
11 TEACHER B, a witness,
12 recalled.
13

14 THE CHAIR: Okay. Teacher B, are you ready to
15 continue?

16 A Yeah.

17 THE CHAIR: Okay. Go ahead, Mr. Kitchen.

18 CNSL J. KITCHEN: Thank you.

19 Q I'm just going to quickly share my screen again
20 with you. You touched on this in your testimony
21 this morning. This is the bit about -- Barry's
22 says -- sorry. We're on -- we are on page 87,
23 Tab 12, I believe. Barry says --

24 CNSL A. TOM: Of the Book of Publications and
25 Statements?

26 CNSL J. KITCHEN: Yes.

27 CNSL L. WADDELL: Okay.

28 CNSL J. KITCHEN:

29 Q You responded to Barry saying, "Is heterosexual
30 marriage no longer the norm?" It was -- it was a
31 question. "If not, what will replace it?"
32 Another question. And then he says, "Hopefully
33 not the unscientific ideology of nonbinary
34 gender." And you said in response, "I find his
35 post ridiculous." Do you recall that?

36 A Yeah.

37 Q Yeah. And that's unchanged. You -- you --
38 you -- you find that ridiculous that he would --

39 A Yeah.

40 Q -- say -- yeah. So you would say it's -- it's --
41 it's ridiculous to call the ideology or idea or
42 theory of nonbinary gender unscientific?

43 A Yes.

44 Q Okay. And as far as you're concerned, I mean, it
45 is acceptable for you to say that it's ridiculous
46 that he believes this?

47 A Yes.

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Teacher B (for Complainant)
cross-exam by Cnsl J. Kitchen

1 Q Okay. But it's not acceptable for him to say
2 that nonbinary gender is an unscientific idea?

3 A That's not acceptable, no.

4 Q Okay.

5 THE CHAIR: I'm going to -- there's a couple of
6 members of the public I can see are trying to
7 come in. I'm going to let them in because we're
8 kind of within a reasonable time of after the
9 break. But I'm just saying this because I know
10 it's going to interrupt the witness. So I'll
11 just give you a moment while I let them in.
12 Okay.

13 CNSL J. KITCHEN: Thank you.

14 THE CHAIR: And I think there may be one more person
15 who seems to really want to be getting in. So
16 I'll -- if they come in the next couple minutes,
17 I'll let them; otherwise, I won't. Okay. Go
18 ahead.

19 CNSL J. KITCHEN: Thank you. I appreciate that.

20 Q And, look, B, at any point you need me to repeat
21 the question, by all means. You're actually a
22 better witness than most and, you know, you don't
23 have to ask me very often.

24 Okay. So do you recall saying -- I think it
25 was in relation to this and a couple other
26 things. You said it was frustrating that parents
27 think that what he's saying is true.

28 A Sorry. I missed half of that.

29 Q It's okay. I'll say it again. It's all right.
30 I guess that person that really wanted to get in
31 came in. Murphy's Law.

32 You -- do you recall saying -- I think it
33 was in response to this and a couple other things
34 that Barry said. You said it was frustrating
35 that parents think that what he is saying is
36 true. Do you recall that?

37 A Yeah.

38 Q Okay.

39 A Yes.

40 Q So for you it's frustrating if -- if parents
41 think that the idea of gender nonbinary is
42 unscientific?

43 A Yes.

44 Q Okay. Do you think parents who -- who -- who
45 believe that, like, are just sort of, you know,
46 uneducated and misinformed?

47 A Yeah.

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Teacher B (for Complainant)
cross-exam by Cnsl J. Kitchen

1 Q Yeah, okay. Along the same vein, you said that
2 Barry created a culture where it was okay for
3 teachers to say inappropriate things. Now, you
4 didn't really elaborate, but -- but here's what I
5 want to ask you: Would this be one of these
6 inappropriate things? A teacher said that they
7 didn't believe in nonbinary gender. In your
8 view, that's an inappropriate thing for a teacher
9 to express that belief?

10 A Depends on who they're expressing the belief to.

11 Q So would it be inappropriate for them to express
12 that belief to you?

13 A Can you repeat the belief again?

14 Q Okay. So -- so we're talking about -- so Barry
15 says that it's -- he says that he believes that
16 it's -- that -- that the idea, the theory of
17 nonbinary gender, okay -- he believes it's
18 unscientific. And then obviously you said, you
19 know, some parents believe that, and that's
20 frustrating. And then you said, you know, he
21 created a culture where it was okay for -- for
22 teachers to say inappropriate things.

23 And so I'm -- and you would agree with me
24 that one of the -- one of those inappropriate
25 things is to say, "Well, you -- look, this
26 gender -- this nonbinary gender idea is
27 unscientific"?

28 A It would depend who they're talking to. If
29 they're talking to a child who says they want to
30 be called by they/them, that's not appropriate.
31 If it was to their friends and their family,
32 that's fine.

33 Q Right. Let -- let -- let -- let's say -- let's
34 say they're at school and somebody asks them what
35 they -- what they believe, and they say, "Well,
36 I -- you know, I -- I believe there's only two
37 genders." If they were to say that belief, that
38 would be inappropriate?

39 A Again, it depends if students were listening or
40 not.

41 Q Let's say it was a student that asked the teacher
42 that. Would that be inappropriate for the
43 teacher -- you know, let's say Teacher Jane, you
44 know -- we're in middle school. Grade 6 student
45 walks up to teacher Jane and says, you know, "Do
46 you believe there's more than two genders?" And
47 teacher Jane says, "No, I believe there's only

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Teacher B (for Complainant)
cross-exam by Cnsl J. Kitchen

1 two, male and female." If teacher Jane says
2 that, is that inappropriate?
3 A I think it would be inappropriate to say that
4 it's okay to think that way. People can believe
5 these things. It's just that when a child --
6 like -- so, like, you're in a class. Some other
7 child sitting right next to them could be
8 nonbinary or trans and really hurt by that
9 statement. So it's not okay to say in front of
10 children. Even if a child said it, I would shut
11 them down and be like, "That's not an appropriate
12 thing to say."
13 Q So there's no -- there's really no tolerance --
14 or there shouldn't be any tolerance in the school
15 system for people to express the belief that
16 there's only two genders and you can't switch?
17 A So it really depends. The incident with the
18 specific teacher that I was talking about, that
19 lady had said that she would not call a person by
20 their pronouns, but she would follow what was in
21 the -- what was in the computer for their gender
22 or sexuality. And I got upset about it because
23 you shouldn't misgender people ever. And -- and
24 saying "I don't believe there's such thing as
25 your nonbinariness" is misgendering someone.
26 Q Well, what if it violated their conscience
27 because it went against their belief? Then what?
28 A Then they can keep that to themselves and not do
29 it in front of students.
30 Q So they -- they can hold their beliefs; they just
31 can't express them?
32 A Not publicly.
33 Q Okay.
34 A It's not like I go out there and go, "I'm going
35 to vote for the NDP. Everybody should follow
36 me." Like --
37 Q Right, but you're -- you understand that you're
38 permitted to do that under the law?
39 A As a teacher, it's not a good thing to do because
40 you want them to have their ideas. And I keep
41 mine close to my chest -- close to my chest
42 because they need to figure out the world too.
43 Q Right, but you're -- you're aware that political
44 belief is protected in the -- in the *BC Human*
45 *Rights Code*?
46 A What?
47 Q You're -- are you aware that the political

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Teacher B (for Complainant)
 cross-exam by Cnsl J. Kitchen
 Submissions by Cnsl J. Kitchen

1 beliefs, that's -- that's a -- that's a protected
 2 characteristic in the *BC Human Rights Code*,
 3 political beliefs?

4 A Yeah.

5 Q Are you -- yeah. So are you -- are you aware
 6 that -- and, again, I'm not looking -- I'm not
 7 looking for you to talk like a lawyer, and I'm
 8 not looking for a legal answer from you because
 9 that's inappropriate, and my friend would pipe up
 10 and -- and justly so. You're aware that the law
 11 protects your ability to say you're voting for
 12 the NDP?

13 A Yes, but it's not good practice in front of a
 14 class to tell them that's how you're voting.

15 Q But it is good practice to say in front of the
 16 class that you believe that there's more than two
 17 genders?

18 A I wouldn't say believe because I know it's fact.

19 Q Would you agree with me that what people believe
 20 to be true, they don't just believe it to be
 21 true; they know it as fact?

22 A I don't understand what you're asking there.

23 Q Well, is -- you would agree with me that you
 24 don't merely believe that there's more than two
 25 genders; you know it to be a fact?

26 A Yes.

27 Q You would agree that people who believe in the
 28 existence of God don't just believe he exists;
 29 they know it to be a fact?

30 A I don't actually know. I'm not religious. So...

31 Q Well, you -- you don't have to answer this, okay,
 32 but I'm just going to -- if you're comfortable,
 33 I'll throw it out there. Do you -- do you
 34 believe there is no God?

35 CNSL L. WADDELL: Sorry. What -- what is the
 36 relevance of this, Mr. Kitchen? This has --

37 CNSL J. KITCHEN: Well --

38 CNSL L. WADDELL: -- nothing to do -- this is not a
 39 freedom of religion case.

40

41 SUBMISSIONS BY CNSL. J. KITCHEN:

42

43 CNSL J. KITCHEN: Political belief and religious
 44 belief are protected in the *BC Human Rights Code*.
 45 If people express those beliefs in the school
 46 system, they are ostensibly protected from being
 47 discriminated against on the basis of expressing

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Teacher B (for Complainant)
cross-exam by Cnsl J. Kitchen
Submissions by Cnsl L. Waddell

1 those beliefs. Ostensibly. Although obviously
2 some people don't believe in that. So the
3 question in this case is we have expression of
4 beliefs that are in opposition to LGBT-oriented
5 beliefs, and your client and the witnesses you're
6 calling are saying that when people express those
7 beliefs that are in opposition to their beliefs,
8 it's discrimination. That's the heart of this
9 case.

10 So yes, exploring what people believe is --
11 is permissible or appropriate or acceptable to
12 be -- to be -- for beliefs to be expressed in
13 school is not only relevant but goes to the very
14 core of this case. Now, I -- I already she --
15 I'm not going to -- I'm not going to press that
16 if she doesn't want to answer that. I'm not
17 going to press it. So I can move on. But just
18 to your -- to your point, you keep saying, "well,
19 this isn't relevant." Well, I wouldn't be -- I
20 wouldn't be wasting everybody's afternoon on it
21 if it wasn't relevant.

22
23 SUBMISSIONS BY CNSL. L. WADDELL:

24
25 CNSL L. WADDELL: Well, just in reply, thank you for
26 agreeing to move on, but it's for the tribunal to
27 determine whether something is discriminatory or
28 amounts to a certain type of speech. These
29 witnesses have all been called to talk about
30 impact on them, which is why they have talked
31 about their perception of the comments. And
32 you're entitled to cross them on that, at least,
33 in my view -- doesn't matter what my view is; it
34 matters what the tribunal's view is.

35 But, you know, if you want to ask questions
36 of the witness about whether she has personally
37 seen people with views like yours or your
38 client's be shut down, firsthand observation to
39 make -- you know, later that you can argue on, I
40 would have no difficulty with that. But asking
41 her to draw legal conclusions and talk about her
42 understanding of the law is at least not in my
43 view relevant. However, it's not my view that
44 counts; it's the tribunal's.

45 THE CHAIR: Thank you. Just before we move on, I'm
46 letting in one more member of the public during
47 this break.

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1 And I think -- I think whatever I may say
2 here may be moot because Mr. Kitchen's agreed to
3 move on. But just as a general -- coming back to
4 what's relevant in this case, I agree with
5 Ms. Waddell that the -- the -- I mean, generally
6 witness's opinions or thoughts about what's
7 protected under the law, what people are entitled
8 to say and that sort of thing is -- I mean, those
9 are questions for this tribunal and not for any
10 of the witnesses in this case. So it's more
11 helpful to stick to firsthand knowledge, facts
12 that relate to the allegations in this complaint.

13 But, Mr. Kitchen, I understand you're moving
14 on, so let's do that.

15
16 CROSS-EXAMINATION BY CNSL J. KITCHEN, continuing:

17
18 Q You had a teacher who said to you, B -- excuse
19 me -- "I wouldn't call -- I wouldn't call a
20 student by" -- what did they say? Something
21 about pronouns. Can you -- you tell me.

22 A They wouldn't follow what a child says their
23 pronouns are. They would look at the computer
24 file and see what it says in there and only call
25 them by that, even if the child keeps saying,
26 "No, this isn't okay."

27 Q Okay. Okay. Did the teacher tell you why they
28 would do that? Or did you ask why they would do
29 that?

30 A I walked away.

31 Q You -- you didn't ask; you didn't engage in a
32 conversation --

33 A Well --

34 Q -- you just walked about. Okay.

35 A No.

36 Q It just really upset you that that person had a
37 different belief than yours?

38 A It upset me that she was a teacher and was going
39 to go and tell my students that their gender
40 didn't -- wasn't their gender.

41 Q What if a teacher is upset that you're telling
42 students that there's more than two genders and
43 that they can change their genders? Then what?

44 A They can go to their union rep and see if there's
45 anything they can do about it.

46 Q But you don't -- you don't think they should be
47 upset with you for that?

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1 A I understand why people are, but I don't think
2 they should be, no.
3 Q What do you mean by that? What -- what do you
4 understand as to why people are?
5 A Why people are what? Can you say it -- repeat it
6 so it's clear?
7 Q What do you understand as to why people are upset
8 that you at times teach children that there's
9 more than two genders and that they can change
10 their gender?
11 A Why do I think --
12 Q No, what -- well, you said -- you said, you know,
13 I can see why they're upset, but that's what I --
14 that's -- you know, that's -- so that -- and
15 maybe you -- maybe you can't comment on that, but
16 that -- but that would be helpful, I think, if
17 we, you know --
18 A I just -- I'm sorry. I'm not understanding
19 exactly what you're asking. It's not that I'm
20 trying to be evasive. I'm just not
21 understanding --
22 Q No, no, no. I actually don't think you are.
23 The -- the -- the school district was upset at
24 one point that you were teaching about -- if I
25 have this right, you were teaching a lesson I
26 think that involved the gender unicorn, and
27 then --
28 A Yeah.
29 Q Yes. Okay. And somebody said they were -- and
30 you don't need to give me a name, but was it,
31 like, a principal? Was it a superintendent? Who
32 was it that -- who was upset with you? Or not
33 upset, but who was it who said "take a step
34 back"? I mean, you don't need to give me the
35 name, just a -- just a...
36 A I think it was the principal.
37 Q Okay. And then you said something about -- you
38 said, "I -- I suspect it is because I am gay"
39 that the principal asked you to -- to step back.
40 Do you recall that?
41 A No. They asked me to step back because there was
42 a -- a guy saying awful things about me online.
43 And I said it's not really something I can step
44 back from.
45 Q But -- but -- but the fact that you were asked to
46 step back, you had said at one point that -- this
47 is what I have written down here -- that you

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1 suspected it was -- it was actually because you
2 were gay. It wasn't really because you were
3 teaching about the gender unicorn; it was because
4 you were gay.
5 A Oh, yeah -- oh, well, I think it's kind of both
6 because as a straight teacher teaching stuff, I
7 feel like they might not get as --
8 THE CHAIR: Just a moment. I think Ms. --
9 A -- be as criticized -- sorry.
10 THE CHAIR: Sorry to interrupt. It looks like
11 Ms. Waddell is trying to say something, and I
12 want to make sure that she gets in.
13 CNSL L. WADDELL: Sorry. Yeah. No, the technology is
14 working. I think, Mr. Kitchen, that you've got
15 the witness's -- your notes from her direct might
16 not quite be accurate. Our notes indicate that
17 the witness said something more along the lines
18 of that it wasn't that the -- so there were two
19 things that you were asking her questions about
20 earlier -- sorry. Not direct. One was the --
21 the principal saying take a step back, and the
22 other was the thing that precipitated it. And I
23 think her evidence previously was that it was the
24 precipitating event that she believed was because
25 she was gay, not being asked to take a step back
26 as a result of that. That's what our notes
27 indicate.
28 CNSL J. KITCHEN:
29 Q Okay. You --
30 THE CHAIR: That's what my notes are as well.
31 CNSL J. KITCHEN:
32 Q Okay. So you think you -- in other words, the
33 criticism from the parent, you think that was
34 because you were gay. The parent knew you were
35 gay, and they were criticizing you because you
36 were gay?
37 A And teaching a lesson on what LGBTQ was, yeah.
38 Q Okay. I find this interesting because of your --
39 of your -- I think your -- your very fair comment
40 about Barry earlier. Let's go back to something
41 else you said about -- you said that in 2005 you
42 found it, to use your words, more open in the
43 Chilliwack School District than it was in 2017
44 when you -- when you came back that second time.
45 Do you mean more open and accepting of gays or --
46 or LGBT people? Queer people, I guess?
47 A People that are different, yeah. Autistic,

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1 gay --
2 Q The -- the -- the acceptance, tolerance,
3 et cetera, was higher in 2005 than in 2017 from
4 your perspective?
5 A Oh, yeah.
6 Q Okay. You would agree with me that the -- the
7 types of things we've been talking about that are
8 in SOGI 1 2 3 that are now being taught, they
9 were not being taught back then? Generally
10 speaking, they were not being taught?
11 A You know, I don't know. I was a high school
12 teacher, and I only knew about history back then.
13 It wasn't until recently that I kind of moved
14 into all the grades -- or all of the subjects.
15 Q Okay. So you weren't -- you weren't teaching
16 SOGI 1 2 3 --
17 A I was a high school teacher. I was a TOC. You
18 don't teach stuff. You just make sure the --
19 everybody survives the day.
20 Q Okay. I was in high school once too, so I can --
21 I understand.
22 You then said that when you professionally
23 came out in 2017, at first it was pretty quiet.
24 A Yeah, it was quiet.
25 Q Is it -- now, when you say "quiet," do you mean
26 that in a bad way or a good way?
27 A It -- it wasn't relevant because I was teaching
28 Grade 1. I was more worried about them reading.
29 Q To -- to put it another way, nobody -- nobody --
30 nobody cared sort of, like, one way or the other.
31 It was like okay, cool, yeah, like anybody else,
32 you know. You know, like, this person is that,
33 you're this --
34 A To my face, yeah.
35 Q Was it more -- more just like, that's cool.
36 Whatever? Like -- like no big deal; right?
37 Nobody -- nobody made a big deal about it. Is
38 that fair?
39 A I wouldn't say that. You can kind of --
40 Q Okay.
41 A -- tell when people get uncomfortable, even if
42 they don't say it.
43 Q So people were more uncomfortable in 2017 than
44 they were in 2005?
45 A In my experience, yes.
46 Q Okay. From your perspective, do you think that
47 has anything to do with the fact that in 2017 the

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1 SOGI stuff is being taught and people are aware
2 it's being taught?
3 A I'm not sure what was taught before SOGI,
4 honestly, and I'm -- I can't even tell you what
5 year it came out.
6 Q Well, I can tell you that it was before 2017
7 and -- but long after 2005. So would you agree
8 with that?
9 A Yeah.
10 Q Okay. So you would agree with me that -- so
11 based on that agreement, then, do you think that
12 the -- the change that you encountered had at
13 least something to do with the fact that that
14 stuff was now being taught and that people were
15 aware it was being taught?
16 A I really struggle with this because I -- I really
17 taught social studies, and a lot of the SOGI
18 stuff was more of an English Language Arts
19 curriculum, and I didn't teach it. So I don't --
20 I can't speak to what it was like in 2005
21 curriculum-wise or -- because I -- again, I was
22 TOCing. I TOC'd for, like, more than ten years
23 where I wasn't actually creating my own lesson
24 plans. I was following other people's.
25 Q The -- do you -- do you -- do you honestly think
26 people were calling you -- from your perspective,
27 people were calling you groomers that time,
28 going -- going back to that -- the candy thing,
29 with the GSA candy thing that you talked about.
30 From -- from your honest perspective, people --
31 do you think people were calling you -- or
32 insinuating that you were a groomer because you
33 were gay or because you were teaching SOGI stuff?
34 A I think it was more that I was teaching SOGI
35 stuff.
36 Q You said at one point that some students are
37 homophobic.
38 A Mm-hmm.
39 Q What does that mean, or what does that look like?
40 Like, what does homophobic mean? Like, what does
41 it mean when a student's homophobic?
42 A When there's a trans person walking down the
43 hallway and they scream "faggot" as loud as they
44 can, that's homophobic. I had students call me a
45 faggot. It's homophobic.
46 Q I take it, then, that your understanding of -- of
47 homophobic is -- is beyond the literal meaning.

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1 It's beyond simply fear of -- of gay people or
2 gayness; it goes beyond that. It's more than
3 just fear of it; it's something else. It's --
4 it's -- it's -- it's something -- it's being mean
5 to it -- or being mean to those people. Is that
6 fair?
7 A It is being mean, but I don't know if everybody
8 would feel that they're being mean.
9 Q You think -- you think when someone yells out
10 "faggot" at someone -- I mean, wouldn't you agree
11 that anyone who does that is intending to be
12 mean?
13 A Oh, yeah.
14 Q Yeah. Just like when -- you know, would you
15 agree with me that, you know, somebody's being
16 mean when they -- when they look at someone and
17 say, you know, "you're fat" or "four eyes" or
18 "you -- you short idiot" or whatever stupid type
19 of middle cool -- school-type stuff? Like, that
20 stuff's all motivated by mean -- by being mean.
21 You would agree with that?
22 A No. No, I think a lot of it is them trying to be
23 funny for each other more so than mean.
24 Q Okay.
25 A They do really think it's funny to make fun of
26 each other, and they don't have a really great
27 filter. So whatever pops in here tends to come
28 out here.
29 Q You -- you -- you would agree with me it's kind
30 of, like, all over the place. Like, sometimes --
31 sometimes they're making fun of the colour of
32 your skin or the clothes you're wearing, your
33 body shape, or --
34 A They'll always find something.
35 Q They'll always find something to be -- to be mean
36 to each other about, to try --
37 A Yeah.
38 Q -- to try to be funny about?
39 A Mm-hmm.
40 Q You said something about how it was your
41 understanding that technically Mr. Neufeld was
42 your employer, so you weren't allowed to
43 criticize him. Was it the union that told you
44 that, or did you just come up with that on your
45 own?
46 A I'm not exactly sure where I got that from. I
47 believe it was a union thing, but I could be

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1 wrong. It might be my misunderstanding of
2 things.
3 Q Okay. Now, I want to track with this a little
4 bit. You were aware that at some point from 2018
5 onwards, Mr. Neufeld was actually prohibited from
6 entering the schools in his ward. Were you aware
7 of that?
8 A I vaguely remember that happening, but I
9 didn't -- I don't know if I could have placed it
10 in time when it happened if it was, like, right,
11 right away or if it was -- I think that I went to
12 the union, like, right before he was stopped
13 being allowed to go in.
14 Q Tell me about that, going to the union. What are
15 you -- what are you talking about?
16 A I just went to the union that if I saw him, I
17 might be upset.
18 Q Okay. And what was their response? Just
19 generally. I don't -- I mean, I don't want
20 hearsay. Just generally what was their -- like,
21 was -- did they receive that well? Did they say,
22 "Look, we'll try to -- you know, we'll see what
23 we can do to help you out," or was it sort of
24 like, "Leave us alone"? Like, was the response
25 positive or neutral or negative?
26 A The union supports me.
27 Q Okay.
28 A So positive.
29 Q So the union was supportive of you when you --
30 when you -- when you said, "Hey, this is my
31 concern"?
32 A Mm-hmm.
33 Q Okay. So I think you said -- you said at some
34 point that -- that the school board wasn't doing
35 anything about Mr. Neufeld. Do you recall that?
36 But you would agree that they did something by
37 prohibiting him from entering the schools? What
38 were you --
39 A But they didn't get rid of him.
40 Q Why -- you think they should have?
41 A Yeah.
42 Q Yeah. Okay. Because somebody who expresses
43 beliefs like Mr. Neufeld, I mean, they just
44 shouldn't be allowed on the -- on the -- on the
45 board of trustees; right?
46 A If you're expressing them inappropriately in a
47 public forum, they shouldn't be trustees, no.

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1 I'm a teacher. I have to protect what I say
2 publicly. They should too.
3 Q Right. They should keep to -- keep their voice
4 to themselves if they're going to be on the --
5 A Yeah.
6 Q -- school -- yeah, okay. Did you believe you had
7 a reasonable basis to -- to fear that Mr. Neufeld
8 would come up and say or do something really mean
9 or inappropriate to you?
10 A Oh, no, I wasn't even saying that he would
11 interact with me. I -- I was saying if I saw
12 him, I would -- might get upset and not be able
13 to teach the next block.
14 Q Help me understand that. What is -- what is --
15 what is so disturbing about seeing him?
16 A He -- I felt like he was calling me a child
17 abuser. I -- I have anxiety and panic attacks.
18 And when I feel like someone thinks I'm an
19 abuser, it's upsetting, and I'll have a meltdown
20 about it if I see them because it's not okay.
21 Q So you're -- you're convincing that because he
22 said that teaching of more than two genders is
23 child abuse, that he therefore thought you were a
24 child abuser?
25 A Yes. That's one of the instances. There was
26 multiple others.
27 Q Wouldn't you agree with me that there are certain
28 beliefs or ideas that it would be child abuse to
29 teach a kid?
30 A I guess so.
31 Q Okay. I guess -- so the question then is whether
32 or not that particular belief or idea really is
33 that awful; right? Because it is -- it is
34 possible -- it is possible to teach your kid an
35 idea or belief that is just so terrible that it
36 is like child abuse to teach it to them. So I
37 guess at that -- it would -- it would. It would
38 just depend what the belief or idea is; right?
39 A I guess, yeah.
40 Q Okay. So you were concerned about -- about --
41 about seeing Mr. Neufeld. Did you have any
42 reasonable basis for -- for thinking that
43 Mr. Neufeld was going to try to do something as a
44 trustee to get you in trouble?
45 A No.
46 Q Okay. And you -- and I'm using the "get in
47 trouble" thing just sort of -- pretty -- pretty

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1 loosely. You got in trouble for the -- the --
2 the candy GSA poster thing; is that right?
3 A Yeah, and that's where he specifically called me
4 a groomer.
5 Q And so there's -- you said there was something --
6 there was something written up about you in your
7 file or something about that, you said. There's
8 a -- you got something. You said, "There was a
9 paper put into my file on that." Do you recall
10 that?
11 A So which instance are we talking about?
12 Q Okay. So -- so -- and -- well, there's -- okay.
13 There's two instances that I'm thinking of.
14 Okay? There's -- there's the time when you --
15 you were talking about the gender unicorn, and
16 apparently somebody found out about that and
17 talked to you about that. Is that -- is that
18 accurate?
19 A Yes.
20 Q And then there was a time that you put up that
21 poster about the GSA that said something about
22 candy?
23 A Yeah.
24 Q And then you got -- you got talked to about that?
25 A It was more -- the -- the candy one was more of a
26 safety meeting than a talk-to. It was about --
27 Q Okay.
28 A -- coming together and making sure that I was
29 safe, that I wasn't doxxed, and that my picture
30 wasn't online somewhere.
31 Q Okay. So you weren't -- you didn't get in
32 trouble for that?
33 A No.
34 Q I'm using "in trouble" very loosely here. Okay.
35 So -- so -- so there was only the one instance
36 you got in trouble, and that was when you -- you
37 taught the gender unicorn?
38 A I had a homophobic student come after me, and I
39 had a letter on my file for that one. Yeah.
40 Q Did you submit that letter to the lawyers to be
41 part of this case?
42 A I believe it's gone because I waited my time
43 limit, and they get rid of it off my file.
44 Q So it's deleted and --
45 A It's not around anymore, as far as I know.
46 Q Okay. Irretrievable. Okay. Okay. And -- and
47 you did agree with me that you got in trouble for

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1 that more -- more because of, like, the gender
2 unicorn thing than, really, anything to do with
3 the fact that you were gay?
4 A Oh, that first instance was because I was gay. I
5 did not --
6 Q It was?
7 A I'm not sure that student was a student who would
8 constantly wander, so I'm not sure if he was
9 there for my lesson or not. I knew he hated me
10 before -- like, lots of reasons. But, yeah, it
11 could have been --
12 Q All right.
13 A I believe that that was his main reasoning, yeah.
14 Q No, but I'm -- I'm talking about the -- the
15 school. So -- okay. The -- the -- the student
16 may or may not hate you, and that's obviously
17 awful. But let's talk about the school. Do
18 you -- do you think the school was disciplining
19 you because you were gay?
20 A No.
21 Q It's fair to say that Barry never entered a
22 school that you were in after he made any of his
23 posts?
24 A No, I never saw him.
25 Q Okay. Fair to say that you -- that you and Barry
26 never interacted at a school board meeting
27 together?
28 A I've never been to a school board meeting.
29 Q Fair to say that Mr. Neufeld never called for --
30 for you to be disciplined or fired?
31 A I -- I don't think he did, no.
32 Q You would agree with me Mr. Neufeld never said
33 that trans or gay teachers should be disciplined
34 or fired or removed?
35 A No, he never said that.
36 Q We have on the record here one email from you. I
37 guess it's from a parent. It's talking about
38 this -- the -- the GSA poster thing. Do you
39 recall that?
40 A That was not a parent from our district.
41 Q Do you know who it was?
42 A It was a parent from some other district. I
43 don't know.
44 Q How did --
45 A I'd have to look at it.
46 Q How do you know that?
47 A I believe that it said -- she said where she was

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1 from. Like I said, I don't have it in front of
2 me. I don't know exactly how --
3 Q Yeah. No, no. No, no. Yeah. Well, I don't
4 think anything turns on it. That's why I haven't
5 brought it up. Okay. You -- you just -- you
6 know it was a parent?
7 A You know what? I actually don't. It's --
8 Q Oh, okay.
9 A It was -- it was just, like, a random email I
10 got. I -- I don't know.
11 Q Yeah, and the initials are just NH, so we don't
12 know who --
13 A Yeah, like...
14 Q Well, you said you received some other, you know,
15 unsavoury emails. Do you recall that? I have it
16 written down that you said a couple different
17 times, you know, you received emails that were --
18 A Emails is I guess an exaggeration. Email.
19 Q Okay. Okay. Okay. We're getting there.
20 There's -- I'm just going to -- I'm just looking
21 at my notes here.
22 CNSL L. WADDELL: Do you want to -- like, are you --
23 if you're at the very end, do you want to take a
24 break to look at your notes or -- we have no
25 problem with that if this is your, like, last few
26 wrap-up things.
27 CNSL J. KITCHEN: Well, yeah -- well, if it's -- if
28 it's -- well, if -- it's fine with me. I can --
29 I can take another 45 seconds or we can take,
30 like, a five-minute break. I mean, if -- that's
31 fine with me either way.
32 THE CHAIR: I think if you think -- if we're in the
33 order of 45 seconds, why don't you just -- we'll
34 just wait. I think it's fine --
35 CNSL J. KITCHEN: Okay.
36 THE CHAIR: -- and then we'll --
37 CNSL J. KITCHEN: Okay.
38 THE CHAIR: We'll see what you've got.
39 CNSL J. KITCHEN:
40 Q I'm going to share my screen again. Do you ever
41 recall this post from the -- oh, sorry. I'm
42 on -- sorry. I'm on page 88. No idea what
43 tab that is. Tab 12, maybe. I think we were
44 just in Tab 12. Page 88, in any event, of the
45 publications book.
46 Do you recall this post from Barry?
47 A What does the top of it look like again?

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1 Q Yeah, that's -- well, we're in that -- geez.
2 Where is the -- it's just a Facebook post.
3 That's -- that's the top of it.

4 A Is this the one after he won -- yeah, it is.
5 Okay.

6 Q October 22nd --

7 A Yeah --

8 Q -- it looks like.

9 A -- I remember this one.

10 CNSL J. KITCHEN: Now, I don't know if anything turns
11 on this. Okay? I have noticed at -- a few times
12 here the last little while Mr. Clark nodding his
13 head at times. And my only concern with that is
14 that, you know, I -- I have no idea if -- if the
15 witness can see Mr. Clark, but, you know, like,
16 if a lawyer was doing that, we would say, "Okay.
17 Hold on now. You can't do that." So I just -- I
18 don't think I'll be much longer, but insofar as
19 it -- as it might come up, I would appreciate it
20 if Mr. Clark doesn't nod his head as if to sort
21 of, you know, let the witness know when she's
22 right or not.

23 THE CHAIR: All right. I see Mr. Clark shaking his
24 head and nodding his head. So I think we won't
25 take any message from that. But yes, thank you.
26 We'll all just have a neutral face if we can. Go
27 ahead.

28 CNSL J. KITCHEN: Thank you.

29 Q Okay. I'm sorry. Do you -- do you recall
30 this -- this statement from Barry?

31 A Yes.

32 Q Okay. He says:

33
34 I have to say I say this to those
35 persons who currently identify as
36 lesbian, gay, transgender, queer,
37 Two-Spirit, or whatever: You have
38 nothing -- in all caps -- to fear from
39 me or my colleagues. I have...

40
41 Okay. Let's just stop there. Fair to say you --
42 you -- you still feared him even after he said
43 that?

44 A Yes.

45 Q Because you thought -- not because you thought he
46 might physically hurt you but because you
47 thought -- you didn't -- you didn't think it

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1 because he might physically hurt you. Is that --
2 is that fair?
3 A No. No, I --
4 Q All right. Okay. Right.
5 A -- thought that he just doesn't understand what
6 he's talking about.
7 Q Right. And so you feared him expressing his
8 beliefs that were different than your beliefs?
9 A His expressing his beliefs were bullying, though.
10 Q So it's -- it's bullying when he expresses his
11 belief that there's only two genders?
12 A To the nonbinary kid, yeah.
13 Q Okay. So when he says -- now, he says -- he says
14 "we." Do you see where he says "we" there? Do
15 you understand him to be talking about him and
16 his other trustees [indiscernible] that are kind
17 of in agreement with him?
18 A I -- I actually assumed more of the anti-SOGI
19 crowd, not his -- not the school board.
20 Q Okay. When he says "you have nothing to fear
21 from me or my colleagues. I have devoted most of
22 my life" --
23 A Yeah, but he's talking about the colleagues that
24 are anti-SOGI like Darryl Ferguson and --
25 Q Right, right, right. But -- yeah, no. Yeah,
26 he's talking about his school board trustees.
27 You -- you would -- you would agree?
28 A The ones that are on his side only.
29 Q Right. Yeah.
30 A Yeah.
31 Q Ferguson and --
32 A Yes.
33 Q -- and -- and Heather -- it was a Heather Maas, I
34 think you said?
35 A Yeah.
36 Q Yeah. And was there another one, or was that it?
37 I think that was it.
38 A There was Kathy Jones, but she didn't get
39 elected, I don't --
40 Q She didn't get elected. Right. "We -- we
41 implore bullying, put-downs, and condescension of
42 any time -- of any kind." You don't believe him?
43 A I believe he believes himself.
44 Q But as far as you're concerned, it's
45 condescension and put-downs to say that he
46 believes there's only two genders?
47 A Yes.

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Teacher B (for Complainant)
cross-exam by Cns1 J. Kitchen

1 Q So he says -- so I'm -- I'm skipping a little
2 bit. If you want to comment on it, you're --
3 you're -- you're invited to, but he says,
4 "Contrary to what you have been told to believe,
5 we actually love all students, no matter their
6 sense of self-identity, and we care about you."
7 Now, wouldn't you agree with me that he doesn't
8 just think that; he's actually acted that way?
9 A What do you mean?
10 Q When he says, you know, "We love all students no
11 matter their sense of self-identity. We -- we
12 care about you," you would agree he's saying that
13 in all sincerity, first of all --
14 A Yeah, for sure.
15 Q Okay. But as far as you're concerned, he's acted
16 the opposite? Like, you don't think he's really
17 actually trying to help kids when he says, like,
18 look --
19 A I think he thinks he is, but I don't think he
20 understands the actual impact of what he says.
21 Q What about the fact that from his -- can you
22 understand his perspective when he -- he thinks
23 it's a -- it's a -- it's a negative impact on a
24 kid to tell them that they -- they can -- they
25 can change their gender.
26 A That's his belief, yeah.
27 Q But -- but would you agree with me that he's --
28 he's saying he's concerned about that because he
29 really is concerned for the kid, just -- but just
30 in a different way than you are?
31 A I think he believes he's concerned about the kids
32 and that he cares about kids, but he thinks they
33 should fit into what he says the world is.
34 Q Right. But you would agree with me that the way
35 he sees the world is not just based on, like, him
36 just arrogantly thinking he's right about
37 everything, but on sort of a good-faith, like,
38 belief system that he has?
39 A Yes.
40 Q Okay. So what about the -- what about the "be
41 patient. You will most likely grow out of your
42 feelings and confusion -- feelings of confusion
43 and angst. They are fleeting and temporary"? Do
44 you think he's wrong when he says that?
45 A Yeah.
46 Q Okay. I think -- I think I'm almost there.
47 Okay, B, those are all my questions. Thank you

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Teacher B (for Complainant)
Proceedings

1 very much for your time.

2 A Thank you.

3 THE CHAIR: Thank you.

4 Ms. Tom, Ms. Waddell, anything arising?

5 CNSL L. WADDELL: Could we just have two minutes to
6 see if we've got any redirect?

7 THE CHAIR: Yeah, that's fine. Why don't we turn our
8 cameras and mics off. Are you okay to hang on
9 for a few more minutes, Teacher B?

10 A Yeah.

11 THE CHAIR: There may just be a couple more questions.
12 All right. Let's turn our cameras and mics off
13 while you confer, and then you can call us back,
14 complainant's counsel.

15
16 (WITNESS STOOD DOWN)

17
18 (PROCEEDINGS ADJOURNED FOR RECESS) [3:35:31]
19 (PROCEEDINGS RECONVENED) [3:38:52]

20
21 TEACHER B, a witness,
22 recalled.

23
24 THE CHAIR: All right, everyone. Come on back. Okay.
25 We can see you, Teacher B, but -- and you're
26 unmuted. You got it. You got it. By the end of
27 the day it all feels easy; right?

28 A I'm good.

29 THE CHAIR: You're good.

30 A I'm good. I'm back.

31 THE CHAIR: Any questions, Ms. Tom?

32 CNSL A. TOM: No.

33 THE CHAIR: Okay. Teacher B, those are all the
34 questions we have for you. I want to really
35 thank you for your time and energy today. I know
36 it's -- it can be difficult to come and
37 participate in proceedings like that, but the
38 tribunal really values everyone's time spent
39 giving us evidence about what you know. So thank
40 you very much. You're free to now leave the
41 proceeding. I'll just remind you to please don't
42 talk to anyone about your evidence if they are
43 going to testify after you. Okay?

44 A Oh, yes.

45 THE CHAIR: Okay. But other than that, you can -- you
46 can talk. Okay.

47 A Okay.

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1 THE CHAIR: Thank you very much.

2 A Thank you. Bye.

3 THE CHAIR: Good-bye.

4
5 (WITNESS EXCUSED)

6
7 THE CHAIR: All right. We're at 3:40. I'm not sure
8 where -- what you think we should do in terms of
9 the schedule, if we want to get started with
10 Teacher C or -- or call it a day. Complainant's
11 counsel, what's your view?

12 CNSL A. TOM: I'm inclined to call it a day just
13 because I'm not sure if Teacher C is still
14 available based on the -- the time estimate for
15 cross. We did kind of tell her we weren't sure
16 if she was going to be called today. So I don't
17 know how long it's going to take her to get
18 online at this point, and given that we started
19 half an hour early.

20 THE CHAIR: Okay.

21 CNSL J. KITCHEN: Yeah, we're -- we're only losing
22 20 minutes, actually. So...

23 THE CHAIR: Okay. That seems reasonable, particularly
24 since I know we're starting tomorrow morning with
25 Dr. Saewyc, so we would have to interrupt
26 Teacher C's evidence anyway, which may be less
27 efficient. So are we still thinking that we
28 should start at 9:00 tomorrow morning, or is that
29 measure no longer required, given Mr. Kitchen's
30 revised time estimate?

31 CNSL J. KITCHEN: I -- well, I would say that
32 generally speaking I'm much more interested in
33 the teacher as witnesses than I am the expert
34 witness. So, you know, I think now -- the
35 witnesses I've been very interested in I've spent
36 four hours with or something like that. I'm not
37 going to spend that kind of time with Ms. Saewyc.
38 So, you know, now that I have a better idea of
39 what -- what -- the way evidence is like. So I
40 would say if we start at 9:30 and we're -- we're
41 talking, you know, she's -- we're done in direct
42 in the morning or maybe even a little shorter
43 than the morning, I -- I definitely will not --
44 we won't need extra time. I would definitely be
45 done with Ms. Saewyc at some point, you know,
46 before, I think, the end of the afternoon.
47 Probably early afternoon.

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1 I don't know if that -- I don't want to put
2 people -- I don't want to have people just
3 hanging around, obviously, but I think it more
4 likely than not at this point I would be very
5 brief with Ms. Saewyc and we -- it would be -- it
6 would be fruitful to start with Teacher C in
7 direct tomorrow afternoon. I -- I don't want to
8 inconvenience people, and I -- and I -- I also
9 don't want to box myself in. I just think that
10 that -- that it would be -- it would be helpful
11 to have Teacher C ready to go tomorrow just to
12 preserve time. Now, and that's assuming
13 Teacher A can't come in for her cross tomorrow.
14 I'm assuming that that's Monday.
15 CNSL L. WADDELL: Well, if your main cross is going to
16 go on for as long as this one, I don't think we
17 want to have her suspended over the weekend. So
18 that does not -- that does not make sense.
19 CNSL J. KITCHEN: Yeah, I agree with that.
20 THE CHAIR: Okay. So if we -- if we start tomorrow
21 at -- back at 9:30, then I -- would Teacher C --
22 is Teacher C generally available tomorrow
23 afternoon if we have some time to start her
24 direct, or --
25 CNSL L. WADDELL: I'm not sure.
26 THE CHAIR: You're not sure.
27 CNSL L. WADDELL: Yeah.
28 THE CHAIR: Okay.
29 CNSL L. WADDELL: We can try -- we'll try and line her
30 up if we can.
31 THE CHAIR: All right. I think it would be helpful
32 if -- if she -- if she can possibly be available
33 in case we finish with Dr. Saewyc. But it sounds
34 like it's not really necessary to try and extend
35 our hearing day to complete Dr. Saewyc's
36 evidence, which was the intention of starting at
37 9:00. So we may as well start at 9:30 and get
38 back on our regular schedule, and -- and
39 hopefully there will be time for Teacher C's
40 direct on Monday -- sorry -- tomorrow afternoon.
41 And I'm -- I'm -- I'm feeling okay about the
42 schedule in light of counsel's kind of revised
43 time estimates around some of the respondent's
44 witnesses and Dr. Saewyc. So it's okay that
45 we're a bit behind. So I think we should come
46 back tomorrow morning at 9:30 with Dr. Saewyc.
47 Oh, yes, Ms. Sokolova. I see you're

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1 unmuting --

2 CNSL M. SOKOLOVA: Yes.

3 THE CHAIR: -- yourself.

4 CNSL M. SOKOLOVA: I am. I was just going to ask --

5 so we've been considering how to approach

6 Dr. Saewyc. I think it's likely that we will

7 have a few questions for the expert witness. As

8 I mentioned, I think the time estimate remains

9 the same. We've been considering sort of how to

10 approach it, the cross-examination, direct

11 examination, question -- I mean, we do -- as,

12 Chair, you've noted, we do have permission in the

13 terms of intervention to cross-examine witnesses.

14 I mean, our view is it's not our witness, and I

15 think we're kind of on -- on solid permission

16 from the tribunal and legal authority, we're

17 content to sort of try to modify the questions

18 to -- to make the questions go faster because

19 they're not lengthy, and just to make sure that

20 we get through the evidence in the interest of

21 time.

22 I've been looking at an authority, you know,

23 just the Sopinka evidence book. I'm wondering,

24 Mr. Kitchen, if you'd like me to send that to you

25 just to have a look at. It's a little bit

26 helpful in terms of, you know, cross-examination,

27 direct examination, deciding the question of when

28 parties, if they're multiple parties, are

29 permitted to --

30 CNSL J. KITCHEN: I'd love that.

31 CNSL M. SOKOLOVA: -- question witnesses anyhow.

32 CNSL J. KITCHEN: I mean, Sopinka's the guy. So

33 yes --

34 CNSL M. SOKOLOVA: Yeah.

35 CNSL J. KITCHEN: -- if you're going to rely on it,

36 I'd like to have a look at it. I might even

37 change my position. I -- my suggestion would be

38 to approach this as sort of a loose direct as in,

39 you know, we -- we're not going to be really hung

40 up about the questions that are a little bit

41 leading. I do think it's inappropriate to come

42 in with a pretty strong cross on a witness that's

43 clearly not adversarial to you in your position.

44 You have intervened on the side of the

45 complainant. I think that's fair to say. So I

46 think -- I think some leeway is fine, but if it's

47 going to be, you know, a full-on cross, then that

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1 would just be inappropriate. But I might change
2 my position once I've -- once I've read what
3 you're relying on with Mr. Sopinka because he's
4 the -- he's the authority.

5 CNSL M. SOKOLOVA: Sure. Would you like me to send
6 you the whole sort of chapter? There's a chapter
7 called "Examination of Witnesses." Or do you
8 want just the excerpts on cross-examination and
9 multiple-party cross-examination?

10 CNSL J. KITCHEN: It's probably just easiest -- the
11 whole chapter's probably easiest.

12 CNSL M. SOKOLOVA: Okay. I'll do that right now, and
13 I'll kind of cc everybody just for the benefit.
14 As I say, I think we're content to actually take
15 your approach, which is, you know, it's an expert
16 witness that's been approved to help the tribunal
17 in decision-making. We're certainly not, you
18 know, out to -- to be adversarial in -- in her
19 regard. So I think we're -- we'll be content to
20 kind of tailor our questions in a manner that's
21 suitable.

22 THE CHAIR: Okay. Thank you. That's all much
23 appreciated. So you'll send those excerpts to
24 Mr. Kitchen and the rest of us. And so if this
25 issue becomes contentious tomorrow, we can deal
26 with it, but it sounds like, you know, unless
27 you're seeking to do a very targeted
28 cross-examination, I expect -- I expect we'll be
29 fine. But we can deal with any objections to the
30 manner of questioning tomorrow if it arises.

31 CNSL M. SOKOLOVA: Yeah.

32 THE CHAIR: Okay.

33 CNSL M. SOKOLOVA: I'll do that right now.

34 THE CHAIR: Thank you. Anything else before we
35 adjourn for the day? No? No? All right. Well,
36 thank you, everyone, for your work today. We'll
37 be back tomorrow with Dr. Saewyc at 9:30 in the
38 morning. I'll remove everyone from the meeting
39 now. Thank you.

40 CNSL L. WADDELL: Thanks.

41
42 (PROCEEDINGS ADJOURNED TO NOVEMBER 29, 2024
43 AT 9:30 A.M.) [3:47:36]
44
45
46
47

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Reporter's certificate

1
2 REPORTER'S CERTIFICATE
34 I certify that this is a true and accurate
5 transcript of these proceedings recorded on sound
6 recording apparatus, transcribed to the best of
7 my skill and ability in accordance with
8 applicable standards.
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18 Afton Ellis, OR, AR
19 Court Reporter, Certificate Number 621
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**IN THE MATTER OF THE *HUMAN RIGHTS CODE*,
RSBC 1996, C. 2010 (as amended)**

**AND IN THE MATTER of a complaint before
The British Columbia Human Rights Tribunal**

BETWEEN:

British Columbia Teachers' Federation obo Chilliwack
Teachers' Association

COMPLAINANT

AND:

Barry Neufeld

RESPONDENT

AND:

B.C.'s Human Rights Commissioner

INTERVENOR

**PROCEEDINGS AT B.C. HUMAN RIGHTS TRIBUNAL HEARING
(VOLUME V)**

ORIGINAL

THERE IS A PUBLICATION BAN IN EFFECT PROHIBITING THE
PUBLICATION OF ANY INFORMATION THAT COULD IDENTIFY THE
TEACHERS WHO TESTIFIED, OR MAY HAVE TESTIFIED, IN
CONNECTION WITH THIS COMPLAINT: CHILLIWACK TEACHERS'
ASSOCIATION V. NEUFELD (NO. 2), 2024 BCHRT 180 [CTA
(NO. 2)]; AMENDED BY LETTER DATED FEBRUARY 25, 2025.

File: CS-003172

**IN THE MATTER OF THE *HUMAN RIGHTS CODE*,
RSBC 1996, C. 2010 (as amended)**

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The British Columbia Human Rights Tribunal**

BETWEEN:

British Columbia Teachers' Federation obo Chilliwack
Teachers' Association

COMPLAINANT

AND:

Barry Neufeld

RESPONDENT

AND:

B.C.'s Human Rights Commissioner

INTERVENOR

**PROCEEDINGS AT B.C. HUMAN RIGHTS TRIBUNAL HEARING
(VOLUME V)**

ORIGINAL

Tribunal Members:	Devyn Cousineau, Robin Dean, Laila Said Alam
Counsel for the Complainant:	Lindsay Waddell, Alanna Tom, Stefanie Quelch, Chris Fenje
Counsel for the Respondent:	James S.M. Kitchen
Counsel for BC's Human Rights Commissioner:	Sarah Khan, Maria Sokolova

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By videoconference
November 29, 2024

(VIDEOCONFERENCE COMMENCES) [9:30:44]

THE CHAIR: Good morning, everyone. It's November 29th, and I'm recalling the case of *British Columbia Teachers' Federation obo Chilliwack Teachers' Association v. Barry Neufeld*, CS-001372. I can see complainant's counsel in the room there. Good morning. And it looks like you also have a separate connection, I imagine, for documents, Ms. Tom? You're nodding. Okay. And Mr. Reid is here this morning. Good morning. I see Mr. Kitchen. Mr. Neufeld's not connected yet, but I imagine he'll be joining us in a few moments; is that right?

CNSL J. KITCHEN: I expect so.

THE CHAIR: Okay. And, Ms. Sokolova, I can see you there as well. So I think that's everyone we need to get started. Oh, except for, of course, the witness. It looks like, Ms. Waddell, are you trying to --

CNSL L. WADDELL: Sorry.

THE CHAIR: -- unmute?

CNSL L. WADDELL: I think -- can you hear me now?

THE CHAIR: Yes.

CNSL L. WADDELL: Okay. Sorry. I think some of the same technological problems we were having yesterday -- I just wanted to note that Ms. Quelch is not here this morning. She has another matter she has to attend to. Joining us, and barely in your screen, is our articling student Chris Fenje, spelled F-e-n-j-a-y [sic].

THE CHAIR: Okay. Thank you. All right. I don't see that Dr. Saewyc is connected yet. Is there any -- are there any preliminary issues we need to address, or are we just waiting for the witness to begin?

CNSL L. WADDELL: We do actually -- oh, sorry --

CNSL J. KITCHEN: No, no, no. Go ahead.

CNSL L. WADDELL: -- Mr. Kitchen.

CNSL J. KITCHEN: You go ahead. Yeah, no, you go -- you go ahead.

CNSL L. WADDELL: We do have a preliminary matter that we need to address, and that's why we've not had the witness dial in yet. What we would like to

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1 ask is for the tribunal to stand the hearing down
2 for 15 minutes -- you can leave it open -- and
3 convene a conference call just with counsel and
4 the tribunal to address this issue.

5 THE CHAIR: Okay. Mr. Kitchen, any objection to that
6 proposal?

7 CNSL J. KITCHEN: No. If we got to talk about
8 something, we got to talk about something.
9 That's fine. Are we going to do this through
10 another separate link, or are we just going to
11 get on the phone?

12 CNSL L. WADDELL: I'm presuming -- I mean, I -- I can
13 do either, but I was presuming, given I sense
14 there's some rigamarole involved in, you know,
15 letting people in and stuff, that the easiest way
16 to do it would be to use the tribunal's
17 conference, like, phone line and just convene a
18 phone call. But -- but whatever's easiest for
19 the tribunal.

20 THE CHAIR: I think I may just be able to put us in a
21 separate room on Teams.

22 CNSL J. KITCHEN: There you go.

23 THE CHAIR: So that we can just stay on Teams. We'll
24 go into a separate room now. Bear with me. I've
25 never done this in a hearing before. So if it
26 goes badly, then we'll -- we'll meet back here
27 and we'll give you a conference line to dial
28 into. But -- but let me just see if I can do
29 this.

30 CNSL L. WADDELL: Sounds good.

31 THE CHAIR: Okay. I'm going to include counsel for
32 the Intervenor as well, unless there's some
33 reason not to.

34 CNSL L. WADDELL: No, that's --

35 CNSL J. KITCHEN: Yeah.

36 CNSL L. WADDELL: -- fine.

37 CNSL J. KITCHEN: I mean, I -- I have no notice from
38 my friend what she wants to talk about, but I'm
39 going to presume it's got nothing to do with the
40 tribunal, and I think it's probably just best if
41 it's the three of us.

42 THE CHAIR: All right. Well, I'm going to include
43 the -- I'll include the intervenor's counsel, and
44 if that, given the topic, seems inappropriate, we
45 can revisit. But I'm going to assign us all to a
46 room now, and -- and we'll see if this works.
47 And just before we do that, I see Mr. Neufeld's

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1 joining, so I'll just let him come in and tell
2 him what we're doing.

3 Good morning, Mr. Neufeld. I just want to
4 let you know what's happening. Counsel for the
5 complainants have asked for a caucus with just
6 the tribunal and legal counsel. So we are
7 temporarily leaving the hearing room for a
8 few minutes to caucus on an issue, and then we'll
9 be back. But you can stay in this space. I'm
10 going to try and just have us removed into a
11 separate private room for this discussion, and
12 then we'll be back in about 15 minutes. Okay?

13 RESPONDENT: Okay.

14 THE CHAIR: Okay. All right. I'm trying to open the
15 room now.

16 CNSL J. KITCHEN: [Indiscernible].

17 UNIDENTIFIED SPEAKER: We're on mute again.

18 CNSL L. WADDELL: Okay.

19 THE CHAIR: All right. I think --

20 CNSL L. WADDELL: Sorry. I thought we got dropped.
21 It looked like we were bumped out of the whole
22 thing, but here we are.

23 THE CHAIR: Here we are. All right. And just --
24 we're in our caucus. The hearing recording is
25 still on. So this is still part of the -- the
26 record of the proceeding unless there's some
27 unusual circumstance that would require us to be
28 off the record. But I expect we'll keep the
29 transcript running.

30 CNSL L. WADDELL: Okay. So -- so Ms. Tom is going to
31 send all of you two attachments to an email.
32 They are posts -- or it is a post from one of the
33 members of the public who was granted access to
34 the hearing. The post says -- and this is
35 someone who attended the hearing yesterday.

36 CNSL J. KITCHEN: Do you have a name? Like, what --
37 what's --

38 CNSL L. WADDELL: Yeah, this --

39 CNSL J. KITCHEN: Let's talk about real people. I
40 mean --

41 CNSL L. WADDELL: This is Tammy Mitchell (phonetic).
42 I'm just going to -- and I'll tell you where I'm
43 going. I'm going to ask that she be excluded
44 from the hearing from this point forward. And,
45 you know, if the tribunal feels that it's
46 appropriate -- it probably is -- if I get the
47 order that I'm seeking and we go back in, it's

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1 probably appropriate to have some -- something in
 2 front of folks so they know what the heck's gone
 3 on. But -- so it is a post that says, "This week
 4 at Chilliwick Middle School" -- so this is just
 5 after Teacher B has testified. That's
 6 Teacher B's school. Big display. Here's the
 7 display from -- that relates to the school.
 8 It's, you know, showing a SOGI display. "Makes
 9 you wonder why the activists wanted to move
 10 Grade 6 in with middle school rather than leave
 11 those grades in elementary school. Hmm. Poor
 12 kids." And then it contains a link to the staff
 13 list for that school where Teacher B is, of
 14 course, identified as the Grade 6 teacher and is
 15 the only teacher whose prefix on that list is Mx.

16 So it's our view that that is a breach of
 17 the publication ban, and if not, it is an attempt
 18 to direct people to someone who was anonymized,
 19 and it is plenty reason to exclude that
 20 individual from the hearing going forward. I --
 21 I appreciate my friend has not had -- this just
 22 came to our attention this morning, and so I
 23 appreciate my friend has had less time with it
 24 than I have. If he, you know, needs a couple
 25 minutes to think through a position, but I -- I'd
 26 be surprised if -- if he had difficulty excluding
 27 that person based on this -- this post. So...

28 THE CHAIR: Okay. Have you sent it over yet, Ms. Tom?

29 CNSL A. TOM: I have, yes. I have a three-minute
 30 delay on my [indiscernible], so just give me a
 31 few minutes.

32 THE CHAIR: All right. So we're waiting for it to
 33 come through, and I've just let the case manager
 34 to -- to -- know to watch for it.

35 Mr. Kitchen, I'm assuming you want to wait
 36 to see the post before you --

37 CNSL L. WADDELL: Yeah.

38 THE CHAIR: -- have anything to say about it, or...?

39 CNSL J. KITCHEN: Yes, well, obviously. So, you know,
 40 part of the -- I can appreciate that my friend
 41 may not have learned about it until this morning,
 42 but, you know, if she learned about it an hour
 43 before the hearing, then -- then it should have
 44 been sent over to me and, you know, with -- with
 45 an email and maybe with an attempt to call me,
 46 and we could have had this discussion without
 47 using up hearing time, which is not that big of a

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1 concern to me. You know, I'm not -- I'm not that
2 obsessed with hearing time, per se. But just --
3 I just note that, you know, I haven't -- I
4 haven't been given any notice. We haven't had a
5 discussion, and -- and that -- that would have
6 been helpful. Maybe she learned of this
7 15 minutes before, but I just -- I raise that.

8 And obviously I generally have no issue with
9 making up arguments on the spot and responding to
10 things that I have no notice of, but, at the same
11 time, it's only fair that if I certainly want to,
12 I be given sufficient, reasonable time to deal
13 with something like this. You know, I -- I gotta
14 see the post. I gotta see what's said. I gotta
15 see what it means. And then, you know, we gotta
16 give a little bit of thought to, first of all,
17 whether or not it's a breach; and then second of
18 all, regardless of whether it is, whether that
19 particular violation of the open court principle,
20 because that's what it is, is justified in the
21 circumstances. And it's not the kind of thing to
22 enter into lightly or -- or do without
23 submissions.

24 Now, I'm not saying we have to stand down
25 today and make submissions over the weekend, come
26 back Monday. I mean, that's not going to --
27 it's -- that's not going to help. Although I
28 would say -- and, again, I'm just -- I'm just
29 responding here off the cuff, you know. An
30 exclusion order for the entire hearing is
31 obviously more severe than an interim exclusion
32 order.

33 So perhaps -- and I -- so I suggest this to
34 you, Chair. If you -- if you agree with my
35 friend that it's a breach, that's thing number
36 one. Thing number two is what do you do in
37 response to it. If you're inclined to respond
38 with booting this person out, then I would
39 suggest to you that since we don't really have
40 the time to go through that whole rigamarole now,
41 you do it on an interim basis for today, which
42 will provide me an opportunity to see if I can
43 come up with some submissions about it, which we
44 can argue briefly Monday morning, and then you
45 can make a more permanent order on whether or not
46 she's going to be out for the rest of the
47 hearing. Those are just some off-the --

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1 off-the-cuff thoughts. I need to see it. Has it
2 been emailed to me yet?
3 CNSL L. WADDELL: Well, it's been -- yes. It --
4 "send" was hit a few moments ago, but there's an
5 automatic delay on Ms. Tom's email. So you
6 should be getting it by now. But I have no --
7 just for the record, I have no difficulty with
8 the process that Mr. Kitchen just proposed. And,
9 I mean, just on the -- even on the interim piece,
10 I think he needs to be able to see the post
11 because it -- you know, it doesn't say the
12 teacher's name in the post, and it doesn't say,
13 you know, "This is Teacher B." But our position
14 is it contains enough. It's clearly intended at,
15 you know, assisting in identifying Teacher B.
16 That's our position. But -- but my friend will
17 want to see the post and develop his position --
18 CNSL J. KITCHEN: Well, yeah.
19 CNSL L. WADDELL: -- just on even an interim -- you
20 know, on an interim piece. So I've got no
21 difficulty with the staged approach that he's
22 suggested and giving him a few minutes now to get
23 a chance to look at the -- look at the post. And
24 we --
25 CNSL J. KITCHEN: I -- I -- I take it you didn't find
26 out about this until just a few minutes before
27 the hearing?
28 CNSL L. WADDELL: Well, I don't have to tell you
29 exactly when I found out about it. It wasn't --
30 CNSL J. KITCHEN: No, no, you don't. I get that.
31 CNSL L. WADDELL: Yeah.
32 CNSL J. KITCHEN: But come on, now. I mean, you
33 know --
34 CNSL L. WADDELL: But -- but, Mr. Kitchen, to the
35 extent that I had any time before the -- the
36 hearing, it was spent calming the witness down
37 and talking to the superintendent to make sure
38 that her name came off of the staff list. So
39 that's my priority. I really don't care about,
40 you know, your desire to have me be courteous
41 with you when I have someone who's been doxxed
42 before, where there's a publication ban. I'm
43 sure you understand that; right? Like, my number
44 one concern --
45 CNSL J. KITCHEN: I get it.
46 CNSL L. WADDELL: -- is to --
47 CNSL J. KITCHEN: I get it. I -- look, I've had --

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1 CNSL L. WADDELL: So --
2 CNSL J. KITCHEN: I've had similar witnesses with more
3 objective evidence for concern. So I get where
4 you're coming from. Okay?
5 CNSL L. WADDELL: Okay.
6 CNSL J. KITCHEN: I'm just saying, you know, we're
7 using up hearing time to deal with this, you
8 know. Like --
9 CNSL L. WADDELL: Yeah.
10 CNSL J. KITCHEN: -- this could have been raised at
11 the end of today, and we could have had some --
12 we could have had a conference after the hearing.
13 We could have -- we could have had submissions
14 over the weekend and dealt with it in a more
15 controlled manner on Monday. I'm just saying,
16 you know, to -- to raise it like this, we're
17 eating up hearing time, which I'm not upset
18 about; I'm just pointing out that that's, you
19 know, not necessarily the best way to deal with
20 this.
21 CNSL L. WADDELL: Well, and you can understand that I
22 don't want this individual attending the hearing
23 today, you know, if the tribunal agrees with our
24 position. So that's why I'm raising it now.
25 CNSL J. KITCHEN: Well, I -- I struggle with the
26 relevance; right?
27 THE CHAIR: Okay.
28 CNSL J. KITCHEN: I mean, if the --
29 THE CHAIR: All right --
30 CNSL J. KITCHEN: -- damage has been done, the damage
31 has been done; right?
32 THE CHAIR: Sorry, Mr. Kitchen. I know that you're
33 concerned about using hearing time, and -- and to
34 some extent, I am as well. So I really want to
35 focus on the issue and not how we are dealing --
36 CNSL J. KITCHEN: Yeah.
37 THE CHAIR: -- with the issue.
38 CNSL J. KITCHEN: Yeah.
39 THE CHAIR: So have you received the email yet?
40 CNSL J. KITCHEN: Now I have.
41 THE CHAIR: Okay. So why don't you take a look. And
42 we're still waiting on it on our end, but that's
43 fine.
44 CNSL J. KITCHEN: Well, do you want to -- do you mind
45 if I just turn off my camera here for five or
46 ten minutes and then --
47 THE CHAIR: Yeah, that's fine.

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1 CNSL J. KITCHEN: Okay. So it's -- okay. Thank you.
2 THE CHAIR: We'll do the same. So you can call us
3 back, Mr. Kitchen, when you're ready. Thank you.
4

5 (PROCEEDINGS ADJOURNED FOR RECESS) [9:45:04]
6 (PROCEEDINGS RECONVENED) [9:51:04]
7

8 CNSL J. KITCHEN: [Recording begins] -- have a chat
9 about it now.

10 THE CHAIR: All right. Go ahead, Mr. Kitchen.

11 CNSL J. KITCHEN: So my thoughts are that we need to
12 hear from my friend as to how this -- how this
13 breaches the -- the publication ban. I can guess
14 that I may agree with her on some points. I
15 don't know if I would agree with her on all, but
16 I just -- I need -- I need to hear her points
17 because I may in fact agree with it -- with all
18 of it. So I just -- and then -- and then I'll
19 respond, and then we have to discuss what to do
20 about it.

21 So I guess -- well, my -- my friend's
22 already made her position that the way to deal
23 with it is to remove this person from the
24 hearing. So I'd like to hear some comments from
25 her, if she has them, as to why that's the
26 appropriate remedy. Because, again, maybe --
27 maybe I will -- maybe I will find some agreement.
28 I'm not necessarily opposed to everything at this
29 point. Just need to understand her position so I
30 can form my position in response. So let's --
31 let's start there. And obviously we're trying to
32 be quick. We've got to get back into the
33 hearing. So I would say if she wants five or
34 ten minutes to -- to articulate why it's a -- why
35 she thinks it's a breach and then I can have five
36 or ten minutes to articulate why it's not, and
37 then maybe a little less time focused on what do
38 we do about it. At least in the interim,
39 anyways.

40 THE CHAIR: All right. Go ahead, Ms. Waddell.

41
42 SUBMISSIONS BY CNSL L. WADDELL:
43

44 CNSL L. WADDELL: Sure. So I was just trying to find
45 a copy of the -- the September 13th extension of
46 the terms of the publication ban, which I just
47 couldn't put my hands on. But my recollection is

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Submissions by Cnsl L. Waddell

1 that it was the names or identifying information
2 of individual teachers who testified. I think we
3 probably all agree that that's it. So --

4 CNSL J. KITCHEN: Yeah.

5 CNSL L. WADDELL: -- this post, in our submission, you
6 know, as I noted, it doesn't say Teacher B is
7 so-and-so. But it is on the day of her
8 testimony; identifying the school at which she
9 works; emphasizing Grade 6, which is the grade
10 that she teaches; posting a link to the staff
11 list on which she is the Grade 6 teacher, and the
12 only teacher identified with a trans prefix; and
13 the photo is of the -- of the GSA display; and
14 the teacher, as this individual will have heard
15 yesterday, is the GSA teacher at the school.

16 So all of that, in our submission, is
17 identifying information about the teacher that
18 makes it capable for people who follow
19 Ms. Mitchell, or those who don't, because her --
20 her profile is -- at least this morning it was
21 available to anybody. It wasn't private. And
22 she is a member of online anti-SOGI Facebook
23 groups. So -- and she's also someone, I would
24 add, who probably had access to -- and she's
25 posted this -- to her Facebook page, and she has
26 connections with, via Facebook, other individuals
27 who are close to Mr. Neufeld, as she herself is,
28 who may have had access to that One -- that
29 One Drive folder, the post that I referred to on
30 Tuesday that contained initially -- and no longer
31 does, thankfully -- the unredacted witness list.

32 So that is our submission on why the post is
33 a breach of the publication ban.

34 And as to why the appropriate remedy is her
35 exclusion from the hearing, you know, the
36 tribunal has limited tools at its disposal to
37 control members of the public. There is, to my
38 mind, not much available after something like
39 this has been done. The tribunal has many powers
40 over participants in a hearing and over parties,
41 but the only way to address this kind of
42 behaviour and to protect the integrity of that
43 ban and the teachers is to exclude this person.
44 It's not a perfect remedy, of course, because we
45 don't know who else has accessed this. But that,
46 in our view, is the appropriate remedy. We'd
47 submit that it must be for the rest of the

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Submissions by Cnsl J. Kitchen

1 hearing. I'm -- you know, I'm happy if my friend
2 wants us to do the two-part process and, you
3 know, argue more vociferously about, you know, a
4 permanent exclusion from this hearing. That's
5 okay with me.

6 But I'll -- I'll give him my -- my general
7 submissions on this now so that he can think
8 about his position, which is that, you know, once
9 something like this happens, there is only so
10 much we can do. Once it's out in the public
11 domain, there is a limited amount of stuff that
12 we can do to protect these individuals. And so
13 for that reason, because there's not a lot to be
14 done after the fact, the best we can do is
15 prevent it from happening and -- and at least
16 with this individual who clearly, you know,
17 was -- was trying to disseminate the very
18 information that was prohibited from publication,
19 the only way to do that is to prohibit her
20 attendance, which, in our respectful submission,
21 is a small infringement on the open court
22 principle because it is only one person, and it
23 is directly tied to the risk that they pose to
24 these teachers who are subject to the publication
25 ban.

26 THE CHAIR: Thank you. Mr. Kitchen?

27
28 SUBMISSIONS BY CNSL J. KITCHEN:

29
30 CNSL J. KITCHEN: The first thing I'll say is to the
31 degree that my friend referred to evidence that's
32 not in front of me or in front of you, you cannot
33 rely on it. So all these comments about Facebook
34 posts and connections with Mr. Neufeld and --
35 et cetera, that's -- that's my friend giving
36 evidence, which she's not permitted to do, which
37 I don't really -- I don't -- yeah, I'm not upset
38 or concerned about that as a problem. Just my
39 only reaction to that is you can't rely on it
40 because it's not in front of us. All we can rely
41 on is what's in front of us, which is this post.
42 And then this other thing, which -- just so I
43 understand this, Ms. Waddell, what you're
44 saying -- because obviously that link doesn't
45 work. I clicked on the link to try to see where
46 it went, and I was -- I was assuming it was going
47 to produce this second document.

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Submissions by Cnsl J. Kitchen

1 CNSL L. WADDELL: Yes, that's --

2 CNSL J. KITCHEN: Is that right?

3 CNSL L. WADDELL: -- that's what I was doing instead
4 of talking to you this morning, is we were -- we
5 were getting that taken down so that --

6 CNSL J. KITCHEN: Okay.

7 CNSL L. WADDELL: -- that information would not be
8 publicly available.

9 CNSL J. KITCHEN: So I guess we just kind of have to
10 take -- sorry. I guess we just kind of -- we
11 have to take it at your word that this link goes
12 to that, which, you know, I mean, it says "link
13 to teacher context," and it says "staff," so
14 I'm -- I'm reasonably confident that -- I guess
15 my only issue is -- okay. So here's my only
16 issue with this, is what you've provided me is
17 one page that lists -- we've got one, two, three,
18 four, five -- five teachers. Presumably, that --
19 that list that she linked to was all the teachers
20 of the school. And so you only provided me a
21 piece of that. So that -- it doesn't seem like
22 it's quite the whole picture. I don't -- I don't
23 know if what -- if you just provided me a piece
24 of the link.

25 I think that matters a little bit, not a
26 lot, because obviously you're trying to say,
27 "Look, she's -- she's -- she's identifying this
28 one teacher," and of course if she's -- if she's
29 identifying all the Grade 6 -- well, actually,
30 it's not -- obviously, it's not just Grade 6
31 because you've got other grades in there -- all
32 the teachers in the whole school, obviously it's
33 more difficult, so you're kind of -- you know, by
34 only providing that evidence, you're kind of
35 artificially narrowing it down to what it might
36 actually be able to -- so I just -- I have an
37 issue with that. There's nothing we can do about
38 that because that's what you've provided.

39 And the reason -- and the reason I say that
40 is because there's -- there's -- there's an open
41 question here as to whether or not this is
42 actually -- regardless of intention is, in
43 effect, identifying this witness. And I think
44 that that's -- I think that that's unclear if
45 that's what's going on because we have -- we have
46 the ban. We're not using this person's first
47 name or last name. I don't think there was any

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Submissions by Cnsl J. Kitchen

1 slip-ups yesterday. Certainly I don't think
2 there is -- was any on my end. So I don't know
3 that this person was even identified with a first
4 name at all orally yesterday during the
5 examination. So it's difficult to see how this
6 would actually, in effect -- putting aside
7 purpose, but -- and because I think we can -- we
8 don't know about the purpose without having the
9 person here in front of us to question. The
10 effect actually breaches it. I have a hard time
11 with that. I -- I just didn't see -- I just
12 didn't see the connection in -- in -- in my
13 friend's submissions.

14 I understand -- I understand the concern,
15 you know, because we do want to guard against
16 that. I get that. But I -- but I understand --
17 but I -- but I -- I'm -- I'm having a hard time
18 understanding how we actually get there, in
19 effect, here with this.

20 And I also have a hard time, of course,
21 with -- with -- the intention I think probably
22 matters a little bit insofar as how do we respond
23 to it. Doesn't matter if we're deciding whether
24 or not there's a breach, but, you know, is
25 there -- is there an intention to dox or out or
26 reveal this person. I have a hard time with that
27 because, you know, the way that that would
28 typically happen is, you know, "Hey, look, here's
29 the link to -- to the witness who's speaking
30 today." You know, I mean, that would be -- that
31 would be a clear violation. We wouldn't be
32 having to have this debate. We would just -- we
33 would just know.

34 And so I don't -- I don't see that here.
35 You know, this -- this post could have -- could
36 have very well functioned sort of on its own
37 without anything to do with this hearing; right?
38 Like, there's no reference -- I'm not --
39 there's -- yeah, there's no reference to the
40 hearing. So this is -- this is the type of stuff
41 that anybody -- that anybody at any time might --
42 might -- might say about what's going on with all
43 this stuff. It's not linked to the hearing,
44 which is another reason why it's -- there's not
45 necessarily a strong connection.

46 So I think what I would say is, in effect,
47 there is no real breach. Okay? I -- I get -- I

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Submissions by Cnsl J. Kitchen

1 get my friend's concern, but I don't -- I don't
2 know that this is actually, in effect, a real
3 breach. And I don't -- I don't see actually that
4 that's the intention or the -- or the effect.

5 So let's say you disagree with me. Well, we
6 got to figure out what to do about it. Okay.
7 Well, I think it's -- it would be -- and I would
8 try to use the analogy of, you know, if we're --
9 if we're -- if we're sentencing a criminal or
10 we're -- or we're -- or we're sanctioning a
11 professional who's been found for -- with
12 unprofessional conduct, we talk about deterrence
13 and denunciation and all that, and the -- and
14 the -- the punishment has to fit the crime is
15 sort of an underlying thought.

16 Well, it would be a disproportionate and not
17 fully rational punishment to this crime, if we
18 want to call it that, to just boot this person
19 out of the hearing for the whole rest of the
20 hearing. That doesn't make any sense. And the
21 reason it doesn't make any sense is because the
22 whole underlying purpose of this is to protect
23 the teacher witnesses from being -- having their
24 identity revealed by this person or any --
25 anybody else attending the hearing.

26 And so then the question is, okay, well, if
27 we boot them out of the hearing generally, we've
28 gone beyond that purpose because now we've booted
29 them out of the hearing even when these teachers
30 are not witnesses; right? Because based on my --
31 my friend's theory of all this, it's completely
32 irrelevant when witnesses beside the teachers are
33 up -- you know -- you know what I mean by "up" --
34 giving evidence; right?

35 So today when we have the expert up or all
36 these days next week that we're going to have
37 Mr. Neufeld's witnesses up, it just wouldn't make
38 any sense or serve any purpose for this
39 individual to be -- to be prohibited from
40 attending. That would be sort of punishment for
41 punishment's sake. It would be more vengeance
42 and, you know, vindictiveness, and it would just
43 be to bring the hammer down without serving a
44 purpose. And of course, you know, all -- all --
45 all punishment, if you will, has to serve a
46 rational purpose.

47 So if -- if the idea is to boot her out, it

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Submissions by Cnsl J. Kitchen

1 can't be -- and -- and because of the open court
2 principle -- so if there's no purpose served,
3 then obviously the open court principle, however
4 much it might be infringed, going to my friend's
5 comment, it obviously outweighs kicking her out
6 for no -- kicking out Ms. Mitchell for no real
7 purpose. So we obviously can't boot her out for
8 the whole thing.

9 So then the question is do we boot her --
10 boot her out for when it's relevant? Well, when
11 would it be relevant? It's when the teachers
12 testify. Okay? So, now, I don't think you
13 should take that approach. Okay? But I'm just
14 saying that that's -- I think -- at least I can
15 make sense of that. I think that's rational.

16 I think the appropriate approach -- and,
17 again, remember -- you have to remember who we're
18 dealing with. We're dealing with members of the
19 public; right? And absent evidence to establish
20 that this person, you know, knew of the
21 publication ban -- let's assume they did know,
22 because I think we've talked about it enough. So
23 they know it; then we have to assume, okay, so
24 they understood it, and they intentionally and
25 maliciously tried to get around it. Well, we
26 don't know that. Maybe they thought that this
27 was totally fine, in good faith, because as far
28 as they're concerned, they just can't post
29 anything. Let's keep in mind who posted, who
30 published this information; right? This
31 information was not published by the -- the --
32 Ms. Mitchell, the individual. Okay?

33 That information is available on the
34 internet because Teacher B and her school have
35 obviously decided it's okay to have that
36 information up. Okay? Which begs the question
37 if Teacher B is so concerned about her identity,
38 why is her identity listed on the webpage of the
39 school; right? I mean, the school took it down
40 right away this morning. So clearly the school
41 is onside; right? The school didn't have to do
42 that. Okay. The school is not controlled by the
43 union. Presumably it's not controlled by the
44 union, and that's -- that's -- that's -- that's
45 who's actually here today, is the union, not --
46 not the school, not the school board in that
47 sense. Okay? Not here.

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Submissions by Cnsl J. Kitchen

1 So the school took it down anyways. Right
2 away this morning. Okay? So clearly the school
3 is -- is on side. They didn't have to do that;
4 they did it anyways. Okay? Which begs the
5 question if -- if Teacher B is so concerned, why
6 was this information up there? Like, just
7 generally speaking, but certainly during the
8 course of the hearing, why is that information up
9 there; right? It begs the question.

10 That's not published by -- I'm sorry. I'm
11 going back to my -- my submission as to whether
12 or not it's a breach, but, again, I'm making this
13 up as I go. Ms. Mitchell has linked to something
14 that was not published by Ms. Mitchell but
15 published by the school where -- where -- where
16 Teacher B works, presumably with -- with
17 Teacher B's consent, not over her head. It's not
18 like Teacher B requested that not be up there
19 during this time, because I think we can infer
20 that if she had requested that, it would have
21 been taken down by the fact that it was taken
22 down this morning on such short notice.

23 So is it really a breach to link to
24 something that doesn't go directly to -- to a
25 page where only Teacher B is -- is listed but --
26 but apparently a list of all teachers, okay,
27 where Teacher B has got her name listed. Okay?
28 If she's really that concerned, you would think
29 the consistent thing to do is to remove
30 everything off the internet. Okay? Which I'm --
31 I'm familiar with that. I mean, some -- you
32 know, that happens sometimes. Employers don't
33 list everybody on there because they're
34 protecting the identity of somebody; right?

35 So is it really a breach for Ms. Mitchell
36 to -- to -- to link to something that's, you
37 know, a list of people -- not just Teacher B --
38 and a list of people that contains Teacher B when
39 presumably Teacher B could have had her name
40 removed from that list at least for the time of
41 this hearing. Is that actually a breach? Okay?
42 I would suggest it's not. But if it is, right,
43 then -- right.

44 Going back to how we respond to it, I would
45 say the better way to respond to this is to go
46 back into the room and say, "Okay. We need to
47 talk about what this publication ban actually

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Submissions by Cnsl J. Kitchen

1 means for the benefit of the public. It means
2 not only that you cannot share the names of these
3 individuals if you happen to somehow know it,
4 which you shouldn't. But if you do happen to
5 somehow know it, that doesn't -- that doesn't,
6 you know, take away your obligation to the ban.
7 Okay? If you know it, the ban still applies.
8 You're not allowed to talk about that person's
9 name. You're not allowed to share that person's
10 information."

11 And you're not allowed to -- because I think
12 that's -- that's sort of what, you know, is
13 obvious that the publication ban means. I think
14 every -- every person -- member of the public --
15 okay -- we can -- we can -- we can give them that
16 much that they can understand that. Okay?
17 It's -- I think it would be helpful to go back
18 and say to the public that's attending this to
19 say, "Look, it also means that if you happen to
20 come across publicly published, you know,
21 open-access public domain stuff that would tend
22 to identify these -- these witnesses, you also
23 can't link to that."

24 And that right there should tell you that
25 this probably isn't a breach; right? Because --
26 because I think in saying that, you're
27 actually -- you're actually expanding and
28 extending the publication ban. Because the
29 initial publication ban is do not do anything, do
30 not publish anything, do not say anything that
31 would tend to identify the teacher, meaning name,
32 you know, email address or whatever that would
33 tend to identify. Okay. Well, that didn't
34 actually happen here; right?

35 So I think what you -- actually what you
36 probably -- and, again, I know -- I'm sorry. I'm
37 making this up as I go. I'm trying to help. I'm
38 trying to give you solutions. I don't think this
39 was a breach of -- of the publication ban proper.
40 Maybe of the spirit. Okay? And so maybe the --
41 maybe the best way to deal with this is to go
42 back and say, "Look, this thing has happened,
43 which may or may not be a breach, but the point
44 is this is the type of stuff that we're trying to
45 avoid." And yes, there was no publication. It
46 was already published by the -- the -- the
47 teacher's school, presumably with the teacher's

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Submissions by Cnsl J. Kitchen

1 permission. But if this stuff is in the public
 2 domain, we are now extending the publication ban
 3 to -- and by the way, I'll -- I'll consent to
 4 this. I mean, we have the publication ban to
 5 begin with, which, you know, I -- I wouldn't have
 6 consented to, but you've decided on it. So as
 7 far as expanding it to make it effective, I would
 8 consent to that, by the way.

9 So we expand it to make it effective for
 10 preventing this type of thing, which is to say we
 11 tell the public, "Okay. We're now expanding it
 12 to include you can't link to anything in the
 13 public domain that would tend to do this. You
 14 can't link to other people's publications, in
 15 other words." Okay? And that's the proper way
 16 to deal with this. We go in, we say, you know,
 17 "We're concerned about this. We feel it
 18 undermines the spirit of the publication ban. We
 19 are therefore expanding the publication ban,
 20 explaining that to you now, and making it very
 21 clear that we expect everybody to follow it."

22 That I think is how we should -- should deal
 23 with this. If you think -- if you think you need
 24 to go further and you need to actually take
 25 action against this person, then I would say the
 26 most you could do would be to exclude this member
 27 of the public from attending the hearing only
 28 when the teacher witnesses are testifying. Okay?
 29 That means if this member of the public wants to
 30 be here this morning for the expert and wants to
 31 be here all next week for Mr. Neufeld's
 32 witnesses, she is entitled to, as any other
 33 citizen in this country under the open -- open
 34 court principle. And she -- and she cannot be
 35 excluded from that when there's no purpose
 36 served.

37 But if you agree with my friend, okay, then
 38 I -- I can -- I can acknowledge that there's a --
 39 there is a purpose served by excluding her from
 40 when the teacher witnesses are testifying, both
 41 in direct and cross. And so -- so that -- that
 42 would be the harshest way I think you could go
 43 about this, would be to exclude the member of the
 44 public when the teacher witnesses are testifying.

45 Okay. Those are -- those are my thoughts.

46 Thank you for letting me work that out.

47 THE CHAIR: Thank you.

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1 Before I come back to you, Ms. Waddell, I
2 just -- I want to put two things to you,
3 Mr. Kitchen. I think we're inclined to agree
4 with you that it's not apparent on its face that
5 this is a breach of the publication ban. From --
6 from our perspective, though, the bigger concern
7 is one that the complainants haven't raised,
8 which is the protection afforded to witnesses by
9 section 43 of the *Human Rights Code*, which
10 prohibits any person from kind of retaliating
11 against someone or taking negative measures
12 against someone for giving -- for giving evidence
13 in a Human Rights Tribunal proceeding.

14 CNSL J. KITCHEN: Okay.

15 THE CHAIR: So from our perspective, that -- that
16 protection is engaged for all witnesses, leaving
17 aside the publication ban. So we have here a
18 post where a person is identified in their icon
19 wearing a sign that says "support Barry Neufeld,"
20 and on the day of a witness's testimony, they are
21 clearly publicly criticizing the action of a
22 Grade 6 teacher who's been identified as our
23 witness in our proceeding, so I think just -- in
24 a proceeding that she's been listening to.

25 So just on its face, there's a -- there's a
26 reasonable connection between the person --
27 Teacher B giving testimony and this post
28 appearing, which is clearly critical of her in
29 connection with her --

30 CNSL J. KITCHEN: Well, hold on --

31 THE CHAIR: -- activity at the school.

32 CNSL J. KITCHEN: Help -- help me understand the
33 "clearly critical." Can I -- can I -- can I
34 understand how you have arrived at that without
35 submissions from us?

36 THE CHAIR: Well, and I don't want to get too
37 sidetracked. I mean --

38 CNSL J. KITCHEN: Well, no, no --

39 THE CHAIR: -- I'm looking --

40 CNSL J. KITCHEN: -- that's not a sidetrack --

41 THE CHAIR: -- at --

42 CNSL J. KITCHEN: That's a --

43 THE CHAIR: I'm looking at that --

44 CNSL J. KITCHEN: That's a key point.

45 THE CHAIR: I'm looking -- my turn to talk now. I'm
46 looking at the post, and, you know, "Makes you
47 wonder why the activists wanted to move Grade 6

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Submissions by Cnsl L. Waddell

1 in with middle school rather than leave those
2 grades in elementary school. Hmm. Our poor
3 kids." So sympathizing with kids in Grade 6 in
4 the middle school in connection with a display by
5 the leader of the -- by the GSA and then
6 connecting to the teachers list.

7 Anyways, whether you agree or not, clearly
8 we've heard from -- it seems to me that this is a
9 criticism of Teacher B and in connection with --

10 CNSL J. KITCHEN: Well, no, I --

11 THE CHAIR: -- their --

12 CNSL J. KITCHEN: That's not clear.

13 THE CHAIR: Okay. I'm still talking, Mr. Kitchen.

14 CNSL J. KITCHEN: I know.

15 THE CHAIR: I know you disagree. I know you disagree.
16 But I'm --

17 CNSL J. KITCHEN: Well, it's not a matter of
18 disagreeing. I'm trying to -- I'm trying to
19 understand. It's helpful to me to understand
20 your -- your -- your perspective --

21 THE CHAIR: All right. Well --

22 CNSL J. KITCHEN: -- on this, okay, because --

23 THE CHAIR: All right. Well, I'm just going to ask
24 you not to interrupt me. I find it very
25 disrespectful. So my bigger concern is under
26 section 43 of the *Human Rights Code*. I'm
27 inclined to agree with you that -- I don't have
28 quite the same concern about the publication ban.
29 I'm also inclined to think that in order for the
30 protection of the witnesses and the protection of
31 the teachers in this proceeding, that it may be
32 appropriate to exclude the -- Tammy Mitchell for
33 their testimony.

34 But what I want to hear from you,
35 Ms. Waddell, is about, as Mr. Kitchen says, the
36 proportionality and rationality of excluding them
37 from all of the proceedings, including
38 particularly the expert witness and the -- and
39 Mr. Neufeld's witnesses. I'm not sure why that
40 may be necessary in the circumstances. Can you
41 speak to that?

42 CNSL L. WADDELL: Sure.

43

44 SUBMISSIONS BY CNSL L. WADDELL:

45

46 CNSL L. WADDELL: So I would say, you know, again
47 there is -- other than retaliation complaints,

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Submissions by Cnsl L. Waddell

1 and you need a certain thing for that, there's
2 not a lot that the tribunal can do, in my view,
3 after the fact. And so for that reason, given
4 that this individual has demonstrated that they
5 are prepared to push the boundaries of what's
6 appropriate, we think the appropriate thing to do
7 is to exclude them from the entirety of the
8 hearing.

9 You know, I am going to put our expert
10 witness on the stand this morning, who is going
11 to testify that after she initially gave her
12 testimony in direct, she received an email saying
13 "fuck off." I'm going to put that to her. Now,
14 she doesn't know who this person is. I happen to
15 know it's a Barry Neufeld supporter. So this is
16 the -- this is the kind of stuff that Barry's
17 supporters are -- are inflicting on people who
18 are just trying to participate in this process.

19 And Ms. Mitchell, just to address,
20 Mr. Kitchen, you're -- you're saying there's no
21 connection to the hearing. Not only was she
22 listening in on the hearing, but she is -- she is
23 also -- and she's entitled to protest, but she is
24 one of the individuals -- you know, your client
25 had someone film her this week in front of the
26 tribunal's offices with that "support Barry
27 Neufeld" sign that you see in the --

28 CNSL J. KITCHEN: Right, but that evidence is not
29 before us.

30 THE CHAIR: You need to let Ms. Waddell finish --

31 CNSL J. KITCHEN: Okay?

32 THE CHAIR: -- speaking, Mr. Kitchen, before you jump
33 in.

34 CNSL J. KITCHEN: Well, no, no, but she's continuing
35 to put evidence in the record that -- that she's
36 not entitled to do. That is -- at some point
37 that gets fairly serious.

38 THE CHAIR: No, actually -- sorry. I'm just going
39 to --

40 CNSL L. WADDELL: May --

41 THE CHAIR: Because we're dealing with counsel here,
42 this isn't evidence. I'm going to -- if counsel
43 is aware of circumstances, I want to hear about
44 that. This is about the integrity of our
45 process. It's not about putting people under
46 oath and giving evidence. So --

47 CNSL J. KITCHEN: I think --

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Submissions by Cnsl L. Waddell

1 THE CHAIR: -- I just -- I want -- our job here is to
2 protect the integrity of the process, and if
3 counsel's aware of members of the public engaging
4 in activity that is relevant to our process, then
5 I trust counsel to be giving me accurate
6 information. And I'm not going to pretend that
7 we -- we can't hear that.

8 So, Ms. Waddell, can you please continue.

9 CNSL L. WADDELL: Sure. And just for my friend's
10 benefit, I invite you to go to your client's
11 website, click on the first video that is about
12 the tribunal proceedings. Go to the 21st minute
13 and between 21 minutes and 22 minutes, you will
14 see Ms. Mitchell, who is identified, and comments
15 and -- in her sign. And she's entitled to do all
16 those things. I'm not suggesting there's
17 anything wrong with that. But I'm just -- in
18 terms of connecting her to the hearing and to
19 your client, that is relevant to the -- the
20 process here.

21 So I really have no submission on the
22 appropriateness of the -- the permanent exclusion
23 other than this person has been a part of these
24 proceedings. Doesn't matter to me whether she
25 intended to breach the publication ban or not.
26 She has engaged in something that I hear the
27 tribunal doesn't necessarily agree it's a breach
28 of the publication ban, but that is clearly
29 getting at the integrity of the tribunal's
30 process. It may be an attempt to intimidate
31 witnesses. It may be retaliation under the code.
32 Whatever the case, that the only way to protect
33 all of our witnesses, even those whose names are
34 not protected by a publication ban, is by
35 excluding someone like this.

36 So at minimum, we absolutely would say she
37 must be excluded for the teacher witness portion
38 of the hearing. But in light of just looking at
39 the situation as a whole, what our expert is
40 going to say about the email she received from a
41 Barry supporter telling her to "fuck off" after
42 just her qualification stuff is -- you know, I --
43 you -- you have some people on your side of the
44 table that you don't have a lot of control over
45 and who are, in my view -- are working hard to
46 subvert this process.

47 I mean, you say you want your client to be

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Submissions by Cnsl J. Kitchen

1 heard and have his story out there and get to the
2 real issues, but unfortunately for you and
3 probably unfortunately for your client, there are
4 a ton of people around him who are really messing
5 with the tribunal's ability to -- to do that.
6 That may be their objective; it may be an
7 incidental effect.

8 So that's all I have to say on the -- the --
9 why I say, you know, a full ban just for this
10 individual is warranted, and I leave it in the
11 tribunal's hands to determine whether it's just
12 while the teachers are testifying or whether it's
13 throughout the proceedings.

14 THE CHAIR: All right.

15 CNSL J. KITCHEN: Okay. I need to comment on the
16 integrity of the process, Chair.

17
18 SUBMISSIONS BY CNSL J. KITCHEN:

19
20 CNSL J. KITCHEN: The integrity of the process means
21 that we don't give submissions on evidence that's
22 not in front of the tribunal. Okay? That --
23 that goes to the core of the integrity of the
24 process. Okay? So no, I don't think it's
25 appropriate for you to say, "Well, I think
26 counsel's telling the truth." I'm not suggesting
27 she's not telling the truth. I'm suggesting that
28 we don't have the evidence that she's talking
29 about; right? And we're going to come to this in
30 the hearing. If she wants to put in a random
31 email that says "fuck off," she's got to
32 establish that that is from what she's called a
33 new -- a Barry Neufeld supporter. And what the
34 heck does that even mean? Okay? That is -- that
35 is prejudicial evidence with very little
36 probative value -- no probative value if we don't
37 establish who the heck it is and that they're
38 somehow connected to Mr. Neufeld; right?

39 So my -- my friend, first of all, has got to
40 put the evidence in, and then she's got to
41 establish that these people, you know, are what
42 she's categorizing as Neufeld supporters. You
43 know, she's saying Tammy Mitchell's a Neufeld
44 supporter. Well -- well, what does that mean,
45 and how do you establish that? She said, well, I
46 can go look it up on the website. The
47 obligation's on her to put all that evidence in.

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Submissions by Cnsl J. Kitchen

1 I can't say -- I'm not saying she can't establish
2 it. But if she wants to establish it, it's not
3 because she just comes in here and says -- tells
4 you about it, but that she actually puts the
5 evidence in and I get a chance to look at it;
6 right? And then we get a chance to hopefully
7 cross-examine a witness about it. Okay?

8 So -- and part of the reason I'm raising
9 this is because I -- we see the integrity of the
10 process obviously different, unfortunately,
11 and -- and it's clearly an issue that's going to
12 come up because -- it's going to come up today
13 just in cross -- or in examination in chief. We
14 can't just have prejudicial, scandalous comments
15 from counsel about the respondent and his
16 supposed supporters unless we have evidence to
17 back it up. It's -- it's -- it's not
18 permissible. It undermines the integrity of the
19 process. So if she's going to do this type of
20 stuff, we -- we got to get the evidence in and
21 not just have her comments on what the evidence
22 is. And if -- if she does, we'll go through the
23 process. Okay? I think that's all I have to say
24 about that.

25 Well, no. My last thing is this -- my last
26 thing -- sorry. My last thing is this. If you
27 decide to exclude Ms. Mitchell, even though you
28 don't decide that there's a -- there's ban on the
29 publication ban -- or, sorry -- there's a breach
30 of the publication ban, then I'm assuming the
31 only other basis is that you're -- you're --
32 you're making a finding that this is potentially
33 retaliation, which of course that's potentially a
34 problem because there hasn't been a complaint.

35 But, in any event, I would need to see
36 reasons from you to -- and the reason I'm asking
37 for this, you know, goes to the integrity of the
38 process. It's also helpful to me; right?
39 Because you've made a comment which I think is
40 the -- is the thing that grounds the retaliation.
41 You've made a comment that this is critical of
42 Teacher B, and I don't see that. And I need to
43 know how you see that, one, because that would be
44 the legal basis for excluding a witness. That
45 would be the legal basis for violating -- because
46 it's a presumptive violation of the -- for
47 justifying the violation, I should say, of the

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Submissions by Cnsl L. Waddell

1 open court principle. It's also helpful for me
2 to understand the issues in this case where --
3 where -- where I don't see criticism, you tend
4 to. And I need to understand your reasoning on
5 that because that's going to, I think, probably
6 continue to come up with -- with our different
7 understanding of what's -- of what's relevant and
8 also, you know, when it comes to argument on the
9 key issues in the case at -- when we get to the
10 end of this.

11 So if I could have -- if you decide to
12 exclude her, even -- even for just the teacher
13 witnesses, under -- under some sort of
14 preliminary finding that it's potentially
15 retaliation, I need to see some reasons from you
16 for -- for, one, the integrity of the process,
17 and two, to help me understand your reasoning.

18 THE CHAIR: Thank you. Now, because this was
19 Ms. Waddell's issue, she is entitled to the last
20 word, and this will really be the last word.
21 Okay.

22 So, Ms. Waddell, if there's any final word
23 you'd like to say before we resolve this issue,
24 you have that opportunity.

25 CNSL L. WADDELL: Sure.

26
27 SUBMISSIONS BY CNSL L. WADDELL:

28
29 CNSL L. WADDELL: I will say that I agree with my
30 friend about the reasons. I think, you know, the
31 open court principle is -- is a very important
32 one, and for that reason, whether it is a partial
33 exclusion or a full one, I do think that reasons
34 will be required. I'm sorry to -- to agree with
35 that, but I do.

36 And there was one more thing I wanted to
37 say, which was, you know, Mr. Kitchen, I think
38 you probably didn't grasp the -- the prejudice
39 you're talking about is precisely why I took the
40 step of not doing this in the main hearing room
41 and instead did it here. I know that may be
42 difficult for you to think that far ahead, but
43 that is -- that is --

44 CNSL J. KITCHEN: No, I get that.

45 CNSL L. WADDELL: -- it. So -- so there you go.

46 THE CHAIR: Okay. All right. Well, then, this is
47 what I'm going to propose we do. We'll need some

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1 time to consider, and I don't want to take up
2 time writing reasons for you, but we'll certainly
3 want to articulate some reasons for you for
4 whatever we decide to do when we get back in
5 the -- in the hearing room. So I'm going to ask
6 for 15 minutes for us to consider and -- and come
7 back at 10:40. And perhaps if you're in contact
8 with Dr. Saewyc, you could ask her to be ready
9 for 10:45. We'll come back at 10:40 with a
10 decision about what to do with Ms. Mitchell.

11 And what I'll propose, because I know we
12 have folks waiting in the main hearing room, is
13 that we'll go back in the main hearing room,
14 explain that we're standing down for 15 more
15 minutes, and -- and then expect to start with the
16 evidence around 10:45 or just after. Okay?

17 So I'm now going to try and remove you from
18 the room. If you get disconnected, of course,
19 just reconnect and we'll meet back in the main
20 room. Thank you.

21 CNSL L. WADDELL: Sure.

22 THE CHAIR: Hi, everyone. We're back. I'm just
23 waiting for complainant's counsel to rejoin, and
24 then I will update everyone on what's happening
25 now. There we are.

26 All right. So for all of you who have been
27 waiting patiently in the main hearing room, thank
28 you for your patience. Sorry that took longer
29 than expected, as it always does. We are just
30 coming back briefly to say that we are taking a
31 15-minute break now to consider the issue that
32 counsel has raised, and we'll be back in
33 15 minutes. And the witness will -- will start
34 just after we -- just after we get back and
35 resolve the issue. So I'm going to close off our
36 camera and mic and take a break for 15 minutes.
37 Thanks very much.

38
39 (PROCEEDINGS ADJOURNED FOR RECESS) [10:27:54]

40 (PROCEEDINGS RECONVENED) [10:40:13]

41
42 THE CHAIR: All right, everyone. Come on back.
43 Sorry. I've just got to get my screen set up
44 right. There we go. All right. Thanks,
45 everyone, for your patience and for those of you
46 who were waiting in the hearing room. Thank you
47 again for your patience while counsel and the

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1 tribunal were discussing a very important issue.

2 I'm going to make a few brief remarks about
3 expectations during this process and -- and
4 outside the process if you're on the call as a
5 member of the public, and then we're going to
6 continue with the next witness.

7 So I'm not going to get into the details of
8 what we -- what counsel has brought to our
9 attention and what we discussed in our caucus
10 other than to say that a concern has arisen about
11 how witnesses in the -- in this proceeding are
12 being treated outside the proceeding. And so I
13 have some general remarks to make to make sure
14 that everyone on the call understands the
15 tribunal's expectations when it comes to
16 witnesses in tribunal hearings.

17 So first of all, you've heard us talk many
18 times about the publication ban in this case,
19 which applies to protect the identities of
20 teachers who testify or may testify for the BCTF
21 and Chilliwack Teachers' Association in this
22 complaint. What that means is that no one is
23 permitted to publish anywhere, including social
24 media, blog posts, of course, media articles,
25 videos, whatever, information that could identify
26 any of the teachers who are testifying in this
27 proceeding in connection with the complaint.

28 And the reason that this order was made is
29 set out in published reasons of this tribunal but
30 generally have to do with the teachers' concerns
31 that they may face retribution, harassment,
32 doxxing in their communities if they're
33 identified in connection with this complaint. So
34 that's a concern that -- that the tribunal takes
35 very seriously. And that's the publication ban.

36 In addition to the publication ban,
37 section 43 of the *Human Rights Code* protects
38 people who testify at the Human Rights Tribunal
39 from any behaviour that is intimidating,
40 threatening, discriminating against them because
41 they've testified in this proceeding. And this
42 is a very important protection that applies to
43 anyone who is participating in this human rights
44 hearing. Any witness or party or lawyer who
45 comes to the Human Rights Tribunal is entitled to
46 do so on the understanding that they are
47 protected from -- from threats, from

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1 intimidation, from discrimination, or other kinds
2 of retaliation, and we take that very seriously
3 too. So this means that -- that -- that
4 witnesses should not be, you know, treated in the
5 ways I've described.

6 So we've -- we have a concern that -- that
7 at least one member of the public may have been
8 taking steps to intimidate or treat poorly a
9 witness in connection with their participation in
10 this proceeding, and that's what we've been
11 discussing. We are going to proceed now to have
12 the expert testify, and all the members of the
13 public may stay for that part of the -- the
14 evidence. But when the teachers are back to
15 testify, there is one member of the public who
16 will be receiving a letter from the tribunal
17 advising that they are not permitted to stay for
18 that part of the hearing, and setting out reasons
19 why. And counsel will get that letter as well.

20 This order will be made under section 48 of
21 the *Administrative Tribunals Act*, which grants
22 the tribunal power to give orders or make
23 directions that it considers necessary to
24 maintain order of the hearing, including
25 excluding a person from further participation or
26 attendance at a proceeding until we order
27 otherwise.

28 So if this is you, and I'm not going to
29 identify you in this open hearing, you will
30 receive a letter explaining why you're not
31 permitted to stay for the remainder of the
32 teachers' testimony.

33 And counsel will get their reasons on that
34 order when -- when it goes out. But for now
35 we're allowing everyone to stay for Dr. Saewyc's
36 testimony. And, again, I reiterate for any
37 member of the public who's listening or -- or not
38 that -- that as a witness in this proceeding,
39 Dr. Saewyc is -- is entitled to the protection of
40 section 43 of the *Human Rights Code*, and I expect
41 there won't be any reports that she's receiving
42 harassing, threatening, intimidating or otherwise
43 disparaging communications in connection with her
44 participating in this proceeding.

45 All right. So that's how we're managing
46 that issue. And I see that Dr. Saewyc has
47 arrived, and so I'm going to bring her in now for

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1 her evidence. Yes --
2 CNSL J. KITCHEN: Chair, I just have a couple points
3 arising from that, questions for you. Will
4 counsel be getting a copy of this letter?
5 THE CHAIR: Yes. As I said, counsel -- I said that.
6 Counsel will be getting a copy of that letter.
7 CNSL J. KITCHEN: Okay. Well, no, you said -- you
8 said copy of the reasons. I just want to know
9 about the letter. Will the person who receives
10 this letter be permitted to publish the letter?
11 I would say she should be able to, and -- and so
12 if you don't think she should be able to, then we
13 need to of course have reasons for that, and she
14 needs to have notice of that so she's not
15 breaching anything further.
16 THE CHAIR: I'll address that, yeah. Thank you. I'll
17 address that in the letter. All right.
18 CNSL J. KITCHEN: Okay.
19 THE CHAIR: Is that all?
20 CNSL J. KITCHEN: Yes. I have -- I have -- I have
21 submissions about what the Commission can or
22 cannot question or how the Commission can or
23 cannot question the -- the expert. But if you
24 want to wait until we get to that point, that's
25 fine. I just want to -- I just want to put that
26 out there that I need to have some comments on
27 that.
28 THE CHAIR: Okay. Thank you. And I think what we
29 discussed yesterday was that Ms. Sokolova would
30 ask her questions, and if there's an objection to
31 the way in which she's framed it as being
32 cross-examination, then we would deal with it at
33 the time. But she was going to work on --
34 CNSL J. KITCHEN: Okay.
35 THE CHAIR: -- on --
36 CNSL J. KITCHEN: That's fine.
37 THE CHAIR: -- on open questions. Okay. I'm letting
38 Dr. Saewyc in now.
39 Good morning, Dr. Saewyc.
40 ELIZABETH SAEWYC: Good morning.
41 THE CHAIR: Welcome back to the proceeding. Thank you
42 for coming back with us this morning and for your
43 patience in an unanticipated long delay this
44 morning. So thank you very much. As you know,
45 you're back to answer questions about your expert
46 report and your expert opinion. You've already
47 been sworn in in this proceeding, but I'll remind

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1 you now of your duty to this tribunal as an
2 expert witness. Your duty is to help the
3 tribunal and not to be an advocate for any party.
4 And we've already confirmed earlier in the week
5 that you understand this duty and have promised
6 to give evidence that is fair, independent, true,
7 impartial, and free from bias. Okay? So I just
8 confirm that oath is still binding on --
9 you're --

10 ELIZABETH SAEWYC: Yes.

11 THE CHAIR: -- nodding to indicate that you understand
12 the duty. So thank you.

13
14 ELIZABETH SAEWYC, a witness,
15 recalled.

16
17 THE CHAIR: Ms. Waddell, please go ahead with your
18 questions. You're muted, Ms. Waddell.

19 A I cannot see.

20 CNSL L. WADDELL: Better? Better? Can you hear me?

21 A Yes.

22 CNSL L. WADDELL: Okay.

23 THE CHAIR: Oh, sorry. Just before you start,
24 Ms. Waddell, sorry. I forgot to -- because
25 Dr. Saewyc's been here before, I forgot to
26 explain who's on the call.

27 A Okay. Sure.

28 THE CHAIR: Just for your benefit, because I know
29 you've come into a room full of people, you're of
30 course -- the tribunal members are here, and
31 complainant's counsel is here, joined by an
32 articling student who may be new to you. Reid
33 Clark is still here as a Chilliwack Teachers'
34 Association representative, and I don't believe
35 we have a BCTF representative on this morning.

36 We have counsel for Barry Neufeld,
37 Mr. Kitchen; and Mr. Neufeld; and we have counsel
38 for the Human Rights Commissioner, Maria
39 Sokolova. Those are all the people on video.
40 All right? Everyone else, there are a number of
41 members of the public who are participating via
42 audio. Okay? So it is as much as you were -- as
43 it was on Monday, but just to confirm that's
44 who's on the call. And the tribunal continues to
45 record the proceeding. Thank you.

46 A Okay. Thank you. I just realized that
47 apparently a number of the people who are on

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Elizabeth Saewyc (for Complainant)
in chief by Cnsl L. Waddell

1 video are on a second page of the -- the screen I
2 have here.

3 THE CHAIR: Okay.

4 A So I didn't see the -- Lindsay and counsel until
5 just now, and somehow their camera came up.
6 So -- and I only see the tribunal and -- and
7 Mr. Kitchen.

8 THE CHAIR: All right.

9 A And the rest just the phone numbers. But --
10 okay. Thank you.

11 THE CHAIR: The phone numbers you can -- are just
12 audio connections. If you find it helpful, what
13 we do on our end is there's a little -- the three
14 dots next to a person's name, you can hit "pin."
15 So you may want to pin the complainant's counsel,
16 Mr. Kitchen, and the tribunal so that we are the
17 three main videos that you can see.

18 A All right. That sounds like a good idea. Thank
19 you. I tend to do more Zoom than -- excellent.
20 I can see the three of you now in that way.
21 Yeah, I tend to do more Zoom than Teams, and so
22 I'm still learning some new techniques.

23 THE CHAIR: Absolutely. Okay. Thank you.
24 Go ahead, Ms. Waddell.
25

26 EXAMINATION IN CHIEF BY CNSL L. WADDELL:
27

28 Q All right. Dr. Saewyc, so we retained you to
29 prepare an expert report answering a number of
30 questions, and you gave some evidence about your
31 qualifications on Monday, so we won't get into
32 that. But I do want to, just before we get into
33 the substance of your report, just confirm a bit
34 of background information and what we did and did
35 not ask of you.

36 Now, so first of all, the questions that we
37 asked of you, or many of them, refer to or use
38 the terms "transphobic" or "homophobic speech,"
39 and you use those at various points in your
40 report. Can you just remind us what you are
41 talking about in general terms when you use those
42 terms or how you understand them when we use them
43 in our questions?

44 A Sure. I -- I gave, you know, some thought to
45 that because these are used quite -- quite
46 widely. There's -- there's -- I think as I
47 mentioned on Monday, there are dictionary

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Elizabeth Saewyc (for Complainant)
in chief by Cnsl L. Waddell

1 definitions of -- of homophobic and transphobic
2 or homophobia and transphobia. But I understand
3 homophobic speech to be, you know, communications
4 that denigrate gay, lesbian, bisexual or other
5 sexual minority people on the basis of belonging
6 to those sexual orientation groups. So this --
7 this is speech that's negative about them, and it
8 can include claiming or sort of more reinforcing
9 negative stereotypes or accusations that suggest
10 that most or all people in these groups are
11 abnormal or mentally ill or engage in criminal
12 behaviour or other negative characteristics that
13 are -- are sort of assigned to this group.

14 And it -- it can include speech that rejects
15 their rights to social spaces or their legal
16 rights or their right to be treated respectfully,
17 or it's speech that encourages others to reject
18 them or to reject their rights or to discount
19 them. It can also involve using, like, sexual
20 orientation-specific slurs. It also can be, for
21 someone who isn't lesbian, gay, or bisexual or
22 doesn't have a nonheterosexual orientation,
23 accusing them of being lesbian, gay, or bisexual
24 because in that case, they're using it as an
25 insult and therefore suggesting that lesbian,
26 gay, or bisexual orientation is offensive or
27 wrong.

28 It also can include refusing to knowledge
29 sexual orientation development in adolescents,
30 that is, denying that adolescents -- they know
31 who they feel they're sexually or romantically
32 attracted to or denying that they should -- can
33 choose the adolescent labels that they want to
34 use to describe themselves. And -- and I would
35 say that, like -- well, homophobia or homophobic
36 speech is the commonly used term and -- and often
37 is coming, you know, as -- as, like, the
38 Cambridge Dictionary would say coming from or
39 having a dislike or fear of gay people and/or
40 queer people or people who do not fit a society's
41 traditional ideas about gender or sexuality or
42 related to policies, behaviours, and rules that
43 result in a continued unfair advantage for
44 straight people compared to lesbian, gay, or
45 bisexual people.

46 Oftentimes I think it's a little more
47 accurate to use a term like anti-gay, lesbian,

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1 bisexual, pansexual, or anti-gay speech because
2 it's really about that disrespectful or
3 derogatory speech. It's not necessarily based on
4 fear, which is where that word "phobia" comes
5 from, as much as on dislike or disgust, contempt,
6 hatred, or prejudice.

7 And -- and transphobic speech similarly is
8 communication that would denigrate trans,
9 nonbinary, or gender-diverse people, including
10 denying the existence of trans people or trans
11 and nonbinary adolescents. And -- and that would
12 include, as with homophobic speech, asserting or
13 claiming negative stereotypes about them,
14 including accusations and statements that claim
15 that most or all people in these groups are
16 mentally ill or engage in criminal behaviour or
17 are dangerous.

18 Transphobic speech also includes
19 deliberately misgendering trans and nonbinary
20 people or refusing to accept their gender
21 identity or use their chosen names or pronouns
22 and encouraging others to reject them or their
23 right to exist in public spaces and to be treated
24 respectfully.

25 And, again, while "transphobic speech" is
26 the really common term, and Merriam Webster's
27 definition, which was first used in 1993, you
28 know, defines it as having or showing
29 discrimination against, an aversion to, or fear
30 of transgender people, it -- it can also be
31 accurate to describe it as anti-trans speech.

32 Q And so that -- just to -- to transition to your
33 report, the -- the sort of understanding of those
34 terms that you just gave us is how you've used
35 those terms in your report and how you understand
36 them?

37 A Yes.

38 Q Okay. So let's start with the first subject that
39 we asked of you, which was -- and first I should
40 say do you have your report in front of you?

41 A I do.

42 Q Okay. If there are times -- I may point you to
43 particular parts of your report, and I'll use
44 the -- the page numbers on the bottom right. If
45 there are times when you want to point us to a
46 particular page, I would just do the same thing.
47 Unless there's a request to screen-share, I

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1 wasn't going to do that because I don't think
2 it's necessary, but it's helpful for the record,
3 because this is being recorded, to -- if we're
4 looking at a document, to at least for the record
5 say, "Okay. We're looking at, you know, my
6 report at page 3. I'm just talking about this
7 paragraph here," if -- if that becomes necessary.

8 A Sure.

9 Q Okay. So the first thing that we asked of you
10 was -- I'm going to ask you to talk about it and
11 perhaps highlight the most salient pieces from
12 your perspective. And we've got your report. So
13 this -- the intention here is not a verbatim, but
14 to hit the highlights, and -- and the tribunal
15 will of course review the report in full.

16 But what are the harms associated with
17 homophobic or transphobic speech that -- that's
18 directed at LGBTQ2S+ people?

19 A Right. So I did start my response with a bit of
20 a background around the -- the concept of stigma,
21 in part because I -- I never want to make an
22 assumption of -- of who's reading this
23 information. And because oftentimes when I -- I
24 talk about the harms related to homophobic or
25 transphobic speech, I use the term "enacted
26 stigma." And -- and so that is part of -- of
27 that discussion.

28 So -- so essentially, of course -- and I'm
29 assuming this may be really common for the -- the
30 tribunal to understand that -- that -- you know,
31 that definitions of stigma that have been
32 integrated for -- for -- there's been a lot of
33 research about it since Erving Goffman in 1963,
34 but the -- the core elements of stigma, that
35 stigma's a social process by which groups are
36 labelled and marked as "other" on the basis of
37 some characteristic or difference from the -- the
38 sort of majority or dominant group, and that
39 their differences often then linked to negative
40 stereotypes or undesirable characteristics and
41 are socially devalued, and they experience a loss
42 of status and discrimination on the -- as a
43 result of this.

44 And -- and it's important to note that --
45 that the research identifies, you know, that
46 stigma actually is dependent on social, economic,
47 and political power; that it takes power to be

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1 able to sort of stigmatize people in a -- that a
2 group has -- carries that stigma. And -- and,
3 you know, there's -- there's been decades of
4 research in Canada that -- and beyond Canada that
5 has documented 2SLGBTQ+ people have been
6 persistently stigmatized for their sexual
7 orientation or their gender identity and gender
8 expression. And these studies have documented,
9 you know, social attitudes, stereotypes, negative
10 public messages, and about specific subgroups.
11 And -- and that's -- these negative public
12 messages or societal messages are that homophobic
13 and transphobic speech.

14 And they in turn can motivate more overt
15 acts of hostility and discrimination towards
16 people, and that can include not just derogatory
17 speech but insulting and threatening verbal
18 harassment, sexual violence, sexual harassment,
19 and physical assaults as well as discrimination
20 in the sort of basic aspects of life;
21 discrimination in -- in employment, in housing,
22 and -- and receipt of services.

23 So that -- that -- any exclusion from public
24 places. So these acts of violence and exclusion
25 and discrimination at the -- the interpersonal
26 level are -- have been called "enacted stigma";
27 basically, the actions that let members of a
28 stigmatized group or people who are suspected of
29 being part of that stigmatized group know that
30 they're unacceptable and that they're not welcome
31 in -- in society. So --

32 Q Are there --

33 A Go ahead.

34 Q I was just going to say are there other types of
35 stigma? And if you're going to get to that
36 later, that's fine, but other than enacted
37 stigma?

38 A Well, there's a variety of -- of other forms
39 of -- of different labels of stigma. So there's,
40 like, structural stigma, which is the sort of
41 broader society-level attitudes and norms and
42 laws and institutional policies that affect the
43 well-being of stigmatized people. So these would
44 be laws that -- or regulations or policies that
45 confer a specific advantage on one group or
46 exclude or -- or in other ways remove rights or
47 access to resources from the stigmatized group.

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And -- and some examples in terms of -- of the -- the literature I mentioned were, you know, political referendums or policies enacted in schools and other places and how those -- a structural stigma can influence health and well-being or can influence being targeted for violence. So -- so some of that research identifies those harms in terms of increased distress and increased depressive symptoms.

Q Sorry. I apologize for interrupting you there. I just wanted to have a quick sidebar about different types of stigma. So I'll let you get back to -- I think you had --

A Yeah.

Q -- talked about some of the research around 2SLGBTQ+ people, and I think you were talking about things more along the line of enacted stigma --

A Yeah.

Q -- when I interrupted you.

A Yeah. And -- and there is a really extensive body of research documenting that 2SLGBTQ+ people are -- are disproportionately targeted. And -- and when I say "disproportionately targeted" for types of violence, enacted stigma compared to their heterosexual and cisgender peers, I mean as a population, they're relatively a smaller population; and so if discrimination and enacted stigma was not due to their belonging to a particular group, their -- the prevalence of the experience of violence would probably end up being within the same sort of population rate, that is, that it should be the equivalent of their proportion in a population. They are much more likely to be found at a higher rate than their general percentage in a population.

Our research over the years, and my own research, the population-based research as -- that is focused on sexual minority and gender-diverse youth in schools in B.C. and in -- in universities or just in -- in the community with young adults has documented higher prevalence of various forms of enacted stigma. And -- and I have talked about that research, and I'm -- have mentioned it in the -- the report and providing sort of examples of that over the 25 years, including -- because the B.C.

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1 Adolescent House Survey as our -- our local
2 population-based school health survey has been
3 conducted every five years since 1992 and '93.
4 30 years' worth of data in that regard.

5 Q So --

6 A And --

7 Q -- just when you -- sorry. When you say that
8 you've -- you've referred to some of the research
9 in your report on this point, can you -- can you
10 just tell us in general terms where in your
11 report you've -- you've covered off some of that
12 research?

13 A So -- so that's on page 4, and it would be, like,
14 the first main full paragraph on page 4 --

15 Q Okay.

16 A -- that starts with "there's an extensive body of
17 research documenting 2SLGBTQ+ people are" --

18 Q Thank you.

19 A Yes.

20 Q Okay. That's fine.

21 A So that just identifies in the report some of the
22 specific reports from the B.C. Adolescent Health
23 Survey that has identified those health
24 disparities and the disparities and experiences
25 of verbal harassment or social exclusion, people
26 excluding them on purpose, or actual physical
27 assault in school.

28 And -- and, you know, just as a summary,
29 these reports do identify that -- that sexual
30 minority and gender diversity, they're more
31 likely to report nearly every type of violence
32 and discrimination than our heterosexual and
33 cisgender peers. And -- and there are a number
34 of examples. But I think, you know, in the
35 interest of time, the -- the tribunal can -- can
36 see those as they are listed. And data from
37 other parts of Canada report similar disparities
38 in harassment and discrimination and -- and
39 violence experienced by 2SLGBTQ+ students in
40 schools.

41 And this is where we get to the harms, then,
42 because why do these differences in violence,
43 exposure, and discrimination matter? It's
44 because higher levels of violence, victimization,
45 and discrimination among young people are
46 strongly linked to harms that include everything
47 from poorer educational outcomes and poorer

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1 mental health. And -- and this -- this
2 combination of enacted stigma does include the
3 experiences of -- of transphobic and homophobic
4 speech as part of that.

5 So in -- in understanding this, I also
6 talked about a review by social psychologists
7 Cervone, Augoustinos, and Maass about the ways in
8 which derogatory speech, which is another way
9 of -- of referring to transphobic and homophobic
10 speech, and hate speech, which can be a more
11 precise definition of some types of homophobic
12 and transphobic speech -- the ways that that
13 actually functions socially to establish out
14 groups and to maintain power and identity and the
15 consequences of that discriminatory speech has
16 been explained.

17 And so they -- they actually provide a
18 really nice large review, but it's -- it's pretty
19 clearly written. And although their paper begins
20 with examples of derogatory speech from -- from
21 three really prominent politicians from the US
22 and the UK and Brazil and -- and the kind of
23 language they use that previously would have been
24 unimaginable in -- in public discourse, they --
25 they also note that there's been a real increase,
26 a proliferation of that kind of hostile forms of
27 language discrimination in social media.

28 And they -- they broadly define how the
29 derogatory language, which they refer to as
30 disparaging statements referring to a social
31 category or its members or any type of
32 insinuation or allegation about members of a
33 given social category that explicitly ridicules
34 or insults them -- they note that that's -- these
35 types of speech are more often targeted towards
36 social groups that are smaller and less familiar
37 or at people who are at the intersection of two
38 or more minority categories, so, like, for
39 example, Black transgender women, and that these
40 attract even more negative comments.

41 And -- and the purposes of that derogatory
42 language and hate speech in social functions
43 includes perpetuating prejudice against minority
44 groups, maintaining the existing group
45 hierarchies, legitimatizing violence and social
46 exclusion of minority groups, establishing and
47 maintaining in-group norms, and fostering

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1 in-group cohesion. And I'm describing this on
2 page 5. And -- and that -- you know, of these
3 five different functions of derogatory language
4 and hate speech, the mechanisms by which those
5 first three are achieved actually provide answers
6 to some of the other questions that you posed.
7 Q Thank you. I meant to say this at the outset,
8 which is since you authored this report, you've
9 released a couple of additional papers; correct?
10 A That --
11 Q I don't --
12 A That's true.
13 Q Maybe more than --
14 A [Indiscernible - overlapping speakers] --
15 Q -- a couple --
16 A -- research -- yes.
17 Q Okay. So because they are not referred to in
18 here, if there are points at which those are --
19 are relevant to any of what you're talking about,
20 if you can just flag them for us, because it
21 won't be readily apparent from the report because
22 they're not listed in here. That would be --
23 that would be great, and then the tribunal
24 members and Mr. Kitchen can make a note of -- of
25 where those additional materials are relevant.
26 A Right.
27 Q So --
28 A So --
29 Q So the next -- or was there -- was there some
30 relevance to that first question, then, or --
31 A Yes.
32 Q Yeah. Okay.
33 A So just as a -- as an update of the -- the
34 research that was presented in -- in that
35 paragraph about the extensive body of research
36 documenting those disparities in -- in being
37 targeted for violence, that enacted stigma,
38 that's that paragraph on page 4. In that report,
39 we mentioned the -- the disparities for trans and
40 nonbinary youth in our report called
41 "Gender-Diverse," and that was from the 2018
42 survey.
43 And in September we released an updated
44 report that was including the 2023 B.C.
45 Adolescent Health Survey data, and that report
46 is -- is called "The Well-Being Gap" and looks at
47 the -- the improvements and -- and continuing

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1 challenges around the experiences of trans and
2 nonbinary young people and school, and does
3 include the persistence of some of that -- being
4 targeted for violence.

5 Q Okay. Thank you for that. And just for
6 everybody's benefit in the record, that
7 report/publication is at Tab 22 of the binder --
8 or the Book of Documents re Expert Materials. So
9 it will actually be at -- I think we have --
10 yeah, the source materials are all at Tab C as
11 the main tab, and then behind Tab C are Tabs 1
12 through 23. And the one that Dr. Saewyc was --
13 was just referring to you will find at Tab 22.
14 Okay. So are we okay to move on to the --

15 A Yes.

16 Q -- next issue, then? So are there any particular
17 harms, in your view, or risks that are associated
18 with speech that connects LGBTQ2S+ people with
19 child abuse or pedophilia or grooming?

20 A Yes. So -- so that review of -- of how
21 derogatory speech actually sort of functions also
22 identifies different types of speech and -- and
23 speech strategies. And they -- they identify
24 this particular type of speech that is connecting
25 people with child abuse or pedophilia or --or
26 grooming as a particular strategy of derogatory
27 language or hate speech to legitimatize violence
28 and social exclusion. So, you know, dehumanizing
29 language is one way that hate speech
30 legitimatizes violence; but another way to
31 justify violent acts against people is to portray
32 the group as a threat, because then that hate and
33 violence can be morally justified.

34 And -- and pedophilia and child abuse are
35 criminal acts that are pretty universally reviled
36 in society. And so a perceived threat against
37 children, it activates stronger outrage and
38 hatred towards a group than other kinds of
39 potential threats because of the protectiveness
40 that people have about children. And -- and so
41 those kinds of accusations morally justify
42 exclusion, discrimination, and violence all under
43 the guise of protecting children from harm.

44 And this particular accusation towards
45 groups has actually been used before, decades
46 ago, to target 2SLGBTQ+ people in campaigns to
47 deny them rights in -- in other parts of the

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1 world. So in -- in the 1970s, for example, in
2 the US, Anita Bryant led a campaign against gay
3 and lesbian people focused on -- on employment in
4 schools and other places where they'd come into
5 contact with children and -- and with this
6 allegation that they -- they influenced young
7 people to -- that they would influence young
8 people to become gay.

9 And similar campaigns were used to establish
10 and to support an anti-gay law -- an anti-gay
11 propaganda law, as it was called in Russia, in
12 2013 under the argument of protecting children
13 and youth from being influenced into thinking
14 that LGBTQ+ relationships were equivalent to
15 traditional heterosexual relationships.

16 And the consequences of using this
17 particular type of -- of speech as a strategy
18 shows its effectiveness as a tool to legitimatize
19 that violence and exclusion. Language
20 identifying 2SLGBTQ+ people as pedophiles and as
21 groomers and -- and especially transgender people
22 or -- or gay people who wear drag in performances
23 has actually led to anti-trans laws as well as --
24 as anti-drag laws that limit rights, including
25 the rights of trans and nonbinary adolescents, to
26 recognition.

27 There's also reports that -- that it appears
28 to lead to increased anti-trans violence and also
29 anti-gay violence, including extensive social
30 media verbal violence, threats, and doxxing,
31 which is publishing a targeted person's home
32 address and place of employment and things like
33 that as a way of encouraging harassment and
34 violence towards them. And -- and it's often
35 paired with death threats in that regard. And I
36 have personally observed that increase on social
37 media over the past few years as it targets
38 especially trans academic colleagues that I have
39 seen.

40 There have been increases in violent hate
41 crimes, including -- and I would just mention
42 it -- it wasn't available in -- during the time
43 that this report came out, but a couple months
44 later in May 2024, the RCMP published a report on
45 hate crimes of various types in Canada and noted
46 there was a 150 percent increase in hate crimes
47 towards 2SLGBTQ populations between 2018 and

542

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2021, and a further increase in 2022, which was
the latest statistics that they -- they listed.

I've also seen, you know, a really prominent
example of an attack during a gender studies
class at the University of Waterloo, which
happened where three people were stabbed, the
instructor and two students, and one person was
almost stabbed while they were trying to flee
during class. And -- and this was an attack by
an ex-student that police called a hate-motivated
incident related to gender expression and gender
identity. So these kinds of events really create
worry, and this kind of language that -- that
accuses 2SLGBTQ+ people of being dangerous to
children creates worry about their ability to
work in fields that involve children and youth,
whether that's in education or health care or
social services. And -- and so it does have an
influence on careers and job security.

And even though, you know, the -- the other
point I make in -- in the report, because part of
my -- my clinical practice and research also
focuses on the -- the care of adolescents and --
who experience sexual abuse and sexual
exploitation is that, you know, this falsely
demonizes and -- and -- and causes distress
among, you know, whole groups of 2SLGBTQ+ people,
but these accusations also deflect the focus of
society away from the more frequent and -- and --
and accurately likely perpetrators of child and
adolescent sexual abuse, including family
members.

And -- and so by -- by focussing on and
accusing a small population falsely as being the
people who are doing this by their nature of
being 2SLGBTQ+, it does actually distract from
focussing on the -- the people who are -- are
verifiably more likely to create that abuse.

Q What about -- what about speech that's directed
specifically at people who support or provide
care for -- for transgender and/or nonbinary
people?

A So we've seen the same strategy of using
derogatory language towards the people who are
supporting children and youth, whether that's the
parents of kids and supporting them in being gay
or in their -- their gender journey, as well as

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1 health care professionals providing services
2 or -- or teachers and others, school counsellors
3 and others. And, you know, the same language
4 that's used to justify violence also justifies
5 violence that way by painting them as a threat
6 for actually supporting young people. And -- and
7 this hateful language actually has had some
8 documented direct harms in creating regulations
9 and laws. So, for example, the one in Texas
10 where the Attorney General directed Child Welfare
11 Services to open child abuse investigations for
12 parents of adolescents who are receiving
13 gender-affirming care under the assumption that
14 that must be abusive.

15 And so that's a form of structural stigma
16 that I mentioned before, using the institutions
17 or laws to directly threaten families who are
18 supporting trans youth in an attempt to prevent
19 youth from getting that care and becoming trans
20 adults. And -- and I -- I would note, as I did
21 in my -- my report on page 6 in that sort
22 second-to-the-last paragraph that this doesn't
23 just have effects in Texas, because this has been
24 widely publicized.

25 And while other states are taking up similar
26 practices, more importantly, here in B.C. I was
27 involved -- I was told by a social service
28 colleague at a meeting I was at at the office of
29 the Representative for Children and Youth that
30 one of their B.C. support groups for parents of
31 gender-diverse children and youth used to have
32 lots of long waiting lists for people to get into
33 the support group for parents, and they've
34 recently -- over the last year or two have had
35 trouble enrolling enough parents to actually form
36 a group at a time. And some of the parents that
37 have reached out or that they've, you know, like,
38 reached out to asked about that have expressed
39 fear that letting people know that they have a
40 gender-diverse child might actually lead to child
41 abuse investigations, despite the fact we don't
42 have laws like that in B.C. But because those
43 messages are circulated on social media, people
44 are thinking it -- it happens here too.

45 And it also provides consequences in terms
46 of for the health care professionals and teachers
47 who do provide that support. I provided an

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Submissions by Cnsl J. Kitchen

1 example of a commentary by a very prominent
2 pediatrician, Dr. Scott Hadland, and -- and --
3 published in the New England Journal of Medicine
4 that identified the chilling effect that such
5 laws and -- and policies and the derogatory
6 speech that politicians use in enacting those
7 policies has, you know, basically put a target on
8 health and education professionals, targeting
9 them for harassment and abuse, especially when
10 they also identify as lesbian, gay, bisexual,
11 trans, queer, or questioning. And he described
12 not just the distress that he has as a
13 pediatrician and -- and a father of children to
14 be falsely accused, but there have -- also noted
15 that there have been death threats and bomb
16 threats aimed towards pediatric clinics and
17 children's hospitals, as well as harassing phone
18 calls and -- and letters.

19 And there -- there are news stories about
20 a -- a rash of children's hospitals and clinics
21 across the United States starting in August 2022,
22 and this has actually been published in
23 *Psychiatric News* in 2023, including things --
24 places like Boston Children's Hospital; Seattle;
25 Washington, DC; Pittsburgh; Phoenix, Arizona; the
26 University of Wisconsin, Madison; Akron, Ohio;
27 Nashville, Tennessee. In the Boston Children's
28 case, there was a subsequent September 2022
29 series of bomb threats and other threats by a
30 Canadian man. So -- so even though it wasn't
31 towards Canadian organizations -- I have spoken
32 with colleagues. I -- I have been on a research
33 team with the gender clinics across Canada who
34 are looking at documenting sort of health
35 outcomes. And so I've been part of meetings with
36 those -- those clinics' leaders. And while I
37 don't think there's any published paper at this
38 point about the increased harassment and bomb
39 threats and death threats that they have received
40 over these last years, they certainly have talked
41 about the increasing security and --

42 CNSL J. KITCHEN: Objection.

43 THE CHAIR: Go ahead, Mr. Kitchen.

44
45 SUBMISSIONS BY CNSL J. KITCHEN:

46
47 CNSL J. KITCHEN: We're getting into hearsay. We just

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1 had some hearsay, which I let go because I think
2 there needs to be a little bit of leeway, I
3 guess, because the report was admitted and it
4 contains hearsay. So -- but her conversations
5 with other colleagues, if it's -- if it's more
6 like general stuff in the field, okay, so
7 there's -- those are academic discussions. But
8 this is -- this is more true hearsay where she's
9 saying, you know, "These people have told me, you
10 know, anecdotally that this is what's happening,"
11 and I think that -- I think that's covered by
12 hearsay. And of course hearsay also applies
13 to -- to expert witnesses, maybe in some
14 different fashion to allow them to give their
15 opinion, but, you know, anecdote -- anecdotal
16 stories from -- from colleagues that are
17 basically just, you know, this is -- "this
18 happened to me," that's more, I think, falling
19 under true hearsay. And so I don't think it's
20 permissible for the witness to go there.

21 THE CHAIR: Thank you.

22 Ms. Waddell?

23
24 SUBMISSIONS BY CNSL L. WADDELL:

25
26 CNSL L. WADDELL: Sure. We're happy to have those
27 statements not go in for the truth of the
28 original information but, rather, for what those
29 individuals -- because what Dr. Saewyc is talking
30 about is a chilling effect, and she's -- she's
31 advising that she has met firsthand with
32 colleagues across the country who themselves
33 expressed that this is what they're experiencing.

34 So insofar as it's what they have expressed
35 to her, I think that is relevant. But I take my
36 friend's point and just suggest that we cut out
37 the -- whether their experience is valid or true
38 at the -- whatever the -- you know, whatever the
39 genesis was for their current state or, you know,
40 that is hearsay and that's -- I don't think
41 that's either here nor there. But she's meeting
42 in a professional setting, and this is at least
43 what her colleagues are reflecting to her.

44 So that -- as something informing her
45 understanding I think is relevant, and I think I
46 agree with my friend. We can't establish exactly
47 what happened to the colleagues that are

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Submissions by Cnsl L. Waddell

1 conveying this to her.

2 THE CHAIR: Thank you.

3 Go ahead, Mr. Kitchen.

4

5 SUBMISSIONS BY CNSL J. KITCHEN:

6

7 CNSL J. KITCHEN: Well, if I understand my friend's
8 comments and what she's saying is that even
9 though she agrees with me in substance, this
10 isn't permissible hearsay; but because she's not
11 relying on it for the truth of its contents, it's
12 permissible for Ms. Saewyc to talk about it -- or
13 Dr. Saewyc to talk about it. My -- my problem
14 with that is, of course, you know, hearsay is
15 notoriously difficult conceptually, and if --
16 if -- if we admit it but not for the truth of its
17 contents, but we still admit it, you know,
18 there's -- there's the prejudice of the fact that
19 well, how do you -- you know, how do you separate
20 that in your mind, and how do you, whether
21 consciously or unconsciously, avoid putting --
22 putting any weight on that.

23 I think the prejudice of letting -- of
24 letting her talk about it outweighs the probative
25 value. If -- if, you know -- if there's no
26 probative value in the truth, then it begs the
27 question where's the probative value? Right?
28 This doesn't go to the core of her opinion. She
29 can provide her opinion without providing hearsay
30 anecdotal stories from other people. Whether or
31 not they're being proffered for the -- for the
32 truth of their contents, I think the -- the
33 prejudice outweighs the probative value, and she
34 shouldn't be permitted to discuss it in any
35 capacity.

36 THE CHAIR: Okay.

37

38 SUBMISSIONS BY CNSL L. WADDELL:

39

40 CNSL L. WADDELL: I thought of one -- before -- before
41 the tribunal renders a decision, I thought of one
42 question that might have some -- of the witness
43 about this testimony that might have some bearing
44 on both your position, Mr. Kitchen, and -- and
45 mine. And I'm wondering if you'll permit me to
46 ask that, and you can object to that after you've
47 heard the question or let the witness answer,

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1 because it might inform our position on the
2 previous for both of us. Would that be
3 acceptable?

4 CNSL J. KITCHEN: Sure. Yeah.

5

6 EXAMINATION IN CHIEF BY CNSL L. WADDELL, continuing:

7

8 Q Okay. So just -- Dr. Saewyc, I'm going to ask
9 you a question about what you were just talking
10 about, and just make sure you leave a good pause
11 before you start answering so that my friend can
12 object if he wants to. All right?

13 So you mentioned -- you said, "I don't think
14 anything has been published yet," and you were
15 talking about -- I took from that that you were
16 saying published about what you and your
17 colleagues had been meeting about, which is this
18 chilling effect. Is there -- for lack of a
19 better word, is there a publication in the works
20 that you are aware of? Is that information going to
21 be published, or don't know?

22 CNSL J. KITCHEN: Yeah, I think that's fine to ask
23 that.

24 A I -- I -- I don't know. I would, however -- am I
25 allowed to ask a question in -- in -- in this
26 regard? There is a published paper -- I referred
27 to it briefly -- about the US, not about Canada.
28 Is it appropriate for me to provide the -- the
29 citation information about that report from
30 the -- the *Psychiatric News* that -- I mean,
31 there's lots of newspaper reports that also
32 document it, but just there's a specific research
33 project about gender-affirming clinics being
34 subject to threats and harassment.

35 CNSL L. WADDELL:

36 Q So you -- yeah, that's -- you referred to that
37 one earlier. So it -- because you referred to
38 it, I think -- subject to what my friend thinks,
39 I think it's appropriate to have you provide the
40 citation.

41 CNSL L. WADDELL: And then if you -- I mean,
42 Mr. Kitchen, if you have difficulty with the
43 tribunal going to that, we can argue about that
44 separately --

45 CNSL J. KITCHEN: No, no. She can provide the
46 citation to it. That's fine. But if she wants
47 to rely on it, then I would -- then I would have

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1 something to say about that.

2 CNSL L. WADDELL: Yeah. So why don't -- why don't we
3 have her provide the citation, and then we can
4 separately deal with the reliance question,
5 because I don't think we need her for that. Is
6 that --

7 CNSL J. KITCHEN: Sure.

8 CNSL L. WADDELL: Does that make sense?

9 CNSL J. KITCHEN: Okay. But we should --

10 THE CHAIR: We haven't decided on the --

11 CNSL J. KITCHEN: Are you --

12 CNSL L. WADDELL: We still have to resolve the
13 objection, yeah, on this --

14 THE CHAIR: Yeah.

15 CNSL J. KITCHEN: Yeah. Are you -- you're
16 anticipating her talking about it, though, not
17 simply giving the citation?

18 CNSL L. WADDELL: Oh, no, she -- she already talked
19 about it. I don't think that there was anything
20 more she was going to add. I could be wrong.
21 Okay.

22 So could we -- Member Cousineau, would it be
23 all right if we just started with the citation
24 and tie that off, and then you can address the
25 objection on the hearsay?

26 THE CHAIR: Sure. Yeah.

27 CNSL L. WADDELL: Okay.

28 THE CHAIR: Do you have the citation, Dr. Saewyc?

29 A Yes. So the -- the citation would be the -- the
30 title is "Gender-Affirming Clinics Subject to
31 Onslaught of Threats, Harassment." The source is
32 Psychiatric News, volume 58, Number 3. And
33 the -- the document object identifier link is
34 <https://doi.org/10.1176/appi.pn.2023.03.2.5>.

35 CNSL L. WADDELL: Okay. And I think we've recorded
36 that on our end. So if anybody's pen wasn't fast
37 enough, we can circulate that.

38 THE CHAIR: Okay.

39 CNSL L. WADDELL: All right.

40 THE CHAIR: Thank you. And so coming back to the
41 hearsay issue, we agree that generally
42 information about what Dr. Saewyc has heard
43 anecdotally from her colleagues is not
44 sufficiently reliable to be something that we
45 could really put any weight on at all, and -- and
46 since it's not really of any probative value, we
47 agree with Mr. Kitchen that it shouldn't be

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1 admitted.

2 So -- so, yes, so going forward, Dr. Saewyc,
3 if you can focus on things that have been the
4 subject of study and research, that will be
5 appropriate. And you'll likely hear the same
6 objection if it's more talking about kind of
7 anecdotally what's been shared in amongst your
8 peers. Okay?

9 A Thank you.

10 THE CHAIR: Thank you.

11 A Might I have one more clarification, then, in
12 that regard? And that is when I -- if it's
13 related to research that I myself have conducted,
14 is that different? Or is that --

15 THE CHAIR: That may be different. I think you should
16 just -- just give your answers, and -- and it's
17 not for you to worry necessarily about the
18 objections.

19 A Okay.

20 THE CHAIR: Because the objections will be made and
21 will be decided, and then we'll figure out what
22 to do with the evidence. But just so that
23 you're --

24 A Okay.

25 THE CHAIR: -- you're following along. But just
26 answer the questions as best you can, and if
27 there are objections, we'll just deal with them.
28 Okay?

29 A Okay.

30 THE CHAIR: Okay.

31 A Sure. Thank you.

32 CNSL L. WADDELL:

33 Q I'd be surprised if my friend objects to your
34 research as hearsay because it's research and
35 it's why we retained you and largely why you've
36 been admitted.

37 So I think you were on -- I think you were
38 wrapping up your response to the question about
39 whether there are particular harms about speech
40 that's directed at caregivers and supporters. Is
41 there anything you want to say about that before
42 we move on to the next question?

43 A I think just the -- the potential for this to --
44 as we've talked about a chilling effect, the
45 potential for it actually to reduce the number of
46 health care providers and -- and educators and
47 others who are willing to provide support for

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1 young people. But that's -- that's a potential
2 concern.

3 Q Okay. So what about speech -- homophobic or
4 transphobic speech that occurs or relates somehow
5 to the workplace? Are there particular harms, in
6 your opinion, that are associated with or flow
7 from that?

8 A Right. So as I said in the report, the research
9 about workplace discrimination in Canada is
10 limited. I -- you know, compared to other areas
11 of research or the other -- other places where
12 there's discussion about workplace discrimination
13 in terms of research, there are far fewer
14 studies, but there are studies. And -- and the
15 research that has been documented in -- in Canada
16 tends to focus more on discrimination based on
17 racialized status or on disability or ageism or
18 even sexism, gender as -- as a woman. There are
19 some studies that look at sexual orientation or
20 gender identity-related discrimination in Canada.

21 And when I was looking at trying to
22 summarize and not create too long a report, I did
23 incorporate a just-published systematic review
24 that provides a comprehensive look at such
25 discrimination from 101 different studies across
26 the world. And this is Magi, Yadav, Encrputa
27 2024. And -- and I chose that as opposed to
28 perhaps older studies that are -- are single
29 studies because a systematic review provides a
30 really rigorous approach to evidence because they
31 try to tap all the existing studies within a
32 specific topic that are available in
33 peer-reviewed journals within a time frame.

34 And this study only included from Canada;
35 however, 70 percent of the studies in this --
36 this systematic review were from the US, which
37 has a similar enough content -- context in terms
38 of -- of education and health and workplaces
39 generally that it -- it can provide relevant
40 insights.

41 And this review found pervasive experiences
42 of discrimination, including in hiring,
43 promotion, and career advancement and pay equity
44 across a variety of different fields of work.
45 And -- and they also documented various types of
46 enacted stigma or personal -- interpersonal
47 discrimination of the sort that I have documented

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1 with research in adolescents in schools rather
2 than in the workplace. And those include what
3 they label as microaggressions, potentially
4 unintentional but subtle negative statements
5 about LGBTQ+ people, or microassaults, homophobic
6 and transphobic speech, including slurs and
7 insults as well as overt bullying and even sexual
8 and physical harassment.

9 And -- and part of the -- the harms related
10 to the systematic review that they talked about
11 also included feeling the need to conceal or hide
12 their identity as LGBTQ+ people in the workplace.
13 And that can create additional stressors about
14 unintended disclosure as well as added stressors
15 from the indignity of being, for example,
16 consistently misgendered for trans people.

17 And -- and they had a particular example in
18 the systematic review in one of the studies about
19 the distress of people having to participate in
20 gendered dress codes for the wrong gender as part
21 of their employment. They -- these findings were
22 mixed because one study also found that gay and
23 bisexual men who were out at work had higher
24 cortisol levels. That's a marker of
25 physiological stress in people's bodies. And the
26 study sort of speculated that that may have been
27 the challenge of being out in a hostile work
28 environment where you're then targeted more by
29 that enacted stigma.

30 Other harms from discrimination in the
31 workplace targeting LGBTQ+ populations includes
32 mental health outcomes. So minority stress,
33 that's the stress involved with navigating stigma
34 and discrimination as a member of a minority
35 group, and that includes higher rates of
36 depressive symptoms, anxiety, and poor general
37 mental health.

38 They also reported on job-related and
39 career-related outcomes like lower work
40 satisfaction, job insecurity, barriers to career
41 advancement, even barriers to entering a chosen
42 profession. And -- and while these studies
43 included a range of -- of types of discrimination
44 and hostility and -- and they weren't solely
45 focused on homophobic and transphobic speech, the
46 large number of studies with similar findings and
47 the inclusion of hostile speech as part of the

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1 experience of workplace discrimination suggest
2 that the harms are likely also from this
3 particular form of enacted stigma.

4 In -- in my report, I actually did include a
5 study from the United States among young adults
6 that's a longitudinal study that was kind of the
7 reverse. Rather than actually about the harms
8 from this, it was a study that focused on the
9 reduction in mental health distress when trans
10 and nonbinary young people were able to be out
11 and use their chosen name in the workplace as
12 well as at home and at school.

13 Q Can I just ask a question? Is -- to confirm, is
14 that the Pollet 2021 --

15 A 2021.

16 Q -- study? Okay.

17 A That is correct. And --

18 Q Sorry to interrupt. Go ahead.

19 A And -- yeah. And so, you know, as mentioned,
20 misgendering someone or dead-naming or using
21 their -- their prior gendered name rather than
22 their chosen name can be a form of transphobic
23 speech and enacted stigma. And in some of the
24 research that we've conducted in B.C. as well as
25 in Minnesota and Massachusetts, we did report
26 that young people felt that being misgendered or
27 dead-named was -- was deeply disrespectful and
28 invalidating and caused them significant
29 distress. And that is the *Brown et al* 2020
30 paper. And the other recent report that we did
31 for the office of the B.C. Representative for
32 Children and Youth that focused on the
33 experiences of youth in care and accessing
34 services included interviews with 15
35 gender-diverse young people across B.C., most of
36 them over the age of 19, where again a regular
37 theme that emerged from the -- the -- the
38 interviews and the data was the demeaning
39 experience of being misgendered in -- in
40 settings.

41 And the study by Pollet and colleagues
42 actually documented that when young people were
43 able to use a chosen name, either within their
44 family, at school, or in employment, they
45 actually had better mental health. And -- and
46 they -- being able to use a chosen name at work
47 predicted lower depression and less suicidal

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1 ideation. And when you actually included family,
2 school, and work context all considered together,
3 being able to use your chosen name at work
4 actually remained an independent predictor. So
5 above and beyond having those supportive
6 environments at family and at school or not,
7 having that -- that ability to be recognized for
8 your gender at -- in your workplace actually was
9 an independent predictor of lower depressive
10 symptoms and reduced suicidal ideation.

11 So that is sort of the reverse of the harms,
12 but it -- it is in some ways -- you can reverse
13 that and say, well, then, when you're not allowed
14 to, or when you're being misgendered, you're more
15 likely to experience those mental health
16 challenges.

17 Q Now, you -- you mentioned very briefly when I
18 asked you sort of those introductory questions at
19 the start to make sure we understood how you were
20 using certain terms -- you referred to some
21 research around speech by political figures. And
22 is there -- and that was our next question, was
23 about whether -- you know, when public or
24 political figures use transphobic or -- or
25 homophobic speech or make statements, is there
26 any evidence of impact on LGBTQ2S+ people,
27 particularly in workplaces?

28 A So -- so yes, there are studies that -- that
29 document the link between public figures or
30 political figures making discriminatory
31 statements or -- or hate speech that have been
32 linked to significant harms among those who are
33 targeted by that particular speech. Most of
34 those are actually broader than employment,
35 though. They -- they generally focus on -- on
36 wide areas of life.

37 There is a longitudinal qualitative research
38 study with 1200 people across the United States,
39 and this is the Haas and Lannutti 2023 paper
40 where they were following them over a number
41 of years, and it happened to overlap with the --
42 the vice president -- or the -- President Trump's
43 election and -- and his first years as -- as
44 president. And they described how the anti-LGBTQ
45 rhetoric by not just President Trump but his
46 cabinet and the Vice President Pence visibly
47 increased the amount of hate and violence

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publicly expressed by other people who were
really affiliated with his political views and --
and expressed the consequences of that.

And while there was a variety of content,
there was one particular quote that did mention
employment, and in this case, I included that
quote that they provided in their study that
noted that it makes being in a same-sex
relationship more stressful, and it harms their
children, and it causes them to be afraid to be
out at work.

There are other studies that look even
more -- sort of more extreme examples at sort of
the -- the most extreme end of impacts of
political figures' speech, and that is a study by
Piazza, Piazza 2020, that documented the link
between hate speech, rhetoric that targets,
vilifies, excludes, or is fashioned to intimidate
racial, ethnic, religious, or sexual minorities,
women, political opponents, migrants, disabled
persons, members of other groups by political
figures, connecting the link between that and
domestic terrorism. And this paper actually
reviewed previous studies publicly, and it was an
analysis of more than -- than 130 countries
between 2000 and 2017 documenting how higher
levels of hate speech by political figures
actually boosted domestic terrorism by stoking
more intense polarization within societies.

Q And --

A And so --

Q Can I just ask a question about that? Did the --
the Piazza piece that you're talking about talk
about what domestic terrorism means, just so that
we have a sense of what it includes?

A Right. So they didn't. They referenced the
Global Terrorism Database, which was where they
drew the -- the evidence. So I had to go
hunting, actually, to look at the code book from
the -- the global terror database where their
definition of terrorism and inclusion criteria
basically defines a terrorist attack as the
threatened or actual use of illegal force and
violence by a non-state actor to attain a
political, an economic, religious, or social goal
through fear, coercion, or intimidation.

And in order to consider it an incident for

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1 inclusion in the Global Terrorism Database, three
2 things must be present: The incident must be
3 intentional, the result of a conscious
4 calculation on the part of perpetrator; the
5 incident must entail some level of violence or
6 immediate threat of violence, including property
7 violence as well as violence against people; the
8 perpetrators of the incidents must be subnational
9 actors. So it doesn't include acts of state
10 terrorism or war.

11 And then at least two of the following three
12 criteria must also be present for it to be
13 included in the database; it -- the acts must be
14 aimed at attaining a political, economic,
15 religious, or social goal, so not just the
16 pursuit of profit; and -- and there must be
17 evidence of an intention to coerce, intimidate,
18 or convey some other message to a larger audience
19 or audiences than the immediate victims; and that
20 the action must be outside the context of
21 legitimate warfare activities.

22 And then for them to identify domestic means
23 it is actually conducted by actors who are
24 members of that society, not people from foreign
25 countries.

26 Q That's helpful.

27 A Yeah.

28 Q Anything -- am I right that you are sort of at
29 the top of page 10-ish?

30 A It's at the bottom of page 9, yeah.

31 Q Oh, sorry.

32 A Top --

33 Q Sorry.

34 A Yeah.

35 Q Okay.

36 A And so -- so -- so basically this -- this is --
37 there was this document. And, of course, while
38 it doesn't specifically identify an impact in the
39 workplace, per se, it may operate similarly in
40 creating those -- those divisions that then
41 increase violence.

42 So other research has focused on -- on the
43 impact of homophobic and transphobic speech in
44 advertisements and campaigns where spokespeople
45 are politicians and political actors. And these
46 are research that's been related to referendums
47 and laws designed to prevent LGBTQ+ rights. So

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1 examples of that research has been in the
2 United States, referendums that prevent same-sex
3 marriage. And many of these campaigns involve
4 messages from public figures and politicians.

5 And there was a study among adults in 2012
6 that looked at exposures to advertising campaigns
7 among LGBT and non-LGBT adults around marriage
8 equality referendums that were going on. And --
9 and this is the Hatzenbuehler and Gates --
10 Flores, Hatzenbuehler, and Gates 2018. And this
11 was actually a study that looked at not the
12 actual state in which the referendum was
13 happening, but those people who were exposed to
14 advertisement in the sort of immediate catchment
15 area in the nearby states. And they found that
16 LGBT people who were exposed to the negative ads
17 reported greater stress and sadness. Non-LGBT
18 people didn't show such association. So -- so
19 there was that -- the negative speech wasn't
20 having the same kind of impact.

21 Another paper focused on anti-transgender
22 legislation, describing two studies that
23 documented mental health experiences of LGBTQ+
24 people before and after a state referendum that
25 would remove gender protections. And the -- the
26 referendum ultimately did fail. It is cited as
27 Horne et al 2022, and I must actually realize I
28 need to correct that. The -- my eyesight
29 apparently is not what it used to be. It is
30 *Horne et al*, H-o-r-n-e. When I looked closer, I
31 thought, okay, their -- their -- their print
32 smashes the "r" and the "n" together. It looked
33 like "Horne" to me. And -- and that study found
34 that -- that exposure to referendum-related
35 messages that were -- were actually linked to
36 anxiety and depressive symptoms, both of which
37 ended up being lower in follow-up after the
38 referendum failed.

39 There is also a study of how the referendum
40 campaign, so political campaigns about a
41 referendum in California in 2008, 2009 actually
42 had -- was linked to increased homophobic
43 behaviours among young people. So this is
44 drawing on -- and this is Hatzenbuehler 2019.
45 This is drawing on the school surveys in
46 California both years before and years after the
47 proposition happened, and they found that the

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1 rate of homophobic bullying in schools across
2 California increased and accelerated during
3 the years of the referendum political campaign
4 compared to the years before and the years after.

5 And as a counter test, they actually looked
6 at other types of bullying, so bullying based on
7 race, ethnicity, religion, or gender, and those
8 did not increase during that same time period.
9 So -- so those -- those trends in both the
10 increase in rate and -- and sort of the
11 acceleration of that rate did not happen for
12 those other types of bullying.

13 Q So there's --

14 CNSL J. KITCHEN: I'm sorry to do this. Can -- I
15 think -- can I ask for a five-minute break?
16 It --

17 CNSL L. WADDELL: Yeah, I was going to just do that,
18 exactly that, because I really have to go to the
19 bathroom. So --

20 CNSL J. KITCHEN: Well, then --

21 CNSL L. WADDELL: Okay. So -- so everybody has to
22 pee. That's great. And what I was going to ask
23 to the -- the tribunal is if we could take -- I
24 think I can probably wrap up in direct by the
25 lunchtime if we keep this break short, and --
26 yeah.

27 THE CHAIR: All right. Yeah, let's take a five-minute
28 body break, and we'll come back and finish with
29 direct examination. So we'll just turn our
30 cameras and mics off and come back in five
31 minutes. Thank you.

32
33 (WITNESS STOOD DOWN)

34
35 (PROCEEDINGS ADJOURNED FOR RECESS) [11:54:29]
36 (PROCEEDINGS RECONVENED) [12:00:15]
37

38 THE CHAIR: All right, everyone. Come on back. We'll
39 just wait for Mr. Kitchen to come back, and then
40 we'll continue. All right. We're back.

41
42 ELIZABETH SAEWYC, a witness,
43 recalled.
44

45 THE CHAIR: Dr. Saewyc, are you ready to continue?

46 A Yes.

47 THE CHAIR: Okay. Go ahead, Ms. Waddell.

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1
2 EXAMINATION IN CHIEF BY CNSL L. WADDELL, continuing:
3

4 Q Okay. So I think we were going to get to the
5 last question that we asked of you in seeking
6 your opinion, which was about whether there are
7 harms associated with homophobic or transphobic
8 speech that specifically occur in educational
9 environments. Can you -- you tell us a little
10 bit about that? And I know, I think in doing so,
11 you will probably want to refer to one of the two
12 studies that hadn't been published when you
13 authored this paper. So just when you get there,
14 just tell us when you're referring to one of
15 those, and I'll -- I'll tell folks where they can
16 find that in the -- the book of documents
17 relating to your opinion.

18 A Sure. So -- so as I -- I wrote in my report, we
19 have more than 25 years of evidence in B.C.
20 schools targeting 2SLGBTQ+ students about verbal
21 harassment, social exclusion, physical assaults,
22 verbal and physical sexual harassment, and
23 discrimination. And those -- those references
24 are our Not Yet Equal report Saewyc et al 2008
25 and the -- the Not Yet Equal (the Sequel) report
26 in 2021 and -- and are The Big Picture, which is
27 the first of the 2023 data itself in 2020 -- no,
28 sorry. I think we're looking at the -- also the
29 also the gender-adverse report from -- from 2022.

30 Other studies across Canada also document
31 pervasive and persistent homophobic, biphobic,
32 and transphobic speech in schools that are
33 observed by both 2SLGBTQ+ and cisgender and
34 heterosexual adolescents, and that's the -- the
35 report by Peter et al. That's the more -- most
36 recent report about the 2010 and 2020 national
37 climate surveys of homophobia and transphobia in
38 Canadian schools. And so this is Peter et al in
39 2021.

40 And, you know, in their reports, they found
41 that -- that students regularly hear these kind
42 of remarks in schools throughout Canada mostly by
43 other students, but there are reports that even
44 teachers and some school administrators do make
45 negative remarks about 2SLGBTQ+ people that they
46 documented in that report.

47 And -- and the harms associated with that

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1 kind of speech for students has also been fairly
2 well documented, including higher rates of
3 depression, anxiety or emotional distress,
4 skipping school, substance misuse, even
5 suicidality. And -- and I noted as well that the
6 discrimination because of sexual orientation may
7 also affect students who identify as heterosexual
8 that others think are gay, lesbian, or bisexual,
9 or at least accuse them of being.

10 In our survey, we -- we ask about "have you
11 experienced discrimination on the basis of sexual
12 orientation or because people think your gay,
13 lesbian, or bisexual?" And what we've seen over
14 the -- the different years is that -- well,
15 there's a small proportion of heterosexual boys
16 and girls who report discrimination because
17 others think they're gay or lesbian compared to,
18 like, the lesbian, gay, bisexual teens who report
19 that same discrimination. That vast majority of
20 the population who are heterosexual in their
21 identity means that the -- that tiny percentage
22 in raw numbers actually ends up being almost the
23 same as, and in some cases even larger than, the
24 group of lesbian, gay, and bisexual teens who
25 are -- are experiencing that anti-gay
26 discrimination.

27 And we found in our research that
28 heterosexual students who experienced anti-gay
29 discrimination because people thought they were
30 gay had similar associations with stress and with
31 suicidality as their LGB counterparts did. And
32 this is at the top of page 11 that I'm reporting
33 that.

34 And we also have in the -- the other
35 element, which is of course in -- when homophobic
36 and transphobic speech occurs in educational
37 environments, employees are less likely to
38 disclose their own 2SLGBTQ+ status. And in -- in
39 the report called the -- as part of the Every
40 Teacher Project, Taylor, Peter, and -- and
41 colleagues in 2015 reported -- this is a study
42 that surveyed teachers across Canada on the
43 safety and inclusion of 2SLGBTQ+ students in
44 schools. And that included teachers who also
45 themselves identified as part of that community.
46 And the survey found that -- that more than
47 20 percent of educators thought their job would

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1 be in jeopardy if they addressed 2SLGBTQ+ topics
2 in the classroom. But notably the risk was
3 greater among 2SLGBTQ teachers. So 34 percent of
4 them, one in three, felt their job would be at
5 risk compared to [indiscernible - automated
6 message] of cisgender and heterosexual teachers.

7 And, of course, another harm of homophobic
8 or transphobic speech by adults, that can provide
9 tacit permission for students to engage in
10 similar speech or even move from speech to
11 physical bullying, as was found in that
12 California school system study when they were
13 exposed to the homophobic and transphobic
14 rhetoric in the media during that campaign around
15 Proposition 8. So that's the Hatzenbuehler et
16 al, the paper that I already referred to
17 previously.

18 Q And just to clarify, that's the 2019
19 Hatzenbuehler? Just because I think there's a
20 couple of Hatzenbuehler papers --

21 A Yes.

22 Q -- cited in here. Okay.

23 A This is an area that -- yes, this -- this is an
24 area that has been a main part of
25 Dr. Hatzenbuehler's research on structural stigma
26 over the years.

27 So -- so finally, you know, what -- what we
28 have identified in a lot of our research is that
29 young people who are experiencing enacted stigma
30 feel less safe in school and less connected to
31 school. And that school connectedness and school
32 safety have been identified as really important
33 protective factors for mental health and
34 well-being and school achievement for all kinds
35 of young people, regardless of -- of -- you know,
36 over and over our research has identified school
37 connectedness is a really important protective
38 factor. And --

39 Q Sorry. Can you just -- can you tell us what --
40 when you use the "protective factor," what you're
41 talking about? I --

42 A So --

43 Q I know what it is, but I just want to make sure
44 everybody --

45 A Right.

46 Q -- everybody does.

47 A A protective factor is one that both fosters

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1 young people's health and well-being and also
2 serves as a buffer against other sort of negative
3 risk factors and reduces the odds of negative
4 outcomes or health -- health outcomes. So we
5 have found in our research that even when young
6 people are experiencing violence at home or even
7 bullying by peers in school, those who have a
8 strong level of school connectedness, that is,
9 they feel cared about by teachers and school
10 staff, they feel like they belong at school,
11 they're -- they're happy to be at school, they're
12 a part of their school, that they are less likely
13 to report suicidality and other forms of -- of
14 mental health challenges. And -- and this has
15 been a really strong relationship that we have
16 seen over the years.

17 And -- and it also is associated with lower
18 odds of engaging in some risk factor -- or risk
19 behaviours or health-compromising behaviours like
20 substance misuse and self-harm in addition to
21 suicidality.

22 So -- so this is really, you know, an
23 important protective factor. And feeling safe at
24 school, of course, and that -- that reduction
25 in -- in bullying and violence, so -- so this is
26 an important element of the -- the potential
27 harms when schools create or have environments in
28 which negative speech about LGBTQ2S is -- is
29 occurring that reduces that sense of -- of
30 belonging and safety and connectedness for young
31 people who identify with those communities.

32 Q Okay. And has any of your -- the -- the most
33 research that you -- the most recent research --
34 sorry -- that you've published looked at student
35 safety, which you were just talking about?

36 A So -- so it wasn't specifically your question,
37 but a lot of the research that we've done over
38 the years has actually looked at how -- what are
39 interventions that would actually reduce bullying
40 in schools or discrimination and improve young
41 people's mental health and well-being or reduce
42 the odds that they would engage in -- in
43 health-compromising behaviours such as
44 suicidality.

45 A fair amount of our research has focused on
46 gender and sexuality or gay-straight alliances,
47 GSAs, as -- as an intervention. Other

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research -- and -- and this is previous
research -- has focused on other kinds of
interventions like the Out in Schools program
here. And -- and I can provide you with those
references if you need it. I think what you're
most recently referring to is we were involved
over the last few years in an evaluation of
SOGI 1 2 3, which is a set of resources that
are -- are available for teachers and school
administrators and others to foster inclusion,
address bullying, and improve safety for 2SLGBTQ+
students and -- and that the Ministry of
Education has supported and endorsed here in B.C.
and elsewhere.

And we were looking at the -- as part of
that specific evaluation, we were -- we did a
combination of both interviewing SOGI school
leads and SOGI district leads. So these are
teachers who are assigned to be sort of the
school resource and help provide some of the
trainings and -- and support teachers when a
student is, like, disclosing bullying, and they
can help the teachers address that and things
like that.

As well as -- so that interviewing was
really focused on how the -- the resources are --
are being used and implemented and what are ways
to support or facilitate implementing the
SOGI 1 2 3 resources as part of their sort of
mandated curriculum on inclusion and -- and
reducing discrimination in schools.

Q And -- but -- sorry. Before you continue, I
think you're probably going to go on and --

A Yeah.

Q -- talk about what -- what that says. But I just
want to confirm. You're talking about the
"Students Feel Safer Here, and More Included" --

A Yes.

Q -- SOGI 1 2 3 evaluation 2024; right?

A Yes, that report --

CNSL L. WADDELL: Okay. So for Mr. Kitchen and -- and
for the tribunal, that is at Tab 23 of the book
of documents regarding our expert witness's
reference materials.

Q So sorry to interrupt. I just wanted to make --

A I --

Q -- sure everybody knew where that was.

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1 A No, that's okay. And -- and so part of our --
2 our -- our study also involved actually drawing
3 on the data from the B.C. Adolescent Health
4 Survey across ten years of the -- the survey
5 before SOGI was a resource that was made
6 available and then after the SOGI school leads
7 were implemented in schools in sort of phases.
8 So some schools took it up, and then another
9 group of schools took it up, and then eventually
10 it was -- all the school districts were involved
11 in the -- the SOGI 1 2 3 programming.

12 And so we were looking at for students, both
13 LGBTQ+ students and heterosexual-identified
14 students in these -- or school surveys in the --
15 2013, 2018, and 2023, looking at different forms
16 of bullying and sexual orientation discrimination
17 as that question I -- I mentioned about
18 identifying as discrimination in the past year on
19 the basis of sexual orientation or because people
20 think you're lesbian, gay, or bisexual.

21 And so we -- we had -- we analyzed these
22 data using some -- some very specific techniques
23 to be able to map that and -- and look at the
24 outcomes and -- and identified that when it comes
25 to -- to the students in school, although young
26 LGBTQ+ youth are still more likely to experience
27 bullying and sexual orientation discrimination
28 than their heterosexual peers even in 2023, what
29 we did see is that in the -- the schools and
30 school districts where the materials were taken
31 up earlier compared to later, we -- we actually
32 saw reductions in some forms of bullying and
33 sexual orientation discrimination targeted
34 towards LGBTQ+ youth, and we saw that -- these
35 reductions also for heterosexual students.

36 And because we wanted to -- because we've
37 had this long-standing research that's documented
38 the impact of -- of GSAs, we actually included
39 analyzing sort of separating out SOGI 1 2 3
40 impacts and GSA impacts in this as well and
41 identified that above and beyond or separate from
42 GSAs, we saw some -- some improvements in
43 reductions in bullying for LGBTQ+ people.

44 But especially striking for the heterosexual
45 students in schools, there was a greater impact
46 towards reduces bullying and sexual orientation
47 discrimination for SOGI 1 2 3 the longer it was

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1 in place, even more so than -- in terms of the
2 effects, even more so than GSAs and the longer
3 they were in a school. And that kind of makes
4 sense in some ways because the majority of
5 heterosexual teens don't join GSAs, particularly,
6 and so they may not have as much of a benefit or
7 impact related to that.

8 Q All right. Unless there's anything else that you
9 want to say about that fourth question, I have
10 only one more thing for you. Is there any --
11 anything that you feel like you left out there?

12 A No, I don't think so.

13 Q Okay. So you came and testified about your
14 qualifications and were cross-examined on Monday.
15 And did you receive any unexpected correspondence
16 this week in your -- in the form of an email?

17 A I did.

18 Q Okay.

19 A On the morning -- on Wednesday morning, I -- I
20 woke up to an email. As I was going through my
21 emails, I woke up to an email that -- that
22 just the -- the header was a bit startling. It
23 said --

24 CNSL J. KITCHEN: Objection.

25 A -- "F off."

26 THE CHAIR: Oh, sorry. Okay. Yes, Mr. Kitchen,
27 what's your -- what's your objection?

28 CNSL J. KITCHEN: Well, without the email in the
29 record, she's -- she's not permitted to read what
30 it says.

31 CNSL L. WADDELL: Sure. I can put it -- I was going
32 to let her describe it and then put it in, but
33 I'm happy to put it in.

34 THE CHAIR: Have you --

35 CNSL J. KITCHEN: Yeah, but we need -- we need -- we
36 need to see it; otherwise, she can't be reading
37 it.

38 A Yeah. It's very brief.

39 THE CHAIR: Okay.

40 CNSL L. WADDELL: Yeah. Okay. Are you able to see
41 that?

42 CNSL J. KITCHEN: I don't see any content.

43 CNSL L. WADDELL: No, that's correct.

44 A There was no content.

45 CNSL J. KITCHEN: Oh, there is no content.

46 CNSL L. WADDELL: That's right.

47 A Just the subject.

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1 CNSL J. KITCHEN: I see. I see. Okay. So now she
2 can -- she can read the subject line because we
3 have it. So that's fine.

4 CNSL L. WADDELL: Okay.

5 A If it's okay with you, I wasn't going to, like,
6 read it as verbatim because it is rude, but
7 everyone can read what it says. When I first saw
8 the subject line, I -- I wasn't sure what it was
9 about. I thought, well, in my role as the
10 director of school of nursing, maybe there's an
11 unhappy student, and sometimes they do say these
12 things. But I wasn't familiar with the name of
13 the person who was sending it, so I -- and it's a
14 Gmail account. So although there's no links in
15 it or anything like that -- and the university
16 does try to teach us to be careful about that --
17 I thought, okay, well, I see this name. The name
18 looks like it matches the Gmail account. I will
19 go Google this name because it's not --

20 CNSL J. KITCHEN: Okay. I have to -- okay.

21 A -- familiar to me.

22 CNSL J. KITCHEN: Hold on. I -- sorry. I have to
23 object because she's saying it's a Gmail account,
24 but I can't see that. All right? So --

25 CNSL L. WADDELL: Sorry. You -- I see. Well,
26 let's --

27 A Yeah, it's the link. Yeah.

28 CNSL L. WADDELL: Yeah. Let's --

29 CNSL J. KITCHEN: Because it sounds like that's
30 actually relevant, based on what she said.
31 Otherwise, I wouldn't care, but --

32 A I don't know if it's relevant. It's just this
33 was the -- the email I received. And I -- when
34 I -- when I just see a name, I actually go look
35 at the email underneath it because oftentimes
36 with -- at the university with -- with phishing
37 or malware or other things like that, we always,
38 you know, look to see if there's a mismatch
39 between the name that's there and the -- the
40 email account underneath it. And they looked
41 like they matched. But --

42 CNSL L. WADDELL: So just a question for Mr. Kitchen.
43 Mr. Kitchen, do you want us to try and get you a
44 copy that shows the Gmail, or is it enough for
45 you if -- if the witness reads out what the
46 actual Gmail address is in her original? It
47 seems like that's what you're -- what you're

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1 wanting. Am I --
2 CNSL J. KITCHEN: Well --
3 CNSL L. WADDELL: -- right about that?
4 CNSL J. KITCHEN: Yeah, if she's going to comment on
5 it, I need to be able to see that it is. So --
6 CNSL L. WADDELL: Okay. So -- so we'll get you -- for
7 now, so we don't interrupt, why don't we have her
8 read the actual Gmail address, and then after we
9 can -- instead of having this copy entered as an
10 exhibit, we can have a copy that shows the actual
11 Gmail address entered as an exhibit.
12 CNSL J. KITCHEN: Sure.
13 CNSL L. WADDELL: Okay.
14 CNSL J. KITCHEN: That's -- yeah, that's fine.
15 A All right. So -- so the Gmail address is
16 bsalzberg11@gmail.com.
17 CNSL J. KITCHEN: Okay.
18 A So I was not familiar with the name Brad
19 Salzberg. So I Googled it in the -- and -- and
20 identified that Brad Salzberg is a founding
21 member of the --
22 CNSL J. KITCHEN: Objection.
23 A -- Cultural Action Party.
24 CNSL J. KITCHEN: Objection.
25 THE CHAIR: What's the objection?
26 CNSL J. KITCHEN: Well, she's talking about stuff not
27 in the record. We know nothing about Brad
28 Salzberg.
29 THE CHAIR: Okay. Well, she's testifying about what
30 she found in a Google search. So --
31 CNSL J. KITCHEN: Exactly. She can't do that unless
32 it's in front of -- in front of us.
33 CNSL L. WADDELL: Sure she can.
34 THE CHAIR: Why not?
35 CNSL J. KITCHEN: Because we -- we need to see the
36 evidence.
37 THE CHAIR: Her -- her testimony --
38 CNSL L. WADDELL: She's giving evidence.
39 THE CHAIR: -- is the evidence. She's testifying.
40 That's evidence. So, I mean, I think --
41 CNSL J. KITCHEN: Right. Right. But -- but -- but I
42 can't cross-examine her on it unless that
43 evidence is put in. I mean, we basically just
44 have to take her at her word. And I'm not
45 suggesting she's lying. Okay. But -- but how we
46 do this is if she's going to talk about evidence,
47 the evidence needs to be in. Her testimony of,

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1 you know, "Hey, Brad's not a -- not a student,"
2 okay, well, you might have noticed I didn't
3 object to that, right, because, like, you know,
4 we're going to -- we're going to take her at her
5 word. We don't expect her to produce a student
6 list of all her students at UBC to prove that
7 he's not a student; right?

8 But -- but that -- this is different. This
9 is qualitatively different. She's now talking
10 about, "Oh, I looked this guy up, and I'm
11 convinced that this guy I found on this webpage
12 is actually this guy," and meanwhile we don't
13 have the webpage. Put the webpage up, and she
14 can talk about it all she wants. That's fine. I
15 get it; right? But without that webpage, she
16 can't talk about it.

17 CNSL L. WADDELL: May I respond?

18 THE CHAIR: Yes.

19 CNSL L. WADDELL: I am certain that Mr. Kitchen is
20 capable of using Google, and he will have the
21 opportunity to cross-examine the witness. I'm
22 not sure what legal proceedings he's been
23 involved in, but viva voce evidence is a valid
24 form of evidence to have in. It must not always
25 be supported by every document that someone
26 glances at. So it's our submission that there is
27 no valid objection to make here and that the
28 witness should simply be permitted to answer the
29 question, and Mr. Kitchen will have the lunch
30 hour to do his own Google research and prepare
31 his -- his cross.

32 THE CHAIR: All right.

33 CNSL J. KITCHEN: My friend is being disingenuous.
34 She knows darn well that if she's going to raise
35 something that, quite frankly, is just an effort
36 to be scandalous and rhetorical, she's -- it's
37 her obligation to put in the evidence. It's not
38 my obligation to go look up the evidence for her.

39 THE CHAIR: Okay.

40 CNSL J. KITCHEN: That's -- that's absurd.

41 THE CHAIR: I'm ready --

42 CNSL J. KITCHEN: It's her obligation to put it in.
43 So don't suggest to me that I got to go find this
44 thing that somehow the witness has found. And
45 how the heck will I know if it's the -- that's
46 ridiculous. Okay? My friend -- if it's so easy,
47 by the way, for me to go find it, then why hasn't

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1 my friend put it up on the screen and say, "I
2 want to have this entered as an exhibit"? That's
3 how it works.

4 THE CHAIR: All right.

5 CNSL J. KITCHEN: Let's -- you know, you -- we talked
6 about the integrity of the process. Let's
7 respect the integrity of the process and get the
8 evidence up there.

9 THE CHAIR: Thank you, Mr. Kitchen. I'm going to ask
10 that you kindly refrain from calling your friend
11 things like "disingenuous." I don't think that's
12 appropriate. Could we take the email off the
13 screen so that we can see everyone again, please,
14 Ms. Tom.

15 We have the objection about requiring
16 documentary evidence of the Google search in
17 order to hear this. The objection is overruled.
18 Dr. Saewyc can testify about the results of
19 her -- of whatever she found and the conclusion
20 she drew from it, and Mr. Kitchen can
21 cross-examine her on it later. And anything we
22 do with it will be a matter of -- of weight when
23 we can decide on the reliability of the evidence.

24 So go ahead, Dr. Saewyc. You were saying.
25 A Okay. So -- so when I put the name in, the first
26 thing that came to the top was a LinkedIn account
27 of someone that was titled "Brad Salzberg,
28 Founder, Cultural Action Party of Canada." And I
29 had heard of the Cultural Action Party of Canada,
30 but I -- I thought they were, like,
31 anti-immigrant as a party. But I -- I didn't
32 know about them but now, you know, realized from
33 the LinkedIn where he said "I am the founder of
34 the Cultural Action Party of Canada, a political
35 media organization founded in September of
36 2016" -- that's his statement on the -- and he's
37 in North Vancouver.

38 That surprised me because I haven't had
39 those kinds of -- like, that -- that specific --
40 without any specific, like, why are you upset
41 with me? Like, there's no message added to that,
42 just that really rude beginning. But I had been
43 asked to please forward any of that to the
44 lawyers, so I -- I did.

45 I also -- because of my role and because
46 it -- I'm located in a hospital, it was necessary
47 to notify the campus security that there has been

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1 a negative comment that might be related to the
2 fact that I might be -- I mean, at the time I
3 didn't know that I had been qualified to testify,
4 but that my testimony might have been or might be
5 coming up on Friday. And so I just forwarded it
6 to the -- the -- the BCTF lawyers and then
7 notified security here.

8 They asked me to share a copy of the email
9 and -- and -- which we forwarded, and then they
10 asked for detailed times about when I would be
11 testifying, if I was going to be, and -- because
12 they were documenting this. They consider this a
13 formal incident in campus security, and they
14 notified the hospital security service and were
15 increasing sort of the circulation of -- of
16 security on the floor in which my office is over
17 the course of -- of the time that I'm supposed to
18 be testifying.

19 CNSL L. WADDELL:

20 Q All right. I have -- let me -- let me just check
21 my notes for one minute, and then I think I'm
22 done, and we --

23 CNSL J. KITCHEN: What are we doing with that email?

24 CNSL L. WADDELL: Well, I'm going to seek to have it
25 entered as an exhibit, but you said you'd --
26 you'd prefer a copy that -- that has the -- that
27 shows the email address.

28 CNSL J. KITCHEN: Well, fine, but we still need to
29 talk about whether or not it should be admitted,
30 whether it's this version or that version. It's
31 presumably going to be that version, but -- which
32 is fine with me if it is admitted. But we need
33 to talk about whether or not it's admissible.

34 CNSL L. WADDELL: Okay. Well, I've indicated I'm
35 seeking to have it entered as an -- as an
36 exhibit. The witness has identified it. She
37 received it. Do you want to articulate if -- are
38 you objecting? If so --

39 CNSL J. KITCHEN: No -- yeah, obviously. I just --
40 you know, I -- I wanted to hear a basis from you
41 for admitting it first, but, I mean, I -- I can
42 go first. What do you want -- what do you think,
43 Chair?

44 CNSL L. WADDELL: Well, the --

45 THE CHAIR: Well, I think --

46 CNSL L. WADDELL: -- the basis --

47 THE CHAIR: -- if it's your objection, you should

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1 object and state the basis for your objection.
2 Go ahead.

3 CNSL J. KITCHEN: Sure. So this is very similar to
4 the Ku Klux Klan-type thing. You know,
5 scandalous and offensive and emotionally exciting
6 and all the rest of it, which, of course,
7 increases the prejudicial value but also
8 increases the rhetorical value for my friends,
9 which is why -- of course why she's doing it.

10 This has nothing to do with Barry Neufeld.
11 We have no idea who in the world Brad Salzberg is
12 other than the unverified, effectively hearsay
13 testimony so far from our witness that this guy
14 runs some political party in Canada, apparently.
15 And I guess we might find out that she's telling
16 the truth, and it wouldn't surprise me if she's
17 telling the truth. But right now at this point,
18 we have absolutely no evidence of who this person
19 is. And if what she's saying is true, then what
20 we do know about him is that he runs a political
21 party in Canada, obviously, you know, one of the
22 sort of sidebar ones that nobody knows about,
23 which means there's absolutely no established
24 connection between this -- between him and Barry
25 Neufeld, which means --

26 CNSL L. WADDELL: I'm not seeking --

27 CNSL J. KITCHEN: -- this -- this completely --

28 CNSL L. WADDELL: -- to have it entered on -- on that
29 basis, just to clarify. I'm seeking to have it
30 entered on the basis that she received it after
31 giving her initial evidence and that she doesn't
32 normally receive emails like this; right? So
33 this is -- she --

34 CNSL J. KITCHEN: No, you're seeking to have it
35 entered for the rhetorical effect that, Hey,
36 look, she testified in Barry Neufeld's case, and
37 then somebody told her to fuck off. And so, you
38 know, people -- you know, so that means that
39 people like Barry Neufeld are somehow, you know,
40 mean, nasty, terrible, hateful, discriminatory
41 people who tell other people they don't like to
42 fuck off. That's -- that's -- that's the purpose
43 of this; right? Which means it serves no -- no
44 legitimate impact except for a rhetorical,
45 emotional one for -- for you and your client.

46 And -- and I -- I get the -- I get the
47 strategy. I do. Okay. I appreciate what --

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1 what you're trying to do because I could -- I
2 could understand the value to it from your
3 perspective. But -- but that's just it; right?
4 If it -- if it has no connection to Barry -- and
5 I don't care what your purpose is because --
6 well, I know what your purpose is. The point is
7 it's not admissible if it's not connected to
8 Barry.

9 Now, you want to establish that Brad
10 Salzberg is somehow, you know, Barry's number one
11 public fan, okay. Maybe -- maybe we have a
12 connection; right? But right now he's just, you
13 know, random gentleman number one in Canada. And
14 so that means there's no probative value to this.
15 There is only rhetorical value, which is not a
16 reason. That's not -- that's not a permissible
17 reason to admit it. It's -- it's no different
18 than the Ku Klux Klan thing, which, again, the
19 only value there was rhetorical and emotional.
20 There was no legal value. Similarly here, no
21 legal value. Okay?

22 And let's -- let's be obvious about this.
23 Ms. Saewyc is not a first-time expert witness.
24 Okay? She's an expert witness in a case that was
25 just released a few days ago that has been highly
26 publicized, okay, that's got both sides of this
27 debate excited. Okay? So how the heck is it --
28 is it -- is it -- is it acceptable to suggest
29 that it's something to do with this case and not
30 something to do with what else she's doing? And
31 that's just -- and I -- I don't know Ms. --
32 Dr. Saewyc, you know, from a hole in the wall,
33 basically. Like, it could be some other public
34 thing that's going on with her. I'm only aware
35 that that -- that that public thing is going on.
36 And so that would indicate that that's probably
37 just the tip of the iceberg.

38 So there's -- there's all kinds of reasons
39 why this can't go in, and no reasons for why it
40 should or could go in, legally speaking, just
41 like the Ku Klux Klan document that you put up.

42 THE CHAIR: Thank you.

43 Ms. Waddell?

44 CNSL L. WADDELL: The tribunal gets to go -- no, I
45 think that was his reply, wasn't it? Or was that
46 his initial objection? I've lost track.

47 THE CHAIR: That was the initial objection. You

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1 interjected --

2 CNSL L. WADDELL: Oh, okay.

3 THE CHAIR: -- only briefly --

4 CNSL J. KITCHEN: Yeah, no --

5 THE CHAIR: -- to say that wasn't why.

6 CNSL L. WADDELL: Okay.

7 THE CHAIR: So that was the initial --

8 CNSL L. WADDELL: All right. So the witness has
9 identified this document, ergo there is no basis
10 for it not to go in. If for any reason the
11 tribunal feels that it does need to be connected
12 to Mr. Neufeld to go in, I can connect it to
13 Mr. Neufeld for you when your client takes the
14 stand. I don't have anybody else who can do
15 that, but I'm happy to do that if it's necessary.
16 But I don't think it's necessary at all. The
17 tribunal is very well poised to consider what it
18 thinks the likelihood is that this had or had not
19 some attachment to Dr. Saewyc's testimony in this
20 proceeding. That's what they do all the time.

21 So it's our position that there's simply no
22 valid objection for it going in as a
23 communication that Dr. Saewyc received and about
24 which she has just testified.

25 THE CHAIR: Okay. Thank you. You --

26 CNSL J. KITCHEN: I just want to --

27 THE CHAIR: -- get the final --

28 CNSL J. KITCHEN: -- reply to that --

29 THE CHAIR: Yeah.

30 CNSL J. KITCHEN: -- to that proposal. Okay.

31 So in response to that, I would say, then,
32 that -- that, you know, once the tribunal was to,
33 in my submission, follow the law and say it's not
34 going to be admitted, period, if the tribunal was
35 considering admitting it, then I would -- I
36 would -- I think I would go along with my
37 friend's proposal here -- I want to make sure I
38 understand it -- that we would hold off on this.
39 I would get to -- I would get to cross on it,
40 okay, with Dr. Saewyc, and then my friend would
41 get to cross on it with Mr. Neufeld when --
42 when -- when he's up, and then we can -- we can
43 finally have what we need to make a determination
44 as to whether or not it's -- it's actually
45 somehow relevant.

46 So that -- I would say, you know, unless
47 you're going to just deny it now, which I think

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1 is the right thing to do, then we need -- we need
2 to hold off admitting it until after we've had my
3 cross of Dr. Saewyc and we've had my friend's
4 cross of Mr. Neufeld.

5 THE CHAIR: Thank you. I think that latter approach
6 is the one we'll take in this case. I'm not
7 going to admit it now, but -- but, Mr. Kitchen,
8 you can cross-examine Dr. Saewyc about it in your
9 cross-examination.

10 And then -- and then, Ms. Waddell, if you
11 can connect it to Mr. Neufeld through his
12 evidence, then we'll bring it back up and
13 consider whether it may have any probative value
14 and will be admitted. But I think we need a bit
15 more before we make that -- that decision and
16 draw the inference based on the timing that this
17 is related in some way to the proceeding.

18 So we're going to defer that question until
19 we have a bit more evidence. But before we break
20 for lunch, I do want to ensure that we've -- I
21 understand, Ms. Waddell, you're done with your
22 questions; right?

23 CNSL L. WADDELL: Correct.

24 THE CHAIR: Right.

25 CNSL L. WADDELL: Correct.

26 THE CHAIR: And we haven't admitted the Book of
27 Documents re Expert Evidence yet, which contains
28 the opinion and the source materials. We've
29 obviously already heard objections and dealt with
30 objections related to the opinion.

31 Mr. Kitchen, is there any objection to any
32 of the other material contained in the
33 complainant's Book of Documents re Expert
34 Evidence?

35 CNSL J. KITCHEN: No, I think it goes in just by
36 virtue of the fact that you admitted the expert
37 witness. All I see is -- is a bunch of research
38 stuff that's exactly what you would expect with
39 experts. So --

40 THE CHAIR: Yes.

41 CNSL J. KITCHEN: -- I don't see any problem with it.

42 THE CHAIR: Okay. Thank you. So I think we're at
43 Exhibit 3. Exhibit 3 is the complainant's Book
44 of Documents re Expert Evidence. It's a PDF that
45 is 1,436 pages.

46
47

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EXHIBIT 3: Complainant's Book of Documents
re Expert Evidence

THE CHAIR: All right. Well, here's where we're going to break for lunch. We're going to take -- let's take just over an hour and come back at 1:45 for -- to continue, Dr. Saewyc, with your questions.

When we come back, we're going to have some questions from the Intervenor's counsel first, Ms. Sokolova. She has just a handful of questions, and then Mr. Kitchen will have questions for you this afternoon as well. I think we already told you the last time that we ask you not to talk to anyone about your evidence who hasn't testified yet. And then when you're under cross-examination, there will be some more cautions, but for now it's just about preserving the integrity of witnesses who may come after you. Do you have any questions before we go into this break?

A No.

THE CHAIR: No?

A Other than I think on Monday you, like, were disconnecting people over longer breaks like lunch, and then we needed to re --

THE CHAIR: Yeah.

A -- connect again? Okay.

THE CHAIR: Exactly. Yeah. So I will remove everyone from the meeting now and then ask everyone to come back at 1:45.

And over the break, Ms. Waddell, you're going to send the email to the tribunal and to Mr. Kitchen. All right. So I'm going to remove everyone from the meeting now, and then we'll reconnect at 1:45.

CNSL L. WADDELL: And --

THE CHAIR: Oh, yeah.

CNSL L. WADDELL: -- Dr. Saewyc, can I just get -- get Dr. Saewyc -- I mean, we can communicate with you on the side, but can you try and send us a copy that shows the -- the Gmail account?

A Yes. I think I can take a screenshot of the --

CNSL L. WADDELL: Okay.

A -- the email that would show the -- yeah, Microsoft is really obnoxious about just putting the names up and not putting --

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1 CNSL L. WADDELL: Yeah.

2 A Unless you specifically click on it. So yes,
3 I'll do that, and see if I can --

4 CNSL L. WADDELL: Okay.

5 A -- take a screenshot of it.

6 CNSL L. WADDELL: Thank you.

7 THE CHAIR: Okay. Thank you.

8

9 (PROCEEDINGS ADJOURNED FOR NOON

10 RECESS)[12:39:10]

11 (PROCEEDINGS RECONVENED)[1:48:11]

12

13 THE CHAIR: Hi, everyone. Sorry for the delay. We're
14 just waiting for the -- there we go. As I've
15 said before, on our end, we get an automated
16 message every time a -- do you hear that,
17 Dr. Saewyc, the "unknown participant is now
18 joining"? Okay. So you hear it. Some people
19 can hear it, and some people can't. But for
20 those of you who can't, it may seem like we're
21 having a strange long pause while everyone --

22 CNSL L. WADDELL: I'm sorry.

23 THE CHAIR: -- comes back in.

24 CNSL L. WADDELL: Can I just ask if -- can everybody
25 hear us?

26 THE CHAIR: Yes.

27 CNSL L. WADDELL: Okay. Sorry. We're just again
28 struggling with our technology.

29

30 ELIZABETH SAEWYC, a witness,
31 recalled.

32

33 THE CHAIR: Okay. All right. Thanks, everyone.
34 Welcome back. Dr. Saewyc, are you ready to
35 continue?

36

A Yes.

37

38 THE CHAIR: Okay. Let me just -- we've just let
39 Mr. Neufeld in, and I'm going to find
40 Ms. Sokolova. There you are. And as you know,
41 Ms. Sokolova's counsel for BC's office of the
42 Human Rights Commissioner, and she has some
43 questions about your report that she's going to
44 ask you now. And it's possible -- we've had some
45 back-and-forth about the type of questions that
46 she's going to be asking, so we may encounter an
47 objection about that, in which case we'll --
we'll deal with it. But that's not for you to

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1 worry about.

2 Go ahead, Ms. Sokolova.

3 CNSL M. SOKOLOVA: Thank you.

4

5 QUESTIONS BY THE INTERVENOR:

6

7 Q Good afternoon, Ms. -- Dr. Saewyc. Thanks for
8 joining us. I have just a few questions for you
9 related to the Commissioner's intervention in
10 this case and within the scope of what we've
11 permitted -- been permitted to do by the
12 tribunal. So just to jump right into it, how is
13 gender-affirming support or care for transgender
14 youth or children defined in the literature?

15 A Okay. That -- I think it -- it's defined in a
16 variety of -- like, there's a lot of pieces that
17 all can count, and sometimes gender-affirming
18 care can include just acknowledging and
19 supporting young people's gender in regular
20 primary care or in -- you know, like -- so not
21 necessarily specifically about -- related to
22 their gender identity but providing respectful,
23 dignified care that, you know, uses the
24 appropriate names and pronouns in -- in sort of
25 regular health care, you know, if they're coming
26 with the flu or to -- you know, with a sports
27 injury or something.

28 Then there's the other also, I think, more
29 widely understood gender-affirming care
30 definition which is care that involves providers
31 who provide counselling and education and
32 assessment around supporting young people in
33 their understanding of their gender identity and
34 specifically for those who are having some
35 distress or -- or just who are having some
36 difference in their gender identity compared to
37 their sex assigned at birth.

38 And that can include assessments,
39 evaluations, counselling for parents and for
40 children. For youth who reach puberty, that can
41 but does not always include medical treatment
42 such as puberty blockers, as they're commonly
43 called, or gonadotropin-releasing hormone
44 antagonists, as well as later in adolescence for
45 some people, additional hormones and other
46 medications. And gender-affirming care also can
47 include later in -- in older adolescents and in

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1 young adulthood and in -- throughout adulthood
2 other health care treatments that might involve
3 body modification such as surgery, or it also can
4 include care related to, like, voice training or
5 things like that. So it's a variety of -- of --
6 mostly health-related but also counselling sort
7 of supports.

8 Q So I think you've commented a little bit, but I
9 just want to expand a little bit. Does
10 gender-affirming care include components other
11 than medical intervention, such as social,
12 psychological, more behavioural components?

13 A Well, I mostly am identifying gender-affirming in
14 this -- like, when I say gender-affirming care,
15 that usually means health care, and yes, within
16 the health care setting that would include
17 behavioural components, that is, in how the
18 health care providers and others are treating or
19 interacting with the -- the people who are
20 gender-diverse. It also can include, yes,
21 counselling, but also education for parents and
22 schools. Gender-affirming care can include
23 referral to social services or other services,
24 for example, explanation on procedures or
25 connecting to the -- the procedures to change
26 names or birth certificates or identification
27 processes. Those are all part of potentially
28 supporting people's gender. And so that might be
29 part of what gets included. The referral, not
30 the actual doing is -- would be what would be
31 part of that.

32 Q Are you able to comment at all on how widespread
33 in our society are allegations that providing
34 gender-affirming support or gender-affirming care
35 to transgender children is a form of child abuse?

36 A That's a bit difficult to -- to quantify in that
37 there is certainly a large amount of commentary
38 about that on social media, it seems like, or
39 in -- there are accounts of that. But in terms
40 of -- are you asking -- maybe I should ask you to
41 clarify. Are you asking about how common people
42 hear this, or are you asking about how common
43 this statement is -- is -- or this conclusion is
44 drawn by whom? People in -- like, in health care
45 and authority or in other places?

46 Q I was asking about sort of if there are any
47 numbers about how common the statement is, not

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1 from -- not a conclusion by medical professionals
2 or -- or health care personnel.

3 A Well, I'm not -- I couldn't -- I couldn't
4 actually put a number on that. I don't have a --
5 I haven't seen particular -- that might even
6 tricky to figure out how you would do that kind
7 of research to count and calculate because of the
8 way algorithms come up in terms of -- of the way
9 social media and -- and news media and stuff
10 happens. But, yeah, I'm sorry, I can't.

11 Q That's all right. Your opinion relies on some
12 research from the United States. And can you
13 comment on whether and how United States research
14 that discusses the claim that gender-affirming
15 care is child abuse can be relied on in the
16 Canadian context?

17 A The -- the research in the United States is
18 primarily focused on the -- the laws and policies
19 that are legally being, like -- like, put forward
20 in legislative assemblies or congresses or -- or
21 state houses in the United States. But the --
22 we've certainly seen in Canada over the last
23 couple years some of those same policies and laws
24 being proposed and put forward in legislative
25 assemblies in different provinces, and so -- and
26 some of the language around that in terms of
27 commentary, including the -- the comments about
28 it, the -- that seems to be part of the -- the
29 potential concern or -- or issues raised.

30 So to the extent that some of the comments
31 and talking points and -- and proposed
32 perspectives that are showing up in -- in news
33 reports are either identical or eerily familiar,
34 I think that research is relevant.

35 Q So last time when we talked during the
36 qualification process -- on Tuesday, was it?
37 Monday, I think. So we discussed moral panics in
38 relation to transgender people, and you noted
39 that you've come across the concept in your
40 research. Can you just give me some example of
41 the context that you've encountered that concept?

42 CNSL J. KITCHEN: Objection.

43 THE CHAIR: Go ahead, Mr. Kitchen.

44 CNSL J. KITCHEN: It's out of the scope of this
45 witness's permissible expert opinion evidence.

46 CNSL M. SOKOLOVA: I would say that that is incorrect.
47 You know, we discussed this. The witness

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1 testified it wasn't the core of her expertise,
2 but she's been permitted. The decision on her
3 qualifications says that it's a
4 mischaracterization of what she said to say that
5 she has no expertise in moral panic. So I think
6 the -- the question would go to admissibility --
7 or to weight and not admissibility. So you can,
8 I think, argue at the end of the day that it
9 might not have weight, but, you know, we have an
10 expert witness who's been qualified to help the
11 tribunal, and we have some questions about this
12 topic. Not too many. There's only a few more.
13 But we think it's relevant.

14 THE CHAIR: Thank you.

15 Go ahead, Mr. Kitchen.

16
17 SUBMISSIONS BY CNSL J. KITCHEN:

18
19 CNSL J. KITCHEN: Chair, so are we back to -- to both
20 my friend and to yourself that in paragraph 3 of
21 your decision admitting the expert as a witness,
22 you said that she was qualified as an expert in
23 the impacts of stigma on sexual and gender
24 minority populations. So, of course, there's no
25 mention there of moral panic. And we -- we went
26 through this before. She is -- is -- as she
27 openly admitted, I guess to her credit, in
28 cross-examination with me, she is not an expert
29 in moral panic.

30 So, you know, the law is very clear on this.
31 You -- you have questions to the -- and this goes
32 for cross, direct, or, you know, if we're doing a
33 blend with Ms. Sokolova. You cannot ask an
34 expert opinion witness to opine outside of the
35 scope of their qualification. That's --
36 that's -- that's a very important point when it
37 comes to experts and questions to experts. So
38 asking her to provide her opinion on it, which,
39 of course, right -- like, we only want opinion
40 evidence when -- when the expert is qualified to
41 do so. It's -- it's beyond her scope, and
42 therefore she cannot opine on it. Those are my
43 submissions. Thank you.

44 THE CHAIR: Okay. Just before we make our decision
45 here, Ms. Sokolova, I want to just understand a
46 bit more about the questions that you intend to
47 ask. If anyone thinks it's appropriate, we can

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1 exclude Dr. Saewyc for this. Does anyone see
2 that as necessary? I'm looking around the table.
3 No.

4 So, Ms. Sokolova, you are asking about
5 whether she's encountered the term "moral panic"
6 in her research and -- and what that means to
7 her. And then what are the other kinds of
8 questions that you're -- what are the other
9 questions that you're planning to ask in this
10 area?

11 CNSL M. SOKOLOVA: They will be related to our terms
12 of our intervention. So I'm sure you know
13 that -- the position of the Commissioner that
14 there is -- there is an interpretation of
15 7(1)(a), as I said in our opening, as well as the
16 fact that statements to the effect that support
17 for gender-affirming care is a form of child
18 abuse may or may not qualify as -- as
19 discriminatory speech or hate speech under s. 7.
20 So the questions that I have for Dr. Saewyc -- as
21 I say, there's only a few more -- it's sort of
22 along the lines of "do you think that statements
23 that support for gender-affirming care is child
24 abuse, it contributes to a moral panic?"

25 THE CHAIR: Okay.

26 CNSL J. KITCHEN: I think if it was contributed to
27 stigma, I mean, we'd be -- we'd be -- we'd be
28 within scope; right? But if it's contributed to
29 moral panic, we're out of scope. That's -- I
30 think that's the line right there.

31 THE CHAIR: And, Ms. Sokolova, can you just -- to that
32 point, the significance of the term "moral
33 panic," which I know has been a focus of the --
34 what's the significance of that in the
35 Commissioner's submissions?

36
37 SUBMISSIONS BY THE INTERVENOR:

38
39 CNSL M. SOKOLOVA: I mean, it's -- well, it's -- I
40 don't think it's going to -- it's not
41 particularly significant, in our -- in our
42 submission. It's just that, you know, when we
43 were asked, for example, to distinguish ourselves
44 to be not duplicative of a complainant, it's
45 another aspect of the submission that is being
46 made. So far there hasn't been a submission
47 about this moral panic question. That would be

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Submissions by Cnsl J. Kitchen

1 the angle from which we're coming at it.

2 Certainly we -- you know, we would also talk
3 about stigma, but we don't want to duplicate the
4 complainant's submission on that point. And, in
5 fact, the terms of intervention distinguished us
6 on -- on the basis that the complainant and
7 Dr. Saewyc is focused on harms, and the
8 Commissioner can come and offer a different
9 perspective on how -- how the speech at issue or
10 these particular statements might violate s. 7.

11 So -- so that would be our kind of angle at
12 coming at this question. And it is a part of our
13 intervention. But we're not sure that at the
14 ultimate issue that it's going to make a big
15 difference in terms of your analysis in your
16 decision.

17 THE CHAIR: Right. So is this angle, as you put it,
18 is this more about kind of the rhetorical effect
19 of these types of phrases and how it -- I mean,
20 presumably, to be relevant to section 7, how it
21 kind of then translates into harm?

22 CNSL M. SOKOLOVA: Yes. So I think in -- in our
23 initial submission on what we're proposed -- what
24 our proposed intervention was, the ask was that
25 we be allowed to comment on the rhetorical work
26 of such allegations and how that might play into,
27 for example, the tribunal's analysis of whether
28 speech discriminates or contributes to
29 vilification or detestation. And because the
30 complainant is already talking about stigma
31 through Dr. Saewyc, we wanted to add this moral
32 panic aspect to the claim.

33 THE CHAIR: Okay.

34 Yes, Mr. Kitchen.

35
36 SUBMISSIONS BY CNSL J. KITCHEN:

37
38 CNSL J. KITCHEN: Well, see, that's -- that's just it.
39 That's -- that's the problem, is the
40 Commissioner's intervention is based on, you
41 know, a slightly different approach to this,
42 which I agree with my friend that's how it works
43 so that there's no duplication and so that you
44 can -- you can cover an issue that the
45 complainant hasn't covered. You know, and so it
46 makes sense, of course, that they were going to
47 call an expert witness -- they could have called

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1 a lay witness as well, and/or, but they called an
2 expert witness to speak to that.

3 So the problem here again, similar to what
4 we had before, is now because the Commissioner
5 doesn't -- they aren't calling their expert
6 witness, they are attempting -- whether --
7 whether it's, you know, by design or not, in
8 effect, they're attempting to co-opt or -- or
9 adopt this witness to -- to be able to speak to
10 the issue that they want to talk about.

11 And the first and most important reason that
12 they cannot do that is because this witness must
13 only give opinion evidence within the scope of
14 her expert opinion, which does not include that
15 issue that she just said she wants to add on.
16 That's -- that's just it. That's -- that's the
17 whole point; right?

18 The first two questions were fair. It
19 was -- it was -- it was basically, you know, an
20 extension of what -- of what Ms. -- Dr. Saewyc is
21 qualified in, which she had talked about in
22 direct. That was fine. Now we're getting into
23 that area that's outside of her expertise. It's
24 the area that the Commissioner wanted to talk
25 about with their expert, and -- and now they're
26 trying to get it in through the back door. And
27 that's just -- it's just -- you know, whether
28 it's -- whether it's a direct or whether it's a
29 cross that she's going to try to do that, it's --
30 it's not permissible because we've -- we've gone
31 outside of the scope.

32 THE CHAIR: Okay.

33
34 SUBMISSIONS BY THE INTERVENOR:

35
36 CNSL M. SOKOLOVA: With respect, we're not trying to
37 get it in through the back door. When I asked
38 the witness in qualification, she told me the
39 expertise does extend to talking about moral
40 panic. She is familiar with the concept,
41 although it's not the core of her expertise, and
42 I accept that. And that's a question for weight.
43 It's not a back door because the Commission's
44 intervention doesn't take a position on the
45 ultimate issue of the merits of this case. We're
46 concerned with the law. We approach the
47 analysis. We're not concerned with, you know,

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1 the particular merits of whether the respondent's
2 statements in any way violate section 7 or
3 whether or not the complainant should succeed.

4 So I don't -- I don't think so. We have an
5 expert witness that's been qualified to help all
6 of us in our analysis and approach. It's helpful
7 to the tribunal; it's helpful to us. Yes, we
8 don't -- we don't have our expert witness on
9 that, but if this expert is able to answer my
10 questions, I don't see why we can't ask them.

11 THE CHAIR: All right.

12
13 SUBMISSIONS BY CNSL J. KITCHEN:

14
15 CNSL J. KITCHEN: I'm just reminding my friend on the
16 tribunal she can't answer them because she has
17 admitted in cross-examination that she is not an
18 expert in this area, which in fact is an accurate
19 statement because she just obviously isn't from
20 the record. So -- so -- so I guess my friend --
21 you know, she -- that's -- that's -- that's where
22 I think my friend is just simply mistaken, is she
23 literally can't because she has acknowledged she
24 is not an expert in that area. And that's just
25 the law. It would prevent her from commenting on
26 it, period.

27 THE CHAIR: Right. All right. We have that point.
28 We're just going to need a couple of moments on
29 this issue. So I'm just going to turn our camera
30 and mic off. It shouldn't be more than a few
31 minutes, but I need a quick caucus here. You can
32 turn your cameras and mics off or remain on,
33 whichever you're more comfortable with.

34
35 (PROCEEDINGS ADJOURNED FOR RECESS) [2:08:20]
36 (PROCEEDINGS RECONVENED) [2:14:17]
37

38 THE CHAIR: All right. Come on back. Thanks,
39 everyone. Thanks for your patience. And
40 sometimes it takes longer to resolve these issues
41 than we think they might. So we're confirming
42 that Dr. Saewyc has not been qualified as an
43 expert in the area generally of moral panic. And
44 so I know there was some ambiguity in her
45 evidence around the scope of her expertise in
46 this area, but to the extent that's -- that
47 wasn't clear in our decision, we can confirm

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Questions by Intervenor

1 she's not qualified as an expert in the area of
2 moral panic.

3 Although, at the same time, we recognize
4 there's going to be some -- some overlap and --
5 you know, with the scope of her expertise for
6 which she is qualified, being the impacts of
7 stigma on sexual and gender minority populations.

8 So, Ms. Sokolova, if you want to ask her
9 questions, you know, directed to resources or
10 sources she's relied on in her opinion that have
11 been admitted into evidence and maybe that
12 touches on rhetorical strategies or -- or moral
13 panic, I think that's within scope. Or -- or
14 focussing on kind of stigma-related questions,
15 that's permissible. But -- but questions asking
16 for opinions about moral panic would fall outside
17 the scope of her expertise.

18 Now, last thing I'll say is there was
19 some -- it wasn't clear to me, and I didn't
20 remember and take good notes whether your
21 question actually asked for an opinion or just
22 asked whether she had encountered the term, which
23 is a fact. But -- but to the extent we're headed
24 towards an opinion related to moral panic, that
25 would fall outside the scope of the
26 qualifications.

27 So hopefully that's provided some guidance,
28 and you can, you know, think about your questions
29 in that light. Go ahead.
30

31 QUESTIONS BY THE INTERVENOR:
32

33 Q Yes. Well, my question did ask kind of the
34 context in which she had encountered the term,
35 which she had said that she had. So I don't know
36 if she's permitted to answer that in light of the
37 objection. If so, then, if she could please
38 answer it.

39 THE CHAIR: So -- so that is not asking for an
40 opinion. That's a fact about whether she's
41 encountered moral panic and in what context. So
42 that is -- that's permissible. Yeah.

43 Go ahead, Dr. Saewyc. If you've tracked all
44 that.

45 A Okay. Yes. Yes, I followed that. Thank you.
46 Okay. So the -- the term, I've encountered
47 this in a variety of contexts specifically

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Questions by Intervenor

1 related to both my -- the -- the specific area of
2 expertise that I've been qualified about here but
3 also my broader clinical research and -- and
4 other expertise. So I will start with the early
5 context of -- in which I have encountered that
6 term, and that was living in the United States in
7 the 1980s related to the preschool child abuse
8 Satanic sexual cult sort of cases that exploded
9 during that time. I knew about them.

10 They didn't use the term "moral panic" at
11 that point, but when I was in nursing school and
12 in the 1990s and the -- the discussions about
13 those cases in our pediatric child abuse course
14 brought up that this was -- like, exploded in
15 visibility and -- or, like -- like, news media
16 everywhere, and ultimately the majority of the
17 cases weren't able to be substantiated. So --
18 but this created a lot concern in -- in society,
19 even though it was not substantiated kind of
20 information. So that was my first exposure to
21 the term, and -- and it became something being
22 aware of related to my -- my clinical practice in
23 supporting child abuse clinics.

24 I also have -- have been exposed to that
25 term in relationship to sexual behaviour of
26 adolescents and -- and specifically as a
27 researcher during -- in my role as the research
28 director for the McCreary Centre Society -- and
29 I'm trying to remember the time of this. I'm
30 sorry, but after 20 years, the actual years kind
31 of blur.

32 But specifically what I'm talking about is
33 that there was a phenomenon that was being
34 described -- and I think even Oprah talked about
35 it -- rainbow parties. And this was a particular
36 event that was -- was being described about
37 adolescents being involved in -- in oral sex with
38 various coloured lipsticks and these kinds of
39 event things, and it was claimed that it was
40 happening everywhere. And the question got
41 raised within -- in B.C. I believe the -- the
42 news story that came out was in Abbotsford, I
43 think it was. And -- and -- yes, it was
44 Abbotsford. And so this would have been prior --
45 2008 or before -- just shortly after that but
46 before 2013 because the question was raised as to
47 whether or not that was, like, this widespread

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Questions by the Intervenor

1 thing and everyone should be concerned about
2 8th graders being involved in -- in this.

3 And we were asked, and at the time the --
4 the president of -- or the chair of the board of
5 McCreary responded, Dr. Roger Tonkin, based on
6 our evidence about asking about oral sex in our
7 adolescent health survey that the -- you know,
8 tiny, tiny percents. This does not seem to be a
9 widespread -- certainly not a widespread thing.
10 But that -- because Abbotsford wasn't part of our
11 survey, we couldn't actually speak to what --
12 what was happening there. And then the term got
13 used in identifying this as an out-of-proportion
14 and not-based-on-evidence concern that this was
15 happening here in -- in B.C. and everywhere.

16 The -- the more recent exposure that I have
17 seen to the term "moral panic" is as it has been
18 characterizing the information about transgender
19 adolescents and the -- the increase in the number
20 of trans and nonbinary people seeking clinical
21 care. And the -- as well the sort of -- as
22 you've also identified, the different rhetorical
23 strategies to -- to characterize gender-affirming
24 care or providing care to trans and nonbinary
25 young people or those who are exploring gender
26 identity as child abuse or as -- as harmful and
27 abusive.

28 So that's -- that's primarily the context in
29 which I've experienced it, and of course we do
30 have some population-based evidence related to
31 that. And I have been exposed to the -- the
32 various critiques about some of the evidence that
33 has been put out there and then some of our own
34 evidence in terms of -- so I can speak to that if
35 that's relevant, but that's -- that's the context
36 in which that term has -- you know, I've
37 encountered that term.

38 And then finally I would -- and then for the
39 last context in which I've encountered that term
40 is actually -- I do use that term in one slide in
41 my public health nursing health of people across
42 the LGB -- you know, 2SLGBTQ people across the
43 life course as I describe how the
44 disproportionate reaction around a variety of --
45 of unconfirmed -- unconfirmed-by-evidence kinds
46 of approaches but rhetorical strategies that can
47 be used to create a lot of anxiety within

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1 communities about information, especially when
2 it's been misinformation about things and -- and
3 that that creates a moral panic in that regard.
4 Usually that leads to trying to change laws or --
5 or present -- prevent things from happening.

6 CNSL M. SOKOLOVA: Thank you. I don't have any
7 further questions. Thank you.

8 THE CHAIR: Thank you, Ms. Sokolova.

9 All right, Mr. Kitchen, do you need a few
10 moments, or are you ready to start your
11 questions?

12 CNSL J. KITCHEN: No, I'm ready.

13 THE CHAIR: Okay. So, Dr. Saewyc, you've -- you've
14 been through this with us before, but
15 Mr. Kitchen's going to ask his questions now.
16 And I neglected to say when we came back, we
17 should probably aim for a break around -- we came
18 back at 1:45, so I would say by about 3:15 I
19 expect everyone's going to be ready for a break.
20 But if you need breaks before then, you can let
21 us know. Do your best to answer his questions.
22 If you don't understand, you can ask for
23 clarification, and if you -- if you don't know
24 the answer, that's a fine answer as well. Okay?

25 Go ahead, Mr. Kitchen.

26 CNSL J. KITCHEN: Chair, I'll start by saying this
27 both for your benefit and my friend. I
28 anticipate my cross would not exceed half an
29 hour, 45 minutes. Now, I say anticipate because
30 that does kind of depend on where -- where the
31 witness takes me. But I do not have a lot of
32 planned questions. So I don't expect we would be
33 going all the way to 3:15. And so I say that
34 partly just to -- to -- you know, in case my
35 friend has Teacher C ready to go. I would
36 anticipate we could get to teacher -- you know,
37 and get a significant portion of Teacher C's
38 evidence in this afternoon.

39 THE CHAIR: Thank you.

40
41 CROSS-EXAMINATION BY CNSL J. KITCHEN:

42
43 Q Dr. Saewyc, I'm going to share my screen here.
44 Are you able to see this thing I'm moving up and
45 down?

46 A Borderline Pride, Douglas Judson. Yes.

47 Q You were an expert in this case; is that right?

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1 A I was.
2 Q And do you have any reason to disagree with me if
3 I was to tell you that this case was published on
4 CanLII earlier this week?
5 A No, I -- I don't -- I'm not familiar with CanLII.
6 So I know that I did receive a communication from
7 Mr. Judson about the decision maybe last week,
8 but -- but, okay. So -- so I did not know that
9 it was published. But, okay. I wouldn't
10 disagree with you.
11 Q Okay. Well, I -- and I -- you know, it's -- you
12 don't know much about CanLII. All right. But do
13 you have any reason to disagree with me when --
14 and -- and, you know, to be -- to be fair to you,
15 just by the way, you know, these are the types of
16 things that come up in cross that you might --
17 that my friend might talk to you about in
18 redirect. So, you know, you'll have the chance
19 to comment there. But the decision came out on
20 the 22nd of November. That's last Friday.
21 That's -- that's -- that's when the court
22 released the decision. Do you have any reason to
23 disagree with that?
24 A No reason I can think of.
25 Q Okay. And if I were to tell you that decisions
26 are -- usually take two to three business days
27 before they're published, or at least one
28 business day, in my experience -- one, two,
29 three, depending on the type of court -- one,
30 two, three business days before -- there's a
31 delay after they're published -- after the court
32 publishes them -- that there's a slight delay to
33 when they're published with CanLII, do you have
34 any reason to disagree with that?
35 A No. I'm -- I'm not familiar with CanLII, so I
36 don't know those -- yeah, how that is. So --
37 Q Well, do you have any reason to disagree with me
38 that this case has been widely reported on in the
39 media?
40 A I don't know that it's been widely reported on in
41 the media. I do know that -- I do know that
42 there was a CBC story --
43 Q Article, yeah --
44 A -- article that came out about --
45 Q So you saw that?
46 A -- this. I saw that. I don't -- I don't recall
47 seeing anything else. But then I -- I usually

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1 get my news from CBC and the New York Times and
2 whatever the UBC news media alerts about cool
3 things that are happening in -- related to UBC.
4 And I'm not necessarily -- I just don't have time
5 to do a lot of news media. So those are the
6 things I read.
7 Q You wouldn't -- you wouldn't expect to see this
8 in the New York Times, of course?
9 A No.
10 Q Yeah.
11 A And I certainly haven't.
12 Q And you would agree with me that you are
13 specifically named in the court decision. The --
14 the Ontario Human Rights Tribunal did mention you
15 by name a couple different times in the decision
16 as being an expert witness?
17 A Yes, although they did give me the wrong first
18 name to start with in the --
19 Q All right.
20 A -- decision. But -- but there's --
21 Q That's unfortunate. I saw you referred to as
22 Dr. Saewyc, which, of course --
23 A Yeah.
24 Q -- for me, you know --
25 A That part was right. But I think they -- they
26 originally wrote it as Dr. Emily Saewyc. There
27 isn't one, but that's -- I -- I notified
28 Mr. Elliott, and he's like, "Oh, we'll get that
29 corrected." But -- so yes, although it -- my
30 name was not named in the CBC article, the news
31 article. I wasn't mentioned.
32 Q Yeah, I don't recall that. I just recall seeing
33 it --
34 A Yeah.
35 Q -- in the decision.
36 A Yeah, I wasn't mentioned because UBC as a -- our
37 comms folks at UBC do regular monitoring of
38 faculty and leaders like me and any mention of
39 UBC in -- in the news as part of their hopefully
40 being able to see places where research is
41 getting out and that kind of thing. And normally
42 if that happens, then it goes in our daily media
43 announcements or they let me know.
44 Q I'm sorry. I'm going to share my screen again
45 because I want to get the -- this stuff out of
46 the way. Can you see that there where this --
47 A Yes.

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1 Q -- says "The Big Picture"?

2 A Yeah. That's the -- the provincial highlights
3 report from the McCreary Centre Society about the
4 2023 initial results.

5 Q Yeah. You're the -- what are you at the McCreary
6 Centre Society?

7 A I am the unpaid research director for the
8 society.

9 Q Okay. So when we go down here and we see the
10 team there, that's you, Dr. Elizabeth Saewyc,
11 research director?

12 A That is correct.

13 Q "Unpaid" in parentheses?

14 A Well, yes, I -- as part of my program of
15 research -- and I used to have a CIHR -- Canadian
16 Institutes of Health Research, Public Health
17 Agency of Canada applied public health chair that
18 supported an additional amount of my time to
19 focus on research, kind of teaching in-service
20 release so that I could do research. And my role
21 at -- at McCreary Centre Society at that point
22 had more dedicated time to it.

23 Q This -- this -- what would we call this? Report?
24 Is that -- is that fair? What would you call it?

25 A A report? This would be a community-friendly
26 report of summarizing the results from the --
27 the -- it's highlights of the B.C. Adolescent
28 Health Survey results, and in this case with some
29 reference to previous years since we have
30 30 years of data.

31 Q Now -- now, this version that I have, I can only
32 assume it's -- it's a proper real version. It's
33 about 85 pages long. Does that sound about right
34 to you?

35 A Yeah. It looks right.

36 Q Okay. Yeah, I mean, as I'm scrolling through
37 here, does this -- does this look familiar to
38 you?

39 A Yes.

40 Q Okay. I'm going to go quickly down to the --
41 near the end here. All these names at the end,
42 this looks familiar to you, the --

43 A So these are the public health nurses who help
44 administer the survey out in the communities,
45 yes.

46 Q Okay. So -- right. So they're -- when you --
47 when you see the report, it looks familiar?

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1 You'll see all these names towards the end of it
2 here.

3 A Yes.

4 Q Okay. And the reason I'm asking you these is
5 just -- is just to, like -- to -- to establish
6 that the person I'm working with is -- you know,
7 this is your opportunity to say, "Well, I don't
8 know if the version you have is the correct
9 version." That's -- that's the reason I'm doing
10 this.

11 A Okay. Well, it appears to be the correct
12 version.

13 Q Okay. Okay.

14 CNSL J. KITCHEN: I'd like this entered as an
15 exhibit.

16 THE CHAIR: All right. Any objection from the
17 complainants?

18 CNSL L. WADDELL: No.

19 THE CHAIR: Okay. So this is the -- I take it,
20 Mr. Kitchen, we're in the respondent's book of
21 documents, complainant's proposed expert witness,
22 which just contains this single document, the
23 McCreary Centre Society Big Picture Overview of
24 the 2023 B.C. Adolescent Health Survey Provincial
25 Results. It's 85 --

26 CNSL J. KITCHEN: It --

27 THE CHAIR: Yes?

28 CNSL J. KITCHEN: It does -- it does have one page at
29 the end, which is a separate document, but -- oh,
30 sorry. Not one page. Well, three pages long.

31 THE CHAIR: All right.

32 CNSL J. KITCHEN: But the -- this -- this page of this
33 document is already included in my friend's
34 expert materials. So that -- I'm not seeking to
35 enter this because it would be redundant, I
36 guess.

37 THE CHAIR: All right. But --

38 CNSL J. KITCHEN: So just to be clear -- just to be
39 clear, there's two documents in here. It's the
40 first one that's 85 pages long that I'm
41 looking -- well, I guess -- I guess -- yeah, it's
42 about 82 pages long. Sorry. The McCreary
43 report's about 82 pages long. That's what I'm
44 seeking to enter.

45 THE CHAIR: All right. But just for the -- for our --
46 the ease of our administrative work here, if
47 there's -- if the last document is already

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1 admitted, then I will propose to just admit this
2 whole PDF book as Exhibit 4, I think --

3 MEMBER ALAM: Yes.

4 THE CHAIR: -- we're at.

5 MEMBER ALAM: Yes.

6 THE CHAIR: Member Alam is keeping track of our
7 exhibits.

8 CNSL L. WADDELL: And I presume you're going to ask
9 the witness some questions about these?

10 CNSL J. KITCHEN: No. I'm -- I'm not going to be.

11 CNSL L. WADDELL: So can I just ask what the purpose
12 of having it entered into evidence is?

13 CNSL J. KITCHEN: Well, I intend to use it probably
14 not a lot but a little bit elsewhere, and of
15 course, you know, the witness to speak to its
16 authenticity is the one we have here in front of
17 us here today. So --

18 CNSL L. WADDELL: Would you -- would you object to
19 having it entered minus the two pages -- three
20 pages containing the names of all the public
21 health nurses that participated in this?

22 CNSL J. KITCHEN: Yeah, that's fine.

23 CNSL L. WADDELL: Okay.

24 CNSL J. KITCHEN: Yeah, well -- yeah. So if we
25 want --

26 CNSL L. WADDELL: It's just three pages toward the
27 end. It's not much.

28 CNSL J. KITCHEN: We could just cut it out. Instead
29 of me redacting it, just cut it out altogether.

30 CNSL L. WADDELL: Sure. That would be great.

31 CNSL J. KITCHEN: Yeah.

32 THE CHAIR: All right. So then, Mr. Kitchen, are you
33 going to cut that out and then resend it to the
34 tribunal to be marked as an exhibit?

35 CNSL J. KITCHEN: Yes. Let me just write that down
36 here.

37 THE CHAIR: Thank you. So we'll hold off on marking
38 it until you've had a chance to do that, and then
39 we'll just be retaining -- you can forget what I
40 said earlier about the last exhibit. We'll just
41 retain the substance of the McCreary Centre
42 Society report.

43 CNSL J. KITCHEN: Okay. Good. Thank you. I don't
44 think I'll need to share anymore.

45 Q Dr. Saewyc, I want to confirm your evidence on
46 direct with my friend there, Ms. Sokolova. You
47 said there is an increase in transgender youth

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1 seeking gender-affirming care over the last
2 few years; is that right?

3 A Yes.

4 Q Okay.

5 A This -- this has been documented in clinical
6 reports.

7 Q And so I have here, as far as what
8 gender-affirming care is, you have -- I have
9 puberty blockers, additional hormones, and older
10 adolescents will seek other treatments such as
11 surgery and body modification. So I'm going to
12 ask you some questions about that. Can you tell
13 us what puberty blockers -- well, without being
14 too technical, so in -- in as -- in as much as
15 you're able to with layman's terms, tell us what
16 puberty blockers do?

17 A Okay. So puberty blockers are a medication that
18 works on the brain and causes the chemical
19 signals to pause the gonads, so your -- your
20 testes or your -- your ovaries -- pause their
21 releasing of hormones that cause the body changes
22 during puberty that lead to changes in depth of
23 voice and Adam's apples and chest development,
24 the breast tissue development in people, as well
25 as other -- genital development and other --
26 other growth -- you know, growth spurts and all
27 of those other things that are part of puberty.

28 Puberty blockers are a medication, at least
29 in -- in the purpose of suppressing pubertal
30 development are commonly used and have been used
31 for at least 30 years. In -- in the case of
32 precocious puberty, they -- so they've had
33 well-established physiologic response in terms of
34 doing what they say.

35 Puberty blockers are -- yeah, they -- they
36 put a pause, I guess is -- is probably the easy
37 way to say it, is -- is they prevent the -- I'm
38 trying to be a lay -- they prevent those -- those
39 hormones that then trigger the next hormones that
40 then trigger growth and development when it comes
41 to puberty.

42 I will also point out that -- that they're
43 also used for other things. For example, they
44 are used in breast cancer as what they do is
45 actually block the release of these -- or these
46 chemicals that continue to circulate throughout
47 people. So when there is breast cancer that is

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1 sensitive to estrogen and so they -- they -- that
2 estrogen can cause the tumours to grow, puberty
3 blockers -- the right kind of puberty blockers
4 actually are used to stop the release of those
5 hormones. So then it's not growth puberty
6 because that's usually with adults, but it has a
7 similar effect.
8 Q So when used on females, puberty blockers will
9 arrest breast development, for example?
10 A When you're talking about prepubertal people,
11 that actually will -- will arrest the development
12 of breast tissue for all people because some
13 breast tissue actually develops in -- in people
14 assigned male at birth as well.
15 Q Okay. So it will -- it will arrest breast
16 development in both males and females?
17 A And -- well, in -- and intersex people.
18 Q Okay. Right. Any -- any human person who takes
19 these around this -- this -- the puberty stage,
20 it's going to arrest breast development?
21 A And most of the other kinds of physiological
22 secondary sex characteristics that happen during
23 puberty --
24 Q Right. So --
25 A -- yes.
26 Q -- like an Adam's apple for males, for example,
27 would it include that?
28 A Well, everyone has, to some extent -- but more
29 prominently --
30 Q Right. Right. Yes.
31 A -- yes. Yeah.
32 Q Okay.
33 A Yeah. And -- and the changing in patterns and
34 hair and the changing in -- in growth spurts and
35 the increase in size of the testes and -- yes.
36 Q Yeah, okay. Yeah. That was my next question.
37 Okay.
38 A Everything, yeah.
39 Q Yeah. You said additional hormones at one point.
40 Would that include things like testosterone
41 injections?
42 A Yes.
43 Q Okay. You said older adolescents may engage in
44 surgery and body modification. Would older
45 adolescents include children that are aged 16 and
46 17?
47 A Older adolescents generally refers to people in

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1 the 17- to 20-year-old age range in sort of
2 general conversation. For the most part, from my
3 understanding, surgery -- gender-affirming
4 surgeries are not usually performed on people
5 under age 18 globally, although there are always
6 exceptions in medical care. But I'm not -- I'm
7 not a surgeon, and I don't -- I'm not involved in
8 that.

9 Q You would agree with me that there -- there
10 are -- there have been instances -- however few,
11 there have been instances of 17-year-old females
12 in Canada having double mastectomies as part of
13 gender-affirming surgeries?

14 A I have seen news reports of this. This is not
15 part of research that I have read or been part
16 of. So I can't say for sure that I know that
17 this has happened, but I don't have any reason to
18 believe it has or hasn't happened.

19 Q You don't have any reason to doubt that it has in
20 fact happened? At -- at -- at least once?

21 A There are -- it would be very surprising for
22 it -- yeah, I -- I guess I -- I don't have any
23 reason to doubt -- to doubt one way or the other.
24 I just don't have any information about it
25 because I don't have access to the provincial
26 health data that -- that focuses on surgeries.
27 And my own research about experiences with
28 surgery did not ask about the age at which people
29 received the various surgical -- surgeries they
30 had, but their experience of timing and the
31 overall experience of it as part of those studies
32 that I mentioned.

33 Q So if a -- if a girl was to -- or a woman was to
34 tell you that she was -- that -- that she had
35 been offered a double mastectomy when she was 17
36 as part of gender-affirming care, you would be
37 surprised to hear that?

38 A I'm not sure I would be surprised or not
39 surprised. I would assume that this would have
40 been provided in the process of a full complement
41 of health care and by people who are experts in
42 the appropriate care. It's -- it's not something
43 that you can just, like, get offered in various,
44 you know, nonclinical places. And -- and, you
45 know, surgeries are -- there's a lot of processes
46 that go into that in terms of being able to
47 receive that.

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1 I mean, there -- there are diagnoses and
2 referrals and all of that other stuff that goes
3 into any surgical procedure. So I -- while I
4 don't know that I'd be surprised or not
5 surprised, I would not necessarily question that
6 if in the -- you know, perspective of the
7 appropriate processes and assessments that that
8 was determined to be the best and appropriate
9 practice for that -- that particular patient, it
10 may have happened.

11 Ultimately, medical care is usually a
12 relation -- you know, a decision based by experts
13 in that care, and I am not a surgeon.

14 Q As far as surgeries go, and we're going to stick
15 with your older adolescent category of 17 to 20,
16 some of the potential surgeries can include
17 taking the skin off of the thigh or the forearm
18 of -- of biological females who have now
19 identified as boys. It includes taking the skin
20 off of their forearm or thigh to create a
21 substitute penis or -- or a phallus and then --
22 and then attaching it to where the -- the girl's
23 vagina originally was. That is -- that is a
24 surgical option for these older adolescents
25 between 17 and 20, is it not?

26 CNSL L. WADDELL: I'm just going to note --

27 THE CHAIR: Just a moment.

28 CNSL L. WADDELL: Sorry.

29 THE CHAIR: Yeah.

30 CNSL L. WADDELL: I'm just going to note for the
31 record -- I don't want to hold things up by
32 objecting, so I'm just going to state for the
33 record that, like, we've let this go for quite
34 some time, that it's all irrelevant to the issues
35 in this case. But understanding that my friend
36 is worried when we deal with objections, I'm
37 worried, we'll just -- it's going to be faster if
38 we just let the witness answer the irrelevant
39 stuff.

40 THE CHAIR: Thank you.

41 Go ahead, Dr. Saewyc. Do you remember the
42 question?

43 A So there was a general description of something
44 that, yeah -- the terminology is phalloplasty.

45 CNSL J. KITCHEN:

46 Q Yes, that's right.

47 A But my -- so I'm not sure that it is regularly

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1 available to older adolescents in that age range.
2 Because my understanding, at least from our
3 research about the wait times and the processes,
4 is that it generally takes quite a long time on
5 the wait lists to actually get to that
6 opportunity for surgery if it is medically --
7 determined to be medically necessary and the
8 patient is determined to be appropriate for that
9 surgery.

10 So -- but I don't know because I'm not
11 involved in, like -- like, I don't do research at
12 this point with surgeons who -- like, any
13 research around surgery related to phalloplasty,
14 and I'm not someone who's providing care or
15 recommendations or anything related to that. So
16 I can't speak to that.

17 Q So your evidence would be that -- I think you
18 used the word "phalloplasty," if I'm saying it
19 right. Your evidence would be that that --
20 that that surgery is a part of gender-affirming
21 care. It is occurring, but you just don't know
22 the frequency to which it would be occurring with
23 older adolescents?

24 A That is correct. I can say that in our Canadian
25 Trans Youth Health Survey, we did ask people --
26 and this is of course young people aged 14 to 25.
27 We did ask about various types of surgery that
28 people might have had in our 2019 survey, and the
29 numbers were very small, such that we could not
30 actually do any statistical analyses among those
31 19- to 25-year-olds. So -- so my impression
32 would be -- and I don't have the report directly
33 in front of me, so I can't tell you exactly, but
34 my impression would be this was a very small
35 number of instances where people had any kind of
36 lower surgery. And I'm not sure -- I mean, it
37 may be in single digits in -- in that group.
38 There were people who indicated that they wanted
39 it, but -- or were being assessed on the wait
40 list for it, but the numbers were extremely tiny.

41 Q So there were people under the age of 18 that
42 indicated that they wanted it; is that right?

43 A No, I can't say that. I'm sorry. I would -- I
44 would --

45 Q Okay. Because it's the whole age group?

46 A So we asked the question about whether people had
47 received it, whether they were -- you know,

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1 wanted it but were -- and had been, you know,
2 like, assessed and were on the waiting list or
3 whether they had wanted it but had not started
4 that process yet. But I cannot -- I cannot tell
5 you off the top of my head how many, if any, of
6 the young people in question that answered that
7 were under the age of 18. The -- two-thirds of
8 the sample of the Canadian Trans Youth Health
9 Survey were 20 and older. The average age is 19.
10 Q Okay. Another surgery that would fall under
11 the -- the -- the phrase "gender-affirming care"
12 would include the removal of the -- if you're
13 talking a biological male who now identifies as
14 a -- as a woman, removal of the penis and
15 testicles and then using plastic surgery to
16 create a vagina or -- or something that, you
17 know, looks and feels like a vagina. You would
18 agree that that's also a surgery that falls under
19 the phrase "gender-affirming care"; right?
20 A Yes, and -- and the term for that is
21 vaginoplasty.
22 Q Yes. Thank you. And -- and -- and the
23 vaginoplasty and the phalloplasty would -- is
24 often referred to colloquially as "bottom
25 surgery"; is that right?
26 A That is correct.
27 Q Okay. And top surgery is -- is pretty much
28 exclusively a reference to the double mastectomy;
29 right?
30 A No.
31 Q No?
32 A No.
33 Q Well, because it can include -- well, okay.
34 So -- it -- is that because it also would include
35 somehow surgically creating or -- or implanting
36 or augmenting breasts onto a biological male that
37 identifies as a woman?
38 A Yes, it would include that, and it also would
39 include not just a mastectomy but pectoral
40 shaping. And there's -- there's a variety of
41 other things. There are also other surgeries
42 that would be considered not top surgery but
43 upper surgeries, and that would be, like,
44 tracheal shaving and facial feminization
45 surgeries and -- and other things that -- that
46 are above the waist.
47 Q Okay. Okay. Thank you. Is body modification

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1 just a synonym for surgery, or would there be
2 things that, like, aren't surgery but that you
3 would classify as simply or merely body
4 modification?
5 A Yes, there are things that are not surgery that
6 would be classified as body modification; so
7 electrolysis and hair removal.
8 Q Okay. Okay. Thank you. That's helpful. I
9 see --
10 A [Indiscernible] --
11 Q -- what you mean. Okay. Are you aware of the
12 US-based group called Gays Against Groomers?
13 A I have heard of them. I understand that they
14 might be a group that is often on social media.
15 I don't -- while I do have a Facebook page, I
16 don't generally use it. Since the pandemic, I've
17 very seldom posted on it. And so I'm generally
18 not on social media, so I don't -- unfortunately,
19 I'm not able to -- to know about -- but I -- but
20 I have seen news articles that mention Gays
21 Against Groomers, yes.
22 Q You referred to laws generally but also
23 specifically in the US, and I think the phrase
24 you used was "anti-trans laws" or "anti-trans
25 rights laws" or laws that would -- would remove
26 the rights of trans people. Does that all sound
27 fair? Am I giving -- am I giving a fair summary
28 of some of the stuff you said?
29 A I -- I think that would be fair, yeah.
30 Q You mentioned -- yeah, you mentioned -- you
31 mentioned a law in Texas that, I think to use
32 your words, had the effect of removing
33 gender-affirming care; is that right? Is that
34 the right --
35 A No. The law in Texas was not -- actually not a
36 law but a regulation by the Attorney General to
37 require the Child Welfare Services to investigate
38 parents of children who had received
39 gender-affirming care. I -- I do believe -- so
40 to investigate them under grounds of -- of that
41 potential as child abuse. I -- I'm not
42 completely sure, but it is certainly possible
43 that Texas has passed a law banning
44 gender-affirming care. There are a number of
45 laws that have been submitted or entered into the
46 legislative houses in a number of different
47 states across the United States. There's a

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1 couple websites that count those, and more than
2 400 various laws.

3 And there are various laws about limiting
4 health care, laws related to public, like --
5 like, public assembly, laws related to insurance
6 coverage, a variety of things. There was even a
7 law in Montana about preventing drag performances
8 in public. And the only reason I know about that
9 one is that they cited some of the research that
10 we did. The judge cited some of the research
11 that I had been a coauthor on in their decision
12 striking down that law.

13 But yes, so I know that there are -- are
14 many different laws. It's certainly quite
15 possible that Texas is one of those that has
16 banned gender-affirming care. I know Indiana is
17 another one that has.

18 Q Okay. So just -- just -- just to sum up, there's
19 a number of state-level laws that prohibit
20 gender-affirming care?

21 A There have been --

22 Q For -- sorry. Sorry. Sorry. Just hold on.
23 Hold on. Let's be more clear. There is -- there
24 is number of states that have banned
25 gender-affirming care for people under the age of
26 18?

27 A There are a number of laws that have been
28 introduced. Many have been -- well, I don't know
29 that I can say many. I would say a number have
30 been passed. A number have also been -- have
31 been in the courts and have either been put on
32 hold until the court cases go out, or I believe
33 there have been a couple that have been struck
34 down. But I can't say that from the standpoint
35 of research. That is, you know, being aware of
36 the news as it comes out in relation to the work
37 I do and see. That -- those are the kinds of
38 articles that do get in the New York Times. And
39 so I will occasionally see those.

40 Q So you -- okay. So you would agree with me that
41 there's -- there's a -- there's a significant
42 number of states that have passed laws
43 prohibiting gender-affirming care for minors --
44 sorry -- for -- for children -- or for people
45 under the age of 18? You would agree with that?

46 A When you say "significant number," can you
47 clarify what you mean by that? Because when I

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1 use "significant," that's, like, a statistical
2 term with a p-value, and I don't think that's
3 what you mean.
4 Q Well, I -- you know, the last time I -- I saw a
5 number, it was, like, 22 or twenty -- it was --
6 it was -- it was something like 45 to 50 percent
7 of the -- of the states.
8 A Okay.
9 Q Does that sound about right to you? And --
10 A So --
11 Q -- I'm talking passed laws.
12 A Yeah, so -- so I would certainly say that --
13 that, you know, 40 percent to nearly half would
14 be significant. So -- okay. That's a fair
15 enough -- thank you for quantifying that. That
16 is -- I would say that in the United States that
17 may well be a reasonable assumption or -- or
18 reason -- I don't -- I haven't counted, so I
19 can't say for sure, but, yeah, that -- that
20 sounds like that may be --
21 Q And you would agree with me it's likely enough
22 that -- that some of those laws have been upheld
23 and some of those laws have been struck down by
24 the courts when they've been challenged? Would
25 you have any reason to disagree --
26 A Yes.
27 Q -- with that?
28 A No.
29 Q Okay. Do you think it likely that such laws are
30 to -- are going to -- are going to increase in
31 the US over the next four years?
32 A I don't know.
33 Q Well --
34 A I --
35 Q -- just based on the fact that -- go ahead. Go
36 ahead.
37 A Given the polarization of the political
38 environment in the United States, as witnessed by
39 its most recent election, there are a number of
40 states that have passed different laws
41 specifically supporting or -- or continuing their
42 human rights laws and affirming those human
43 rights laws. So I don't -- it's -- it's possible
44 that there might be a few states that haven't
45 already done so that may take that up, but I
46 think a lot of that will -- well, I don't know.
47 I'm not a lawyer, but I would -- I would

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1 guess a lot of that will depend on whether any
2 major -- like, if these court cases that are
3 protesting these laws as -- as broadly making
4 medical decisions by judges, if those go through
5 appeals to a broader appellate court so that they
6 have a broader impact beyond, say, one state, it
7 is possible that those [indiscernible - automated
8 message].

9 So my understanding is if, for example, an
10 appeals court strikes down a law, that might
11 have -- what -- broader impact on other similar
12 laws in other states. But then I am not a
13 lawyer. That's just what I've, you know,
14 certainly read, that if appeals courts at -- at a
15 higher level or even the Supreme Court makes a
16 decision -- so I think the increase in those laws
17 would likely depend on determinations at -- in
18 the legal system as to whether those are
19 discriminatory or what other grounds they might
20 have for -- for throwing them out or unconfirming
21 them.

22 Q Based on your substantial knowledge of and
23 interest in US politics as it relates to this
24 issue of gender-affirming care, wouldn't you
25 expect the -- the Supreme Court to uphold those
26 laws?

27 A So my knowledge of the politics is that of a
28 citizen and someone who does research in this
29 area and who has colleagues who are health care
30 providers who do provide this kind of care. I
31 don't -- I mean, the current constellation of the
32 Supreme Court has made a variety of decisions
33 that are surprising across the perspectives. I
34 mean, I really did not expect *Roe v. Wade* to be
35 overturned, but then I wasn't knowledgeable about
36 the arguments that delete that. I don't know
37 that I would be able to make that kind of a
38 suggestion because the Supreme Court has -- yeah,
39 has -- has made decisions -- I mean, they -- they
40 follow decisions based on constitutional law, and
41 sometimes those things seem to be very different
42 from what I would expect as a layperson. So I
43 can't say.

44 I seem to recall that -- and I could be
45 wrong, and it might have been when there weren't
46 all the same people on the Supreme Court, but I
47 seem to recall that there -- there may have been

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1 some cases that they -- that actually did uphold,
2 especially discrimination about trans people.
3 But, again, I don't know. I don't have a crystal
4 ball, I -- and I don't have a law degree in the
5 United States, so I can't speak to constitutional
6 law or the likelihood of the current
7 constellation of Justices and how they're going
8 to rule on something.
9 Q Well, it's interesting because when I -- because
10 when I asked you, I didn't -- I didn't specify
11 this, but when I -- when I had asked you about
12 the increase in laws, I wasn't actually talking
13 about the state level. I was talking about
14 the -- the federal level, the executive level at
15 the federal level because of -- you know, you
16 made a number of comments about Trump and Pence
17 and, you know, Trump's, you know, sort of -- sort
18 of strategy for -- for denying trans rights.
19 And, you know, since Trump is president again,
20 that's -- that's actually what I was referring
21 to. So -- so let me just ask -- let me ask you
22 that -- go ahead.
23 A From that perspective, oh, well -- well,
24 actually, the -- the president doesn't make laws.
25 He's not a -- and he's not like a prime minister.
26 Q Right. No, I don't mean --
27 A Congress --
28 Q -- laws --
29 A -- puts the laws --
30 Q -- like in the technical sense. I mean in a very
31 colloquial sense. Like, you know -- like, for --
32 for the average person, you know, laws would
33 probably include the executive orders when the --
34 from the Oval Office; right? That's --
35 A Laws and regulations --
36 Q I -- because --
37 A -- [indiscernible - overlapping speakers] --
38 Q -- because -- because --
39 A -- [indiscernible - overlapping speakers] --
40 Q -- you're not a lawyer --
41 A Yeah.
42 Q -- right, we're talking sort of --
43 A Yeah. Okay.
44 Q As soon as I'm asking you legal questions, right,
45 I'm going to be getting into trouble, and my
46 friend's going to object, and rightfully so. So
47 we're talking --

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1 A Right.

2 Q -- we're talking -- we're talking both layman's
3 here.

4 A Laws and regulations.

5 CNSL L. WADDELL: Sorry. Even as -- can you -- can
6 you tie in or explain how the -- the layman's law
7 discussion is relevant?

8 CNSL J. KITCHEN: Well, I mean, you know, obviously
9 when she's talking in her report about all the --
10 the laws that -- that -- that she said denies
11 trans rights or laws that -- that -- that
12 prohibit gender-affirming care, like, it's in her
13 report; right? So you -- you clearly thought it
14 was okay to put it in. She wasn't talking as a
15 legal expert. I didn't object to it as it -- as
16 it being something that only a legal expert can
17 speak to because she's just talking about the
18 existence of the laws and their practical effect.
19 She's not talking about the legality of them or
20 the constitution -- constitutionality of them.

21 I mean, she's kind of strayed into that a
22 little bit here just now, but I don't think
23 anybody, you know, thinks she's trying to speak
24 as a -- as a -- as a lawyer, which she said
25 several times she's not. So if she's giving her
26 opinion as -- so far as it's relevant to do with
27 stigma and she's connecting it to laws, then
28 obviously it's fair for me to ask her about some
29 of these laws.

30 CNSL L. WADDELL: Sure. So her report, though, as I
31 understand it, is about what -- what some of the
32 literature says about connecting things with law.
33 So I have no -- if you're grounding it in her
34 report and you're -- you're -- again, you're
35 challenging her on the literature, that's totally
36 fair game. It just sounded like you were -- you
37 were getting into an interesting but esoteric
38 debate about, you know, her -- her thoughts about
39 what the Donald Trump presidency would bring, all
40 of that kind of stuff. So I'm happy if you want
41 to ground it in -- in her report or her opinion
42 generally.

43 THE CHAIR: Thank you, Ms. Waddell. Yes, I agree it
44 would be helpful to come back to the report or
45 the -- the literature that she's talking about in
46 her report and the opinion that she's given.

47 CNSL J. KITCHEN:

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1 Q The -- the -- the purpose of me raising this
2 is -- is you said something I thought was
3 interesting because you -- you described -- and
4 you correct me if I'm wrong, but you described
5 these laws as -- as a strategy to deny trans
6 rights or prohibit gender-affirming care. Is
7 that -- is that -- is that -- is that a fair
8 summary of what your evidence was?

9 A I would say that the -- the evidence was that the
10 stigma and discrimination in the homophobic and
11 transphobic speech can lead to or is often used
12 to justify passing these laws. And to the extent
13 that the laws would deny people rights like the
14 right to identify yourself by your gender, the
15 right to access health care, I do recognize that
16 in United States, unlike in Canada, health care
17 is not a right, but in -- in Canada, the extent
18 to which -- but they -- I would say that
19 discrimination in accessing health care is -- is
20 something that is part of the research that I
21 have seen.

22 So to the extent that these laws are using
23 homophobic and transphobic speech and
24 stigmatizing descriptions to pass these
25 specific -- you know, to enact these specific
26 laws, that that's what I was noting.

27 There are a lot of transgender people, both
28 adults and adolescents, who would clearly state,
29 and have done in our research, that refusing to
30 cover -- like, so the -- the health -- our
31 provincial health services, some of them had
32 previously covered or not covered
33 gender-affirming care for anyone of whatever age,
34 that -- that that would be discriminatory because
35 they find that that's denying them access to care
36 that they and their health care professionals
37 have determined they need. Or creating long,
38 like, delays and -- and so forth.

39 So to the extent that these laws are passed
40 and do take away the decision-making right of the
41 young person and/or their parents if they are
42 relevant parts of this because of the -- the --
43 the age of the young person, and the clinicians
44 who are experts in this area of all the different
45 professions -- to the extent that the laws
46 actually prevent them from being able to provide
47 care and to make decisions about what is the

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1 appropriate care in the best interests of the
2 young people and they don't do that similarly for
3 related types of care, that does seem to be
4 potentially anti-trans. Certainly the young
5 people and their parents would call it that.
6 Q So you would say, would you not, that generally
7 speaking, adolescents aged 17 to 20 generally --
8 assuming they've been assessed by a doctor and
9 all that, they -- they are in a position to make
10 decisions about whether or not to have these
11 surgeries? Like, they -- they have -- they
12 have -- they have the capacity to exercise that
13 right, as you've called it. You would agree with
14 that?
15 A In -- generally speaking -- so -- so are you
16 asking that question in terms of developmentally,
17 or are you asking that question legally?
18 Q No, no.
19 A I --
20 Q Yeah, developmentally. Developmentally.
21 Because -- because the legal -- the legal
22 switches back and forth. And so no, I'm talking
23 nonlegal. I'm talking, you know, your area of
24 expertise, psychologically, psychosomatically,
25 medically, whatever. As you said.
26 A There has been a lot of research done about the
27 capacity of adolescents to make decisions about
28 needed health care across a wide array of types
29 of health care, including sexual and reproductive
30 health care, STI testing, accessing substance use
31 treatment, et cetera. Generally speaking,
32 however, the clinicians who are providing that
33 care are assessing as part of the informed
34 consent process for any health care. They are
35 assessing the capacity of all of their patients.
36 And that would include adults and -- and seniors
37 who may have diminished capacity to -- to
38 understand and consent to the health care they
39 need. So -- but generally speaking, yes, by that
40 age, developmentally, most young people have
41 developed the capacity for abstract thought,
42 considering consequences, extrapolating things,
43 and they can and do make a number of decisions
44 about their well-being across a lot of different
45 domains of their life, including employment and
46 relationships and so forth.
47 Q You would -- you would agree with me the legal

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1 drinking age in America is 21 years old?

2 A Now? I -- yes, I believe so, though it isn't in
3 Canada, and it's certainly not in various
4 countries in Europe or other parts of the world.
5 Yes.

6 Q Right. So you would say that there's a bit of a
7 disconnect there between, you know, what --
8 what -- what medically makes sense for allowing
9 older adolescents to drink and -- and -- and the
10 legal prohibition on it in the United States?

11 A I do not recall -- because I believe this
12 happened after I came to Canada. I do not recall
13 the arguments or the evidence or the decisions
14 that went into making the law that age as opposed
15 to previously when I was living there in -- in
16 the '80s, it -- it varied state by state. I
17 recall Wisconsin being 18 and Minnesota being 19
18 at -- at some point.

19 And -- and so there is -- there are times
20 when countries or communities make decisions
21 based on public health evidence around things
22 that aren't necessarily about the capacity of
23 every person, but the capacity of specific
24 people. So the potential around seat belts or
25 the age at which people will have a driver's
26 licence and the risk to car accidents, for
27 example, that may make decisions that are based
28 on their cultural practices within their
29 communities and not necessarily based on the
30 individual capacity of adolescents and adults.

31 Q You would agree with me that puberty blockers and
32 hormones such as testosterone are at least
33 sometimes provided or made accessible to -- as
34 part of gender-affirming care to adolescents that
35 are in the age range of 15, 16, and 17? I was
36 thinking Canada, by the way.

37 A Right. Puberty blockers, not so much. I mean,
38 they -- they are sometimes provided at that age,
39 but it's a little late. Generally speaking --
40 and, again, this is -- this is always a challenge
41 because physiologically, most of physiology is on
42 a spectrum; so likewise, the timing of puberty
43 exists on a spectrum at which some people develop
44 sooner than others with a lot of different things
45 related to genetics and environment and so forth.

46 But generally speaking, most adolescents go
47 through the multiple years of puberty between --

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1 you know, starting around 8, 9, 10 and finishing
2 somewhere between 12 and 16 or 17. There are
3 some variations where sometimes people take a
4 little bit longer than that. And so generally
5 speaking, if the point is to suppress puberty, if
6 it's 16 or 17, for the most part, you've missed
7 the boat timing-wise.

8 But -- but it does depend on the person, and
9 it does depend -- because certain secondary sex
10 characteristics may take longer in -- in terms
11 of -- of emerging for people. And so that -- I'm
12 not a pediatric endocrinologist. I can't speak
13 to that -- that variation.

14 Q Okay. So in other words, it would -- it would --
15 it would -- yes, it could be administered in that
16 age, but more likely it would be actually in the
17 12, 13, 14 range?

18 A Yes.

19 Q Okay.

20 THE CHAIR: Sorry. Mr. Kitchen, just before you go
21 on, I'm noting the time and wondering if we
22 should take a break or if you're just -- if
23 you're as close to done as you thought you would
24 be.

25 CNSL J. KITCHEN: We got there already. Last
26 question.

27 Q Are you familiar with the new laws in Alberta?
28 It sounded like you would -- you were. You
29 didn't say Alberta, but you were talking about
30 potential laws in Canada.

31 A Yes, I have -- I'm not familiar as in strongly
32 familiar, or I haven't completely read -- I
33 understand they've tabled them, and I haven't
34 read through those documents. But yes, I have
35 seen the -- the news stories, and I did hear the
36 announcements that Premier Smith made last --
37 last spring about the intention of them to -- to
38 enact these laws. I'm not familiar -- are they
39 law or -- I mean, are they now law? Have they
40 been --

41 Q You know what? I -- I don't know for -- you
42 would think I would know this. I haven't dealt
43 with it yet, so I don't -- I don't know. I'm
44 like you. I'm -- I'm -- I haven't had time to
45 read them.

46 A Okay.

47 CNSL J. KITCHEN: And, Chair, just so you know,

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1 this -- I think this really is my last question.
2 That's why I asked it, because I think I'm almost
3 done. So --
4 THE CHAIR: Okay. Thank you.
5 CNSL J. KITCHEN:
6 Q Sorry, Dr. Saewyc. I cut you off. As far as --
7 as far as I know, they're -- they haven't been
8 passed yet. They've only been tabled. That's --
9 that's my understanding.
10 A Okay.
11 Q But, I mean, my -- my question isn't --
12 doesn't -- doesn't -- doesn't depend on whether
13 or not they've been passed or not. So --
14 A Okay.
15 Q And you correct me if you think I'm -- my
16 understanding, based on the same sort of -- it
17 sounds like we have similar knowledge. My
18 understanding is some of the -- the two takeaways
19 I took from what she said is -- Smith said is
20 that whatever law it is that she's tabling is
21 going to -- is going to -- is going to prevent
22 the use of new pronouns by teenagers at school
23 without parenting approval, and there would be no
24 surgeries -- no gender-affirming-care surgeries
25 for children under 16. Do you have any -- do you
26 have reason to disagree with those two takeaways?
27 A I thought -- but I could be wrong, but I -- I
28 thought when she was talking about them, it was
29 gender-affirming surgeries under 18. And --
30 Q Well, then, let's --
31 A -- I think it was also talking about --
32 Q -- go with that because --
33 A -- about puberty blockers too, but I don't
34 recall. Maybe she didn't ultimately -- she
35 talked about those in the spring, and maybe they
36 didn't end up in the law that she's tabled.
37 But --
38 Q Actually -- well, now that you mention that,
39 that -- that jogs my memory. I think it might
40 have been puberty blockers, 16, and surgeries,
41 18. I think that might have been it. Do you
42 have any thoughts on that?
43 A Okay. So -- so basically she's preventing all
44 children and adolescents from being prescribed
45 puberty blockers?
46 Q That's -- that's my understanding.
47 A Including for cancer and precocious puberty and

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1 everything?

2 Q I -- well, good question. I don't know. I
3 understood it --

4 A That's --

5 Q -- only to be for gender-affirming care, not for
6 things outside of gender-affirming care. I mean,
7 as far as I know --

8 A Okay.

9 Q -- the legislation is -- is all about
10 gender-affirming care; right?

11 A Okay. In which case -- all right. Then -- then
12 she's basically essentially saying that --

13 Q I was going to ask you if you disagree with the
14 laws, but it sounds like that's the answer that
15 you're going to give. So that's -- that's my
16 question. Now, do you -- do you -- do you
17 disagree with the -- with the laws as they -- as
18 they've been proposed?

19 A If -- if that is indeed the laws, I -- I disagree
20 with them because that is preventing
21 gender-diverse young people whose clinicians and
22 parents and them have agreed they need a pause on
23 pubertal development to better understand their
24 gender identity. That option is taken out of
25 their hands, and that's a -- a -- as I understand
26 it, that is a treatment that has been around for
27 a very long time, offered in a number of
28 countries, including the Netherlands, and is part
29 of our Canadian Pediatric Society and Canadian
30 Endocrine Standards of Care as an option for when
31 it's appropriately determined by the
32 endocrinologist and/or the pediatrician.

33 So to the extent that a government has
34 decided to make those medical decisions as a very
35 broad "nobody gets this, no matter what firm, no
36 matter what -- you know, no matter how the expert
37 people involved in that care and the young people
38 are -- and their families are understanding their
39 particular needs and treatment," yeah, I disagree
40 with that because it means that it is taking away
41 their right to get the care they need as
42 determined by them and their providers.

43 So, yeah, I would -- I would disagree with
44 that law.

45 Q Fair to say that when that law is challenged and
46 a group comes to you to ask you to be an expert
47 witness as part of that challenge, you are likely

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1 to say yes?

2 A Yes, within the scope of my specific expertise.
3 If -- if they're asking me to speak to things
4 related to endocrinology or endocrine care, I
5 can't speak to that. That's not the research I
6 do. That's not my clinical expertise. But to
7 the extent that my research, should I be asked --
8 in the same as way, as is in my CV, I was asked
9 by the other laws, which I thought is what you
10 were mentioning, the -- the law passed in
11 Saskatchewan --

12 Q [Indiscernible - overlapping speakers] --

13 A -- [indiscernible] Brunswick where I have been
14 asked to provide the research evidence we have to
15 the extent that that would provide information
16 for the courts to make their determination.

17 CNSL J. KITCHEN: No further questions arising on
18 cross.

19 THE CHAIR: Thank you.

20 Ms. Waddell, do you anticipate anything in
21 redirect?

22 CNSL L. WADDELL: I highly doubt it, but if I could
23 use the afternoon break to just look at my notes
24 and -- or whatever break we're going to take to
25 look at my notes and just confirm, that would be
26 great.

27 THE CHAIR: All right. So we are due for a 15-minute
28 break. Are you -- just before we take the break,
29 I just want to ask complainant's counsel whether
30 you are intending to start with Teacher C this
31 afternoon or have a teacher who's available or
32 what your idea is for the afternoon.

33 CNSL L. WADDELL: We probably aren't, but I would just
34 suggest that we have a quick chat here and then
35 can confirm after the break.

36 THE CHAIR: All right. That's fine. Sorry. One more
37 thing before we take our break. We have two
38 connections to the hearing that just show
39 "meeting guest." Oh, one of them, it's being
40 pointed out to me, is Mr. Kitchen. And I think
41 the other one -- I think the other one has
42 usually been Adrian Smith (phonetic). And so
43 with apologies for having to call you out again,
44 Adrian Smith, can you just confirm that this is
45 you on the line so that we know who we have here?

46 Oh, you know what? It may be -- this may
47 be -- sorry. I'm wrong. I think this may be

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1 actually complainant's counsel.
2 CNSL L. WADDELL: Oh, the document-share one?
3 THE CHAIR: No, it's you. Sorry. Okay.
4 CNSL L. WADDELL: No, we're not -- we're not logged in
5 as the -- on the document share anymore.
6 THE CHAIR: No, no, it's you. You and Mr. Kitchen are
7 both showing up as "meeting guests - unverified."
8 So I --
9 CNSL L. WADDELL: Oh, okay.
10 THE CHAIR: That's thrown me. But I think -- sorry.
11 Apologies to anyone. All right. So we're going
12 to take a 15-minute break. I'll ask everyone to
13 come back at 3:45.
14 And, Dr. Saewyc, please do hang around, and
15 we'll see if there's a last couple of questions
16 for you. Thanks very much.

17
18 (WITNESS STOOD DOWN)

19
20 (PROCEEDINGS ADJOURNED FOR RECESS) (3:27:50)
21 (PROCEEDINGS RECONVENED) (3:43:57)

22
23 ELIZABETH SAEWYC, a witness,
24 recalled.

25
26 THE CHAIR: All right, everyone. Come on back. There
27 we are. Ms. Waddell, anything in redirect?
28 CNSL L. WADDELL: No further questions. Thank you.
29 THE CHAIR: Thank you.

30 Dr. Saewyc, those are all of the questions
31 we have for you in this proceeding. Again, I
32 want to thank you very much for your time and
33 your expertise and your evidence in this
34 proceeding. We really appreciate when people
35 take the time to come and testify at the Human
36 Rights Tribunal. So thank you for the -- for
37 your work. You are now free to disconnect from
38 the proceeding, and the only caution that
39 continues to apply to you is not to talk to
40 anyone who may testify after you. But other than
41 that, you're free of any obligations to us. So
42 thank you very much.
43 A Thank you.
44 THE CHAIR: Take care.

45
46 (WITNESS EXCUSED)
47

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1 THE CHAIR: All right. So, complainant's counsel,
 2 what would you like to do?
 3 CNSL L. WADDELL: We are not going to call our next
 4 witness, not because we don't want -- have her
 5 lined up, although I think her time is -- she's
 6 probably passed her window now anyway, but
 7 because yet another post has come up, this one
 8 identifying Teacher A, by a different person.
 9 So we need to -- "we" being we need time to
 10 consider this and figure out how we can possibly
 11 provide a safe space for these individuals who
 12 are supposed to be protected by the publication
 13 ban to testify. So, yeah.
 14 CNSL J. KITCHEN: Are we going to see that post?
 15 CNSL L. WADDELL: Mr. Kitchen, you will see that post,
 16 but you -- if you check your Twitter account, you
 17 are tagged in it. So it is available to you now
 18 if you wish to, but I will send you a copy.
 19 CNSL J. KITCHEN: [Indiscernible - automated message]
 20 Twitter, so I need to see a copy.
 21 CNSL L. WADDELL: I'm sure you haven't been checking
 22 it. So yes, we will happily send one over as
 23 soon as we are done here today.
 24 THE CHAIR: All right.
 25 CNSL J. KITCHEN: Okay. Well, hold on now. Are we --
 26 so are we not -- so we're not going to deal --
 27 well, I mean, we --
 28 CNSL L. WADDELL: Yeah, I --
 29 CNSL J. KITCHEN: -- have 45 minutes, so, I mean --
 30 CNSL L. WADDELL: I just read the -- the text of it,
 31 like, five minutes ago. So I haven't even
 32 formulated any thoughts about what I want to
 33 propose be done. So I've got to think about it
 34 as well. You can look at it, and, yeah, we'll
 35 figure out what we want to propose. But
 36 something is very, very wrong with the process,
 37 and we've got to figure out what we can do to
 38 actually give effect to that publication ban.
 39 So...
 40 THE CHAIR: All right. Well, it sounds obviously like
 41 we're not going to hear any more evidence today.
 42 Ms. Waddell, you'll communicate with Mr. Kitchen
 43 as you see fit about whatever you're going to
 44 come back and propose or -- if anything and want
 45 to address on Monday morning with us. But I'll
 46 leave you to -- to do that.
 47 And then once you do have an idea of how

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1 you'd like to go forward, will you email your
2 friend and the tribunal to give some indication
3 of who you expect to call on Monday or the order
4 of --
5 CNSL L. WADDELL: Yes. Yes --
6 THE CHAIR: -- the schedule and so on.
7 CNSL L. WADDELL: -- of course. I'll -- I'll -- I'll
8 see if we can agree on maybe steps to be taken.
9 If not, you know, we'll -- we'll -- I will
10 propose a process for dealing with it, and I'll
11 of course let him know who we can deal with on
12 Monday.
13 THE CHAIR: All right. Thanks very much. Is there
14 anything else before we adjourn, then, for the
15 weekend?
16 CNSL L. WADDELL: Did we get all -- I'm just thinking
17 about any documents that -- we sent out a copy of
18 that email with the email address. I haven't
19 looked at my email to see if -- I think the only
20 takeaway for Mr. Kitchen was to provide a copy of
21 the McCreary report minus those three pages that
22 he wanted entered as an exhibit.
23 CNSL J. KITCHEN: Yeah, that's right.
24 CNSL L. WADDELL: And should --
25 CNSL J. KITCHEN: I've got to do that.
26 CNSL L. WADDELL: -- we -- what are we -- what -- what
27 are -- should we -- well, I guess we can mark it
28 on -- on Monday and give it a number when we've
29 all got it in hand.
30 THE CHAIR: I think we can mark it once we have it in
31 final version, although --
32 CNSL L. WADDELL: Sure.
33 THE CHAIR: -- it seems like -- Member Alam's pointed
34 out it appears to be the same document at Tab 19
35 of the complainant's book of documents. So I
36 don't know whether it may already be in in its --
37 CNSL L. WADDELL: Okay. If it is, well, then we don't
38 need to -- we can take a look and -- and figure
39 that out.
40 THE CHAIR: But --
41 CNSL J. KITCHEN: Wait. What's -- 19?
42 THE CHAIR: I think so.
43 MEMBER ALAM: Yes.
44 CNSL L. WADDELL: You're talking about the experts
45 book --
46 THE CHAIR: The expert's --
47 CNSL L. WADDELL: -- right?

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1 THE CHAIR: -- book.

2 MEMBER ALAM: Correct.

3 CNSL L. WADDELL: Yeah.

4 CNSL J. KITCHEN: Yeah, looks like it's -- hold on.
5 Let me just go through it here. Looks like it's
6 the -- looks like it's the same thing.

7 CNSL L. WADDELL: Yeah, it does.

8 CNSL J. KITCHEN: Yeah. Well, let's -- so -- so
9 forget my book, then. We'll just -- we'll
10 just -- we'll just go with the complainant's
11 book.

12 CNSL L. WADDELL: Yeah.

13 THE CHAIR: Okay. So then, Mr. Kitchen, your homework
14 is cancelled. We have the email where --
15 where -- we're dealing with that next week after
16 Mr. Neufeld's evidence. I don't think there's
17 any other -- I saw your hand, Ms. Sokolova, so
18 I'll come to you in a moment, but I don't think
19 there's any other kind of dangling issues. No?
20 Okay.

21 Ms. Sokolova, I saw your hand there. Is
22 there something you wanted to address?
23 CNSL M. SOKOLOVA: Yes. Thank you. Sorry. I was
24 just wondering if we had a -- if we're still
25 starting at 9:30 on Monday or if we're thinking
26 of changing that start time to 9:00, just because
27 it might be my colleague Sarah Khan. I just want
28 to let her know to arrive at the right time.

29 THE CHAIR: Thank you. We'll start at 9:30 as -- as
30 scheduled. Yeah. And we'll -- we'll expect
31 Ms. Khan for all or part of next week.

32 All right. Well, in that case, we will
33 adjourn for the day and for the week. I thank
34 everyone for -- for your work this week. We'll
35 be back on Monday morning at 9:30, hopefully with
36 some way to -- to improve how this proceeding has
37 been going if that's necessary.

38 So I'll -- I'll wait to hear from you all on
39 Monday morning about if there's any other steps
40 we need to be considering, but other than that,
41 thank you for your work this week, and I do hope
42 you get some bit of a weekend.

43 I will remove everyone from the meeting now.
44 Thanks.

45 CNSL L. WADDELL: Thank you.

46
47 (PROCEEDINGS ADJOURNED TO DECEMBER 2, 2024,

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Reporter's certificate

1 AT 9:30 A.M.) [3:50:44]
2
3
4

5 REPORTER'S CERTIFICATE
6

7 I certify that this is a true and accurate
8 transcript of these proceedings recorded on sound
9 recording apparatus, transcribed to the best of
10 my skill and ability in accordance with
11 applicable standards.
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22 Court Reporter, Certificate Number 621
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**IN THE MATTER OF THE *HUMAN RIGHTS CODE*,
RSBC 1996, C. 2010 (as amended)**

**AND IN THE MATTER of a complaint before
The British Columbia Human Rights Tribunal**

BETWEEN:

British Columbia Teachers' Federation obo Chilliwack
Teachers' Association

COMPLAINANT

AND:

Barry Neufeld

RESPONDENT

AND:

B.C.'s Human Rights Commissioner

INTERVENOR

**PROCEEDINGS AT B.C. HUMAN RIGHTS TRIBUNAL HEARING
(VOLUME VI)**

ORIGINAL

THERE IS A PUBLICATION BAN IN EFFECT PROHIBITING THE
PUBLICATION OF ANY INFORMATION THAT COULD IDENTIFY THE
TEACHERS WHO TESTIFIED, OR MAY HAVE TESTIFIED, IN
CONNECTION WITH THIS COMPLAINT: CHILLIWACK TEACHERS'
ASSOCIATION V. NEUFELD (NO. 2), 2024 BCHRT 180 [CTA
(NO. 2)]; AMENDED BY LETTER DATED FEBRUARY 25, 2025.

File: CS-003172

**IN THE MATTER OF THE *HUMAN RIGHTS CODE*,
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RESPONDENT

AND:

B.C.'s Human Rights Commissioner

INTERVENOR

**PROCEEDINGS AT B.C. HUMAN RIGHTS TRIBUNAL HEARING
(VOLUME VI)**

ORIGINAL

Tribunal Members:	Devyn Cousineau, Robin Dean, Laila Said Alam
Counsel for the Complainant:	Lindsay Waddell, Alanna Tom, Stefanie Quelch, Chris Fenje
Counsel for the Respondent:	James S.M. Kitchen
Counsel for B.C.'s Human Rights Commissioner:	Sarah Khan, Maria Sokolova

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By videoconference
December 2, 2024

(VIDEOCONFERENCE COMMENCES) [9:31:01]

THE CHAIR: Good morning, everyone. It's December 2nd, and I'm recalling the case of *B.C. Teachers' Federation obo Chilliwack Teachers' Association*, CS-001372. I don't yet see Mr. Kitchen connected, and so before we get started, we'll just wait another few minutes until -- until he's connected.

CNSL A. WADDELL: Just going to test the mic right now while -- we've had so many issues. Everybody can hear me?

THE CHAIR: Yeah.

CNSL A. WADDELL: Okay. Great. Thanks.

TEACHER A, a witness,
recalled.

THE CHAIR: Good morning, Teacher A. We're just waiting for Mr. Kitchen to arrive, and then we'll get started, but we're just -- in case you wonder why we're all sitting in silence, we're just waiting for -- for someone else to join us. Yeah. Mr. Neufeld, did you speak to him? You're muted.

THE RESPONDENT: Yes, I just spoke to him. He started to connect, and all of a sudden, his internet went down.

THE CHAIR: Okay.

THE RESPONDENT: He's trying to solve that now.

THE CHAIR: Okay. Thank you. We'll just keep waiting. Good morning, Mr. Kitchen.

CNSL J. KITCHEN: Good morning. You have my apologies for that. I -- I've been using the internet and my computer just fine this morning. I went to click on the link to join, and I had no internet. But in any event, I was able to get it back, so here I am, and I apologize. So I apologize for being late.

THE CHAIR: That's okay. Thank you. So nothing's happened yet. We've just been waiting for you. Teacher A is here. And I -- I see also Ms. Khan is here for B.C.'s Office of the Human Rights Commissioner. Hello. And I see as well, we have

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1 Clint Johnston today, and I'm -- I'm
2 understanding that Mr. Johnston is with the BCTF;
3 is that right?

4 CNSL A. WADDELL: That's correct, Madam Chair. He's
5 the president of the BCTF.

6 THE CHAIR: Okay.

7 CNSL A. WADDELL: And it's J-o-h-n -- it's
8 J-o-h-n-s-t-o-n.

9 THE CHAIR: Okay. Thank you.

10 CNSL A. WADDELL: And we also have Robin Toscza back
11 who is the second VP of the BCTF.

12 THE CHAIR: Thank you. And before we continue with
13 Teacher A's testimony, we've seen the
14 correspondence regarding Mr. Neufeld's witnesses,
15 and we'd like to -- we'll deal with that when you
16 start your case, so we don't want to deal with
17 that first thing, but is there anything else that
18 has arisen that we need to deal with before we
19 start with Teacher A?

20 CNSL J. KITCHEN: Nothing on my end.

21 CNSL A. WADDELL: Nothing on our end either. Oh. I
22 have one tiny housekeeping thing which is that I
23 spelled -- I spelled our articling student's name
24 incorrectly like the bad principal that I am. It
25 should be -- so it was Chris Fenje, and it should
26 be F-e-n-j-e. Thank you.

27 THE CHAIR: Thank you. All right. In that case,
28 Teacher A, we've talked a little bit about this
29 already, but I just want to confirm with you who
30 is on the -- the call with us this morning. You
31 should see, obviously, complainant's counsel
32 there, Ms. Tom, Ms. Waddell, and Ms. Quelch. And
33 then you've already seen Mr. Johnston and Robin
34 Toscza. And Reid Clark is here also from the
35 Teachers' Association. Mr. Neufeld's on video,
36 as is his counsel, Mr. Kitchen. And Sarah Khan
37 who is the lawyer for the B.C. Human -- Office of
38 the Human Rights Commissioner. And that's
39 everyone who is on video.

40 As we said last time, we also have a number
41 of members of public who are observing. One
42 member of the public is -- has not been permitted
43 to observe while the teachers are testifying, and
44 I can confirm they are not here.

45 Do you have any questions about who's on the
46 call or about the proceeding? Okay. And so as
47 you know -- and actually -- sorry. Just --

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Proceedings

1 Teacher A, I'm going to do -- run a test here.
2 I'm letting in a member of the public. Can you
3 let me know if you hear a message announcing that
4 they're entering the meet? Okay. I'm going to
5 admit them now, and tell me if you can hear
6 anything. You hear that? Okay. All right. So
7 that -- that sound can be quite disruptive when
8 you're giving testimony. So while Teacher A is
9 testifying, I'm not going to be letting in
10 members of the public during the kind of off
11 times because it's disruptive, so thank you for
12 confirming that.

13 So as you know, you're here today to answer
14 questions from Mr. Kitchen in cross-examination.
15 One of the purposes of cross-examination is to
16 test your evidence, and so it can -- many people
17 find this to be, you know, a difficult
18 experience. And if that's true for you, then --
19 then that wouldn't surprise me. We'll aim to
20 take a break around 11 o'clock, but if you need
21 other breaks, you can let me know. If you don't
22 understand a question, you can ask for
23 clarification. If you don't know the answer,
24 that's a fine answer to a question as well.

25 Do you have any questions about this part of
26 the process? No. Okay. All right.
27 Mr. Kitchen, go ahead when you're ready.

28 CNSL J. KITCHEN: Sorry. Just one quick question for
29 my friend. Ms. Waddell, you're -- you're going
30 to be calling Teacher C later today when we
31 complete with Teacher A? That's still the plan?

32 CNSL A. WADDELL: Correct.

33 CNSL J. KITCHEN: Okay. Thank you. Okay. I -- I
34 can't quite see Teacher A yet because I need
35 to -- there we go. I've got it switched now.
36 Got my view figured out.

37
38 CROSS-EXAMINATION BY CNSL J. KITCHEN:

39
40 Q Okay. Teacher A, I'm going to refer to you as --
41 as -- as "Teacher A." You understand that when I
42 say "Teacher A," I'm referring to you; is that
43 right?

44 A Yes.

45 Q Okay. Thank you. Let's -- so I'm going to
46 somewhat follow the chronology of the testimony
47 that you gave here last week in direct. So let's

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Teacher A (for Complainants)

Cross-exam by Cnsl J. Kitchen

1 start with you identified an issue of -- of -- at
2 the beginning of your testimony -- as a queer
3 human. Can you explain to me what that means?
4 A Yeah. Queer is an umbrella term that kind of
5 catches the full 2SLGBTQIA -- IA+ spectrum.
6 Q So as far as you're concerned, it included -- it
7 captures all, you know, gay, bisexual, lesbian,
8 trans people?
9 A That is my understanding of it, yes.
10 Q Okay. And I -- I'm not going to ask this for --
11 for -- to do with anything personally, but of
12 course, you know, when a person claims
13 discrimination, they have to establish that they
14 have a -- a relevant protected characteristic.
15 So queer, of course, is not protected in the
16 *Human Rights Act* as you probably know. So what I
17 need to know is do you identify as gay or
18 lesbian?
19 A Yeah. I would -- I would definitely identify as
20 lesbian.
21 Q Okay.
22 A Queer is a -- is a more comfortable term for me,
23 but I think if we're using only that binary of
24 gay or lesbian, then I would fit under the
25 lesbian category.
26 Q Why is queer more comfortable for you?
27 A Because queer also would dig into gender rather
28 than just sexuality, so they're very different.
29 Q Okay. So speaking of the gender side of things,
30 what would be the gender identity that you
31 identify with or as?
32 A I would identify as being gender fluid.
33 Q Okay. And can you explain for me what that
34 means?
35 A Yeah. It means that I don't feel like the binary
36 works for me. I don't feel female all the time
37 nor do I feel male all the time.
38 Q Is it then fair to say that sometimes you -- to
39 use your terminology, sometimes you feel female;
40 is that right?
41 A Absolutely.
42 Q And sometimes, you feel male?
43 A I wouldn't say that I feel male ever, no.
44 Q Okay.
45 A I feel less female sometimes.
46 Q Okay. So when -- those times when you feel less
47 female, why -- why is it then that you're not

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Teacher A (for Complainants)
 Cross-exam by Cnsl J. Kitchen

1 still -- you know, your identity is still not
 2 woman or female?
 3 A Because I don't identify with -- with woman when
 4 I feel that way. That label doesn't work for me
 5 at that time.
 6 Q Okay. Is there anything then -- when -- when
 7 that time comes, is there anything then that you
 8 would identify with or that would be accurate to
 9 describe how you feel?
 10 A Can you clarify the question.
 11 Q Those times when you're not feeling female or
 12 fully female and -- and you don't -- so you don't
 13 identify as female, what -- what status or
 14 identity or description would describe how you do
 15 feel?
 16 A I guess it would be closer to nonbinary.
 17 Q Okay. And you -- can you describe for me what
 18 that means?
 19 A I mean, that's -- that's a huge question that I
 20 may feel one way about and others may feel other
 21 ways about. But for myself, it is a -- a -- a
 22 lack of gender, not feeling like the -- the
 23 female category fits me at that very moment. It
 24 feels uncomfortable.
 25 Q Okay. So you would say -- would you say that you
 26 don't have a gender when you feel that way?
 27 A I would say that the gender is fluid and
 28 nonbinary.
 29 Q Right. But is that the same as saying that when
 30 you feel that way, you're sort of -- you're sort
 31 of agender, like, you're no particular gender?
 32 You're kind of in the -- the space between
 33 identifiable genders?
 34 A Sometimes, yeah.
 35 Q Can you help me understand the frequency, the
 36 frequency that you feel like a -- a female and
 37 the frequency that you feel like --
 38 CNSL A. WADDELL: Sorry. I'm just going to object to
 39 this. The witness is clearly -- my friend asked
 40 a number of questions to situate her within the
 41 class, which is relevant, but this line of
 42 questioning, to our mind, appears to be
 43 irrelevant, and it's deeply personal. My friend
 44 acknowledged in the outset of this chain of
 45 command that, you know, personal wasn't
 46 necessarily appropriate here, so we're objecting
 47 on the basis of relevance.

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Teacher A (for Complainants)
Cross-exam by Cnsl J. Kitchen

1 THE CHAIR: Thank you. Mr. Kitchen.

2 CNSL J. KITCHEN: Well, obviously, exploring the
3 gender identity of the -- the complainant or
4 the -- you know, the -- the member of the class
5 of complainants is highly relevant because we
6 need to -- to nail down where she lands in the --
7 in the protective characteristic. Okay. So, you
8 know -- so she established that she's -- that she
9 identifies as a lesbian, and I might ask a few
10 more questions about that but probably not a lot
11 because that's probably fairly self-explanatory
12 although, I need to clarify. But the -- the
13 gender identity thing is a little less clear
14 because as she's testified, she's -- she's gender
15 fluid, so it -- so it changes, right? Now if --
16 if we had a case where it was biological female
17 that identified as a male all the time, that's a
18 lot more simple, right, and so I don't need to
19 continue to explore it. But with this witness, I
20 need to explore it so that we can understand her
21 particular gender identity or I guess I would say
22 gender identities, okay?

23 So I'm -- I'm not grilling her on her, you
24 know, her personal life to try to make her
25 uncomfortable, right, as -- as sometimes is done
26 in cross-examination. This is -- this is -- this
27 is an intellectual exercise, and it's -- it's one
28 that legally needs to be done because it goes to
29 the legal test of where -- where do we have the
30 gender identity discrimination with this
31 particular person. And especially with gender
32 identity, it seems to me that it can be very
33 different from one person to the other, and so
34 the discrimination, if there is any, could look
35 different and for how we would establish
36 discrimination with one person who is claiming
37 gender identity from another one could be very
38 different.

39 So I mean, the -- the witness clearly isn't
40 uncomfortable. I think she understands that I'm
41 not looking to -- to -- to dig into her personal
42 life to somehow embarrass her or make her
43 uncomfortable. I'm exploring from a -- from a --
44 from an intellectual and legal perspective what
45 this actually means, and that is relevant to the
46 complaint. Once I think we've finished exploring
47 it, I'm going to move on.

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Teacher A (for Complainants)
Cross-exam by Cnsl J. Kitchen

1 THE CHAIR: Okay. Thank you, Mr. Kitchen. I think
2 we -- we have the evidence about Teacher A's
3 membership in the class, about her sexual
4 orientation and gender identity. She said she's
5 gender fluid. She's given a bit of evidence
6 about what that means, and I think that's --
7 that's sufficient, and anything else is getting
8 too personal and not -- not helpful to the issues
9 we must decide, so can you move on, please.

10 CNSL J. KITCHEN: Well, so the problem with that is
11 that the respondent has to be able to explore
12 what he believes in good faith is relevant to his
13 legal argument; okay? So you might have already
14 predecided what the relevant issues are for the
15 decision that you've already decided you want to
16 make, but you have to permit the respondent to --
17 within -- within the bounds of reason, obviously,
18 okay, but -- but relevance is an extraordinarily
19 broad category. And even if a decision maker has
20 sort of predecided the issue, what the -- what
21 the relevant legal issues are, there needs to be
22 a lot of leeway for a respondent to come in and
23 cross-examine on the issues that are relevant,
24 the facts that are relevant to the legal
25 arguments and case that he is going to make,
26 okay?

27 Now if I was asking her what race she was,
28 okay, that would not be relevant because this is
29 not a case about race, right? So that falls
30 outside the very broad -- there is -- there is
31 limits on what's -- on what's relevant; right?

32 THE CHAIR: Yeah.

33 CNSL J. KITCHEN: Like, that's not logically relevant.
34 So --

35 THE CHAIR: Right. Mr. Kitchen, I'm -- I'm a bit
36 confused about what's happening here. We already
37 had submissions on the objection. I've made a
38 decision, and now you're continuing to make
39 submissions, and that's just not how this goes.

40 CNSL J. KITCHEN: Yes. No, I know. Look, I have -- I
41 have -- I have to --

42 THE CHAIR: So we've made the decision, and you're
43 talking while I'm talking again which I've said
44 repeatedly --

45 CNSL J. KITCHEN: No. You -- you just interrupted me,
46 okay? So I was the one talking, and you
47 interrupted me.

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Teacher A (for Complainants)
Cross-exam by Cnsl J. Kitchen

1 THE CHAIR: No. I know. But, Mr. Kitchen, this is --
2 I understand I interrupted you. This is our
3 proceeding, and when you're talking about things
4 that have already been decided, it's not a good
5 use of our limited time together. You've made
6 your submissions on the issue, and now we need to
7 move on. And furthermore, in the course of
8 making your submissions, you've made a couple of
9 comments, as you've done throughout the
10 proceeding, suggesting that we've predetermined
11 the issues and so on. And I'm just going to ask
12 that if you want to make an argument of whatever
13 you're alluding to, bias, something, make it
14 properly, make it directly, and kindly refrain
15 from kind of these comments suggesting that
16 there's something untoward going on. Those
17 aren't helpful. In any event --

18 CNSL J. KITCHEN: Well, I don't -- I don't --

19 THE CHAIR: Okay. But -- and so, Mr. Kitchen, just
20 please go on to ask your next question. We need
21 to move -- we need to make decisions and move on;
22 okay?

23 CNSL J. KITCHEN: Right. I know, but I didn't get any
24 reasons from you, right? So I -- again --

25 THE CHAIR: I -- I -- you did get reasons from me. I
26 said there has been evidence to establish her
27 sexual orientation and gender identity that is
28 sufficient. Further probing in this area is not
29 relevant and is not -- and is unduly invasive of
30 her privacy. I -- I get -- I understand you
31 don't agree with my reasons. That's clear. But
32 those are the reasons, and so now it needs to go
33 on to the next question.

34 CNSL J. KITCHEN: Okay. So just last point, let me
35 ask you this. If -- if you want, I can -- I
36 can -- I can, you know, state on the record the
37 respondent's position as -- as far as his
38 concerns about the Tribunal having predecided the
39 issues and -- and predecided perhaps the ultimate
40 issue. I mean, if that's -- if that's what you
41 would prefer me to do, I'm prepared to do that.

42 THE CHAIR: Well, I think the proper way to raise
43 that -- I don't want to waste more of Teacher A's
44 time dealing with this. If you have a recusal
45 application or an application or something that
46 you want to bring, bring your application, not
47 during -- in the middle of someone's testimony,

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Teacher A (for Complainants)

Cross-exam by Cnsl J. Kitchen

1 but you can bring an application, and we'll just
2 consider an application. But suggesting, if
3 you've been unsuccessful in an objection, that
4 this is indicative of some wider predetermination
5 is -- is not helpful to the issues.

6 So if we could please get back to the
7 questions for Teacher A, moving on to the next
8 subject area of your cross-examination.

9 CNSL J. KITCHEN:

10 Q Teacher A, I'm going to -- I'm going to ask you
11 this, and your -- your counsel may -- may object,
12 so you can pause for a second before you answer.
13 Do you identify as woman more often than you
14 identify as anything else?

15 CNSL A. WADDELL: Again, we -- we just went through
16 this. We object on the basis of relevance. And
17 I think this falls within the scope of what the
18 Tribunal just determined. If I'm incorrect about
19 that, then we, again, object on the basis of
20 relevance.

21 THE CHAIR: Yes. This is what we just discussed,
22 Mr. Kitchen. I thought my -- I apologize if I
23 wasn't clear. Can we move on now from the
24 questions probing her gender identity? We have
25 her gender identity. She's gender fluid. She's
26 already explained that. Can we move on from this
27 question.

28 CNSL J. KITCHEN: No. She -- we -- we do not have her
29 gender identity. She's multiple gender
30 identities. She's established that. I wasn't --
31 I was almost done, and you decided to intervene.
32 And so now I'm trying to -- to get what I -- what
33 I know is relevant in any way that I can. And --
34 and I would have already been done this had you
35 not intervened to stop what was clearly a
36 relevant line of questioning, so I'm going to
37 keep trying for a little while yet because this
38 is important to the respondent's case, and so I
39 need to be able to try and get it, okay?

40 So that -- that was going to be my last
41 question. I just wanted to know one way or the
42 other the answer to that, and I was going to move
43 on.

44 THE CHAIR: Okay. Well, move on, please.

45 CNSL J. KITCHEN:

46 Q Teacher A, is it fair to say that in -- in total,
47 there's -- there's two -- there's two gender

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1 identities that you identify with, the female and
 2 then the nonbinary one. Is that fair?
 3 CNSL A. WADDELL: Objection. Again, this is the same
 4 subject matter. I think you've got everything
 5 you need about her gender identity. I think the
 6 witness has effectively already given this
 7 evidence that Mr. Kitchen is putting to her
 8 again, and -- and this is part of the same
 9 subject matter that is no longer relevant now
 10 that he has probed her membership in the class.

11 THE CHAIR: We've had this evidence already,
 12 Mr. Kitchen. You've asked this question before.

13 CNSL J. KITCHEN: Right. No. I'm just making a point
 14 that I wasn't -- I wasn't done, and so stopping
 15 me before I'm done when I've been on a topic for
 16 no more than four minutes is -- is not going to
 17 move this proceeding forward more quickly. The
 18 respondent's not going to just be okay with that.
 19 He -- he's here to put in his case. This is not
 20 supposed to be a -- a -- sort of just a process
 21 to get it over with and done with. It's -- it's
 22 supposed to have both sides put in their case,
 23 and they make their arguments, and we explore all
 24 the relevant evidence. It's not supposed to be,
 25 well, let's just get through it and do the
 26 motions so we can get to the outcome at the end.

27 So, you know, I -- I am going to move on
 28 now, but I hope it's clear that it's not going to
 29 be helpful if -- if this continues where -- where
 30 I can't explore the topics that I need to explore
 31 for, you know, more than three or four minutes
 32 before someone cuts me off. It's -- it's not
 33 going to move this forward faster. It's not
 34 going to help the integrity of the process, and
 35 it's -- I don't think it's -- it's helpful to
 36 having a proper hearing at all.

37 THE CHAIR: Well, Mr. Kitchen, I'm not sure -- I know
 38 you haven't been at the B.C. Human Rights
 39 Tribunal before, but this is how it works. If
 40 someone makes an objection, we rule on the
 41 objection, and typically, then you move on. You
 42 respect the ruling, and you move on, and then it
 43 doesn't have to take this much time. So that's
 44 the expectation here. If your friend objects,
 45 I'm going to rule on the objection. The decision
 46 that I make is final on the objection, and then
 47 you move on to the next thing, and then you

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1 gather these arguments for whatever purpose you
 2 want to use later. But that's how the proceeding
 3 can go smoothly. If we're going to keep having
 4 back and forths, you're going to keep asking the
 5 same question we've already ruled on, it's --
 6 it's not -- that's not appropriate. So I'm glad
 7 to hear you're going to be moving on.

8 CNSL J. KITCHEN: Well --

9 THE CHAIR: No. I'm glad to hear you're going to be
 10 moving on. Move on.

11 CNSL J. KITCHEN: Just -- just so you're aware, I've
 12 been in front of several other tribunals, and
 13 sometimes when questions get objected to, counsel
 14 does continue to ask similar questions, and then
 15 the objections come in. And the purpose of that
 16 is to build a record. It's not to just to annoy
 17 everybody. It's -- it's to build a record, and
 18 so that's part of what I'm doing now. So just so
 19 you understand, I'm not doing it just to make
 20 everybody angry. I have to build a record. It's
 21 my job as the advocate for the respondent.

22 Q Teacher A, you -- I'm just going to ask you a
 23 couple questions to -- to clean up the sexual
 24 orientation bit. So can you describe for me
 25 the -- the -- the impact that your -- your
 26 changing or gender fluid gender identity has on
 27 your -- your sexual orientation? And when I'm
 28 asking this again, this is not meant to be some
 29 kind of personal thing. I'm asking for more of
 30 an intellectual perspective to help me
 31 understand; okay? What is the relationship
 32 between the gender identities and -- and the
 33 sexual orientation as -- as -- as a -- well, as a
 34 queer person but as a -- but as a lesbian?

35 CNSL J. KITCHEN: I think it's irrelevant, but in the
 36 interest of time, I'll just let -- let the
 37 witness answer the question.

38 THE CHAIR: Thank you.

39 A For me, it has no difference. It doesn't make a
 40 difference. For others, it might. I can only
 41 speak to my own experience.

42 CNSL J. KITCHEN:

43 Q Okay. And I know you don't like the word
 44 "lesbian", so fair to say that you remain only
 45 sexually attracted to -- to -- to women, which is
 46 to say biological females? Like, regardless of
 47 your gender identity, that sexual orientation

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1 stays -- it's consistent, stays the same?
 2 A First of all, I have no problem with the word
 3 "lesbian". I think it's a great word.
 4 Q Okay. Okay.
 5 A And no, I didn't -- I didn't testify that I was
 6 only interested in biological females.
 7 Q Okay.
 8 A And I don't think that the word "lesbian" only
 9 encompasses those who were assigned female at
 10 birth.
 11 Q Okay. So you would believe when it comes to --
 12 when it comes to a female who is assigned at
 13 birth and when it comes to lesbian, do you
 14 believe then that -- that -- that people who were
 15 assigned male at birth but then identify as -- as
 16 female at some point can then, you know, come
 17 into the category of lesbian?
 18 A Absolutely.
 19 Q Is some sort of surgical -- physical, you know,
 20 structural surgical change required for that,
 21 or -- or -- or is -- is it not required?
 22 A Are you asking what I believe, or are you --
 23 Q Yes, yes.
 24 A -- asking me to be an expert witness right now?
 25 Q I'm asking what you believe.
 26 A I don't think that any type of surgical
 27 intervention needs to happen for somebody to
 28 identify as a lesbian.
 29 Q Okay. So -- so a male who still has a penis and
 30 testicles but he identifies as a female can --
 31 can come into the category of lesbian?
 32 A Well, then he would not be a male if he
 33 identified as a woman.
 34 Q Right. Because when you identify as -- so just
 35 so I understand, so when you -- you believe that
 36 when he identifies as a female, he really does
 37 become female?
 38 A Yeah.
 39 Q Okay. Sorry. Just to go back to what you said.
 40 So -- so your -- your sexual orientation is
 41 broader than -- than -- than only attracted to --
 42 to women. You -- you are attracted at least at
 43 some times or some degree to -- to more than
 44 women; is that right?
 45 CNSL A. WADDELL: Objection. Relevance. This falls
 46 under the same category as what the Tribunal has
 47 already determined is not relevant and worthy of

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1 further time.

2 THE CHAIR: This does seem to be just probing into her
3 personal life beyond just her membership in the
4 class, which is related to sexual orientation,
5 which we have evidence of, and gender identity,
6 which we have evidence of. So what are her
7 personal, you know -- you know, who she's
8 attracted to and -- and when and how and that --
9 how does -- what does that have to do with
10 anything?

11 CNSL J. KITCHEN: Well, her -- her beliefs -- and
12 again, I don't want any specifics. I don't want
13 any personal details, but -- but her beliefs in
14 how she acts on them are, of course, relevant to
15 the legal issues. They're relevant to what the
16 respondent's witnesses are going to -- at least
17 some of them -- are going to -- to speak to. She
18 hasn't merely identified as -- as somebody who is
19 sort of, you know, easily -- easily categorized
20 as, you know, I'm -- I'm just -- I'm -- I'm gay,
21 and that's it, right, or, you know, I'm trans,
22 and that's it. We have -- we have this whole
23 queer thing going on, and, you know, maybe that's
24 fully understood to everybody else on the call,
25 but it's not for the respondent and his counsel.

26 And of course, you know, that has to be
27 legally categorized as sexual orientation and
28 gender identity because that's what's protected
29 in the code. It's not -- queer isn't protected
30 in the code. So this person is coming in and
31 saying I'm queer, and then there's all these
32 things that are under it, and of course,
33 they're -- they're connecting that to the grounds
34 in the code by saying, you know, I have -- I have
35 these gender identities, and I have this sexual
36 orientation, and -- and that makes sense. But
37 if -- if we're going to understand at the end of
38 the day where there is discrimination, if
39 there -- if there is any -- of course, the
40 respondent is going to argue there isn't, then --
41 then we need to explore what this witness
42 believes and -- and how she acts on those
43 beliefs.

44 And again, this is -- this is an
45 intellectual exercise, not a personal one. I
46 would have thought that was obvious that I'm not
47 asking this to -- to be personal, to -- to upset

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1 the witness or make her uncomfortable or -- or
2 somehow expose her. That's obvious that that's
3 not what I'm doing here, okay? That would be --
4 that would be a waste of time. That would be --
5 that would be rhetorical, right, as my friend has
6 done at times, I would say. That's not what I'm
7 trying to -- I'm not trying to be rhetorical,
8 okay? I'm trying to explore the issues.

9 Maybe it's very, very clear to her, very,
10 very obvious to her what queer is, but it's not
11 to everybody else. And they're the ones who have
12 made the case. They're the ones who have claimed
13 discrimination, and now they want to say, well,
14 it's -- it's too personal for us to talk about
15 it. It doesn't work that way. If -- if a person
16 comes in and says they've been discriminated
17 against on the basis of religious belief, they
18 can't then claim, well, my beliefs are personal.
19 I'm not going to talk about them on
20 cross-examination. That's not how it works.
21 They've made the claim. If they want to withdraw
22 their claim, fine. But if they've made the
23 claim, then they have to permit themselves to be
24 cross-examined on those things that may very
25 well, you know, feel like and seem like they're
26 personal because they've made the claim, and the
27 onus is on them to -- to establish the claim, and
28 the respondent has a right -- because he's
29 defending himself, he has a right to a fair and
30 free defence -- to explore that. He doesn't have
31 a right to abuse the witness, of course, right?

32 I mean, I'm on the other side of this all
33 the time. I have a ton of religious clients, and
34 it is very personal when they get questioned
35 about their religious beliefs, but it is fair
36 because they're making a claim of religious
37 discrimination. Okay. I'm making an analogy to
38 this case. Someone comes in and says I've been
39 discriminated against this way, the respondent
40 has a right on cross-examination, without being
41 abusive, to explore the beliefs and actions of
42 the person who has claimed they've been
43 discriminated against. That is what I am doing,
44 and I'm trying to get through it as fast as I
45 can, okay?

46 And maybe you're annoyed at how little I
47 understand this. Well, I would ask that you have

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1 some patience for me, okay, because I, in good
2 faith, am trying to understand this in order to
3 make argument at the end, which by the way, you
4 know, you're not going to like it if I argue from
5 a vacuum. You're going to say why didn't you
6 cross on this? So where's the evidence on this?
7 So that's part of the reason why I'm doing this
8 because I can't -- I shouldn't be arguing from a
9 vacuum -- vacuum at the end. It's -- it's the
10 job of the respondent, if he's going to argue
11 certain things, to explore in cross-examination,
12 not to just ignore it and then argue it in a
13 vacuum at the end, okay?

14 So, you know, I'm kind of caught between a
15 rock and a hard place because I -- because you
16 don't want me to go too far. I get that. But I
17 also can't argue in a vacuum, so I have to
18 explore the evidence. That's what I'm doing
19 here. It's at simple as that.

20 THE CHAIR: Ms. Waddell.

21 CNSL A. WADDELL: I would simply say that I think my
22 friend's analogy to a religious belief case is --
23 is not helpful here because, of course, the case
24 there is that you've got to establish a
25 reasonably held belief. That is not required in
26 a complaint brought under one of the other
27 protected grounds. He's already asked -- and
28 that's why I'm objecting. He has -- I've let him
29 cross-examine on personal subjects which go to
30 her membership in the class. That's done. And
31 as such, her -- anymore detail on that subject,
32 in our respectful submission, is irrelevant.

33 THE CHAIR: Thank you. I agree that the analogy to
34 religious beliefs is not helpful. That's a -- a
35 ground that expressly engages sincerely held
36 beliefs of the people who are asserting
37 protection under religious belief. The grounds
38 of sexual orientation, gender identity, gender
39 expression do not engage the same principles of
40 probing beliefs and personal lives of the people
41 who bring them -- bring those complaints. It's
42 just -- the analogy is -- I'm sure you appreciate
43 it's imperfect, but it's imperfect in a way that
44 I find significant right now.

45 So again, delving into the personal life of
46 these witnesses, their romantic life, their
47 gender identity, I appreciate you say it's an

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1 intellectual exercise, but for Teacher A, you're
 2 asking her personal questions about her romantic
 3 life, her sex life, her gender -- gender identity
 4 that are not helpful to the issues we have to
 5 decide. So I get the -- the outcome here is the
 6 same. I think we -- you've asked the questions
 7 about -- that are relevant about sexual
 8 orientation and gender identity and expression,
 9 and I'll ask you to move on.

10 CNSL J. KITCHEN: Just for the record, Chair, I asked
 11 nothing about sex life or romantic life. I think
 12 it's a gross mischaracterization to suggest that
 13 I have. I will remind you that the argument for
 14 the respondent in this case is that there is no
 15 discrimination when properly defined because
 16 there was no criticism of any LGBT person on the
 17 basis of their identity as L, G, B, or T. There
 18 has only been a criticism of the beliefs of
 19 queer, trans ideology beliefs. That is a fair
 20 argument.

21 And in fact, we had evidence from another
 22 witness that touched -- a couple witnesses have
 23 touched precisely on that issue. So what the --
 24 this witness believes when it comes to her queer
 25 beliefs and ideology are fundamental to the case
 26 because we need to -- well -- and maybe, again,
 27 you've already made up your mind. But from the
 28 respondent's perspective, we need to parse out
 29 where is the discrimination based on a protective
 30 characteristic as opposed to simply opposition to
 31 and criticism of a belief?

32 THE CHAIR: Right.

33 CNSL J. KITCHEN: Which is -- which is --

34 THE CHAIR: And those may be legal arguments you can
 35 make at the end. But again, Mr. Kitchen, same --
 36 same issue I have here. We've had a full
 37 submission process. I've made my decision. And
 38 now, you have to move to the -- to the next
 39 question. We can't continue to argue about this
 40 and hear submissions about it.

41 CNSL J. KITCHEN: I can't argue at the end in a
 42 vacuum; okay? Or else you're going to say, well,
 43 this didn't come out in evidence. And then --
 44 then I'm stuck. I'm stuck in the place
 45 apparently you want me where I -- I can't get the
 46 evidence I need to make the argument, so I have
 47 to argue in a vacuum which allows you to be able

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1 to say he's argued in a vacuum. We don't have
 2 the evidence about that. It doesn't make any
 3 sense.
 4 THE CHAIR: Again, Mr. Kitchen, you've just done it
 5 again. We've made a decision on an objection.
 6 You need to move on. And you've done it again
 7 where you're suggesting that we're acting somehow
 8 nefariously against you --
 9 CNSL J. KITCHEN: Not nefariously.
 10 THE CHAIR: -- by ruling against you or with a
 11 predetermined outcome. Can you please move on to
 12 the next question.
 13 CNSL J. KITCHEN:
 14 Q Teacher A, what do you mean when you say the
 15 queer community?
 16 A The queer community are, in my opinion, those who
 17 fall in the 2SLGBTQIA+ and nonbinary people
 18 because that's not necessarily represented. I
 19 guess it could be under the Q, but there's no
 20 specific letter for it, so I would like to also
 21 include them.
 22 Q What about the plus? Is -- is the plus designed
 23 to cover for that or...?
 24 A Yeah. I would -- I would agree.
 25 Q And -- and the Q --
 26 A I -- I like to say it because non -- nonbinary
 27 people don't always get included in this
 28 conversation.
 29 Q And -- and -- and here, I'll be very explicit.
 30 I'm not asking you -- about you personally;
 31 although, I am asking about what you personally
 32 believe. Can you -- can you articulate for me
 33 what you believe about what nonbinary is?
 34 A Yeah. I think that there -- and again, this is
 35 not a -- this is my belief around this.
 36 Nonbinary people are people who either fall
 37 outside of the gender binary or are moving
 38 between the binary.
 39 Q And the binary -- the binary is -- is male and
 40 female; is that right?
 41 A Yes.
 42 Q Okay. When you -- okay. So -- so in between
 43 would be somebody who -- who is in between male
 44 and female; is that right?
 45 A It could represent somebody who is gender fluid,
 46 or it could be somebody who has no attachment to
 47 gender or is -- does fall somewhere within it but

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1 may change.
 2 Q And so just to help me understand the -- the
 3 fluid thing, the idea with the fluid -- the
 4 gender fluid -- is -- is gender fluid like itself
 5 a gender identity, or -- or is it more of a
 6 description of the changing between identities?
 7 A It can be both.
 8 Q Okay. So -- so -- so it can mean that you're --
 9 you're -- you're currently changing from one to
 10 the other? It can mean that; is that right?
 11 A I'm not really sure what you mean.
 12 Q Well, I just asked you what if -- I -- I -- I
 13 gave you some sort of a binary question because I
 14 asked you if gender fluid meant that you were --
 15 you were changing between genders -- gender
 16 identities or if it was a way to describe
 17 identifying as -- as a person who has, like,
 18 let's say two of them, and you sometimes move
 19 back -- back and forth. So -- so let's -- let's
 20 break it down.
 21 The -- the gender fluid thing, would that --
 22 would that capture a person who has, let's say,
 23 more than one gender identities and then kind
 24 of -- kind of oscillates from -- from one to the
 25 other? Is that fair?
 26 A Sure.
 27 Q Okay. And -- and this is going again to what you
 28 believe. Is it possible for someone to have more
 29 than two gender identities that they -- that
 30 they -- they're fluid about, that they move back
 31 and forth from?
 32 A Yes.
 33 Q Okay. Is it -- is it -- is it just three, or
 34 could it be even more than that?
 35 A I'm -- I'm sure that it could be as many as they
 36 feel attached to.
 37 Q Okay. So it could be, like, four or five or six
 38 or seven?
 39 A Maybe.
 40 Q Okay. Well, the Q stands for queer; is that
 41 right?
 42 A Queer and questioning.
 43 Q Okay. And what's -- and what's questioning mean?
 44 A Questioning is an indecision about where you
 45 might fall within the spectrum.
 46 Q And by "spectrum," you mean, like, the gender
 47 spectrum?

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1 A Or the sexuality spectrum.
 2 Q And by "sexuality spectrum," you mean sexual
 3 orientation spectrum to be specific?
 4 A Sexual orientation, yeah, absolutely. Yes.
 5 Q Again, going to your beliefs, the -- the -- the
 6 sexual orientation spectrum, so I guess
 7 heterosexuality and homosexuality would be on
 8 that; correct?
 9 A Those would be the -- the two ends of that, yes.
 10 Q Okay. Okay. And then -- and then can you give
 11 me an example of what might be in between?
 12 A Bisexuality would be in between.
 13 Q Like, at the exact halfway point?
 14 A Not necessarily, no.
 15 Q Oh, okay. Okay.
 16 A That's -- it's a spectrum.
 17 Q Would -- would pansexuality fall on the spectrum?
 18 A Yes.
 19 Q Okay. And can you explain to me what you believe
 20 pansexuality to be?
 21 A Yeah. So pansexuality is an attraction to all
 22 genders from my understanding. I'm -- I'm not
 23 pansexual, so I -- I don't know.
 24 Q Okay. Okay.
 25 A I can only speak to my belief about it.
 26 Q Right. Now these things we've been talking
 27 about, for you, these things aren't merely a
 28 theory. Like, you don't hold them as a -- as a
 29 theory. You believe them as -- as fact?
 30 A Yes.
 31 Q Okay. And is that the kind of fact -- you know,
 32 because some people hold facts, like, you know,
 33 the existence of aliens or the existence of God
 34 or stuff like that that are not really
 35 scientifically provable by the typical scientific
 36 method. Do you hold this fact to be something
 37 that's, like, you know, not capable of scientific
 38 proof or capable of scientific proof?
 39 A I believe it to be capable of scientific proof,
 40 yes.
 41 Q You at one point were talking about one of
 42 Mr. Neufeld's posts, and you said he was
 43 dismissive of evidence-based healthcare. If you
 44 recall, do you know if by that you meant you were
 45 referring to gender-affirming care?
 46 A I was speaking to the idea that people that we
 47 put in -- in charge of -- of healthcare, like,

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1 positions and -- and very smart scientists who
2 have done the -- the research by suggesting that
3 they have a shallow understanding of it, I think,
4 is incorrect. That's their field of study where
5 they've received degrees upon degrees on it.
6 Q So what's the evidence-based healthcare you're
7 referring to? Are you just talking generally, or
8 was there something specific you had in mind?
9 A I was speaking generally.
10 Q Okay. What's -- what's gender-affirming care
11 from -- from -- from your perspective? Don't try
12 to tell me, you know, as a -- as an expert. Just
13 what do you believe gender-affirming care to be?
14 A I believe it encompasses a lot of things.
15 Gender-affirming care can be a hat.
16 Gender-affirming care can be a conversation. It
17 can be intervention of the -- of the
18 psychological realm. It could be any type of
19 support that somebody needs at that time, and it
20 can be apparel. It can be medical.
21 Q And you support gender-affirming care for young
22 people?
23 A Absolutely.
24 Q Do you believe -- okay. So, you know, speaking
25 as a teacher -- well, let's back up. Let me ask
26 you this. Do you -- as a teacher -- and I'm
27 going to ask you about your involvement in the
28 GSA as well and so on, but I'm just -- because
29 you might have different answers there. But just
30 speaking as a teacher, do you encounter people --
31 students who have a gender identity that is --
32 hold on. Let's back up. I apologize. What do
33 you understand the term "cisgender" to mean?
34 A My understanding of "cisgender" is you identify
35 with the sex you were assigned at birth.
36 Q Okay. And so for example, you have a -- you have
37 a student who is assigned male at birth, and they
38 identify as a boy. That's a cisgender student;
39 is that correct?
40 A Yes.
41 Q Okay. And -- and is -- is everything that --
42 that is -- that falls out of that category, you
43 know, the alignment of the sex assigned at birth
44 and -- and -- and gender identity, you know, male
45 and boy or girl and female, is anything that's
46 different from that considered something other
47 than cisgender?

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1 A I guess if you want to -- a classification.
 2 Q Yeah. Okay. So any time -- and -- and going
 3 to -- going to the binary thing, is any -- any
 4 time a person steps out of being that cisgender
 5 identity, you know -- and to keep it simple, you
 6 know, you got a -- you got a student who is
 7 assigned female at birth, and now they identify
 8 as a boy or as anything else, gender fluid or
 9 whatever, is it -- is it fair to call them
 10 transgender because they're no longer cisgender?
 11 A No.
 12 Q No. Okay. So once we get out of cisgender, it's
 13 not -- it's not just one big category called
 14 transgender. There's multiple categories besides
 15 cisgender. Is that fair?
 16 A Trans can be an umbrella term, but no, there
 17 might be somebody who does not identify with the
 18 sex assigned -- that they were -- that they were
 19 assigned at birth but not be trans.
 20 Q Okay. Okay. But we -- we can agree that
 21 they're -- they're no longer cisgender. They're
 22 something else?
 23 A Again, if you need a classification.
 24 Q Okay. So you -- you get a student who -- do
 25 you -- do you -- do you encounter students -- and
 26 obviously, there might be some you don't know
 27 about because they haven't told you, okay, but do
 28 you encounter students that you know because they
 29 told you or you've been told by the
 30 administration that they're -- they're not
 31 cisgender? They have -- they have a gender
 32 identity that's different than aligning with the
 33 sex their assigned at birth. Do you encounter
 34 students like that in your classes?
 35 A Yeah, constantly.
 36 Q Okay. Could you give us roughly an idea, like,
 37 maybe a -- a percentage, for example, of, like,
 38 all the students that you encounter, like, per
 39 year for example?
 40 A Sorry. You want me to tell you how many students
 41 I encounter who are not cis?
 42 Q Yeah. Just a rough idea. I don't need an exact
 43 number. I don't want you to give away any
 44 details that might identify you or anybody else.
 45 I just -- you know, maybe it's 2 percent, maybe
 46 it's 20, maybe it's somewhere in between. I
 47 mean, I don't even know how many students you

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1 encounter in a year, and you probably shouldn't
 2 tell me that. But if you could just kind of give
 3 me either a fraction, if it's a tenth, for
 4 example, or a percentage, that would be helpful.
 5 A I would say 30 to 40 percent.
 6 Q Okay. So you would agree with me that's a
 7 significant minority would be a fair way to
 8 describe that?
 9 A No. I -- I don't think that that's a minority.
 10 I don't think it's a significant minority. I
 11 think 30 to 40 percent is getting close to half.
 12 Q Well, yes. That's exactly what I meant by that.
 13 I wasn't trying to downplay it in any way. I
 14 was -- you would agree with me majority is 51.
 15 You would agree with that; right?
 16 A If you would like to put numbers on it, sure.
 17 Q No. But just -- no. Just -- when people use the
 18 word "majority," they mean -- out of 100, they
 19 mean -- they mean, you know, you're 50 plus 1.
 20 You're in the majority now. You're more than
 21 50 percent. You agree that's what majority
 22 means; correct?
 23 A Sure.
 24 Q Okay. Okay. So the -- the 30 -- 30 to
 25 40 percent, which is -- you know, 30 -- when you
 26 say 30 to 40 percent, you're talking out of
 27 100 percent obviously. So how would you
 28 categorize that, you know, fairly large group
 29 of -- of people? Just, you know, in -- in
 30 relation to the -- the -- the -- the still
 31 majority of cis people walking around, how would
 32 you characterize that, you know, that -- like, is
 33 that -- is that -- is that significant to you
 34 that that's a lot of people, for example?
 35 That's -- that's what -- that's what I want to
 36 know.
 37 A Yes. I think that it's a reflection of the world
 38 we live in. There are a lot more people who are
 39 queer than are out to everyone.
 40 Q Okay. Do you mean by that there's a lot more
 41 people who are queer than people who are publicly
 42 identifying as queer? Is that what you mean?
 43 A Yes.
 44 Q Okay. So the 30 to 40 percent, is that the
 45 people who -- who -- like, total including all
 46 the quiet private ones, or is it -- or is it --
 47 or does that represent the number who have

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1 publicly identified at least in some way to
2 somebody that they're queer?
3 A You asked me how many -- how many students I've
4 encountered.
5 Q Yeah.
6 A I can't speak to whether they're out or not to
7 people other than me.
8 Q Other than you. Okay. So the 30 to 40 percent,
9 when you say that, are the -- are the people that
10 are at least -- the students -- sorry -- that --
11 that are -- that are out to you in a way that you
12 know?
13 A Yes. They've given me some indication.
14 Q Now do not tell me the school, but I just want to
15 know, is it -- is it high school grades that you
16 teach?
17 A I have taught high school more than any other
18 grade, yes.
19 Q Let's say over the last five years, is that what
20 you've been teaching, high school?
21 A Yes.
22 Q Okay. When you encounter these students, do you
23 believe that the right approach with them is some
24 form of gender-affirming care?
25 A I believe that the right approach is to listen.
26 And typically, they indicate what they need from
27 me.
28 Q Is there ever a time where it's actually a good
29 to -- to not give a student -- you know, we're
30 talking about, you know, the 30 to 40 percent,
31 the non-cis students; okay? We're talking about
32 those students. Is there -- is there ever a time
33 when -- when the appropriate thing to do is -- is
34 to not give that student what they're -- what
35 they're asking for?
36 A As I've said, I -- I believe that
37 gender-affirming care can be a conversation, so
38 I -- I'm always going to talk to a student who
39 comes to me for help or to listen to them.
40 Q But is there any room for a conversation or a
41 response that suggests to the student that they
42 should, you know, hold on, slow down, wait and
43 see, watch and wait for a little while, you know,
44 stay in the tension for a bit, et cetera? Is
45 that ever acceptable?
46 A I would not have that type of conversation with a
47 student. I would refer them to support.

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1 Q Okay. And -- and -- okay. But you -- but you
2 would have the conversation about -- about
3 what -- what you could do to help them and what
4 you could do to respond to their request for
5 help?

6 A My job is to listen to them. And if they need
7 support, I would then refer them to that support.

8 Q Okay. Right. Well, yeah. Like, if they need
9 medical or psychological support, you're not
10 going to try to provide that because you're a
11 teacher? In other words then, that's basically
12 what you're saying; is that right?

13 A Yeah.

14 Q Okay. But if -- if they come to you and say, you
15 know, look, I need -- I need to start using
16 different pronouns and a different first name
17 because, you know, I -- I now identify with a
18 different gender identity than I did, you know,
19 last year? What -- what would your response be?

20 A I would understand that the person is the expert
21 of themselves, and I would -- if they asked me to
22 use a different pronoun than they have been using
23 or a different name than they have been using, I
24 would absolutely respect that.

25 Q Right. And just to be clear, if -- if -- if
26 somebody who had been identifying as a cisgender
27 male came to you and said, look, I -- again, just
28 to -- we're just going to keep it as simple as we
29 can, he comes, and he says, "I identify as a
30 girl. That's -- that's my -- that's my gender
31 identity now, and so I'd like you to use, you
32 know, she/her, and my name is no longer Cole.
33 It's Chloe." Is it -- is it fair to say that you
34 would then start using the she/her pronouns and
35 the new feminized name?

36 A Yes.

37 Q And in fact, you -- you've had situations similar
38 to that, like, actually occur in -- in your real
39 life with students?

40 A Yes.

41 Q And to be clear, you don't -- you don't -- you
42 don't request any sort of, like, doctor's note or
43 parent note or -- like, you don't request
44 anything from the student before you start doing
45 that; is that right?

46 A No. An individual is the expert on themselves.

47 Q In other words, there's no -- there's, like, sort

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1 of no -- no third party verification required?
 2 Is that a -- I know it's a bit technical, but is
 3 that fair?
 4 A Yes.
 5 Q Okay. And when that happens, is the -- is the
 6 standard practice to not tell anyone else? So,
 7 like, for example, like, when that happens, do
 8 you -- do you go and tell the principal and let
 9 the principal know?
 10 A No.
 11 CNSL A. WADDELL: Just to be clear, you're asking the
 12 witness about her standard practice; is that
 13 right?
 14 CNSL J. KITCHEN: Yes. Yes.
 15 CNSL A. WADDELL: Yeah. Okay.
 16 A No.
 17 CNSL J. KITCHEN:
 18 Q Okay.
 19 A Wouldn't be my -- wouldn't be what I would do.
 20 Q Okay. And you wouldn't send -- send a note home
 21 to -- to -- you know, to engage the parent about
 22 this?
 23 A No.
 24 Q Okay. You said in -- what time are we at here?
 25 Okay. We've got a little bit yet. You said
 26 in -- in response to a post from Barry, he -- he
 27 mentioned indoctrinating all society in the
 28 unscientific gender theory, and you were asked
 29 about your reaction to that, and you said it was
 30 a thinly veiled attack on the existence of the
 31 queer community. Can you help me understand what
 32 you mean by "existence" there?
 33 A I think I -- I need to see that post to be able
 34 to answer you effectively.
 35 Q Sure. Yeah. You're going to have to give me a
 36 second here. Okay. I'm going to share my screen
 37 with you here. Okay. Now can you see that
 38 there? There's a -- there's a stop sign; there's
 39 some -- there's some text; there's Barry
 40 Neufeld's name. Do you see that?
 41 A Yeah.
 42 Q Is it -- is it small, or is it big enough for you
 43 to read?
 44 A It's -- it's getting there.
 45 Q Okay. Let's see if I can get if there a little
 46 more. Oh. There we go. Okay. Do you -- do you
 47 recognize this as the post that I was talking

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1 about that you commented on here last week?

2 A Yes.

3 Q Okay. And --

4 CNSL A. WADDELL: Sorry. Sorry to interrupt,
5 Mr. Kitchen. Can you just clarify for the record
6 where -- the document that you're putting her to
7 just so that the record will reflect what she's
8 looking at?

9 CNSL J. KITCHEN: Yeah. So we're at Tab 10, page 85.
10 Looks like it's some sort of Facebook post by
11 Barry, August 29th, probably, 2018, I'm going to
12 guess, but we don't know for sure.

13 Q Okay. You said this is a thinly veiled attack on
14 the existence of the queer community. And I've
15 heard this existence language before. Can you
16 help me understand what you mean by that?

17 A I -- I believed my comment about this particular
18 post was the use of the term "majority of
19 children".

20 Q Well, let me ask you this. Barry Neufeld's --
21 let's back up. Barry Neufeld talks about gender
22 dysphoria. Now, do you believe that gender
23 dysphoria, like, is -- is a thing that exists?
24 Well -- and first of all, I guess I have to ask
25 you do you understand what gender dysphoria is?

26 Do you understand what Barry means by that?

27 A I -- I believe so, but maybe you should tell me.

28 Q Well, I would put it to you that when Barry
29 Neufeld says gender dysphoria, he's talking about
30 someone who has, you know, significant and
31 consistent -- and we'll keep it to kids. We'll
32 talk about students because someone is too vague.
33 Gender dysphoria is -- is when a child has
34 intense consistent feelings or angst about being
35 uncomfortable with their -- their sort of
36 cisgender identity. And they -- they -- they are
37 uncomfortable, and they -- and they have strong
38 feelings that they really are, you know, a boy in
39 a girl's body or a -- or a boy in a girl's -- or
40 a girl in a boy's body, for example; okay?

41 That's what he referred to as -- as gender
42 dysphoria or at least that's -- that's what --
43 that's what I -- I put to you I think is a fair
44 summary of what he means by that. Is that your
45 understanding of what gender dysphoria is?

46 A Yeah, I would say that I would agree with that.

47 Q Okay. And so you -- you would -- you would

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1 agree -- you would agree with me that kids,
 2 there's -- there's some students that -- that,
 3 like, really do have gender dysphoria, the -- the
 4 discomfort with their -- with -- with the gender
 5 identity that's associated with their sex? You
 6 know, it's -- it's persistently really
 7 uncomfortable for them?

8 A Yes.

9 Q Okay. Now, would you say that that's all of
 10 those 30 to 40 percent of kids that you talked
 11 about earlier, or that's just some of them?

12 A I wouldn't want to speculate on that. I don't
 13 know their experience.

14 Q Okay. But you would say at least -- at least a
 15 small number of people in that category are -- or
 16 student in that -- in that 30 to 40 percent
 17 are -- are experiencing sort of genuine gender
 18 dysphoria?

19 A Sorry. Can you clarify.

20 Q You would agree with me that at least a small
 21 number of those students that are in that 30 to
 22 40 percent we've been talking about are
 23 experiencing genuine gender dysphoria?

24 CNSL A. WADDELL: I just want to interject here to say
 25 that this witness is not a medical expert, so I'm
 26 wondering if you can reframe the question so that
 27 she's not being asked to identify, you know, how
 28 many people would -- and -- and you framed it in
 29 a way that essentially asks, you know, what
 30 percentage of that 30 to 40 might meet the
 31 diagnostic criteria for gender dysphoria. So if
 32 there's a way to -- so I object on the basis that
 33 you're asking her to assess a -- you know, folks
 34 meeting a medical standard. But if there's a way
 35 to ask the question that doesn't do that, I'm --
 36 I'm happy to park my objection.

37 CNSL J. KITCHEN: No. I -- I understand what you're
 38 saying. I'll -- I'll try it in a different way.

39 Q Teacher A, Barry says that it's less than one
 40 percent of students that have gender dysphoria
 41 as -- as we've just described it, and you've
 42 agreed with me. Would you disagree with him on
 43 that?

44 A I don't think that we -- that you asked me what
 45 percentage of people I believe have gender
 46 dysphoria. That wasn't the question.

47 Q Well, the question I've just asked you was I --

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1 and again, if you think -- if you think I'm
2 wrong, I guess I can -- I can -- I can -- you
3 know, we can come back to it, and I'll find a
4 post where Barry says this. But he says a few
5 different times that the percentage of students
6 who are gender dysphoric -- and again, so that's
7 going to the -- to the definition that you and I
8 just agreed on, is -- he says it's less than one
9 percent of students. I want to know if -- if, in
10 your experience, you would agree with that, or
11 you would disagree with that.
12 A I would disagree. From the kids that I
13 personally have met.
14 Q Okay.
15 A It doesn't appear to be the case.
16 Q Okay. And that's -- and that's what I'm going
17 for, right, just -- just your off the cuff, you
18 know, observations or what it appears to be to
19 you. I don't want you to diagnose. No one is
20 going to hold you accountable to that. But
21 this -- this is a -- you know, you said -- said
22 at one point you're very familiar with SOGI 123
23 materials, and we'll cover this more later. But
24 just to confirm, you are -- you are involved in
25 a -- in a -- in a GSA at the school that you're
26 at?
27 A Not currently.
28 Q Not currently. But you -- you have been in the
29 last five years?
30 A Yes.
31 Q And for how long?
32 A I was involved with the GSA for about three
33 years.
34 Q Okay.
35 A At a specific school.
36 Q Right. And we're not going to get into the
37 specific school, but it was the school you taught
38 at though; right?
39 A Yes.
40 Q Okay. And what was your involvement with the
41 GSA? I guess we'll cover that now.
42 A I was the teacher host.
43 Q Okay. And what does that involve?
44 A Really, it involves opening my classroom to kids
45 that might need to be there for a safe place.
46 Q So, like, meetings at lunch hours or after-school
47 events or early morning events, stuff like that,

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Teacher A (for Complainants)
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1 or something totally different?
2 A Most lunch hours I kept my classroom open.
3 Q Okay.
4 A Sometimes there were after-school events.
5 Q And what did these -- what did these events
6 involve or gathering or get-togethers or, you
7 know, the lunch break? What did that involve?
8 A The lunch hours would mostly just be us eating
9 our lunch together and talking.
10 Q Okay. What about the after-school events? Were
11 they a little more structured?
12 A Yes.
13 Q Okay. And -- and give me an example of maybe one
14 in particular or just some -- some activities
15 that were common.
16 A We would plan events together.
17 Q So the -- so the after-school GSA events could be
18 you and the -- the attendees to the GSA event
19 planning other events that are outside of the
20 school?
21 A Not outside of the school. Attached to the
22 school.
23 Q Oh, okay. So what are these events that might be
24 planned?
25 A So a picnic and a dance were typically the ones
26 we would plan.
27 Q And the picnic just happens on school grounds, I
28 take it?
29 A Yes.
30 Q Okay. And this is basically just you and the GSA
31 students would just go out, bring some food, sit
32 down and eat, and just have a good time? Is that
33 fair?
34 A Yeah. That's some -- yeah.
35 Q Was it -- was it -- was it, like, kind of, you
36 know, just for the GSA-attending kids, or was it
37 more, like, hey. The GSA is hosting this event,
38 and we invite all these people to come to it?
39 A It was open to families as well.
40 Q The -- the families of the GSA-attending
41 students?
42 A Not necessarily, no.
43 Q Okay.
44 A Families of anybody who attended any school in
45 Chilliwack.
46 Q Okay. And can you give me, like, a -- a rough
47 average of -- of how many students tended to

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1 regularly attend the GSAs -- the GSA meetings
 2 when you were the teacher host?
 3 A I mean, that would ebb and flow depending on the
 4 season. Anywhere from 3 to 30.
 5 Q Oh, okay. Wide range. Okay. The -- the dance,
 6 same idea, was that more for the actual GSA
 7 attendees, or was it more like the attendees were
 8 hosting it, and all the other students were
 9 invited?
 10 A Yes. It was the -- the GSA kids were the hosts,
 11 and everyone was invited.
 12 Q And is it fair to say that you didn't run into
 13 any sort of roadblocks or resistance from the
 14 school district or the principal when organizing
 15 those events?
 16 A There were definitely a lot of hurdles.
 17 Q Okay. Were those hurdles that every other
 18 student group had to go through, or were they
 19 hurdles unique to the GSA?
 20 A They were hurdles unique to the GSA.
 21 Q Such as?
 22 A There had to be special planning meetings that
 23 involved upper management.
 24 Q And what was the -- what was the purpose of
 25 these -- okay. So these were planning meetings,
 26 but what was the type of -- like, what was the
 27 content of these meetings? What were the -- what
 28 were the things that were discussed? Why were
 29 they needed?
 30 A They were needed to avoid protests.
 31 Q And who was it -- who was it you anticipated
 32 would be protesting?
 33 A Typically people who didn't enjoy GSAs and the
 34 events that we were putting on.
 35 Q Right. But who were those people? Like, are
 36 they just, you know, random members -- or random
 37 residence of Chilliwack, or are we talking about,
 38 like, specific -- like, are they students? Are
 39 they teachers? Are they school trustees? Are
 40 they principals? Are they -- who -- who are the
 41 people?
 42 A I don't know who they were.
 43 Q Oh, okay. So you have no idea if they're
 44 involved in the school system or not?
 45 A No, no idea.
 46 Q Okay. So -- so as far as you're concerned,
 47 they're just random members of the public?

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1 CNSL A. WADDELL: That's not what she said. She --
2 sorry to interrupt. She said she didn't know who
3 they were.
4 CNSL J. KITCHEN: Right. Well, so that's what I'm --
5 that's what I'm -- that's what I'm getting at.
6 We're exploring who she thinks they are.
7 Q So -- let me just ask you again, Teacher A. So
8 from -- from your perspective, you don't know who
9 these people are, but they're not part of the
10 school system. They're just members of the
11 public. Is that fair?
12 A I'm not sure who they are.
13 Q Okay. Could be -- could be students and teachers
14 and parents from the school system?
15 A I'm not sure who they -- they are.
16 Q And I take it you made absolutely no effort to
17 figure out who they might be. Is that fair?
18 A No. I don't know that I would want to know
19 either who -- who it is, no.
20 Q Okay. You wouldn't -- you wouldn't want to hear
21 their concerns. Is that fair?
22 A If their concerns were about something that
23 wasn't protected by the *Charter*, then yeah, I
24 would be interested, but this is.
25 Q Do you believe that teaching to students that
26 they -- they -- they can self-identify as
27 different genders is protected by the *Charter*?
28 A Are you insinuating that I'm teaching children
29 this?
30 Q Well, let me ask you. Do you teach -- and, you
31 know, this can either be when you're teaching the
32 SOGI 123 resources or when you're not, either
33 way, do you teach that -- do you teach the belief
34 that -- the belief that you have that students
35 can be their own expert, as you said, and
36 identify as a different gender than -- than the
37 one that -- that connects with their sex at
38 birth?
39 A I don't directly teach that, no. If that comes
40 up as a question, then we deal with it in a
41 discussion.
42 Q Okay. And have you been asked that question by a
43 student? Like, you know, asked the question,
44 like, look. Can I -- you know, can I actually
45 identify as a -- as a different gender than what
46 I've -- than what I've been for the last few
47 years? What -- what do you tell the student when

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1 they ask that?
2 A I've never been asked that.
3 THE CHAIR: Mr. Kitchen, if you're done with the
4 document, would you mind taking it down so I can
5 see everyone.
6 CNSL J. KITCHEN: Yes. Sorry.
7 THE CHAIR: Thank you.
8 CNSL J. KITCHEN: I'm done with the document. Well,
9 I'm probably going to go back to it, but we'll
10 stop sharing for now. Okay. There. I think
11 that's off now.
12 Q You would agree with me that that is one of
13 the -- well, the -- the underlying beliefs in the
14 SOGI 123 resources, the belief that a student can
15 change their gender, you would -- you would agree
16 with me that's one of the underlying beliefs of
17 the SOGI 123 resources?
18 A I believe that SOGI reflects the society we live
19 in. And some of the people in the society we
20 live in have undergone a social transition or a
21 medical transition. So it's -- it's expressing
22 the reality of the word we live in.
23 Q And from your perspective, the reality of the
24 world that we live in is that there are more than
25 two genders?
26 A Yes.
27 Q And that people can change their gender?
28 A I -- I take a little bit of issue with the term
29 changing their gender.
30 Q Okay.
31 A If they are a different gender, then they are a
32 different gender. It's not a -- necessarily a --
33 a choice.
34 Q Right. But you -- but -- but you would agree
35 with me that what you believe is that someone can
36 at some point in their life, including when
37 they're children, claim as or identify as a new
38 gender identity than what they've had in the
39 past?
40 A I think that sometimes, they are -- I think that
41 people are born how they're born. So no, I don't
42 think that you're going to claim a new gender
43 identity because that is probably the gender
44 identity you had since birth, and it just took a
45 while to understand that.
46 Q But what about the people -- and I think -- I
47 think you yourself would fall into this category.

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1 What about the people who are gender fluid so
 2 therefore don't have one sort of static identity?
 3 They -- they fluctuate or oscillate.
 4 A I'm sorry. I don't understand the question.
 5 Q Well, you're saying that -- that that was the --
 6 that was probably this -- this -- this new gender
 7 identity to you isn't really necessarily new.
 8 It's -- it's more them just discovering the
 9 proper one that they were properly born with. Is
 10 that fair?
 11 A I can only speak to my own experience, not other
 12 people's.
 13 Q Right. But help me understand this. When
 14 it's -- when it is someone like you who -- who
 15 does not have one fixed static gender identity
 16 that they've arrived at, but they -- but they're
 17 gender fluid, they have -- they have more than
 18 one, is it not then fair to say, you know, that
 19 you are at times, you're -- you're changing
 20 the -- the gender that you -- that you identify
 21 with at any particular time?
 22 A No.
 23 Q So change -- change is not the right word there.
 24 What would be the right word?
 25 A I'm not sure. For -- I mean, I -- I think we
 26 have fundamentally different ideas around this,
 27 so I don't know that I'm going to give you one
 28 that you're satisfied with.
 29 Q No. I would agree we have fundamentally
 30 different ideas around this, and that's the whole
 31 point of what I'm trying to get at. And -- and
 32 language is difficult, and I understand that.
 33 And I'm not using "change" in a pejorative way.
 34 I'm just -- I'm just grasping for a word that I
 35 think is -- fairly describes it which is why I'm
 36 asking you. Okay. So change is not a word, but
 37 we don't -- we don't have a word to describe
 38 the -- the transition from -- from one gender to
 39 another. Can we just call it -- it's a
 40 transition? Can we call it that?
 41 A I -- I don't know that it is a transition. I
 42 think you are born with a gender identity
 43 intrinsic to you, and it might take a while for
 44 that to be uncovered, but I don't think it ever
 45 changes necessarily.
 46 Q Okay.
 47 THE CHAIR: Mr. Kitchen, I'm just noting the time, and

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1 finish off if you're on a line of questioning,
2 but somewhere around here is a good opportunity
3 for a morning break.

4 CNSL J. KITCHEN: Sure. No. We can -- yeah. We can
5 break now.

6 THE CHAIR: Okay. So we're going to take a -- a
7 15-minute break. Teacher A, you're under
8 cross-examination right now. And for so long as
9 you're under cross-examination, you're not
10 allowed to talk to anyone about your evidence.
11 That includes the lawyers for the complainants.
12 So in this 15-minute break, take a break, talk
13 about other things. We'll just turn our cameras
14 and mics off and ask everyone to come back in
15 15 minutes; okay?

16 A Okay.

17 THE CHAIR: Thank you.

18
19 (WITNESS STOOD DOWN)

20
21 (PROCEEDINGS ADJOURNED FOR MORNING RECESS) [11:01:40]
22 (PROCEEDINGS RECONVENED) [11:16:03]

23
24 TEACHER A, a witness,
25 recalled.

26
27 THE CHAIR: Hi, everyone. Welcome back. We'll go now
28 until -- we have a lunch break planned for 12:30
29 just to let you know kind of the schedule of the
30 day. And of course, Teacher A, as I said before,
31 if you need breaks, let us know. Are you ready
32 to continue? Yeah. Okay. Go ahead,
33 Mr. Kitchen, when you're ready.

34 CNSL J. KITCHEN: Thank you.

35
36 CROSS-EXAMINATION BY CNSL J. KITCHEN, Continuing:

37
38 Q Teacher A, let's go back to these -- these
39 special planning meetings. Okay. Were they --
40 were they to do with -- these meetings to do with
41 anything else besides potential protests?

42 A So the -- the purpose of the -- the planning
43 meetings were to, I guess, think of anything that
44 could come up that would be difficult for the
45 particular school or the District to deal with.

46 Q Okay. So fair to say that the -- the -- the
47 school and/or the District were -- were -- were

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1 supportive of you in helping to plan for those
2 contingencies and make sure that the meeting went
3 ahead?
4 A They -- they wanted it to go ahead was my
5 understanding, but there was a lot of extra hoops
6 that we had to jump through that wouldn't have
7 been extended to, say, a cultural day.
8 Q Right. And -- and do you think the District
9 imposed those because they somehow disproved of
10 the GSA meetings, or were those things simply
11 things that were there that had to be overcome,
12 and the District was actually helping you to get
13 past them?
14 A I think the District anticipated that the --
15 the -- some of the community in Chilliwack would
16 struggle with these events.
17 Q But you -- but you would agree with me that the
18 District wasn't -- wasn't struggling. The
19 District didn't oppose them. The District didn't
20 resist them. The District was helping you to
21 make them happen; isn't that right?
22 A Yes.
23 Q Did you ever make any requests for -- for -- for
24 resources from the District for your GSA meetings
25 or for the club that was denied by the District?
26 A I was denied PAC funds.
27 Q And what are those?
28 A PAC is a parent advisory group. I'm not sure the
29 exact term for it. Committee maybe. So they
30 decide who is going to get funds and who are not,
31 which -- which clubs are going to get funding.
32 Q Okay. And so some clubs got it, some clubs
33 didn't? Is that fair?
34 A Yes.
35 Q Okay. But the GSA club was one of the clubs that
36 didn't get it?
37 A We got some funding.
38 Q Okay.
39 A Just not a lot.
40 Q Do you think the -- the District or the -- or the
41 school was -- was unfair towards the GSA club
42 and -- and giving it less money than it gave
43 other clubs?
44 A I think that in the light of equity, I think that
45 the GSA definitely deserves funding.
46 Q Right. But -- but do you think -- isn't it fair
47 to say that the school did not withhold funding

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Teacher A (for Complainants)
Cross-exam by Cnsl J. Kitchen

1 on the basis that they disagreed with or
2 disapproved of the GSA?
3 A Yes.
4 Q There's going to be a witness who testifies later
5 this week that from his perspective, the --
6 the -- the GSA at your school was -- was treated
7 well. It wasn't singled out, and, you know, it
8 was -- it -- it got funding and supports and
9 everything else that any other club got. Would
10 you disagree with him?
11 A I would say that the -- the funding that was
12 given was less than many other clubs got.
13 Q Okay. But fair to say you just -- you just
14 regard that as something that just happened, not
15 as a form of discrimination on the basis of
16 gender identity and/or sexual orientation?
17 A I can't speak to whether there was discrimination
18 or not, but I will say that money talks. And
19 when a group is not given funding, it's, in my
20 opinion, because it's not placed at the same
21 importance as other clubs are.
22 Q Okay. So you -- you -- you think the District or
23 the school you were at thought the GSA was less
24 important?
25 A In my opinion, when people are given less funding
26 for something, it's because they are categorized
27 lower than others.
28 Q How do you know you had less funding? How do
29 you -- how do you have access to the amount of
30 funding the other groups received?
31 A Because people talk.
32 Q Oh, okay. So you only know from people talking.
33 You don't know because you've seen the numbers?
34 A I -- I don't recall whether I've seen the numbers
35 or not honestly. It's been a long time.
36 Q So fair to say you don't really know if the GSA
37 was given less funding. That's just your sense
38 of it?
39 A Based on what was reported by others.
40 Q Right. But you would -- you would attribute
41 this -- this sense of a lack of funding, you
42 would attribute this to -- to Barry Neufeld's
43 comments?
44 A Sorry. Can you repeat the question.
45 Q The -- the -- the -- the -- the sense or
46 perceived lack of funding to the GSA when you
47 were the teacher host for it, do you -- do you

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Teacher A (for Complainants)
 Cross-exam by Cnsl J. Kitchen

1 blame that in part on Barry Neufeld's comments?
 2 A I think that the comments that were made by Barry
 3 contributed to an overall issue in the district
 4 and the community where queer people were thought
 5 of as less than.
 6 Q Yes. But do you believe -- do you honestly
 7 believe that -- that, you know, if in fact the
 8 District gave the GSA less money, that they did
 9 so in part because of Barry's comments?
 10 A I think that Barry's comments contributed to the
 11 culture that was growing in Chilliwack.
 12 Q Well, yes, and you've given that evidence. But
 13 what I want to know is -- is do you believe that
 14 Barry's comments contributed to this specific
 15 thing, this perceived lack of funding to the GSA
 16 when you were in charge of it? Do you believe
 17 Barry's comments contributed to the District
 18 ostensibly giving the GSA less money?
 19 A Yes. And I should clarify that the -- I don't
 20 know if the money comes from the District. It
 21 comes from the PAC, and I don't know where they
 22 fall within the district hierarchy.
 23 Q That's helpful to know. Thank you. So the money
 24 for -- for student clubs comes from the parent
 25 advisory council?
 26 A Yes.
 27 Q Do you know where they get their money from?
 28 A No idea.
 29 Q The parent advisory council, is it -- is that
 30 something that's sort of autonomous and
 31 independent, or does the District have some
 32 control over it?
 33 A I have no idea.
 34 Q So as far as you know, it wasn't the District
 35 that was -- that was denying funding to the GSA.
 36 It was parents. Is that fair?
 37 A I have no idea.
 38 Q Well, how could you have no idea? It's the
 39 parent advisory council. You said that's where
 40 the money comes from. Is it -- the parent
 41 advisory council composed of parents?
 42 A The title would allude to that, but as I've said,
 43 I have no idea the makeup of --
 44 Q So you have no idea about the parent advisory
 45 council?
 46 A No. It's not part of my job to know that.
 47 They're a funding source that we reach out to for

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Teacher A (for Complainants)
Cross-exam by Cnsl J. Kitchen

1 funding, but no, it's not something that I spend
2 a lot of my time researching.
3 Q But this -- this is the body that you submitted
4 request for funding for the GSA group to?
5 A Yes.
6 Q Okay. Now -- now the meetings to make these
7 events successful, those were within the
8 district, not with the parent advisory council?
9 A Yes.
10 Q Okay. So money for the -- for the -- for the --
11 for the student groups doesn't come from the
12 District at all. It comes from -- it comes only
13 from the PAC?
14 A I can't speak to the District's funding
15 disbursements, but I did not receive any funding for
16 events -- those particular events that I talked
17 to at that time.
18 Q And you would agree with me that you didn't
19 request funding for those GSA events from the
20 District?
21 A No. But I don't think that that's something that they
22 do necessarily.
23 Q Yeah. Exactly. Okay. In other words, you would
24 agree with me that if there was any sort of
25 discrimination with the funding, it's -- it was
26 coming from the parent group, not from the
27 District; isn't that right?
28 A In terms of funding.
29 Q In terms of funding. We started this discussion
30 with your comment about attack on the existence
31 of the queer community, so I want to come back to
32 that. And do you want me to put that post back
33 up again?
34 A Sure.
35 Q Okay. Oh, okay. This is the post that you said
36 that in connection with. Can you see that there
37 again with the highlighting?
38 A Yeah.
39 Q Okay. So I -- so I want to understand this
40 perspective.
41 A Sure.
42 Q When we were getting into a discussion about
43 numbers and gender dysphoria and all the rest of
44 it, I just -- I kind of want to go back to the
45 beginning if we can. From your perspective, how
46 does Barry's comments attack the existence of the
47 queer community or -- or queer students or queer

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Teacher A (for Complainants)
Cross-exam by Cnsl J. Kitchen

1 teachers, et cetera?
2 A The -- I mean, I think that the -- the term
3 "gender ideology" dismisses the real life that --
4 the reality of people's lives.
5 Q How so?
6 A Because that's how people are born. They're --
7 it's not an indoctrination. That's just how
8 somebody is born in my opinion.
9 Q In your opinion. But isn't it fair to say that
10 Barry holds a different opinion or belief?
11 A Yeah, I think so.
12 Q But from your perspective, his belief or opinion
13 is wrong, and yours is right. Is that fair?
14 A Yes.
15 Q Okay. And from your perspective, it's your
16 opinion or belief that should prevail in the
17 school system, not Barry's; is that right?
18 A I have lived experience that directly contradicts
19 his opinion, so I know it to be true.
20 Q So what you believe about the gender spectrum and
21 the sexual orientation spectrum and -- and the
22 multiple genders, you know it to be true because
23 you have lived it?
24 A Yes.
25 Q And if someone says they know that not to be true
26 because they've lived it, you would say they're
27 wrong?
28 A But that's not what we're talking about. He
29 hasn't lived it. He comes from a place of
30 privilege where he does not experience gender
31 dysphoria and therefore cannot speak to it the
32 way that somebody with lived experience can.
33 Q Well, what about de-transitioners? They've lived
34 it. De-transitioners would say I've lived it,
35 and I -- I know from my lived experience that
36 it's wrong. What about them?
37 A I think -- again, you're talking about less than
38 one percent, so I don't put a lot of weight on
39 that.
40 Q Okay. So the de-transitioners don't really --
41 don't really matter much or shouldn't have put
42 much weight put on them because there's so few of
43 them?
44 A They may have a different lived experience than I
45 do, but I'm going to -- I'm going to go with my
46 lived experience because I know it to be true,
47 and I can't speak to somebody else's experience.

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Teacher A (for Complainants)
Cross-exam by Cnsl J. Kitchen

1 Q But you would agree with me that both you and --
2 from your perspective, there's no, like, you
3 know, Barry's right, and I'm right -- because you
4 just said, like, Barry's wrong, and I'm right.
5 So you would -- you would agree with me there's
6 some -- there's some mutual exclusivity here;
7 right? It's not like -- it's not like Barry's
8 belief and your belief can harmoniously coincide.
9 They conflict with each other; right? You would
10 agree with that?
11 A He's saying that I don't -- I don't exist
12 essentially, so yeah. I think that those beliefs
13 are misguided and misinformed.
14 Q And shouldn't be tolerated; is that right?
15 A They shouldn't impact my ability to live freely
16 in the world.
17 Q But to be fair, they don't impact your ability to
18 live in the world; isn't that right?
19 A They -- they do actually. The comments that
20 people in power make have direct impact on
21 marginalized people. People who hold power
22 should use their power to uplift others, not put
23 them down.
24 Q But you're -- you're -- you haven't experienced
25 any employee discipline because you identify
26 as -- as gender fluid and as lesbian; right?
27 A I haven't been disciplined, no.
28 Q You haven't had your pay reduced; right?
29 A No.
30 Q You haven't been told to -- to go home because
31 you've been too gay that day, or you've --
32 you've -- you've been too gender fluid that day?
33 That hasn't happened; right?
34 A No.
35 Q You were never told to shut down the GSA because
36 it was -- there was too much -- too much lesbian
37 stuff or too much gender identity stuff; isn't
38 that right?
39 A You don't have to be directly told something for
40 it to have an impact on you.
41 Q I don't disagree with you. And I know you're not
42 a lawyer, and I don't want you to comment like --
43 as if -- as if you are one, but from your
44 perspective, do you feel like you have really
45 been discriminated against by the District
46 because of Barry Neufeld's comments?
47 A I feel like the culture was impacted by Barry's

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Teacher A (for Complainants)
Cross-exam by Cnsl J. Kitchen

1 comments, which bled into my work experience.
2 Q And -- and you blame the District for that?
3 A No. I -- I think that the onus needs to go on
4 Barry for that.
5 Q You blame Barry for that. Okay.
6 A He made the comments. That's what we're here
7 talking about today.
8 Q When you say "culture", do you -- I take it you
9 mean, like, you know, people in the district
10 acted differently after Barry said things, the
11 things that you don't like?
12 A Yes.
13 Q Okay. And you think Barry is responsible for
14 those -- some of those actions and -- and words
15 from those people?
16 A I think when you're in a position of power, you
17 have a responsibility to your community to uplift
18 people and not put people down.
19 Q What would you say to him when he says that
20 that's what I'm trying to do? I'm trying to
21 uplift the kids who are going through this. I'm
22 trying to help them. I'm trying to protect them
23 from what I think is a bad belief system. I care
24 about them. I love them. I don't hate them. I
25 want to see them succeed in life. I want to see
26 them accept who they are. I want to see them not
27 harm themselves, not commit suicide. What about
28 when he says all those things? What -- what
29 would you say -- what do you say in response to
30 that?
31 A I would say if that was true, he would be a
32 proponent of gender-affirming care and not be
33 actively putting people down in these comments.
34 Q Because gender-affirming care is -- is the only
35 appropriate or acceptable way to respond to all
36 this; is that right?
37 A Like I said, I think gender-affirming care is
38 very expansive and can be a conversation. It can
39 be support when somebody needs support.
40 Q But you -- you would agree with me that from your
41 perspective, the only acceptable way to respond
42 is affirmation only, or -- or is there room for
43 not affirming and saying, right now, I don't
44 think this is a good idea for you, Student X.
45 That's what I want to know. Is -- is it
46 affirmation only, or is there -- is there room
47 for non-affirmation?

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Teacher A (for Complainants)
 Cross-exam by Cnsl J. Kitchen

1 A I think that a person is the expert on their own
 2 experience, and I think sometimes, it -- kids
 3 need that space to explore who they are safely.
 4 Q Well, I -- I appreciate that, and -- and a
 5 general comment like that, Mr. Neufeld may very
 6 much agree with. But what I want to know is when
 7 a child -- I -- I -- you know, says they're --
 8 they're -- they're questioning, they're
 9 exploring, they're -- they're identifying as a
 10 different gender, they no longer identify as the
 11 gender they used to, is -- is affirmation only --
 12 or only affirmation, is that -- is that the only
 13 right approach? What do you believe? Is that --
 14 is that -- is that the only right approach?
 15 A So I think that there's the -- the belief, again,
 16 that you -- you believe somebody can change their
 17 gender where they were born that way, so I think
 18 that creating a safe space where kids can explore
 19 and be creative is absolutely correct. I think
 20 that --
 21 Q Okay.
 22 A -- we owe that to kids.
 23 Q Right. So you would agree with me that it is
 24 inappropriate to respond by saying, look -- look,
 25 child, you know, Child Z or Z or whatever, I
 26 don't want to use -- let's use a name because it
 27 won't -- let's -- Johnny comes to you -- let's
 28 say John. John comes to you and says, "I am -- I
 29 am Joanne now, and -- and I'm a she/her", you
 30 would agree with me that -- that you believe it's
 31 inappropriate to respond by saying, "Now hold on,
 32 John. I don't know if this is a good idea.
 33 Maybe you should spend some time trying to get
 34 comfortable with being a boy instead of --
 35 instead of just, you know, transitioning into
 36 being a girl. I don't know that I want to affirm
 37 you in that yet. It might not actually be good
 38 for you." You would agree -- you would agree
 39 with me that you believe it's inappropriate to
 40 say that?
 41 A My role would be to offer to connect them with
 42 support, and that's it.
 43 Q No, no, no. I'm talking about the pronoun and
 44 the names, right, because this isn't -- this
 45 isn't a medical thing. This is something you
 46 have to deal with. You already told me that what
 47 you would do is you would -- you would adopt

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Teacher A (for Complainants)
 Cross-exam by Cnsl J. Kitchen

1 the -- the pronouns and the names. So what I
 2 want to know is -- is -- is -- do you believe
 3 that is the only appropriate response, like, the
 4 affirming approach of, okay. Yeah. That's good.
 5 That's fine. John, I'm going to -- I'm going
 6 to -- I'm going to refer to you as Joanne, and
 7 you're going to be she/her from now on in my
 8 classroom. I'm going -- I'm going to make sure I
 9 do that for you. What I want to know is do you
 10 believe that is the only appropriate way to
 11 respond to the -- the -- the self-identification
 12 of the -- the -- I'll say new, not different or
 13 changed, but just the new -- or maybe the real --
 14 you believe it's the real -- but the new gender?
 15 Do you believe that the only way you should
 16 respond is to affirm it and go with it?
 17 A The only way that I would respond to somebody
 18 coming to me in confidence in saying this is who
 19 I am is to respect their experience because
 20 they're the expert of it and say okay. I see
 21 you.
 22 Q And you believe Barry is wrong when he says that
 23 what we should do at least sometimes with these
 24 kids is say, now, hold on now. Maybe you should,
 25 you know, watch and wait and -- and see if you
 26 actually get to be comfortable with -- with being
 27 a boy. When Barry says that's what we should do
 28 sometimes with these kids, you disagree with
 29 that? There's no room for that approach?
 30 A What would be the -- you know, how would you
 31 decide which kids you do that with and which you
 32 don't? How -- how do you know which kids have
 33 gender dysphoria and those who are being
 34 creative? You don't. So you give them the
 35 freedom, and you believe and trust in their
 36 experience to make that determination, and it --
 37 it may be something that dissolves. But giving
 38 kids the freedom to try that out is what I
 39 believe we need to do.
 40 Q You should let them experiment in other words?
 41 A We need to trust them and understand that it's a
 42 process sometimes.
 43 Q But the -- but the -- but the being creative,
 44 it's fair that we should -- we can call that, you
 45 know, to let them experiment with that, with
 46 the -- with the gender identity thing?
 47 A If you're attached to that word. I'd like to

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Teacher A (for Complainants)
Cross-exam by Cnsl J. Kitchen

1 call it being gender creative or exploring one's
2 gender.
3 Q Okay. Okay. Okay.
4 THE CHAIR: Mr. Kitchen, sorry to interrupt. If
5 you're done with the document, could you take it
6 down, please.
7 CNSL J. KITCHEN: I'm sorry.
8 THE CHAIR: Thank you. And I'm just going to fix the
9 blinds, but I'm still listening. I just can't
10 see.
11 CNSL J. KITCHEN: Yeah. And you know what? I'm going
12 to get myself some more light here. There we go.
13 Now I'm having issues with my blinds.
14 Q This belief that you hold that people aren't
15 really changing their -- their gender. They're
16 just discovering the gender they always were --
17 and let me stop there. Is that fair? Like,
18 you -- you would say, like, what's really
19 happening is people are really discovering the
20 gender they always were. They're not changing
21 their gender. Is that fair?
22 A I -- I can speak from my own experience, and
23 that's how it was for me.
24 Q Okay. Right. But you're -- but you're -- I've
25 been talking about students changing their
26 gender, and you've been saying, well, that's not
27 really accurate. That's not what I believe. I
28 don't think that's fair. So -- so you would
29 agree with me at that point, you're talking about
30 the students that you've had to deal with; right?
31 A Yeah. But again, I can't speak for other
32 people's experiences.
33 Q You would -- you would --
34 A -- is that, yeah, I discovered who I was, and it
35 took a long time for me.
36 Q Okay. So was that what the students are doing?
37 They're discovering what gender they really
38 always were all along, or are they -- are they --
39 to use my language -- or are they changing their
40 genders?
41 A I -- I think that they're discovering who they
42 are.
43 Q Okay. This belief that when somebody that --
44 that you have that when somebody identifies as a
45 new gender that they're just discovering their
46 sort of, you know, real gender that they always
47 were, how long have you had that belief?

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Teacher A (for Complainants)
 Cross-exam by Cnsl J. Kitchen

1 A 20 years.
 2 Q Okay. And is that -- is that roughly your entire
 3 adult life roughly?
 4 A Yeah.
 5 Q Okay. And did -- and what caused you to adopt
 6 that belief?
 7 A I think therapy was really helpful. I think that
 8 research was really helpful, talking to people
 9 who had similar life experiences to me were
 10 helpful, similar identities to me, discovering I
 11 wasn't the only one.
 12 Q So what's wrong, in -- in your view, of -- of
 13 Barry referring to this belief as gender
 14 ideology?
 15 A I don't believe it's an ideology. I think that
 16 it's just how people are.
 17 Q Okay. So -- and to get a little more to the
 18 point, for you, when Barry says, as a lot of
 19 people do, that there's only boy and girl.
 20 There's no other genders, and that, you know,
 21 boys can't become girls, when he -- when he says
 22 things like that, for you, that is somehow
 23 attacking the existence of -- of people -- of
 24 trans people?
 25 A Yes.
 26 Q Because this -- this is what I want to
 27 understand. How does that -- how -- how do you
 28 work that out?
 29 A It's also negating the, you know, somewhat
 30 reasonably large population of intersex people,
 31 which are two percent of the population which is
 32 the same amount of people who have red hair. How
 33 many people do you know that have red hair?
 34 Probably lots.
 35 Q You would agree with me --
 36 A [Indiscernible] gender binary.
 37 Q You would agree with me that when he's talking
 38 about gender ideology and, you know, the beliefs
 39 about -- about -- about changing -- or adopting a
 40 new gender and there being more than two genders,
 41 you would agree with me that he's not -- he's not
 42 actually talking about intersex people?
 43 A I'm not sure if that's -- I mean, intersex people
 44 are under the queer umbrella, so I think he
 45 potentially is.
 46 Q Okay. But he's obviously not talking only about
 47 intersex people. Like, obviously, the -- the --

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Teacher A (for Complainants)

Cross-exam by Cnsl J. Kitchen

1 you know, his -- his focus is -- is not intersex
2 people. It's -- it's the people who believe that
3 they're -- that there's something other than
4 cisgender.
5 A Mm-hmm.
6 Q Or do you really think he's targeting intersex
7 people?
8 A Well, I think this is a bigger conversation that
9 could go into biology. But without me being an
10 expert witness, I don't think that's really an
11 area that we can really tackle. But I will say
12 that biological sex and transness have a lot of
13 interplay.
14 Q And to be clear, again, I don't want to get into
15 the medical eyes, but when you say intersex,
16 you're talking about people that have some form
17 of atypical development in the -- in the sense
18 that they might have both testes and ovaries.
19 They might have, you know, an -- like, an
20 undeveloped penis but -- and also -- but fully
21 developed or undeveloped ovaries. We're -- we're
22 talking about people who -- who -- there's --
23 there's been a biological developmental atypical
24 thing along the way? You -- you would agree
25 generally that's what we're -- that's what we're
26 both talking about when we talk about intersex?
27 A Intersex can be biological, hormonal, or
28 chromosomal. There might not be any physical
29 characteristics and no secondary sex
30 characteristics.
31 Q Okay. So we're on the same page. But -- but --
32 but it could also be the examples I just gave?
33 Is that fair?
34 A It's a -- yeah. It's a big spectrum, so it's
35 going to encompass a lot.
36 Q Right. But yeah, but -- but to your point, we're
37 talking about people with biological or
38 chromosomal or -- or genetic or -- or whatever,
39 whether or not it's sort of, you know,
40 structurally visible. We're talking about people
41 who have some sort of atypical development on the
42 chromosomal genetic physiological level?
43 A Yes.
44 Q Okay. Good. Good. Good. Good. Okay. So you
45 would agree with me that gender-affirming care
46 has a -- has a -- has a medical aspect to it, not
47 only a social aspect to it; is that right?

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Teacher A (for Complainants)
 Cross-exam by Cnsl J. Kitchen

1 A Yes.
 2 Q Okay. And is -- you would agree with me it's
 3 your understanding that the medical aspect can
 4 include things like puberty blockers?
 5 A Yeah.
 6 Q Okay. And things like -- like hormones like --
 7 like, testosterone for those who are -- who are
 8 transitioning to male, for example?
 9 A Eventually, yes.
 10 Q Eventually. And eventually, it can include
 11 surgeries?
 12 A If that's the -- the road that they decide that
 13 they want to go down, yes.
 14 Q Yeah. And, you know, surgeries to -- to -- to,
 15 like, remove or augment breast tissue, surgery
 16 to -- to remove or create different genitalia, so
 17 surgeries would include surgeries like that? Is
 18 that fair?
 19 A Yes. Gender-affirming surgeries.
 20 Q Yes. Okay. So we call those gender -- okay. So
 21 for -- I'll just use one example. So for a woman
 22 who -- who -- and I'm just sort of using that
 23 term loosely, so track with me. A woman who, you
 24 know, wants to fully transition to becoming a
 25 man, one of the surgical options for effecting
 26 that would be the -- the removal of both of
 27 her -- of her breasts; right? You would agree
 28 with that?
 29 A If he was trans --
 30 THE CHAIR: Oh. Just a minute. Sorry. Ms. Waddell,
 31 are you trying to unmute?
 32 CNSL A. WADDELL: That's okay. I was going to let
 33 her --
 34 THE CHAIR: Okay. Sorry.
 35 CNSL A. WADDELL: -- answer, and I can -- I can object
 36 to the general line of questioning, but I'm --
 37 THE CHAIR: Okay.
 38 CNSL A. WADDELL: Go ahead for now.
 39 A Yeah. I think that if he was going through a
 40 medical transition, it would -- and if he decided
 41 he did not want breast tissue, to have that
 42 gender-affirming surgery for more of -- of a male
 43 contoured chest, then that is one of the ways
 44 that people affirm their gender.
 45 CNSL A. WADDELL: So I'm just going to object again on
 46 the basis of relevance. I mean, my view is that
 47 pretty much everything we've heard in cross so

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Teacher A (for Complainants)
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1 far -- most of it -- is irrelevant, but I've been
2 trying to curb the objections so that we can just
3 get through stuff. I'm familiar with this aspect
4 of my friend's cross-examination because we went
5 through it with the other witness, and I just
6 don't understand how getting individual witnesses
7 to affirm the various different types of
8 surgeries that might be included in
9 gender-affirming care is relevant. We -- we
10 don't dispute that those are all types of --
11 of -- of surgeries that may result. I mean, so
12 to my mind, this is irrelevant. And in the
13 interest of time to actually get through this
14 witness in a timely way, I'm going to suggest
15 that my friend limit his questions to, you know,
16 if he wants to ask about, you know, firsthand
17 experience or things that -- you know, whether
18 the witness has -- understands any kids she's
19 worked with to have any of these things. I just
20 don't see how it possibly ties into the issues in
21 this case. That's my objection.

22 THE CHAIR: Thank you. Mr. Kitchen.

23 CNSL J. KITCHEN: Well, that's fine. I mean,
24 obviously, Ms. Waddell and I are going to
25 disagree on -- on what's relevant. That's just
26 how it goes. I would remind my friend that she
27 is the one who has put into the record and put
28 into the case that Barry's comments about these
29 types of things are discriminatory. She has put
30 an enormous amount, and I -- I grant that there's
31 a lot of things that Barry has said, but she's
32 pretty much put it all in there and says all this
33 stuff is -- is -- is discriminatory. So that
34 lends itself to extensive cross-examinations
35 because there's just a lot of content that
36 Barry -- Barry kind of covers the whole topic.
37 You know, everything from the -- the surgeries to
38 the -- to the stats to the ideologies to the
39 beliefs to the -- to the teaching of the beliefs
40 to the kids and -- and, you know, his perspective
41 that it harms the kids, and, you know, et cetera,
42 et cetera, et cetera.

43 He talks about the body parts, and we've had
44 a witness get really upset about that. And, you
45 know, he talks about the -- the -- you know,
46 the -- the -- getting -- getting rid of the gay
47 kids, and, like, there's a lot of content that

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1 she's put -- she's put in, the complainants have
2 put it in, and they've said this is
3 discriminatory. And then she says it's not
4 relevant for me to cross about it. I mean, I get
5 it. That's how -- that's how the game works. I
6 get that. But I just --

7 THE CHAIR: Well, it's not a game. Can you just -- I
8 mean, coming back to -- it was very intentional
9 the reason that we set out the legal test and the
10 legal issues and the factual issues multiple
11 times in our correspondence at the beginning of
12 the hearing. So I -- so I think in some of your
13 submissions about relevance, you say it's obvious
14 or she's -- it's relevant because he said it, and
15 these are the comments that are alleged to be
16 discriminatory. But it would be very helpful if
17 you could point to the place in the analysis
18 where we're going to be making findings about,
19 you know, what witnesses have testified about
20 various surgeries and that that's going to have
21 some bearing on whether we find there's
22 discrimination.

23 I just -- I'm really struggling on where any
24 of this falls in the analysis of the issues we're
25 trying to -- we're asked to decide because we're
26 not adjudicating the -- the truth or good faith
27 of his beliefs and all of those things; right?

28 CNSL J. KITCHEN: I was just going to comment on that.

29 THE CHAIR: Like, we're adjudicating whether
30 Section 13 or Section 7 of the Code are engaged.

31 CNSL J. KITCHEN: To be -- to be clear, as you -- as
32 you pointed out, the truth doesn't matter, and
33 that's fine. I'm fine with that. It isn't about
34 whether or not Barry -- what Barry is saying is
35 objectively verifiably true. Obviously, some of
36 it is, but that's besides the point from your
37 perspective, and that's fine. I get that, okay?
38 But then the question becomes is what he is
39 saying reasonable and defensible from the
40 perspective of a reasonable person who is
41 discussing ideas and beliefs and the teaching of
42 those ideas and beliefs to children and whether
43 or not that's a good idea. And the less
44 reasonable it is that he's having that
45 discussion, the less reasonable it is to talk
46 about these things, and the less reasonable the
47 things he's saying, the more perhaps we can then

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Teacher A (for Complainants)
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1 infer that these things really are potentially
2 discriminatory or hateful.

3 But the more reasonable they are, the more
4 defensible they are, the more real reality that
5 they're connecting to, the more real people live
6 and feel and see the things that he's talking
7 about, the things that he believes, then the less
8 likely that it is legally justifiable to refer to
9 these things as causing hatred or discrimination.
10 That matters immensely for the legal analysis.
11 The legal analysis is not simply a few people
12 stand up and say I'm really upset. This really
13 hurt my feelings. I really don't like the
14 political climate this created. I really
15 disagree this person. I think it's shocking they
16 would say this and then walk out the door, and
17 you decide there's discrimination because they
18 got emotionally upset enough. That's not the
19 test, okay?

20 Now, obviously, dignity, hurt feelings,
21 et cetera, these things matter. I deal with this
22 all the time. I deal with people that get kicked
23 out of their programs at school and lose their
24 jobs, okay, real discrimination, tangible
25 discrimination. And obviously, their dignity and
26 their feelings are enormously hurt as a result of
27 that tangible act, and that matters, and we
28 compensate on the basis for that. That's human
29 rights discrimination damages right there, okay?
30 None of that has happened to these people,
31 obviously, and we didn't -- we didn't expect
32 that. And of course -- in fact, that's not
33 happening.

34 And so what we are -- all that we really are
35 left with is I don't like the political climate.
36 My feelings are hurt. I think what he said is
37 shocking, right, which, of course, goes to my
38 point that this isn't about tangible instances of
39 discrimination. It's about people having
40 emotional upset and response to words. Okay.
41 Fine. Right. Some words really are hateful and
42 discriminatory, and so we need to sort out, well,
43 you know, because it's a little subjective
44 obviously, so we have to sort out, well, are
45 these words hateful and discriminatory? Well,
46 let's look at the reasonableness of the words,
47 right, what is actually being talked about

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1 because somebody -- and I -- you know, I could
2 take you right to the BCHRT website where it
3 talks what is hate speech? Well, it has to be
4 more than merely offensive. It has to be more --
5 there's a list of all the things it has to be
6 more than, right? Just because somebody has a
7 subjective overreaction of hurt feelings doesn't
8 mean that the objective test of whether or not
9 this thing that was said is actually more than
10 merely offensive, et cetera, has actually been
11 met.

12 THE CHAIR: Right.

13 CNSL J. KITCHEN: So that -- that -- that's the --
14 that is the legal issue here, so that makes all
15 of this relevant, right? We wouldn't be having
16 this discussion had Barry made a post, and the
17 next day, the principal or the teacher -- the
18 school said that's it. You're done with the GSA,
19 and I'm taking this class way from you. That
20 would be employee discipline or employee
21 retaliation or employee -- whatever you want to
22 call it. That would be a -- an exclusion, for
23 example, okay? Well, then we have tangible
24 discrimination. Now, of course, the question
25 would still be, well, is that the District doing
26 something, or is that somehow -- is that somehow
27 Barry, right?

28 And of course, you know, Barry never said,
29 well, you know what? Trans teachers shouldn't be
30 teachers, right? If he said that kind of thing,
31 that's discriminatory speech. We wouldn't need
32 to have a discussion about it. He wouldn't have
33 a two-week or three-week hearing about it.

34 THE CHAIR: Sorry, Mr. Kitchen. Sorry for --

35 CNSL J. KITCHEN: Okay. No, no. I'm almost done.
36 I'm almost done.

37 THE CHAIR: Okay. We are very far from the question.

38 CNSL J. KITCHEN: I am saying this because you keep
39 coming back to, Mr. Kitchen, nothing you're doing
40 is relevant, and I don't get it. And that's why
41 I keep having to remind you, well, what are the
42 issues, right? And this is why you've heard me
43 say, well, have we already predecided the issues;
44 right? The respondent's defence might be one
45 that's new to you, but it's not unreasonable,
46 okay, and it needs to be explored. And maybe you
47 will discover the relevance of it after I've

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completed, and you've gotten my legal argument. As novel it might be, perhaps you will discover that. You need to let us go there. This is not a quick and easy case of somebody said something obviously objectively easily bad, exclusionary, et cetera, and then we have this obviously easily identifiable actual act of exclusion. We don't have any of that here anywhere, okay? Nobody has lost their job. Nobody's got in trouble at their job. None of that has happened, okay? Nobody said they should, right? This isn't that type of case, okay?

It's a case where somebody's criticized ideas and beliefs, and the other side said that amounts to criticizing our identity, and you can't do that. You have to be quiet, okay? That's the case we're having. That's -- that's a difficult case to wade through. That's why we have to explore these things. I hope -- I hope that's helpful insofar as I might have said something a little more clear than I've said last week about what we believe the issues are and what the case is really about. Thank you. I appreciate it.

THE CHAIR: Ms. Waddell.

CNSL A. WADDELL: Mr. Kitchen, are you -- are you trying to argue that the speech is not -- you know, shouldn't reasonably be interpreted as it is because Mr. Neufeld is talking about super invasive surgeries? Like, I'm still trying to get to how, you know, the details of phalloplasty and vaginoplasty are -- are relevant. Is that what you're trying to say? Are you trying to sort of get at, okay, it's -- it's not offensive speech or it's not -- it's not all the things the complainants say it is because he's talking about serious stuff? Is that -- like, what's the relevance of the -- of the -- the details? You got her to agree that the whole -- you know, that various different types of surgery could fall under the gender-affirming care, and I just don't -- I still don't understand the relevance.

If -- if there's some way that you can -- I'm happy to set my objection aside if you can find some way to -- to tie it to -- even -- even the -- you know, the broad response to the complaint, the -- you know, I -- I think doesn't

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1 fit anywhere, but even taking your approach to
2 the case, you still haven't, for me, explained
3 how this -- this line is -- is -- is relevant.
4 And if it -- if you could do this in two
5 questions, which -- which is possible or that
6 kind of thing, I wouldn't have a problem with it.
7 But we're just eating up a tremendous amount of
8 hearing time on irrelevant stuff. So anyway,
9 there -- that's my closing reply, if you will.

10 CNSL J. KITCHEN: Well, look. We -- this whole case
11 is about a clash of world views, okay? It's not
12 just between the litigants but between the
13 parties and I dare say between the respondent and
14 the Tribunal, which sort of underlies the point
15 I'm trying to make, okay? You -- you think it's
16 not relevant. Well, if Barry is talking about
17 things that are happening, then that begs the
18 question, well, is it -- is it hate speech? Is
19 it discriminatory? Now if he's talking about
20 something that just isn't happening or just isn't
21 real and he's sort of making stuff up, well, then
22 we tend to say okay. Well, even if he didn't
23 intend discrimination, maybe we actually have it
24 here. And go to the commissions -- they want to
25 say this is all moral panic, right, like, you
26 know, this -- all of this stuff -- this stuff is
27 terrible, this stuff is happening.

28 And if it isn't happening, right, then --
29 then -- then the point is a lot more supported.
30 The point that, okay, maybe this is really just,
31 like, you know, discrimination but dressed up
32 as -- as somebody pretending there's a big
33 problem that they're really concerned about.
34 Really, they're not. They're just being
35 discriminatory. But if it's actually happening,
36 if -- if -- if it's -- if these are really
37 issues, real problems, right, like, there really
38 are de-transitioners. There -- there -- there
39 really are all these surgeries happening. Like,
40 he's not just obsessed with body parts and
41 therefore discriminatory. He's identifying a --
42 a real issue. And it might land in different
43 spots on the issues, right, but that doesn't make
44 it discriminatory. Just -- we're in the
45 marketplace of ideas, which means it's not
46 discriminatory because we actually do have free
47 expression in the country, right?

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1 Like, I don't expect you or the Tribunal
2 to -- to -- to really easily wrap your heads
3 around it. You come from different world views,
4 but you have to understand that the respondent
5 has a right to that defence. And no, we can't
6 cross-examine this witness for 18 hours on it,
7 but for four hours, yes, because we need to
8 explore those issues. You're going to say it's
9 all identity. Well, if I don't cross-examine and
10 establish that there's some beliefs involved,
11 then you're going to win, right?

12 I'm not trying to waste anybody's time, and
13 I understand you might feel that way because you
14 see the issues differently. But I -- this is not
15 me just -- just poking around, wasting time,
16 trying to embarrass the witness and trying to
17 make the complainants look bad. I'm trying to
18 extrapolate what the beliefs are. And you know
19 what? Most of them, yes, I'm unfamiliar with, so
20 is the respondent -- to the degree that he
21 holds them -- he -- he knows them insofar as he
22 criticizes them. Well, let's see what he's
23 criticizing. Is it something phantom because
24 he's discriminatory, or is it something real, and
25 are we in the marketplace of ideas? It's the
26 whole point of this, okay? That's what I'm
27 exploring.

28 No. I don't want to be with the witness
29 until the end of the day. I don't want to take
30 more than three or four hours. It might even be
31 less, okay, but I have to explore this a little
32 bit, and I'm going to continue to whether, I
33 mean, you see it as relevant or not. Okay. I
34 don't have anything else to say on this, so thank
35 you for hearing me out.

36 THE CHAIR: All right. Thank you. Thank you,
37 Mr. Kitchen. And I think I -- I think I do
38 understand Mr. Neufeld's theory of the case, and
39 I think there is a -- a rich argument to be made.
40 But where I -- where I do struggle -- because
41 here we are talking about evidence and what
42 evidence, what fact evidence is going to be
43 relevant to legal issues we have to decide, we
44 are not in novel terrain. We're in well, well,
45 well trodden areas of the law related to hate
46 speech, related to discriminatory publications,
47 and related to discrimination and employment.

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1 And generally, those are not -- I mean, you keep
2 characterizing this as a clash of world views.
3 And maybe at a very high level it is, but the
4 analysis is very set out. So where I see the
5 arguments that you're making coming into play is
6 under Section 7(1)(b) which does ask whether in
7 the view of a reasonable person apprised of the
8 circumstances, this speech could expose people to
9 vilification or detestation, right? So -- and
10 that's a rich area as well because this is where
11 we do some *Charter*, you know, balancing,
12 considering freedom of expression and so on and
13 so forth.

14 But the analysis in that area, which has
15 been laid down by the Supreme Court of Canada, is
16 an objective one, which means the reasonable
17 person is a legal fiction. It's not any -- with
18 all due respect to Teacher A, it's not -- none of
19 the witnesses in this hearing are the reasonable
20 person. It's a legal fiction, and you make your
21 arguments, right? So the evidence about what
22 Teacher A thinks, Teacher B, C, your witnesses,
23 is not relevant to the question of a reasonable
24 person, and that's why we're struggling because
25 we're not litigating the views. We're litigating
26 whether those views -- and -- and frankly, I
27 would have expected most of your defence to come
28 in legal argument and not through facts because
29 the publications are -- they are what they are.
30 They're in front of us. We can all read them.
31 And you have to -- you have to all make arguments
32 about whether they violate Section 7.

33 There's some factual issues around the
34 relationship between trustees and, you know,
35 teachers and -- and what's employment. That's a
36 factual issue. But the substance of the comments
37 is not a factual issue in dispute. And the
38 context of a legal person is a legal -- of a
39 reasonable person is a legal threshold, not a
40 factual one. So it truly -- I maintain the view,
41 and I know my panelists do as well, that these
42 questions intended to kind of get the witnesses'
43 opinions about Mr. Neufeld's comments and -- and
44 what he's talking about are not helpful to any
45 part of the actual legal issues that we have to
46 decide.

47 You'll have your chance to make these

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1 arguments. I just don't see them as a matter of
 2 evidence from these witnesses. So coming back to
 3 the objection, which was to a line of questioning
 4 asking this witness about surgeries and various
 5 kinds of medical interventions, I agree with your
 6 friend that these -- these aren't relevant
 7 factual issues that warrant hearing time to hear
 8 evidence about them from these witnesses, so I'm
 9 upholding the objection, and I'll ask that you
 10 move on.

11 CNSL J. KITCHEN: Sorry. I'm just finding a post.
 12 Oh. Here we go.

13 Q Okay. Do you see this post here with the -- the
 14 National Geographic picture there?

15 A Yes.

16 Q Now this is one of the posts that my friend
 17 brought you to that you were -- you said was
 18 misleading, upsetting. You recall that?

19 A I think so.

20 Q Okay.

21 THE CHAIR: This is Tab 17; is that right? Oh, God.

22 CNSL J. KITCHEN:

23 Q And you understand that the virtue of the fact
 24 that --

25 THE CHAIR: Sorry, Mr. Kitchen. Sorry. Just wanting
 26 to get the right place. Tab 17?

27 CNSL J. KITCHEN: Tab 17 in the publications book.
 28 This is page 97, like, in the Bates numbering.

29 THE CHAIR: Thank you.

30 CNSL J. KITCHEN: Not in the PDF, Bates numbering. I
 31 think that's the same across both of these books.

32 Q So is it fair to say that this is misleading --
 33 when you say it's misleading, you disagree with
 34 Mr. Neufeld, and that's why you find it
 35 misleading; correct?

36 A I think that the -- the very first sentence there
 37 insinuates that teachers don't have the best
 38 interest of gay kids at heart.

39 Q So you -- you would equate elites with teachers?

40 A Well, I assume that's why you're asking me about
 41 it.

42 Q Well, no, no. I'm asking you about this
 43 because -- because Ms. Waddell brought you to
 44 this to get your reaction to it, and -- and, you
 45 know, you understand that the reason this -- this
 46 statement -- publication from Mr. Neufeld is --
 47 is even in front of you is because Ms. Waddell's

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1 client, the B.C. Teacher's Federation has claimed
2 that this statement is hate speech. That's
3 why -- that's why we're discussing it, okay? And
4 you'd been preferred as a witness to speak to
5 whether or not you feel like this is hate speech.
6 That's why we're having this conversation.
7 So you think when he says elites, he's
8 talking about teachers. Isn't it fair to say
9 he's talking not about teachers because teachers
10 aren't part of the elite?
11 A I think he's talking about very highly educated
12 people, and sometimes teachers fall into that.
13 Sometimes teachers have PhDs.
14 Q Okay. So you think -- you think he really is
15 intending to talk about teachers when he says
16 elites?
17 A I think he's talking about highly educated
18 people. I think that sometimes teachers fall
19 under that category, but I don't think that's
20 what he was intending with this particular
21 comment.
22 Q Okay. But -- but to use -- to use some language
23 on -- on your end, you know, and correct me if
24 you think I'm wrong when you read this post.
25 It's very short. But I'll put it to you that
26 Barry's perspective is that -- that queer beliefs
27 or -- or queer ideas are -- are bad -- are bad
28 for the gay kids. I'll put it to you that's
29 basically what he -- what he is saying. Would
30 you agree with that?
31 A Sorry. Can you clarify your question.
32 Q Sure. So I put it to you that what -- what
33 Barry -- to sum up in plain language, what Barry
34 is saying in this is that -- is that the -- the
35 trans agenda -- he uses those phrase -- the trans
36 ideology, gender ideology, queer ideas, okay,
37 stuff we've been talking about, all the beliefs
38 about -- about -- about gender and multiple
39 genders and -- and -- and adopting new genders,
40 okay? He's basically saying, look, all that --
41 all that stuff, all those beliefs and the
42 teaching of those beliefs to kids is -- is bad
43 for the gay kids. Do you think that's a fair
44 summary of what he's saying here of what he
45 thinks?
46 A Yes.
47 Q And you would disagree with him?

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1 A Yes. I -- I think it's another attempt at
 2 division.
 3 Q What would you say to the -- to the -- to the gay
 4 people who say that -- that it's -- it's -- it's
 5 the queer beliefs that are causing the division?
 6 A I would say that I am from the queer community,
 7 and this type of division doesn't exist from my
 8 perspective.
 9 Q From your perspective, there is no division
 10 between the -- the queer trans side of the
 11 community and the more -- the more traditional
 12 gay side of the community?
 13 A Not that I see.
 14 Q That you see.
 15 A No. We're pretty good at holding each other.
 16 Q Okay. Okay.
 17 A And creating space for each other.
 18 Q But fair -- fair to say the reason you're upset
 19 with this post is because you disagree with him,
 20 that you think he's wrong. He's -- he's
 21 misleading. It's misinformation. Is that fair?
 22 A Yes.
 23 Q Okay. Because -- because fair to say you -- you
 24 think he is wrong when he says these ideas are
 25 bad for the gay kids?
 26 CNSL A. WADDELL: That's been asked and answered.
 27 CNSL J. KITCHEN: No. I'm just -- I'm just -- I'm
 28 just clarifying. I -- I -- I get it,
 29 Ms. Waddell. I'm just clarifying. That's all.
 30 This witness has a tendency to just give sort of,
 31 you know, certain pat answers, and I just want to
 32 clarify her position. I think it's a -- it's a
 33 fair question. I'm not trying to ask it over and
 34 over and over again to give her a hard time. I'm
 35 just clarifying.
 36 CNSL A. WADDELL: And just to clarify, when you last
 37 asked the question, she asked -- she answered
 38 yes.
 39 CNSL J. KITCHEN: Okay. Well --
 40 THE CHAIR: Yeah. We have the answer on this one.
 41 CNSL J. KITCHEN: Fine.
 42 Q Barry says here -- he's talking about
 43 gender-confused individuals. I guess it's fair
 44 to say you would take issue with -- with -- would
 45 you -- would you say that the students are ever
 46 gender confused?
 47 A No. I think that people, all people, and

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1 especially kids deserve time and space to figure
 2 out who they are without us telling them who they
 3 are.

4 Q But isn't that exactly what Barry's saying here
 5 when he says they don't need different clothing,
 6 pills, hormones, and surgery. They need love,
 7 compassion, and encouragement to live the life
 8 they were created to live. Don't you agree with
 9 Barry?

10 A No.

11 CNSL A. WADDELL: And, Mr. Kitchen, just because I
 12 know you've said a number of times that creating
 13 the record is important to you, do you want to,
 14 so that the record actually reflects what you're
 15 putting to the -- the witness, one, identify
 16 auditorily, right, because the recording's not
 17 going to capture what you see on your screen, if
 18 you want to just note the page reference or the
 19 tab or something? If you don't care about that
 20 part of the record, then that's fine. I'll stop
 21 interrupting, but I'm just trying to help the
 22 record that I think you want to create.

23 CNSL J. KITCHEN: Well, I appreciate your help. I --
 24 I would opt for the -- the -- the no-interruption
 25 approach, but I appreciate your efforts. But
 26 just for the record, we're at Tab 23 of the
 27 publication book.

28 Q Okay. So how is what you're saying different
 29 than what Barry is saying? He's saying that they
 30 need love, compassion, and encouragement to live
 31 the life they were created to live. And you just
 32 said that the kids need to be allowed to explore
 33 who they are.

34 A So love and compassion and encouragement isn't
 35 shutting down a kid who is trying to figure out
 36 who they are. That's not what compassion is.
 37 It's the opposite.

38 Q Compassion is affirmation only?

39 A No. But it's giving space.

40 Q Which is the same as affirmation only, isn't it?

41 A We're supporting. Supporting isn't affirmation
 42 only. You can not say anything and just give a
 43 kid time and space to discover who they are and
 44 support them when they ask or with things that
 45 pop up. But denying their existence is
 46 absolutely not compassion and encouragement.

47 Q So saying to them that they should -- they should

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1 try to learn to be comfortable with -- with --
 2 with the gender or sex that they are, if you say
 3 that, you deny their existence? Is that your
 4 belief?

5 A I believe that if you tell them that is not who
 6 you are, then yes, you are denying the person
 7 that they are. You're not seeing them
 8 authentically.

9 Q And the reason you say that is because you are
 10 convinced that your -- your -- your view of the
 11 world is -- is correct. Your view of the world
 12 is that Barry is wrong. There are not just two
 13 genders. There are not just -- you know, you can
 14 identify as a gender different than your sex.
 15 It's fair to say the reason you say that is
 16 because you view the world differently. You view
 17 reality differently than Barry; isn't that right?

18 A I have lived experience that my understanding
 19 is -- that Barry does not have, so therefore,
 20 yes. I know those things to be true.

21 Q When Barry says he knows those things to not be
 22 true, you believe he's wrong?

23 A He does not have the lived experience to make
 24 that assumption.

25 Q Well, what if he has the knowledge and -- what --
 26 what if he -- what if he does have the lived
 27 experience to say I've lived as a person. I've
 28 had children. I've worked with human beings my
 29 whole life in what I've done, and that's my lived
 30 experience. I know it to be true that there are
 31 only two genders and that you can never truly
 32 switch from one to the other, which he says
 33 elsewhere?

34 A Well, again, he doesn't have -- he doesn't have
 35 the life experience as a gender expansive person,
 36 so he wouldn't really be able to speak to it with
 37 any authority.

38 Q Well, what about -- what about the people that
 39 have? What about de-transitioners who have said
 40 I have lived this. I have tried to live -- I was
 41 born a woman, and I tried to live as a man, and
 42 it didn't work, and so now I'm a woman again
 43 because it's the only way I can -- I can actually
 44 truly live in the world?

45 THE CHAIR: Mr. Kitchen, we've had these exact
 46 questions before. All of these questions have
 47 been asked already. Exactly what is in this

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1 exact line. You disagree with Mr. Neufeld, what
 2 Mr. Neufeld says isn't true, he doesn't have the
 3 lived experience, what about people who do, we've
 4 had this exact line already, so I just -- in
 5 fairness to the witness and for -- to the
 6 Tribunal, once it's asked -- it -- just ask it
 7 once.

8 CNSL J. KITCHEN: I'm asking it again because I didn't
 9 get direct answers. This is a witness who likes
 10 to give --

11 THE CHAIR: No. Don't -- don't -- don't disparage the
 12 witness. She's given --

13 CNSL J. KITCHEN: I'm not disparaging the witness,
 14 Chair. I am describing the witness. And it's
 15 fair for me to do so, okay? I'm not disparaging
 16 anybody here. I'm not here to disparage anybody,
 17 okay? That's not what I'm out for, okay? I'm
 18 not here to try to make fun of people based on
 19 their gender identity or sexual orientation,
 20 okay?

21 THE CHAIR: I wasn't suggesting that.

22 CNSL J. KITCHEN: And I'm -- and I'm -- I'm very clear
 23 and serious about that.

24 THE CHAIR: Okay. I wasn't suggesting that you were.

25 CNSL J. KITCHEN: And there's been times that
 26 you've -- you've thrown words around about what
 27 Barry and I are doing, and I have some patience
 28 for that because again, I know we're coming at it
 29 from different perspectives, okay? But I'm being
 30 very intentional about -- about not doing that
 31 because I don't think that that's what we should
 32 be here to do, okay?

33 THE CHAIR: Okay. Well --

34 CNSL J. KITCHEN: Okay. I'm -- I'm trying to take
 35 this very, very seriously. It seems to me that
 36 others aren't because they've already made up
 37 their mind about where this should go. I'm
 38 taking this very seriously because it is very
 39 serious for somebody to be accused of hate speech
 40 because they've criticized the belief system that
 41 they disagree with. And by the way, a belief
 42 system that a lot of people disagree with, a
 43 belief system that very people held up until
 44 about a decade ago, okay, a belief system that is
 45 crumbling around the world, okay?

46 THE CHAIR: Okay. All right. So I think -- my point
 47 was just to say I've heard these questions, and

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1 I've heard clear answers on these questions
2 already. So I -- I just want to focus on new
3 areas of questioning. That's -- that's the
4 point. So -- and -- and I can read you back the
5 witness's answer if you don't think they were
6 clear. They -- they were very clear to me. I
7 didn't need them again. So that's all -- that's
8 the point. But we have just a few minutes left
9 to lunch. Can -- do you have other questions we
10 can move on to before lunch?
11 CNSL J. KITCHEN: Yes.
12 THE CHAIR: Okay.
13 CNSL J. KITCHEN: Yes. Let's use the seven minutes.
14 THE CHAIR: Thank you. And you're done with the
15 document, can you take it down? If you're not,
16 that's fine, but just so I can see people.
17 CNSL J. KITCHEN:
18 Q In response to this particular post, you said
19 that when Barry says this, it proves that science
20 has no hold on a lot of these posts. Do you
21 recall that?
22 A Yes.
23 Q So from your perspective, you would agree that
24 science has no hold on -- on Barry's ideas and
25 perspectives and beliefs about all this?
26 A Yeah. I don't -- yeah.
27 Q Okay. Good. We're done with the sharing on
28 that. You said in your testimony that you work
29 with the SOGI 123 resources often. Do you recall
30 that?
31 A Yes.
32 Q Okay. Okay. You see this?
33 A Yes.
34 Q Now I've been told that this looks like it's an
35 older iteration of the SOGI 123 resources. Would
36 you agree with that?
37 A I can't speak to it unless I have more time to
38 examine it, which I don't think we have right
39 now.
40 Q Okay. This has been -- I'll -- I'll -- I'll put
41 it to you that this has been put in the record as
42 an accurate reflection of SOGI 123 resources. Do
43 you have any reason to disagree with that?
44 A Again, I would need more time to examine it.
45 Q Okay. But let's go to self-identification here,
46 number 3.
47

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Students will have the right to self-identification which includes the name by which they wish to be addressed and the preferred pronouns that correspond to their gender identity.

You would agree with me that this is an accurate description of one of the approaches or policies of SOGI 123?

A Yeah, I would agree with that.

Q Okay. And just to try to be a little quicker, you would -- number 4, confidentiality -- by the way for the record, we're at page 131 of the various books. Okay. So confidentiality:

Students will have the right to the confidentiality of their official and/or preferred sex, gender, and name.

You would agree with me that that looks like it's an authentic part of SOGI 123 resources?

A I believe that "preferred" has been taken out of that more recently.

Q So it would read that "students have the right to the confidentiality of their official and/or sex, gender, name"?

A I -- I don't -- unless I have it in front of me, I can't testify to the exact wording, but I believe that the term "preferred" is no longer being used in association with gender or pronouns.

Q And is that because -- going back to your earlier comment about your belief about this -- that when somebody -- when somebody identifies as a gender, it's -- it's -- it's not really their -- when a -- when a student identifies as a -- as a new gender, it's not really their preferred gender. It is their -- it is their real gender that they really discovered? Is -- is that why this language has been -- is being taken out from your perspective?

A From my perspective, it's because it's not up for debate. The person is the expert on their own experience, and it's not really for us to debate somebody else's pronoun or name.

Q So it's not possible that the person is wrong?

A I'm not really understanding what you're asking

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1 me.
 2 Q Is it possible that the -- that when the student
 3 comes and says, "I'm really a girl," and he -- he
 4 was assigned male at birth, you -- from your
 5 perspective, it's not possible for him to be
 6 wrong; is that right?
 7 A I -- I think that we give kids time regardless of
 8 what their eventuality is. It's not for me to
 9 decide if a person is wrong about themselves.
 10 That's not something anybody can decide for
 11 anybody. And I'm sure if I told you that it was
 12 not correct that you identify as male that you
 13 would have serious feelings about that.
 14 Q Well, I'm a little more thick-skinned than most
 15 people, so I -- I could care less. I'm pretty
 16 tolerant of people's beliefs, so -- but I take
 17 your point. Some people get very upset about
 18 that. But isn't it possible that if I identify
 19 as a young, gorgeous man with flowing long hair
 20 that I'm actually wrong? Isn't that possible?
 21 A I don't think that that -- that has anything to
 22 do with what we're talking about right -- right
 23 now.
 24 Q It doesn't?
 25 A And I don't think that those two things are
 26 similar at all. So I don't want to --
 27 Q Isn't -- isn't it equally -- isn't it equally
 28 incorrect to say that I'm a young, gorgeous man
 29 with long hair? I'm bald for those who can't see
 30 me. Isn't it equally incorrect for me to say I
 31 have long flowing hair as it is for a boy, born
 32 male, to say that he is a girl?
 33 A No.
 34 Q So he's -- the boy is correct, but I am wrong?
 35 Is that what you would say?
 36 A I would say that a person is the expert on their
 37 experience. And that boy is going to know who he
 38 is inside a lot more than I am or you are.
 39 Q And from your perspective, school trustees
 40 shouldn't be permitted to suggest otherwise; is
 41 that right?
 42 A As a person in power, it is absolutely
 43 inappropriate to be putting down marginalized
 44 groups, people who have very little power
 45 compared to him. It's not fair to pick on people
 46 who have very little power in the world.
 47 Q And when Barry --

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1 A -- [indiscernible] information.

2 Q When Barry observes -- observes the reality --
 3 from his perspective, when Barry observes the
 4 reality from his perspective that nobody born a
 5 boy, a male, can ever become a girl, to you,
 6 that's putting people down?

7 A Yeah. I think that it's, first of all, not true,
 8 so it's spreading misinformation. And actually,
 9 I would consider it disinformation. And it is
 10 further marginalized an entire group of people
 11 that -- and we don't need to pick on people who
 12 already hold very little power in the world. We
 13 need to uplift them.

14 Q But -- but what if Barry says, "I believe
 15 Muhammad was not a prophet"? Is that putting
 16 down Muslim students?

17 CNSL A. WADDELL: Sorry. Again, this is a
 18 hypothetical that is just not -- not relevant in
 19 the same vein that the -- some of the questions
 20 on Friday about, you know, identifying as a furry
 21 or whatever the heck they're called. This is --
 22 I -- yeah. Anyway, I'm objecting on the basis of
 23 relevance and the fact that he's asking the
 24 witness about a hypothetical.

25 CNSL J. KITCHEN: We went through this with
 26 Mr. Hansman, and he was fair and generous enough
 27 to have the conversation because it is relevant.
 28 And, Chair, I think you now maybe have finally
 29 understood my argument well enough to know that
 30 it is relevant; okay? Nobody can sit there and
 31 claim that there aren't Muslim students in this
 32 teacher's class or Jewish students or Christian
 33 students. So if I was to use those examples,
 34 it's not hypothetical, okay? This is -- this is
 35 real stuff, okay? This goes to the core of the
 36 issues in the case. I must be permitted to
 37 explore -- not for hours on end, but I must be
 38 permitted to explore it a little bit with a few
 39 questions like I was with Mr. Hansman, and that
 40 was a fruitful discussion for getting at this.
 41 And I will remind of what he said -- of what he
 42 said unsolicited from me. He said you must
 43 separate the criticism of the belief from the
 44 criticism of the person, okay? That's what's
 45 going on here.

46 Now, I know it's lunchtime, so we're not
 47 going to go any further, but I need to be

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1 permitted to briefly explore this with the
2 witness when we come back.
3 CNSL A. WADDELL: If I can just offer my reply on the
4 objection. Two things; one, Mr. Hansman's
5 evidence wasn't this witness's evidence. But if
6 you want to ask specifically about how this
7 teacher has or has not addressed, you know,
8 specific situations rising in the classroom,
9 that's totally fine. I don't -- I mean, I
10 don't -- I still don't think it's relevant, but
11 it's less hypothetical if you ask it differently.
12 THE CHAIR: All right. Well, we're --
13 CNSL J. KITCHEN: And I'm -- and I'm fine with it.
14 THE CHAIR: All right. Well, we're at the lunch
15 break, and so just to tie this one off, I agree
16 that the hypotheticals, again, from my
17 perspective, they are eliciting the teacher's
18 opinion on things that haven't happened, so
19 they're quite remote from what may be helpful.
20 And so where are we at, Mr. Kitchen, in your
21 cross?
22 CNSL J. KITCHEN: Well, I would say I'm at least
23 two-thirds. Again, that's more of a percentage
24 of questions, not of time.
25 THE CHAIR: Okay.
26 CNSL J. KITCHEN: I'm probably about two-thirds the
27 way through my questions.
28 THE CHAIR: All right. So I expect then we'll come
29 back and have a bit more, and then we'll have
30 some time to get started with Teacher C today.
31 Could you take the document down just for a
32 moment while I say my final --
33 CNSL J. KITCHEN: Yes.
34 THE CHAIR: -- things. Thank you.
35 CNSL J. KITCHEN: Yes, yes, yes.
36 THE CHAIR: All right. So we're going to take an hour
37 for lunch now. Teacher A, you're still under
38 cross-examination, so I'll ask that you please
39 don't talk to anyone about your evidence. For
40 this longer break, I'm going to log everyone out
41 of the meeting, so don't you leave. Let me
42 remove you. And then in one hour, please --
43 please rejoin, and we'll -- we'll continue on.
44 Thanks very much. I'm going to remove everyone
45 now.

46
47 (WITNESS STOOD DOWN)

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(PROCEEDINGS ADJOURNED FOR NOON RECESS) [12:35:19]
(PROCEEDINGS RECONVENED) [1:35:22]

TEACHER A, a witness,
recalled.

THE CHAIR: Hi, everyone. Welcome back. I can see complainant's counsel here. Teacher A is back, and Mr. Kitchen is here. Mr. Neufeld has not rejoined yet, but I imagine he will be here in the next couple of minutes. Teacher A, are you ready to continue? Yeah. Okay. Mr. Kitchen, go ahead when you're ready.

CNSL J. KITCHEN: Well, I think we should give it a couple minutes just to allow people to get in. I don't -- I think we -- I think at least according to what Teams has told me, we had about 16 people this morning, and I only see 11 there, and I'm -- I'm mindful of your comment that you're not going to let anybody else in after the testimony starts, which I -- you know, I can understand why.

THE CHAIR: Okay. We can wait a few more minutes and particularly for Mr. Neufeld. All right. Just while we're waiting -- have we lost you, Mr. Kitchen?

CNSL J. KITCHEN: No. I am here.

THE CHAIR: Okay. While we're waiting, there is one phone number connected that we don't recognize, and it's a phone number ending in 6774. And so if that's you, you're a member of the public and your phone number ends in 6774, you have two options. You can unmute yourself and tell us your name so we can verify that we have you on our list, or you can hang up and reconnect with a number that you've given the Tribunal previously. So again, this is for the member of the public whose number ends in 6774. Okay. They're leaving the meeting. Maybe they'll reconnect. All right. I think we can wait one more minute, and then we should probably carry on unless you're waiting for your client, Mr. Kitchen.

CNSL J. KITCHEN: No. That's fine. We'll -- I think we should see if this person rejoins with a different number because I'm going to guess that's what they were doing by the fact that they

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1 left without saying anything.

2 THE CHAIR: Yeah. That's fine. And then we should --
3 then we can continue.

4 CNSL A. WADDELL: Just while we're waiting, I just
5 wanted to confirm that we haven't received any
6 new announcements of -- of additional access
7 granted since Wednesday; is that -- is that
8 correct?

9 THE CHAIR: Member Dean is just checking.

10 CNSL A. WADDELL: Sure. Thanks.

11 THE CHAIR: We have granted access to one person on
12 the 28th. Did you get notice of that person?

13 CNSL A. WADDELL: Let me just check.

14 THE CHAIR: That was Thursday.

15 CNSL A. WADDELL: Thursday, no, I don't believe so.
16 On Thursday, we received your decision regarding
17 the expert evidence. That's the only thing I
18 have a record of.

19 THE CHAIR: All right. Well, would you -- I'm not --
20 I can ask the case manager to send you the
21 updated list, or I can tell you who has been
22 approved on Thursday, or we can deal with it in
23 some other way. What do you -- what would be
24 appropriate here?

25 CNSL A. WADDELL: The case manager can just -- if the
26 case manager can forward that updated list, that
27 would be great.

28 THE CHAIR: Okay.

29 CNSL A. WADDELL: And of course, Mr. Kitchen, sounds
30 like he didn't get one on Thursday either so...

31 THE CHAIR: Yeah.

32 CNSL A. WADDELL: To both of us would be great.

33 THE CHAIR: Okay. I've asked the case manager to do
34 that. I imagine she'll do it soon. We're now
35 kind of seven minutes into our time together, so
36 I think we should get started. Teacher A, you're
37 ready to continue. Mr. Kitchen, go ahead,
38 please, when you're ready.

39 CNSL J. KITCHEN: Okay. Thank you.

40

41 CROSS-EXAMINATION BY CNSL J. KITCHEN, continuing:

42

43 Q Teacher A, before the lunch break, you told me a
44 couple of different times that the child is --
45 the student is the expert of themselves.
46 Wouldn't you agree with me that in taking that
47 position with students who are in that 30 to

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1 40 percent we talked about and their exploring
2 different gender identities, do you agree with me
3 that by taking that approach that you are playing
4 the role of psychologist and not of teacher?
5 A No.
6 Q Fair to say you think it is appropriate for
7 teachers to -- to regard children -- to regard
8 their students as the experts of themselves and
9 their own gender identity?
10 A Yes.
11 Q Okay. And fair to say that you think that
12 that's -- that's in alignment with what is in the
13 SOGI 123 resources?
14 A I don't think that it explicitly says that
15 anywhere. This is my own personal belief about
16 this.
17 Q Right. But fair to say it's -- it's in alignment
18 with the underlying, you know, approach or
19 beliefs of SOGI 123?
20 A Again, I don't know if it explicitly says it
21 anywhere, but the SOGI resources reflect the
22 society that we live in, and this is part of
23 that.
24 Q And in the society that we live in, it's a fact
25 that there's more than two genders in the society
26 that we live in?
27 A I can tell you my -- my belief is yes, because I
28 myself have experienced that.
29 Q What makes you so confident that SOGI 123
30 reflects the society in which we live?
31 A Because everybody has a sexual orientation and
32 gender identity.
33 Q What about those -- go ahead.
34 A And the program and the SOGI resources are a way
35 to give voice to those who have had their
36 identities suppressed for a long time because
37 there are people with two mom families; there are
38 people with two dad family; there are people who
39 are gender expansive. And to ignore that would
40 not be teaching an accurate representation of
41 what society is and the people in it.
42 Q Wouldn't you teach that -- couldn't you teach
43 that there are two moms; there's two dads,
44 there's -- there's -- there's people that live as
45 a different gender than their birth sex, couldn't
46 you teach all those things, those -- those
47 realities of people that -- that -- that are in

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1 our society, couldn't you teach those things
 2 without teaching that there's more than two
 3 genders and that -- I should stop there.
 4 Couldn't you teach all those -- we'll call them
 5 inclusive things -- inclusive things, that
 6 there's two moms; there's two dads; some families
 7 are like that; there's -- there's some adults
 8 that were born male but identify as female.
 9 Those people exist. They function in our world.
 10 They teach. They have -- they own businesses;
 11 they get into politics, blah, blah, blah, blah,
 12 couldn't you teach all that without teaching
 13 the -- the -- the queer belief system that
 14 there's more than two genders?
 15 A Why would we ignore a whole group of people that
 16 exist in the world? Why would we intentionally
 17 keep them out of the conversation?
 18 Q So for you, if you don't teach the beliefs, it's
 19 the same as ignoring the people?
 20 A Yeah. I -- I don't -- I -- I don't understand
 21 why we would pick and choose what parts of
 22 reality we're going to -- to -- to teach. The
 23 reality is there are people who fall outside of
 24 the gender binary. There are trans people that
 25 exist in our society. Why would we not talk
 26 about them? Why would we try to keep them down
 27 even further?
 28 Q Well, why not just teach the -- the queer beliefs
 29 as beliefs, as a theory, as -- as one -- as one
 30 way to look at the world? Why -- why the need to
 31 teach it as if it's proven verifiable fact?
 32 A Because I believe it to be proven verifiable
 33 fact.
 34 Q But what about the swaths of society that say it
 35 isn't?
 36 A They're -- that's not really my -- my job to say.
 37 That's -- if they have not done the research and
 38 have not come to an understanding and -- and this
 39 is common of people who don't have a lived
 40 experience, but we have to trust the people who
 41 do. That's -- that's what we do. We don't make
 42 up our mind about who somebody is. We trust that
 43 that's their experience.
 44 Q You don't teach -- well, hold on. And what are
 45 the subjects that you teach? And I don't want
 46 you to tend to identify yourself, but I need to
 47 have some idea of -- of what it is that you

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1 teach.
 2 A Are you asking what I teach currently or what I
 3 have taught?
 4 Q Well, let's say over the last five years.
 5 A Over the last five years, I've taught English,
 6 fine arts, social studies, and then I've also
 7 taught as a core teacher, so it's all subjects
 8 except for math and science.
 9 Q When you teach social studies, do you teach
 10 anything about the existence of -- of religions
 11 in the world?
 12 A We weren't at that -- no. The -- the grade level
 13 that I thought didn't cover that at all.
 14 Q Is it fair to say that you have at least some
 15 understanding of -- of how the topic of world
 16 religions is taught to social studies high school
 17 students?
 18 A No, I don't know.
 19 Q You have no understanding of that?
 20 A I -- I'm not going to venture a guess as to how
 21 world religion is taught by a myriad of different
 22 teachers. I -- I believe it's probably taught
 23 differently compared to which teacher you talk
 24 to. There's no set curriculum.
 25 Q Isn't that how it is with SOGI too? There's no
 26 set curriculum? It might be taught differently
 27 from teacher to teacher?
 28 A Well, SOGI is not a curriculum so...
 29 SOGI is the integration of reflective ideas
 30 in society.
 31 Q You keep saying it's reflective of society, but
 32 do you know if it's reflective of what most
 33 Nigerian immigrants believe, for example?
 34 A I would have no idea.
 35 Q No idea. Okay. What about Muslims?
 36 A Again, I'm -- I'm not Muslim, so I'm not sure.
 37 Q What about Jews?
 38 A I'm also not Jewish, so I can't speak to that.
 39 Q Don't you have Jewish, Muslim, Christian, and
 40 Sikh students at times occasionally in your
 41 class?
 42 A Yes.
 43 Q So is it your practice to just remain completely
 44 ignorant of -- of what your students believe, or
 45 do you seek to know a little bit about what they
 46 believe?
 47 A It hasn't come up.

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1 Q What hasn't come up?
2 A What you're asking me about has not come up.
3 Q So you have no concern with whether or not some
4 of your students come from cultural or religious
5 backgrounds in which the beliefs that you hold
6 are not the beliefs in those religious or
7 cultural backgrounds? You haven't given any
8 thought to that concern? Is that fair?
9 A No, I don't think that's fair.
10 Q Okay. So you have given thought to the fact that
11 there would be a lot of Nigerians, Muslims,
12 Christians, and Jews who do not subscribe to your
13 beliefs about gender? You have given thought to
14 that?
15 A I think that there are people within these
16 religions and out of those religion -- religions
17 who aren't going to believe what I know to be
18 true.
19 Q And not just religion, but you -- you would agree
20 with me there are some cultural groups such as
21 Persians, Nigerians, or even non-Muslim Arabs
22 that, from a cultural perspective, would have
23 beliefs very different than yours when it comes
24 to gender? You would acknowledge that to be
25 true?
26 A As I've said, there are people within these
27 groups and outside of these groups who have
28 different ways of thinking and believe something
29 different than what I know to be true.
30 Q Right. So you -- you would acknowledge that some
31 of -- at least -- at least -- just by, you know,
32 the -- the -- the mere fact that you've been a
33 teacher for a while, and you've had a fair number
34 of students that you've had at least a few
35 students that have come through your classrooms
36 that have been from those backgrounds and come
37 from families that hold those beliefs that are
38 different than yours and different than the SOGI
39 beliefs? You would acknowledge that that --
40 that's happened?
41 A No. It has not come up.
42 Q What do you mean by "has not come up"?
43 A I mean that it has not -- we haven't spoken about
44 it. Nobody from any of the -- the groups that
45 you're talking about have come to me with any
46 disagreement about any lessons or any content.
47 Q Well -- but you said in your -- in your direct

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1 that the idea of people removing their children
2 from -- from a lesson or class in which you're
3 teaching this type of stuff was really upsetting.
4 Do you remember saying that?

5 A Yes.

6 Q And so is -- is not that evidence that there are
7 at least some students coming through your
8 classroom that come from families who don't share
9 the beliefs that you do about gender?

10 A So I believe what you asked me was if these --
11 there was -- were certain groups, and then you
12 listed off a few, which is different than what
13 you're asking me now. So I'd ask you to clarify
14 the question, please.

15 Q And you know -- it's okay to give me what you
16 think the answer should be. This is why I put it
17 to you. You said the idea that people who remove
18 children from a class in which you're teaching
19 this sort of stuff was really upsetting. So I
20 asked you isn't that -- isn't that sort of, you
21 know, hard evidence that there have been student
22 that have come through your class that come from
23 families that have different beliefs about gender
24 than you do?

25 A Yeah. I think that there are families that have
26 different beliefs than I do, but I also don't --
27 don't believe that that is the only reason they
28 were removed from my class.

29 Q You think it's because they just really, like,
30 don't like you or maybe even hate you because of
31 who you are?

32 A That is one of the reasons, yes.

33 Q Okay. And you really do think it's because of
34 who you are as opposed to just what you're
35 teaching?

36 A Yeah, I do. I believe it's because of who I am.

37 Q In other words, you think -- you think it's --
38 these -- these parents are pulling -- well, hold
39 on. I -- I take it -- I take it you haven't had
40 anybody tell you that. You're just sort of --
41 you're summarizing that from the circumstances.
42 Isn't that fair?

43 A No. I have been told.

44 Q You've been told. You've had a parent tell you I
45 don't -- I'm paraphrasing. "I don't like you
46 because you're -- because you're gay or your
47 trans or you're queer, and therefore, I'm pulling

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1 my kid out of your class"?
 2 A No. I did hear it from the person that they
 3 spoke to.
 4 Q So there was a parent who said something like
 5 that, said it to somebody else, and that somebody
 6 else told you that?
 7 A Yes, because I -- I actually can't control who is
 8 in my class and who isn't out of my class, so
 9 they wouldn't talk to me about that directly.
 10 They would talk to somebody else in the school
 11 about that.
 12 Q Okay. So is that the instance in which you're
 13 talking about when you make this comment that I'm
 14 quoting back to you?
 15 A Yes.
 16 Q Okay. And so they didn't -- so this person
 17 didn't pull the kid out of you teaching a SOGI
 18 123 lesson. They pulled -- they pulled their kid
 19 out of your class completely all together?
 20 A I -- and I should clarify. I don't teach SOGI
 21 123 lessons.
 22 Q Okay.
 23 A That's -- that's not part of my practice. I
 24 incorporate SOGI into most of the teachings that
 25 I do as was intended.
 26 Q It's -- it's embedded. Is that a fair word to
 27 use?
 28 A Sure if you want to use that word.
 29 Q Okay.
 30 A It's -- it should be considered through a --
 31 teaching should be considered through a SOGI lens
 32 in my opinion.
 33 Q Okay. So it's not so much that you -- you -- you
 34 sort of teach discrete SOGI 123 lessons. It's,
 35 like, whenever you're teaching literature or --
 36 or social studies or whatever else it is you
 37 said -- I'm sorry. I forgot -- you might -- you
 38 might, when appropriate, sort of incorporate the
 39 SOGI 123 resources in -- into the lesson that's
 40 about history or literature or math or what -- or
 41 whatever. Is that fair?
 42 A I wouldn't use pre-made SOGI resources. I would
 43 teach through an -- an inclusive lens or choose
 44 an author, for instance, who is queer so that we
 45 have marginalized voices represented in the
 46 classroom.
 47 Q Okay. So just to be clear, when you say so --

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1 you said "I use SOGI 123 resources," you said, "I
 2 work with them often in reference to SOGI 123
 3 resources."
 4 A Yes.
 5 Q Can you clarify what you mean? Is that basically
 6 what you just said? Is that what you mean by
 7 that?
 8 A Yes. So I -- I think that you're thinking of
 9 SOGI 123 resources as being, like, these pre-made
 10 stacks of -- of books or -- or resources, but
 11 that's not generally how I use them anyway. I
 12 would incorporate inclusivity into my class. I
 13 would also feature people of colour often as
 14 authors because it's another opportunity to
 15 use -- to feature voices that are not often
 16 heard.
 17 Q But you believe some voices are often heard?
 18 A I -- I think that there are voices that are more
 19 often heard than others.
 20 Q Okay. Okay. So to be clear, you -- you have not
 21 had -- or you tell me if you -- you disagree with
 22 me. You have not had a student pulled out of
 23 your class as a result of teaching these SOGI 123
 24 concepts along with everything else, or have you?
 25 A That was part of it, yes.
 26 Q Okay. So for this -- for this one child that was
 27 pulled out, he wasn't just pulled out of some of
 28 your classes or some lessons, he was pulled out,
 29 like, completely. Is that -- is that accurate?
 30 A Yes.
 31 Q Okay. Fair to say the District didn't -- didn't
 32 punish you or exclude you or -- or -- or mistreat
 33 you as a result of that parent pulling that
 34 student out of your class?
 35 A No.
 36 Q Generally, the District has been supportive of
 37 you and -- and your identity, haven't they?
 38 A I would say that there are some people in the
 39 District that have and some people who haven't.
 40 Q Okay. Have you brought a human rights complaint
 41 against the District because of these people that
 42 have not supported you the way you would like?
 43 A No.
 44 Q You used the example of there was a -- a table at
 45 which there was some GSA material. I think you
 46 said there was some rainbow material. You were
 47 kind of supervising the table, and you were, you

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1 know, upset or disappointed because you asked a
 2 teacher to -- to take over supervising that
 3 table, and they didn't. Do you recall saying
 4 that?
 5 A I didn't ask one teacher. I asked many.
 6 Q Okay. And they all refused?
 7 A It was an email. And --
 8 Q Oh.
 9 A -- it went out to all staff, and nobody came to
 10 help.
 11 Q Nobody responded to the email in other words?
 12 A Nobody responded to the email or showed up.
 13 Q And I mean, obviously, that's annoying. You want
 14 your colleagues to help share the load of the
 15 work in the school, but why is that -- why is
 16 that something you would bother mentioning in --
 17 in this -- in the context of this case?
 18 A Well, I think that it goes to show the -- the
 19 culture of the place that I was working. And in
 20 this case, I -- it was -- it wasn't something
 21 that I had asked once, that I had asked for
 22 people to get involved and -- and share the --
 23 the workload many times. And if --
 24 Q What if -- but what if it's just a matter of, you
 25 know, this group of teachers or the majority of
 26 teachers or whatever just shared different
 27 beliefs than you do?
 28 A I -- I don't know that that is a belief. I think
 29 that when we're talking about human beings and
 30 their rights to equality, I think that it -- it's
 31 a very upsetting concept to not be held in the
 32 same regard as somebody who is heterosexual or
 33 cisgender.
 34 Q But -- but what -- what about the people who
 35 do -- who do believe there's only two genders?
 36 Should they be included? Should they have -- be
 37 treated with equality as well?
 38 A I don't think that those -- that's what we're
 39 talking about.
 40 Q Well, we talk a lot about inclusivity. You throw
 41 that word around. A lot of people have thrown
 42 that word around a lot. I haven't heard it
 43 defined yet, but it's -- it's used a lot. It's a
 44 nice sounding word. It's a big word in SOGI.
 45 Wouldn't you agree with me that -- that the
 46 inclusivity of SOGI is exclusive of people who
 47 believe there's only two genders, and you can't

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1 change your gender?
 2 A I believe that we're talking about comfort over
 3 safety. I --
 4 Q No. You --
 5 A -- [indiscernible] going with that.
 6 Q I have no idea what you mean by that.
 7 A So you're talking about the -- the discomfort of
 8 those who may believe my existence is not as --
 9 as real as theirs or that --
 10 Q Do you really think that they think that? Do you
 11 really think that they think that your existence
 12 isn't as real as their existence?
 13 CNSL A. WADDELL: Sorry. Just to object, the witness
 14 wasn't finished answering the question.
 15 THE CHAIR: That's right. Go ahead, Teacher A.
 16 A Well, if we're talking about them believing that
 17 there are only two genders, then no. I don't
 18 think that they can fully believe in my existence
 19 because I exist outside of that binary.
 20 CNSL J. KITCHEN:
 21 Q Have you ever heard someone say something like,
 22 "I don't believe you exist in the world to the
 23 same degree as I do because you're queer, and I'm
 24 not"? Have you ever heard somebody say something
 25 like that.
 26 A I've never heard somebody use those words in that
 27 combination before, but I -- the actions and
 28 other things that they say would lead me to
 29 believe that, yes. I think that people think
 30 that some people who, as you say, believe that
 31 there are only two genders don't give a lot of
 32 credit to identities that they don't understand
 33 and therefore are very dismissive about them.
 34 Q And do we -- but do we include the -- the
 35 teachers and students who hold those beliefs, or
 36 do we just keep telling them they're -- they're
 37 wrong, and they're misguided, and they don't know
 38 the science? What do we -- what do we do with
 39 those people? I mean -- I mean, you know, what
 40 you want to do with Barry is hold him accountable
 41 and make sure that, you know, nobody can ever say
 42 what he said. That's -- that's what you want to
 43 do with Barry. What do we with the people that
 44 honest -- honest to God believe the way Barry do?
 45 Not because they're running around trying to see
 46 how much they can hurt people's feelings but
 47 because they just honest to God believe that? As

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1 misguided as they are, that's what -- that's
 2 what -- that's what they believe.
 3 And when I say "believe," they -- they --
 4 they believe it. That's their view of the world,
 5 whether it's religious or not. Usually, it
 6 obviously would be. That's what they believe.
 7 What do we do with those people? What do we do
 8 with those teachers and students?
 9 A They can believe whatever they want. But the
 10 problem is when they say things, particularly
 11 when they hold power, that could influence other
 12 people to believe those things. That is where
 13 the problem is. And it -- it's also protected.
 14 Q So they can hold those beliefs. They just
 15 shouldn't talk about them. Is that fair?
 16 A You can believe anything you want.
 17 Q Right. So --
 18 A But the problem is when you speak about it.
 19 Q Right. So it's okay if Barry believes this
 20 stuff. He just can't say it as a school board
 21 trustee. That's your -- that's your perspective?
 22 A I don't believe that anybody should say things
 23 like that but especially when you hold a position
 24 of power, and you're supposed to be creating an
 25 environment that upholds the rights and freedoms
 26 of people.
 27 Q Don't you hold a position of power over your
 28 students?
 29 A I guess you could say that. That wouldn't be how
 30 I perceive my classroom experience, no. It's
 31 more of a Socratic environment.
 32 Q So Barry holds power over you, but -- but -- so
 33 you would say Barry holds more power over you
 34 than you hold over your students?
 35 A I didn't say that.
 36 Q Okay. You keep saying "position of power." Tell
 37 me, it was Barry who was excluded from entering
 38 the schools in the district, not you; correct?
 39 A Yes. Because I didn't say harmful things.
 40 Q Right. Or at least the people with the power to
 41 exclude people from schools didn't think you said
 42 anything harmful. Is that fair?
 43 A Sorry. I'm not really sure what your question
 44 is. Can you clarify.
 45 Q Fair to say the people who really do have the
 46 power in this situation thought that what Barry
 47 said was harmful but don't think that what you

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1 say is harmful; right?
2 A Yeah. Because I don't say harmful things.
3 Q And who is the arbiter of what's harmful and
4 what's not?
5 A I believe our professional standards and the
6 Charter of Rights and Freedoms are part of that
7 as are the people who are in power in the
8 District that make these decisions.
9 Q And it was the right decision, in your view, to
10 exclude Barry from the schools because he
11 expressed his beliefs?
12 A When those beliefs are actively harming others,
13 yes. We don't want to further traumatize
14 especially children. We don't want to traumatize
15 staff either but especially children.
16 Q And it was traumatizing for you to encounter a
17 belief that's different than your own? That's
18 why you didn't go to school board meetings when
19 Barry was there because you would -- you would
20 be -- it would be visibly upsetting for you to
21 encounter Barry's beliefs because those beliefs
22 are different than yours. Is that fair?
23 A Again, it's not the belief that I struggle with.
24 Barry can believe whatever he wants. But when
25 you're --
26 Q Expressing.
27 A -- actively doing harm with your words, yes.
28 Q But you would say that Barry expressing his
29 beliefs that there's only two genders, and you
30 can't switch between them, is actively harming
31 you.
32 A Well, he's saying my existence and my experience
33 within my own body isn't real, so yeah, that is
34 harmful to me.
35 Q Isn't it fair to say that that's your
36 interpretation of what he's saying, not actually
37 what he's saying, like, literally? You would
38 agree with that?
39 A No.
40 Q So you would agree with me that he's saying trans
41 people don't exist? That's what he's saying
42 literally according to you?
43 A I'm not sure if he's used those exact words in
44 that configuration in any of his posts, but that
45 is the gist of -- of what he's saying, yeah.
46 Q And according to you, that's the gist of what
47 he's saying and -- and -- but -- but from your

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1 perspective, that's not simply your
2 interpretation. That, like, is the correct way
3 to interpret what he's saying?
4 A I'd be very happy to listen if there's another
5 interpretation that I'm missing.
6 Q Well, I'll -- okay. I'll put it to you that --
7 that Barry is going to say in his testimony that
8 he's not denying the existence of anybody. He's
9 simply expressing his belief that there are only
10 two genders, that you can't switch them, and that
11 it's a bad idea to teach kids that there are more
12 than two genders and that you can switch them.
13 That's what -- now, he'll say a little more than
14 that, but that's, in summary, what he say he
15 believes. And he will -- he will deny saying --
16 he will deny that he ever said anything that
17 denies the existence of trans people.
18 A That -- that is the -- the -- from my
19 perspective, that's the same thing.
20 Q From your perspective, it's -- it's the same
21 thing. As soon as you say there's only two
22 genders, and you can't switch them, you've denied
23 the existence of trans people?
24 A Yes. Because a trans person is -- or under the
25 trans umbrella or a nonbinary person or somebody
26 who is Two-Spirit is outside of that gender
27 binary. And there are many trans people who are
28 also non -- nonbinary.
29 Q Right. Right. Now you would agree with me that
30 you have had Muslim students in your classrooms
31 at some point in the last six, seven years?
32 A I would assume so.
33 Q You would assume so given that there's a, you
34 know, a -- a -- a more than negligible amount of
35 Muslims that live in Chilliwack? Is that -- is
36 that fair? Would you agree with that?
37 A Yes. However, I have not been in the classroom
38 for two years. So a lot of our newcomers have
39 been coming within the last two years, so I think
40 that I would have had more Muslim students in my
41 class this year or last year for instance.
42 Q Let's get a little more to the point. You would
43 agree -- you would agree with me that a fair
44 number of students that have come through your
45 class in the last six, seven years have been
46 Christian of some form or another?
47 A I would assume so, but that is going to be an

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1 assumption because typically, we don't talk about
 2 religion in the subjects that I teach.

3 Q But you would -- you would agree with me that it
 4 would be unreasonable to suggest that you've had
 5 no Christians in your classroom over the last six
 6 or seven years?

7 A I think there have probably been some Christians
 8 in my class. I can't speak to how many.

9 Q Right. But simply by virtue of the fact that a
 10 fair number of Christians live in Chilliwack, I
 11 think that's a -- you would agree with me it's an
 12 obvious fact in the world, speaking of the world
 13 and society and reflecting our world, you would
 14 agree with me that there's a fair number of
 15 Christians that live in Chilliwack?

16 A Sure.

17 Q And you would agree with me that there's a fair
 18 number of, you know, nonwhite people, so Asians,
 19 Arabs, Nigerians, Persians, et cetera? You --
 20 you would agree with that?

21 A Yeah. I mean, Chilliwack is predominantly white,
 22 but there are definitely people of colour coming
 23 in especially more recently.

24 I'm sorry. I will need a -- a washroom
 25 break soon-ish. Is now a good time, or should I
 26 ask later?

27 Q Yeah.

28 A Okay.

29 CNSL J. KITCHEN: That's fine.

30 THE CHAIR: Why don't we take a quick -- we'll just
 31 turn off our cameras and mics, and you can call
 32 us back, Teacher A.

33 A Okay. Thank you. I am drinking too much, I
 34 think, of this.

35 THE CHAIR: Not a problem. Okay. See you in a
 36 moment.

37 A Thanks.

38
 39 (WITNESS STOOD DOWN)

40
 41 (PROCEEDINGS ADJOURNED FOR RECESS) [2:17:57]
 42 (PROCEEDINGS RECONVENED) [2:21:17]

43
 44 TEACHER A, a witness,
 45 recalled.

46
 47 THE CHAIR: All right. We're back. Teacher A, you're

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1 okay to continue? Okay. Go ahead, Mr. Kitchen.
2 CNSL J. KITCHEN: Thank you.

3
4 CROSS-EXAMINATION BY CNSL J. KITCHEN, continuing:

5
6 Q And you would agree with me that it's all
7 together likely that you've had Jewish students
8 as well pass through your -- sorry -- pass
9 through your class over the next -- over the last
10 six, seven years?

11 A I can't speak to that. I have no idea.

12 Q Do you -- you would -- you would -- you would
13 deny that Jewish students have passed through
14 your class over the last six, seven years?

15 A No, I didn't say that. I just can't confirm
16 that -- that they have.

17 Q Right. And I didn't ask you to confirm. So I'll
18 ask it again. You would agree with me it's all
19 together likely that you've had, at least a
20 handful, of Jewish students pass through your
21 class in the last six, seven years?

22 A Potentially.

23 Q Potentially. So you think it's likely that there
24 were no Jewish students in your class over the
25 last six, seven years?

26 A I neither think that it is -- no. I don't think
27 it's unlikely. I think there have potentially
28 been Jewish students pass through my class.

29 Q So would you say it's -- it's a 50/50 chance that
30 you had one Jewish student in your class over the
31 last six or seven years?

32 A Yes.

33 Q Okay.

34 A But I -- I'm not really super familiar with the
35 Jewish faith, so I -- I -- I have no idea. I
36 don't know.

37 Q But you are really familiar with the 30 or
38 40 percent of the students that you've had that
39 identify as queer. So I'm wondering why you are
40 so familiar with -- with their sexual orientation
41 or gender identity but not their religious
42 beliefs. Can you help me understand that?

43 A Sure. I -- I think that I am considered to be a
44 safe person in the school when it comes to queer,
45 trans, Two-Spirit, nonbinary people. So it would
46 make more sense that people who identify that way
47 would come and speak to me. And that is probably

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1 why 30, 40 percent of the students I've
2 interacted with have been queer, Two-Spirit,
3 nonbinary, trans because I probably would attract
4 a disproportionate amount of students compared to
5 the average teacher.
6 Q Fair to say the religious students don't quite
7 find you as safe as the queer students then?
8 A I think because I now am openly queer, it's
9 probably more comfy for the kids who also
10 identify as queer to speak to me whereas I don't
11 talk about religion, so they would have no idea.
12 Q So in other words, the -- the -- the queer
13 students seek you out?
14 A Yes.
15 Q Okay. And you -- and you would agree with me
16 that's because you make it -- you make it fairly
17 obvious to students that you yourself are queer?
18 A I don't hide it.
19 Q Right. But you would expect teachers who -- who
20 believe that there's only two genders and that
21 you can't switch them, you -- you do expect them
22 to hide that?
23 A I expect them not to say harmful things.
24 Q But if -- but if expressing their belief that
25 there's only two genders and you can't switch is,
26 as you say, harmful, then doesn't that mean that
27 you expect them to hide that they believe that?
28 A I -- again, I don't care what they believe as
29 long as they're not doing active harm by saying
30 those things publicly.
31 Q Right. So -- so if -- if you regard some of the
32 beliefs that they hold to be harmful if they're
33 expressed and from your perspective, the right
34 thing that should be done is for them to not
35 express them?
36 A Yeah. It should be kept to themselves or not
37 said publicly.
38 Q Okay.
39 A I think that's how hate speech works, but I'm not
40 totally sure about that.
41 Q Yes. Hate speech means that you shouldn't
42 express your beliefs. At least that's --
43 that's -- yeah, that's -- that's your
44 understanding, and I think -- I think your
45 fellow -- a lot of your fellow teachers believe
46 that too it seems.
47 A So I will clarify. I believe that if you're

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1 expressing it publicly where people who identify
 2 outside of the binary can hear you or that can
 3 get back them, that's harmful. You can say
 4 whatever you want to a friend of yours that
 5 believes the same thing as you. But if you're
 6 saying it in a way that creates -- that creates
 7 safety issues for that person, that's a problem.
 8 Q What about the Jewish teacher who thinks it's
 9 harmful for you to express a belief that's
 10 contrary to hers that there are more than two
 11 genders and that you can switch them? Doesn't
 12 that mean that you should have to not publicly
 13 express your beliefs because they're -- they're
 14 perceived as harmful to her?

15 A This is feeling very rhetorical.

16 THE CHAIR: Are -- are -- are we -- do we have some --
 17 I noticed you're leaning on a lot of examples
 18 about Jewish, Nigerian, Muslim beliefs. Do we
 19 have some foundation for what the belief is that
 20 you're referring to? I'm -- I'm just not -- are
 21 you asking us to take notice that certain groups
 22 in society hold these views based on their
 23 religious affiliation? I'm -- I'm not familiar
 24 with this part of the Jewish faith, so that's
 25 what I'm just wondering, in fairness to the
 26 witness, is about this question.

27 CNSL J. KITCHEN: Well, as SOGI says, there are people
 28 of all faiths that believe in the gender beliefs,
 29 and I think that's logically true. And -- but
 30 it's -- I'm -- I'm not a fan of judicial notice
 31 generally speaking, so I don't know that I would
 32 ask you to -- to -- to take notice of it per se.
 33 I -- I'm more trying to get the evidence from the
 34 witness. I -- I would have thought it was
 35 obvious that the vast majority of Jews and
 36 Muslims, and to a lesser extent Christians, do
 37 hold to the traditional -- so-called traditional
 38 belief about -- that I've been talking about that
 39 there's two genders, and you can't switch them.
 40 I would have thought that was uncontroversial,
 41 notoriously true, if you will, to use the
 42 judicial notice language.

43 You know, the -- the witness is disagreeing
 44 with me at times, and that's fine, and so I'm
 45 questioning her on that. We're working through
 46 that. But, yeah, so I don't know about judicial
 47 notice, but yes, I would have -- I would have

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1 thought it was notoriously apparent, I suppose,
 2 to the point of being capable of judicial notice
 3 that, you know, it's -- it's -- it's a very
 4 common basic tenet of -- of Islam and Judaism and
 5 Christianity that there's only two genders, and
 6 you can't switch them. So yes, that's --
 7 that's -- that's -- that's how I'm approaching
 8 this. And again, the witness is entitled to
 9 disagree with me. And if she does, then there's
 10 certain questions I can't ask. But that's --
 11 that's where I'm coming from because I would have
 12 thought that that was just, you know, common
 13 knowledge, if you will.

14 THE CHAIR: Well, I'll -- I'll say when it comes to at
 15 least Judaism and Islam, I think it's -- it's
 16 outside the common knowledge of this panel, so I
 17 wouldn't assume that we -- that this is common
 18 knowledge to us. It may be to you, but that's --
 19 that's news to us.

20 Ms. Waddell, were you -- were you reaching
 21 for your mute button?

22 CNSL A. WADDELL: I was just going to see how this
 23 plays a little bit. I mean, it's -- it's
 24 unquestionably not something that's appropriate
 25 for judicial notice and -- in our view. And
 26 there are -- you know, I'm pretty confident that
 27 if Mr. Kitchen actually put someone on the stand
 28 to talk about any of these things, you know,
 29 with, like, academic or whatever authority, they
 30 would say there is no single monolith of
 31 Christian tradition. There is no -- there are
 32 many different groups, and they probably all
 33 harbour many different beliefs, so I -- anyway --
 34 but I also don't think anything turns on it
 35 because I think this is all irrelevant, so -- and
 36 many of these are -- are hypothetical, so that's
 37 all I'll add.

38 THE CHAIR: Okay. So you don't really have an
 39 objection here, Mr. Kitchen, so I think you
 40 can -- the complainant's counsel strategy is to
 41 not object to these questions, but I'm just going
 42 to say that the assumption underlying some of
 43 them about the views of big groups of people as a
 44 generalization is not well founded enough for a
 45 question as far as I can tell.

46 CNSL J. KITCHEN: Okay. That's fine. I'm a little
 47 surprised to hear that considering the Tribunal

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1 obviously deals with cases of religious
 2 discrimination involving Muslims, Jews,
 3 Christians, and Sikhs, but I take your point.
 4 Q What I'm -- what I'm trying to get at, is it your
 5 evidence that you have -- that you have, to your
 6 knowledge, never worked with an explicitly
 7 religious teacher who has either told you or you
 8 perceived that they, as part of their religion,
 9 hold to the traditional binary gender belief?
 10 You just -- is it your evidence you just never
 11 encountered a person like that?
 12 A I have never had that conversation with anybody.
 13 Q Okay.
 14 A I don't think that they would choose to have it
 15 with me.
 16 Q And you -- you wouldn't -- fair to say you
 17 wouldn't seek out that kind of conversation with
 18 somebody? That's not a conversation you'd like.
 19 Isn't that fair?
 20 A I'm pretty approachable and open. I think that
 21 however upsetting it might be, I would not
 22 necessarily seek it out, but I would be open to
 23 it if it was productive.
 24 Q So let's say there's -- and this is going on a
 25 real example that you gave. Let's say there's
 26 the -- there's the traditional Christian club,
 27 and they got a table, and it's all about, you
 28 know, how great it is that God made us male and
 29 female, and, you know, it's so great that -- that
 30 girls get to grow up to become mothers, and
 31 fathers get to grow up to become -- or boys get
 32 to grow up to become fathers and providers, and,
 33 you know, it's so beautiful. Femininity and
 34 masculinity are so beautiful. And that's their
 35 table, and that's the material they're -- they're
 36 disseminating to the kids, and that's, you know,
 37 it's a -- it's a place for all -- for all the
 38 traditional kids to come, the -- you know,
 39 whether they're the Nigerians or the -- they're
 40 the -- they're the Asians or they're the Persians
 41 or they're the -- they're the Christians or
 42 they're the -- they're the Muslims or whatever.
 43 It's a space for people to come and celebrate the
 44 fact that, hey. There's -- there's two genders,
 45 and -- and we like this, and we think it's good.
 46 Okay. Now track with me on this. And --
 47 and there's a woman running that table, and she

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1 sends an email asking for help. You received the
 2 email. Would you say, yeah, I'll look after the
 3 table for you for you to take a break. Would you
 4 do that?

5 A This is very hypothetical but --
 6 Q It is.
 7 A I don't think that that table would ever exist,
 8 so I don't know.

9 Q Right. That table would not be permitted, would
 10 it?

11 A Again, I don't know.
 12 Q Okay. Okay. All right. Oh, okay. Just to go
 13 back. I'm almost done this, and then I have a
 14 little bit but not a whole lot left. And maybe
 15 you're just going to say I don't know, and that's
 16 fine. But to -- to go back to the -- the thing
 17 that we've been talking about where if Barry
 18 expresses his belief, it's -- it's -- he
 19 shouldn't be permitted to because he's in a
 20 position of power, and it denies the existence of
 21 people who hold the -- the contrary belief. What
 22 if Barry gets up and says that he doesn't believe
 23 Muhammad was a prophet? Is that somehow --

24 CNSL A. WADDELL: Again, this is a completely
 25 hypothetical question that has no bearing on the
 26 issues in this case. This is not a political
 27 belief case.

28 CNSL J. KITCHEN: And you -- you've clearly coached
 29 your witness to say that sort of stuff. And if
 30 she says it, I'll leave it alone.

31 THE CHAIR: Oh, that's --

32 CNSL J. KITCHEN: Okay?

33 THE CHAIR: Mr. Kitchen, I don't know if you meant to
 34 suggest that your friend had behaved unethically,
 35 but if you hadn't, maybe you could clarify that.
 36 That was -- that was quite an accusation there
 37 that she's been coaching her witness. Do you
 38 have a basis for that?

39 CNSL J. KITCHEN: Well, we all prep our witnesses --

40 THE CHAIR: Well --

41 CNSL J. KITCHEN: -- to say certain things.

42 CNSL A. WADDELL: Coaching her is not the same thing.

43 CNSL J. KITCHEN: Oh, okay. So --

44 THE CHAIR: If you -- if I've misunderstood. It's
 45 just "coaching" is a bit of a loaded term.

46 CNSL J. KITCHEN: Okay. I'll -- you know what? I'll
 47 change the word. I'll change the word. I'll

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1 change the word from "coaching" to "preparing."
 2 I have no issue with that. If -- if that word is
 3 a problem, I have no issue --

4 THE CHAIR: All right.

5 CNSL J. KITCHEN: -- of changing those words; okay?

6 THE CHAIR: Well, coming back to the objection --

7 CNSL J. KITCHEN: But I'm not -- I'm not accusing
 8 anybody of anything.

9 THE CHAIR: Okay. So coming back to the objection --

10 CNSL J. KITCHEN: -- unethical, okay?

11 THE CHAIR: I mean, witnesses are here to testify
 12 about things they have firsthand knowledge of,
 13 things they said, heard, you know, felt, saw,
 14 know, et cetera, not hypothetical scenarios about
 15 what -- what if this happened and what if that
 16 happened. So can you respond to the objection
 17 that this is a -- you're asking the witness to
 18 opine on what, I guess, her beliefs would be or
 19 if she thinks it would be okay or what the impact
 20 would be, I think, on Muslim students if Barry
 21 Neufeld said he didn't believe Muhammad was a
 22 prophet. How is this falling within something
 23 that she has direct knowledge of that is relevant
 24 to this complaint?

25 CNSL J. KITCHEN: Okay. She -- if she's willfully
 26 remained ignorant of the fact that Muslim
 27 students have come through her class, then that's
 28 fine. She might say to me --

29 THE CHAIR: No. What -- how is she supposed to
 30 testify what Muslim students would think if Barry
 31 Neufeld said something he didn't -- I have no
 32 evidence he said.

33 CNSL J. KITCHEN: But she's testifying to what queer
 34 students think and believe. If she's permitted
 35 to do that, which, obviously, she is, then she --
 36 then she's permitted to talk about her other
 37 students. She -- she -- to her own testimony,
 38 she -- 60 percent -- 60 or 70 percent of her
 39 students except for the ones, I guess, that she
 40 might not know about because they're private
 41 about it are not queer, okay? And heck, maybe
 42 there's some overlap between the queer students,
 43 by the way, and -- and the Muslim, Christian,
 44 Bahá'í, Sikh, Jewish Christians as -- as well --
 45 students as well, okay?

46 But you have all these students that, you
 47 know, would have all these beliefs just by virtue

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1 of the fact that they come from these families,
 2 okay, and -- and yeah, Chilliwack might be mostly
 3 white. I don't live there. I don't know. But I
 4 can guess that. But I can also guess that
 5 because it's just by virtue of the fact that it's
 6 a big city in British Columbia, it's pretty
 7 diverse, and there's all kinds of people that
 8 aren't just white Christians; okay? And I think
 9 it's a little bit bordering unreasonable to
 10 suggest that, you know, we haven't had a whole
 11 slough of Muslim, Christian, Sikh, Bahá'í, Jewish
 12 students go through the school that this witness
 13 teaches at and therefore by virtue --

14 CNSL A. WADDELL: The witness hasn't --

15 CNSL J. KITCHEN: -- have gone through her classes.

16 CNSL A. WADDELL: The witness hasn't made that
 17 assertion.

18 CNSL J. KITCHEN: Now if she wants to -- if she wants
 19 to deny that, then that's -- that's fine. I'm
 20 going to -- I'm going to move on. If she's going
 21 to say, well, I think it's a hypothetical, and I
 22 don't know what you're talking about, fine. But
 23 I mean, at least let me, you know, ask -- I asked
 24 a couple questions just before this that she
 25 said, "Well, no. I don't know. I don't know. I
 26 think it's hypothetical." I moved on; okay? But
 27 at least let me ask the question because the
 28 question obviously is relevant.

29 She's saying I know the beliefs of these
 30 queer students. And as far as I'm concerned,
 31 it's erasing their existence if contrary beliefs
 32 are expressed. Well, that begs the question for
 33 everybody who is listening to this, well, what
 34 does that mean if the questions of other people
 35 groups are challenged? Does that mean their
 36 existence are somehow erased? And, of course,
 37 that question answers itself. Muslim, Christian,
 38 Jewish, and Bahá'í people don't go around
 39 claiming their existence is somehow denied or
 40 erased when their religious beliefs are
 41 challenged; okay?

42 So we got it -- we got to sort out why this
 43 disparity? Why this double-standard? Why are
 44 queer beliefs completely immunized from criticism
 45 but nobody else's beliefs are? Okay. That goes
 46 to the core of this case, right? We wouldn't
 47 have this case if queer people didn't feel that

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1 way. If they felt the same as other people who
 2 have beliefs about the world, they wouldn't make
 3 a complaint because they know it would fail as
 4 the law was being applied consistently and
 5 equally amongst various different belief groups,
 6 okay? You don't have Christians making religious
 7 discrimination complaints when someone says,
 8 well, I disagree with your belief that there's
 9 only two genders, and I think -- you know, you're
 10 unscientific, as our witness has said.

11 You're not going to get those complaints.
 12 If you did, they would be summarily dismissed by
 13 the -- by the Tribunal -- and rightfully so, by
 14 the way. I've been on those types of cases, and
 15 I don't disagree; okay? So I hope that
 16 establishes -- what I just said, I hope that
 17 establishes the relevance of the question. And
 18 if it's a true hypothetical because I -- because
 19 the witness wants to say, look, I have no idea
 20 because I don't think I've had any of these
 21 people, fine. I'll move on. But I need to ask
 22 the question.

23 THE CHAIR: Okay. But sorry. Just so we're on the
 24 same page -- understanding of what a hypothetical
 25 is, the question begins "what if." So to me,
 26 that's a line sign that it's a hypothetical
 27 because it's not something that happened. So I
 28 mean, there's two parts of the question I think
 29 you have an objection to. One is asking her to
 30 opine about what Muslim students would think.
 31 But the hypothetical part of it is what if
 32 Mr. Neufeld said something that he didn't say.
 33 That's the hypothetical, right?

34 And generally -- generally, you would agree
 35 with me, I think, we don't ask witnesses
 36 hypotheticals. We ask them about things they
 37 have firsthand knowledge of. So that's the part
 38 of the objection that I think I still don't have
 39 the response to.

40 CNSL J. KITCHEN: Well, you know, the -- the
 41 hypothetical thing is a tough thing because it
 42 all depends on the context and the utility of the
 43 question, right, and the type of claim we're
 44 responding to. I would generally agree with you,
 45 right, if we're talking about, you know, really
 46 specific unique factual circumstances. But here,
 47 we're talking more at a -- at a -- at a high

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1 conceptual intellectual level; okay? And --
 2 and -- and so this hypothetical, I think, is --
 3 does have utility.

4 Now you might disagree with me, I know,
 5 because you view the case differently than I do,
 6 but I think there's utility to it, right? And
 7 I -- and I -- I did this with Hansman. I think
 8 there was utility there to get the perspective of
 9 the people who are claiming you can't criticize
 10 my belief, and when you do, it's hate speech. To
 11 get their perspective on the criticism of other
 12 types of beliefs does have a lot of utility,
 13 right? Because it -- it -- it reveals what the
 14 case is actually really about.

15 So I -- I -- if you're not going to let me
 16 ask the question, that's fine. I'll move on. I
 17 want to get to the end of this, but -- but I do
 18 think there's utility in asking the question. I
 19 mean, at least asking it. Maybe she says, no,
 20 and that's fine. I'll move on. But there's
 21 utility in asking it.

22 THE CHAIR: Ms. Waddell.

23 CNSL A. WADDELL: Look, if -- if you want -- you have
 24 asked her about her firsthand experience, so I
 25 think that's covered. But if you have a -- a
 26 question that can get at her firsthand
 27 experience -- not withstanding that she's already
 28 said she doesn't -- you know, she's agreed with
 29 you that it's possible that there have been
 30 students of faith coming through her class, but
 31 she doesn't have firsthand knowledge. But not
 32 withstanding that, if there is some, you know,
 33 direct knowledge question that you can ask, you
 34 know, that, I have no problem with.

35 But again, this is not a -- a belief case,
 36 and so the analogy -- while it might be something
 37 you want to raise in -- in legal argument, I
 38 understand that -- that's your approach to the
 39 case, you know, this is not the place for -- for
 40 legal argument. So to -- to my mind, our reply
 41 is it needs to be something that the witness can
 42 offer firsthand, you know, testimony about or
 43 experience. And then the rest is, like, I know.
 44 You're going to raise all that in legal argument,
 45 and you can make those to use your, you know,
 46 intellectual exercise words. You can, you know,
 47 engage in that intellectual exercise in your --

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1 your legal argument, and I know you will. So
 2 anyway, that's our reply on the objection.
 3 THE CHAIR: Thank you.
 4 CNSL J. KITCHEN: Okay. I'm going to move on.
 5 THE CHAIR: Okay. Thank you.
 6 CNSL J. KITCHEN:
 7 Q Teacher A, do you recall testifying about Teri
 8 Westerby?
 9 A Yes. Well, I don't know that I testified about
 10 him, but his name came up.
 11 Q And Teri Westerby is a Chilliwack school trustee;
 12 is that right?
 13 A Yes.
 14 Q You would agree with me that Teri Westerby is
 15 a -- an -- an -- an -- you would agree with me
 16 that Teri Westerby identifies as a queer person.
 17 Is that fair? Or do you not know that? If you
 18 don't know, that's fine but...
 19 A My understanding is that Teri Westerby identifies
 20 as trans.
 21 Q Okay. Okay. Okay. Which is a little different
 22 than you because -- because you specifically
 23 identify as -- as -- as queer. Those things are
 24 similar, but -- but -- but there's some
 25 differences there. Is that fair?
 26 A They -- they can be.
 27 Q Okay. Okay.
 28 A They can be similar. They can be completely
 29 different.
 30 Q Okay. Are you familiar with this post by
 31 Teri Westerby?
 32 A No.
 33 Q Never seen this before? Sorry. There you go.
 34 That's the whole thing.
 35 A Maybe I have. It's hard to say. I see a lot of
 36 rainbow posts online. Potentially.
 37 Q You would agree this one has been on social media
 38 and/or the -- the legacy media a little bit in
 39 Chilliwack?
 40 A Maybe.
 41 Q Maybe. Okay.
 42 A I can't -- I can't say whether it has or hasn't.
 43 Q So you've seen posts similar to this then? Is
 44 that -- do I have that right?
 45 A I've seen posts with rainbow on it, but
 46 nothing -- like, I haven't seen posts similar
 47 to -- to this one exclusively. I don't know

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1 where -- what this Barbie symbol has to do with
 2 anything.

3 Q Neither do I. Okay. Well, I won't ask any
 4 questions about it because you're not sure if --
 5 if you've -- if you've seen it or that it's out
 6 there in the world.

7 So you have felt unsafe at school since --
 8 since Barry Neufeld started making his comments
 9 about his beliefs in 2017?

10 A I think that not just at school. I felt unsafe
 11 in the community. I felt unsafe shopping. You
 12 never know what's going to happen.

13 Q You have been concerned that somebody may engage
 14 in -- in physical violence towards you whether at
 15 school or in the community?

16 A Yes.

17 Q Because -- because -- because of your queer
 18 identity?

19 A Yes.

20 Q But you weren't before Barry said something?

21 A Not really, no.

22 Q So you -- you were afraid that people were going
 23 to encounter Barry's beliefs that there's only
 24 two genders, and you can't switch them, and
 25 gender-affirming care for kids is bad and all
 26 that, you were afraid that somebody was going to
 27 interpret that as okay. Let's go be violent
 28 towards some queer people. You were scared of
 29 that?

30 A I mean, these things happen every day. I don't
 31 know why it's shocking, but yes. I -- I was --
 32 it's -- it's always on my mind that it might
 33 happen. It's not a really great way to live
 34 honestly. It's unfortunate that queer people
 35 have to live in fear.

36 Q Would you -- to try to sort of contextualize this
 37 in -- in the society in which we live, would you
 38 say it's -- it's comparable to, you know, Jews in
 39 Montreal or Toronto when -- when there's
 40 Palestinian people going around and protesting
 41 and saying, you know, from the river to the sea,
 42 is it kind of like that for you? You know, is it
 43 to that level or not?

44 CNSL A. WADDELL: Sorry. Again, I'm going to object.
 45 I -- I don't think this has any relevance, and
 46 the witness has already said she's not Jewish.
 47 She clearly doesn't live in Montreal, so she

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1 can't speak to any of the things that my friend
2 is putting to her.
3 CNSL J. KITCHEN: Fine.
4 Q Have you -- have you ever had anybody -- in
5 the -- let's say in the last seven years since
6 Barry's comments, have you ever had somebody take
7 physical violence against you because of your
8 queer identity?
9 A I have definitely been bumped into aggressively.
10 I have had threats of violence.
11 Q Written threats?
12 A No.
13 Q So oral threats?
14 A Yes.
15 Q But not at school, only in the community? Or
16 also at school?
17 A At school has been a little bit more on the
18 down-low and not necessarily verbalized.
19 Q So no oral threats of violence from anybody in
20 the school system; is that right?
21 A Not -- no, not within the -- the walls of the
22 school.
23 Q Okay. So no violence, no threats of violence,
24 but you still feel unsafe at work?
25 A Yes.
26 Q Help me understand what the lack of safety is.
27 A When people don't like you and especially don't
28 agree with who you are and -- and how you move
29 through the world, it can be a very worrisome
30 experience because I don't know how far they lean
31 and what they're capable of. And because I see
32 it all too often in the media and within my
33 friend group, I know that the possibility exists
34 of hate crimes happening to me.
35 Q But you think that possibility -- you know, as
36 opposed to being a mere logical possibility as
37 if -- you know, what I mean by that, it's all
38 logically possible that we will get struck by
39 lightning in the year 2025. You would say
40 that when you say possibility, you're talking
41 about more than mere logical possibility, more
42 than mere -- you know, if you get hit by
43 lightning? You're talking about like -- like --
44 like, real possibility?
45 A Yes.
46 Q That's what you -- okay. Okay. And you would
47 say that that -- that real possibility didn't

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1 exist before Barry started making those comments?
 2 A It wasn't something that I worried about before.
 3 Q And you -- do you still worry about it today in
 4 2000 -- in December 2024?
 5 A Yes.
 6 Q You go -- you go to school thinking somebody --
 7 somebody's going to either take violence against
 8 you or threaten you with violence even after
 9 seven years of it never happening?
 10 A It hasn't never happened. It has happened. And
 11 I think that that's a very privileged
 12 perspective, and I'm really excited that you
 13 haven't had to experience that, but a lot of us
 14 have.
 15 Q Oh. Don't worry. I -- I -- okay. Hold on. You
 16 just told me that there has been no instances of
 17 violence or -- or oral or written threats of
 18 violence at school. You told me that that only
 19 happened in the community. So are you changing
 20 your -- your testimony now?
 21 A No. That's not what you asked me about a moment
 22 ago. You said there's been no acts or threats of
 23 violence, and there has been. You didn't specify
 24 in the school community or in the school walls.
 25 Q Right. So there's been no threat of violence
 26 over the last seven years at school or in the
 27 school system that you've experienced, you?
 28 A Not towards me, no. I have seen it but not
 29 towards me.
 30 Q Now -- okay. Let me ask you this. You would
 31 agree me that Barry -- and maybe you don't. But
 32 you would agree with me that Barry has not
 33 advocated for violence towards queer people;
 34 right?
 35 A Not explicitly.
 36 Q He has implicitly according to you?
 37 A By making some of the comments that he's made, I
 38 think that especially when you have a platform,
 39 that there is more of a likelihood that your
 40 followers are going to engage in violence.
 41 Q So by saying he believes that there's two
 42 genders, you can't switch between them, and that
 43 it's -- it's a bad idea to teach queer theory to
 44 kids, you think that -- that -- by saying those
 45 things and things like them, you know, that
 46 we're -- that we're eliminating the gay kids, you
 47 know, the stuff he says, you think that increases

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1 the likelihood amongst his followers that they're
2 going to commit violence against queer people?
3 A There was a post that said that allowing your
4 child to transition is child abuse.
5 Q Yeah.
6 A I think that some people, potentially those who
7 may be unstable, will take that information and
8 use it against those in the school system who are
9 proponents of SOGI, yes.
10 Q Okay.
11 A I think that they're -- or in the community.
12 Q So in other words, right-minded people won't do
13 that. Only the people who are disturbed in mind
14 would do that?
15 A I can't imagine why you would attack another
16 human if you weren't mentally unstable.
17 Q Completely agree with you. Do you think Barry is
18 mentally unstable because of the beliefs he's
19 espoused?
20 A I think that he's misguided and that he could
21 probably do a little bit more research. I don't
22 want to speculate on his mental health. That's
23 not for me to do.
24 Q Okay. All right. All right. But we would all
25 be better off if he would just change his
26 beliefs; is that right?
27 A I think that the queer, trans, Two-Spirit, and
28 nonbinary people in the world would be better off
29 if he didn't speak these beliefs especially when
30 he has a platform.
31 Q You think -- fair to say, you think queer people
32 would just be better off if they never
33 encountered beliefs that challenged their own?
34 Is that fair?
35 A I believe that queer, trans, Two-Spirit, and
36 nonbinary people would be better off if people
37 didn't verbally attack them and if people with
38 platforms did not say they don't exist.
39 Q And -- and to be clear, for you, when somebody
40 says, hey. I believe there's only two genders,
41 and you can't switch them, and you shouldn't be
42 teaching that stuff to kids, when people say
43 that, for you, it's the same thing as attacking
44 trans or queer people?
45 A It's denying their existence.
46 Q Right. Right. Almost done. You said -- towards
47 the end of your testimony, you said that Barry

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1 needs to be held accountable and that we need to
2 make sure that it doesn't happen again, which was
3 a reference to him expressing his beliefs. Does
4 that sound -- does that sound like a fair,
5 accurate assessment of -- or summary of what you
6 said?

7 A Yeah. I think people who are in power who say
8 things that could incite violence and -- and that
9 deny the existence of people should be held
10 accountable, yes.

11 Q Okay.

12 A It shouldn't be something that happens.
13 Shouldn't be allowed.

14 Q If someone was to say to you, you know, look.
15 You really misconstrued what Barry's had to say,
16 like, you really -- you really, you know,
17 attached a meaning to it that -- that isn't
18 there, fair to say your response would be, well,
19 you know, look. I think you're wrong, and I
20 think I'm right, and it's what I think that
21 matters. Is that fair?

22 A I think impact is what matters. And the reality
23 is that the things that he said have an impact
24 still. They impacted me. They impacted many of
25 the youths that I work with. They impacted many
26 of -- of the queer, trans, Two-Spirit, and
27 nonbinary community members that I know. So I
28 think it's -- it's impact over intent. And even
29 if that was not the way it was intended, which I
30 would love to hear -- if there was another
31 intention, I would be all ears for that, but it's
32 impact over intent.

33 Q Okay. So you believe Barry intended to hurt or
34 harm queer people?

35 A I can't imagine why you would say that when you
36 didn't at least have an inkling that that would
37 harm a queer person.

38 Q What if you just thought it was -- it was good to
39 express your beliefs about this because you think
40 your beliefs are correct?

41 A Again, it's --

42 Q Like, is it -- is it --

43 A -- impact over intent. So whether he intended to
44 or not, I can't speak to that but --

45 Q Okay. All right.

46 A -- I do know that the impact is long lasting.

47 Q Okay. But -- but you would agree with me you did

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1 just speak to that. You did just say, "I can't
 2 imagine the intent being anything other than an
 3 intent to harm and hurt." You did just say that.
 4 A In -- in my opinion, I can't imagine you could
 5 say that and not at least have an inkling that
 6 that would hurt somebody.
 7 Q What if you just thought that expressing your
 8 belief that's different than somebody
 9 else's is -- is just that, just -- just having a
 10 conversation about differing beliefs? I mean,
 11 isn't that a thing we do? I mean, at school,
 12 right, as part -- as part of learning and
 13 education, we try to challenge kids' preconceived
 14 ideas and get them to think outside the box and
 15 get them to consider beliefs that are different
 16 than their own? Don't we do that as teachers?
 17 A No, we don't, not when they're harmful and not
 18 when they're protected grounds.
 19 Q And who decides what's harmful and what's not?
 20 A Well, in this case, I believe it was the -- the
 21 *Charter for Human Rights and Freedoms*.
 22 Q Okay. So the *Charter* has decided that it's
 23 harmful to say to queer people, "I believe
 24 there's only two genders, and you can't switch
 25 between them," from your perspective?
 26 CNSL A. WADDELL: Okay. She's talking about her
 27 perspective, that's fine. But she's not a
 28 legal scholar, so yeah.
 29 CNSL J. KITCHEN: We know she's not a lawyer. We all
 30 know that. I'm not looking for that. That would
 31 be completely unhelpful even if she was.
 32 Q So just to be clear, from your perspective, as
 33 far as you're concerned, the *Charter* has decided
 34 that it is hurtful and harmful for people to say
 35 that they only believe there's two genders, and
 36 you can't switch between them?
 37 A When you're denying a whole group of people
 38 exist.
 39 Q But who has decided that when you say that,
 40 you're denying that a group of people exist? Who
 41 has decided on that interpretation?
 42 A I have. For -- for the purpose of -- of this
 43 testimony, that is what I have decided.
 44 Q Okay. So it's not about the *Charter* then. It's
 45 about you, to be fair?
 46 A Well, I rely on the *Charter* to guide a lot of the
 47 work that I do.

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1 Q Okay. Okay. It's -- to be fair, it's your
 2 interpretation of the *Charter* that what Barry has
 3 said is harmful, and therefore, he shouldn't be
 4 allowed to say it?

5 A It's my belief that Barry's comments have
 6 erased -- attempted to erase a lot of people who
 7 exist in this world and caused them harm.

8 Q And anybody who says otherwise is just -- is
 9 just -- is just wrong?

10 CNSL A. WADDELL: Sorry. That's been -- I'm -- I'm
 11 pretty sure that that has been asked and answered
 12 a number of times.

13 THE CHAIR: It has.

14 CNSL J. KITCHEN:

15 Q What's -- what's the authority -- is the only
 16 authority you're appealing to your own, or is
 17 there some other authority that -- that you're --
 18 that you would rely on? That's -- that's kind of
 19 what I'm getting at.

20 A For the purposes of what he has said, I -- yeah,
 21 it's -- I know that it contradicts the -- the
 22 held beliefs and -- and the knowledge, the
 23 intrinsic knowledge that I have, so I don't need
 24 anymore than that. I know the things he's saying
 25 are wrong. I know that they are -- there's --
 26 there's a reason he wasn't allowed to be in the
 27 schools, so there's other people who believe that
 28 they were wrong. And I know that when he posted
 29 these things, it impacted myself as well as
 30 countless other people, and I know that that is
 31 wrong.

32 CNSL J. KITCHEN: No further questions arising on
 33 cross.

34 THE CHAIR: Thank you.

35 Ms. Waddell, do you think you'll have
 36 anything arising? Do you need a break?

37 CNSL A. WADDELL: If we could take a -- just a short
 38 break to just check our notes and see if we have
 39 any questions in re-direct, that would be great.

40 THE CHAIR: All right. Do you want us to just turn
 41 our cameras and mics off for a few minutes or to
 42 take the 15-minute afternoon break?

43 CNSL A. WADDELL: Just a -- why don't we just do a
 44 quick turn off, and we'll make ourselves reappear
 45 when we're ready. I don't think we'll need more
 46 than a few minutes.

47 THE CHAIR: All right. Let's just turn our cameras

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1 and mics off for a few minutes, and we'll come
2 back if there's any questions.

3
4 (WITNESS STOOD DOWN)

5
6 (PROCEEDINGS ADJOURNED FOR RECESS) [3:05:11]
7 (PROCEEDINGS RECONVENED) [3:07:39]
8

9 TEACHER A, a witness,
10 recalled.

11
12 THE CHAIR: All right. Everybody, come on back. Oh.
13 We have someone -- was that you?

14 CNSL J. KITCHEN: That's -- I'm sorry. Yeah, that's
15 me. Sorry.

16 THE CHAIR: No. That's fine. I thought it was a
17 member of the public. Ms. Waddell, any questions
18 arising? Oh. Ms. Tom. Sorry. All right.
19 Teacher A, those are all the questions we have
20 for you. I want to really thank you for coming
21 to this proceeding for two days and answering
22 questions. We really, of course, rely on people
23 taking the time and energy to come -- come
24 through and give their evidence, and that's not
25 always an easy experience, so thank you very much
26 for your time. You're free to disconnect from
27 the call and go about your day. Thanks so much.
28 A Thank you very much.

29
30 (WITNESS EXCUSED)
31

32 THE CHAIR: All right. For the rest of us, I guess
33 we'll take the afternoon break. And then do we
34 have Teacher C ready to come in 15 minutes?

35 CNSL A. TOM: Yes, we do.

36 THE CHAIR: Okay. All right. Well, why don't we take
37 15 minutes, and then -- and then we'll come back
38 with Teacher C. We'll just turn our cameras and
39 mics off for this break. Thank you.
40

41 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS) [3:09:08]
42 (PROCEEDINGS RECONVENED) [3:25:31]
43

44 THE CHAIR: All right. Everyone, come on back. I
45 think I see, yeah, complainant's documents coming
46 in and Teacher C coming in.

47 Good afternoon. Teacher C is what we're

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1 going to call you, a witness who has come to
2 testify at the Human Rights Tribunal. My name is
3 Devyn Cousineau. I'm vice chair of the B.C.
4 Human Rights Tribunal. And joining me are
5 tribunal members Robin Dean and Laila Said Alam.
6 I'm going to start by just explaining for you
7 everyone who is on the call and a bit about what
8 to expect, and then we're going to get started
9 with your questions; okay?

10 So first of all, can you give me a thumbs up
11 if you can hear me okay? Okay. Great. So there
12 are some people on the call that are joining by
13 video who can see you, and you should be able to
14 see them, so I'm just going to let you know who
15 everyone is. There should be a screen that says
16 "complainant's counsel." That's counsel for the
17 BCTF and Chilliwack Teachers' Association,
18 Lindsay Waddell, Stefanie Quelch, and Alanna Tom.
19 And then you'll see Reid Clark, who is the
20 representative here from the Chilliwack Teachers'
21 Association, and it looks like Robin Toscak is
22 gone now; is that right? Okay. So we don't have
23 anyone here right now from the B.C. Teachers'
24 Federation. I think that's right.

25 And then you should also see Barry Neufeld
26 who is the respondent in this case is on -- who
27 is joined by video. His video is not on right
28 now, but he will probably come back. And his
29 lawyer is James Kitchen, who you should see. And
30 then the last person on video is Sarah Khan.
31 She's counsel for the Intervener, the B.C. --
32 Office of the B.C. Human Rights Commissioner. So
33 that's everyone who is on video who can see you
34 and you can see.

35 And then we have a number of members of the
36 public who are joining by audio only, and they
37 can hear everything, but they don't have video
38 access. All the members of the public and
39 everyone on the call are required to follow the
40 Tribunal's terms and conditions for
41 participation, and that includes no recording of
42 any kind. The Tribunal is -- we are recording
43 the proceeding for our own records, so we have
44 recording equipment here, and we use that and
45 allow people to use that only for the purpose of
46 the complaint and not for any other purpose.

47 As you know -- or I think you probably

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Proceedings

1 know -- there's a publication ban in this
2 complainant prohibiting anyone from publishing
3 information that could identify you as a teacher
4 witness in the complaint. As an extra -- as an
5 extra layer of security, we are all doing our
6 best in this proceeding not to use your name, so
7 that's why we're going to be calling you
8 "Teacher C." So it's not to be impersonal. It's
9 just to keep your name out of the proceeding as
10 much as possible. We've been doing pretty well.
11 But on the -- if there's an occasional mistake, I
12 can't promise there won't be an occasional slip,
13 but everyone is doing their best and I think is
14 doing pretty well at keeping -- keeping
15 everyone's name confidential.

16 So that's kind of a general introduction to
17 the proceeding. We're going to go today until
18 4:30, and then we'll take a break, and then I
19 expect we'll -- you'll come back tomorrow morning
20 at 9:30 to continue with your questions. So do
21 you have any questions for me about the process?
22 No. You're shaking your head. Okay. So
23 normally at this stage, I would ask you to spell
24 your full name for the record, but I'm not going
25 to do that. I'm just going to ask you to tell me
26 what pronouns you use.

27 TEACHER C: She/her.

28 THE CHAIR: She/her.

29 TEACHER C: Did that mic work?

30 THE CHAIR: There it is. Okay. Yeah. It just took a
31 moment there. Okay. Thank you. And so just
32 before you start answering questions, I'll have
33 you take this oath to tell truth.

34
35 TEACHER C, a witness called
36 for the Complainants,
37 affirmed.

38
39 THE CHAIR: And do you understand that a breach of
40 this promise is an offence under the law?

41 TEACHER C: Yes, I do.

42 THE CHAIR: Okay. Thank you. So I expect our time
43 today will be taken up with questions from
44 complainant's counsel, and so I'll hand it over
45 to them now. Go ahead.

46 CNSL A. TOM: Just before we get started, we did want
47 to put Mr. Kitchen on notice that we are going to

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Proceedings

1 be amending our notice -- or requested remedy as
2 a result of the hearing. Teacher C had been on
3 hold for a number of days now without pay, and so
4 we're going to ask some questions about the wage
5 loss there, and so that's just going to be
6 something that we're going to amend our remedy
7 requested to address.
8 CNSL J. KITCHEN: You're going to seek lost wages from
9 the last few days, you mean?
10 CNSL A. TOM: Yes.
11 CNSL J. KITCHEN: On the basis -- I don't want a full
12 explanation, just -- just -- you said you would
13 give me notice so just sort of a conclusion of
14 your position.
15 CNSL A. TOM: Yeah. Sure. That it flows from the
16 discrimination requiring her to appear and give
17 testimony here and expecting that she would come
18 on Wednesday and then Thursday and then Friday
19 and then today and then likely also tomorrow.
20 Teacher C, yeah, is not in a -- a position right
21 now where she is paid for her time to give
22 testimony, and so that's why.
23 CNSL J. KITCHEN: Okay. And our -- and I think this
24 is the last question I'll ask. Okay. Hold on.
25 So -- so that's going to be -- you're going --
26 you're going to argue that in your closing
27 submissions?
28 CNSL A. TOM: Yes. We just wanted to put you on
29 notice that that's a change to our remedy given
30 how things have gone during the hearing.
31 CNSL J. KITCHEN: Okay. And you're going to -- you're
32 going to elicit evidence to that from this
33 witness and make the factual foundation?
34 CNSL A. TOM: That's the plan.
35 CNSL J. KITCHEN: Okay. Okay. Well, I'll cross on it
36 and -- okay. That's fine. Sorry. One last
37 question. You're -- you're going to blame the
38 respondent -- you're going to blame respondent's
39 counsel for that or respondent for that?
40 CNSL A. TOM: Don't know if there needs to be blame.
41 I just think that it is -- what's happened in
42 this hearing and that Teacher C should not bear
43 the -- the brunt of having to, yeah, recoup those
44 lost wages on her own.
45 CNSL J. KITCHEN: Right. But you're saying that
46 somebody else should, and in particular, the
47 somebody else is the respondent because -- I

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Teacher C (for Complainants)

In chief by Cnsl A. Tom

1 mean, that's -- you're seeking a remedy. You're
 2 seeking it from the respondents. So you're
 3 saying Barry was -- Barry -- Barry is the reason
 4 that -- that the witness has missed pay?

5 CNSL A. TOM: Well, Barry's the reason that we're here
 6 today and the reason that Teacher C is here today
 7 and the reason that she has been on hold for the
 8 last number of days.

9 CNSL J. KITCHEN: Okay. So you're not -- you're not
 10 suggesting it's counsel misconduct. You're --
 11 you're just -- you're suggesting that it's
 12 somehow Mr. Neufeld's fault? That's all I'm
 13 getting at.

14 CNSL A. TOM: I'm not suggesting there's counsel
 15 misconduct, no.

16 CNSL J. KITCHEN: Okay. Okay. Okay. And I'm -- and
 17 I'm -- yeah. Okay. All right. All right.
 18 We'll -- we'll see where that goes.

19 CNSL A. TOM: Okay.

20
 21 EXAMINATION IN CHIEF BY CNSL A. TOM:

22
 23 Q All right. Teacher C, can you just tell us how
 24 you identify.

25 A I identify as female, and I happen to be a trans
 26 woman as well.

27 Q And what's your profession?

28 A Maintenance technician.

29 Q Previous to being a maintenance --

30 CNSL J. KITCHEN: I'm having a hard time hearing the
 31 witness. I don't know. Maybe it's just me.

32 THE CHAIR: She's -- you're kind of cutting in and
 33 out. I think when you get talking, we can hear
 34 you okay, but when you first start talking,
 35 there's a bit of a crackling. So I don't know if
 36 there's --

37 CNSL J. KITCHEN: Exactly.

38 THE CHAIR: -- a different -- I don't know if there's
 39 a different mic you might be able to use, or is
 40 it just the mic -- is that the only mic you have?

41 A I can try changing mics. One second.

42 THE CHAIR: Okay. Thank you. Nothing. No. We can't
 43 hear anything.

44 CNSL A. TOM: Now we can't hear you at all.

45 THE CHAIR: Yeah. We lost you. If you -- if you need
 46 to go back to the other mic, it's okay. We'll
 47 just probably need you to speak extra clear and

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Teacher C (for Complainants)

In chief by Cnsl A. Tom

1 loud.

2 A I'll just be a sec. Okay. How about this?

3 THE CHAIR: Perfect.

4 CNSL J. KITCHEN: That's pretty good.

5 THE CHAIR: Thank you.

6 A Okay.

7 THE CHAIR: Yeah. That's much better.

8 CNSL J. KITCHEN: It's just -- I didn't hear the

9 answer to that question. I don't know if it

10 matters, but I just didn't hear -- I didn't hear

11 the answer.

12 THE CHAIR: Right. So we're going to go back a moment

13 if -- Ms. Tom, could you ask your question again,

14 and then we'll keep going. Thank you.

15 A I identify as female. I happen to be a

16 transgender woman as well.

17 CNSL A. TOM:

18 Q And what is your profession?

19 A I'm an industrial maintenance technician.

20 Q And what did you do prior to that?

21 A Multiple jobs such as delivering pizza and being

22 a teacher on call in the Chilliwack School

23 District.

24 Q And when were you a teacher in the Chilliwack

25 School District?

26 A From 2017 to 2021.

27 Q And generally speaking, what grades and subjects

28 did you teach?

29 A I'm a French specialist, and I mostly taught in

30 high school, so grades 9 to 12 mostly.

31 Q And is 2017 when you started teaching, or did you

32 teach elsewhere before that?

33 A I taught in Abbotsford in 20 -- in 2010 to

34 2012 -- to 2011.

35 Q Why did you leave the Abbotsford School District?

36 A I was in the process of transitioning, and I

37 didn't feel that Abbotsford School District would

38 be a comfortable or safe place for me to

39 transition.

40 Q Why not?

41 A Abbotsford School District had a poor history.

42 For example, there is a grade 12 course called

43 Social Justice 12 that one school was trying to

44 offer, and Abbotsford School District said to

45 that school that they weren't allowed to unless

46 they changed it and took all of the gay stuff out

47 and made a locally developed version.

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Teacher C (for Complainants)

In chief by Cnsl A. Tom

- 1 Q And how were you concerned that was going to
2 translate for you as you were transitioning in
3 the workplace?
- 4 A Because that -- that instruction to that school
5 came from the district level, so I -- I made the
6 assumption that any -- that anything from the
7 district level would be unsupportive of me as a
8 transitioning teacher.
- 9 Q What did you do work-wise after you left
10 Abbotsford in -- in 2011?
- 11 A I continued working at the Real Canadian
12 Superstore.
- 13 Q And when was the first time you applied to
14 Chilliwack as a teacher?
- 15 A I believe it would have been May 2014.
- 16 Q How many times did you apply before you got a
17 position?
- 18 A To be a teacher on call, it was the fifth time
19 applying where I got an interview and hired.
- 20 Q Had you transitioned socially by that point?
- 21 A Yes.
- 22 Q Were you going by your new name?
- 23 A Yes. Yes. I had a legal name change, social
24 transition, yes.
- 25 Q Did you have any concerns about being a trans
26 teacher in Chilliwack?
- 27 A Yes, I did, as I grew up here and knew that it
28 was a conservative town.
- 29 Q Did you ever raise that with the District when
30 you were applying?
- 31 A Yes. During my interview, I asked the hiring
32 principal at the time who gave me the interview
33 if Chilliwack School District was supportive of
34 trans and queer teachers, and the hiring
35 principal replied that he thought so and that the
36 District had sent administration on a SOGI
37 course.
- 38 Q Did you know what that meant at that point?
- 39 A I was unfamiliar with that acronym, so no, I
40 didn't know what that meant at all.
- 41 Q And do you remember when you first heard about
42 Barry Neufeld?
- 43 A I grew up in Chilliwack, so I had seen -- I had
44 seen the name in the newspapers during school
45 board election cycles. But related to -- yes,
46 but nothing beyond that before I -- before I
47 started teaching in Chilliwack.

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Teacher C (for Complainants)

In chief by Cnsl A. Tom

1 Q And what did you learn once you had started
2 teaching in Chilliwack?

3 A I didn't hear any mention of Former Trustee
4 Neufeld's name until October 2017.

5 Q Can you tell us a little bit about that?

6 A The respondent made some ignorant posts on
7 Facebook which immediately made me upset, and I
8 referred these posts to the Chilliwack Teachers'
9 Association president at the time.

10 Q Do you remember what the post said?

11 A Suggesting that it was wrong to -- to teach
12 students anything about queer or trans people.
13 Although, I believe the term "SOGI" was used at
14 the time, which I had learned what it meant by
15 then.

16 Q I'm just going to share my screen here for a
17 second. And we're going to be at the book of
18 documents RE statements at Tab 1. I'm going to
19 enlarge this a little bit. Oops. Is this the
20 post that you were referring to?

21 A Yes, this is the post.

22 Q And can you tell us what the impact was of the
23 sentence here where -- this highlighted portion?

24 A Okay. The impact was that I felt that his
25 comments were suggesting that there was something
26 wrong with -- with -- with K-to-12 students
27 learning that trans people exist and that it --
28 it was child abuse to provide gender-affirming
29 care to students -- well, little children.

30 Q I'm going to stop sharing now. Do you remember
31 where or what context you saw that first post?

32 A Yes. I was on a break on the job.

33 Q So you were at -- at your job as a teacher?

34 A Correct.

35 Q What was it like to go back to work after reading
36 that on a break?

37 A It was a little uncomfortable. There was some
38 immediate discussion with other teachers about
39 it, and I did share that I was bothered by it
40 with several teachers who worked near me.

41 Q Had you ever faced or seen transphobic comments
42 in the media before Mr. Neufeld?

43 A As in news articles, yes, but definitely nothing
44 local.

45 Q So is there something different about
46 Mr. Neufeld's comment and other transphobic
47 comments that you might have seen --

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Teacher C (for Complainants)
In chief by Cnsl A. Tom

1 A Specifically is that he was my boss and
2 representing the Chilliwack School District.
3 CNSL J. KITCHEN: I'm very sorry. I got -- I got --
4 and this has happened to me several times today,
5 but I haven't -- it hasn't yet been important
6 enough for me to pipe up. I was booted out for
7 five, seven seconds, whatever it was. So I
8 completely missed -- and I don't know -- I don't
9 know how to fix that. It just seems to be a
10 Teams thing. I completely missed the witness's
11 answer, so I would -- I would be very grateful if
12 I could hear it again.
13 CNSL A. TOM: Did you get the question, Mr. Kitchen?
14 Did you hear that part?
15 CNSL J. KITCHEN: Yes. And it was just the perfect
16 cut off, and then that was it.
17 CNSL A. TOM: Okay. Okay.
18 A Could you repeat the question.
19 Q Sure. Yeah. Was there -- is there a difference
20 between seeing the transphobic comments
21 circulating elsewhere and Mr. Neufeld's comments?
22 A Yes. The important distinction was that Former
23 Trustee Neufeld was my boss and representative of
24 the board of the Chilliwack School District.
25 Q What was your position within the school district
26 at that point?
27 A I was a teacher on call, but I had been -- been
28 in the same assignment for a couple weeks by this
29 point at Fraser Valley Distance Education.
30 Q Did you know at that point whether or not you
31 would be continuing that position or whether or
32 not you would be going back to being a teacher on
33 call?
34 A I was waiting to find out if I would get some
35 kind of a temporary contract to cover parental
36 leave.
37 Q So you weren't sure at that point whether or not
38 you were continuing?
39 A No. No, I didn't.
40 Q And did you start teaching on call right at the
41 beginning of September in 2017?
42 A Yes, that's correct.
43 Q Do you remember hearing an apology that
44 Mr. Neufeld made?
45 A Yes. I believe there was an apology made within
46 a week. I don't remember the details however.
47 Q Did it change how you felt, that there was an

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Teacher C (for Complainants)
In chief by Cnsl A. Tom

1 apology made?

2 A Yeah. I was hoping that was going to be the --
3 the last I'd have to hear about -- about Trustee
4 Neufeld's view about trans people.

5 Q Do you recall any comments after that apology
6 that had an impact on you?

7 A So there were multiple, and I -- enough that I
8 stopped looking at them. But one that bothered
9 me in particular was one from, I believe it was
10 April 2020, suggesting that the public health
11 officer of Canada Dr. Theresa Tam could not be
12 trusted because she was transgender, and I
13 believe this was a reference to a conspiracy
14 theory that had been posted.

15 Q I'm just going to take to you that post now, and
16 we're going to be at Tab 21 of the book of
17 document RE statements and publications. Is this
18 the post you're referring to?

19 A Yes. Yes, this is the right post.

20 Q And can you tell us what the impact was of this
21 line here in particular?

22 A Okay. So if Dr. Theresa Tam is -- has spent a
23 major portion of their career deceiving people,
24 that same rationale would apply to me, which if I
25 continue that thought further, that means that I
26 was deceiving everyone simply by walking into a
27 school and asking teacher -- asking students to
28 call me Ms. C.

29 Q What was the impact of feeling like that -- as
30 you said, as your employer, he believes that
31 someone can't be trusted merely because of their
32 gender identity?

33 A That bothered me because I felt that the most
34 important thing was what I said and did in the
35 classroom towards students, not because of who I
36 was, and certainly not that I was deceiving my
37 students by existing as myself.

38 Q How did you feel as time went on and as you said,
39 there were continued comments and -- too numerous
40 that you stopped looking at some point?

41 A Yeah. I -- I felt bothered, and I felt that the
42 unelected district staff could have also said
43 more than they did.

44 Q What do you think they could have done?

45 A For example, I think they could have held
46 information sessions about what SOGI was and
47 how -- how SOGI curriculum was different than

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Teacher C (for Complainants)

In chief by Cnsl A. Tom

1 SOGI 123, which was an optional learning
2 resource, for example. That didn't happen, and I
3 also didn't see any communication from the
4 District towards staff who were queer or trans.
5 Q What do you think the difference would have been
6 of -- of having those communications in
7 particular to staff?

8 A Oh. I think I would have felt more welcome in --
9 as a part of the School District 33 learning
10 community.

11 Q While you were there, did the District ever do
12 more in terms of holding those kinds of
13 information sessions or putting more information
14 out there about what SOGI was?

15 A The District painted a sidewalk rainbow at the
16 school board office. There was a private event
17 where transgender author Ivan Coyote was invited
18 to speak to some staff. And then there -- and
19 then there were a few leaks on SharePoint about
20 SOGI resources, but I don't think anything --
21 anything that I felt was significant enough.

22 Q Did you ever attend any speaking engagements
23 where Mr. Neufeld spoke in person?

24 A I was at a Culture Guard rally which would
25 probably have been fall 2018. However, I did not
26 hear Former Trustee Neufeld speak.

27 Q Why not?

28 A I was there to protest, and I also didn't want to
29 hear anything that he had to say about people
30 like me.

31 Q How are you protesting?

32 A I had a sign that said "proud trans teacher," and
33 I held it outside the event.

34 Q Were you concerned about that or doing that?

35 A Yes. I was a little nervous and made sure not to
36 mention that I was in fact a teacher under --
37 under the Chilliwack School Board -- School
38 Board's purview.

39 Q Why were you careful about that?

40 A So from the beginning of the process where I
41 complained to the Chilliwack Teachers'
42 Association president, I kept being reminded that
43 I had a fiduciary duty towards Trustee Neufeld
44 and that I was not permitted to criticize him
45 publicly.

46 Q Did you ever respond on social media to any of
47 Mr. Neufeld's posts?

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Teacher C (for Complainants)

In chief by Cnsl A. Tom

1 A No, never.

2 Q Is that for the same reason?

3 A Definitely.

4 Q What were you concerned was going to happen?

5 A I thought it was going to affect my likelihood of
6 getting teaching contracts.

7 Q When you were in your various positions in -- in
8 Chilliwack, did you ever experience any negative
9 interactions with students or staff to do with
10 you being a trans teacher?

11 A One time when I was a -- a teacher on call at one
12 high school. Fortunately, there was another
13 teacher there who reported to administration, and
14 I'm very pleased to state that administration
15 took it very seriously.

16 Q Why do you say it was fortunate that another
17 teacher was there?

18 A Because I would not have said anything because I
19 was -- I was scared that I wouldn't have any
20 support from administration.

21 Q Do you remember around what time that was?

22 A I believe this would have been -- I believe this
23 would have been 2018, but sorry. I can't
24 remember more specifically.

25 Q So when that interaction occurred and the other
26 teacher reported it to admin on your behalf, did
27 that change how you felt about the District
28 overall?

29 A I was pleasantly surprised, but I wasn't sure
30 what support would extend beyond administration
31 of one school.

32 Q And in 2018, were you still teacher on calling,
33 so you were still kind of moving --

34 A Yes.

35 Q -- schools?

36 A Correct.

37 CNSL J. KITCHEN: I just -- I went to mention
38 something. I take it you're not going to -- to
39 ask the witness what happened? We're just going
40 to -- we're just going to -- we're just going to
41 not talk about that? I'm going to cross on this.
42 That's all. And I'm just raising the issue of,
43 you know, I'm going to ask what -- what happened,
44 and I think that's a fair cross-examination
45 question, and I'm just raising the issue that,
46 you know, it -- it would be -- it would be
47 entirely unfair to prevent me from crossing that

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Teacher C (for Complainants)

In chief by Cnsl A. Tom

1 when I -- when I actually have no idea what's --
2 what's happening. That's -- that's the only
3 reason I raise it.

4 CNSL A. TOM: Okay. Thanks.

5 Q And so did you -- while you were TTOCing or
6 otherwise, did you ever participate or lead any
7 gender sexuality alliances or gay straight
8 alliances?

9 A Since I was not usually a -- at the same school,
10 I didn't lead any. I did attend as many as I
11 could in high schools and middle schools if I
12 happened to be at that school on the same day
13 that it was happening.

14 Q Why did you make the effort to do that?

15 A I thought it was important for -- for students to
16 know that -- that trans adults existed simply --
17 simply like that, and my presence was how I could
18 show them. And that day, they would know that I
19 was -- I was a trans teacher because I had a flag
20 on -- on the bag with me. I thought it was best
21 to not -- for example, I didn't introduce myself
22 as a trans woman to the whole GSA ever because I
23 didn't feel that was my role. If students wanted
24 to ask me about my trans pride sticker, I stated
25 I was trans.

26 Q And why -- why do you think that was important
27 for you to just be there?

28 A Because the students -- my theory was that the
29 students were only familiar with trans people
30 from media and from each other rather than adults
31 who are actually in their lives.

32 Q Did you have that kind of -- or did you see that
33 kind of representation in school when you were in
34 high school or middle school?

35 A Oh, no, never. There was -- there was no one of
36 any age who was out as anything other than
37 straight and cisgender.

38 Q Do you think that would have been meaningful for
39 you as a younger person?

40 A Yes. It would have been meaningful to know that
41 there were other people like me even if they
42 weren't exactly the same, but yes, it would have
43 been very meaningful.

44 Q Did Mr. Neufeld's comments have any impact on
45 your attendance at GSAs?

46 A No, no. I don't think so. In fact, I would say
47 that they made -- made me feel it was even more

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Teacher C (for Complainants)

In chief by Cnsl A. Tom

1 important to attend.

2 Q So if anything, it made you feel like you needed

3 to be there more?

4 A Yes.

5 Q Why?

6 A I knew that some of the older students were

7 familiar with Former Trustee Neufeld's comments,

8 and it didn't happen very often, but I did hear

9 students talking about it occasionally, and I

10 felt it was important for them to know that not

11 at all adults in the school district thought that

12 way.

13 Q And so in 2017 when you interviewed for the

14 District and got hired, you said there -- you

15 didn't have any awareness of what SOGI 123

16 resources were, what SOGI meant?

17 A Yes.

18 Q Did you eventually learn about what the resources

19 were, or did you use them in your practice?

20 A Yes. I never needed to use them because the --

21 they weren't relevant to any of the classes I was

22 teaching. But thanks to Former Trustee Neufeld's

23 comments, I did -- I did peruse everything I

24 could find on the SOGI educator 's network

25 website, for example, and I also attended a -- I

26 don't remember the name of the professional

27 development conference, but I went to one

28 specifically from the -- about that.

29 Q So you weren't teaching in -- in subjects where

30 you felt it was relevant to use the lessons or

31 the -- the resources?

32 A Yes, that's -- that's correct.

33 Q And earlier, you said that you taught in the

34 Chilliwack School District until 2021?

35 A Yes.

36 Q Did you ever teach anywhere else?

37 A Since? No.

38 Q Yeah. Can you tell us a little bit about why you

39 left the District.

40 A So primarily, I thought that teaching wasn't a

41 good fit for me, classroom teaching, and that it

42 was really going to be difficult to make a living

43 as a teacher teaching on call, so it was a -- a

44 career switch.

45 Q Did Mr. Neufeld's comments have any impact on

46 your decision to leave?

47 A Yeah. They made me feel a little less --

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Teacher C (for Complainants)

In chief by Cnsl A. Tom

1 somewhat -- sorry. They made me feel somewhat
 2 less welcome in the District. But again, people
 3 were coming out publicly and saying things on
 4 different sides, and -- however, I wasn't sure if
 5 Trustee Neufeld's views were similar to those
 6 held by the other trustees and -- and District --
 7 higher level District staff as well as
 8 administration at the school level.

9 Q How did you resign?

10 A I sent a resignation letter to Rohan
 11 Arul-Pragasam who was, at that time, acting
 12 superintendent.

13 Q Did you make your resignation letter public?

14 A Yes. I made it public on Facebook because I
 15 wasn't -- since I was resigning, I wasn't
 16 concerned about having a fiduciary duty anymore.

17 Q I'm just going to share a document with you.
 18 It's -- we're at the book of documents -- Barry's
 19 documents at Tab 17. Okay. So can you tell us
 20 if this is your resignation letter.

21 A This is my resignation letter.

22 Q And under these black boxes, is -- is that your
 23 name and icon?

24 A Yes, probably.

25 Q So you shared a little bit about why you felt
 26 okay to publicize your reason. Can you tell us a
 27 little bit about why you wanted to do that at
 28 all?

29 A Yeah. I thought it was an attempt -- I was
 30 attempting to put public pressure on the school
 31 district.

32 CNSL A. TOM: Oh, sorry. Can we just go back to -- I
 33 think this is one of the disputed documents, so
 34 I'd like this entered as an exhibit.

35 THE CHAIR: Thank you. Mr. -- any objection?

36 CNSL J. KITCHEN: No. That's fine. Now that -- yeah.
 37 We know who posted this.

38 THE CHAIR: Thank you.

39

40 (EXHIBIT MARKED)

41

42 CNSL A. TOM:

43 Q So you said you were attempting to put some
 44 public pressure on the District?

45 A Yes.

46 Q To do what?

47 A To -- to show LGBTQ students and staff that they

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Teacher C (for Complainants)

In chief by Cnsl A. Tom

1 were valued members instead of an inconvenience.

2 Q Did you feel like you were inconvenient when you
3 were a staff member?

4 A Yes, because I had -- I had strong feelings, and
5 I think I would have been more convenient if
6 Former Trustee Neufeld's comments didn't bother
7 me.

8 Q Have you had any concerns about your safety
9 related to testifying in this proceeding?

10 A Physical -- physical safety, no.

11 Q Psychological, emotional safety?

12 A I've heard reports that other witnesses have had
13 private information shared, and that makes me
14 slightly concerned.

15 Q What about that is concerning for you?

16 A Because I don't want to wake up in the morning to
17 hate mail, for example.

18 Q And in your current job, are you working
19 full-time or part-time right now?

20 A I work -- I work full-time.

21 Q Are you usually scheduled Monday to Friday?

22 A Yes. I -- I normally work 6:00 a.m. to 2:30 p.m.

23 Q Had you been scheduled to work on Wednesday,
24 November 27th through Friday, November 29th?

25 A Yes.

26 Q What about today, December 2nd?

27 A Yes. Yes. So on Thursday, Friday, and today, I
28 had to ask to leave early so that I could attend
29 this hearing.

30 Q Approximately how many hours of work do you think
31 you've lost?

32 A About eight and a half hours.

33 Q And do you have any provisions in your employment
34 contract or do you have a collective agreement
35 that allows you to be paid to appear as a witness
36 in -- in legal proceedings?

37 A We've just had our union certified by
38 the labour -- labour board, but -- so we do not
39 have a contract yet. And as far as I know,
40 there's no provisions from the company about
41 this.

42 CNSL A. TOM: I'm just reviewing my notes to make sure
43 I haven't missed anything. Can I actually have
44 five minutes to look at my notes and then come
45 back?

46 THE CHAIR: Yes. Although, I'm not sure -- Ms. Tom,
47 you haven't asked Teacher C about her wage rate.

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Teacher C (for Complainants)

In chief by Cnsl A. Tom

1 CNSL A. TOM: Oh, yes.

2 THE CHAIR: I'm not sure if you were going to
3 introduce evidence about that or --

4 CNSL A. TOM: Yes.

5 Q Can you just tell us what your wage rate is, if
6 it's a daily rate or an hourly rate?

7 A I get paid hourly. \$26 an hour.

8 THE CHAIR: All right. And now you just want to turn
9 your camera and mic off for a few minutes to
10 check your notes?

11 CNSL A. TOM: That would be great, yes.

12 THE CHAIR: Okay. So we're just going to turn our
13 cameras and mics off, and then the lawyers will
14 call us back when they're ready. Okay. Teacher
15 C, you can do the same or just wait, whichever
16 you're more comfortable with.

17 A Okay.

18

19 (WITNESS STOOD DOWN)

20

21 (PROCEEDINGS ADJOURNED FOR RECESS) [4:11:52]

22 (PROCEEDINGS RECONVENED) [4:14:55]

23

24 TEACHER C, a witness,
25 recalled.

26

27 THE CHAIR: All right. We're back. Come on back,
28 Teacher C. There you are. Any more questions?

29 CNSL A. TOM: I've got a couple more questions.

30

31 EXAMINATION IN CHIEF BY CNSL A. TOM, continuing:

32

33 Q Teacher C, did you want to tell us about the
34 incident that the other teacher reported of
35 transphobia in your workplace?

36 A Yeah. It was a group of -- group of boys at a
37 table -- not working at their table actually, and
38 one of them made a comment about transgender
39 people.

40 Q Do you remember what --

41 A And it was -- no. Other than that it was
42 definitely derogatory, and it was definitely
43 within my earshot. I think I would have been a
44 little more comfortable reporting it to
45 administration if I had known exactly what they
46 said and had been able to prove or something that
47 it was directed at me.

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Teacher C (for Complainants)

In chief by Cnsl A. Tom

1 CNSL J. KITCHEN: I have -- I have an objection not to
2 the question per se but to the answer. I don't
3 think that should be permitted to stay on the
4 record because in addition to the fact that it's
5 hearsay, there's no content to it. There -- you
6 can't prove a negative. I can't cross on that,
7 so it's -- it's just a suggestion that hangs out
8 there that this person said this terrible thing,
9 but I don't know what it is, and I can't remember
10 what it is. So again, it serves a rhetorical
11 purpose, but that's not the legitimate purpose
12 of -- of getting in evidence. I don't -- I
13 don't -- I don't think it should be -- I don't
14 think -- I don't think that should be admitted
15 into the record as -- as testimony that the
16 Tribunal can rely on in any way. I think it's --
17 it's inappropriate. It's inadmissible.

18 THE CHAIR: All right. Ms. Tom, do you want to
19 respond?

20 CNSL A. TOM: Yeah. I don't think that it's hearsay.
21 Teacher C said that she heard it. She doesn't
22 recall exactly what the comment was and wasn't
23 sure that she could prove that it was directed at
24 her, but I -- I think that it was an experience
25 that she had in the classroom. She said it was
26 definitely within her earshot, so I'm not sure
27 how it's hearsay.

28 CNSL J. KITCHEN: But to -- Ms. Tom, to be fair to
29 you, my -- my -- my larger concern and more to
30 the point is that there's no content to --

31 THE CHAIR: All right.

32 CNSL J. KITCHEN: Okay. To be -- okay. To be fair to
33 you because I -- I think it would probably be
34 good if you respond to this. My -- my -- my real
35 certain is that there's no content to -- to the
36 evidence. Right. There's no evidence. There's
37 nothing for me to cross on because the witness
38 has said I have no idea what was actually said.
39 I just remember it being bad. And you can't --
40 it's -- it's -- think of it this way. There's
41 all the prejudice in the world to that and
42 absolutely no probative value, right? We can't
43 have witnesses just being, like, well, I -- there
44 was -- there was some terrible things said, but
45 don't ask me what they were, right? That's --
46 that's -- that serves no legal purpose and only
47 serves a rhetorical purpose. And therefore, it's

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Teacher C (for Complainants)
In chief by Cnsl A. Tom

1 inadmissible from my purpose to my perspective.
2 THE CHAIR: Okay. Thank you. And, Teacher C, I see
3 you have your hand up. And I -- I forgot to
4 mention at the beginning what would happen with
5 objections, which is -- you're kind of learning
6 by experience which is if there's an objection,
7 the lawyer will explain the basis, and then I'll
8 ask usually to hear from the other lawyer, and
9 then they'll talk for a bit, and then I'll make a
10 decision. In the meantime, you can just wait
11 until we resolve the objection. But I just want
12 to acknowledge your hand is up. Did you have a
13 question about that process, or before I kind of
14 deal with the objection, is there something you
15 wanted to say?

16 A I have an apology letter from one of the students
17 that the administration clearly forced that
18 student to write and present to me. I can read
19 that out loud if you wish after this objection
20 has been dealt with.

21 CNSL J. KITCHEN: I -- I would object to that.

22 THE CHAIR: Okay. Well, coming back to the objection,
23 I think, Mr. Kitchen, if your view is there's no
24 content to it, then I think there's -- you can
25 argue there's no probative value. And equally,
26 if there's no content, there's no prejudicial
27 affect. I think it's just a matter of weight as,
28 you know, what we can make of it, and she's
29 answered the question. That's her evidence, and
30 so we're just moving on to the next thing.

31 So, Ms. Tom, I'll leave it to you if you
32 want to ask Teacher C about the apology, and then
33 we'll deal with an objection about that, but --
34 but I'll let -- I'll let the -- counsel figure
35 out if they want to keep going with this.
36 Ms. Tom.

37 CNSL A. TOM: Sure.

38 Q Did you -- does the refreshing your memory with
39 the letter provide you with any additional
40 information about what the student said?

41 A No. I'm afraid not. The letter only refers to
42 transgender jokes and comments.

43 CNSL A. TOM: Okay. The other followup question I had
44 is not related to this, so I'll just wait until
45 Mr. Kitchen is done writing. It looks like he's
46 taking notes.

47 CNSL J. KITCHEN: No, I'm fine. You go ahead.

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Teacher C (for Complainants)
In chief by Cnsl A. Tom

1 CNSL A. TOM: Okay.

2 Q Teacher C, was it a difficult decision to leave
3 the teaching profession after trying several
4 times to get hired and then working in the
5 District for a number of years?

6 A Yes.

7 CNSL J. KITCHEN: I'm -- I'm not going to specifically
8 object to the question because we're almost done,
9 but I have -- I just have to say -- put it on the
10 record because it may become an issue later this
11 week, that's a leading question, and we've had --
12 we've had a number of questions like that that
13 aren't blatantly leading, okay, but they've --
14 but they've been really riding the line. And --
15 and depending where you draw the line, questions
16 like that one could be impermissible because
17 they're leading, okay?

18 So I'm just -- I -- I take a very liberal
19 approach to that, okay? But I have no idea what
20 type approach my friend might take. And if I was
21 to ask a question like that, she -- she may be
22 objecting a whole bunch later this week. So I'm
23 going to put it on the record that to --
24 depending on where you draw the line, I would say
25 that's leading. I tend to draw the line much
26 more liberally than some. I would hope this
27 Tribunal does especially since it seems to be
28 quite -- quite interested in the fact that the
29 rules of evidence don't strictly apply to it, so
30 I just point out that hopefully, we will have no
31 problems with this later on with Ms. Waddell
32 trying to change the goalpost on what leading
33 and -- and not leading is. And I'm not
34 suggesting she will. I'm just -- I'm just
35 preparing us for that, okay? Thank you.

36 THE CHAIR: All right. So you've objected because
37 it's leading. Ms. Tom, do you want to rephrase?

38 CNSL A. TOM: I can rephrase if you would like. Sure.

39 Q Was it a difficult decision or an easy decision
40 to leave the teacher profession?

41 A Choosing to leave was both easy in that I knew it
42 was the right thing to do and difficult because
43 it had taken a long time to get to that point.

44 Q Can you tell us a little bit more about the
45 difficulties.

46 A Oh, yeah. So I always -- it took me three tries
47 to get into the teacher training program, three

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Teacher C (for Complainants)
In chief by Cnsl A. Tom

1 tries before I finally got in, and then I did it,
2 and I was transitioning during -- during the
3 time, and I was concerned that being a trans
4 teacher would make it harder, and -- and then I
5 left the Abbotsford School District, and it
6 was -- and when I was finally ready to start
7 teaching again, it was -- it was hard to get a --
8 get rehired.

9 I -- I also applied to several other
10 districts other than Chilliwack. And then when I
11 did finally get hired, my boss made repeated
12 comments about people like me that made national
13 news.

14 CNSL A. TOM: No more questions.

15 THE CHAIR: Thank you. Teacher C, we're going to
16 leave it here for the day with your evidence.
17 I'm going to ask you to please come back tomorrow
18 morning at 9:30, and we'll carry on. Mr. Kitchen
19 will have some questions for you. The thing --
20 well, I think you're the last teacher witness to
21 testify, but if there's anyone you know who may
22 be testifying after you, I'll just ask that you
23 not talk about your testimony or anything going
24 on with witnesses who may come after you. So
25 yes. So I'll just ask you to come back at 9:30.
26 And everyone else stay on for a few minutes.
27 We're going to do some scheduling and planning
28 talk. But thank you, Teacher C. You're free
29 to -- actually, I'll disconnect you from the
30 meeting, and then you can --

31 A Thank you.

32 THE CHAIR: -- click the link to rejoin tomorrow.

33 Okay.

34 A Okay.

35 THE CHAIR: Thank you. We'll see you tomorrow
36 morning. Bye.

37
38 (WITNESS EXCUSED)
39

40 THE CHAIR: All right. I just want to spend our last
41 few minutes here checking in about scheduling.
42 So we have Teacher C's cross, and then that's the
43 end of the complainant's case; right? And,
44 Mr. Kitchen, what is your idea about Teacher C's
45 cross? Is it the -- she was quite short in
46 direct, so I don't know if that affects your time
47 estimate.

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1 CNSL J. KITCHEN: I do think I will be less in time
2 with this witness as opposed to the other
3 teachers. I think I was something like three and
4 a half, four, four and a half hours, something
5 like that with the other teacher witnesses. I --
6 I -- I can't say how much shorter because
7 obviously, it's very witness dependant, but I --
8 I would have less questions for -- for this
9 teacher -- for this witness, so yes, I do think
10 it would be shorter. So, for example, if I had
11 to guess, I would say it's likely we would be
12 done with this witness by or before the lunch
13 break. That would be my guess. Of course,
14 again, that depends on witness, and I -- you
15 know, I can't hold myself to that, but that's --
16 that's what I would anticipate.

17 THE CHAIR: All right. And so in that case, I think
18 we're anticipating that we're going to start with
19 your case tomorrow, Mr. Kitchen. Before we start
20 with your evidence, I think we should make sure
21 we set aside a little bit of time to deal with
22 the objection to your addition to the witness
23 list and as well as -- I think there's objections
24 to maybe two other witnesses in terms of
25 relevance. And earlier when we had our
26 prehearing call, you indicated you wanted to deal
27 with the complainant's objections to, for
28 example, Faith Groleau, I believe, was one
29 witness objected to when Ms. Groleau appeared and
30 then just hear the objection at that time.

31 So I guess I'll -- I'll let you choose. I
32 think we could either deal with the -- if there's
33 wholesale objections to any of the witnesses, we
34 could deal with them at the beginning of your
35 case so that if a witness isn't allowed to
36 testify, they don't have to come, or you can wait
37 until the witness comes, and then we can deal
38 with the objection when they're here. What would
39 you rather do?

40 CNSL J. KITCHEN: I think it is -- as much as I don't
41 want to do this to any of my witnesses, I think
42 it is -- we're probably best to deal with it
43 before -- before they come up, so immediately --
44 immediately before they come up so, you know,
45 they can -- we can -- if -- if we already know,
46 we can identify, okay, this is a witness that we
47 shouldn't just immediately call and have her --

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1 have him or her just sit there but have us go
2 through the -- the process of -- of the objection
3 and submissions and all that, and then a
4 decision's made, and then we can let the witness
5 know, okay. You're in now, or actually, you're
6 not. That -- that's what I think is -- is the
7 best way to do it. So, you know, we -- we -- we
8 have our -- and our schedule, and we can just
9 build in time for those submissions, and -- and
10 then, you know, if the witness is -- is a go,
11 then I'll -- I'll make the call, and we'll get
12 the witness in as fast as we can.

13 THE CHAIR: Okay. Ms. Waddell or complainant's
14 counsel, are you -- can you foreshadow for us --
15 I know that you have an objection to the new
16 witness, and I -- so I say I recall you saying
17 you were going to object to Faith Groleau. Are
18 there witnesses -- any other witnesses -- or can
19 you confirm which witnesses you're going to be
20 kind of objecting to wholesale and if there's any
21 overlap in your submissions about that.

22 CNSL A. WADDELL: I -- so first of all, are there any
23 other witnesses to whom we object wholesale, I
24 honestly can't remember. I don't think so, but I
25 haven't thought of my friend's -- these
26 particular witnesses in some time, so I can
27 confirm whether there's anybody else that falls
28 into that same pit by email tonight, but I don't
29 think so. I think those are the two that are --
30 at -- at least wholesale objections, but I'll
31 want to confirm that we're not taking the same
32 position on Kellie Lynn Pirie. And then on the
33 process front, it's my friend's case. I take no
34 issue with if this is his preferred method of
35 proceeding. That's -- that's fine with us. I
36 would -- are there anything -- any other things
37 you asked, Member Cousineau, that I didn't
38 address there?

39 THE CHAIR: No. I just -- I'm mainly trying to figure
40 out kind of how to deal with the wholesale
41 objections, so no. That's good.

42 CNSL A. WADDELL: Sure. And only -- so I was just
43 going to ask for my friend to confirm that
44 objections aside, if -- if, for example, his new
45 witness is permitted, when he would propose in
46 the schedule to slot that witness, and then I --
47 yeah. Go ahead.

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1 CNSL J. KITCHEN: Thursday. That's -- that's --
2 that's the day the witness has identified is --
3 is best for him, so, you know, I don't know when.
4 He's available the whole day, so whenever it is,
5 I'm going to try to get him in on that day.

6 CNSL A. WADDELL: Okay. So --

7 CNSL J. KITCHEN: The only witness I have -- go ahead.

8 CNSL A. WADDELL: I was just going to say. So
9 presuming that everybody else is in, you would
10 slot this witness after Ms. Groleau and before
11 your client; is that right?

12 CNSL J. KITCHEN: Probably. It, you know, depends how
13 things go, but yes, probably.

14 CNSL A. WADDELL: Okay. Okay. Now -- sorry. You
15 were going to say something else, and I was just
16 going to ask. Again, sort of absent
17 determinations that -- that the Tribunal is not
18 going to hear from a witness, if the rest of your
19 schedule -- not timing-wise -- but order was
20 going to remain the same.

21 CNSL J. KITCHEN: Well, seeing as my guess is
22 tomorrow, we are going to finish by, you know,
23 sometime in the morning or the end of the
24 morning, my first witness is probably my
25 shortest, and that's Silvia -- I think it's Dyke
26 or Dyck. I can't remember. It might be Dyck.
27 Silvia Dyck, I think, is her name. She's my
28 first witness. She's going to be short. She
29 will not take up -- I can't imagine she would
30 take up the whole afternoon, which means we
31 should be starting another one. And if time goes
32 well, we can probably get through all of the
33 direct of another one. Another one will be
34 Darrell Furgason.

35 Now the trouble with that is, and similar to
36 what we had last week, Rob Bogunovic is going to
37 have to go Wednesday because he's a teacher, and
38 that's the day he's taken off of work, and so
39 that's the day we've set aside from him. He's
40 the only witness that's kind of stuck with --
41 with one day. I mean, the new guy is, you know,
42 supposed to be Thursday, but he might be more
43 flexible. But -- so to use the time tomorrow --
44 and maybe this won't be a problem -- but to use
45 the time tomorrow, I suggest we do the direct
46 examination of Darrell Furgason, and then we, on
47 Wednesday morning, go to the direct examination

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1 of Rob Bogunovic to make sure we get him done
2 because he might -- he might be quite long.

3 And so that means then that my friend will
4 do -- will have to do what I just did is just do
5 cross-examinations in a row. It's not ideal, but
6 I think that's kind of where I'm at as far as
7 scheduling. Or I mean, we could just -- we could
8 we could just, you know, do Silvia, sort of take
9 half the afternoon off, start with Rob Wednesday
10 morning. I don't have a problem with that.
11 Just -- it's a, you know, trying to use hearing
12 time issue.

13 THE CHAIR: Okay.

14 CNSL A. WADDELL: I have no -- I have no issue. I
15 think we should try and use the hearing time that
16 we've got. I have no problem -- I mean, we've
17 already done that once, so that's -- that's just
18 fine if we have to, you know, do -- you -- you do
19 Darrell's direct -- presuming the timing works --
20 out and then pause before his cross and -- and
21 slot Rob in. That's -- you know, that's fine if
22 that's what's necessary with the witness
23 schedules.

24 THE CHAIR: All right. So just to confirm, tomorrow
25 after we finish with Teacher C, we can resolve
26 the objection to the new addition to the witness
27 list, and then we'll go on to hear from
28 Silvia Dyck and Darrell Furgason, some amount of,
29 we expect, Darrell Furgason's testimony, and then
30 Rob Bogunovic on Wednesday and -- and onwards
31 from there. And we'll deal with the objections
32 to Faith Groleau's evidence and maybe Kellie Lynn
33 Pirie if there is one when -- at the outset of
34 when they're intended to testify; right? That's
35 the plan?

36 CNSL J. KITCHEN: I -- I also need to mention that,
37 you know, in light of the -- of the complainant's
38 evidence, I need to expand my time estimate for
39 Mr. Neufeld. I think it -- all together --
40 likely, I would be at least a day and a half in
41 direct because there is a lot of evidence for him
42 to respond to. So not that -- I mean, to me, it
43 seemed -- you know, it's fairly obvious we were
44 not going to finish this week in any event, but I
45 just -- I just need to make it known that
46 that's -- I think that's inevitable that I'm
47 going to be at least a day and a half with him in

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1 direct just because of the amount of stuff
2 that -- amount of content that needs to be
3 covered. So -- and, you know, I -- I think it's
4 fair that my friend have, you know, within reason
5 however much time she wants in cross with him
6 because I mean, he's ultimately, you know, one
7 of, if not the most important witness. So I
8 think, you know, ultimately assuming we do even
9 get to Barry, which it's possible we won't, we're
10 not going to be done with him on Friday. We're
11 going to need at least another day, two, or
12 three.

13 THE CHAIR: All right. Well, I think I'll propose
14 that we probably come back to, you know, our --
15 how we're doing. I mean, we'll check in every
16 day, but by the end of the day Wednesday, we'll
17 have a better sense of, you know, how far along
18 we're going to be this week. And if we need to
19 start looking at other days, then we can start
20 talk about that Wednesday. But I think we need
21 to see how -- the pace of how -- how these
22 witnesses go, and we may make up some time or --
23 we'll -- we'll see.

24 So I think that's helpful to know,
25 Mr. Kitchen. Thank you for that, and we'll keep
26 talking about scheduling, but I think I -- we'll
27 talk about more days when we get to kind of
28 Wednesday, Thursday mark when we have a better
29 idea of what we need. Ms. Waddell.

30 CNSL A. WADDELL: I have one -- before we go, I have
31 one housekeeping matter to address. I'm happy to
32 do it now if the Tribunal didn't have additional
33 things it wanted to --

34 THE CHAIR: No.

35 CNSL A. WADDELL: -- address. Okay. So I had a
36 chance this afternoon to look at -- the
37 Tribunal's case manager just sent out the -- the
38 notification for participants. I -- and I -- it
39 sounds to me like an individual was granted
40 access on Friday. We didn't have notice of that.
41 That's fine. And that access was granted today
42 for someone who won't access the hearing until
43 tomorrow by the name of Tammy Dawn
44 Plett [phonetic], and I just want note that
45 Ms. Plett is, we understand, married to the
46 witness -- or to the member of the public that
47 has been prohibited from accessing the -- the

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1 hearing during the -- the testimony of the
2 teacher witnesses. So I just wanted to confirm
3 that -- that Ms. Plett wasn't -- it's not
4 entirely clear to me from the Tribunal's
5 correspondence whether Ms. Plett was granted
6 access today and attended during -- during the
7 individual teacher witnesses' testimony or
8 whether the intention is that she would only
9 attend tomorrow.

10 If tomorrow -- if -- if -- and here, I'll
11 say this. And if it's -- whether it's today or
12 just tomorrow, I would ask that the -- the
13 Tribunal do one of two things. Either they write
14 to Ms. Plett -- and I can provide the Tribunal
15 and my friend with, you know, what I've been able
16 to find online on my phone during the hearing to
17 establish that connection, but that either the
18 Tribunal write to this individual further to
19 their having been granted access to remind them
20 that they cannot use their public access to also
21 provide access to the individual who has been
22 prohibited from attending while the teachers are
23 testifying, or the Tribunal simply, you know,
24 make some announcement or ask for some assurance
25 tomorrow morning if and when this individual logs
26 in. So that is what I wanted to draw to
27 everyone's attention and just identify.

28 THE CHAIR: Thank you. We are not -- we don't have
29 that name yet, or we haven't been -- you're ahead
30 of us in terms of information.

31 CNSL A. WADDELL: Okay.

32 THE CHAIR: So they haven't joined today.

33 CNSL A. WADDELL: Okay.

34 THE CHAIR: And we haven't received the updated list
35 yet from the case manager so --

36 CNSL A. WADDELL: Okay.

37 THE CHAIR: I do think it would be helpful if you
38 could send to the Tribunal and to your friend,
39 you know, the -- some information --

40 CNSL A. WADDELL: Yes.

41 THE CHAIR: -- to kind of explain that connection --

42 CNSL A. WADDELL: Yes.

43 THE CHAIR: -- before we take any further steps, and
44 then we can see what's necessary if they join
45 tomorrow morning.

46 CNSL A. WADDELL: Sure.

47 THE CHAIR: Okay.

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1 CNSL J. KITCHEN: Sure. I -- I don't know that this
2 is appropriate. You know, we're -- we're
3 suggesting that by virtue that these two women
4 are married to each other, that, you know, one of
5 them is going to let the other one listen. I --
6 I -- you know, I can't help but note the irony in
7 this. I just don't think that's appropriate. I
8 think -- I think we leave -- we leave it with
9 them, and -- and they know the rules. They know
10 them really clearly now because of that letter
11 you sent. I -- I -- I don't think you should be
12 going there. I think it's inappropriate. I
13 think you let it be. You know, we've already
14 restricted access significantly. And this is --
15 you know, at some point, you know, we can't just
16 say that somebody should -- should watch out for
17 their wife. I think they're allowed to listen.
18 They're a member of the public. And the other --
19 the other person, her wife knows that she's not
20 supposed to be listening.

21 CNSL A. WADDELL: Just to be clear, Mr. Kitchen, I'm
22 not proposing that Ms. Plett not be granted
23 access. That's not -- that's not our position at
24 all.

25 CNSL J. KITCHEN: I get it. I get it. You just want
26 a letter reminding her to be, you know, a good
27 little member of the public, and I just don't
28 think that's appropriate.

29 THE CHAIR: Okay. Well, I think -- we'll come back to
30 this tomorrow morning. I think the -- if any
31 steps are necessary, I'm more inclined to a
32 general reminder to everyone in the morning of
33 the terms and conditions of participation which
34 include, you know, not sharing the link with
35 anyone and -- and our expectation that any of the
36 phone numbers we see here belong to the
37 individual that has been granted specific access.
38 That's kind of what I would be inclined to do
39 without singling anyone out necessarily.

40 But, Ms. Waddell, if you can send in any
41 information you think we should consider, we'll
42 consider it, but yes. So no one's being denied
43 access to the hearing outside from what we've
44 already dealt with. It's just a matter of
45 ensuring that our conditions are complied with.
46 And I take your point, Mr. Kitchen. We don't
47 assume that someone in a marriage is going to

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1 act, you know, inappropriately. But anyways,
2 we'll just see what you have to send in,
3 Ms. Waddell, and we can deal with it tomorrow
4 morning.

5 Okay. Anything else before we adjourn for
6 the day? No. All right. Well, then --

7 CNSL J. KITCHEN: No.

8 THE CHAIR: -- I'm going to remove everyone from the
9 meeting now, and we'll be back here at 9:30
10 tomorrow morning with -- to continue Teacher C's
11 evidence. Thank you. Good night.
12

13 (VIDEOCONFERENCE ADJOURNED TO DECEMBER 3,
14 2024, AT 9:30 A.M.) [4:42:05]
15

16 REPORTER'S CERTIFICATE
17

18 I certify that the proceedings from timestamp
19 9:31:01 to timestamp 4:42:05 inclusive are a true
20 and accurate transcript of these proceedings
21 recorded on a sound recording apparatus,
22 transcribed to the best of my skill and ability
23 in accordance with applicable standards.
24
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26



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34 Krystal Truong
35 Court Reporter
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**IN THE MATTER OF THE *HUMAN RIGHTS CODE*,
RSBC 1996, C. 2010 (as amended)**

**AND IN THE MATTER of a complaint before
The British Columbia Human Rights Tribunal**

BETWEEN:

British Columbia Teachers' Federation obo Chilliwack
Teachers' Association

COMPLAINANT

AND:

Barry Neufeld

RESPONDENT

AND:

B.C.'s Human Rights Commissioner

INTERVENOR

**PROCEEDINGS AT B.C. HUMAN RIGHTS TRIBUNAL HEARING
(VOLUME VII)**

ORIGINAL

THERE IS A PUBLICATION BAN IN EFFECT PROHIBITING THE PUBLICATION OF ANY INFORMATION THAT COULD IDENTIFY THE TEACHERS WHO TESTIFIED, OR MAY HAVE TESTIFIED, IN CONNECTION WITH THIS COMPLAINT: CHILLIWACK TEACHERS' ASSOCIATION V. NEUFELD (NO. 2), 2024 BCHRT 180 [CTA (NO. 2)]; AMENDED BY LETTER DATED FEBRUARY 25, 2025.

File: CS-003172

**IN THE MATTER OF THE *HUMAN RIGHTS CODE*,
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AND:

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INTERVENOR

**PROCEEDINGS AT B.C. HUMAN RIGHTS TRIBUNAL HEARING
(VOLUME VII)**

ORIGINAL

Tribunal Members:	Devyn Cousineau, Robin Dean, Laila Said Alam
Counsel for the Complainant:	Lindsay Waddell, Alanna Tom, Stefanie Quelch, Chris Fenje
Counsel for the Respondent:	James S.M. Kitchen
Counsel for B.C.'s Human Rights Commissioner:	Sarah Khan, Maria Sokolova

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By videoconference
December 3, 2024

(VIDEOCONFERENCE COMMENCES) [9:32:00]

THE CHAIR: Good morning, everyone. It's
December 3rd, and I'm recalling the case of *B.C.
Teachers' Federation obo Chilliwack Teachers'
Association v. Barry Neufeld*, CS-001372.

I can see complainant's counsel connected.
Good morning. And I think we have Teacher C
back. Good morning. And Mr. Clark is here. I
can see Mr. Neufeld and Mr. Kitchen and Ms. Khan.
So that's everyone we need to start the
proceeding.

We also have, of course, members of the
public joining us this morning. I'm going to
remind all the members of the public who are
observing about the Tribunal's publication ban in
this case prohibiting publication of information
that could identify any of the teacher witnesses.
I'm also going to remind one member of the public
that you have been prohibited from joining the
hearing for the portion that includes the
teachers' testimony. I see that this person has
connected to the proceeding, and so in a moment,
I'm going to disconnect them from the proceeding
because Teacher C is still testifying. I expect
we'll have the respondent's witnesses on this
afternoon. And at that point, you can rejoin.
And so I'll remind you that this prohibition
applies not only to -- to you connecting yourself
but to listening through anyone else's
connection. So to this person, and you know who
you are, I'm going to remove you in a moment
for -- while Teacher C finishes her testimony,
and then you can come back this afternoon and
listen to the rest of -- of the hearing. So I'm
going to remove this individual now. 7388.

Okay. Are there any other preliminary
issues that we need to deal with this morning?
We saw counsel's -- some of the emails that came
in with some authorities foreshadowing for
arguments about the respondent's witnesses, which
we're going to deal with later. Is there
anything else that we need to deal with before we
come back to Teacher C? No. Yes, Mr. Kitchen.

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1 CNSL J. KITCHEN: Sorry. Sorry. Chair, I'll just
2 note that I know yesterday I said that I'd prefer
3 us to deal with it piece meal per witness, but if
4 I understand my friend's position, we have -- we
5 have two -- we have the objection to two
6 witnesses, like, wholesale objections to them
7 even being called. Now, obviously with one, my
8 friend's going to say it's not relevant, and it's
9 too late. And she's going to say with another
10 one that it's just not relevant. So there's --
11 you know, there's not complete overlap there, but
12 there's obviously a lot. So I would say -- I
13 change my position. I think it's best for us to
14 actually deal with this all at once from the
15 outset before -- you know, before -- before we
16 get to these two witnesses because I think
17 conceptually, that's the way -- that's the way it
18 should be argued. I -- I think it would be very
19 difficult for -- for the Tribunal to -- to let in
20 one and not the other, you know, at -- there
21 doesn't seem to be much on the lateness basis as
22 far as additional evidence.

23 The witness I'm calling with
24 Mr. Gailor [phonetic] I think is his name. So
25 may -- maybe -- maybe there's a difference there,
26 but I don't see much of it. I think -- I think
27 the real issue is relevance, so I think that
28 should be argued all -- all at once, and I think
29 we might as well just go ahead and argue that
30 this afternoon or whenever it is that we -- that
31 we get to the respondent starting his case.

32 THE CHAIR: Thank you, Mr. Kitchen. That makes good
33 sense to me. I agree that the issues are likely
34 going to be overlapping. Complainant's counsel,
35 any -- anything to say about that?

36 CNSL A. WADDELL: No. I -- I think that makes good
37 sense, but it just dawned on me that I think the
38 Tribunal asked us to confirm whether we were
39 objecting to just two or three witnesses. And in
40 thinking through -- and I realize I didn't do
41 that last night. In thinking through the nature
42 of our arguments on relevance, I don't think
43 there's any -- that those apply to that third
44 witness as well. So, for example, if -- it would
45 be nonsensical if -- if the Tribunal agreed with
46 us on -- on the first two to then hear evidence
47 on the third. Really, the only distinction with

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1 that witness is that they're, you know, from
2 within the province of B.C. but the substance of
3 their evidence is the same.

4 So I think my friend's suggestion makes
5 sense. I think it will effect some timesaving
6 rather than making the same arguments three
7 times. I do think it makes sense to deal with
8 this all at once, but I'm simply advising, with
9 apologies for not having done this last night,
10 that we'll make the same arguments about
11 relevance with respect to both Ms. Groleau and
12 Ms. Pirie if I've got her -- her name right so...

13 THE CHAIR: All right. All right. Well, we'll come
14 back to this when the respondent starts their
15 case, and we'll hear arguments about the three --
16 the admissibility of evidence from those three
17 witnesses at the same time. All right.

18
19 TEACHER C, a witness,
20 recalled.

21
22 THE CHAIR: Teacher C, are you ready to continue this
23 morning?

24 TEACHER C: Yes, I am.

25 THE CHAIR: Okay. Thank you. Just so that you're --
26 I'm sure you've -- you know, the -- the lawyers
27 have probably explained to you a bit about this
28 process, but I'll add to what they've told you.
29 Mr. Kitchen is going to ask you questions now.
30 This is called cross-examination. One of the
31 purposes of cross-examination is to test your
32 evidence. And so for that reason, sometimes
33 people can find it a bit difficult. We're going
34 to aim to take a break around 11 o'clock, but if
35 you need other breaks, you can -- you can let us
36 know, and I'm sure we can usually work with that.

37 So if you don't understand a question, you
38 can ask for it to be clarified. If you don't
39 know the answer to the question, it's fine to say
40 you don't know the answer. So really, your role
41 is just to do the best job you can answering
42 Mr. Kitchen's questions. Do you have any
43 questions for me about this part of the process?

44 TEACHER C: No, I don't.

45 THE CHAIR: Okay. Thank you.

46 Go ahead, Mr. Kitchen, when you're ready.

47 CNSL J. KITCHEN: Thank you. Just trying to get the

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Teacher C (for Complainants)
Cross-exam by Cnsl J. Kitchen

witness to show up on my screen here. Times
video. Okay. There we go. I'm sorry. I think
I got it now.

CROSS-EXAMINATION BY CNSL J. KITCHEN:

Q Okay. Teacher C, you understand when that --
when I refer to you as "Teacher C," I'm -- I'm --
I'm talking about you. I'm referring to you.
You understand what I'm doing when I -- when I
say that?

A Yes, I do.

Q Thank you. Okay. You started off your testimony
yesterday by saying you identify as a female and
as a -- a trans woman. And so -- and I'm going
to have some questions about that. But so
obviously, that engages the -- the gender
identity, gender expressions protections in the
Code. First, what I want to know is -- and when
I'm asking you this, I'm not asking you to speak
as a lawyer or anything like that or be a legal
expert, but I want to know if for you, you feel
like your sexual orientation has anything to do
with Mr. Neufeld, your employment while he was a
trustee, this case, et cetera? Does your sexual
orientation have anything to do with that?

A No.

Q Okay. So is it fair to say as far as you're
concerned, if you experienced any discrimination,
it was based only on your gender expression or
gender identity and not also on your sexual
orientation?

A That's fair to say.

Q Okay. Well, then on that basis, I will ask you
no further questions on your sexual orientation.
Now help me understand what you mean -- when you
say trans woman, what does that mean?

A Are you asking me to pull up the Wikipedia page,
or are you asking what it means to me?

Q Yeah, what it means to you, right? Like --

A Okay.

Q Yeah. Go ahead.

A So transgender means that I don't identify with
the gender I was assigned at birth.

Q And the gender you were assigned at birth was
male?

A Yes.

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Teacher C (for Complainants)

Cross-exam by Cnsl J. Kitchen

1 Q Would you consider yourself then fitting in --
 2 fitting -- fitting inside of the -- the -- the
 3 binary perspective? The binary being, you know,
 4 male or female, boy -- or man or woman.

5 A Considering I transitioned, I would not say that.
 6 I -- I fit in the gender binary since I've
 7 crossed it.

8 Q Right. But, you know, that's what I mean. So
 9 for example, you don't identify as nonbinary?

10 A I don't.

11 Q Okay. So you -- you did identify as man or male,
 12 and now you do identify as -- as fail -- as
 13 female or woman? Is that fair?

14 A I identified as male because that's what I was
 15 told, but yes.

16 Q Okay. Is it your understanding that nonbinary is
 17 a reference to people who fall outside of that
 18 binary of just woman or man?

19 A That's accurate.

20 Q Okay. And your transition, it sounded to me like
 21 your -- your transition from male to female
 22 happened in your adult life, or did it -- did it
 23 start when you were still youth?

24 A No, it started in my adult life.

25 Q Okay. Now -- sorry. Let me turn that off so we
 26 don't get any dings. From your perspective --
 27 from your perspective, you -- you believe that by
 28 transitioning, you have, in reality, become a
 29 woman; is that right?

30 A I don't have a strong position on that.

31 Q You -- you identify -- well, no. You've already
 32 answered. You identify as female. So -- but is
 33 that -- for you, is that a -- you -- you don't
 34 have a strong position, so I'm just trying to
 35 figure out what position you do have. Is it your
 36 position that, you know, well, ultimately, I'm --
 37 I'm still a man, but I am presenting and living
 38 and identifying as a woman because that's what I
 39 want. So I'm presenting that to you as one
 40 option. And maybe that's not how you feel, but
 41 that's one option.

42 And then the other option is -- and you said
 43 you didn't take a position, but the other option
 44 I see -- and maybe there's a third option here;
 45 okay? But the option I would see is no, look. I
 46 have -- I have actually fundamentally -- in
 47 essence, I have switched from male to female, and

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Teacher C (for Complainants)

Cross-exam by Cnsl J. Kitchen

1 I actually am female. Do you take a position on
 2 either those, or either of those an accurate
 3 description of how you perceive yourself, or is
 4 it something else all together?

5 A It's something else all together.

6 Q Can you explain that for me.

7 A Well, I certainly don't think I'm a man
 8 pretending to be a woman, and I certainly don't
 9 think I was female assigned at birth.

10 Q So you would agree -- well, okay. Would you
 11 agree that it was accurate? Like, factually
 12 accurate in the world for you to be -- for you to
 13 be assigned or identified as male when you were
 14 born?

15 A Yes.

16 Q Do you believe you're born in the wrong body?

17 A I don't know.

18 Q Okay. So -- so it's not that you -- as far as
 19 self-perception, you don't perceive yourself
 20 as -- as actually a woman in the world?

21 A That is not what I said.

22 Q Okay. But this is what -- but this is what I
 23 want to know. I want to know what your -- what
 24 is -- what -- what is your self-perception as --
 25 as yourself and your real gender in the world?

26 A I'm a woman. When I go to work, everyone calls
 27 me she/her. My documents all say "F."

28 Q Okay. But when I asked you earlier --

29 CNSL A. WADDELL: I'm just going to -- sorry. Before
 30 you ask your next question, Mr. Kitchen, I'm just
 31 going to say that it's our view that you've asked
 32 many exploratory question to place this
 33 individual in the class. And if you only have a
 34 couple more questions on this subject, I'm
 35 prepared to just leave it. But if there's a long
 36 process of many further questions about this
 37 witness's, you know, belief about themselves,
 38 it's our view that that is irrelevant, that line
 39 of questioning.

40 THE CHAIR: And sorry. Just before you respond,
 41 Mr. Kitchen, I neglected at the beginning to tell
 42 Teacher C what would happen in an objection. So
 43 if there's an objection to a question, Teacher C,
 44 the BCTF, CTA lawyer will speak up, explain the
 45 basis for the objection, and then generally, I'll
 46 hear from both lawyers -- oh. We went over this
 47 yesterday. I'm remembering. Once in a while, I

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Teacher C (for Complainants)

Cross-exam by Cnsl J. Kitchen

1 may ask you to leave the -- the hearing while
2 we're resolving the objection, and I'll give you
3 instructions on that if we come to that point.
4 But just -- just -- just wait until we've
5 resolved the objection, and then we'll -- I'll
6 confirm when we're moving on. Okay. Sorry for
7 the interruption, Mr. Kitchen. Go ahead.

8 CNSL J. KITCHEN: You have to understand this isn't
9 just the respondent, Chair. I guess I'm speaking
10 both to you and Ms. Waddell. I guess especially
11 to you. You have to understand that this isn't
12 just the respondent exploring the complainant's
13 case, okay, which frankly is not very clear.
14 It's -- it's also that he has to -- he has to --
15 to guard against what may come up when he calls
16 his witnesses and what his witnesses will speak
17 to. If my friend continues her pattern of high
18 intervention -- and by saying that, I'm not
19 trying to disparage her or -- or say she's acting
20 unethically. I don't think either of those
21 things, okay? Effective counsel will often
22 interrupt a lot. It's just -- it's how it works.
23 But if she continues that pattern of interrupting
24 a lot and interfering a lot and objecting a lot
25 and -- and -- and pounding on about anything that
26 she doesn't like as irrelevant, which again,
27 that's -- that's common. That's how this whole
28 thing works, okay? Then part of what I have to
29 do in cross-examining the complainant's witnesses
30 is explore all these issues that I anticipate are
31 going to come up on -- with the respondent's
32 witnesses.

33 And so she wants to sit there and say that
34 95 percent of anything I ever want to question
35 about or talk about is irrelevant. I get it.
36 That's fine. But, Chair, what you have to do
37 is -- is look at it objectively outside. You
38 know, you're -- you're not an advocate. You're
39 look at it, and you say okay. The respondent's
40 probably going to -- the respondent's got five,
41 six, seven witnesses. Probably going to call all
42 kinds of evidence to challenge the complainant's
43 evidence, probably going to call all kinds of
44 evidence that -- that he believes is relevant.
45 And it's not -- it's not -- my -- my belief or
46 the respondent's belief that what he's calling is
47 relevant. It's a reasonable belief. I have a

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Teacher C (for Complainants)
Cross-exam by Cnsl J. Kitchen

1 reasonable legal basis for the arguments I'm
2 going to make about that, okay?

3 So -- and especially since -- obviously, the
4 bar for -- for what is relevant is -- is -- it's
5 been, you know, intentionally set quite low by
6 the Tribunal in this case, and I don't
7 necessarily, you know, as a whole take issue with
8 that, okay, especially in a case like this. It's
9 probably the better way to go instead of too
10 high. Err on the side of what's -- what's
11 probably going to be better in the long run --
12 then I need to be permitted to explore these
13 things with the witness; otherwise, it will be
14 used like a hammer to beat me over the head with
15 later this week if I haven't fully
16 cross-examined, fully explored cross-examination
17 with -- with these witnesses all of these issues
18 that I want to talk about with my witnesses.

19 All we'll hear from Ms. Waddell is
20 Mr. Kitchen didn't cross on that. Mr. Kitchen
21 didn't cross on that. Mr. Kitchen didn't cross
22 on that, okay? So that's part of what's going on
23 here. That's part of how rerun effective
24 hearings. We don't just cross-examine to
25 necessarily, you know, get into -- into evidence
26 more of what that the complainant thinks is
27 relevant. That's their evidence on chief. It's
28 for the respondent to be able to make their case
29 when it's their turn, okay?

30 So I need to be able to explore this
31 person's beliefs. You -- you -- you -- you
32 curtailed me more than I think you should have
33 with other witnesses, okay? This witness is a
34 little bit different than the other ones we've
35 had, okay, who -- they -- they -- they haven't
36 transitioned as far as I could tell. They were
37 nonbinary. They were -- they were coming from a
38 different perspective. This is the only witness
39 I have, as far as I can tell, who has actually
40 transitioned and can actually speak to that. I
41 need to explore it, okay?

42 That's fine if the witness says, well, it --
43 it is personal. Ms. Waddell says it's personal.
44 I don't necessarily disagree with her, but it is
45 nonetheless also going to the legal issues in
46 this case, and I'm not exploring it for the
47 purposes of poking into -- into the personal

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Teacher C (for Complainants)
Cross-exam by Cnsl J. Kitchen

1 lives of the witness, okay? I know I'm going on
2 at length here, but I anticipate we're going to
3 have more of these, and I'm trying to clear the
4 air on this so I can get through my cross because
5 I think everybody -- everybody agrees. They
6 don't want me to go on for four hours again with
7 this witness like the other ones. Seems like
8 nobody likes that. I'm not intending to go that
9 long, but this is an area I have to explore for
10 fairness to the respondent being able to make his
11 case, okay, both with evidence and with argument.
12 And the bar has been set low more relevance. We
13 need to make sure that bar applies consistently
14 across the board to both parties. And so I need
15 to be able to fully explore with this witness
16 what her beliefs are about transgenderism as it
17 applies to her. Thank you.

18 THE CHAIR: Thank you. Ms. Waddell.

19 CNSL A. WADDELL: So I would simply say that this case
20 is not about whether trans people exist or their
21 identity. This is about statements made. I
22 agree with my friend that the respondent needs to
23 be able to establish and cross-examine on his
24 case, but the respondent's case is not simply all
25 the stuff he wishes to err in a public forum or
26 domain like this. The respondent's case is
27 defined by both the complaint and the complaint
28 response, and I -- and I appreciate that my
29 friend has, you know, said that this evidence is
30 relevant to the legal issues, but he's not
31 pointed to a specific legal issue. And those --
32 those legal issues have been set out by the
33 Tribunal, and they do not, in our respectful
34 view, come anywhere near the individual teacher
35 witness's beliefs in -- or anybody's belief about
36 the veracity of a particular identity.
37 They're -- they're not even in our respectful
38 view about Mr. -- Mr. Neufeld's beliefs.

39 So, you know, as I said at the -- at the
40 outset when making the objection, my goal here
41 is -- is simply to preserve the Tribunal's time.
42 I -- I don't suggest or think that Mr. Kitchen is
43 doing this, you know, deliberately to pry into
44 personal matters. I genuinely think the
45 respondent wants to -- to bring out all this
46 information, but this is not, in our respectful
47 submission, what the case is about and the legal

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Teacher C (for Complainants)
 Cross-exam by Cnsl J. Kitchen

1 issues the Tribunal must determine needs to drive
 2 relevance.

3 If, again, it's just a matter of one or two
 4 more questions, I'm not going to -- the weighing
 5 and balancing of time taken out to make this
 6 objection, you know, doesn't -- doesn't outweigh
 7 the -- the limited time it will take to ask one
 8 or two more questions. But if my friend is -- is
 9 going to spend a lot of time on this, and I sense
 10 that -- that he wishes to, then it's our position
 11 that this should be cut off on the basis that
 12 it's just not relevant, and so it's not a
 13 productive use of what is now very limited time.
 14 That's our submission in reply.

15 CNSL J. KITCHEN: Chair, there were some new things
 16 there. I don't want to rehash what I've already
 17 said, but I just want to respond to the -- to the
 18 new stuff.

19 THE CHAIR: Okay.

20 CNSL J. KITCHEN: Again, I don't -- I don't know if
 21 the lack of understanding on the part of my
 22 friend is intentional or not. I -- I -- I don't
 23 know if it's intentional or not on the part of
 24 the Tribunal. But I'll say it again, okay, what
 25 makes this relevant? It is not hate speech to
 26 criticize or rebut or oppose someone's belief
 27 system. It is hate speech or potentially hate
 28 speech when you attack the person on the basis of
 29 their identity, okay? I get that my friend and
 30 every -- probably every queer person in the
 31 country wants to say my beliefs are a part of my
 32 idea; and therefore, you can't criticize them.
 33 But that is an open question or at least it ought
 34 to be because if it's not, then we've created a
 35 two-tier society where one group of people, their
 36 beliefs are immune from criticism unlike
 37 everybody else's, okay?

38 That's the ultimate -- I've been saying --
 39 and maybe -- again, I keep trying to say this in
 40 different ways to get it across. I know that
 41 Ms. Waddell and -- and, Chair, you -- you come
 42 from a completely political world view than I do
 43 and the respondent does, but I think that in it
 44 of itself speaks to the problem here, okay?
 45 These are beliefs, okay? It is a belief case.
 46 The queer people have come in in this case and
 47 say you challenge my beliefs. I don't think you

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Teacher C (for Complainants)
Cross-exam by Cnsl J. Kitchen

1 should be able to do that. I don't think you
2 should be able to speak that publicly. When you
3 do, it really upsets me, and I should not have to
4 encounter those opposing beliefs. The beliefs
5 are different than mine; and therefore, I'm going
6 to claim it as discrimination on the basis of my
7 idea, and then -- and then you will have to be
8 quiet. I won't have to encounter your beliefs
9 anymore. Okay.

10 If that really is the law, then dear, Lord,
11 it should not be. Okay. And so if that is the
12 law, then yeah, I'll be challenging that in my --
13 in my closing arguments. My suggestion is
14 properly understood, that's not actually the law.
15 Because the law is able to distinguish, as
16 Mr. Hansman said, between the criticism of the
17 person and the criticism of the belief. And I
18 think it's reasonable -- and maybe you'll
19 disagree with me in a few distinct posts, okay,
20 that Mr. Neufeld made. Maybe. I don't think you
21 should but maybe -- I think it is fair, just
22 objectively obvious and fair to say, that most,
23 if not all, of Mr. Neufeld's comments were
24 directed at the belief system that he has called
25 gender identity and gender ideology.

26 Now I get they want to say that it is fact,
27 that there's more than two genders, that you can
28 switch them, et cetera. They teach it as fact to
29 kids, okay? But let's not pretend that there
30 aren't billions of people on this planet that
31 don't believe it as fact and in fact believe
32 quite the opposite and regard the belief system
33 that we're talking about here as completely
34 unfounded, okay? So let's be realistic about
35 what's going on here and say okay. The law does
36 not prevent criticism of people's belief systems.
37 And so we need to identify where do we draw the
38 line when it comes to queer and trans people? We
39 have to protect them based on their identity, but
40 we don't immunize their beliefs from any
41 criticism at all because if we were to do that,
42 we would be expanding discrimination beyond what
43 the law has said it should be, and we would be
44 eliminating free expression, which the law
45 protects.

46 Okay. That is going to be my legal
47 argument. And I have to say, I regret not

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1 putting in some sort of extensive brief before
2 starting this case too keel us up for this so we
3 would have avoided this problem a little more.
4 That's why I have to explore it. Has Mr. Neufeld
5 actually harmed objectively? Okay. Because the
6 test is also not who can come in here and --
7 and -- and -- and, you know, be the best at
8 talking about how upset they are and how hurt --
9 hurt their feelings are, okay? It's not a test
10 to see who can get more emotional. That's not
11 the legal test, okay? It's a subjective,
12 objective test about what is actually -- and
13 it's -- for hate speech, it's all listed out on
14 the Tribunal's website. What -- what equals hate
15 speech? It can't be merely offensive or merely
16 hurtful. It has to go to vilification and
17 detestation. It has to rise to a certain level,
18 okay?

19 So, Chair, I know, you're probably annoyed
20 at me going on. I'm going on at length to try to
21 deal with this in a wholesale manner up front
22 with this -- with this witness. Now maybe this
23 won't help, but I had to try so that we don't
24 have constant objections. They're getting a
25 little bit excessive from my friend. Not
26 relevant, not relevant, not relevant. Okay.
27 I'm -- I'm trying in good faith to explain to
28 everybody here why they are relevant. I'm done.
29 Thank you.

30 THE CHAIR: All right. Thank you, Mr. Kitchen. All
31 right. We just need a couple of minutes to
32 discuss. We're going to turn our cameras and
33 mics off, and then we'll just be back in -- in
34 just a few minutes. You can do the same, or you
35 can leave it on, whatever you're more comfortable
36 with.

37
38 (WITNESS STOOD DOWN)

39
40 (PROCEEDINGS ADJOURNED FOR RECESS) [10:01:52]

41 (PROCEEDINGS RECONVENED) [10:05:47]

42
43 TEACHER C, a witness,
44 recalled.

45
46 THE CHAIR: All right. Everyone, come on back. I'll
47 just wait for complainant's counsel to come back.

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1 Thank you. Thanks for your patience. We wanted
2 a few minutes to talk because this issue has come
3 up before, and I expect it will come up again.
4 And as you said, Mr. Kitchen, you've been
5 struggling to persuade us of the relevance of
6 some of the lines of your -- of your questioning,
7 and this is certainly one of them. And so where
8 we want to kind of -- where I'm going to start is
9 by grounding the concept of relevance in a legal
10 proceeding. And so relevance, of course as you
11 all know, is not sort of what the -- just what
12 the parties want to bring in as evidence.
13 Relevance has to be grounded to the legal issues
14 that the Tribunal is tasked to decide. We're a
15 creature of statute. We're bound by court
16 decisions above us, and we have to follow the law
17 as it's been set down, not as people may want it
18 to be.

19 So in this case as we've said, we have
20 issues to decide under Section 7(a) and
21 Section 13 of the *Human Rights Code*. As I've
22 said before, I mean, coming into this case, I --
23 I would have thought that a lot of the -- a lot
24 of the factual foundation is -- a lot of it, not
25 all of it, is undisputed, namely the publications
26 that are at issue are -- are undisputed. But
27 where the real heart of disputes are likely to
28 arise are in legal questions. And -- and,
29 Mr. Kitchen, as I understand, one of your
30 arguments will be around this -- the criteria
31 under Section 13 of a nexus or a connection.
32 You're going to argue that -- there's a couple of
33 things you're going to argue, but one of them is
34 Mr. Neufeld's comments were not connected to the
35 class's gender identity or gender expression or
36 sexual orientation because they were connected
37 to -- because they were about beliefs and not
38 identity.

39 And then also, of course, you're going to
40 have arguments about the employment context, but
41 I don't think I need to talk about that now. And
42 then under Section 7(a), you know, which I think
43 is also where a lot of your arguments are coming
44 from, Mr. Kitchen, is about, you know, whether
45 the publications expose or tend to expose the
46 class to detestation and vilification. And this,
47 as we've been over, is an objective test, so we

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1 don't need -- and in fact, we shouldn't be
2 admitting evidence from witnesses about what they
3 think about the -- the publications and the
4 substance of it and what the interpretation is
5 and so on. This is an objective test. And that
6 comes from the Supreme Court of Canada. It's not
7 open us -- open to us to take a different view.

8 So in terms of the relevant questions for
9 witnesses, I think we've -- we've exhausted the
10 relevant issue with Teacher C around whether
11 she's a member of the class. We have to
12 respectfully reject the argument, Mr. Kitchen,
13 that this is a case about -- that these questions
14 are going to belief. As we've talked about
15 before, the ground of sexual orientations, gender
16 identity, and gender expression are not analogous
17 to religion. And that's not our personal views.
18 We're following case law and Hansard on what
19 those grounds mean. They're not -- there's no
20 criteria of establishing beliefs in relation to
21 those grounds.

22 So to the extent that you want to argue that
23 Mr. -- Mr. Neufeld -- Neufeld's comments relate
24 to beliefs and not identity, those are arguments
25 you should make in your -- in your legal
26 argument, and you can point us to case law that
27 we're so far unfamiliar with that makes those
28 distinctions, but I don't see it as a relevant
29 line of inquiry for Teacher C. And to the extent
30 you're saying it's relevant because you intend to
31 ask your witnesses about the same issues, we're
32 likely to hold the same view of the relevance
33 when the evidence comes from your witnesses.

34 So I -- I think you're -- you're arguing
35 that you're -- you're being curtailed in the
36 evidence you can -- you can introduce and that
37 there's an unfairness in this, and I'll -- I'll
38 say, yes, we are trying to curtail some of the
39 evidence you're trying to introduce because it's
40 irrelevant, and that's properly the rule of the
41 Tribunal. And that if you're going to persuade
42 us that it's relevant, it must be grounded in
43 Section 7(a) and 13 of the *Human Rights Code*.
44 And truly, we expected coming into this, and I
45 still expect that the bulk of your arguments,
46 which you have been making in these objections,
47 are available to you as legal argument. It

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1 doesn't make the questions to these witnesses
2 relevant though.

3 So on this objection, this is kind of a
4 broader statement than just this objection, but
5 this objection is upheld. The questions about
6 Teacher C's gender identity beyond what we've
7 already established, that she's a trans woman and
8 she's testified about that, probing her
9 particular understanding of these concepts is --
10 is not -- is not relevant to the legal analysis
11 from her or any other witnesses as far as we can
12 tell. So we're going to ask that you move on to
13 the next area. And -- and just again, some areas
14 that we would expect you to cross-examine on that
15 may be relevant are, you know, the -- the
16 employment context, relationship between teachers
17 and trustees, adverse impacts on employment,
18 cross-examine on the remedies and the adverse
19 impacts from the publications. That's all
20 relevant and fair game, but this stuff about
21 personal information about gender identity is --
22 is not -- we cannot see the relevance of it, and
23 we can't use -- use hearing time or frankly the
24 witnesses shouldn't have to answer questions that
25 aren't relevant. That's not a good use of their
26 time either. So I'm going to ask you to move on,
27 please.

28 CNSL J. KITCHEN: I will say just for your benefit and
29 for the record that my concern with that approach
30 which you've expressed to me a couple different
31 times is that you are setting me up for failure
32 because you are setting me up to argue in a -- in
33 a vacuum. I'll get to the end, and I'll make my
34 arguments, and it will be easier for you to
35 disregard them because you can say, well, we
36 didn't have any evidence about that.

37 THE CHAIR: Mr. Kitchen, sorry to interrupt, but
38 you've had -- we've heard extensively from you on
39 this objection, so I do need to kind of cut off
40 the submissions and get you to move on to the
41 questions. You can make these arguments later.
42 I -- I have your objection. You think that we're
43 cutting you off and making it impossible for you
44 to make certain arguments at the end. You've
45 made that point. I understand --

46 CNSL J. KITCHEN: I didn't say impossible. What I
47 said is it makes it easier for you to disregard

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1 my arguments by saying, well, you're arguing in a
2 vacuum. Where's the evidence for this? Okay.
3 And yes, I see an issue there with a
4 predetermined outcome or reverse-engineered
5 decision, if you will. Yes. That's -- that --
6 that is my concern, and I'm going to speak to
7 that concern.

8 Out of respect for the Tribunal and its
9 process and the public, I am going to speak to
10 that, okay? This process will be better served
11 by letting me take the 10 minutes to explore the
12 relevant question than 20 minutes to go through
13 all this. And by the way, I did not hear an
14 analysis from you. I did not hear any analysis
15 on Section 7(a) --

16 THE CHAIR: Okay. Mr. Kitchen.

17 CNSL J. KITCHEN: -- that actually responded to me. I
18 heard only a conclusion, and that's an issue
19 because the Supreme Court of Canada, by the way,
20 which you're putting reliance on, I get it. The
21 hate speech test has been set out. Okay. But
22 the Supreme Court of Canada also says in *Vavilov*
23 that it's reasons first. It's got to be reasons.
24 I didn't hear any reasons as to how this doesn't
25 connect to Section 7(a). I gave reasons, and I
26 heard none in response. Okay. I know what the
27 Supreme Court of Canada has to say about hate
28 speech, okay?

29 And I know that if we had a case in which
30 somebody was criticizing a Jewish belief or some
31 other belief, okay, veganism, communism, whatever
32 the -- and by the way, political belief is -- is
33 protected in -- in the code in B.C., okay? So
34 we're not just talking about religious beliefs
35 here, okay? It's -- it's -- it's -- some people
36 would say the queer trans belief is religion.
37 Some would also say it's political belief. And
38 political belief is protected in the *Code*, okay?

39 So this -- this is relevant. And I'm only
40 hearing conclusion from you. I'm not hearing any
41 reasons or analysis as to how from the get-go we
42 can determine that this is not relevant to -- to
43 the test, okay? I'll say no more. Thank you for
44 hearing me out.

45
46 CROSS-EXAMINATION BY CNSL J. KITCHEN, continuing:
47

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Teacher C (for Complainants)

Cross-exam by Cnsl J. Kitchen

1 Q Social Justice 12, that's a course you talked
2 about in your testimony yesterday, Teacher C.
3 Can you tell me your understanding of what that
4 is?

5 A I don't have a great understanding. I haven't
6 looked at the -- at the course syllabus, but my
7 understanding is it's a course about social
8 justice, and it covers a lot of different areas.
9 And one of them --

10 Q And what -- go ahead.

11 A And one of them was LGBTQ people.

12 Q Sort of the history of the movement and -- and --
13 and, you know, changing policies and seeking --
14 seeking recognition of rights and stuff like
15 that?

16 A I don't know. I haven't --

17 Q Okay.

18 A -- looked at the -- at the -- the course content
19 on the curriculum.

20 Q But I -- I guess you knew enough to know that
21 there was supposed to be a history of -- of the
22 LGBT movement over the last few decades?

23 A Yes.

24 Q Because you -- because you -- because from -- as
25 far as you were aware, Abbotsford had -- had --
26 the District there had removed that from their
27 course?

28 A I -- my understanding is at -- at the district
29 level, they cannot remove things from a
30 provincial course. Instead, they -- they gave
31 W.J. Mouat the option of offering that course as
32 a locally-developed version without the gay
33 stuff.

34 Q Okay. And to your knowledge, Chilliwack never
35 did anything like that?

36 A Not to my knowledge.

37 Q Okay. I put it to you that social justice -- the
38 social justice course that you're talking about
39 is taught in Chilliwack with all of its
40 components including the -- the component about
41 the LGBTQ community. Would you disagree with
42 that?

43 A No.

44 Q You used the word and the concept of existence at
45 least twice in your testimony, and I've heard
46 this from others. Is it fair to say you believe
47 you exist in the world as a woman right now?

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1 THE CHAIR: Mr. Kitchen, isn't this what we just dealt
 2 with for -- quite at length? Isn't that just the
 3 question you asked that was objected to, or is
 4 this a different question?

5 CNSL J. KITCHEN: It is different. I mean, obviously,
 6 it's related, but it is different.

7 THE CHAIR: It sounds to me an awful lot like what we
 8 just dealt with. The last question was -- the
 9 objection was about Teacher C's self-perception
 10 as a woman, and then we had a lengthy objection
 11 process, and now you're asking about her belief
 12 of being a woman. What's the difference?

13 CNSL J. KITCHEN: Okay. Well, I'll say this. The
 14 complainants have come in and said --

15 THE CHAIR: I don't want to relitigate it. Just can
 16 you tell me if this is a different question.

17 CNSL J. KITCHEN: No. No, no, no. Listen. It's a
 18 different question, okay? The complainants have
 19 come in and said you have denied our existence.
 20 Now that's pretty darn awful, okay? If they can
 21 actually establish that in fact, within reason,
 22 right, and they've gone a long ways towards
 23 establishing the respondent has committed hate
 24 speech, okay? But we have to look at what he's
 25 actually said and whether or not we can within
 26 reason, you know, using logic and critical
 27 thinking and the English language, look at
 28 whether or not he's actually denied their
 29 existence, okay? Because yeah, that --
 30 unfortunately, that type of stuff happens. We
 31 sometimes get speech that attempts to or does
 32 deny the existence of people, black people, Asian
 33 people, Muslim people, whatever. Okay. And
 34 yeah, usually, that would -- that's -- you know,
 35 there you go. That's a really good example of
 36 hate speech, okay? So if that's -- you know, if
 37 that's part of the complainant's case and the
 38 Tribunal can just say, oh, okay. He denied the
 39 existence of trans people. Done. Conviction.
 40 Hate speech. Done. Okay.

41 But has he actually? Has he actually in
 42 law, in reality, in the world, has he actually
 43 denied their existence by expressing his belief
 44 in opposition to their belief that there's only
 45 two genders and that you can't actually switch
 46 between them, okay? No, he hasn't denied their
 47 existence in doing so. That's what they want to

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1 say. Okay. I get that.
 2 THE CHAIR: Okay. I know. Mr. Kitchen, it feels like
 3 you're making closing submissions. I -- can you
 4 just -- maybe you can ask the question grounded
 5 in Mr. Neufeld's comments.
 6 CNSL J. KITCHEN: If you let me ask the question and
 7 let the witness answer it, we wouldn't have to
 8 keep doing this, okay?
 9 THE CHAIR: No, Mr. Kitchen. Do you need a moment?
 10 CNSL J. KITCHEN: I don't need a moment.
 11 THE CHAIR: To kind of get -- okay. All right. So
 12 listen, once we've dealt with an objection, then
 13 don't ask the same question again. You can
 14 ask --
 15 CNSL J. KITCHEN: Well, first of all, that -- that --
 16 that is an acceptable process that is sometimes
 17 to get it on the record, okay?
 18 THE CHAIR: All right.
 19 CNSL J. KITCHEN: Again, I -- I have to build the --
 20 THE CHAIR: Okay. Mr. Kitchen. Mr. Kitchen.
 21 We've --
 22 CNSL J. KITCHEN: -- record for when we get to the
 23 B.C. Supreme Court, okay?
 24 THE CHAIR: We've -- we've been over this again.
 25 You're interrupting me again. This is why I'm
 26 asking if you need a moment because you're
 27 interrupting me again. We've dealt -- I don't
 28 know what --
 29 CNSL J. KITCHEN: Well, I'm interrupting you
 30 interrupting me, okay, so it's not like, you
 31 know, this is one-way street.
 32 THE CHAIR: No. Okay. Right. But this is our
 33 process. I have a mandate to manage the process,
 34 which is what I'm trying to do here. So I don't
 35 know -- I'm -- I'm not interested in what you've
 36 done in other proceedings. In this proceeding,
 37 once we've ruled on an objection, I expect you
 38 not to ask the same question again and then make
 39 further submissions about it again because we --
 40 it makes it very difficult to move on.
 41 What I can suggest is maybe you could take
 42 Teacher C to a publication that you want to ask
 43 her about or something like that. But -- but
 44 asking again about her beliefs of herself as a
 45 woman, we've ruled on that, so can we please move
 46 on to the next area of questioning.
 47 CNSL J. KITCHEN: It sounds to me like you've already

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1 ruled on the case.

2 THE CHAIR: I've ruled on an objection, and I need you
 3 to move on from the question that we've held is
 4 inadmissible.

5 CNSL J. KITCHEN: Well, I -- I may end up at times
 6 asking questions that are similar to this for the
 7 purposes of building a record, and I'm not doing
 8 that to disrespect you or the process. Sometimes
 9 that is done, and it's appropriate to do so
 10 because it is needed to be done. Now, it can't
 11 be done later when we're arguing this on appeal.
 12 It has to be done now.

13 THE CHAIR: Okay. But you have -- your objection is
 14 on the record. Your objection is on the record,
 15 and it's not appropriate to use more time asking
 16 the same question once it's been ruled on. It's
 17 just not. So please stop doing that. And if you
 18 keep doing that, we're going to have some
 19 conversation about how to stop you from doing
 20 that. Please move on to the next question.

21 CNSL J. KITCHEN:

22 Q Teacher C, I'll try asking you this. Do you feel
 23 like Mr. Neufeld when he said certain things --
 24 and I'm going to summarize. I'm going to
 25 paraphrase -- he said both explicitly and
 26 implicitly that he believes there's only two
 27 genders, that you can't truly switch from one to
 28 the other, you can't truly become any other
 29 gender than what you really are, like, what
 30 you're born with, okay, would you agree with me
 31 that -- that is fair -- brief but fair summary of
 32 much of what he said?

33 A I would agree that that's a fair summary of some
 34 of what he said.

35 Q Okay. Okay. And that's fair. Is it your view
 36 that when he expresses those beliefs, he is, in
 37 effect, denying your existence in the world?

38 A If he's denying my existence as what?

39 Q As anything. Is he -- is he in any way denying
 40 your existence?

41 A No. He's not denying that I'm a person and a
 42 human and a teacher.

43 Q Right. Now, I -- I would agree with you. Now
 44 let's leave -- okay. You said Trustee Neufeld
 45 was your boss. Use your words, you said boss.
 46 But isn't it fair to say that he's not your boss
 47 because who -- the people who are your boss are

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1 the vice principal, the principal, the
2 superintendent, the assistant superintendent,
3 those people are your boss, not Trustee Neufeld;
4 isn't that right?

5 A If Trustee Neufeld and the other trustees have
6 the power to -- to get administration to do
7 something, then the trustees are the boss, I
8 would argue.

9 Q You would agree with me -- and I'm going to have
10 a -- just -- my question's a bit -- listen
11 carefully to the specificity of my question;
12 okay? Would you agree with me that -- that --
13 that -- that Neufeld trustee -- Trustee Neufeld,
14 on his own, by himself as a single trustee, just
15 Mr. Neufeld, has no real or practical ability to
16 instruct or direct the District administration in
17 any way, to do with any teacher, about anything,
18 wouldn't you agree with that?

19 A My understanding of the role of a trustee is they
20 can indeed individually talk to administrators.
21 I don't know what kind of power they have in
22 those conversations with administrators.

23 Q Many of Mr. Neufeld's witnesses will testify that
24 an individual trustee does not have any of that
25 ability that you had just alluded to. Do you
26 have any reason to disagree with them? Would you
27 disagree with them?

28 A Ability to what? Could you be more specific.

29 Q Well, to do any of the things that you just said
30 that you just said right now, okay? Mr. Neufeld
31 and some of his witnesses are going to testify
32 that an individual single trustee has no ability
33 to do any of the stuff that you just said. Or to
34 summarize, has no ability to influence, direct,
35 or instruct how the administration deals with
36 teachers, okay? That's what those say. Do you
37 disagree with them?

38 A Yes. Honestly, I think -- I think a trustee has
39 a lot of power. I don't know how much of that
40 power is formal. But when someone is in that
41 position where they can't be criticized publicly,
42 that's where that power lies.

43 Q You would agree with me, it was not the board of
44 trustees that told teachers they couldn't
45 criticize Mr. Neufeld. It was the Union;
46 correct?

47 A Yes.

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1 Q Okay. You just took the Union at its word, or
2 did you try to figure out if the Union was right
3 about that?
4 A I don't remember if I saw anything specific in
5 our collective agreement about that.
6 Q Did it ever occur to you that maybe the Union was
7 telling you that because they were bringing a
8 human rights complaint against Mr. Neufeld and
9 didn't want any teachers openly criticizing
10 Mr. Neufeld because it might interfere with the
11 complaint?
12 A No. In fact, I don't actually know when the CTA
13 and BCTF started this human rights complaint.
14 Q We had a witness testify that they reached out to
15 their members to let their members know about the
16 complaint. Do you not recall that?
17 A I do.
18 Q Okay. So you did know that there was a complaint
19 against Mr. Neufeld launched by the CTA and the
20 BCTF?
21 A Yeah. I don't even know what year that was.
22 Q Okay. So you -- you don't recall that it was
23 early 2018?
24 A No.
25 Q Okay. Is that -- is that just maybe just the
26 fact that you forgot because it's been so long?
27 A Probably.
28 Q Okay. You said in your testimony yesterday that
29 you hoped you would not have to hear anymore of
30 Mr. Neufeld's views. Why is it that you don't --
31 that you want to avoid encountering -- I'll say
32 this too. You also said in evidence yesterday
33 that you went to a Culture Guard -- it sounds
34 like -- this wasn't established. And to the
35 degree that you can clarify this, go ahead. But
36 it sounds like you went to the same Culture Guard
37 event in which Barry spoke about that. You
38 didn't hear him speak, but -- but he was
39 speaking. Let me ask you that. You went -- the
40 Culture Guard event you went to, to your
41 knowledge, Barry was speaking. You just didn't
42 hear what he said. Is that fair?
43 A Yes.
44 Q Okay. And you -- you went to that event for the
45 sole purpose of protesting it; is that right?
46 A Yes.
47 Q Okay. And you -- you -- is it fair to say you

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1 intentionally avoided hearing what he had to say?
 2 Is that fair?
 3 A Yes.
 4 Q Okay. So sorry. To go back to my original
 5 question, why not hear what Mr. Neufeld has to
 6 say and see if you can understand his
 7 perspective? Let's end it there. Why not listen
 8 to what he has to say and consider his
 9 perspective?
 10 A I had already seen enough of his perspective from
 11 repeated rants on Facebook. I don't -- I don't
 12 know the substance of his speech at the Culture
 13 Guard rally. I'm assuming it was quite similar.
 14 Q Isn't it generally a good thing to give -- give
 15 an ear to and give -- give thought to ideas and
 16 beliefs that are different than one's own to see
 17 if one can be more open-minded and if -- that
 18 belief actually has something good about it?
 19 Isn't that generally a good thing?
 20 A I suppose so.
 21 Q And we do, generally speaking, and I -- I -- and
 22 I want you -- I'm asking you this as a teacher.
 23 Don't we generally try to teach that to -- to --
 24 to -- to kids -- to students?
 25 A Yes.
 26 Q And when it comes to inclusivity and tolerance,
 27 isn't that -- isn't that one of the concepts of
 28 inclusivity and tolerance is to try to get kids
 29 to be open-minded about the different beliefs and
 30 perspectives and backgrounds of the other kids
 31 around them? Isn't that fair?
 32 A Yeah. So that's fair. And at the high school
 33 level, I think I would introduce the concept of
 34 the paradox of tolerance.
 35 Q And what's the paradox of tolerance?
 36 A What amount of intolerance should be tolerated.
 37 It's -- it's a thought experiment, and I'm --
 38 Q I figured that's what you were -- no. It is.
 39 It's a good one. So should we tolerate the
 40 intolerance of the queer people who say that they
 41 don't want to encounter beliefs that oppose their
 42 own?
 43 A Can you repeat that question.
 44 Q Sure. Well, I'll -- hold on. To be fair to
 45 you -- okay. The other two teacher witnesses
 46 identify as queer, which I explored a little bit
 47 to try to get an understanding of it. I got

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1 various answers on whether or not queer and trans
2 were the same thing or they overlapped or
3 whatever. Do you identify as a queer person?
4 A It's a label I sometimes use.
5 Q For you, is trans or transgender, is that a
6 better label?
7 A No.
8 Q Oh, okay.
9 A They're just different just like I might call
10 myself a Canadian in some contexts.
11 Q Right. And you might say you're a short person
12 or a tall person or --
13 A Yes.
14 Q You know, a person with glasses or -- yeah.
15 Okay. So you -- you wouldn't -- if -- if --
16 if -- if I was to suggest that you're -- you're a
17 queer person or you're part of the queer
18 community, would you take exception to that?
19 A I would not.
20 Q Okay. Okay. Okay. And -- and -- and here, I'm
21 going to give you an opportunity to -- to -- to
22 say if you disagree with this, but the -- the --
23 the evidence we have so far from -- from the
24 other teachers are that Mr. Neufeld's beliefs
25 should not be tolerated. They should not be
26 publicly expressed. He can believe them, but
27 they should -- they should not publicly express
28 that. They were very adamant about that. I want
29 to know if that's your perspective. Is it your
30 perspective that Mr. Belief -- Mr. Neufeld's
31 beliefs as we've summarized them, we should not
32 tolerate them to be publicly expressed? What do
33 you think about that?
34 A I disagree with them. Have -- having said that,
35 as an elected -- having said that, as an -- as an
36 elected person, I think we also have a right to
37 criticize when a public figure makes comments
38 that we find we don't like for whatever reason.
39 Q Completely agree with you. I think it's really
40 unfortunate that the Union told you that you
41 shouldn't say anything in response to
42 Mr. Neufeld's comments. Did you feel like you
43 were sort of, you know, silenced or stifled or
44 suppressed because you couldn't -- you couldn't
45 express your opposition to Mr. Neufeld's beliefs?
46 A Only publicly.
47 Q What do you mean "only publicly"? So -- so you

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1 did privately in other words?
2 A Yes.
3 Q Oh, okay.
4 A Yes.
5 Q Okay. So -- but insofar as you were -- as you
6 were instructed by the Union to not say anything
7 publicly, did you feel stifled or expressed or --
8 or -- or silenced or anything like that?
9 A I don't know if I would use those words.
10 Q Okay.
11 A If I hadn't had that communication, I believe I
12 would have been more public.
13 Q And do you believe that others likely would have
14 too? And by others, I mean, like, other people
15 or people in the school system. Do you think --
16 do you think -- you know, they -- they might have
17 publicly spoken up too?
18 A Everyone's situation is different, but I would
19 suspect that some might have. And for all I
20 know, some did indeed speak up more publicly. I
21 don't know if that's true or not. I don't know
22 who any of the other witnesses are for the
23 complainant.
24 Q Right. I figured as much. Okay. So I -- I had
25 asked you that question about whether or not
26 Mr. Neufeld should be able to express his
27 beliefs, and you said, well, you know, we should
28 be able criticize them, which have to say,
29 totally agree with you. But let's go back to
30 that question because what I want to know is is
31 it your perspective that as an elected school
32 board trustee, Mr. Neufeld should not be
33 permitted to express the beliefs he has
34 expressed? Like, the -- you know, about -- about
35 gender and stuff, is it your perspective that he
36 should not be permitted to express those beliefs
37 as an elected school board trustee?
38 A That's a good question. I would say it's the
39 same as if it were any other type of belief that
40 touches on the *B.C. Human Rights Code*. So
41 similar, I believe we had a trustee who made some
42 Islamophobic comments at some point. I don't
43 remember if it was before or after election.
44 Q Do you know what those -- do you remember what
45 those comments were?
46 A Not the specifics.
47 Q How did you -- then how did you determine they

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1 were Islamophobic?
 2 A I -- I recall reading them saying something -- I
 3 don't remember the details, which is why I'm not
 4 trying to summarize what he said or didn't say.
 5 Q I -- I don't want to nail you down on this, but
 6 just -- can you -- can you give me some idea
 7 of -- of what you -- what you -- how you would
 8 define or describe Islamophobia?
 9 A I'm not -- I'm not an expert.
 10 Q No, no. Exactly. I just -- yeah. Just -- just
 11 your off the cuff -- I mean, you -- you obviously
 12 have some idea of it because you -- you
 13 identified some comments as Islam -- as
 14 Islamophobic, so I'm not asking in any sort of
 15 expert way. Just the off -- off the cuff, what's
 16 your personal understanding of it? Like, why
 17 did -- what was it you were thinking about the
 18 concept of Islamophobia that, you know, caused
 19 you to conclude that you encountered some
 20 Islamophobic comments?
 21 A Saying that -- for example, saying that all
 22 Muslims are wrong or bad or the entire religion
 23 is wrong or bad.
 24 Q Okay.
 25 A Rather than -- yes.
 26 Q Would you consider it Islamophobic if -- and I'll
 27 just keep it very general because none of us know
 28 much about Islam. I'm assuming you don't
 29 practice Islam. Is that fair?
 30 A I -- Islam is not my religion, no.
 31 Q Yeah. Okay. So we're all coming at this from
 32 just a very generic perspective but -- outside
 33 perspective. But let's -- let's say, you know,
 34 somebody came along and said, look. I don't
 35 think Muhammad was a prophet of Allah. Would
 36 that classify as Islamophobic for you?
 37 A I haven't thought about that before, but I don't
 38 think so.
 39 Q Okay. And if somebody said, look, I don't think
 40 Jesus was the son of God, you wouldn't regard
 41 that as -- I'm going to make this word up. You
 42 wouldn't regard that as Christianophobic; right?
 43 A No.
 44 Q Okay. And if someone comes along and says, look,
 45 I don't think Yahweh exists at all, you wouldn't
 46 regard that as antisemitism, would you?
 47 A No.

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1 Q Okay. You mentioned -- you mentioned the *B.C.*
 2 *Human Rights Code*, and I've got similar answers
 3 before, and I don't want to get your comments as
 4 a lawyer, but you -- but you did -- you know,
 5 unsolicited from me, you did -- you did mention
 6 it. Is it your personal perspective that what
 7 Mr. Neufeld said about, you know, look, there's
 8 only two genders. You can't truly switch from
 9 one to the other, okay, when he said that type --
 10 and we agreed that that's, you know, some of what
 11 he said. Is it your understanding, personal
 12 understanding, that the *Code* prevents that type
 13 of expression?

14 A My understanding is that the *Code* doesn't
 15 prohibit discriminatory language, only
 16 discrimination itself. But I could be wrong
 17 about that. As you stated, I am not a lawyer.

18 Q Right. Well, let's go with the discriminatory
 19 language comment. As far as you are --
 20 because -- let's -- let's -- so let's go back to
 21 the other examples. You would agree with me that
 22 it's not discriminatory language for someone to
 23 say that they believe Muhammad was not a prophet;
 24 correct?

25 A Yes.

26 Q Or that --

27 CNSL A. WADDELL: Sorry. Mr. Kitchen, I'm just going
 28 to -- I'm not going to object to you going down
 29 this path, but I'm just going to suggest that
 30 maybe you use language to doesn't ask the witness
 31 to draw sort of a legal conclusion. I know you
 32 framed it as you're not asking in a capacity of a
 33 lawyer, but discrimination is a -- is a legal
 34 conclusion. I think if you return to your
 35 language you used in your first series of
 36 questions about, you know, it's not Islamophobic,
 37 I have no difficulty --

38 CNSL J. KITCHEN: These questions are actually more
 39 helpful because discriminatory language is more
 40 intelligible than something like Islamophobia,
 41 right, which, you know, like, we've -- we've had
 42 terms like homophobia and transphobia thrown
 43 around, and those are not overly useful because
 44 they're not exactly intelligible.

45 So similarly with Islamophobia or my made-up
 46 word of Christianophobia, so I'm using the
 47 witness's words of discriminatory language, and I

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1 take your very obvious point that discrimination
 2 has a legal meaning, okay? And it's obvious to
 3 everybody listening that I'm not asking the
 4 witness for a legal opinion. The witness knows
 5 that. And I'm intentionally using
 6 "discriminatory language" because those are the
 7 words of the witness. It's helpful and useful to
 8 hear what the witness has to say about whether or
 9 not she believes personally, not as a lawyer, but
 10 her personally, whether she believes if
 11 Mr. Neufeld's language was discriminatory
 12 language and therefore caught by the Code. I'm
 13 not asking for a legal opinion, just her
 14 off-the-cuff thoughts and beliefs. There's some
 15 value in that considering the legal issues of the
 16 case.

17 CNSL A. WADDELL: Why -- why don't you -- and just so
 18 that the Tribunal doesn't feel like they have to
 19 weigh in, why don't you just proceed -- I have no
 20 difficulty when it's focused on the witness's own
 21 perception of -- of Mr. Neufeld's comments. It's
 22 more when you start to get into other types of --
 23 you know, hypotheticals that we're not dealing
 24 with here.

25 CNSL J. KITCHEN: Okay.

26 Q Teacher C, from -- and no -- no one's going to
 27 hold you accountable for -- for -- for -- for
 28 this opinion as some sort legal expert, okay?
 29 Is -- in your personal view of this, is it -- is
 30 it discriminatory language, to use your words,
 31 for Mr. Neufeld to say, look. There are only two
 32 genders, and you cannot truly switch genders or
 33 identify as any other gender? Is it -- is it --
 34 in your perspective, is that discriminatory
 35 language?

36 A Yes.

37 Q Can you explain why or how?

38 A Well, I'd also like to continue
 39 that those weren't the only parts of his
 40 comments.

41 Q Mm-hmm. Mm-hmm.

42 A I believe his original -- his original post in
 43 October 2017 talks about how SOGI was child
 44 abuse, for example.

45 Q Wouldn't you -- wouldn't you agree me -- no.
 46 Let's back up. Is it your understanding that --
 47 I'll -- I'll use the word "idea." We'll see if

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1 we can compromise on that -- on that word.
2 The -- the general idea that a person can change
3 their gender, can become a new gender, okay, is
4 it fair to say that general idea, you believe
5 that as a fact, not merely a theory? Isn't that
6 fair?

7 A No. I don't -- I don't -- I don't have an
8 opinion on that.

9 Q Okay. So -- and just to clarify, would you
10 consider yourself as still transitioning, or
11 you've fully transitioned?

12 A I've fully transitioned, whatever that means.

13 Q Okay. Is it fair to say then that your belief
14 about changing genders or the ability to change
15 genders or being in the wrong body, is it fair to
16 say that these beliefs didn't actually really
17 matter to you in your choice to transition to a
18 woman?

19 A Yes.

20 Q Okay. So -- and again, correct me if I'm wrong,
21 is it -- is it fair to say that for you, it's,
22 like, this is what I feel; this is what I want;
23 I'm going to go for it? And by the way, I'm not
24 saying that to try to trivialize, okay, what --
25 what you've done. I'm just trying to -- I'm just
26 trying to summarize it in a way that I can
27 understand, and you're free to disagree. Tell me
28 if I'm wrong. But is it fair to say that for
29 you, it -- it wasn't so much about theory. It
30 was about this is what I want; this is how I
31 feel; this is what I want, and I'm -- I'm going
32 to do it? Is that fair?

33 A No. I'd say it's closer to identity than desire.

34 Q Okay. So in other words then, is it -- is it --
35 is it more fair to say that this -- this was --
36 this was about you finding -- finding what you
37 believe to be your true identity in the world?

38 A I suppose.

39 Q Okay. So you said -- go all the way back to try
40 to bring this -- weave back in, okay? You had
41 said that you hoped you don't have to encounter
42 Mr. Neufeld's views ever again, and you -- you
43 explicitly didn't want to encounter his views at
44 that SOGI rally you went and protested at.
45 Couple questions. Do you believe that you --
46 that you shouldn't have to ever encounter beliefs
47 like what Mr. Neufeld expressed?

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1 A No.
2 Q Okay. Is it then more fair to say that for you,
3 that was a personal choice for you, what you
4 thought was best for you was to avoid having
5 to -- avoid listening to what Mr. Neufeld had to
6 say?
7 A Yes.
8 Q Okay. So then would you agree with me that --
9 that people do have some ability to simply look
10 away from or turn their ear away from speech or
11 expression that they don't like and don't want to
12 encounter? They have some ability to do that
13 then, you would agree?
14 A Some ability. If that kind of speech is in
15 person, yes, in person and avoidable.
16 Q You -- you would agree with me that the -- that
17 the speech at the Culture Guard rally was
18 avoidable because you avoided it; right?
19 A Yes.
20 Q Okay. And you would agree with me that --
21 that -- that the -- the -- the speech on Barry
22 Neufeld's Facebook post or Facebook page is
23 avoidable, right, for you because you don't
24 actually ever have to go to Mr. Neufeld's
25 Facebook page?
26 A I would say that it's a lot harder to avoid when
27 it's making local and provincial and national
28 news.
29 Q You know what? And I think that's fair. But you
30 would agree with me that you could. If you
31 really wanted to, you -- you could -- you could
32 avoid it. You could just any time you saw there
33 might be something about Barry Neufeld just
34 decide not to read it? Isn't that fair?
35 A Can't avoid reading the headline if you open
36 the -- the news site, but yes, it's fair. You
37 don't need to read the article.
38 Q It's fair to say we -- we all kind of do that?
39 You know, we see a headline and go, oh. I don't
40 want to read about that. You know, maybe
41 somebody doesn't want to read about Poilievre or
42 somebody doesn't want to read about Trudeau. You
43 would agree with me that people just -- just
44 generally sometimes, people -- people tend to do
45 that?
46 A Yes.
47 CNSL J. KITCHEN: What are we at? 11 -- Chair, do you

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1 want to take a break now, or do you want to go on
2 for another five minutes?

3 THE CHAIR: I leave it to you. We can go another five
4 minutes if you have a five-minute set of
5 questions, or if you're going to a new area, we
6 can stop now.

7 CNSL J. KITCHEN: Yeah. I -- yeah, I'd like to
8 because I'll probably take more than five minutes
9 in my next batch of questions.

10 THE CHAIR: Okay. All right. Well, let's take a
11 morning break then. We're going to take
12 15 minutes for this break.

13 Teacher C, you're under cross-examination
14 during this break. And for so long as you're
15 under cross-examination, you're not allowed to
16 talk to anyone about your evidence. That
17 includes the lawyers for the BCTF and CTA. So
18 during this break, just go and do whatever makes
19 you feel comfortable, but don't talk about your
20 evidence; okay?

21 A Okay.

22 THE CHAIR: All right. Anything before we break for
23 15 minutes? Doesn't look like it. All right.
24 We're just going to turn our cameras and mics off
25 for this break, and we'll come back in 15.
26 Thanks very much.

27
28 (WITNESS STOOD DOWN)

29
30 (PROCEEDINGS ADJOURNED FOR MORNING RECESS) [10:55:53]

31 (PROCEEDINGS RECONVENED) [11:10:41]

32
33 TEACHER C, a witness,
34 recalled.

35
36 THE CHAIR: All right. We're back. Teacher C, are
37 you ready to continue?

38 A I'm ready.

39 THE CHAIR: Okay. Go ahead, Mr. Kitchen, when you're
40 ready.

41 CNSL J. KITCHEN: Thank you.

42
43 CROSS-EXAMINATION BY CNSL J. KITCHEN, continuing:

44
45 Q Before the break, Teacher C, you mentioned the
46 child abuse comment from Mr. Neufeld. Would you
47 agree with me that what Mr. Neufeld was

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1 identifying as child abuse was the teaching --
 2 well, let's back up. When Mr. Neufeld -- I think
 3 we covered this. I just want to confirm this.
 4 When Mr. Neufeld says gender ideology, gender
 5 theory -- I think he said gender identity --
 6 ideology a couple times -- when he says these
 7 things, do you understand him to be talking about
 8 what we've already talked about, this -- this
 9 idea -- his idea that, look, there's only two
 10 genders; you can't truly switch them; you know,
 11 there's -- there's -- there's -- there's no, you
 12 know, multiple genders, et cetera, right, that
 13 whole -- that whole set of ideas, okay, do you --
 14 do you understand what he's saying when he says
 15 gender ideology, gender theory, do you understand
 16 what he says when he uses that phrase to describe
 17 these ideas?
 18 A No, not really.
 19 Q Okay. Well, what do you -- what do you think
 20 he -- and maybe you don't have an answer, but it
 21 sounds like you would. What do you understand
 22 him to mean when he says things like gender
 23 theory, gender ideology, gender identity
 24 ideology, what do you think he means?
 25 A I'm speculating that he means anyone that isn't
 26 gender conforming to the gender they were
 27 assigned at birth. So perhaps that even -- for
 28 example, a -- a man wearing a dress might be
 29 gender theory for some people or gender ideology,
 30 and anything from nonbinary people to binary
 31 trans people. I don't know.
 32 Q But wouldn't -- wouldn't you agree with me
 33 that -- that -- that what you're -- what you're
 34 describing is not the idea or the belief but
 35 somebody acting on the idea or the belief?
 36 A Sorry. Are you asking about what I --
 37 Q Yeah. You -- you just gave -- you just gave some
 38 examples, right? Like -- well, one example was,
 39 you know, a man wearing a dress. I think you
 40 just said that. Would you agree with me that
 41 that itself, that action is not gender theory or
 42 gender ideology? That action is a person acting
 43 on their beliefs about gender?
 44 A I don't know.
 45 Q You don't know.
 46 A I -- I don't know because I'm speculating as to
 47 what the respondent might have meant.

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1 Q Right. Well -- well, it matters because you --
2 you -- you -- you've taken offence to the things
3 that Mr. Neufeld has said. That's fair to say;
4 right? That's why you're here today?
5 A Yes.
6 Q And you -- you feel like they're -- these
7 comments are -- like, they're attacking you as a
8 person? Is that fair?
9 A Yes.
10 Q Okay. So it sounded to me like what you were
11 saying is that you think that when he's talking
12 about gender identity, ideology or gender
13 ideology or gender theory, that he's talking
14 about people and not ideas?
15 Did I lose you for a second there?
16 A No. I'm still here.
17 Q Okay. I could -- yeah -- just repeat the
18 question. It sounds to me like when -- when you
19 encounter those phrases from him, you think he's
20 talking about people because when I asked you the
21 question, you started giving example of people
22 doing things.
23 A So I can't -- I can't exist as a trans woman
24 separate from whatever this concept of gender
25 ideology and theory and gender identity, whatever
26 those concepts mean to Trustee Neufeld, I don't
27 think I can be distanced from that since I
28 clearly don't identify as the gender I was
29 assigned at birth. I mean, I'm clearly not very
30 feminine for a woman. Look at my short hair. I
31 just came from my blue collar job to -- to
32 testify.
33 Q Yes. But you did just testify to me that the
34 beliefs and the theories behind all this weren't
35 really what's driving you. Like, when you --
36 when you --
37 A Yes.
38 Q -- decided to transition. It was -- it was more
39 just you -- you -- you finding a more authentic
40 identity for yourself. So if the ideas aren't --
41 aren't important to you, then -- then how can you
42 say that you couldn't exist in the world without
43 those ideas?
44 A I don't mean that I can't exist without those
45 ideas. I'm saying that my identity as a trans
46 woman, since you've asked me to speculate about
47 the -- the respondent's mind and what he might

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1 have meant --
2 Q No, no, no, no. Hold on. I'm not asking you to
3 speculate about his mind. I'm trying to get into
4 your mind.
5 A Correct.
6 Q You can't get into his -- you can't get into his
7 mind.
8 A No, definitely not.
9 Q And I can't ask you. That's not -- that's not --
10 that's not proper. But what is -- what is really
11 helpful is to know your mind on -- on what he --
12 on what he has said.
13 A Okay.
14 Q That's -- that's what I'm trying to get into. I
15 want to know what you think about what he said.
16 A I think what he -- I don't think he can
17 separate -- again, speculating -- trans women
18 from gender ideology and gender theory and gender
19 identity.
20 Q Because from your perspective -- okay. Let's put
21 it this way. Isn't it fair to say that no matter
22 how much he criticizes this -- this -- this
23 belief or set of ideas -- let's -- let's -- let's
24 make it really specific because this is what
25 applies to you. Some people who -- who -- who
26 haven't, you know, had the same lived experiences
27 as you, they're just coming at it and looking at
28 it from the outside, they would without meaning
29 to be offensive or mean or anything like that to
30 you would say that you have switched genders from
31 male to female.
32 A I'm sorry. You got cut off. Could you repeat
33 that.
34 Q Sure. No. I didn't get cut off. I stopped
35 talking. It's the same thing that happened just
36 with you.
37 A Sorry. You got cut off in that sentence.
38 Q Okay. Okay.
39 A Okay. All right.
40 Q Then I'll repeat it. That's fine. Isn't it fair
41 to say that you either are a woman or not a woman
42 regardless of what Mr. Neufeld says?
43 A Yes.
44 Q And isn't it fair to say that regardless of what
45 anyone else believes, you either -- you either
46 are or are not a woman?
47 A Yes.

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1 Q You would agree with me that someone else's
2 belief does not define who you are?
3 A Yes.
4 Q And fair to say your beliefs don't define who
5 somebody else is; correct?
6 A Yes.
7 Q Okay. Your video appears to have frozen for me.
8 CNSL A. WADDELL: Same over here.
9 A Okay. Let me turn it off and on -- on again.
10 CNSL J. KITCHEN:
11 Q Yeah. Yeah. Exactly. That's what I was going
12 to suggest. Your audio is fine though.
13 A Okay. How about that? Oh. No.
14 THE CHAIR: No. Yeah, that's good.
15 A Okay.
16 THE CHAIR: Yeah.
17 CNSL J. KITCHEN:
18 Q Yes. There we go. Good. Thank you.
19 Did it occur to you when encountering
20 Mr. Neufeld's posts that he was criticizing the
21 idea of people, like you, changing their gender
22 from man to woman, not that you are a woman?
23 Would you -- would you agree with me that what he
24 was criticizing was the idea of you becoming a
25 woman, not that you are a woman yourself? What
26 would you say to that?
27 A I don't think those things can be separated --
28 Q Okay.
29 A -- easily like that.
30 Q How do you square that with what you just said
31 when you said that his belief whether or not
32 you're a woman didn't actually change whether or
33 not you're a woman?
34 A I don't --
35 Q Go ahead.
36 A Can you -- can you explain how that's in
37 contradiction?
38 Q Yes. So -- so in other words, if -- if his --
39 if -- if his belief and him expressing his belief
40 that, you know, there's only two genders, and you
41 really can't truly switch between them -- and I
42 say truly because that's one of his words, okay?
43 You can't truly become one or the other. If him
44 expressing that belief has no real world
45 impact -- and when I say impact, I understand it
46 might, like, offend you and upset you and hurt
47 your feelings. I get all that. But I'm talking

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1 sort of, like, tangible. If him expressing his
 2 beliefs that there's only two genders and you
 3 can't truly switch between them doesn't actually
 4 change whether you really are a woman or not,
 5 then how come for you it's the same thing to
 6 criticize that idea as it is to criticize you?
 7 Go ahead.

8 A Okay. Because, again, for him, it's the same
 9 thing. He can't -- it's a -- it's a dissonance
 10 for people with that -- with the belief that I'm
 11 lying about being a woman. They can't separate
 12 that from -- from these nebulous ideas of gender
 13 ideology and transgenderism or whatever scare
 14 quote language we might want to use.

15 Q If they're the same thing, wouldn't you agree
 16 with me that Mr. Neufeld never advocated for
 17 trans or queer or nonbinary people to not be
 18 teachers, for example?

19 A If he made those comments, I'm -- I'm not aware
 20 of them.

21 Q Okay. You would agree with me that he never
 22 suggested or -- or expressed his -- expressed a
 23 belief that, you know, the trans teachers that
 24 are in the system are terrible teachers?

25 A Not directly. However --

26 Q Okay.

27 A -- in my testimony yesterday, I referred to his
 28 post about Dr. Theresa Tam being untrustworthy
 29 because she was allegedly a transgender woman.
 30 So he didn't -- in that post, he did not talk
 31 about Chilliwack's School District 33 teachers,
 32 but I don't see how you can say that one person
 33 is inherently deceptive because they're trans and
 34 another person is not.

35 Q Wouldn't you agree with me that when it comes to
 36 people groups, just because one person is --
 37 is -- you know, does something bad, one person
 38 lies, one person cheats, one person whatever that
 39 the rest of them don't, like, it's -- you would
 40 agree with me that it's unfair to say that, you
 41 know, because one person in one group does
 42 something, all the rest of them in another group
 43 does something, isn't it?

44 A That was not the message that I understood from
 45 that post was that if this particular woman is
 46 untrustworthy as a trans woman, I -- I
 47 don't think it was clear in that post that he was

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1 referring that only Dr. Theresa Tam is deceptive
 2 as -- because she's a trans woman, and all other
 3 trans women are not necessarily deceptive.

4 Q Right. No, I -- I think that's fair. He
 5 didn't -- he didn't explicitly say that. But
 6 isn't it fair to say that you -- it's your
 7 interpretation of what he said that causes you to
 8 sort of extrapolate that onto all trans people?

9 A Yes. For example, if I said -- I see you brought
 10 up my glasses earlier. If I say that you can't
 11 trust my testimony because I'm wearing glasses,
 12 anyone listening is going to assume you're not
 13 specifically talking about me. You're talk --
 14 even if you're specifically talking about me,
 15 you're talking about anyone with glasses.

16 Q Okay. I think I understand better. So -- again,
 17 so -- so similarly, if he had said, you know,
 18 hey, we -- you know, this Muslim person, you
 19 know, lied about this thing and -- which they did
 20 because they have some doctrine that allows them
 21 to lie -- and this is a real world example
 22 because apparently, this is what some people --
 23 some people do to criticize Muslims sometimes.

24 You know, if someone says, well, this
 25 person -- this person lied, and they -- they used
 26 this -- this Muslim doctrine in order to be able
 27 to do that, you think it's fair then to
 28 extrapolate out of that that -- that person
 29 thinks that about all Muslim people?

30 CNSL A. WADDELL: Sorry. Again, I'm just going to
 31 object. This is -- I appreciate Mr. Kitchen is
 32 saying this -- he thinks this is a real world
 33 example, but it's a hypothetical to this case, so
 34 I -- I -- I just don't think it's helpful or
 35 relevant.

36 CNSL J. KITCHEN: Well, so is the glasses example. I
 37 mean, I -- but, you know, we're -- the -- the --
 38 the witness and the cross-examining lawyer are
 39 having a discussion that I think is moving along
 40 just fine, and I don't think it's going to move
 41 along any better because, you know, you -- you
 42 interfere that way.

43 THE CHAIR: Can you respond to the objection that it's
 44 hypothetical.

45 CNSL J. KITCHEN: Strictly speaking, it is
 46 hypothetical. Having said that, it's in response
 47 to a hypothetical that the student -- or that the

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1 witness just brought up, and it's also one that
 2 ties back to her previous comments about
 3 Islamophobia. So I think it's helpful and
 4 permissible in this context to draw out where the
 5 witness is coming from on this point, which is
 6 relevant, okay? We're -- we're at the point now
 7 of discussing identity and beliefs and the
 8 interaction between the two of them and how the
 9 witness sees them as going together and how she
 10 sees them as, you know, criticizing her beliefs,
 11 criticizing her identity. That's -- that's --
 12 that's relevant evidence, so I think in the
 13 context, it's permissible.

14 THE CHAIR: Okay. Thank you. Well, I -- I'm, again,
 15 going to uphold the objection to hypotheticals.
 16 I appreciate you're responding to an analogy that
 17 Teacher C drew in her response. But as the
 18 person asking questions, you're required to ask
 19 questions related to facts that the witness has
 20 firsthand knowledge of, so that doesn't include
 21 hypotheticals, so we'll uphold this objection.

22 CNSL J. KITCHEN:

23 Q I take it it's fair to say, Teacher C, that from
 24 your perspective, if there's a criticism of a
 25 belief that you regard as -- as tied up with your
 26 identity, that criticism should not be permitted?
 27 Would that be a fair summary of your position?

28 A No, definitely not. Would it be possible to pull
 29 up that exhibit so we don't need to speak about
 30 hypotheticals?

31 Q This is --

32 A You don't have to agree with me but --

33 Q Which -- which one are we talking about here?

34 A I talked about it in my testimony yesterday.

35 Q But give me -- give me an example of what -- of
 36 what he said that you want me to find the post
 37 for.

38 A I think he only made one post about Dr. Theresa
 39 Tam.

40 Q Oh, okay. You're talking about that one. Okay.

41 A Yes.

42 Q Okay.

43 A So that I can further speak to the concept of
 44 someone being inherently untrustworthy or
 45 deceptive because of their -- being trans.

46 Q Okay. But that -- if I ask you anymore questions
 47 about that post, then I will bring it up in

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1 fairness to you, but that actually wasn't my
2 question because I'm trying to tie this off so we
3 can -- we can get done and get you out of here
4 before lunch. My question is this. Is it your
5 position that if someone criticizes a belief that
6 you hold and that you regard as a -- as a -- as
7 important to your identity, that they should not
8 be permitted to criticize that belief?
9 A No.
10 Q Okay. So would you then agree with me that they
11 should be permitted to criticize a belief that
12 you hold even if it is important to your
13 identity?
14 A Yes.
15 Q Then that begs the question: Why are you
16 complaining about Mr. Neufeld's expression?
17 A Someone can be permitted to make discriminatory
18 beliefs, and I can still complain about that.
19 Q But you do -- you would agree with me -- you
20 understand, do you not, that if such a complaint
21 is upheld, the result will be that Mr. Neufeld
22 will no longer be permitted to express his
23 beliefs? You do understand that, don't you?
24 A I -- I don't know the basis of the complaint
25 actually.
26 Q Okay. Let me ask you this. Personally speaking,
27 personally, would you like to see something put
28 in place to prevent -- well, okay. Mr. Neufeld
29 is not longer a trustee, okay, but the complaint
30 was filed when he was a trustee, and he was a
31 trustee for a good four plus years after the
32 complaint had already been filed, and that's when
33 you were a teacher. So let's situate
34 ourselves --
35 A Yes.
36 Q -- so let's situate ourselves -- let's situate --
37 so let's -- let's say we're still in that 2017 to
38 2021 time frame. You're still a teacher; he's
39 still a trustee; the complaint's ongoing.
40 A Yes.
41 Q In -- in that context, would -- would your
42 personal goal be to see Mr. Neufeld told that he
43 can't say these things anymore?
44 A No.
45 Q Then what would you like to see?
46 A So in that context where I'm a teacher and
47 Trustee Neufeld is representing the school

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1 district, I would like to see him not make those
2 statements publicly.
3 Q Okay. So -- so -- okay. Okay. That -- that --
4 do you see how that contradicts what you just
5 said? Or if not, can you explain to me how it
6 doesn't?
7 A What did I just say?
8 Q Well, I just asked you if -- if -- if what you
9 would like to see is for him to be told that he
10 can't -- that he can't say those things anymore.
11 A Yes.
12 Q And you said no.
13 A I would -- not to see those things publicly. I
14 don't care if he rants about trans people -- in
15 this situation, I don't care if he rants about
16 trans people all day long to his friends.
17 Q Or mirror on the wall or whatever. Okay.
18 A Exactly.
19 Q Sorry. It was implied in my question, not for
20 you it wasn't, but it was implied to me in my
21 question that the word "publicly" was -- was
22 implied. I just didn't say it, so okay.
23 Let's -- let's back up then.
24 A Okay.
25 Q Let's -- let's say -- was it -- was it your goal
26 back then for Mr. Neufeld to be -- to be -- to be
27 somehow -- for there to be something to be done
28 so that Mr. Neufeld could not publicly say the
29 things he was saying about gender ideology and
30 all the rest of it?
31 A Yes.
32 Q Okay. So from your perspective, while he's
33 permitted to hold those beliefs, he should not be
34 permitted to publicly express them as a trustee?
35 A Yes.
36 Q Okay. And are you aware that that -- that --
37 that -- I mean, obviously, we're kind of outside
38 of the time frame now because it's after the
39 fact. But originally when the -- when the
40 complaint was filed, are you aware of the fact
41 that one of the remedies sought when the
42 complaint was filed was for Mr. Neufeld to not be
43 able to publicly say these things?
44 A No.
45 Q Okay. And from your personal perspective that he
46 should not be publicly permitted to say these
47 things, is that your personal understanding of

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1 how the *Human Rights Code* and -- and the law
 2 about discrimination is supposed to work?
 3 A I don't know.
 4 Q You don't know. Okay. All right. But that is
 5 how you think it should work? Is that fair?
 6 A I don't think it should be up to me, but -- so I
 7 don't know.
 8 Q That's -- okay. Sorry. Let me ask you this. Is
 9 that how you would like to see it work? Just
 10 speaking for yourself personally, is that how you
 11 would like to see it work? You would like to see
 12 the law working away so that Trustee Neufeld
 13 would not be able to say those things publicly as
 14 a trustee?
 15 A Yes.
 16 Q Okay.
 17 Was it just once that the District painted
 18 the sidewalk like a -- a -- a
 19 pride-flag-rainbow-colour-type thing? Was it
 20 just once that the district did that?
 21 A To the best of my knowledge, yes.
 22 Q I mean -- I mean when you were there.
 23 A Yes. Again, I think it was just once. There may
 24 have been other ones that -- at the school level
 25 that I don't know about or don't remember.
 26 Q Right. You were -- you were there four years
 27 about; is that right?
 28 A Yes.
 29 Q Okay. You said something about the District
 30 inviting a trans author to speak at -- at one of
 31 the schools. Does that sound right?
 32 A It wasn't at a school, but yes.
 33 Q Where was it?
 34 A I believe it was at the Best Western in a
 35 conference room, large conference room that was
 36 rented.
 37 Q But it was organized by the District?
 38 A That's what I recall.
 39 Q And who was invited to it?
 40 A I believe it was staff.
 41 Q Oh. It was a staff thing. Okay. Okay. So
 42 there's -- there's -- there's an event at the
 43 Best Western that the District puts on and
 44 invites a trans author to speak and invites
 45 teachers to attend it? Is that fair?
 46 A Yes. I don't think it was specific to teachers.
 47 I think it was specific to staff.

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1 Q Oh. Which is a broader category than teachers;
2 correct?
3 A Yes.
4 Q Okay. Okay. And -- and you -- you attended
5 that?
6 A Yes.
7 Q And fair to say that made you feel welcomed and
8 valued?
9 A More than if they had not had it, yes.
10 Q Yeah. Yeah. I mean, you know, fair to say
11 that -- fair to say that any people group
12 would -- would feel welcomed and -- and -- and
13 valued if they saw themselves reflected in
14 somebody that was invited to speak?
15 A Yes.
16 Q Yeah. And this happened during your four years
17 that you were there, right, as a -- as a teacher?
18 A Yes.
19 Q Okay. At that event, was -- was the fact that
20 the author is trans, was that celebrated at that
21 event?
22 A One thing I do specifically remember is that the
23 comments from a District employee were extremely
24 carefully worded to not mention that the author
25 was trans. But however, I believe the --
26 Q Okay.
27 A -- the reason most people were there was because
28 the author was trans.
29 Q Okay. So everybody -- everybody in the audience
30 knew. You knew and --
31 A We all knew.
32 Q Okay.
33 A Yes.
34 Q Now fair to say that Mr. Neufeld never entered a
35 school in which you were working?
36 A I don't know.
37 Q You don't know.
38 A As I was working in multiple schools.
39 Q I'm going to -- I'm going to put it to you that
40 he never entered a school that you were working
41 in. Would you disagree with that?
42 A I'd say I can't answer it as, again, I was a
43 teacher on call, and I also had contracts at
44 multiple schools, so I don't know. I don't
45 remember being in any of the schools.
46 Q Okay. Mr. Neufeld and some of the witnesses he
47 will call will say that he never entered any

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1 schools after the point in 2018 in which the --
2 the school board barred him from entering any
3 schools. Do you have any reason to disagree with
4 that?

5 A I don't remember the details, but I do remember
6 there was an incident where he was accidentally
7 invited, and I believe it was at Imagine High,
8 and he showed up, and the students were unhappy
9 to see them -- unhappy to see him. I don't
10 remember any details beyond that so...

11 Q You -- you would agree with me though that
12 generally speaking, the -- the -- the majority of
13 school board trustees passed a resolution
14 prohibiting him from -- from attending any
15 schools in the district, and that that happened
16 in 2018?

17 A Yes.

18 Q Okay. You would agree with me that Mr. Neufeld
19 never had any direct -- direct conversations with
20 you?

21 A Yes.

22 Q And I know this is a bit obvious, but -- so he --
23 he never -- I take it he never inspected your
24 classroom, for example?

25 A No.

26 Q To your knowledge, he never tried to instruct a
27 principal or a superintendent to somehow monitor
28 you or discipline you or exclude you from
29 anything?

30 A Not to my knowledge.

31 Q You would agree with me that in fact, he has no
32 capacity to do that as an -- as an individual
33 trustee?

34 A Not formally, no.

35 Q You would agree with me that even informally,
36 trustees don't go around trying to -- in -- in
37 Chilliwack at least, they don't go around trying
38 to influence superintendents or principals to do
39 anything in particular?

40 A I honestly don't know. I would hope not.

41 Q Fair to say you don't have any evidence of any
42 trustees ever trying to informally direct or
43 influence how superintendents or -- or principals
44 do their job?

45 A Yes.

46 Q Isn't it fair to say that nobody ever hindered
47 you from attending any of the GSA meetings that

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1 you attended?
 2 A Yes.
 3 Q You said something about having a trans flag on
 4 your bag. Do you recall that?
 5 A Yes.
 6 Q So, like, it was, like, a sewn-on patch kind of
 7 thing?
 8 A A sticker.
 9 Q Sticker. How big was it just roughly, like,
 10 inches?
 11 A 3 by 5.
 12 Q 3 by 5.
 13 A Yeah. Smaller than that. 2 by 3. Something
 14 like that.
 15 Q Oh. Like, the size -- like, the size of my
 16 wallet here?
 17 A Yes.
 18 Q Okay. And that was on -- was it like a -- like a
 19 backpack school bag, or was it like a purse or a
 20 briefcase or...?
 21 A Closer to a briefcase, I suppose.
 22 Q And was this -- was it a briefcase, like, covered
 23 in a whole bunch of other stickers, and this one
 24 just blended in, or was, like, this kind of the
 25 only one?
 26 A It -- it was that one and then I also had the --
 27 the rainbow sticker from the BCTF. If you would
 28 like, it's in this room. I can get it for you.
 29 Q I'm not opposed to that. I -- I don't know how
 30 my friend feels about that. I'd like to see it
 31 if she's okay with it.
 32 CNSL A. WADDELL: I got no -- no problem with that.
 33 CNSL J. KITCHEN:
 34 Q Yeah. No. I think it would be -- I think it
 35 would be great.
 36 A Less than 10 seconds.
 37 Q Okay. Good. Thank you.
 38 A Okay. Unfortunately, it looks like I've
 39 removed -- removed the stickers, but they were
 40 here. Oh. And of course, it's on blur, so you
 41 can't see it anyways.
 42 Q Yeah. Yeah.
 43 A Okay.
 44 Q No.
 45 A It was on the front of this.
 46 Q Okay. Okay. That's fine. That gives us an
 47 idea. It was -- it was blurry, but at least we

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1 have an idea of what the bag looks like. Okay.
2 So the only two stickers on that bag were the
3 BCTF rainbow sticker thing and then -- and then
4 the other sticker we've been talking about?
5 A The trans pride sticker, yes.
6 Q Okay. Now, the trans pride sticker, that one
7 is -- it's got the rainbows going across, and
8 it's got the triangle thing with the -- with the
9 black and the brown and the pink and all that;
10 right?
11 A Not quite. You're thinking of the so-called
12 progress pride sticker.
13 Q Okay.
14 A The trans pride -- the trans pride flag has
15 horizontal bars of blue, pink, and white.
16 Q Oh, okay. Yeah. Okay. I'm tracking. I've seen
17 that before. Okay. Okay. Okay. So you kind of
18 had the original old fashion multi-colour pride
19 stick, and then the trans pride one of just
20 the -- the pink, white, and blue?
21 A Yes.
22 Q Okay. And how long did you have those stickers
23 on your bag roughly?
24 A Roughly three years.
25 Q Okay. So -- so most of the time you were --
26 A So basically --
27 Q Go ahead.
28 A Yes.
29 Q Okay.
30 A Yes, that's right. Most of the time I was there.
31 Q Okay. And is it -- is it fair to say that you
32 sort of regularly brought that bag to school?
33 A Yes.
34 Q Okay. Fair to say no one, you know, at the
35 District or administration came up to you and
36 said, well, you're going to have to get rid of
37 that bag because of what Mr. Neufeld said? Fair
38 to say nothing like that happened?
39 A Yes.
40 Q Now I thought this was interesting. You -- you
41 mentioned something about how, you know, you were
42 actually -- individually speaking, you were --
43 you were treated fairly well by the District but
44 that you were a little bit surprised by that.
45 A Yes.
46 Q Do I have -- is it -- is it fair to say that your
47 concerns and fears that the District -- that the

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1 District would mistreat you because of your
2 gender identity or because you're trans, those
3 fears were -- those fears and concerns did not
4 materialize? Isn't that fair?

5 A I don't know if they materialized when I was
6 applying for jobs, but I don't have reason to
7 think either way. It's just though to the best
8 of my knowledge, they were not, but I don't know.

9 Q Well -- and you would agree with me that --
10 that -- that the times you were applying to the
11 District was long before Mr. Neufeld made his
12 comments?

13 A Yes.

14 Q Okay. You said you attended some sort of
15 professional development conference about SOGI
16 123?

17 A Yes.

18 Q Does that sound right?

19 A No. It was from the Canadian Centre for Gender
20 and Sexuality or something.

21 Q Okay. But what's -- what -- did you -- did you
22 attend that as a private citizen, like, just on
23 your own random --

24 A It --

25 Q Go ahead.

26 A It was not a professional development day in
27 School District 33, so I asked my administrator
28 at the time for the day off. Oh. It -- it was
29 an in-lieu day. Do you know what that is?

30 Q I don't.

31 A Okay. An in-lieu day is teachers can do
32 professional development in the mornings or
33 something, and they get an extra day off. But
34 because I hadn't had a contract, I didn't have
35 that. I didn't have the right to the paid day
36 off, so I used my own money and applied to this
37 conference -- and sorry -- and went to this
38 conference in New Westminster.

39 Q Okay. So help understand this. You were -- you
40 were scheduled to work that day but asked for the
41 day off to attend the conference?

42 A Yes. I don't know about scheduled because it was
43 an in-lieu day.

44 Q Okay. But --

45 A Some -- if my -- if my recollection is -- if my
46 recollection is correct, no teachers would have
47 been in my school that day.

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1 Q Okay. So why did you bother asking for
2 permission to go at all? It sounds like you
3 didn't actually need to.

4 A Because I was getting paid for it even though
5 I -- so I was getting paid for that day even
6 though I hadn't the right to get paid for that
7 day, and I wanted to do things correctly if that
8 makes sense.

9 Q Okay. So the District did end up paying you
10 that -- that day for --

11 A Yes.

12 Q -- you know, for your time. Okay.

13 A Yes.

14 Q And you did -- you did tell the District the
15 nature of the conference you were going to?

16 A I don't recall if I told my administrator that,
17 but I think I did.

18 Q Okay. Fair -- fair -- fair to say the
19 administrator was fine with it?

20 A Yes.

21 Q Okay. Do you think -- you said that you wondered
22 if district administrative staff held the same
23 beliefs as Mr. Neufeld. Do you recall saying
24 that?

25 A Yes.

26 Q Wouldn't you agree with me that regardless of
27 whether somebody believes the way Mr. Neufeld
28 does, they're still, if they choose to be,
29 perfectly capable of treating you with respect
30 and dignity?

31 A Yes, theoretically.

32 Q What do you mean by theoretically?

33 A Theoretically is, yes, they have that capacity.
34 Whether they choose to exercise it, I don't know.
35 I was -- I believe I -- I'm happy with how I was
36 treated in that regard.

37 Q You -- is it -- is it then -- based on what you
38 just said, is it then fair to say that you think
39 it unlikely that anybody who believed the way
40 Mr. Neufeld did would treat you with kindness,
41 respect, and dignity?

42 A That it's unlikely?

43 Q Yeah. You believe that's unlikely?

44 A No. I think it's an individual thing.

45 Q Then why -- then why give any thought or concern
46 to what individual people at the District believe
47 if their beliefs don't matter?

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1 A Because I never know. For example, I didn't tell
 2 my boss when I had to ask for -- to leave early
 3 four days in a row what the human rights case was
 4 about beyond generic details because I don't know
 5 what my boss thinks. Is it going to affect my
 6 treatment at work or my career opportunities? I
 7 don't know. Obviously, my boss is,
 8 theoretically, beholden to the *Human Rights Code*.
 9 But in practice, I don't know what he actually
 10 thinks. I don't know if he knows I'm trans at
 11 all. And however, in my employment with the
 12 Chilliwack School District, they inherently had
 13 to know I was trans because when I applied, I
 14 unfortunately was not able to change all of my
 15 documents.

16 Q You froze again. I think if you just reset your
 17 camera again, we'll be -- we'll be okay. There.
 18 So it's fair to say that you have no idea
 19 if -- if any district administration staff did
 20 have the same beliefs as Mr. Neufeld?

21 A Yes.

22 Q Would you agree with me that you did engage in a
 23 little bit prejudgment with the District because,
 24 you know, you -- you -- you were concerned that
 25 they were going to mistreat because you were --
 26 you were trans, and then you were a little bit
 27 pleasantly surprised when they didn't? Did
 28 you -- would you agree with me that you -- you
 29 sort of prejudged them a little bit? You sort of
 30 prejudged whether or not they were going to be
 31 kind and respectful and accepting?

32 A Yes. But I also -- I don't know who did or
 33 didn't know I happen to be trans, and I don't
 34 know which administrators took a look at my
 35 official file at the district level when I
 36 applied for positions because I did also apply
 37 for some positions during the four years we're
 38 talking about after Trustee Neufeld started
 39 making his comments.

40 Q Would you agree with me then that -- that, you
 41 know, for the most part or even maybe entirely,
 42 nobody ever really -- at the district level, at
 43 the administrative district level, really --
 44 really made an issue one way or the other about
 45 the fact that you were trans? As -- as -- as far
 46 as they were concerned, you're just another
 47 teacher that needs to be treated well?

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1 A Yes.
2 Q I expect Mr. Neufeld will say pretty much the
3 same thing. And he will say that look, all
4 teachers should be treated with, you know,
5 fairness, kindness, decency, respect, dignity,
6 all the rest of it, sort of on the same standard
7 across the board regardless of whether or not
8 they're -- they're trans. If -- if -- if he said
9 that to you, would you accept that at face value,
10 or would you -- would you tend to disbelieve him
11 because of his beliefs?
12 A I would disbelieve that somebody who can make --
13 be criticized, make apologies, be criticized
14 again for the same thing, make apologies, has the
15 capacity to -- to distance themselves from their
16 beliefs and how they treat someone.
17 Q So in your view, because of the beliefs he has,
18 he can't or -- or won't treat trans people with
19 the same common decency, respect, and dignity
20 that he would anybody else?
21 A Yes, because of that lack of self-control.
22 Q You think he has a lack of self-control?
23 A I would say that's exactly what I would say to a
24 student who kept misbehaving in the same way,
25 kept apologizing, and kept doing it again. I
26 would consider that as a lack of self-control.
27 Q To be clear, to the -- to the extent that
28 Mr. Neufeld apologized at all, he -- you would
29 agree with me that he only ever apologized once;
30 correct?
31 A Yes.
32 Q Okay. So in fact, what you just said is actually
33 wrong. He didn't keep apologizing at all. He
34 only apologized once; isn't that right?
35 A Okay. I thought he did it twice, but I could be
36 wrong. Was it only once? Okay. I -- if you say
37 so. Okay.
38 Q Well, to be -- to be fair to you, he -- he -- he
39 issued a statement after that first statement in
40 October 2017 --
41 A Yes.
42 Q -- that was somewhat of an apology. He said he
43 apologized for making people upset basically. He
44 didn't sort of apologize for what he said. It
45 was one of those apologies where somebody says
46 they're sorry for how somebody got upset at what
47 he said basically; okay?

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Teacher C (for Complainants)
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1 A Okay.
2 Q So -- so -- I -- I put it to you, you know, he's
3 going to say as I take him through his evidence
4 that he only ever apologized in any fashion at
5 all that -- that -- that first time in the
6 beginning, and you don't disagree with that?
7 A Okay. Yes.
8 Q Okay. But fair to say, that doesn't -- that
9 doesn't change your answer or your perspective of
10 him? Is that fair?
11 A Yes.
12 Q Okay. So regard -- regardless of the apology
13 because I mean, he kind of apologized but not
14 really once and then said a whole bunch of more
15 things for the next few years. So would you --
16 you would -- you would agree with me that he
17 is -- he is not apologetic about what he's
18 saying?
19 A Yes.
20 Q Okay. And so just -- just to clarify, so -- so
21 for you, because of all those beliefs he has
22 expressed, you think he won't treat you as well
23 as he would anyone else because he lacks
24 self-control?
25 A Yes.
26 Q Okay. I see. So you think -- you think the
27 lack -- you think lack of self-control is -- is a
28 factor in all these things he's expressing?
29 A Again, I'm speculating, but I think so.
30 Q Help me understand that a little bit. Your --
31 your -- your -- your perspective on that,
32 that's -- help me understand that.
33 A So I'm speculating that if someone apologizes
34 and -- or sorry. What did you say? Like an
35 apology. I'm sorry -- an unapology. I'm sorry
36 for those I have offended and then keeps doing
37 the same thing, either that nonapology is
38 insincere, or -- or it was -- sorry -- that
39 apology must be insincere unless -- hold on.
40 That apology must have been insincere, or there
41 must have been some kind of lack of self-control
42 if he kept saying those things, which he knew
43 were likely to be offensive.
44 Q What if it's -- what if it's just that is what he
45 believes, and he thinks it's good to express what
46 he believes as a -- go ahead.
47 A Okay. So then that would mean that it's not a

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1 self-control thing. It's an insincere thing
2 about that initial nonapology.
3 Q Okay. Okay. Okay. You know, he's -- he's going
4 to say that he meant everything he said, and that
5 he -- and that he's -- and that he's given quite
6 a bit of thought to it and that, you know, it's
7 important to him. Does that surprise you that
8 that's what he would say about -- about his
9 comments?
10 A No.
11 Q Okay. Okay. Just to briefly go back to this --
12 this -- and I'm nearing the end. Just to briefly
13 go back to this bit about the tolerance thing,
14 the paradox of tolerance, fair to say you think
15 the District and -- and -- and I'll broaden it
16 out to society generally because you're not at
17 the district anymore. You live out in society
18 now. Fair to say you think society should
19 tolerate -- we're going to go back to this issue
20 whether or not these beliefs are really important
21 to you, but it sounds to me like they are. You
22 believe society should tolerate your belief that
23 someone can -- can change their gender in their
24 life? Is that fair that you believe society
25 should tolerate your belief that people can
26 change genders?
27 A I don't know if I have that belief. All I --
28 what's important to me is that I transitioned,
29 not what I believe about it. So I think --
30 again, I'm not talking about any other witnesses.
31 But for me, that's the important part is that I
32 transitioned, and that that's okay.
33 Q Yeah. No. And we've been through this, but
34 where -- where -- where -- where there seems to
35 be inconsistency to me, at least, that I'm trying
36 to sort out with you is -- is why then does it
37 matter what Mr. Neufeld's beliefs are and if he
38 criticizes that belief? If that belief is not
39 important to you, why does it matter to you if
40 Mr. Neufeld expresses a belief in opposition to
41 that belief?
42 A Because it's important to him, and it's also
43 important to the rest of the school community.
44 Q So then it's not actually a problem for you.
45 You're just worried about others?
46 A I am worried about others, but -- sorry. Can you
47 repeat that last question.

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Teacher C (for Complainants)
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1 Q So -- so in other words, it's -- it's -- it's not
 2 so much that this is a problem for you because --
 3 because this belief isn't really important to
 4 you. You just -- you are -- you are who you are,
 5 and this belief doesn't really matter. You
 6 don't -- fair to say you don't need this belief
 7 to be who you are; right? Is that fair?
 8 A Sorry. Which belief?
 9 Q The -- the -- the -- the -- the belief that
 10 people can switch their genders or change their
 11 gender.
 12 A I'd say the belief that people can transition is
 13 extremely important to me.
 14 Q Okay. Okay. Explain that for me.
 15 A Okay. So some trans people and some non-trans
 16 people, CIS people, would say I was always a
 17 woman, and some would say I used to be a man, and
 18 now I'm a woman. I don't think -- for me, that's
 19 not an extremely important distinction.
 20 Q Okay. Fair to say it's not the belief that
 21 matters? It's the -- it's the ability to do it
 22 that matters. In other words, fair to say it
 23 doesn't matter what those people believe or what
 24 Mr. Neufeld believes. What matters is that you
 25 are permitted to actually transition and that no
 26 one stops you from doing that. That's
 27 what's matters?
 28 A Yes. So at the beginning of your cross, you
 29 asked me that I transitioned as an adult; right?
 30 Q Yes.
 31 A Okay. So the reason I transitioned as an adult
 32 is because society writ large chose to not tell
 33 me that it was a possibility to transition. If I
 34 had known earlier and I had -- then I would have
 35 transitioned earlier. And the reason why Mr. --
 36 one of the reasons why the respondent's original
 37 post was bothersome to me was that he wanted to
 38 prevent students in the school district from
 39 learning about that possibility.
 40 Q But you would agree with me the reason he doesn't
 41 want students learning about it is because he
 42 believes that the ideas behind that possibility
 43 are wrong?
 44 A Yes.
 45 Q And you would agree with me that the reality is
 46 whether the idea of it is a good idea or a bad
 47 idea, the reality is is that it is possible

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1 for -- for people, older teenagers, adults,
2 usually adults but people, you would agree that
3 regardless of whether the idea is wrong or right
4 and regardless of whether or not the idea is
5 being criticized or not, it is occurring? People
6 are transitioning the way you have?

7 A Yes.

8 Q Do you think Mr. Neufeld -- well, I'll -- I'll --
9 do you recall the post in which he said something
10 along the lines as I got no issue with adults.
11 They can -- they can do their thing. They're
12 adults. That's fine. They -- they want to go
13 transition, it's okay. They're adults. Do you
14 recall him ever saying something like that?

15 A Not specifically, but I'm unsurprised that he
16 would say that.

17 Q You're unsurprised he would say that?

18 A Yes.

19 Q Okay. You would agree with me that he's -- you
20 know, his -- his focus is on the kids and what
21 the kids are being taught?

22 A Yes. So his focus is on preventing children from
23 transitioning for -- at -- at all until -- yes.

24 Q And you think that's bad because you think they
25 should be able to transition before they're
26 adults?

27 A I think it's bad to prevent children from
28 learning that transition is something that people
29 can do.

30 Q But -- but why? Why -- why isn't it just better
31 to -- to let them discover it when they're -- you
32 know, when they're adults, when they're 18 like
33 any other number of things?

34 A Hold on. Could you provide an example of
35 something we deliberately withhold from people
36 until they turn 18? Because we're talking about
37 knowledge; right?

38 Q Right. Well --

39 A We're not talking about access to
40 gender-affirming care such as hormones or even
41 being allowed to change their name at school.
42 Like, I know that's an issue right now in
43 New Brunswick.

44 Q Right. Okay. So we're -- we're talking about
45 the ideas, not the actions. Like, we don't let
46 kids get tattoos and -- and -- and, you know,
47 drink alcohol and smoke cigarettes and blah,

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1 blah, blah, blah. But -- but you're not talking
2 about that. You're talking about the knowledge?
3 You're talking about the ideas?

4 A Yes.

5 Q Okay. So you -- you think -- you think it's good
6 that -- that -- that students, children in the
7 schools are thought about the idea that they
8 can -- can change their genders?

9 A Only if it's done at an age-appropriate level.

10 Q Okay. And -- and where -- where would you draw
11 the line on that?

12 CNSL A. WADDELL: Sorry. This -- again, this is
13 because of time, but I don't know what the
14 relevance is of the witness's view about
15 age-appropriate materials. If Mr. Kitchen can
16 articulate it for me, I'm happy to resile from my
17 objection, but I -- I don't know that that's
18 relevant to the issues in dispute here.

19 CNSL J. KITCHEN: It is relevant what the teacher
20 witnesses -- this witness was a teacher. It is
21 relevant what the teacher witnesses think about
22 the teaching of the SOGI 123 ideas to students
23 since that is the source of what Mr. Neufeld's
24 criticizing in the majority of his comments. So
25 not only is it relevant, but it sort of is at the
26 core of the relevance in this case because that's
27 what he's criticizing. So what the teachers
28 believe about it and how they teach it and when
29 they teach it and where they teach it is highly
30 relevant.

31 I -- I -- you know, I don't think it's --
32 and I -- there's -- there's a good faith
33 misunderstanding between the two of us about
34 what's relevant. You don't think it is because
35 you got your theory of the case. It's obvious to
36 me it is because I got my theory of the case. I
37 don't think I can persuade you, and I don't think
38 you can persuade me. We're just coming from two
39 different planes of existence on this.

40 THE CHAIR: Are we on track -- do you think,
41 Mr. Kitchen, if -- if you're going to -- asking
42 these questions, are we on track to finish by
43 lunch?

44 CNSL J. KITCHEN: I don't -- maybe. I wasn't going to
45 spend much time on this. I -- I --

46 THE CHAIR: All right. If it's not going to take up a
47 lot of time, I'm content to have you ask the

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1 questions, but I -- I would really like us to be
 2 wrapped by lunch, so I don't want us to branch
 3 off into -- any deeper into these subject areas,
 4 then we may have to deal with relevance. But if
 5 it's not going to take that much time, then I
 6 think you can ask your questions, and we'll try
 7 and get this wrapped.

8 CNSL A. WADDELL: That sounds good to me.

9 CNSL J. KITCHEN:

10 Q Teacher C, we don't need to get super technical
 11 about this, but where would -- where would --
 12 personally speaking for yourself, where would you
 13 draw the line? What's -- what's the appropriate
 14 age?

15 A There is no appropriate age. The appropriate
 16 age -- the appropriate comes into factors how you
 17 discuss these things. So yesterday, I testified
 18 that I was a teacher in Abbotsford while I was in
 19 the process of transitioning, so this would have
 20 been 2010 to 2018. Well, once I was in a
 21 kindergarten classroom, and a boy asked me why --
 22 why do you look like a girl but your voice is
 23 like that? Because I hadn't had voice surgery.

24 Q Okay.

25 A Really great question. So I chose to answer it
 26 in an age-appropriate way, and I said sometimes
 27 girls have boy voices, and that's all I said.

28 Q Okay.

29 A I didn't say anything about -- about well, let's
 30 talk about my gender identity, so I didn't want
 31 to -- I didn't talk about -- I didn't want to use
 32 big words. I didn't talk about the fact that I
 33 had transitioned. I just opened his mind a
 34 little bit, so that's an example of how we can
 35 make things age-appropriate.

36 Q But you would agree you opened his mind to the
 37 idea that -- that -- that a boy can become a girl
 38 or a girl can become a boy; correct?

39 A No, no. I think I opened his idea that girls
 40 come in different shapes, sizes, and -- so I -- I
 41 don't even know if that boy -- what he understood
 42 from that.

43 Q But if that was the case, wouldn't you have said
 44 instead sometimes girls have deep voices?

45 A Again, this was kindergarten, so I thought it was
 46 simpler to say boy voices because at that age,
 47 they care about -- they strongly care about --

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1 because they're taught by society about how
2 things that are gender markers are extremely
3 important because they're -- at that age, they're
4 in the process of trying to categorize
5 everything, so they will have all these mental
6 categories saying anyone with a beard is a man;
7 anyone who is bald is a man; anyone who wears a
8 dress is a woman. At that age, they have those
9 characteristics. So if -- I might -- if it had
10 been bald instead, I might have said sometimes
11 women are bald.

12 Q Right. Isn't that same as saying sometimes women
13 have deep voices?

14 A Sure. I just used a word I thought he would
15 understand.

16 Q Because you wanted to open his mind to the idea
17 that it is possible for people to change their
18 genders? Isn't that fair?

19 A No. Just open his mind to the idea that gender
20 is not as constrictive as he's been taught by
21 society.

22 Q You -- you -- you believe that -- that the -- the
23 binary gender of male and female, you believe
24 that is not the way the world actually is.
25 That's just the way our society has said the
26 world is?

27 A Yes.

28 Q And fair to say, you believe in reality? Like,
29 in the real world, the reality is -- reality is
30 that -- that -- that male and female binary thing
31 is wrong, and -- and actually what's really going
32 on is that there's multiple genders, and people
33 can identify as different ones?

34 A Can you repeat that question.

35 Q Isn't it fair to say that you believe that --
36 that -- that -- that -- like, in reality, you
37 believe -- you believe the reality of the world
38 is that there are multiple genders and that
39 people can identify with a different one than
40 they used to?

41 A Yes.

42 Q Okay. And you believe that it's appropriate for
43 teachers in the Chilliwack School Division to
44 teach that belief to children not just as a
45 theory but as fact?

46 A I don't know. It is -- it is a fact that -- that
47 people transition and have throughout history.

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1 The terminology changes over millennia.
2 Q Yes. But it is it a fact that they -- that when
3 they do that, they truly do in reality become the
4 gender that they now identify as?
5 A I don't know. This is maybe too personal, but if
6 I lived in a different society, I might have a
7 different word to describe myself other than
8 trans woman. But I grew up in western society.
9 But if I was from a -- Thailand, for example, I
10 might use a different word because that's the
11 cultural word. So these -- these -- it's hard to
12 pick out what's cultural, what's religious,
13 what's from society, et cetera.
14 Q I think I tend to agree with you. At the end of
15 the day, you think Mr. Neufeld is going after
16 trans people, not trans ideas, and that's why
17 you're upset? Is that fair?
18 A Yes.
19 Q And if he says or if I say to you what he's
20 really doing is criticizing trans ideas, you
21 would say, no, I think you guys are wrong?
22 A I think he 's doing both. I don't think he can
23 separate it. And I think it's very difficult for
24 a nonexpert to separate it. Just like --
25 Q What if -- what if -- what if he says it's really
26 easy for him to separate it?
27 A I'm skeptical. I think it's difficult for me to
28 separate it, and I have actual lived experience
29 transitioning.
30 Q No. I would agree. I think it is difficult for
31 you to separate it. You would agree with me that
32 people who are atheist don't tend to just run
33 around mistreating every person who's -- who has
34 religious beliefs? Would you agree with that?
35 A In general, yes.
36 Q You would agree with me that -- that the
37 religious teachers in the District -- because I
38 know you don't know all the personal religious
39 beliefs of all the teachers you worked with, but
40 you didn't experience -- you did -- you didn't
41 observe people being -- teachers being mistreated
42 on the basis of their real or perceived religious
43 beliefs when you worked at the District; right?
44 A Right.
45 Q Right. And isn't it fair to say that there are
46 plenty of people who worked at the District,
47 either as teachers or as administration, who

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1 believed different things than all the Jews,
2 Muslims, Christians, and Sikhs that were teachers
3 there but still managed to treat them with --
4 with decency and respect; right?

5 A Yes.

6 Q You would agree that you don't need to believe
7 the same as someone to treat them -- to treat
8 them with human dignity; right?

9 A Yes.

10 Q In fact, you would agree with me that you don't
11 have to hold the same Christian beliefs as
12 Mr. Neufeld in order to treat him with -- with
13 decency and dignity and respect; right?

14 A Yes. But I would continue to say that if I made
15 an effort -- if I made a concerted effort over
16 years to -- to attack his beliefs and then
17 claimed I was going to treat him exactly the same
18 way, I think he would be right to be skeptical of
19 my claim that, oh. I believe these things, but
20 promise. I'm going to trust you -- I'm going to
21 treat you exactly the same as if I -- if I don't
22 have these strong beliefs against your beliefs
23 that I'm going to keep doing after -- even after
24 getting consequences from them.

25 Q So he should be wary of you then in that
26 scenario, wary that you might mistreat him
27 because you have -- you have criticized his
28 beliefs?

29 A If I have -- if I have kept criticizing his
30 beliefs after he's told me, please, don't do
31 that -- or I have been told -- sorry. Please do
32 do that. That bothers me. My beliefs aren't a
33 choice. He might say that. Then yes, he would
34 be right to be suspicious if I was willing to do
35 that up to the point of -- like, to the point
36 of -- I -- I believe he got censored. He faced
37 consequences, right, for repeatedly doing that,
38 so I think he would be right to be suspicious if
39 I insisted on denigrating his beliefs and saying
40 don't worry. I'm going to treat you the same way
41 no matter what.

42 Q Right. But you would agree with me the situation
43 you just described is more of a face-to-face kind
44 of situation where the people actually know each
45 other; isn't that right?

46 A Yes. But if I were making those public and I was
47 also in a position of authority, some -- some

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1 kind of position of authority, I don't know.
2 Let's -- let's say I'm not his direct boss but a
3 boss at his -- at his work, for example, he's --
4 and then he finds out thirdhand that I've been
5 saying these things, and I'm unapologetic about
6 it, I think he would be right to be suspicious.
7 Q You -- you know who Richard Dawkins is, hey,
8 famous atheist scientist?
9 A I -- I'm familiar -- familiar, yes.
10 Q Loves to rag on Christianity.
11 A Yes.
12 Q Do you think -- do you think -- do you think
13 Christian student should be -- should be wary of
14 him and taking classes from him because, you
15 know, he's spent his whole career ragging on
16 Christianity?
17 A I've only read some of his biology books and some
18 of his books that he chose to start a career as
19 an outspoken atheist 15, 20 years ago. Yeah, I
20 think they have a right to be --
21 Q You don't think Christians should be -- should be
22 wary of -- of him mistreating them?
23 A I don't know if -- well, why not? Yes. Yes, I
24 think they -- they might want to know why someone
25 can write a book called *The God Delusion* and then
26 also treat them with respect. So I would --
27 Q Well, what about diversity and tolerance; right?
28 Like, I mean, I -- you know, I would have thought
29 Dawkins -- Dawkins actually supports diversity
30 and tolerance. You know, I -- because I mean,
31 he -- as far as he's concerned, he should have
32 the right to -- to -- to say God is a delusion.
33 A He does, yes.
34 Q He does have that right, and he exercises that
35 right. So -- but where does -- where does the
36 tolerance and inclusion and diversity fit into
37 this; right? Like -- like -- like, shouldn't
38 the -- shouldn't the Christians not prejudge you
39 and assume that you're going to mistreat them
40 because you have -- you have criticized their
41 belief in the gender binary? Like, wouldn't --
42 wouldn't you find it, like, you know, uninclusive
43 and intolerant of them if they assumed you were
44 going to mistreat them, so they didn't take a
45 class with you?
46 A If I had that -- that long history of speaking
47 out directly and despite facing criticism, then

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1 yes, I don't think it would be unreasonable for
2 them to assume that I couldn't separate the --
3 that.
4 Q Okay. Fair enough.
5 THE CHAIR: I'm just noting the time, Mr. Kitchen.
6 Are we wrapping up?
7 CNSL J. KITCHEN: I'm nearing there. Look, Chair, I'm
8 in your hands. If you'd would -- if you'd rather
9 we take the lunch break now and I come back, or
10 if you -- if you would rather have me finish now.
11 THE CHAIR: Well, what do you mean when you say you're
12 nearing? Are we a few minutes away? Do you have
13 a lot more questions?
14 CNSL J. KITCHEN: Yeah. I have two or three more.
15 THE CHAIR: Okay. If it's just two or three, I think
16 we should continue, but I -- but I really don't
17 want to go too far past. Are you okay to -- to
18 continue a little bit longer, Teacher C, if we're
19 able to finish this? Okay.
20 A Yes.
21 THE CHAIR: All right. And -- and complainant's
22 counsel, okay to continue for two or three more
23 questions? Okay. Go ahead then.
24 CNSL J. KITCHEN:
25 Q You said you wanted to pressure the District to
26 do something or do things --
27 A Yes.
28 Q -- by posting your resignation letter?
29 A Yes.
30 Q Now you talked about how you would have -- you
31 would have liked them to do more -- you know,
32 more things. They did the sidewalk thing and
33 stuff. But you would have -- you would have
34 liked them to have taken more sort of proactive
35 steps to -- to -- to celebrate and welcome in
36 the -- the trans people. Do you recall saying
37 that?
38 A Yes. And also to correct the misinformation
39 about -- about the SOGI curriculum and the SOGI
40 123 learning resources.
41 Q Okay. That's what I was getting at.
42 A Okay.
43 Q So what's the -- what's the misinformation about
44 the SOGI 123 resources that you're talking about?
45 A The misinformation was that some people were
46 saying that it was all the same as learning
47 resources and curriculum, and they weren't making

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1 that distinction.
2 Q Okay.
3 A Okay. So that's -- that's what I think is
4 important because curriculum is mandatory.
5 Q Okay.
6 A And provincially authorized. And a -- something
7 a resource is -- is not mandatory.
8 Q You would agree with me that Mr. Neufeld's not
9 the only one who makes that -- makes that --
10 or -- or gets those confused at times?
11 A No, definitely.
12 Q Yeah.
13 A And I'm sure the other witnesses from the
14 complainants as well might have missed out on the
15 distinction. I don't know. But yes, it's --
16 most people have been doing that.
17 Q Going to your comment about self-control, you
18 said it would have been more convenient if
19 Mr. Neufeld's comments didn't bother me.
20 Couldn't you just exercise self-control to stop
21 letting his comments bother you?
22 A I was talking about self-control about the
23 ability to -- to actually do something, not the
24 ability to stop having a reaction or feeling
25 emotional about something. I think exercising
26 self-control is a lot harder when it comes to
27 "I'm not going to think that". Just like it
28 would be unreasonable for me to say his
29 self-control should have been to stop having his
30 beliefs or stop -- stop thinking about that.
31 That would be unreasonable if I thought that was
32 a level of self-control that he could exercise.
33 Q But it is reasonable to tell him to have the
34 self-control to stop publicly expressing his
35 beliefs?
36 A Yes.
37 Q But you would say it is unreasonable for you to
38 be told to stop expressing your beliefs?
39 A Sorry. You got cut out in the audio. Could you
40 restate that.
41 Q Yeah. Yeah, yeah, yeah. But wouldn't you say it
42 is unreasonable for you to be told to stop
43 expressing your beliefs about gender?
44 A In -- in general, yes.
45 Q And is it fair to say you're not concerned about
46 the -- wouldn't you agree on the face of it,
47 there's -- there's what looks like something of a

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1 double standard?

2 A So a large part of that double standard comes
3 from the position of authority thing. One
4 individual teacher speaking is less significant
5 than a school trustee.

6 Q Well, let's talk about trustees. You're familiar
7 with Teri Westerby?

8 A Yes.

9 CNSL A. WADDELL: Sorry. Before we talk about
10 trustees, I -- I -- I'm just going to object
11 here. I've got eight questions. I'm going to
12 presume though that I think my friend's first
13 three were breakdowns of what was really one
14 question, but we're already -- we're already well
15 over his two to three question and answer, and
16 now he's --

17 CNSL J. KITCHEN: I didn't -- I didn't mean individual
18 questions. I meant -- I meant lines of
19 questioning.

20 THE CHAIR: Okay. Well, sorry. Then I -- then that's
21 my misunderstanding. I thought we were having
22 two or three more questions and that would just
23 take a few minutes, but we are kind of now
24 branching into other lines.

25 CNSL J. KITCHEN: Okay. Look. I know you like to
26 take breaks at -- at -- at the time, and I can
27 appreciate that. I suggest we just -- we take
28 the lunch, and I come back, and I'll clean it up
29 as fast as I can.

30 THE CHAIR: Okay. I think we -- unless there's any
31 objection to proceeding that way, I think we
32 probably should take the break. But -- but
33 really, Mr. Kitchen, I -- I -- from what you're
34 saying, we're, like, a few minutes away. We have
35 one or two more lines of questioning, and then
36 we're going to be almost done, and then we can
37 move on to the respondent's case? Is that -- am
38 I understanding right?

39 CNSL J. KITCHEN: Yeah. I don't like to put minutes
40 on it. I don't -- you know, I didn't mean to
41 indicate that I thought we were a few minutes
42 away. I just -- we're -- we're close, and I'm --
43 I'm nearly done. I got one -- not even -- not
44 even a whole -- well, I have about two questions
45 in front of me that I -- that I -- that I still
46 need to try -- and I -- by that, I mean lines of
47 questioning that I need to -- I need to try and

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1 cover.

2 THE CHAIR: Okay.

3 CNSL J. KITCHEN: That's -- compared to what I've been
4 through, I would say I'm 95 percent plus through
5 my lines of questioning.

6 THE CHAIR: All right. Well, maybe I'll just -- I'll
7 check in with Teacher C. Would -- would you like
8 us to take the lunch break now, come back, and
9 finish off, or are you really hoping that we'll
10 just finish right now?

11 A I don't have a preference. I will go along with
12 whatever everyone else wants.

13 THE CHAIR: Okay. Complainant's counsel, do you have
14 a preference?

15 CNSL A. WADDELL: Our preference is a relevant
16 cross-examination that's much shorter, but I'll
17 defer to what my friend's needs are, and we can
18 return, and yeah. I've -- I've been not
19 objecting so that we could wrap up, but I'm
20 happy -- if we want to take the lunch break
21 and -- and wrap up after, that's fine.

22 THE CHAIR: All right. Let's take a lunch break.
23 Let's take one hour, and then we'll come back,
24 wrap up, and we'll move right into the issues
25 about the respondent's -- the objection to the
26 respondent's witnesses. So for this longer
27 break, I'm going to remove everyone from the
28 meeting, and then I'll ask you to please come
29 back at 1:40. Thank you.

30
31 (WITNESS STOOD DOWN)

32
33 (PROCEEDINGS ADJOURNED FOR NOON RECESS) [12:38:29]
34 (PROCEEDINGS RECONVENED) [1:40:31]
35

36 TEACHER C, a witness,
37 recalled.
38

39 THE CHAIR: All right. Hi, everyone. Welcome back.
40 And I'm just going to remove Silvia Dyck from the
41 meeting until it's her time to testify.

42 CNSL J. KITCHEN: Yes, we know.

43 THE CHAIR: We're back to continue with Teacher C's
44 evidence. And so I know I told -- there's one
45 member of the public who I told to come back this
46 afternoon when the teachers were done, but
47 we're -- but we're actually not done with the

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Teacher C (for Complainants)

Cross-exam by Cnsl J. Kitchen

1 teachers yet, so I'm going to have to remove you
 2 again, and you could try again around 3 o'clock,
 3 and we'll let you in or if you hear from someone
 4 else that the teachers are done, you can -- you
 5 can come back in. So I'm going to remove you
 6 now. Oh, sorry.

7 All right. Teacher C, are you ready to
 8 continue?

9 A I'm ready.

10 THE CHAIR: Okay. Go ahead -- go ahead, Mr. Kitchen.

11 CNSL J. KITCHEN: Thank you.

12

13 CROSS-EXAMINATION BY CNSL J. KITCHEN, continuing:

14

15 Q Yesterday, you mentioned the thing the student
 16 had said that you couldn't remember but that it
 17 was, you know, somehow directed at you and -- and
 18 somehow not good. And then you said something
 19 about the -- the -- the school administration
 20 compelling the student to apologize to you.

21 A I don't actually know what happened in those
 22 conversations.

23 Q Okay. But it seems that way to you?

24 A [Indiscernible]. I'm speculating because I got
 25 two -- I got an in-person apology and a letter,
 26 so I don't -- maybe the administrators asked them
 27 to. So I shouldn't have said that they forced
 28 them to. That's not accurate.

29 Q Right. Okay. Okay. No. And I -- I didn't
 30 think you had direct knowledge of that. That was
 31 just -- that was your impression?

32 A Yes.

33 Q But you said it as if you thought that if that
 34 was the case, that it was bad that the District
 35 did that with the student. Or did I misperceive
 36 that?

37 A I don't think that's what I meant.

38 Q Okay.

39 A If I said that.

40 Q If -- and again, I'm not going to hold you to
 41 this or anything like that, but just -- that's
 42 your impression, and there's probably some --
 43 some value in that. That sort of thing happens.
 44 If that's what happened and -- and -- and the
 45 administration had, you know, pressured or
 46 strongly encouraged or requested that the student
 47 apologize or, you know, "voluntold" the student

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Teacher C (for Complainants)
Cross-exam by Cnsl J. Kitchen

1 to apologize, let's say, do you think it was good
2 that the District did that?
3 A I think it would depend on the nature of that
4 conversation.
5 Q Of the conversation between the -- the student
6 and the -- and the -- and the --
7 A Administrator.
8 Q Okay. No, no. I just mean as a general -- as a
9 general concept though. A student comes in --
10 and I know you're not a teacher anymore, but when
11 you were, a student comes in, you know, says
12 something whether it's to you or to his buddies,
13 and he's snickering, and he hopes you didn't hear
14 it or whatever, says something that's --
15 that's -- that's, you know, mean to you, and
16 it's -- or mean about you, and it's got something
17 to do with the fact that you're trans, do you
18 think -- just -- just generally speaking, it's
19 good if the District, you know, tells the
20 student, like, look. You need to apologize to
21 the teacher for that?
22 A In general, yes.
23 Q Okay. In this case, if the District had, you
24 know, encouraged or -- or required or requested
25 the student to apologize, were you pleased about
26 that in this case?
27 A Yes.
28 Q Okay. Fair to say that -- that helped you to
29 feel, you know, welcomed and valued by the
30 District?
31 A Yes.
32 Q Mr. -- I'm going to -- well, we'll just keep this
33 simple. I'll put it to you that Mr. Neufeld said
34 at one point that he knows people who have
35 transitioned or tried to transition and have come
36 to regret it. Okay. Do you have any reason to
37 disagree with me that he said that at some point
38 in one of the posts that are at issue in this
39 case?
40 A I don't -- I don't disagree. I don't recall
41 those specifically, but yes.
42 Q Okay. So all I want to know is do you regard
43 that -- and again, your personal perspective, do
44 you record that as discriminatory speech on his
45 part?
46 A Not in it of itself.
47 Q Okay. Do you think he's wrong? Like, just

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Teacher C (for Complainants)
 Cross-exam by Cnsl J. Kitchen

1 factually wrong when he says that there are
 2 people who regret it and then de-transition?
 3 A Regret transitioning?
 4 Q Yeah.
 5 A No.
 6 Q Okay. You say -- or you have said that
 7 Mr. Neufeld should not be able to publicly
 8 express his beliefs about gender, okay, that --
 9 you know, because he believes in the gender
 10 binary and that you can't actually switch and all
 11 that that we've talked about, you said that he
 12 shouldn't be able to express that belief publicly
 13 as a trustee. But what if -- what if the trustee
 14 who was expressing that belief was a
 15 de-transitioner? Would it then be acceptable to
 16 you personally?
 17 A No.
 18 Q Almost done. Just want to -- just want to go
 19 back to this child abuse thing. So you use the
 20 word "knowledge," and I'm going to try to use
 21 that word so we can be as much on the same page
 22 as possible. Fair to say that you understand
 23 Mr. Neufeld to be calling it child abuse to teach
 24 the knowledge to kids that they can change or
 25 switch their genders? Fair to say that --
 26 that -- that -- you would agree with me that
 27 that's what he's saying? He's saying, look, I
 28 think it's child abuse to teach the knowledge --
 29 to use your words -- that they can switch or
 30 change genders. Would you agree with me that
 31 that's -- that's a fair summary of what he's
 32 saying?
 33 A Yes.
 34 Q Okay. And you would agree with me that at least
 35 one of the reasons he's saying that is because he
 36 believes that knowledge is false?
 37 A Yes.
 38 Q There are Christian schools in B.C., all
 39 throughout Canada and the western world, but to
 40 B.C., where it is taught as knowledge -- to use
 41 your words -- or as fact that God made people
 42 male and female and that people are going to burn
 43 in hell if they don't accept Jesus as their
 44 saviour. If Richard Dawkins says, as he's likely
 45 to do, that it's child abuse to teach kids that
 46 in school, isn't that permissible for
 47 Richard Dawkins to say that, or is that

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Teacher C (for Complainants)

Cross-exam by Cnsl J. Kitchen

1 impermissible because it's discrimination towards
2 Christians?
3 A I would say it's impermissible.
4 Q Okay.
5 A I would also add that neither Mr. Dawkins nor
6 Barry -- nor Trustee Neufeld are experts on child
7 abuse any more than I am.
8 Q Well, that's true. You would agree with me that
9 people comment on a whole number of things that
10 they're not experts on in public, and that we
11 generally tolerate most of that because of free
12 expression?
13 A Yes.
14 Q I mean, people love to talk about politics but
15 very few people are experts on politics. Isn't
16 that fair?
17 A Yes.
18 Q Yeah. And you would agree with me that
19 there's -- there's value to -- to all members of
20 society to allowing as much of that expression as
21 we can?
22 A Yes.
23 Q You would agree with me that the -- that the
24 trans community benefits from being able to -- to
25 the degree that they're able to, to the degree
26 you believe they're able to, you would agree that
27 the trans community benefits from being able to
28 express their beliefs about who they are and
29 about their place in the world?
30 A Yes. But as I've pointed out earlier, there is
31 no, like, singular belief from the trans
32 community that everyone would agree upon just
33 like -- to use what we were talking about,
34 there's no singular Christian belief about where
35 they agree on everything, so yes.
36 Q You would agree with me though that it -- it is
37 fair on sort of, like, a really basic generic
38 general level to say that there's -- you know,
39 there's some general beliefs that queer people
40 share in common; there's some general beliefs
41 that Christians share in common; there's some
42 general beliefs that vegans share in common,
43 et cetera? You -- you would agree with that?
44 A Yes.
45 CNSL J. KITCHEN: Okay. Sorry. I'm just checking my
46 notes to make sure. No. Those are my -- those
47 are my questions. Thank you, Teacher C. I

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Teacher C (for Complainants)

Re-exam by Cnsl A. Tom

1 appreciate it.

2 THE CHAIR: Thank you.

3 A You're welcome.

4 THE CHAIR: Ms. Tom, is there anything arising? Do
5 you need a few minutes?

6 CNSL A. TOM: I don't need a few minutes. I do just
7 have one followup question for Teacher C.

8 THE CHAIR: Go ahead.

9

10 RE-EXAMINATION BY CNSL A. TOM:

11 Q Teacher C, my friend asked you earlier about
12 whether you had considered whether the Union was
13 just telling you that you weren't permitted to
14 criticize Mr. Neufeld because they didn't want
15 anything to interfere with the humanity rights
16 complaint. Would you have any reason to doubt
17 the Union when it tells you that you have certain
18 duties in your employment?

19 A No.

20 CNSL A. TOM: Thanks. That's the only question I had.

21 THE CHAIR: Thank you, Teacher C. Those are all of
22 the questions we have for you. I really want to
23 thank you for taking the time and energy. I know
24 you've been on hold for several days and missing
25 work, so I appreciate you doing that in order to
26 give evidence in this proceeding. Your role now
27 is done, and you're free to disconnect. I don't
28 expect you'll be talking to any of the witnesses
29 testifying after you, but if you happen to find
30 them, don't -- don't tell them anything about the
31 proceeding; okay?

32 A Okay.

33 THE CHAIR: Thank you so much.

34 A Thank you. Have a good day, everyone.

35 THE CHAIR: Bye.

36

37 (WITNESS EXCUSED)

38 THE CHAIR: All right. So that closes the
39 complainant's case; is that right?

40 CNSL J. KITCHEN: That's correct.

41 THE CHAIR: Okay. Then what we're going to deal with
42 next is the complainant's objections to three
43 witnesses, Faith -- sorry -- I got to find my
44 list of names. Kellie Lynn Pirie, Faith Groleau,
45 and the new witness, Scott Gailor. We have the
46 respondent's will-say statements for these
47 witnesses, and so I think it makes sense for the

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Submissions by Cnsl A. Waddell

1 complainants to go first. It's their objection.
2 And then Mr. Kitchen can respond, and then
3 Ms. Waddell or the complainants can reply on
4 their objection, and then we'll make a decision;
5 okay? So go ahead, Ms. Waddell, when you're
6 ready or complainant's counsel, whoever is going
7 to talk.
8

9 SUBMISSIONS BY CNSL A. WADDELL:

10
11 CNSL A. WADDELL: Thanks. So by notice of will-say
12 statement provided yesterday, the respondent
13 advised that he sought to call new evidence from
14 new witnesses in this matter, Mr. Scott Gailor.
15 Mr. Gailor is identified in the will-say
16 statement as a gay man from Vancouver Island and
17 member of an organization or an alliance that is
18 inclusive of LGB individuals but which advocates
19 the view that lesbian, gay, and bisexual people
20 are facing a new kind of homophobia as a result
21 of what it calls the medical scandal or
22 gender-affirming care -- of gender-affirming
23 care. Now the respondent --

24 CNSL J. KITCHEN: I'm -- I'm -- I'm sorry to
25 interrupt. Are you reading from my will-say?

26 CNSL A. WADDELL: No. I'm about to.

27 CNSL J. KITCHEN: Okay. So what are you reading from?

28 CNSL A. WADDELL: So these are my notes. So
29 Mr. Gailor is identified in your will-say
30 statement as a gay man from Vancouver Island and
31 a member of an organization -- a particular
32 organization. Not in your will-say statement is
33 what that organization advocates for, which is
34 that it is an LGB group that, according to its
35 website, espouses the view that lesbian, gay, and
36 bisexual people are facing a new kind of
37 homophobia as a result of what it calls the
38 medical scandal of gender-affirming care. The
39 respondent seeks to call Mr. Gailor to give
40 evidence that --

41 CNSL J. KITCHEN: Hold on. Hold on. It's my position
42 that if you're going to read from a website, you
43 need to put it into the record, and -- and we
44 don't -- we don't need to -- we're not going to
45 put it in as an exhibit unless it's on consent,
46 of course, because we don't have a witness to
47 speak to it, but it should be in -- in the record

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Submissions by Cnsl A. Waddell

1 marked for identification so that I can see what
2 you're reading from so that I can read something
3 else or comment on it or confirm that what you're
4 reading is accurate. I don't think it's -- it's
5 permissible or acceptable for you to read into
6 the record from a website that we don't even know
7 exists. I mean, I'm -- I'm presuming it does,
8 obviously, but I don't even have it in front of
9 me. I mean, send it to me, and we'll mark it --
10 we'll mark it for identification, and then we --
11 and, you know, we're -- we're not having counsel
12 read evidence into the record.

13 CNSL A. WADDELL: Look. If you want to strenuously
14 object to what is publicly available on the
15 website for the organization that you identified
16 in this witness's will-say statement, you have at
17 her. I'd like to finish my argument. If the --
18 the Tribunal asks me to provide you with the URL
19 for that website for the organization, which you
20 must be aware of because you put it in your
21 will-say statement, I'll be happy to do that
22 after, but I'm going to finish my -- my -- my
23 submissions.

24 CNSL J. KITCHEN: Well, I -- I -- I want a ruling from
25 the Tribunal. You know, I don't care which way
26 this goes, Chair. I just want to hear from you
27 that we -- we -- we have some leeway with reading
28 evidence into the record because if so, then
29 obviously, that's going to apply, you know,
30 equally to both parties, and I'm actually okay
31 with that. I just want to make sure that we're
32 applying the same standard here that we -- we are
33 being intentionally lax with that.

34 THE CHAIR: All right. Well, this is my ruling.
35 Ms. Waddell can finish her objection. If you
36 have questions about the source of any of her
37 information or need time to go and review it
38 yourself and determine whether you dispute it,
39 then I'm happy to give you the time to do that,
40 and I would really only want to spend hearing
41 time if there's some reasonable dispute about
42 what she's -- she's representing. I mean, this
43 isn't evidence. It's not -- I'm not weighing
44 it -- we're not weighing it to make decisions,
45 but she's making her submissions. And if you
46 need time after she's done to kind of follow up
47 on some of the things she's talked about, I'm

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Submissions by Cnsl A. Waddell

1 happy to give it to you, but I'm not going to
2 interrupt her submissions to be looking for the
3 website. I think it's fine that she mentions it.
4 Okay.

5 CNSL J. KITCHEN: So that's fine. That's fine. I'll
6 take that to mean that if I need to -- to read a
7 little bit from something to get it into the
8 record, then that's fine.

9 THE CHAIR: Thank you. Go ahead, Mr. -- Ms. Waddell.

10 CNSL A. WADDELL: So the respondent seeks to call
11 Mr. Gailor to give evidence first that queer
12 activism upholds the social construct of gender
13 to not just be equal to but greater than that a
14 biological sex for any heterosexual can itself
15 claim that they are gay or lesbian and that he
16 regards as antigay, that so-called inclusive
17 language provision has erased what we know as
18 homosexuality and frames it as a general
19 preference, or at worse, trans phobic, that the
20 affirmation model is a type of gay conversion
21 therapy, and that queer ideology, simultaneously
22 called gender ideology, as -- is a political or
23 faith-based system, that in the individual's
24 concerns about gender nonconforming views,
25 erasure of women's sex based rights and
26 homosexual erasure. He has been shunned and
27 targeted personally, and that he believes that
28 prohibiting or punishing publicly-elected
29 officials from criticizing an alleged type of
30 medical gay conversion therapy on same sex
31 attracted youth to be a step back for the rights
32 of LGBT people.

33 Now Mr. Gailor has no connection to public
34 education or community of Chilliwack. He is not
35 a member of the class, and he is not an expert
36 nor do we understand the respondent to be
37 proposing to call him as such. And for his
38 evidence, we oppose tendering him at all on three
39 bases. First, that his addition as a witness on
40 the second to last day of the complainant's case
41 was provided well outside of the Tribunal's
42 timelines. His evidence is not responsive to
43 something that wouldn't have expected that arose
44 in the course of the complainant's case. So that
45 is, I'll call it, the procedural objection.
46 Second, Mr. Gailor's evidence is wholly
47 irrelevant to the issues this Tribunal must

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Submissions by Cnsl A. Waddell

1 decide; and third, with the exception of the
2 composed evidence respecting his personal
3 experience of being shunned, which we say is
4 irrelevant, the rest of his evidence is clearly
5 in the nature of opinion, which is inappropriate
6 for a lay witness to give in -- before this
7 hearing. So that -- that is my nutshell summary
8 of the important pieces that we know about
9 Mr. Gailor.

10 Before this hearing in his witness
11 disclosure of October 4th, the respondent also
12 proposed to tender evidence from two individuals,
13 who in our respectful submission, appear to have
14 similarly no relevant evidence to give in this
15 proceeding. The first of these individuals is
16 Faith Groleau. Ms. Groleau is being tendered to
17 give evidence about her experience transitioning
18 and then more recently de-transitioning and to
19 give evidence about the effect that the
20 transgender movement and most of the terms used
21 in the -- the will-say statement has not been
22 accepting of her de-transition. Ms. Groleau is
23 not a member of the class, is not a resident of
24 Chilliwack, or to our knowledge, resident of
25 B.C., nor is she a teacher or a student in the
26 public education system tied to this case. Her
27 story, while, of course, important to her, and
28 perhaps to the respondent for some reason is
29 irrelevant to the legal issues the Tribunal has
30 to decide, and we object to her evidence solely
31 on the basis of relevance.

32 The second of the two witnesses that were
33 identified on October 4th to whom we object is
34 Kellie Lynn Pirie. Ms. Pirie, like Ms. Groleau,
35 is someone who the respondent is tendering to
36 give evidence about her experience transitioning
37 and then de-transitioning. The will-say provided
38 her also indicates that she'll talk about her
39 experience of discrimination in the healthcare
40 system. And we also take it from the will-say
41 statement that the respondent intends that she
42 will give evidence about her views of whether the
43 respondent's expressions are likely to expose the
44 class to detestation or vilification. Like
45 Ms. Groleau, we will object to Ms. Pirie's
46 evidence in its entirety on the basis that it's
47 irrelevant to the issues that the Tribunal must

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Submissions by Cnsl A. Waddell

1 decide. And -- and I will say that in opposing
2 their testimony, we don't mean to diminish the
3 importance of their own lived experience but
4 rather their personal experience, views, and
5 opinions are irrelevant to the issues in this
6 case.

7 So what I'm going to do in terms of my
8 submissions even though it is -- it may seem out
9 of order, I'm going to first just review some of
10 the procedural history around disclosure of
11 information regarding witnesses because that is
12 relevant to our argument with respect to
13 Mr. Gailor on -- on a procedural basis. I am
14 then going to provide you with our argument --
15 our procedural argument, which is respecting
16 Mr. Gailor alone. Then, I will talk about
17 relevance, which is our objection to all three
18 witnesses, and then very briefly at the end, I
19 will explain our objection with respect to
20 Mr. Gailor's opinion evidence.

21 So in terms of the -- the relevant
22 procedural history, you know, this -- this matter
23 was sometime ago set for a three-week hearing
24 beginning on June 17th. When Mr. Neufeld advised
25 the Tribunal that his counsel had withdrawn much
26 earlier this year, the matter started to be quite
27 closely case managed. Among other things, you
28 know, the complainant promptly asked for a -- a
29 prehearing conference to address a number of
30 matters including whether Mr. Neufeld still
31 intended to argue about the Tribunal's
32 jurisdiction and also to address remaining
33 prehearing disclosure dates.

34 Now at that time, the parties -- and at that
35 time, I mean when Mr. Neufeld ceased to have
36 counsel, the parties had already exchanged all
37 documents, and their deadlines for disclosure of
38 expert evidence were March 19th, and the
39 respondent's disclosure -- deadline for
40 disclosure of witness information and a list --
41 or witness list rather, not will-says, was
42 March 15th. The complainant's delivered their
43 expert report to Mr. Neufeld in March.
44 Mr. Neufeld did not identify whether he intended
45 to rely on an expert report by the deadline of --
46 of March 19th and also did not provide a list of
47 witnesses. The Tribunal -- or the -- the

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Submissions by Cnsl A. Waddell

1 complainants, you know, wrote to the Tribunal
2 identifying that Mr. Neufeld had missed the
3 deadline for some of that disclosure,
4 particularly the -- the identification of
5 witnesses, and requested another prehearing
6 conference.

7 In April, the Tribunal held another
8 prehearing conference and dealt with quite a
9 variety of matters including whether Mr. Neufeld
10 still intended to rely on expert evidence and
11 also to discuss witnesses. To facilitate
12 Mr. Neufeld's search for new counsel, at that
13 point, Mr. Neufeld was still self-represented.
14 The Tribunal adjourned the June hearing dates and
15 agreed to just have a brief hearing on the
16 preliminary threshold jurisdictional question,
17 and it set new hearing dates for the evidentiary
18 portion of this hearing, which were to begin for
19 two weeks on October 21st.

20 The Tribunal in -- in mid May directed
21 Mr. Neufeld to file his outstanding hearing
22 disclosure, which included Mr. Neufeld's witness
23 list and disclosure by May 31st. On May 31st,
24 the respondent filed a largely anonymized witness
25 list. The only two identifiable individuals on
26 that list were Dr. Hilary Cass and James Cantor.
27 And then in June, the Tribunal, responding to
28 another application, issued a decision regarding
29 the complainant's application for a publication
30 ban regarding its initial teacher witnesses, and
31 that decision required both parties to exchange
32 witness lists and provide will-say statements by
33 June 24th. The complainant delivered its
34 nonanonymized witness list and will-say
35 statements on June 24th. The respondent, again,
36 did not.

37 On July 4th, the Tribunal heard arguments
38 from the parties about the Tribunal's
39 jurisdiction. Toward the end of the day on that
40 date of hearing, the complainant consented to
41 extend Mr. Neufeld's deadline for delivery of his
42 lay witnesses' names and will-say statements to
43 July 23rd. Mr. Neufeld did not comply with the
44 July 23rd deadline. On the 31st, we wrote to
45 Mr. Neufeld and the Tribunal to set out some of
46 the procedural history surrounding his consistent
47 failure to abide by the Tribunal's rules and

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Submissions by Cnsl A. Waddell

1 orders, particularly with respect to disclosure.
2 And on the 9th, Mr. Neufeld finally delivered a
3 list of witnesses containing brief will-says for
4 each.

5 In early September, September 9th, the
6 complainant wrote to the Tribunal to object to a
7 number of the respondent's proposed witnesses. A
8 few days later, the Tribunal convened a case
9 conference, the purposes of which was to address
10 some of those objections along with various time
11 estimates. The -- the respondent was at this
12 case management conference represented by a lay
13 advocate Kari Simpson. And while we did not
14 expressly address the objections on that call,
15 Ms. Simpson acknowledged that there were issues
16 with Mr. -- with Mr. Neufeld's witness list but
17 agreed to submit a revised witness list by
18 September 25th.

19 Shortly before that date on September 19th,
20 Mr. Kitchen got on the record and promptly
21 brought an adjournment application which resulted
22 in the hearing being adjourned to the current
23 dates. And the sole reason for that adjournment
24 was to provide new counsel with time to prepare.

25 Mr. Kitchen, on October 4th, provided a
26 revised witness list containing Ms. Groleau and
27 Ms. Pirie's name -- names, and -- and then it was
28 on December 2nd of this week that the respondent
29 provided a will-say statement for the proposed
30 new witness, Scott Gailor. So on the -- in terms
31 of the -- the framework on the Tribunal's powers,
32 although I expect the -- the panelists are well
33 aware of them, for my friend's benefit,
34 Section 27.3 of the *Code*, of course, provides the
35 Tribunal a broad power to control its process.
36 Put simply, the Tribunal is the master of its own
37 house, and that it has active -- rules and may
38 make orders to control its own processes.
39 Section 27.2 of the *Code* also provides the
40 tribunal the power to receive evidence in many
41 forms for a member of the panel to satisfy that
42 the evidence is "necessary and appropriate." The
43 Tribunal's rules, and in this case, any orders of
44 the Tribunal provide for the disclosure of the
45 names of witnesses and will-say statements well
46 in advance of hearing. The purposes of these
47 rules and orders, of course, is to ensure that

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Submissions by Cnsl A. Waddell

1 the process is procedurally fair and that both
2 parties can know the case they have to meet.

3 The Tribunal has enacted specific rules to
4 address circumstances in which a party fails to
5 meet its disclosure requirements including
6 disclosure of information in relation to
7 witnesses. The -- the first specific rule to
8 address this is Rule 4.2, which provides the --
9 the Tribunal may order costs against a
10 complainant or respondent as appropriate if there
11 is a failure to meet disclosure obligations or
12 comply with an order with respect to disclosure.

13 And the second is Rule 22, which provides
14 that without limiting Rule 4.2, which is the rule
15 I just referred to, if a participant fails to
16 disclose any document, witness list, will-say
17 statement, expert report, or summary of an expert
18 opinion as required by these rules or by decision
19 or by direction of the Tribunal, the participant
20 may not call as a witness a person whose name,
21 witness statement, expert report, or summary of
22 an expert opinion was not disclosed as required
23 without permission of the Tribunal.

24 I -- I emphasize some of the language there
25 because it is clear in our view that section --
26 Rule 22 is a barrier, a hard barrier to the
27 respondent calling Mr. Gailor as a witness unless
28 the respondent can convince the Tribunal that he
29 should be granted leave to do so. So it's our
30 submission that the respondent clearly bears the
31 onus here. To discharge this burden, we say that
32 the respondent must establish as a threshold
33 matter that at minimum, the evidence sought to be
34 tendered is relevant to an issue raised by either
35 the complaint or the response to the complaint.
36 And here, we submit that the evidence of
37 Mr. Gailor is relevant to neither of -- of those,
38 that is the complaint or response to complaint.
39 And on this basis alone, the request to call
40 Mr. Gailor as a witness should fail.

41 I'll expand a little bit more on relevance
42 when I address that as a separate -- a separate
43 ground for objection. Now, if this later
44 argument about relevance, which I will get to,
45 the Tribunal is of the view that -- that some
46 portion of Mr. Gailor's evidence may have
47 tangential relevance to the matters actually at

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Submissions by Cnsl A. Waddell

1 issue, and I say actually at issue to distinguish
2 them from the issues the respondent wishes to err
3 in -- in public through this case, we say the
4 respondent's request for leave should still be
5 denied on the basis that the addition of this
6 witness now would result in procedural unfairness
7 and would prejudice the complainant.

8 And here, I want to point out -- I sent some
9 emails out this morning with some authorities. I
10 want to refer my friend in the panel to the *Platz*
11 decision, which is 2002 BCHRT 2, at paragraph 89,
12 which that decision is helpful on many levels.
13 It gives a pretty comprehensive review of how the
14 Tribunal handles evidence. And at paragraph 89,
15 the Tribunal says in here the Tribunal is
16 considering in different circumstances -- if
17 memory serves in *Platz*, there was an allegation
18 that a party was deliberately, as a sort of
19 litigation strategy, withholding things, which is
20 not what we're alleging here, but -- but this
21 paragraph, we say, is helpful. The Tribunal
22 says:

23
24 I -- I also considered how the breach of an
25 order of this Tribunal affects the promotion
26 of a fair and efficient process. Parties
27 that appear before this Tribunal must comply
28 with Tribunal orders because they're made
29 with the purpose of requiring certain
30 conduct and are necessary to ensure that the
31 process is just and timely. Parties that
32 appear before this Tribunal must be able to
33 prepare their case secure in the knowledge
34 that orders of the Tribunal will be complied
35 with. Where a party has failed to comply
36 with an order of the Tribunal, it affects
37 the fairness and efficacy of the process.

38
39 So we -- we simply say that that is -- makes it
40 pretty clear that a failure to comply with an
41 order of the Tribunal *de facto* affects the
42 fairness and efficiency of the process.

43 Now the complainant here, we submit that
44 there is significant prejudice. So we submit
45 that this -- Rule 22 is a far -- onus is on the
46 respondent. He's not going to be able to
47 establish relevance. And that even if he could

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Submissions by Cnsl A. Waddell

1 or there's some limited relevance, that in any
2 event, there's significant prejudice to the
3 complainants such that it's -- it's obvious that
4 the fairness and efficiency of the process will
5 be impacted. The complainant here -- all parties
6 were in the midst of the hearing, and we simply
7 have had insufficient time to prepare for or
8 consider any necessary response to this new
9 witness. Part of that preparation might have
10 involved giving consideration to whether the
11 complainant's own witnesses had pertinent
12 information to provide and respond to this new
13 witness, or if not, whether other evidence might
14 be needed to counter it. And we say that given
15 the proposed witness's name and will-say
16 statement was delivered on the -- the day before
17 we called our last witness -- or sorry -- the day
18 we called our last witness, this is simply far
19 too late in the process for us to prepare to meet
20 the evidence.

21 So if the Tribunal were to allow the
22 respondent to call Mr. Gailor, we submit that it
23 would result in procedural unfairness, and it
24 would cause unnecessary delay in bringing this
25 hearing to a close.

26 So those -- those are our submissions that
27 are just limited to Mr. Gailor's evidence on the
28 procedural front. And I'm now going to move and
29 talk about relevance. So we submit that the
30 respondent should be prohibited from calling
31 Mr. Gailor, Ms. Groleau, Ms. Pirie because their
32 evidence is wholly irrelevant to the issues
33 actually raised by the complaint and the
34 complaint response.

35 Now the Tribunal outlined the issues that
36 were actually raised by the complaint and the
37 complaint response in its letter of
38 September 12th to the parties. The only legal
39 issues the Tribunal must decide are whether
40 Mr. Neufeld's statements breached 7(1)(a) of the
41 Code, whether his statements constitute hate
42 speech contrary to 7(1)(b), whether the
43 complainants experienced discrimination regarding
44 employment as a result of Mr. Neufeld's speech.
45 And if any of those aspects of the complaint are
46 found to be justified, what the appropriate
47 remedy might be. Mr. Neufeld has never raised

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Submissions by Cnsl A. Waddell

1 his right to [indiscernible] of religion in
2 responding to the complaint and does not assert
3 that his speech would be somehow justified as a
4 bona fide occupational requirement at least for
5 the component that for which a bona fide
6 occupational requirement couldn't be available,
7 which is the Section 13 aspect to the complaint.

8 So given those limitations in what
9 Mr. Neufeld has raised in his response to the
10 complaint, clearly, all that needs to be
11 determined -- the only issues are first with
12 respect to employment discrimination, whether
13 the -- the class members have a characteristic
14 protected by the Code, whether Mr. Neufeld's
15 comments have any connection to employment,
16 whether class members have experienced adverse
17 impacts in their employment, and whether the
18 protected characteristics were a factor in those
19 adverse impacts.

20 With respect to discriminatory publication,
21 so 7(1)(a), the Tribunal need only determine
22 whether the publications indicate discrimination
23 or intention to discriminate. With respect to
24 7(1)(b), the hate speech provisions, the
25 complainants and the Tribunal really focus solely
26 on whether the publications are likely to expose
27 the class with the protected characteristic to
28 hatred or contempt, and that is a test that is
29 based, as the Tribunal has reviewed a couple of
30 times, on the perspective of a reasonable person,
31 which is a legal fiction, and it is an objective
32 test that doesn't depend on anyone's subjective
33 views about these statements. The truth of the
34 statements has no bearing on this particular
35 piece of the analysis.

36 And we say that it's plain from a reading of
37 the respondent's will-say statements from
38 Mr. Gailor, from Ms. Groleau, and from Ms. Pirie
39 that none of their evidence relates to any of the
40 subjects that I have just reviewed even taking
41 the broadest possible view of those issues.
42 Rather, their evidence appears aimed at
43 attempting to litigate what respondent seems to
44 think is a clash of world views to use, I think,
45 Mr. Kitchen 's language, which is simply not what
46 this case is about. This case is about the
47 application of settled law to a particular set of

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Submissions by Cnsl A. Waddell

1 facts. Most of those facts are simply the
2 statements. The views of -- those facts consist
3 of the publications and the statements and the
4 impacts they did or did not have on class
5 members, and the views of carefully selected
6 members of public have no bearing on the
7 interpretation of the publications or on the
8 impacts they had on class members.

9 Now, the Tribunal will, of course, in
10 looking at those issues also have to grapple not
11 with a distinct legal issue but with a legal
12 value, and that is Mr. Neufeld's -- the values
13 that underlie Mr. Neufeld's *Charter* right,
14 freedom of expression. And here, we say,
15 determining whether the speech at issue in this
16 case furthers the values that underlie that
17 *Charter* right is going to be a matter of legal
18 argument. Then, again, the views of an
19 assortment of individuals from the public who may
20 agree or disagree with Mr. Neufeld's views will
21 have no bearing on that *Charter* values analysis.

22 Expert evidence, we say, might have been
23 something that could have been relevant with
24 regard to the nature of that speech, but the
25 respondent had ample opportunity to adduce expert
26 evidence and has not done so. So again, the --
27 the -- the views and opinions of individual
28 citizens who may agree with Mr. Neufeld have no
29 bearing on the *Charter* values analysis in our
30 respectful submission.

31 Now, the Tribunal has, on a number of
32 occasions, declined to hear from witnesses whose
33 evidence is determined to be wholly irrelevant.
34 It has done so in a number of the authorities
35 that I emailed out this morning. It did so in
36 the *Belusic and Canadian Federation of the Blind*
37 case, citation 2022 BCHRT 2. That is a
38 reconsideration decision, and their
39 reconsideration was specifically sought because
40 of the Tribunal's determination with respect to
41 whether or not a witness could testify. It also
42 did so in *Q v. Wild Log Homes*. Citation there is
43 2012 BCHRT 135. It did so in *Broderick v.*
44 *Namdor*. Citation is 2011 BCHRT 254. And it did
45 so in *Platz v. B.C.*, 2002 BCHRT 2. And it also
46 did so in the *Oger* decision which we referred to
47 a few times in the course of these proceedings.

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Submissions by Cnsl A. Waddell

1 And I will say in many of those cases, you know,
2 the Tribunal is faced with -- and I'm sure what
3 my -- my friend will point this out, but in
4 several of those cases, the Tribunal prohibited,
5 you know, one witness from testifying but
6 permitted another witness to testify. But in
7 every single one of those cases, the -- the
8 overarching and determining factor is relevance.
9 It's not the only factor, but it is the -- the
10 prevailing factor that the Tribunal looks at.
11 Will these witnesses have anything relevant to
12 say? And if the answer is no, the Tribunal has
13 the ability and -- and has exercised it to not
14 permit a party to call that witness at all.

15 And in particular, I would point the
16 Tribunal to paragraph 25 of *Oger* where the
17 Tribunal is considering the relevance of witness
18 testimony and its discretion to admit evidence
19 under 27.2 of the Code. The Tribunal there says:

20
21 In exercising that discretion, the Tribunal
22 is mindful to further the purposes of the
23 Code by delivering just and timely dispute
24 resolution services to those parties that
25 come before it. This mandate and the
26 purposes of the Code are not furthered when
27 the tribunal takes up time and resources to
28 hear irrelevant evidence and argue that is
29 the nature of the evidence which Mr. Watt
30 had proposed to introduce their witnesses.
31 Their views of and response to the flyer are
32 no more relevant to our analysis than the
33 views of any individual on the street.
34 Their evidence could have no bearing on
35 whether the flyer violated Section 7(a).
36 That analysis --

37
38 And I -- I would underscore this part of the
39 paragraph.

40
41 That analysis is an objective one undertaken
42 from the perspective of a reasonable person
43 and not Ms. Oger, Mr. Watt, or most
44 significantly, the witnesses.

45
46 And we say that that is precisely what we have
47 here. I appreciate that my friend and the

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Submissions by Cnsl A. Waddell

1 respondent are desirous of having these -- these
2 stories told. But unfortunately, that is not --
3 that is not the threshold for relevance.
4 Relevance, as the Tribunal noted earlier, must be
5 tied to the legal issues in the case, which I've
6 just reviewed, and we submit that there's simply
7 no conceivable relevance to the evidence of any
8 of these three witnesses, and that the Tribunal
9 should with respect to Mr. Gailor decline to
10 grant leave to hear from him at all. And then
11 with respect to the other two, make a
12 determination that it will not hear from those
13 two -- those two individuals.

14 The -- the purposes of the *Code* here simply
15 are not furthered. We have spent a tremendous
16 amount of time in this proceeding on irrelevant
17 evidence elicited in cross-examination to date,
18 and we say that we're already at risk of not
19 finishing in the time allotted. And in order to
20 get things back on track, the Tribunal needs to
21 make some decisions on a -- you know, before
22 hearing from these witnesses about whether or not
23 their evidence will be relevant and of assistance
24 to the Tribunal.

25 Now, lastly, on the subject of our objection
26 to Mr. Gailor on the basis that much of his
27 evidence is in the nature of opinion -- with the
28 exception of his evidence about his own personal
29 experience being shunned -- and I noted at the
30 outset that we say that evidence is irrelevant,
31 all the rest of the evidence that's described in
32 his will-say statement is in the nature of an
33 opinion, and it's therefore, we say,
34 inappropriate for him to provide.

35 So those are our submissions on the -- the
36 three witnesses, and I look forward to hearing
37 from my friend. I'm happy if my friend would
38 like me to forward the -- let me just find
39 Mr. Gailor's will-say statement here -- a link to
40 the website for the LGB Alliance of Canada, which
41 is the organization referenced in the first
42 sentence of his will-say statement. I'm happy to
43 do that and provide some time to -- to think, but
44 I don't want that time to be so much that we
45 delay dealing with these issues.

46 THE CHAIR: Mr. Kitchen, do you need some time to look
47 at that website, or are you ready to respond?

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Submissions by Cnsl J. Kitchen

1
2 SUBMISSIONS BY CNSL J. KITCHEN:
3

4 CNSL J. KITCHEN: No, no. Now that we know that
5 counsel can, at times, read evidence into the
6 record and that's acceptable, that's fine with
7 me. I have -- I -- I doubt my friend was not
8 reading -- I -- I doubt she was reading from
9 something that wasn't real, so I -- I don't take
10 any issue with that.

11 Okay. I'm going to start with, again,
12 trying to bring us back to what are the legal
13 issues. So I'm going to read from the Tribunal's
14 own website about publications and 7(a) and 7(b)
15 of the Code. So to quote the Tribunal on its
16 website, it says it is not enough for a
17 publication to encourage mere disdain or dislike
18 or to discredit, humiliate, or offend the members
19 of the group. In this case, the group is
20 LGBT-identifying teachers in Chilliwack. It is
21 not enough that the publication is hurtful. A
22 repugnant or offensive idea is not enough on its
23 own to violate the Code. The Code does not
24 prohibit expressions which are repugnant or
25 offensive unless they incite a level of
26 abhorrence, delegitimization, or rejection that
27 risk causing discrimination or other harmful
28 effects.

29 And then there's a -- there's a little bit
30 more, and then we get near the end of the
31 section. And then it says context may include --
32 Tribunal's words on their website:
33

34 The context may include the content and tone
35 of the message, the social and historical
36 background for the publication, the
37 credibility likely given to the publication,
38 how the publication is presented.
39

40 Context. Context matters often but especially
41 when it comes to dealing with something as sticky
42 as hate speech. Social and historical
43 background, credibility to be given to the
44 publication. Well, my friend would have it that
45 the only context and social and historical
46 background and credibility to be given to the
47 publication comes from her witnesses and not the

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Submissions by Cnsl J. Kitchen

1 respondent's witnesses. I note the hubris in my
2 friend's submissions. She would have it that
3 unless this person is part of the queer community
4 and part of the Chilliwack School Division, they
5 shouldn't have anything to say about this
6 hearing. In other words, if you're one of the
7 popular people in the LGBT movement, we want to
8 hear what you have to say. But if you're one of
9 those unpopular ones like the de-transitioners or
10 the gays that don't agree with all the queer
11 people, then we don't want to hear from you. Of
12 course, note the irony in that.

13 This case is about LGBT teachers coming
14 before this Tribunal and saying we have
15 experienced hate speech and discrimination in
16 employment because Mr. Neufeld has said things
17 that we don't like. And we need to figure out if
18 the things he said are hate speech or not. And
19 the website from this Tribunal -- and I
20 understand that that's not gospel. I get it.
21 But it -- it -- it obviously matters, otherwise,
22 it wouldn't be on the website -- said that the
23 context matters; the social and historical
24 background matters, the credibility matters,
25 okay?

26 I'll note about 7(b), the website says this
27 is -- this is -- 7(b) is discrimination. 7(a) is
28 the -- is the hate speech. About 7(b), the
29 discrimination says this section does not
30 prohibit expressing offensive or hurtful --
31 hurtful ideas or -- or engaging in matters of
32 public debate. Well, how the heck are we
33 supposed to decide if something is matter of
34 public debate? Is that something the Tribunal
35 decides this a vacuum so they become the arbiters
36 of what is and isn't public debate? I should
37 hope not. I should hope they would want to hear
38 from people who actually have something to say
39 about that and, you know, are sort of
40 stakeholders in that. These are not random
41 people off the street to quote the Oger decision,
42 okay? This is a gay man. These are two
43 de-transitioners, people who did identify as
44 transgender. These are people who say -- share
45 the same protective characteristics with the
46 people in the class.

47 And obviously, I'm dealing with relevance.

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Submissions by Cnsl J. Kitchen

1 I'm going to get to the end, and I'm going to
2 deal with the whole issue with procedural
3 unfairness and lateness, but let's talk about
4 relevance, okay? I have will-say statements from
5 the complainant that are all of five lines long.
6 That's the only notice I had of their evidence.
7 It is almost useless insofar as I could have
8 known that much about what the witnesses were
9 going to say without a will-say statement just by
10 virtue of the fact that, you know, one of them is
11 the former BCTF lead, and one of them is the
12 former CTA lead, and three of them are former
13 teachers. The will-say statements told me
14 effectively nothing of what they were going to
15 say.

16 Now I'm not complaining about that, but I
17 point that out to bring awareness to the fact
18 that we really don't know what any of the
19 witnesses are going to say on the complainant's
20 side. And then they say a whole bunch of things,
21 right, and this is part of the reason why I did
22 my best to do longer cross-examinations to go
23 through everything, to give my -- in fairness to
24 the witnesses and my friend so that we don't run
25 into a situation like we did in the Platz case,
26 okay? And these people said things like they
27 were really, really upset with Mr. Neufeld in his
28 post in Tab 17 of the publications book about the
29 trans agenda destroying the gay kids. They're --
30 they've put that comment in the record and said
31 this is supportive of our position that it's hate
32 speech and discrimination. Okay. Maybe it is.
33 Maybe it isn't. We're going to have to figure
34 that out because like it says on the website,
35 this is not an obvious on its face example of
36 hate speech. There are no indicators of hate
37 speech towards the class in this case on this
38 post.

39 Mr. Neufeld does not say trans teachers and
40 Chilliwick are subhuman filth, genetically
41 inferior, or lesser beasts. He doesn't say those
42 things. If he did, we wouldn't be wasting our
43 time here. He says something very, very
44 different, but they're claiming it still is
45 discriminatory speech or hate speech. Okay. So
46 let's figure out if it is because clearly, it
47 isn't on its face, so we need to look at things

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Submissions by Cnsl J. Kitchen

1 like how the publication is presented, the
2 credibility, is it a matter of public debate,
3 what's the historical background of the
4 publication?

5 Well, what's Mr. Gailor going to speak to?
6 Hey. I'm a gay man. And you know what? I've
7 had some experiences, some lived experiences as a
8 gay man, that can help you understand the social
9 and historical background and whether or not this
10 is actually a credible thing to say and whether
11 or not this is a matter of public debate or would
12 be or should be if the queer community wasn't
13 silencing anybody that opposed them. And by the
14 way, yeah, I'm one of those people too.

15 He was a gay man who -- who experienced
16 homosexuality as a youth and has lived through it
17 all through his adulthood. This is what he's
18 going to talk about. And he does perceive what's
19 going on as a form of gay conversion therapy and
20 a form of homophobia. Well, that matters
21 immensely for figuring out if when Barry says
22 essentially the same thing when he's commenting
23 on this, whether or not it's hate speech or it's
24 discriminatory, or it's merely an idea that the
25 queer community finds repugnant and offensive,
26 right? Is it merely an idea for which there
27 should be a public debate that some people find
28 offensive and repugnant, okay, but a real matter
29 of public debate, okay, because it is a real
30 problem, or is it hate speech?

31 If it's a real problem, if there's -- if
32 there's really a debate to be had, if he's really
33 just expressing an idea that some people find
34 repugnant, then it's not hate speech. And
35 hearing from what a gay man has to say about that
36 gives us context. Okay. The Tribunal should be
37 very pleased to be able to get that context so it
38 can better understand this issue, assuming it
39 wants to as opposed to doing just whatever the
40 queer community wants, assuming it wants to
41 actually dig into this and figure out whether or
42 not there's actually hate speech here. It should
43 think it was necessary and appropriate to have
44 that evidence.

45 The bar for necessary and appropriate in
46 this case has been set very low, and fine.
47 That's okay. I thought it should have been set a

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Submissions by Cnsl J. Kitchen

1 little higher, but fine. We've set it at that.
2 We spent an entire day. My friend was very upset
3 with how much time we wasted on evidence in
4 the -- we spent an entire day hearing from an
5 expert that had very little valuable evidence to
6 give about this case because the Tribunal elected
7 to say it's necessary and appropriate, and we'll
8 decide on which weight to give it, okay? They
9 took the cautious approach of let's let it in and
10 decide what to do with it at the end. And I can
11 understand that. I can appreciate that. But
12 that has possible applied equally to both sides.
13 If we're going to let in evidence from the
14 complainants that is tangential -- I think it's
15 fair to say that -- and I think it's fair for my
16 friend to say that what I'm calling is tangential
17 since she -- of course that's what she thinks.
18 It's her case. And in my case, I think what the
19 expert has to say is tangential. I don't think
20 what the teachers had to say was tangential.
21 That goes to the core of the case.

22 Okay. I'm going back to my issue with this.
23 If the teachers are giving evidence for an hour
24 and a half or two hours in direct, that, you
25 know, is not at all captured in their will-says,
26 things are going to come up. So -- so I had no
27 idea that teachers were going to -- were going
28 to -- were going to, you know, really make a big
29 deal out of this -- out of this -- this -- the --
30 the story of all gay kids post by Barry, but they
31 did. One of the teachers gave evidence that, no,
32 the queer community, there's no divisiveness.
33 They tend to agree. We're -- we're all big,
34 happy family. Well, is that the case? That's
35 important. That's important for understanding
36 the context, for understanding the historical and
37 social background, the credibility to be given to
38 Mr. -- to Mr. Neufeld's publications. You know,
39 this -- this -- this -- this idea of whether or
40 not all these new queer beliefs really truly
41 represent all the community. Are -- are there
42 beliefs that have always been there? Are
43 there -- are there members in the LGBT community
44 that say, hey, I want to be heard too and not
45 silenced. And -- and by the way, yeah, I don't
46 know if -- I don't know if this speaks for me. I
47 don't think I agree with this. Actually, this is

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1 a problem. Actually, you know what? This is now
2 turning into homophobia against me. I would have
3 thought that that was quite plainly necessary and
4 appropriate for the Tribunal to hear about that.
5 Not his opinions. I don't want his expert
6 opinions. But when he speaks from his lived
7 experience -- I'm using that phrase on purpose
8 because it that -- I -- that seems to matter, and
9 I can make sense of that. Speaking from his
10 lived experience of I experienced this as
11 homophobia; I experienced this as a form of gay
12 conversion therapy; I -- I experience censorship
13 and mistreatment and intolerance from the queer
14 community. And that came out a lot in the
15 cross-examinations from the teachers.

16 One of them -- one of them -- one of the
17 things that all three of them agreed on is that
18 no, we have no tolerance for people saying this
19 stuff in the public. Trustees shouldn't say it;
20 de-transitioners shouldn't say it; gay people
21 shouldn't say it; and they shouldn't say it
22 publicly. We should never have to publicly
23 encounter beliefs that challenge our own. It's
24 the height of hubris and intolerance that has
25 been demonstrated by the -- the -- the three
26 queer witnesses we've had.

27 Well, we need to hear from somebody who
28 comes from that general community to say, yeah,
29 I've experienced that same intolerance because
30 this case is starting to look like that the
31 Tribunal is being turned into one -- or the
32 proceedings is looking more and more like a slap
33 proceeding insofar as the queer community is
34 saying no. You say something we don't like,
35 we're going to nail you to the wall with
36 litigation on it. Or to go even further, it's
37 almost beginning to look like a blasphemy court
38 where the queer community has said we're going to
39 call up the Human Rights Tribunal to enforce the
40 absolute prohibition against any public criticism
41 of our beliefs. Well, I think it's fair and
42 appropriate that you hear from what a gay man and
43 some de-transitioners have to say about that. If
44 it's relevant, right, not just -- not just to --
45 to -- to spout on about their opinions that
46 they're not entitled to give, but from their
47 lived experience to say this is what I went

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1 through; this is how I experience this because
2 that speaks to the historical and social context
3 and the credibility and whether or not this
4 really is a matter of public debate.

5 Let's go back to -- so that's -- that's
6 Scott's relevance. And -- and by the way -- no.
7 I'll come to that -- I'll come to that later.
8 Let's deal with Faith and Kellie Lynn. So it
9 came out in evidence, as I expected it might,
10 that, well, Mr. Neufeld is -- is -- is engaging
11 in discriminatory hate speech by being, you know,
12 weird and obsessed with body parts and talking
13 about stuff that doesn't happen and, you know,
14 suggesting that we're encouraging, you know,
15 surgeries when we aren't, and -- and, you know,
16 we had -- we had teacher witnesses that were
17 really upset about that stuff. Okay.

18 Well, is Mr. Neufeld just sort of making
19 stuff up or completely mistaken and -- and
20 there's no public debate here; there's no
21 credibility to what he's saying; he's just
22 spouting off and, you know, it really is hate
23 speech, or is there some credibility? Is it a
24 matter of public debate or would be or should be?
25 Well, Faith can speak to that. She lived through
26 it. She tried to transition when she was still a
27 minor. She was encouraged to do so. She's going
28 to testify that, no, she was not properly
29 assessed; no, her other mental health problems
30 were contributing to it and weren't addressed.
31 Okay.

32 Again, these are things that Barry has said
33 that the -- that the teacher witnesses have been
34 very upset about that. They said we're shocked;
35 we're upset; we're hurt that Barry said these
36 things, okay? That's fine. But what does the
37 law say? The law says that's not enough. So
38 then we have to decide, okay, well, let's look at
39 what's said. Is it somewhat credible? Is
40 there -- is there a public debate here? What's
41 the social context? Are these things actually
42 happening, or is Barry out to lunch? Right. If
43 these things are actually happening, then, well,
44 you know, it might be hurtful and -- and
45 offensive to the teachers, but it's not hate
46 speech because Barry isn't -- when we -- when we
47 looked at the -- when you look at the comments

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1 objectively, Barry isn't making stuff up to try
2 to target trans people to expose them to hatred.
3 He is engaging in a public debate in a way that
4 some people find offensive, but that's not
5 enough.

6 So hearing from Faith's real-world evidence
7 on that brings that context. The expert
8 suggested that these surgeries are rare for
9 minors and that they're never offered easily.
10 Faith is going to give lived-experience evidence
11 that contradicts that. That's an issue in the
12 case that has arisen during the complainant's
13 case. They don't -- they -- they -- they made it
14 an issue. They made it an issue through their
15 expert, and they made it an issue through the lay
16 witnesses who said it really, really bothered
17 them that Barry would talk about this. The
18 teachers suggested, at times didn't know, but
19 they suggested no. These surgeries aren't
20 happening. They're not happening easily, right,
21 and I can't believe Barry would suggest that some
22 of these trans kids have other mental health
23 problems. That's a terrible thing to say.

24 But what if what he's saying is credible and
25 reasonable? Then is it hate speech, or is it him
26 engaging in a difficult public debate? Faith's
27 going to speak to that. She's going to give us
28 her lived experience about how, no, she didn't
29 get assessed. She was offered a double
30 mastectomy when she was still 17 even though the
31 people who offered that to her didn't deal with
32 her mental health issues very well even though
33 they weren't properly addressed, even though
34 nobody suggested to her that maybe that was
35 actually the thing that was contributing to her
36 gender dysphoria, her desire to transition, which
37 she will testify to actually was the problem.
38 And when she dealt with those, she didn't want to
39 transition anymore. We need to hear from these
40 people. These de-transitioners are crying to be
41 heard, and I would have thought that the Human
42 Rights Tribunal would be the first place to want
43 to hear what they have to say.

44 The fact that she's in Ontario is
45 irrelevant. B.C., Alberta, Ontario,
46 Saskatchewan, and by the way, we talked about all
47 those provinces with the experts, okay? Doesn't

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Submissions by Cnsl J. Kitchen

1 matter what province she's in. It's not like the
2 provinces are little individual fiefdoms that are
3 completely different than the other. My -- my --
4 and I -- I noticed my friend said nothing about
5 whether or not B.C. and Ontario are substantively
6 different, because they're not, obviously.
7 There's no suggestion that somehow SOGI, the idea
8 behind SOGI is only taught by B.C., and it's
9 completely shunned everywhere else. No. That's
10 not a reality.

11 Let's talk about Kellie Lynn. Now, she
12 didn't transition when she was a child, but the
13 fact that she did, what she believed when she
14 did, and the fact that she lived to regret it and
15 to de-transition is relevant because she will
16 explain through her own lived experience how it
17 didn't work. She couldn't actually fully do it
18 just like Barry said that the teachers are so
19 upset about as being discriminatory. Again, did
20 he say something credible? Did he say something
21 reasonable? What's the historical and
22 background -- social and historical background
23 for the publication? Is there a public debate
24 about this? She's going to speak to that. She
25 will also -- I think perhaps the most valuable
26 thing is she will give this Tribunal the only
27 example it will hear in -- in -- in actual
28 evidence from real life witnesses of what
29 transgender discrimination actually looks like.
30 Not merely encountering an idea that you as a
31 trans or queer person don't like and makes you
32 uncomfortable but to actually be mistreated.

33 The teachers have all told us how well they
34 were treated by the District, especially Teacher
35 C, but all of them told us that. None of them
36 were disciplined or excluded or ostracized or
37 made to feel less than. None of them. They're
38 having sidewalks painted after them. They're
39 having clubs that they can go to and host and
40 hold events about. She will talk about what it
41 was like to have somebody truly engaged in
42 discrimination and hatred towards her because she
43 was transitioning. And that contrast is needed
44 in a case like this where I think what is real
45 discrimination has been totally lost.

46 Discrimination is a tough thing to define,
47 but it's not so tough to know it when we see it.

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Submissions by Cnsl J. Kitchen

1 When somebody is left to be in pain in a
2 vulnerable, very vulnerable state in a hallway
3 where they should be getting the care they need,
4 you'll know it when you see it. And Kellie Lynn
5 is going to talk about that, and we need to hear
6 that because none of the teachers could take --
7 could talk to anything even close to that. The
8 farthest they could get is I thought it was
9 hurtful. I thought it was shocking. It offended
10 me. It bothered me, created a political climate
11 I didn't like. The contrast couldn't be more
12 stark.

13 And as I've mentioned before, I have
14 discrimination cases all the time with people who
15 are fired from their job or kicked out of the
16 program at school because they expressed their
17 beliefs. So I know what it really looks like
18 because I deal with it everyday. Kellie Lynn is
19 going to talk about that. It's helpful to hear
20 from somebody who was transgender but isn't
21 anymore to look at Barry's comments and give some
22 context about, yeah, I can see where there's a
23 public debate here. I can see the content and
24 the tone of the message is about this belief
25 system that I used to believe but I don't
26 anymore. I can see why what he's saying is
27 credible even if it's repugnant to people in the
28 queer community.

29 To conclude on relevance, I know we
30 struggled with this. I don't know why it's so
31 difficult especially since the Tribunal has
32 decided that the line for relevance or it -- to
33 use its words in the rules -- what's necessary
34 and appropriate has been drawn very low in this
35 case. And -- and again, that's fine. And, you
36 know, the reasons for letting in the expert
37 pronounced at length about how this Tribunal does
38 not follow the rules of evidence, and so, you
39 know, is -- and the implication from that is that
40 we let -- we let just about anything in as long
41 as it's logically relevant, and then we decide
42 what weight to put to it. Well, I think it
43 beggars belief to suggest that hearing from
44 transgender people or gay people in a case where
45 gay and trans teachers are claiming gay and trans
46 discrimination against them is not necessarily
47 appropriate. It beggars belief.

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Submissions by Cnsl J. Kitchen

1 It's relevant for 7(a) and 7(b). I'm not,
2 by the way, suggesting it's -- it's relevant for
3 the employment claim; okay? But the complainants
4 have decided to claim discrimination 7(b), hate
5 speech 7(a). If they're going to -- if they're
6 going to make that claim and they're going to put
7 in all this evidence from Barry to make that
8 claim, then he has the right to defend himself by
9 calling evidence to speak to whether or not it
10 actually is hate speech because obviously, it
11 isn't on its face. And maybe you decide to give
12 a little weight in the end, but you have to admit
13 it because if you didn't, it would be a double
14 standard. It would be a double standard to admit
15 a witness like Dr. Saewyc and not hear from a gay
16 man and the de-transitioners who have something
17 different to say, something different that is
18 relevant to the things that Barry has said, that
19 the complainants have complained about.

20 So let's talk about Scott Gailor. Is it too
21 late? Is it procedurally unfair? Well, the
22 first and obvious answer and I think a complete
23 answer all on its own is two words:
24 cross-examination. When I look up opportunity to
25 cross-examine under the BCHRT in my -- in my --
26 in my -- in LexisNexis, over 100 cases pop up.
27 The opportunity to cross-examine is
28 extraordinarily significant. It's often been
29 called the greatest tool for getting out the
30 truth in a proceeding, okay? My friend can
31 cross-examine Mr. Gailor. If there is any
32 prejudice -- and there isn't -- but if there is,
33 it is more than sufficiently remedied by the fact
34 that she can cross-examine him. That's a full
35 answer all on its own. But if we were to look at
36 *Platz*, which I think is probably the case on this
37 issue, if you were to look at paragraphs -- I
38 think it's 60 to 64, but I'm going to pull it up
39 here. And I'm going to speak to whether or not
40 there's any -- any prejudice, but let's just --
41 let's just assume for a second that there maybe
42 is a little bit of prejudice. The BCHRT says in
43 the -- in the *Platz* case at paragraph 62.

44
45 In considering the potential prejudice --
46 potential prejudicial effect to the
47 complainant's case, I find that some

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Submissions by Cnsl J. Kitchen

1 prejudice likely did result to the
2 complainant's case and possibly the process
3 as a whole from the combined effect of the
4 respondent's strategy.
5

6 By -- by the way, my friend's already conceded
7 there's no strategy from me here to not
8 cross-examine, so that's already gone. So that's
9 not even a consideration. Okay.

10
11 However, I find that this prejudice can be
12 remedied short of excluding the viva voce
13 evidence objected to which I find necessary
14 and appropriate. In the circumstances of
15 this case, I find that the prejudice to the
16 complainant is not irreversible. It can be
17 remedied by allowing the complainant one or
18 more of the following remedies: An
19 adjournment, the option of reopening her
20 case and recalling witnesses who have
21 already testified, or calling additional
22 witnesses in advance to the respondent
23 calling evidence, and/or broader right of
24 reply.

25 The complainant will have the option of
26 utilizing one, all, or some combination of
27 these remedies as is reasonable in the
28 circumstances.
29

30 That's assuming there is prejudice, and that's on
31 top of the -- the -- the -- the fact that she can
32 cross-examine him. There is no prejudice. I've
33 given my friend a will-say statement that is 5,
34 10 times longer than the one she gave me for her
35 witnesses. I did that on purpose to give her --
36 to give her notice, okay? I don't expect
37 Mr. Gailor is going to be a really long witness.
38 I mean, you know, she can -- she can cross him
39 for as long as she needs to, but I don't expect
40 I'll be more than an hour with him. Where's the
41 prejudice? This -- this is not like some sort of
42 *Browne v. Dunn* problem. It's not like there are
43 highly specific uniquely contested facts, you
44 know, that -- that -- for example, that -- that
45 Mr. Neufeld, you know, snuck into a school and,
46 you know, cornered a transgender teacher in
47 the -- in the hallway and threatened her life,

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Submissions by Cnsl J. Kitchen

1 and then some -- and then he's saying he didn't
2 do it, and then I'm bringing in some witness now
3 to say that actually, they -- they -- you know,
4 they were there, and they can verify Barry didn't
5 do it. We're not in that kind of situation,
6 okay? And obviously because there's some --
7 there's some prejudice in that situation, right?
8 My friend's not afforded the opportunity to call
9 a witness that can speak to the opposite of what
10 my witness is going to speak to. Okay. That's
11 where you -- that's where you begin to get some
12 sort of prejudice like this, okay? That's not
13 here. Right. All the stuff that she can
14 cross-examine Mr. Gailor on is all the stuff she
15 could always cross-examine Mr. Gailor on or that
16 she could always have questioned her witnesses
17 about, okay? A lot of what he's going to speak
18 to came up in my cross-examination of the
19 witnesses, okay, which that happens in cases. So
20 there's no prejudice.

21 If I remember that if you look at the cases,
22 for example, *Wild Log Homes*, that's the 2012
23 BCHRT 135 case, the respondent wanted to call
24 nine extra witnesses. That's a little excessive
25 obviously. Four of them were let in. And I
26 don't know when that was in the process, but it
27 certainly wasn't -- I think it was later in the
28 process than when I'm doing it. I think -- I
29 think they had already started their -- their
30 other witnesses. They -- the respondents had
31 already started their case. My friend not only
32 can cross-examine Scott Gailor, she can
33 cross-examine all of my witnesses knowing what
34 Scott is likely going to say, okay? He's one
35 extra witness. We're already calling six
36 including -- including the respondent. This is
37 one, one extra witness, one who will not take a
38 very long time even if he's cross-examined
39 extensively. We're talking probably about half a
40 day at most, at most. My friend has already
41 indicated she probably won't do long crosses.

42 In other cases like the *Platz* case, like the
43 *Wild Log Home* cases, witnesses were admitted
44 because, of course, it is, you know, very unusual
45 to -- to exclude witnesses unless they truly are
46 irrelevant. And obviously, Scott's evidence is
47 not irrelevant, Mr. Gailor's evidence. What

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Submissions by Cnsl J. Kitchen

Reply submissions by Cnsl A. Waddell

1 the -- what the -- what the Tribunal does is says
2 okay. If there's any prejudice, let's make sure
3 we put things in place to remedy it. So in
4 addition to cross-examination here, which I would
5 say is a full answer, there's -- there's other
6 options like what's in *Platz* if -- if the
7 Tribunal feels any of those are needed.

8 Think about the prejudice to Mr. Neufeld who
9 has been accused of hate speech, and he can't do
10 what is said on the Tribunal's website about
11 establishing the context in order to defend
12 himself? I know it's an obvious point, but I
13 have to say it. This is our only chance to get
14 evidence in. There will be no later opportunity.
15 This is the trial of this case. And maybe you
16 argue there are multiple levels of courts, but
17 this is the only stage in which we do evidence,
18 which I think -- if I can read between the lines
19 of Tribunal's decision with -- with admitting the
20 expert, that's -- that's part of the reason why
21 the Tribunal erred on the side of, well, let's
22 let it in. See how much weight we give to it.
23 Same thing here. It's the only opportunity for
24 evidence to come in in what is clearly an
25 important case. Let it in, and decide how much
26 evidence to give it just like you did with the
27 complainant's witnesses.

28 Those are my submissions subject to any
29 questions.

30 THE CHAIR: Thank you. Ms. Waddell, you have a right
31 of reply.

32
33 REPLY SUBMISSIONS BY CNSL A. WADDELL:

34
35 CNSL A. WADDELL: I think I'll be quite brief. So
36 first, my friend has gone to the Tribunal's
37 website to talk about what may be relevant in
38 considering whether something meets the threshold
39 test under 7(1)(a) and 7(1)(b). And he then went
40 on to make submissions about the -- the need to
41 know -- that those factors require knowing
42 whether Ms. -- what Mr. Neufeld has to say is
43 credible and reasonable. With the greatest of
44 respect of my friend, the only question is
45 whether it meets the legal test for hate speech,
46 which does not feature beyond the reasonable
47 person aspect of the test for hate speech as

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Reply submissions by Cnsl A. Waddell

1 annunciated in the *Whatecott* case, it does not
2 look at whether something or reasonable. Indeed,
3 if it meets the test for hate speech, it is
4 simply not going to be either of those things.

5 I would also say in reply to my friend that
6 he is drawing -- or asking you to falsely equate
7 to things -- to equate individual evidence about
8 experience in de-transitioning, for example, with
9 the individual experience of the teacher
10 witnesses. With the greatest of respect, none of
11 the evidence from the three individuals that my
12 friend seeks to tender has any bearing on whether
13 the impact -- you know, whether the complainant
14 class members here truly experienced an impact,
15 whether they were, as my friend suggested, simply
16 being overly sensitive, and this is not real
17 discrimination. He had ample opportunity, which
18 he exercised, to cross-examine those individuals
19 and challenge them about whether this really hurt
20 their feelings or whether it was not a big deal,
21 and he -- he exercised that right over my
22 repeated objection. He's had the opportunity to
23 test that, and that's the way to test it. It is
24 not to start calling, you know, people who have
25 different experiences or views. Otherwise, what
26 we wind up with is a hearing that is, you know,
27 who can pull the most members of the public in
28 that share their view, and that is simply not the
29 point.

30 Couple of other things to say. My friend
31 suggested that having let our expert in, you
32 would be creating a double standard if you did
33 not permit these witnesses. With respect, there
34 are different considerations for both of them,
35 and there's simply no -- nothing concrete to his
36 statement beyond the rhetorical statement that it
37 is. There's no double standard when you look at
38 the legal test, what the relevant issues are,
39 which is precisely what the Tribunal did in
40 looking at whether expert evidence was
41 admissible. And that is not -- has no bearing on
42 the question of whether or not these three
43 individuals should be permitted to testify.

44 I do agree with my friend that it is unusual
45 to not permit a witness to be -- to testify at
46 all. We agree. We say that these circumstances
47 here are unusual in that the respondent is

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1 seeking to repeatedly tender and elicit evidence
2 that is simply not relevant to the facts that the
3 Tribunal must consider. And I think those are --
4 just let me check my notes here. Yeah. I think
5 those are -- are our submissions in reply.

6 THE CHAIR: Thank you. We are going to reserve our
7 decision on this issue. We'll hope to have it
8 for you by tomorrow morning. But what I am going
9 to propose now is that we take our 15-minute
10 afternoon break and come back with Silvia Dyck, I
11 think, is ready to be next, Mr. Kitchen; is that
12 right?

13 CNSL J. KITCHEN: Yes. Can I just ask my friend if
14 she anticipates any cross with -- with Silvia
15 because if -- if she doesn't at all, then we may
16 get to my second witness. But if she thinks
17 she's probably going to have any cross at all for
18 her, we're probably not going to get to my second
19 witness. So that would be helpful to know that.

20 CNSL A. WADDELL: I -- I don't know. We may have a
21 few questions for her in cross, but I don't
22 expect they would be many.

23 CNSL J. KITCHEN: Okay. So we're going to come back
24 at about what, 3:00, 3:25, Chair; is that right?

25 THE CHAIR: I think that's right.

26 CNSL J. KITCHEN: Then I'll say this. Even if my
27 friend doesn't cross but probably she's going
28 to -- probably a little bit, we're going to be
29 really close 4:30 by the time we get through our
30 first witness, so I -- I -- I'm not going to want
31 to call the -- the second one if it's just for 10
32 or 15 minutes or whatever it ends up being so...

33 THE CHAIR: That makes sense. That makes sense.

34 CNSL J. KITCHEN: Thank you.

35 THE CHAIR: Okay. We'll just turn our cameras and
36 mics off and come back in 15 minutes. Thank you.

37
38 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS) [3:08:36]

39 (PROCEEDINGS RECONVENED) [3:25:04]

40
41 THE CHAIR: All right, everyone. Come on back. I do
42 not see the witness in the lobby yet, so I'm just
43 confirming, Mr. Kitchen, you've been in contact?
44 Let her know to come?

45 CNSL J. KITCHEN: I have.

46 THE CHAIR: Okay.

47 CNSL J. KITCHEN: I will give her a call. So just

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1 give me a second. My apologies.

2 THE CHAIR: There she is. All right, Mr. Kitchen.

3 I'm letting the witness in.

4 CNSL J. KITCHEN: Yes. Thank you.

5 THE CHAIR: Good afternoon. Silvia Dyck, I can see
6 you here. My name's Devyn Cousineau. I'm vice
7 chair of the B.C. Human Rights Tribunal, and I'm
8 joined by tribunal members Robin Dean and Laila
9 Said Alam, and we are the panel that's been
10 designated to hear and decide this human rights
11 complaint.

12 I'm going to start by letting you know
13 everyone who's on the call in the meeting here
14 with us, and then explain a little bit about what
15 to expect. And then if you have questions for
16 me, I'm happy to answer them. So you should see
17 a number of people on video. First of all, you
18 should see some familiar faces. Mr. Neufeld is
19 here, and -- and his lawyer James Kitchen are
20 also on video. And then you'll see a screen
21 called "complainant's counsel," and those are the
22 lawyers for the B.C. Teachers' Federation and
23 Chilliwack Teachers' Association, Lindsay
24 Waddell, Alanna Tom, and Stefanie Quelch. And
25 then they are joined by Reid Clark who is an
26 instructing client from the Chilliwack Teachers'
27 Association. And the last person you should see
28 on video is Sarah Khan. She is the lawyer for
29 the Intervener, B.C.'s Office of the Human Rights
30 Commissioner. So those are all the people who
31 are on video on the call. We also have a number
32 of members of the public who are listening to the
33 call with audio access.

34 Everyone who is part of this proceeding is
35 required to follow certain rules, and one of
36 those rules is that no recording is permitted.
37 So we, at the Human Rights Tribunal, are
38 recording the proceeding using our hearing
39 recording equipment. That's the official record.
40 And aside from that, no one else is permitted to
41 do any recording.

42 So I'm going now to ask you if you could
43 kindly unmute your mic. And then for the record,
44 could you tell me -- could you please say and
45 spell your full name, tell us the pronouns that
46 you use, and how you would like to be addressed
47 in this proceeding. Oh. You're still muted.

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Silvia Marie Dyck (for Respondent)
In chief by Cnsl J. Kitchen

1 You just have to -- yeah.

2 SILVIA DYCK: There we go.

3 THE CHAIR: There you are.

4 S. DYCK: My name is Silvia Marie Dyck. What else did
5 you want?

6 THE CHAIR: Can you spell that for the record, please.

7 S. DYCK: S-i-l-v-i-a M-a-r-i-e D-y-c-k.

8 THE CHAIR: Okay. And is it Ms. Dyck, Mrs. Dyck?

9 What do you prefer we use?

10 S. DYCK: You can -- you can use Mrs. -- Mrs. Dyck is
11 fine.

12 THE CHAIR: Okay. So I'm sure you've been told a bit
13 about what to expect. In a moment, I'm going to
14 ask to you take a solemn oath to tell the truth
15 in this proceeding, and then Mr. Kitchen will ask
16 you questions, and then the lawyers for the BCTF
17 and Chilliwack Teachers' Association may have
18 questions for you as well, and your job here is
19 just to answer questions as best you can. Do you
20 have any questions for me about the process?

21 S. DYCK: No.

22 THE CHAIR: Okay. In that case, Mrs. Dyck, you're
23 about to give evidence to the B.C. Human Rights
24 Tribunal. The Tribunal depends on you telling us
25 the truth, and the law requires that you do so.

26
27 SILVIA MARIE DYCK, a witness
28 called for the Respondent,
29 affirmed.

30
31 THE CHAIR: And do you understand that a breach of
32 this promise is an offence under the law?

33 S. DYCK: Yes.

34 THE CHAIR: Okay. Thank you. Mr. Kitchen will ask
35 his questions now.

36
37 EXAMINATION IN CHIEF BY CNSL J. KITCHEN:

38
39 Q Good afternoon, Silvia. Thanks for being here.
40 Let's start off with some obvious questions.
41 Were you a trustee for the Chilliwack School
42 District?

43 A Yes.

44 Q And for roughly how many years?

45 A Oh. From 1999 until 2018.

46 Q And did you -- did you stop being a trustee
47 because you sort of resigned, or is it because

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Silvia Marie Dyck (for Respondent)

In chief by Cnsl J. Kitchen

1 there was an election, and you were not
2 re-elected?

3 A I was not re-elected.

4 Q Okay. And was that in 2018?

5 A Yes.

6 Q Do you -- do you remember roughly when in the
7 year the election was that year?

8 A I beg your pardon?

9 Q Do you remember when the election was in 2018?

10 A Oh, I -- I don't recall.

11 Q I'm going to ask you -- well, what do you see,
12 you know, sort of from an executive summary
13 perspective? What do you see the role of the
14 school board to be? The -- the trustees that
15 make up the board of trustees of the -- of the
16 school board, what do you see their role as?

17 A We're a governing board. We have
18 responsibilities to the school, to the community.
19 In terms of our functions are -- are the
20 long-term planning. We do the capital budgets,
21 and we approve District policy and monitor
22 operations. We hire our superintendent who
23 attends to all the administrative issues along
24 with the senior team.

25 Q Thank you. Do you hire any employees besides the
26 superintendent?

27 A We do hire the curriculum inspection and the
28 treasurer -- or the director of curriculum
29 inspection, I should say, and the secretary
30 treasurer as well.

31 Q Any others?

32 A Oh. There's one more. What's the correct title?
33 Just a sec. I have the correct title. We do
34 want to get this absolutely correct. It's the --
35 the district principal. So you have the director
36 of instruction, the secretary treasurer, the
37 director -- the district principal, and the
38 deputy superintendent. Those are the
39 [indiscernible].

40 Q Okay.

41 THE CHAIR: Sorry. I'm just going to jump in here for
42 a moment because it's dawned on me. I forgot to
43 say one thing in my introduction. Mrs. Dyck, I
44 can see that you're -- you're referring to some
45 papers there or I think you are. Can you just
46 let -- tell us what papers you have in front of
47 you that you might be referring to?

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Silvia Marie Dyck (for Respondent)
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1 A Oh, I have -- I have -- just have the school
2 district chart -- organizational chart so I
3 remember the title of the senior team.
4 THE CHAIR: Okay. Thank you. And do you have other
5 papers there that you may be referring to?
6 A Not that I'm referring to. I have papers all
7 over the office but...
8 THE CHAIR: Okay.
9 A That's all.
10 THE CHAIR: Right. But not -- but anything for this
11 case is what I mean.
12 A Well, they would be in the file. I have
13 different things in the file but not in front of
14 me if that's what you're concerned about. It's
15 just the organizational chart.
16 THE CHAIR: Thank you. No. It's not a concern. It's
17 just that since we're not all in the room
18 together, we can't see what you may be looking
19 at, so I just need to kind of know if you're --
20 if you're looking at notes or if you're speaking
21 from memory, and so -- just so that we're all on
22 the same page about what you're looking at.
23 A Oh, okay.
24 THE CHAIR: So from what I understand, you have a file
25 somewhere related to this case, but you're not
26 looking at it, and -- but you're looking at an
27 organizational chart of the school district. And
28 then the other papers in your office are
29 unrelated to the complaint; is that right?
30 A Yes.
31 THE CHAIR: Okay. Thank you. Apologies for the
32 interruption. Go ahead, Mr. Kitchen.
33 CNSL J. KITCHEN: Thank you.
34 Q Silvia, is the Board involved in the hiring of
35 individual teachers?
36 A No.
37 Q Do you know who does generally handle that?
38 A The hiring of the teachers is the responsibility
39 of the superintendent and the principals.
40 Q When they hire teachers, are they required to
41 gain approval from the school board for each
42 teacher they hire?
43 A No.
44 Q Does the school board give any instruction to the
45 superintendent on what teachers they would like
46 to see hired or not hired?
47 A Oh, heavens, no.

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Silvia Marie Dyck (for Respondent)
In chief by Cnsl J. Kitchen

1 Q Okay.

2 A We have nothing to do with that.

3 Q Let's switch over to the other side; firing.

4 Does the board have any role in firing or
5 disciplining a teacher?

6 A No. The board has a role -- if there is an issue
7 with a teacher, it comes through the principal,
8 the superintendent, and the report is prepared
9 and presented to the Board, and the Board would
10 review the issues regarding that particular
11 teacher and make a decision whether to suspend
12 the teacher or not.

13 Q And how often does that happen roughly?

14 A Quite frankly, I don't recall ever suspending a
15 teacher.

16 Q Do the principal, district principal,
17 superintendent, what did you -- did you refer to
18 them as?

19 A The senior team.

20 Q The senior team. Does the senior team ever make
21 decisions about suspending or disciplining
22 teachers without bringing it to the Board?

23 A No. That is not in their job description.
24 That's not their role.

25 Q Okay. So who -- who handles -- who generally
26 usually handles issues of employee or teacher --
27 sorry -- discipline or suspension?

28 A It starts with the principal as soon as there's
29 an issue with a teacher. The principal would
30 deal with that. If it was beyond what he felt he
31 could deal with, then he would bring it to the
32 superintendent, and they would review the issue,
33 and again, through a report to the Board in terms
34 of suspending or not suspending. It mostly rests
35 with the principal about the conduct of his
36 teachers.

37 Q When you were on the board -- well, actually, no.
38 Let's talk about this. What about this? Do
39 the -- do the trustees, either as a group or on
40 their own, ever go and inspect teachers in their
41 classrooms?

42 A No. We only attend classrooms by invitation.

43 Q Okay. Let's talk about individual trustees.

44 What -- give me an overview of what the role of
45 an individual trustee is.

46 A A trustee is the member of the Board and abides
47 by the rules and the job description of the Board

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Silvia Marie Dyck (for Respondent)
 In chief by Cnsl J. Kitchen

1 of Education. They have no individual authority
 2 or power except that what is given by the Board.
 3 Invariably, that tends to be the chairing of a
 4 committee.

5 Q Does an individual trustee have any ability to
 6 instruct or direct anybody on the senior team?

7 A No. Again, he has no authority on his own.

8 Q One of the witnesses in this case suggested that
 9 an individual trustee may have informal power to
 10 influence or direct the senior team. Is that
 11 something you've ever experienced?

12 A I'm not clear on what you mean "informal."
 13 It's -- trustee has no authority to speak and
 14 direct anyone.

15 Q And --

16 A [Indiscernible] informally too.

17 Q Well, that's the word -- that's -- that's the
 18 word that was used by the -- by the witness. But
 19 in your -- let me put it to you a little
 20 differently. In your experience as a school
 21 board trustee, have you ever had an experience
 22 where an individual trustee has attempted to
 23 influence or direct, on their own by themselves
 24 not through the Board, influence or direct
 25 somebody on the senior team?

26 A It has never happened in my time. If it ever had
 27 happened, the staff member would immediately
 28 inform the Board that this trustee has crossed
 29 the line.

30 Q Are -- are trustees usually aware that they're
 31 not supposed to do that?

32 A Of course. They're members of the Board, and
 33 they review the responsibilities of a board of
 34 directors, and their responsibilities in terms of
 35 the -- the responsibility to the community, to
 36 the students, and to their staff.

37 Q In your time on the Board with Barry Neufeld, did
 38 he ever do something like that?

39 A Like what?

40 Q Like, attempt to influence or direct one --
 41 somebody on the senior team?

42 A Well, he wouldn't have because it would have come
 43 to the Board. A staff member would have brought
 44 it to the Board. So there's no way that that has
 45 happened in my time because it didn't come to the
 46 board nor would he ever do that. He's a very
 47 experienced trustee. Doesn't cross the line.

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Silvia Marie Dyck (for Respondent)

In chief by Cnsl J. Kitchen

1 Q Did you feel like you got to know Barry Neufeld
2 fairly well during your time on the Board with
3 him?

4 A Reasonably well as one would get to know a
5 colleague that one works together, but you're all
6 busy and families, so it's mostly in a
7 professional capacity.

8 Q Are you aware of him ever attempting to follow a
9 teacher or inspect a teacher in a classroom or
10 confront a teacher at a school?

11 A No.

12 Q Are you aware of any examples in the Chilliwack
13 School District of any gay or transgender
14 teachers being disciplined or admonished or
15 excluded from something because they were gay or
16 transgender?

17 A I'm not aware of gay or transgender teachers. In
18 my time, we had teachers. We did not segregate
19 them according to their sex. This was something
20 that simply was not anything that, A, we were
21 concerned about or knew about. They were
22 teachers. That's all.

23 Q While you were still on the Board, did it -- did
24 the Board ever instruct the senior team to
25 inspect or monitor gay or trans teachers more
26 than other teachers?

27 A No. The subject of gay and transgender was not
28 something that was -- what's the word -- talked
29 about, concerned about. It was not something
30 that was in our lexicon if you'd like. We talked
31 about teachers, student achievement, and -- and
32 how well our teachers were doing, the areas that
33 we got the results from in terms of literacy,
34 we're going up, and are we going down, and what
35 kind of supports do we need? That was the focus.

36 Q Did the senior team ever come to you with a
37 report that trans or gay teachers were worried
38 about their status in the workplace or their
39 treatment in the workplace?

40 A Not in my time, and again, not in our lexicon.

41 Q In your time on the Board, was the Board open and
42 receptive to trustees speaking their mind about
43 what they thought was best for education?

44 A Yes. As a board of trustees, we all had our
45 particular experiences, knowledge, skills, and
46 concerns, and we were varied and vocal, and those
47 were the good debates that we had in order to

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Silvia Marie Dyck (for Respondent)

In chief by Cnsl J. Kitchen

1 come to a good, unified decision around what our
2 progress should be in terms of our strategic
3 planning, our finance. Everyone spoke how they
4 felt until we got -- debated it to the point of
5 unification.

6 Q From your time on the Board, were any trustees
7 ever disciplined by the Board?

8 A No, not in my time. Now, depending on your
9 definition of "discipline," having been a chair
10 for some leg of time, we would admonish a trustee
11 for going on too long or -- in terms of --
12 veering off the subject matter, those kinds of
13 things, but that was more as a chair trying to
14 conduct a very, very, very opinionated group of
15 people in terms of the education of students.

16 Q Did -- did a situation ever arise where a trustee
17 was told that they could no longer visit the
18 schools that were part of the schools that they
19 were a liaison for? Did that ever happen in your
20 time on the Board?

21 A No. We were assigned schools, and we changed
22 those. So, you know, one time, you would have
23 this group, and another time, you would have that
24 group. But we never ever suggested a trustee
25 should not attend a school that I recall in my
26 time.

27 Q Are you aware of any times that Mr. Neufeld
28 expressed at board meetings that he thought gay
29 or trans people shouldn't be teachers?

30 A No. Again, that subject didn't come up until the
31 SOGI issues started. But again, we never talked
32 about teachers in terms of their sexuality at
33 all. They talked about a curriculum, a program,
34 a government program, not about teachers at all.

35 Q When did you first find out about SOGI 123?

36 A That was in -- in the fall of 2017. And I just
37 started to become aware of it because it was
38 snuck in in 2016 without the Board knowing about
39 it. I found that out later, that we didn't know
40 about it until 2017, and then we just started to
41 become aware about it, and I hadn't -- because I
42 was ill -- I missed quite a bit in 2017 because
43 of health issues, so I didn't really get into it
44 until 2018.

45 Q And what did you come to learn about it while --
46 while you were still a school board trustee?

47 A That Barry alerted us who -- the issues around

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Silvia Marie Dyck (for Respondent)

In chief by Cnsl J. Kitchen

1 SOGI. He caught onto it quicker than the rest of
2 us, I believe, simply because of his education
3 and background in dealing with abused children
4 and his -- his concern, which we didn't
5 automatically agree with or support because we
6 hadn't read it. So I delved into SOGI, read it,
7 reviewed it, and reflected on the impact this
8 would have on students and absolutely supported
9 his point of view. This is a horrific program
10 for our students. It is just -- it's -- it's
11 indoctrination. And in terms of an ideology and
12 perspective that children shouldn't be exposed
13 to.

14 From an early age, like, in an education
15 system, this is -- this just -- it's just not
16 right to talk about something that children
17 wouldn't have the capacity at their age to
18 consider and -- and be confused by someone might
19 suggest they aren't a boy, girl, whatever they
20 change to. They couldn't possibly comprehend
21 about that. And that is just wrong to confuse
22 our children in terms of -- of the program,
23 and -- and they -- they say it's a resource.
24 It's supposed to be anti-bullying, but it
25 turns -- it turned out to be more of an awareness
26 thing. And it is not. It wasn't awareness. It
27 was more indoctrination in my view in terms of my
28 reading of it. And children should not be
29 indoctrinating into something that is fact and in
30 fact, it isn't. Children should be studying
31 academics, not this sexual confusion.

32 SOGI is a real, real problem for our
33 education system. Our students need to be
34 protected from this kind of false information.
35 It's just wrong. Children are -- to suggest that
36 children are able to -- and -- and the worst part
37 is without parental information. Parent
38 involvement is a key thing. We work with the CTA
39 with everyone early on. Everyone within the
40 education policy talks about parent engagement.
41 Parent involvement is key to the education of
42 student success in schools. And now, suddenly,
43 this SOGI, it was kept so secret from both the
44 Board and is being kept away from parents.
45 Students are being informed that they can be
46 whatever, but they don't share it with their
47 parents. And -- and this is a critical concern.

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Silvia Marie Dyck (for Respondent)

In chief by Cnsl J. Kitchen

1 Parents have the key. They are the -- they key
2 person to their students. The school system
3 should not be taking over the parental role and
4 trying to put a wrench between parents and
5 students. This is just wrong to have that happen
6 and with all the -- the foolishness of pronouns
7 and all this thing without parents knowing about
8 it and finding out later on, and -- and
9 suggesting to students that they can use
10 hormones, and they go further to surgery.

11 All of these things are horrific, absolutely
12 horrific because they change the life of a
13 student if you have all of this kind of confusion
14 in their mind. Students, when you tell them
15 something, they will experiment, and it may not
16 even be true. We agree that there are children
17 that have what they call, I believe -- excuse
18 me -- gender dysphoria, but there are very, very
19 few, and they are not -- in my time, no child has
20 ever been harassed for that kind of thing. We
21 have an anti-bullying program that I considered
22 one of the best, and we look after our students.
23 I don't recall a student being harassed in terms
24 of those gender issues. But SOGI brings it in
25 front of our students and indoctrinates them into
26 something that is not true.

27 And how dare you do that in the public
28 education system? We need to teach our children
29 the truth in terms of things like an ideology.
30 You can't say this is something when it isn't.
31 Sex and -- and gender are two different things.
32 Gender ideology says you can be whatever, and you
33 can choose to be this, and you can choose to be
34 that. No matter whether you're a boy or a girl,
35 you can choose to be -- and this is how you can
36 do it, and we'll help you do it. And a variety
37 of things. We'll start hormones.

38 And a lot of these things are irreversible,
39 and that's a major concern because children will
40 experiment. As they get older, they may find my
41 goodness. This is not who I am, but I'm in a
42 position where I can't change back now. My whole
43 life is changed.

44 And when you consider -- for me, the issue
45 of, if you will, the joy of adult sex and
46 reproduction is stolen from many children because
47 they've gone through this particular gender

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Silvia Marie Dyck (for Respondent)
 In chief by Cnsl J. Kitchen

1 ideology, which was considered to be fact, and in
 2 fact wasn't them. So SOGI and -- I think is --
 3 is a real, real danger to our children. And part
 4 of the ever -- the erosion of public education,
 5 the confidence in public education is being
 6 eroded by these cultural wars, and this is a
 7 really sad thing.

8 We had a wonderful education system. We had
 9 a wonderful school district. We were doing
 10 really well. And now, we are so emersed and --
 11 and drowning in SOGI and forgetting that we're
 12 there to educate our students to be confident,
 13 [indiscernible] citizens. And all we're dealing
 14 with is the sexual [indiscernible].

15 So SOGI to me and Barry's highlighting of
 16 it created an awareness -- and certainly for me.
 17 I can't speak for the rest of my colleagues --
 18 that this indeed was a danger to our children and
 19 to our -- to our students. And particularly,
 20 I've been involved in parent involvement for many
 21 years. For me, education is critical for our
 22 students for their success in life, so parent
 23 involvement is something I've been working with a
 24 long time, Canadian Home and School, VCC PAC, and
 25 everyone worked with us. We had students; we
 26 teachers, the CTA. Everyone worked together to
 27 make the best success for students.

28 And suddenly, now, they're driving a wedge
 29 between parents and students, and I don't
 30 understand why. The secrecy of this and
 31 presenting SOGI, if something is kept secret, you
 32 know there's something wrong with it. In my
 33 view, if you keep a secret, you know there's
 34 something shady going on. So to keep that secret
 35 and to keep it from parents also is a real
 36 concern. Why? If this is such a great thing,
 37 why are we not sharing it with parents? Why
 38 aren't we bringing everybody together and saying,
 39 look, this is a great program. This is really
 40 going to help kids. Why aren't we doing that?
 41 Because it's wrong. It's the wrong ideology. It
 42 is absolutely wrong. And Barry's advocacy
 43 against -- his critique against this program is
 44 absolutely bang on.

45 And I believe that he was being martyred
 46 by -- by -- and harassed, if you will, by the CTA
 47 and others that are suing him because he will --

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Silvia Marie Dyck (for Respondent)
 In chief by Cnsl J. Kitchen

1 he will not stop talking about how bad SOGI is
 2 for students, how it can lead to -- to child
 3 abuse -- actually is what you might call it --
 4 because we're abusing children by telling them
 5 something is true, and in fact, it isn't. So
 6 he's being -- because he will not be quiet about
 7 it, and he's -- he's talking about a curriculum,
 8 a resource, call it what you will. That's what
 9 he's attacking. And he's actually correct. This
 10 curriculum, this resource, whatever you care to
 11 call it, is child abuse in the long term.
 12 THE CHAIR: Just before your next question -- oh.
 13 Sorry. I thought you were done your answer.
 14 Sorry. Were you going on?
 15 A No. That -- that's fine.
 16 THE CHAIR: Okay.
 17 A I could go on, but that's enough.
 18 THE CHAIR: Partway through the answer, it may have
 19 been in advertent, but -- but Mr. Neufeld gave
 20 the thumbs up Emoji sign on his screen, and I'll
 21 just remind Mr. Neufeld, as we did with other
 22 viewers as well, kindly not to give any
 23 indication one way or the other about whether
 24 you're agreeing with the witness's testimony.
 25 A Actually, I -- I didn't actually see that.
 26 THE CHAIR: That's fine. It's just my job to make
 27 sure everyone's doing what they're supposed to
 28 do, so I'm just reminding everyone not to be
 29 using the -- the thumbs-up feature.
 30 A Yeah. I just didn't see that.
 31 THE CHAIR: Yeah. Thank you. Go ahead, Mr. Kitchen.
 32 CNSL J. KITCHEN:
 33 Q Thank you for that, Silvia. I just have a couple
 34 follow-up questions. To your knowledge as --
 35 as -- as the school board, do you generally have
 36 some awareness of what's actually taught by the
 37 teachers in the District?
 38 A Yes. We have the basic curriculum as prescribed
 39 by the Ministry of Education, and then we have a
 40 curriculum instruction committee. Teachers will
 41 then in their professional capacity and the
 42 program or the subject matter that they're
 43 teaching may come across a resource, something
 44 different that might enhance the subject matter
 45 that they're teaching, so they bring it to the
 46 curriculum instruction committee and -- to clear
 47 it with them, if you will, to discuss it to see

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Silvia Marie Dyck (for Respondent)

In chief by Cnsl J. Kitchen

1 how -- whether it fits nicely or if there's any
 2 concerns about it. And so it's just a matter of
 3 information running through and making sure that
 4 we're all on the same page. So that's -- that's
 5 the -- that's it for the curriculum -- curriculum
 6 instruction committee. That was sort of their
 7 role in terms of teachers bringing things forward
 8 because they -- they are very much wanting to
 9 give their students the very best they can and
 10 the most information they can on the subject
 11 matter.

12 Q Are you aware if students in the district are
 13 ever taught about various religious beliefs such
 14 as Islam, Sikhism, Judaism, Christianity,
 15 et cetera?

16 A Not taught at all directly. It's not a -- that
 17 I'm aware of that it's in -- it may be referenced
 18 in some point in some of the -- the subject
 19 matter perhaps but not -- not at all whereas
 20 nothing -- we don't teach religions per se from
 21 my understanding and in my experience.

22 Q If any of those religious beliefs were taught
 23 from the perspective that they are true and
 24 factual, would that give you cause for concern as
 25 a trustee?

26 A Actually, yes. I -- I don't think we could say
 27 that any religious belief or ideology is true or
 28 not. They are an ideology. They are a belief
 29 system. And whether they are true or not, it's
 30 what people believe. It's their culture. And
 31 they -- we couldn't say whether it's true or not.
 32 I think it's their belief system. It's their --
 33 their culture, and -- and I respect that.

34 Q Do you think it's possible to prevent bullying
 35 against trans students without the teaching of
 36 trans ideology or gender ideology?

37 A Could you repeat that, please.

38 Q Do you think it's possible to effectively prevent
 39 bullying against transgender students without the
 40 teaching that gender ideology is true?

41 A Yes. We deal with bullying in terms of what
 42 they're bullying about, but you don't go into the
 43 subject matter of the bullying. If they're
 44 bullying someone, you would simply deal with the
 45 issue of this -- given the whole chapter and
 46 verse about why we don't bully other people, why
 47 we respect other people, but you wouldn't have to

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Silvia Marie Dyck (for Respondent)

In chief by Cnsl J. Kitchen

1 go into a whole teaching of it. It is somewhat
2 irrelevant to the bullying.

3 Q Was preventing bullying a priority for the Board
4 when you were on it?

5 A Yes. Our anti-bullying program, I thought, was a
6 very good one, and we were very, very concerned
7 about bullying with kids, so we wanted to make
8 sure our students were safe and felt safe school.
9 So if we felt there was any bullying, we -- we
10 had the measures and the -- the mechanisms to
11 deal with that and deal with it effectively
12 regardless of the subject matter of the bullying.

13 Q To your memory, did -- did Barry ever oppose
14 efforts to prevent bullying?

15 A Could you repeat, please.

16 Q Sure. To your memory, did -- did Barry ever
17 oppose the school board's efforts to prevent the
18 bullying of children?

19 A He was an absolute advocate of our bullying
20 program. He was very proud of it and was very
21 much making sure that we had a really good
22 bullying program and that it was effective. So
23 to be against it makes absolutely no sense. He
24 was proud of it. He thought we had one of the
25 best ones, and I would agree. Nothing's perfect.

26 CNSL J. KITCHEN: That's true. Those are all my
27 questions in direct. Thank you, Silvia.

28 THE CHAIR: Thank you. Ms. Waddell, I do have some --
29 you're going to have some questions now?

30 CNSL A. WADDELL: I think we need a little break to
31 just consider the witness's testimony, and
32 that --

33 THE CHAIR: All right. Just a few minutes with our
34 camera and mics off, or do you need a little bit
35 of a longer break than that.

36 CNSL A. WADDELL: I think a few minutes will be good.

37 THE CHAIR: All right. Mrs. Dyck, we're just going to
38 take a short break here, and we're all going to
39 turn our cameras and mics off while the
40 complainant's lawyers are talking about their
41 questions. So you're free to do the same during
42 this break, and we'll call you back, or you can
43 just -- just wait. It should be a few minutes;
44 okay?

45 A Okay. I'll just -- I'll take a break as well.

46 THE CHAIR: Okay.

47

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1 (WITNESS STOOD DOWN)

2
3 (PROCEEDINGS ADJOURNED FOR RECESS) [4:09:17]
4 (PROCEEDINGS RECONVENED) [4:19:45]
5

6 THE CHAIR: All right, everyone. Come on back.

7 Ms. Waddell, do you have some questions?

8 CNSL A. WADDELL: Yeah. So a couple of things.

9 Ms. Tom is going to handle the questions, and
10 what we were going to say is this. We think we
11 need about a half an hour with this witness in
12 cross. We're presuming that it will go pretty
13 well. I have a childcare issue that means I can
14 stay about five minutes late but no more. I'm
15 not asking the questions, but I do need to be
16 here for the -- for the evidence. So I was going
17 to say to Mr. Kitchen, either -- and obviously,
18 the -- you know, if the Tribunal has strong
19 views, but I -- since it's his witness, I was
20 going to give him the option. Either we can
21 start and get -- go up to until 35 after is when
22 I can stay until and then resume in the morning.
23 Or if you don't want the witness to be suspended
24 overnight, we can just start in the morning and
25 do a half an hour.

26 CNSL J. KITCHEN: I think it's best if we start in the
27 morning. I mean, I don't feel strongly about it
28 but that -- that to me sounds the best thing for
29 us to do.

30 CNSL A. WADDELL: We're -- we're fine with either. I
31 just wanted to -- it's your witness, so I wanted
32 to give you the option, and of course, obviously,
33 if the Tribunal has strong views.

34 THE CHAIR: All right. We don't have strong views, so
35 I think it will make sense to start in the
36 morning.

37 So, Mrs. Dyck, you heard that. We --
38 counsel for the BCTF and Chilliwack Teachers'
39 Association does have a few questions for you,
40 likely around half an hour, give or take. But
41 rather than kind of start and then stop and then
42 continue, we're going to just do that all
43 tomorrow morning. So I'm going to ask that you
44 come back tomorrow morning at 9:30, and we'll
45 finish our questions for you. At this point, in
46 terms of kind of instructions for you, my only
47 instruction is that you kindly not talk about

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1 your evidence or this proceeding with anyone who
2 is going to testify after you. So I don't know
3 if you're in contact with any other witnesses,
4 but if you are, please don't. Okay. Thank you.
5 So in that case, Mrs. Dyck, I'm going to remove
6 you from this meeting and ask that you just use
7 the link to rejoin tomorrow morning at 9:30. All
8 right.

9 A Thank you.

10 THE CHAIR: Thank you.

11
12 (WITNESS EXCUSED)

13
14 CNSL A. WADDELL: Can I just ask Mr. Kitchen a
15 scheduling question about tomorrow.

16 CNSL J. KITCHEN: Sure.

17 CNSL A. WADDELL: What -- was it tomorrow that you
18 said -- I think one of your witnesses was only
19 available tomorrow; is that right?

20 CNSL J. KITCHEN: Yeah. So that's who we're calling
21 as soon as we're done with Silvia.

22 CNSL A. WADDELL: Okay. And that was Rob; right?

23 CNSL J. KITCHEN: Yeah. And he -- yeah.

24 CNSL A. WADDELL: Okay.

25 CNSL J. KITCHEN: So if he doesn't start until 10:00
26 or 10:30, he -- he will finish tomorrow, so
27 that's fine.

28 CNSL A. WADDELL: Yeah. And he will have -- that's
29 fine. He will have lots of time. Okay.

30 That's -- that's great. I just wanted to make
31 sure I have the correct note about who it was
32 that had to get done. Okay.

33 THE CHAIR: Okay. Anything else before we adjourn for
34 the day?

35 CNSL J. KITCHEN: As far as the Tribunal's decision on
36 the witnesses that have been objected to, when
37 can we expect that? And will it be in writing or
38 delivered orally?

39 THE CHAIR: What I'm hoping -- it will be delivered in
40 writing, and I'm hoping to have that for you
41 tomorrow morning. At a minimum, we will be able
42 to give you our kind of bottom line decision
43 tomorrow morning just for your planning purposes,
44 but we're going to give our reasons in writing.

45 CNSL J. KITCHEN: Okay. Thank you.

46 THE CHAIR: Okay. All right. I'm going to
47 disconnect everyone from the meeting now and ask

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1 you to come back at 9:30. Thank you all for your
2 work today. We'll see you all in the morning.
3 Goodbye.
4

5 (VIDEOCONFERENCE ADJOURNED TO DECEMBER 4,
6 2024, AT 9:30 A.M.) [4:23:42]
7

8 REPORTER'S CERTIFICATE
9

10 I certify that the proceedings from timestamp
11 9:32:00 to timestamp 4:23:42 inclusive are a true
12 and accurate transcript of these proceedings
13 recorded on a sound recording apparatus,
14 transcribed to the best of my skill and ability
15 in accordance with applicable standards.
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26 Krystal Truong
27 Court Reporter
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File: CS-003172

**IN THE MATTER OF THE *HUMAN RIGHTS CODE*,
RSBC 1996, C. 2010 (as amended)**

**AND IN THE MATTER of a complaint before
The British Columbia Human Rights Tribunal**

BETWEEN:

British Columbia Teachers' Federation obo Chilliwack
Teachers' Association

COMPLAINANT

AND:

Barry Neufeld

RESPONDENT

AND:

B.C.'s Human Rights Commissioner

INTERVENOR

**PROCEEDINGS AT B.C. HUMAN RIGHTS TRIBUNAL HEARING
(VOLUME VIII)**

ORIGINAL

THERE IS A PUBLICATION BAN IN EFFECT PROHIBITING THE
PUBLICATION OF ANY INFORMATION THAT COULD IDENTIFY THE
TEACHERS WHO TESTIFIED, OR MAY HAVE TESTIFIED, IN
CONNECTION WITH THIS COMPLAINT: CHILLIWACK TEACHERS'
ASSOCIATION V. NEUFELD (NO. 2), 2024 BCHRT 180 [CTA
(NO. 2)]; AMENDED BY LETTER DATED FEBRUARY 25, 2025.

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**PROCEEDINGS AT B.C. HUMAN RIGHTS TRIBUNAL HEARING
(VOLUME VIII)**

ORIGINAL

Tribunal Members:	Devyn Cousineau, Robin Dean, Laila Said Alam
Counsel for the Complainant:	Lindsay Waddell, Alanna Tom, Stefanie Quelch, Chris Fenje
Counsel for the Respondent:	James S.M. Kitchen
Counsel for B.C.'s Human Rights Commissioner:	Sarah Khan, Maria Sokolova

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By videoconference
December 4, 2024

(VIDEOCONFERENCE COMMENCES) [9:32:22]

THE CHAIR: Good morning, everyone. It's December 4th, and I'm recalling the case of *British Columbia Teachers' Federation obo Chilliwack Teachers' Association v. Barry Neufeld*, CS-001372. I can see complainant's counsel and Mr. Clark here again this morning. I can see Mr. Neufeld and Mr. Kitchen. Good morning. And Ms. Khan is here as well. We do not have the witness back with us yet from the looks of it unless I'm missing something. No. So we'll just need to wait for Mrs. --

CNSL J. KITCHEN: Well, here. Hold on. I'll give her a call again. I -- I have re-sent her the -- a fresh copy of the link, but I'll give her a call.

THE CHAIR: All right. Thank you.

SILVIA MARIE DYCK, a witness,
recalled.

SILVIA DYCK: This is Silvia. Hang tight. Here we go.

THE CHAIR: She's here.

S. DYCK: Here I am.

THE CHAIR: Here you are. Good morning, Mrs. Dyck.

S. DYCK: Good morning.

THE CHAIR: Glad to see you've connected. Your video is quite fuzzy. Is that just me, or is everyone else seeing it a bit distorted this morning?

CNSL J. KITCHEN: There it is.

THE CHAIR: Oh. There we go. Okay. Just took a moment.

CNSL J. KITCHEN: Yeah. I think it's probably a connection lag issue.

THE CHAIR: Yeah. Okay.

S. DYCK: All good?

THE CHAIR: All good now. Thank you.

Just before we get started with Mrs. Dyck's questions, we had said to the parties that we would have our kind of bottom line decision for you about the evidentiary objection this morning. We are going to delay that until lunch, and we'll tell you just before the lunch break in case

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1 you're working on it over the lunch break, but we
2 want to make sure we spend the morning getting in
3 as much evidence as we can, and we'll give our
4 decision just before lunch. And we're hoping to
5 have written reasons to you by the end of the day
6 if we can get all the folks together at the
7 Tribunal that need to be involved with that.
8 So --

9 S. DYCK: I'm not -- was that directed at me or...?

10 THE CHAIR: No.

11 CNSL J. KITCHEN: No.

12 THE CHAIR: Thank you for -- no. That's just for
13 the -- for the lawyers.

14 S. DYCK: Oh, okay.

15 THE CHAIR: It's something that we have been
16 discussing. So now we are about to have the
17 complainant's lawyers ask questions of Mrs. Dyck.
18 This is called cross-examination. One of the
19 purposes of cross-examination, Mrs. Dyck, is to
20 test your evidence. So some people find that can
21 be a bit challenging. You heard yesterday that
22 they expect to be about half an hour. That --
23 that, of course, could be -- could change
24 depending on the pace of things. If for some
25 reason it's going on for a lot longer, we'll take
26 a break around 11:00. But if you need any other
27 breaks, you can let us know; okay?

28 S. DYCK: Okay. Okay.

29 THE CHAIR: So if you don't understand a question, you
30 can ask for a clarification. And if you don't
31 know the answer to a question, it's fine to just
32 say you don't know to a question; okay? Do you
33 have any question for me about this part of the
34 process?

35 S. DYCK: No.

36 THE CHAIR: No. Okay. In that case, complainant's
37 counsel, I think it's Ms. Tom that will be asking
38 the questions, you can go ahead. Technical
39 issues getting unmuted. Now I think they're
40 frozen. I'm going to remove you from the meeting
41 and maybe try and rejoin maybe unmuted. I'm
42 going to remove you now.

43 S. DYCK: Okay.

44 THE CHAIR: Not you, Mrs. Dyck. Sorry. I'm talking
45 to the complainant's lawyers.

46 S. DYCK: Oh, okay.

47 THE CHAIR: You're okay. You're off mute.

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Silvia Marie Dyck (for Respondent)

Cross-exam by Cnsl A. Tom

1 S. DYCK: Okay.

2 THE CHAIR: We just need to get the lawyers up and
3 running.

4 S. DYCK: All righty.

5 THE CHAIR: All right.

6 CNSL A. TOM: Can you hear me?

7 THE CHAIR: Yes. There we go.

8 CNSL A. TOM: Okay.

9 THE CHAIR: Okay.

10 CNSL A. TOM: Sorry about that. [Indiscernible].

11

12 CROSS-EXAMINATION BY CNSL A. TOM:

13

14 Q All right. So, Mrs. Dyck, yesterday, you told my
15 friend that the Board is not involved in the
16 hiring of individual teachers; is that correct?

17 A Yes.

18 Q And by that, you meant that the Board doesn't
19 recruit or review resumes or interview individual
20 teachers; right?

21 A Yes.

22 Q Because you understand that the school board, the
23 board of trustees, is in fact the employer for
24 all of the teachers in the school district of
25 Chilliwack; correct?

26 A Yes.

27 THE CHAIR: Mrs. Dyck, could I just ask you to speak
28 up a little bit? There's -- you're -- you're
29 quite faint. I want to make sure we're getting
30 your -- your answers clearly. Thank you.31 A The employee relation is a little bit different
32 than the usual definition of employment.

33 CNSL A. TOM:

34 Q And you understand that there are various
35 individuals throughout the school district who
36 are employees of the Board or who occupy
37 positions in the Board in the district who owe
38 responsibilities specifically to the Board;
39 correct?

40 A I'm not sure I understand your question.

41 Q Sure. So yesterday, you were talking about the
42 senior team and teachers and folks like the
43 secretary treasurer. Would you agree that those
44 people owe responsibilities and duties to the
45 Board?46 A They owe responsibility to -- to the community
47 and to their students and more so than -- than

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Silvia Marie Dyck (for Respondent)

Cross-exam by Cnsl A. Tom

1 the Board as well. I mean, the responsibility is
2 for them to do their job and serve their
3 community and the students.

4 Q Are you aware of any restrictions on who can be
5 nominated as a trustee for the Chilliwack School
6 District?

7 A Not really. I'm just making it -- my only
8 assumption is that they're not criminal.

9 Q So are you aware that an employee of a board
10 including a teacher cannot be nominated as a
11 trustee for that same board?

12 A Would that be a conflict of interest?

13 Q Would you consider it to be a conflict of
14 interest?

15 A Yes.

16 Q And so it's important that this prohibition
17 exists for just nomination despite the fact that
18 there's no guarantee of election; is that right?

19 A Well, that would make sense.

20 Q And especially if a trustee is elected, it's
21 important because individual trustees do have an
22 impact on the function of the school board as the
23 employer; is that correct?

24 A Could you repeat that, please.

25 Q Sure. So the prohibition guarding against that
26 conflict of interest is important because
27 individual trustees may have an impact on the
28 Board's function as the employer?

29 A Well, their loyalties would be split.

30 Q And it would be kind of impossible or illogical
31 to act as your own employer; right?

32 A Well, that would make sense. You can't -- your
33 loyalties are split.

34 Q Yesterday, you also said that the Board has no
35 role in firing or disciplining teachers; is that
36 correct?

37 A The Board suspends teachers upon the
38 recommendation of staff. They review it to see
39 whether in fact they uphold the suspension
40 recommendation or not.

41 Q And yesterday, you said that you can't recall
42 ever suspending a teacher; is that correct?

43 A Yes.

44 Q So in -- in 20 years of being a trustee, you
45 can't recall any time where you did that review
46 of a report and confirmed a suspension?

47 A I can't remember that, no.

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Silvia Marie Dyck (for Respondent)

Cross-exam by Cnsl A. Tom

1 Q Yesterday, my friend also asked you if there was
 2 any example that you knew of in Chilliwack of any
 3 teacher being disciplined, admonished, or
 4 excluded from something because they were gay or
 5 transgender. And your answer was, "I'm not aware
 6 of any transgender or gay teachers. In my time,
 7 we had teachers, and this was not something we
 8 were concerned or knew about." Do you remember
 9 that?

10 A Yes. Not something I was concerned or knew
 11 about.

12 Q And you also said that during your time, no
 13 senior -- no member of the senior team ever
 14 reported to the Board that gay or transgender
 15 teachers were concerned about their status or
 16 treatment in the workplace; is that right?

17 A No. That subject never came up that I recall.

18 Q So you maintain that you did not know whether
 19 there were any gay or transgender teachers in the
 20 district?

21 A That was never my focus and never -- it was never
 22 my focus. It was not something that concerned
 23 me. I was concerned about student
 24 [indiscernible].

25 Q And you also maintain that those teachers about
 26 whom you didn't know were never disciplined or
 27 admonished because of or in relation to their
 28 identity as being gay, transgender?

29 A Could you repeat the question, please.

30 Q Sure. So those teachers, gay and transgender
 31 teachers about whom you don't know and you were
 32 not aware, you also maintain that they were never
 33 disciplined in relation to their identity as gay
 34 or transgender people?

35 A Whether -- whether -- if they had been in any
 36 way -- what was your word again? Could you
 37 repeat that, please.

38 Q Disciplined or admonished.

39 A If they had been disciplined or admonished, I
 40 would be aware of that, and I was not.

41 Q Yesterday, you described the Board as a
 42 governance body. And you said that as the
 43 governance body, the trustees on the Board have
 44 responsibilities to the community, to students,
 45 and to their staff; is that correct?

46 A Yes.

47 Q And you would agree that leadership in the school

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Silvia Marie Dyck (for Respondent)

Cross-exam by Cnsl A. Tom

1 district encompasses more than just the
2 individual hiring and firing decisions; right?
3 A Could you repeat the question, please.
4 Q Sure. You would agree that leadership in the
5 school district means more than just hiring and
6 firing decisions?
7 A We don't make hiring and firing decisions.
8 Q But nonetheless -- sorry. Go ahead.
9 A As a board, we don't make hiring and firing
10 decisions except the suspension upon the
11 recommendation of staff, whether or not we agree
12 with that suspension.
13 Q Would you agree then that the -- the members of
14 the board are leaders in the district?
15 A We're a governing board, and we are recountable
16 to the community.
17 Q And in that governing role, the Board sets
18 policies for -- guide how the other actors such
19 as teachers, students, superintendents,
20 et cetera, are to act within their respective
21 roles; is that correct?
22 A We set policy, yes.
23 Q And so the effectiveness of the other actors,
24 teachers, principals, vice principals, and so on,
25 within their respective roles, depends in some
26 part on the effectiveness of the Board; is that
27 correct?
28 A Say again.
29 Q The effectiveness of others in the school
30 district in their respective roles, for example,
31 as teachers or vice principals or principals,
32 depends in part on the effectiveness of the
33 Board?
34 A I wouldn't say that. I think they -- they -- can
35 you repeat that again, please.
36 Q Sure. So we just discussed the -- the role of
37 the -- the Board as setting the policies in the
38 district. And so the next question is whether or
39 not the effectiveness of the other actors in the
40 school district depends in some part on the
41 effectiveness of the Board, for example, in
42 setting those policies?
43 A Their effectiveness is in terms of -- of -- is in
44 their control in exercising their duties of
45 the -- of their position. And part of that is to
46 know and follow the policy of the Board.
47 Q And you would agree that every trustee, in turn,

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Silvia Marie Dyck (for Respondent)

Cross-exam by Cnsl A. Tom

1 is accountable for the effective management and
2 operation of the Board as a whole, would you not?
3 A Say again, please.
4 Q You would agree that every trustee on the Board
5 is accountable for the effective management of
6 the Board?
7 A Not accountable. They are participants. They
8 contribute. But not personally accountable as an
9 individual.
10 Q Just going to bring up a document for you here.
11 Is this a photo of you?
12 A Yes.
13 Q Do you recall writing a letter to the then
14 Premiere and Minister of Education in
15 November 2020?
16 A Yes.
17 Q Do you recall stating in that letter that every
18 trustee is accountable for the effective
19 management of the Board?
20 A Yeah. If that's what I wrote, that's what I
21 wrote.
22 CNSL A. TOM: Thank you. I'd like to have that
23 admitted as an exhibit. I will send it shortly.
24 THE CHAIR: All right. We can -- after Mr. Kitchen
25 has a chance to look at it and after the Tribunal
26 receives it, we can talk about admitting it as an
27 exhibit. Thank you.
28 CNSL A. TOM:
29 Q And November 27th, 2020, that was still while
30 Mr. Neufeld was a trustee; correct?
31 A Yes, I believe so.
32 Q And so you were advocating for the entire Board
33 to be disbanded while Mr. Neufeld was still on
34 the Board?
35 A If he was on the Board, yes.
36 Q Yesterday, you also spoke about these SOGI 123
37 materials. And in that, you -- you stated that
38 Barry alerted you to the issues of SOGI 123 and
39 that he caught on a lot faster than -- than the
40 rest of you. Do you remember saying that?
41 A Yes.
42 Q And then you said that you delved into SOGI, you
43 read it, reviewed it, and reflected. Is that
44 accurate?
45 A Yes.
46 Q And upon doing so, you supported his point of
47 view that it's a horrific program for the

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Silvia Marie Dyck (for Respondent)

Cross-exam by Cnsl A. Tom

1 students of Chilliwack; is that right?
2 A Yes.
3 Q Because you said that it was suggesting to
4 students that they can use hormones, and they can
5 go get surgery, and that that is part of what's
6 horrific. Do you agree with that?
7 A I would say that the -- saying that it was true
8 that students could, through artificial means,
9 change their gender is what I objected to.
10 Q Do you remember seeing where that was in the SOGI
11 materials?
12 A Whether it was in the SOGI materials, I can't
13 recall exactly.
14 Q Was it in a lesson plan? Do you remember?
15 A No.
16 Q So was it in any of the policies and procedures?
17 A It's been a while, so I can't recall exactly.
18 Q And this all came from your own personal research
19 into the SOGI materials?
20 A Yes. My reflection on what the impacts of such a
21 program would be for our students and the
22 long-term possible effects.
23 Q Did you consult the sources on the SOGI 123
24 website to come to that conclusion?
25 A I took several places, yes.
26 Q Was the SOGI 123 website one of those places?
27 A Yes.
28 Q And if I were to tell you that there's nothing in
29 the SOGI materials that mentions artificial
30 means, hormones, or surgery, would you disagree?
31 A I couldn't say.
32 Q Did you consult any of the research that has been
33 done about SOGI 123 or its predecessors and why
34 it was important?
35 A I did several readings around the genesis -- my
36 assumption it was the genesis -- of the ARC
37 Foundation, which seemed to have started this --
38 this SOGI 123 at the beginning of the SOGI 123.
39 Q And what did you learn from the genesis of the
40 ARC Foundation?
41 A That there was a concern that -- that a child --
42 a parent was -- I'm not sure -- gay, lesbian, or
43 trans or wanted to be trans. I'm not sure -- and
44 needed -- and asked for help, and that started, I
45 believe, the whole pursuit of how to help that
46 child.
47 Q And in terms of the implementation of codes of

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Silvia Marie Dyck (for Respondent)

Cross-exam by Cnsl A. Tom

1 conduct that address specifically homophobia and
2 transphobia, did you do any research on -- on why
3 that was implemented?

4 A Say again.

5 Q So one of the first steps of the SOGI 123 rollout
6 was the adoption of codes of conduct that
7 specifically address transphobia and homophobia.
8 Did you do any research on why that was one of
9 the steps or why that was felt to be necessary?

10 A Could you repeat that again, please.

11 Q Sure. So did you do any research regarding the
12 necessity of ensuring that codes of conduct in
13 school districts mentioned homophobia and
14 transphobia specifically?

15 A No research per se.

16 Q Could you just show us what you're reading or
17 looking at, Mrs. Dyck.

18 A I have a pad of paper, and I'm making notes to
19 try to answer the questions properly. Would you
20 like to see it? I can show it to you.

21 Q Yes, please.

22 A Do you see it?

23 Q Not really, no. Could you send copies of that?

24 A [Indiscernible]. I'd have to rip this off. It's
25 my scribble.

26 CNSL J. KITCHEN: Chair, I don't think it's
27 appropriate to ask for copies of it. It's not
28 notes she came in with. It's notes she's making
29 during the cross, which I think is actually a
30 good thing because it's -- it should be helpful
31 to my friend for the witness to give the best
32 answer she can. If it's notes that she's coming
33 in with, then I think the request makes sense.
34 But if it's notes she's making during cross, I
35 don't think the request is appropriate.

36 THE CHAIR: Ms. Tom.

37 CNSL A. TOM: Well, yesterday, Ms. Dyck had some
38 papers in front of her, and we discussed that,
39 and so I agree that if it's notes she's making
40 during cross, that's -- you know, that's not
41 objectionable, but we don't actually know that
42 that's what she has in front of her, so it would
43 be helpful, I think.

44 A Because I'm telling the truth that is exactly
45 what it is. I'm making notes to answer the
46 questions properly.

47 THE CHAIR: Okay. So just to be --

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Silvia Marie Dyck (for Respondent)

Cross-exam by Cnsl A. Tom

1 A [Indiscernible] right now. Okay. I'm -- I swore
2 to tell the truth, and that's what I'm doing.

3 CNSL A. TOM: If the witness could wait until the
4 objection is resolved, that would be great.

5 THE CHAIR: All right.

6 CNSL J. KITCHEN: No. But she -- she clearly
7 wasn't -- I understood the first time that she
8 said it was notes that she made during
9 cross-examination. So she's just making -- that
10 was clear to me but apparently wasn't to
11 everybody else. She's trying to make that clear.
12 I think that's fair.

13 THE CHAIR: All right. And this is a -- this is maybe
14 something I forgot to say at the outset,
15 Mrs. Dyck, and I apologize for that -- is where
16 there's an objection, typically, I'll hear about
17 the objections from the lawyers, and then I'll
18 make a decision, and then I'll come back to you.
19 And I appreciate in this case, you're -- you're
20 trying to clarify what the -- what your notes
21 are.

22 So can I just understand then, tell me if --
23 if my understanding is right, and please -- very
24 important to correct me if I'm wrong. When we
25 started this cross-examination, was that a blank
26 piece of paper?

27 A Yes.

28 THE CHAIR: Okay. And so then I understand that
29 you're writing on it as the questions come in to
30 help yourself answer the questions; is that
31 right?

32 A Yes.

33 THE CHAIR: Okay. And do you have any other papers or
34 anything in front of you that you're referring to
35 when you're answering your questions?

36 A No. Only the one -- the chart -- the
37 organizational chart that I told you about
38 yesterday.

39 THE CHAIR: Okay. Thank you. I think, Ms. Tom, we
40 should -- we just need to take Mrs. Dyck at her
41 word here that she's making notes of the
42 questions and her answers, and I'm not going to
43 order her to provide copies of that. And if
44 that's assisting her to follow the question and
45 answer it, then I think that's fine. Go ahead.

46 CNSL A. TOM:

47 Q Okay. So yesterday, you also said that one of

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Silvia Marie Dyck (for Respondent)

Cross-exam by Cnsl A. Tom

1 your concerns about SOGI 123 is that you said it
 2 was kept secret, and that's how you know
 3 something shady is going on; is that right?

4 A Not that I know, but I suspect.

5 Q Did you attend a board meeting on November 28th,
 6 2017, in your capacity as a trustee?

7 A I can't recall. I was sick and missed a fair
 8 bit, but I can't recall whether I was at that
 9 meeting, but I could check -- or we could check
 10 however.

11 Q Do you recall attending the B.C.'s School
 12 Trustees Association conference that year?

13 A Actually, no.

14 Q Do you recall receiving an email from the chair
 15 of the district parent advisory council prior to
 16 the BCSTA conference asking the trustees whether
 17 they would have a meeting to discuss SOGI 123
 18 with the trustees?

19 A No, I don't recall that. I was ill and in
 20 [indiscernible] at that time.

21 Q That's fair. Just going to take you to something
 22 to see how this works out.

23 THE CHAIR: There's no audio. Oh, there it is.
 24 Sorry. I -- I said there was no audio. There --
 25 there is audio. I was wrong about that.

26 CNSL A. TOM: Okay.

27 Q I'm just going to play this for you, Mrs. Dyck.

28

29 (VIDEO BEING PLAYED) [10:03:42 to 10:06:30]

30

31 THE CHAIR: Oh. You're muted still.

32 CNSL J. KITCHEN: Yeah. I think she's working it out.

33 CNSL A. TOM: Okay.

34 CNSL J. KITCHEN: You need to mute the documents one,
 35 I think.

36 CNSL A. TOM: There we go. That -- there we go.
 37 Okay.

38 Q Mrs. Dyck, does that refresh your memory?

39 A Well, if that's what I said, then that's what
 40 happened.

41 Q Okay. So to recap, the District's parents group
 42 knew about SOGI 123 by -- at least by
 43 November 28th, 2017; right?

44 A It would appear so.

45 Q And they had asked the trustees to have a meeting
 46 to learn more prior to that date?

47 A I'm sorry. What's the question?

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Silvia Marie Dyck (for Respondent)

Cross-exam by Cnsl A. Tom

1 Q Oh. The question was so do you recall now that
2 the -- the DPAC chair requested a meeting with
3 the trustees to discuss SOGI 123 prior to that?
4 A Whatever she says would be.
5 Q And you said that in that meeting, you requested
6 that your colleagues bring back information about
7 SOGI 123?
8 A If that's what I said, then that's what we did.
9 Q And so you had the opportunity to attend this
10 conference with other school trustees from around
11 the province to learn more about SOGI 123, but
12 you didn't attend, did you?
13 A I wasn't able to attend as I explained. Family
14 came down.
15 Q Yesterday, you said that there are children who
16 suffer from gender dysphoria, but that they're
17 very, very few. Do you recall saying that?
18 A I don't recall saying there were very, very few.
19 I recall saying there are.
20 Q Okay. And you also said that bullying prevention
21 was a priority for the Board; is that right?
22 A Certainly. It's part of keeping students safe.
23 Q And would you describe safety as encompassing
24 more than just physical safety?
25 A Well, I don't know whether you would call verbal
26 bullying as physical.
27 Q No. I would separate those. So would you
28 describe safety as being safety from both
29 physical violence and verbal bullying?
30 A Yes.
31 Q Because emotional and physical safety are
32 important for humans; correct?
33 A Well, safety is safety. It encompasses the whole
34 person.
35 Q If I were to tell you that there's academic
36 research showing the effectiveness of SOGI 123 in
37 reducing specific forms of bullying related to
38 LGBTQ identities, would that surprise you?
39 A Not much surprises me. There's lots of research
40 everywhere.
41 Q So you -- would you doubt the results of that
42 research?
43 A I question everything.
44 Q On what basis would you question that research?
45 A The extent of it, who was consulted, who had the
46 initiative to do that, why they did that, all of
47 those kinds of questions.

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Silvia Marie Dyck (for Respondent)

Cross-exam by Cnsl A. Tom

1 Q If I told you that the research that I'm speaking
2 about was based on the Province-Wide Adolescent
3 Health Survey, would that make a difference in
4 how reliable you would find that research?

5 A Not necessarily.

6 Q And you also said that no students, to your
7 knowledge, were ever bullied on the basis of what
8 you called gender issues during your time as a
9 trustee; is that correct?

10 A I wouldn't know the subject of every bullying
11 event in the school system.

12 CNSL A. TOM: Thank you. Those are my questions.

13 THE CHAIR: Thank you. Mr. Kitchen, do you need a few
14 minutes, or do you have any questions in
15 re-direct?

16 CNSL J. KITCHEN: I do. I'll need a copy of that. I
17 haven't checked if it's been sent. I'm going to
18 assume it has. No. I don't see it in my inbox
19 yet, so I'll need a few minutes obviously. My
20 friend didn't send -- send that to me this
21 morning, so I need a -- I need her to send me a
22 copy now, and so I guess -- I guess -- I don't
23 know. If you want to take the morning break or
24 just give me 10 minutes, but I -- I need -- I
25 need at least 5 or 10 minutes after I get the
26 article, which I don't have yet so...

27 THE CHAIR: All right. And just to be clear -- and --
28 and apologies if this is obvious to everyone
29 else, is the video of the November 28th, 2017,
30 board meeting in the record already, or is that
31 also a new video?

32 CNSL A. TOM: That is also new video.

33 THE CHAIR: Okay.

34 CNSL A. TOM: I'll have to send that through a link
35 though because it's too big so...

36 CNSL J. KITCHEN: I -- yeah, I -- I'm not going to --
37 I'm not going to re-direct on that, so -- it's
38 obviously a school board video, so I think it's
39 fine to -- to go in. It looks like it's from the
40 relevant period so...

41 THE CHAIR: All right. Well, then why don't we --
42 let's take 10 minutes. And if that's enough
43 time, Mr. Kitchen, then when we come back, you
44 can let us know if you need more time. But we'll
45 send over the article and come back in
46 10 minutes.

47 Mrs. Dyck, we're just going to take this

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Silvia Marie Dyck (for Respondent)
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1 short break now. We're just going to turn off
 2 our cameras and mics, and I'll check back in in
 3 10 minutes to see if Mr. Kitchen is ready with a
 4 couple more questions after he's had a chance to
 5 review the article; okay?

6 A Okay.

7 THE CHAIR: Okay. Back in 10.

8

9

(WITNESS STOOD DOWN)

10

(PROCEEDINGS ADJOURNED FOR RECESS) [10:13:40]

11

(PROCEEDINGS RECONVENED) [10:23:48]

12

13

14

THE CHAIR: Hi, everyone. It's been 11 minutes, so
 15 just come on back for a quick check-in. We might
 16 need more time here. It looks like I -- we get
 17 the email about Ms. Tom's computer crashing, so I
 18 know, Mr. Kitchen, you just got the document. I
 19 take it you'll probably need a few -- a bit more
 20 time?

21

CNSL J. KITCHEN: No, I'm good. I've -- I've read it.
 22 I was just -- I was just about to come back in
 23 because I -- I've been through it now.

24

THE CHAIR: Okay. Great. Mrs. Dyck, are you there?

25

CNSL J. KITCHEN: Now we need her back.

26

THE CHAIR: We need her back. Maybe just while we're
 27 waiting for her to come back, Mr. Kitchen, are
 28 you going to be objecting to admitting this
 29 document, or is this -- or can we admit it?

30

CNSL J. KITCHEN: No. I -- I -- I can't see a basis
 31 on which I could -- I mean, its relevance is
 32 questionable, but like I said yesterday, we've
 33 drawn the line at a pretty low bar, so I don't --
 34 I don't think I -- I can -- I -- decent basis
 35 to -- to object to it.

36

THE CHAIR: All right. In that case, we'll -- oh.

37

Hi, Mrs. Dyck. We're back. Are you there?

38

CNSL J. KITCHEN: You're muted, so we can't hear you,
 39 but hopefully you can hear us.

40

41

SILVIA MARIE DYCK, a witness,
 42 recalled.

43

44

A Yeah. Here I am. Hang on.

45

THE CHAIR: Okay.

46

A There I am.

47

THE CHAIR: There you are. Okay.

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Silvia Marie Dyck (for Respondent)

Re-exam by Cnsl J. Kitchen

1 CNSL J. KITCHEN: There we are.

2 THE CHAIR: Thank you. Just before we come to your
3 questions, I don't know if we have the exhibit
4 sheet up yet.

5 UNIDENTIFIED SPEAKER: We do.

6 THE CHAIR: Okay. So we'll admit the article --
7 sorry. I don't have it in front of me. Can you
8 pull it up for me?

9 UNIDENTIFIED SPEAKER: Sorry. Sure.

10 THE CHAIR: Okay. The article dated November 27th,
11 2020, is called "Letter Former Chilliwack School
12 Trustee Says It's Time to Fire the Whole Board"
13 by Silvia Dyck in the Chilliwack Progress. This
14 will be Exhibit 4. It's eight pages.

15
16 (EXHIBIT MARKED)

17
18 THE CHAIR: And then I take it the video, Ms. Tom,
19 were you seeking to have the video admitted as
20 well, or was that just for cross-examination?

21 CNSL J. KITCHEN: Oh. You're muted.

22 CNSL A. TOM: So sorry. Yes, I am seeking to have it
23 admitted. I am going to need a couple minutes
24 with my computer to get it into a link, but I
25 will do that as soon as I can.

26 THE CHAIR: Okay. We'll come back to it then. Go
27 ahead then, Mr. Kitchen, if you have a few
28 questions on re-direct.

29 CNSL J. KITCHEN: Sure.

30
31 RE-EXAMINATION BY CNSL J. KITCHEN:

32
33 Q Okay. Silvia, can you -- can you see -- can you
34 see that picture of you there?

35 A Oh, yeah.

36 Q Okay. So this is the same letter that Ms. Tom
37 brought you to. And she -- she asked you if you
38 had written this, and she specifically asked you
39 about this orange bit here, "Every trustee is
40 accountable for the effective management of the
41 board." And she asked you just very briefly
42 about what this letter was about. So what I want
43 to know is -- is she -- and my friend mentioned
44 something about advocating for the -- for the
45 Board to be disbanded in 2020. I think that was
46 her word. I don't know if that's yours, but
47 could you tell me -- well, actually, you know

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Silvia Marie Dyck (for Respondent)

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1 what? Here -- here's what I think we should do
2 to be fair to you. How about we have you --
3 just -- this is very short. How about we have
4 you read it again just so you can refresh your
5 memory.
6 A The whole letter or just the part that you've
7 highlighted?
8 Q The -- the whole -- here, let's get rid the
9 highlight so that we're not messing with your
10 eyes because that can get annoying.
11 A Oh, okay.
12 Q And there's one more down here. Yes. So I'm
13 going to have you read the whole thing. So when
14 you get to the bottom of this page, just let me
15 know, and we'll continue on.
16 A Oh, okay. Hang on. I'm just having trouble
17 scrolling down here.
18 Q No. It's me. I have to scroll down for you.
19 A Oh, okay.
20 Q There. That's the rest of it.
21 A Well, go back a little bit, please.
22 Q Okay.
23 A Little bit more. Okay. Okay. Now -- okay. One
24 sec. Okay. Scroll up a bit, please. Got it.
25 Q Okay. Thank you. Why did you write this letter?
26 What were your concerns?
27 A As I recall, that -- it seemed that people were
28 being silenced and not allowed to speak in terms
29 of the freedom of speech and -- and association.
30 It seems to me the Chilliwack Board of Education
31 seemed to have, as I recall at the time, to
32 forget who they were accountable to. We really
33 go back to remember that clearly. The -- the
34 chair seemed to have some issues with dealing
35 democratically with the -- with the membership,
36 both of the Board and the public as I recall.
37 So as I state here, it's -- it must have
38 been so bad that I wrote this letter. And the
39 only thing that I can recall as clearly indicated
40 that something -- the conduct was so bad that
41 democracy, freedom of speech and association was
42 totally ignored. And individuals were losing --
43 or allowing their personal biases to overrule
44 their concern for the education of students and
45 service to the community as best as I can recall
46 in terms of the why. What I say is what I say.
47 Q Okay. Was there any particular event that

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Silvia Marie Dyck (for Respondent)

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1 inspired you to comment on democracy, freedom of
2 speech, and freedom of association?

3 A I think it's not one event. They were
4 continually doing this in terms of shutting
5 people down and not letting the public speak as I
6 recall. So it was -- when I say enough, it
7 wasn't just a one-time event. It was a
8 cumulative of behaviour of the Board that finally
9 got to me that it wasn't just the one-off, oh,
10 we -- we messed up today and maybe yesterday, but
11 it continued, and this is why I said enough.
12 This is -- they're not changing their ways.
13 They're not improving.

14 Q I think this is my last question on this. So my
15 friend asked you -- she asked you a question
16 about accountability, and then you said something
17 about a trustee being a participant but not
18 necessarily accountable. Can you tell me, you
19 know, as far as you can recall, what you meant
20 when you said in this letter -- you said every
21 trustee is accountable for the effective
22 management of the Board. What did you mean when
23 you wrote this as a part of this letter that you
24 can remember?

25 A That every trustee has to behave in terms of
26 respectfully allowing the procedures of a board
27 meeting to move forward. So they needed to
28 conduct themselves respectfully. And they're
29 accountable -- and each trustee is accountable
30 for contributing to that kind of respectful
31 working relationship of a board. I use the word
32 "management," which is, you know, as a chair, you
33 manage the board meeting.

34 Q Okay. I think this is a little small. I'm going
35 to make it bigger for you. Hold on. Just give
36 me a second. In cross-examination, my friend
37 Ms. Tom asked you whether you had looked at the
38 SOGI 123 website. You had said yes. She asked
39 you where the belief about changing gender had
40 come from, where -- where -- where you had got it
41 from, okay? And you said you weren't quite sure.
42 And so I'm -- what is in front of you here now,
43 it is from the SOGI 123 resources that have been
44 put into this case, okay? So it's -- it's a --
45 it's a document that both sides have agreed is --
46 is -- is real and authentic and proper, and
47 it's -- and it's in front of the Tribunal, and

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1 it's going to form part of the -- the legal
2 record in this case.

3 And for the record, we're -- I think we're
4 at Tab 34, and the Bates numbering is 131. Okay.
5 Now I'm going to read you here this section that
6 says number 3 here. It says
7 "self-identification."
8

9 Students will have the right to
10 self-identification which includes the name
11 by which they wish to be addressed and the
12 preferred pronoun that corresponds to their
13 gender identity.
14

15 Is this where you got the belief that SOGI was
16 about -- or included teaching that children can
17 change their gender?

18 CNSL A. TOM: Sorry. Objection. This wasn't put to
19 the witness in cross.

20 CNSL J. KITCHEN: What -- what -- well, I just said
21 what -- what question you asked the witness in
22 cross. I quoted you pretty accurately, I would
23 say.

24 CNSL A. TOM: No, no. I asked her where she got the
25 suggestion that students can change -- can use
26 hormones and go on to get surgery.

27 CNSL J. KITCHEN: No. You -- well, yes, and then you
28 asked her about whether the belief of changing
29 genders came from.

30 CNSL A. TOM: No. I said, "Where did you get the idea
31 that SOGI talks about hormones or surgery?" Not
32 about changing gender.

33 CNSL J. KITCHEN: Well, I guess there's two issues
34 here. One, if we really have to, we'll just --
35 we'll have to somehow get the audio recording
36 because -- but I -- I would -- I would suggest
37 that perhaps the better way to deal with this is
38 to -- is to say that that's matter of splitting
39 hairs. The point is that generally speaking, you
40 asked her where she got her views of the SOGI 123
41 resources and what they meant and what the
42 implications of them were. And she said I don't
43 know. But you asked her if she looked at the
44 SOGI 123 website, and she said yes. And so
45 that's not something, of course, I dealt with in
46 direct. That's something you crossed on, which
47 is fine. You're permitted to do so. And I'm now

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1 re-directing on that question you asked her based
 2 on what is a SOGI 123 resource from a SOGI 123
 3 website, which you've put in the record, to ask
 4 her if that's where she got it from. And I don't
 5 know what her answer's going to be. Maybe it's
 6 no, maybe it's yes, but it's permissible
 7 re-direct.

8 So I -- I -- I would say we don't need to
 9 split the hairs and go back and look at the
 10 recording to see, you know, who is more accurate
 11 about exactly what you said, but if -- if -- if
 12 the Chair disagrees, then I would say that --
 13 that's -- that's -- I guess that's what we're
 14 going to have to do, which, you know, sometimes
 15 happens in re-direct.

16 THE CHAIR: Okay. Well, I just have to -- what I'll
 17 say is that I agree with the complainants. My
 18 notes reflect that the question was -- the
 19 questions went:

20
 21 Q You support -- you supported Mr. Neufeld's
 22 view that things related to SOGI were
 23 horrific because --

24 A Yes --

25 Q Because -- suggested that students were
 26 going to get hormones, surgery, and that's
 27 part of what is horrific?

28 A Yes.

29 Q Where is that in the SOGI materials?

30 A Don't recall.

31 Q Was it in a lesson plan?

32 A No.

33 Q Policy procedure?

34 A Yes.

35
 36 So the questions were about hormones and surgery.
 37 But -- so just for the sake of being accurate
 38 and -- and correctly summarizing what the
 39 cross-examination was, that's what it was, but
 40 I'll let you ask the question, which is broader
 41 than that, which is about, I think, what you're
 42 going to ask about in number 3.

43 CNSL J. KITCHEN: Okay. And I don't disagree with
 44 that by the way. She did -- my friend did say
 45 that. I think perhaps the problem is that I --
 46 I -- I didn't write that down. I wrote down
 47 maybe the next question or the question before it

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1 because she did say that. So that's -- yeah,
 2 that's -- that's the issue. I wrote down a
 3 different question than the one she's talking
 4 about, I think. But in any event, I'll just
 5 quickly ask this.

6 Q You -- Ms. Dyck, you -- you said something
 7 about -- you said several things about what you
 8 inferred from the SOGI resources, and you weren't
 9 quite sure where you -- where you -- where you
 10 got that from. So what I want to know is -- and
 11 I'm going to read this to you again -- your --
 12 your -- let's just say, your -- your -- your
 13 concerns and your views about what the SOGI 123
 14 resources were teaching and the implications of
 15 that such as hormones and -- and -- and surgery
 16 and et cetera, I want to know if -- if this bit
 17 here about self-identification is where you got
 18 that from.

19 A The -- the -- the self-identification concerned
 20 me greatly on the -- the piece that -- firstly,
 21 that it was not shared with parents. It was kept
 22 from parents. That was one of them. The other
 23 part is when you talk about gender identity,
 24 gender is something that is a -- a construct.
 25 It's not how you change your gender. So the
 26 gender identity is -- here, it just talks about
 27 the pronouns that correspond to their gender
 28 identity. But how do you do -- how do you get to
 29 gender identity? How do you change your gender
 30 identity? And those -- that's -- that's where I
 31 got that. How do I take that further? How does
 32 that go further in terms of identifying your
 33 gender identity and asking to be addressed in a
 34 different way, which is what led me down that
 35 road to say, well, how does that happen? And how
 36 do you maintain that? That's sort of where I
 37 came at -- at that time. And particularly the
 38 fact that, again, it was secret from parents.

39 Q This section here, number 6, "Gender-integrated
 40 Inclusive Activities." It says:

41
 42 Integrated and inclusive activities will
 43 enable students to join teams and groups
 44 that they feel correspond with their gender
 45 identity.
 46

47 Is this a source for your views and concerns

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1 about SOGI 123?

2 A That continues the concern. It's -- it's all
3 sort of connected. So when you read this, it
4 continues to talk about gender identity, to
5 correspond with their gender identity, and those
6 are the -- the concerns that what is this gender
7 identity? What is this change that these
8 students are wanting to make, and where will it
9 lead them?

10 Q And number 8 here, it says "Inclusive Learning."

11
12 Classroom materials and activities will
13 taken positive images and accurate
14 information about sexual and/or gender
15 diversity.

16
17 What do you understand to be the accurate
18 information that -- that SOGI resources are
19 seeking to teach students?

20 A There is no accurate information. It's --
21 it's -- what is accurate doesn't compute here.
22 Accurate means that it's real. It's true. And
23 sexual -- and gender diversity, how can that --
24 like, it's not accurate to me. Accurate means
25 that it's true. Sexual and/or gender diversity.
26 There is sexual diversity. We've had gay and
27 lesbians forever. But the gender diversity
28 continues in a far, far different arena in my
29 perspective.

30 Q And lastly, number 9, "Facilities."

31
32 Individuals may choose to use washrooms and
33 change rooms that match their gender
34 identity.

35
36 Is this a source for your views and concerns
37 about SOGI 123?

38 A Oh. This is a really bad one that if you
39 choose -- we have two genders, male and female.
40 And if you change that, if you have a male who
41 chooses to be female and then decides to use a
42 female washroom, that is a real concern. Females
43 are entitled to have the privacy of their own
44 washroom. And to have it invaded, if you will,
45 by someone who simply chooses to be female,
46 although they are male, is just absolutely wrong.
47 And girls and -- and -- need to be protected from

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1 that.

2 CNSL J. KITCHEN: Thank you. Those are my questions
3 in re-direct.4 THE CHAIR: Thank you. Mrs. Dyck, those are all of
5 the questions we have for you in this proceeding.
6 I want to really thank you for taking the time to
7 give your evidence at this Tribunal. We rely on
8 people taking the time and effort to do that so
9 that we can make our decisions, so thank you very
10 much for your participation.11 You are free to leave this proceedings now.
12 And the only thing I'll ask of you is -- is
13 something I said yesterday which is to please not
14 talk about your everyday with anyone who may be
15 testifying after you; okay?

16 A Okay.

17 THE CHAIR: Okay.

18 A Thank you very much.

19 THE CHAIR: Thanks very much. Take care.

20

21 (WITNESS EXCUSED)

22

23 CNSL J. KITCHEN: So I would suggest we take the
24 morning break now, and then we'll come back with
25 the -- the next witness, Rob Bogunovic.26 THE CHAIR: Okay. Yeah. That's fine. Just while
27 we're taking this break, I will need to restart
28 my computer, and that may mean that everyone gets
29 booted out of this meeting when I leave. I'm not
30 sure of it, but I suspect that may happen. So
31 you may -- if that happens, you'll just have to
32 re-click the link, and I'll open the hearing room
33 back up at 11 o'clock. Apologies for that. I'm
34 not able to open some programs, so I need to do a
35 bit of a reboot.36 So we'll take a -- which the complainant's
37 counsel can relate to this morning, I think. So
38 we'll take a 15-minute break. Come back at
39 11:00. If you get booted out, please just
40 reconnect, and I'll let you back in at 11:00.
41 Thanks very much. Bye.

42

43 (PROCEEDINGS ADJOURNED FOR MORNING RECESS) [10:46:07]

44 (PROCEEDINGS RECONVENED) [11:01:17]

45

46 THE CHAIR: Hi, everyone. Welcome back. I'm just
47 going to admit -- all right. We're back. I can

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1 see all the parties. I don't see a witness;
2 although, someone has joined as "Meeting Guest
3 External".
4 CNSL J. KITCHEN: That's probably him. He is actually
5 joining from Mr. Neufeld's house. He --
6 Mr. Neufeld's going to be in a separate room
7 obviously, so we don't have any issues with
8 potential feedback, et cetera. So that's
9 probably him because I doubt he's going to be
10 able to pop up with his name.
11 THE CHAIR: All right. If that is you, Witness, could
12 you turn your camera on, please. I see -- looks
13 like Mr. Neufeld's going to help. That's good.
14 CNSL J. KITCHEN: We were going to rent a space, but
15 we decided to use Mr. Neufeld's because his setup
16 seems to work pretty well. I don't know about
17 this -- this filter -- or the background he's got
18 though.
19 THE CHAIR: Looks cozy.
20 CNSL J. KITCHEN: Yeah. The problem with these
21 backgrounds is you're always fading in and out.
22 I never -- I never use them.
23 Madam Chair, just while we're waiting, we're
24 going to have your decision at the beginning of
25 lunch on the witnesses?
26 THE CHAIR: Yes. We'll give you the -- the outcome,
27 and then we're finalizing reasons. Hopefully by
28 the end of the day, you should have the reasons.
29 CNSL J. KITCHEN: Yeah. That's fine. The outcome is
30 what I'm most interested in for practical reasons
31 as much as anything else.
32 THE CHAIR: Yeah. Understood. Oh. Mr. Neufeld,
33 you're muted. I think you might be talking.
34 THE RESPONDENT: His camera is on, and he's waiting to
35 be let in.
36 THE CHAIR: He's not showing up. Can you ask him to
37 just disconnect and try again? I'm sorry. I
38 don't see him in the lobby here. So he will just
39 have to try again. Thank you. And that leaves
40 the question of who the meeting guest is that
41 I -- that we can't identify. If you are -- if
42 you know that you're the meeting guest that's not
43 identified, could you speak up? Otherwise, I'm
44 going to have to remove you and -- and ask that
45 you call back with a phone number that you've
46 given to the Tribunal previously.
47 CNSL J. KITCHEN: I take it though the last -- the

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1 last witness was disconnected.
2 THE CHAIR: The last witness is disconnected.
3 CNSL J. KITCHEN: Yeah. Okay.
4 THE CHAIR: Last call for the meeting guest before
5 you're going to be removed, and I'll ask you to
6 reconnect with the phone number you've provided
7 to the Tribunal for verification.
8 CNSL A. WADDELL: And just a question. On our screen,
9 we see two meeting guests. Do you --
10 THE CHAIR: I -- no. I think we just have one.
11 CNSL J. KITCHEN: Well, everybody is meeting guest for
12 me.
13 THE CHAIR: We just have one. I mean, sometimes some
14 people -- some of us, the participants have shown
15 up as meeting guests. It's not happening today
16 for us. But we just see all the phone numbers
17 and then the parties and then one meeting guest.
18 So I am removing the meeting guest now. If this
19 is you being removed, please try again with the
20 phone number that we have on file for you.
21 CNSL J. KITCHEN: Okay. You're still not seeing
22 anybody in the lobby that's waiting to get in?
23 THE CHAIR: No.
24 CNSL J. KITCHEN: I don't have anything personal
25 against Teams but having litigated a lot in
26 Alberta and Ontario, I do have to say that Webex
27 and Zoom, I don't know if they're more secure.
28 Maybe security is the -- is the issue. But as
29 far as functionality, Webex and Zoom do seem to
30 function a lot better than Teams does.
31 THE CHAIR: As I understand it, it was a security
32 issue for the B.C. government.
33 CNSL J. KITCHEN: Yeah. I am -- I think, well,
34 obviously Zoom probably isn't the most secure
35 thing. I always found it interesting that the
36 Ontario courts all use Zoom. But Webex seems to
37 be secure. I think that's why the Alberta
38 government chose that one. And it tends to work
39 great, but I don't think anybody else -- I don't
40 think anybody else in the world uses Webex.
41 THE CHAIR: We used to before Teams, and I think
42 there's others but...
43 CNSL J. KITCHEN: Oh. Well, it's too bad. I -- I've
44 litigated less in B.C., but it's -- I've -- you
45 know, whether it's the Tribunal or courts or
46 what, I've had never ending trouble with Teams.
47 I'm going to -- I'm going to turn my camera off

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1 here and see if I can call them and see if
2 there's -- I can be of any assistance.
3 THE CHAIR: Thank you.
4 THE RESPONDENT: He's still in the lobby waiting to be
5 let in.
6 THE CHAIR: I don't -- he's not in the lobby. I
7 gather this -- I'm assuming this is the same link
8 that all of the other witnesses have used that
9 you've forwarded from the Tribunal? He's not in
10 the lobby. I don't quite to know what to
11 suggest. Has he gone out and then tried to
12 rejoin again, Mr. Neufeld?
13 THE RESPONDENT: He's done that twice.
14 THE CHAIR: He's done that twice. Okay.
15 THE RESPONDENT: Now I'm going to exit.
16 THE CHAIR: Sorry?
17 THE RESPONDENT: Now I'm going to exit.
18 THE CHAIR: Okay. Yeah. Mr. Kitchen. Mr. Kitchen,
19 you're -- you're muted. You know. Okay. You
20 broke something -- okay. Now we're in the
21 charades portion of the hearing. Something's --
22 the connection has broken. Okay.
23 CNSL J. KITCHEN: Okay. I -- I couldn't unmute, so
24 that -- that's the first time that happened to
25 me, but I'm going to -- what I'm -- what I'm
26 going to suggest, if it's okay with the Chair, if
27 we can't get him to work separately, then he'll
28 just -- he'll just have to appear on Barry's
29 screen, and we'll just have to understand that
30 he's not Barry notwithstanding the name in the
31 corner.
32 THE CHAIR: Well, if -- if that is going to happen,
33 which may be the solution here, what we would
34 need is for the background to be taken off and
35 for us to be able to see both of them so that we
36 can see if there's any communication going on.
37 So they would just have to sit side by side
38 without the background on so that we can kind of
39 see as much as possible the two of them together.
40 That's all.
41 CNSL J. KITCHEN: Yeah. I think that's fine.
42 THE CHAIR: Yeah.
43 CNSL J. KITCHEN: Yeah.
44 THE CHAIR: But we need Mr. Neufeld back now. He's --
45 he's left us.
46 CNSL J. KITCHEN: Okay. Well, I'm going to --
47 hopefully, I can mute and -- okay. That -- good.

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1 That works. Okay. I'm going to -- I'm going to
2 call him and tell him that that's what we're
3 going to do so we can get moving.
4 THE CHAIR: There we go. Good afternoon. There we
5 are. I see Rob Bogunovic has joined. Apologies
6 if I -- I don't know how to pronounce your last
7 name yet. Thank you for connecting. I
8 understand that you're connecting from
9 Mr. Neufeld's house; is that right?
10 ROBERT BOGUNOVIC: That is correct.
11 THE CHAIR: Okay. Thank you. And is he there with
12 you, or is he going to another room to connect?
13 R. BOGUNOVIC: He's in another room.
14 THE CHAIR: Okay. So he's not -- he's not reconnected
15 yet, but I imagine, Mr. Kitchen, he'll -- we're
16 expecting him to come back?
17 R. BOGUNOVIC: Yes.
18 CNSL J. KITCHEN: Yeah. I mean, if it works, yes.
19 THE CHAIR: Okay.
20 CNSL A. WADDELL: And can we -- sorry. I'd just like
21 to ask rather than -- than deal with it later if
22 the witness could take off the -- the virtual
23 background for testifying particularly while
24 Mr. Neufeld is not in the hearing.
25 R. BOGUNOVIC: Okay. I can see if I can do that, but
26 it's a different screen. So trying to -- I don't
27 even know how to do what you just asked me to do.
28 I can move from the gallery.
29 CNSL J. KITCHEN: No.
30 THE CHAIR: Well, you know what? How about this --
31 why don't -- I have some introductory things to
32 say. Let's go through those and see if
33 Mr. Neufeld joins. If Mr. Neufeld connects and
34 we can see him separately, then I don't think we
35 have the issue. If not, then -- then I can coach
36 you through you how to deal with the virtual
37 background; okay? But let's just see if he's
38 able to get back in. I would imagine it's --
39 it's his intention to join. So I have some
40 introductory things to say, and then we'll figure
41 out if he's joined us or not. Okay. So here he
42 is.
43 CNSL J. KITCHEN: Okay. Good.
44 THE CHAIR: Let's get --
45 CNSL J. KITCHEN: It's working.
46 THE CHAIR: Let's get everyone in. There we go. Hi,
47 Mr. Neufeld. You're back. And we've just heard

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1 from the witness that you're sitting in separate
2 rooms in your house; that's right? You're muted.
3 Oh. Your camera's off. Background. Okay.
4 Okay. Well, that's my understanding. And if
5 that is not correct, then someone needs to speak
6 up and let me know, but that's what we've just
7 been told, so I'll carry on.

8 My name is Devyn Cousineau. I'm vice chair
9 of the B.C. Human Rights Tribunal. I'm joined by
10 tribunal members Robin Dean and Laila Said
11 Alam -- Alam, and we are the panel that's been
12 designated to hear and decide this complaint.
13 I'm going to start by telling you a bit about who
14 is in the room with you in this meeting room.
15 You have a number of people on camera. You
16 should see, as we've just gone over,
17 Mr. Neufeld's on camera and his lawyer
18 Mr. Kitchen. We also have a video that says
19 "complainant's Counsel," and those are the
20 lawyers for the B.C. Teachers' Federation and
21 Chilliwack Teachers' Association, Lindsay
22 Waddell, Alanna Tom, and Stefanie Quelch. They
23 are joined by Reid Clark, who is an instructing
24 client from the Chilliwack Teachers' Association.
25 And the last person you should see on camera is
26 Sarah Khan. She's the lawyer for the Intervener,
27 B.C.'s Office of the Human Rights Commissioner.
28 Those are all the people on the call with video
29 access to see and hear the proceedings.

30 Then we have a number of members of the
31 public who are joining via audio access only.
32 All of the participants in this call are required
33 to follow the concern rules and expectations of
34 the Human Rights Tribunal. One of those is no
35 recording of any kind. We are doing our own
36 recording here at the Tribunal, which will be the
37 official record of proceeding, but that's the
38 only recording that's happening of this
39 proceeding.

40 So I think what I'll start by doing is
41 asking you to please spell your name for the
42 record and tell us what pronouns you use. Go
43 ahead.

44 R. BOGUNOVIC: Rob is R-o-b. The full name is Robert
45 which is R-o-b-e-r-t. My middle name is Alan.
46 That is A-l-a-n. My last name is Bogunovic which
47 is B-o-g-u-n-o-v-i-c. You can also pronounce it

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1 as Bogunovic.

2 THE CHAIR: Okay. Thank you. And we've just been
3 over -- I think there's -- there's no one else in
4 the room with you; is that right?

5 R. BOGUNOVIC: That's correct.

6 THE CHAIR: Okay. And do you have any papers or
7 anything in front of you that you may be
8 referring to?

9 R. BOGUNOVIC: Only a few items so I get exact wording
10 if I need it. But beyond that, it's just a
11 computer screen.

12 THE CHAIR: Okay. Thank you. And by -- by a few
13 items, what do you mean? Are those notes? Are
14 they documents? What --

15 R. BOGUNOVIC: They're tiny pieces of paper that have
16 written exact quotes.

17 THE CHAIR: Okay. And sorry. I'm -- I'm just asking
18 this. If we were in person, we would be able to
19 see what you were looking at, so it's just
20 important to everybody knows what you're
21 referring to, when you're testifying from memory,
22 when you're reading something, if you're reading
23 something, what it is. So that's why I'm asking
24 these questions. So --

25 R. BOGUNOVIC: If -- if I consult it, I will show you
26 the piece of paper.

27 THE CHAIR: Okay. So can we put those aside then?
28 And then if you want to consult them, please let
29 us know that you're consulting them.

30 R. BOGUNOVIC: Yeah.

31 THE CHAIR: And then we can deal with the piece of
32 paper; okay?

33 R. BOGUNOVIC: Yeah. Okay.

34 THE CHAIR: Thank you. Okay. So there, I take it --

35 R. BOGUNOVIC: They're already set aside.

36 THE CHAIR: They're set aside. Okay. Okay.

37 R. BOGUNOVIC: I mean, they're not obstructing my view
38 in any way so...

39 THE CHAIR: Thank you. All right. Well,
40 Mr. Bogunovic, you're about to give evidence to
41 the B.C. Human Rights Tribunal. The Tribunal
42 depends on you telling us the truth, and the law
43 requires that you do so.

44
45 ROBERT ALAN BOGUNOVIC, a
46 witness called for the
47 Respondent, affirmed.

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1
2 THE CHAIR: And do you understand that a breach of
3 this promise is an offence under the law?
4 A Yes.
5 THE CHAIR: Thank you. We will go until around 12:30
6 when we'll take a break for lunch. If you need
7 other breaks, please let -- let me know; okay?
8 So Mr. Kitchen is going to ask you questions
9 first, and then we'll likely take a quick break
10 and have the complainant's questions. All right.
11 You ready to begin?
12 A Yes.
13 THE CHAIR: Okay. Go ahead, Mr. Kitchen.
14
15 EXAMINATION IN CHIEF BY CNSL J. KITCHEN:
16
17 Q Good morning, Rob. Thanks for being here. I
18 apologize for the troubles of getting connected.
19 Let's start off with you telling us -- are you a
20 teacher at the Chilliwack School Division?
21 A Yes, I am.
22 Q Okay. And what -- roughly what grades do you
23 teach?
24 A I teach the senior levels. In the last five
25 years, I've taught a range from grade 9 through
26 to grade 12. Presently, I'm teaching grade 10
27 social studies.
28 Q Okay. What are some other courses or classes
29 that you have taught in the last few years?
30 A Humanities 9 and Social Justice 12.
31 Q Okay. What can you tell me about Social Justice
32 12?
33 A The course was created as a settlement several
34 years ago. It basically brings into the
35 curriculum a --
36 Q What do you know what that settlement?
37 A Sorry?
38 Q What do you know about the --
39 A It was with -- yeah. I mean, I -- I was aware of
40 the lawsuit at the time. The settlement allowed
41 the [indiscernible] to basically help to reshape
42 the curriculum K to 12 and introduce the Social
43 Justice 12 course into the B.C. curriculum. When
44 they announced that, then school districts
45 started to create the course. And a couple of
46 years later, Chilliwack Senior had its course up
47 and running. Since it's run in Chilliwack, I

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1 have been probably the primary teacher of it in
 2 Chilliwack Senior, though that changed a couple
 3 of years ago. The Social Justice course, unlike
 4 other courses where teachers might steer clear of
 5 controversial subjects, the Social Justice 12
 6 course tends to focus on those most controversial
 7 subjects to try and help students to understand
 8 the complexities of these issues and realize how
 9 they interact with the larger society.

10 So most of the subjects that would be
 11 covered in the course would be, you know,
 12 sensitive, controversial, potentially triggering
 13 subjects which you have to take incredible care
 14 with. The -- the first time I encountered social
 15 justice was actually in UBC during my -- my
 16 teacher's training. I was in -- in a course
 17 labelled "Social Justice." So when they offered
 18 it is as a curriculum course in grade 12, I was
 19 already familiar with the nature of what Social
 20 Justice looked like as a course because I had
 21 been in a course before.

22 Q Okay. Thank you. What are some of the -- some
 23 of these sensitive, controversial, or triggering
 24 topics that are -- that are covered in this
 25 course?

26 A Well, in my class, I always start by -- I break
 27 it down into units, and in Unit 1, we're dealing
 28 with the evolution of political thought, and so
 29 we're dealing with how all the various ideologies
 30 emerged going right back to Plato and Aristotle.
 31 This, of course, leads you into a discussion
 32 about the tenets of fascism and Marxism and how
 33 they interplay in -- in a modern society,
 34 liberalism, how it has emerged. And so the first
 35 unit deals with -- with politics. And politics
 36 is a ground of great controversy. Almost any
 37 time you're dealing with an ideology, you run
 38 into the potential of individuals disagreeing
 39 over the tenets, over the claims.

40 Then I use a unit that takes a look at, you
 41 know, it's a section, you know, that looks at the
 42 evolution of -- of how religious freedom has
 43 emerged in the western world. It looks at some
 44 of the issues, that it really created problems
 45 from a -- from a religious perspective, from an
 46 economic perspective, like, the issue of slavery
 47 and how that had to be taken on and abolished by,

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1 you know, people like William Wilberforce, the
 2 British Empire. We took -- take a look at
 3 residential schools. We take a look at the
 4 *Indian Act* and a whole litany of other issues
 5 connected with Canada's First Nations. We take a
 6 look at the battle of the sexes, the history of
 7 feminism, the battles that have been fought in
 8 that realm. We take a look at LGBTQ+ issues. We
 9 also take a look at things such as Black Lives
 10 Matter and, you know, historical injustices in
 11 Canada like the Chinese head tax, internment of
 12 the Japanese, so many different areas.

13 And then there's always a certain current
 14 events element where certain issues that are
 15 prevalent in that moment can, you know, come into
 16 your classroom because the students are eager to
 17 discuss them.

18 Q Do you find students find this course
 19 interesting?

20 A I can only speak that as the course got running,
 21 we would tend to get at least three courses
 22 running, which means it's an elective course in
 23 grade 12. And if you're in a school of about 350
 24 graduates and you're getting three courses
 25 running, obviously, it's -- it's connecting with
 26 a certainly segment of the student population.
 27 The most popular course at Chilliwack Senior
 28 probably is Law 12. The teacher of that would
 29 always get, like, seven courses running. But
 30 when I was running the Social Justice, we
 31 consistently got three classes, and I was usually
 32 quite pleased with that enrolment.

33 Q Did you -- did you sort of voluntarily choose to
 34 be a teacher of this course?

35 A Yeah. You have -- you have to build the course.
 36 You have to promote it to try and get students
 37 to -- to sign up for it. So with the grade 12
 38 courses, there's -- it's very rare that you would
 39 be asked to teach a grade 12 course that you
 40 weren't, right, willing to take on. Prior to the
 41 Social Justice, I was teaching Geography 12. And
 42 for me, I kind of shifted from Geography 12 into
 43 the Social Justice when it became available.

44 Q Do you personally agree with all the ideologies,
 45 ideas, and beliefs that are taught in the course?

46 A No. It would be impossible because many of the
 47 ideologies taught in the course are diametrically

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opposed to each other. If you are teaching about liberalism and then you are also presenting the tenets of fascism, fascism is diametrically opposed to liberalism. So is, you know, Marxism in its pure form, diametrically opposed to liberalism. So if you're presenting it, you -- you present these are the tenets of the various political ideologies, but they will be at odds with each other because there's no way to -- to ignore that.

When you -- try to do in the course is -- is -- at least what I try to do with the course is present a balance so that most issues -- sometimes false dichotomies are presented as you have to believe in one thing or another, but most issues actually have multiple other frameworks of mind, ways of people understanding, middle ground positions. I try to make it so that students can -- can appreciate the complexities of the issues and how people approach them.

Q Do you teach any of the ideologies or beliefs or ideas or religious systems as fact, as -- as -- as true?

A I -- you want to avoid doing that because if it's something that's controversial, usually, there's a reason it's controversial. Most of the times it's because the body of evidence is -- is disputed in many quarters. There are very few things that I would ever approach as -- as a fact. And even in the teaching of history, you -- you can take a point that's likely not to be challenged like World War II started with Germany's invasion of Poland, except that's not when World War II started for China and Japan because they were already in the fight. And you could argue that's not when World War II started for the Americans because that was -- they didn't get into it until Pearl Harbour. So -- so even a thing that seems to be right of well-established fact in history, we don't tend to use that term -- or at least I try not to. I try to represent that there is nuance; there's complexity; there's divergence of opinions. And most things are not as settled matters. Especially if it's an issue of controversy, it's because it's not a settled matter.

Now, we don't have to spend a lot of time

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1 debating, you know, the theory of gravity
2 because, right, there's not an issue that we're,
3 you know, really wrestling with. We've --
4 we've -- the theory of gravity, you know, seems
5 to play out pretty well in real world
6 experiments. But when it's something else that
7 is really as contentious, you know, individuals
8 on both sides and credentialed individuals on
9 both sides, you want to represent it as not an
10 issue that is settled.

11 CNSL A. WADDELL: Can I just -- Mr. Kitchen, I'm sorry
12 to interrupt. I was just going to ask if it
13 would be possible to just have the witness slow
14 down a smidge for -- for people -- all of what
15 he's saying is interesting, but just for those
16 who are taking notes, he's going at a good --
17 good clip. I don't know if the Tribunal is
18 having the same difficulty. I know they have the
19 benefit of the recording, but we don't.

20 THE CHAIR: Thank you. Mr. -- go ahead, Mr. Kitchen.

21 CNSL J. KITCHEN: I can appreciate my friend's
22 position. I mean, I -- you know, I get -- I get
23 sore when I take 12 pages of notes because the
24 witness is going fast. But witnesses got to
25 be -- got to be permitted to speak as slow or as
26 fast, you know, obviously within reason -- within
27 reason, which we are within reason with this
28 witness. Witnesses got to be comfortable to
29 speak in -- in -- in their own manner. I never
30 would have asked Ms. Waddell's witnesses to slow
31 down or speed up unless it was -- they -- they
32 were being unreasonably slow or fast, which of
33 course, none of them were at any time. So no,
34 I -- I'm sorry. I can't -- I can't ask my
35 witness to slow down. He's going to have to
36 speak at whatever the natural pace is for him,
37 and I would have thought that my friend would
38 have appreciated that considering she's made a
39 lot of comments about time. So --

40 THE CHAIR: All right.

41 CNSL J. KITCHEN: -- those are my thoughts.

42 THE CHAIR: Well -- thank you. I don't think it's
43 unreasonable. Mr. Bogunovic, without throwing
44 you off, if it's possible to slow down just a bit
45 so that we can keep up, that's great. If that
46 becomes -- if that interferes in some way with
47 your flow of thought, we can deal with it. But

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1 if you're able to do that easily, then that's
2 appreciated. Thank you. Go ahead, Mr. Kitchen.

3 CNSL J. KITCHEN: Thank you.

4 Q Okay. Are there any -- going back to what you
5 just said, are there any examples in this course
6 of ideologies or ideas or belief systems that are
7 sort of, you know, contentious because some
8 people believe them and some people don't? Going
9 to what you just said about that, are there
10 anything -- are there anything -- is there
11 anything like that that's in the course?

12 A Oh, yeah, lots of things because you have to
13 examine them if they're having an impact in the
14 larger society. If we're taking a look, for
15 example, a unit that I teach on the state of the
16 world, you're going to be dealing with climate
17 change. Now, climate change is an emerging
18 field. There's lots of different scientists that
19 have a lot of different opinions. There is a
20 common area of agreement, about 97 percent
21 consensus, that the temperature has warmed
22 somewhere between 0.7 and 1 degree celsius in the
23 last 120 years. What's causing that warming, how
24 problematic it is, those are all areas of
25 contention in this emerging field.

26 And, you know, the -- the -- an
27 understanding of climate is growing, but
28 realistically, we're still trying to get our
29 footing, and so lots of people will make claims;
30 other people will make counterclaims; and they
31 wrestle with the data. But it's hard to make any
32 statements definitively. When you're dealing
33 with something along the lines of -- and what
34 would be fairly relevant for this proceedings --
35 gender theory is also a relatively new and
36 emerging theory -- field of study within the
37 social sciences. There's not a deep body of
38 research to back up a lot of the claims that are
39 being made on either side of this particular
40 debate.

41 Now, lots of individuals engage in this
42 debate like with -- with a tremendous amount of
43 vitriol, and they often speak as though things
44 are known and things are factual, but it's an
45 emerging study, and the landscape keeps changing,
46 and I think it's always important that we
47 acknowledge that we cannot make, you know, many

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1 claims definitively when they're still very quite
2 contentious.

3 Q What are your understandings of the claims made
4 by those who adhere to gender ideology?

5 A I'm -- I think that what has -- what I -- what
6 worries me is that there's a rush to bring about
7 wide-sweeping changes significantly in
8 [indiscernible] changes without due consideration
9 and open dialogue with other stakeholders. And I
10 understand why they're motivated, you know, in
11 their way, but I think they also have to be
12 appreciative of the other stakeholders and the
13 concerns that they'll be raising. I think more
14 and more -- as we study this, more and more
15 nations have begun to reverse course on the
16 original affirmation approved models that were
17 initially embraced.

18 I know that National Health Services in
19 Britain, they don't regard affirmation as -- as
20 essentially a neutral act. And because of that,
21 you are now entering into a realm where you are
22 shaping the psychological landscape of a
23 generation. What that will do, we won't know for
24 many years if not a generation. And so when you
25 engage in any kind of significant program,
26 there's two things that I would often want to
27 see. Number one, that great care has been put
28 into the evaluation of the evidence and that they
29 have a deep body of evidence, and that there's an
30 open ability for people to discuss and to
31 challenge the evidence because in science, if you
32 cannot question or challenge the claims being
33 made, then you've abandoned the very principle of
34 science.

35 Science is driven by the capacity of
36 individuals to second guess, to challenge, to
37 reproduce the experiment. And I see there has
38 been a headlong rush given largely, I believe, by
39 political concerns, a headlong rush to advance an
40 agenda without the proper due care. I think more
41 caution is warranted.

42 CNSL A. WADDELL: I'm not going to make an objection
43 and ask the Tribunal to rule on it. I'm just
44 going to note -- because I know my friend's
45 pointed out many times. He's only asking
46 witnesses to share their personal view. And so
47 to the extent that this witness strays beyond his

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1 own personal view and understanding, we'll be
2 asking the Tribunal in our closing submissions to
3 disregard anything beyond that as opinion
4 evidence. So I'm just putting it on the record,
5 but I'm -- I'm not going to interrupt on that.
6 I'll just let my friend continue with his direct.

7 CNSL J. KITCHEN: Good. Well, I'm glad to hear that.

8 THE CHAIR: Thank you.

9 CNSL J. KITCHEN:

10 Q Mr. Bogunovic -- Rob. I'll just call you Rob.

11 That's --

12 A Understandable.

13 Q Rob, well, what can you tell me -- well, first of
14 all, let me ask you this. When you -- when
15 you're talking about the gender theory stuff, is
16 this part of what's taught in the -- the
17 social -- the Social Justice 12 course?

18 A Almost certainly it's taught. I can't say that
19 it was something that I taught as fact. I would
20 produce and present we know what gender theory is
21 and the landscape of debate that surrounds it.
22 But the issue with social justice or really any
23 course right now in the B.C. curriculums are that
24 there's not a lot of guidelines to how teachers
25 will shape or introduce the content of their
26 courses. As a Social Studies 10 teacher, if I
27 spent the entire course on the teaching about
28 World War II, I wouldn't be violating the
29 curriculum. And if I taught the entire course
30 and never mentioned World War II, I, likewise,
31 would not be violating the curriculum.

32 Because it used to be that they would say,
33 well, we would like teachers to teach this and
34 this and this and cover this content. But -- but
35 a lot of those -- those guideposts have been
36 removed. And in social justice, that has the
37 same kind of aspect where there's an awful lot of
38 leeway for how teachers choose to introduce
39 courses and what they choose to emphasize.

40 Now, I lay out six units, and those six
41 units, again, roughly equal amount of time, and
42 I, you know, cover all the six, you know, units
43 and the content in pretty much a consistent way,
44 presenting multiple perspectives, you know, and
45 trying to be fairly broad.

46 But another teacher might devote the -- you
47 know, half the course or even the entire course

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1 to only looking at one unit specifically, and
 2 students might complain if they feel that certain
 3 content is not being covered. But in social
 4 justice, it gives teachers a fair amount of
 5 leeway. So what other teachers are doing with
 6 the course, I can't actually speak to.

7 Q Okay. Okay. You mentioned the affirmation
 8 model. I guess two questions: One, tell me what
 9 you know about that; and then two, is that
 10 something that's also covered in the course?

11 A In my course, I present both the affirmation
 12 model and the wait-and-see model as the two
 13 predominant approaches that have been taken. The
 14 affirmation model essentially presents that if a
 15 child, you know, represents that they, you know,
 16 have gender dysphoria or something akin to gender
 17 dysphoria, then you should affirm the child in
 18 that belief; right?

19 Whereas the wait-and-see model, which
 20 probably the best representations with that is
 21 Kenneth Zucker, Dr. Kenneth Zucker in Canada, it
 22 was a more common approach in Europe, but Kenneth
 23 Zucker in Canada was probably the key advocate
 24 for it. It takes the idea that for a lot of
 25 children, gender dysphoria will probably, you
 26 know, essentially self-correct during puberty.
 27 And you can't predict how an individual's gender
 28 dysphoria when they were very young will manifest
 29 past puberty. So he usually recommends before
 30 you promote any kind of affirmation, that you do
 31 a wait-and-see.

32 He wouldn't, for instance, recommend the use
 33 of any kind of, you know, hormone blockers or
 34 surgical intervention, you know, up until at
 35 least -- the earliest would be the age of 16.
 36 And so the affirmation is you affirm the child in
 37 their belief. The wait-and-see is you try to
 38 essentially help the child to be comfortable in
 39 the biological, you know, determined gender role
 40 as much as you can and take a wait-and-see before
 41 you produce or promote a different level of
 42 intervention.

43 So that's the -- the -- kind of the
 44 contrast. In North America, the affirmation
 45 approach seems to be the dominant approach used
 46 throughout most education systems and most
 47 medical bodies. I don't think the landscape in

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1 Europe is quite the same, but North America seem
 2 to have gone pretty strongly towards the
 3 affirmation model.

4 Q The three teacher witnesses that we have heard
 5 from from the complainant's side have said that
 6 it would be impermissible -- they have given
 7 their sort of personal opinions that it would be
 8 against the *B.C. Human Rights Code* to -- to -- to
 9 take the wait-and-see approach with any
 10 particular student. What would -- what would
 11 your thoughts be on that?

12 A When I go over the *Human Rights Code*, when I look
 13 at the language, I don't see where it prohibits
 14 or prescribes either of the two medical
 15 approaches. I think a lot of individuals read in
 16 their aspirations into the language of the *Code*.
 17 And I think that that's, by in large, something a
 18 lot of people do when it comes to any kind of
 19 human rights language or *Charter* rights language.
 20 They tend to read it as I have this aspiration,
 21 and I find confirmation of this aspiration in
 22 this language. But somebody else reads the
 23 language and doesn't see where that's being
 24 prescribed.

25 The truth is, a lot of power is given in the
 26 *Human Rights Code* to the two words "gender
 27 expression," but the surrounding context of those
 28 two words does not necessarily prescribe that we
 29 have to do this, that, or the other thing. I
 30 would also argue that when it comes to any kind
 31 of rights, whether they're *Charter* rights, human
 32 rights, we always have to be clear as to
 33 distinguish between a person's rights and a
 34 person's aspirations. And sometimes, the ugliest
 35 right will have to trump the prettiest
 36 aspiration. So I might want a society where
 37 everybody, you know, uses clean language. They
 38 never use any kind of pejorative speech. I might
 39 have that aspiration, but I would also want to
 40 uphold, you know, our freedom of expression
 41 within reasonable limits within the Canadian
 42 landscape even if that means protecting the
 43 individual's right to say something that is ugly.
 44 So human rights and *Charter* rights run into this
 45 problem realistically that one person's rights
 46 tend to end where another person's rights begin.
 47 And this is why it's so important that when you

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1 wade into this area, you allow open conversation,
 2 discussion among the many different stakeholder
 3 groups because in order for any lasting, you
 4 know, progressive movement to -- to essentially
 5 really gain widespread approval and acceptance
 6 within the society is going to have to be
 7 emerging from that open and frank discussion.

8 If it's just imposed by fiat from down
 9 above -- from up above, it's going to have
 10 resistance, and that resistance is going to make
 11 a mess and really undermine the aspirations of
 12 the people who are advocating, again, for their
 13 own interest and for what they believe is right.
 14 I think -- when I take a look, for instance, at
 15 the progressive cause in regards to LGBTQ rights,
 16 they made an awful lot of progress in the 1980s,
 17 1990s, the early 2000s by appealing to the better
 18 angels of our natures. They appealed to people
 19 for compassion.

20 But what I'm seeing more recently is a much
 21 more heavy-handed you must, you know, refrain.
 22 You must do this. You must say this or else. It
 23 seems to have been now a shift where they are now
 24 appealing to a darker aspect of nature, you know,
 25 make people intimidated, make people afraid, make
 26 people cower. This is because they seem now to
 27 be favouring political correctness as the means
 28 to advance a cause rather than what I saw being
 29 very effective in the 1990s and the early 2000s,
 30 which as I said, was appealing to people's
 31 compassions.

32 Q Do you cover the history of that, the 80s, 90s,
 33 the early 2000s, the history of, you know, the --
 34 the -- what I'll -- what I'll just colloquially
 35 call the gay rights movement?

36 A I go all the way back to the 1920s. So I cover
 37 the whole spectrum. 1920s, we talk, you know,
 38 about for instance May West and -- and Jimmy
 39 Shields. When we get into the 1970s, of course,
 40 we're talking about Harvey Milk and his campaign
 41 and again, all the way through. So I give a
 42 pretty comprehensive history to the students when
 43 I would teach the LGBTQ+ unit. I would say
 44 that's probably at least a third of -- of the
 45 content that I cover in dealing with the LGBTQ is
 46 presenting the history so that there's a proper
 47 context.

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1 Q You said something about permitting debate. Do
 2 you let -- do you let the students debate at all
 3 about the -- the topics and issues and ideas and
 4 beliefs that are covered in the LGBT unit?

5 A In the class, we allow open discussions within
 6 understanding. We lay out at the beginning of
 7 the course what are considered reasonable
 8 grounds. So for instance, you have to avoid
 9 using personal attacks, ad hominums against the
 10 other individual. You can challenge the idea,
 11 but you don't attack the person. And one of the
 12 rules that existed within the class was that if
 13 the debate is happening in the class, it doesn't
 14 carry on outside of the class except by the
 15 permission of the participants.

16 So two students start debating something.
 17 One student wants to continue debating at
 18 lunchtime or on their -- on their social media,
 19 you know, messaging, the other student say that
 20 was a class debate. I'm interested in leaving it
 21 there. But within those frameworks, you do allow
 22 the students to present their opinions and their
 23 beliefs. We do also have, in the class, we would
 24 have structured debates where students can pick a
 25 topic and challenge other students on the topic
 26 that they want to debate.

27 Now, generally speaking, virtually without
 28 exception, students stayed clear of the LGBT
 29 topics that were always presented on the list of
 30 potential, you know, debate topics for them, but
 31 I found that they often didn't want to debate
 32 that in a -- you know, in a structured formal way
 33 against another student. It was often
 34 challenging, for instance, if the debate was,
 35 let's say, same sex marriage was on the topic.
 36 If a student says I'd like to debate same sex
 37 marriage, then they would go looking for someone
 38 to see if that person would debate with them.
 39 And generally speaking, they wanted to debate in
 40 favour, and they couldn't find anyone who would
 41 be opposed. That was often how that would play
 42 out.

43 So of all the debates that I recall, I think
 44 the only time I saw students actually choose a
 45 debate that was clearly within the realm of the
 46 LGBTQ+, you know, section, it was probably when
 47 debating whether or not trans athletes should be

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1 able to compete directly against women in sports.
2 And it was a very interesting debate. When the
3 student carried it, they were very, very mature
4 in how they handled it, but that's the only one
5 that stands out in my mind. Most of it is fast
6 discussions.

7 Q The unwillingness, what -- what do you make of
8 the unwillingness for students to debate the --
9 the LGBT stuff as much as other things?

10 A I think because -- and this is just a caution, I
11 think, anybody entering into this particular
12 realm needs to be aware of. The passions of
13 people involved in this debate are -- are very
14 high. And individuals speaking out of their
15 passions tend to rush to judge probably more
16 harshly the individuals who are opposing them.
17 And the nature of the judgments are quite extreme
18 on both sides of this debate. And there doesn't
19 seem to be a lot of middle ground.

20 And so when -- when students, you know,
21 choose to stay clear of this topic, you know, in
22 a formal debate setting, I -- I do sort of
23 understand it. It's because they know that so
24 much of what they say can be misinterpreted, and
25 so much can be inferred that hasn't actually been
26 stated. And you very quickly get into trouble as
27 soon as you weigh into this. Because even if you
28 are crystal clear and careful in how you choose
29 your language, it's -- it's not always about how
30 you said it. A lot depends on how what you say
31 gets interpreted by others. And unfortunately,
32 there's too much of a standard out there that it
33 doesn't actually matter what you said. It only
34 matters how what you say gets interpreted by
35 others.

36 So for those who stay clear of this issue,
37 it makes sense that they stay clear of this
38 issue. There's -- there's just too many land
39 mines.

40 Q I see. Thank you. Let's talk a little bit
41 about -- little bit more about you. As far as
42 your -- I'll use the phrase lived experience
43 because it's -- it's a common one. What's your
44 lived experience with LGBT issues and -- and
45 beliefs or queer theory or anything like that?
46 What's -- what's -- what's your lived experience
47 interacting with these things?

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1 A Well, I mean, it's -- it's -- it's pretty close
2 to home for me. My wife, in 2015 or thereabouts,
3 she was actually transitioning using male
4 pronouns, adopting a male name, and actually
5 began the process of a physical transformation,
6 utilizing, you know, hormones, but they -- she
7 wound up abandoning that because they were having
8 very detrimental effects upon her -- her kidney,
9 her liver, her -- her general overall health.
10 She was wrestling at the time with -- with a
11 very, you know -- it was a dark period for her.
12 She struggles due to PTSD and some other
13 challenges.

14 She was, you know, trying to figure out a
15 lot of the problems being -- like, she struggled
16 what they thought were mental health issues, and
17 of course, PTSD was, but they thought there were
18 other things going on, and they were prescribing
19 her some -- some medications to try and deal with
20 things and not listening to her when she was
21 saying they weren't working. And then about --
22 about 2018, she developed a physical
23 manifestation of -- she temporarily went blind in
24 one eye, and that caused the Canadian medical
25 system to start looking for a physical cause for
26 all the things that they previously had been
27 ascribing to mental illnesses like schizophrenia.

28 And this is when they discovered that she
29 had multiple sclerosis and had probably had it
30 for a decade or longer, right, a fairly
31 advanced -- advancing multiple sclerosis. She
32 started with that awareness to transform her
33 life, her diet, how she exercised. She made a
34 much greater point of leaving the house more
35 frequently and, you know, started working a job
36 as a flagger and a whole lot of things started
37 going very well and right in her life. And a lot
38 of things shifted within her own mental landscape
39 around things like her gender dysphoria.

40 She identifies now as a wife, as a mother.
41 She -- she still considers herself quite an ally
42 of the LGBT, you know, and their cause. She --
43 she tries to be very sympathetic to them, but she
44 can't always agree with everything that they are
45 proclaiming because her own lived experiences and
46 her own understandings of issues create real
47 challenges for, you know, accepting every claim

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1 that's being put forward.

2 I -- I have a similar thing. My -- my place
3 isn't in the L -- where I've ever clearly
4 questioned my gender. But in terms of my sexual
5 expression, I, for years, identified as
6 asexual/aromantic. And so this was a -- a way I
7 understood my identity, which would put me on
8 the, you know, LGB, you know, TQ part, really in
9 the Q part of the spectrum, so it's -- it's on
10 the A if you add the A into the list of letters.

11 So -- so we're an odd couple to say the
12 least, but we've -- we've been wrestling very,
13 very much with these issues and the implications
14 of these issues long before SOGI 123, you know,
15 started landing on the front page of the
16 Chilliwack Progress in our community. We've been
17 wrestling with, you know, the concerns, the
18 questions, the challenges that were being raised
19 within the field. I was, of course, dealing with
20 this in the context about my social justice
21 course. I also had to deal with it in the
22 context of a club that I ran for about five or
23 six years, which was the Diversity Alliance.

24 The Diversity Alliance was sort of a club
25 devoted to anti-bullying and a place to belong
26 for individuals who often felt themselves as
27 outcasts. A significant number of the members
28 were LGBTQ+ identifying. And so my sponsorship
29 of that club, we -- we were wrestling a lot with
30 issues connected to the LGBT causes. So from the
31 clubs that I ran, from the course that I was
32 teaching, from my own life experience and that of
33 my wife, I -- I think -- I recognize the
34 complexities of the questions in play.

35 One of my great frustrations in dealing with
36 this debate is that a lot of individuals, they
37 get annoyed at the very suggestion that there's
38 complexity because they see things as black and
39 white. And a lot of things can be black and
40 white, but a lot of things have tremendous areas
41 of grey. And I think when it comes to LGBTQ
42 issues and rights, there's a lot of grey areas
43 which require us to be very frank and open in our
44 conversations. But there's a climate where if
45 you try to be frank and open in the conversation,
46 you will get slapped down.

47 Q By who?

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1 A Oh. It could be almost anyone in the case of --
2 of the current, you know, human rights case that
3 we have before us today. Barry Neufeld, he tried
4 to speak on the issue of SOGI 123 which was being
5 brought in to all the school districts without a
6 lot of public announcements or public
7 consultations. And when he voiced his concern in
8 a satirical post, the BCTF and the local media
9 and numerous activists came down on him very
10 hard. It went right up to the Ministry of
11 Education who was suggesting as I -- I believe
12 the Minister Fleming had suggested that because
13 of what Barry Neufeld said in his Facebook post
14 that some -- some child would commit suicide,
15 which seems like a pretty extraordinary claim to
16 make.

17 We -- we see that individuals naturally go
18 to extreme language when they discuss this issue.
19 Both sides of the debate around SOGI 123 and
20 affirmation use the word "abuse." Both sides
21 speak of indoctrination, and, you know, both
22 sides are wrestling with where people's rights
23 should begin and where people's rights, you know,
24 can't, you know, proceed without trampling upon
25 other people's rights. It's -- it's a
26 complicated issue. But a lot of people want to
27 reduce it to black and white, simple. And they
28 get angry when an individual suggests it's not
29 simple.

30 Q Excuse me. Is anti-bullying important to you as
31 a teacher?

32 A Yes. The diversity club that I helped sponsor
33 was primarily devoted to trying to reduce
34 bullying. But we also have a lot of mechanisms
35 within the system to address that, and we've had
36 those mechanisms for quite some time. I think
37 part of the bigger challenge is whether or not
38 the -- the mechanisms that are already in place
39 are being consistently applied. But nobody wants
40 to -- to allow bullying within the school system.
41 And as -- when I was really young, and we're
42 talking kindergarten and grade 1, I -- I
43 struggled because of bullies. And so I -- I -- I
44 understand the personal harm that -- that that
45 causes, so yeah. I don't know that you would
46 find very many teachers who are opposed to, you
47 know -- you know, cracking down and reducing

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1 bullying. I think the struggle comes when you
2 consider what the best way forward is. That's
3 where the debate would be. We're not -- I'm not,
4 you know, thinking there's much of a debate that
5 bullying is bad. I think there's a huge debate
6 as what's the best way to reduce it.

7 Q Do you think gender ideology needs to be taught
8 as a fact in order to prevent the bullying of gay
9 or trans or -- or -- or gender dysphoric
10 students?

11 A Well, I think you got to ask the first question:
12 Should it be taught as fact? I don't think
13 gender theory should be taught as fact for the
14 simple reason that it isn't a fact. The moment
15 you use the word "theory," you are already
16 implying that it's -- it's not like a math proof
17 or something of that nature. And again, it's an
18 emerging field of research, emerging with a thin
19 body of evidence, and we should acknowledge that
20 and be very careful with it.

21 So the first part of the question, should it
22 be taught as fact? I would argue no simply
23 because it's not a fact. Then we have to take a
24 look at the second is teaching it as a fact
25 useful, you know, to reducing bullying? I think
26 this is a -- is a -- is a, you know, interesting
27 question. Certain times you can present a
28 belief, you know, and if people accept that
29 belief, it will make them more inclined to accept
30 the next belief that is introduced, the next idea
31 that is introduced. But it's -- it can become a
32 case where it's intellectually shallow meaning if
33 someone wants to challenge the belief or the
34 foundational belief underneath that belief, they
35 will not have much trouble doing it.

36 And then in order to prop up and defend this
37 practice, you actually have to engage in
38 intellectual dishonesty or, you know, political
39 correctness, intimidation. I think you get into
40 a -- a trouble where -- where you plot what you
41 think is a course that is useful, the path of
42 least resistance, but you wind up building a much
43 stronger, a much hardy resistance that will --
44 you will just simply encounter it down the line.

45 There's -- there's in politics, there's the
46 short game, and there's a long game, what you try
47 to do in a campaign versus what you try to do

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1 when you're building a larger movement. In an
 2 election campaign, you are in a sprint. But then
 3 when the campaign is over, you run the marathon.
 4 And I think a lot of what some people are doing
 5 is they're implementing a sprint tactic in an
 6 issue that really needs to be a marathon. And
 7 the way you run the marathon effectively on this
 8 is you have to allow open discussion. If you
 9 are -- seem to be bullying people into silence
 10 and compliance, you are going to build a very --
 11 a very hard resistance, and you will never be
 12 able to crack that. We -- we have to appeal to
 13 people -- people's better angels, not rely upon
 14 their most base instincts of fear.

15 Q Oh. We got some time. Okay. Let's get a little
 16 more specific. When did you first encounter
 17 SOGI? What was your initial reaction to it as a
 18 teacher?

19 A The term SOGI, would have been encountering that
 20 around, you know, probably 2015 and '16. Of
 21 course, it just means sexual orientation gender
 22 identity. This -- the term itself isn't
 23 controversial. Everyone has a sexual orientation
 24 and gender identity. Many individuals might find
 25 there's shifts in how they understand their
 26 sexual orientation and gender identity, but
 27 everybody basically has one.

28 But then SOGI 123, the first time I heard
 29 about that was essentially when there was a
 30 significant pushback against Barry Neufeld and
 31 his Facebook posts which came shortly after Barry
 32 Neufeld and another trustee named Heather Maahs
 33 first learned about SOGI 123. So they, as
 34 trustees, and I, as a Social Justice teacher, had
 35 not encountered SOGI 123 prior to it landing
 36 essentially on the front page of the -- of the
 37 Chilliwack Progress or just a week or two before
 38 that.

39 And so when I saw what, you know, the
 40 reaction to Barry Neufeld's posts, my reaction
 41 was first, I read the post, and then I started
 42 doing some research. I started looking into what
 43 SOGI 123 was. And it wasn't difficult. There's
 44 an ARC Foundation website. They created the SOGI
 45 123, you know, policies and procedures and
 46 curriculum. They lay it all out in a website so
 47 you could easily look into what it was, and you

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1 could also see very quickly how it was being
2 misrepresented by the various parties. So I --
3 my reaction was, I think, very different from a
4 lot of people's reaction. Many people wanted to
5 rush to judge what Barry had said, and there was
6 satirical elements to what he had said, but I --
7 I could kind of understand their visceral
8 reaction. But at the same time, what was he
9 talking about?

10 When they were saying, you know, that he --
11 like, he claimed, for instance, that they're
12 going to banish the youths of words like boys and
13 girls, mom and dad, that's in the ARC
14 foundations. It's a part of SOGI 2, the
15 environment. It lays out very clearly as an
16 example that teachers must avoid, you know, using
17 words like boys and girls, mother and father,
18 instead using, you know, gender neutral terms
19 like parent or student.

20 And that's -- so when he points to that and
21 then individuals say, no, it won't do that, and
22 then you read the website, and it's, like --
23 actually, that's there. Even if you can say
24 he's, you know, made assumptions about what it
25 will do, it's a reasonable assumption based on
26 what the ARC Foundation website was claiming it
27 wanted. And so a lot of what was going on was
28 the straight reading of what was appearing in the
29 ARC Foundation website was contradicting the
30 larger claims being advocated in the public
31 press. And I -- I sometimes wondered why more
32 people simply didn't do their research before
33 they started speaking about the issues.

34 And -- and so I -- I always take a --
35 whenever controversy arrives, I try to take a
36 step back. I don't want to rush to comment. I
37 want to do a little bit of research, figure out
38 the landscape before I engage in it. Sometimes,
39 I've had students want to, you know, an issue,
40 they say Mr. B, we want to talk about Standing
41 Rock or some other controversy that's in the news
42 right now, and I often want to take a step back
43 because what we know in this one day, three days
44 later, we might know a whole lot of other things
45 that give a completely different context. And so
46 I usually want to give at least those two, three,
47 or four days for many elements of the story that

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were suppressed perhaps or ignored by the original news reports to -- to find their hearing.

And I saw an awful lot of rushing in the judgements against Barry that weren't actually considering A, what were the merits of what he had said, and whether or not what he said was actually factually correct meaning did they align with what clearly appears on the ARC Foundation website and the program that it was putting forth?

So we actually -- actually, when you're dealing with SOGI 123, one of the first things that I realized was SOGI 123, the 1 stands for policies, and there were 10 that were being promoted; 2 stood for environment, and that's where they talk about, you know, use of language, you know, by teachers such as not using the words boys and girls; and 3 referred to curriculum, sources. A lot of the curriculum that is claimed to be SOGI 123, really, it existed in any cases before. It just sort of fell under the umbrella. And there really isn't a SOGI curriculum. What -- the primary thing that most people are reacting to, I would say, is the 1 and the 2. The 1, the 10 policies, and the 2, the environment and what that imposes upon for teachers.

Q Thank you for that. I'll share my screen with you here. I'll try to make it big enough. Okay. Do you see this page where it says SOGI 123 and the 10 components?

A Yes.

Q Yeah. Okay. So there is a list of 10 things here. Are these the 10 policies you're talking about?

A Yes.

Q Okay. So number 3, I'll read it to you, and then you just tell me your understanding of it.

Students have the right to self-identification which includes the name by which they wish to be addressed and the preferred pronouns that correspond to their gender identity.

What's your understanding of what that means?

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1 A Well, this is one of the things where I wish they
2 were clear and elaborated on meaning. And this
3 is where I think it is important that we take any
4 one of these policies and consider if there needs
5 to be any kind of parameters or further
6 explanations. A simple way of reading that would
7 be, for instance, on school documents. If we're
8 producing report card comments, it might make
9 sense, you know, in that context to -- if we're
10 going to refer to the student using pronouns,
11 that we use the student's preferred pronouns
12 since they might have to produce that document
13 sometime in the future. And if the pronoun
14 isn't, you know, the one that they were utilizing
15 at the time and were still using, it would lead
16 to some questions they might not want to answer.
17 And so that becomes an aspect where perhaps in
18 written documentation, you show great care when
19 you use preferred pronouns.

20 How it's often been understood though is
21 that it applies to speech. And there is a
22 challenge in that. We are often quick when we
23 speak to -- to just, you know, say what's within
24 our mind and not to be able to create the proper
25 guard so that we can respect an individual's
26 pronouns even if they have, you know, made it
27 clear to -- to us what they are. And that can be
28 challenging because I've seen students have been
29 offended because you -- their -- their preferred
30 pronoun was not being used; yet, they never
31 actually articulated to the individual that they
32 preferred this particular pronoun. So they --
33 they get upset that it's not happening, but they
34 haven't taken the proactive steps to help
35 facilitate it happening.

36 It also is a challenge in that what we mean
37 by a person's preferred pronouns because it's --
38 it's open-ended. It can mean individuals who
39 want to use, you know, he, she, and -- and him,
40 her and all of those, the -- the classic
41 pronouns. It can also potentially apply to a
42 broad list of new made-up pronouns like
43 ze/zif/zer, co/cos/coself. Individuals can
44 create almost an infinite number of potential
45 pronouns, and I don't know that any one of us is
46 going to be able to police their own thought
47 processes and language to such a degree that they

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1 would never trip over that.

2 A lot of times, people will choose the
 3 pronoun that their eyes tell them. So if they
 4 look at an individual who is presenting, you
 5 know, as a woman, they would drift towards female
 6 pronouns. If they are looking at an individual
 7 who essentially presents as a man, they would
 8 drift towards male pronouns. We get the
 9 strangeness where an individual might not shift
 10 their appearance, change their pronouns, and then
 11 individuals start getting tripped up. And so
 12 just on the self-identification issue, there's a
 13 lot that cannot really be properly understood as
 14 what the full scope and scale of it is.

15 As far as the right of self-identification,
 16 individuals have the right to choose what name
 17 they go by. My name is Robert. I tend to go by
 18 Rob. I've known individuals who change their
 19 names. There's a legal process in which to do
 20 that. Sometimes individuals don't do the legal
 21 process as a first step. They start changing how
 22 people are going to refer to them, and then maybe
 23 later on, they change their names legally. But
 24 right of self-determination and identification,
 25 that -- that is, I think, less controversial.
 26 The pronouns create a lot more challenge.

27 And I know this was an area that Jordan
 28 Peterson took on where he -- he didn't want to
 29 have individuals informing him on what speech he
 30 had to use, that there was a difference between,
 31 you know, restricting the use of certain
 32 pejorative terms. But this is now prescribed
 33 speech, and that is something that really does
 34 violate the freedom of expression principles in
 35 his mind, and I think there's a lot of merit to
 36 his argument on that one.

37 Q One of the teacher witnesses said that no age
 38 is -- is -- is too young for a child to identify
 39 as a -- as a new or different gender and that
 40 children should be regarded as the experts of
 41 themselves. And this teacher in particular,
 42 that, you know, she -- she -- she said that
 43 that's her approach. Is that your approach? Or
 44 what -- what would you have to say about that?

45 A I think the difficulty of that is it asks us to
 46 act as, you know, psychologists and pediatricians
 47 when we as teachers simply do not have the

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1 training. I am not qualified to -- to render the
 2 kind of judgments on -- on that. It's -- it's --
 3 it's a big question. Now the idea that at any
 4 age a -- you know, a child can, you know,
 5 properly -- you know, identify and manifest
 6 gender dysphoria, to the degree that a child is
 7 able to articulate. Before they form language,
 8 it would be very difficult to know exactly what
 9 it is the child might be indicating. I mean, I
 10 have a -- a 19-month old at home. I don't know
 11 how I would detect gender dysphoria in my
 12 19-month old, you know, son's life. I won't even
 13 know what that would look like. I certainly
 14 wouldn't, you know, presume just because he liked
 15 one toy over another, that that meant something,
 16 and he hasn't yet formed the level of language in
 17 which to articulate a belief system about who he
 18 is in terms of gender. He hasn't even used the
 19 word gender.

20 So this -- this would be a challenge of when
 21 they say at any age. Well, clearly, there has to
 22 be some kind of a limit. Now young children from
 23 very young ages, four, five, might manifest
 24 gender dysphoria. I don't dispute that they have
 25 that sense that, you know, they're perhaps born
 26 into the wrong body. They were perhaps born
 27 into -- you know, into the wrong biology. But
 28 when it deals with the issue of gender dysphoria,
 29 and again, there are other gender expressions
 30 than gender dysphoria, but when you're dealing
 31 with gender dysphoria, the DSM-5 which Kenneth
 32 Zucker essentially helped to -- to write, it
 33 points out that many individuals who express
 34 gender dysphoria as children ceased to suffer
 35 gender dysphoria as they passed through puberty.

36 During puberty, your -- your body is either
 37 flooded with testosterone or estrogen. And for a
 38 lot of individuals, it essentially corrects the
 39 dysphoria that they were experiencing in their
 40 earlier age. So -- so the -- the big challenge
 41 is you -- you can't predict whether or not an
 42 individual's gender dysphoria expressed at even a
 43 very young age will correct during puberty.
 44 There's no test for that, which is one of the
 45 reasons Kenneth Zucker favours the wait-and-see
 46 approach because we can't know whether or not it
 47 will correct in puberty. And for a lot of

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1 individuals, it does.

2 So can an individual feel gender dysphoria
3 at a very young age? Yes. How articulate can
4 they be in expressing that? It would depend on
5 exactly how young they are. And how much should
6 we presume that that is going to be the identity
7 that they will bear for the rest of their lives?
8 That, I would be highly suspicious of.

9 Q The vast majority of what you just said would
10 have been the -- the -- the teachers witnesses
11 that we had in this case would characterize as
12 impermissible expression because it discriminates
13 against them under the Code.

14 CNSL A. WADDELL: Sorry. I think -- I think that is
15 not what those teacher witnesses testified about.
16 I think my friend is inferring what he thinks
17 they might have said. If you want to put a
18 direct quote from one of the witnesses to this
19 individual, that's fine, but I don't think that
20 that's an accurate misrepresentation --
21 representation rather, of the evidence that we've
22 heard to date. And if you didn't put the
23 specific statement that you're going to put to
24 this witness now to our witnesses, then I'd say
25 you have a *Browne v. Dunn* problem.

26 CNSL J. KITCHEN: Well, of course, we -- we know from
27 the *Platz* case that *Browne v. Dunn* is not
28 strictly applied at the Tribunal level and not
29 surprisingly because the Tribunal, I would say,
30 almost prides itself in the fact that the rule of
31 evidence doesn't apply. Having said that -- and
32 I -- and I would say that -- that what I just
33 said is fair actually. But having said that, I
34 take your point. I take your point. I will -- I
35 will get a little more specific.

36 Q I think it's very fair to say that the -- of
37 course, I cross-examined each of the teacher
38 witnesses for, I think, roughly four hours for
39 each one, much to the chagrin of my friend. And
40 some -- and there was -- so there was a lot of
41 evidence that came out about their perspectives
42 on this. And we often use the words permissible
43 and impermissible. Those were words that were
44 thrown around because at least, there was some
45 agreement on those words. And the teacher
46 witnesses often said that it was -- it was
47 impermissible to -- to -- to -- to not affirm a

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1 child who came to them or -- or -- now, they
 2 never used the "wait-and-see" words because that
 3 was not language that they -- that they
 4 understood. And they never used -- they just
 5 used gender-affirming care, okay? That's the
 6 phrase they used.

7 But in -- in a number of questions that I
 8 asked of them about what's permissible and what's
 9 impermissible, they said it was impermissible to
 10 not affirm a child -- a student who came to them
 11 and said, "I think I identify as a different
 12 gender." Do you have any thoughts on that?

13 A Well, I think it's always a challenge because as
 14 I said, you're entering into a realm.
 15 Affirmation is not a neutral act, and so you're
 16 entering into a realm of psychology and
 17 pediatrician. You know, that's -- that's their
 18 area, and we're not qualified. I could, you
 19 know, go over the kind of approach that Kenneth
 20 Zucker took in a wait-and-see, and it's because
 21 there's, you know, really some interesting things
 22 written of firsthand accounts of what they
 23 experienced with -- with Kenneth Zucker and the
 24 outcome of it, and I'd go through that, the
 25 careful interviews, you know, the -- the years of
 26 investment, and -- and of course, his vast
 27 knowledge on the subject.

28 And I look at that, and then I think what
 29 teacher within the public school system would be
 30 qualified to do the thing that Kenneth Zucker
 31 would do in his clinic? What teacher teaching
 32 usually a student for a single year could fully
 33 grasp and understand the full scope and scale
 34 of -- of an issue? I think this is why parental
 35 rights probably matter a lot in this issue is
 36 because parents would tend to know their children
 37 better than a teacher. I -- I encounter my
 38 students for usually half a semester for maybe
 39 80, 90 hours, and I wouldn't want to weigh into
 40 this very delicate area of their lives, their own
 41 gender expression or sexual identities because I
 42 simply don't know enough about my students. I
 43 don't have enough interaction or contact with my
 44 students to -- to -- to presume that I am
 45 qualified to -- to weigh into that area, which is
 46 where I think teachers need to be cautious.

47 Now if -- if a parent were to come and say

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1 my student needs this medical intervention
2 regardless of whether or not this -- you know,
3 they are hard of hearing, they need special, you
4 know, accommodations made, or they -- they have
5 some mobility issue, or in the case of, you know,
6 their gender expression, if they came and it's
7 been something that they've got the doctor, you
8 know, recommendation, they themselves as parents
9 are asking, I would be inclined to trust their
10 prescribed course of action because I think they
11 would be the best to be in the driver's seat on
12 that.

13 They -- at the very least, if they're
14 consulting with a pediatrician or a psychologist,
15 they've got someone with some credentials, some
16 expertise in the field weighing in and, you know,
17 offering what they believe out of their practice
18 and their experience is the best path forward for
19 that child. So the smart play for any real
20 teacher is to realize that they're not experts,
21 and they're not qualified, you know, to act as
22 experts in that arena. So -- so that's where I
23 would have a concern. The first principle of
24 medicine is essentially do no harm. We -- we
25 have to be very cautious and very careful and not
26 just presume that we are more knowledgeable and,
27 you know, and credentialed on a topic like this
28 than we actually are.

29 Q This -- and I'm sorry. I know I've been
30 continuing to share my screen because I have been
31 intending to continue with this. The next one is
32 confidentiality. "Students will have the right
33 to the confidentiality of their official and/or
34 preferred sex, gender, and name." What do you
35 understand this -- this -- this to mean as one of
36 the SOGI policies?

37 A Yeah. And that's actually -- because when SOGI
38 came out and the Union said if we had any
39 questions or concerns, we should -- should bring
40 them, and I actually wrote to the Union quite a
41 lengthy document where I broke down all the
42 questions and the concerns that I had. And when
43 I first read, you know, the -- the section on
44 confidentiality, I didn't see it as being
45 problematic. But I've seen since how it's being
46 applied.

47 So when I first read it, my thought was the

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1 students have the right to confidentiality of
 2 their official and/or preferred sex, gender, and
 3 name. In -- I read it in the same sense that any
 4 student in the public school system has the right
 5 to have their confidentiality protected in that
 6 we can't publish a picture of a student, you
 7 know, onto an open source -- you know, on the
 8 open source web, you know, so that they could be,
 9 you know, identified without, of course, a
 10 parental, you know, signed permission form.
 11 We -- we don't release the names of students out
 12 to the public in any way. And so that's how I
 13 initially read it, and I didn't think it was
 14 particularly controversial.

15 However, I've since seen individuals
 16 utilizing this confidentiality, you know,
 17 concern. They're saying that we, you know, have
 18 to not tell parents if we are using a different
 19 name or different pronouns for the student in the
 20 school. In other words, we have to hide from the
 21 parent how we are interacting with the student in
 22 the school. Now, that's --

23 CNSL A. WADDELL: I'm just going to -- sorry. I'm
 24 just going to interject and just say all of this
 25 is hearsay. But again, I want to get through the
 26 witness's testimony, so I'm just putting that
 27 objection on the record, and I'll -- I'll let
 28 Mr. -- apologies for interrupting you, Mr. B.
 29 I'll let you continue.

30 CNSL J. KITCHEN: Well, I don't think that's fair.
 31 He's not saying that a teacher came to him and
 32 said this is what I did. These are his
 33 observations. This is what he's seeing
 34 happening, which is different than reporting on
 35 what he's heard someone say to him, so I don't
 36 think that's fair to characterize it as hearsay.
 37 But having said that, it doesn't seem like
 38 there's a problem, and -- and so the witness can
 39 continue with his observations of how SOGI 123
 40 policies are being implemented.

41 Q Go ahead, Rob.

42 A And if we are talking about that latter
 43 interpretation, then I would say it seems to be a
 44 violation of the *School Act* in which parents have
 45 to be properly notified regarding the conduct,
 46 behaviour, and expressions of students in school
 47 especially if it pertains to an area that could

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be potentially problematic in terms of students safety. And so I read the *School Act*, and I wouldn't normally have thought that this would be how that would be interpreted because it would seem to be such a contradiction of the *School Act*, but I'm afraid that it's -- it's the second interpretation that is more and more creeping in in the way we are conducting ourselves on SOGI 123 and its implementation across the school districts.

Q What would you say to the advocates in this area to say, "But that is required for the safety and security of trans students"?

A I think that's always a great question as to who has the greater concern regarding the safety of a student, the, you know, teacher, the councillor, or the parent. Now, there are going to be moments where parents are abusive, and you would hope that the State has taken proper measures to protect the child. But in the absence of clear evidence of -- of that risk, that threat, I would be inclined to always side with the parent and their right to know and to not have secrets kept from them unnecessarily.

So -- but it is a complicated issue because especially when you're dealing teenagers, teenagers, they like to keep all kinds of secrets from their parents. So I can certainly understand why they would want to do that. It is a question though as a teacher what are our obligations under the *School Act*. If we have a concern, we are legally required to report it.

CNSL J. KITCHEN: Chair, it looks like we're at 12:30 so...

THE CHAIR: Yes.

CNSL J. KITCHEN: Or just about.

THE CHAIR: Yeah. Would you mind taking the document down just for these last few --

CNSL J. KITCHEN: Yes, sorry.

THE CHAIR: -- moments. Thank you. We'll take -- we're going to head into a break now.

Mr. Kitchen, just for scheduling and for the witness, rough idea of where we're at in your questions?

CNSL J. KITCHEN: I think I'm about 50 percent of the way through.

THE CHAIR: Okay. All right. So, Mr. Bogunovic,

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1 we're going to take an hour now for lunch. And
2 for this break, I'm going to remove you from the
3 meeting and ask you to rejoin again at 1 o'clock.
4 Hopefully -- or sorry -- about 1:30. Hopefully,
5 we will avoid those issues we had the first time.
6 And when we come back, we're going to continue
7 with Mr. Kitchen's questions. And that's all for
8 you.
9

10 (WITNESS STOOD DOWN)
11

12 THE CHAIR: I just have a couple of things to say to
13 the parties. So for the lawyers and the parties,
14 we had said we'd give you our bottom line
15 decision on the remaining -- on the three
16 witnesses for Mr. Neufeld. And our decision will
17 be to find they're not admissible largely on the
18 basis of relevance. As I said, we're aiming to
19 provide our written reasons on that to you by the
20 end of the day. So we'll be working on
21 finalizing that over the lunch, and we'll get it
22 to you by the end of the day. Anything --

23 CNSL J. KITCHEN: Chair.

24 THE CHAIR: Yeah.

25 CNSL J. KITCHEN: Yes. I'm going to apply to adjourn.
26 I think the only -- the only procedural fair
27 thing to do in light of that is to stand this
28 down and seek judicial review of that decision.
29 Obviously, it's significant for the case. This
30 is the only opportunity to get the evidence in,
31 which means it's highly prejudicial to the
32 respondent to continue to go through and then
33 when we get to judicial review, to be talking
34 about this issue because then, you know, pretty
35 much the only remedy is to -- to strike the whole
36 hearing and throw it back and go through the
37 whole process again. I don't think that's fair
38 to the Tribunal or the public or the parties. I
39 think the only fair thing to do, especially in
40 light of the fact that we cannot finish this week
41 in any event, is to adjourn immediately, stand
42 this down, and the respondent, as quick as he
43 can, review judicial review of that decision.
44 And it's either upheld, or it's not. If it's
45 not, then great. We can come back. We can put
46 the evidence in. We can continue the proceeding,
47 you know, it won't be prejudicial to -- to having

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1 to overturn the whole thing at the end and come
2 back potentially.

3 And if it's upheld, it's upheld, and then
4 we -- and then we keep going, which -- which will
5 happen pretty much in any event because we're not
6 going to be able to finish this week. So that's
7 what I think must be done in these circumstances.
8 So that's my application to adjourn, stand this
9 down so we can seek judicial review.

10 THE CHAIR: All right. Well, Mr. Kitchen, before you
11 commence a legal proceeding of judicial review,
12 I'm going to suggest that you read our reasons
13 and then find your basis for judicial review. So
14 I'm not -- I'm denying --

15 CNSL J. KITCHEN: Well, no, no. Obviously --

16 THE CHAIR: No, no, no. Excuse me. I'm denying the
17 request to adjourn right this moment. We're
18 going to use the rest of the hearing day. You
19 can have our reasons. And if you want to pull
20 together an application for an adjournment, we
21 can talk about that at the end of the day, but
22 we're not going to lose the rest of this hearing
23 day for an adjournment application for a judicial
24 review of reasons you haven't seen. So we're
25 going to break for an hour, and we'll come back
26 here at 1:30.

27 CNSL J. KITCHEN: How about -- well, and -- and look,
28 I know we need to break for lunch. But it occurs
29 to me that one option then, seeing as how you've
30 already denied the -- the request, that we -- we
31 move the date for closing oral argument back a
32 little bit. I know it's already March 4th, but
33 that probably isn't enough time to go to the B.C.
34 Supreme Court and get reasons. It might be, but
35 it probably isn't, and so I would suggest we move
36 that back a little bit to allow that -- that
37 application to go ahead and to get reasons,
38 again. Pretty much to the -- to the -- to what I
39 said, right, if we have those reasons before we
40 finish, that would be helpful to everybody
41 involved so that we can either jump back in and
42 do our evidence and then do our closing argument
43 and then you go on to make a decision as opposed
44 to we just barrel through, then we get a decision
45 from you, you know, we've completed the evidence
46 part of the phase, then we go to judicial review.
47 And even if -- even if we were to lose on

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1 everything else but we were to win on this, we
2 would have a problem because a potential remedy
3 would be to quash it and send it back to redo the
4 whole thing potentially. And -- so to save
5 against that prejudice, I would suggest that
6 that's a way to deal with this in -- in light of
7 what you've just decided.

8 THE CHAIR: All right. Well, maybe. But I think this
9 discussion is premature. We can come back to
10 this at the -- at the proper juncture once we've
11 got reasons and perhaps if -- perhaps at the end
12 of this week, but -- when we're talking about the
13 next stages of the process, but I'm not inclined
14 to jump into a decision about this right now. We
15 also need to hear from your friend and now is
16 just not the time. So again, today, I want us to
17 stay focused on hearing the evidence from
18 Mr. Bogunovic and Darrell Furgason, if we get to
19 that. You'll have our reasons at the end of the
20 day, and then the parties can consider their
21 positions about what they want to do and what
22 makes the most sense, and we'll deal with it at a
23 better juncture.

24 CNSL J. KITCHEN: Okay. I'm sorry. Last thing.
25 Just -- just -- and it's a scheduling thing to my
26 friend. Ms. Waddell, if I'm another hour with
27 Rob, which I expect I would be at least but
28 probably not much more, do you think your cross
29 would consume the rest of the afternoon or -- or
30 likely to? I mean, I know you can't predict
31 that. I'm just -- I'm just thinking of Darrell.
32 Should I tell him to stand by so we can call him
33 at, let's say, 3:30 and get an hour. Or -- or is
34 it looking like probably it's going to be
35 tomorrow morning for Darrell?

36 CNSL A. WADDELL: I -- I don't think I'm going to be
37 that long with Mr. Bogunovic, so I -- I think you
38 probably would have the chance to -- to get -- at
39 least get Darrell started toward day's end, yeah.

40 CNSL J. KITCHEN: Okay. Okay. No. That's helpful.
41 Thank you.

42 THE CHAIR: All right. I'm going to remove everyone
43 from the meeting now. Let's take an hour for
44 lunch. Please come back at 1:35. Thank you.
45

46 (PROCEEDINGS ADJOURNED FOR NOON RECESS) [12:36:08]
47 (PROCEEDINGS RECONVENED) [1:36:18]

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ROBERT ALAN BOGUNOVIC, a
witness, recalled.

THE CHAIR: All right. Hi, everyone. Welcome back.
I can see all the familiar faces we're expecting.
And, Mr. Bogunovic, for your benefit, it looks
like we're now joined by Robin Toszczak from the
BCTF. They are connected by video as well. And
then we have our members of the public by phone
still.

So with everyone being here, Mr. Bogunovic,
are you ready to continue?

A Yes, I am.

THE CHAIR: Okay. Go ahead, Mr. Kitchen, when you're
ready.

CNSL J. KITCHEN: Thank you.

EXAMINATION IN CHIEF BY CNSL J. KITCHEN, continuing:

Q Let's pick up where we left off. Back to sharing
my screen here. We talked last time about
Section 4 there, confidentiality. This is,
again, we're at the SOGI inclusive policies and
procedures, page 131 of the publications book,
and I think it's Tab 34. So I'm going to ask you
two questions, and then you can -- you can answer
them. Gender -- I'm going to read this to you,
and then I'll answer -- ask you the questions.

Gender-integrated inclusive activities.
Integrated inclusive activities will enable
students to join teams and groups that they
feel correspond with their gender identity.

Rob, I want to know what you understand this SOGI
policy to be and from your observations how it's
been implemented.

A Well, it's -- it's always as a question does this
apply to -- and when they say "teams," sports
would be probably the most common means by which
we would have a gender-segregated activity. We
usually do have, especially at the age -- higher
levels, different sports for the boys and the
girls. And so it would seem to apply that an
individual, if they identify as one gender that
is not in alignment with their biological sex

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1 that they would be able to compete in the, you
2 know, category they identify as. And we've seen
3 numerous examples of this playing out even all
4 the way up to the Olympics. There's -- there's a
5 lot to unpack in a thing like that. A lot of
6 individuals read that and, you know, they -- they
7 celebrate it, and -- and other individuals wonder
8 if that's not putting A, women in danger when
9 they have to compete against men in sports that
10 require some level of contact; also, whether or
11 not men would naturally have an advantage that
12 could not be undone by the use of various
13 hormones, testosterone, estrogen.

14 Those are real questions that are being
15 raised. And it might not matter that much in the
16 elementary school level. It might not matter
17 even at the middle school level. But when you
18 get into high school, these differences do start
19 to matter quite significantly. And when the
20 scholarships are now in play, it has a financial
21 cost and a burden potentially especially upon
22 women 's sports. So I see that, and that's what
23 I presume is -- is in play. I don't know that
24 there's a lot of other teams or groups that
25 segregate based on sex, but teams and, you know,
26 sports seems to be what that's implying.

27 And that's how I read it at the time that it
28 was essentially opening the door for individuals
29 to compete in sports in whichever gender category
30 that they want.

31 Q Do you -- do you see this happening in the
32 Chilliwack School Division?

33 A I'm not in the athletic department, so I wouldn't
34 see how this could be playing out there. And
35 again, the concerns that I -- I would have had
36 and raised on that is that without any kind of
37 language creating a parameter around this right,
38 it basically becomes too open-ended and allows
39 for potentially too much abuse. We certainly
40 have seen stories of this playing out across the
41 spectrum of our culture, but I couldn't, you
42 know, with any personal knowledge speak to
43 something that's happened within the Chilliwack
44 School District.

45 Q Okay. When you said earlier that you were
46 talking about in class that you -- you said the
47 one thing that was debated in this -- in this

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1 area with students was -- was males in female
 2 sports. I think -- I think you said that.
 3 Correct me if I'm wrong.

4 A That's right.

5 Q So is this the same as that?

6 A This was what I would understand that debate to
 7 be around. Now, again, very good arguments were
 8 raised on both ends of that debate. I think it's
 9 a question -- really comes down to what an
 10 individual imagines the purpose of sports to be.
 11 If the purpose of sports is simply, you know,
 12 fellowship, teaching good qualities of
 13 comradeship, and, you know, participation,
 14 there's no great reason to engage in any
 15 exclusary [sic] segregated practice.

16 However, when you start adding in
 17 competition, when you start adding in elements of
 18 scholarships, an individual is trying to
 19 establish their career paths moving forward, sex
 20 segregation almost becomes an essential because
 21 it would unbalance the competition. And we --
 22 this is one of the reasons why we've had, you
 23 know, segregated sex, you know, competitions
 24 where, you know, we have male hockey and female
 25 hockey, male basketball and female basketball.

26 Even in marathon run -- runs, they record
 27 the times for the men and then the times for the
 28 women. And the women don't have to beat the men
 29 to win in their category, right? This -- there's
 30 just some biological advantages that are almost
 31 impossible to escape on a question like this.
 32 Height being a big one, you know, in basketball.
 33 If an individual is 6'9", right, and male but
 34 identifies as a woman and you put them on a high
 35 school basketball team for the girls, you can
 36 imagine that would do to the competition.

37 Q Number 8 is called "Inclusive Learning." And it
 38 says:

39
 40 Classroom materials and activities will
 41 taken positive images and accurate
 42 information about sexual or gender
 43 diversity.

44 A Yes.

45 Q When -- when you see this in the SOGI 123
 46 resources, what do you understand the accurate
 47 information to be?

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1 A Well, this is part of the problem where
2 individuals probably needed to have opened up
3 this document to outside voices, and so they
4 could have pointed out the things that somehow
5 got missed when they were shaping these policies.
6 When you insist that you provide positive images
7 and accurate information, you have created a
8 contradiction, and the contradiction is sometimes
9 to create accurate information, you must also
10 allow for negative portrayals, right?

11 So my understanding of the simple reading is
12 when you speak about issues of LGBTQ+, you must
13 always frame it in the most positive way
14 imaginable meaning you have to sidestep all the
15 potential concerns, safety issues, and other, you
16 know, challenges that are raised by a policy or
17 by a system of belief. It would be -- imagine if
18 we didn't refer to this in the terms of SOGI but
19 instead we referred to it in the in terms of
20 religion, and we required that when addressing
21 religion, you only ever present your religion in
22 positive images and accurate information.

23 I couldn't discuss Christianity accurately
24 if I could only discuss it in terms of the
25 positives. In order to truly understand
26 Christianity, which is my religion, I would also
27 have to be able to discuss the bad, you know,
28 elements of the religion, how it's played out in
29 the past. If I'm being accurate, I can't bypass,
30 right, the possible negative images that would be
31 raised in an honest discussion. So when I see
32 inclusive learning, and they use language like
33 that, contain positive images and accurate
34 information, what I see is that is not about
35 education. That is about promoting propaganda,
36 right? That's the only reason you would require
37 both simultaneously knowing that there's a
38 contradiction.

39 And by the way, that's not the only place in
40 the SOGI document that they use positive and
41 accurate, you know, side by side and don't
42 recognize the contradiction that is there.

43 Q I just have, I think, one more page I'm going to
44 bring you to in this document. So forgive all
45 the scrolling. I think -- here. Now, there's a
46 highlighted section here. The things that came
47 out repeatedly with the teacher witnesses is that

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1 I -- I asked them if SOGI was -- SOGI 123, the --
2 the resources, the -- the theory, the ideas of it
3 were taught as fact, and they said emphatically,
4 yes, it's taught -- they -- it's taught as fact
5 because it is fact. In light of the teacher
6 witnesses saying that, what do you make of SOGI
7 when it -- of the SOGI 123 resources when it says
8 teaching about SOGI is similar to teaching about
9 religions or cultures? We teach about different
10 religions, but we don't teach the students -- the
11 students should be any of those religions.

12 CNSL A. WADDELL: Just before the witness answers, can
13 you give us, Mr. Kitchen, just where you're
14 looking in the record here?

15 CNSL J. KITCHEN: Page 118 of the various books.

16 CNSL A. WADDELL: 18. Okay.

17 CNSL J. KITCHEN: Yes. I -- I don't know what tab
18 that is. Sorry. 118.

19 CNSL A. WADDELL: That's okay. 118 is good.

20 CNSL J. KITCHEN:

21 Q Rob, do you need me to say the question again?

22 A No. I think I understand it. And yeah, it is a
23 question. In the ideal, you would be teaching
24 the individuals about rather than trying to
25 present or lead them into. I can teach about a
26 religion. I can teach about multiple religions.
27 If I was doing a survey of them in my class,
28 looking at both the positives and the negatives
29 that might play out in -- in how they present the
30 various tenets and in the conduct of their
31 followers; and yet, I wouldn't necessarily be
32 encouraging them to become any one religion.
33 There's the impartating [sic] of information, and
34 then there's what would cross the line into
35 proselytizing or evangelizing. And it then
36 raises the question at what point is an
37 individual crossing in that line? And now, these
38 are -- they're not easy keynote things to deal
39 with nor does it only apply in this context.

40 I remember there was a teacher in our school
41 years ago, she was upset that a student in the
42 school was handing out these little tracks that
43 were scratch-away tracks, and, you know,
44 suggested that Darwinian evolution was
45 everybody's favourite myth. And she was upset
46 because she taught biology, and she thought I had
47 something to do with the tracks. I -- I didn't.

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1 I knew the student, but I didn't have anything to
 2 do with the tracks, but she thought I had
 3 something to do with it, and she -- she came to
 4 my door and was, like, I need students to believe
 5 in Darwin -- Darwinian evolution in order for me
 6 to teach about it. And that never made sense to
 7 me because you can understand a thing without
 8 believing in the thing, right?

9 I can understand the tenets of Christianity
 10 without believing in Christianity. So it's --
 11 it's -- it's -- it's not a line, you know, you
 12 have to believe in order to understand. But
 13 sometimes, individuals somehow miss that. They
 14 think that knowledge must equate to belief.
 15 SOGI, being similar to religion or culture, I do
 16 think there are some elements of the SOGI that --
 17 that certainly draws parallels. But then again,
 18 I also see individuals who try then to distance
 19 SOGI from those parallels.

20 When it comes to school, we're supposed to
 21 be secular and nonsectarian, and I do question
 22 whether or not we're trampling upon that boundary
 23 listed in the *School Act* with how we are
 24 approaching this particular topic.

25 Q Do you think we have to teach Christianity as
 26 being true in order to prevent bullying against
 27 Christian students?

28 A No. I think you have to teach individuals that
 29 bullying is counterproductive to the larger
 30 flourishing of human society and encourage them
 31 to embrace a diversity of opinions. And then
 32 you -- in order to promote tolerance, you
 33 actually have to begin at the point of
 34 disagreement because you don't need tolerance
 35 when everybody agrees with each other. Tolerance
 36 is how you handle disagreement. And so when
 37 individuals try to create some kind of, like,
 38 ideologically, you know, saturated environment
 39 where certain views are, you know, presented as
 40 being off limits, especially when they start
 41 magnifying how many topics are off limits, I
 42 don't think you are promoting tolerance. I don't
 43 think you are promotes diversity. And I think
 44 you are setting a landscape that is actually
 45 going to breed a certain counter punch, a -- a --
 46 a negative reaction, and it will not be something
 47 that you can easily police once that manifests.

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1 So -- so this is why I try to avoid the
2 polarizing language that so often divides on
3 issues and why I often present things as not a
4 false dichotomy and either or when you can then
5 celebrate the diversity of opinions and look at
6 the merits of each position. I think you are
7 entrenching more of a positive atmosphere in
8 which would better combat the bullying which we
9 are so concerned about.

10 Q Do you think the theory of Darwinian evolution
11 must be taught as fact in order to prevent
12 bullying against students who identify as
13 atheist?

14 A No. Again, I wouldn't suggest you have to teach
15 it as fact. I don't -- I mean, it's a theory,
16 and it's a scientific theory. It has -- has some
17 weight to it. There's no question about that. I
18 don't really know anyone who -- who questions the
19 basic tenets that species do adapt and, you know,
20 through some kind of process of natural
21 selection.

22 What was interesting, I once had a debate
23 with a student. They brought this forward. They
24 wanted to debate whether or not intelligent
25 design, right, creationism should be taught in
26 school. And the -- the argument that I thought
27 was quite compelling and persuasive in the midst
28 of that debate was that Darwinism was designed as
29 a counter to the prevailing creationist models of
30 its day. And to present Darwinism in school but
31 then not even let students know what theory it's
32 meant to counter or what are the tenets of the
33 theory or the beliefs that it was designed to
34 counter means that you are not teaching Darwinism
35 accurately. You are leaving too much out of the
36 understanding of this theory. And so in order to
37 teach Darwinism well, you would also have to
38 understand the creationism, which it as a theory
39 was designed to counter.

40 Now, that's certainly not happening. I
41 don't think any schools are, right now, teaching
42 creationism in any meaningful way outside of
43 perhaps the private school systems. But it -- it
44 raises this question of when we start talking
45 about language. You have to have a positive
46 image, you know, portrayal. You have to have
47 accurate information. But the requirement of

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positive, right, negates what you are fully allowed to address and deal with; therefore, you can't be fully accurate. Sometimes the exclusion such as we're not going to teach creationism because it's not strictly scientific in the mindset of the people who make the decisions means we can't accurately talk the full scope and scale of what Darwinism is.

That's -- that's the kind of challenge that we find ourselves with. I would tend to favour any kind of open marketplace for ideas. We do have to have reasonable limits on speech, but I often encourage that we set a high bar, and I've been generally pleased that the Supreme Court of Canada tends to set a very high bar for what it limits as well.

Q Just -- just to couple more questions in this vein. And you can listen to them quickly if you want to. And this came up with -- a little bit with examination with the teachers. Do we need to teach Islam as being true in order to prevent bullying against Muslim students?

A No, I don't think you do. I think, again, you can focus on the inherent rights of individuals to -- to practice their faith and the principles of tolerance. I don't, again, think any one thing needs to be taught as truthful or fact for us to encourage the very attitudes that help us to restrict and restrain bullying.

Q I want to ask you this question because political belief is protected in the *B.C. Human Rights Code*. Do we need to teach either capitalism or Marxism or libertarianism as true in order to prevent bullying against students who have strong political affiliations or identities that they express?

A And again, I would say no, you don't --

CNSL A. WADDELL: Sorry. I'm just going to say for the record, I'm sure my friend anticipates this. Again, I don't want to hold things up, so I'm not going to ask that a determination be made unless my friend would like it, but all of this is hypothetical and -- and in our submission, irrelevant to the proceedings, and I just want that on the record. We don't -- unless the Tribunal or my friend would like to -- have the objection determined. I'm content to just leave

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1 it.

2 CNSL J. KITCHEN: Well, while it's becoming
3 increasingly obvious that the Chair entirely
4 agrees with you, I am attempting to build a
5 record about what this case is really about in
6 the event that the court may eventually agree
7 with me. This case is about one particular group
8 who holds to one particular belief trying to
9 enforce that belief on everybody in the school
10 system and then claim that it's hate speech if
11 anybody criticizes that belief system. That is
12 in plain language what this case is about.

13 So we need to discuss that in the evidence,
14 as I've said repeatedly, because it's relevant to
15 sorting all that out. If we decide that, yes, a
16 particular belief system is immune from criticism
17 because it's hate speech to criticize it, the
18 implications of that legally are that other
19 belief systems may also be immune such as
20 political belief systems in the province of
21 British Columbia because political belief is
22 protected in the Code.

23 If someone is pro-life and suggests that
24 they should be able to teach pro-life ideology as
25 fact and that they should not be criticized or
26 punished or disciplined if so, then of course,
27 they would look to this case as a precedent if
28 the Tribunal decides the way you are asking them
29 to. So this evidence, I would have thought, it's
30 obvious that it is relevant to that
31 determination.

32 THE CHAIR: All right. Well, sorry. Just before we
33 move on, I'm just going to -- because you've said
34 it a few times, and I don't necessarily need to
35 correct you, but you're talking about what's
36 protected in the Code, and -- and political
37 belief actually isn't protected in Section 7 or
38 Section 8 which covers education. Nothing turns
39 on it but just to be accurate. And, you know, as
40 you've alluded to, I agree with your friend that
41 this evidence is not relevant to the issues that
42 we have to decide under section 7 and Section 13.
43 I'll let you keep going, but I -- I agree because
44 it's just -- it's not relevant to any of the
45 issues we've been over extensively.

46 It's relevant to your broader -- the broader
47 debate, the broader concern, your broader kind of

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1 view of SOGI and what should happen in schools
2 and so on. That's not what this case is about.
3 It's about specific publications, which I note
4 you haven't mentioned in quite some time. But --

5 CNSL J. KITCHEN: Yeah. That's coming later in my --
6 in my questions.

7 THE CHAIR: Okay. I mean, go ahead. Again, with all
8 due respect to Mr. Bogunovic who is clearly very
9 thoughtful about all of these issues and likely a
10 very interesting person to discuss them with, his
11 opinions about all of these various ways, the
12 questions you're asking are just in no way
13 relevant to the legal issues we've defined in
14 this case. But go on.

15 CNSL J. KITCHEN: He -- he will not be surprised to
16 hear that you find those to be irrelevant.

17 THE CHAIR: Well, sorry. No. I can't let you just --
18 you're in -- I can't let you just suggest that
19 I'm disregarding the evidence of a witness
20 because of personal beliefs. That's -- I can't
21 let you suggest that. That's not --

22 CNSL J. KITCHEN: I'm not -- I'm not suggesting it's
23 your personal beliefs. I never suggested that.

24 THE CHAIR: Okay. All right. So just to be clear,
25 relevance in a legal proceeding is different than
26 relevance in -- out in the general world.
27 Relevance in a legal proceeding is connected to
28 issues in a legal framework, a well-understood
29 legal framework, facts that will help us decide
30 those issues. You are not eliciting from this
31 witness facts that he has direct knowledge of
32 that help us decide any of the issues, so it is
33 legally irrelevant. But you can go on.

34 CNSL J. KITCHEN: I understand that's your opinion.
35 That's become abundantly clear.

36 Q Rob, did you -- did you ever try to leave the --
37 the union, the CTA or the BCTF?

38 A Yes, I did.

39 Q And why -- why is that?

40 A When I saw how they were responding to the
41 concerns being raised by individuals like Barry
42 Neufeld regarding SOGI 123 and when I saw how
43 they responded to the concerns that I raised to
44 them in private in response to their invitation
45 to ask questions and express concerns, I realized
46 that the Union was operating from a totalitarian
47 mindset that was not allowing for discussion or

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1 debate.

2 In fact, the number of times that high
3 ranking B.C. -- BCTF people were stating that
4 explicitly and the candidates that they endorsed
5 in the next trustees election, all revealed that
6 they were closing the door on any kind of
7 discussion of SOGI 123 having never allowed the
8 public discussion to take place in the first
9 place. So I saw that they were also operating in
10 contravention of their own members code, which
11 was -- is my member's code. And at the time, it
12 was found in Section 3446. And can I read what
13 that code said? I will have to consult my notes.

14 Q That's fine. We'll just submit the notes.
15 That's what I suggest just to be fair to -- to
16 my -- to my friend and the Tribunal. They'll
17 want to see them, and I -- and I suggest we just
18 submit them.

19 A Yes. 3446 of the member's guide at the time that
20 Barry Neufeld expressed his opinions states that
21 the BCTF affirm that freedom of speech is a
22 foundation of democracy and that we recognize
23 that satire is an important element of free
24 speech and that the BCTF oppose the use of slap
25 suits as they are a tactic used by the powerful
26 to silence public debate and discussion. And
27 when I was beholding what was happening back in
28 2016 -- 2017, I should say, when I was beholding
29 what was happening in our newspapers with the
30 Union statements and the climate that was being
31 created, what I saw was the powerful using every
32 trick at their disposal to silence public debate
33 and discussion on -- on this issue.

34 Clint Johnson, the current BCTF president at
35 the time was VP, and he wrote a letter into the
36 local Progress on December 6th, 2017, in which he
37 outright states the fact that there is no more
38 discussion needed or possible in regards to SOGI
39 123. He states it as a fact that there is no
40 more discussion needed or possible. Now, freedom
41 of speech is a foundation of democracy. That is
42 core liberalism. And what the BCTF has done is
43 wage war on that most fundamental aspect of our
44 democracy and in a way that really demonstrated
45 they were operating with a totalitarian mindset.

46 Now that is an affront to me both on a
47 political and a religion level, so I inquired

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1 from the Union how I might go about, you know,
2 essentially separating myself from the union. I
3 filed a Section 17 application with the Labour
4 Relations Board. The Union challenged it. And
5 in before the Labour Relations Board, the Union
6 won. I appealed, and the ruling was still
7 against me.

8 So that effort was to have my union dues
9 redirected from the Union to a charity. So this
10 is, of course, not how it was portrayed in the
11 media. Local reporter Paul Henderson wrote
12 essentially a headline that suggested that I was
13 just trying to get out of paying union dues
14 rather than actually having them redirected. But
15 we have this issue where there used to be ideals
16 on issues of freedom of speech that the Union
17 upheld, but the Union has abandoned those
18 principles. And probably the best example that I
19 can point to other than the direct quotes of
20 leaders to that abandonment is the fact that
21 Section 3446 no longer appears in the member's
22 guide. I pointed out to the CTA at the time that
23 they were in violation of this principle found in
24 the member's guide. And somewhere along the way,
25 3446 was simply removed.

26 Q Was there -- was there a GSA club in the school
27 where -- where you've been teaching the last few
28 years?

29 A Yes.

30 Q Has the club been treated appropriately?

31 A They meet -- they meet in -- on a different floor
32 at the other end of the school, so I wouldn't be
33 able to give any testimony regarding the conduct
34 of that club. On top of that, over the last
35 several years, I've had significant amount of
36 time removed from essentially the school campus,
37 so I couldn't speak to the goings on especially
38 last year where I was gone for the entire year.
39 But I -- I can only speak to how things unfolded
40 when we had the Diversity Alliance, which was in
41 some ways sort of a GSA plus. And generally
42 speaking, there was an awful lot of drama amongst
43 the students, but I didn't get the sense that
44 there was an awful lot of harassment being
45 directed against the members from outside the
46 club. By in large, I think most people are go
47 along, get along type of individuals. So they're

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1 not looking to cause trouble for individuals who
2 aren't looking to cause trouble for them.

3 Q Now, for the benefit of my friends and the
4 Tribunal and your sake, I have informed you of
5 the names of the teachers, confidentially, not
6 for you to share with anybody, of course. And
7 normally, I could just do that on the record, but
8 I can't, and I don't want you to -- to -- to say
9 their names at all, of course, because that's the
10 publication ban. But are you familiar with who
11 Teacher A is in this case?

12 A I believe I am.

13 Q

14

15

16 Q

17 Okay. She has testified that she was -- was --
18 was a lead or a host, I think was her word, for
19 the -- for the GSA club in her school [REDACTED].
20 Were you aware of that?

21 A Yeah. I was aware that the particular teacher
22 was the head of the GSA. I don't know the
23 teacher at all realistically. [REDACTED]

24 [REDACTED] So I -- I rarely interact
25 with most of the teachers in the school, and I
26 have not had any real significant interactions
27 with Teacher A.

28 Q But how did you know she was the host of -- or
29 involved in leading the GSA?

30 A A lot of that information is just widespread and
31 knowledgeable. I -- I used to actually manage a
32 clubs board in the school so that individuals
33 would be able to know where the clubs were and
34 what classrooms go in. And on top of that,
35 it's -- it's often -- individuals indicate on
36 their doors where clubs will meet, and teachers
37 tend to use their own classrooms as gathering
38 places. So it's -- it's not a -- it's not a
39 challenge to -- to figure out any particular club
40 if you're there for -- for any significant amount
41 of time. But then if there was a shift, I -- I
42 might be delayed in figuring out and
43 understanding if it moved to a different
44 classroom or a different teacher picked up on it.
45 But again, it's -- it's -- there's -- there's not
46 really much ability to hide a thing like that
47 when you've got public gatherings, public

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1 meetings in a set classroom.

2 Q I'm going to ask you a little bit about the
3 environment at the -- or at least at your school.
4 And if you -- if you can speak to the environment
5 of other schools because you have direct
6 knowledge of it, but at least at your school,
7 from your observations, was the environment
8 hostile to gay or trans teachers?

9 A I don't know what inpersonal encounters teachers
10 might have. I certainly saw nothing in a public
11 context that would suggest to me that there was
12 some kind of systematic bullying taking place
13 of -- of teachers. I'm also probably not a great
14 person to ask that particular question. As I've
15 said, over the last two years, two and a half
16 years, I haven't been on the campus for -- for a
17 good chunk of that. And then there was a lot of
18 disruption during COVID where we were all in
19 silos and limiting our interactions. And
20 actually, ever since I left, you know, or tried
21 to leave the -- the BCTF, a number of teachers
22 essentially disassociate, and so you -- you kind
23 of -- I -- I don't have the kind of collegial
24 relations with a lot of the -- my colleagues. I
25 don't, you know, know a lot of what they talk
26 about, what's happening within their chat rooms.
27 I'm simply on the outside.

28 In [REDACTED], I feel things are
29 often quite siloed. I'm in my classroom. I know
30 the -- the teachers around me within my
31 department and my half of the school on the upper
32 floor. And -- and then when we go to staff
33 meetings, then I'm surrounded by individuals who
34 I couldn't tell you what their names were, and 40
35 or 50 new -- new people seem to show up every
36 couple of years. So regardless -- regardless of
37 what I might think --

38 Q Let's go back then to -- to 2000 -- the late
39 2017, 2018, 2019 before COVID. The teachers
40 suggested that there was a change in the
41 environment. They said there was a change in the
42 political climate was the words of one particular
43 teacher. And that generally, they have suggested
44 there was a change in climate at least that they
45 felt in the school district after Barry made that
46 first comment in 2017 and -- and -- and then, you
47 know, continued to make them. Do you have any

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1 observations that you recall from that immediate
2 two or three year period after Barry started
3 expressing his beliefs?

4 A Well, I mean, a lot of the debates and
5 discussions taking place in the community at the
6 time were about rainbow crosswalks and whether we
7 would fly, you know, civic flags at the school
8 board office. There -- there was certainly a lot
9 of greater levels of tension within the district,
10 but I don't know that I felt that the tension was
11 unlocked by Barry's comment. I think that's --
12 that's an important thing to -- to draw a
13 distinction on.

14 A lot of what Barry was reacting to was
15 something that other individuals would have
16 reacted to had Barry stayed completely silent.
17 The -- the concerns that were being raised
18 regarding SOGI 123 and, you know, other things
19 that were happening within the culture, those
20 things really are not tied to a single person
21 standing up or issuing a Facebook post. The
22 reaction that Barry's, you know, Facebook post
23 generated, it was kind of like -- created a
24 Streisand effect where a lot of individuals were
25 suddenly now looking at Barry. And because so
26 many individuals' only understanding of Barry was
27 actually based on the reporting on it in the
28 news, and the reporting on the news seemed to be
29 quite hostile to Barry and others of his ilk, you
30 would tend to have individuals who would devote a
31 tremendous amount of hatred his way, right?
32 And -- and that's what some individuals reacted
33 to.

34 They were reacting that they regarded as a
35 poor treatment and abusive treatment of Barry
36 which they could see tangibly on the front page
37 of newspapers, reading the articles, the signs
38 that people were holding up, right, when they
39 were protesting at the school board where they
40 were trying to draw a link that Barry was some
41 kind of dinosaur. And so it was a very vitriolic
42 climate. Sometimes individuals might suggest
43 that Barry's Facebook post lit a spark. What I
44 saw was that -- that was a debate that was going
45 to happen inevitably because there are already
46 people elsewhere in other districts that were
47 standing up and raising concerns.

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1 Barry learned about it from Heather Maahs
2 after she was in Langley where she -- I think she
3 listened and heard from Laura Lynn Tyler Thompson
4 and some individuals connected to Culture Guard.
5 So there were already individuals mobilizing
6 against what SOGI 123 was -- was doing. And the
7 kindling was already laid out on the ground.

8 So when the BCTF and the CTA and the
9 Progress Newspapers and other activists focused
10 in on Barry the way they did, he became the
11 centre of a firestorm, but he wasn't the cause.
12 They -- the way they focused on him seemed to be
13 the bigger story to me, right?

14 And -- and I -- I saw what Barry's comments
15 were. It was satirical. It drew a tremendous
16 amount of attention, but what I saw him doing was
17 he was challenging the ideology. He was raising
18 concerns about a program that had never undergone
19 public scrutiny, and -- and I didn't see that he
20 was launching personal attacks against people. I
21 saw him raising concerns about an ideology and
22 its impact in a public school system, which would
23 seem to be something that an elected politician
24 would be allowed to address especially if it's in
25 their area of concern and especially given
26 Barry's life experiences, which are unique to
27 him, but informative of his perspective.

28 So it was -- it was a rough climate in some
29 ways. Every -- every week it seemed like there
30 was a front-page story in the newspaper. The
31 BCTF/CTA was issuing an awful lot of statements
32 around SOGI 123 which did not seem to align with
33 the material that was in the ARC Foundation
34 website. They -- they kept kind of insisting
35 that it was just a curriculum, but SOGI 1 means
36 policy. And anyone who then tried to talk about
37 the policies were -- was essentially being shut
38 down. So I -- I had a lot of concerns with that.

39 And then the CTA took the extraordinary
40 measure of selecting a slate of candidates that
41 they endorsed in the trustees election. They had
42 never done so before. They have done so twice
43 now. And in many cases, the individuals that
44 they chose to endorse were individuals who fanned
45 the flames of public discourse by how they
46 conduct themselves toward the people on the other
47 side. So it seemed like this was almost an

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1 engineered climate of hostility that I felt was
2 targeted mostly at the social conservatives who
3 have disproportionately received a lot of the law
4 fare and certainly received an awful lot of
5 sanctions within the larger culture. I thought
6 that's what the point was was to make the social
7 conservatives intimidated and afraid with Barry
8 Neufeld being the one that they had to put into
9 their place.

10 So that's what I saw. Now -- but I can only
11 speak to my experience as -- as a social
12 conservative, and I can only testify directly to
13 the price that I had to pay for being a fairly
14 well-known social conservative.

15 Q You -- you said something about the powerful --
16 and I'm just paraphrasing here -- the powerful
17 coming after Barry. What do you say to the
18 teachers who said that -- and this can be
19 generalized sort of to the queer community
20 generally, but the teachers specifically said
21 over and over again to me that actually, the
22 powerful person in all of this is Barry and that
23 they're opposing that power. What would you say
24 to that?

25 A Well, the BCTF has a lot more resources
26 financially to direct at a case like this than
27 Barry does in his defence. Barry is really
28 financially limited, so this has been something
29 where he has to, you know, fundraise just trying
30 to pay for -- for his lawyer. So in terms of
31 finances, that doesn't make sense.

32 School boards are usually left-leaning
33 politically. And I don't think [REDACTED]
34 [REDACTED], you know, the Chilliwack School
35 District has been very different in that. When I
36 consider who was elected on the school board in
37 the last two elections, there -- there was one
38 election where of the seven that were elected,
39 four I would regard as on the left of the
40 political spectrum, three I regarded as
41 conservative. In the last election, it was five
42 on the left of the spectrum. And in -- on the
43 right side of it, it was two. And I think that
44 the -- the breakdown in Chilliwack is actually
45 about a conservative a breakdown as you're going
46 to find in 95 percent of the school districts
47 across this province. Most school districts

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1 probably are even more left-leaning than
2 [REDACTED] tends -- or sorry -- Chilliwack
3 School District tends to be.

4 So in terms of where they are positionally,
5 I'm not sure I see how that's, you know, a power
6 imbalance in Barry's favour. Being the minority
7 on a school board of seven, he -- they weren't
8 able to implement much say over any policies.
9 Most votes came down four, three. You can almost
10 predict how the votes were going to fall. And
11 the only exception that I could think of was when
12 two school trustees had to recuse themselves on
13 the issue of COVID because they had spouses that
14 were teachers. So most votes broke down four,
15 three, the left to the right. And so there
16 wasn't an institutional power that was in favour
17 of a social conservative.

18 Federally, we do elect Conservatives in this
19 riding. Provincially in the last election, we
20 elected two NDP until the most recent election.
21 It went back with Conservative. So it's
22 provincially, it tends to be a back and forth a
23 little bit. But federally, we are conservative.
24 But the Conservative, which is Mark Strahl, he
25 has largely stayed away from this particular
26 issue. It doesn't really fall into his, you
27 know, jurisdiction since education is an entirely
28 provincially thing.

29 So if I take a look at money, it doesn't
30 favour Barry. If I take a look at positions of
31 power, I don't see where Barry has an advantage.
32 And then you take a look at the media, and The
33 Progress, their coverage was so one-sided that
34 essentially Clint Johnson, in that same piece
35 that he wrote where he said no more discussion
36 was needed or possible, he praised The Progress
37 journalists explicitly, right? But -- but anyone
38 who was a social conservative in this -- in this
39 city looks at The Progress and thinks it's
40 essentially a left-wing, you know, paper. And if
41 you take a look at how they wrote about the
42 trustees during the election where they profiled
43 them, you could read very easily who the papers
44 wanted you to vote for by how they chose to write
45 those write-ups. And -- and so you could say,
46 oh, the paper work doesn't want me voting for
47 this person. The paper does want me voting for

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1 this person, and it was in perfect alignment with
2 what the CTA was endorsing for their candidates.

3 Now you see media bias; you see economic
4 advantage; I see positional advantage. None of
5 it was in Barry's favour, so I'm not sure where
6 that claim would come from.

7 Q What do you regard as your boss?

8 A Well, that's -- that's challenging because the
9 education system is -- it's -- it's not easy.
10 The school district has trustees. There are
11 seven of them. I was conditioned fairly early in
12 my career to -- to think that the school board,
13 the trustees were my bosses, but I had a
14 conversation with one of the trustees in which he
15 insisted that, no, trustees are not the boss. I
16 had always been told that that was one of the
17 reasons why as a teacher, you must refrain from
18 publicly criticizing a trustee was because
19 basically, the trustee is your boss.

20 As trustees, they don't choose who the
21 District hires or fires with the exception of the
22 superintendent. They don't have any direct
23 control over our terms of employment. The only
24 time I would ever find myself interacting with
25 the trustees in terms of my employment apart from
26 if they're at an event, a school event, and we
27 happened to be there, would -- would essentially
28 be if there was a disciplinary matter. And
29 having exhausted the -- the, you know, process,
30 you know, and had a judgment rendered against
31 you, you could appeal that judgment to the board
32 of trustees. Some districts require that you
33 submit that appeal, but I think -- but I actually
34 know that with the Chilliwack School District,
35 it's optional whether or not you would ever
36 submit to the trustees for -- for their judgment
37 on a disciplinary matter.

38 So the -- the trustees, they're --
39 they're -- they're kind of the -- the boss, but
40 it's -- it's -- it's more complicated. It -- it
41 would kind of be like if you take a look at, you
42 know, our military in Canada. Who is the head of
43 our military? I don't know. I've studied
44 politics. It's because it's -- it's not an easy
45 question to answer. But if it was the United
46 States, who is the head of the military? The
47 President of the United States.

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1 Q Yeah.

2 A Technically in Canada, the -- the head of the
 3 military would be the head of state, and the head
 4 of state is the Monarch, but the Monarch doesn't
 5 make military decisions for Canada, so it's --
 6 and I think with the school district, who is my
 7 boss, I tend to think in terms of my principal as
 8 my boss. I tend to think in terms of my
 9 superintendent is my boss. But -- but I don't
 10 know that I'm right now inclined to think of my
 11 trustees as my bosses. But it's -- it's not an
 12 easy thing to -- to proclaim because I think
 13 there's a lot of confusion there.

14 Q Okay. From your understanding, do individual
 15 trustees have any influence, direct or indirect,
 16 over teachers and they do their job and -- and
 17 how they're treated in the workplace, et cetera?

18 A Not in any way that is especially tangible.
 19 And -- and I think that we -- we have to be
 20 mindful that while they have the influence they
 21 have as any members of society would have,
 22 trustees have a voice, and so their voice can
 23 influence the public discourse. But non-trustees
 24 also have a voice, and their voice can also
 25 influence the public discourse. I've seen some
 26 trustees who have made themselves very impactful
 27 in the social landscape of Chilliwack being in
 28 the constant chat rooms and the comment sections
 29 of newspaper articles and promoting their --
 30 their vision, but they aren't alone. There's a
 31 lot of non-trustees who are right there alongside
 32 of them also exerting their influence within
 33 those public realms.

34 So a trustee, I mean, is elevated in part
 35 because they've obviously had enough support
 36 within the community to get themselves elected,
 37 so -- so they -- they probably have a -- a -- a
 38 position that is greater in influence than a lot
 39 of other citizens, but there are also a lot of
 40 citizens who probably wield greater power than
 41 the trustee simply because they are also fairly
 42 well known, fairly influential in other, you
 43 know, positions and capacities.

44 I would say for instance a trustee's voice
 45 might not be as strong as the editor of the
 46 Chilliwack Progress who makes a lot more
 47 decisions on how things get shaped and understood

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1 within the community by those who read the
2 Chilliwack Progress. So trustees, they have an
3 influence. I don't think it's an excessive
4 level. And it certainly doesn't exert more
5 control on what happens to me in the classroom
6 than somebody of equal social power but who's not
7 a trustee. Does that make sense?

8 Q Makes a lot of sense. Are you aware of any
9 instances where any LGBT-identifying teachers
10 were in any way admonished, disciplined,
11 excluded, mistreated, ostracized, et cetera, by
12 District administrative staff after Barry made
13 his first post?

14 A Well, to the degree that I would be represented
15 on the LGBTQ+ spectrum being for years
16 identifying in the A part, asexual, aromantic, I
17 can say that I was admonished and disciplined by
18 District staff in the wake of Barry Neufeld's
19 posts. I'm not -- it's not clear to me it had
20 anything to do with Barry Neufeld. I suspect it
21 had a lot more to do with my politics being a
22 candidate for federal office in the elections in
23 2019 and 2021. But a tremendous damage has been
24 done to my career by District staff in the wake
25 of Barry Neufeld making his comment in 2017. I
26 don't blame Barry for that climate or for that
27 situation because I do not see his fingerprints
28 on any of that. I do know that a lot of the
29 individuals who have been most vocal in attacking
30 Barry have been very involved in the problems
31 that I have encountered in this district.

32 Q Those people, the people that are, you know, very
33 explicitly gay or lesbian or trans or queer, is
34 the -- two of the -- one of the teacher witnesses
35 identified as a transgender woman, and two -- the
36 two others both identified as queer, queer people
37 or queer humans they called themselves. These
38 types of people, did you see anything negative,
39 any negative impact directed towards them from
40 District staff after Barry made his post?

41 A Never encountered any of that myself with the
42 possible exception I did have one conversation
43 with a teacher just about a year ago during the
44 summer. This one teacher was -- was expressing
45 concern, and it connected with me because I, like
46 her, have identified as having autism and have
47 encountered challenges within the District which

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1 seem to be connected in part to our existence of
 2 having autism. That individual is not among the
 3 current slate of witnesses, so I can't speak to
 4 how much it transfers, but that individual did
 5 communicate to me struggles that they were facing
 6 involved with their managing of a GSA in a
 7 different school. So I would not presume to
 8 speak on that person's behalf. I was sympathetic
 9 to the challenges that this individual faced
 10 because, again, being autistic, I've encountered
 11 numerous challenges within the district in recent
 12 years, and we did see a lot of common ground even
 13 if we both acknowledged that we were coming from
 14 politics almost from the opposite directions.

15 I tend to be very much classical liberal,
 16 and -- and she was more to the left on the
 17 spectrum. So we wouldn't necessarily agree on
 18 politics, but we did have similar concerns and
 19 experiences based on what I would say is a
 20 backlash, the source of her backlash probably
 21 completely different than the source of my back
 22 lash. But that's the only thing I could
 23 personally testify having heard that story.

24 CNSL A. WADDELL: And all -- all of that's hearsay.
 25 I'll just leave my objection on the record and
 26 let you carry on.

27 CNSL J. KITCHEN: Yeah. No. I hear you on that.

28 Q You were talking about the influence of trustees.
 29 Do you recognize this post?

30 A I do recognize the post.

31 Q And who is this person, Teri Westerby?

32 A Teri Westerby was one of the candidates endorsed
 33 in the last trustees election. Teri Westerby
 34 when -- was -- when Teri was elected became the
 35 first -- I believe the first trans -- openly
 36 trans person elected to a school board in Canada.
 37 I could be wrong on that, but I do believe
 38 that -- that's the case. Teri ran on a slate of
 39 candidates that supported by the CTA that
 40 included individuals like Willow Reichelt and
 41 Margaret Reid and Swankey and -- and Carin
 42 Bondar. There was another on that slate who
 43 didn't get elected, but -- but that also was an
 44 individual who taught, I believe, in Abbotsford
 45 and -- but yeah. But they won the last election,
 46 five of six, on their particular slate, and they
 47 formed the five to two, left, two conservative

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1 control on the current school board.

2 Q And to your knowledge, did Teri Westerby post
 3 this particular post when -- and I don't know
 4 this person, so I'm just going to say he or
 5 she -- when -- when he or she was a trustee?

6 A Yeah. I believe that was -- I mean, I'm pretty
 7 confident that that came -- the Barbie movie
 8 happened after the election, so it wouldn't make
 9 sense to presume that it was posted before.

10 Q Right. Now, you've already identified as a
 11 Christian. Do you have any concerns, you know,
 12 as a teacher when you -- when you see this kind
 13 of post from a school trustee?

14 CNSL A. WADDELL: Sorry. Can I just -- this one, I --
 15 I really don't see the -- the relevance and the
 16 tie-in to the issues in this case, this post
 17 states. I mean, if you can -- if you can
 18 articulate how this actually ties into the issue,
 19 but I -- I have to say it seems an awful like the
 20 goal here is simply to err this trustee's name
 21 and for all those listening in and tweeting on
 22 Rebel News, et cetera, et cetera, to as many
 23 times as possible remind the audience about this
 24 post, which is not made by the trustee in
 25 question here.

26 So I'm going to object because I'm starting
 27 to be concerned about the extent to which
 28 rhetoric is being used to simply play for those
 29 public members in attendance who are busy
 30 tweeting, et cetera, stuff that has nothing to do
 31 with this case. So that's my objection.

32 CNSL J. KITCHEN: I could care less about Teri
 33 Westerby, who they are. My only concern or -- or
 34 interest, I should say -- interest is that Teri
 35 Westerby is a school trustee, posted this when
 36 they were a school trustee, and Rob Bogunovic is
 37 a teacher in the district in which the trustee
 38 posted this. And it is obviously relevant for
 39 the teacher to comment on seeing a post like this
 40 considering the whole case is about queer or
 41 trans teachers coming in and saying I have
 42 encountered discrimination in employment because
 43 my -- the trustee in the district in which I work
 44 has posted something that -- that I find
 45 upsetting or shocking or offensive, et cetera.

46 So obviously, it's relevant to get this
 47 teacher's thoughts on seeing this post

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1 considering he has an identity that is implicated
2 by the post. So no, it's not for rhetorical
3 effect. Like I said, I really don't know
4 anything about who Teri Westerby is, and I really
5 don't care, and I don't mean that in a
6 disrespectful way. I just mean that in the
7 literal sense. I don't care. But if -- if
8 they -- if this person is a trustee and posted
9 this as a trustee, well, this witness was a
10 teacher, and it's -- it's, you know, I think --
11 obviously, I'm going to -- we're going to
12 describe the post. It's -- it's obviously
13 relevant to the issues in this case. So that's
14 it.

15 There's no rhetorical effect. Or if there
16 is, it's incidental. It's not the purpose of it
17 as, of course, you would know about because you
18 have put things in for the purpose of rhetorical
19 value. That's not the purpose of this as I think
20 is obvious. If there is, it's -- it's -- it's
21 incidental, and I could care less if people
22 tweeted about Teri Westerby. I mean, dear, Lord,
23 that's not what this is about. It's about
24 whether or not, you know, this -- this is the --
25 what -- what's this post got to do with the other
26 post, right? Let's -- let's -- let's look at --
27 let's compare them to that. I think that's very
28 fair and very, very helpful to the Chair making
29 an analysis.

30 Of course, the Chair will decide what kind
31 of analysis she wants to do, and she might be
32 completely different than what I think she should
33 do, but I'm going to submit that this should be
34 part of the analysis. So if it's helpful to you,
35 I will go out of my way to never mention Teri
36 Westerby's name again other than just right now.
37 I will -- I will call that person "the trustee
38 who made this post" if that's helpful to you.
39 I -- and I'm sure Rob can catch onto that, and we
40 can do that. I have no issue with that.

41 THE CHAIR: All right. Well, quite aside from --

42 CNSL A. WADDELL: Sorry. Can I -- can I --

43 THE CHAIR: Oh. Go ahead.

44 CNSL A. WADDELL: -- reply?

45 THE CHAIR: Yes.

46 CNSL A. WADDELL: So I -- that's great. I appreciate
47 your solution there, but I -- I still, just based

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on your description of the relevance, what you've articulated is that you're essentially trying to present this as similar fact evidence. It's not one of the posts in dispute, and you are suggesting that because it's also a Facebook post by a trustee, and you are currently leading in direct a witness who identifies as a member of the queer community, that that's somehow a similar fact pattern to the post that we're dealing with here, and that there's something to be drawn from that. And similar fact evidence, also not admissible. I mean, that's -- that's all I have to say in reply. And if it -- you know, if it is going to proceed depending on what the Tribunal decides, you know, refer to it as you need to.

CNSL J. KITCHEN: So if I understand your -- your problem is not that it's not identified and real. The problem -- you're saying it's just not relevant?

CNSL A. WADDELL: Sorry. I'm not sure what you -- you mean by identified or real. I mean, I -- you know, I articulated an initial concern about it's not relevant.

CNSL J. KITCHEN: Okay.

CNSL A. WADDELL: And it feels like it's just being erred for a particular purpose. But in -- in our identifying and -- and explaining your view of its relevance, my reply to that is -- is simply to say it's -- you've -- the relevance you've identified is -- is, I would say, in the nature of similar fact evidence, which, in my submission, is inadmissible so...

CNSL J. KITCHEN: Well, I'm sorry. I can't -- I can't claim to know what you mean by similar fact evidence. Let's be a little more -- I'll be a little more explicit, then I'll be quiet about this, Chair. It's obvious to anybody who is paying attention to this with a fair mind that there is a gross double standard here. One trustee can post a steam roller of another protected group, and everything's fine. Another trustee can criticize someone's beliefs, and he has to go through six years of this human rights complaint. That double standard is relevant, okay? At least -- at least I think it's obvious that it's -- it's relevant. And, Chair, I

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1 understand you may very well disagree with me,
2 but I think -- I think it's obvious that the
3 double standard is relevant. The only people who
4 have suffered harm here are people who have
5 opposed a belief system, not the people who hold
6 that belief system. And that double standard
7 needs to be considered by this Tribunal, I -- I
8 submit, for the sake of the reputation of the
9 Tribunal in -- in the -- in the -- in the public
10 sphere.

11 People are not stupid. They see a double
12 standard, and they see it institutionalized
13 through our adjudicative bodies, and this is a
14 deep concern to them, and it should be to the
15 bodies themselves if they're giving thought to
16 the repute of the justice system. That alone
17 makes this relevant. I'll say no more. Thank
18 you.

19 THE CHAIR: Thank you. Well, just addressing the --
20 the double standard issue, which isn't an
21 evidentiary concept. I would think it's open to
22 anyone to file a human rights complaint about
23 this post, and the Tribunal would consider that
24 human rights complaint on its merits. If such a
25 complaint has been filed, it's not before us, and
26 it's not the complaint here. So I agree with
27 your friend that, again, this isn't relevant. If
28 you want to ask this teacher about his views
29 and -- of posts, I mean, to the extent that's
30 relevant, why don't we look at the posts that are
31 at issue in this complaint rather than something
32 that's not at issue that no one's brought a human
33 rights complaint about?

34 So I mean, again, I think where we're having
35 the disconnect is you're making very broad
36 arguments where I'm just trying to keep us on
37 track for the issues that we have to decide in
38 this complaint. This is not a complaint about
39 this post. I can't imagine what findings of fact
40 we're going to make about this post that would
41 have any bearing on -- on what we find regarding
42 the actual post at issue.

43 If you want to ask this teacher about posts
44 online, I suggest that you ask him about the ones
45 that are actually the subject matter of this
46 human rights complaint. And then any of your
47 many clients can make their own separate human

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1 right complaint, and that would be a different
2 conversation.

3 CNSL J. KITCHEN: Well, my clients are not into the
4 business of censorship, so you're not -- you're
5 not likely to see those types of complaints. I
6 will ask that this be entered as an exhibit.
7 It's been identified.

8 THE CHAIR: All right. Ms. Waddell, are you -- is --
9 is your objection as you've stated? I think
10 you're muted.

11 CNSL A. WADDELL: Thank you. Yeah. We just don't see
12 the relevance of this at all, and -- and it's --
13 I don't dispute that it's out there in the public
14 domain, but yeah.

15 THE CHAIR: All right.

16 CNSL A. WADDELL: Doesn't meet, in our respectful
17 submissions, the incredibly low threshold for
18 relevance that -- that would be necessary to
19 enter a document even if we don't dispute its
20 authenticity.

21 THE CHAIR: All right. Well, seeing no possible
22 relevance of this document, we're -- we're not
23 going to admit it.

24 CNSL J. KITCHEN: I would like to ask the witness what
25 his reaction is to this -- this particular post,
26 but obviously, my friend may object, so I'm just
27 going to put that out there as the next question
28 I want to -- and the only question, by the way,
29 on this, and then we're going to move on, but I
30 do want to ask that question.

31 CNSL A. WADDELL: I've -- I've already got my
32 objection on the record, so you just go ahead and
33 ask, and I'll make argument about it later.

34 CNSL J. KITCHEN: Okay.

35 Q Mr. -- or, Rob, as someone who identifies as
36 Christian, what do you think of this -- this
37 post?

38 A Well, I remember when a lot of people expressed
39 concern regarding this post in the community. I
40 thought the concerns were really a tit-for-tat
41 reaction that if this had been posted five or six
42 years earlier, but, you know, it probably
43 wouldn't have drawn much of a reaction, but now
44 people were trying to point to what they saw as a
45 double standard. Here, you have a steam roller
46 identified as Barbie and painted up in rainbows,
47 and it's attacking ideas. Christian values is an

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1 idea. Traditional family is -- is an idea.
2 Sanctity of marriage is an idea. I don't think
3 that this could be interpreted as any kind of,
4 you know, violent promoting post, and I didn't
5 engage in any criticism of the trustee in
6 question when this was posted.

7 But I had the concern that if -- if it was
8 this kind of post coming from Barry Neufeld, only
9 with different shifts in the values, the opinions
10 that he was challenging, the uproar would have
11 been much, much higher than what the particular
12 trustee in question received. I wouldn't file a
13 human rights complaint over such a thing, and I
14 don't think anyone has. But I do think it's
15 interesting that on a completely different
16 matter, when I approached the CTA about them
17 helping me to file a human rights complaint, they
18 informed me that they had no experience in filing
19 human rights complaints, and so they could be of
20 no assistance to me.

21 So I went to my local teacher association
22 about a different matter asking to file -- their
23 help to file a human rights complaint and was
24 told they had no experience in filing such
25 complaints. This was well after they filed the
26 complaints against Barry Neufeld, which does
27 raise, in my mind, the question of who is
28 actually steering the particular ship in this
29 situation.

30 Q Excellent. Okay. Just going to take you to the
31 things that the Chair wants you to talk about
32 which are some of Barry Neufeld's comments.

33 CNSL A. WADDELL: Do you want to just, Mr. Kitchen, if
34 you're going to -- I don't know what you intend
35 to ask him about things, if you're going to ask
36 his views or opinions, but I'd like to ask that
37 you exhaust his memory of anything first before
38 you actually put it to him. I know this is a
39 long time ago, so that might be a brief memory,
40 but that would be my request.

41 CNSL J. KITCHEN: Help me understand what you mean by
42 that. I think -- I think I can probably agree
43 with that, but I'm not quite sure I understand
44 what you're saying.

45 CNSL A. WADDELL: Well, to the extent that you -- you
46 want to ask him about things that, you know,
47 Barry has posted, I for one would find it helpful

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1 to know what his current recollection is of what
2 Barry posted before you take him to specific
3 comments.

4 CNSL J. KITCHEN: To me, it sounds like a waste of
5 time, which seems to be something that's both of
6 a lot of concern to you and the Chair. That
7 would be -- would be probably my only -- I'm fine
8 with that generally. I could just ask more
9 questions of the witness, his thoughts and memory
10 of what Barry said, which, of course, he's
11 already talked at length about. But I am -- I am
12 trying to get through this because I -- I would
13 have thought both you and the Chair wanted me to,
14 and the Chair has expressed her view that she
15 would like me to do this.

16 So I -- I -- I -- I would suggest that
17 that -- that -- that if you're willing to permit
18 me to do this, that this is -- this is better
19 than me spending more time on getting him to talk
20 just -- just generally.

21 THE CHAIR: Well, I think -- I mean, I don't think you
22 need to spend a ton of time on it, but if you
23 could just maybe ask one or two questions to see
24 if he can remember any specific posts. It
25 would -- just to know what he remembers or what
26 he thinks the posts were since he's been talking
27 about them and then -- and then go on, but don't
28 spend a lot of time. One or two questions should
29 be fine.

30 CNSL J. KITCHEN: Okay. Will do.

31 Q Rob, what do you remember about Barry's post
32 about -- and I'll try to categorize it a little
33 bit. He made some posts about how --

34 CNSL A. WADDELL: Sorry. Why don't you just ask --
35 before you lead the witness, why don't you just
36 ask him what he remembers about Barry's posts?

37 CNSL J. KITCHEN: Sure.

38 Q Rob, what do you remember about Barry Neufeld's
39 posts?

40 A Well, the original -- the original post included
41 a picture that basically showed, you know, two
42 captions, "Then Versus Now," what -- how people
43 responded to, let's say, an individual
44 expressing, you know, gender dysphoria or at
45 least, you know, wanting to do a thing like get
46 an earring in the past versus today, and then had
47 a -- a -- a commentary in which he referred to

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the College of Pediatricians -- although he didn't spell pediatricians -- and made some comments regarding what he saw as a major concern with the bringing in of SOGI 123 and what his personal concern was, which is primarily that he's of the mind -- and, you know, and I understand where he's coming from on this opinion. It's the opinion of the American College of Pediatricians is that children are often best cared for by their biological parents.

And so Barry, his -- you know, his original post was touching upon that theme using satire in the form of the cartoon and had made reference to the College of Pediatricians. Then there was, you know, a -- an apology from him after that. He's rendered other comments in the media talking about at one point how he felt persecuted like prophets in the Old Testament which the local newspapers decided to misinterpret as him calling himself a prophet, which is not the same thing as drawing an allusion to them.

He, at one point, made comments regarding Theresa Tam. I remember paying attention to that particular controversy at the time. I've read through aspects of the BCTF complaint, so I've familiarized myself with a lot of the specific language that they are objecting to, so I -- I think I'm fairly well familiar with the content. And certainly, if any post is put in front of me, I can probably zero in pretty quickly on its content and speak to what I see within this language.

CNSL J. KITCHEN: Are we satisfied?

CNSL A. WADDELL: If that's the extent of his recollection of the posts, yeah.

CNSL J. KITCHEN: I -- I could go on.

Q Rob, do you remember anything about allusions to the residential school controversy?

A Yes. I remember reading his comments regarding that.

Q Do you remember comments criticizing what he called gender theory or gender ideology, talking about, you know, the potential for people to eventually have body parts cut off and to have brittle bones and other problems, medical, physical problems from hormone blockers? Do you remember that? Okay.

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1 A And I also remember when he made a comment that a
2 lot of people reacted to suggesting that there
3 might be some kind of statistical link between
4 gender dysphoria and autism. And a lot of people
5 at that time reacted like they had never heard
6 this before. And yet, I had heard it before as a
7 social justice teacher. Kenneth Zucker had
8 talked about it as, you know, one of the leading
9 experts within the country. And it -- it was not
10 a surprise to me, and I was surprised that they
11 were reacting to it as though he was saying
12 something new. A lot of the times, that's what I
13 saw, reaction to something Barry said where Barry
14 is actually representing an aspect of the
15 conversation that is taking place. And yet,
16 they're reacting like he's the first person who
17 is saying this, or he's getting it from obscure
18 source.

19 And that's been part of my frustration with
20 the reaction to Barry. Everything winds up being
21 interpreted in the most negative way possible.
22 They are not trying to understand what he's
23 saying. They're simply seeking to attack him for
24 having said it.

25 Q Do you think it's possible that -- that some
26 people in the school system actually have not
27 encountered the ideas that Barry's expressing?

28 A I think it's always possible because, you know,
29 individuals can be ignorant on any number of
30 subjects. And in fact, we all are. The amount
31 of things that we are ignorant of increases every
32 day because there's so much knowledge out there.
33 My -- my point is is that they are publically
34 commenting on things and acting like it's --
35 the -- the -- these comments from Barry weren't
36 already part of the discussion. And yet, many
37 times, a 15-second Google search would bring you
38 to the content that Barry is referencing.

39 And so that's -- that's been my frustration
40 is all along the way, we have individuals who
41 simply refuse to do their research. A classic
42 example was when he introduced the -- the issues
43 he had with SOGI 123, people attacked him as
44 though he was misrepresenting it. But a simple
45 search of the ARC Foundation website aligned with
46 a lot of the criticism that he was raising. They
47 could have dealt with those criticisms by setting

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1 in parameters and changing the language. That's
 2 what the point of public discussion should be, to
 3 fine tune the language and to minimize
 4 misunderstanding. But instead, the CTA, the
 5 BCTF, the local media, they all participated in a
 6 silence campaign saying no discussion is
 7 permitted. No discussion is needed or possible.
 8 And so we couldn't refine the language. We
 9 couldn't clarify. We couldn't minimize
 10 confusion.

11 And the same treatment that was dealt with
 12 on the SOGI language was the same thing that they
 13 have done with Barry Neufeld's posts. He says
 14 things. I take the time to try and understand
 15 what he means. Usually, it's not that difficult
 16 to sort out. But I see other people reacting,
 17 and their reaction seems completely misaligned to
 18 the point that he just made.

19 Q Do you think the intention or purpose of SOGI 123
 20 was to reduce bullying?

21 A We already had language in place, policies in
 22 place to tackle bullying. I think what SOGI 123,
 23 if -- if you're going to intersect with it on
 24 that issue of bullying alone, what its intention
 25 might have been -- and again, you would have to
 26 consult individuals who were -- were really in
 27 the room, might have been to crouch the topic in
 28 terms of -- of sexual orientation and gender
 29 identity, to make it -- that that's the ground in
 30 which we discuss bullying, and there's a purpose
 31 to doing so.

32 If you specified a particular group as being
 33 protected against bullying, then if -- if
 34 bullying is being done against other individuals
 35 connected to that particular debate, that other
 36 bullying somehow becomes more tolerated because
 37 that group hasn't been named as protected.

38 Q Do you think it's what we see with -- with Barry?

39 A I think there's a lot of that going on. I do
 40 think that a lot of the commentary in the
 41 community that is problematic is happening on
 42 both sides of this issue, and as I say, almost
 43 equal vitriolic, you know, nature. Both sides on
 44 the debate use terms like grooming; both sides of
 45 the debate use terms like abuse; both sides of
 46 the terms -- of the debate use comparisons that
 47 you would say, well, those aren't morally

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1 equivalent. You're drawing comparison to
2 something that isn't morally equivalent to what
3 we're talking about, but most delusions in our
4 society are not drawing moral equivalency.
5 You're always having this discussion and debate
6 where people are trying to use language to the
7 best of their ability to communicate their
8 points.

9 Some individuals are simply trying to score
10 points against the opposition, hurling insults,
11 ad hominem attacks. Others are trying to have a
12 more substantive conversation and to try to
13 understand where the individuals are coming from.
14 My frustration is that I don't see the BCTF and
15 the CTA lending power to the individuals seeking
16 to understand. I see them instead taking one
17 side of the debate that's promoting a lot of
18 their own vitriol and yet reacting to vitriolic
19 comments on the other side as though that's the
20 only crime that's potentially being committed.
21 That's the double standard that individuals seem
22 to be reacting to. I wish there was no double
23 standard, but it does seem to be in play.

24 Q It would be better if adjudicative bodies like
25 the Human Right Tribunal didn't try to pick sides
26 as between the two sides of this debate?

27 A Well, I always want a justice system that
28 operates on a fair and unbiased principle. And
29 realistically with justice, you have to have
30 confidence and belief in its -- its unbiased
31 nature. Justice should at least perceived --
32 should be perceived to be blind. The challenge
33 with -- with the HRCs is that a lot of
34 individuals, especially social conservatives do
35 not trust in their integrity on this regard.
36 They do not trust that they render judgments in a
37 way that is unbiased. They often present as
38 political activists on causes, and then higher
39 courts have to step in, and that just drags out
40 the process.

41 This -- this case with Barry has been going
42 on for six or seven years now, pretty close to
43 seven years. And -- and if we have to appeal
44 this court to higher levels, if that's what's
45 going to happen, then you're going to see even
46 more years added on. In criminal law, it's,
47 like, a three-year maximum, right? A trial has

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1 to be finished within a three year period. We
2 don't see the human rights courts operating with
3 that kind of strict time frame. And so you wind
4 up having individuals languishing under
5 accusations for years before they even get a day
6 in court. That's a frustration. In a principled
7 system, justice has to not only be seen to be
8 done, it also has to be seen to be done fairly
9 quickly.

10 THE CHAIR: Just to note, Mr. Kitchen, we're around
11 break time sometime in the next 15 minutes, so
12 I'll leave it to you when is a good time to take
13 a 15 minute break in the questions.

14 CNSL J. KITCHEN: Let's take a break now. I will --
15 and -- and, Rob, I -- I apologize to you for
16 this, but I will be done with this witness today,
17 but I have a little bit left yet. We have some
18 posts to get through. So my friend may be able
19 to start her cross today. But unless it's brief,
20 she probably will not get through it. And again,
21 Rob, I apologize to you. That means we'll need
22 you to come back tomorrow, and I'm sure that's a
23 massive inconvenience for you, and I apologize.
24 Or if you can't come back tomorrow, there is
25 potential you can come back the next day. We can
26 discuss about that in scheduling because I do
27 have one witness left that we can fit in tomorrow
28 if tomorrow is not going to work. I just say all
29 that for the purposes of scheduling.

30 So let's take our break, and we'll get back,
31 and I'll -- I'll try to finish up.

32 THE CHAIR: All right. So for this break, we're just
33 going to take 15 minutes. We're just turning our
34 cameras and mics off, and then we'll come back in
35 15 minutes. Okay.

36 A Thank you.

37 THE CHAIR: Thank you.

38
39 (WITNESS STOOD DOWN)

40
41 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS) [3:01:24]
42 (PROCEEDINGS RECONVENED) [3:16:59]

43
44 ROBERT ALAN BOGUNIVIC, a
45 witness, recalled.

46
47 THE CHAIR: All right, everyone. Come on back.

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1 THE RESPONDENT: You back, Rob?

2 A I'm back.

3 THE CHAIR: All right. Just going to make sure we've
4 got Mr. Kitchen back with us.

5 CNSL J. KITCHEN: I'm here.

6 THE CHAIR: Okay. Mr. Bogunovic, you ready to
7 continue?

8 A Yes.

9 THE CHAIR: Okay. Go ahead, Mr. Kitchen.

10
11 EXAMINATION IN CHIEF BY CNSL J. KITCHEN, continuing:
12

13 Q Rob, just one more quick question about your
14 encounter with that post we were talking about.
15 I want to know if seeing a trustee criticize
16 beliefs that you hold created an unsafe space for
17 you at the school that you teach at?

18 A No. Comments of that nature are not likely to
19 create problems for me in my classroom or in my
20 position at the school. I've had significantly
21 worse comments rendered by a trustee against me,
22 targeted at me. And even those comments did not
23 directly impact upon my ability to teach in my
24 classroom or my position within the school.

25 Q Well, okay. But is -- is that perhaps because
26 you're exceptionally thick-skinned?

27 A Well, as teacher, I think almost everyone has to
28 have a certain level of thickness to their skin.
29 I teach teenagers, and teenagers will -- will
30 press you. They will challenge you. And pretty
31 much almost any age group of child probably has
32 that. They test the boundaries, and they engage
33 in, you know, language and conversations that are
34 sometimes not what you would like or prefer. So
35 I think it's -- it's a pretty standard job
36 requirement when you're a teacher to have some
37 level of thickness to your skin.

38 Q But what about the queer teachers that seem to
39 have very thin skin? How do we accommodate that
40 as -- as --

41 A I --

42 Q -- a group of teachers?

43 A I cannot speak to -- to that circumstances or
44 that situation. They're reacting to the tweets
45 and the conversation that they see happening
46 around them. I can only speak to my mindset, my
47 philosophy when it comes to education.

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1 Q That's fair. Bring back up the posts here. See
2 if we can get through this. Well, actually, one
3 more -- one more question, and I think I'm done
4 with everything that's not a post.

5 When you consider the SOGI 123 resources,
6 the content of the -- of the policies and the
7 environment and the resources, the 123, does it
8 look to you like SOGI 123 really is about
9 anti-bullying?

10 A No. It looks to me like it's about the
11 advancement of a political agenda. And when I
12 take a look at how they minimize stakeholders
13 being able to speak to the issue, they -- the ARC
14 Foundation was very clear who was invited to the
15 table, and they were not inviting any voices that
16 would challenge them on the agenda that they were
17 putting down on -- through policies and
18 environment, language, and even on the curriculum
19 side of things. There was -- when I reviewed the
20 ARC Foundation, I -- I -- of course, I -- I have
21 autism, so I take things very literally. And as
22 I interpreted the literal meaning of the --
23 the -- the things that were present in it, I was
24 seeing all kinds of problems. I was wondering
25 did -- did anybody actually review this document
26 with any kind of a critical eye?

27 Now, I presented all those concerns to the
28 CTA in a -- in a pretty lengthy document laying
29 out, you know, this concern and this concern and
30 this concern and this language which is
31 problematic, and the response that I got from the
32 CTA was that they didn't see that there was much
33 to debate on the issue. In other words,
34 minimize, not address, not attend to, and
35 that's -- that what I genuinely saw as the
36 overall approach from the media, from the BCTF,
37 was that they were not willing to look upon
38 the -- the actual SOGI 123 resource with any kind
39 of critical lens.

40 And in fact, when the CTA took the
41 extraordinary act of endorsing candidates in that
42 first election following Neufeld's post and the
43 controversy, they explicitly endorsed candidates
44 who also demonstrated by their language that they
45 were not looking at SOGI 123 with any kind of a
46 critical lens. They expressed 100 support --
47 degree support -- 100 percent support for SOGI

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123 and suggested that any reasonable person or any person who regarded the LGBT as full members of our society would do the same. That was the language that they were using when they answered the survey that was given to the CTA after they surveyed all the potential candidates.

So I saw both in who they chose to endorse and how they chose to approach the issues publicly and in private dialogue with me that they were not interested in examining any part of the language of SOGI 123, not interested in considering any of the language that might alleviate concerns by presenting reasonable parameters. They were simply interested in advancing a political agenda.

Q Okay. Okay. I'm sharing my screen. I don't think this is the only place that Barry has said this, but this is one of the places where he makes an analogy to the residential school event if -- we'll call it that. And this was something that was particularly shocking and upsetting to the teachers who have testified. And so I -- as a teacher, when you see this, what's your reaction to it? And if you will, reaction to the -- to the other teachers who are saying that this is really shocking and upsetting to them and something that they find hurtful?

A Can I quickly ask what was the date of this post?

Q Oh. That's a good question. This is a long one.

CNSL A. WADDELL: The -- just to help you out, Mr. Kitchen.

CNSL J. KITCHEN: Thank you.

CNSL A. WADDELL: The date, it's not on this copy of the document, but the date according to the index is December 18th, 2017. And I was just going to say for the record -- and -- and sorry. I will periodically -- what I'll do to make your life easier if it -- it helps just -- I will just jump in when you take him to document. I can jump in and say where in the record it is only because I may cross on some of these, and it will necessary to know what he's talking about in direct. So right now, we're at -- last page at Tab 4 in the book of posts.

CNSL J. KITCHEN: Yeah. Page 22.

A Yeah.

Q So there you go. It was late 2017.

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1 A Yeah. And I ask why the date because in this
2 case, the date matters because on the issue of
3 residential schools, there was a significant
4 shift in public thought and concern following the
5 widespread media reports that 215 children were
6 discovered in unmarked graves or masked graves,
7 depending on the report, up in an apple orchard
8 in Kamloops near the residential school that was
9 there. That report dramatically shifted how most
10 individuals in our culture understood residential
11 schools.

12 So an individual who's reading this comment
13 in the wake of that report and who had been
14 influenced in their opinion by what was being
15 claimed by those media reports is not going to be
16 reading it in the -- in the same way that an
17 individual pre that Kamloops 2015 story breaking
18 would be reading it. And this was clearly before
19 Kamloops 215 not after.

20 When you look at what we widely understood
21 regarding residential schools -- and I've been
22 teaching residential schools -- was an active
23 genocide violating all five of the criteria in
24 the Geneva Convention. Going back -- I was
25 teaching that as early as basically the year
26 2000. So I'm well familiar with the concerns
27 people have about residential schools. But a lot
28 of that concern was about the power of government
29 infringing upon the rights of parents. That was
30 how a lot of what was being raised, even in
31 literature at the time, the greatest violations
32 of parent -- parental rights was the outright
33 taking of their children, relocating them into
34 schools, separating them from their language and
35 from their culture, and that's why even if they
36 disputed whether or not residential schools
37 violated criteria 1 through 4 of the Geneva
38 Convention, it clearly violates criteria 5 which
39 is the transferring of children from the care of
40 one group to another group. That was clearly
41 articulated as an active genocide.

42 Now that's what I see Barry referencing in
43 this case. He's talking about the dangers of
44 empowering governments to essentially override
45 the concerns of parents or shut them out on
46 matters pertaining to their children. And it --
47 it -- I think he pretty succinctly renders the

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1 argument when he simply says that the government
2 makes for a bad parent. And he -- he, again,
3 speaks out of his own personal experiences. He's
4 not drawing a moral equivalency. He's pointing
5 to a common concern between what some of the SOGI
6 123 policies appear to be doing and what some of
7 the concerns that were raised about residential
8 schools appear to have done. It's not the
9 perfect analogy. There are no perfect analogies
10 whenever you're trying to draw a connection.
11 You're always going to have some challenge, some
12 problem. To me, when I look at something like
13 this, I -- I come up with a different analogy
14 entirely to demonstrate the concerns people are
15 raising regarding SOGI 123. And that's to look
16 at previous debates we had regarding corporal
17 punishment in schools or the current debate that
18 is even before the Senate which is whether or not
19 parents should be allowed to spank their
20 children.

21 There's a lot of different opinions about
22 that. And we used to have -- in public schools,
23 corporal punishment was standard practice. And
24 then eventually, individuals decided that it was
25 bad practice. And so now, if a teacher were to
26 engage in corporal punishment of the student,
27 they would be disciplined for violating, you
28 know, their professional ethics. It would --
29 severe punishment would come against them on
30 something that used to be standard practice. The
31 first individuals who would have raised this
32 concern that teachers, you know, issuing corporal
33 punishment to students was problematic, was
34 abusive, was damaging, the first people to raise
35 those concerns would have been open to the
36 challenge that they were accusing teachers of
37 being abusive, that they were labelling teachers
38 as some kind of, you know, violent groups. And
39 yet, all that person doing -- would be doing is
40 advocating for a better policy, a better
41 approach.

42 And what I see with Barry, he is trying to
43 articulate for a better policy, a better
44 approach, a different awareness or understanding
45 of potential risks and concerns. And he's doing
46 that with obvious evidence in front of him that
47 due care has not been taken by the individuals

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1 who had advanced the SOGI 123 policies because if
2 due care had been taken, they would have
3 sharpened their language. They would have made
4 sure their language was less open to confusion
5 and misunderstandings.

6 Q And dancing around a little bit, but I'm going to
7 go to page 20. Okay. No. You already commented
8 on that. I'm going to try to go through this
9 quickly. Hold on. Okay. I think we're in the
10 wrong -- I might be in the wrong binder. I have
11 a couple of different of these because the --
12 here we go. So we're still in the publication
13 book. I'm now at Tab 3, and I'm on page 14.
14 Excuse me.

15 At one point, I asked one of the teachers
16 about this -- this thing in green here, and there
17 was some agreement from the teacher about
18 everything except until we got to the last line,
19 and the teacher said that she took issue with
20 that, that it wasn't true, that it was wrong,
21 that it was unscientific. And of course, I asked
22 that witness about, you know, the -- the --
23 the -- what is -- what is fact, what is science,
24 you know, what isn't in SOGI, and -- and I got an
25 answer about, you know, basically queer theory or
26 gender identity theory. Do you have any thoughts
27 on a school trustee being able to simply say his
28 view of science when he says gender is
29 nevertheless rooted in biology? How should
30 teachers respond to that, or how could they
31 respond? Or how do they -- how do they
32 internalize that and then decide what they're
33 going to teach or how they're going to interact
34 with students?

35 A It's part of the challenge that we have when we
36 use language and where the language comes from
37 and how the individuals understand it. A lot of
38 times now, gender is being used synonymously with
39 the word sex. It didn't have that meaning, say,
40 in 1950. It's now sort of gained it's new
41 footing. But at the same time, it's being
42 understood as expression less than biological in
43 its nature. And yet, there's still a fairly
44 obvious pretty consistent biological component,
45 and this is why the hormones estrogen and
46 testosterone matter so much. If -- if there was
47 no changes brought to an individual's, you know,

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1 physical and psychological makeup from estrogen
 2 or testosterone, this would be a valid statement.
 3 But because estrogen and testosterone clearly do
 4 affect personality, character traits, and
 5 physical appearance, it would seem that there
 6 will always be an aspect of gender that is rooted
 7 in biology.

8 I don't know that there's any easy way to
 9 escape that. But I read it that way, but an
 10 individual might take gender as merely being the
 11 expression of -- of a person's, you know,
 12 masculine or feminine qualities, which are shaped
 13 entirely by the culture, and are therefore not
 14 rooted in biology. I just don't know that
 15 there's much of a body of evidence -- and
 16 certainly, I've not encountered much of a body of
 17 evidence that allows for that to be easily
 18 separated. Sex and gender seem to be very
 19 closely aligned, not perfectly, but closely
 20 aligned.

21 And -- and so I -- I -- I wonder if the
 22 reason an individual reads that statement and
 23 comes to the conclusion that it's wrong, if
 24 they're not understanding the term gender in a
 25 way different than I am or perhaps understanding
 26 the word biology different than I am.

27 Q This phrase here, "gender confusion appears to
 28 become a new fad." Whether or not Barry is right
 29 about that, do you see world in which a trustee
 30 saying this would expose a transgender or queer
 31 teacher to vilification or detestation?

32 A I don't think I would go to the levels of either
 33 vilification or detestation. Gender confusion
 34 certainly has gained a lot more expression within
 35 our culture. The number of students who are
 36 identifying as gender dysphoric or having some
 37 kind of fluidity has -- has increased not even
 38 marginally but massively within -- within society
 39 and the culture. And there's a question that has
 40 to be raised as to why that has happened. Is it
 41 some level of a social contagion, or is it as
 42 some argued simply that people are now freer
 43 to -- to express themselves?

44 I often hear that the explanation for the
 45 increase in gender expression that deviates from
 46 the classic binary is because people are now --
 47 feel more at liberty to do so. But if -- if

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1 they're more at liberty to do so, then I don't
2 know how the concern being raised that this has
3 been stated could in any way infringe upon that
4 liberty. That liberty has existed alongside of
5 people who have regarded it as being some kind of
6 fad or some kind of current trend since -- since
7 the beginning. So I -- I -- and I also don't
8 know why it would be particularly problematic to
9 have this stated by a trustee as opposed to
10 anybody else, right?

11 It -- it -- it seems that Barry has been
12 targeted for saying this because he's a trustee,
13 but I don't know why that should especially
14 matter in this situation. So comments like that
15 which challenge an individual's opinion, I know
16 people can be frustrated when their opinions get
17 challenged, but I don't think it leads to, you
18 know, the level of extreme hate that is almost a
19 requirement of the discrimination law.

20 Q These are Darrell's comments, so I'll ask him
21 about that. Hold on. I'm going to find here. I
22 think -- B3 -- no. This -- this is the one I
23 might be able to jump to right away. No. We're
24 close though. Okay.

25 At least one of the teacher witnesses took
26 particular offence to this post. And I just want
27 to focus on this bit here, and I'll read it to
28 you.

29
30 The movement has to keep patching and
31 shoring up its beliefs, policing the
32 faithful, coercing the heretics, punishing
33 apostates, and terrorizing spineless
34 professionals because as soon as its furious
35 efforts flag for a moment or someone
36 successfully stands up to it, the whole
37 charades is exposed. That's what happens
38 when your dogmas are so contrary to obvious,
39 basic, everyday common sense. A transgender
40 future is not the 'right side of history,'
41 yet activists are using mafia and Bolshevik
42 techniques to convince the most powerful
43 sectors of our society to acquiesce to their
44 demands.

45
46 Now, I didn't get a lot of particular
47 articulation from the teachers, but they did tell

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1 me that this was hurtful and upsetting and that
2 they -- they found it offensive and I think maybe
3 even shocking. But I'm -- I'm trying to
4 understand -- because I couldn't from them -- do
5 you see a world in which this type of comment
6 would expose trans or queer teachers to
7 vilification or detestation based on your
8 experience as a teacher?

9 CNSL A. WADDELL: Just before the witness answers,
10 we're -- we're at Tab 8, page 83.

11 THE CHAIR: Thank you.

12 CNSL J. KITCHEN: Thank you.

13 A Again, I don't see how it would rise to -- to
14 that level. It is expressing a concern, a
15 concern regarding how this is being policed, how
16 individuals have been using political correctness
17 to silence individuals who might otherwise stand
18 up and speak. A lot of individuals are
19 sidestepping and being quiet on issues because
20 they are afraid of losing their jobs. It's a
21 little pejorative to refer to it as spineless,
22 but again, I don't think a little bit of
23 perjorativity means it rises to the level of
24 detestation.

25 Regarding the Bolsheviks, whenever you see
26 the phrase "right side of history," and I've seen
27 that used frequently in connection to this
28 particular debate often at the hands of the
29 LGBTQ+ activists. The "right side of history"
30 comment presumes that they know where history is
31 going to be taking us, and that's essentially a
32 Marxist presumption. Marxists believed that they
33 knew what the future would look like. They
34 believed that -- you know, made several
35 predictions about the future, most of which
36 didn't actually come to pass, but they still use
37 this language. And so when it says "Bolshevik
38 techniques," the very fact that they keep using
39 this phrase "right side of history" does seem to
40 be in alignment with how the Bolsheviks often
41 articulated their political agendas.

42 So -- so I mean, it's -- it's using
43 language. Some of the language is colourful. I
44 can understand again, you -- you are encountering
45 this, you disagree with this opinion. But
46 disagreeing with an opinion doesn't mean that
47 that opinion has risen to the level of

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detestation. And almost anybody who -- who's reading that is not likely to run out, right, and be -- be angry. If they agree with it, they were probably already leaning in that direction of their own assessment. If they don't agree it, they [indiscernible] dismissed out of hand. I don't see that influencing people towards detestation.

Q What do you say to the queer and trans teachers who -- and -- and these are people in your district, who would say that this is an attack on them as queer and trans teachers, not an attack on their beliefs and ideas? What would you say to them?

A Well, I -- I wonder why they -- they feel the need to essentially personalize that. I -- I exist in the same school system that they do. I've had colleagues, principals, even individuals who have been running the -- the pro-D events we've had where we've examined LGBTQ issues who have made disparaging comments about Christians and taken the Lord's name in vain. That's -- that's a common occurrence, and I don't regard that as something that has attacked me in my identity. And maybe there's -- there's -- there's a reason for that. Christianity kind of believes that, you know, we're at certain degrees odd -- at odds with the world.

But as a -- just as a mindset, people will have different opinions. And just because they hold a different opinion doesn't mean that they're attacking you in yours. The mere presence and articulation of a different opinion is not an attack. And if it is an attack, then they have been attacking Barry when they articulate their disagreement with him. And so it's a -- would then be a question we have to figure out who's allowed to attack, and whether the other person is allowed to defend. It raises too many questions. A truly tolerant society is not going to be concerned with individuals expressing comments of this nature. You will disagree with them. You might even feel like it's -- it's -- it's a challenge to the things that you believe, but that's just part of the process. You know, that's just how we have to exist in a pluralistic society. We have to know

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1 that not everyone's going to agree with us and to
 2 not see every point of disagreement as something
 3 nefarious.

4 When I was an atheist, I would have long
 5 conversations with my Christian friends in which
 6 we disagreed fiercely over, you know, the tenets
 7 of Christianity and the claims of Christianity.
 8 They still remained my friends. I was
 9 challenging their core religious beliefs, and
 10 they were challenging mine. We still remained
 11 friends, right? That, I think, is ultimately
 12 what we would want to see celebrated within the
 13 larger society. But with the war in camps that
 14 have emerged, that's not what's happening.

15 Q Moving to page 97. And I'm sorry. I don't know
 16 what tab this is, but this is page 97. What
 17 about this one? This -- this drew particularly a
 18 lot of attention from the teachers as -- as -- as
 19 being hurtful and harmful to them. They never
 20 said it exposed them to hatred, but of course,
 21 that's the claim in the case. What do we -- what
 22 do we -- what do we do with this comment from
 23 Barry here that he -- that he says the elites
 24 will destroy all gay kids? And of course, it's
 25 in a reference to what he calls the trans agenda.
 26 Do you see this as an attack on trans -- well,
 27 let's -- trans or queer teachers?

28 A No. What I see is it is raising a concern that
 29 I've heard in other quarters regarding what the
 30 push towards hormone blockers might actually be
 31 achieving. And I've heard this from the LGBT --
 32 LGB side of the LGBTQ communities where they have
 33 noted that hormone blockers often prevent the
 34 child who is expressing gender dysphoria before
 35 they hit puberty emerging at the end point of
 36 that process as a, you know, gay man or a lesbian
 37 woman. Kenneth Zucker has -- has counselled that
 38 when he's dealing with very young children with
 39 gender dysphoria, and he's counselling them, that
 40 frequently, the outcome is that the child will
 41 cease to be gender dysphoric but will be gay when
 42 the process has -- you know, puberty has -- has
 43 run its course. And it's impossible to predict,
 44 so, you know, assurances can never been made.

45 But if we are interrogating young children
 46 and urging them to go on hormone blockers so that
 47 they don't go through puberty, then the outcome

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1 of that naturally, one would predict, would be a
 2 reduction in the number of those who identify as
 3 gay when they have finished passing through
 4 puberty.

5 Now I can't speak to the -- the veracity of
 6 those concerns. I only know that I have seen
 7 those concerns expressed. And it might well be
 8 that that's the concern being expressed in this
 9 National Geographic article or that Barry's
 10 responding to something in the article. I
 11 can't -- I can't, you know, see right now the --
 12 the National Geographic or what its story is
 13 based on this post. But the idea that there's a
 14 concern in the LGB community on this issue, I've
 15 heard it firsthand from members of the LGB that
 16 that is something that bothers them. That is
 17 something that they're deeply and profoundly
 18 worried about. They're not, by the way,
 19 suggesting it's going to be no gay kids period.
 20 It's a simple numbers game; right? And that
 21 numbers game is -- is where the use of a word
 22 like "eugenics" seems to be while, certainly, you
 23 know, infused with potent meaning, also not
 24 entirely inaccurate because that would seem to be
 25 in alignment with the various ways eugenics went
 26 about doing things.

27 Eugenics is, by the way, another one of
 28 those words that it -- it developed a new meaning
 29 in the wake of World War II than what it had back
 30 in the 1920s. 1920s, eugenics was a very popular
 31 scientific theory, movement. High-ranking
 32 individuals all the way up including Emily Murphy
 33 had -- had promoted eugenics, but then it took on
 34 this new understanding because of what the Nazis
 35 were doing. Individuals look for a different
 36 word, find that there's not really another word
 37 to replace it if they're referring to, you know,
 38 this -- this -- this -- this movement and this
 39 way of trying to construct and shape the
 40 demography of a -- of a culture. I don't know
 41 that there's another word to use even though the
 42 current word is now in view with all of the
 43 connections with the Nazis. If they generated a
 44 different word and it came into wide use, I would
 45 celebrate the use of that word, but I really
 46 don't know what word that would be.

47 Q I have to switch back to the other book now. I'm

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1 going to get to page 100. We're close.

2 THE CHAIR: Are we in the various documents book?

3 CNSL J. KITCHEN: No. We're in the publication book.

4 THE CHAIR: Oh, okay.

5 CNSL J. KITCHEN: Page 100.

6 CNSL A. WADDELL: I have 18.

7 CNSL J. KITCHEN: Thank you.

8 THE CHAIR: Thank you.

9 CNSL J. KITCHEN:

10 Q Barry says here -- he says "it". It's in
11 reference to SOGI 123.

12
13 It centres out the LGBT community as the
14 only ones for emphasis on. The way the SOGI
15 123 resource stands now, it discriminates
16 against people with religious objections.
17 It discriminates against some people with
18 ethnic cultural differences, and it
19 discriminates against people with certain
20 abilities.

21
22 What's your perspective on this -- as a teacher,
23 as a teacher of Social Justice 12, as a teacher,
24 not as, you know, the expert Rob but just as a
25 teacher, what's your -- what's your reaction to
26 this.

27 A I think there's some validity to the concern that
28 once you emphasize and draw special attention to
29 the one, you wind up making it very difficult to
30 consider the elements of the equation that's in
31 play. When we're talking about, for instance, we
32 need to make sure that the LGBTQ community feels
33 safe and included within a school, and one of the
34 things that -- that has been happening within the
35 public schools is you have an awful lot of
36 rainbows that -- I mean, we have rainbow
37 crosswalks, anything, on almost every school if
38 not every school in Chilliwack. If you go in,
39 you'll see rainbow and inclusion statements right
40 on the office doors, and then individuals, many
41 teachers have little rainbow stickers that go on
42 their doors of their windows or their door
43 themselves saying that this is a safe space. And
44 so you walk through the hallways of my school,
45 and you will see an awful lot of rainbows
46 promoting this vision of inclusion.

47 Now, when I was trying to promote in my

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1 school in the wake of COVID the Christian
2 Students United Club, and so we're trying to
3 rebuild the club because everything got shut down
4 during the COVID years, and so no club was
5 running with the exception of the GSA, which was
6 meeting in the library with social distancing.
7 All the clubs basically got shut down. And in
8 trying to rebuild, I was informed that in
9 producing posters to advertise for the club, I
10 could not make use of any Christian images, and I
11 could not make use of their reference to -- to
12 God. And so -- so the idea that I would put a
13 cross onto the poster, I was specifically told I
14 wasn't allowed to do that. And then I had to run
15 whatever scriptures that appeared on the posters
16 past an administrator for approval before I could
17 create a poster board to advertise the club.

18 And the reason that I was given for that was
19 that the sight of a cross might upset someone;
20 and therefore, we are not wanting people to be
21 upset, so essentially, we will not allow that
22 image to appear on a poster, right, advertising
23 this club in the school. And it really did limit
24 the ability for us to -- to -- to, you know,
25 promote the club, and the club never really got
26 off the ground. The idea that someone would be
27 offended by the cross, I get. I can understand
28 individuals have all kinds of reactions to all
29 kinds of religious images. The idea that someone
30 would not have any grounds whatsoever to have a
31 reaction to the current rainbow flag, right, and
32 what it represents, again, I think that -- that
33 would be naive to presume that individuals do not
34 have a reaction to the flag.

35 We've seen clear examples with debates
36 taking place in cities over whether or not they
37 can fly the rainbow flag during pride month or
38 whether or not they will allow rainbow
39 crosswalks. Clearly, there are individuals who
40 have concerns about the meaning of that flag, and
41 they don't want to see that in a public space
42 like a school anymore than they would want to see
43 a cross. Yet, the one will be happen, be
44 everywhere, be almost ubiquitous, and the other
45 one will be banned. And I can't, you know, point
46 to any reason for that being the conduct and
47 behaviour other than the emphasis has been to

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In chief by Cnsl J. Kitchen

1 protect one group against bullying and not to
2 protect the other.

3 Another example was when we had, several
4 years ago, the don't-say-gay effort. This was
5 designed to challenge the pejorative use of the
6 word "gay." Gay was -- was frequently being used
7 by students, including gay students, to describe
8 assignments they didn't like or activities. And
9 so it was that pejorative use of the word. And
10 teachers were -- were trying to raise this
11 campaign to challenge this pejorative use and
12 make sure that we were minimizing the pejorative
13 use of the word "gay" in schools. This was part
14 of an effort to combat homophobia. I remember
15 being in a social justice pro-D event where we
16 were discussing this very thing. We couldn't in
17 that event get a clear definition of what
18 constituted homophobia, but -- but it was obvious
19 that people using "gay" in the pejorative was
20 deemed to be homophobic.

21 They couldn't provide an answer to how we
22 are to regard gay people who use "gay"
23 pejoratively, which was fairly common. One of
24 the students who was testifying in that social
25 justice pro-D event on this issue, in giving his
26 testimony dropped two F bombs and used the word
27 "retard" twice in reference to his friend who
28 wasn't policing his use of the word "gay"
29 pejoratively, and, you know, that the word
30 "retard" is certainly packed with a lot of potent
31 meaning, right, and gets people offended, and
32 dropping F bombs in a room full of teachers is
33 demonstrating you're not being careful with your
34 language. We were asking individuals to care
35 about one expression of language rather than just
36 in a general sense be careful with how we frame
37 all of our language.

38 I remember in a different event, the person
39 who was leading the event told the story about
40 how she chastised one of the teachers in her
41 school because he was not policing the use of the
42 word "gay" in his classroom. And I asked her if
43 she would have chastised a teacher who was not
44 policing the use of Jesus' -- Jesus' name being
45 used in vain, you know, taking the Lord's name in
46 vain in a classroom, and she got a little
47 sheepish and said, "No. In fact, I find I do

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1 that myself." And I answered, "Yes. I noticed
2 three times." Now, I'm not particularly offended
3 by individuals who take the Lord's name in vain,
4 but I do think there's a problem when we say
5 police language, and the individuals who are
6 telling us that demonstrate that they're not
7 being careful in how they construct language and
8 what groups they might be offending with their
9 careless words.

10 I think we should be urging a general
11 approach. But because one group is targeted with
12 the programs with the language and the policies,
13 that one group appears to be the only one getting
14 these special protections, and that does seem to
15 play into what Barry is saying here as the only
16 ones for emphasis.

17 CNSL J. KITCHEN: And before my friend pipes up, and
18 rightfully so, there -- there was some hearsay
19 there, and I -- I -- I thank my friend for
20 letting the witness complete his answer, because
21 the hearsay was not really the core of his
22 answer, and I --

23 CNSL A. WADDELL: I've given up, so just let it all
24 go, and I'll argue about it later.

25 CNSL J. KITCHEN: Well. Okay. I might be in the
26 wrong -- no. Let's go to the next one then.
27 275. No. I think we've already covered this.
28 Just going to check my notes. I think I might be
29 done. You know what? I'm going to end it there.
30 So thank you, Rob, for your testimony, and my
31 friend will have some cross-examination questions
32 for you.

33 THE CHAIR: Thank you. Complainant's counsel, I'm not
34 sure who is going to be asking the questions, but
35 do you need a few minutes, or are you ready to
36 get started? I'd like to use our last half an
37 hour if we can.

38 CNSL A. WADDELL: Sure. I do need a little bit of
39 time, and I'll -- I'll say I think I'm going to
40 be about an hour with this witness, so we can get
41 started. And my -- and my only concern -- and I
42 just raise this for my friend -- so I would say,
43 Madam Chair, in response to your question that if
44 you do want me to start now and use the time, I'd
45 appreciate about 10 minutes. And I just wanted
46 to identify one concern I have because this
47 witness is actually in -- in Mr. Neufeld's house,

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1 and so I have some concern about him being
2 suspended in cross overnight given his location,
3 but if you wish for me to proceed, I'm happy to
4 do that.

5 CNSL J. KITCHEN: I can say he won't be staying there.
6 So that -- I don't know -- I'm assuming that
7 would -- that would help. He's not staying there
8 tonight.

9 THE CHAIR: Well --

10 CNSL A. WADDELL: And I also -- one other thing --
11 sorry. Go ahead.

12 THE CHAIR: No. Go ahead.

13 CNSL A. WADDELL: I was just going to say before we
14 forget, I'd also like to ensure that the witness
15 provides us with the notes that he was referring
16 to.

17 THE CHAIR: All right. So maybe, Mr. Kitchen, you can
18 work on that. And in terms of whether we get
19 started today or not, I'm just getting the views
20 of my co-panelists here.

21 CNSL J. KITCHEN: Well, he is going to have to come
22 back in any event.

23 THE CHAIR: All right.

24 CNSL J. KITCHEN: And -- and, Rob, I'm going to invite
25 you to tell us out of -- out of -- out of
26 tomorrow or Friday, which day is least terrible
27 for you to come back?

28 A I could probably come back on either of the days
29 if it was in the afternoon. In the morning, it's
30 more problematic. But if we're talking something
31 after 2:30, I can probably do that without
32 disrupting my teaching.

33 THE CHAIR: All right.

34 A Sorry. I'm just double-checking with my
35 calendar. Tomorrow, I do have a lab
36 appointment -- sorry. Friday, I have a lab
37 appointment it looks like. No. That's actually
38 not tomorrow. So both days look fine for me.
39 I'm good with Thursday or Friday afternoons.

40 CNSL J. KITCHEN: Ms. Waddell, I would -- whether --
41 whether you start now or not because it sounds
42 like you're not going to finish, I would propose
43 that tomorrow morning, we kick it off with
44 Mr. Furgason, who I -- I -- I would think, even
45 if I go at length, I would think we would be done
46 by, you know, 3-ish in the afternoon, and then we
47 could come back for Mr. Bogunovic's

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1 cross-examination to the end of it -- for the
2 rest of it.

3 CNSL A. WADDELL: Sure. Madam Chair, either we can
4 hear from you, or if I can ask for a minute just
5 to seek some instructions, that would be great.

6 THE CHAIR: Well, I think if -- if we're not coming
7 back first thing tomorrow morning with
8 Mr. Bogunovic, then we might as well wait and
9 just do it as a piece; otherwise, it's a bit
10 choppy. So -- so assuming then you have no
11 objection to interrupting this witness' testimony
12 to hear from Mr. Furgason in the morning and then
13 having Mr. Bogunovic come back, that -- it
14 doesn't make any sense to really start now. Do
15 you have an objection to that manner of
16 proceeding, Ms. Waddell?

17 CNSL A. WADDELL: No. I think I'd simply say if -- if
18 Mr. Bogunovic can't come back tomorrow, then
19 that's -- that's fine. That is what it is. But
20 if it's -- if it's a preference, then -- then I
21 think we should proceed with him. But I'm -- it
22 wasn't clear to me which it was there. So either
23 way, it sounds like we're not going to be
24 starting this afternoon so...

25 THE CHAIR: We won't start this afternoon, and -- and
26 Mr. Kitchen, maybe I'll leave it with you to
27 speak with Mr. Bogunovic just to clarify
28 what's -- when he's able to come and whether it's
29 a preference or a real tough scheduling issue.

30 CNSL J. KITCHEN: No. I --

31 THE CHAIR: Yeah. Go ahead.

32 CNSL J. KITCHEN: I can -- I can tell you it's not a
33 preference. It's a -- it's a -- it's a need
34 because he's supposed to be at work tomorrow, and
35 today was the only day that we -- that we took
36 off. So, you know, and I -- I -- I don't think
37 there's any prejudice to my friend. It's less
38 than ideal obviously, but I did not raise an
39 issue of that because it's just how it goes in
40 these hearings, and it's -- it is -- it's --
41 there's really no actual -- it's an
42 inconvenience, but I wouldn't classify it as
43 actual prejudice, so I would ask my friend, you
44 know, I accommodated her witness. I would ask
45 her to accommodate mine, and so he can actually
46 go to school tomorrow and then -- and then show
47 up in the afternoon. And I think that's fine.

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1 You know, if -- if -- otherwise, he has to come
2 back, and he has to actually miss -- miss where
3 he's supposed to be at work on very short notice.
4 And so -- so if he's able to actually not miss
5 work and come back tomorrow afternoon, I think
6 that's just obviously the best solution.

7 CNSL A. WADDELL: Yeah. That's fine.

8 THE CHAIR: All right. So we'll leave it there for
9 the day. Mr. Bogunovic, you're back tomorrow
10 afternoon. I -- I believe I probably mentioned
11 this before, but I'll just ask you not to talk
12 about your -- your evidence with anyone who's
13 testifying after you. Obviously, Mr. Neufeld has
14 heard all of this, so nothing will come as a
15 surprise to him, but if you're talking to other
16 people who may be testifying later, I'll ask you
17 not to talk about the case. That just helps to
18 preserve the integrity of their evidence.

19 And so as for the rest of us, we're back
20 tomorrow morning -- and sorry. Mr. Bogunovic,
21 you can -- you're welcome to stay for this last
22 administrative part or if you -- you can go. Up
23 to you.

24 A Okay.

25 THE CHAIR: The rest of us --

26 A I will leave. Thank you.

27 THE CHAIR: Thank you.

28
29 (WITNESS EXCUSED)

30
31 THE CHAIR: The rest of us are back tomorrow morning
32 at 9:30 with, I gather, Darrell Furgason. Is
33 there anything else to address before we adjourn
34 for the day?

35 CNSL J. KITCHEN: Chair, I still don't have your
36 decision on whether or not you're going to admit
37 the evidence that the Intervener, the
38 Commissioner has sought to adduce that we have
39 opposed or objected to.

40 THE CHAIR: Right.

41 CNSL J. KITCHEN: And I would --

42 THE CHAIR: So we were going to come back to that at
43 the end of the week to --

44 CNSL J. KITCHEN: Okay.

45 THE CHAIR: -- figure out how to get fuller
46 submissions on that issue, so we've -- we kind of
47 deferred that issue to the end of the week once

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1 we know -- can confirm the submission schedule
2 and how to deal with that.

3 CNSL J. KITCHEN: Okay. So the -- the idea here is
4 that the Commissioner will provide some
5 submissions in response to my initial
6 submissions, I'll reply, and then you'll make a
7 decision at some point in December or et cetera?
8 Is that -- is that the general plan?

9 THE CHAIR: Yeah. Something -- something like that.
10 Yeah, I think so. I mean, I think -- and -- and
11 I see Ms. Khan here paying close attention. You
12 weren't here the first week, but -- but the idea
13 and understanding which is an issue you raised,
14 Mr. Kitchen, is I know that you want to go into
15 your -- all the parties should go into their
16 closing submissions knowing whether or not that
17 material will be admitted, and so we need to
18 resolve that issue before the closing submissions
19 are prepared. And I had just planned to discuss
20 at the end of the hearing whether we want a
21 process for dealing with that orally or a short
22 written submission process. I mean, we haven't
23 really decided anything. So I was planning to do
24 that at the end of the hearing.

25 If there's a reason to do it now, we could
26 do it now I suppose, but it may be easier once we
27 have the full context of what we're dealing with,
28 if we have to come back, if any of the dates are
29 getting shifted, and so on. I think it might
30 be -- make more sense to deal with it at the end
31 of the week.

32 CNSL J. KITCHEN: Okay. That's fine.

33 CNSL S. KHAN: That makes sense. And so you're not
34 wanting submissions from me on Friday, but we'll
35 just come up with the process?

36 THE CHAIR: That's right. Yeah. I think that makes
37 more sense. I'd like to maximize our time this
38 week for hearing -- getting in as much evidence
39 as we can, and then we'll at the end of the day
40 Friday, see where we're at, see how far we've
41 gotten and what we have left to do, and we'll
42 make a plan for that -- for that issue.

43 CNSL S. KHAN: Okay. Thank you.

44 THE CHAIR: Okay. Anything else before we adjourn for
45 the day?

46 CNSL A. WADDELL: Mr. Kitchen, do you think you could
47 get me Mr. Bogunovic's notes tomorrow?

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1 CNSL J. KITCHEN: Yeah. I'll get him to, you know,
2 take a picture or photocopy or whatever, and then
3 we'll send them on over.

4 CNSL A. WADDELL: Thank you.

5 THE CHAIR: And my apologies. I just remembered. One
6 more issue which is the video that the
7 complainant's put to Mrs. Dyck in cross which
8 we've now received. And I understand that the
9 complainants were seeking to have that admitted
10 into evidence, and there was no objection from
11 Mr. Kitchen, and so we -- we have it now, and we
12 can admit it as Exhibit 5, being the video of the
13 Chilliwack school trustee board meeting dated
14 November 28th, 2017.

15
16 (EXHIBIT MARKED)
17

18 THE CHAIR: All right. And that will do it for today.
19 We'll be back here tomorrow morning at 9:30.
20 I'll remove everyone from the meeting. Thanks so
21 much for your work today. Bye.

22
23 (VIDEOCONFERENCE ADJOURNED TO DECEMBER 5,
24 2024, AT 9:30 A.M.) [4:09:10]
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Reporter's certificate

1 REPORTER'S CERTIFICATE

2
3 I certify that the proceedings from timestamp
4 9:32:22 to timestamp 4:09:10 inclusive are a true
5 and accurate transcript of these proceedings
6 recorded on a sound recording apparatus,
7 transcribed to the best of my skill and ability
8 in accordance with applicable standards.
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19 Krystal Truong
20 Court Reporter
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**IN THE MATTER OF THE *HUMAN RIGHTS CODE*,
RSBC 1996, C. 2010 (as amended)**

**AND IN THE MATTER of a complaint before
The British Columbia Human Rights Tribunal**

BETWEEN:

British Columbia Teachers' Federation obo Chilliwack
Teachers' Association

COMPLAINANT

AND:

Barry Neufeld

RESPONDENT

AND:

B.C.'s Human Rights Commissioner

INTERVENOR

**PROCEEDINGS AT B.C. HUMAN RIGHTS TRIBUNAL HEARING
(VOLUME IX)**

ORIGINAL

THERE IS A PUBLICATION BAN IN EFFECT PROHIBITING THE
PUBLICATION OF ANY INFORMATION THAT COULD IDENTIFY THE
TEACHERS WHO TESTIFIED, OR MAY HAVE TESTIFIED, IN
CONNECTION WITH THIS COMPLAINT: CHILLIWACK TEACHERS'
ASSOCIATION V. NEUFELD (NO. 2), 2024 BCHRT 180 [CTA
(NO. 2)]; AMENDED BY LETTER DATED FEBRUARY 25, 2025.

File: CS-003172

**IN THE MATTER OF THE *HUMAN RIGHTS CODE*,
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**PROCEEDINGS AT B.C. HUMAN RIGHTS TRIBUNAL HEARING
(VOLUME IX)**

ORIGINAL

Tribunal Members:	Devyn Cousineau, Robin Dean, Laila Said Alam
Counsel for the Complainant:	Lindsay Waddell, Alanna Tom, Stefanie Quelch, Chris Fenje
Counsel for the Respondent:	James S.M. Kitchen
Counsel for BC's Human Rights Commissioner:	Sarah Khan, Maria Sokolova

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By videoconference
December 5, 2024

(VIDEOCONFERENCE COMMENCES) [9:30:48]

THE CHAIR: Good morning, everyone. It's December 5th, and I'm recalling the case of *B.C. Teachers' Federation on behalf of Chilliwack Teachers' Association and Barry Neufeld*, CS-001372. I can see complainant's counsel here -- good morning -- and Mr. Clark. I can see Mr. Neufeld and Mr. Kitchen -- good morning -- and Ms. Khan. Good morning.

We don't have the witness with us yet, it looks like. I think we're expecting Darrell Furgason. Is that right?

CNSL J. KITCHEN: We are. I've sent him the link. I know Barry has spoken with him, and he's supposed to be getting connected here, so -- but you -- you don't see him in the lobby, hey?

THE CHAIR: No.

CNSL J. KITCHEN: Okay. I'll try giving him a call. Chair, I got an e-mail from our witness saying he's waiting to be signed in. But he's still not appearing in the lobby for you, I take it.

THE CHAIR: No. That's so strange. I know that's what the witness said yesterday as well.

CNSL J. KITCHEN: Well, it's -- every time I try to come in, I have to go through a double process. I'm always rejected the first time, and then I have to do it again. And, of course, I'm just used to that now but might be confusing for other people.

THE CHAIR: Has he gone out and come back in? Has he disconnected and then tried to connect separately?

CNSL J. KITCHEN: I don't know. I'll -- I think he's got his phone turned off so that nobody -- nobody calls him while he's -- while he's testifying.

THE CHAIR: Right. Which is --

CNSL J. KITCHEN: It looks like -- it looks like Barry's got ahold of him there.

THE CHAIR: I don't know what it was that ultimately worked for Mr. Bogunovic yesterday.

CNSL J. KITCHEN: Yeah, I don't know. I don't know what it was --

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1 THE CHAIR: Perseverance --
2 CNSL J. KITCHEN: -- either.
3 THE CHAIR: -- maybe.
4 BARRY NEUFELD: He's -- he's leaving the page. He's
5 backing out. He's going to try again because he
6 was waiting in the lobby.
7 THE CHAIR: Thank you.
8 BARRY NEUFELD: That happened to me twice yesterday.
9 I was waiting in the lobby, nobody picked me up,
10 so I just backed out, rebooted the computer and
11 started it again, and then I got in.
12 THE CHAIR: Okay.
13 BARRY NEUFELD: Continue on your -- continue on your
14 browser. Put your name in. Don't forget
15 Dr. Darrell Furgason. Go in now. Okay. Hang
16 tight. Someone should admit you shortly.
17 He's in the waiting room.
18 THE CHAIR: Is he using the browser rather than the
19 app?
20 BARRY NEUFELD: Yes.
21 THE CHAIR: I'm wondering if that's the issue. I
22 still don't see him.
23 I still don't see him. Is he able to use
24 the app rather than the browser?
25 BARRY NEUFELD: Well, he'll have to take some -- he'd
26 probably have to download the app.
27 CNSL J. KITCHEN: That should be pretty quick, though.
28 BARRY NEUFELD: Yeah, it should -- should happen
29 pretty quickly.
30 THE CHAIR: Yeah.
31 BARRY NEUFELD: Yeah. He's leaving the page.
32 THE CHAIR: Thank you.
33 BARRY NEUFELD: I know it's a lot -- it's a lot more
34 complicated than Zoom, but yesterday I had to try
35 two or three times to get in, and I've been there
36 ten days. Every witness has had problems
37 connecting at first.
38 Back out and go back to your original link
39 now. You've now got the app on your computer.
40 It might come through easier. You see that link
41 there?
42 Yeah.
43 THE CHAIR: Here we go. I see him now.
44 BARRY NEUFELD: He sees -- she sees you now. You're
45 in.
46 CNSL J. KITCHEN: There we go.
47 BARRY NEUFELD: Yeah.

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1 THE CHAIR: Good morning, Dr. Furgason. Sorry about
2 the trouble this morning. Thanks for hanging in
3 and -- and sorting it out.

4 DARRELL FURGASON: Good. No problem.

5 THE CHAIR: My name is Devyn Cousineau. I'm
6 vice-chair of the B.C. Human Rights Tribunal, and
7 joining me on this panel are Tribunal members
8 Robin Dean and member Laila Alam. We are the
9 panel who's been designated to hear and decide
10 this human rights complaint.

11 I'm going to start by telling you a bit
12 about who's on the call with us this morning,
13 and -- and then we'll move -- move into your
14 evidence.

15 So there's a number of people --

16 D. FURGASON: I had to turn that light off. That's
17 better.

18 THE CHAIR: Okay. There's a number of people joining
19 us this morning with video access, meaning you
20 can see them and they can see you. You should
21 see Mr. Neufeld. Well, he's -- he seems to have
22 stepped out for a moment, but here he comes back.
23 He's on video. And his lawyer, James Kitchen,
24 who you may know, is here on video. You should
25 see a panel with complainant's counsel; those are
26 the lawyers for the B.C. Teachers' Federation and
27 Chilliwack Teachers' Association, Lindsay
28 Waddell, Alanna Tom, and Stefanie Quelch, and
29 they are joined by Reid Clark from the Chilliwack
30 Teachers' Association. And the last person on
31 video here with us this morning is Sarah Khan.
32 Ms. Khan is the lawyer for the intervener, B.C.'s
33 office of the Human Rights Commissioner.

34 So that's everyone with video access this
35 morning. We also have a number of members of the
36 public who are listening with audio access, so
37 they are -- they can hear everything, but they
38 aren't -- they can't see anything.

39 So everyone in the proceeding, including the
40 members of the public, are required to follow
41 certain rules and expectations, and one of those
42 includes no recording of any kind. We are
43 recording the proceeding at the Human Rights
44 Tribunal for our official record of proceeding,
45 and -- and that recording stays with the Tribunal
46 and is only used for complaint-related purposes.

47 Is there any -- it doesn't look like it, but

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Darrell Furgason (for Respondent)
Proceedings

1 I'll just confirm. Is there anyone there in the
2 room with you?

3 D. FURGASON: No.

4 THE CHAIR: Okay. And do you have any papers in front
5 of you that you might be referring to?

6 D. FURGASON: I have. A couple newspaper clippings --

7 THE CHAIR: A newspaper --

8 D. FURGASON: -- and my statement of when I ran for
9 the school board. I have that.

10 THE CHAIR: Okay.

11 D. FURGASON: And I have two newspaper articles that I
12 wrote and was published by the -- by the
13 Chilliwack Progress, and I have the thesis cover
14 for Glen Hansman's menster (verbatim) thesis.

15 THE CHAIR: Okay. Thank you. I'm just going to ask
16 if you wouldn't mind putting those aside for now,
17 and if you're asking a question that -- where you
18 want to refer to or pull out or look at one of
19 those documents, you'll just let us know.

20 D. FURGASON: Sure.

21 THE CHAIR: It's just important that we know -- since
22 we're not all in the room together and can't see
23 what you might be looking at or reading from or
24 whatever, it's important that you -- you let us
25 know if you're referencing something that we
26 can't see. Okay?

27 D. FURGASON: Sure. Yeah.

28 THE CHAIR: All right. I'm going to ask you now to
29 kindly spell your full name for the record and
30 tell us what pronouns you use.

31 D. FURGASON: My pronoun is "Dr."

32 THE CHAIR: Okay.

33 D. FURGASON: My name is Darrell, D-A-R-R-E-L-L, and
34 my last name's Furgason spelled with a U.
35 F-U-R-G-A-S-O-N.

36 THE CHAIR: All right.

37

38 DARRELL FURGASON, a witness
39 called for the Respondent,
40 affirmed.

41

42 THE CHAIR: Thank you. You are here today answering
43 questions first from Mr. Kitchen and then from
44 the complainant's counsel. We will go until
45 11 o'clock, and then we'll take a 15-minute
46 break. But if you need breaks before then, you
47 can let me know. And just one other thing maybe

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Darrell Furgason (for Respondent)
In chief by Cnsl J. Kitchen

1 to note is while you're testifying, it's possible
2 that the complainant's lawyer may have an
3 objection to one of the questions, and if that
4 happens, I'll just ask that you wait. I'll
5 probably -- we'll probably hear arguments from --
6 from the lawyers, and then we may make a ruling,
7 and then we'll tell you to carry on. So if -- if
8 we get caught up in -- in an objection, I'll just
9 ask you to wait until we've resolved that issue,
10 and then we'll instruct you about the question to
11 answer. Okay?

12 A Sure.

13 THE CHAIR: And you may -- I -- I don't know how your
14 screen is set up, but I know we have a lot of
15 little boxes in the screen, so if you find it
16 easier, there's an option to make certain videos
17 bigger so that you can see them better. Do you
18 want me to talk you through that?

19 A No. I can see -- see everybody except all the
20 ones who aren't signed in yet or...

21 THE CHAIR: All right. Okay. Well, then, I'll
22 leave -- I'll leave it as is. Mr. Kitchen is
23 going to ask you his question now.

24 Go ahead.

25 CNSL J. KITCHEN: Make it a bit -- there we go.
26 That's better.

27
28 EXAMINATION IN CHIEF BY CNSL J. KITCHEN:

29
30 Q Well, good morning, Dr. Furgason.

31 A Good morning.

32 Q Thanks for being with us. Let's start off with
33 could you please tell us a little bit about your
34 educational background and occupation.

35 A I have two degrees in philosophy from the
36 Australian National University, a bachelors and a
37 masters. It's called a B.Lit., but it -- it's a
38 masters level. I have a masters degree in
39 international studies, political science from The
40 University of Sydney. And I have a PhD in
41 religious studies, sociology from The University
42 of Sydney 2001.

43 Q Thank you. And --

44 A What was your second question again?

45 Q My second -- my second question was what's your
46 occupation now and --

47 A Oh.

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1 Q -- and, you know, recently.

2 A Well, I -- I was a professor for many years
3 teaching in university-level courses. I've
4 taught at Trinity Western University. I was
5 [indiscernible] on faculty through the Liberty
6 University for many years. And I ran courses
7 under the University of the Nations
8 internationally for a number of years, many
9 years.

10 Q When did you go on to become a school board
11 trustee in the Chilliwack school division?

12 A May I read from my -- the paper -- I can send you
13 a copy -- that I published in the newspaper
14 giving explicit reasons -- if I'm allowed to do
15 this --

16 Q Yes. And so what's going to happen is we're
17 going to take a -- you're going to send me a copy
18 of that, and I'm going to give it to the Tribunal
19 and the lawyers for the other side.

20 A Okay. Well, here -- here's why I ran. It's --
21 it's got five points. Bear with me.

22 Q Yeah.

23 A I've been -- it says this:

24
25 I've been involved in education of the
26 high school and university level for more
27 than 30 years. I have a BA and a B letters
28 (phonetic) from the Australia National
29 University, and then I got a PhD from
30 University of Sydney. My aims for the
31 Chilliwack School District include,
32 Number 1, academic excellence. I seek to
33 help teachers be the best educators they can
34 be. Excellence in teaching will equip
35 students with the academic abilities and
36 intellectual skills needed for success in
37 today's world.

38
39 Number 2. Promote critical thinking. I
40 believe the school curricular should enhance
41 the intellectual, moral, and social
42 development of every student. This means an
43 approach to teacher resources that promote
44 critical thinking and problem solving within
45 the global context.

46
47 Number 3. Parents' rights in education. I

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1 believe it is the right and responsibility
2 of every parent to be involved in the
3 education of their children. This includes
4 the opportunity to discuss and assess
5 teacher resources, curricular, or courses
6 involving sexual practices, sexual
7 orientation, and/or gender identity such as
8 SOGI 123. Parents were not consulted in the
9 creation of SOGI 123, nor were any religious
10 groups such as Muslims, Hindus, or
11 Christians.
12

13 Number 4. Education not indoctrination. My
14 aim is to stand up for a community and
15 support parents, not special-interest groups
16 with ideological agendas. We must protect
17 the emotional, psychological, and
18 intellectual development of all children
19 equally. This requires new leadership so
20 that the school board does not simply become
21 a rubber stamp for politicians, bureaucrats,
22 and activists.
23

24 And, finally, Number 5. All students should
25 be protected. Bullying of any sort should
26 never be accepted in any school. Concern
27 about the implementation and impact of
28 SOGI 123, however, should not be labelled
29 homophobia or transphobia. SOGI 123 is an
30 optional resource and has not been mandated
31 to be part of any curriculum. Schools are
32 not required to use this material. My
33 desire is to protect innocent children from
34 the ideology that, quote, gender is fluid,
35 that a girl can transition to a boy or that
36 they may be a boy trapped in a girl's body.
37 I would promote the involvement of a
38 qualified child psychiatrist to address any
39 issues of gender dysphoria on a
40 child-by-child basis. We need to show
41 compassion for children who are struggling
42 with gender confusion.
43

44 That is -- was published in a Chilliwack paper
45 when I was running in the election.

46 Q And was that the 2018 election?

47 A Yes, that's right.

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1 Q Okay. And were you elected?

2 A Yes, I was.

3 Q Okay. And how many terms did you sit?

4 A Just one. Four years.

5 Q Okay. Did you run again after that, or did you
6 just give it up?

7 A No, I -- I ran again and -- and was not elected.

8 Q Okay. Was Barry on the board with you while you
9 served there for that four-year term?

10 A Yes, he was.

11 Q Okay.

12 A Just going to grab a tissue. Hang on. Sorry.

13 Q That's all right. What was your experience like
14 as a school board trustee?

15 A It was a pretty constant battleground with four
16 trustees who really were pushing that
17 ideological -- what I call an ideological agenda.
18 We were a minority of three. They had the
19 majority of four, so it appeared that a lot of
20 our energy and time was combatting mistruths,
21 untruths, and -- and agendas.

22 Q There might be more agendas and untruths than
23 what's relevant to this case, but can you give us
24 some of the ones that would be relevant to this
25 case as you understand them?

26 A Well, the whole idea that people who question
27 certain aspects of policy -- for example, there
28 was a large rewriting of the aims of the district
29 and values of the district which suddenly
30 included DEI; diversity, equity and inclusion.
31 And as we had meetings to discuss what that
32 meant, it -- it was almost automatic that we
33 couldn't question that this -- this mantra --
34 I'll call it a "mantra," DEI, was -- was normal,
35 good, and should be implemented, and I questioned
36 it, saying, well, I don't think that this
37 diversity you're defining includes people who
38 don't accept the ideology that you can transition
39 from a girl to a boy or a boy trapped in a girl's
40 body.

41 The definitions of "equity," the definitions
42 of "inclusion," excluded religious people,
43 excluded other views other than that view. So I
44 believe that an ideology was masqueraded under
45 the mantra of DEI.

46 And, you know, other things like racism.
47 The board was required to take -- to listen to

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1 speakers on racism, and I said, well -- and --
2 and the values stated that -- that we had
3 systemic racism, and I viewed that as Marxist
4 indoctrination. I said, I don't believe we
5 should put in there that -- that we have systemic
6 racism; we should put -- we should address it if
7 we have it. And I was completely shot down by
8 the superintendant and the majority. They said,
9 oh, no -- phrases like this: The fact that you
10 don't recognize it means you have it, and I --
11 I -- this is complete Marxist drivel, in my view.
12 And so, you know, ideas like that suddenly became
13 prominent.

14 I was told by the chair that I was
15 homophobic, transphobic, Islamophobic, bigoted.
16 All these things came out, and -- which I was not
17 prepared for, nor had I joined the school board
18 for that reason. I believe -- my -- my main
19 purpose was to help children achieve
20 academically, which I believe I've done. I
21 believe children could get a PhD. Why not? But
22 we got mired in this activist bunch in the
23 majority. They're activists. And so if you
24 challenged or attempted to put a motion forward
25 that, you know, I question some of these things,
26 you were immediately labelled Islamophobic --
27 well, here's -- here's the bizarre thing. In the
28 very beginning -- I think it was 2018 or '19 --
29 the chair turned to me -- Willow Reichelt,
30 who's -- who's, in my view, an extreme activist.
31 I've written that, and -- and she was the main
32 source of the problems of promoting the stuff,
33 but -- I -- I -- I was talking about Islam. She
34 quoted one of my articles or something on
35 Facebook where I said the god of Islam is not the
36 same as the god of the Bible. And that's very
37 clear for anyone who studies theology.

38 My PhD, as I said, was studying the beliefs
39 of Muslim students and the effect of Western
40 education upon them, so it's kind of relevant.

41 So -- so suddenly she blurted out "You're --
42 you're Islamophobic," and I thought what
43 ignorance and bullying. It's a form of bullying.

44 I -- you know, the fact I have a masters
45 degree in -- in the political ideology of Islamic
46 movements -- this woman has never read the book
47 or read any book.

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1 And it's not from a theological school; it's
2 The University of Sydney, my masters degree,
3 looking at political ideology. And I have a PhD
4 where I spent six years talking to Muslims, but
5 that -- but to be labelled ignorantly as an
6 Islamophobe illustrates to me the ideological
7 bullying that was going on on the board, and that
8 translated into union activities and especially
9 media.

10 I've got a number of media articles, one of
11 which I'll refer to, which says when I raised a
12 question it was hate speech. Hate speech. You
13 know, they throw these terms out there as --
14 as -- and they're just intimidation tactics. And
15 as somebody who studied ideology, I can tell you
16 that these are intimidation tactics. They're a
17 form of bullying. They're a form of silencing
18 the opposition by labelling them with terms
19 that -- that automatically view you as -- as
20 evil, as malicious, as dangerous, somebody who
21 should be silenced. And the constant chirping
22 was that this is -- this is under the *Human*
23 *Rights Code*. This is the *B.C. Human Rights Code*.
24 This is the *B.C. Human Rights Code*. As though
25 this was some kind of coverage for them to bully
26 you and intimidate you and harass you.

27 In fact, I -- I filed an official harassment
28 claim against the board chair. An official -- it
29 went through investigation -- claiming that I --
30 I've been ridiculed; I've been called homophobe,
31 transphobe, Islamophobe -- everything under the
32 sun. This is workplace harassment that prevents
33 me from doing my job as a trustee, which is to
34 represent the whole community. That means
35 conservative people and Christians and Muslims,
36 other people who don't hold the ideology of DEI
37 as they define it.

38 So my experience over the four years was
39 this constant name calling, belittling. You
40 know, being belittled. I mean, homophobe. I
41 mean, I've -- you know, I'm not against
42 homosexual people at all. I'm against
43 ideologies, and one of which, you know, is
44 promoted by the BCTF.

45 So, anyway, that's the battle scene. And,
46 you know, it became uncomfortable. You're either
47 going to lie down and quit -- but then again

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you've been elected by a big chunk of the community. You know, I got, I think, over 7,000 votes. There is a -- I -- I am to represent all people, but it seemed like this board was not willing to let us represent other views than what they should have. In fact, the chair once told me, "Look, if you'd just vote like us, we'd all be happy," and I thought that -- that's not why I'm on the board. I'm here to promote education, not indoctrination.

Q Thank you for that. What did you make of the board's treatment of Barry during this time?

A Well, the same thing. You know, Barry was silenced or got the same responses. You know, the *B.C. Human Rights Code* -- you know, "You're violating the *Human Rights Code*" -- blah, blah, blah. You know, it's like a mantra.

And so any motions that we made, basically, in four years -- well, I can't -- we might have had a few minor little ones pass, but unlikely. Every motion we put forward was shot down, voted down.

So I do remember when -- before I was elected -- becoming aware that somebody on this board was a target and -- because there were -- there were riots almost. Well, there were demonstrations outside the boardroom. I think it was 2017 when activists -- and one of which was Willow Reichelt who became -- who is the chair under -- I think she was out there with a -- with a group of flags from the union, the CUPE unions. Everybody, you know, rallying against Barry Neufeld. And -- and they marched into the boardroom and -- and -- and surrounded him. I think he -- he can give his own testimony -- and were -- you know, that's a violation of the board itself that these people are allowed into the boardroom with their flags waving and screaming, "Hey, hey, ho, ho; Barry Neufeld's got to go."

So as I had just -- you know, as I lived in Chilliwack and I'm -- was semi-retired, I thought, "Hey, what's all this about?" And I learned about it, and so I became interested in it, and I ran for the school board. But, no, I didn't see Barry get any affirmation.

And, you know, one of the code of ethics in the school board is to respect the views of other

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1 trustees and that it is expected that you will be
2 respectful, you will honour the other
3 achievements and listen to perspectives, because,
4 after all, a board is not like the Conservative
5 party or the Liberal party or the NDP which is a
6 party with one ideology. A -- a board has seven
7 people who represent the whole community and --
8 and so, therefore, the board cannot be a one-idea
9 party other than the idea of student achievement.
10 So the code of ethics says you have to respect
11 other people; you have to allow other views; you
12 have to honour people and be -- and -- and listen
13 to their opinions, none of which happened to us.
14 Especially to Barry. He was a target -- once he
15 had this human rights complaint against him --
16 and I heard about this; I thought, "Well, surely
17 this will be settled in a year, two years." Six
18 years. That's -- that's bullying, in my view.
19 It's -- it's a form of bullying by the Human
20 Rights Tribunal itself. I hate to say that, but
21 that's what I'll state. Keeping -- keeping that
22 hanging over a man's head without any evidence,
23 without any victims. The union could not -- you
24 know all the details, but this -- this was the
25 atmosphere that this board had to work under, and
26 we three in the minority were targets because
27 this claim magnified through the media all the
28 time that Barry was charged under the Human
29 Rights Tribunal; therefore, he's an evil man who
30 hates kids -- blah, blah, blah. That was for
31 years that we had to sit under that, and -- and
32 it was referred to all the time.

33 So I -- I believe -- it was disappointing
34 for me, as someone who has got a PhD, who -- who
35 has taught in academic things and came to
36 Chilliwack. In fact, I was born in Chilliwack.
37 My dad was in the army, and I was born in '53.
38 You know, I came here to increase the academic
39 achievement of students. And what we were
40 involved was a quagmire of ideological bullying
41 constantly, and this charge against Barry by this
42 union who could produce no victims was
43 ideological. Ideological, in my view. And so
44 that -- that hung over us all the time and was
45 used as a -- as a stick, I think. It was used as
46 a stick against Barry. You know, he's an evil
47 man; he's wicked. You know, children -- you

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1 know, you've got the -- you've got Glen Hansman
2 saying, you know, children shouldn't be near him;
3 he's dangerous. I mean, I'm going to read
4 from -- I'm going to read the title of his
5 master's thesis later on. Or should I do it now?
6 But, no, I'll do it later when we get...

7 So it -- I -- I lived in an atmosphere of
8 ideological pressure. The media, the government
9 itself, the Minister of Education was -- you
10 know -- we -- we had a judge sent down to
11 investigate us as -- because, you know, they
12 wanted to fire the board. And I told the judge
13 in private conversation -- we all got interviewed
14 by this judge. You can get her name if you want.
15 She was a B.C. Supreme Court judge. I said,
16 "Look, we got elected. I represent a
17 conservative voice which is legitimate for a
18 board. That's what we're for; to represent all
19 of Chilliwack." And there's a large conservative
20 population in Chilliwack. And I said, "The real
21 problem of this board is the chair pushing her
22 ideology on us all the time causing dissension,
23 but we will not lay down and die. We will push
24 back." Because I felt obliged that there were
25 people who voted for me. 7,000 people wanted me
26 to represent my statement that I just put out
27 here. They like this statement, and I felt it's
28 accurate.

29 So the tragedy was a lot of time was wasted
30 on ideological intimidation, and sadly the
31 reading and math results in Chilliwack School
32 District are low, lower than they should be, and,
33 in my view, that's part of the consequence of
34 this constant attempt to ridicule Barry, me --
35 anyone -- as homophobes.

36 Q What do you make of the -- of the -- it sounds
37 like regular references to the *Human Rights Code*
38 as a justification for this type of treatment of
39 you and Barry?

40 A Yeah, like, as though we were violating the *Human*
41 *Rights Code* by raising an objection to a
42 resource, an optional resource, SOGI 123, which,
43 by the way, according to the bylaws of a board,
44 boards must approve all learning resources. They
45 must vote on approval of learning resources.
46 This chair and the majority would not allow us to
47 vote on SOGI 123, and it should have been voted

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1 on.

2 So -- I'm sorry. Just give me your question
3 again. I got diverted by the -- what did I
4 make -- what did I make of -- what was -- what
5 was the --

6 Q You know, what did you make of the -- of the --
7 the constant references --

8 A Oh.

9 Q -- or constant suggestions that you're violating
10 the *Human Rights Code*?

11 A Yeah, I mean, that's intimidation. It's -- it's
12 a form of bullying because I -- I looked at it
13 myself. Well, where? Where am I violating this?
14 If I even raise a question about DEI, how -- how
15 is that -- how is that wrong since my job as an
16 elected official was to represent all views and
17 discuss the best educational program for
18 children.

19 I mean, the job required the board to assess
20 everything and be on top of every development
21 with a view that we should be promoting student
22 achievement first and foremost. So this constant
23 belittling, especially by the chair, and then, of
24 course, the media -- any questioning of gender
25 ideology was labelled hate speech. Hate speech
26 because the *Human Rights Code* says, you know --
27 look, I -- I totally support SOGI in one sense.
28 And I got to be qualified. SOGI is -- is people
29 are born with a sexual orientation. Okay. And a
30 gender identity. Okay. They have a right to
31 that. I have no problem. I have no problem with
32 people having a right to have sex with whoever
33 they want. Whatever. It's not my job. However,
34 123 -- SOGI 123 are lesson plans and an outline
35 and -- and an ideology that promotes certain
36 things within that.

37 So while people have the right to have a
38 sexual orientation, they don't have a right to
39 have that as a doctrine, as a mantra, as -- as an
40 ideology that gets taught to children as normal,
41 as -- and I'll use that word because it's --
42 just -- there -- there are aspects -- many
43 aspects of sexual orientation.

44 If you want to go on the website, I -- I
45 will -- I will gladly actually give you my list
46 here from two websites. One is healthline.com;
47 the other is rainbowandcompany.com -- .uk, which

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has 47 terms describing different sexual orientations. 47. And there's growing list. If I may -- I -- I'm happy to send you this list. This is off their website. I'm just going to read it. There's a spectrasexual. There's a polysexual, pansexual, omnisexual, non-libidoist asexual, gynosexual, skoliosexual, graysexual, cupiosexual, autosexual, asexual, allosexual, abrosexual, demisexual, lithosexual. This is not the complete list. So these are sexual orientations. Are we going to teach all these? If not, why not? And how confusing is this? So these are not biological categories; these are psychological categories. So -- so the idea that -- I don't mind that people want to claim they're pansexual or skoliosexual. That's their business. But once it enters into a resource and a curriculum where children are exposed to this and potentially told that they could be one of these without any -- these are not scientific terms; they are psychological terms. They are not biological terms.

So it became very clear that we were facing -- and particularly Barry who was, of course, constantly living under this specter of the Human Rights Tribunal charge that he had somehow, according to the union, violated the *Human Rights Code*. I don't see it. Where? Where has anyone, charged with being elected to represent all views, why should we be forced to accept one view? That -- that was my -- so, yeah, constant -- I considered it bullying.

As an academic, to sit in that environment with people with no qualifications academically to tell you that I'm an idiot, that -- that I'm a hater -- I mean, how -- how does that show inclusion? How does that demonstrate diversity? How does that demonstrate equity to me? I'm treated like an ignorant, evil person. And so I'm not the type, having spent a lot of years in education at university level, to just lie down and take it because I felt obliged to the electorate to help children.

And if -- if you want to ask me later, I got calls from parents concerned, and that's what motivated me even more.

Q You heard some comments and testimony from some

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1 of the teachers who say that they were upset by
2 Barry Neufeld's posts and they found some of them
3 shocking, and we heard some evidence from
4 Mr. Glen Hansman, and they both mentioned the
5 fact that, you know, they thought Barry was in a
6 position of power and -- and so his comments were
7 more concerning to them and that, you know,
8 they -- they both -- both Hansman and the
9 teachers have more concern about what a trustee
10 has to say than what a member of the public has
11 to say. So -- and those -- and those comments
12 were in reference to the fact that, you know,
13 that's why there's a human rights complaint
14 against Barry and -- and not against other
15 people, for example.

16 But what I'm curious about is what are your
17 thoughts on why Barry has a human rights
18 complaint against him but you do not. Do you
19 have any thoughts on that?

20 A You know, that's a good question. Although, I
21 must say, I have been charged with Barry and
22 Heather by the B.C. Human Rights Tribunal while I
23 was elected during my term. This Tribunal
24 charged me with racism, and so all three of us
25 were charged with racism by the B.C. Human Rights
26 Tribunal, and we had appointed -- we had
27 government lawyers appointed because we were
28 covered under, I guess, the government's
29 indemnity program -- or not indemnity, but
30 program. So I -- I had a lawyer; Barry had a
31 lawyer; Heather Maahs had a lawyer. And we were
32 charged with racism because, in discussing the
33 naming of a primary school in Chilliwack, a new
34 school -- which is called right now
35 Stitó:s Lá:lém Totí:lt -- that's the name; it's a
36 First Nations name -- there was a committee
37 struck to -- to find a name for the new school
38 that was just built -- well, I guess a couple
39 years ago. And so as the board does, a committee
40 was struck. Willow Reichelt, of course, put
41 herself in as the chair and -- and got a
42 committee together which we knew the outcome
43 right away.

44 And so, anyway, the name was debated, and
45 some people contacted Heather. About 95 people
46 said, "Hey, I'd like the name Riverside." There
47 was a lot of suggestions, and then there was the

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1 name Stitó:s Lá:lém Totí:lt. So there was a --
2 it had to come to the board for discussion and
3 vote. That's how it worked. The committee made
4 suggestions; it came to the board. And so we
5 discussed it on the board in public, and, of
6 course, you know, you're free to make --
7 you're -- you're required as a trustee to make
8 comments about what you think -- you know, what
9 you think. Just like any other person of a
10 liberal party can get up and state what they
11 think. And so I -- I just thought, you know
12 what, I'll -- I'll -- people were saying, you
13 know, some -- I can't remember all the comments.
14 I probably said the most.

15 I said, "Well, you know what? It's a long
16 name, and -- and it's kind of difficult. Might
17 be difficult for some kids to pronounce." That's
18 all I said. And I said, you know what, I mean --
19 and, again, this is not out of any anger,
20 malice -- you know, whatever it is; this is just
21 discussion to -- to promote other people's views
22 because, after all, dozens of people wrote in to
23 us saying, "Hey, I like this name." So we're
24 open to the public. Okay? We -- we represent
25 the public. It's not my -- so I -- I represented
26 a certain public response. Well, that's kind of
27 a tough name, but hey.

28 And I said, you know, there are lots of
29 cultural groups in -- in Chilliwack. It could be
30 named any name. You know, after Chinese or
31 whatever, you know. I'm not saying it's wrong;
32 I'm just saying there's lots of other cultural
33 names that could be used, right. That's all part
34 of the debate in politics. And, remember, we are
35 in politics. The board is a political
36 appointment.

37 And, anyway, so about a year later, I think
38 it was -- I have no idea why it took so long --
39 somebody -- a part First Nations person living in
40 Surrey took offence to this -- and I can't
41 understand why it took that long if it was so
42 offensive -- and -- and -- and contacted the
43 Human Rights Tribunal and -- and claimed that --
44 that we were racist and -- and ticked every
45 single box on the form for the Human Rights
46 Tribunal. I don't -- there's age, gender,
47 history, culture, geography. I don't know what

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1 all the things are, but this person ticked them
2 all. We were guilty under all of them, and --
3 and she wanted \$75,000 from each of us for pain
4 and suffering. I find this politically wrong,
5 you know.

6 So -- so we were under this charge until our
7 lawyer asked for any evidence, which is what
8 lawyers do. Where is the evidence of your racism
9 and asked this First Nation's person to submit
10 the evidence that we were against age, gender,
11 history, geography, et cetera, et cetera, and --
12 and the -- none of which happened. There was
13 nothing. So it was an ideologically-driven claim
14 that the Human Rights Tribunal took on, and our
15 lawyer asked twice to dismiss this -- dismiss
16 this for lack of merit. They would not. So I
17 believe that this type of activity, using the
18 Human Rights Tribunal as a weapon, as a club to
19 beat opposition without evidence is -- is a
20 travesty of justice.

21 Honestly, as someone who deals with
22 political science -- okay. I'm referring to my
23 background, my experience as a professor speaking
24 in political science. This is a form of
25 political intimidation using an institution to
26 beat down people or to allow it to be used as a
27 club by people with ideological agendas.

28 So the -- the case was dismissed, as it
29 rightly should have been, but the point is we
30 lived under that for at least a year and had to
31 go through this mock idea. And the B.C. Human
32 Rights Tribunal should have dismissed it. I just
33 say -- I would say that. That's my opinion
34 because it was dismissed in the end anyway
35 because there was zero evidence that we -- but,
36 you know, we -- we were called racists.

37 I mean, you know, for somebody who had been
38 involved in education for this long, I mean, to
39 be -- to be labelled so often as racist,
40 homophobe, transphobe, it -- it -- it's
41 demeaning. It's not advancing our education for
42 young people whatsoever nor anyone's trust in the
43 institutions like the B.C. Human Rights Tribunal.
44 That's my opinion. This is my -- having lived
45 under this specter of charge that -- you know,
46 it -- it puts a dampening on you for wanting to
47 be involved in children's education. It truly

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1 does.

2 Q Do you think that's the intention?

3 A Intention of what?

4 Q Of the -- of the name calling.

5 CNSL L. WADDELL: I'm just going to interject here to
6 put some objections on the record. First, that
7 is the question asking the witness to speculate
8 about intention, which the witness can't do, and
9 also -- and I'm not going to hold it up because I
10 do -- things went faster yesterday, but all of
11 what this witness is -- is testifying about has
12 zero connection to any of the legal issues in
13 this case; so it's -- it's all irrelevant. But
14 I'll let my friend determine if he wants to
15 continue.

16 THE CHAIR: Mr. Kitchen?

17 CNSL J. KITCHEN: I don't know if we need to waste any
18 time. I know you don't want to listen to what I
19 have to say, so --

20 THE CHAIR: Well, hold on. Mr. Kitchen, that's --
21 I've asked you before to refrain from those kinds
22 of comments which suggest something untoward
23 about the integrity of this Tribunal. You're an
24 officer of the court and by extension this
25 Tribunal, so I'll ask you to kindly refrain
26 from --

27 CNSL J. KITCHEN: Well, yes, I --

28 THE CHAIR: -- those kinds of comments.

29 CNSL J. KITCHEN: I -- I -- I -- I am an officer of
30 the court; I take that very seriously, and I take
31 the integrity of this Tribunal and the repute of
32 this Tribunal very seriously, and, in fact, that
33 is the primary motivation for such comments.

34 THE CHAIR: Okay. Well, I'm asking you to kindly stop
35 with those kinds of comments, okay, until you
36 have a basis. I asked for your view -- for your
37 response to the objection; if you'd like to make
38 it, now's the time.

39 CNSL J. KITCHEN: I wouldn't say them if I didn't
40 believe in good faith as an officer of the court
41 that I didn't have a basis for making them, so
42 let's -- let's be clear about that. I'm -- I'm
43 very familiar with results-oriented decision
44 making and reverse-engineered outcomes and the
45 type of language that's used in Vavilov, and I'm
46 using that language intentionally because I'm not
47 seeking to be disrespectful for the sake of being

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1 disrespectful. If that's the incidental effect,
 2 then that's -- that's -- you know, be that as it
 3 may, but that's -- that's certainly not the
 4 intention or the purpose because, of course, that
 5 intention and purpose would not be acceptable.

6 But my -- my role is to be a zealous
 7 advocate. And if I perceive the types of things
 8 that Vavilov is speaking to, then it's my job as
 9 a zealous advocate to -- to -- to raise that
 10 and -- and to -- to mention those. As -- as
 11 uncomfortable and difficult as it may be for you
 12 to hear it or even for me to say it, that is my
 13 role as a zealous advocate. You know, and I
 14 think that's made -- made clear by the Supreme
 15 Court of Canada in the -- in the *Groia* case
 16 amongst others.

17 So just to be clear, that's -- that's been
 18 my role. That is my role. I didn't -- I didn't
 19 start out this hearing with that perspective, but
 20 that's -- that's what built up over time. And --
 21 and so, no, it doesn't seem like -- like -- like
 22 I've been listened to or I've been heard, and --
 23 and that doesn't -- doesn't hurt my feelings or
 24 anything -- I'm not worried about that -- but
 25 that -- that is my honest, objective perception,
 26 and so I -- I think it's -- I think it's fair to
 27 mention that.

28 And I don't want to take up any more of your
 29 time or Ms. Waddell's time with explaining what I
 30 think is obviously relevant. It's -- it's --
 31 it's not been heard. It doesn't seem like it's
 32 going to be heard, and -- and so, I mean, I'll
 33 put it in my written argument, and then we'll go
 34 from there.

35 So I -- I -- I do want to get through this
 36 witness as -- as quickly as I can. You know,
 37 like -- like -- like Rob, he has a lot of very
 38 valuable things to say, and he speaks quickly; so
 39 we're getting through it. And I think it's -- I
 40 think it's good, the rate that we went yesterday,
 41 and I think we might even go even -- even a bit
 42 quicker today, and -- and that's the goal.

43 So I -- I take my friend's point. You know,
 44 I -- I -- I have my -- I have my list, and I'm
 45 going to try to get through it as fast as I can.

46 THE CHAIR: All right. Well, just returning to the
 47 objection, you can't ask a witness to speculate

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1 about other people's intentions, so can you ask
2 your question in a different way.

3 CNSL J. KITCHEN: Right. I-- yeah, no, I didn't --
4 I -- yeah, I understand that. I wasn't trying to
5 speak to individual people's intentions, but I
6 understand -- I understand the point.

7 Q Dr. Furgason, do you recall Barry being excluded
8 by the majority of the board from attending the
9 schools in person?

10 A Yes, I do.

11 Q Okay. Did that happen for any other trustees?

12 A No.

13 Q And do you -- do you remember what the-- what the
14 majority's basis was for that?

15 A That I think part of the -- part of the B.C. --
16 BCTS attack through Glen Hansman and therefore
17 through the CTA, which seemed to be simply a --
18 well, the attack dog, if you will -- was, you
19 know, to discredit him and to follow the idea
20 that -- which I believe was part of Glen
21 Hansman's approach -- that he's a danger to
22 children, that he's a dangerous person to
23 children, which is absurd. He was elected with
24 more votes than me and has been elected for I
25 don't know how many terms; five, six, seven. I
26 can't remember. I wasn't on it.

27 So I don't ever remember hearing Barry say
28 anything in four years that appeared dangerous to
29 children or -- or that would make children
30 feel -- feel unsafe. I think it was a union
31 propaganda effort, picked up by the media, of
32 course, loved by the media. And he became a
33 scapegoat. Barry became, you know, the scapegoat
34 for all their ideological anger, as it were, that
35 there were people out there who didn't agree with
36 him. And so I would say they were hell-bent --
37 hell-bent on it. And that was -- you know, it
38 was four years I sat under that kind of thing.

39 So, you know, claiming that Barry's very
40 presence in a school makes children feel unsafe
41 is false if you look at how many people voted him
42 in to look after their children. So Barry should
43 have been allowed. It's -- it's -- I don't think
44 it's legal to keep an elected official from doing
45 his duty by hearsay, by propaganda, by -- by
46 vilification. That would be like saying, you
47 know, we're not going to let Premier Eby speak

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1 because he's dangerous to conservatives, you
2 know, so -- so he's banned; David Eby's banned
3 from ever speaking on the news because he -- lot
4 of us don't feel safe. And I don't, so there you
5 go. I don't feel safe around David Eby.

6 So, I mean, this is how ridiculous it would
7 be. You cannot do that with an elected political
8 body. And Barry was elected, and to be silenced
9 from representing 8- or 9,000 voters who wanted
10 him to raise a voice against this specter of this
11 looming ideology that a boy could become a girl,
12 a biological lie, yeah, that -- that -- that was
13 astounding, and we attempted to get that
14 overturned, and it was shot down by the
15 ideologically-driven, union-supported -- remember
16 we were the only three on that board who were not
17 connected to the union.

18 The chair was married to another teacher in
19 the union. One of the other trustees, I believe
20 his wife, they were in the union. The -- the
21 chair at the time, Dan Coulter, was, I believe,
22 a -- I'm not -- I better be careful. I'm not
23 sure if he was a CUPE member, but he was an NDP
24 person. So it was an ideologically-aligned
25 board, and so we saw all these demeaning
26 vilification terms and attempts as tiring,
27 distracting, unnecessary. Let us do our job.

28 They were literally preventing Barry from
29 fulfilling the role of an elected trustee with
30 only the -- the -- these diatribes that he was
31 evil, unsafe -- you know, whatever else. I can't
32 remember all the terms. But, anyway, that --
33 that's the context of it.

34 Q Let's talk a little bit about teachers as it
35 relates to the board. What's -- do -- do --
36 do -- does the board as a whole -- I'll ask about
37 individual trustees later, but does the board as
38 a whole have any -- any power over or interaction
39 with or ability to influence or direct teachers?

40 A No. No. We -- we don't have direct access to
41 teachers other than at a -- a celebration dinner
42 or -- with some, but we -- we are not directly
43 responsible for teachers. The superintendant
44 hires the teachers, and they're under the union
45 as well.

46 So the board represents parents. The board
47 represents the community; not the union, not the

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Darrell Furgason (for Respondent)
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1 teachers' union. So we're not there to direct
2 the teachers. We're not -- the -- the
3 superintendant does that. He -- he's the one --
4 we -- I don't think I -- trying to think if I
5 ever talked to a teacher except at a coffee
6 morning or something. No, we did not have the
7 responsibility to represent teachers. Our job
8 was to represent the public, to represent
9 families who voted for us. So, yes.

10 Q We had evidence from the teachers -- and this
11 point is obvious, of course, and -- and,
12 nonetheless, the complainants have made a claim
13 of discrimination in employment saying that Barry
14 is their employer, but the teachers, when I --
15 when I asked them about this, the -- some of the
16 evidence I got was that he has -- he has an
17 indirect impact or he has a -- has an -- has an
18 informal influence. What would you say in
19 response to that? Is there any merit to that?
20 A Informal? Like, what does that mean? He exists,
21 so that's an informal influence? What -- what --
22 I mean, I exist; am I an informal influence? You
23 know, I don't know. I mean, I think it's
24 farfetched.

25 Number one, we're not the employer; we're
26 the representatives of the public. Let's get
27 that straight. I was elected by the public to
28 represent the public. Nobody said I'm going to
29 represent the union. In fact, I didn't get union
30 endorsement; none of us did. They endorsed their
31 candidates, which I think was -- I'm not sure of
32 the legality of putting that on paper. They
33 were -- but they did. I think it went to press.
34 It became clear who the union-supported trustees
35 were, and it wasn't me, it wasn't Barry, and it
36 wasn't Heather.

37 But, no, we -- we -- what -- what does it
38 mean, "informal"? I mean, we make -- we are
39 there to support the policies that are directed
40 at student achievement. Student. Student
41 achievement. My focus was on students, not the
42 union. In fact, the union's attacked us in the
43 media. I got called various names. The unions
44 were there to achieve what their members -- what
45 the unions wanted for their members. And let's
46 face it. A lot of teachers don't -- don't
47 support their own union. The -- the union

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1 doesn't take a vote when they start attacking
2 trustees in the media or whatever. So there are
3 activists in the unions. Of course there are.
4 Glen Hansman's an activist.

5 And I've got -- if you want to see what
6 his -- I mean, can I -- should I bring this -- I
7 may as well because we might never get to it.
8 Here -- here -- here is the title of his master's
9 thesis. Okay? Master's thesis at UBC in 2008.
10 And -- and the title tells you exactly what this
11 individual who became the -- the -- the president
12 of the BCTF and was very active during our term
13 and has charged Barry, slandered Barry, vilified
14 Barry.

15 The court agreed that Barry had been
16 defamed. The B.C. Supreme Court ruled three --
17 with three judges that he'd been defamed by this
18 individual saying he was dangerous. I don't know
19 all the terms. Dangerous, kids -- you know,
20 whatever. He was -- he -- but the court here
21 agreed that Barry was defamed by Glen Hansman and
22 awarded Barry the -- the -- the case only to have
23 Hansman load up his case with all the -- the --
24 David Eby and all these irrelevant people to take
25 it to the Canadian Supreme Court to rule that
26 Barry -- yeah, Barry was defamed, absolutely. He
27 was defamed. But that doesn't matter because
28 Glen Hansman is interested in helping the poor
29 marginalized kids. Like, what? So we're going
30 to -- we're -- we're going to put aside justice
31 to -- to...

32 So, anyway, his title of his thesis -- let
33 me tell you what -- it gives an idea of what he
34 was aimed at. *The Politics of Minority Interest:
35 Building Queer-Friendly Schools in Vancouver.*
36 His -- this is an ideological agenda, his aim.
37 His aim is not unions and their members; his aim
38 is building queer-friendly schools. So I'm
39 telling you right away we have an ideological
40 agenda of the union, and anyone who didn't toe
41 that line was an enemy, as is common about -- and
42 I just want to say a few things about ideology
43 since that's my background.

44 An ideology is a belief that society should
45 be structured in a certain way along certain
46 values. So there is a -- there is an LGBTQ
47 ideology, and it's well-known. You just have to

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Darrell Furgason (for Respondent)
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1 Google it. And this man represented that and
 2 spoke for it. He wasn't talking about teachers;
 3 he's talking about getting rid of opposition,
 4 which is typical of an ideology. Ideologies will
 5 always suppress opposition. Now, think of
 6 ideologies. I'm not saying that the union was
 7 this or that, so don't quote me wrong, but
 8 there's lots of -- liberalism. You know, Nazism,
 9 socialism, Marxism -- I mean, lots of ideologies.
 10 They all have a -- they all have a mantra. They
 11 all have a mandate. Well, the mandate -- the --
 12 the mantra of this -- I'll call it "LGBTQ
 13 ideology" or -- or what Glen Hansman represented
 14 was DEI. DEI was their mantra and only defined
 15 in their terms. It always seeks to cancel out
 16 any counter-revolutionaries, if you want to use a
 17 Marxist term. So people who are under the
 18 Soviet Union or Afghanistan -- Islamic ideology
 19 persecutes people under those systems who don't
 20 agree with certain terms. You're going to be
 21 imprisoned, executed in Afghanistan if you become
 22 a Christian from a Muslim. Ideology seeks to
 23 suppress dissonance.

24 And -- and the other thing is they all have
 25 a flag. All ideologies, all political ideologies
 26 have a flag. Why is there a rainbow flag hoisted
 27 up on a flagpole at -- at the school board? By
 28 the RCMP? By the government? Why is there a
 29 Pride Month? We don't have a Canada Month.

30 This is all a form of coercion to proclaim
 31 an ideology that can't be questioned. It can't
 32 be questioned. If you questioned it, you're a
 33 hater. You violate the B.C. *Human Rights Code* if
 34 you question this.

35 You know, so the -- the -- the -- they adopt
 36 terms to suppress any opposing view. Homophobe,
 37 transphobe, bigot, hater -- these are all
 38 indicators of denouncing other people's ideas to
 39 promote their ideology, and that's exactly what
 40 Glen Hansman's thesis is for.

41 Education is not to set up gay-straight
 42 alliance clubs in every school, and that's what
 43 we had in Chilliwack. We have GSA; gay-straight
 44 alliance clubs. I -- I don't see Christian
 45 clubs, Muslim clubs, Hindu clubs. I don't see
 46 other clubs there. But we have -- we have this
 47 individual who's a head of a union not looking

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Darrell Furgason (for Respondent)
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1 after his members but promoting the setting up of
2 clubs that promote a certain kind of sexual
3 activity, and that is not the role of any school
4 board to promote any sexual activity.

5 And that's why this SOGI 123 becomes
6 dangerous in the hands of -- of ideologues,
7 because they want to promote a certain kind of
8 sexual orientation. And I've just listed 47 of
9 them. You can't promote that. If you're going
10 to promote sexual orientations, you're going to
11 start with 47 and start teaching this to kids?
12 That's abuse. That's a form of child abuse,
13 totally, to push children into ideas that they
14 shouldn't be getting that are confusing.

15 And if you want to -- I did Google the
16 definition of "child abuse," and -- and we should
17 look at that because child abuse is upsetting
18 the -- the sense of a child's idea of who they
19 are and their own emotional and psychological
20 safety, and you're causing harm if you do that.
21 So abusing a child can be ideological and can
22 be -- can be very visible through SOGI 123, and
23 the board was there to express some concern about
24 this, and that's the role of an elected board,
25 which I was there, so I -- I was almost forced
26 into it to have to say, "Hey, look, this is an
27 ideology. Okay? Children should not be learning
28 to pretend that you can change your sex." And
29 I'm going to be very careful here because --
30 well, I've got an article I should -- I should
31 read.

32 But you cannot change your sex from male to
33 female, and this whole ideology that's pushing
34 gender -- now, what is gender? Gender is not
35 sex. Google it yourself. Gender is a
36 psychological view of -- of your -- your sex and
37 who you are in your sex. So gender dysphoria is
38 a psychological condition where you view --
39 choose to view yourself and your biology in a
40 different way. And here's -- here's a list of
41 47 ways you could do that. So this is not
42 biology.

43 So gender -- gender involves an ideological
44 position because you cannot biologically
45 transition from male to female. You cannot.
46 It's biologically absurd. It's never been done.
47 And cutting off one's breasts, as was done by

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1 Teri Westerby who is currently a board trustee --
2 she has cut off -- and I'm going to use a sex
3 term, not a gender term, because I've been
4 accused, you know, of -- of -- of misgendering
5 this person when I didn't speak of gender at all.
6 I spoke of sex.

7 Teri Westerby was born a female because Teri
8 Westerby said, "I have a uterus, and I would like
9 tampons in every boy's bathroom because I
10 identify as a -- as a man." So we have this
11 psychological condition being forced upon boys in
12 Chilliwack schools to the tune of \$80,000 or
13 something per year to have tampon -- tampons in
14 every boys' washroom -- which were obviously --
15 you know, abused boys through the knot (phonetic)
16 and whatever -- because -- because a transgender
17 person feels like they're not -- they're --
18 they're not -- it's not equity. What about
19 hundreds and hundreds of boys' sense of emotional
20 and psychological security?

21 So, anyway, it -- it's -- it's a political
22 issue here. And so we -- we -- we were forced
23 into it as trustees by the activities that were
24 raging all through the media, the courts. People
25 being punished around the world for expressing.
26 And -- and if you -- if you questioned
27 transgenderism -- and let me tell you this --
28 someone who has a degree in -- two degrees in
29 philosophy -- transgenderism is an ideology like
30 Nazism, Islamism, individualism, socialism,
31 fascism -- whatever you want to call it. It's
32 a -- it's a philosophical position that -- that
33 you can change your -- your -- well, it's moved
34 from gender -- gender to sex.

35 Now, obviously anybody can change their
36 gender because it's a psychological condition.
37 That's why they call it "fluid." Well, one day
38 you're asexual; the next thing you're polysexual;
39 the next thing you're bisexual. And, hey, we can
40 all have that. That is -- that is a -- a -- a
41 psychological issue that you are communicating to
42 children which is confusing them.

43 In fact, I had calls from a grandparent who
44 said their six-year-old just came back from a
45 Chilliwack school and said, "Grandma, I can be a
46 boy or a girl if I want," and Grandma was shocked
47 because, no, you cannot change your sex. So it's

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1 being marketed. It's been marketed by an
2 ideological agenda called transgenderism that --
3 and they're confusing.
4 They're conflating sex and gender. Sex is
5 biology. There are only two sexes, and they can
6 never -- and have never been shown to -- you can
7 move from a male to a female, and yet these words
8 are now being conflated and put together by
9 people who said --

10 And I was kicked out of a board meeting --
11 after I stepped off the board, I went to public
12 meetings. I questioned a female who was putting
13 up -- I don't know if you've seen the meme by
14 Teri Westerby showing a steamroller -- I'll put
15 it in my thing -- running over a -- a rainbow
16 steamroller crushing traditional and Christian
17 values. This is an elected trustee who's
18 vilifying conservative people as we speak, and to
19 question that, that very activity becomes hatred.
20 I'm -- I'm a hater so --

21 THE CHAIR: I'm just going to jump in here. Sorry to
22 interrupt, although it is my role to try and keep
23 us on track if I can.

24 Mr. Kitchen, obviously your role as counsel
25 is to be asking questions related to the issues
26 in this case, and so we're -- we've gone -- we've
27 gone far off track here, and I'm just wondering
28 if you can bring your next question forward that
29 relates to the case.

30 A Sorry. I go into too much detail.

31 THE CHAIR: That's okay. I mean --

32 CNSL J. KITCHEN: No, I -- I --

33 THE CHAIR: -- I'll just say this is a -- I mean, I'm
34 not sure if you've been involved in legal
35 proceedings or not. It's different than a
36 conversation; right? We're just here for a very
37 targeted reason of getting evidence -- firsthand
38 evidence --

39 A Okay.

40 THE CHAIR: -- related to legal issues which is, you
41 know, question-driven.

42 So, yes, Mr. Kitchen, if you could ask your
43 next question.

44 CNSL J. KITCHEN: Well, I'm going -- I'm just going to
45 point out to the witness I respectfully disagree.
46 Getting evidence, oral evidence, oral testimony
47 from witnesses is a conversation between the

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1 lawyer and the witness. That's how it happens,
2 so I would respectfully disagree. And -- and,
3 no -- and I would also disagree with my witness
4 being -- off the track, I think was -- was your
5 words. I think this is entirely on track. If
6 you -- if you appreciate the issues in this case,
7 then this is entirely on track, actually.

8 Okay.

9 Q Dr. Furgason, I -- I do appreciate all those
10 comments, but -- and I am going to take you to
11 some of Barry's posts, okay, specifically, but
12 let me ask you this. The -- the -- one of the
13 core issues in this case -- or at least from
14 Barry's perspective of the law, one of -- one of
15 his -- what he thinks is a core issue in the case
16 is that he says he's not attacking people at all;
17 he is criticizing an ideology or -- or the
18 ideological beliefs that certain people hold.
19 And it was confirmed in evidence in
20 cross-examination that, indeed, the types of
21 beliefs that he has been criticizing, he calls
22 them "gender theory," "gender ideology." You've
23 used those phrases.

24 People who hold those beliefs have come
25 before this Tribunal to give evidence about what
26 they thought of those views of -- of Barry's
27 beliefs, and they have -- they have said that
28 they feel like Barry is attacking them. They --
29 they -- they have received his comments as an
30 attack on them, as -- as -- as a human being,
31 as -- as a person. What -- what do you say in
32 response to -- to -- to the teachers who are
33 saying, look, this -- this -- this is -- this is
34 harming us; this is hurting us; this is attacking
35 us as people?

36 But Barry says no, it's -- it's -- it's --
37 I'm -- I'm attacking ideas. What do you say to
38 the people who hold these beliefs, the -- the
39 queer people that we've had as -- as witnesses
40 who say, "Look, no, you're attacking -- you're
41 attacking me when you -- when you attack -- when
42 you say the things you say"?

43 CNSL L. WADDELL: Just if he can reframe the question
44 and use -- the witness is not -- if you want to
45 put those witnesses -- get some evidence to him
46 and say, "Do you agree," that's fine, but he's
47 not -- he's not speaking to those witnesses here;

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Darrell Furgason (for Respondent)
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1 he's giving evidence to the Tribunal. What --
2 what he thinks --

3 CNSL J. KITCHEN:

4 Q Dr. Furgason, what would you say to the Tribunal
5 in response to these witnesses saying, "Look,
6 this -- this -- what Barry has done is attacked
7 us as queer people"?

8 A Well, let me give you a similar example. If --
9 if I attack Trudeau -- if I attack his party, you
10 know, which I do, and so does the media and so
11 does everybody, 'cause that's politics, okay.
12 Remember, in politics, you know, I -- I -- I
13 don't like Trudeau, his oil policy -- blah, blah,
14 blah. I don't like his ideology of selling us
15 out to China or whatever. Am I attacking Trudeau
16 personally? No. I'm attacking policies.

17 So -- so for someone to say that if we
18 criticize gender ideology -- and, trust me, you
19 can Google "gender ideology." I've just listed
20 some of the -- the defining points -- the flag,
21 the mantra of DEI. It's an ideology. And -- and
22 I disagree with some of this stuff too. I
23 disagree with their definitions of DEI, of
24 course. They're not inclusive. They're not
25 including the Christian community, Muslim
26 community, conservatives -- nothing. It's not
27 inclusive, it's not equity, and it's not diverse.
28 And there's something wrong with diverse sexual
29 orientations.

30 If you're going to say that 47 of these are
31 perfectly good for children to learn about -- and
32 it's growing number. The flag is getting more
33 and more and more colours on it and squares and
34 triangles and circles 'cause -- how big is it
35 going to be to include 47? I mean, you know, it
36 becomes absurdity.

37 So questioning any of this as a political
38 ideology is not wrong. That's the role of an
39 elected person. That's the role of the
40 opposition party, the conservatives right now in
41 B.C., to criticize David Eby and his policies.
42 Now, they don't hate David Eby, and he shouldn't
43 be afraid that, you know, somebody spoke against
44 his oil policy.

45 It's -- politics is ideological, and we --
46 Barry was elected to represent a portion of the
47 community that has concerns about an ideological

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Darrell Furgason (for Respondent)
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1 agenda, an overtly ideological agenda pushed by
2 people like Glen Hansman who's in a position of
3 power.

4 So if anybody has power, it's not Barry
5 Neufeld. He's only one of seven. He has no
6 power. No power. I had no power to vote
7 anything unless it was a majority of four,
8 whereas Glen Hansman, the head of the BCTF, has
9 all the power of thousands of union members,
10 including the CTA who worked lock in step to use
11 law against an individual. And so they're
12 claiming that Barry has power? What power? We
13 had zero power. That's the function of a board.
14 That's why there's seven.

15 So -- so this -- whoever claims that -- you
16 know, that he was talking about them is just like
17 that charge I got from the B.C. Human Rights
18 Tribunal that I was a racist. I was a racist
19 because I talked about the naming of a school.
20 Okay? It -- it's -- it's wrong. It's way off
21 course for these structures to do this.

22 So, no, these people who are claiming that
23 are, I would say, disingenuous or they -- they
24 are what we would call in our old generation
25 "gold diggers" -- you know, I mean, looking
26 for -- or they're simply a tool of the union.

27 And, by the way, I think some of that is
28 true because why did it take the union, the CTA,
29 six years to come up with a victim? It's a --
30 it's a travesty of the law and procedure. The --
31 the B.C. Human Rights Tribunal did not stop this
32 without evidence. So I -- I -- I think the claim
33 now that some of these people feel like, you
34 know, they were hated is nonsense. Nonsense.
35 I -- I -- some of the -- no.

36 So, anyway, I -- I won't go on. I talk too
37 much. I'm -- I'm a professor, so I got to shut
38 up; otherwise, this -- don't talk too much. Next
39 question.

40 Q Going to share my -- got to get it up here.
41 You -- you've answered a lot of my questions, of
42 course, so -- a lot of the questions I hadn't
43 asked yet. But let's -- let's go -- hold on
44 here. There it is.

45 Okay. Can you see my screen here? A little
46 bit of sliding up and down?

47 A Yeah.

1007

Darrell Furgason (for Respondent)
In chief by Cnsl J. Kitchen

1 Q Okay. We had evidence from the teachers that
2 SOGI 123 and -- and the ideas underpinning it,
3 which you've already pointed out, they're obvious
4 in this case; the changing of genders, the being
5 born in the wrong body, the -- the multiple
6 genders, that sort of stuff. I asked the
7 teachers at length about this and if it was being
8 taught as a theory or as fact, and they said it
9 was being taught as fact, and they said
10 repeatedly to me it is a fact that there's more
11 than two genders; it is a fact that you can be
12 gender fluid or that you can -- you can
13 transition from one gender to another. I was
14 told this repeatedly by the teacher witnesses.

15 I'll ask you a specific question about what I
16 have in front of me here, but -- but first I'll
17 ask you, as a school board trustee -- speaking as
18 a school board trustee in the four years you were
19 there, do you have any concerns about those
20 beliefs being taught as fact to the children in
21 the district?

22 A Yes. Well, your very statement that you said
23 just then that the union supported the view that
24 you could change genders, they're talking about
25 gender, but they're including sex in that, and
26 that's the error. You cannot change your sex.
27 So what's being confusing is that they are --
28 they're merging the two. Sex and gender become
29 the same. So when they use the word "gender,"
30 they are referring to sex, and that's a -- that's
31 a biological lie. So when somebody says you can
32 change from a boy or a girl, they're talking
33 possibly gender, and they're -- they're --
34 they're -- that is not referring to sex. So ask
35 these teachers "Are you referring to their
36 biological sex or their psychological state?"
37 Because now the word "woman" is meaningless.
38 Okay? "Woman" and "man," I don't use them
39 anymore. I use "male" and "female." You're safe
40 with "male" and "female." I never use the word
41 "woman" and "man" because they're meaningless
42 because a woman could be a man. Men can have
43 babies, that idea, which is nonsense.

44 So even the Supreme Court nominee in the
45 United States, the Black woman, she couldn't
46 define "woman." When -- when they say, "Could
47 you define 'woman,'" she wouldn't define it.

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Darrell Furgason (for Respondent)
 In chief by Cnsl J. Kitchen

1 Therein lies the ideological lie and coercion is
 2 to -- and this is typical of an ideology to
 3 capture the -- the language, redefine terms, and
 4 paint your enemy, your dissidents, your --
 5 your -- your non-conformists as evil.

6 So anyone can think themselves anything they
 7 want. You want to think yourself -- gender as
 8 fluid? Yes, gender is fluid, but biology isn't.
 9 So this lie that I encountered on the board that
 10 Teri Westerby was a male in an open meeting that
 11 I went to after the election as I was -- was
 12 concerned about some of these sex books, what I
 13 consider porn books like *Gender Queer* being in
 14 our schools showing homosexual sex acts -- which
 15 under the *Criminal Code* I believe is illegal to
 16 show any sexual acts to children under 18 but,
 17 hey, it's being done.

18 So all this stuff is landsliding into the
 19 system, into the school system under the guise of
 20 human rights. It's not a human right to teach
 21 sex acts to a kid in Grade 1 that include
 22 homosexual sex acts, fellatio, and anal sex which
 23 is all in gender --

24 I'm getting off the track, but my point --
 25 going back to -- is -- is this is an ideology
 26 that is attempting to teach that gender and sex
 27 are -- are -- are exchangeable, and they are not.

28 And so you do not discriminate against
 29 somebody as I did in that public board meeting
 30 when I said, "Teri Westerby is a female," and the
 31 whole place went ballistic, and I got kicked out
 32 of a public -- a public school board meeting for
 33 misgendering someone, and I never even used the
 34 term "gender." But this is how they go. Teri
 35 Westerby's colleague said, "Teri is a male," and
 36 I said, "No, I'm sorry, Teri is a female," and
 37 they went ballistic. I said, "Because Teri
 38 posted on Facebook 'I have a uterus,' and in
 39 biology only females have uteruses, and if she
 40 wasn't a female, why did she cut off her
 41 breasts?" She wouldn't have breasts if she
 42 wasn't a female, and she uses --

43 THE CHAIR: We've gone -- sorry. We've gone so far
 44 off track again. I'm not sure -- this -- this
 45 complaint has nothing to do with Teri Westerby,
 46 so I -- I don't -- I don't want to keep
 47 dragging --

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Darrell Furgason (for Respondent)
 Proceedings

1 A Okay. I'm sorry. I'm sorry.
 2 THE CHAIR: -- his name into it and -- and talking --
 3 A Okay. So that --
 4 THE CHAIR: -- about bodies and so on. So --
 5 A Okay. So gender --
 6 THE CHAIR: -- coming back to the question.

7 A -- and --

8 CNSL J. KITCHEN: Well, considering Teri Westerby did
 9 precisely what Barry Neufeld did -- in fact, I
 10 would say probably in a much more vulgar
 11 fashion -- but criticized --

12 A Yes.

13 CNSL J. KITCHEN: -- ideas of Teri Westerby's political
 14 and ideological contestants or opponents, that is
 15 relevant because it gives important context. It
 16 helps the Tribunal, if it wants to see, if it's
 17 willing to see, that there is a contest of ideas
 18 between opposing world views. Right? Teri
 19 Westerby's world view is that these Christian
 20 values and traditional family values are bad and
 21 Teri Westerby opposes them.

22 Barry Neufeld thinks the ideas about
 23 changing gender are bad ideas and opposes them.

24 And that begs the question why is the
 25 Tribunal, potentially, if it was decide --
 26 decided in favour of the complainants in this
 27 case, picking favourites in the marketplace of
 28 ideas as if it was a government engaging in
 29 economic intrusion into the free market.

30 So that context is important in deciding
 31 hate speech. Hate speech is not decided in a
 32 vacuum. Hate speech is not decided because one
 33 side is able to say that they are more offended
 34 or shocked or upset or hurt than the other side.
 35 It is -- to go back to your comments, it is an
 36 objective test. In order to perform a proper
 37 analysis about that objective test, we must look
 38 at the context. What is the current social
 39 climate and debate and discussion about the
 40 issues? Are both sides criticizing each side's
 41 ideas and ideological views and beliefs and
 42 should it -- is it appropriate to come in and
 43 pick sides and say that one side is engaging in
 44 hate speech but the other side isn't?

45 I can go on; I won't. The point is it is
 46 relevant what the other side in this debate is
 47 saying about the people that they have accused of

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Darrell Furgason (for Respondent)
Proceedings

1 hate speech. Okay? If it's not relevant, then,
2 with all due respect, the analysis is incomplete.

3 THE CHAIR: All right.

4 CNSL L. WADDELL: Well, I will add only -- just for
5 the record again -- that I think, Mr. Kitchen,
6 you're on adequate notice that my position is
7 that the entirety of this witness's evidence is
8 irrelevant and inadmissible, and the Tribunal has
9 expressed some view that this is irrelevant, and
10 so I -- I'm just making that clear because it may
11 be something that we address in a costs
12 application which, as you know, we already intend
13 to bring in terms of wasting everyone's time with
14 irrelevant matters and witnesses. I appreciate
15 you take a different view. We'll see how that
16 ultimately plays out, but I just wanted to note
17 that for the record.

18 CNSL J. KITCHEN: Well, we were over six days with
19 your case, and I think we're on day, what, three,
20 four at most, of my case; so I think that's
21 a bit --

22 A May I -- may I -- may I say something?

23 THE CHAIR: Just not yet. Just -- just a moment, sir.
24 We just have to resolve this issue, and then
25 we'll come back to the next question for you.

26 Mr. Kitchen, I just -- I can't leave. I --
27 I must address a couple of things that you said
28 again about the Tribunal which, respectfully,
29 consistently fundamentally misconstrues and
30 misunderstands the Tribunal's role and why we're
31 here. You've referred to us picking sides,
32 picking favourites in the marketplace of ideas,
33 picking and choosing sides and hate speech, and I
34 just kindly remind you that we're not a royal
35 commission about SOGI or a royal commission about
36 speech and the human right -- in Chilliwack
37 School District.

38 We are tasked -- a complaint has been filed.
39 Our job under the *Human Rights Code* is to
40 adjudicate that complaint based on admissible
41 evidence from witnesses with relevant firsthand
42 information, and then we make our decision.

43 You have plenty of strong defences that you
44 can advance, which I haven't heard yet, and
45 hopefully I will in your legal argument. You
46 have plenty of opportunity to do that. But to
47 continually suggest that we are picking sides or

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Darrell Furgason (for Respondent)
Proceedings

1 somehow bringing charges or, you know, picking
2 favourites and that we're just in a marketplace
3 of ideas is a fundamental misunderstanding of
4 what the Human Rights Tribunal is. I mean, it's
5 like a court.

6 For those of you who aren't lawyers, we're a
7 court. We adjudicate disputes. That's what's
8 happening here. The evidence should be related
9 to those disputes.

10 Just before the objection or the
11 interjection, Dr. Furgason was talking about an
12 experience it sounds like he had in a board
13 meeting where he was having an interaction about
14 Teri Westerby, which, with all due respect -- and
15 it's not the witness's -- I don't -- I'm not
16 faulting the witness -- is nothing to do with the
17 events in this complaint.

18 So it's 11 o'clock. I'd like us to take a
19 break so we can regroup and come back --

20 CNSL J. KITCHEN: Well --

21 THE CHAIR: Yes?

22 CNSL J. KITCHEN: Counsel, that's fine. We'll take a
23 break. I -- I just -- I just have to mention,
24 okay, in response to what you just said, there
25 was an application to dismiss this complaint that
26 the Tribunal denied. Okay? Somebody is coming
27 and claimed that the school board trustee is
28 their employer which -- which, just on its face,
29 is a very shaky claim. Okay? And the Tribunal
30 has said, "No, we want to hear that claim
31 through." And so, yes, that makes me wonder,
32 okay, well, what -- how does the Tribunal view
33 its role? That is obviously not employment
34 discrimination. If a trustee simply criticizes
35 an idea and then a teacher who holds that idea
36 says, "I've experienced discrimination
37 employment," that's pretty readily on the -- on
38 the -- on the law not likely to be successful.

39 Tribunal disagreed, said, "No, we got to
40 have a hearing on it." And so now we're having a
41 hearing on it, and it seems like my -- the
42 Tribunal and the complainants are upset that
43 we're having a full hearing on that.

44 Well, you know what, maybe we wouldn't have
45 if the Tribunal had of, in my view, properly
46 understood its role and said not likely to be
47 successful in any way because there's -- put

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Darrell Furgason (for Respondent)
 Proceedings

1 aside the issues -- and -- and here -- herein --
 2 herein maybe is the problem. Perhaps the issues
 3 weren't put aside the way they should have been.
 4 Okay? And let's look at the -- no, there's no
 5 connection, okay, so we're not -- we're not going
 6 to -- we're not going to go to a hearing on it --
 7 THE CHAIR: This isn't --
 8 CNSL J. KITCHEN: -- and then we get -- we then we
 9 get --
 10 THE CHAIR: -- I -- I don't know what you think is
 11 happening --
 12 CNSL J. KITCHEN: -- to a hearing on it --
 13 THE CHAIR: -- right now. Mr. Kitchen --
 14 CNSL J. KITCHEN: -- and everybody's complaining that
 15 we're taking a long time --
 16 THE CHAIR: Mr. Kitchen --
 17 CNSL J. KITCHEN: -- to go through the hearing --
 18 THE CHAIR: -- this is not -- Mr. Kitchen --
 19 CNSL J. KITCHEN: -- to talk about all this stuff --
 20 THE CHAIR: -- I've --
 21 CNSL J. KITCHEN: If we're going to establish --
 22 THE CHAIR: -- asked you before --
 23 CNSL J. KITCHEN: -- an employment connection --
 24 THE CHAIR: -- when I say your name --
 25 CNSL J. KITCHEN: -- between teachers and trustees --
 26 THE CHAIR: -- you need to stop talking.
 27 CNSL J. KITCHEN: -- we're going to have to look at --
 28 THE CHAIR: Mr. Kitchen -- okay --
 29 CNSL J. KITCHEN: -- all this context because
 30 obviously there's no --
 31 THE CHAIR: Mr. Kitchen, I'm cautioning you now that
 32 you're not respect --
 33 CNSL J. KITCHEN: -- direct connection.
 34 THE CHAIR: Okay. Mr. Kitchen, that was wildly
 35 inappropriate.
 36 CNSL J. KITCHEN: You interrupted me --
 37 THE CHAIR: I'd like to --
 38 CNSL J. KITCHEN: -- Chair.
 39 THE CHAIR: I'd like to talk to counsel in a -- in a
 40 breakout room. Everybody else can take -- can
 41 take a break. I need to talk to counsel, and
 42 then we are going to also need a break, so I'll
 43 come back when I -- when we're done so that I can
 44 tell everyone else how much time we need.
 45 So just a moment. I'm creating a breakout
 46 room just for counsel.
 47 We're missing one person. Just a moment.

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Proceedings

1 All right. I'll be right back.

2
3 (WITNESS STOOD DOWN)

4
5 THE CHAIR: Oh, you were there as meeting guest.

6 Apologies. I didn't see your name.

7 I've pulled you in here, Mr. Kitchen,
8 because I'm having a real difficulty with some of
9 your conduct in the course of this proceeding,
10 and I don't want to air it in front of members of
11 the public for two reasons: out of courtesy to
12 you and, second of all, because of my impression
13 that some of this is, frankly, a performance for
14 members of the public.

15 So I know you've taken issue with me
16 interrupting you --

17 CNSL J. KITCHEN: Can I -- can I hear your --

18 THE CHAIR: Oh, I'm just --

19 CNSL J. KITCHEN: -- your -- your --

20 THE CHAIR: -- yeah, I'm just talking.

21 CNSL J. KITCHEN: -- your take on that.

22 THE CHAIR: This is the issue. Listen.

23 CNSL J. KITCHEN: Okay.

24 THE CHAIR: I know you've taken issue with me
25 interrupting you at times, and I'm going to
26 remind you again that part of our role is to
27 exercise control over our proceedings, so there
28 is a bit of an imbalance where I can interrupt
29 you and you shouldn't be interrupting me. That's
30 just inherent in the nature of this proceeding.
31 And it may be frustrating for you, but I'm -- I'm
32 going to ask you to -- to respect that.

33 And then what -- what got us here -- well,
34 the immediate thing was you wouldn't stop talking
35 when I asked you to stop talking -- is you were
36 making a long submission about the Tribunal not
37 dismissing the complaint in a process that was
38 fully adjudicated and judicially reviewed and
39 that it was wrong and that it was acting
40 improperly in advancing this complaint.

41 And, again, I'm going to come back -- I'm
42 assuming you're -- you're licensed to practice
43 law in British Columbia since here you are, but
44 under the code of conduct -- sorry, let me just
45 pull that up. Where's my mouse?

46 The lawyers' code of conduct certainly
47 allows you to advance objections to or concerns

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Proceedings

1 about the fairness of a proceeding. I mean,
2 we -- we have no issue with you doing that, but
3 as a lawyer, your duty is to do that in an
4 appropriate, respectful way that upholds the
5 integrity of the Tribunal.

6 So 2.1-2 of the lawyers' code of conduct
7 says a lawyer -- sorry, (b):
8

9 Judges, not being free to defend
10 themselves --
11

12 This applies to us.
13

14 -- are entitled to receive the support
15 of the legal profession against unjust
16 criticism and complaint. Where there
17 is proper grounds for serious
18 complaint --
19

20 Which I gather you say you have.
21

22 -- it is proper for a lawyer to submit
23 the grievance to the appropriate
24 authorities.
25

26 And in this case I would say if you have some
27 complaint about the fairness of the proceeding,
28 you can address that issue on its merits or in
29 your closing submissions or, eventually, on
30 judicial review. But it's not appropriate to be
31 making public statements in front of a whole
32 audience suggesting that the Tribunal is
33 backwards engineering decisions and for -- I
34 mean, I'm -- I -- I've never experienced this
35 kind of disrespect before, frankly, Mr. Kitchen,
36 which is why you're in here.

37 So if you have something to say about the
38 fairness of the process, there is ample avenues
39 for you to properly raise those issues which are
40 not these kinds of comments.

41 And, in addition, while we're here, we
42 should have finished this hearing in time, and
43 now we're not going to. And there are many
44 reasons for that, and one of them is that you are
45 using these objections or interventions as an
46 opportunity to make long speeches about things
47 that we're not talking about, and so that's why I

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Proceedings

1 interrupted, which is part of my job, to try and
2 exercise some control over this proceeding. And
3 I have to ask you, with the deepest of respect,
4 to kindly stop doing it. If there's an
5 objection, just address the objection without
6 going on to these other areas.

7 So that's what I wanted to talk to you
8 about, and I hope that we can use the rest of our
9 limited time here to focus on admissible
10 evidence, targeted questions related to the
11 complaint, and respectful interactions that don't
12 repeatedly demean the Tribunal or suggest that
13 something untoward is going on when there's other
14 ways to do that. And, frankly, I don't see the
15 basis for it anyway. But you have other avenues
16 to -- to raise that, but it's not saying this
17 stuff in front of the public.

18 CNSL J. KITCHEN: Well, one thing I'll say out of the
19 gate that I'll -- that I'll -- that I'll do that
20 I think would be helpful to all of us is that if
21 you interrupt me, I will -- I will not speak. I
22 will -- I will let you interrupt me. You know,
23 it was a deliberate choice to keep talking this
24 time because you have interrupted me a lot,
25 and -- I don't know if "frustrating" is the right
26 word, but, you know, I -- I -- I -- it's happened
27 a lot, and -- and this time, you know, I -- I --
28 I wanted to finish my point, and I thought it was
29 fair to.

30 But we'll put that aside and say I will
31 commit to, when you interrupt me, to not speak
32 anymore, and -- and so I think that will be
33 helpful.

34 I don't -- I don't -- to the -- I don't know
35 if this -- this -- this is helpful, but I'll --
36 I'll -- I will just say it. You use phrases like
37 "demean" and "disrespect" and so -- I mean, you
38 know, I gather that's how you perceive it, and
39 that's -- I know this is a little bit ironic
40 because we're at a human rights -- that's not my
41 intention, and I understand that's -- but
42 that's -- that's -- that's -- that's the effect
43 on you, but I think it's important for me to be
44 able to defend myself to say that's -- that's
45 not -- that's not my goal here.

46 And -- and you might understand my -- my
47 advocacy to be surprising or unusual, and I

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Proceedings

1 wouldn't fault you for that, actually, but it is
2 not motivated by or intended to be disrespect
3 and -- and -- and definitely not for the purposes
4 of being disrespect. It is strong and zealous
5 advocacy, yes.

6 You -- you -- you don't -- you know, if --
7 if you're going to get into a case like this and
8 you're not just simply leading your client to
9 the -- to the gallows, which I'm trying not to
10 do, then you're -- you're -- you're going to come
11 in with -- with some pretty zealous advocacy.
12 Okay? You're not going to -- you're not going to
13 try to disrespect the -- the Tribunal. You're
14 not going to try to troll the Tribunal. You're
15 not going to try to do any of that, and I
16 haven't. If -- if that's been the incidental
17 effect at times, that is not my goal. I -- I
18 don't see any of my comments as disrespecting or
19 demeaning the -- the -- the Tribunal. Or the --
20 when I should -- I should -- you know, the
21 Tribunal members. I -- I got nothing personal
22 against you or your -- your colleagues. My -- my
23 comments are directed at the Tribunal as an
24 institution, and obviously you, as humans,
25 represent that institution; I get that. But
26 that's the direction of my comments is -- is --
27 is towards -- is towards the institution. And so
28 when I say things like, you know,
29 "reverse-engineered outcome" or whatever, this --
30 this is not meant to be demeaning and
31 disrespectful to -- to you or your colleagues as
32 human beings. That -- that -- that is what I
33 perceive. I think it's fair and appropriate to
34 put it on the record, especially since the
35 record's going to matter when -- when -- when we
36 get to the B.C. Supreme Court.

37 You know, I'm not supposed to go into a
38 proceeding and just never say anything and
39 then -- and then get to the B.C. Supreme Court
40 and allege bias. If -- if I've honestly
41 perceived it, I should -- I should -- I -- I
42 should put it on the record. At least that's my
43 understanding, right. And obviously that -- that
44 is uncomfortable. Okay? I get that. I get
45 that. But, you know, this is -- this is -- this
46 is -- this is what I, in good faith as an officer
47 of the court, have perceived with clients like

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Proceedings

1 this, like -- like Mr. Neufeld. I -- this is the
2 type of work I do. This is what -- this is what
3 I, honest to god, perceive. Okay?

4 And I -- I do -- you know, when I took the
5 oath to become a lawyer, I did feel that that
6 was -- was important. If I saw inherent biases
7 or -- or -- or prejudices or -- or unfairness in
8 -- in the judicial system that I work in, I
9 should not -- I should -- I should boldly point
10 that out, no matter how difficult and
11 uncomfortable it would be. And so that's
12 what [verbatim] I'm here.

13 And -- and -- you know what, I mean, we
14 could go back 20, 50 years ago, and it would
15 probably be the other way around. It would have
16 been -- would have been -- would have been
17 happening on -- on behalf of Aboriginals and gay
18 people and all the rest of it, and I actually
19 think that's great. I think advocacy is a
20 wonderful thing.

21 So to your performance comment -- and it's
22 fine if you think I'm doing that; I just -- you
23 know, I simply say, in my defence, no, I'm not.
24 This is me. You're getting the real me. And I
25 understand you might not appreciate the real me,
26 but this is -- this is what I do. I -- I -- it's
27 not a show. Yes, I am used to being in court
28 with people watching. A lot of my cases are
29 public, but this -- this is not a show. This is
30 taking enormous amount of time out of my practice
31 and -- and, you know, and -- and my life, and --
32 and it's obviously going to cost my client a lot
33 of money. We're fundraising for this thing.

34 The -- the -- we're not -- we're not here to
35 put on a show. That's not my goal. Okay?
36 You -- we -- we disagree, you know, wildly on the
37 issues; I understand that. And -- and -- and
38 maybe you will give me really good reasons as --
39 as to why I was -- I was totally off base on the
40 law, but my -- my honest-to-god perspective of
41 this is what I'm putting forward as far as the
42 issues. This is not a performance. It's not a
43 circus. It's not a -- a trolling event. It's
44 not any of those things. Okay? I have better
45 things to be doing.

46 I have -- I have -- I have a lot of clients
47 waiting for me to get out of this hearing.

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Proceedings

1 People who have experienced discrimination, okay,
2 calling me, crying about it. Okay? So that's
3 what I have to go back to.

4 This is not a performance to impress people
5 in the public. Okay? I may do a little of that
6 when I do media interviews. It's totally
7 inappropriate if I was to bring that into the
8 courtroom, and -- and I'm not. If that's what
9 you think, then I -- you know, I -- it's just my
10 style of advocacy is different, so I can
11 understand why you might think that, but I just
12 want you to know. Candidly, you know, person to
13 person in the justice system, that's -- that's
14 not what's going on here.

15 So hopefully -- hopefully some of that's --
16 hopeful I -- I -- I -- I -- I've tried, and I --
17 I think successfully -- to -- to steer clear --
18 clear of anything that's sort of personally
19 attacking you or -- or -- or making any of this
20 personal or -- or -- or anything like that.
21 That's -- that's important to me because I'm all
22 about hard on the issues and soft on the people.
23 That's -- that's very important to me just
24 as a -- as an approach, considering the kind of
25 work that I do. So if it's -- if it's coming
26 across as -- as really negative for you, then
27 I -- I get that.

28 You know, zealous advocacy -- advocacy is
29 going to -- going to feel that way when -- when
30 you come in with a client who's -- who's looking
31 at the whole thing saying, "Well, the -- the
32 deck's stacked against me. What can I do?" I
33 mean, that is how Barry and I honestly feel,
34 and -- and maybe we're wrong about that, and
35 we'll find out in the end, but that is honestly
36 how we feel.

37 You have to -- you have to remember
38 everything we're doing is out of honesty. Okay?
39 It's not out of let's put on a show; let's make
40 the chair's life miserable; let's -- let's make
41 Ms. Waddell's life miserable. It is -- it is --
42 it is our honest perspective. Okay? Maybe --
43 maybe wrong, but honest and, I think, reasonable
44 perspective. That's -- that's what we're
45 operating out of.

46 And maybe we will be proven wrong by your
47 decision in the end, but that is our honest

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1 perception. Okay? And -- and, you know, it --
2 it -- it is a reasonable one. I -- I -- I don't
3 think the Tribunal, you know, can -- can, with
4 all due respect, sit there and say that they
5 haven't contributed to that perception in the
6 public at all as if they've been entirely
7 neutral. I -- I just don't -- I just don't think
8 it's fair to say that.

9 And so that's -- you know, that's part of
10 the problem when we come into a proceeding like
11 this. Everybody coming into it is thinking, you
12 know, the deck is stacked against us, you know.
13 Well, let's -- let's make sure we -- we -- we do
14 the zealous advocacy thing because, you know,
15 we're going -- we're going into a hostile
16 environment. That's, honest to god, how it
17 feels, so --

18 THE CHAIR: Okay.

19 CNSL J. KITCHEN: -- I will do -- I -- I will -- I
20 commit to -- to not letting -- to not speaking if
21 you interrupt me, and I'll -- I'll do my best
22 also to -- to -- to shorten my comments.

23 You -- you and I have had a, I would say,
24 unusual back and forth where -- where -- where
25 you say things that I don't think are fair and
26 then I feel a need to respond, and I think you
27 feel the same way, and -- and the last thing I'll
28 say is I think that itself is indicative of what
29 I'm speaking to -- to about how we come from such
30 wildly different, you know, world views or
31 backgrounds or perspectives on things.

32 You say words like "demean," and I'm just
33 left -- I'm -- you know, I -- I furrow my
34 eyebrows because I'm wondering where that comes
35 from. But that's because we share such different
36 perspectives and world views. Right?

37 I probably have a very different perspective
38 on -- on -- on zealous advocacy and free
39 expression and -- and all the rest of it than --
40 than you do. And reasonable people could
41 disagree about what's reasonable, but I think
42 that's part of the problem here is we -- we -- we
43 fundamentally misunderstand each other, I think,
44 a lot of the time, and that's why I've tried with
45 lengthy submissions multiple times to -- to -- to
46 explain what I see as the issues, and we just
47 haven't understood each other because we see the

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1 issues so radically different, be that as it may.
2 But I think -- I think that's more the issue
3 than -- than -- I -- I don't think you're
4 personally trying to ruin my day either, by the
5 way, just so you know. So I -- I think that
6 might be the problem is it's -- it's -- it's felt
7 that way, perhaps, but -- but I don't think it
8 truly is. I think it's just a -- a very deep
9 disagreement on these issues. I do take it very
10 seriously that my client has been accused of hate
11 speech for simply exercising his right to free
12 speech. It's --
13 THE CHAIR: Okay.
14 CNSL J. KITCHEN: -- something I believe deeply in,
15 so --
16 THE CHAIR: All right.
17 CNSL J. KITCHEN: -- you know, that's -- that's part of
18 it.
19 THE CHAIR: Thank you. I -- I do appreciate those
20 comments and the commitment around interruption.
21 I see Ms. Waddell's hand, and I will just say I
22 appreciate that, and truly my interest is -- I
23 have an interest -- we all have an interest in
24 the integrity of the Tribunal, so that's where
25 I'm really -- that's why I've pulled you in here.
26 Ms. Waddell, go ahead.
27 CNSL L. WADDELL: Mr. Kitchen, you may not be open to
28 this, but I'm going to say it anyway, and if you
29 want to interrupt me, I'll stop.
30 You were called in 2017 or 2018; is that
31 right? Or did you practice somewhere first?
32 Like, in another jurisdiction, I mean.
33 CNSL J. KITCHEN: No. Yes, that's right. 2017.
34 CNSL L. WADDELL: Okay. My observation is that you
35 have a lot of experience for someone of those
36 years of call. I have a lot more, and I'm just
37 going to offer you some mentoring tips. Again, I
38 will stop. I -- I sense that you have practiced
39 on your own and/or in small organizations where
40 you haven't had a lot of mentor -- and maybe you
41 have; I don't know.
42 CNSL J. KITCHEN: No, that's -- that's fair.
43 CNSL L. WADDELL: But I can tell you that lots of
44 people have bias concerns in a variety of
45 different fora. If you were familiar with the
46 law around administrative tribunals, you would
47 know -- and you may know this; you may not. It

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1 sounds like maybe not -- that if you think there
2 is bias, your job is not to make what I would
3 characterize as, like, passive-aggressive
4 comments insinuating attacking the integrity
5 of -- I agree with you you're talking about not
6 the members personally, but you're talking about
7 the institution. But as an officer of the court
8 and a member of the bar -- whether you're
9 (indiscernible) here or in Alberta -- you have a
10 duty to -- you may not like them, but to --
11 within the confines of any legal proceeding you
12 are involved with -- to uphold that institution
13 and challenge -- you can bring challenges, right.
14 You and your client can challenge the
15 constitutionality of aspects of the *Human Rights*
16 *Code*. You can allege, on judicial review, that
17 the Tribunal has not, you know, acted reasonably
18 or whatever.

19 If you have a concern about bias, your job
20 is not to make comments; that is improper, in my
21 respectful view. I appreciate I'm not a bench
22 for the Law Society. But to bring an
23 application -- people do this all the time -- the
24 first step is seeking to have the panel recuse
25 itself. You bring that application to the panel,
26 they make a decision, and then you may seek
27 judicial review of that or reconsideration of
28 that if you disagree. That is the appropriate
29 channel.

30 A Tribunal member, of course, can't give you
31 legal advice. I'm not giving you legal advice.
32 This is member of the bar to member of the bar.
33 Okay? I will tell you you are better counsel
34 than most people I see acting for clients like
35 yours, but you are doing a tremendous disservice
36 to him and his cause, which I know is also your
37 cause, by engaging in these types of antics. You
38 seem to want to appear to be professional
39 counsel, but you need -- there's some work you
40 could do on that. You have lots going --

41 CNSL J. KITCHEN: I don't --

42 CNSL L. WADDELL: -- for you, but there is --

43 CNSL J. KITCHEN: -- really have a desire either way.

44 I --

45 CNSL L. WADDELL: Yeah.

46 CNSL J. KITCHEN: Okay. But I take your point. I
47 just -- you know --

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1 CNSL L. WADDELL: Anyway --
2 CNSL K. KITCHEN: -- I'm not really concerned about
3 the --
4 CNSL L. WADDELL: -- but that's -- yeah, that -- that's
5 all I'm going to say. That's all I'm going to
6 say. Okay?
7 CNSL J. KITCHEN: I -- I will say this both for your
8 benefit and the Chair's benefit -- I shouldn't
9 say "obviously."
10 My client and I considered that. Okay?
11 Obviously he's -- very sparse resources. I have
12 no idea if I'm going to get paid for -- for at
13 least some of my time on this -- on this file
14 because he's -- he's impecunious.
15 Which, by the way, you should just know,
16 candidly, he's -- he's impecuniously [verbatim].
17 I think it's fair that you know that.
18 So, you know, to -- to -- to waste what
19 his -- in his honest-to-god good faith opinion --
20 wasted resources on a recusal application, that
21 was -- we -- we just decided that that was --
22 I -- I -- I have made those applications in the
23 past, and -- and in -- and, in my humble view,
24 they are -- they are -- they are a complete waste
25 of time. They are -- they are not -- they're --
26 they're -- that's just -- every -- every one that
27 I've made, every one that I've read -- in fact,
28 I -- I did read one from Ms. Cousineau when she
29 was asked to -- they just seem to be a complete
30 waste of resources for a client who has very
31 scarce resources, so -- and -- and -- and maybe
32 I'm wrong. I'm -- I'm humble enough to admit I'm
33 wrong. But from my perspective, you know,
34 there's two approaches to this. You do that but,
35 if you do that, then, you know, you've -- you've
36 made your point, and you better shut up. I --
37 but I have two issues with doing that. One, I
38 think it's a waste of time because that's --
39 that's just been my experience.
40 Two, it's -- you're prejudging the decision
41 maker which is perhaps a little bit unfair to the
42 decision maker. And so I -- I -- I approach
43 these types of cases of going in and -- and
44 giving the decision maker a chance to -- to -- to
45 be fair. And -- and then if I encounter what --
46 what I honest -- honestly believe is -- is
47 otherwise, then -- then I -- then I make those

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1 comments because I think it's -- I think it's
2 fair that I make those comments, and then -- and
3 then we deal with it on -- on appeal.

4 But what I think is wrong is if I make the
5 recusal application then -- then -- then of
6 course, you know, I -- I can't -- I can't make
7 those comments, and -- and I wouldn't, so I -- I
8 think it's better to honestly preserve to see
9 whether the -- whether the -- Tribunal is --
10 is -- is -- is acting, I think, fairly, and
11 then -- and then if not, respond to it and deal
12 with it on appeal as opposed to a recusal
13 application up front that sort of prejudices the
14 Tribunal; doesn't give them a chance to be fair.
15 And, frankly, is just -- is just always tossed
16 out anyways.

17 Just so you know -- just so you -- but --
18 but -- so for both your sake -- just so you
19 understand my reasoning on this, I -- I -- I
20 tried to take an open-minded -- I did not
21 prejudice the -- the Tribunal before I got in
22 here. I really didn't. I -- I -- I -- all my
23 comments have been honest and in good faith, and
24 I -- I do apologize if you think -- if you think
25 they've gone too far and they're inappropriate.
26 I -- I don't think they are. I -- I appreciate
27 your feedback because maybe -- maybe I need to
28 re-evaluate where I'm -- where I'm coming from,
29 but I -- I -- I -- I've made everything in good
30 faith from -- from -- from my honest perspective;
31 not -- not to put on a show, not to -- not to
32 hurt anybody's feelings or -- or anything like
33 that.

34 And you know what I would say, Ms. Waddell,
35 in one of your comments -- and -- and the
36 Chair's, I guess -- I -- I've obviously made my
37 point in this regard, and I don't need to say
38 anything further about it, so I will -- I will do
39 my best, and I think -- I think I can commit to
40 this. I committed to never using the teacher's
41 names; I think I was successful about that.

42 I will commit to not make anymore comments
43 in this vein -- and I mean that broadly -- in
44 this vein about -- about reverse-engineered
45 decision. I've made that clear on the record.
46 I've said I -- I -- I've done what I thought was
47 right to do that, and I will make no more

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1 comments about that because I think -- I think --
2 I think, you know, that's been exhausted, and
3 that's not going to -- that's not going to be
4 good for anybody.

5 THE CHAIR: All right. Well, thank you. I -- I
6 appreciate the candour, and I -- I think and I
7 hope this has been a productive conversation.
8 Mr. Kitchen, what I take from what you've just
9 said is that you're -- you're going to be
10 refraining going forward from the kinds of
11 comments that suggest that the Tribunal has
12 prejudged the issue, is biased, and so on. And
13 if you have those concerns, if you continue to
14 have those concerns, then the appropriate way to
15 raise that will be in your closing argument, and
16 we can address them in closing argument. But you
17 are on notice of the Tribunal's expectation that
18 those kinds of concerns not be raised in kind of
19 offhand comments or remarks throughout the course
20 of the hearing.

21 So thank you. Thank you for this
22 conversation. I'm going to close the room now,
23 go back into the main room, announce that we're
24 taking a break, and then we'll come back with
25 Mr. Furgason. Okay?

26 CNSL J. KITCHEN: Thank you.

27 THE CHAIR: Thank you.

28
29 DARRELL FURGASON, a witness,
30 recalled.

31
32 THE CHAIR: All right. We're all coming back now.
33 I'll just let the lawyers trickle back in. Okay.
34 I think I can see complainant's counsel. I just
35 need to find Mr. Kitchen.

36 Mr. Kitchen, are you there somewhere? I
37 can't see you. Not yet. There we go.

38 Okay. Thanks to everyone for your patience
39 while we had that discussion. I know that the
40 non-lawyers in the room have just had a long
41 break, but the lawyers in the room still need
42 their break; so we're going to head into a
43 15-minute break now. During this break I'm just
44 going to turn our cameras and mics off.
45 Dr. Furgason, you're welcome to do the same. And
46 then we'll come back at 11:40 to carry on with
47 questions for Dr. Furgason. Thank you.

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(WITNESS STOOD DOWN)

(PROCEEDINGS ADJOURNED FOR MORNING RECESS) [11:25:56]
(PROCEEDINGS RECONVENED) [11:42:41]

DARRELL FURGASON, a witness
called for the Respondent,
recalled.

THE CHAIR: All right. Everyone come on back. All
right. Counsel are back, and Dr. Furgason is
there. He just wheeled off camera for a moment.
Are you ready to continue? You're muted.

A I can't see myself, so I don't know which one of
these symbols I am so...

THE CHAIR: We can see you.

A Okay. That's probably good enough.

CNSL J. KITCHEN: Can you -- you need to see me and
the Tribunal --

A Yeah, I can see you guys. I don't need to see
myself as long as you can hear me. And you can
see me --

CNSL J. KITCHEN: Yeah.

A -- so I can't drink -- can't drink my tea, then.

THE CHAIR: You can drink your tea.

CNSL J. KITCHEN: You can just --

A Okay. There we go. My wife said, "Don't let
them see your tea drinking on camera." Okay.

THE CHAIR: Go ahead.

CNSL J. KITCHEN: Okay. Thank you.

EXAMINATION IN CHIEF BY CNSL J. KITCHEN, continuing:

Q So, Dr. Furgason, I'm going to share my screen
with you, and what I would say is give me -- give
me -- give me short summary answers because a lot
of -- a lot of what you said -- you know, you --
you -- you've said just about anything that I
might have expected you to say but what I was
looking to ask you about your thoughts on all
this. So I just want to bring you through a
couple things quickly so we -- we can get through
this. So you can kind of summarize but just
don't -- don't -- don't go as long if -- if -- if
you can help it just for the sake of both
yourself and me and -- and everybody else

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Darrell Furgason (for Respondent)
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1 listening.

2 So I have up here -- this is from the SOGI.
3 This is -- this is in the book of documents in
4 this case. It's been admitting [verbatim] as --
5 as an exhibit on consent. It's from the SOGI 123
6 website. You know, SOGI -- there's -- there's 1,
7 there's 2, there's 3. 1 is the, I think,
8 policies; 2 is the environment; and 3 is the
9 lessons.

10 And so this is going to the -- to the 1.
11 This is the -- you know, there's 10 policies and
12 procedures here. So I'm just going to ask you a
13 few specific questions about some specific ones.

14 So when you -- when you talk about
15 ideology -- is Number 3 a place where you see
16 that ideology when it comes to SOGI?

17 And, sorry, for the record -- hold on. For
18 the record, we're at page 131 of the publication
19 book. Item 3. I won't read it. You can just --
20 you can -- you can read it and tell me is --
21 is -- is this -- is this one of the things where
22 you say, "Hey, I think this is ideology"?
23 A Okay. Sorry. I'm -- I'm getting close up
24 because it's quite small but -- okay. Look,
25 students can -- without -- oh, okay. There.
26 That's better.

27 It's -- it's getting into ideology because
28 what happens is you're required to cooperate with
29 that and use their pronoun which is make-believe.
30 So you're required to lie, and I won't do that.
31 Why should I be required to lie about someone's
32 sex and call them a male when they're not? So
33 it's compulsory lying. If somebody wants to
34 say -- identify as a cat -- and apparently in
35 Chilliwack School District we have some people in
36 some high schools that are identifying as
37 furries. So to what degree do you cooperate with
38 this and to what degree do -- they -- they have a
39 right to identify as a cat, but are they a cat?
40 No.

41 So do we deal with truth or do we deal with
42 imagination? And gender identity is imagination.
43 You imagine you're a man when you are a female.
44 And that's okay. It's legal. But once you begin
45 to expect others to lie to go along with your
46 pretension -- because you cannot biologically
47 change your sex at all. You can mutilate --

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Darrell Furgason (for Respondent)
In chief by Cnsl J. Kitchen

1 self-mutilate yourself as one trustee has done.
2 But, no. So telling me that I have to use their
3 preferred pronoun and name and that they're --
4 and that they can keep this -- teachers can keep
5 this from parents, which is what Chilliwack
6 School District is doing, then that's
7 ideological, yes, it is, because parents are
8 being eliminated if the -- I was told by the
9 superintendant if students reveal or choose to
10 identify themselves or name or pronoun
11 differently in school and haven't told their
12 parents that the school district will or could
13 and probably would keep that information from
14 parents. So now that is an ideology. That is
15 now treating the parents as an enemy and the
16 school's teachers somehow become the protector,
17 the new enforcer of this ideology, and that is
18 not right.

19 I even stood up in a public meeting and said
20 the superintendant must not withhold information
21 from parents, and I was essentially kicked out of
22 the meeting.

23 So we are in an ideological mold here when
24 we are required to lie about a person's
25 biological reality, and I won't do that.

26 CNSL L. WADDELL: So just a quick note from me. I'm
27 not going to keep interrupting the witness so
28 that we can get him done, but -- but any time he
29 utters the words, you know, "Someone else who's
30 not testifying in this proceeding told me," it's
31 my position that that's hearsay. But I'll --
32 I'll let you keep going, James. I think you know
33 I object to that, so that's all I wanted to note.

34 CNSL J. KITCHEN: Yeah, that's fine. I understand.

35 Q What about -- and, of course, sex [verbatim]
36 and -- sorry. Six and nine kind of go together
37 here. Six says, "Students can join teams and
38 groups that they feel corresponds with their
39 gender identity." "Individuals may choose
40 washrooms and change rooms that match their
41 gender identity"; that's number nine.

42 I guess, first, how do -- how do you
43 understand and is -- is this an ideological
44 problem for you --

45 A Yes --

46 Q -- as a trustee?

47 A -- yes, it is. This impinges upon the rights of

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Darrell Furgason (for Respondent)
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1 children who are males or females to have other
2 sexes come into their washrooms which are private
3 spaces, so it jeopardizes the rights of girls to
4 feel safe. Lots of girls. All the girls. And
5 this can happen if you have one transgender
6 student -- I don't know. One or two or three in
7 the school. They can -- this -- I believe all
8 students have a right to feel safe, and that
9 includes the non-transgender students. But this
10 forces them to cooperate with the -- with the
11 psychological issue that this student has and to
12 pretend by having them say on outings where
13 perhaps a male will be with the females in an
14 overnight situation. It's -- it's beginning to
15 happen, can happen. So I disagree.

16 If you're going to have washrooms and you
17 have transgender students, there should be
18 specifically-designated areas or a new washroom
19 created, but I believe you should not put them
20 all together. It's -- destroys the rights for
21 privacy of girls and boys.

22 Q What do you make of this -- number eight here
23 says "inclusive learning," and then it says
24 "accurate" -- well, okay. Hold on.

25 It says, "Classroom materials and activities
26 will contain positive images and accurate
27 information about sexual and/or gender
28 diversity." Speak as a --

29 A Well --

30 Q Speak as a trustee to me. What's your
31 understanding of this?

32 A Well, it's inaccurate information. It's not
33 in -- about sexual diversity. I mean, I've just
34 given you a list of 47 sexual orientations here
35 which are all imaginary. They're conditions of
36 the mind, not conditions of the body.

37 So when you're saying to little girls -- and
38 I had a parent call me and say, "My little girl
39 was told she could become a boy, and she's a
40 girl, and it upset her." Can I be a boy or a
41 girl? No, you cannot. Only in your imagination,
42 but you cannot biologically, so that's
43 inaccurate. That's a philosophical lie that you
44 can change your sex or that we must hide sex, the
45 sex reality of -- of a transgender man who's a
46 female, and we must hide that or play it down
47 because now they're -- we should call them a

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Darrell Furgason (for Respondent)
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1 male. No, that's inaccurate. That's
 2 scientifically false and so I -- I would not be
 3 expected to teach lies to children as a trustee.
 4 I'm -- I'm against that. I've never -- I have my
 5 own children and grandchildren. It's wrong to do
 6 that, to -- to manufacture lies.

7 Now, they may identify that way, and you can
 8 say, "This person identifies," but they are not
 9 transitioning. There's no transition whatsoever
 10 between male and female, so this -- this idea
 11 people can transition with medical, hormonal
 12 supplement, surgery, is a lie.

13 Cutting off her breast, Teri Westerby, does
 14 not make Teri Westerby a male. So I cannot -- I
 15 cannot and will not state that -- that she is a
 16 male. I will say she has chosen and has the
 17 right to identify as a transgender man, but
 18 that's psychological, so I shouldn't be forced to
 19 lie and say she's a male.

20 Q Was -- was SOGI 123 presented to you as an
 21 antibullying program?

22 A Oh, absolutely, yeah. It was. It sounded
 23 harmless and we're going to protect kids, and all
 24 it did was stigmatize others.

25 And -- and parents had called us. I -- I
 26 had a parent call because the teacher at
 27 Chilliwack Middle School -- and I was on the
 28 board. Parent called me and said, "Hey, my son's
 29 in Grade 6. The teacher just walked into the
 30 room and said they're all going to be called
 31 'they.' They're not going to be called 'he' or
 32 'she' anymore. The teacher said I'm going to
 33 call you all 'they' because I don't know what you
 34 are." And he felt upset because, "No, I don't
 35 want to be called 'they.' I'm a he."

36 And so I called the superintendant, said,
 37 "Hey, this teacher is forcing their ideology upon
 38 students and misgendering the whole class because
 39 the teacher feels like she has the power or
 40 right, obligation, to do so. It's misgendering
 41 to call everyone 'they.'" And he said, "Oh, no,
 42 no, that couldn't be happening." I said, "You
 43 better check it out. Here's the classroom.
 44 Here's the teacher. Here's the day it was on."
 45 He checked it out said, "Yes, she's doing that,
 46 absolutely. I told her she can't do that unless
 47 parents -- unless parents give the okay." And

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1 since then he's changed that, of course. He said
2 they can keep it from them.

3 And another -- in that same school a student
4 reported that a -- an EA, an educational
5 assistant, had gone around to all the classrooms,
6 Grade 6, inviting them to the gay-straight
7 alliance club, and I said, "Hey, hey, that should
8 not be happening. This -- this is promoting a
9 sexual activity, a sexual orientation."

10 And the schools -- and I maintain this as a
11 trustee and as myself -- schools have no right to
12 teach sexual activities, period. They're not
13 there for that. They should not divulge any
14 sexual activity or through a book or anything
15 because that is against what schools are on
16 about. But it's all hidden in the sexual
17 education course.

18 So this student -- I -- I told the
19 superintendant, Rohan, that, "Hey, this EA is
20 going around." He said, "Oh, no, that can't be
21 happening." I said, "Well, it was. You can call
22 up and find out." And sure enough it was
23 happening.

24 So my point here is you don't know what
25 teachers are doing with the SOGI material. You
26 have no idea, and it's all hidden by the CTA
27 under teacher autonomy, and this is wrong because
28 you have teachers -- there's a SOGI lead in every
29 school. That is ideological, my goodness. You
30 have someone -- and if you read about what a SOGI
31 lead is, they have no qualifications in
32 psychiatry or psychology. They are
33 self-appointed, and their job is to look for or
34 nurture or whatever -- it's -- it's also
35 promotion of this -- this transgender ideology,
36 transgenderism, let's put it under a
37 philosophical term, in the school. And so
38 there's a SOGI lead in every school. If this
39 isn't ideology, what is?

40 There's lots of political examples of this
41 in history where people were appointed in China
42 to report on any woman who got pregnant under the
43 one-child policy, and their job was to -- was
44 to -- you know, to locate women who happened to
45 secretly get pregnant. I mean, this -- this type
46 of thing is coercive.

47 But, anyway, I'm sure the union feels that

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1 these SOGI leads are helpful, kind, and nice.
 2 But, hey, they're unqualified. They should --
 3 teachers have no right being in psychological
 4 issues. They're not trained. They are not
 5 professional. And I advocated, as a trustee, for
 6 a full psychiatric and psychological help to
 7 qualify people if there were students who felt --
 8 who identified differently than their sex.

9 Q Do you -- I'll use the word *transgenderism*.

10 Do you -- do you think transgenderism must be
 11 taught as a fact in order to prevent bullying of
 12 transgender children?

13 A Well, that's -- that's their argument, and it's a
 14 dubious argument. Do you have to teach every one
 15 of these 47 growing number of sexual
 16 orientations -- and, by the way, if you Google
 17 sexual orientations, you'll also get lists of
 18 fetishes. Sexual orientations of sex with the
 19 dead. People who get turned on by sex with their
 20 mother. All kinds of sexual orientations. So my
 21 question is where's the limit, and where does
 22 it -- where does education begin? I believe that
 23 sex belongs at home, not through arbitrary
 24 teachers who choose themselves to present their
 25 ideas as though they're qualified, and they
 26 shouldn't talk about sex or present these
 27 semi-porn books that are in every school like
 28 *Gender Queer*. These -- these are promoting
 29 sexual practices, and no teacher has a right to
 30 promote her or his sexual practice or discuss it
 31 to any student because it has a coercive -- a
 32 power authority -- power structure influence.

33 So, no, I think you have to be very careful
 34 and -- and especially when you get to the lower
 35 grades. I believe children should be left alone
 36 to develop and -- and not put labels on somebody.
 37 Oh, this is a transgender student; I think that's
 38 wrong. Children do not even understand
 39 themselves for many years, and to say -- for
 40 teachers to say they know that they are is -- is
 41 also a mistake. It's unqualified assessment.

42 So there's a lot going on behind the scenes
 43 through teachers that the board can't even find
 44 out about until a parent phones you, and then you
 45 go "oh, my gosh." And so that did raise concern
 46 by myself, by Barry, by Heather, but we were shut
 47 down. We were called -- we were homophobic or --

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1 or we're -- we're transphobic because we -- we
2 dare question this issue.

3 Well, it's a philosophy. It's a
4 philosophical issue of psychological arrangement.
5 It's not biology, so it's not factual. It's
6 based on feelings. And since somebody said
7 gender's fluid, then the feelings there cannot be
8 trusted whatsoever because if you can go from a
9 boy one day to a girl to a bisexual to a trans --
10 you know, if you can jump around like this,
11 there's no way to teach it. You shouldn't be
12 teaching it. You're going to confuse kids.
13 You're going to upset. This is called "child
14 abuse" where you upset a child's sense of
15 identity and self, and that causes them harm or a
16 sense of, you know, fear, anxiety. And I -- and
17 I've had parents, at least that -- several call
18 me about that.

19 So my job as a trustee is to try to bring
20 the education system back to achievement, and
21 this has nothing to do with achievement. So I
22 don't believe it's antibullying.

23 I -- I -- we all went to school. We didn't
24 have SOGI leads in our school in Vancouver when I
25 went to the school and -- and, you know, if there
26 was somebody who was in that psychological
27 orientation, then you let them be. And other
28 students can -- you know, there was no bullying
29 in our school.

30 I -- I was a teacher -- a relief teacher for
31 six years. We never allowed bullying of any
32 sort. So the idea that we have to teach
33 nonsense -- and that's what it is, philosophical
34 nonsense that you can change sex, in order to
35 make people feel comfortable, that's -- that's
36 compelling me to lie, and I won't do it. That's
37 the way I felt as a trustee. I'm not going to be
38 compelled to lie because somebody feels like
39 they're a cat or a furry or whatever.

40 Q There -- there was at least one teacher that said
41 that they felt unsafe in the workplace because of
42 Barry's comments. What -- what could a trustee
43 do to -- to -- to try to help teachers feel safe
44 but also at the same time, you know, protect what
45 they think is good education or -- or avoid lying
46 or -- or -- or whatever? What -- what can a --
47 what can a trustee like Barry do to help those --

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1 those queer teachers not feel unsafe?

2 A I don't think you can do any more than he did.
3 He -- he did express he's not against any
4 student. He -- he's never been against a
5 student, as we said earlier. He just doesn't
6 accept an ideology that is harmful to students,
7 and neither do I.

8 So what -- sorry. Go ahead.

9 Q But -- but -- but what about the -- the queer
10 teachers that say, "Well, you know, look,
11 Dr. Furgason, when you say that -- that, you
12 know -- that I'm not really a -- a man now that
13 I've transitioned, you're denying my existence,
14 and that makes me feel unsafe." The -- the
15 existence thing came up a lot with the queer
16 teachers. They -- they -- they really said this
17 a lot, that they felt like their existence was
18 being denied when -- when people expressed views
19 like Barry that, you know, you -- you can't
20 change your gender or sex, that there's only two
21 genders --

22 A Two sexes.

23 Q Two sexes.

24 A Only two sexes.

25 Q The -- the terms have gotten thrown around a
26 lot --

27 A That's right.

28 Q -- by -- by everybody in the case. And -- and --
29 and, you know, fair enough. It happens in
30 society.

31 But -- but they said repeatedly that they
32 felt like their existence was being denied when
33 Barry said the types of stuff that he said, which
34 is similar to what -- to what you said at times.

35 What do -- what can trustees do to try to
36 help those queer teachers not feel like they're
37 being attacked or -- or -- or their existence is
38 being denied?

39 A Existence and identity are different issues.
40 They exist because they're walking around as
41 human being teachers, so nobody's denying their
42 existence. Their choice, however they got it, to
43 psychologically identify as the opposite sex when
44 biology -- biology says, no, you cannot -- truth
45 must prevail in any education system. Unless you
46 want to teach lies -- you're going to go on there
47 and say there was no Holocaust; we're going to

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1 have teachers who say, you know, America started
2 World War I or whatever you want. Once you start
3 teaching lies in education or mistruths, you're
4 not teaching accurate information.

5 So a -- a queer teacher or a transgender
6 teacher, you know, they can feel however they
7 want. Feelings aren't facts 'cause, remember,
8 they can change from, in there view -- in this
9 ideology you've got 47 choices here. You
10 could -- you could adopt any one of those, and
11 that's your psychological choice. So -- so
12 feelings are not facts, and -- and whether they
13 feel safe isn't an issue of -- of Barry because
14 they are safe.

15 So we teach safety, not feeling safe.
16 You -- you might -- I don't feel safe being
17 interviewed on this board so should you all go
18 away? No. That's part of the reality of life.
19 You know, I've been accused of things.

20 So feeling safe is -- is a -- is a mask for
21 silencing people who disagree with your view
22 about your -- your identity.

23 He -- he can keep his identity. Nobody
24 said -- I -- I said -- I said again everyone has
25 a right to sexual orientation and gender
26 identity, but they don't have a right to tell me
27 I have to cooperate with it and lie to maintain
28 their gender dysphoria. It is a psychological
29 condition, not a biological one. So feelings in
30 these -- those who choose any one of those 47
31 orientations can change from day to day. How can
32 anyone -- how can anyone in a trustee role say or
33 do something that -- that makes them feel safe
34 without making everybody else feel unsafe like
35 these [verbatim] little girl who was made feel
36 [verbatim] unsafe as a girl because an activist
37 teacher said you could be a boy or a girl if you
38 choose? That's making kids feel unsafe. That,
39 to me, takes priority over any teacher feeling
40 unsafe.

41 To be honest, I'm there for the kids, not
42 the teachers. The union protects teachers;
43 that's their job. It is not the board's job to
44 meddle in teacher affairs or to question them
45 or -- or anything like that. We are there for
46 the public. So my concern for children feeling
47 unsafe like having a male go in a girls' washroom

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1 and having a teacher tell them they could be a
2 boy when they're a girl, they feel unsafe.
3 That's priority to me over any teacher who --
4 who -- you know, a teacher is a mature adult
5 who's chosen to be a teacher. Surely -- surely
6 they have enough maturity -- enough maturity to
7 recognize their own condition. And be happy with
8 yourself, but don't expect others and the whole
9 system to change to suit your one idea.

10 Q I'm really sorry. I've been sharing my screen
11 all that time.

12 Okay. I'm somewhat near the end now, but I
13 want to go through some -- some specific
14 comments. I was going to take you to yours, but
15 you already covered that, so...

16 Okay. Let's go to -- let's go here. Okay.
17 I'm in the publication book, as we're calling it,
18 and page 13, and these are some of Barry's
19 comments.

20 And what do you think of Barry's comment
21 here when he says:

22
23 I believe children should be gently
24 encouraged to get comfortable with
25 their bodies, to accept their own
26 biology, their own biology which can
27 never be completely changed, to love
28 themselves.

29
30 Do you think this is a good approach for a
31 trustee to take about all this?

32 A Yes. I have no problem with that. They should.
33 You know, you can't change your biology. You
34 know, even cutting off your breasts, which one
35 trustee has done, does not make that person a
36 male, so it becomes self-mutilation, which you're
37 never going to be happy with your so-called true
38 self. It's an imaginary self.

39 And so, yes, that person will never be able,
40 through surgery or hormones or anything, change
41 that trustee from being female to male.

42 So, yes, I agree with that statement. Learn
43 to love your biological self so you don't try to
44 get into one of these 47 identities that, you
45 know, leave you vulnerable. Lead -- lead you to
46 mutilation.

47 Q The -- the teachers have -- you know, and -- and

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1 obviously the -- the actual complainant, the
2 BCTF. But the teacher witnesses have said
3 they're really upset about the -- the child abuse
4 comments. Barry's used that a couple different
5 times. You've used it. And -- and he says it
6 right here. Okay. He says:

7
8 The attack on the foundation of a
9 child's being, which is child abuse,
10 this won't have any affect on us; this
11 will have the effect of confusing
12 children, disturbing their personal
13 security and mindful health.
14

15 Okay. So but the teachers are saying, "Look,
16 this is an attack on us. You're calling us
17 'child abusers.' And, you know, of course
18 that's -- that's, you know, rather hateful or
19 that's -- that's discriminatory, and, you know,
20 you -- you can't do that."

21 What would you say to the -- the tribunal in
22 response to the teachers who are claiming that --
23 that Barry's calling them child abusers?

24 A Well, I just gave you an example of a teacher in
25 Chilliwack Middle School who essentially abused
26 her class by confusing their identity and calling
27 them all "they," using pronouns as an ideological
28 position. That's abuse. That's child abuse.

29 Or the gay, straight alliance club using
30 teachers, and there's always a teacher sponsoring
31 it, to promote.

32 And we've got Glen Hansman's thesis right
33 here. His whole aim was to promote these -- what
34 did he call them -- queer-friendly schools.

35 So we have an ideological agenda. So, no,
36 I -- yeah, I think when teachers start -- and
37 SOGI leads is a dangerous role because they're
38 not trained. And if you look up what a SOGI lead
39 is in -- in -- in the SOGI thing, it's a
40 self-appointed person who feels they have the
41 gift. To do what?

42 You know, so there's danger here that
43 teachers who are -- who -- who can't be seen in
44 the system. Okay? This teacher autonomy is a
45 nice veil the union uses to -- to hide behind
46 teacher behaviour unless they do something
47 drastic like kick a child or something. But you

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1 don't know what they're teaching. You have no
 2 idea about what's being taught as SOGI 123. And
 3 I've just given you illustrations, and there's
 4 many more, of teachers who are activists. There
 5 are teachers who are activists, and they want to
 6 get their view across, and so does Glen Hansman
 7 with all of his union buddies, and they're doing
 8 it, and you'd have no idea.

9 So teachers who are caught out with this --
 10 and there's lists of teachers who have been
 11 kicked out over -- over the decades because of,
 12 you know, their sexual activities with students,
 13 so -- I'm not saying they're doing that. What
 14 I'm saying is, yes, it qualifies, in my view,
 15 as -- as child abuse.

16 If you have a teacher who's an activist
 17 pushing their ideological view and their sexual
 18 orientation with books -- now don't forget there
 19 are all these books in schools showing --
 20 pictorial books -- queer -- you know, queer --
 21 forget what it is now -- *Gender Queer*. Actual
 22 homosexual activities. Anal sex, fellatio, and
 23 the whole thing. And what is this here for?
 24 What teacher would use this, because they're not
 25 allowed, under the Criminal Code to show, depict,
 26 describe, discuss sexual activities to children.

27 So -- so, yes, this -- using that book,
 28 *Gender Queer*, in any school would be child abuse
 29 in my definition, and it's the teachers, sadly,
 30 who have the -- the classroom presence without
 31 supervision to do so. We don't know what they're
 32 saying.

33 Q As a trustee, during your time did -- did you --
 34 did you see any evidence that the teachers who
 35 were teaching these things have been exposed to
 36 discrimination or hatred?

37 A No. No, I never heard anything like that in four
 38 years. That's why I say there was no victim
 39 produced by the CTA of the charge that was over
 40 Barry's head the whole four years that I was on
 41 the board that -- that led to a -- you know, an
 42 oppressive atmosphere whereby we were all -- the
 43 three of us were accused of being homophobic,
 44 transphobic, whatever, haters of kids, unsafe,
 45 blah, blah, blah.

46 Four years the Human Rights Tribunal let it
 47 ride, and -- and -- and -- and we were made

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1 scapegoats for this hateful nonsense against us.

2 You know, it -- it was -- it was wrong that
3 we were treated like that as though we had no
4 right to represent the public and even, god
5 forbid, the conservative public which the
6 chair -- Trustee Reichelt once said, you know,
7 she absolutely does not like conservatives, and,
8 you know, being on the far left, of course, as
9 many of the union -- I got to be careful because
10 I can't name them all, but hey. We won't go left
11 to right, but let's just say they manifest a
12 power structure that seeks to force boards to pay
13 them more, give them less time -- more free time.

14 I mean, we were constantly listening, every
15 time there was an election for the -- I forget
16 now -- government and -- and different things.
17 Unions -- oh, every time the contract came up,
18 unions wanted more money for less work, less
19 minutes, more this -- more -- it was so detailed
20 and became so ridiculous.

21 I was there for the kids, not for the
22 feelings of a teacher. But we never said
23 anything -- anything ever negative about any
24 particular teacher because, quite honestly, we
25 never met them. We only heard from the union
26 chiefs during meetings.

27 Q Did -- did you -- did you ever hear from the
28 superintendant or anybody else who's, you know,
29 senior staff that comes in to talk to the board
30 that, you know, queer or gay or trans teachers
31 were facing discrimination?

32 A No. I never heard that, not once. We -- it was
33 just labelled, you know, through the media. I
34 mean, you know, I've -- I've got an article here
35 from the Chilliwack progress where I -- I
36 questioned a -- a trustee's sex because Westerby
37 is a female and has admitted that because she
38 uses tampons and has a uterus but -- and -- and
39 the paper said I -- I -- I was guilty of hate
40 speech. So this is such political intimidation
41 that the unions would use that, the papers would
42 use it, the -- the -- the ideologues in the
43 system would use it.

44 Anyone who questioned -- for the sake of the
45 public. Now, remember, I'm in an elected
46 position, so I have to represent everybody;
47 that's what I'm charged to if you read the role

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1 of a trustee, and yet conservative voices were
 2 not being heard at all or suppressed or being
 3 called "hateful." So it was -- it was a
 4 battleground and -- but we never -- I don't
 5 remember any meeting, because I didn't even know
 6 any of the teachers, where I spoke against a
 7 teacher because of any sexual orientation. I --
 8 I didn't hear Barry say anything like that
 9 either, no.

10 Q Were any members of the public or parents or
 11 grandparents calling for the -- the discipline or
 12 the firing of or the ostracization of or the
 13 admonishment of gay or trans or queer teachers?

14 A No. No. Again, we -- we don't have any power to
 15 deal with getting rid of a teacher. You know,
 16 and the union would come -- you know, they --
 17 they defend their teachers, and the
 18 superintendant is responsible for all that, so
 19 we -- we never had any access to teachers to --
 20 or heard a parent demand a teacher be fired.

21 There was a -- a channel of complaint, which
 22 we encouraged parents to take, which is in the
 23 role of the -- the board which is a parent should
 24 go to the teacher if they have a complaint or a
 25 concern about anything, including SOGI 123, and
 26 say, "Hey, I have" -- and the teacher came --
 27 and -- and if you don't get satisfied from the
 28 teacher, you can go to the principal. If you
 29 don't get satisfied from the principal, you can
 30 come to the superintendant.

31 But these issue -- any issues never came to
 32 the board except I think once when a teacher had
 33 hit somebody or hit his -- hit his wife or
 34 something.

35 But, no, we -- we never -- we never could.
 36 We never had the power, the authority to ask a
 37 teacher to be fired or punished or -- and never
 38 did we do it.

39 Q All right. Been there. We've already covered
 40 that. I'm going to stop sharing. Just going to
 41 try to find only comments that you haven't really
 42 already dealt with in what you've said.

43 A Can I just mention one more thing about -- for --
 44 if we're talking about unions and power, this is
 45 really important.

46 I was -- I was defamed very heavily by
 47 Glen Hansman, the leader of the BCTF at that

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1 time. We had had a discussion on the board of a
2 dress code, and the dress code came up that
3 somebody had proposed that we should -- the chair
4 wanted to get rid of the dress code.

5 Now, dress codes were existent in every
6 school and every workplace, including yours as
7 lawyers, judges. On the bus. Think of it.
8 Every workplace has some kind of code. You can't
9 turn up naked or in a bathrobe, you know, on your
10 job at McDonalds, whatever. So it was dress
11 codes. And in the -- in the debate about should
12 we change the dress codes and let people wear
13 whatever they want, I was in favour of the
14 teachers having the authority to set the tone in
15 their own workplace because they are
16 professionals. So I support teacher
17 professionalism. They're -- they're
18 professionals.

19 Students should not be able to come exposed,
20 in my view, of body parts that demeans a
21 teacher's professional context. That -- that's
22 my concern, right. These people should be
23 respected just so should lawyers if you go to
24 their office, whatever.

25 And so I said two words that became, like,
26 just -- just red rag to a bull. I said, "Well,
27 I -- I believe that modesty and decency in dress
28 should be the main criteria. Let -- let's aim
29 for decency and modesty. Now, that -- that --
30 that isn't -- those are not bad words, but all of
31 a sudden all hell broke loose, and I ended up
32 being accused in the media by Glen Hansman and
33 the -- and the -- and the longshoremen's union of
34 Canada -- B.C. president in the -- in the
35 province newspaper -- I was downtown, and my mom
36 said, "Hey, you're in the paper." I go, "What?"
37 "You're on page 2 of The Province." I go,
38 "Page 2?"

39 There's an article in there with Glen
40 Hansman, the head of -- this is -- this is what
41 I'm talking about, misuse of power. It's not the
42 trustees. We're victims of this. Using the
43 media, the BCTF spread this stuff. And I've got
44 the article right here, 2019, where I was accused
45 of promoting a rape culture. Now talk about
46 slander. Talk about hate speech. Talk about
47 bullying by union power throughout the province.

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1 So I was labelled. My kids said, "Get out of
2 the board right away. People are going to come
3 bomb your house." You know, we live under fear.
4 Like, and I was called promoting a rape culture
5 because I -- I -- I wanted to cover up girls.
6 Like, is that wrong to ask for -- like, it's
7 wrong to be decent, and that I must have a
8 problem as a dirty old man insinuation because I
9 can't stand to see, you know, naked flesh without
10 some problem.

11 I mean, this is -- this is blatant
12 intimidation of -- of a trustee by a union head.
13 And -- and I got the article. So from -- any --
14 anything that's mentioned about protecting kids
15 now is called "hate speech," another propaganda
16 tool, and that's the way that ideology works.
17 You discredit anyone else, and you seek to cancel
18 them. You seek to get them fired. You seek to
19 take them to the Human Rights Tribunal and punish
20 them with -- because they're -- they're not
21 cooperating. And the nazis did it; the
22 communists did it. Any ideology does it. They
23 seek to punish opposition.

24 So, anyway, that's what happened. That's
25 sort of an extra example, perhaps out of context.
26 But since we're talking about teachers and being
27 in the union, it -- it was big unions that --
28 that -- that came down heavily with some of this
29 stuff when I was on the board.

30 And I'm not promoting a rape culture,
31 contrary to Glen Hansman, so it's slander. You
32 should have taken him to the Human Rights
33 Tribunal.

34 Q Just have a couple more, I think.

35 Now, with this one you've already commented
36 at some length about this so maybe try to stick
37 to new things.

38 But the -- the teachers -- a couple of them
39 were quite upset, and -- and I'm using that word
40 because that was a word that was often used by
41 them. They were quite upset with Barry -- in
42 this comment because he says, "Using Mafia and
43 Bolshevik techniques." So I'll read you the --
44 well, I'll just read you the paragraph:

45
46 So trans ideologues ignore contrary
47 evidence and competing interests. They

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disparage alternative practices, and they aim to muffle skeptical voices and shut down any disagreement. The movement has to keep patching and shoring up its beliefs; policing the faithful, coercing the heretics, punishing apostates, and terrorizing spineless professionals because as soon as its furious efforts flag for a moment or someone successfully stands up to it, the whole charade is exposed. That's what happens when your dogmas are so contrary to obvious, basic or [indiscernible] common sense.

The transgender future is not the right side of history, yet activists are using Mafia and Bolshevik techniques to convince the most powerful sectors of our society to acquiesce to their demands.

Now, before you answer, again, the approach of the teachers was that these types of comments were attacking them and -- and -- and therefore it was -- it was -- you know, it -- it made them upset. It -- it -- it -- it -- they -- they perceived it as hurtful and made them feel unsafe if their workplace, et cetera. That's what -- that was their reaction to this, that -- that this was an attack on -- on them. What do you think?

A Well, there's a lot in there, and you'd have to ask Barry about each one of those lines 'cause there's a lot of things in there.

But generally speaking, teachers are not supposed to be trans ideologues, so was Barry talking about teachers here or he's talking about trans ideologues? He's talking about the movement, and LGBTQ is a movement, and certainly Glen Hansman is part of that movement. So he's never talking about individual teachers; he's talking about a movement. And it is a movement, trust me. It's an ideology that punishes anyone who disagrees, which is why we're talking today.

But who said any particular teacher? Did he ever say to a particular teacher "You are a trans ideologue"? Did I ever say that? No, because

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1 we're dealing with a philosophy. We're not --
2 we're not going after individuals. There's no
3 mention in this whole thing of individuals. So
4 if -- if a teacher happens to identify as a trans
5 ideologue then, yeah, they open themselves
6 [verbatim] up to being criticized no different
7 than if a teacher said there was no Holocaust, an
8 anti-Holocaust person. You know, they're going
9 to open themselves up to question and -- and
10 critiquing and let's -- you know, let's see where
11 this leads.

12 So I -- I see nothing harmful in this
13 paragraph. It's got some pretty pointed points,
14 and a lot of it does relate to political
15 ideology, and I agree that it is movement. Trans
16 ideologues are pushing -- their movement is
17 pushing.

18 I mean, we have a pride month, for goodness
19 sake. There -- there was a town in Ontario, Emo,
20 whose mayor was punished -- and -- and -- and
21 I'll mention this again -- by who? By the
22 Ontario Human Rights Tribunal that demanded that
23 the town raise the rainbow flag in its downtown
24 area for a month, and if they didn't, they were
25 going to be punished, and the mayor said, "I'll
26 go to -- I'll go to jail, then."

27 Now, this is a clear example of trans
28 ideologues, of a movement. Even using the Human
29 Rights Tribunal in Ontario to punish a town, for
30 goodness sake, for not raising a rainbow flag.
31 This is -- this is a politicization, a harmful
32 politicization of education promoted by many,
33 including unions, media, government ideologues.
34 It's all in there. And the school board, in one
35 way, is the last frontier of defence, if you
36 will, except they're now dominated by these
37 ideologues and so people like Barry, myself,
38 Heather, others who are conservative, are
39 muffled, cursed, told we're evil homophobes.

40 You know, it -- it -- it's no longer -- the
41 boards are no longer functioning -- doing what
42 they should. They're just mouth pieces for these
43 trans ideologues.

44 So Barry, in this statement, has never
45 mentioned any teacher, so no teacher should feel
46 threatened unless they identify as a -- a trans
47 ideologue 'cause they have the right to be

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1 whoever they want. Nobody's challenging that.
2 But if they're an ideologue, then they are beyond
3 who they are. They are now moving in the
4 movement to sell this and coerce the society into
5 accepting their practices and punishing anyone
6 who disagrees.

7 Q Going to narrow it down. I'm just going to take
8 one last little look here.

9 A Sorry I'm giving you too much -- talking too
10 much. Hopefully you get through what you want.

11 Q No, no, it's all right. Do you recall Barry ever
12 talking about the -- the surgeries and -- and --
13 and the lost body parts and that sort of stuff?

14 A Well, do you mean -- in a board meeting, you
15 mean?

16 Q No. Just -- no, just on Facebook or at -- you
17 know, at a -- at a speaking event. You know, a
18 lot of what we have in the case here is just his
19 Facebook comments and stuff that he said that's
20 been recorded.

21 A So what's your list again? Give me your list of
22 things.

23 Q Do you recall Barry ever talking about, you know,
24 the -- the -- the -- the gender-affirming
25 surgeries and -- and -- and the loss of, you
26 know, breasts or other -- you know, the body
27 parts off of -- off of people who go through this
28 process? Do you recall him ever talking about
29 that?

30 A Yes. I'm pretty sure I talked about it too.
31 I've done it today. So, yes, that's part of the
32 problem is it's not gender affirming; it's
33 self-mutilation out of an idea you have. So,
34 yes.

35 This gender affirming is another ideological
36 construct that aims to make this -- cutting off
37 one's breasts or penis or anything else as -- as
38 a positive change, as a good thing, and it's
39 nothing that a child should be introduced to.
40 They should leave them alone 'til they're 18.

41 So, yes, Barry -- I'm sure he's mentioned.
42 I've talked to him about it. I agree with it,
43 that it's not gender affirming 'cause if -- you
44 know, again, this word "gender" is -- there's 47
45 genders I've just listed to you, or sex
46 identities. It's all intertwined. Gender
47 identity, sex identity.

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1 They're male or female. So if you're going
2 to mutilate yourself out of some vision that you
3 might be something else, it -- it's -- it's a
4 psychological issue. So, yeah, we talked about
5 it. He talked about it.

6 Q The BCTF has complained about those comments in
7 this case, and at least one of the teachers
8 mentioned that she found it concerning and -- and
9 weird that Mr. Neufeld would be obsessed with it,
10 and -- and -- and she indicated that that might
11 mean that he's obsessed with things he -- he
12 shouldn't be and that might make him, you know,
13 unsafe for her to be around.

14 As school board trustees, is it -- is it
15 your job to be concerned about the implications
16 of some of the things that your students are
17 being taught?

18 A Well, of course. That's why you're elected.
19 You're elected by the public. Barry got one of
20 the highest numbers in 2018. 8,000 plus. I
21 think I got 7,000. Clearly a board is there to
22 represent the whole community. It's -- it's in
23 the statement of the roles of a ward under all
24 the codes. We're there to listen to the public,
25 hear their concerns, implement their concerns,
26 and -- and so, you know, a teacher who says a
27 trustee is obsessed -- I mean, well, what does
28 that mean? You know, I mean, if anybody's
29 obsessed, it's the unions who are obsessed with
30 eradicating a guy who has an opinion that they
31 don't like 'cause it's power. You know, unions
32 are power instruments. They -- they -- they
33 don't talk about students; they talk about their
34 members more than anything. Not -- and, yes,
35 they are there for student achievement, correct,
36 but we -- we can't deal with teachers. The board
37 deals with parents and their concerns.

38 So a teacher who identifies as whatever they
39 want saying that somebody's obsessed with it --
40 with -- with what? Obsessed in -- what were they
41 obsessed with? That he has views that made them
42 feel unsafe or something?

43 You know, you can never deal with
44 everybody's feels, and you can't establish if
45 those feelings are factual and that -- why would
46 a person who has a psychological issue -- how
47 would we assess their feelings when you're not

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In chief by Cnsl J. Kitchen

1 responsible for that? You're on the board for
2 the parents. So there was -- there was no time
3 to -- as a trustee to -- to go into these --
4 and -- and let's face it -- I mean, I never even
5 heard of any of those accusations until you just
6 mentioned it now in this court that some teacher
7 felt this or that because Barry never spoke about
8 individuals. Neither did I, neither did -- it's
9 a movement. I'm -- my background's political
10 science. I'm -- I'm concerned about the movement
11 that is coercive in our system and that I want to
12 protect innocent children from trans ideologues
13 who use union power to crush opposition. That --
14 that's what I'm concerned about, and that's --
15 those types of things have happened in history
16 lots of times if you want to look at how power
17 institutions are used in history.

18 So I -- I can't address the feelings of one
19 teacher because of something one person said in
20 some post that had nothing to do with the job on
21 the board at the time. So that's all I can say
22 on that one.

23 Q Would you have concerns of the trustee if Islam
24 or Christianity or Judaism or Sikhism are taught
25 as fact in the school?

26 A Well, you know, that -- that -- they teach
27 atheism, that's for sure, that the universe came
28 from nowhere. But, hey, I mean, that's their
29 prerogative. They call it neutral. But, you
30 know, I don't want to get into that one.

31 Would I have a problem if they teach those
32 things as factual? I think they're unqualified,
33 and -- and this is one of the problems, and
34 that's why they don't teach it. They're
35 unqualified, and -- teachers are unqualified.
36 Unqualified to speak about transgender origins,
37 issues, outcomes, et cetera. They're not in
38 psychology, they're not in psychiatry, and
39 suddenly they volunteer to be a lead in a school
40 that all has them.

41 So it's dangerous for parents, and they were
42 writing to us, and they were contacting us, and
43 they're saying, "I'm nervous about this." "Hey,
44 I support your view. I'm scared about sending my
45 child to a public school if they're going" -- and
46 -- and that's out there. You've got aggressive
47 ideological teachers who are -- and I just

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1 mentioned two at Chilliwack Middle School. So,
2 you know, this idea that teachers are terrified
3 by trustee [verbatim], it's really in the
4 reverse. Teachers are -- are -- trustees are
5 bullied by teachers, the union. Not -- not
6 teachers; we don't have anything to do with them.
7 But, you know, the type of stuff that was said to
8 us and Barry by the unions -- like, I'm called
9 a -- promoting a rape culture by the BCTF. Come
10 on. Maybe I should feel really intimidated and
11 sad and lodge a claim.

12 I mean, we live in a world where your
13 feelings of safe will be jeopardized on a bus
14 because there's black people there. I don't
15 know -- because there's Chinese, because
16 there's --

17 So getting back to -- I -- I don't think
18 they can teach about Christianity, Islam,
19 et cetera, et cetera, not even if they tried to
20 do it neutrally because they could never
21 communicate accurately about those things.
22 And -- and I -- so I don't believe they should be
23 teaching the ideology of transgenderism either.
24 Q If we don't use the -- the transgenderism or
25 gender ideology underlying SOGI -- if we -- if we
26 don't use that or we don't use SOGI 123 to
27 prevent the bullying of, let's say, middle and
28 high school kids who do identify as -- as -- as
29 gay or queer or transgender, then what do we do
30 to -- to -- to protect them and keep them from
31 being bullied?

32 A It's very simple. We all went to school. I -- I
33 went through school in Canada in Vancouver. I
34 never encountered any incident of -- of a
35 transgender student -- any teaching whatsoever
36 that said I was bullying somebody. We never
37 bullied -- there was a strict policy that
38 bullying of any sort is not tolerated. That's
39 very easy to enforce in a school without teaching
40 there are 47 sexual orientations and here's what
41 they like to do and we'll call gender queer.
42 That's way over the top. It's out of line.

43 So if there's incidences of -- if you have a
44 transgender student and -- and that becomes
45 evident through their talk with their classmates
46 and whatever else, then -- and -- and bullying
47 occurs, that's when you nip it in the bud.

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1 The -- whoever bullies the person or hits the kid
2 in the schoolyard is brought before the teacher
3 and the principal. "Hey, we don't do this.
4 You're not allowed to bite anybody, kick anybody,
5 call them this or that," and -- and it's done on
6 that level. But bringing in an indoctrinating
7 orientation is way beyond stopping bullying. Now
8 you are planting lies in kids' heads that they
9 too could be a boy and a girl. That's a lie.
10 You can't change your sex. So -- so you -- you
11 have people teaching that.

12 And as you said earlier, "Oh, you just keep
13 jumping back between gender and sex," that's a
14 mistake, sir. Stop it and get clear as a lawyer.
15 There's a difference between gender and sex. Do
16 not conflate the two. Therein lies the deception
17 that is being sold to kids that they could
18 change -- a 6-year-old being told in Chilliwack
19 school they could be a -- change to a male from a
20 female is psychologically harmful, and I would
21 call that child abuse. Absolutely.

22 So -- so the issue of teachers being
23 fearful, it -- it's -- who knows why people are
24 fearful or -- or feel unsafe. Our job is not to
25 make people feel safe. They are safe. Our job
26 is to make people safe, and they are. When you
27 have bullying policies that address issues as
28 they come up in context so that everybody gets
29 the message on a subtle level that you don't
30 bully this child because they have gender --
31 they're going through a phase; they might -- most
32 likely, 85 percent, they'll grow right out of it
33 if you don't give them hormones and sex
34 reassignment surgery. They'll be fine, so leave
35 them alone, but just enforce no bullying.

36 But SOGI 123 is not an antibullying program.
37 It is indoctrination masquerading as making
38 people feel safe. Everybody else -- those little
39 girls who have a male walk into their washroom in
40 a Chilliwack school do not feel safe, but nobody
41 cares about their feelings. So -- so this is an
42 oppressive idea.

43 THE CHAIR: Mr. Kitchen, I'm just -- I'm noting the
44 time. I thought you were just about done. I
45 just wanted you to finish up --

46 CNSL J. KITCHEN: Yeah.

47 THE CHAIR: -- I assume.

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1 CNSL J. KITCHEN: No.

2 THE CHAIR: Yeah.

3 CNSL J. KITCHEN: I'm done.

4 THE CHAIR: Oh, okay.

5 CNSL J. KITCHEN: I'm done.

6 THE CHAIR: Great. All right. So, Dr. Furgason,
7 we're going to take an hour for lunch, and then I
8 expect the complainant's counsel may have some
9 questions. Is that -- we're coming back for
10 cross-examination; yes?

11 A Sure.

12 CNSL L. WADDELL: I just wanted to -- sorry. I just
13 wanted to ask because I think our -- your other
14 witness from yesterday, Mr. Kitchen, he is only
15 available this afternoon; correct?

16 CNSL J. KITCHEN: He sounded to me like he could make
17 himself available tomorrow afternoon. Obviously
18 that's not ideal because that kind of is in the
19 middle of Barry's testimony, and I'm sure neither
20 one of us want that.

21 CNSL L. WADDELL: Yeah, and I thought --

22 CNSL J. KITCHEN: But --

23 CNSL L. WADDELL: -- as we were discussing it
24 yesterday -- I could be wrong, but I thought I
25 heard him -- I think he looked at a calendar or
26 something, and it sounded like he was saying he
27 thought he might have an appointment tomorrow
28 afternoon. Anyway --

29 CNSL J. KITCHEN: Yeah, no, I thought -- I thought he
30 did. I can check with him. You know, obviously
31 you need -- you need to be able to cross him,
32 so -- and you need to be able to cross
33 Dr. Furgason. So if -- if Dr. Furgason is going
34 to take you the whole afternoon, then we have to
35 figure out when -- when Rob's going to come back.
36 I would say that, you know, I'm not going to
37 finish with -- with Barry tomorrow, so, I mean,
38 not ideal for you, obviously, but -- but
39 Mr. Bogunovic could come back whenever we have
40 further dates.

41 CNSL L. WADDELL: Okay. So let's -- let's return with
42 the presumption -- if -- if this is okay with
43 you, of course, and Chair, but that we will
44 proceed with the cross of Dr. Furgason and/or
45 deal with his evidence after lunch and then,
46 depending on how much time that takes -- you --
47 you've got -- Rob is lined up to attend today?

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1 CNSL J. KITCHEN: I'm going to -- I'm going to make
2 sure he's lined up here on lunch break.
3 CNSL L. WADDELL: Okay. Okay. So we'll see if we can
4 get him.
5 THE CHAIR: Okay. All right. Well, we're going to
6 take an hour now for lunch. Dr. Furgason, the
7 only thing I ask of you during this particular
8 break is if you know there's someone who's going
9 to be testifying after you -- oh, Mr. Neufeld is
10 waving his hands. Yes, Mr. Neufeld?

11 CNSL J. KITCHEN: You're muted.

12 THE CHAIR: You're muted.

13 BARRY NEUFELD: I'm expecting Mr. Bogunovic at my home
14 at 3 -- 3 o'clock this afternoon to finish his
15 testimony.

16 THE CHAIR: Okay. Thank you. We will -- we'll try
17 and remember to give you some notice if it looks
18 like that schedule may not work, but thank you
19 for letting us -- us know. We'll follow up with
20 you after we have a sense of how Dr. Furgason's
21 evidence is going.

22 So, Dr. Furgason, I think maybe the only
23 witness after you besides Mr. Neufeld is Rob
24 Bogunovic, so I'll just ask that you not talk
25 about your evidence with anyone who's going to
26 testify after you in this proceeding. Okay?

27 And for this lunch we are going to
28 disconnect everyone from the meeting. So I'm
29 going to remove you, Dr. Furgason, from the
30 meeting, and then just click on the link to come
31 back in. Hopefully it will be an easier ride to
32 get back in.

33 Everyone please come back at 1:45. Okay?
34 I'm removing everyone now.

35
36 (WITNESS STOOD DOWN)

37
38 (PROCEEDINGS ADJOURNED FOR NOON RECESS) [12:42:30]

39 (PROCEEDINGS RECONVENED) [1:45:23]
40

41 THE CHAIR: All right, everyone, we're back. I can
42 see all the counsel. I cannot see Mr. Neufeld or
43 Dr. Furgason. I mean, we can give it a few
44 minutes. I'm assuming they're trying to get in,
45 but they're not here yet.

46 CNSL L. WADDELL: While we're here, we do have our
47 articling student here again, Chris Fenje.

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1 [Indiscernible] screen.

2 THE CHAIR: Thank you. And, Ms. Waddell, is it you
 3 who's going to be asking the questions?

4 CNSL A. TOM: It will be me.

5 THE CHAIR: Oh, Ms. Tom. Okay.

6 CNSL J. KITCHEN: Okay. We got Barry. I've -- I've
 7 sent an e-mail there to Darrell, so...

8 THE CHAIR: All right. I was hoping the issue this
 9 morning was with using the browser, which I've
 10 heard is sometimes not as effective as the app.

11 CNSL J. KITCHEN: Yeah. That's -- yeah, that's been
 12 my experience too.

13 THE CHAIR: So...

14 CNSL J. KITCHEN: Although...

15 THE CHAIR: We'll see.

16 CNSL J. KITCHEN: Somebody should do a -- like, a
 17 post-COVID study on all the -- the platforms used
 18 by the tribunals and courts across the country
 19 and figure out which -- which is the best. And
 20 I -- I venture a guess that Teams would --
 21 would -- would lose on that score.

22

23 DARRELL FURGASON, a witness,
 24 recalled.

25

26 THE CHAIR: Here we go. Hi, Dr. Furgason. You're in.
 27 You're muted.

28 A Sorry. Yeah. There we go.

29 THE CHAIR: There we go. Thank you. All right. The
 30 next part of this process, Dr. Furgason, is that
 31 the lawyer -- one of the lawyers for the BCTF and
 32 Chilliwack Teachers' Association is going to ask
 33 you questions. It will be Ms. Tom.

34 I also want to let you know that you may see
 35 a new pair of hands in the corner of their screen
 36 there. They've been joined by their -- by an
 37 articling student in the office, Chris Fenje,
 38 who's also now in the room. Just letting you
 39 know who's on the call. And otherwise it's --
 40 it's the same as I mentioned before.

41 So this part of the process is called
 42 cross-examination. It's -- one of the purposes
 43 of the -- these questions is going to be to test
 44 your evidence, so -- and for that reason
 45 sometimes people can find it difficult or --
 46 well, can find it difficult.

47 We'll aim to go until about, I would say,

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1 3:15, and then we'll take a break. Or -- well,
2 let's say 3 because we have to check in with
3 another witness. We'll go until 3 and then take
4 a break. If you need any other breaks, you can
5 let me know.

6 If you -- if you don't understand a
7 question, you can ask for clarification. And if
8 you don't know the answer, it's fine to just say,
9 "I don't know." And, yeah, make sure you
10 understand the question and do your best to
11 answer the question.

12 If it seems like you've given a fulsome
13 answer and -- and maybe moving on to other
14 topics, it's possible that Ms. Tom may interrupt
15 to ask a new question, but in general you're
16 allowed to give the full answer to the question
17 and only if we're kind of going really far afield
18 would you be interrupted.

19 All right. Do you have any questions for me
20 about this part of the process?

21 A Yeah. I -- my camera isn't showing on the
22 screen, and I don't know which one of these
23 symbols is mine, so I can't see myself.

24 THE CHAIR: You -- you can't see yourself. Okay. We
25 can see you.

26 A Okay.

27 THE CHAIR: And hear you just fine so...

28 A Okay.

29 THE CHAIR: Are -- are you comfortable? Are you able
30 to see the lawyers and see us?

31 A Yeah, I can see them, yeah. Okay. That's good,
32 then.

33 THE CHAIR: All right. Yeah, you're coming through --

34 A I just didn't want to have any strange -- didn't
35 want to have any strange face that I couldn't
36 correct.

37 THE CHAIR: No. Okay. All right. If you're ready
38 then, Ms. Tom, go ahead when you're ready.

39
40 CROSS-EXAMINATION BY CNSL A. TOM:

41
42 CNSL A. TOM: Thanks. So at the outset we just want
43 to advise that later on we are going to be
44 bringing an application to strike much of
45 Dr. Furgason's evidence in direct for relevance,
46 so we'll do that at a later date, and for that
47 reason our cross is going to be quite narrow for

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Cross-exam by Cnsl A. Tom

1 just those pieces of his evidence that we found
2 to be relevant.
3 Q So, Dr. Furgason, at the beginning of your
4 testimony you said that you ran courses under the
5 University of the Nations internationally for
6 many years. Is that right?
7 A Yes, that's correct.
8 Q And where internationally?
9 A I lived in Australia for 27 years, so I was on
10 the international committee, and the courses were
11 run largely in Australia but also in Canada.
12 Q Okay. So -- and the institution in Australia, it
13 was called the University of the Nations?
14 A Yes, it started out that. It became an
15 institute. But it -- it -- there's an
16 international university based in the States
17 called University of the Nations that's
18 registered, and the campus in Australia is an
19 extension campus.
20 Q But that institution doesn't have any
21 degree-granting powers, does it?
22 A Not in Australia, but it does internationally
23 through the U.S.
24 Q Okay.
25 A So it grants degrees.
26 Q But not recognized by the Australian government.
27 A No.
28 Q So the next thing I just wanted to talk about is
29 you said at one point that, "Number one, we are
30 not the employer." Do you remember that?
31 A Yes.
32 Q Okay. I just want to take you to a document
33 here. I'm going to pull it up on my other
34 screen. Just going to enlarge this a little bit.
35 So this is document is the provincial collective
36 agreement, and this is the Chilliwack local
37 version. And do you see there the first page?
38 A Yes.
39 Q Where it defines the Board of Education as the
40 employer?
41 A Mm-hmm. I was referring to employing as in
42 directly employing teachers, which we don't.
43 This -- the -- this -- the superintendant does
44 the employing. We don't interview. We don't
45 hire. So when it means employer, I was referring
46 to those who employ, directly employ teachers.
47 Q So you'd agree with me, though, that the board is

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Darrell Furgason (for Respondent)
 Cross-exam by Cnsl A. Tom

1 the entity who ultimately employs the teachers;
 2 correct?
 3 A Well, I guess if you want to use that document as
 4 your -- practically we don't, but I suppose in
 5 terms of that document and legislatively they
 6 consider that.
 7 Q Okay.
 8 A We can't fire teachers. We don't hire them. So
 9 I don't know what "employer" means.
 10 Q Okay. I'm just going to take you to another
 11 document here. So this is an excerpt of the
 12 *School Act*, and here in Section 15(1) says:
 13
 14 A board may employ and is responsible
 15 for the management of those persons
 16 that the board considers necessary for
 17 the conduct of its operation.
 18
 19 A The board only hires directly one person or it
 20 could be two. The superintendant can be fired by
 21 the board, but he does all the hiring. We never
 22 heard of any teacher, principal. We had no
 23 option of hiring those teachers or principals.
 24 So we don't hire them; we only directly can hire
 25 a superintendant who does all the other hiring.
 26 Q Okay.
 27 A I think this -- also I think the secretary
 28 general -- secretary -- secretary treasurer is
 29 sometimes considered under the employ of the --
 30 of the board directly but usually goes through
 31 the superintendant.
 32 Q So the board employs those people --
 33 A Yes, well --
 34 Q -- and those people are --
 35 A Yes, theoretically that's right. I -- I had no
 36 role in employing the superintendant. He was
 37 just there. I did not make a choice to hire him.
 38 Our board had no decision put in front of it to
 39 hire or fire him, but he was the one doing the
 40 hiring the teachers --
 41 Q But you'd agree with me that the board does have
 42 the power to determine whether an individual
 43 teacher should or should not be dismissed or
 44 suspended --
 45 A No. No, I don't agree with that. The
 46 superintendant does.
 47 Q Okay. I'm just going to take you back to the

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Darrell Furgason (for Respondent)

Cross-exam by Cnsl A. Tom

1 first document again. Okay. So where it says:

2
3 All teachers, speech pathologists, and
4 school psychologists appointed by the
5 board to the staff of the district
6 shall be appointed on a continuing
7 contract of employment.

8 Do you understand that that --

9 A I understand what it says, but in practice that's
10 not the way it worked.

11 Q Okay. And further down here, this article here
12 where it says that:

13
14 The Board of Education shall, pursuant
15 to Article 22.4, hold a meeting with
16 the employee and give the employee and
17 the association notice where they may
18 be suspended or dismissed.

19
20 A Do you notice the next sentence? It says the
21 Board of Education may also have its
22 representative present. Well, that was the
23 superintendant. So we -- we were not present at
24 any of those meetings, at least I wasn't in my
25 term.

26 The superintendant is the representative of
27 the board. He hires. He fires. We don't
28 directly, at least in my term, anyway. So the
29 superintendant is the representative of the board
30 to the teachers and his other employees like
31 associate superintendants, principals, et cetera.

32 Q And when my friend asked you that -- whether or
33 not you'd heard anything from a parent or a
34 grandparent, anything from the public where they
35 asked the board to punish or discipline a teacher
36 for teaching things like SOGI. You responded,
37 "Never had the authority to ask a teacher to be
38 fired, and we never did it." Remember that?

39 A There's two things in what you said. One -- the
40 first one was -- again, there's two things about
41 the authority to fire. What was the first part?

42 Q "We never had the authority to ask a teacher to
43 be fired, and we never did it."

44 A We never did it during my term. I -- I never
45 asked --

46 Q Okay.

47 A -- any teachers to be fired. We never voted on

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Darrell Furgason (for Respondent)
Cross-exam by Cnsl A. Tom

1 teachers being fired. The union --
2 Q Do you also --
3 A Sorry.
4 Q Do you also recall telling my friend that you got
5 a call from a parent who was concerned about
6 their child's Grade 6 teacher using the pronoun
7 "they" for the entire class?
8 A Yes.
9 Q And do you recall saying that you then called the
10 superintendant about that teacher?
11 A Yes.
12 Q And then you asked the superintendant to look
13 into it?
14 A Yes.
15 Q Okay. And during the course of the board
16 meetings that you attended, they were ran
17 according to Robert's Rules of Order; right?
18 A That was the attempt. Sometimes it didn't work
19 that way.
20 Q It's a complicated system, for sure.
21 A Well, some people didn't follow the rules.
22 Q Right. And did the chair ever prevent you from
23 saying something because they said that you were
24 ruled out of order?
25 A Oh, I'm sure. I'm sure that happened a number of
26 times, yeah.
27 Q And that -- and you disagreed with that decision?
28 A Yes. Yes. You'll have to give me an
29 illustration of one of those incidents because
30 they -- they like to rule outside of order often
31 over the four years.
32 Q Sure. So you gave an example where you said that
33 it had come to the board for discussion and a
34 vote and the committee made a suggestion about a
35 school name change, and you discussed it in
36 public, and you also said that you believe you're
37 required to make comments and state what you
38 think. Was that one of the times where the chair
39 ruled you out of order for saying something?
40 A No.
41 Q No? Okay. But you would agree that it is your
42 job to be involved in the discussion and have
43 your input into these discussions; right?
44 A Well, that's, I thought, what a trustee does.
45 All issues related to education and student
46 achievement in the district.
47 Q Right. Despite the understanding that your

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Cross-exam by Cnsl A. Tom

1 individual comments have no sway or power as a
2 directive to specific employees or governing
3 authority.
4 A They were always about policy or stuff in the --
5 the -- the aims and objectives. Our discussions
6 were always in our -- our domain. We -- we never
7 discussed teachers. I mean, our domain was
8 policy and how this policy is going to be carried
9 out. And then the -- the superintendant could be
10 advised to take -- you know, to check into this
11 or check into that, which he would do. So it was
12 policy and all the issues in the code of conduct
13 and the bylaws and the operation of the board
14 itself.
15 Q And you'd agree that the discussion itself is --
16 is important despite the fact that at the end of
17 the day you each had one vote and that was kind
18 of how decisions were made.
19 A Yeah. That's the operation of the board.
20 There's seven people, so there -- there will be
21 no split. It will be one way or another. And
22 any issues of policy or change in policy -- there
23 was a lot of change in policy, a lot of change of
24 the wording of the entire manual for the
25 district. The aims, objectives. We'd spend days
26 and days and days rewriting terms. The union was
27 involved in some of this too. Outside groups
28 changing -- so there was a lot of discussions,
29 and -- and things were voted on, yes.
30 Q And have you ever been apart of a board meeting
31 where a trustee has had to recuse themselves from
32 a discussion about a certain topic or policy?
33 A Not about a topic or policy, but there were
34 several trustees who were in conflict of
35 interest. They are married to teachers, as in
36 Willow Reichelt's husband is a librarian. And
37 one of the others -- David Swankey's wife, I'm
38 not sure if she's a teacher or he's got some
39 relations there. So there was several of them
40 who did recuse themselves in -- in very minor
41 situations, but they should have and didn't in
42 others.
43 Q Right. And they recused themselves both from the
44 discussion and from the vote itself; right?
45 A Yes, that's correct.
46 Can I just mention one of the most -- the
47 main one was over the vaccination that -- for

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 Cross-exam by Cnsl A. Tom

1 teachers, which I opposed on the basis of
 2 individual freedom and autonomy. There was a
 3 discussion that all teachers should be mandated
 4 to be vaccinated. I think the union wanted that.
 5 I could be wrong. You can ask the CTA whether
 6 they were pushing for all teachers to be vaxxed
 7 or all students to be masked. There was a
 8 terrible period during the vax when the union was
 9 weighing in on what should happen with masks or
 10 vaccinations.

11 The three of us conservatives voted against
 12 mandating any vaccination for a teacher on the
 13 basis of their individual rights to autonomy and
 14 -- and privacy regarding medical treatments. And
 15 that's -- that's one time the two of them were
 16 recused during that vote.

17 Q You also mentioned that you filed a complaint
 18 against a fellow trustee because they called you
 19 Islamophobic. Is that correct?

20 A Well, it was more than that. Almost from the
 21 beginning Willow Reichelt, who is now the current
 22 chair, spewed out words like they were just
 23 talking day-to-day. I -- I'm a homophobe. They
 24 called Barry a homophobe. Tran -- transphobe.
 25 Bigot. Hater. These words just rolled off her
 26 mouth. And during one discussion she said she'd
 27 read one of my posts about Islam. I do write
 28 articles. My master's thesis is on political
 29 ideology of Islam. She said I was a homo -- I
 30 was a trans -- Islamophobe, and I looked at her
 31 with incredulous disbelief. But that's the kind
 32 of atmosphere ignorant people who were on that
 33 board, what I call "ideologues," okay,
 34 trans-ideologically driven.

35 Everybody was an enemy to be opposed,
 36 oppressed, removed, cancelled. That's the terms
 37 they used, which were not proven, unprovable, but
 38 still they throw it out like a weapon.

39 So, yeah, I was accused by the chair. I
 40 looked at her and said, "What do you know about
 41 Islam," which would be nothing, but they can --
 42 how -- how could anybody say that? How could
 43 anybody say that -- how could anybody say this
 44 in -- in -- in the Chilliwack Progress that I --
 45 I'm guilty of hate speech? How can somebody say
 46 that, just roll it off their mouth because I
 47 said, "Teri Westerby is a female, born female,

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Darrell Furgason (for Respondent)
 Cross-exam by Cnsl A. Tom

1 and she says so herself"? How -- how is it --
 2 Q Okay --
 3 A -- that I --
 4 Q -- I'm just going to stop you --
 5 A -- in -- in agreeing --
 6 Q -- from going into -- into the other trustee --
 7 A All right. I'm trying to illustrate how terms
 8 just get -- like, you mentioned Islamophobe. I
 9 just threw out there. I added to it. All kinds
 10 of terms were thrown out there as though you're
 11 guilty because they mention it.
 12 Q Right. And so those words, though, had an impact
 13 on you. Those accusations of being --
 14 A Yeah.
 15 Q -- Islamophobic --
 16 A You know --
 17 Q -- despite the fact that you don't identify as
 18 Islamophobic.
 19 A Well, I'm stunned to hear it, that someone's
 20 accusing me of something. I teach on that area.
 21 That's like me telling you you don't know
 22 anything about law, right. So what's your --
 23 what's your take on that?
 24 So you're -- I'm professionally maligned by
 25 somebody who doesn't know what they're talking
 26 about. If -- I -- I could say the same thing
 27 about you. Malign you wrongly, and what would --
 28 you know, am I supposed to feel happy? I mean, I
 29 don't feel bad; I just felt this is going to be a
 30 long four years, which it was.
 31 Q Yeah. But you thought it was workplace
 32 harassment.
 33 A Well, telling somebody that they're an
 34 Islamophobe, which -- that she didn't even define
 35 and then calling me a homophobe, and I've never
 36 said anything to anybody there, and a
 37 transphobe -- you know, they just roll out these
 38 words. They're false allegations. It's like me
 39 telling you you must be a child abuser 'cause
 40 your hair is -- is styled in a certain way.
 41 Right? You're a child abuser. I mean, these are
 42 baseless accusations. Now, do they hurt me? No,
 43 because they're made by an ignorant person. So,
 44 you know, you get that in politics, right. You
 45 get that. I just took it as part -- perhaps this
 46 is part of the political turf of being on a
 47 school board because I hadn't been on one before.

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Darrell Furgason (for Respondent)

Cross-exam by Cnsl A. Tom

1 I've never encountered hostility like that
 2 before. But I thought, well, we're going to have
 3 to deal with this somehow.

4 Q So you mentioned your -- your -- your study of --
 5 of Islam. So what -- do you recall what the
 6 comment was that caused someone to call you an
 7 "Islamophobe"?

8 A Well, I don't know if it's relevant to this
 9 inquiry, but I'll give it to you anyway. She
 10 said that when I said the god described in the
 11 Quran -- and this is well known in theology
 12 anyway -- is not, in character, essence, or
 13 morality the same as the god described in the
 14 bible. Just like if I said the god of the bible
 15 is not Thor of the Greeks or whoever Thor was the
 16 god of. Or the god of the bible is not, you
 17 know, the god of Zeus of -- of the Romans. You
 18 know, anybody could compare those ideas in
 19 documentation and come up with a reasonable
 20 answer that the god of the bible is not Thor or
 21 Zeus or -- or Venus. So Allah, who has a
 22 different name, is not Yahweh, the god of the
 23 bible. And so I -- I said that because I -- I've
 24 taught on it. You could study it.

25 And so, yeah, it's ignorance. But it's --
 26 it's aggressive, demeaning type of ignorance by
 27 attaching phobe to it. You're -- you're an
 28 Islamophobe. She didn't say, "I think you've got
 29 a misunderstanding of the Quran." No. I'm
 30 suddenly an Islamophobe, which what is that? I
 31 mean...

32 Q And you also mentioned the human rights complaint
 33 that you received, and you said that being
 34 labelled as a racist in education is demeaning,
 35 and it's demeaning because it's a pejorative
 36 term; right? It's...

37 A Well, it's false. I mean, you know, if somebody
 38 says I'm a lousy fisherman, okay, maybe I am.
 39 But if somebody says you're a racist, that term
 40 implies evil behaviour, so one has to say, "Well,
 41 have you got any evidence for that?" Like, if
 42 somebody says, "You're a rapist" -- okay. How
 43 about the Glen Hansman saying me -- I promote
 44 rape culture; I mean, how does one answer that?
 45 You know, it's such a wild accusation without
 46 evidence, which a lot of his stuff is, that --
 47 you know, how do you answer? Well, you got to

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Darrell Furgason (for Respondent)

Re-exam by Cnsl J. Kitchen

1 either throw it back in their face like, you
 2 know, "You're off the wall here, buddy, because I
 3 don't fit your definition." I mean, any normal
 4 person -- if somebody said to you, "You're a
 5 molester," well, what are you going to do? I
 6 mean, you know, if they have no evidence. Oh, it
 7 doesn't bother me because -- no, you take it as,
 8 well, I've either got to refute this or just
 9 dismiss this person as -- as ignorant.

10 Q And particularly in education it's damaging,
 11 right, because you're seen as being somewhat
 12 authoritative in the community and education is
 13 upheld. You yourself have done a lot of
 14 education.

15 A So, sorry, so that -- where -- where are you
 16 leading this?

17 Q Oh, I'm just saying you said that it was -- being
 18 labelled as a racist in education is demeaning,
 19 so first I -- I asked you about the demeaning
 20 bit, and now I just want to know -- you know, in
 21 education particularly because of the stature of
 22 education in our -- in our society, it's
 23 damaging.

24 A Well, if you're being able -- label -- if -- if
 25 Barry's being labelled as a hater, it's damaging
 26 to him. He's been defamed. Glen Hansman
 27 labelled me as a rape promoter. Yeah, that's a
 28 bit damaging, especially when it gets into The
 29 Province or on the front page of the -- of the
 30 Chilliwack Times.

31 So -- but if this has any level of equality
 32 talking about teachers, it's a vastly different
 33 level because somebody's lying about me and my
 34 professional training versus it's not my
 35 identity. I'm not claiming an identity in Islam.
 36 So they're -- they're different. They're not
 37 equivalent.

38 CNSL A. TOM: Those are all my questions.

39 THE CHAIR: Thank you. Mr. Kitchen, do you have
 40 anything arising in redirect?

41 CNSL J. KITCHEN: Just give me a sec.

42
 43 RE-EXAMINATION BY CNSL J. KITCHEN:

44
 45 Q Just one question. Darrell, I think -- sorry,
 46 Dr. Furgason. Forgive me. I'm thinking of you
 47 in my mind.

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Darrell Furgason (for Respondent)
 Re-exam by Cnsl J. Kitchen

1 Do you think the two are one in the same --
 2 this is in -- this is in the vein of -- of the
 3 discussion you just had with my friend and, you
 4 know, the name calling and referring to people
 5 as, you know, scandalous things, and the -- the
 6 child abuse thing came up again, and you said
 7 something along the lines of -- to my friend you
 8 said, you know, I wouldn't call you a child
 9 abuser just because you got black hair. So --
 10 this -- this -- this goes to one of the -- one of
 11 the key issues in this case because obviously --
 12 obviously regardless of where people fall on the
 13 spectrum of anything to do with politics or
 14 ideology, people don't like being called a child
 15 abuser. You don't like it; Barry doesn't like it
 16 when Mr. Hansman calls him that; and -- and the
 17 teachers are saying they don't like it.
 18 Everybody doesn't like it. It's a classic
 19 example that everybody -- everybody hates, of
 20 course, being called that.

21 Do you think it's the same thing to say that
 22 the teaching of an ideology is child abuse? Do
 23 you think when somebody says that it's the same
 24 thing, functionally, as saying that the person
 25 teaching it is a child abuser?

26 CNSL A. TOM: I'll just say that my friend is not
 27 permitted to lead on redirect, so if you could
 28 reframe your question.

29 CNSL J. KITCHEN: I thought it was an open question
 30 and not leading. I didn't -- I wasn't leading
 31 him to a particular answer. I have no idea what
 32 he's going to say.

33 THE CHAIR: I think the question is fine.
 34 Dr. Furgason, if you understood it, could you
 35 give your answer, please.

36 A Okay. I -- I might have got lost in the -- in
 37 the shuffle afterwards. Did it have something --
 38 something to do with is it the same calling
 39 someone a child abuser in action like you're a
 40 rapist versus somebody who teaches something that
 41 is called child abuse? Is that what the question
 42 was?

43 CNSL J. KITCHEN:

44 Q I think so. Let me -- let me -- let me just ask
 45 it again. Barry -- Barry said teaching gender
 46 ideology is child abuse. You said it. We've got
 47 another witness who have said it. And then the

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Darrell Furgason (for Respondent)

Re-exam by Cnsl J. Kitchen

1 teachers say, "For us what's happening here is
 2 you're calling us child abusers and so we think
 3 that's discrimination. We think that's really
 4 harmful to us."

5 What I want to know is do you -- do you
 6 think -- do you think saying teaching an ideology
 7 is child abuse is the same as calling the people
 8 who teach it child abusers?

9 A No. I -- I don't think it's the same. You know,
 10 in academia, university courses, there's all
 11 kinds of controversial topics. I mean, there are
 12 professors who teach there was no Holocaust or
 13 that the world's going to end with global warming
 14 in the next three years and the polar bears are
 15 all going to die. You know, I mean, we got all
 16 kinds of ideologies -- environmental ideals,
 17 political, social, whatever -- and it doesn't
 18 mean that -- well, in academia you take on the
 19 idea that that person has just told you that --
 20 that there was no Holocaust. Now, whether
 21 they're a Jew hater is in question. Maybe
 22 they're not. Maybe they got bad information. So
 23 you can have somebody 's who's not -- who doesn't
 24 hate Jews teach that there was no Holocaust
 25 because they can't read history right or they --
 26 they believe the wrong thing. Do you follow me
 27 there? So -- so -- so if a professor teaches
 28 there's no Holocaust and -- and he doesn't hate
 29 Jews but he's honestly trying to find the
 30 thing -- maybe he's open to hearing that there
 31 was a Holocaust. Maybe he's got limited
 32 information. Maybe he just goes to Wikipedia
 33 or -- you know, you don't know where the guy got
 34 his information.

35 So the issue here is, yes, separating the --
 36 the -- the -- the person from their ideology --
 37 it's, like, you know, I don't -- I -- I hate some
 38 of the stuff Trudeau does, and a lot of people
 39 do. We hate the stuff in his policies, but you
 40 can't say, "I hate him as a person because he
 41 spouts this stuff." Right? We hate his
 42 political party, his ideological orientation,
 43 his -- his association with China in his
 44 political whatever. But -- but if somebody says,
 45 "Do you hate Trudeau," I go, "No, no; I'm not
 46 allowed to hate that person." He's got an
 47 ideological platform.

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Darrell Furgason (for Respondent)
Re-exam by Cnsl J. Kitchen

1 So I would think the same thing in the
2 school. You know, I'm not -- I don't hate
3 teachers. I've written stuff support -- I tried
4 to support teachers. I want teachers to be
5 better. I don't want our grades to be going
6 lower while they get bogged down in ideological
7 junk, which they are. So I -- I support
8 teachers. I was a teacher. I -- I was a
9 substitute teacher for six years. We -- we -- we
10 would not let any student bully. But we never
11 had anything like this. None of these issues
12 came up and et cetera. So I fully respect
13 teachers and believe that they do a great job. I
14 want better teachers. I want better curriculum.
15 I don't want -- anyway.

16 To get away from it -- right. The question
17 being -- no, the two are not the same. I can
18 despise Trudeau's economic policies which have
19 bankrupted Canada, but I don't hate him as a
20 person because he happens to be liberal or -- or
21 whatever.

22 Q Thank you.

23 THE CHAIR: All right. Thank you, Dr. Furgason, for
24 your evidence. Those are all of the questions we
25 have for you. Appreciate you taking the time and
26 effort to come and testify in the proceeding. As
27 I said to you before, the only request I make is
28 you not talk about your evidence with anyone to
29 testify after you, but at this point I don't know
30 if you could if you wanted to because we're
31 almost done. So thank you for your time.
32 You're -- I'm going to disconnect you from the
33 meeting now. You're free to go about your day.

34 A Okay. Thank you very much. I appreciate it.

35 THE CHAIR: Thank you.

36
37 (WITNESS EXCUSED)

38
39 THE CHAIR: All right. So I understand we have
40 Mr. Bogunovic. Maybe Mr. Neufeld could give us
41 an update as to whether we're still expecting him
42 at 3 or is it possible to come any earlier?

43 BARRY NEUFELD: He should be here in about ten
44 minutes.

45 THE CHAIR: Okay.

46 CNSL J. KITCHEN: That's good.

47 CNSL L. WADDELL: I've got a housekeeping -- sort of

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1 housekeeping thing to address, maybe, in that --
 2 that gap. So it just has come to our attention
 3 that the member of the public that was initially
 4 banned while the teacher witnesses were
 5 testifying is now permitted to be in the hearing.
 6 I do not know if she is here but --

7 CNSL J. KITCHEN: I'm really sorry. I got -- I got
 8 booted out again, and I -- I just missed that,
 9 and it might have been important. I'm sorry.

10 Can you just tell me again.

11 CNSL L. WADDELL: Sure. I was just going to say that
 12 it's come to our attention that the member of the
 13 public that was prohibited from parts of the
 14 hearing where the teacher witnesses were
 15 testifying but who is now permitted to be back in
 16 has published the Tribunal's letter respecting
 17 that decision, which the Tribunal directed not be
 18 published -- has -- has published that online. I
 19 wanted to make the Tribunal aware that I haven't
 20 really had much time to process what we might do
 21 about that, but her post here says --

22 CNSL J. KITCHEN: Ms. Waddell, we need -- we need to
 23 see it. If she has --

24 THE CHAIR: Well, she can send it --

25 CNSL J. KITCHEN: -- then that needs to be dealt with
 26 but --

27 THE CHAIR: She can read it and then -- and then she
 28 can send it. She can read the post and then --

29 CNSL L. WADDELL: I'll read it and then send it --

30 THE CHAIR: -- send the post.

31 CNSL L. WADDELL: -- Mr. Kitchen. So it says:

32
 33 I was denied public access to the
 34 hearing for the days that the BCTF, CTA
 35 witnesses were testifying. Was sent a
 36 letter by the HRT about this. James
 37 Kitchen, Barry's lawyer, said that I
 38 could take the HRT to court over that.
 39 I asked him if he'd be my lawyer. He
 40 said something like, "Hmm, Tammy
 41 (phonetic), I'd love to represent you,
 42 but I can't do it for free. We need to
 43 have a large money investor.
 44

45 That part doesn't matter. Next paragraph:

46
 47 Oh, and I was told that the letter they

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1 sent me was not to be publicized.
2 Here's a clip. Though James said I
3 could share portions but that they
4 actually can't tell me this is not
5 public information as well. The post
6 upon prompted [verbatim] this denial of
7 me to attend was the one where I posted
8 the images that a parent sent me of the
9 window areas in a hall that were
10 plastered with RTQ propaganda. The
11 post is in this group a few days ago.
12

13 So in our submission, the individual is trying to
14 point people back to that post, and then
15 there's -- the letter is attached to the post
16 that I just read you. The Tribunal's letter is,
17 I mean.

18 So I -- I don't know exactly what to do
19 about that other than I think it's abundantly
20 current [verbatim] that -- that this particular
21 member of the public probably ought to just be
22 excluded now for the rest of the hearing. But I
23 haven't -- I don't have any fancy submissions or
24 anything to say on that. I just wanted it -- to
25 bring it to everybody's attention ASAP. And I
26 will now send -- I will send that to Mr. Kitchen
27 and the Tribunal while we're using time.

28 THE CHAIR: Thank you. We'll take a look at the post
29 and let Mr. Kitchen take a look at the post, and
30 then we'll decide what to do.

31 CNSL J. KITCHEN: I'm not opposed, of course, to my
32 friend raising these issues, generally speaking.
33 I do find it frustrating that a number of times
34 these things have come up. And I don't think
35 there's any rule, of course, that she's
36 breaching, but it is frustrating that these
37 things are sprung upon us in the public part of
38 the hearing. There's no notice to me. There's
39 no e-mail. There's no, "Here, I'm going to talk
40 about this. Have a look at it." I don't know
41 that my friend is required, strictly, to do that;
42 that's certainly how it's done.

43 THE CHAIR: All right. Well --

44 CNSL J. KITCHEN: So I -- I do have to -- I do have
45 to -- I do have to mention I find that -- I find
46 that very frustrating. You know, if -- if -- if
47 it was me, I -- I would -- I would be sending it

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1 to her and letting her know I'm going to -- "I'm
2 going to say this. Here you go. Have a look at
3 it." But that's just -- that's just how it's
4 done. I -- so I find that -- at this point it's
5 getting a little frustrating for me.
6 CNSL L. WADDELL: And, you know, I -- I appreciate
7 your acknowledgement that that's not an
8 obligation, but I agree with you that that is
9 often a courtesy extended, and I'm not trying not
10 to extend the courtesy because I don't think
11 you're deserving of it; it's just impossible to
12 stay on top of all of these things, and
13 unfortunately so much of this has happened that
14 it's not possible to give you advance notice.
15 Now I've lost my e-mail trying to attach
16 this. Hang on.
17 CNSL J. KITCHEN: Well --
18 THE CHAIR: And certainly, Mr. Kitchen, I mean, if
19 these things are arising during the hearing
20 and -- and coming up during the hearing and you
21 need time to, you know, look at the post, think
22 about how you're going to respond, always happy
23 to give you a few minutes, give you time with it.
24 And if you want to propose offline conversations
25 with your friend, you can always propose that.
26 But, you know, if these things are coming up --
27 CNSL J. KITCHEN: Well, no, yeah -- yeah, generally I
28 would. I mean, I -- I -- you know. Usually
29 opposing counsel is not this interested in what's
30 going on in the public around a hearing, but if
31 they are, to -- then -- then, yeah, we talk about
32 it. I've -- I've -- I've had those
33 conversations. I've -- I've never had a hearing
34 where I've had this many things sprung on me in
35 the hearing. They're -- they're --
36 CNSL L. WADDELL: And -- and we have had --
37 CNSL J. KITCHEN: -- they're brought up as
38 conversations between counsel.
39 CNSL L. WADDELL: And just to be clear, Mr. Kitchen,
40 we have had conversations, right. We're just --
41 we're not right now, and we haven't on every
42 occasion, but we have had one lengthy
43 conversation, so...
44 THE CHAIR: All right. Well, since this may take a
45 few minutes just to get the post and send it and
46 have us review it, maybe what I'll propose -- and
47 we're still waiting for the witness -- is we can

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1 turn our cameras and mics off for -- give
2 ourselves a little ten-minute break while we get
3 the witness in and -- and look at the post and
4 come back at 2:40. Is that all right by
5 everyone? Hearing nothing.
6 CNSL L. WADDELL: Yeah, sorry, that's --
7 THE CHAIR: Okay.
8 CNSL L. WADDELL: -- fine by me.
9 THE CHAIR: I'm going to take the break. We'll take a
10 ten-minute break. We'll come back at 2:40.

11
12 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS) [2:28:48]
13 (PROCEEDINGS RECONVENED) [2:40:17]
14

15 THE CHAIR: All right. Everyone come on back.
16 BARRY NEUFELD: Okay. Rob is just getting set up. I
17 have a little housekeeping item I need to
18 mention.
19 THE CHAIR: All right. Just -- we can get there,
20 Mr. Neufeld. I'm just waiting for Mr. Kitchen to
21 come back. And your camera's not on. And I have
22 something to deal with as well, so I'll come to
23 you in just a moment when Mr. Kitchen's back.
24 BARRY NEUFELD: Okay.
25 THE CHAIR: There you are. Thank you. Okay.
26 CNSL J. KITCHEN: Okay. So I've since learned
27 something that my friend failed to mention that I
28 think is very relevant to this. This was not --
29 on the information I have, which I can only take
30 as true based on what I've been told, this post
31 is not public. It is in a private chat group
32 unaccessible [verbatim] by the public. That
33 means two things: One, this is not the
34 scandalous thing my friend as made it out to be
35 because it's not publicly accessible.
36 Two, that means somebody associated with my
37 friend is infiltrating a private chat group for
38 the apparent purpose of -- I'll call it spying on
39 communications and then taking those
40 communications, giving them to my friend, and
41 then my friend is using them to scandalize me in
42 the process. That's not acceptable, obviously,
43 especially if my friend fails to mention that the
44 post was from that private chat group
45 inaccessible by the public.
46 So I was at first very annoyed and intended
47 to be -- share some of my friend's concerns, but

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1 now I am much more concerned at her conduct.

2 THE CHAIR: Can you --

3 CNSL J. KITCHEN: Because why -- why is somebody
4 infiltrating a private chat group as a spy,
5 pulling content, getting it to a lawyer, then
6 that lawyer putting it into a public proceeding
7 to scandalize opposing counsel and -- and try to
8 get this person kicked out? Okay?

9 Now, I've -- I've seen a copy of it, and I
10 can -- I can see that -- that -- that this person
11 has -- has clipped a portion of the letter. I
12 can confirm that, okay, and I can understand if
13 the Tribunal's concerned about that being done in
14 a private chat group to a degree, though, because
15 I think the restriction is that it's not
16 published publically, and -- and if it's not
17 published publically, then it's not published,
18 really. Okay?

19 So my -- I don't know -- I don't know what
20 my friend's game is, but this is -- this is
21 totally unaccept -- and maybe she doesn't know.
22 Maybe she has no idea. Okay? But I -- you know,
23 she -- she -- she should. She has -- she should
24 have a duty to make sure that -- when she brings
25 up something this scandalous to figure out what
26 her source is and where it's coming from.

27 So I -- I suggest that -- you know, I can --
28 I can -- I can forgive my friend this, especially
29 if she -- if she tells me that she just didn't
30 know. Well, I'll take her word at it. But
31 either way there should be no further discussion
32 on this because this is not public, and it's not
33 something that we should be airing in the public
34 in this form.

35 THE CHAIR: Thank you. Ms. Waddell, I'll give you a
36 chance to respond, and then -- and then I'll deal
37 with this.

38 CNSL L. WADDELL: I will say just a few things, and
39 I'll try and keep it short because I do want to
40 respect Mr. Bogunovic's time and get to him.

41 So, first of all, I apologize to my friend
42 for reading the text of the post out. That was
43 literally the first time that I was actually
44 reading it, and I didn't realize that it talked
45 about him. I would not have read that portion
46 and would simply have sent it had I known that to
47 be the case, although I don't think there was

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1 anything particularly untoward in the content.

2 But I don't actually -- I have no knowledge
3 about the specifics of that group. Now that you
4 mention it and I look at the screenshot, it is a
5 Facebook group. I don't know -- I have no
6 knowledge of what its parameters are nor whether
7 the individual that took that screenshot is a --
8 I can only presume they are a member of that
9 group, and I don't think any of that is
10 particularly relevant. The reason why I brought
11 it to the Tribunal's attention is because I
12 consider it part of my job, as an officer of the
13 court, to maintain the integrity of this process.
14 The Tribunal made an order, issued a letter
15 addressing a situation that had -- had arisen
16 in -- in that vein that said that that ought not
17 to be posted, and then in the middle of our --
18 our hearing today I found out that, in fact --
19 and I don't know if -- I mean, I can only -- in
20 my screenshot I can only see part of the letter.
21 I presumed, perhaps erroneously, that the
22 entirety of the letter was there, but certainly
23 the text of it saying that it ought not to be
24 published was there.

25 So that's all I'll say about -- I -- I don't
26 think the -- where it came from, which I don't
27 actually know, is relevant. I think that the
28 relevant piece is -- is the impact on the
29 Tribunal's processes and the Tribunal's effort to
30 maintain some sanity and structure in this
31 proceeding.

32 And I will say I don't -- if the Tribunal
33 wants to address it now, that's fine. If the
34 Tribunal would like to address it separately in
35 submissions between counsel that aren't aired
36 here, to my friend's point, I'm fine with that.
37 I did -- I wasn't deliberately raising it in a
38 public format; I was raising at the first
39 available opportunity having just been apprised.
40 So that's -- that's all I will say in reply. I
41 have no further.

42 THE CHAIR: All right. Thank you. I don't want to
43 spend too much time today on this because our
44 priority is, of course, to finish with
45 Mr. Bogunovic's evidence. I will say -- I mean,
46 and I appreciate, Mr. Kitchen, the information
47 you're bringing forward that this is a private

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1 Facebook group, I -- I understand you to be
2 saying, but certainly it's -- it's not so private
3 that somehow it's not posted; it's being shared.
4 Right? So --
5 CNSL J. KITCHEN: Well, no, no, and that's just it.
6 There's somebody in there --
7 THE CHAIR: Okay. Well --
8 CNSL J. KITCHEN: -- right --
9 THE CHAIR: -- but so I'm --
10 CNSL J. KITCHEN: -- who is -- who -- and this is my
11 problem --
12 THE CHAIR: Yeah, no --
13 CNSL J. KITCHEN: -- right --
14 THE CHAIR: -- I -- I get the problem --
15 CNSL J. KITCHEN: -- somebody that my friend is connect
16 [verbatim] with --
17 THE CHAIR: Oh, Mr. Kitchen --
18 CNSL J. KITCHEN: -- okay, like --
19 THE CHAIR: -- I know. I get the problem. Oh, I'm
20 talking now. I get the problem. I get what
21 you're saying. Someone's infiltrated the group.
22 We're not going to get to the bottom of that
23 right now, but I'm saying it's not so private --
24 this obviously isn't sort of a family WhatsApp
25 group. This is a group that it's possible for
26 people to get in and look at posts, right.
27 So in my letter to this member of the
28 public, it started with an all-bolded paragraph
29 saying, "You may not publish this letter.
30 Publishing this letter would violate the
31 tribunal's publication ban." And the portion of
32 the letter that was published is exactly the
33 portion that I feared would violate the
34 publication ban by providing enough information
35 for someone in the public, whatever -- however
36 limited a slice of the public that is -- to
37 identify the teachers in the proceeding.
38 So, I mean, I take your point maybe this
39 wasn't public to the whole world, but it's public
40 to enough people that it's come up before the
41 Tribunal, and as far as I'm concerned, that's a
42 direct violation of the very clear instructions
43 in the Tribunal's letter, and under Section 48 of
44 the *Administrative Tribunals Act*, which I've
45 referenced before, we have the authority to
46 exclude a person from further participation in or
47 attendance at a proceeding if they're disobeying

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1 or failing to comply with an order or direction
2 of the Tribunal, and in our view that is what has
3 happened here, and the only remedy available to
4 us to deal with this in this moment is to exclude
5 this person from further participation in the
6 hearing or attendance at the hearing, which is
7 what we're going to do.

8 So we're going to -- this person -- and --
9 and I know you're listening, and you know who you
10 are, you're excluded from further attendance at
11 the hearing; this includes listening or otherwise
12 observing the hearing through anyone else's
13 connection who has been granted access to the
14 proceeding. So I'm going to remove you from the
15 proceeding now, and you will not be readmitted.

16 All right. Is Mr. Bogunovic here? Oh,
17 Mr. Neufeld had a housekeeping issue. Sorry.

18 Mr. Neufeld, coming back to you --

19 CNSL J. KITCHEN: Chair, I got --

20 THE CHAIR: Yeah.

21 CNSL J. KITCHEN: -- I got -- I got one thing I need to
22 ask in that.

23 THE CHAIR: Yeah.

24 CNSL J. KITCHEN: I -- I think it's fair that you make
25 a ruling directing my friend if she has any more
26 issues of this nature to raise it with me
27 privately, okay, to -- for a number of reasons.
28 She's talking about the integrity of the process.
29 This was, I think, an -- an -- you know, an
30 unintentional attack on the integrity of the
31 process. I think it -- it -- the -- the effect
32 was to scandalize me and -- and the respondent.

33 My -- my -- my friend can -- can avoid the --
34 the -- what I think is a significant error of
35 judgment assuming something is public when it's
36 not and then -- and then -- and then springing it
37 on opposing counsel in a public portion of the
38 hearing by holding on a little bit until at least
39 a break and picking up the phone and saying, "I'm
40 going to send you something, and we need to talk
41 about it" --

42 THE CHAIR: All right. I --

43 CNSL J. KITCHEN: -- okay, because -- because --

44 I'll -- I'll take her word she doesn't know,
45 but -- but -- but -- that's fine, but there's
46 still a lack of due diligence. She received
47 something from the public. She has no idea where

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1 it comes from. She doesn't run it by me for us
2 to figure out where it comes from, and she -- she
3 just throws it out there. Okay? And -- and --
4 and the effect, okay -- and at some point I have
5 a hard time -- my friend not -- not anticipating
6 the effect of scandalizing me and the process and
7 the respondent. Okay? She wants to bring these
8 up, fine. I'll get it. She did that once, not
9 many times, once, earlier on in the hearing. Her
10 and I had a conversation about it that I thought
11 was constructive. It resulted in immediately one
12 thing that was important to her that she wanted,
13 and it eventually resulted in the rest of what
14 she wanted. Okay? Ms. Waddell and I can have
15 constructive conversations. I'm not opposed to
16 them. We've -- we've had them a couple times. I
17 think we just had them here a couple hours ago,
18 actually. That -- that -- that needs to happen
19 if she's going to have any more of these sort of,
20 you know, pop-up surprises of something on the
21 internet that she doesn't like. We can deal with
22 it, and then we don't have to go through this,
23 and -- and -- and I don't have to, you know, deal
24 with -- with -- with somebody who's -- who's got
25 a spy in a private chat group blowing something
26 up to scandalize me. I -- we can -- we can avoid
27 that. She's got an issue; I'll try to deal with
28 it. Okay?

29 THE CHAIR: Okay.

30 CNSL J. KITCHEN: I'm not out to get her. She's got
31 something online she doesn't like, I'll try to
32 deal with it like I did the last time she
33 [indiscernible -- rapid speech]. That -- that
34 needs to happen so we don't -- we don't --
35 because this is obviously potentially going to
36 keep happening. This is about the fourth time
37 she's brought something up like this. It needs
38 to stop. We'll deal with it the proper way.

39 THE CHAIR: All right. Well, thank you. I think we
40 have your views on that, and certainly counsel
41 has heard your -- your views on how you'd like to
42 deal with this going forward. I'm not going to
43 make a direction or order because I don't
44 necessarily see a basis to do so. There may
45 be -- you know, I'll leave it to you two how
46 you're going to interact about this stuff, but I
47 don't see anything improper about bringing these

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1 things up as they come.

2 I do want to move on. Mr. Neufeld said that
3 he had a housekeeping issue. Mr. Neufeld, is
4 there something that you wanted to address?

5 BARRY NEUFELD: Just very briefly. You'll notice that
6 quite often I step away from my computer, and
7 there's two reasons for that: Number one, I'm
8 diabetic, but I'm not on insulin, so I need
9 frequent washroom breaks.

10 The second thing is I live in a house
11 trailer. My furnace is -- sounds like a jet
12 flying through the house, so I haven't -- I'm
13 trying to keep warm with a wood stove, and I need
14 to get up every few minutes and put another log
15 on the fire. So that's the only reason. I'm
16 listening. I'm paying attention to everything
17 that's going on.

18 THE CHAIR: Okay. Thank you. That's fine. Thank you
19 for that explanation. I have a similar furnace
20 issue. I don't see -- is Mr. Bogunovic there
21 yet, Mr. Neufeld?

22 BARRY NEUFELD: Yes, he's here.

23 THE CHAIR: Okay. He hasn't --

24 BARRY NEUFELD: We'll take --

25 THE CHAIR: -- connect -- yeah, it's time for him to
26 connect to the hearing if he can.

27 BARRY NEUFELD: Are you connected, Rob?

28 THE CHAIR: And I know we just had a break. I think,
29 Ms. Waddell, you estimated about an hour. Are
30 you -- well, I guess I should ask. Do we -- do
31 we need another break or do you want to go
32 through with this cross? How would you like to
33 handle this? Awkward timing.

34 CNSL L. WADDELL: I'm -- I'm easy. I can go with the
35 Tribunal's needs or my friend's needs or
36 Mr. Neufeld's needs as the case may be. I --
37 I -- I may be under an hour. So, anyway, I -- I
38 don't need a break, but I'm happy to take one if
39 others would like one.

40 THE CHAIR: Mr. Kitchen, do you have a preference?

41 CNSL J. KITCHEN: No, no, no. No preference.

42 THE CHAIR: All right. We'll just carry on.

43 Oh, maybe while we're waiting, Ms. Tom, we
44 didn't see the collective agreement in the record
45 anywhere. Was that something that you were
46 seeking to have admitted?

47 CNSL A. TOM: Yes. I'll send that shortly.

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1 THE CHAIR: Okay. And then are you seeking to have it
2 admitted?

3 CNSL A. TOM: Yes. And could we also get
4 Mr. Furgason's notes that he said he was
5 referring to, Mr. Kitchen, that you said you were
6 going to send?

7 CNSL J. KITCHEN: Well, he didn't have any notes that
8 I know of, but he had that -- he had the thesis
9 and he had --

10 CNSL L. WADDELL: His election statement.

11 CNSL J. KITCHEN: His election statement.

12 CNSL L. WADDELL: Couple of --

13 CNSL J. KITCHEN: He didn't actually read any -- read
14 anything from those -- those news articles. But,
15 I mean, I -- I can ask him for them. That's
16 fine.

17 CNSL A. TOM: Okay.

18 CNSL J. KITCHEN: So -- so you want the news articles.

19 CNSL A. TOM: Yeah, just the things that he -- he was
20 referring to, yeah. That'd be agreed.

21 CNSL J. KITCHEN: Well, I know. That's what I'm
22 trying to sort out. So -- so there's -- there's
23 his election statement. There's the thesis.
24 There's the news articles.

25 THE CHAIR: He had the piece of paper with the 47
26 sexual orientations. I don't know if that's --
27 are you looking for that as well --

28 CNSL J. KITCHEN: Yeah, you want -- do you want that?

29 CNSL A. TOM: Sure.

30 CNSL J. KITCHEN: Yes. That was -- that was the only
31 thing that was actually a written note.

32 THE CHAIR: All right. I see Mr. Bogunovic here, so
33 I'm going to let him in. We'll come back to the
34 collective agreement once we have it, and I
35 imagine -- well, we can deal with it once we have
36 it.

37

38 ROB BOGUNOVIC, a witness,
39 recalled.

40

41 THE CHAIR: Good afternoon, Mr. Bogunovic. Thank you
42 for rejoining us.

43 A Thank you.

44 THE CHAIR: You are, I think, already familiar with
45 what we're doing here and who's here. It's
46 generally the same group of people you were
47 introduced to yesterday. There is a new person

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1 here. Basically we can only really see his
2 hands, but it's -- it's an articling student
3 with -- with the complainant's counsels' firm,
4 Chris Fenje, is here as well.

5 And -- just a moment. And you should see on
6 camera the -- the same folks that were here
7 yesterday: Complainant's counsel and Reid Clark
8 from the Chilliwack Teachers' Association,
9 Mr. Neufeld, of course, Mr. Kitchen. And we have
10 Sarah Khan from the B.C.'s Office of the Human
11 Rights Commissioner. So those are all the people
12 on video. We have a number of people as well
13 from the public that are listening.

14 A Okay.

15 THE CHAIR: And apologies for my eyes looking around.
16 There's someone trying to join, and I just need
17 to make sure we're okay to let them in.

18 All right. So you're back here for
19 cross-examination. This means counsel --
20 Ms. Waddell, counsel for the unions, is going to
21 ask you questions. One of the purposes of
22 cross-examination is to test your evidence, so
23 some people can find that a difficult process,
24 and if that's you, that would be not surprising.

25 We are -- we're a bit off schedule right now,
26 so I think we're just likely going to push
27 through all of your questions. We think we might
28 be able to finish them without a break, but
29 certainly if you need a break, let us know and
30 we -- we can happily take one.

31 When you're answering questions, if there's
32 a question you don't understand, you can ask for
33 clarification. And if you don't know the answer
34 to a question, that's also a fine answer. So
35 your job is just to do the best you can answering
36 the question.

37 Do you have any --

38 A Okay.

39 THE CHAIR: -- any questions for me about the process?

40 A Not presently, no. Thanks.

41 THE CHAIR: Okay. Thanks. Go ahead, Ms. Waddell.

42 CNSL L. WADDELL: Thank you, Madam Chair.

43
44 CROSS-EXAMINATION BY CNSL L. WADDELL:

45
46 Q Okay. Mr. Bogunovic, I want to start with some
47 of your testimony from yesterday about the

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Rob Bogunovic (for Respondent)
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1 SOGI 123 materials. You talked about what was
 2 contained in each of the 1 and the 2 and the 3.
 3 I think you said that 1 was about policy and 2
 4 was about environment and 3 was about materials.
 5 Is that right?
 6 A Curric --
 7 Q Okay.
 8 A Three is curriculum materials, yes.
 9 Q Okay. It's good that you raise that. Do you
 10 agree or disagree that Number 3 are resource
 11 materials?
 12 A Generally speaking, yes. I don't dispute that
 13 they are resource materials, and when I dealt
 14 with the -- my questions to the union, I dealt
 15 primarily with 1 and 2 and only pointed out that
 16 some of the resources in Section 3 seem to be
 17 violations of the very principles they claim to
 18 be holding to.
 19 Q Right. That's sort of your -- I'll call it your
 20 "philosophical approach" because you --
 21 A Yes.
 22 Q -- talked a fair bit about philosophical
 23 approaches yesterday.
 24 And you'd agree with me, I take it, that
 25 those resources, whether they're good or bad, are
 26 not mandatory for teachers to use; correct?
 27 A True. And on top of that, they aren't the
 28 resources that have been out there. The BCTF has
 29 had resources in the realm of LGBTQ+ long before
 30 there was a SOGI 123, so it's not necessary that
 31 those resources even be wrapped up under the
 32 umbrella of a SOGI 123 program.
 33 Q Okay. That's helpful. And in terms of the 1, if
 34 you will, the policy, my friend took you
 35 yesterday to, I think, one page of that.
 36 Now, the materials under the umbrella of
 37 Number 1, those are sample policies; correct?
 38 CNSL J. KITCHEN: Is it him that's frozen?
 39 THE CHAIR: Yes.
 40 CNSL L. WADDELL: Okay. I thought he was just being
 41 really thoughtful.
 42 CNSL J. KITCHEN: Which is --
 43 CNSL L. WADDELL: Which I'm sure he was, but yeah.
 44 Okay.
 45 THE CHAIR: We'll just give it a minute here.
 46 BARRY NEUFELD: He got kicked out of the meeting.
 47 I'll try and get him in again.

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Rob Bogunovic (for Respondent)
Cross-exam by Cnsl L. Waddell

1 THE CHAIR: All right.
2 CNSL L. WADDELL: Sure. Thank you.
3 THE CHAIR: All right. You're back in. There you go.
4 Do you want us to repeat the question or -- or do
5 you remember?
6 A Please.
7 CNSL L. WADDELL:
8 Q Absolutely.
9 A Can you repeat the question, please.
10 Q I sure can. I sure can. So I was just asking
11 you about the policy part. So we talked about --
12 we -- we had a couple questions about the
13 materials part, and I was just going to the
14 policy part, so -- so the 1 in SOGI 123, and I
15 was just asking you if you'd agree that the
16 policy materials contained in SOGI 1, I'll call
17 them, those are sample policies; correct?
18 A They -- you can certainly argue, yes. They're --
19 they're somewhat influential in that I would say
20 they put forth an aspiration. But the wording on
21 the policies leads to so much potential
22 confusion, and some of the aspirational goals put
23 forth are really quite problematic which means if
24 they are designed to be the aspirational goals
25 for board policies, then you're going to run into
26 problems that what they are technically and
27 literally promoting is actually going to be a --
28 a bad business for -- for schools and --
29 Q And this --
30 A -- for the district. And I --
31 Q Okay.
32 A -- I would add that when individuals spoke about
33 SOGI, and especially candidates that were
34 endorsed by the CTA, they expressed 100 percent
35 support for SOGI 123, the policies as written,
36 and when individuals tried to speak to those
37 policies and the wording, they were often shouted
38 down and told that no discussion of these
39 policies or the language was permitted or
40 necessary. And so the common --
41 Q Okay.
42 A -- refrain that we were getting from the BCTF,
43 the CTA, and then the larger media that was
44 reporting what they were saying, was that these
45 policies are not open for debate which means
46 while they may be presented as aspirational, the
47 boards were being told that these things needed

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Rob Bogunovic (for Respondent)
Cross-exam by Cnsl L. Waddell

1 to be adopted as is.
2 The confusion on all of that was not the
3 fault of the people reading Art Foundation and
4 reacting to it; the confusion is entirely on the
5 hands of the people who wrote the Art Foundation
6 website and who were promoting SOGI without
7 allowing debate, discussion, or providing proper
8 clarifications. And I would argue that that's
9 one of the things that really lit a fire of
10 controversy in Chilliwack at that time.
11 Q Okay. So you just raised two things. One, do
12 you understand that your role here is not to
13 argue but to give evidence?
14 A I believe my -- I'm to answer the questions that
15 you ask me and to present my perspective as a
16 witness. That's my understanding.
17 Q Correct. But not to argue --
18 A Now --
19 Q -- you --
20 A Sometimes argument is necessary in a -- in a
21 process like this. If -- if -- and -- and I'm
22 not sure I'm being argumentative. I believe I
23 was answering your question as thoroughly as I
24 could.
25 Q Well, I don't think you were argumentative, just to
26 be clear, but you used --
27 A Okay.
28 Q -- the word "I would argue," and -- and I just
29 wanted to clarify that --
30 A Ah.
31 Q -- that the job here is not argument. My friend
32 and I get to argue. So I just wanted to ask and
33 make sure you understand that -- that the
34 questions I'm asking, I'm not seeking an argument
35 in response because that's not a witness's job.
36 What I'm seeking are your -- your views, which
37 you just expressed.
38 A Yeah. That might just be the way I sometimes
39 express myself.
40 Q It -- it may be a figure of speech, so I'll only
41 raise it the one time.
42 A Okay.
43 Q So the other thing was your answer to my last
44 question -- my -- my question was whether you
45 agreed that the materials on -- found in SOGI 1
46 were samples, and you -- you went on and said,
47 "Well, they're aspirational," and I take it from

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Rob Bogunovic (for Respondent)
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1 your response that although -- you know, you have
2 a particular experience of how that has hit the
3 ground, shall we say, but that you'd agree with
4 me that the SOGI 1 resources are not de facto
5 district policies. Those are samples that any
6 district can decide to use or not.

7 I take your point about the position people
8 have taken about them, but you'd agree that what
9 you see at that SOGI 1 tab my friend took you to,
10 that's not a -- it's not a stamp with the
11 district of Chilliwack's policy logo at the top;
12 correct?

13 A I would say that's a fair representation of how
14 it's presented in the Art Foundation website, but
15 that is not how it was presented by the CTA and
16 the BCTF in 2017 and 2018. They were --

17 Q Yeah.

18 A -- presenting it as a de facto policy that had to
19 be adopted and that even trustees were not
20 permitted to debate or discuss these things. So
21 that's what a lot of people are reacting to.

22 The Art Foundation -- my complaint regarding
23 how the BCTF and CTA has dealt with the website
24 is that they were consistently misrepresenting it
25 to the public and to their own members, and that
26 was adding to layers of confusion.

27 My other problem with the Art Foundation
28 website is that it is in desperate need of
29 editing to clarify its intent and its meaning,
30 and it showed very, very prominently in its
31 construction that there weren't very many voices
32 or, if any, voices of caution and concern when
33 they were writing their language.

34 Q Yeah, I think you made that point yesterday.

35 A I did.

36 Q Okay. Now, different subject. Yesterday you
37 talked about gender ideology in school systems
38 not just here. You talked about more and more
39 nations reversing course on their approach to
40 gender ideology or affirmation. Do you remember
41 that?

42 A Yes.

43 Q Okay. And I just want to confirm, because we
44 didn't actually talk about your educational
45 background much in your direct, but you haven't
46 studied international movements in relation to
47 gender ideology at a university or a master's

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Rob Bogunovic (for Respondent)

Cross-exam by Cnsl L. Waddell

1 level, have you?

2 A No.

3 Q And I -- I presume you haven't published academic
4 research or the like on that subject.

5 A No.

6 Q Your testimony was -- it was just your own
7 perspective; right? Correct?

8 A Perspective, but at the same time it's also
9 acknowledging the recent developments that are
10 easily accessible with any kind of search. You
11 don't need to be an expert to read the -- the --
12 the master court in England or to understand what
13 human [verbatim] health services in England has
14 done.

15 And so, yeah, am I an expert? No. My
16 actual position is no matter how well-read I am
17 on this issue, no matter how much I study this
18 and no matter how much I might connect with the
19 LGBTQ part of the spectrum, I am not qualified to
20 behave as a pediatrician or a psychologist in the
21 classroom, and I don't know that there are hardly
22 any teachers who would be qualified and yet were
23 being asked to act in that role.

24 Q Okay. That's helpful. Now -- and that actually
25 links to my next question. Yesterday do you
26 remember saying that the affirmation model was
27 entering the realm of shaking the psychological
28 landscape of a generation? Do you remember that?

29 A I might have used words to that effect.

30 Q Okay. And I take it you would agree, because you
31 just acknowledged, that you're not a psychologist
32 or engaged in clinical research in that area;
33 correct?

34 A I'm not, no.

35 Q Okay. So you cannot give expert opinion evidence
36 or opinion evidence of any kind on the
37 psychological realm; correct?

38 A In the realm of psychology, I would often defer
39 to the psychologists, many of who have weighed in
40 on these particular issues. I am trained, to a
41 degree, in demography. It was an area of
42 strength when I was studying geography. That's
43 the study of population and changes within the
44 population.

45 It is not difficult when you studied
46 demography to see how the landscape socially has
47 been changing when we've seen a -- a incredible

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Rob Bogunovic (for Respondent)

Cross-exam by Cnsl L. Waddell

1 increase in the number of youth identifying with,
2 you know, gender dysphoria or something akin to
3 gender dysphoria. And it's not difficult to also
4 weigh in when previously the number of youth who
5 reported in that way broke down pretty evenly
6 boys and girls and now it's predominantly girls
7 identifying with gender dysphoria shifting
8 towards being boys. And it's not even a minor
9 difference like 60, 40; it's a massive
10 difference.

11 And so when you study demography and we
12 understand how populations function and you see a
13 big shift taking place -- again, you can leave to
14 the psychologists why that's happening, but you
15 can speculate or at least acknowledge that it is
16 happening. And when I refer to a major change on
17 the social landscape, that's what I'm talking
18 about.

19 Q And you understand, though, that in this
20 proceeding you've not been tendered as an expert
21 in demography; correct?

22 A No. But I'm --

23 Q Okay.

24 A My understanding as well is that this this side
25 of the table has had a hard time essentially
26 getting many of their witnesses brought forward,
27 so we all can't be the experts in every field
28 that you might ask about.

29 I'm presenting my understanding of the issue
30 given my experience being in the school district,
31 being the social justice teacher, and having done
32 significant amounts of reading and studying on
33 this issue. I'd never once pretended that I am
34 an expert. In fact, my claim has been, on a lot
35 of the questions and -- raised, is that we are
36 being asked to operate outside of a realm of
37 expertise. As teachers we're being asked to step
38 into a role we are not qualified to step into.

39 Q Okay. Yeah. And you -- you talked a couple of
40 times yesterday about, in particular, psychology
41 and medicine not being -- you know, teachers are
42 not -- yourself included -- not psychologists,
43 not medical professionals.

44 But I just want to cycle back to something
45 you said earlier which was you started talking
46 about the numbers of children transitioning that
47 have shifted, and I -- I want to confirm again

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Rob Bogunovic (for Respondent)

Cross-exam by Cnsl L. Waddell

1 that that is you being informed by Dr. Google.
2 You don't have a degree as a statistician, do
3 you?

4 A No.

5 Q And you don't have any background in -- or degree
6 in epidemiology either.

7 A No.

8 Q Okay. And on the subject of -- of expertise, I
9 also I take it from your -- your testimony
10 yesterday you talked a fair bit about Kenneth
11 Zucker, and I take it you -- you would view him
12 as an expert in this field for you.

13 A I would say he is one of the most credentialed
14 experts from Canada in this field, which is why
15 they entrusted him to write the section in the
16 DSM-5 that deals with, you know, gender.

17 So it's not a -- I mean, to the degree that
18 this is an opinion and his credentials, I think,
19 speak for themselves.

20 Q Okay. So I'm glad you raised the DSM because
21 you've talked about that a little bit yesterday,
22 and you'd agree that it's -- it's a diagnostic
23 manual that you're not qualified to interpret for
24 us here. Is that right?

25 A Well, again, I'm not trying to interpret it in
26 the sense that I'm engaging in diagnosis of an
27 individual. That would be where medical
28 malpractice would come into play. But that
29 doesn't mean I can't read the numbers and
30 understand what is being declared.

31 They -- the -- the language in the DSM-5
32 isn't difficult language to comprehend. So to
33 the degree of which I've read it and -- and I
34 have reviewed it and I've -- I've produced some
35 personal writings in connection to it -- the
36 degree to which I have reviewed it and studied
37 it, I don't find that it requires that you be an
38 expert in order to read it, just as I don't need
39 to be a legal expert to read the Charter of
40 Rights and Freedoms and form my opinions on where
41 my rights are.

42 Now, I might get the opinions wrong, but I
43 don't need to be a legal expert to access this
44 document that is so instrumental to my rights in
45 this country.

46 Q Okay. So if the -- if the language in the DSM-5
47 isn't difficult to read, I take it you

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Rob Bogunovic (for Respondent)

Cross-exam by Cnsl L. Waddell

1 understand, then, that -- that Dr. Zucker is not
2 actually an author of that extract but he was
3 part of a working group that talked about it. So
4 he may have contributed, but he was not an author
5 of that chapter. I guess you understand that if
6 the language isn't --
7 A I believe --
8 Q -- [indiscernible - cross talk] understand?
9 A -- he -- wasn't -- wasn't he the lead of that
10 working group?
11 Q He was a member of the working group or task
12 force, they're often called, the DSM task force.
13 A Okay.
14 Q Okay. And I take it you understand that the
15 respondent is not calling Dr. Zucker as an expert
16 or any other expert in this proceeding. Is that
17 right?
18 A That's right.
19 Q Okay. Now, yesterday my friend took you to parts
20 of the SOGI materials talking about inclusive
21 activities. Do you remember that?
22 A Yes.
23 Q Okay. And you talk about a few different things
24 under that -- I think under that heading. You
25 talked about some of the clubs that you have
26 tried to get off the ground; you talked about
27 GSAs; and -- and you --
28 A I don't --
29 Q -- talk --
30 A I -- I don't believe I talked about the clubs
31 I've tried to get off the ground in connection to
32 my interpretation on that section. I --
33 Q Okay. Those --
34 A -- I could be wrong but --
35 Q -- were --
36 A -- I think I talked about that elsewhere in my
37 testimony.
38 Q Okay. I think one of the things you definitely
39 did talk about under that heading, though, was
40 sport. Do you remember that part?
41 A Yeah. If you -- if you want to bring up the
42 SOGI 1 page. Can you present that so that we can
43 see that --
44 Q Sure.
45 A -- together? Thank you.
46 Q Yeah. Let us know if you need -- do you need us
47 to make it bigger for you?

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Rob Bogunovic (for Respondent)
Cross-exam by Cnsl L. Waddell

1 A I believe I can make it bigger on my end. Yeah,
2 I can zoom here.

3 Q Okay. So you just -- you let us know what it
4 is -- if you need us to scroll up or down if
5 you --

6 A I'm seeing right now:

7
8 Six gender-integrated and inclusive
9 activities. Integrated and inclusive
10 activities will enable students to join
11 teams and groups that they feel
12 correspond to their gender identity.
13

14 Q Okay. And -- and you remember talking a little
15 bit about sport and your views on the impact that
16 something like that language would have on sport?
17 Do you remember that?

18 A Yes. It has the potential of allowing for some
19 unbalance in the competition at a huge
20 disadvantage, essentially within female sports,
21 to, you know, biologically-born women and girls.
22 And we've seen significant amounts of stories
23 connected to that, but I could not speak to
24 what's taking place in Chilliwack because I'm not
25 in the athletics program.

26 Q Right. And I think you said, just to be more
27 precise about your -- your testimony from
28 yesterday, I think you sort of said that you
29 didn't think it would be -- make much difference
30 in elementary school, and it might also not be --
31 make much difference in middle school but that
32 high school was where this might start to pose a
33 problem. Is that right?

34 A Yes. I believe my -- my principle, you know, on
35 that is in the earlier grades we tend to promote
36 sports out of the desire of participation and
37 developing team play and so those goals can, you
38 know, easily be inclusive and easily allow
39 individuals, you know, from -- that are boys and
40 girls, and without puberty kicking in, the
41 difference is not as pronounced.

42 The challenge is once you start dealing with
43 sport as competition and especially when you get
44 to high school and it starts having scholarship
45 moneys attached to it, that can be quite a -- a
46 burden placed upon female sports, and it can
47 create a lot of disruption which is why people

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Rob Bogunovic (for Respondent)
Cross-exam by Cnsl L. Waddell

1 have expressed concerns regarding that.

2 Now, I'm not going to suggest that there
3 aren't individuals who might have concerns in the
4 elementary school or middle school ages, but --
5 but I don't tend to have those concerns. Maybe
6 if I was informed more I would, but that's not a
7 major concern that I would have.

8 Q Okay. And in terms of the concerns that you have
9 about inequity at that more senior level, that is
10 based on your presumption that there would be
11 physiological inequities; correct?

12 A I'm not sure I'm comfortable just saying it's a
13 presumption. I think the -- the vast body of
14 evidence in favour of that proposition might move
15 it beyond just being a personal presumption.

16 Q All right. But you'd agree with me you're --
17 you're not an expert in sports physiology or
18 sport science or biology; correct?

19 A No, I'm not an expert. But, again, I don't think
20 this is an area you would need to be an expert in
21 to provide some pretty compelling evidence.

22 Q Okay. Just you and Dr. Google have reached that
23 conclusion.

24 A You've used this "Dr. Google" twice. I do find
25 that to be kind of a pejorative dismissal of what
26 I'm saying.

27 If you just pulled up the Boston Marathon
28 and look at the results going back on any year,
29 who wins the Boston Marathon? Then take a look
30 at the top, you know, scores, the top times, and
31 then find the top time for the fastest female
32 runner. That would demonstrate pretty
33 conclusively -- regardless of your source, that
34 would produce pretty solid evidence of a
35 biological advantage.

36 Q For people who have -- are not on -- on hormone
37 blockers and haven't gone through sex
38 reassignment surgery; correct?

39 A The debate on what impact the hormone blockers
40 and sex reassignment has on the physiological
41 advantages and to the degree to which it actually
42 makes enough of a difference to equalize isn't an
43 area that I can weigh in on, nor have I done so.
44 I have simply pointed out that at the senior
45 level, once you are into the age of puberty, you
46 are now dealing with men who have testosterone
47 that is having a direct impact on their

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Rob Bogunovic (for Respondent)

Cross-exam by Cnsl L. Waddell

1 physiques, of having greater height, greater, you
2 know, physical strength, versus women.

3 Now, they have certain advantages as well in
4 terms of, you know, flexibility and potentially
5 ability, but that doesn't balance out evenly in
6 every sport, and in some sports you're going to
7 have a very shocking imbalance in the nature of
8 the competition.

9 Once you start weighing into the impacts of
10 hormones, once you start -- and -- and hormone
11 blockers and other elements such as surgical
12 interventions, that is a realm for other
13 individuals to weigh in on. I haven't, and I
14 don't need to because if you read the policy --
15 and I was speaking to the policy -- the policy
16 does not say that individuals will be able to
17 access teams once they have undergone proper
18 medical interventions. It says they will be able
19 to access teams that correspond to how they
20 identify, and none of those interventions are
21 necessary for identification.

22 Q And you said you were not a part of the athletics
23 department and so I take it in terms of your
24 testimony about, you know, this impact at a
25 senior level being important because there are
26 scholarships, you probably don't know whether
27 Canada's scholarship system is different than the
28 States and that there's not a lot of money
29 involved in it?

30 A I went -- I can't speak to the number of
31 scholarships that are in play, and I also am not
32 going to suggest that a Canadian athlete can't
33 get a scholarship in an American university.

34 Q Well, you're quite right about that.

35 Okay. Now, on -- yesterday when you were
36 talking about inclusive learning -- so, again,
37 this is that inclusive learning piece that my
38 friend took you to in the SOGI 123 materials --
39 do you remember saying something along the lines
40 of you read that as -- as effectively dictating
41 that when you speak about LGBTQ issues you can
42 only speak about them in the most positive light?
43 Do you remember that?

44 A Well, can we again bring up the language
45 specifically --

46 Q Yeah.

47 A -- so I can address it.

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Rob Bogunovic (for Respondent)

Cross-exam by Cnsl L. Waddell

1 Q Absolutely. Yeah.

2 A Exclusive learning. Yeah. So Number 8.

3 Q Okay. And -- and do you remember sort of -- and
4 correct me if I've got your language wrong, but
5 you said something along the lines of, you know,
6 one -- one of the takeaways for you in looking at
7 that was that it -- it seems to say that when you
8 speak about LGBTQ issues you can only really
9 speak about them in the most positive light.
10 Have I -- have I brought that right or do you
11 want to correct my --

12 A That --

13 Q -- my recollection there?

14 A That is a straight interpretation of these words.
15 Now, I -- I need to -- to make sure you are aware
16 I have autism, and individuals who have autism --
17 and there is an awful lot of us, and for most
18 adults it has not been diagnosed. I have
19 actually gotten to go on the diagnosis. We tend
20 to read things based on what is literally stated
21 there, and because we tend to read things that
22 are literally stated and not -- and interpret it
23 and understand what its full scope and statement
24 is, when we read a statement like that, we
25 probably are interpreting it different than other
26 individuals.

27 Now I read that as clear you must present,
28 you know, the -- the learning -- you know, and
29 the discussion of LGBTQ+ in positive and in a
30 accurate light, and my point is if they add the
31 word "positive" and you regard that as a limit on
32 what you are allowed to permit to be said, then
33 you are restraining yourself in your ability to
34 be accurate if, for instance, you had to address
35 some element, some component, that would be
36 negative. And so if you are trying to be truly
37 accurate in how you advance your, you know,
38 discussion on an issue and yet also trying to
39 crouch that discussion in terms that can only be
40 positive, you are creating for yourself a
41 contradiction, and I don't see how that can be
42 reconciled.

43 Now, that language for positive and accurate
44 appears elsewhere throughout the SOGI document,
45 but it's very prominently positioned there on the
46 policy page.

47 Q Okay. And I think you went on -- I'm glad you

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Rob Bogunovic (for Respondent)
Cross-exam by Cnsl L. Waddell

1 raised the sort of -- the -- the necessity of
2 criticism to accuracy, or I think you were,
3 because I -- I think after you talked yesterday
4 about what we just discussed, you went on to sort
5 of give a different example and say, you know, I
6 couldn't teach about -- you know, if this
7 referred to religion, you couldn't fully
8 understand Christianity unless you could
9 criticize it.

10 A That's right.

11 Q Yeah, okay. And just to be clear, because we've
12 already talked about the -- the limits of your
13 expertise and knowledge in relation to gender
14 identity, gender theory, but you don't have a
15 degree in theology, and you're not suggesting
16 that you're an expert in theology; correct? This
17 is just your -- your knowledge as a Christian
18 person.

19 A Well, first of all, I -- I'm not an expert in
20 theology. I'm not entirely sure I would trust
21 anyone who suggested they were an expert in
22 theology because theology is the study of god who
23 is infinite and eternal, and anybody with a
24 finite and temporal mind who calls them self an
25 expert on that subject is lying.

26 Q Okay. That's an interesting point. Okay. Now
27 yesterday my friend took you to some of
28 Mr. Neufeld's posts, and in describing some of
29 them -- and I just want to get a sense of what it
30 is that you -- you think [indiscernible]. You
31 used the word "satire." Do you remember that?

32 A Yes.

33 Q Okay. So I want to get a sense -- and did you
34 use the word "satire" because you know it is
35 something that factors into sort of the hate
36 speech equation sometimes?

37 A My find -- my main reason for using "satire" in
38 describing it is because the BCTF members'
39 guide 34,46 used to say that they recognize
40 satire as having an important place in the
41 promotion of freedom of expression, which they
42 called a foundation of democracy and also that
43 they -- it opposed slap suits.

44 That's what used to appear in the members'
45 guide. My understanding is that has since been
46 yanked out of the members' guide perhaps -- and I
47 have no idea if I was an influence on this -- but

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Rob Bogunovic (for Respondent)
Cross-exam by Cnsl L. Waddell

1 perhaps because I pointed out to the union that
2 they were in contradiction of that particular,
3 you know, principle as contained within the
4 members' guide. So they used to recognize the
5 value of satire, and now the part of the members'
6 guide that referred to that no longer seems to be
7 there.

8 Q Okay. So let's just return to satire generally.
9 Now, do you -- let's make sure we both have the
10 same understanding of the word, but my general
11 understanding of it is -- is something that is
12 intended -- where the meaning is intended to be
13 humorous but to socially criticize something. Is
14 that sort of similar to your understanding or do
15 you want to give me your definition?

16 A I can accept your definition.

17 Q Okay. So I -- I want to just review some
18 messages with you and ask you to tell me if, to
19 you, they reflect satire. So the -- the first
20 document that my friend took you to -- and this
21 is the one with that image of the -- it had
22 the -- the -- it's the one about the -- the
23 earring on top, and then underneath it's about
24 changing genders. Do you remember that one?

25 A Yes.

26 Q Okay. Is -- is calling SOGI 123 "a weapon of
27 propaganda nothing short of child abuse," satire
28 to you?

29 A Okay. Can -- can you pull up the image --

30 Q Yeah.

31 A -- please.

32 Q Yeah. And if it's -- if it's the image that you
33 found to be satire as opposed to the text, then
34 just tell me. I just want to get a handle on
35 what you think is satire there.

36 A What I -- I referred to in this post as being
37 satirical was the image.

38 Q Okay.

39 A The commentary by -- by -- by Barry Neufeld, I
40 did not regard that as commentary [verbatim]. I
41 did regard that as speech that should be
42 permitted within the realm of public discourse,
43 not crossing over the lines and boundaries that
44 had been laid down in Canada by the Supreme
45 Court.

46 But as far as what I refer to as "satire," I
47 referred to this image.

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Rob Bogunovic (for Respondent)
Cross-exam by Cnsl L. Waddell

1 Q Okay.

2 A 1997, 2017.

3 Q Okay. So picture is satire -- or image satire,
4 not words.

5 A I'm not looking at the words. There are times
6 where I'm sure Barry has made comments that are
7 satirical, but in this post the only thing that I
8 think I regarded as satirical was the image.

9 Q Okay. When Barry said that gender confusion --
10 if he were to equate gender confusion with sexual
11 addiction, would you take that to be satirical?

12 A No. That's -- again, I would put that in the
13 realm of commentary.

14 Q Okay. What about calling it an "evil ideology"
15 or "a great evil." Do you think that's
16 satirical?

17 A Again, I looked at those as commentary.

18 Q Okay. What about "the trans agenda is eugenics"?
19 Commentary or satire?

20 A Again, I consider that to be commentary. Now,
21 it's entirely possible that an individual can
22 render those comments in a -- in a joking way.
23 You are giving me little snippets, but I've
24 encountered those with my own readings of Barry's
25 comments, and usually I understood them to be
26 commentary. There are times where he has made
27 comments that I regarded as satirical, but the
28 specific ones that you are pointing to, when I
29 have generally encountered them, it's when Barry
30 has been making an argument.

31 Q Okay. Are there any other ones -- I -- I don't
32 want to put all of them to you, but you -- you
33 said there are some others where you might have
34 thought he was satirical. Are there any that --
35 that you can recall thinking, "Oh, I think this
36 is satire"?

37 A Well, yeah, and a lot of times he's posted
38 comments. And -- and bearing in mind my
39 interactions I sometimes see comments that have
40 not been included in the hundreds of pages that
41 have been submitted to the court where perhaps he
42 is lighter and in talking on a more personal
43 level.

44 But there were so many documents that
45 were -- were submitted to the court. It seems
46 like anything that Barry has said over -- you
47 know, on any public forum for the last, you know,

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Rob Bogunovic (for Respondent)

Cross-exam by Cnsl L. Waddell

1 six years somehow found its way into the
2 documents and then were, you know, presented into
3 this human rights case.

4 I cannot speak to the volumes of that and
5 then pull that out and say, "Here, I found this
6 to be satirical," especially since I don't have
7 my notes in front of me, and I was not told to
8 prepare for that kind of question.

9 Q Okay. Nobody's told you it was going to be a
10 satire exam, so I'll -- we'll move on.

11 Now, before -- before that October 2017,
12 that first post or series of posts, did you know
13 Barry before then or was that sort of how he came
14 to your attention?

15 A No, the only thing I knew regarding Barry was
16 that when we would have discussions in my family
17 regarding who we were going to vote for for
18 school trustee, Barry was always recommended as
19 one to vote for because Barry stood with the
20 union during certain strike situations. Prior to
21 2017, I had no personal knowledge. I had never
22 met Barry Neufeld.

23 Q Okay. And have you -- I mean, you're testifying
24 at his house, which may just be for technological
25 reasons, but is it reasonable for me to presume
26 that you've gotten to know him a bit since?

27 A It would be reasonable to presume that. We
28 probably developed a bit of a common cause
29 because many of the individuals who have attacked
30 Barry have also attacked me and so we've both
31 had, you know, damage done to our reputations and
32 certainly understand who are the individuals
33 behind a lot of that damage that has been done.

34 I've always found Barry to be a very likeable
35 individual with lots of interesting thoughts.
36 He's a fun guy to talk to. He's got a beautiful
37 map of *Lord of the Rings* in his living room and
38 so we have some common interest. I -- I wouldn't
39 say that I would regard Barry as, you know, among
40 my top 5 friends, but he would certainly be in
41 the top 15.

42 Q Okay. And would it also be safe -- and I'm
43 generalizing based on your testimony yesterday --
44 to say that you -- you generally sort of support
45 his cause? And if you want to give his cause
46 some parameters and describe it so that I'm not
47 being inaccurate, please do.

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Rob Bogunovic (for Respondent)
Cross-exam by Cnsl L. Waddell

1 A My primary cause is to protect the right of
2 public discourse, and on that I stand strongly
3 with Barry Neufeld because if we lose the ability
4 of freedom of expression, we lose every freedom
5 because it's freedom of expression that enables
6 us to defend every other freedom within the
7 system.

8 But every other thing beyond that is -- is a
9 secondary consideration in my equation. I have
10 concerns around SOGI 123. I've expressed those
11 concerns to the union. The union did not address
12 a single one of my concerns. But I have concerns
13 because when I read the Art Foundation's website,
14 I see that it is woefully lacking in editing,
15 in -- in consideration of rival views, and it
16 allows for tremendous amounts of confusion, and
17 my complaint against the union is that they added
18 to that by misrepresenting what the Art
19 Foundation was actually presenting; numerous
20 times misrepresenting that.

21 So when I look and want a public discussion
22 on SOGI 123, I want that public discussion so we
23 can have a proper airing of differences and
24 define language and make for a better program and
25 policy that is not going to generate the kind of
26 vitriol that we have seen in Chilliwack. But the
27 group that made that impossible were the
28 activists that were lined with the BCTF, the CTA,
29 and the media. They were the ones making that
30 discussion impossible, and they were very open in
31 declaring that there could be no more discussion
32 permitted, no more discussion was necessary, the
33 time for debate has passed despite the fact they
34 never actually allowed for the debate in the
35 first place, and they just presumed that they
36 could bully everyone into submission. That I am
37 strongly against.

38 As far as the other elements connected to
39 SOGI 123, again, I want the debate to be allowed
40 to happen in an open, fair, and honest way, and I
41 would accept the outcomes of that debate because
42 that's where you refine ideas and where you can
43 make policies make sense.

44 Q Okay. So I think you just articulated really
45 well pieces of -- of Barry's cause that you
46 support and then the -- the pieces where you
47 would accept the outcome of -- of fully

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Rob Bogunovic (for Respondent)
Cross-exam by Cnsl L. Waddell

1 fleshed-out debate.

2 Yesterday you -- you talked about the -- I
3 think it was, you know, potential outcomes of
4 this proceeding and -- and you said, you know,
5 "We will go on to challenge." I don't have your
6 exact words, but you -- you definitely referred
7 to "we."

8 A Yes.

9 Q Do you take yourself to be, you know, part of
10 Barry's team, then, I take it?

11 A I don't -- I've been part of the team in the
12 sense of we've -- we've had discussions in
13 preparation, we're fundraising efforts to try and
14 pay for the legal costs to -- to deal with this.
15 And in the broad sense of if the ruling goes
16 against Barry, it has to be challenged because if
17 they can limit the kind of speech that Barry
18 brought as a -- as a public servant, right -- he
19 was a trustee -- if they can't, as a politician,
20 engage in an open dialogue of an expression of
21 their views in the public realm, then this
22 country is in all kinds of trouble; falling
23 headlong towards, you know, the creation of a
24 totalitarian state where no one's going to be
25 able to articulate clearly their propositions,
26 their opinions, unless they align with the
27 powerful elite and what they have chosen to
28 permit.

29 What's really frustrating in that regards is
30 they probably won't even tell you in advance what
31 they will permit before they punish the people
32 who have somehow violated that standard.

33 Q And have you then -- a financial contributor to
34 his fundraising campaign?

35 CNSL J. KITCHEN: Objection.

36 THE CHAIR: Yes, Mr. --

37 CNSL L. WADDELL: Why don't we -- just to --
38 Mr. Kitchen, why don't we exclude the witness
39 for -- to deal with the objection.

40 CNSL J. KITCHEN: Sure.

41 THE CHAIR: All right. Mr. Bogunovic, I'm going to
42 remove you from the meeting right now. Sorry, I
43 forgot to forecast that this could happen during
44 some objections in cross-examination; we may ask
45 you to be removed from the meeting. So I'm going
46 to remove you from the meeting, and Mr. Neufeld
47 is going to stay, so I'll just ask that you stay

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Submissions by Cnsl J. Kitchen

Cross-exam by Cnsl L. Waddell

1 somewhere where you're not listening and hearing
2 what's going on while we're talking.

3 As soon as I remove you from the meeting,
4 click the link to rejoin; that will put you in a
5 lobby. I'll let you in when we're -- we're ready
6 to have you back. Okay?

7 A Okay. Thank you.

8 THE CHAIR: Okay. I'm going to remove you momentarily
9 here. And there we go.

10
11 (WITNESS STOOD DOWN)

12
13 THE CHAIR: Okay. Go ahead, Mr. Kitchen. You have an
14 objection?

15
16 SUBMISSIONS BY CNSL J. KITCHEN:

17
18 CNSL J. KITCHEN: Yes. I'm not concerned about the
19 answer; I don't know if it's "yes" or "no."
20 It -- it -- it doesn't matter. But that's just
21 it. It's -- it's not relevant. You know, my
22 friend's having some personal discussions with
23 him about his -- his personal views and, you
24 know, fine. That's -- I guess that's fair in
25 cross-examination. I mean, I would tend to say
26 it's on the edges of relevance, but I define
27 "relevance" very broadly.

28 Now I think, okay, now -- now we're just --
29 we're just poking around to -- to, you know, see
30 if we can -- if we can uncover something that's
31 rhetorically or scandalously useful and -- and --
32 and so we sort of left the actual relevance --
33 because I think his views are at least somewhat
34 relevant, obviously. You know, whether or not
35 he's donated money, whether or not he's donated
36 money to the -- I don't know -- if there's a
37 Christian group that promotes the Jew
38 [verbatim] -- the two-gender theory or whatever.
39 That's just -- it -- it -- it's -- it's almost
40 rhetorical or -- or -- or potentially trying to
41 fish for something scandalous. That's the only
42 value to it. There's no -- there's no legal
43 value. There's no legal relevance. So while I
44 don't think the answer matters, I don't think --
45 I don't think that type of question should --
46 should be permitted because I don't -- I don't
47 think the purpose is -- is permissible.

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Submissions by Cnsl L. Waddell

Reply submissions by Cnsl J. Kitchen

1 THE CHAIR: Go ahead, Ms. Waddell.

2

3 SUBMISSIONS BY CNSL L. WADDELL:

4

5 CNSL L. WADDELL: Sure. I think it's highly relevant
6 to whether this witness is capable of providing
7 objective and helpful evidence. I don't care --
8 and -- and the answer may have no bearing because
9 maybe the answer is no or maybe the answer is \$5,
10 which I don't care about. But if he -- right,
11 there's no -- nothing disintitling him to
12 support, but if he -- you know, if he is a
13 significant backer of -- of Barry's campaign, to
14 my view it goes to his objectivity and what type
15 of a witness he is and the weight that should be
16 accorded what he has to say. So that's -- that's
17 the relevance.

18 I'm not going to ask him about any other
19 causes he may contribute to. I think those are
20 irrelevant. It is just about his attachment to,
21 you know, Barry's campaign.

22 Yesterday he used the word -- you know, he
23 said, "we will appeal to a higher level," and so
24 I -- I think there is reason to have some concern
25 about his ability to actually provide, you know,
26 relevant evidence that is truly that of an
27 independent -- you know, a lay witness with his
28 own -- with his own views. So that -- that's the
29 basis for the question.

30 THE CHAIR: Okay. Thank you.

31 CNSL J. KITCHEN: Okay --

32 THE CHAIR: Mr. Kitchen?

33

34 REPLY SUBMISSIONS BY CNSL J. KITCHEN:

35

36 CNSL J. KITCHEN: -- no, I -- in reply briefly, well, I
37 guess my issue with that is -- is -- is now
38 you're sort of treating him like an expert
39 witness which you kind of have at times, and
40 you've been establishing that he's not one, and
41 I -- and I get that; I think that's fair. So
42 I -- I -- I think now I get where you're coming
43 from.

44 What -- what I would say is -- is of course
45 you're entitled to -- to -- to cross him to
46 establish that he's not objective or that he's,
47 you know, a supporter of the cause or he hopes

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Reply submissions by Cnsl J. Kitchen

1 Barry wins. I mean, I think you've done that. I
2 think that's totally fair. But I think that's --
3 that's how you do that, right. You don't -- you
4 don't poke around in -- in the personal stuff
5 that I -- I -- I think it is irrelevant. Zero;
6 5; 10,000. I mean, you know, I'm pretty
7 confident it's not that, but, I mean, I just --
8 that's -- that's not relevant to the point you're
9 making. Which the point is relevant, but --
10 but -- but this -- this evidence to that point
11 is -- is -- is not relevant because I don't -- it
12 doesn't matter one way or the other, right.

13 I think -- honestly, I -- I would -- I would
14 think his -- his -- his views and his personal
15 relationship's going to matter way more than --
16 than -- than the money. And I think that's fair
17 game, right, because I think, you know, if he
18 comes up as a witness, that's fair game. But his
19 personal finances just -- it's not fair game.
20 THE CHAIR: Okay. Thank you. We'll allow the
21 question. We don't want to spend a ton of time
22 on it, but to the extent that this is part of the
23 complainant's argument that the evidence of the
24 witness should be given less weight because he's
25 in common cause with Mr. Neufeld and may be
26 inclined to orient his testimony to a particular
27 outcome, it's fair for them to explore it. But I
28 don't think we need to pry into personal
29 financial details, but if he's been financially
30 contributing to this cause, that may be something
31 they can rely on, and I think it's fair to ask
32 about it.

33 The witness is not back in the lobby yet, so
34 I --

35 CNSL J. KITCHEN: Oh, we got to get him.

36 THE CHAIR: We got to get him back.

37 Mr. Neufeld, could you ask -- just make sure
38 he's -- without talking about his evidence or
39 anything that's happened, just make sure he's
40 clicked on the link to rejoin? Thank you.

41 CNSL J. KITCHEN: There's no -- there's no sort of
42 witness waiting room you can put him into or...

43 THE CHAIR: Well, that's not a bad idea. I haven't
44 done that before. I could do that. Yeah, if
45 this -- if this is an issue, that's --

46 CNSL J. KITCHEN: It's easier on Zoom to do that.

47 THE CHAIR: Here we go. We've got him back. I could

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Rob Bogunovic (for Respondent)

Cross-exam by Cnsl L. Waddell

1 have done that.

2
3 ROB BOGUNOVIC, a witness,
4 recalled.

5
6 CROSS-EXAMINATION BY CNSL L. WADDELL continuing:

7
8 THE CHAIR: Okay. Thank you, Mr. Bogunovic, for
9 your -- for your patience. Ms. Waddell's going
10 to repeat her question.

11 CNSL L. WADDELL: Thank you.

12 Q Mr. Bogunovic -- and I want to tell you why I'm
13 asking because I'm -- I'm not trying to pry into
14 personal matters, and I understand that any time
15 someone asks about money it is personal, but it's
16 important to me just how aligned or not you are
17 with Mr. Neufeld's cause. So that's the reason
18 for my question.

19 So have you contributed to any of
20 Mr. Neufeld's fundraisers for this case or his
21 Supreme Court of Canada case?

22 A So I'm going to be fully disclosing on this
23 point, but I'm going to premise, if you will
24 allow me, on one thing. As a member of the BCTF,
25 I am required to fund this lawsuit that has been
26 brought against Barry Neufeld, and I am an
27 individual who believes in trying to be as fair
28 and balanced as possible. To that end, knowing
29 that my union dues would be redirected to this
30 lawsuit, very early in this process I handed
31 Barry Neufeld \$600.

32 I have not participated in any of the
33 fundraising or donated money to him in any way
34 since then. That was before there was a Supreme
35 Court case. That was before the NDP brought in
36 anti-SLAPP lawsuits -- legislation that excluded
37 human rights cases but allowed Glen Hansman to
38 quash Barry Neufeld's defamation lawsuit.

39 So fairly early in this process I did donate
40 to Barry. I have not donated since. And I'm not
41 sure how much of my union dues have gone to pay
42 for this case. I felt that \$600 would probably
43 be sufficient to cover it. Unless you can tell
44 me how much the BCTF has spent on this legal case
45 thus far, I would have a hard time doing the
46 calculation to see if that is, in fact, the case.

47 Q I certainly don't have that math for you. So I

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Rob Bogunovic (for Respondent)

Cross-exam by Cnsl L. Waddell

1 appreciate your explanation and the answer to the
2 question.

3 Okay. So while we're on the subject or
4 talking about the union -- because you spoke
5 about both the CTA and the BCTF a fair bit
6 yesterday -- would -- would it be a fair
7 characterization -- and I want you to correct me
8 if you don't think I've got it right because this
9 is just very broad strokes, but would it be fair
10 if I said that you are not a fan of the BCTF or
11 the CTA?

12 A In the current way that it has been conducting
13 itself over the last six, seven years, I am very
14 much not a fan of the BCTF and the CTA, and this
15 is because I am a fan of the liberal democracy
16 that we have created in this country, and I see
17 them waging war against that.

18 In the years prior early in my career, my
19 dad, who was a CTA president for three years, and
20 I, having grown up in a family that was very
21 staunch supporters of the NDP, was quite the fan
22 of the BCTF and CTA and even published a number
23 of articles defending their positions during
24 labour disputes with the then B.C. liberal
25 government.

26 So it was a situation where I was fairly
27 pro union, specifically pro BCTF, early in my
28 career, and then the union abandoned principles
29 such as the defence of democracy and freedom of
30 expression which is its foundation. And when I
31 saw how they were marshalling all of their power
32 against one citizen who was expressing his
33 opinion, which I felt is an opinion worth
34 hearing, I was quite alarmed. And since trying
35 to talk with the union about my concerns and
36 having been told that none of my concerns will be
37 dealt with, none of my questions will be
38 answered, that they do not see that there's much
39 to debate in this issue, I sought to part ways
40 with the union, filed a Section 17 application to
41 have my union dues redirected. Since that was
42 denied, I have essentially refused to go to any
43 special union meetings or to show up for any
44 union votes.

45 Q Okay. So just on the subject of -- of your
46 interactions with the union, you said that they
47 sort of ignored your concerns that you were

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Rob Bogunovic (for Respondent)
Cross-exam by Cnsl L. Waddell

1 trying to bring forward, and -- and is it your
2 evidence that that was -- those were your
3 concerns about SOGI? It's not that they -- they
4 ignored other concerns you had.
5 A I expressed in a -- I believe a 26-page document
6 my concerns with what they were -- how they were
7 treating Barry Neufeld. They are trampling upon
8 the freedom of expression principle; they're
9 ignoring Section 34,46 of the members' guide; as
10 well as the fact that they are promoting the
11 belief that the SOGI policies needed to be
12 implemented and were not open to discussion,
13 which is a misrepresentation of the aspirational
14 goals appearing on the SOGI 1 page; that they
15 were not properly representing what SOGI 123 was
16 to the public or to their membership; and that
17 they were promoting candidates who, A, would be
18 echoing their misrepresentation of SOGI 123,
19 continuing the assault against Barry Neufeld
20 which, as free citizens, is certainly their
21 right, but also those same individuals who were
22 attacking Barry Neufeld also went into the public
23 realm to launch very significant attacks against
24 me, attacks that I believe easily have crossed
25 the line into harassment and found that the union
26 was not willing to be particularly helpful in
27 addressing any of that.
28 Q Okay. So the -- the local's filed grievances on
29 your behalf before, though; right?
30 A Sure.
31 Q Okay. So 2021 you received a written warning
32 from the district; right?
33 A Yes. And I believe it was June 25th.
34 Q Yeah. Okay. And that was in response to
35 allegations that the district described as you're
36 making homophobic, xenophobic, and misogynistic
37 remarks in your capacity as a teacher; right?
38 A A student and a parent raised the complaint, and
39 the element of the complaint that was -- that I
40 made homophobic, xenophobic, transphobic remarks
41 was found to be unsubstantiated by the
42 investigator.
43 Q But some of -- some of the allegations were
44 substantiated; correct?
45 A What was substantiated was -- it was a partial
46 substantiation. The claim was that I had
47 compared Bill Cosby to Miley Cyrus, which the

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Rob Bogunovic (for Respondent)

Cross-exam by Cnsl L. Waddell

1 student claimed was homophobic on the grounds
2 that Miley Cyrus was an icon of the LGBT and
3 Bill Cosby was a convicted serial rapist.

4 The nature of that was substantiated only
5 because on one PowerPoint slide, which consisted
6 of 26 names, in one column I had Bill Cosby
7 underneath Richard Nixon and over top of
8 O. J. Simpson, and then the next column over I
9 had sandwiched between Amanda Bynes and Kanye
10 West the name Miley Cyrus.

11 The investigator found that this was not
12 homophobic, but he partially substantiated that
13 the claim had been -- that the comparison had
14 been made.

15 Now, I found that to be very flawed logic.
16 It basically means that any name that appears
17 within a phonebook has been compared to every
18 other name that appears within a phonebook.

19 Q Okay. And that -- the -- the local filed a
20 grievance for you in relation to that written
21 warning; correct?

22 A Sure.

23 Q Okay. And then in 2022 you raised some concerns
24 that you were being personally harassed by -- I'm
25 not clear whether it's one or more trustees of
26 the board. I think that was what you were just
27 referring to earlier. Is that right?

28 A I issued a harassment complaint against one
29 member of the board.

30 Q Okay. And the local filed a grievance for you in
31 response to that concern that you raised with
32 them; correct?

33 A Yes.

34 Q Okay. And in and around these same times, so I'm
35 going to say, like, 2021 and 2022, you were the
36 subject of a few complaints from students and
37 parents that the district investigated; correct?

38 A I cannot speak to the number.

39 Q Okay.

40 A To the best of my knowledge, in the -- in one of
41 the investigations there was no complainant
42 dealing with the substantiated claims that were
43 brought against me.

44 There was a situation I brought to the
45 district's attention, and again on that on every
46 point of the complaints it was found to be
47 unsubstantiated.

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Rob Bogunovic (for Respondent)
Cross-exam by Cnsl L. Waddell

1 The last round of investigations I cannot
2 say the word "few" is accurate. To the best of
3 my knowledge, based on my reading of the
4 investigator's report, it was one student and the
5 father acting on what the student had told him.
6 I cannot, you know, make any inference as to what
7 other students may have added because nothing in
8 the investigator's report suggested confirmation
9 by other students.

10 Q Okay. And am I right that because the district
11 was investigating a few different things, that
12 was the reason you wanted to file a human rights
13 complaint against the district? You talked
14 yesterday about wanting to file a human rights
15 complaint and -- and said the union -- the -- the
16 local told you they didn't know anything about
17 how to do that. Do you remember talking about
18 that?

19 A Yeah. I requested --

20 Q And --

21 A I requested that the union assist me in filing a
22 human rights complaint. I was told by the union
23 that they had no experience filing a human rights
24 complaint. And to be clear, I'm talking about
25 the CTA; that was who the request was made to. I
26 am not referring to the BCTF.

27 Q Yes.

28 A The nature of that complaint is -- has been
29 submitted. And so the substance of the complaint
30 is something that I do hope that one day will be
31 considered by the Human Rights Commission. I
32 have been waiting for quite sometime to get a
33 response from the Human Rights Commission on what
34 I have alleged. I do not want to go into the
35 specifics of the complaint or the nature of it.

36 Q Okay. That -- that's fine. I'm not going to ask
37 you to go into the nature of it. But I put it to
38 you that, in fact, what the CTA said to you or
39 what they provided you with was their standard
40 letter that they sent to members who raised such
41 things with them which said that they generally
42 don't file human rights complaints for members,
43 and they say members may, in that letter, file
44 complaints themselves, which it sounds like you
45 did. Am I -- am I right about that?

46 A That I -- I -- I will confirm that I have filed a
47 complaint.

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Rob Bogunovic (for Respondent)
Cross-exam by Cnsl L. Waddell

1 Q Okay. And -- and would you agree with me that
2 what they really said to you was not that they
3 have no experience with human rights complaints
4 but that they do not have a practice of filing
5 human rights complaints for members and they
6 provide members with the information that they
7 can file it themselves. Correct?
8 A My recollection and how I read the note that I
9 got from the union was that it said that they had
10 no experience filing a human rights complaint.
11 It didn't necessarily read to me as a form
12 letter; however, I wouldn't know what the form
13 letter would look like since I wouldn't be able
14 to see what letter they send to other
15 individuals. A letter that comes to me appears
16 like it is a letter written to me.
17 That being said, since I don't have easy
18 access to my notes or my computers at this
19 moment, I wouldn't be able to give specific
20 language to you without leaving and then looking
21 up these items, and that might take sometime, and
22 I believe we are somewhat limited. We have
23 about, what, a half an hour left?
24 Q Yeah. We are -- and we'll finish by then, just
25 to --
26 A Okay.
27 Q -- let you know. You'll be out of the hot seat
28 soon.
29 A Okay.
30 Q Okay. So the -- so you filed a human rights
31 complaint on your own, and then in December of
32 2022 the district issues you a ten-day suspension
33 after an investigation. Do you remember that?
34 A Yes.
35 Q Okay. And that related to student and parent
36 complaints. I don't know any more about them;
37 I'm just --
38 A Again, when you say the word "students and
39 parents," I don't know that that is an accurate
40 number. From the investigator's report I can say
41 one student and one parent.
42 Q Okay. Okay. And the local grieved that
43 suspension for you, didn't they?
44 A Yes.
45 Q Okay. And they were able to resolve that
46 grievance; correct?
47 A No. I'm not sure that the grievance has

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Rob Bogunovic (for Respondent)
Cross-exam by Cnsl L. Waddell

1 necessarily been resolved. What happened --

2 Q Well, let --

3 A -- in that -- can I answer, please.

4 Q Oh, yeah. Absolutely. Go ahead.

5 A What happened with that was they -- they -- the
6 judgment that came when -- I was permitted to
7 read the investigator's report and so I was able
8 to evaluate the evidence that was being presented
9 and the logic and lack of logic that was involved
10 in its construction.

11 When -- in the midst of the meeting before
12 that report had been handed to me, it became
13 obvious to me that the judgment of the district,
14 specifically the judgment of Diego Testa, who was
15 the HR representative lighting the case, was
16 being influenced largely based on his perception
17 of character traits, many of whom, like, he
18 projected onto me or presumed that I was
19 displaying, and based on these character traits,
20 he rendered a very harsh judgment that skipped
21 over the short suspension stage and went to a
22 long suspension stage with -- on -- on terms that
23 I found to be highly suspect if not outright
24 outrageous.

25 I spoke to the CTA representative, the then
26 president, on that immediately when we had an
27 adjournment that I wondered if they understood
28 that I have autistic tendencies, and she said she
29 didn't think they did, which I actually found
30 surprising because when I presented my challenge
31 to the first letter that you had mentioned, the
32 one that's June 25th, you know, 2021 -- when I
33 presented my concerns with that judgment, I
34 presented numerous mitigating factor that were
35 not considered -- clearly not considered by Diego
36 Testa in his analysis, including my autistic
37 tendencies. So somehow the district never got
38 that information, or if they did, they have
39 nefariously acted upon that information.

40 The district has not ever indicated that
41 they were aware that I had autistic tendencies,
42 so right now you have a situation where I have a
43 he said/she said. I had the union saying that
44 they would have told the district; I have the
45 district saying they had never been told. But
46 either way, that was influencing the judgment
47 that was rendered against me.

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Rob Bogunovic (for Respondent)
Cross-exam by Cnsl L. Waddell

1 I then proceeded to get a diagnosis of
2 autism, which cost me over \$3,000. I had to get
3 that because when I indicated that I might be
4 pursuing a diagnosis, well, somehow a
5 conversation happened between the union and the
6 district where they made that a requirement of
7 the advancement of my grievance; would not
8 advance my grievance until I had a diagnosis, and
9 that was indicated to me very clearly in the
10 language, the communication by the CTA.

11 So I got the diagnosis at a cost of over
12 \$3,000 to myself. Later the district reimbursed
13 for me for half of that cost, which still left me
14 paying out of pocket \$1,500 in terms of the cost
15 to get this diagnosis.

16 The -- because of the diagnosis, and even
17 though I think it should have been overturned
18 because of the incredible logical fallacies --
19 but because of that diagnosis, the district
20 determined that the -- the investigator's report
21 could not be substantiated, and because that
22 shift occurred, the suspension, of which I had
23 already had to serve three days, was reversed,
24 and I was restored pay for the three days. So to
25 this date I have no suspension on record.

26 Q And the union represented you in -- in all of
27 what you've just described.

28 A The union provided the level of care and support
29 that they have a fiduciary obligation to provide
30 me as a paying union member. I will agree that
31 they have provided the level of care required by
32 their fiduciary obligations.

33 Q And, now, just in terms of -- so we've talked
34 about three -- three different grievances where
35 the union has -- has represented you. Those were
36 not your first -- that wasn't your first
37 experiences with discipline, though; correct?

38 A No.

39 Q No. You were provided with a letter of direction
40 in 2006. Do you remember that?

41 A Yes.

42 CNSL J. KITCHEN: Objection.

43 THE CHAIR: Yeah, just while we deal with the
44 objection, Ms. Waddell, do you want to exclude
45 the witness again?

46 CNSL L. WADDELL: Yeah, probably. Sure.

47 THE CHAIR: Okay. Mr. Bogunovic, I'm going to try

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Submissions by Cnsl J. Kitchen

1 something new, and we'll see how it goes. Rather
2 than disconnecting and having you reconnect, I'm
3 going to put you in your own room and then bring
4 you back when we're done. So you just stay
5 connected. You don't touch anything. I'm going
6 to see if I can get you to -- just to move into a
7 breakout room here by yourself. Just a moment.

8 A Okay.

9 THE CHAIR: Okay. I am sending you there now.

10
11 (WITNESS STOOD DOWN)

12
13 THE CHAIR: There we go. Okay. Go ahead,
14 Mr. Kitchen.

15
16 SUBMISSIONS BY CNSL J. KITCHEN:

17
18 CNSL J. KITCHEN: Ms. Waddell, predictably enough
19 you've attempted to discredit him with recent
20 issues, which is fine, although, you know, it --
21 it is kind of missing the point a little bit.

22 But the 2006 thing now -- you know, you're
23 now a decade before the relevant events with
24 Barry, with SOGI, with the amendment of the *Human*
25 *Rights Code*, with his changing in views of being,
26 you know, more pro union because it was not yet
27 anti free speech, et cetera. Everything we're
28 talking about in this case is pretty much 2016
29 onward. You're -- you're now a decade before
30 that. I think at this point, again, you're --
31 you're just fishing for -- for anything
32 scandalous to try to suggest, oh, well, because
33 he -- he had something that, you know, might be
34 nefarious from, you know, 20 years ago, we
35 shouldn't believe anything he says.

36 I -- I -- I think -- I think at that point
37 we -- we've gone too far. You know, you're --
38 you're just wasting time to see whatever you can
39 get that's -- might be, you know, scandalous
40 or -- or rhetorical. So I don't think it's
41 appropriate or relevant or helpful or useful or
42 whatever term we want to use, and I -- and I
43 think it's just -- you know, at that point it
44 crosses into the line of being abusive, you know.
45 Whatever can you pull up to try to suggest
46 this -- this -- this witness is some terrible
47 person that shouldn't be believed. So that's --

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Submissions by Cnsl L. Waddell

Reply submissions by Cnsl J. Kitchen

1 that's my submission.

2 THE CHAIR: Thank you. Ms. Waddell?

3

4 SUBMISSIONS BY CNSL L. WADDELL:

5

6 CNSL L. WADDELL: Sure. I'm not trying to do that at
7 all. You put the witness on the stand yesterday
8 and, over my objection, allowed him to give all
9 sorts of evidence about, you know -- as though he
10 were an expert in teaching. He waxed on about --
11 you know, and presented himself as a person who
12 presents both sides of things, and he talked
13 about his philosophy in terms of you asked him
14 questions about, you know, do you -- do you teach
15 what you believe, all kinds of stuff about use of
16 language. He provided, you know, his own
17 personal views on all of that. You know, I -- I
18 tried to put my objections in in a time-efficient
19 way, but you -- you wanted to get it all out, and
20 I'm entitled to attack his credibility on this.

21 This discipline relates to this subject
22 matter. It is about his actual views, not the
23 more balanced views that he tried to present
24 yesterday.

25 So in my submission, you know, by letting
26 him go on -- and -- and, you know, that whole
27 segment I just did, well, he went on ad infinitum
28 about, you know, the union never does anything;
29 and, in fact, the union's done lots. So this is
30 all part of attacking his credibility. It's fair
31 game. You guys opened the door, and I'm entitled
32 to enter it. That's my response. I'm not -- I'm
33 not doing it to try and take cheap shots. It is
34 on point for the evidence that he gave.

35 And I'm almost done, by the way too, in
36 terms of timing.

37

38 REPLY SUBMISSIONS BY CNSL J. KITCHEN:

39

40 CNSL J. KITCHEN: Well, you'll forgive me if I
41 disagree with that description. It's a waste of
42 time to establish, oh, the union did that. The
43 public may not know it, but you, me, and the
44 Chair all know the union has no choice but to do
45 that because of the duty of fair representation
46 that the union has to its members. So whether he
47 hates the union or the union hates him, the

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Reply submissions by Cnsl J. Kitchen

1 union's going to go ahead and do that, so it's --
2 it's -- you're just -- it's a -- it's a nothing,
3 right. It was rhetorical value, of course, but
4 legally it's -- it's a nothing to just go through
5 and be like, "Well, the union did that, didn't
6 it?" "The union did that, didn't it?" Right?
7 So, I mean, that's really the only purpose I've
8 seen so far other than trying to discredit him,
9 which I get, okay, and that's -- that's -- that's
10 my point, right. You did that during the
11 relevant time frame; now you want to go back a
12 decade before. So now -- now we're outside of
13 relevance; right? I have --

14 CNSL L. WADDELL: It's credibility.
15 CNSL J. KITCHEN: -- no idea what you're --
16 CNSL L. WADDELL: Credibility is what I'm after.
17 CNSL J. KITCHEN: Right. Credibility from -- from 12
18 years before the events and -- and -- and 18
19 years before where we're at now, right, which --
20 I mean, he's already said that he was an atheist
21 at some point, so now you're back into -- to
22 when he -- so obviously this is a person whose
23 views have changed, which doesn't surprise me.
24 He's obviously a very intelligent and thoughtful
25 person; those types of people tend to change
26 their views.

27 So it's not -- and, you know, the -- the
28 Chair is going to be -- going to be the one to --
29 to -- so I'm talking to you, but obviously my
30 comments are directed to the Chair. It's -- it's
31 outside of the -- the very wide balance for
32 relevance that we decided in this case because it
33 is so far back that there's nothing useful to be
34 gleaned from it, and that's, of course, in
35 addition to the -- to the -- to the prejudice of
36 bringing up something that's from, you know, 18
37 years ago, 12 years before the events and the --
38 and the -- and the case trying to catch him off
39 guard because his memory isn't good enough just
40 to -- just to point out how scandalous he is.
41 It's -- it's the type of thing where there's
42 prejudice to not just the -- the -- the
43 respondent but also to the process for what
44 probative value? None other than rhetoric and --
45 and -- rhetorical and -- and -- and scandalous
46 type stuff which, of course, again, that's --
47 that -- that increases the prejudice.

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Rob Bogunovic (for Respondent)
Cross-exam by Cnsl L. Waddell

1 So as far as I'm concerned, no, you're not
2 entitled to go there. I didn't object to you
3 going after everything -- I mean, you know, you
4 spent the last 20 minutes going after this his
5 apparent misconduct over the last few years.
6 Fine. You know -- fine. But that -- you're
7 going too far now and so I -- you know, I have
8 to -- I have to object and say, you know, look,
9 we need to be -- we need to be fair to this
10 witness and -- and -- and not have him dredge up
11 stuff from back when he was probably quite a
12 different person based on what the evidence he's
13 given us.

14 THE CHAIR: All right. I'm mindful of the time. We
15 just need one minute to discuss, so we're just
16 going to turn our cameras and mics off for one
17 minute. We'll be right back.

18 Okay. We're back. I'll just wait until
19 complainant counsel's back.

20 All right. We agree with Mr. Kitchen.
21 We -- we don't see the -- the relevance of this
22 issue. We appreciate it's an argument about
23 credibility, but in our view it's going too far
24 back in time to really be of any value, and
25 there's a potential prejudicial effect in terms
26 of it essentially constituting bad character
27 evidence. So we will uphold this objection and
28 ask you to move onto the next question.

29 And we are bringing Mr. Bogunovic back now.
30 We'll see if this new strategy is going to work
31 any better.

32 CNSL L. WADDELL: Maybe we're bringing him back.

33 THE CHAIR: We think -- okay. There. We've brought
34 him back.

35

36 ROB BOGUNOVIC, a witness,
37 recalled.

38

39 CROSS-EXAMINATION BY CNSL L. WADDELL, continuing:

40

41 THE CHAIR: Okay. All right. Thank you for your
42 patience. Ms. Waddell's going to ask her next
43 question, Mr. Bogunovic.

44 CNSL L. WADDELL:

45 Q Thank you, Mr. Bogunovic. All right. As I said,
46 almost done. So yesterday you testified quite a
47 bit about -- and used a number of examples of

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Rob Bogunovic (for Respondent)
Cross-exam by Cnsl L. Waddell

1 your teaching of Social Justice 12. Is that
2 right?

3 A I probably pulled as examples from Social
4 Justice 12, yes.

5 Q Okay.

6 A Certainly when I was talking about the debates
7 that took place in the class, they were Social
8 Justice 12 debates.

9 Q Right. And I took from your testimony that you
10 were sort of -- some of those examples you gave
11 of the debates, for example, you were -- you were
12 giving as examples of how -- you know, how
13 subjects could be presented unlike SOGI 123 but
14 ways to deal with controversial topics that are
15 more balanced. Am I -- am I kind of getting the
16 general gist?

17 A Yeah. The basic principle of liberalism is that
18 you must allow individuals the right to be in
19 error as long as you also maintain your right to
20 correct them. And so the principle of any debate
21 is that individuals are allowed to present their
22 best arguments and challenge each other with
23 those arguments.

24 Q Okay. And just so that I'm clear, am I correct
25 that you are not presently permitted to teach
26 Social Justice 12?

27 A It's not a situation that I would say I'm not
28 presently permitted. I was going to be on a
29 leave. I took a personal leave, and knowing that
30 I was going to be on a leave, they had to hand
31 over my courses. Now, in the decision to hand
32 over my courses, the -- the principal made the
33 decision to hand over the social justice course
34 to one teacher so that the other teacher who came
35 in would not have that on their plate. They were
36 going to bring in a series of first TOCs, and
37 then a couple of different teachers wound up
38 teaching the other blocks, which were Social
39 Studies 10 and one Social Studies 9; the social
40 studies component of the Humanities 9 course. So
41 because of the nature of social justice, the
42 principal decided to move that out of my
43 assignment and give that to a different teacher.

44 This was, by the way, done without directly
45 consulting with me, although we had previously
46 had a conversation in which the CTA president was
47 represented as well in which she had asked me to

1111

Rob Bogunovic (for Respondent)
Cross-exam by Cnsl L. Waddell

1 give thought to whether or not I should continue
2 on as a social justice teacher given the kind of
3 restraints upon my speech that were being imposed
4 by the school district. And I want you to
5 understand -- because you -- you are talking
6 about these letters of discipline, you should
7 know exactly what the letter of direction that I
8 was given specifically prescribed so you can
9 understand why I consider my situation to also be
10 an issue of freedom of expression.

11 I was told by the district that I was to
12 avoid unnecessary conversations that were
13 sensitive, controversial, or potentially
14 triggering. They refuse to define what they
15 meant by "unnecessary." It took a long time for
16 them to get around to addressing any -- with any
17 clarity what they meant by "sensitive,
18 controversial or potentially triggering," and
19 what was clear was that if I violated the terms
20 of the letter of direction, it would open me up
21 to further discipline that could also result in
22 repeated violations of a letter of direction --
23 summary termination.

24 So, now, I taught social studies and social
25 justice. I would ask you to consider how
26 difficult it is to teach social studies and
27 social justice while avoiding unnecessary
28 conversations that are sensitive, controversial,
29 and triggering when is it is woven into the
30 curriculum and everything in the curriculum is,
31 by definition, unnecessarily taught.

32 Q Okay. So you think it's the course, not your
33 expression and imposition of your views in the
34 course.

35 A The direction made it so it was a land mine. It
36 was almost inevitable that they would push on
37 that letter -- language in the letter of
38 direction to create further problems for me,
39 which is what we saw in the later investigations.

40 The more clarified language in the letter of
41 direction actually gives me a litany of things
42 that -- topics I am supposed to avoid while
43 teaching Social Studies 10, and I have not
44 sought -- you know, in re-establishing my career
45 after an absence of a year and a half, I have not
46 sought to -- to try and re-establish the social
47 justice course and my teaching of it at this

1112

Rob Bogunovic (for Respondent)

Cross-exam by Cnsl L. Waddell

1 time.

2 But the list, if you're interested in what
3 kinds of things I have been specifically told I
4 must avoid talking about, if it will inform you
5 as to the scope and scale of the restriction on
6 my freedom of speech that they have imposed, I am
7 willing to share that list with you.

8 Q It's entirely up to you. I leave it in your
9 hands.

10 A So in addition to previously-discussed items like
11 abortion, Black Lives Matter, pronouns and -- and
12 same-sex marriage, they have added to that list
13 the following: That I must avoid any discussion
14 regarding grief or loss, mental health, personal
15 identity, bullying, cyberbullying, parental
16 divorce, friendship, peer pressure, politics,
17 religion, social media, ethics, climate change,
18 gun control, sexual assault, self-harm, suicide,
19 substance abuse and addiction, body image, eating
20 disorders, and the historical and contemporary
21 impact of intergenerational trauma.

22 Q Okay. Do you think those same terms apply to the
23 new social justice teacher?

24 A No. I don't think those terms apply to any
25 teacher. I think you -- you're hard-pressed to
26 find any teacher in the province who has been
27 told they can't talk about that litany of topics
28 and that they have to restrain themselves,
29 especially given the course content. I don't
30 know how I'm supposed to talk and teach about
31 residential schools without talking about the
32 historical and contemporary impact of
33 intergenerational trauma, and if I don't teach
34 about residential schools, I could easily be
35 found to be in violation of Standard 9 of our
36 professional ethics.

37 CNSL L. WADDELL: I think those are my questions. I'd
38 just like to -- if we could turn off our camera
39 and mic for just one minute so I can check my
40 notes?

41 THE CHAIR: Yeah, that's fine. We'll do the same.
42 You just call us back when you're ready. Okay.
43 Mr. Bogunovic, we're just going to turn our
44 cameras and mics off for a minute or two. You
45 can do that or you can remain as you are;
46 whatever you'd rather.

47 A I will remain as I am.

1113

Rob Bogunovic (for Respondent)

Cross-exam by Cnsl L. Waddell

1 THE CHAIR: All right. Come on back. Any more
2 questions?

3 CNSL L. WADDELL: Sure. Just -- just two.

4 Q The first, Mr. Bogunovic, yesterday it looked --
5 and maybe this is just the optics of the setup,
6 but it looked like you have two screens in front
7 of you. Do you?

8 A I had a computer on the side, but I only have one
9 screen in front of me.

10 Q Okay. And what's -- what's on the computer on
11 the side?

12 A At that moment probably some of the documents I
13 was reviewing in anticipation of the kinds of
14 questions that I might be asked because, since we
15 have to mostly rely on our memory, I wanted to
16 keep things as fresh in my mind as possible.

17 Q Okay. So I'll just put a request out that the
18 witness -- that you provide those to Mr. Kitchen
19 and that --

20 A Provide what exactly? The only notes that I had
21 in front of me and the only note that I consulted
22 was already handed over to Mr. Kitchen to provide
23 to you. The screen on the side was never looked
24 at during the -- during the whole questioning,
25 and I'm not entirely sure what it is you're
26 asking for. Are you asking for every file that
27 was on my computer to be handed over?

28 CNSL J. KITCHEN: No. We're -- I'll --

29 CNSL L. WADDELL: No, not -- not at all --

30 CNSL J. KITCHEN: -- I'll take -- Ms. -- Ms. Waddell,
31 he never looked at that screen during his
32 testimony. He never referred to it. Those were
33 things he reviewed before his testimony which, of
34 course, every witness is entitled to do. In
35 fact --

36 CNSL L. WADDELL: Yeah.

37 CNSL J. KITCHEN: -- should do, and prudent -- prudent
38 witnesses do that to prepare, and then they
39 become better witnesses, as Mr. Bogunovic did,
40 so, no, we will not be handing that over. As far
41 as actual notes he did refer to, yes, we have and
42 we will hand those over, but that computer
43 doesn't fall under that.

44 CNSL L. WADDELL: Okay. No, no, that's -- that's
45 fine. He answered the question adequately to
46 tell me he wasn't looking at it while he was
47 testifying, so I'm happy.

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Rob Bogunovic (for Respondent)
Re-exam by Cnsl J. Kitchen

1 Q And to the extent that you were referring to any
2 other notes today -- so it looked to me -- again,
3 it could be just the setup -- as though you were
4 referring to something at various points today.
5 If you were referring to anything, if you can
6 provide them to Mr. Kitchen and he'll provide
7 them to me. Those are my only questions.

8 A The only thing that I looked at was this list
9 which, knowing that this was going to be coming
10 up, while I was on my break I sought and brought
11 forward. I will provide that entire list to you
12 so that you would have the complete list of the
13 topics that the district said were things that I
14 must refrain from discussing.

15 CNSL L. WADDELL: Thank you. Those are my questions.

16 THE CHAIR: Thank you. Mr. Kitchen, anything on
17 redirect?

18 CNSL J. KITCHEN: Yes.

19
20 RE-EXAMINATION BY CNSL J. KITCHEN:

21
22 Q Rob, when did you donate the \$600? Do you
23 remember what year?

24 A I believe it would have been around -- and this
25 is -- this is my best guess: Probably around
26 October 2018. But I can't be 100 percent sure on
27 the month. It definitely was around that time
28 frame.

29 Q Okay. And was it towards this human rights case,
30 or was it towards some other case?

31 A It was primarily out of a concern for Barry
32 knowing that he was getting so much attack and
33 knowing that there was so much lawfare being
34 launched against him. I left it to his
35 discretion how he would utilize the money.

36 Q Okay. So you didn't -- sorry. Did -- did you
37 say to him, like, "Look, I'd like this to go
38 towards a particular case?"

39 A No.

40 Q Okay.

41 A But it is important that I'm pretty sure at that
42 time there wasn't -- the -- the -- the particular
43 case that involved another trustee and
44 allegations that he alleged she was a striptease
45 artist, that hadn't yet unfolded.

46 Q Right.

47 A That would have been well after the -- the

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Proceedings

1 handing over of the \$600 donation. Nor did I
2 ever claim it as a donation; this was essentially
3 just a supportive gesture.

4 CNSL J. KITCHEN: Okay. Those are my questions on
5 redirect.

6 THE CHAIR: Thank you. Mr. Bogunovic, those are the
7 questions that we have for you. I want to thank
8 you for taking the time now over two days to come
9 and give your evidence at this Human Rights
10 Tribunal. We really appreciate your time and
11 energy. It's important to the Tribunal that --
12 that people do come and testify, so we thank you
13 for that. You're now released of, you know, any
14 obligations in relation to this case, and you're
15 free to exit the meeting.

16 We just have a few administrative things we
17 have to discuss that you don't necessarily need
18 to stick around for, though you're welcome to if
19 you're interested.

20 A All right. Thank you very much.

21 THE CHAIR: Thank you.

22

23 (WITNESS EXCUSED)

24

25 THE CHAIR: All right. So I gather we are back
26 tomorrow morning with Mr. Neufeld, and we will
27 just see how far we can get with -- with
28 Mr. Neufeld tomorrow and reserve at least 10 or
29 15 minutes at the end of the day to talk about
30 next steps.

31 Anything else before we adjourn for the day
32 today? I don't think so.

33 CNSL L. WADDELL: Not that I can think of at the
34 moment but...

35 THE CHAIR: We're going to get the collective
36 agreement. Is that coming in?

37 CNSL A TOM: I -- I did send it, so hopefully it
38 should be --

39 THE CHAIR: Oh, you have it? Okay. So, well, then
40 let's just tie that off. So is there any
41 objection, Mr. Kitchen, to admitting the
42 collective agreement as an exhibit in the
43 proceeding?

44 CNSL J. KITCHEN: Oh, geez.

45 THE CHAIR: You can give --

46 CNSL J. KITCHEN: Just give me a sec.

47 THE CHAIR: Yeah. If you want to come back to this

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1 tomorrow morning after you've had a chance to
2 look, we can, but...
3 CNSL J. KITCHEN: Just let me get it open. You know,
4 it's 147 pages long or something like that which
5 probably is indicative that it is a collective
6 agreement. What's the year on this thing?
7 Sorry. Let me just get through it here.
8 THE CHAIR: Effective 2022 to 2025.
9 CNSL J. KITCHEN: '25. Yeah. Yeah. Yeah, that's
10 fine.
11 THE CHAIR: Okay. So this will be Exhibit Number 6,
12 the provincial collective agreement for School
13 District 33, Chilliwack, 2022 to 2025, and it's
14 147 pages long.

15
16 (EXHIBIT MARKED)
17

18 THE CHAIR: All right. I think that's all for today.
19 Thank you for your work today. We'll be back
20 here at 9:30 tomorrow morning with Mr. Neufeld's
21 evidence. We'll see how far we get, and then
22 we'll make a plan at the end of the day for the
23 next steps. I'll remove everyone from the
24 meeting now. Thanks very much.

25
26 (VIDEOCONFERENCE CONCLUDES) [4:29:59]
27

28 (PROCEEDINGS ADJOURNED TO DECEMBER 6, 2024,
29 AT 9:30 A.M.) [4:29:59]
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1 REPORTER'S CERTIFICATE

2
3 I certify that the proceedings from timestamp
4 9:30:48 to timestamp 4:29:59 inclusive are a true
5 and accurate transcript of these proceedings
6 recorded on a sound recording apparatus,
7 transcribed to the best of my skill and ability
8 in accordance with applicable standards.
9

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12 Victoria Ross
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14 Victoria Ross
15 Court Reporter
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**IN THE MATTER OF THE *HUMAN RIGHTS CODE*,
RSBC 1996, C. 2010 (as amended)**

**AND IN THE MATTER of a complaint before
The British Columbia Human Rights Tribunal**

BETWEEN:

British Columbia Teachers' Federation obo Chilliwack
Teachers' Association

COMPLAINANT

AND:

Barry Neufeld

RESPONDENT

AND:

B.C.'s Human Rights Commissioner

INTERVENOR

**PROCEEDINGS AT B.C. HUMAN RIGHTS TRIBUNAL HEARING
(VOLUME X)**

ORIGINAL

THERE IS A PUBLICATION BAN IN EFFECT PROHIBITING THE
PUBLICATION OF ANY INFORMATION THAT COULD IDENTIFY THE
TEACHERS WHO TESTIFIED, OR MAY HAVE TESTIFIED, IN
CONNECTION WITH THIS COMPLAINT: CHILLIWACK TEACHERS'
ASSOCIATION V. NEUFELD (NO. 2), 2024 BCHRT 180 [CTA
(NO. 2)]; AMENDED BY LETTER DATED FEBRUARY 25, 2025.

File: CS-003172

**IN THE MATTER OF THE *HUMAN RIGHTS CODE*,
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INTERVENOR

**PROCEEDINGS AT B.C. HUMAN RIGHTS TRIBUNAL HEARING
(VOLUME X)**

ORIGINAL

Tribunal Members:	Devyn Cousineau, Robin Dean, Laila Said Alam
Counsel for the Complainant:	Lindsay Waddell, Alanna Tom, Stefanie Quelch, Chris Fenje
Counsel for the Respondent:	James S.M. Kitchen
Counsel for BC's Human Rights Commissioner:	Sarah Khan, Maria Sokolova

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By videoconference
 December 6, 2025

(VIDEOCONFERENCE COMMENCES) [9:30:43]

THE CHAIR: Good morning, everyone. It is December 6th and I'm recalling the case of *B.C. Teacher's Federation on behalf of Chilliwack Teachers' Association and Barry Neufeld*, CS-001372.

I can see complainant's counsel here and Mr. Clark. Good morning. And then Mr. Neufeld and Mr. Kitchen are here, good morning, and Ms. Khan. I'm just going to let in some more members of the public here.

All right. Today's plan is to hear from Mr. Neufeld. Is there anything -- any preliminary issues that we need to deal with before we get to that? No?

CNSL J. KITCHEN: I don't think so because you want to deal with scheduling when we get to the end.

THE CHAIR: I think so. Let's just see how far -- how much progress we can make today.

CNSL J. KITCHEN: Okay.

THE CHAIR: Yes?

CNSL J. KITCHEN: I -- I don't expect to finish, although I do expect to get through, you know, the majority of it. Probably 50 to 75 percent in any event. Maybe even more. We'll see. At least 50 percent. So -- and -- and I will say that Ms. Waddell and I have discussed timelines and how much additional time we think we need and, you know, we're both in agreement, you know, on the amount of time that we think this witness is going to take and the amount of time we think we need, so when -- when we get to that, we basically have a -- a consent suggestion to the Tribunal.

THE CHAIR: Okay. Well, in that case, if you're -- if you're already that far ahead, why don't you let us know what the consent suggestion is so that we can talk about it over our lunch.

CNSL J. KITCHEN: My guess is that I would be -- I would be a day and a half with Mr. Neufeld. So, you know, today is the day and then a half. Maybe up to three quarters but probably a day and a half.

And then, you know, I -- I would imagine

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1 Ms. Waddell having half day to a whole day in
2 cross. You know, obviously that's -- just kind
3 of depends how things go, but I think -- I think
4 we need to give her the room for that. I mean,
5 you know, it's obviously the most important
6 witness for her to cross, and there's going to be
7 lots to cross on because I'm going to put her --
8 I'm going to -- I'm going to -- you know, there's
9 going to be a lot in direct, right. I mean, he's
10 the only witness that's going to speak to all of
11 these -- or almost all of these posts, right,
12 which is appropriate and -- and that's the
13 design.

14 So our suggestion is that, you know, in
15 total we need three days with this witness,
16 right. So today's day one. Or up to three days.
17 We might use, you know, right up until the mark,
18 but -- but what -- what -- we need more than two
19 days with this witness, so in addition to today
20 we need two more days, so I think we need to
21 schedule two more days. Maybe we only use a day
22 and a half of those two days, but we need to
23 schedule those two days so that everybody has the
24 room they need and we're not going to run into a
25 situation where if we only schedule one we don't
26 quite finish, and then we have to schedule
27 another one. And I've been in those situations,
28 and it's -- it's terrible for everybody involved
29 to do that.

30 So I think we schedule two days in a row if
31 we can or two days very close. Like, maybe if
32 it's a Monday or a -- and a Thursday in a week
33 that's all right. But -- but either two days in
34 a row or -- or two that's very close to each
35 other in the same week. Get those scheduled, get
36 them -- get them done, and then we can actually,
37 you know, complete the evidence, you know, and be
38 able to schedule when we know we're going to
39 complete the evidence.

40 THE CHAIR: Okay. So we need two days. And have you
41 two discussed dates yet or not yet?

42 CNSL J. KITCHEN: No, we didn't get that far.

43 THE CHAIR: Okay. All right. Well, we'll come back
44 to that later. Later today maybe -- certainly at
45 the end of the day. But scheduling two more
46 days, that makes sense to me.

47 All right. Mr. Neufeld, you've been here

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Barry Neufeld (for Respondent)
In Chief by Cnsl J. Kitchen

1 now for nearly two weeks, so by now you have some
2 idea about what to expect and the role of a
3 witness and so on, so I won't do my full
4 introduction for you. I will say that we will go
5 this morning until 11 o'clock, but if you need
6 other breaks -- I know you indicated that you may
7 need breaks; you're welcome to -- to take them
8 and let us know. And if you need a move around
9 or anything, that's fine. And as you know,
10 your -- your job here as a witness is just to
11 answer the question as best you can.

12 So I'll start by just having you please --
13 you can unmute yourself and spell your name for
14 the record.

15 BARRY NEUFELD: My name is Barry Neufeld, B-A-R-R-Y
16 N-E-U-F-E-L-D.

17
18 BARRY NEUFELD, a witness
19 called for the Respondent,
20 affirmed.
21

22 THE CHAIR: Thank you. Now, are you one of the people
23 who can hear the announcement when members of the
24 public come in?

25 A No.

26 THE CHAIR: You can't hear it. Okay. So we'll --
27 we'll continue to -- to let people in if we need
28 to but so long as it doesn't interrupt our -- our
29 ability to hear the evidence and get a record of
30 it. But it's -- it's not interrupting you, so
31 that's good.

32 A Thank you.

33 THE CHAIR: Okay. Are you ready to begin?

34 A Yes.

35 THE CHAIR: Okay. Go ahead, Mr. Kitchen, when you're
36 ready.
37

38 EXAMINATION IN CHIEF BY CNSL J. KITCHEN:
39

40 Q Well, good morning, Barry. Let's start with
41 could you please tell the Tribunal about your
42 background before you became a trustee.

43 A I tried a career in sales until my mid-30s, and
44 then by accident I applied to become a
45 correctional officer. I applied through LAMRCC
46 (verbatim) not knowing what it was.

47 But, anyways, I was called in for an

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Barry Neufeld (for Respondent)
In Chief by Cnsl J. Kitchen

1 interview, and it had been a long time since I
2 had an interview, and it was a very short
3 interview. Back in those days they were pretty
4 desperate for correctional officers. They said,
5 "How much education have you got?" I said, "I
6 have a degree in adolescent psychology," and they
7 said, "Where did you work before?" I said, "I
8 was a roughneck on the oil rigs," and the third
9 question was, "When can you start?"

10 Q And tell us how that went at least initially.

11 A Well, you know, when I was in high school, I was
12 always getting picked on because I was scrawny
13 and not very strong, and I have a lot of
14 firsthand experience with bullying, so when I
15 walked in for my interview and I saw all these
16 muscle-bound big, ugly-looking criminals, I was
17 quite frightened. I thought, "How on earth can I
18 work in a place like this?"

19 But as it turned out, I quite enjoyed
20 working there. Some of the prisoners -- one of
21 the first prisoners I worked with was Clifford
22 Olson who abused and murdered nine children.
23 Robert Noyes, the school principal who, when he
24 finally got caught, had molested over 100
25 children in various school districts. And I
26 somehow seemed to have a knack with -- of working
27 with these -- these people.

28 Many of these men had been badly abused as
29 children, and that was part of the reason for
30 their addictions issues which led to criminal
31 activity.

32 I started there, I think, in the early 80s.
33 That's where I first became aware of transgender
34 people. Back in those days the only place they
35 could get bottom surgery was at Johns Hopkins
36 University in United States. But a lot of these
37 transgender people were prostitutes, and that's
38 why they landed up in trouble with the law, and
39 once they're in trouble with the law, they're
40 stuck in Canada, and there was -- there was no
41 way they could get the -- the treatment that
42 they -- they wanted to have.

43 I was in the remand facility. For part of
44 that time I was in West Gate B which at that time
45 *Young Offenders Act* was still in -- in -- in
46 effect, so we had men there as young as 17. It
47 wasn't until the *Youth Criminal Justice Act* --

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Barry Neufeld (for Respondent)
In Chief by Cnsl J. Kitchen

1 no, we were still under the *Juvenile Delinquents*
2 *Act*. When the youth -- *Young Offenders Act* came
3 in, they made the dividing line 18 and so we
4 didn't have very many teenagers left in the -- in
5 the institution.

6 In 1983 I applied and was accepted in
7 through Vancouver Pretrial centres which was the
8 most modern and up-to-date correctional facility
9 in North America when we moved in. Everything
10 was computerized, and the doors were all
11 electronic, so we weren't carrying around keys as
12 much. And the problem with that job was that it
13 was the shift work. It threw you totally out of
14 whack with the rest of the world 'cause you
15 worked four days on, and then you were two days
16 off, so you never had the same weekend as
17 everybody else. We worked a month of days, a
18 month of afternoons, a month of days, a month of
19 afternoons, and then a month of graveyards.

20 At the time I was in my second marriage. I
21 had four kids and two dogs to feed, so I quite
22 often took double shifts. Start work at 8 in the
23 morning. 4 o'clock I'd start the afternoon
24 shift, go 'til midnight. Rush home for a quick
25 sleep and then back to work again in the morning.
26 Q When you say worked with -- back up a little bit.
27 When you say work with these convicted
28 individuals you're working with and you
29 mentioned, I think, the school principal and this
30 other guy, what was -- what was the -- what was
31 the actual type of work that you actually did
32 with them?

33 A As a correctional officer we had to make sure
34 that we count -- regularly counted how many
35 inmates we had on our tier. A tier was a hallway
36 of 20 prison cells. But they would be leaving
37 their cells for visits with their lawyers, visits
38 with their family, professional visits with
39 psychiatrists, with medical doctors, nurses, what
40 have you. So there was a lot of coming and going
41 all the time, and we had to keep -- keep track of
42 them, where they were in the building, and -- and
43 make sure they got back to their proper cell.

44 The -- in those days we kept sex offenders
45 separate, and we had to be very careful that they
46 didn't bump into, you know, a non-sex-offender
47 criminal like a burglar or a bank robber,

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Barry Neufeld (for Respondent)
In Chief by Cnsl J. Kitchen

1 whatever. They might get beat up in the hall or
2 whatever, so we had to be very careful about
3 their safety.

4 And I -- I never felt physically threatened
5 there. The -- the atmosphere was very profane.
6 The language was enough to make a longshoreman
7 blush, and the walls were completely covered with
8 porn and Playboy, and -- and the inmates were
9 very bored. They had very few activities. They
10 only got to go out in the yard for an hour a day.

11 The interesting thing was when I moved to
12 Vancouver Pretrial it was based on the philosophy
13 of Charles Colson, the guy in the Watergate
14 scandal who later became born again. And the
15 Vancouver pre -- Pretrial allowed absolutely no
16 skin books, no girly books in the -- in the
17 facility. No posters of sexualized activities.

18 And I was in Pretrial about as long as I was
19 in Oakalla. In Oakalla we -- we had fights -- we
20 had to drag bloody prisoners out to the ambulance
21 two or three times a week. When I was Pretrial
22 for almost the same amount of time, about three
23 years, I only had one violent incident and some
24 prisoner bopped another prisoner over the head
25 with an ashtray because he wanted an -- an extra
26 dessert or something like that. So it was a much
27 more peaceful, quiet environment without all this
28 sexualized activity. And profanity was also --
29 was punished. So, you know, only -- only
30 occasional "shit" would slip out, but no -- no
31 F-bombs or -- or profaning the name of god or
32 anything. It was -- it was a very peaceful
33 environment to be in.

34 Q You said you had a knack for working with people
35 like those first two individuals you mentioned.
36 What do you mean by that?

37 A Well, I -- I treated them with -- with respect
38 that I believe they deserve as human beings.
39 Some of them had done horrendous things.

40 Some of my other fellow officers, you know,
41 if they knew that somebody had murdered and
42 abused a child, you know, they -- they couldn't
43 help but treat them with disdain. And, of
44 course, as I said, at Oakalla the -- there was no
45 restriction on language. The staff 's language
46 was just as bad -- bad as the prisoners'. And,
47 of course, the prisoners would bristle when --

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1 when they were being treated as subhuman. I
2 treated them with the respect that they had.

3 I remember once there was a bomb scare and
4 so we had to get all the prisoners out of the
5 building and out into the yard and so everybody
6 was rushing around making sure that these
7 prisoners got out into the yard, and all of a
8 sudden I realized that nobody had done anything
9 to get the sex offenders out of the building, so
10 I -- I talked to the officer in charge, and he
11 says, "Yeah, you can take them out in the
12 backyard." So I got all 40 of them out in the
13 backyard. As -- as quite often the bomb scare
14 was a phony, but I know the sex offenders were
15 very grateful that -- you know, had there been a
16 bomb gone off, they would have all perished, but
17 I made sure that they got out of the building as
18 well.

19 Q Were there any times that that respect that you
20 showed for them was returned back to you?

21 A Yes, it was. I couldn't accept any bribes, but
22 they -- they told me they -- they appreciated
23 the -- the way that I treated them, that it made
24 them feel that, you know, maybe there was hope
25 for them to -- to not -- not -- what's --
26 recover -- I'm not -- rehabilitate.

27 Q And when, ultimately, did -- did that type of
28 work end for you?

29 A Well, when I was at Pretrial, all -- all the
30 manuals for corrections were available in the
31 officers' office, and during the lockdown times,
32 especially during graveyard shift when they were
33 all fast asleep in bed, I had a chance to study
34 the corrections policy, and the whole training
35 manual for probation officers was there, so I
36 studied up on how to become a probation officer.
37 I -- I applied, and I was accepted.

38 And it was in-service training then. I
39 trained at the Justice Institute which was out
40 in -- near Jericho Beach at the time, and at the
41 end of our 14-week training -- it -- it was kind
42 of a strange thing. In British Columbia,
43 probation officers were also family court
44 counsellors. You'd think that wouldn't have
45 anything to do with each other, but family court
46 counsellors would assist parents who were
47 separating. We weren't lawyers, but we would

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1 help them work out the details of child
2 visitation and child maintenance. And we also
3 got involved with battered women. We would help
4 them get restraining orders. We would -- we were
5 about probably the only two men in the whole town
6 who knew where the women's transition house was,
7 and we'd make sure they -- they got into a safe
8 facility.

9 Quite often when a divorce was very
10 acrimonious the children would be emotionally
11 damaged, and sure enough we'd see them in the
12 criminal courts a few -- a few years later. They
13 were angry; they were acting out; they were doing
14 drugs and alcohol like they'd seen their parents
15 do, so...

16 It -- I was posted -- my first posting was
17 in the little city of Creston in the Kootenays.
18 And the -- the interesting part of that town is
19 that's where the polygamist Mormons have quite a
20 large colony. I dealt a lot with -- with their
21 marital problems because some of them would have
22 several wives, and there would be jealousy
23 between the wives. And not only that; when
24 there's so many kids in the house, the
25 step-siblings would -- would molest each other,
26 and then they'd be in trouble with the -- the
27 courts.

28 I got to know the bishop quite well.
29 Winston Blackmore now has 30 wives.

30 Q And how long did you do the -- the probation
31 officer thing?

32 A I was in Creston for five years, and I --
33 unfortunately my marriage broke down in -- in
34 that town and so I applied to come back to the
35 coast. I was accepted by the Chilliwack office,
36 and a week before I was transferred, the -- the
37 court awarded me primary custody of my two
38 children who were, at that time, in Grade 7 and
39 Grade 4. So I moved to Chilliwack as a single
40 parent, raised my kids. They both graduated from
41 high -- Chilliwack high school. My son went on
42 to university, and he's now married. My daughter
43 is not married yet, but she's had various very
44 interesting jobs.

45 Q Obviously we all know you became a school board
46 trustee eventually. Did that overlap with being
47 a probation officer, or did you sort of retire

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1 and then become a trustee?

2 A I was a probation officer in Creston. There was
3 an alternate school, and they had an advisory
4 board of professionals that oversaw what was
5 going on at the alternate school. And like a lot
6 of -- of alternate schools it was the most
7 tumble-down ramshackle building in the district,
8 and I represented probation because most of my
9 kids on probation were in the alternate schools.
10 There were social workers, alcohol and drug
11 workers, the police, mental health workers. We
12 were all on this -- all on this advisory board,
13 and that's when I really began to take an
14 interest in education, and I -- I began to notice
15 how schools say that they're concerned about
16 marginalized kids, but these were the most
17 marginalized, and they were the most neglected.
18 And we kept asking them to fix up the building,
19 and they said, "Oh, we don't have money for it,"
20 you know, but they had money for all sorts of
21 other expensive projects in the district, so I
22 came up with the brilliant idea of calling the
23 workman's compensation board to come and take a
24 look at the building. Well, they condemned it as
25 being unfit for human habitation, and the school
26 board was forced to fix the place up. Made much
27 bigger windows, got rid of all the stored
28 metal -- sheet metal that was -- had sharp edges
29 sticking out all over the place, better lighting,
30 a good floor. And the kids were loved it.
31 They -- they were finally proud of the building
32 where they went to school.

33 At that time the Sullivan Commission was
34 going around the province, and I took a real
35 interest in the -- the submissions to the
36 Sullivan Commission. And the BCTF will not be
37 happy to know that I had quite an interest in
38 charter schools. And B.C. was actually
39 considering it at the time. I made submissions
40 to the Sullivan Commission.

41 But I left Creston in 1992 and came to
42 Chilliwack, and within a year and a half there
43 was a school board election. And I had run for
44 school board in Creston; I didn't get elected
45 because the other candidate had an unfair
46 advantage. Adam Robertson had a school named
47 after him.

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1 But I came to Creston and went down to city
2 hall and -- and they said, "Well, what do you
3 want to run for? Town counsel or school board?"
4 I says, "I don't know." So I went, "Eeny, meeny,
5 miny, moe," and my finger landed on school board,
6 so I took out the school board nomination papers.

7 It was so lucky because there was 26
8 candidates for the six seats on counsel. School
9 board only had seven seats, and there were
10 eight -- eight of us running for it. And there
11 was only two of us were incumbents and so I
12 was -- I was elected to the school board back in
13 1992.

14 One of the reasons I was elected was because
15 people were impressed with my experience with
16 special-needs kids and my knowledge of learning
17 disabilities and attention deficit disorder
18 and -- and dyslexia and behavioural problems.

19 And I don't think I received it in that
20 first election, but every subsequent election up
21 until 2018 I would get generous support from both
22 CUPE and the B.C. Teachers' Federation. It
23 didn't come directly from them; it came through
24 the Fraser Valley Labour Council. But I had
25 union support because not only was I a member of
26 the union, I was a member of the B.C. Government
27 Employees' Union, but I had a strong heart for
28 special-needs kids and kids who were marginalized
29 and suffering.

30 Q You said you had kids -- you -- you worked with
31 kids when you were doing the probation work.
32 What can you tell me about that?

33 A When I was in Creston, I was a probation officer
34 all ages [verbatim], so I -- I had youth clients
35 who were under the age of 18, and I had adult
36 clients over the age of 18. And some of the
37 adults were 14 going on 15. They -- they were in
38 trouble with the law largely because they were
39 very immature. Probably the most common
40 problem kids got into was shop lifting but also
41 burglary. They would break into people's homes
42 and steal things. They would get into fights and
43 be charged with assault causing bodily harm. Oh,
44 and -- and another common -- another common crime
45 that they were always stealing cars, and usually
46 when a teenager steals a car he piles it up and
47 smashes it up so... Not too many major crimes.

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1 We did -- because we were so far out in the
2 country, if there were federal parolees in our
3 jurisdiction, we had a contract with corrections
4 Canada to supervise parolees, and we had some
5 pretty notorious serial sex offenders that --
6 that I had to supervise so...

7 And because of the polygamist colony in our
8 community, I had a lot of experience with dealing
9 with sex offenders, and I began to take courses,
10 and eventually years later I became the lead
11 probation officer in charge of sex offenders.

12 When -- probation officers are basically the
13 eyes and ears of the judge. An -- an offender
14 would come before the judge, and once he was
15 found guilty, the judge would want a presentence
16 report before he would sentence them, and he
17 would order the probation officer to do an
18 investigation, find out what's going on in the
19 kid's life, and make a report to the court.
20 Sometimes he'd also ask for a psychiatric report,
21 but I found that the judges always put more
22 weight on the probation officer's report because
23 one of our principles, one that I always stuck
24 with, was I was never satisfied with what the kid
25 or the client told me in my office. I want to
26 visit them in their home. And quite often when
27 you go to their home, you get a whole different
28 picture of what their life was really like.

29 And I remember the -- the school teachers
30 that I rubbed shoulders with -- and I had lot of
31 -- a lot of involvement with school teachers as a
32 probation officer. They very -- very rarely
33 visited their -- their students' home. And the
34 one thing that I learned that a kid can be
35 totally different personality at home than they
36 are in school and another totally different
37 personality when they're in front of the judge
38 and a totally different personality when they're
39 in front of a probation officer. But by visiting
40 the home, I found that I got the best, most
41 holistic view of what was really going on in
42 their lives.

43 Q You have any long conversations with some of
44 these students that -- or -- or kids that you
45 were working with?

46 A Many long conversations. And, you know, years
47 later some of them still consider me the most

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1 positive influence in their life. A lot of them
2 are married, grown up, have their own children,
3 even grandchildren. They still keep in touch
4 with me because I was the -- I was not -- I was
5 not easy on them. If they didn't behave
6 themselves, I breached them and they'd go back to
7 jail, and they knew it. And often times when
8 they would get out of control with drug abuse I
9 would breach them, throw them back in jail. The
10 court would throw them back in jail, and that
11 would give them an opportunity to get clean and
12 stay away from -- from drugs.

13 Unfortunately the jails now are so corrupted
14 that it's almost as easy to get drugs in jail as
15 it is on the street.

16 Q Did you find your degree in child psychology
17 helpful when you did this type of stuff?

18 A Adolescent psychology. It was amazing. And one
19 of my interests was in identity. I -- I know I
20 wrote a paper on it. It's around here somewhere.
21 I haven't reviewed it in a long time.

22 But a lot of kids struggle with, you know,
23 who am I really, and the kids that seem to
24 resolve that question the best are ones who are
25 in touch with their extended family. They know
26 their roots. They know their uncles. They know
27 their grandpas and grandmas. They know their
28 great-grandparents. And it helps to give them
29 identity when they have a cousin who has similar
30 personal qualities as they do.

31 Nowadays kids live such isolated lives.
32 They have no connection to their past, no
33 connection to their extended family. People move
34 all over the country, and they're usually quite a
35 long ways from their grandparents or their aunts
36 and uncles, and this makes it even more difficult
37 for kids to establish who they really are and
38 what their talents and abilities are.

39 Q Did you also have long conversations with some of
40 the sex offenders that you worked with?

41 A Many long conversations. And quite often they
42 would so oh -- well, they -- they'd usually try
43 the line that, "Oh, they're lying about me. I
44 didn't do it, you know. She just -- she just is
45 making it all up." And I had a lot of -- had
46 this trouble with that denial a lot. And -- and
47 some of them would even blame -- blame the child.

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1 They would say, "Oh, well, you know, she was
2 coming onto me, and she was acting really
3 seductive," and I said, "But she's only 3 years
4 old," and they would say, "Oh, yeah, but, you
5 know, she knows all about sex." And I would -- I
6 would hammer them.

7 I remember once I had this old guy; he had
8 taken a 15-year-old girl off camping, and he'd
9 had his way with her, and the judge ordered a
10 psychiatric report by the head of psychiatry at
11 the University of Calgary, and that psychiatrist
12 once again only saw the client in his office.
13 I'd been to the guy's home, and I saw that he
14 had -- the house was stuffed with things that
15 would -- would interest children. So he had a
16 real thing for kids.

17 The psychiatrist said that the man didn't
18 know what he was doing because he was suffering
19 from Alzheimer's, and I went to court, and I
20 says, "There's no way that guy has Alzheimer's.
21 That psychiatrist doesn't know what he's talking
22 about." Well, the judge took my evidence over
23 the psychiatrist. That was kind of nice. I -- I
24 was believed before the head of the university
25 psychiatric department.

26 Q How many -- if you had to guess as to how many of
27 these reports you've done for judges, what
28 would -- what would the number be?

29 A I was a probation officer for 27 years. 25 times
30 50 is, what -- I was doing two or three reports a
31 year. Hundreds if not thousands.

32 Q Did the sex offenders ever tell you anything
33 about, you know, their tactics or what they did
34 or how they did what they did or anything like
35 that?

36 A One of the most common lines they would use was
37 to confuse a child about their gender. If -- if
38 a man was going after a little girl, he would
39 say, "Are you sure you're really a little girl?
40 Maybe you're a boy. Why don't we see what the
41 difference is?" And in those days children had
42 firmer boundaries. They would be grossed out
43 when they saw a man pull his pants down and see
44 his sex organs for the first time. But kids are
45 curious, and these guys would know how to molest
46 a child in a way that it was pleasurable to the
47 child. It would feel good. And they would

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1 always say, "Well, now it's our little secret.
2 You can't tell -- you can't tell your parents."
3 Now, that didn't always work with little girls,
4 but it sure worked with little boys because if a
5 man molested a little boy, he would say, "You
6 know, this is our secret. Don't tell your
7 parents or they're going to know you're gay."
8 And in most of the cases where I was involved
9 with the -- where -- where a man had been charged
10 with molesting a -- a boy, the witness would fall
11 apart and would simply not be capable of giving
12 witness in court.

13 I -- I worked closely with the RCMP when I
14 was in Chilliwack, and they told me that of all
15 the complaints to Crown counsel that they
16 investigated, all the complaints of sexual abuse
17 that they investigated, only 10 percent went to
18 Crown counsel because the witness just wasn't
19 dependable enough. And the reason the witness
20 was -- wasn't dependable is because they were --
21 they were afraid or they had some skeletons in
22 their closet and maybe a little girl wouldn't
23 want to testify against an adult man because she
24 had once played doctor with an 11-year-old boy
25 and she didn't want people to know about that.

26 THE CHAIR: I'm just going to jump in here just for a
27 moment. I -- I don't want to interrupt,
28 necessarily, but I -- with all due respect, I
29 don't think it's necessary in this case to hear
30 details about the abuse and sexual abuse of
31 children. It's just not necessary for anyone
32 listening. So, Mr. Kitchen, if I could ask in
33 your questions that you're not asking about
34 details of child sexual abuse, that would be
35 appreciated.

36 CNSL L. WADDELL: I was also just going to add that a
37 ton of what this witness is saying is hearsay. I
38 do wanted to proceed and -- and move things
39 along, so rather than objecting every sentence or
40 second sentence, I'm just going to put my
41 objection on the record and will apply to strike
42 that evidence after on the basis that it's
43 hearsay. But there's -- there's a lot of it, so
44 I'm just putting that on the record.

45 THE CHAIR: Thank you.

46 CNSL J. KITCHEN: I think it's somewhat fair to -- to
47 characterize it as hearsay insofar as he is

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1 giving evidence as to what some of these people
2 he's worked with as a probation officer told him.
3 However, this is the type of hearsay that, you
4 know, as opposed to just throwing it away and we
5 just look at it as, well, it's part of the
6 testimony in order to get the story out, this is
7 a little different insofar as I would say it's
8 necessary insofar as obviously we can't get these
9 witnesses; that's impossible. But also necessary
10 insofar as -- and -- and to go to the other point
11 of what relevance, and I'll get into that, it's
12 relevant.

13 And there's no -- or very little prejudice
14 to -- to -- to my friend. This case is not
15 about, obviously, whether or not the teachers
16 are -- are actually child abusers or anything
17 like that, and -- and -- and you will hear that
18 testimony from Mr. Neufeld. Obviously the
19 accusation is that he's calling them child
20 abusers or groomers or whatever, and -- and --
21 and that's -- you know, my -- my -- my friend has
22 chosen to put that in and chosen to include that
23 in the record to support her claim that
24 Mr. Neufeld has engaged in hate speech or
25 discrimination in -- in employment, so obviously
26 we're entitled to defend against that, obviously.
27 We need to.

28 You know, if -- if -- if there is any
29 validity to my -- to my friend's complaint, it's
30 to be found in those types of comments. Those
31 are the types of comments that come -- that come
32 the closest and the ones that need to be dealt
33 with the most, I think. You know, in my -- my
34 view a lot of the comments are sort of throw-away
35 obviously criticizing ideas and are not hate
36 speech or discrimination in employment, but some
37 of the other ones that at least the teachers have
38 suggested, "Hey, we're being called child abusers
39 and groomers," those -- those need to be, you
40 know, fully explored and obviously fully
41 defended.

42 Getting to the relevance. Mr. Neufeld is
43 obviously going to give comments and respond
44 to -- and I'm going to be intentionally vague
45 here because otherwise I don't think it's fair.
46 I don't want to lead the witness, you know,
47 through this back-door process, but being

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1 intentionally vague, he's -- he's going to give
2 evidence as to what -- what he was talking about
3 there. Okay? And his professional experience
4 with child sexual abuse is highly relevant as to
5 what he was talking about. Right? And -- and --
6 again, to be very general, he's -- he's going to
7 talk about, you know, "Look, I wasn't calling
8 these people child abusers, but, you know, here's
9 why I said what I said. Here's -- here's what's
10 informing this." And so this background is
11 important because it does -- it does inform that.
12 So I -- I apologize if you find it uncomfortable,
13 but it's necessary evidence. It's necessary for
14 our defence. And, of course, you know, obviously
15 Mr. Neufeld has a right to defence. I don't
16 think -- I don't think I need to give lengthy
17 submissions about that. So you might find it
18 irrelevant at this point in his testimony all you
19 want, but you -- you -- you must let him talk
20 about it if -- if it's part of his defence
21 because he has a right to defend himself. And if
22 the relevance isn't -- isn't -- isn't apparent
23 yet, I would suggest that it will become very
24 apparent and so you need to let us explore it.

25 I -- I don't think we're going to hear much
26 more of that, at least not until we get to that
27 part of the testimony. I think I'm done with
28 this part of it, but it was intentional, and --
29 and -- and it must be -- it must be talked about
30 because it's relevant to the defence. And we're
31 not doing it for the sake of making anybody
32 uncomfortable, and I'm sorry if it does, but
33 it's -- it's relevant, and it has to be talked
34 about as part of our defence.

35 THE CHAIR: Thank you, Mr. Kitchen. As I understand
36 it, you're saying this is relevant because it
37 speaks to kind of Mr. Neufeld's intentions or the
38 meaning behind what he was saying and gives
39 some --

40 CNSL J. KITCHEN: Not -- no, not quite.

41 THE CHAIR: No? Okay. Not the intentions because
42 what he was saying was true? What are we saying?
43 What -- can --

44 CNSL J. KITCHEN: Well, I mean, you know, I -- I -- I
45 know -- I know -- obviously -- you want to tell
46 me, "Look, it's about impact, not intentions." I
47 agree with you. That's -- that's the test on

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1 discrimination, right. But obviously there has
2 to be an -- an objective analysis of, okay, is
3 what he said going to expose these people to
4 hatred, and obviously context is important for
5 that, okay, because whatever -- you know, fine;
6 whether he intended to or -- obviously he didn't
7 intend to, so, fine, there's no intention, but
8 the impact matters. But in order -- in order to
9 give an objective analysis to that impact and not
10 an entirely subjective one, because, of course,
11 that's not the test, the context matters, right.
12 And so -- and so this is not context you would
13 have from any other witness or in any other way.
14 It's not context I'd be able to argue about in
15 closing argument without having actual evidence
16 to argue about.

17 So it -- it -- it has -- it has to come in
18 there for me if I'm going to argue about, no,
19 look, on -- on -- on the objective legal test,
20 this isn't hate speech and here's why, and I'll
21 give my legal argument, but I have -- I have to
22 point to actual real contextual evidence that --
23 that just does not exist except for from this
24 witness.

25 THE CHAIR: Okay.

26 CNSL L. WADDELL: If I can just respond. Mr. Neufeld
27 can't give social context evidence because he's
28 not an expert witness.

29 CNSL J. KITCHEN: He's not.

30 CNSL L. WADDELL: He can give evidence -- no, no, I
31 know, but you're -- you're talking about context;
32 that's the kind of context stuff. He can give,
33 you know, his own context, which is why I -- I
34 took the same read of your argument that -- that
35 the member did which was you must've been talking
36 about his -- his intention or -- or what he meant
37 when he was accusing people or, you know, when he
38 said words "child abusers" in --

39 CNSL J. KITCHEN: He didn't say "child abuser," so...

40 CNSL L. WADDELL: Okay. So whatever -- yeah, I'm not
41 trying to mischaracterize --

42 CNSL J. KITCHEN: I know, but -- but that's important.

43 CNSL L. WADDELL: So, anyway, that -- that is -- so
44 the social context piece, he's not an expert. He
45 can't speak -- none -- none of -- all of the
46 stuff that he's just given us is -- is his view,
47 and -- and anything beyond that is -- is in the

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1 nature of an expert opinion which he's not -- he
2 just can't give, so -- so I don't think he's
3 capable of -- of having relevant evidence on the
4 context. He can give, you know, relevant
5 evidence about his -- you know, perhaps where --
6 I don't know if it's relevant to the actual legal
7 analysis, but I accept that he has evidence about
8 where he's coming from.

9 THE CHAIR: All right. Well, since -- Mr. Kitchen,
10 since you said you're moving on, we'd like to
11 move on. But moving forward, I don't see the
12 necessity of hearing detailed information about
13 child sexual abuse. In my view that kind of
14 evidence is harmful to everyone listening. More
15 beyond just uncomfortable. I appreciate there
16 are cases -- some cases we have to hear that, but
17 this is not one of them. So if you're moving on,
18 go ahead and move on.

19 CNSL J. KITCHEN: Well, I -- I -- I don't see a basis
20 for suggesting that it -- that it's harmful.
21 And, again, all I would say is I'll -- I'll go as
22 fast as I can, but insofar as it's relevant to
23 our defence, we're going to discuss it.

24 THE CHAIR: I thought you said you were moving on.
25 Are you moving on?

26 CNSL J. KITCHEN: Yeah, no, I'm -- I'm -- I'm moving
27 on now. I'm just -- I'm just -- I'm -- I'm --
28 I'm preempting this. You're -- you're taking a
29 very strong approach to I don't want to hear this
30 evidence, and -- and -- you know, and -- and
31 it's -- you know, I -- I -- I, you know, I -- I'm
32 entitled to -- to have some reasons as to the
33 suggestion that it's -- that it's harmful, and --
34 and I think, you know, with all due respect,
35 you -- you -- you -- you got to leave me the
36 leadway to -- to bring the actual respondent
37 through what -- what he thinks, he believes is --
38 is his defence, okay. And in -- and in the end,
39 you know, I get it, you may say, "No, I don't
40 think this was -- this was part of the analysis."
41 From our perspective, it is. Like, I -- I
42 planned out my legal argument, okay, and this --
43 this evidence feeds into that, and -- and -- and
44 Mr. Neufeld is entitled to a full and fair
45 defence, and that includes putting in the
46 evidence to support his legal argument so that
47 his lawyer isn't forced to argue in a vacuum.

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1 Okay?

2 So I -- I don't think we're going to get
3 much more of this now. I'm -- I'm not going to
4 try to elicit any more now. I -- I think I have
5 what -- what makes sense to get, but it -- but
6 we're going to end up coming back to it at least
7 one more time, and it's -- it's -- I don't think
8 harmful is -- is -- is -- with all due respect
9 is -- is -- is -- is an objectively fair
10 analysis. Uncomfortable -- I think I said that
11 word on purpose because I think it is
12 uncomfortable for some people. Harmful, I --
13 I -- you know, I mean, there's nobody here that
14 that's harming unless it's -- unless it's a
15 member of the public, and of course they're --
16 they're -- that's unfortunate, but they would be
17 free to leave if it was really like that for
18 them, but it's not for the members, it's not for
19 opposing counsel, it's not for anybody else
20 that's listening that needs to be here that needs
21 to be a part of this process.

22 So we -- we have to go through the evidence
23 for -- for the -- for the respondent [verbatim]
24 people to, you know, have his right to a full and
25 fair defence. So it's just -- that's -- that's
26 important for preempting us down the road in case
27 I -- you know, we -- we're face -- we're getting
28 up against a wall, we're getting shut down again
29 on what we think is relevant for our defence.

30 THE CHAIR: All right. Well, you have my ruling. Go
31 ahead.

32 CNSL J. KITCHEN:

33 Q Barry, let's just talk a little bit briefly about
34 the first -- I'll call it this first stint that
35 you were a school board trustee. So you -- tell
36 me the years that you worked consecutively as
37 school board trustee after -- you know, after you
38 were first elected in 1992.

39 A I continued on until the election of 2008, and at
40 that time I -- I wanted to get my master's degree
41 so I didn't run in the 2008 election. I went
42 back to university. My goal was to become a
43 prison chaplain. I completed my degree in 2010,
44 and while I was waiting for a position to open up
45 in chaplaincy, I took a temporary job at Walmart
46 as a greeter. And I was quite surprised how many
47 school staff and trustees shopped at Walmart, and

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1 they said, "Barry, we need you back on the board.
2 The board's stuck. They're fighting all the
3 time, and, you know, you've always been the peace
4 maker." And that was usually my sense of humour.
5 I could sometimes break the -- the ice.

6 But, you know, from '92 to 2008 the -- most
7 people who are attracted to running for school
8 board are somewhat left of centre, and, you know,
9 they like to consider themselves progressives.
10 And I would -- most people would probably place
11 me as left of centre back in those days, but the
12 one thing that we -- a value that we really
13 valued was consensus, and although we had some
14 very conservative board members and some
15 extremely liberal board members, we would always
16 work towards consensus. We'd put a motion on the
17 table, and if we couldn't all vote for it,
18 we'd -- we'd wordsmith it until finally we came
19 up with something that -- that was workable. And
20 I think we came up with much better policies that
21 way. We considered all the unintended outcomes,
22 and -- and we made some real headway turning
23 Chilliwack into a -- a highly-performing school
24 district that was focussed on student
25 achievement. And we had antibullying programs;
26 we had alcohol and drug prevention programs. And
27 there was a lot to be proud of, and that
28 continued right up until the summer of 2017.

29 Q So when did you come back to the school board?

30 A I ran for re-election again in 2011, and I got
31 the second-highest number of votes, and I stayed
32 on the school board. I wasn't re-elected in
33 2022. I must admit that my energy and enthusiasm
34 for public education was -- well, it was pretty
35 obvious that that was falling apart by then.

36 Q Let's talk a little bit about -- so -- so
37 obviously it's a lot of years and there's a --
38 there's a -- there's a three or four-year gap
39 there in the middle, but just talking generally,
40 in all these years in the school board, what did
41 you -- what did you see -- you know, just
42 generally, as -- as -- as the role and the
43 function of the Chilliwack school board?

44 A Well, it was very clear in the *School Act* that
45 trustees are to approve learning resources.

46 Way back in the 90s when I was on the school
47 board, learning resources were hard to come by.

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1 There were usually kits or -- or boxes of
2 programs, and we didn't have much money in the
3 budget for learning resources, so we had a
4 building where all the learning resources were,
5 and -- but because the school district had to pay
6 a pretty penny for all these learning resources,
7 you know, we had a lot of control over what was
8 available. And teachers would go to this
9 central -- I guess a library you could call it --
10 and use a learning resource. But over the years
11 as the internet began to grow and learning
12 resources became available on the internet, we
13 lost less and less control over learning
14 resources. And our -- we used to -- a lot of our
15 policies would -- would be concerned with
16 learning resources.

17 And then, of course, the -- the teachers
18 negotiated a clause in their union that each
19 teacher has the autonomy to use their
20 professional discretion to use whatever learning
21 resource they -- they believe supports the
22 curriculum.

23 So basically over the years trustees lost --
24 lost the power to have any say over learning
25 resources.

26 Q During all those years, what was the -- the board
27 of trustees' role or function when it came to
28 teachers?

29 A We were told, number one, that trustees light the
30 track; they don't play with the trains.

31 Secondly, we had one employee, and that was
32 the superintendent. When I was first on the
33 board, we had more involvement in -- in advisory
34 capacity and the hiring panels were even for some
35 principals, assistant superintendents, human
36 resources officer. But over the years we had
37 less and less to do with that. And just before I
38 stepped off the board, the only people that the
39 trustees had direct involvement with hiring was
40 the superintendent and the secretary treasurer.

41 Q Sorry. I'm just making a note here.

42 What about -- well, let me ask you this:
43 Did -- did the -- did the board ever have any
44 involvement with disciplining, suspending, firing
45 any teachers over all that period that you were a
46 trustee that you remember?

47 A Yes. If a teacher misbehaved, the superintendent

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1 would launch an investigation. Sometimes there
2 would be parallel investigations; the RCMP would
3 also have an investigation. And if the
4 superintendant made a decision to fire that
5 teacher, the teacher was fired. However, in
6 their union contract, teachers have the option to
7 make an appeal to the board. So they would come
8 to the board with their union representative,
9 their shop steward, and perhaps the union lawyer,
10 and argue that -- that they shouldn't be fired
11 or -- or sometimes they were suspended with pays
12 or without pay, and they would argue that that
13 was -- was too serious, and the board would make
14 a -- a determination.

15 Quite often -- and just to speak to the
16 Chairman's [sic] and -- and the other lawyer's
17 argument that I'm not an expert witness, I'm no
18 longer a probation officer, but when I was a
19 probation officer, I was considered an expert
20 witness by the court. I was not attempting to
21 give hearsay evidence; I was telling you about my
22 lived experience, and that became very important
23 when we had, I think, three incidents of teacher
24 discipline. I -- due to my experience, I could
25 see through the denial.

26 We had teachers that physically abused kids;
27 teachers that had been sexually involved with
28 children, and quite often I -- I could tell that
29 if they were in denial, they weren't going to
30 change. Therapy wasn't going to help them. The
31 only way they could redeem themselves if they
32 admitted, "Hey, I screwed up. I did wrong, and
33 I'm willing to do whatever it takes to
34 reestablish myself as a trusted school teacher."

35 And quite often the -- the school board
36 would be split three to three. Three would vote
37 to reinstate the teacher and three would vote to
38 get rid of them, and I would throw the deciding
39 vote.

40 Q Can you give me any idea of how common or often
41 these types of hearings were in the time you were
42 there?

43 A I think maybe once a term.

44 Q Okay.

45 A Initially our terms were three years, and then
46 beginning in two-thousand-and -- yeah, then the
47 last -- the last term was four years long. They

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1 changed it in 2018, I believe.

2 Q Okay.

3 A So maybe -- maybe in my career of -- half a dozen
4 times. And there was a similar process for
5 non-unionized staff; principals or -- or admin --
6 head office staff.

7 Q And just so I understand this, the -- the -- were
8 the teachers only able to get in front of you
9 because they were appealing a superintendant's
10 decision?

11 A That's the only way they could appeal -- appear
12 before us. It was an in-camera meeting. It was
13 a quasi court. And that's the only time we had
14 any direct impact on teacher discipline is if --
15 if they took the initiative to appeal the
16 superintendant's decision to the board.

17 Q Did the board ever get itself involved in -- in
18 the superintendant's decisions to discipline
19 or -- or fire a teacher?

20 A That was not allowed.

21 Q Okay. We're good on time.

22 Okay. Well, is there -- in your time was
23 there any other way that -- I'm speaking here
24 more of at the board level, so, like, as a -- as
25 a whole of trustees, was there any other way that
26 the board micromanaged or interfered with or
27 supervised or inspected or attempted to control
28 or direct teachers and how they -- and how they
29 did their job?

30 A No. We had various committees. We had the
31 budget committee; we had the learning
32 disabilities committee; we had the education
33 policy committee, and those were made up, usually
34 chaired by a trustee, and there were
35 representatives from all the partner groups. A
36 representative from the CTA, the teachers; a
37 representative from the support workers, QP;
38 students; parents; sometimes community members,
39 and we worked collaboratively, but, you know,
40 everybody was on an equal basis in these
41 committees, and there's no way that we would do
42 anything to discipline or shame or -- or put down
43 a school teacher or a support worker.

44 It was a -- once again, the -- the purpose
45 of the committee was to craft the wording to a
46 policy, and once the committee had agreed on the
47 wording of a policy, as chair of the committee I

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1 would take it to the board and say, "Here, my --
2 all the members of my committee have suggested
3 that we implement a rule that there's no smoking
4 allowed in the student washrooms," and -- and
5 then the board would vote or -- to accept it as
6 policy or reject it.

7 Q Do you think it's fair or accurate for teachers
8 to refer to you as their boss?

9 A Absolutely not. Trustees had very, very little
10 involvement with the day-to-day work of teachers.
11 We would go to meetings with them, social
12 gatherings, but we generally avoided actually
13 visiting the classroom. Teachers always welcomed
14 us, but I -- I chose to -- I chose to keep myself
15 distanced from the day-to-day operation of the --
16 of the teachers.

17 There was one incident, though, once when I
18 was very interested in a -- a pull-out program
19 that we had for learning-disabled children, and
20 the debate on the board whether kids should --
21 learning-disabled kids should continue to be
22 integrated in the classroom and with extra
23 support or if they should be taken out of the
24 classroom and put in a special program. So I
25 went to visit the special program and was
26 absolutely amazed with the quality that -- and
27 the experience of that teacher in the program.

28 What is interesting about my experience is
29 there was a little girl in the program who seemed
30 so distracted and -- and, like, she just -- just
31 wasn't with it, and I thought, "She's not acting
32 like she's learning disabled," so I took the
33 teacher aside, and I said, "You know, that little
34 girl is showing all the signs that she's a victim
35 of sexual abuse. Why don't you talk to the
36 parents and see if you can get child protection
37 involved." And I didn't follow up any further.
38 I found out weeks later that, yes, that little
39 girl was being molested in her home by her
40 stepfather, and the -- the symptoms appeared to
41 be a learning disability, and that's why she was
42 mistakenly put in this learning disability
43 program.

44 Q Hmm. Do you remember roughly when this occurred?

45 A Oh, 20 years ago. We haven't had that program
46 for a long time. The board decided to get rid of
47 it and work with -- you know, all -- all

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1 special-needs kids would be kept in their class
2 and they wouldn't have any pull-out programs.
3 Q I see. Let's talk a little bit more about that
4 last term because, of course, that's when it
5 matters more. So from 2018 to 2022, you're in
6 your last term as a school board trustee. Did
7 you ever attempt to, as -- as a trustee, somehow
8 interfere with teachers generally or specific
9 teachers or try to supervise them or inspect them
10 or monitor them or instruct the superintendant to
11 inspect or monitor them? Anything like that?
12 Did you do anything like that in that last term?
13 A You know, I had never done it up to that point,
14 and I knew what I was being accused of, so I bent
15 over backwards to distance myself from the
16 day-to-day work of teachers and -- and support
17 workers. In that last term I went out of my way
18 to avoid them.
19 Q What about entering the schools? I mean, going
20 back to the story you -- you gave us, would --
21 would trustees normally sometimes enter any of
22 the schools in the district?
23 A Some trustees did that fairly regularly. I went
24 to schools for the scholarship committee because
25 they always met in a school. And it was a -- a
26 group of teachers, and we would receive
27 scholarship applications and -- and vote on it,
28 and I would go to those meetings which were often
29 held in the staff room of a school.
30 On October the 5th it was a tradition in our
31 district that the trustees would deliver an apple
32 to the teachers, and we'd take baskets of apples
33 and carry them into the staff room of the school
34 and -- and tell teachers we appreciated their
35 work. And I don't think anybody ever felt
36 threatened by me coming into the school bearing a
37 basket of apples.
38 Q Did you ever enter any schools in that last term
39 between when you were elected in the fall of 2018
40 and up until you left in 2022?
41 A Only once. We had purchased the -- the campus of
42 the University College of the Fraser Valley and
43 designed a new school, called it Imagine High,
44 and on the opening ceremonies, the board was --
45 and all the local politicians were invited to
46 come and attend the opening ceremony, and I -- I
47 went in there and sat in the gallery. Didn't

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1 speak to any school teachers. But afterwards
2 there was a big hullabaloo that Barry Neufeld had
3 set foot in a school.

4 Q And -- and why was there a hullabaloo about that?

5 A Well, they thought I wasn't allowed to go in the
6 schools.

7 You know, one of the most troubling
8 things -- it was Glen Hansman that came up with
9 the idea that Barry should not be around
10 children, and then the school board followed it
11 up by saying I was not allowed to go into
12 schools. A lot of people who didn't know the
13 details believed that Barry Neufeld should not be
14 around children because he's a sex offender, and
15 that is very, very scandalous, and it was
16 difficult for me to deal with.

17 I'm a school trustee. I've had an interest
18 in schools and kids for years, and all of a
19 sudden I'm treated as if I'm some kind of a
20 perverted, dirty old man. I have endured a lot
21 more shame, ridicule, than any of the three
22 teachers that I heard give testimony of. I've
23 had my life threatened, been called names, and
24 all because of the union activists that don't
25 like my ideas. And I have never said anything
26 damaging to any human being, to any person. I've
27 always been attacking the idea, the ideology, the
28 learning resource.

29 Q What was going on with that -- with that
30 particular event that you ended up being there
31 that particular day and -- and people thinking
32 you weren't supposed to be?

33 A Oh, I think there was a musical presentation, and
34 there were some speeches about -- from the
35 principal and -- trying to remember if there was
36 a ribbon-cutting ceremony. I don't think so.
37 And they introduced the trustees one by one, and
38 I was introduced by the superintendant, I
39 believe; otherwise people might not even know
40 that I was there.

41 Apparently they had some students at the
42 door who were sort of registering guests, and one
43 of them recognized me and told her mother, and
44 her mother was the one who made the complaint to
45 the media that I had been at a school.

46 Q From your perspective, were you permitted to be
47 there?

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1 A The whole board was invited.

2 Q Did any of the other trustees attempt to sort of
3 run you out or tell you that you shouldn't have
4 been there or anything like that?

5 A No. They did pose for a group picture, and I
6 hung back. I didn't stand in the group picture.

7 Q Did you ever experience anything like that in all
8 your time on the board where the majority of the
9 trustees voted to keep one of the other trustees
10 out of the schools?

11 A Never heard of it before. I don't know if its
12 ever happened in British Columbia.

13 Q Were the school board trustees ever actively
14 involved in negotiating the terms of the
15 collective agreement with the teachers or with
16 the teachers' unions?

17 A Not really. The collective agreement for school
18 teachers is largely done on a provincial basis
19 and so representatives of school boards get
20 together, and that's called the B.C. Public
21 School Employers' Association, and they are the
22 employers' representatives, and they are the one
23 who negotiate the terms with the B.C. Teachers'
24 Federation.

25 I -- I was never -- as an elected position
26 of the board, I was never a representative to the
27 B.C. Public School Employers' Association because
28 there was a hint of some conflict there because I
29 was a member of the B.C. Government Employees'
30 Union.

31 Of course, when I came back to the board in
32 2011, I had retired from my day job, and I was no
33 longer a member of the B.C. Government Employees'
34 Union. My -- but I was several times the
35 representative to the B.C. public school --
36 B.C. School Trustees Association which didn't
37 have the problems of conflict of interest.

38 Q You said earlier the QP and the BCTF supported
39 you at some point because of your strong heart
40 for marginalized kids. When did that support
41 end, from your perspective?

42 A It ended in 2018. I didn't get any money from
43 them. That was the first year that they hand --
44 they publicly endorsed candidates that they
45 approved of. I think that's very wrong, very
46 unethical. It's illegal to do in Ontario, but
47 B.C. allows it, I guess. And they published it

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1 in the newspaper, and, of course, my name was
2 conspicuously absent from that list as well as
3 Heather Maahs and the new candidates.

4 Q Let's go to a time just before the events at
5 issue in this case. Did you become aware of
6 gender identities, and -- and gender expression
7 being added to the B.C. Human Rights Code?

8 A It happened in the summer of 2017. It happened
9 so fast. Normally a bill takes several --
10 couple -- three weeks to wend its way through a
11 legislature, but in this one they managed to whip
12 it through in an afternoon. I was totally
13 oblivious to it.

14 Shortly after that the minister of education
15 sent out a directive to all school boards that
16 they had to amend their code of conduct, and
17 every school had to amend their code of conduct
18 to include no bullying of -- on the basis of
19 sexual orientation or gender identity.

20 Now, there had been suggestions earlier to
21 do that, but our board had resisted that, and I
22 understand Premier Christy Clark had resisted it
23 as well, on the grounds that if you start naming
24 certain groups that you're not allowed to bully,
25 what happens is that then bullying for other
26 reasons is not considered as serious. For
27 example, if you make a rule you're not allowed to
28 bully gay kids or gender diverse kids, then kids
29 will think, well, it's okay to bully a kid who is
30 fat or has got glasses. It's -- it's -- because
31 it's -- it's not listed.

32 The other thing that -- based on my
33 experience in the justice system, and, of course,
34 restorative justice system, is that I did not
35 believe that long, wordy codes of conduct were
36 ideal, and I kept advocating for all schools to
37 shorten their codes of conduct and -- and make
38 them very, very brief, and some of the schools
39 implemented my recommendations, and my
40 recommendation is the only code of conduct a
41 school should have is do no harm to others; do no
42 harm to this place; do no harm to yourself.

43 But after we caved in and altered our
44 district's code of conduct, the codes of conduct
45 in all the schools began to get longer and longer
46 and longer, and some of them are four pages long
47 with all sorts of minor things: Don't to this;

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1 don't do that; don't to this; don't do that.
2 Well, that doesn't work with teenagers. The more
3 rules you've -- the more rules you lay on them,
4 gives them more opportunity to break a rule.

5 Q We're going to get to SOGI 123, but -- but prior
6 to SOGI 123, what was the board's approach to
7 antibullying or what policies did they have about
8 antibullying?

9 A We had an excellent antibullying program. Bully
10 Beware and erase. And serious bullying
11 incidents, if the parents weren't happy with how
12 the principal would deal with it, it might come
13 up to the board for review or input or whatever.
14 I can't remember any bullying incidents ever
15 coming to our board. The -- the staff at the
16 school level were almost always able to deal with
17 it because there were so few. Very, very little
18 bullying going on in our school district.

19 There was some problems over the competitive
20 sport once in one of the schools that almost came
21 to the board. We heard about it, but never
22 formally came to the board. Like, when kids are
23 in competitive sports, sometimes they can get
24 pretty passionate.

25 Q Hmm. You said something about adding sexual
26 orientation and gender identity to -- I think --
27 I think the code of conduct, you said, from the
28 minister. When did this happen?

29 A That was in the fall of 2016, and I went along
30 with it. I had no idea how, within a year, this
31 new provision in our -- we were only -- we were
32 only changing the -- the district's code of
33 conduct, but the -- the directive from the
34 ministry was that it then had to be added to
35 every school code of conduct. I had no idea how
36 this would upend the whole education system and
37 take its focus off learning and academic
38 achievement into a human rights squabble.

39 Q What, if any, understanding did you have of
40 gender identity when you saw that term coming in
41 for the codes of conduct?

42 A Well, as I told you, I -- I first became aware of
43 transgender people when I worked in Oakalla in
44 the -- in the early 80s. But I remember in
45 probably early 2017 my adult son was all enamored
46 with a guy named Jordan Peterson, and I said,
47 "Well, who's he?" "Oh, he's a psychologist from

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1 Toronto, and he" -- I said, well, "What's so
2 great about him?" He says, "Oh, he's opposed to
3 compelled pronouns." I said, "What do you mean,
4 compelled pronouns?" He said, "Oh, you know, if
5 a guy wants to be known as a woman, you got to
6 call her a she," and I said, "What a dumb idea.
7 That will never be an issue in Chilliwack." And
8 he was donating to Jordan through Patreon, and I
9 was a little worried that maybe he was getting
10 caught up with a cult figure or something.

11 The Tribunal will be very unhappy to hear
12 that I'm quite a fan of Jordan Peterson now.
13 CNSL J. KITCHEN: Chair, I don't -- I don't really
14 mind -- sorry. Don't mean to interrupt you, but
15 I am -- I am now going to probably jump into
16 something that's -- that's, you know, a lengthy
17 discussion so, you know, I would prefer if we
18 take a break about five minutes early.

19 THE CHAIR: That's fine. Let's take our morning break
20 now. We'll just turn our cameras and mics off,
21 and I'll ask everyone to please come back at
22 11:10. Thanks very much.

23 CNSL J. KITCHEN: Thank you.

24
25 (WITNESS STOOD DOWN)

26
27 (PROCEEDINGS ADJOURNED FOR MORNING RECESS) [11:54:57]
28 (PROCEEDINGS RECONVENED) [11:10:59]
29

30 BARRY NEUFELD, a witness,
31 recalled.
32

33 THE CHAIR: All right, everyone. Come on back.
34 Mr. Neufeld, are you ready to continue?

35 A Yes, I am.

36 THE CHAIR: All right. Go ahead, Mr. Kitchen.

37
38 EXAMINATION IN CHIEF BY CNSL J. KITCHEN, continuing:
39

40 Q Barry, could you please tell us when and how you
41 first found out about SOGI 123.

42 A I was in Langley the evening of August the 29th,
43 and Heather Maahs had heard about SOGI -- she
44 just called it "SOGI," and she -- she called me,
45 says, "Barry, have you heard about this new
46 sex ed program called SOGI?" I said, "No, what's
47 that?" And she said, "I don't know either, but

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1 they're having a parent information night at
2 Brookswood Secondary in Langley," and I said,
3 "Well, what time is the meeting?" She said,
4 "7:30." I said, "Oh, I'm going to be in Langley
5 anyway. I can probably make it."

6 Well, she texted me back after 7 o'clock and
7 said that the B.C. Teachers' Federation had found
8 out about the parent information night, and
9 they'd declared it a hate group, so it's being
10 moved to Murrayville Hall, so I went to
11 Murrayville Hall, and that's where I heard about
12 SOGI 123.

13 The speaker who had the most information was
14 a TV personality from The 700 Club, Laura-Lynn
15 Tyler Thompson, and I could not believe what I
16 was hearing. What -- what she said that really
17 angered me was that this had been implemented as
18 a pilot program already and was about to be
19 rolled out in the K-to-12 in all British Columbia
20 schools starting the next month, September of
21 2017, and I thought, "I'm an elected school
22 trustee. How come I never heard about this?"

23 And I discovered later that this was
24 something the government had contracted with the
25 Art Foundation to provide -- the initial plan was
26 to provide an antibullying program that was
27 specifically designed to protect gay kids. But
28 the whole concept of gender theory was -- was in
29 it, and I -- I knew absolutely nothing about
30 gender theory, but the idea that a boy could
31 change into a girl or a girl could change into a
32 boy, I just found that preposterous.

33 Q After you first learned about it, then, on
34 August 29, 2017, did you -- did you -- what did
35 you do to look into it further?

36 A Well, due to my experience, my professional
37 experience with sex offenders, one of the most
38 common lines they use for seduction is to get a
39 child to question their gender and their
40 sexuality. Now it was being promoted as a
41 learning resource in schools. So I began to do
42 my -- some research. I couldn't find much. I
43 came across the book Harry met Sally [sic] by
44 Ryan Anderson, and it didn't really have much to
45 do with children.

46 I found Mark Yarhouse's book on dealing with
47 gender dysphoria, and he recommended three --

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1 three ways of dealing with it.

2 And I understood that it was a very painful
3 experience when people experience gender
4 dysphoria, and it had previously been considered
5 a psychiatric illness, but it had been changed
6 just to be a psychiatric condition.

7 And -- but I think the most impactful was
8 I -- I got my hands on a DVD called
9 "Transformed," and it carried the -- the life
10 stories of, I think, 16 people who had
11 transitioned and then regretted it and changed
12 back. I got to personally meet one of them,
13 Susan Tikada (phonetic), who is a Japanese woman
14 who tried living as a boy for a while.

15 And in every single case, all these people
16 who had transitioned had been severely
17 traumatized by physical and sexual abuse as
18 children, and by changing their gender, they
19 thought that would protect them from any further
20 abuse.

21 And in the past six years I have bought and
22 borrowed books. I have done more studying on
23 this issue than I ever did for my master's degree
24 when I graduated in 2010, and nothing will
25 convince me that SOGI benefits kids. I believe,
26 along with Dr. Hilary Cass, that it does more
27 harm than good.

28 One of the things I did as a probation
29 officer, I pioneered dealing with sex offenders
30 as a group, and my first curriculum that I used
31 was John Bradshaw's lectures on -- on the family.

32 But the sex offenders would tell me, you
33 know, it -- it's getting easier and easier to
34 seduce kids because kids are learning so much
35 about kinky sex in school and their sex education
36 programs that, you know, they're curious and they
37 want to find out what it's really like.

38 And one of the things that has always
39 disturbed me is people who don't want to hear
40 about it. It's upsetting; they don't want to
41 know about it. Well, that's how offenders
42 managed to get away with abusing kids for so long
43 before they ever get caught; because if the
44 parent or the caregiver doesn't want to know
45 about it, doesn't want to hear about it, then the
46 abuser can just keep up the abuse until finally
47 something snaps and they get reported. But often

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1 a lot of offenders get away because the people
2 involved in the child's life just don't want to
3 hear about what's going on. They want to put
4 their heads in the sand.
5 Q Why did you decide to -- I'll say "publically" --
6 I mean, it was on Facebook. But why did you
7 decide to publically, via Facebook initially, say
8 where you stood on this whole thing?

9 A When I first heard about it, it was August the
10 29th, and I thought, "I've had a long run on the
11 school board, but if this is the way public
12 education is going, I can no longer be part of a
13 system that's pushing this." So that's when I
14 started doing research.

15 On October the 13th our school board had a
16 meeting with our two MLAs, Laurie Throness and
17 John Martin, and the reason for our breakfast
18 meeting with them was that our schools were
19 getting crowded, and I think we had about
20 90 portables, and we needed to advocate to our
21 provincial representatives that they needed to
22 build some more schools for us. You know, it
23 wasn't healthy or -- or convenient or safe to
24 have so many portables.

25 So that was the main topic of our
26 conversation, and then at the end of the meeting,
27 the MLA said, "Well, thank you for this meeting.
28 We'll go to Victoria and lobby for more schools.
29 Is there anything else you want to bring up?" So
30 I piped up in this private meeting, and I said,
31 "Yeah, I've discovered that this new learning
32 resource SOGI 123 has implemented in the schools,
33 and I don't think that I can -- I can be part of
34 public education if this is their priority," and
35 the other trustees didn't have a clue what I was
36 talking about, but Heather Maahs did because we
37 were at the same meeting where we learned about
38 SOGI 123, and our superintendant knew because she
39 had been directed by the Minister of Education to
40 implement it quietly because it might cause some
41 controversy. The other trustees didn't know what
42 I was talking about.

43 Ten days later -- got to back up. Before I
44 left the meeting, everybody got up to leave, and
45 my MLA, Laurie Throness, pulled me aside, and he
46 said, "Barry, you can't resign. Public school
47 system needs you. You've got to speak out." So

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1 he's to blame. And took me ten days until I got
2 the nerve to speak out, and I thought, "How
3 should I do this?" Public school board meeting
4 [indiscernible - audio cuts out].

5 The only access I have to the media is
6 through Facebook. So I came across that meme of
7 the -- the earring and the -- and the hormones,
8 and I posted it on October 23rd. And, as you all
9 know, all hell broke loose after that. I was a
10 horrible person and I was out of touch and I was
11 old fashioned and I was a bigot and I was a
12 misogynist and I was a racist and every insult
13 they could throw at me. Kind of surprised me
14 that there was so much public knowledge and
15 support for this program, but, anyways, it was
16 what it was, and I felt like I had been honest
17 with everybody.

18 Q One more question before I -- or I think just one
19 more before I take you to that post and start
20 bringing you through the posts. How did you find
21 out that the superintendant had known about
22 SOGI 123 before you and had been instructed to
23 implement it?

24 A Well, it came out of that parent information
25 meeting that it was being -- it was being
26 implemented province-wide in September of 2017,
27 and all the superintendants in all 60 school
28 districts had been told to implement it quietly
29 without a lot of -- a lot of public announcements
30 because it might stir up some -- he used the word
31 "moral panic." So they were -- they were trying
32 to do it through the back door and get it
33 well-established in place before anybody could
34 find out about it.

35 Q What do you make of that, the quietly back-door
36 approach to this?

37 A It's the first time it's ever happened in public
38 education. Increasingly over the 30 years I've
39 been involved with the school board -- and I
40 should say that even the three years I was off
41 the board I was still active in school
42 programs -- but it's the first time the ministry
43 has ever interfered with local school boards and
44 told them how to handle a new program that they
45 were introducing. Usually when there's a new
46 curriculum or announcement of a new school or
47 whatever they allow the school boards to make the

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1 first public announcement. But this one was done
2 surreptitiously, I believe. It was unethical.
3 It's not fair to the tax payers.
4 Q Okay. We're going to do some screen sharing now.
5 I'm going to have to make this -- do you
6 recognize -- well, okay. I know that I can't
7 quite hold it all on the screen at once, but we
8 have our -- we have our satirical meme, if you
9 will, and then we have your post. Is this -- is
10 this -- is this that first post you're talking
11 about?
12 A Yes.
13 Q Now, I apologize it's fuzzy. This is just how it
14 was produced in the record.
15 A I can read it.
16 Q Good. Good.
17 A Oh, I -- I should say along with those two books
18 and that DVD I had discovered the website of the
19 American College of Pediatricians, and they had
20 given some medical reasons why little children
21 changing genders was not an ethical practice.
22 The American College of Pediatricians has
23 been labeled a hate group by the Southern Poverty
24 Centre, but I think that's the kettle calling the
25 pot black. I don't think there's a more corrupt
26 organization that's been so hypocritical as the
27 Southern Poverty Law Centre. It's not the main
28 organization, the pediatricians in the United
29 States; it -- it's a smaller group. But they
30 were one of the first organizations in the
31 United States that began to stand against this
32 new trend.
33 Q You said here, "At the risk of being labeled a
34 bigoted homophobe." Why did you say that?
35 A Well, I knew there would be some pushback. I was
36 so new to this I -- I don't even think I was
37 aware that there was a new word called
38 "transphobe," so I -- I thought they'd throw the
39 homophobe idea at me.
40 But, you know, gender transition doesn't
41 have anything to do with homosexuality. I don't
42 know. They -- they -- the -- the transpeople saw
43 the great success that homosexuals had had in
44 improving their lot in life and -- and their
45 rights and protections and so they've tried to
46 piggyback on the gay liberation movement, but
47 it's not a good fit because -- I -- I -- both the

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1 American College of Pediatricians and
 2 Dr. Kenneth Zucker, who I've met personally, say
 3 that if you just employ watchful waiting of a
 4 little boy -- and back in those days it was only
 5 a very small percentage of young boys that wanted
 6 to become girls. He said that if you just wait
 7 and -- and don't encourage them to transition,
 8 they'll grow out of it. They may grow up to be
 9 gay, but they won't start damaging their bodies
 10 with drugs and -- and surgery.

11 Q Okay. And then, of course, we get to the famous
 12 phrase here: "Allowing little children" --
 13 probably a mistake on your part, but "Allowing
 14 little children choose to change gender is
 15 nothing short of child abuse." Tell us what you
 16 meant by that.

17 A Well, if -- if you employ watchful waiting, they
 18 will grow out of it and a lot -- most of them --
 19 80 -- 80 to 90 percent will grow out of it. They
 20 may become gay, but at least they'll have all
 21 their parts. But changing gender as -- which was
 22 populized [verbatim] by Jazz Jennings -- means
 23 that they're going to submit to powerful drugs
 24 that will alter their bodies and experimental
 25 surgery that has got all sorts of complications.

26 One of the first books used in school
 27 libraries to promote this was a little book
 28 called *I Am Jazz*, and it sounded like it was such
 29 a beautiful thing. When Barbara Walters
 30 interviewed Jazz and her parents back when she
 31 was a little girl, it sounded like a new,
 32 exciting development, but anybody who looks at
 33 Jazz's life now, she's a mess. She -- she's in
 34 college. She's obese. Her bottom surgery just
 35 keeps running into complications. Her vagina
 36 keeps healing shut, and she's not doing the
 37 proper dilation exercises, and it's -- it's
 38 not -- it's not a happy life. Not what it was
 39 predicted to be when she was a little girl.
 40 Initially it was a little boy.

41 Q If you knew that you might be called names like
 42 bigoted homophobe, why bother to care? Why not
 43 just retire?

44 A You know, I had worked with special-needs kids
 45 for so long I -- I knew that a lot of these kids
 46 that I worked with, that they would get sucked in
 47 by this ideology, and I couldn't give -- give up

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1 on my -- my lifetime career of -- of protecting
2 vulnerable at-risk children. And I also knew
3 that the majority of these kids that were being
4 transitioned were foster children. They were
5 children in the care of the State.

6 I was adopted, and for the first eight
7 months of my life I was a foster child, so I -- I
8 had a -- I had some sympathy for them, and I just
9 thought I have to speak the truth as I see it
10 because nobody else was at the time. And I think
11 that I'm probably the first elected official in
12 Canada that has ever spoke out against this. And
13 I was alone for a long time, but now countries
14 around the world are starting to wise up.
15 Finland, Sweden, Norway, England, France, over 20
16 American states and the province of Alberta. And
17 I wasn't seeking any fame or fortune for myself;
18 I just thought I had to do it to -- to protect
19 the helpless.

20 Q We know from the teachers' testimony that -- that
21 this theory is, in fact, taught and, further,
22 that it is, in fact, taught as fact, so that's
23 not a dispute, and I think it's actually in part
24 because of that that the teachers are saying,
25 "Well, this is really serious for us because if
26 we teach this, then -- then what Barry is saying
27 is that he's -- he's calling us child abusers
28 and, you know, you can't do that, of course." Do
29 you think you were calling the teachers child
30 abusers?

31 A No. I was not referring to teachers as the
32 abusers. It was the -- the -- the medical
33 professionals who were going along with this
34 because there was so much profit to be had in it.
35 What the teachers were doing was setting these
36 children on a path. So you've got a little boy
37 who's 8 years old, and he tells his teacher, "You
38 know, I feel like a girl," so the teacher says,
39 "Well, you know, if you feel like a girl, you
40 know, you can change your gender. If you want to
41 start wearing girl's clothes, that's fine with
42 me," and so he starts socially transitioning.
43 And this continues on until they get into their
44 teen years and, you know, the puberty is starting
45 in, and they're uncomfortable with that.

46 And I know the schools say that they don't
47 administer puberty blockers or hormones in school

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1 and they don't do any surgery in school, but
2 they've set the kids on the path. And in
3 British Columbia I'm aware of one girl who had a
4 lot of problems in school, and they referred her
5 to the gender clinic at B.C. Children's Hospital.
6 The father objected, and he said, "No, no, no,
7 she's got a whole bunch of other mental health
8 problems. You know, I don't want her getting
9 testosterone." But by this time the -- the
10 activists had gotten their hooks into the little
11 girl's life. And he applied to the court to stop
12 his daughter from taking testosterone; he was
13 told by the judge that, "Your kid is no longer a
14 girl. She's a boy. And if you call her a boy or
15 use your boy's name, that's an act of domestic
16 violence." He continued to protest, and in the
17 end he got thrown in jail. And I've -- I've met
18 him. I know him personally. His life is a mess.
19 He's ruined. He's a broken man. His children
20 have been alienated from him, and it's destroyed
21 the family.

22 Q You say at the end of this post, "I belong in a
23 country like Russia or Paraguay which recently
24 had the guts to stand up to these radical
25 cultural nihilists." So I have a couple
26 questions. What's your understanding of radical
27 cultural nihilists? What do you mean by that?

28 A You know, this idea of changing from a boy to a
29 girl or vice versa is completely new in this
30 century. It's -- it's -- it's biologically
31 absurd. It -- it's not seen in the animal
32 kingdom. It's been marriage and family life has
33 been the pillar of our society for centuries, and
34 all of a sudden there's this new push to
35 completely redefine what a family is, and they're
36 trying to do away with the -- the cultural norms
37 that have benefitted civilization for hundreds
38 and thousands of years. We've never had this
39 before. And this idea is -- is destroying the
40 concept of male and female to the point that even
41 candidates for the Supreme Court of the United
42 States don't know how to define a woman anymore.

43 Q At least one of the teacher witnesses really took
44 issue with reference to Russia and -- and
45 Paraguay, you know, and she -- she drew from that
46 that there might be a concern for her because,
47 you know, you might mean something really violent

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1 or threatening or scary or whatever about --
2 about that. Help us understand what was going on
3 when you -- when you said that -- that reference
4 to Russia and Paraguay.

5 A Well, Glen Hansman said that they hunt down and
6 kill gays Russia. You'll notice that there's --
7 very little of my posts have anything to do with
8 gays. But I have a friend in Russia, and she
9 says, "Oh, that's western propaganda that we --
10 that we hunt down and persecute gays. We do have
11 a law that gay and transgender people cannot try
12 to influence our children, but gay pride parades
13 are allowed in Russia. We just tell them -- they
14 have rights, they have -- they can't discriminate
15 against gay or trans people for employment, but
16 they're not allowed to try and influence
17 children."

18 The government of Paraguay simply made it a
19 law that you can't teach gender identity in
20 schools, and that post was from 2017. There's
21 been a lot of pushback in Paraguay to try and
22 bring it up to the standards that United Nations
23 have set, that's where this idea is coming from,
24 and the government of Paraguay withstood it.
25 The -- the prohibition against teaching this to
26 children still stands in Paraguay.

27 Q Because we're not going to rely on the hearsay
28 and my friend's going to want to strike it, and
29 -- and, you know, certainly most of the time
30 that's going to be fair, what's your
31 understanding of -- of Russia and -- and why
32 would you say that you belong in a country like
33 Russia or Paraguay?

34 A Well, because I -- I feel uncomfortable in a
35 country where they're teaching this to children.

36 You know, the -- they started teaching this
37 in 2017. That was seven years ago. They started
38 teaching it in Grade 11 and 12. Well, those
39 students, if -- if they really believe that and
40 really believe that I am a horrible person,
41 they're old enough to be in the workforce now,
42 and I would not feel safe going into an
43 extended-care facility if there were staff there
44 that had been indoctrinated with this idea that
45 it's a great thing to change gender because I'm a
46 well-known opponent of it, and I'm sure they
47 could think of lots of ways to shorten my life if

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1 I was a dependant, handicapped person in a
2 residential facility.
3 Q I'm going to stop sharing so that we don't -- not
4 everybody has to watch all the scrolling.
5 Okay. And just for the record, we're at
6 page 11 of the publications book, and this is --
7 pretty sure this is Tab 3. This is -- Barry, for
8 your sake, this is a transcript of what you said
9 at a event you spoke at on November 21st, 2017,
10 it looks like. I'm not going to ask you about
11 everything you said, but this little bit here,
12 you talked about collaboration, and then you
13 said:

14
15 However, the development of the SOGI
16 process has not been collaborative and
17 certainly not restorative. The victims
18 have gotten together and said, in
19 effect, we have been hurt, and here's
20 what you have to do to make things
21 right.

22
23 What's your -- what's your issue with that or
24 concern about that?
25 A I've not only served on the school board; I've
26 served on boards of other nonprofit societies,
27 and I -- I really believe in a collaborative
28 consensus model. The people who designed SOGI
29 were all of the same mind. They -- they came up
30 with this program, and their wording is subject
31 to misinterpretation. And whenever you get
32 people who all think the same way, they do not
33 come up with as good a product as when you have
34 contradicting views; when people with other
35 perspectives are involved.

36 As I understand it, there were no medical
37 professionals that had input into the creation of
38 SOGI 123; there were no parent representatives;
39 there were no religious representatives. It was
40 mainly activists from UBC, members of the Art
41 Foundation which are -- you know, they're --
42 they're -- they're strongly [indiscernible -
43 audio cuts out] for gay rights. And prior to
44 SOGI 123, their only main accomplishment was the
45 Vancouver Queer Film Festival. And they had
46 one -- one educator from the K-to-12 system, and
47 that was a principal, Matt Carruthers from the

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1 Delta School District.

2 Shortly after all this came out, our school
3 board wanted to have some professional
4 development in what SOGI 123 was all about, and
5 Matt Carruthers came to do the -- the -- the
6 professional development, and he dispelled the
7 myth that SOGI 123 is primarily an antibullying
8 program. That's what everybody thought it was,
9 and that's what the BCTF was saying it was. He
10 said, "No, it's consciousness raising. We want
11 the whole world to understand why people want to
12 change their gender."

13 And gender theory is very comforting to
14 people who have suffered gender dysphoria. They
15 think there's something wrong with them, and, you
16 know, they can be told, "No, there's nothing
17 wrong with you." You know, "You can choose your
18 gender. Gender is a social construct. It's
19 different than -- than sex with -- which is
20 determined at birth by what organs people can
21 see."

22 I understand that the World Professional
23 Association of Transgender Health has changed
24 their -- their belief. They used to say that sex
25 was not the same as gender; now they say that --
26 that it is. It's a moving target. It's hard to
27 stay on top of what they believe.

28 But when you have a restorative process, the
29 victim and the offenders get together and they
30 discuss how to make things right. The SOGI 123
31 did not involve anybody who didn't agree with
32 them, and I think they came out with a very
33 flawed resource, and when you try to shove
34 something like that down the public's throat,
35 they're going to push back.

36 Way back in 2017 I felt like it was standing
37 alone, but now today I can't get over the new
38 friends that I've made. I've lost a lot of
39 friends, but I've developed some powerful new
40 friends as well who agree with me.

41 Q You've already commented on this -- okay. So
42 next to you -- or next thing I'm going to ask you
43 about, you say:

44
45 It is obvious that the supporters of
46 SOGI are the true bullies and want to
47 shut down any further discussion. It

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frightens me that these people want
exclusive influence over their
children.

What are you talking about here?

A Well, as I said before, they did everything in their power to try to shut me up, but it didn't work. They used every name in the book, and, of course, the biggest club was to say I wasn't fit to be around children, which most of the public understood that I was molesting children behind closed doors or something, and that was a heavy cross to bear. But I know I have no desire to molest or abuse children. It was just a false claim and -- but these people are -- are so passionate -- and -- and I know they think -- they -- they think they're actually helping children, but they are setting them on a path that is going to lead to disaster. But when they were so determined to stop any opposition or any reconsideration, it -- it -- it frightens me that people like that are -- are in so much command of public education.

When -- when free speech and -- and dissent are totally suppressed, you're going to have a totalitarian society. What are they going to force down our throats next?

Q In this bit here where you say, "It frightens me that these people want exclusive influence over their children," who are the people that you're talking about and who are the children that you're talking about?

A Well, the -- the educators who don't want any other viewpoints. We heard from at least two teachers that absolutely believe that you can change genders, and they're not willing to challenge a child who is gender confused. They just listen.

And -- I'm sorry, can you repeat the question.

Q When you say, "It frightens me that these people want exclusive influence over their children," who are the people you're talking about when you say "these people," and -- and who are the children? Are -- are you talking about teachers here?

A I'm talking about teachers who are passionately

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1 promoting the SOGI 123 materials, and the
2 children are the children in their classes, in
3 their GSA clubs, in their other clubs in school
4 where they have influence over children.

5 It's not only children that are going to be
6 convinced to -- to change their bodies. Children
7 are being taught that this is the new knowledge,
8 this is the new science, and they come home and
9 tell their parents, you know, "A teacher said I
10 can change from a boy into a girl," and if the
11 parent says, "Oh, no, that's a stupid idea,"
12 well, the child thinks that their parents are --
13 are out of touch and their parents are old
14 fashioned. It's driving wedges in families.

15 In the four families that I am personally
16 involved with, wherever the child went ahead and
17 transitioned, the parents have end up -- ended up
18 divorced. And not only that, the extended family
19 has been set against each other as the aunts and
20 uncle argues about the pros and con of gender
21 transition. Grandparents are being denied access
22 to their children. It's -- it's causing mayhem
23 in society.

24 Initially we believed that only .2 percent
25 of children had gender dysphoria. One of our
26 teachers said she thought it was closer to the
27 30 percent. I -- I think she may be
28 exaggerating, but I think we all agree that this
29 is suddenly -- gender dysphoria has reached --
30 has grown exponentially over the last six years.

31 Q You know, our teacher witnesses, one was
32 transgender, specifically, and two identified as
33 queer, and there was some discussion that those
34 things tended to relate or overlap. So they're
35 similar. What do you say to these three teachers
36 that say, "Well, look, this comment's targeting
37 us and is hurting us as -- as people who identify
38 as queer"?

39 A I don't really care how they identify. There may
40 be some people that are CIS gender and straight
41 but they're still teaching this idea to children.
42 And they mean well. They're trying to help these
43 kids be comfortable with their angst, but they
44 are setting them on a path that leads to
45 referrals to gender clinics.

46 In Canada we have affirmation only. We
47 don't have wait and -- watchful waiting anymore.

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1 And in my experience as a probation officer,
2 we're working with mental health professionals so
3 closely for many years. Our service -- our --
4 our psychiatric services to children and
5 adolescents is very, very substandard and very
6 poor. A lot of these children have other
7 psychiatric problems that have nothing to do with
8 their gender, but it's so difficult -- you're --
9 you're waiting years to -- to see a mental health
10 professional for a child or adolescent, and some
11 of these other conditions can be overlooked or
12 ignored.

13 And one of the witnesses -- well, two of the
14 witnesses that were prohibited from being in this
15 Tribunal, they had physical ailments that were
16 exacerbating their -- their mental problems which
17 were being diagnosed as gender dysphoria. It
18 wasn't gender dysphoria at all.

19 Rob Bogunovic's wife was having thoughts of
20 gender dysphoria, but it was actually multiple
21 sclerosis which had been overlooked.

22 Teachers do not have the expertise to
23 diagnose what the real problem these kids are --
24 are experiencing. It's none of their business.
25 They should stay out of it. They should not be
26 practicing psychiatry.

27 Q You go on here in this same talk to say:

28
29 Any child or parent or even teacher who
30 happens to hold on to traditional
31 family values, that includes not only
32 conservative Christians and Jews but
33 Jehovah's Witnesses, Mormons, Sikhs,
34 Muslims, and persons of no religious
35 persuasion at all.

36 Glen Hansman of the BT -- BCTF
37 president made this very clear. He
38 said, "When religious scruples bump up
39 against inclusion, we must err on the
40 side of inclusion." He meant inclusion
41 of the LGBT kids, not children from
42 religious homes. He doesn't seem to be
43 worried about or concerned that
44 children with traditional values are
45 excluded and marginalized or even
46 persecuted.
47

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1 Do you think it's fair for you to be concerned
2 that the promotion of SOGI 123 might -- might
3 lead to problems with other kids?
4 A I know that it's leading to problems with other
5 kids. Kids are afraid to open their mouths in
6 school and -- and say anything. Christian
7 programs and activities are strictly stifled and
8 prohibited in schools, but gay pride flags are
9 everywhere, and they're encouraging kids to go to
10 GSA meetings by offering them candy. It's --
11 it's too one-sided. It's not inclusive of
12 everyone.
13 Q But why does that -- why does that matter? Why
14 should you be -- as a trustee, why should you be
15 concerned about that?
16 A I'm concerned about everyone who votes for me,
17 and there's a lot of people that voted for me.
18 And, incidentally, after I came out so strongly
19 against it in 2017, I was re-elected by a
20 substantial majority in 2018, so the community
21 was still behind me because I had the guts to
22 stand up and speak out against this.
23 Q You said here -- can you -- can you see my mouse
24 here? I'm moving around.
25 A Yeah.
26 Q Little bit. There we go. You said:
27
28 I believe instead of coddling and
29 encouraging what I regard as a sexual
30 addiction of gender confusion, I
31 believe children should be gently
32 encouraged to be comfortable with their
33 bodies, to accept their own biology --
34 their own biology which can never be
35 completely changed and to love
36 themselves.
37
38 A Yes, I wish that policy were in the schools, not
39 forcing them to -- forcing them to believe in
40 gender theory which is -- SOGI 123 is full of.
41 Q Do you think you have any common ground here
42 with -- with your detractors and the teachers
43 insofar as you -- you want to see these kids love
44 themselves?
45 A Yes, I think I do. And, you know, if you go back
46 to that speech I made at Evergreen Hall in 2017,
47 I have never said that SOGI 123 should be

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Barry Neufeld (for Respondent)
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1 completely abolished. I have compassion for
2 these kids who -- who are suffering, but I think
3 it needs to be -- it needs to have a -- a
4 thorough reworking. There are unintended side
5 effects that I think -- I think should be watched
6 over.

7 They're putting these kids on a path to
8 social transition in school, and then when a boy
9 gets to be 14, all of a sudden he's got this
10 tremendous thing. Well, if I keep going on with
11 social -- transition, then the first step is I
12 got to get castrated, and then I got to start
13 taking hormones, and this is a big jump.

14 Now, I know they keep saying that we're not
15 handing out puberty blockers or hormones in
16 school, but we are encouraging kids to go to
17 gender clinics, and gender clinics are -- are --
18 in Canada are all pushing social affirmation
19 therapy. And despite Dr. Seywicks' (phonetic)
20 research that kids are happier and more content
21 now that SOGI has been -- 123 in -- in the
22 schools, I don't believe it. I've heard
23 anecdotal evidences that bullying and mental
24 health problems are escalating in schools. And I
25 don't have the research here in front of me to
26 share with everybody, but it -- it's out there.

27 And some are saying, well, it's -- it's not
28 caused by SOGI; it's caused by all the
29 restrictions of the COVID-19 epidemic or
30 pandemic. But I know there is definite research
31 to prove, at least in the Chilliwack School
32 District, our academic achievement scores have
33 been going steadily down in the last six years;
34 and why is that? Well, I think we've lost our
35 priority.

36 Starting 25 years ago, the B.C. school
37 trustees were pushing the main -- the key work of
38 school boards as academic achievement. You don't
39 hear anything about that anymore. It's all about
40 diversity, inclusion, and equity. And because of
41 diversity, inclusion, and equity, we're being
42 pushed to play favourites with transgender and --
43 and gay kids.

44 And in my whole career on the school board,
45 I never once heard of any bullying of kids
46 because they were gay. I know gay kids are -- a
47 lot of them are unhappy, but I never heard any

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In chief by Cnsl J. Kitchen

1 incidents of -- of bullying specifically because
2 they were gay.

3 Q What about teachers? Did you -- you know,
4 because, I mean, you went -- you went pretty far
5 back; 1992. Did you ever hear that they're --
6 gay teachers were having a hard time?

7 A No. When I was first on the school board, the
8 president of the Chilliwack Teachers' Association
9 was Jack Turn (phonetic). He was a gay man.
10 Lived with another man. Jack and I got along
11 well. He was well-respected as a union leader,
12 and nobody had any problems with what he did at
13 home in his bedroom. It was none of our
14 business, and he didn't push it on us either.

15 Q We heard some evidence from, I think, a couple
16 different teachers that there seemed to be a
17 change -- and -- and in this sense they are
18 talking not so much about their gender identity
19 but their -- their -- their sexual orientation or
20 perceived sexual orientation 'cause our first two
21 teachers identified as -- as queer but -- but
22 also as -- as lesbian, and they said that they
23 experienced -- you know, from their perspective,
24 they had some -- they -- they had some unpleasant
25 experiences, you know, in the last five, six,
26 seven, eight, nine, ten years with, you know,
27 other teachers and the environment at school and
28 all that when people found out that they had a
29 wife instead of a husband, et cetera.

30 But they also had a little bit of experience
31 that it seemed to be -- it seemed like that was
32 different than -- you know, I think 2004, we had,
33 2006 were some -- some time periods mentioned by
34 the teachers where it was quieter or the climate
35 was different.

36 What do you make -- insofar as -- I mean,
37 this is anecdotal, but insofar as it's happening,
38 what -- what do you make of that sort of change
39 that they experienced from more recent as opposed
40 to longer ago?

41 A I'm not familiar with their lived experience, but
42 I must admit I find it hard to believe.
43 Teacher A said that she was -- she felt like she
44 was being harmed because people weren't returning
45 her emails. Well, probably a lot of people think
46 that I hate them because I get hundreds of emails
47 a day, and I don't -- I don't reply to every one.

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Barry Neufeld (for Respondent)

In chief by Cnsl J. Kitchen

Submissions by Cnsl L. Waddell

Reply submissions by Cnsl J. Kitchen

1 That was a pretty lame evidence of -- of
2 discrimination against her.

3 She also said that she sat at a table during
4 lunch hour promoting her GSA clubs and she
5 couldn't leave the table to go to the washroom or
6 get a drink 'cause other teachers refused to
7 cover her. And she just came across as over
8 sensitive to me. I -- I really, really had a
9 hard time feeling sorry for the troubles that she
10 claimed she was having. She has not endured near
11 as much vitriol, hatred, and threats as I have.
12 I've had my life threatened. I had a student
13 tell me that my mother should have aborted me
14 with a coat hook. That's hate.

15 Q Hmm. What do you think? Do -- do -- do you
16 think it -- the -- the -- the teachers that --
17 that didn't help her with the GSA table, that it
18 was because she was queer or lesbian or anything
19 like that?

20
21 SUBMISSIONS BY CNSL L. WADDELL:

22
23 CNSL L. WADDELL: Sorry, that is pure speculation.
24 There is -- there is no conceivable way this
25 witness can speculate about what others --
26 reasons why others may or may not have jumped in
27 to assist. He's -- he's already placed himself
28 outside of individual schools, so I just -- I'm
29 not sure about the utility of asking the witness
30 to speculate about something which normally we
31 don't do.

32
33 REPLY SUBMISSIONS BY CNSL J. KITCHEN:

34
35 CNSL J. KITCHEN: I -- I -- I do take your point,
36 generally, yes. The problem here with this is
37 that all the complainant's witnesses gave no hard
38 evidence of any discriminatory impacts, but they
39 did give lots of speculation, insinuation,
40 suggestions -- that story of the GSA table, for
41 example -- and they speculated and so which --
42 There's two things going on there. I mean,
43 one, obviously, that -- that -- that could
44 suggest that, you know, there's -- there's --
45 there's no actual identifiable tangible
46 mistreatment because there's no evidence of it,
47 but -- but it -- but it also sort of just -- just

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Barry Neufeld (for Respondent)

Reply submissions by Cnsl J. Kitchen

Reply submissions by Cnsl L. Waddell

1 puts it out there to hang in the air, and -- and
 2 it's -- it's -- it's very suggestive, and -- and
 3 we don't really quite know what it means, and --
 4 and maybe there really is.

5 And so I do think it's fair if the witness
 6 is going to speculate on something like, that
 7 that might be sexual orientation or gender
 8 identity discrimination against them and that
 9 Barry might somehow be responsible for that, no
 10 less, that it's fair that Barry get to respond to
 11 that.

12 Generally I -- I -- I agree with you. We
 13 got -- got to be careful with having him
 14 speculate. But if -- if -- if the teachers can
 15 speculate, then he needs to be able to -- to
 16 speculate in response to what they have
 17 speculated about. Not generally but to what they
 18 have speculated about.

19
 20 REPLY SUBMISSIONS BY CNSL L. WADDELL:

21
 22 CNSL L. WADDELL: And in reply I would just say it was
 23 open to you to object to the speculation at the
 24 time, which you didn't do. And the one
 25 individual teacher witness that you had who
 26 actually would be a little bit closer to at least
 27 in the school environment wasn't asked that
 28 question, so I still maintain that to the
 29 extent --

30 CNSL J. KITCHEN: He was asked that question. He was
 31 asked that question --

32 THE CHAIR: Oh, just let's --

33 CNSL J. KITCHEN: -- at least to my memory.

34 THE CHAIR: Please let Ms. Waddell finish what she's
 35 saying.

36 CNSL L. WADDELL: Not -- not to mine. Anyway, so I --
 37 I -- to the extent that there is any assistance
 38 in speculating, that's at least an individual
 39 that is closer to the level of the individual
 40 teachers, not a trustee who has -- you've taken
 41 him through evidence establishing that he wasn't
 42 in schools, wasn't in schools, wasn't in schools,
 43 so...

44 CNSL J. KITCHEN: Right, which makes my point,
 45 actually, that -- that there's no connection
 46 between Barry Neufeld and your witnesses and so
 47 there's no discrimination claim in employment,

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Reply submissions by Cnsl J. Kitchen
Reply submissions by Cnsl L. Waddell

1 yet here we are. We have to adjudicate a claim
2 in discrimination in employment which -- which
3 the Chair has reminded us. There was an
4 application to dismiss that, which was upheld by
5 the B.C. Supreme Court. So, I mean, we -- we --
6 we are entirely in the realm of speculation, and
7 it is unfair to not let Barry Neufeld speculate
8 about this when the teachers have speculated that
9 other teachers are discriminating against them,
10 despite no hard evidence, and that Barry is --
11 speculating further that Barry is responsible for
12 that. If -- if we're going to permit that kind
13 of evidence -- and I -- I take your point that
14 I -- that I -- that I probably didn't object to
15 that; I don't recall that I did. I mean,
16 that's -- I mean, you know, I guess we don't know
17 what the Chair would have said, but, I mean, that
18 is -- that is -- that is literally your -- your
19 evidence, so I -- presumably that that would have
20 been allowed because that -- that is your
21 evidence. That's -- that's what -- the whole
22 case hangs on that.

23 The only -- so whether I objected or not,
24 the only fair way to approach that is to let
25 Barry counter speculate. Again, I agree with you
26 in general; he can't just speculate about
27 everything -- anything under the sun, but to
28 counter speculate based on what your witnesses
29 speculated about based on the fact that the whole
30 case is -- is based on that speculation, he has
31 to be able to speculate in response. In defence,
32 I should say. Thank you.

33 THE CHAIR: Thank you. Well, we can only deal with
34 each objection on its merits as it --

35 CNSL J. KITCHEN: Oh, Chairman, you're muted.

36 THE CHAIR: Oh, thank you. Thanks.

37 We can only deal with each objection on its
38 merits as it arises. To the extent we need to
39 engage in any comparison, I would say that this
40 is the direct evidence of teacher -- we heard
41 direct evidence from Teacher A about what she
42 saw, experienced, was present for and, obviously,
43 the inferences she drew from it.

44 In contrast, Mr. Neufeld has no direct
45 connection with any of these events and so
46 whatever he may speculate was the reason is of so
47 little possible probative value as to not be

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1 worthy of admitting it. So I -- I agree with
2 Ms. Waddell that this is entirely speculative and
3 way too far removed from any firsthand knowledge
4 to be of any potential assistance, so --

5 CNSL J. KITCHEN: Well --

6 THE CHAIR: -- I'll uphold that objection.

7 CNSL J. KITCHEN: That's fine. I guess that -- I
8 guess that proves my point. It's -- there's no
9 connection, so there's no discrimination in
10 employment. That's -- that's the tack we'll
11 take.

12
13 EXAMINATION IN CHIEF BY CNSL J. KITCHEN, continuing:

14
15 Q Okay, Barry, we're -- we're still in that Tab 3,
16 same talk you gave at that event, I think
17 November 21st, 2017. The statement here:

18
19 I believe it is more rational and
20 healthy to teach and believe what is
21 obvious. While there is natural and
22 welcome variation in gender expression,
23 none of us are completely masculine and
24 totally feminine. Gender is
25 nevertheless rooted in biology.

26
27 Do you see any way in which it could possibly be
28 hateful towards queer and trans people, and
29 specifically the queer and the trans teachers in
30 the district, to say that it's obvious that
31 gender is rooted in biology?

32 A Well, you know, these -- at least two of these
33 teachers were very passionate about their belief
34 that gender can be changed; so passionate that
35 they would spend their lunch hour sitting at a
36 table. And I'm -- I'm saying that I believe
37 something different. And just because I disagree
38 with them does not mean that I -- I hate them or
39 despise them. There's a lot of people I meet in
40 life who we have different opinions, but we build
41 on what we have in common, and what -- what I do
42 have in common is -- with these teachers is that
43 I want -- we -- we all want best -- best for
44 these kids, but what we differ is on how we can
45 get them to go that way.

46 And the whole concept of gender ideology
47 is -- has nothing to do with biology, and if --

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1 if I have to choose, I'm going to err on the side
 2 of biology.

3 Nobody has ever been able to tell me where
 4 this idea has come from. Where's the research?
 5 Did it come out of research and gender studies in
 6 university? Who are the scientists that
 7 discovered that there's more than two genders?
 8 It's all just a belief. It's got so much -- it
 9 reminds me so much of people's religious beliefs.

10 And Mr. Bogunovic made a very important
 11 comment that there's nobody who's an expert in
 12 theology, and I agree, but what these teachers
 13 are doing are taking a -- a very strong
 14 theological stance that the only god that exists
 15 is you, and you can recreate yourself. You can
 16 create whoever you want to be. There's no god
 17 outside of you. And they believe it with a
 18 passion. They believe with so much passion
 19 they'll give up their lunch hours to try and
 20 evangelize the lost in the school hallways.

21 And the *School Act* is very clear: It's to
 22 be conducted on a secular level, and that does
 23 not only mean -- that means religion but also
 24 political beliefs. But I would argue that the --
 25 the passionate proponents of gender ideology are
 26 pushing a new religion that we've never had in
 27 the world before. It's a religion that has
 28 similar -- similarities to agnosticism, and it
 29 elevates the -- the human psyche to becoming
 30 their own god.

31 Q You say, "These children here" -- and, of course,
 32 you're talking about the children who are
 33 encountering this and the gender dysphoria
 34 children and the transgender children and all the
 35 rest of it.

36 Now, you say:

37
 38 These children are extremely
 39 vulnerable, prone to self-harm and
 40 other mental illnesses such as
 41 depression and anxiety disorders. We
 42 must be very careful.

43
 44 What would you say to those who suggest, well,
 45 this is actually you being quite hateful of
 46 transgender kids 'cause you're suggesting that
 47 they're all mentally ill?

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1 A Some of them may be mentally ill. We know now
2 that -- that in -- in the Tavistock Centre in
3 England, which has just subsequently been shut --
4 shit down is that a lot of these kids had other
5 mental health problems that were being ignored,
6 and because these other problems were being
7 ignored, they went ahead with transitioning
8 these children when that wasn't their real
9 problem.

10 In my DVD Transformed, several of them said
11 that they had a different mental health diagnosis
12 than gender dysphoria and so they went ahead and
13 transitioned and then discovered that wasn't
14 solving their problem.

15 Young girls have started to transition when
16 their problem was actually multiple sclerosis.
17 It's not just mental health; it's physical
18 health.

19 And another woman who -- young woman who
20 didn't -- has -- detransitioning, all the medical
21 personnel completely ignored her cardiac
22 problems, and she had problems with her heart,
23 and they were shoving her full of -- shoving her
24 full of hormones. That's dangerous. We need to
25 be more careful.

26 Q Then you talk about the suicide thing. You say:

27
28 I'm concerned about suicide. Some
29 statistics say that 50 percent of
30 people with gender dysphoria die before
31 the age of 30, often from suicide of
32 [indiscernible - rapid speech] anxiety.
33 I agree that something must be done to
34 alleviate their suffering.

35

36 Again --

37 A Well, now I --

38 Q Go ahead.

39 A Recent Swedish study which finally followed up
40 children who had transitioned more than ten years
41 ago discovered these -- these people, once
42 they've fully transitioned, they're 12 times more
43 likely to commit suicide. Yes, it's a problem,
44 but there's got to be other ways of solving it
45 than transition. It's -- it's one-size-fits-all.

46 And therapists are afraid to explore other
47 mental health issues because they -- they're

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terrified of being accused of doing conversion therapy. And it's just got the whole medical, psychiatric community tied up in knots over what to do about this problem, and -- and we owe it to our children to do a thorough assessment, a thorough investigation before we start putting them on a path to making alterations to their bodies.

Q You say down here:

I can support programs that have proven to be best practices, but where is the evidence that this radical new approach will be effective in preserving and maintaining the mental health of all students? I can find none. In fact, I am convinced of the opposite: That it will create many unintended and dangerous side effects.

What are you referring --

A Well, you know, before my time there Dr. Hilary Cass said that in her four-year investigation she discovered that gender-affirming care quite often does more harm than good. So I'm backed up by research.

Q But do you think there's -- there's -- to go back to the -- sort of the point that the -- that the complainants are trying to make, do you think the queer and trans teachers are somehow trying to hurt kids?

A No. They mean well. They -- they think this will help -- help children. But notice that the two teachers who were so passionate that you can change gender, they've made -- made no modifications to their bodies.

And they didn't impress me as being very well-read in all the various kinds of literature there is -- there is going. It's -- it's -- they just kept referring that it was their own lived experience that they believed gender could be changed.

Q Why do you think it matters to warn children about the increasing numbers of transgender persons who regret their sexual reassignment surgery?

A Well, even this Tribunal doesn't want to hear

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from them. They think that's irrelevant. To me it's the most relevant story that we need to hear. If -- if we find a new drug that's supposed to prevent heart attacks and we only hear about the positive effects of that and don't hear about the -- some people who suffered dangerous side effects, we're going to make stupid decisions. And this Tribunal does not want to hear about transitions that went sideways, and because of that -- it's already been said -- the Supreme Court says truth doesn't matter; it matters whether feeling -- people's feelings have been hurt.

Q Just quickly, this -- this section you say, "It's my firm conviction -- I'm on page 16, by the way. It's the same tab, Tab 3, publications book:

It's my confirm conviction that in order to prevent the bullying of all students who are prone to self-harm there needs to be [indiscernible - rapid speech] discussion and greater compromising what is suddenly being foisted on the public by government [indiscernible - rapid speech]. In a democracy everyone would be allowed to participate.

Can you believe that the -- that the -- that the trans and queer people should be allowed to participate?

A Certainly. I want to hear their perspective, but I also want to hear the perspective of people who strongly believe in traditional family values. These people, they want to do away with traditional family values. They want to run steamrollers over them, and they're not prepared to make any compromises to take a hard look at their -- their philosophy and try and improve it.

Q What do you make of the common refrains from the teachers that they did not want to encounter or hear your ideas and beliefs and that they thought they shouldn't have to?

A Well, they don't have to. Most of my -- my comments were on Facebook. They don't have to look at my Facebook posts. I've made comments on YouTube; they don't have to watch them. You know, I -- I made some pretty strong videos on

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1 YouTube, and I thought YouTube would shut me
2 down, but they haven't.

3 And now I'm -- more and more of my stuff is
4 appearing on Rumble. So they -- if they don't
5 like the ideas, they don't have to listen to it.

6 But, you know, if -- if you really want the
7 best for kids and you want the truth, you're
8 going to look at both sides of the argument,
9 and -- and sometimes the truth is somewhere in
10 between. But if you only look at one side of the
11 situation, you're going to end up with tunnel
12 vision, and you're going to make some errors in
13 judgment.

14 Q The -- we had some comments from at least
15 Teacher A and B about what they call the informal
16 influence that you had over teachers or the
17 culture or the climate in the district; the
18 political climate in the district was what one
19 teacher said. I think both teachers, or at least
20 one, said that they felt that your comments
21 enabled other people to -- to -- to say things
22 like what you had to say.

23 Let's start with the -- the informal
24 influence. What -- what do you make of that? Do
25 you think you somehow have an informal influence
26 over teachers and their working conditions when
27 you say stuff on Facebook as a trustee?

28 A I suppose that's an informal influence, but it
29 certainly seem to influence to [verbatim] any of
30 the administration. The administration of the
31 Chilliwack School District is solidly behind
32 SOGI 123 because all of them are receiving
33 six-figure salaries, and they don't want those
34 threatened in any way.

35 I have never tried to influence
36 administration and to -- anyone in administration
37 to discipline a school -- a -- a school teacher.
38 I -- I did give an informal reference on an
39 applicant to the school district. And I did it
40 once; I'm never going to do it again. Teacher
41 let me down. And I told him that I was
42 uncomfortable giving him a reference for a job in
43 our school district, and -- like I said, in 30
44 years I only did that once.

45 Q Did you ever sort of, you know, speak to
46 directly, call or whatever, in person, the
47 superintendant and -- and suggest or -- or

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1 purport to instruct the superintendant to inspect
2 gay or trans or queer teachers or, you know, keep
3 an eye on them or monitor them or anything like
4 that?

5 A Nothing. Never. When this -- after 2017 when
6 this issue came up, I was extra careful not to
7 try and influence the administration in any way
8 at all.

9 Q At least one of our teacher witnesses said that
10 if she had of saw you [verbatim] -- she
11 had of [verbatim]-- she had of physically, with
12 her eyes, seen you in -- in the building where
13 she worked that she would have had to take a day
14 off to recover. What do you make of that?

15 A Is that Teacher A?

16 Q I think so.

17 A I've never seen her before. And that's the only
18 person in my memory who -- who ever said anything
19 like that. It was a pretty dramatic remark. And
20 you had a term -- term for that which I -- now
21 has slipped my mind.

22 But obviously she does not want to tolerate
23 any ideas that are different than her. I don't
24 know if she's a vegetarian, but I -- I guess if I
25 eat a meat sandwich in front of her, that
26 would -- that would really upset her too.

27 But we live in a world -- world of people
28 with all different ideas. We need -- we need to
29 learn to get along with each other. And try as I
30 might, I couldn't feel sorry for her because of
31 that because a lot of people -- many people who
32 don't agree with me, they still enjoy my company.

33 Q There was a suggestion that your comments might
34 lead people to be violent against, you know,
35 teachers if people found out -- or against queer
36 and trans teachers if people found out that a
37 particular teacher was queer or trans, that they
38 might take violence. Do you think that's, you
39 know, like -- do you think it's a reasonable --
40 reasonable suggestion?

41 A That's absolutely preposterous. I have never
42 made any physical threats again [verbatim]
43 anybody, and none of my supporters have.

44 But some of my supporters have been
45 physically roughed up. Somebody tried to run
46 over Harem Bom (phonetic) when he was protesting.
47 Bill Bordcrest (phonetic) has had his arm broken.

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1 Drea Humphrey from the Rebel News had her life
2 threatened and even her children's lives
3 threatened by a transgender person. It's the
4 trans activists who are so violent and hateful,
5 not the people who are opposing them.

6 Q Right. Which --

7 CNSL J. KITCHEN: And this is my last question, I
8 think, before lunch, Chair.

9 Q What do you -- what do you make of that
10 contradiction or inconsistency?

11 A I think it's a way they've managed to achieve
12 success in -- in the takeover of academia,
13 takeover of the medical profession, and the
14 takeover the education session [verbatim] -- the
15 education sector.

16 It's -- it's been the -- it's -- it's been
17 the -- the threats of violence that have
18 frightened people. You know, Radio Canada, the
19 French version of CBC, ran a -- a broadcast where
20 they sent a -- a -- a 14-year-old girl who was an
21 actor into a -- a gender clinic, and within a few
22 minutes she came out with a prescription for
23 puberty blockers. And they published this.
24 Well, as a result, the next day protesters broke
25 the windows of Radio Canada in -- in Montreal.

26 Nobody has ever -- on -- on my side has ever
27 done that to any institution or organization that
28 promotes the LGBTQ agenda.

29 Way back in the days of Stonewall -- I
30 forget how many years ago that was -- there may
31 have been some violence against LGTQ people, but
32 I don't know of any of it happening in recent
33 memory.

34 CNSL J. KITCHEN: Chair, I'm ready for lunch.

35 THE CHAIR: Okay. Let me just get caught up in my
36 notes.

37 All right. Let's take an hour now for --
38 for lunch. Over the break if you haven't
39 already, Counsel, if you could start thinking
40 about dates when you're available as soon as
41 possible in December or January, February, then
42 we can have those dates ready for our discussion
43 later.

44 Anything else --

45 CNSL J. KITCHEN: Ms. -- Ms. --

46 THE CHAIR: Oh, yeah, go ahead.

47 CNSL J. KITCHEN: Ms. Waddell, can -- can I ask you to

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1 kindly send -- send me your availability first,
2 and then I can try to respond?

3 CNSL L. WADDELL: Yeah, that's fine.

4 CNSL J. KITCHEN: Thank you.

5 THE CHAIR: Okay.

6 UNKNOWN SPEAKER: And would you mind copying me?

7 THE CHAIR: Of course.

8 UNKNOWN SPEAKER: Thank you.

9 CNSL J. KITCHEN: Yes.

10 CNSL L. WADDELL: Not a problem.

11 THE CHAIR: All right. We will close down the meeting
12 room now and ask you all to come back in an hour.

13 Thanks very much.

14 CNSL J. KITCHEN: Thank you.

15

16 (WITNESS STOOD DOWN)

17

18 (PROCEEDINGS ADJOURNED FOR NOON RECESS) [12:33:56]

19 (PROCEEDINGS RECONVENED) [1:30:47]

20

21 THE CHAIR: Hi, everyone. We're back. We don't have
22 Mr. Neufeld or Mr. Kitchen back quite yet, so
23 we'll get started when they come.

24

25 BARRY NEUFELD, a witness,
26 recalled.

27

28 THE CHAIR: Hi, Mr. Neufeld. We're just waiting for
29 Mr. Kitchen now.

30 Hi, Mr. Kitchen. You're there?

31 CNSL J. KITCHEN: I am here, yes.

32 THE CHAIR: Mr. Neufeld, are you ready to continue?

33 A Yes, I'm ready.

34 THE CHAIR: All right. We'll go until 3 o'clock and
35 then take a break. Go ahead, Mr. Kitchen.

36 CNSL J. KITCHEN: Thank you.

37

38 EXAMINATION IN CHIEF BY CNSL J. KITCHEN, continuing:

39

40 Q Okay. Barry, I'm going to share my screen with
41 you a little bit more. Okay. This is page 18 of
42 the publication book that we're at. This is
43 another -- looks like some sort of Facebook post.
44 This is a long one, so I'm going to take you
45 through this a little bit.

46 You mention two books here -- let me just
47 see if I can make this -- there we go.

1177

Barry Neufeld (for Respondent)
In chief by Cnsl J. Kitchen

1 You mention two books here: Why Gender
2 Matters and Understanding Gender Dysphoria. Why
3 did you read these books?

4 A Oh, I've read just about every book that's ever
5 been published on gender trying to get an
6 understanding. I've read both sides of the
7 argument.

8 I just realized a mistake. I graduated from
9 Simon Fraser in 1978, so I probably read the book
10 in '77, '78.

11 Q This -- this other book, I take it, is more
12 recent, the *Understanding Gender Dysphoria*?

13 A Yes, it is.

14 Q Was this book advocating for hating or excluding
15 or hurting or harming or hating -- or, sorry,
16 or -- or taking violence against queer or trans
17 people?

18 A Oh, definitely not. He was looking at the ways
19 of -- of helping them without -- without
20 affirmation therapy. How to help them deal with
21 the pain that they're struggling with.

22 Q Why try to understand the beliefs of gender
23 theory and -- and -- and understand the issues or
24 problems or thoughts of queer and trans people?

25 A Well, as I said, when I retired from my day job
26 as a probation officer, I had never heard of the
27 term transgender, I had never met any of my
28 clients who were transgender, but all of a sudden
29 it was a -- everybody was talking about it, so I
30 wanted to get as much background knowledge as I
31 possibly could to understand what was really
32 going on there and why it had become such a
33 hot-button issue in 19 -- 2017.

34 Q Can you explain to me in your words, in your own
35 words, this -- well, I mean, I know these are
36 your words here, but -- but this pastoral
37 approach you're talking about, tell us what you
38 mean by that.

39 A Well, first of all, I should say that the career
40 of a probation officer is very similar to that of
41 a pastor. A pastor tells people, "If you don't
42 be good, you're going to go to hell." A
43 probation officer says, "If you don't be good,
44 you're going to go to jail."

45 So a pastoral approach is one that's caring,
46 trying to meet people in the -- the pain and --
47 and their lack of direction in life. And -- but

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Barry Neufeld (for Respondent)
 In chief by Cnsl J. Kitchen

1 a -- a pastor or a probation officer, neither of
 2 them can change anybody. Change comes from --
 3 from outside. Some people would say people
 4 change and they don't really know what -- what --
 5 what has caused the change in them, but it is my
 6 belief that positive change comes from a
 7 transcendent god outside of one's own personal
 8 being.

9 Q And then you talk about the other approach being
 10 prophetic, and then you say, "When I thought
 11 about it, there were clearly gifts of prophecy in
 12 the early church," and then you list some.

13
 14 They -- they spoke boldly to the ruling
 15 powers condemning unrighteousness and
 16 injustice, and they got into a lot of
 17 trouble for their outspokenness. They
 18 were persecuted, banished, jailed for
 19 their sermons. Saint John Chrysostom,
 20 perhaps the most [indiscernible - rapid
 21 speech] saint of the orthodox church,
 22 was banished by the unrighteousness and
 23 injustice -- oh, sorry -- and banished
 24 by the --

25
 26 Where are we here?

27 A I think we missed part of the page there.

28 Q
 29 Banished by the empress from the --
 30 from [indiscernible - rapid speech]
 31 throne in Constantinople and he died on
 32 the long journey to the little village
 33 where he had been ordered to go and
 34 live in obscurity.

35
 36 Are you here -- are you here trying to call
 37 yourself a prophet or anything like that?

38 A No. But I looked at their example, and they
 39 spoke up for what they sincerely believed was
 40 right, and they were not afraid of any negative
 41 consequences that might happen if -- if they
 42 spoke what they believed was the truth.

43 Q And do you think that's what you're doing?

44 A I hope so.

45 Q When you say:

46
 47 It is -- it is difficult to engage in

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Barry Neufeld (for Respondent)
In chief by Cnsl J. Kitchen

1 the cultural wars. One pays a heavy
2 price for criticizing the prevailing
3 world view. One gets called a bigot
4 and a hater and even worse. As a
5 school trustee, my role is different
6 than a counsellor or a pastor.
7

8 Couple questions. What's the culture war that
9 you're referring to?

10 A Well, as I mentioned before, it's the -- society,
11 I believe -- the strongest building block of
12 society is the nuclear family: Father, mother,
13 and children. That's beginning to fall apart as
14 divorce becomes more -- more common. And then
15 there's the recent phenomena of gay parents, so
16 kids don't have a mother and a father.

17 But now the whole idea of -- of getting
18 married and having children is being pooh-poohed
19 and it's more individualistic. You be true to
20 yourself, and if you're born in a boy's body and
21 you feel like a girl, then go for it, and that
22 will -- that will bring you contentment and peace
23 of mind; and that, to me, is a culture war
24 because I can't go along with that, and I need to
25 stand up for what -- the nuclear family which I
26 believe is the best foundation for a -- a
27 flourishing society.

28 Q You -- you said a comment just now that I think
29 we're going to get to here, but I'll -- I'll
30 address it now. Do you think it's -- it exposes
31 gay people or gay teachers or gay couples or gay
32 parents to discrimination or hatred when you talk
33 about them being parents and the issue of a child
34 having a mother and a father?

35 A You know, I -- I commend gay couples for
36 adopting, quite often, children who are not
37 wanted by anybody else. They're adopting
38 children who are handicapped, Down syndrome, you
39 name it, and these children would -- would grow
40 up in institutionalized -- institutions or -- or
41 foster homes, which is far from perfect.

42 But I strongly believe that a child has a
43 right to know both their mother and father. And
44 I spent a good portion of my life trying to track
45 down my biological mother and my biological
46 father. I tracked down my mother before she
47 died, and we had a good relationship.

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Barry Neufeld (for Respondent)
In chief by Cnsl J. Kitchen

1 Unfortunately, by the time I figured out who and
2 where my father was, he had passed away. But
3 there are siblings out there, and they're in
4 Alberta. I haven't had a chance to go out and
5 meet them yet.

6 But if two gay parents are refusing to allow
7 their child to know who the true parents are,
8 then that's very difficult if they've managed to
9 have a baby through artificial insemination. I
10 don't think that's fair to the child. A child
11 has a right to know both their mother and father.

12 As a family court counsellor, I believe so
13 strongly in that principle. Often times a
14 marriage is broken up because one or both of the
15 parents were unfit; they were dangerous or
16 whatever, but I insisted the child had a right to
17 know both their mom and dad, and if that required
18 supervised access, I would make every effort to
19 try and arrange it.

20 Q But isn't it discriminatory towards gay couples
21 to -- to express that belief?

22 A They probably don't like it, but I still believe
23 the child's needs trump their needs to have
24 children. And, as I said, I appreciate it when
25 gay couples marry -- adopt children who are not
26 wanted by anybody else, but they still should
27 make every effort that that child know who their
28 biological parents are.

29 Q But what about the gay couple that interprets
30 that discriminatory because they interpret that
31 as you saying or suggesting that they're bad
32 parents?

33 A Not saying they're bad parents. Not -- not
34 saying it to criticize them. I'm just standing
35 up for the rights of the child to know about
36 their mother and father. If they're refusing to
37 do that, that is not being a good parent. If
38 it's impossible for them to do that, then I hope
39 that two lesbian mothers have got a positive male
40 role model in their circle of friends that the
41 child can relate to. If it's two gay men who are
42 raising a child, I would hope they had a positive
43 female role model in their lives that -- that can
44 get involved with the children.

45 Q What if that hurts their feelings because they
46 feel like you are suggesting that they can't fill
47 both roles?

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Barry Neufeld (for Respondent)
 In chief by Cnsl J. Kitchen

1 A You know, we can't go through life without
 2 getting our feelings hurt sooner or later. And
 3 I'm sorry, whether their -- if their feelings are
 4 hurt, I'm more concerned about the feelings of
 5 their child because the child is going to be
 6 around a lot longer than the parents. And
 7 children need positive role models, both male and
 8 female, to grow up into well-rounded individuals.

9 Q As a school trustee, you say, "My role is
 10 different than a counsellor or a pastor." What
 11 do you mean by that?

12 A Well, a -- a school trustee -- as -- as I pointed
 13 out, I made every effort to distance myself from
 14 the teachers in the classroom. I don't have any
 15 direct contact with students or teachers. My
 16 role is to set policy, and one of the most
 17 important things in setting policy is to try and
 18 predict the unintended results of a policy.

19 Q You say here, "My heart goes out to those
 20 families who are struggling under the threat 'Do
 21 you want a dead son or a living daughter?'"
 22 Where's that coming from?

23 A It's been reported in the literature that's quite
 24 often what the gender therapists will tell to a
 25 parent if a child is experiencing gender
 26 dysphoria.

27 But in the high court decision in Britain --
 28 sorry, the name is escaping me now. The young
 29 woman that sued The Tavistock Centre for
 30 railroading her into transition. They found that
 31 this threat that a child will commit suicide if
 32 you don't allow them to transition, that that --
 33 there's no factual basis for that. There's no
 34 convincing statistics. Dr. Kenneth Zucker said
 35 they're conflating completed suicide with
 36 threatened suicide. It's a very manipulative
 37 thing for a child to tell his parents, "If you
 38 don't give me what I want, I'm going to commit
 39 suicide." That's manipulation, but that's not
 40 suicide. That's just threatening it.

41 And I've even heard of therapists -- I'll
 42 mention names: Dr. Wallace Wong gave a speech at
 43 the Vancouver Library, and he -- he thought it
 44 was funny; he would tell kids, "If your parents
 45 don't like your idea of transitioning, just
 46 threaten suicide. That will get them off their
 47 asses."

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Barry Neufeld (for Respondent)
In chief by Cnsl J. Kitchen

1 Q You say:

2
3 My job description is that of a policy
4 maker, and the current emphasis is on
5 inclusion. I do not want to give into
6 the self-serving agenda of the LGBTQ+
7 groups who want to be given priority as
8 the most downtrodden of victims.
9

10 What motivated you to say that?

11 A Well, actually, I think the LGBT right now are
12 the most privileged of any class. They're
13 getting all the benefits. They're getting all
14 the positive media reports. They're getting tons
15 of taxpayer money being poured into organizations
16 to support their -- their -- their lifestyle and
17 their identity.

18 As a policy maker, I want to make -- I want
19 to really focus on what is true inclusion, and
20 that's everyone, not just a particular subgroup.
21 And when -- when I don't have as much enthusiasm
22 for the LGBT subgroup, it's because I think
23 they've got an unfair advantage and they're
24 getting too many privileges right now and they're
25 feeling -- acting as if they are very entitled,
26 and that's not fair; that's not just.

27 Q What about the perspective that they deserve it
28 because they've been historically marginalized?

29 A We've had gay rights now for over 50 years.
30 100 years ago maybe they -- they threw gay people
31 in prison or whatever, but they have had many
32 rights and many privileges in the last 50 years.
33 I do not see them as a marginalized, persecuted
34 group anymore.

35 The transgender people have probably endured
36 more social ostracism in the past few years, but
37 they're trying to jump on the -- to the LGB [sic]
38 bandwagon and -- and share in those privileges
39 that the -- and rights that the LGB have managed
40 to obtain over the last 50 years, but they don't
41 really fit in that well. The group is not -- is
42 not consistent and homogenous, and many LGBT
43 people are -- are not happy that they're being
44 lumped in with trans people. Many LGBT people
45 are getting fed up with the gay pride parades.
46 They've turned into absolute clown shows with the
47 grossest perversion being paraded as

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Barry Neufeld (for Respondent)
 In chief by Cnsl J. Kitchen

entertainment, and many LGBT people think that little children should not be exposed to some of the depravity that they see in an LGB pride parade.

Many LGBT people, they just want to live their lives privately; they don't want to flaunt it; they don't want to push other people's noses into it. They just want the rights to marriage, pensions, joint property holdings, things like this that -- that everybody else enjoys, and I don't begrudge them that.

Q But I think you probably covered a little bit of this but -- just now so -- but one person mentioned --

In the new categories that are included in the long list of letters now added after the LGBTQ are a new caste system. They no longer are satisfied with mere intolerance inclusion [verbatim]. They want to be celebrated and given priority.

What do you mean by the -- the caste system?
 What do you understand that to be?

A The caste system is -- was, anyways, common in the nation of India. They had the upper caste, the Brahmins, and then at the bottom they had the outcasts, and there was no way you could proceed from being an untouchable to becoming a Brahmin, and all your rights and privileges depended on what caste that you were in. And what I see society heading towards is -- is this new kind of caste system.

Q Tell me a little more about that. How do we -- what's this new caste system that -- that you see?

A Well, I see people that are politically correct are getting privileges, and diversity, equity, and inclusion is codifying that. You're not as likely to get a job if you're a middle-aged white male. They no longer promote based on merit. They -- you get promotions and benefits depending on what class you belong to.

And keep talking in this Tribunal about members of the class. Well, you could also say that they're members of the new caste system in

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Barry Neufeld (for Respondent)
In chief by Cnsl J. Kitchen

1 British Columbia because they're the privileged
2 ones. They are the ones you can't hurt their
3 feelings. They're the ones you can't contradict.
4 They're the ones you can't disagree with. If you
5 do, you'll get punished.

6 Q But what about the prevailing concept promulgated
7 by all kinds of institutions in this country, up
8 to and including the Supreme Court of Canada,
9 that, again, the -- the transgender people or
10 transgender community has been historically
11 marginalized or faced, historically,
12 discrimination and mistreatment and exclusion and
13 therefore this -- this -- this new approach is --
14 is -- is justified or -- or makes sense as a
15 response to that?

16 A Yeah, the pendulum is swinging back, and they're
17 giving it a really big push. I know many of them
18 complain that in the past they -- they did
19 experience some intolerance, but I have talked to
20 transgender people who have been transgender for
21 many, many years, and they had some frustrating
22 experiences, but nobody has ever told me that
23 they were severely ostracized or penalized.

24 We all go through life sometimes with
25 frustrating experiences and setbacks due to many
26 reasons, and to blame all their challenges and
27 frustrations on being LGBTQ I don't think is --
28 is disingenuous. Just because somebody doesn't
29 want to spell you off at a GSA table in school
30 doesn't mean that they hate you. They're just
31 busy.

32 And I don't mean to minimize the -- the
33 persecution and -- and social exclusion that
34 transgender people have experienced in the past;
35 I don't advocate for that either. But I -- I
36 believe they have rights and we should respect
37 their rights, but I don't think they should be
38 extra privileged and have more rights than the
39 average Joe citizen.

40 Q On this vein, you said that gender theory reminds
41 you of people's religious beliefs of how they --
42 of how people treat the religious beliefs. You
43 called gender ideology a new religion. But, you
44 know -- and this is -- can think of this
45 generally, but obviously this especially applies
46 to the -- to the queer and trans people because
47 they say that it's -- it's hateful or

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Barry Neufeld (for Respondent)
In chief by Cnsl J. Kitchen

1 discriminatory to criticize their beliefs because
2 their beliefs are so bound up with or intertwined
3 with their identity. So how do we deal with
4 that?

5 A No, I don't agree with that. There are people
6 who believe that Muhammad is a prophet, and that
7 is their identity, and if somebody comes along
8 and says, "Well I don't think Muhammad a profit;
9 I think he liked to get married to young girls."
10 Well, they get all violent, and -- and they'll
11 fight back. That's not right.

12 I happen to be a Christian. I happen to
13 believe that Jesus rose from the dead. Well, if
14 somebody comes along and says, "Barry, you're
15 believing in fairy tales. There's no way a
16 person could rise from the dead," I'm not going
17 to hate them for that. I know lot of people
18 don't agree with me. They have different views.
19 I'm willing to have a conversation with them, but
20 I'm not going to get angry and call them names
21 and -- and tell him that he's not allowed to set
22 foot in any schools anymore because he -- he said
23 something that hurts my feelings.

24 Q But isn't it hateful or discriminatory towards
25 Christians if somebody says that Jesus didn't
26 rise from the dead or can't rise from the dead?

27 A No. That's their opinion. I accept it on faith.
28 If they don't have the faith, I don't condemn
29 them for that.

30 Q But would it -- would it change something if it
31 felt -- if -- if -- if suddenly you felt really,
32 really, really hurt and really upset that
33 somebody criticized your beliefs? Does that
34 change it?

35 A No.

36 Q Get my bookmarks out here.

37 Sorry. I'm just trying to make sure I
38 don't -- I don't duplicate, if I can help it, if
39 it's stuff that you've already talked about.

40 Okay. This is page 23 of the publication
41 book. This is -- this is an email that you
42 drafted about -- or at least in part about the
43 parent advisory council in Chilliwack and Justine
44 Hodje or Hoj (phonetic) who was -- who was the
45 president of that.

46 You've already talked about that. This bit
47 here:

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Barry Neufeld (for Respondent)
In chief by Cnsl J. Kitchen

Other parents taking a more proactive approach encouraging their child to find gender-appropriate activities even though they may not be stereotypical, taking an effeminate boy to figure skating lessons or signing up a rough-and-tumble girl for karate.

Tell me, what's your -- what's your -- we usually talk about gender identity, but gender expression is already -- is also protected in the code.

What's your view on gender expression?

A Well, there are so many stereotypical ideas of what is proper gender expression. And I had no problem with -- with boys taking ballet lessons or learning to figure skate. That doesn't mean that they're a girl in a boy's body. And we used to have tomboys, and they liked to wrestle with the boys and -- and climb trees and -- and carve things and -- and that doesn't mean that they're a boy born in a girl's body.

Two often these days these atypical behaviours of a gender are taken as a -- a sign that this children [verbatim] -- this child should be indoctrinated with gender ideology and perhaps encouraged to live as the opposite gender or even make body modifications to match their favourite activity.

And it changes over the years. A lot of tomboys, when they were -- when they were preteens or teens, you know, they were rough and tumble, and then they end up getting married and they have a beautiful wedding dress and then become stay-at-home mothers and really enjoy their work.

Q You say here, "I do not hate transgender children." You emphasized it. "They can't help the way they feel. They should certainly not be bullied or teased." Why did you feel the need to say this as if it wasn't already obvious?

A Because I kept getting accused of hating transgender children. "He hates them; that's why he doesn't want them to transition." No, I don't hate them.

Q Then why don't you want them to transition?

A Because they need to be happy with the body that

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Barry Neufeld (for Respondent)
 In chief by Cnsl J. Kitchen

1 they were born in. If a child goes ahead and
 2 does all the steps that lead to a transition,
 3 they're 12 times more likely to commit suicide
 4 when they reach college age. They get into their
 5 20s and all of a sudden their friends are getting
 6 married and having kids and they've modified
 7 their body to the point that they're sterile and
 8 they're either incapable of impregnating a girl
 9 or they're incapable of getting pregnant and
 10 nursing a baby.

11 That's a whole -- that's one of the most
 12 beautiful rewards of being a human being is not
 13 just the pleasure of the sexual act but the joy
 14 of bringing another life into the world, and if
 15 they transition, they could totally cancel that
 16 from ever happening in their life. I don't want
 17 to see that to happen to kids.

18 And I -- I know at the age of 14 a young
 19 girl who's not happy with her developing body --
 20 and a lot of girls aren't, especially the
 21 autistic girls. You can't tell her, "Well --
 22 well, if you transition, you won't be able to
 23 nurse a baby," and they say, "I don't ever want
 24 to have a baby, and I can't stand the idea of
 25 nursing them." That's what they think when
 26 they're 14, but ten years later when they're 24,
 27 they envy their friends who are able to do that.
 28 Q I'll make this a little bigger here. Here we go.
 29 This is at page 83 of the publications book.
 30 This was one that the teachers found upsetting.
 31 Probably going to start up here. You say:

32
 33 You aren't happy with the body you were
 34 born with? Doctors don't waste time
 35 trying to figure out what happened that
 36 makes you feel this way. No matter.
 37 They will give you untested
 38 chemotherapy cocktails that will make
 39 you sterile and cause all sorts of side
 40 effects like mood swings, which you
 41 were trying to avoid; brittle bones;
 42 cancer; diabetes; acne and
 43 incontinence, and follow up with a
 44 lifetime of taking expensive artificial
 45 hormones. These drugs might postpone
 46 serious depression that may lead to
 47 suicide, but if doctors go all the way

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Barry Neufeld (for Respondent)
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1 and carve you up by lopping off healthy
 2 body parts, you will still have no
 3 guarantee of a happy life. If
 4 depression doesn't get you, other
 5 complications caused by messing with
 6 nature are sure to end your life before
 7 middle age.
 8

9 Now, you've already covered some of this, but --
 10 so -- but a little bit of it you haven't. So
 11 what I want to talk about is the -- the bit here
 12 about brittle bones, cancer, diabetes, acne,
 13 incontinence, that type of stuff. Where --
 14 where -- why is that a concern for you? Where's
 15 that coming from?

16 A Well, various research has pointed out that
 17 brittle bones is quite often an effect of puberty
 18 blockers -- and wish now I had the reference at
 19 my fingertip, but there was an anecdote of a girl
 20 that was 26 years old that had to have hip
 21 replacement because her bones were so porous from
 22 taking puberty blockers.

23 Mood swings is a common side effect, and
 24 that's quite often why they're recommended for
 25 transition is because they're having mood swings,
 26 and then they give them puberty blockers and
 27 hormones and the mood swings get worse. There --
 28 there are so many unintended side effects.

29 You know, in 2018 I was accused of promoting
 30 junk science because I quoted the American
 31 Academy of Pediatricians. So because of my many
 32 years experience as a probation officer and also
 33 because I was a school trustee, I applied to the
 34 international congress on child and adolescent
 35 psychiatry. It was being held in Prague,
 36 Czech Republic. I had to apply, and I was
 37 accepted because they knew that I had -- I had
 38 professional expertise and experience in the area
 39 and so I went to -- to Prague, and it was a
 40 six-day -long conference. Started at 7:30 in the
 41 morning; went until 6:30 at night. There was
 42 over 1500 delegates there, and I took in every
 43 LGBTQ workshop that I could.

44 And most of the workshops were very
 45 depressing because they were trying to find
 46 adolescent interventions that worked, and not
 47 much was working. Talk therapy wasn't working,

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Barry Neufeld (for Respondent)
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1 and -- and they were getting criticized for
2 working pharmaceutical [verbatim] therapy, and there
3 was a lot of criticism that they were
4 overprescribing Ritalin.

5 But the one workshops that were upbeat were
6 the workshops where therapists were doing
7 affirmation therapy, and they were so happy with
8 their work, and their clients loved it. And,
9 now, that's unusual. I've never known an
10 adolescent who likes to go to a therapist, but
11 these kids were going to the therapist so they
12 could get their -- their drugs, their puberty
13 blockers and their -- their hormones. And so, of
14 course, they thought this was going to bring them
15 great joy and happiness, and repeatedly these
16 doctors were asked, "Well, do you know of any
17 side effects?" "Well, no, really -- really not
18 sure." That was in 2018. Now we know that
19 puberty blockers not only cause sterile
20 [verbatim] bones -- or puberty blockers cause
21 brittle bones and Osteoporosis, causes cancer,
22 causes heart disease, causes mood swings, acne,
23 and incontinence.

24 Most of the kids who have undergone bottom
25 surgery struggle with incontinence because they
26 messed around with those -- machinery down there
27 below, and that's not a very pleasant lifestyle.
28 The -- the side effects are horrendous.

29 And I believe this idea of affirmation
30 therapy is a medical scandal of this century. It
31 outpaces the -- the scandal we had of lobotomies
32 about 50 years ago. And back in those days the
33 doctors were performing lobotomies because they
34 really cared about their patients. They thought
35 this would help them with their mood swings and
36 their depressive episodes, but now we know that
37 that was absolutely barbarous.

38 The doctor -- one -- I think it was the
39 doctor that started doing lobotomies got a
40 Nobel -- Nobel prize for his contributions to
41 medicine, and now we know it was horrific. How
42 long are we going to experiment with this
43 affirmation therapy until all of a sudden we
44 realize it's doing more harm than good?

45 And, once again, I'll repeat I know the
46 schools are not handing out puberty blockers or
47 hormones, but they're encouraging kids to follow

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Barry Neufeld (for Respondent)
In chief by Cnsl J. Kitchen

1 that path.

2 Q Do people tend to learn so much about the
3 problems and issues faced by the group that they
4 supposedly hate?

5 A Oops. Can you repeat that again?

6 Q Sure. Do people tend to try to learn so much
7 about the problems and issues faced by the group
8 of people that they supposedly hate?

9 A No. And that's a reason for a lot of conflict
10 in -- in organizations in society and between
11 countries. If we really understood our enemy, we
12 might be able to solve the conflict without
13 resorting to violence and threats and exclusion.

14 Q Would you -- would you prefer it if -- if the
15 queer and trans teachers would actually take the
16 time to -- to listen to what you have to say and
17 speak with you and enter into a dialogue with
18 you?

19 A That's all I've ever asked for. I've never asked
20 for SOGI 123 to be dismantled. I've asked for
21 dialogue. I -- I believe it needs to be
22 modified. I need -- I think we need to look at
23 the unintended consequences and come up with a
24 better solution as to how to make gay and trans
25 kids feel comfortable in school. What's
26 working -- it's not working right now. It
27 needs -- it needs revision.

28 Q At least one of the teachers was upset with this
29 reference to Mafia and Bolshevik. So I'll --
30 I'll read this, and then I'll get you to comment
31 on it. It's page 83 of the publications book.
32 You say, "The movement --" and -- well, actually,
33 I'll read the whole thing:

34
35 Trans ideologues ignore contrary
36 evidence and competing interests. They
37 disparage alternative practices, and
38 they aim to muffle skeptical voices and
39 shut down any disagreement, and the
40 movement has to keep patching and
41 shoring up its beliefs, policing the
42 faithful, coercing the heretics,
43 pushing apostates and terrorizing
44 spineless professionals because as soon
45 as it -- its furious efforts flag for a
46 moment or someone successfully stands
47 up to it, the whole charade is exposed.

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That's what happens when your dogmas are so contrary to obvious basic everyday common sense. The transgender future is not the right side of history and activists are using Mafia and Bolshevik techniques to convince the most powerful sectors of our society to acquiesce to their demands.

So I'll ask you what you were talking about here generally, but I would also ask you to when you -- when -- when you answer that to speak to what you mean by "Mafia and Bolshevik techniques."

A Well, you missed the most important summary of that paragraph when I'm saying, "Shame on you, physicians." I'm not talking about teachers here.

Q Okay.

A And it's their refusal to enter into dialogue. Their stubborn refusal to enter into dialogue and their extreme attempts to shut down dissenters is what I claim as the Mafia and Bolshevik techniques. That's exactly what the Bolsheviks and the Mafia do. You don't disagree with the bosses. If you do, they snuff you out. And that's no way to come to a better understanding of -- of our human problems is to -- is to shut down dialogue and shut down any dissenting views. There needs to be more discussion on how we deal with -- with kids who claim themselves to be transgender and kids who identify as being same-sex attracted.

Q But shouldn't they have to right to avoid talking to you because they've -- they've claimed that what you say they find hurtful and shocking and upsetting?

A No. You need to deal with unpleasant ideas if you're going to get to the truth.

Q Okay. Another one. This is page 85 of the publication book. I have a few questions about this statement, but I'll just read it first. But I'm -- and this is you speaking:

But I'm opposed to indoctrinating all society, especially the little ones with an unscientific gender fluid

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1 ideology to accommodate the less than
2 half of 1 percent of people who
3 experience fleeting GD. This will
4 confuse and disorient many other
5 special needs children into choosing a
6 path that leads to sterility, acne,
7 bone density issues, and even cancer.
8 My primary motivation is to protect the
9 majority of children.

10
11 So I'll kind of go through it top to bottom. Why
12 do you use the word [verbatim] "indoctrinating
13 all society"?

14 A Well, they're trying to impose this on everybody,
15 and they -- like I say, they -- they've captured
16 academia. They've captured the medical
17 community. Now they've captured K-to-12
18 education. And this gender ideology is only
19 comforting to children who are -- are -- a small
20 percentage of people that are experiencing gender
21 dysphoria. But now they want to push this
22 ideology on everybody, and it's confusing to a
23 lot of children. It's especially confusing to
24 cognitively-challenged children such as autistic.

25 Many, many children who have transitioned
26 were actually autistic, and that should make us
27 suspicious. I have said that public [verbatim]
28 before and people have thrown up their hands.
29 Oh, what a horrible thing to say about autistic
30 children. Well, I'm not saying it to put
31 autistic children down, but they are vulnerable
32 to this kind of black-and-white teaching that
33 kids can be born in the wrong body, and they
34 latch on to it.

35 And, of course, the other subgroup of
36 children who are being pushed to transition are
37 foster children. They're in care of the state.
38 They don't have any thoughtful parent that would
39 do their own research and say, "Hey, hold it.
40 This is not a good idea." They're being cared
41 for by representatives of the state, and the
42 state of the NDP government of British Columbia
43 is all for affirmations therapy. A foster child
44 in Alberta would not run into the same problem.
45 I'm proud to say I was a foster child in Alberta.

46 Q Well, but the -- the queer and trans people, or
47 at least the queer and trans teachers in this

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1 case, they say they're right. They say that
2 science is on their side. They're scientifically
3 correct; it is true -- it is true that there's
4 multiple genders and you can change them. If
5 they are right, shouldn't they be able to silence
6 you because they're right and you're wrong?

7 A No. I know -- I was surprised they said science
8 supports them. I haven't seen the science. I've
9 looked and looked and looked for six years. I
10 can't find it. But, okay, so they're right.
11 I -- I've said it before that when you have
12 policy that's made by everybody who thinks the
13 same and agrees you're going to end up with poor
14 policy. You're better off to have some people on
15 your planning committee or steering committee or
16 think tank that think -- have different points of
17 view and you're going to up with a better
18 product, a better idea, a better policy in the
19 end because you're more likely to anticipate
20 unintended side effects. And if they are right,
21 and they've got the research to prove it, I'll
22 change my mind. But they have certainly let me
23 know that they have absolutely no intention of
24 changing their minds.

25 Q But if they're right, you know, shouldn't you
26 have to keep your belief to yourself and --
27 and -- and never express them as a -- as a school
28 trustee?

29 A If they're right, they shouldn't be afraid of me
30 presenting a different idea. Why are they so
31 afraid of me presenting an alternate idea? They
32 know in their heart of hearts that their -- their
33 philosophy is assailable, that their
34 philosophy -- holes can be poked into it, and
35 they care about kids or they claim they care
36 about kids, and they don't want me coming along
37 and talking the kids out of doing something that
38 they believe is in the best interests of those
39 children. But everybody -- if -- if -- if you're
40 going to a doctor and he's prescribing some new
41 therapy, it's a good idea to get a second opinion
42 and even a third opinion and then decide for
43 yourself. You don't blindly follow everything
44 the first doctor tells you, especially when
45 you're dealing with life and death issues.

46 Q You say, "My primary motivation is to protect the
47 majority of all children," but what -- what --

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1 what -- what about those who would interpret that
2 to say that you're trying to exclude transgender
3 children?

4 A Often times in the school board we had to make
5 decisions -- especially with learning disabled --
6 that was in the best interests of everybody. And
7 we had one famous parent who came to us who had a
8 special program for dyslexic readers, and it was
9 going to cost \$10,000 a year, and I'm sure it
10 would have helped this poor boy, but being that
11 we were custodians of the district budget, we
12 said no. That would take away from resources for
13 the so-called "normal kids," and we turned down
14 the request for a special program to benefit this
15 severely learning-disabled child. It's a
16 principle in democracy that you do what's best
17 for the majority.

18 What's happening in society today with DEI,
19 we're having a tyranny of the minority, and
20 what's good for them -- the one-half or 1 percent
21 of them -- could do a lot of damage to the 95,
22 99 percent of kids that are not transgender.
23 There are kids getting railroaded into the
24 transgender wagon when that's not their problem.
25 They may have obsessive compulsive disorder.
26 They may have a oppositional defiance disorder.
27 They may be sexually abused. There may be myriad
28 of other problems that are causing them grief,
29 but because of the prominence of this gender
30 ideology, too many kids are getting railroaded
31 into it, and teachers are not assessment
32 psychiatrists. They're not therapists. They
33 should not be messing in this area. They need to
34 go back and focus on teaching kids how to read
35 and to write and -- and be critical thinkers.

36 Q What about the suggestion that the teaching of --
37 of gender theory or gender ideology helps
38 transgender students or queer -- transgender or
39 queer students and teachers to -- to feel safe
40 and to feel like they're not bullied?

41 A You know, teaching something that isn't true
42 might make you feel safe for now, but it can --
43 if it's going to lead to more dangerous
44 consequences in the future, I think we need to be
45 honest and tell them that, you know, here's --
46 here's -- here's one way of looking at it. And,
47 you know, you might be born in the wrong body and

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1 you can change your -- your -- your gender
2 because it's just a social construct, and it
3 might make them feel good in the short run, but
4 in the long run if this convinces them to follow
5 the very draconian path of puberty blockers,
6 hormones, and surgery, they're going to be ending
7 up in a much worse place further down the road.
8 So I think it's more important that we look at
9 what's best for our kid's future than how they're
10 feeling right now.

11 Q So we don't teach gender theory either as a
12 theory or as a fact as it's currently being done.
13 What should the school board -- speaking as a
14 trustee, what should the school board do to
15 ensure that queer teachers and students are not
16 being bullied?

17 A You know, I wish I had the answer for that, but
18 my solution is go back to the drawing board, get
19 more participants, not just the members of the
20 ARC Foundation, not just a few activist teachers
21 from UBC, but a broad cross-section of society
22 and come up with something that's -- that's more
23 workable. And in the meantime, stop this
24 emphasis on pronoun use and transitioning at
25 school secretly from parents. That's got to
26 stop. I agree with Dr. Hilary Cass. If a child
27 presents in school with some distress about their
28 gender, the first people you need to tell are the
29 parents, and, secondly, the child should be
30 referred to an independent therapist, not the
31 school psychologist because the school
32 psychologists are members of the B.C. Teachers'
33 Federation, and their hands are tied. They can
34 only go with affirmation -- affirmation therapy.
35 An independent therapist. And give those
36 therapists the encouragement that they can
37 explore other issues that might be bothering the
38 child without accusing them of conversion
39 therapy.

40 And even Dr. Kenneth Zucker says some kids'
41 gender dysphoria is so bad that the best thing
42 for them is to transition, but it's a very, very,
43 very small percentage. But they need to be
44 assessed by a therapist who is open-minded, is
45 not ideologically driven and who uses best
46 practices and has the ability to discern if
47 there's other mental health problems going on

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1 that's driving this child's angst.

2 Q This is page 86 of the publication book. You
3 posted about Kathy Jones [phonetic]. Did you
4 post this during the 2018 trustee election cycle?

5 A Yeah. Because it's -- Facebook [indiscernible -
6 rapid speech] 2018. And she ran -- ran for
7 school board back then.

8 Q Sorry for the different highlighting, but I just
9 want to make sure I don't miss any statements.
10 This is short, but there's a lot here and some
11 stuff that upset the teachers. You said:

12
13 [Indiscernible - rapid speech] of
14 SOGI 123 primary grade lesson plans and
15 then promotes same-sex marriages,
16 questioned traditional marriage, teach
17 children to question traditional gender
18 expectations, disrespect and dishonour
19 parents and the values they teach.

20
21 But what would you say to those that say, you
22 know, the -- the -- the -- cause at least -- at
23 least one or two of our teachers who identified
24 as queer, they were also lesbian, so they -- they
25 had -- you know, they -- they were homosexual in
26 their orientation, at least sometimes. Isn't
27 this -- isn't this being mean to or
28 discriminatory towards or demeaning of gay people
29 when you talk about the promoting the same-sex
30 marriages and questioning traditional marriage?

31 A It was just a factual description of --
32 [indiscernible - rapid speech] analysis of the
33 SOGI 123 lesson grade plans. And I think Rob --
34 witness Rob Bogunovic pointed out that some of
35 these resources were around long before SOGI 123,
36 and they're controversial. Many cultural groups
37 do not approve of same-sex marriage, but SOGI has
38 put it front and centre that it's an important
39 building block in their thing.

40 And, you know, if -- if adults want to live
41 together and love each other, I'm not going to
42 oppose it. But when they start questioning and
43 criticizing traditional marriage of men and
44 women, I think they're crossing the line because
45 research after research have [verbatim] shown
46 that children thrive the best in a stable, happy
47 marriage of a mom and a dad. There is some

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research out there that say kids -- some kids thrive in same-sex marriage, but they're very small sample size, and I don't know of any of them that have been replicated.

The one thing that is -- I -- I agree with is that in SOGI 123 school staff are taught to disrespect and dishonour the parents and encourage their students to do that as well 'cause any parent that disagrees with SOGI 123 will be branded as a hateful person, and that was clearly stated by our B.C. Human Rights Commissioner Kasari Govender. She was responding to 5,000 protesters in Surrey, most of them of the Sikh culture, who were marching down King George highway and protesting the Education Minister Rachna Singh and her support for SOGI 123. It's -- it's causing a general uproar and not just between Christians and gays but -- but Sikhs and Muslims as well.

Q You said, "In Grade 10 and 12 SOGI 123 introduces the topic of sodomy." What did you mean by that? What's the -- what are you referring to there, "the topic of sodomy"?

A I had books that I purchased that are available in school libraries. They don't have photographs, but they actually have cartoons of -- of boys engaging in sodomy, and not wanting to upset the members of the committee, but sodomy involves inserting a penis in another man or woman's anus, and it's very explicit. And once -- sodomy is quite often the preferred method of a sex offender when he's abusing a child, and by making that familiar to kids, Grade 10 and 11 -- they're -- they're still legally children. By making -- normalizing that and desensitizing them to that, it blurs their boundaries and makes them more vulnerable to be talked into doing something that they would later regret.

Q But --

A What adults do -- consenting adults do is their own business, but I don't think we need to introduce this subject to any student in -- who's in the age of K to 12.

CNSL L. WADDELL: James, before you move on to the next question, are -- whereabouts are you in your direct? I notice that you're at about Tab 11 in

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1 the book.

2 CNSL J. KITCHEN: I'm probably at least 50 percent of
3 the way in.

4 CNSL L. WADDELL: Okay. I ask because I've been --
5 you know, I've made a few little objections on
6 the record on -- that apply pretty broadly, but
7 the vast majority of evidence that you've been
8 eliciting from this witness --

9 CNSL J. KITCHEN: Is irrelevant. I know.

10 CNSL L. WADDELL: No, no, no. Relevance or not, it's
11 utterly inadmissible on other bases, never even
12 mind relevance. So if we're going at this pace
13 throughout, I'm going to start objecting more a
14 little bit. I'm not going to -- I'm not going to
15 go to do it outright because mostly I think we
16 can just strike most of this evidence, but that's
17 why I was just asking because it's a tremendous
18 amount of time with a witness giving what is
19 effectively all opinion evidence that he's just
20 not qualified to give. I understand the stuff
21 about what he was thinking with the posts. I'm
22 sure the Tribunal's happy to see you actually
23 going to the posts now, but, yeah, there you go.

24 CNSL J. KITCHEN: Ms. Waddell, this whole case is
25 about somebody regarding Mr. Neufeld's opinion as
26 discriminatory and/or hateful towards them. You
27 have put into the record hundreds of pages of
28 internet postings by this man and said, "This is
29 the basis of our human rights complaint." And
30 then when I take you through it, you say he can't
31 opioniate about the opinions that you say are
32 hateful.

33 If this case was a matter of -- oh, here we
34 go, Whatcott 2.0, you know, throw all the gays in
35 jail, and the gays are awful, and let's beat up
36 the gays -- we wouldn't be having this
37 discussion. I wouldn't be here. You might have
38 noticed. I've never been counsel of
39 Mr. Whatcott. That was no accident. Very
40 familiar with who he is and the stuff he says and
41 the cases he's got. Okay? There's a particular
42 case that he's got that you like to quote, and I
43 can't blame you for it. That's not what we're
44 dealing with. We're dealing with a man that you
45 can never say with good conscience actually hates
46 any gay or transgender person.

47 And, yes, I'm going to bring him through the

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1 evidence to say over and over and over again, to
2 demonstrate over and over and over and over again
3 how much he cares about these people, how much he
4 sympathizes with these people, how much he
5 understands these people, how much he has sought
6 to understand these people, how much he is
7 interested in helping these people, how much he
8 has risked in order to give his perspective on
9 what is best and helpful and loving and good for
10 these people. And you can sit there and say it's
11 irrelevant and it's impermissible and all the
12 rest of it, and so be it. Maybe we'll get to the
13 end and he'll be stuck with a huge fine and
14 labeled a bigot and a hater, but at least he will
15 have opportunity to defend himself for his own
16 good conscience to demonstrate that he actually
17 is the opposite. He actually cares about these
18 people; you just haven't been able to recognize
19 it because of your world view or your client's
20 world views or somebody else's world views.

21 Now, you'll noticed [verbatim] that I've
22 done my examinations longer than you've liked,
23 but I've finished within a reasonable time, and
24 I'm going to do so with this witness. And, yes,
25 it will be the longest, and that should surprise
26 no one who has any experience with this kind of
27 process considering he is the respondent, and you
28 are the one who has put in hundreds of pages of
29 his comments and suggested they're all
30 discriminatory and hateful.

31 So whether this is just -- this whole thing
32 is a foregone conclusion because you're going to
33 strike everything and the Tribunal's going to
34 agree with everything you say, we're going to
35 respect the administration of justice enough in
36 this country to at least go through the process
37 and create a public record for posterity.

38 So, no, I'm not going to be five days with
39 this witness. As I've told you, I'm 50 percent
40 in. I think that's accurate. Well, that makes
41 sense. I'm three-quarters of a day in. I told
42 you I'd be a day and a half. I think that's
43 pretty darn reasonable. So I don't mind if you
44 object, but I think it's a little bit ridiculous
45 to suggest that he can't opine about the
46 opinions that you've said he's not permitted to
47 say.

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1 THE CHAIR: All right. Mr. Kitchen, I think --

2 CNSL L. WADDELL: Sorry, can I reply, Madam --

3 THE CHAIR: Go ahead, Ms. Waddell. Yes, go ahead.

4 CNSL L. WADDELL: Sure. I -- I think, Mr. Kitchen,
5 that you perhaps misheard or misapprehended what
6 my objection was about. As I said, I'm happy to
7 see you taking this witness to the posts, and I
8 disagree about relevance; we know about that,
9 but -- because of the [indiscernible - rapid
10 speech], but I -- I take no issue with your
11 leading him through each of these and why he made
12 the posts, but he has repeatedly testified as
13 though he is an expert in a variety of subjects,
14 which he is not, and so it's the opinion stuff
15 that is -- some of that has taken up a tremendous
16 amount of time. I'm all about the time. If it's
17 going to be fastest for me not to object because
18 you're making your way through -- you are within
19 the bounds of the estimate that you gave us, so
20 I'm not suggesting you're taking too long, but I
21 just don't want to waste our time with stuff that
22 is inadmissible.

23 So if it's going to be faster for me to
24 object to the opinion evidence, then I will do
25 that. If it's not going to be faster, I will
26 leave it and just ask the Tribunal to strike it
27 all after.

28 THE CHAIR: All right. So as I understand it right
29 now, Ms. Waddell has interjected to get a sense
30 of how fast we're going so that she can decide
31 whether she wants to start making objections,
32 and, Mr. Kitchen, we'll deal with those
33 objections on their merits.

34 As you well know, counsel are entitled to
35 make objections and have them dealt with
36 according to the laws of evidence which we apply
37 loosely here -- or informally, I would say, but
38 which still have some bearing on the way that we
39 spend our time together in a legal proceeding.
40 So I don't hear an objection now, but if
41 Ms. Waddell does object, that's a proper part of
42 the process, and we'll deal with it on the
43 merits. But you can go on with your next
44 question now.

45 CNSL J. KITCHEN: Thank you.

46 A May I request a 10-minute break? I -- I need --
47 I need a break from questioning for about 10

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1 minutes.

2 THE CHAIR: All right --

3 CNSL J. KITCHEN: Chair, I -- I would ask that we just
4 take our afternoon break, and I would request
5 that we do it -- we -- we take a 20-minute break
6 in anticipation of probably not taking any more
7 for the rest of the day.

8 THE CHAIR: All right. That's fine. We can take a
9 20-minute break. Just come back at 3:05. Thank
10 you.

11
12 (WITNESS STOOD DOWN)

13
14 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS) [2:45:06]
15 (PROCEEDINGS RECONVENED) [3:05:41]

16
17 BARRY NEUFELD, a witness,
18 recalled.

19
20 THE CHAIR: All right, everyone. Come on back. There
21 we go. Ms. Waddell, did you have something --
22 okay. Yeah.

23 CNSL L. WADDELL: Yeah. I was just going to say
24 before we get going -- and this was just spawned
25 by something that you said, Madam Chair, before
26 the break that just caused me some concern
27 that if I will have objections, I'll make them
28 because I've made sort of some standing
29 objections, which at least I -- I thought it was
30 clear they were sort of standing on a few
31 different subjects: Hearsay, opinion, to some
32 extent relevance. And so I wanted to make it
33 clear that they weren't -- you know, the -- the
34 things I objected to weren't just the -- the
35 sentences before those objections, but I've
36 intended to make them standing objections with a
37 view to not interrupting perpetually. So as long
38 as that's clear to everybody and that I will
39 later be applying to strike things that fit
40 within those objections, I'm going to try and do
41 my best to sit on my hands with a view to getting
42 through this as much as possible. But, yeah, I
43 just wanted to make clear the objections that I
44 have made are -- are standing ones. They're
45 not -- they're not narrow and specific.

46 THE CHAIR: I -- I've understood that and have -- we
47 have not made rulings on that on the

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1 understanding that you're going to be making
2 submissions about what -- that you're not opposed
3 to them -- to hearing the evidence, but you'll
4 make submissions about what we should do with it
5 later, and all I meant, I think, in saying that
6 we'll deal with objections on their merits is
7 that when you're asking for a decision, then
8 we'll -- we'll make it.

9 CNSL L. WADDELL: Yeah. Well, to use Mr. Neufeld's
10 words, when I can no longer sit on my hands, I
11 will object, and you will decide. I got it.

12 THE CHAIR: Yeah.

13 CNSL J. KITCHEN: Chair, I have a concern about this
14 approach. I don't think it's appropriate to
15 suggest that we can just go in after the fact and
16 strike swathes of the record as if it didn't
17 happen. I think -- I think the better way to
18 deal with this is if my friend is -- is convinced
19 she has a solid basis to strike, then that means
20 she has -- she has a solid basis to suggest to
21 you that it can't be admitted in the first place.
22 And I have no interest in wasting my time or
23 Mr. Neufeld's time which can be much better spent
24 than being here doing this.

25 So I suggest that if she -- the -- the --
26 the hearsay stuff, there's only one thing that he
27 said that's hearsay that -- that we would rely on
28 for the truth of its contents, and that's the
29 stuff that he was told by some of the people he
30 worked with when he was a probation officer. And
31 I've made that comment. Anything else we are not
32 relying on for the truth of its contents, and
33 it's like -- like we dealt with earlier here last
34 week. It's like, okay, well, the Tribunal will
35 decide whether or not to put any weight on that,
36 and in that case, of course, you'd put zero
37 weight because it's hearsay. So that's fine. We
38 don't have to worry about striking it out of the
39 record. We trust the Tribunal to put no weight
40 on it.

41 When it comes to relevance and opinion, I --
42 I think -- I think the fair thing to do is if my
43 friend really does believe that I'm eliciting
44 evidence that is not -- not relevant or not
45 opinion, she object, we go through the motions.
46 We'll make our -- we'll make our submissions and
47 you'll make a ruling. I have no interest in

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1 trying to elicit a bunch of evidence that's going
2 to be struck from the record as if it was never
3 said. I don't see how that's an appropriate way
4 to go. So I'm not just sitting here going
5 through the motions. I have better things to do.
6 I have other clients to serve. I'm not going to
7 go through the motions. If you don't want to
8 hear this evidence, Chair, let's have it out and
9 have you make that ruling. I'm putting in
10 evidence what I think is appropriate insofar as
11 it is relevant and helpful and it goes towards
12 the issues and supports the argument that I
13 intend to make at the end. So I -- I would
14 invite my friend to intervene when she thinks she
15 has a -- a basis to do so, and then we handle it
16 the way we would in any other case.
17 THE CHAIR: Ms. Waddell?
18 CNSL L. WADDELL: Well, I'll just say that that wasn't
19 the position that you took when I stated various
20 objections for the record on a sort of go-forward
21 basis. You didn't ask me to articulate them
22 then, so to the extent that your client has
23 already provided a fair bit of opinion
24 evidence -- and I note just -- he's got his hand
25 up. I'll --
26 CNSL J. KITCHEN: We disagree about that. So let's --
27 I want -- I want to hear it from you.
28 CNSL L. WADDELL: You know, we can -- I have no
29 problem if -- if we're going to deal with it now,
30 but we'll have to go back and look at every
31 single piece of opinion evidence that he's given;
32 so --
33 CNSL J. KITCHEN: Well, I didn't get to --
34 CNSL L. WADDELL: -- anyway --
35 CNSL J. KITCHEN: -- go back to stuff I didn't object
36 about --
37 THE CHAIR: Mr. Kitchen -- sorry. While --
38 CNSL J. KITCHEN: As the Chair -- as the Chair --
39 THE CHAIR: While -- while Ms. Waddell --
40 CNSL J. KITCHEN: -- just said, so I don't get how you
41 get to do that.
42 THE CHAIR: -- is speaking you need to -- while
43 Ms. Waddell is speaking, you can't speak. So
44 Ms. Waddell was still speaking. So just kindly
45 don't interrupt her. If you have something else
46 to say at the end, I'll always come back to you,
47 but please don't interrupt Ms. Waddell while

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1 she's speaking.

2 Ms. Waddell, can you finish?

3 CNSL L. WADDELL: So with respect to the evidence
4 that's already been heard, I think I was quite
5 clear that further to my friend's desire to move
6 through with things, I was making categorical
7 objections, and I said repeatedly, "We will apply
8 to strike," and I didn't hear any dispute from my
9 friend at those times. So if he would like me to
10 interrupt and object going forward, that's fine,
11 but with respect to all the evidence that we've
12 heard to date, I'm going to maintain the process
13 that I started, which was I categorically object
14 to this type of evidence. I will bring a motion
15 to strike, and that's how I suggest doing it.

16 THE CHAIR: Okay. Mr. Kitchen, did you have something
17 else to say? And I see Mr. Neufeld's hand up.

18 CNSL J. KITCHEN: Yeah, let's -- yeah.

19 THE CHAIR: Mr. Neufeld, is there something -- do you
20 have a question?

21 A The first objection was that I was presenting
22 hearsay evidence. I'm an experienced witness in
23 court, and I was taken aback that I was accused
24 of giving hearsay. What I wanted to bring across
25 was how I responded to those remarks, which would
26 give an indication of why I have experience in
27 the area. It was my response that I wanted to
28 get on the record, not necessarily what I heard
29 people say.

30 THE CHAIR: Thank you. All right. Are we -- can we
31 move on now? Or, Mr. Kitchen, is there something
32 else you wanted to add?

33 CNSL J. KITCHEN: The only thing I wanted to say was
34 just to point out to my friend was that, as you
35 had said, you know, we don't -- we don't get
36 to -- we don't get to object to stuff after the
37 fact, and, you know, obviously we don't get to
38 just throw out a categorical objection and
39 then -- and then -- and then go back and point
40 out where they -- where they think that actually
41 applies. I don't think that's fair or right.
42 That's part of the reason why I've -- yes, I have
43 somewhat modified my position that this is
44 probably not a right -- not a -- not a good way
45 to proceed, never a way that I've proceeded where
46 people just say, "Well, I'll apply to strike it
47 at the end." Maybe Ms. Waddell is experienced

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1 with that. I will candidly admit I do not. We
2 deal with objections in the moment. So, you
3 know, that's why I'm -- that's why I'm saying
4 it's probably a better way to -- to go. I think
5 it's more fair to everybody that we -- that we
6 deal with it.

7 This witness is important, so, you know, if
8 it takes extra time to go through the objections,
9 so be it. Let's -- let's -- let's go through
10 with them, and -- and -- and not sort of, you
11 know, leave room to suggest that after the fact
12 my friend can go back through the record and say,
13 "Well, this is where -- this is where my
14 categorical upfront objection would have applied,
15 so, you know, now we can strike that." I don't
16 think that's fair. So --

17 THE CHAIR: All right.

18 CNSL J. KITCHEN: -- that's part -- that's --
19 that's -- that's all I was pointing out with
20 that.

21 THE CHAIR: Okay.

22 CNSL J. KITCHEN: It just goes to why I think this is
23 a better way to go going forward. And, yes, I
24 have changed my position because I've arrived at
25 what is a better position.

26 THE CHAIR: Okay. So just to summarize where we're
27 at, the complainants have put on the record their
28 intention to make categorical objections and
29 object to -- later to the admissibility of a lot
30 of this evidence and asked to have it stricken.
31 They can make those arguments. Mr. Kitchen, you
32 can respond in your closing arguments.

33 Going forward, Mr. Kitchen has indicated his
34 position that the complainants -- that the proper
35 approach is for the complainants to object to
36 evidence they say is inadmissible when it's
37 rendered, so we're going to do that. And all I'm
38 going to ask, respectfully, is that when we're
39 engaging in that, we need some tight submissions
40 on those. I don't want to be spending 15 minutes
41 on every objection. It should be a snappy
42 objection, snappy response, moving on. So that's
43 my only request because I do have a concern that
44 once we start getting into objections, we're just
45 going to be us talking, and I really just want to
46 hear from witnesses about relevant information.

47 Okay? So let's carry on. Let's plan to stop

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Barry Neufeld (for Respondent)

In chief by Cnsl J. Kitchen

1 around maybe 4:20 so we can have some logistical
2 planning, but that will give us just over an hour
3 here. Go ahead, Mr. Kitchen.

4 CNSL J. KITCHEN: Thank you.

5 EXAMINATION IN CHIEF BY CNSL J. KITCHEN, continuing:
6

7 Q Barry, none of us want to talk about this word
8 that we were talking about before the break, I
9 understand that, but I think we can also all
10 agree that it is something of a trigger word or a
11 word that particularly upsets people. I think
12 it's fair as -- you know, that we -- we deal with
13 it. It's the only time you use it, of course,
14 but it should be dealt with. I think if I
15 understand the concern of the complainants and of
16 the witnesses is that -- what -- what about --
17 what about male students, male teachers -- male
18 students and teachers who say that learning
19 about -- learning about the fact that this occurs
20 with -- with -- with -- with, you know, people,
21 teenagers, adults, teachers, students -- this
22 activity occurs, and they say that learning about
23 it in the school or knowing that it is learned
24 about the school [verbatim], it makes them feel
25 included and that if -- if -- if it was not
26 taught or learned about that it would make them
27 feel excluded and therefore discriminated
28 against. What would you say in response to that?

29 A Well, I suppose if that's part of their
30 lifestyle, they're entitled to that opinion. I'm
31 not comfortable with it, but, yeah, they may have
32 a point there. I'll concede that.

33 Q Do you want to see, you know, teenagers that
34 identify as -- as -- as gay and teachers that
35 identify as gay feeling like they're equal
36 members of society at school?

37 A Yes, they should, but their behaviour in the
38 bedroom should not be the basis of their
39 acceptance. Their behaviour in the bedroom is a
40 private matter, and it doesn't need to be brought
41 out in class.

42 Q What should be the basis of their equal inclusion
43 and participation in society at school?

44 A Their character, their academic achievement,
45 their athletic ability. These are much more
46 important than -- than -- I think -- I think
47 there's too much emphasis put upon our sexual

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Barry Neufeld (for Respondent)
 Submissions by Cnsl L. Waddell
 Submissions by Cnsl J. Kitchen

behaviour as being such an integral part of
 our -- our identity. Our identity should be so
 much bigger than that. And I think they're
 giving their sexual preferences and identity too
 much priority as part of their identity.

I wouldn't want a married teacher to explain
 to his class how he pleasures his wife with oral
 intercourse. It's none of their business. It
 should be a private matter. And it's not
 necessary to be brought up in school. There's --
 and this goes beyond SOGI into comprehensive
 health care as recommended by the United Nations.

CNSL L. WADDELL: Sorry. Objection. Relevance.

A Okay.

THE CHAIR: Mr. Kitchen, brief response?

CNSL J. KITCHEN: Well, it might help the remedy if I
 heard from my friend a couple -- at least a
 couple sentences as to how it's irrelevant.

SUBMISSIONS BY CNSL L. WADDELL:

CNSL L. WADDELL: Sure. Yeah, sure. Well, we're here
 to -- according to your client, to talk about
 SOGI, and he's just said going -- you know,
 analogizing to something different, going beyond
 SOGI. And so my position is whatever he's about
 to say is going to be irrelevant.

SUBMISSIONS BY CNSL J. KITCHEN:

CNSL J. KITCHEN: It's not our position that we're
 here to talk about SOGI. It's our position that
 here -- we're talk -- we're here to talk about
 the fact that everything Mr. Neufeld has said has
 been a criticism of ideas and beliefs and not an
 attack on any people, and therefore it's not
 discriminatory and hateful, and so we are talking
 obviously, then, a lot about beliefs, and if he's
 going to talk about where beliefs are coming
 from, which he has said before some of them come
 from the UN -- I don't think that's really
 controversial -- he needs to be permitted to talk
 about that because that's the whole -- that's our
 whole case is that he is criticizing belief
 systems, not attacking people, and so he needs to
 be able to talk about that to -- obviously, you
 know, there's reasonable limitations, but to some

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Barry Neufeld (for Respondent)
Reply submissions by Cnsl L. Waddell
In chief by Cnsl J. Kitchen

1 degree, he needs to be able to talk about where
2 those ideas come from.
3 THE CHAIR: Okay. Ms. Waddell, brief reply. This is
4 a good pace.

5
6 REPLY SUBMISSIONS BY CNSL L. WADDELL:

7
8 CNSL L. WADDELL: Yeah. Yeah. So the -- the posts
9 that you have -- you have argued that the belief
10 system and what he's talking about in those posts
11 is SOGI 123. It's not about people, and so he's
12 just straying into something that is not about
13 SOGI 123 ergo we say it's not relevant to what is
14 contained in the posts.

15 THE CHAIR: Okay. All right. Well, I'll let
16 Mr. Neufeld give his brief answer, and it can go
17 to weight on this one. Go ahead, Mr. Neufeld.

18
19 EXAMINATION IN CHIEF BY CNSL J. KITCHEN, continuing:

20
21 A SOGI 123 includes most of the elements of the
22 United Nations recommendations on comprehensive
23 health. The two are not inseparable. SOGI 123
24 builds on the united nations comprehensive --
25 comprehensive health -- sexual health curriculum.

26 CNSL J. KITCHEN:

27 Q Barry, there's also another time in this post
28 when you say something, I think, that only
29 appears once in all of these, and -- and you say,
30 "Evil ideology to affect our children's minds."
31 What is the evil ideology you're referring to
32 here?

33 A Once again, I believe that people who promote
34 this ideology really believe that it helps kids,
35 but the fact that they won't allow any criticism
36 of it and they try to silence voices like mine
37 frustrates me and makes me believe that it's an
38 evil ideology because it's being forced on our
39 children, it's being forced on parents, and
40 there's coercion here. And I'm not saying that
41 the teachers are evil. I'm not -- but I am
42 saying the ideology is evil when it's being
43 forced and shoved down people's throat and their
44 faces rubbed in it.

45 Q Okay. You say here in another Facebook post --
46 I'm on page 88. This one starts on page 87. You
47 say:

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Barry Neufeld (for Respondent)
In chief by Cnsl J. Kitchen

Finally, I have this to say to those persons who currently identify as lesbian, gay, transgender, queer, two spirit or whatever: You have nothing [emphasized] to fear from me or my colleagues. I've devoted most of my life to supporting at-risk and vulnerable youth. We avoid bullying, putdowns and condescension of any kind, and we encourage you to be the best person you can possibly become. We understand the ideology of nonbinary gender is comforting to you when you suffer from so much cognitive dissonance about the gender you were assigned at birth. We understand you find the concept of gender fluidity comforting when you feel like you are losing your mind. Contrary to what you have been told to believe, we actually love all students no matter their sense of self-identity, and we care about you, but love must be tempered with truth. Be patient. You will most likely grow out of your feelings of confusion and angst.

Okay. Why did you feel like you needed to say something like this about lesbian, gay, transgender, queer, and two spirited people having nothing to fear from you?

A Because I had been told so many times that I was a hateful person, that I hated these people, and I wanted them to be destroyed or go away. That's the farthest thing from my mind, and I had to emphasize that I care about all kids no matter what their orientation, no matter what their identity. And my advice for them to slow down is advice I'd give to any adolescent who was rushing to make important decisions that would affect the rest of their lives. Slow down. Be patient.

Q Okay. This is one that has caused a lot of consternation. We're on page 97 of the publication book. You say, very short post:

The elites will destroy all gay kids.

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1 They are culling them from the gene
 2 pool. Make no mistake about it. The
 3 trans agenda is eugenics. They are not
 4 on the side of the LGBT+. Don't ever
 5 think they are. Snakes are everywhere.
 6 More division and the destruction of
 7 humanity.
 8

9 I'll break this down. Who are the elites? When
 10 you say, "The elites will destroy all gay kids,"
 11 who are you talking about there with the elites?

12 A Government policy makers.

13 Q What about the teachers when they say that they
 14 feel like this is targeting them? The teacher
 15 witnesses, I mean, in this case, the queer and
 16 trans teachers.

17 A When there was an investigation into the
 18 Tavistock Centre in England, there was a quote
 19 that a whistleblower made that they thought it
 20 was a joke that pretty soon --

21 CNSL L. WADDELL: Sorry, objection. This is --
 22 objection. This is hearsay, also irrelevant.

23 A I can find the source for this. This is so
 24 important. I can find the source in the Hilary
 25 Cass report.

26 THE CHAIR: All right. Just a moment, Mr. Neufeld.

27 A Soon there will be no more gay kids in England.

28 THE CHAIR: All right. Mr. Neufeld, just on the
 29 objections --

30 CNSL L. WADDELL: So can we determine the --

31 THE CHAIR: -- we have --

32 CNSL L. WADDELL: -- objection first before the
 33 witness answers.

34 THE CHAIR: Sorry. I was muted. I was trying to say
 35 that.

36 CNSL L. WADDELL: Oh, okay.

37 THE CHAIR: So, sorry, Mr. Neufeld, just -- please
 38 just wait until we resolve the objection, and
 39 then we'll come back to you. So we have the
 40 objection was hearsay. Is that the basis of the
 41 objection, Ms. Waddell?

42 CNSL L. WADDELL: Yeah. Yeah. He's speaking to
 43 material that's not in the record.

44 CNSL J. KITCHEN: Right. So I understand the hearsay
 45 thing. I mean, you know, the Cass report, I
 46 think, is obvious. And it may actually yet still
 47 come in because it may come in in response to

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1 what the Commissioner's throwing in as expert
2 evidence without an expert. But even if it
3 doesn't, it's fine. If it doesn't, we're not
4 going to rely on the truth of the contents.
5 The -- the -- the -- the -- the purpose of this
6 is to let Barry go through with that so we can
7 hear what he has to say, what he believes. And
8 I'm not going to ask the Tribunal to put weight
9 on what he has heard except for the one exception
10 I've already told you about. But to simply let
11 him talk and then put weight on what he has to
12 say, and to -- to -- to some degree, we need to
13 let him do that so that we can actually get to
14 what he is going to say about what he believes
15 and, you know, trust the Tribunal to -- to not
16 put weight on what the -- the content of what he
17 said he's heard, but from what he -- he is
18 saying. I take my friend's point. You know,
19 I -- I -- I can ask Barry to be very brief or to
20 summarize or to not quote as much as possible and
21 get to what he is saying, but we -- we need to
22 allow him a little bit of leeway to get to the
23 what he is saying.

24 THE CHAIR: Ms. Waddell?

25 CNSL L. WADDELL: Yeah. I have no difficulty if
26 you -- if he just wants to talk about, you know,
27 his belief, and so brevity is -- is fine, but
28 he's been repeatedly referring to materials that
29 aren't part of the record and going into quite a
30 bit of detail. So if you can keep it brief, and
31 he can be focussed on his belief and this post,
32 I'm happy.

33 CNSL J. KITCHEN: Fair. But he needs to be able to
34 say his source, right. Again, I think that goes
35 back to -- to -- to the test; right? If he's
36 some ignoramus spouting off from some basement
37 somewhere, then it's more likely that what he's
38 saying is -- is -- is potentially hateful. If he
39 has a reasonable source, and he's a reasonable
40 person who's actually reasonably considered this
41 and reasonably talking about it, then it's a lot
42 more questionable that we actually have hate
43 speech as opposed to something that's just an
44 offensive opinion about something that is
45 actually occurring in the world and is -- is just
46 simply part of the public debate and public
47 discussion. So he needs to be able to at least

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1 say the source of where he's getting it. Yes, I
2 can -- you know, we can -- we can suggest that he
3 needs to -- to quote as little as possible,
4 et cetera, but he needs to be able to at least
5 identify the source. So if he wants to say "the
6 Cass report," I mean, that's -- that's -- that's
7 fair that he say I -- this is my source as
8 opposed to quoting it.

9 THE CHAIR: Okay.

10 CNSL L. WADDELL: That's fine.

11 THE CHAIR: Go ahead.

12 CNSL L. WADDELL: But going -- sorry. I have no
13 difficulty with that, Mr. Kitchen. But I'm just
14 going to ask, Chair, going forward, objections
15 and anything in litigation, as I'm sure my friend
16 knows, usually take three parts: Initiator,
17 responder, reply, and my friend consistently
18 lengthens that process. In keeping with your
19 desire to have it short, I'd ask that the
20 Tribunal make an effort to try and keep it to
21 just those initial three steps, so...

22 CNSL J. KITCHEN: That's fine. That's fine.

23 THE CHAIR: Thank you.

24 CNSL J. KITCHEN: I'm just -- trying to be helpful.
25 I'm trying to work out a solution with my friend.
26 That's all.

27 THE CHAIR: Okay. And I agree. I think that that's
28 the appropriate process here. In this case
29 Mr. Neufeld can answer the question. And as I
30 think you've both acknowledged we will not be
31 placing any weight on what he's saying the
32 substance of these sources are saying because
33 they're not in front of us and that's not -- he's
34 not an expert witness who can talk to it, but if
35 it's shedding light on what he thinks and why he
36 thinks it then he can spend a modest amount of
37 time on that. So go ahead, Mr. Neufeld.

38

39 EXAMINATION IN CHIEF BY CNSL J. KITCHEN, continuing:

40

41 A This post was six years ago, and when I made a
42 post and added comments in front, it was quite
43 often a summary or -- or a paraphrase of
44 something that was in the article. And I think
45 you'll agree -- you've seen enough of my posts --
46 that this does not sound like my writing style.
47 I believe it was copied and pasted from inside

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Barry Neufeld (for Respondent)
 In chief by Cnsl J. Kitchen
 Submissions by Cnsl L. Waddell
 Submissions by J. Kitchen

1 that article, and it was intended to stir up
 2 interest so people would take the time to click
 3 on the link for the article and read it for
 4 themselves. But I -- I'm absolutely positive
 5 that that are -- is not my words. I copied and
 6 pasted from another source. Probably the article
 7 cited.

8 CNSL J. KITCHEN:

9 Q To make this process a little bit faster, could
 10 you summarize for us what you understand this
 11 post to be referring to about destroying the gay
 12 kids, transgender being eugenics, et cetera. Can
 13 you -- can you explain to us what's going on
 14 here.

15 A Well, when kids are fully transitioned, they're
 16 most often very likely to be sterile and --

17
 18 SUBMISSIONS BY CNSL L. WADDELL:

19
 20 CNSL L. WADDELL: Objection. Opinion.

21 THE CHAIR: Yeah. Mr. Kitchen?

22 A I -- that is not just an opinion. Everybody
 23 knows that.

24 THE CHAIR: Okay. Thank you, Mr. Neufeld. We have to
 25 resolve the objection. Go ahead, Mr. Kitchen.

26
 27 SUBMISSIONS BY CNSL J. KITCHEN:

28
 29 CNSL J. KITCHEN: When my friend says "opinion," what
 30 she means is expert opinion. So you can't --
 31 you're not supposed to give an expert opinion
 32 when you're not an expert. I understand that.
 33 I'm with my friend on that. However, you have to
 34 understand the context of the case. He is
 35 opinionated about ideologies, about beliefs. And
 36 my friend has said, Well, those opinions are
 37 hurtful, hateful, discriminatory. You can't give
 38 those opinions. So now he's talking about his
 39 opinions. He's explaining his opinions. And he
 40 needs to be able to do so. We're not going to
 41 suggest at the end of this -- I mean, we're not
 42 going to get to the end of this and -- and write
 43 in legal argument that what Mr. Neufeld said is
 44 authoritative because he is the leading world
 45 psychologist on all this, and he's got, you know,
 46 three PhDs, and he's been qualified as an expert
 47 witness. That's not where this is going. You --

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Barry Neufeld (for Respondent)
Submissions by Cnsl J. Kitchen
Reply submissions by L. Waddell

1 you can't be your own expert witness. You know,
2 I can't call Mr. Neufeld as his own expert
3 witness in this case, and I wouldn't anyways even
4 if he's got some qualifications, he probably
5 doesn't have enough to be qualified as an expert
6 witness. I'm not pretending he is. Okay? So
7 it -- it -- it's one thing, you know, for my
8 friend to suggest, well, you know, this is an
9 inadmissible expert opinion 'cause, you know, we
10 might -- we might rely on his expert opinion.
11 That's not the context of this case. He's --
12 he's giving his thoughts, I would call it that
13 more than I would call them expert opinion, okay,
14 about his thoughts that are about ideas that my
15 friend is claiming are hate speech. He needs to
16 have the ability to say what he believes is true
17 as part of explaining his thoughts so we can
18 provide the context to whether or not this is
19 hate speech, and he can argue whether or not it's
20 hate speech, without having to argument in a
21 vacuum. Okay? Not trying to solicited expert
22 opinion. We're not going to rely on it as expert
23 opinion. I would say it's not expert opinion.
24 It's -- it's -- it's thoughts. Thank you.

25 THE CHAIR: Ms. Waddell gets the last word. Go ahead,
26 Ms. Waddell.

27 CNLSL J. KITCHEN: Yes.

28
29 REPLY SUBMISSIONS BY CNLSL L. WADDELL:

30
31 CNLSL L. WADDELL: Yeah. So a lay witness cannot give
32 opinion evidence, whether it's their own opinion
33 or someone else's. They have to provide
34 firsthand information. If he wants to say, "I
35 believe that" and speak to his own belief or "I
36 think that," I have no difficulty with that. But
37 right now he's stating an opinion as fact, which
38 is impermissible for a lay witness.

39 THE CHAIR: Thank you. I agree that to the extent
40 this evidence would be proffered -- and I
41 understand it's not being proffered for the
42 proposition that when kids are fully transitioned
43 they're very likely to be sterile. That's not
44 appropriate, and we would not make a finding
45 based on Mr. Neufeld's statements to that effect
46 because he's not an expert in this proceeding.
47 What we would -- the most we could make of

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Barry Neufeld (for Respondent)
In chief by Cnsl J. Kitchen

1 this is that that's what he thinks and so it
2 would be more helpful if we could be clear in the
3 questions.

4 And, Mr. Neufeld, to the extent you can, in
5 the answers, to be saying this is what you think.
6 But to the extent it's presented as fact, I agree
7 that's not a fact that we would take from this
8 witness. So go ahead, Mr. Kitchen.

9 CNSL J. KITCHEN: I'll do my best to include "What do
10 you believe" in my questions, so hopefully that's
11 helpful. I would have thought it was obvious,
12 but I will do that to try and make it a little
13 more clear on the record.

14
15 EXAMINATION IN CHIEF BY CNSL J. KITCHEN, continuing:

16
17 Q Okay. Barry, I asked you what do you believe
18 about what is going on here with -- with these
19 words and these statements about the trans-ing
20 [verbatim] of the gay kids? I'm just -- I'm just
21 saying that to summarize it. Tell us what you
22 believe about what's going on and what motivated
23 you to -- to -- to post this.

24 A Well, once again, I -- I think probably some of
25 these medical professionals think they're doing
26 good, but it's -- it's having the effect of
27 just -- it's having the effect of destroying kids
28 who would normally grow up to be gay. That's
29 what I believe. And -- however, I do believe
30 there's a lot of money to be made in -- in
31 gender-affirming care and I also believe that
32 some of them don't have the highest ethics.
33 They're doing it for the money. I believe that.
34 Many people believe that.

35 Q Okay. I'm just -- so you understand what's going
36 on, I'm going to you through the posts, and I'm
37 trying not to ask questions about ones that I
38 think he's already spoken to.

39 Okay. Let's go to this one. I have a year
40 on this one. So this is page 142 of the
41 publications book, September 24th, 2020.

42 THE CHAIR: You're not sharing your screen,
43 Mr. Kitchen. I don't know if you were intending
44 to be.

45 CNSL J. KITCHEN: Thank you. Okay.

46 Q There we are. This is a post from you. You
47 said:

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Barry Neufeld (for Respondent)
In chief by Cnsl J. Kitchen

1
2 I believe it's a great injustice to
3 gender-confused individuals to pretend
4 to believe the comforting lie that they
5 were born with a male mind and a female
6 body or vice versa.
7

8 Who's suffering the great injustice here? You
9 believe -- who do you believe is suffering the
10 great injustice?

11 A The children who are gender confused, AKA gender
12 dysphoric.

13 Q And why do you refer to it -- that they were born
14 with a male mind and a female body or vice versa?
15 You refer to that as a lie. Why do you refer to
16 it as a lie? Why do you believe it's a lie?

17 A Well, I know that's -- that's a standard belief
18 of people, like our first two teachers, that
19 believe you can change from a boy to a girl and
20 you can be born in the wrong body. The one
21 teacher said that you don't change your gender;
22 you just discover what your gender really is.
23 I -- I can't find any scientific proof that this
24 theory is -- is -- is true. They believe it with
25 the enthusiasm of a new convert to a new
26 religion, and I believe it's a great injustice
27 to -- to tell kids that they were born in the
28 wrong body. A male mind in a female body or vice
29 versa. That's -- that's what it means. I
30 believe that's a delusion.

31 Q Here you said -- this is page 163. You said:

32
33 I've only objected to certain parts of
34 an educational curriculum called
35 "SOGI 123" and more specifically the
36 ideas in a document called "The Gender
37 Spectrum."
38

39 Do you know what -- what you're referring to
40 there when you say "The Gender Spectrum"?

41 A Yeah. I've -- I've seen an exercise that's been
42 done in the SOGI class and they've got a graph, a
43 line graph, with male on one end and then the
44 children are supposed to come up and put a mark
45 either beside the male symbol or the female
46 symbol, or if they figure that they're somewhere
47 in between, make a mark there, and so that means

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Barry Neufeld (for Respondent)
In chief by Cnsl J. Kitchen

1 their gender identity is on a spectrum, and you
2 can be 90 percent male and 10 percent female or
3 40 percent female and 60 percent male. And the
4 document that explains that and is the basis for
5 that exercise is called "The Gender Spectrum:
6 What Every Educator Needs to Know."

7 Q Just down here you say:

8
9 I will never give up fighting to
10 protect vulnerable, traumatized, and
11 easily-manipulated children from being
12 used as guinea pigs in a
13 state-sponsored experimentation.

14
15 What are you referring to or what do you believe
16 is going on with the guinea pigs and a
17 state-sponsored experimentation?

18 A This new gender-affirming care and especially
19 gender bottom surgery is still experimental.
20 Puberty blockers --

21 CNSL L. WADDELL: Sorry to interrupt. This is the
22 witness's belief?

23 CNSL J. KITCHEN: It was in my question --

24 A My belief --

25 CNSL J. KITCHEN: -- Ms. Waddell. It was my -- in
26 my --

27 THE CHAIR: Okay.

28 CNSL J. KITCHEN: -- question. Okay? I'm trying to
29 help you out here. I'm not --

30 A It's -- it's my -- it's my belief. And I -- I
31 also believe that it's experimental. It's -- I
32 can't find any -- any scientific proof that
33 it's -- it's reputable, that it's -- it's true,
34 that it's -- it's good science. It's -- it's
35 new. It's never been around in history before.
36 And it's still in the experimental stage, and I
37 don't think kids should be encouraged to trust
38 that and -- and to put their faith in -- in an
39 experiment -- experimental procedures that we
40 still don't know all the side effects of.

41 Q What do you say in particular to Teacher C who
42 identifies not merely as queer but someone who
43 has -- they're transgender and they've
44 transitioned, and they say, "Well, this makes me
45 feel targeted by you as a -- as a transgender
46 teacher when you -- when you talk about the
47 transgender kids this way"? Do you think that's,

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1 you know, fair or reasonable for them to -- to
2 suggest that they're being targeted by your
3 comment?

4 CNSL L. WADDELL: Can I just -- sorry. Objection.
5 If -- if the witness is being asked if he thinks
6 he was targeting, that's fine, but the witness's
7 views of the subjective feelings of the teachers
8 is pure -- is speculative and has zero value. I
9 think where you're going is, you know --

10 CNSL J. KITCHEN: I can --

11 CNSL L. WADDELL: -- does the witness think that it's
12 targeting, and I'm fine with that question.

13 CNSL J. KITCHEN:

14 Q Barry --

15 A Well, I'm sorry -- I'm sorry if he thinks he's
16 targeted, but I was not referring to transgender
17 teachers there. I was referring to children.
18 And I certainly wasn't targeting them. I was
19 concerned about them. He's a grown up. He
20 should be able to deal with his feelings.

21 THE CHAIR: And just for the record, as a reminder,
22 Teacher C uses she/her pronouns, so if we could
23 kindly get that right.

24 A Okay. She.

25 CNSL J. KITCHEN: I leave it to Barry and what's
26 appropriate for his conscience. I had to make a
27 choice about my conscience when dealing with this
28 witness. I do have a concern with the Chair
29 engaging in compelled speech with the witness.
30 If it's -- if he doesn't perceive it as compelled
31 speech, and it doesn't violate his conscience,
32 then that's fine. But if it does, then I -- I
33 have to -- I have to express that -- that
34 concern.

35 This case has not been about pronouns, and I
36 think that's good, and I don't think we should
37 make it about pronouns partly because I think we
38 get into the realm of compelled speech, and I
39 think that's a very unfortunate place for us to
40 be if we are in a realm where an adjudicated body
41 is engaging in compelled speech with witnesses.
42 So I'll -- I'll leave it alone if -- if -- if
43 Barry doesn't raise it as a problem because it's
44 his conscience, not mine, that matters. But I do
45 have to note that concern on the record.

46 THE CHAIR: Thank you for the concern. At the Human
47 Rights Tribunal, our expectation is that everyone

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1 who comes to this Tribunal has their identity
2 respected, and that includes using their proper
3 pronoun. So if -- hopefully we don't have an
4 issue. If we do have an issue, that's where --
5 that's where the issue will end, and that will be
6 the outcome of the issue. So go ahead with your
7 next question, please.

8 CNSL J. KITCHEN:

9 Q Okay. This post has got something that's a
10 little bit new. Now, this is -- you're talking
11 here -- and I think you talked a couple other
12 places about this particular case with a Supreme
13 Court judge and a girl in B.C. who was
14 transitioning.

15 CNSL L. WADDELL: And -- sorry. I'm not -- I'm not
16 objecting to anything. I'm just noting that you
17 may not know, Mr. Kitchen, but I believe -- I'm
18 not sure about this, but I believe some of the
19 names that appear in this post may be protected
20 by a publication ban. I don't think probably
21 what you're going to ask the witness necessitates
22 mentioning them, and I'm also not certain about
23 that information. So I'm just alerting you to
24 it, and I'll let you proceed however you like.

25 CNSL J. KITCHEN:

26 Q Okay. So, Barry, it looks to me like -- and to
27 the degree that you can remember, of course, this
28 was four years ago, but what -- this -- this bit
29 here that I've got highlighted, these are the
30 words of the mother. Is that your understanding?

31 A Yes. I know her personally.

32 Q Okay. And where did you -- do you recall where
33 you pulled these words from?

34 A Discussions with her.

35 Q Okay. So are you quoting -- are you quoting her,
36 like, from oral comments she's made, or are
37 you -- are you picking her comments that are in
38 writing from somewhere on the internet?

39 A No, I was -- it was personal.

40 Q Okay. Well, they're her words, not yours. So I
41 won't question you about them. That's what I
42 wanted to know. Thank you.

43 I think this is -- is this -- is this the
44 same case here, this post? You're talking about
45 the same case?

46 A Yes.

47 Q Okay. I believe one of the teacher witnesses was

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concerned about this post, said that there's something -- something weird and -- and I'm not sure what else she said, but something weird and -- and not good about you talking about body parts and breasts, et cetera. So you said here:

As encouraging as this report may be, there's a downside. This child is 17 years old and almost old enough to make the decision herself. She has probably already modified/damaged her body so much that she can never have children and thus her breasts are useless. She will probably threaten suicide. I just hope and pray she does not succeed.

What are you talking about here, and -- and why did you post this?

A Well, I know the end of the story. She backed off and then decided she did not want a mastectomy, and she's now quite happy with being a woman, and she's a very pretty woman with a nice figure.

CNSL L. WADDELL: Okay. Objection on the basis of that's hearsay. I mean, it's already in, so we can always deal with it later.

A I saw her in person. It's not hearsay.

CNSL J. KITCHEN: Ms. Waddell, it's not hearsay. Can we -- we need to be fair about the objections. He wasn't talking about anything anybody said. He was talking about his own observations.

THE CHAIR: What he said was the end of the story is that she backed off, she's very happy, and now she has a nice figure. So, I mean, some of that stuff is hearsay, but we've heard it, so we can move on. Whether or not she's happy, all of that is hearsay, but we can move on.

CNSL J. KITCHEN: It's hearsay if the source of it is her saying she was happy, but you can observe happiness in a person.

THE CHAIR: All right. Let's move on. I've heard it. Let's move on.

CNSL J. KITCHEN:

Q Do you think it's appropriate -- do you believe it's appropriate, Barry, for you to raise concerns as a school board trustee about

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1 17-year-old girls potentially having surgeries to
2 remove body parts or, you know, potentially
3 commit a suicide?

4 A My -- my driving motive is to protect children
5 from abuse, and if this story causes any child to
6 have second thoughts and reconsider, then it's
7 worth the trouble that I get into.

8 Q I think the only thing I want to talk about here
9 is -- and, again, this is going to your belief --
10 you say:

11
12 And I realize that this gender fluid
13 ideology is a comfort to people who
14 struggle with gender dysphoria, but I
15 do not believe it's true. I believe
16 the gender you were assigned at birth
17 is one that is with you all your life.
18 Every cell of your body is either male
19 or female.

20
21 Can you just briefly tell us what you mean when
22 you say, "I believe the gender you were assigned
23 at birth is the one that --" 'cause we talked
24 about this in -- in the evidence. "The gender
25 you were assigned at birth is the one that is
26 with you all your life."

27 A I haven't taken too many courses in biology, but
28 I remember that very clearly about the XX and the
29 XY chromosomes, and they're -- they're throughout
30 every cell in your body, and they can't change
31 every cell in your body. They can do a bit of
32 cosmetic surgery on the outside, but I believe
33 that the gender you're born with at birth is one
34 that is with you all your life.

35 Q We -- we heard a lot of talk from the three
36 teachers witness [verbatim] about the existence
37 thing, and it's -- it's -- it's the effect --
38 not -- not your intention that matters, but do
39 you believe that you are in effect denying a
40 transgender person's existence when you say
41 something like this?

42 A Of course I'm not designing -- denying their
43 existence. I'm disagreeing with what they
44 believe about their existence, but I'm not
45 denying their existence.

46 Q But what if they say that that's what they've
47 experienced when you say something like this?

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1 A Well, I'm sorry, but my opinion is different than
2 their experience. So many of them talk about
3 their lived experiences, the basis on which they
4 base their truth. I do not believe that our
5 lived experience will always lead us into truth.
6 I believe the Christian concept that the heart is
7 desperately wicked who can know it.

8 Q But what if expressing that belief is -- is -- is
9 perceived by somebody else to be hateful or
10 hurtful or harmful to them?

11 The teachers believe that because they
12 perceive it that way you simply shouldn't be able
13 to express that belief as a school trustee. Does
14 that make sense to you?

15 A You know, just because I'm a school trustee
16 doesn't mean that I'm not a person without -- out
17 opinions. I was elected to represent the
18 community and -- and even though I'm a school
19 trustee, I have opinions that caused people to
20 vote for me. It's up to me -- it's -- it's
21 incumbent upon me to express my -- my opinions
22 even though they might disagree with a certain
23 class of people.

24 Q Okay. We're going to move into another batch of
25 comments.

26 THE CHAIR: Can you orient us in the book here? I'm
27 just trying to follow along.

28 CNSL J. KITCHEN: Yep. Page 204 --

29 THE CHAIR: And --

30 CNSL J. KITCHEN: -- in the publication book.

31 THE CHAIR: Okay. And this is a top -- what is this
32 in?

33 CNSL J. KITCHEN: Oh, I'm -- I'm starting in the
34 middle here of page 204.

35 THE CHAIR: Okay. But what is this? Is this a
36 transcript of which -- just -- it's okay. You
37 know what, I can find it. It's okay.

38 CNSL J. KITCHEN: Yeah, no, no. It's --

39 THE CHAIR: 33. Tab 33.

40 CNSL J. KITCHEN: This is an interview with -- with
41 Laura-Lynn Tyler Thompson here, so...

42 THE CHAIR: Perfect. Thank you.

43 CNSL J. KITCHEN: I think it is, anyways. That's my
44 understanding here. This is -- this is one of
45 the older transcripts I was provided with.

46 THE CHAIR: I'm with you. Tab 33.

47 CNSL J. KITCHEN: Thank you.

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Barry Neufeld (for Respondent)
In chief by Cnsl J. Kitchen

1 Q Okay. You use the word "grooming" here, which,
2 again, it seems to be a trigger word, a word
3 that's very upsetting for -- for -- for the
4 teachers and the complainants. So you say:

5
6 When I got invited to the SOGI parent
7 information night, I didn't have a clue
8 what it was, and yet here it had been
9 going on. Now, the other thing, I
10 spent a career as a probation officer.
11 My speciality was supervising sex
12 offenders, and in my role as a
13 specialist I interviewed an awful lot
14 of them, their victims, because I had
15 to write sentencing recommendations for
16 the courts, and red flags started going
17 all over the place when I heard that
18 schools were getting kids to question
19 their sexuality. That's exactly what
20 sex offenders do. Now the progressives
21 are getting rather upset that we keep
22 referring to *grooming*, that this
23 program grooms kids. Well, maybe the
24 people who designed it didn't realize
25 that it has that effect, but it's an
26 unintended side effect, and it does a
27 lot of the work that child predators
28 used to have to do themselves.

29
30 Now, this has been interpreted as to suggest
31 that -- that the teachers are somehow groomers or
32 pedophiles or sex offenders or some other
33 terrible thing. What do you say -- and, again,
34 we -- the -- you know, your intention doesn't
35 matter, but -- but -- but, you know, the -- the
36 interpretation of it does, so -- so do you think
37 it's -- how do you interpret what you said in --
38 in light of their interpretation being, you know,
39 very, very terrible?

40 A I've said it before. I am not accusing teachers
41 of molesting children, but I am accusing them by
42 their comprehensive sex ed and the SOGI lesson
43 plans of blurring boundaries, of making kids
44 desensitized to kinky sexual behaviour, and we
45 see that in the explicit books that they're
46 allowing into the libraries. This has the effect
47 of grooming a kid and getting ready to be

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Barry Neufeld (for Respondent)
Submissions by Cnsl L. Waddell
Submissions by Cnsl J. Kitchen

1 vulnerable for a predator. And I told you I -- I
2 work with groups of sex offenders, and they all
3 said it's so much easier to seduce kids now
4 because --

5 CNSL L. WADDELL: Okay. Objection.

6 A No. It's my professional opinion. It's my lived
7 experience.

8 THE CHAIR: All right. We have to deal with the
9 objection.

10 A It's important --

11 THE CHAIR: Oh, Mr. Neufeld, we have to deal with the
12 objection. Ms. Waddell, do you want to explain
13 your objection?
14

15 SUBMISSIONS BY CNSL L. WADDELL:

16
17 CNSL L. WADDELL: Sure. It's hearsay and on a
18 highly-contentious subject. It's utterly
19 inappropriate. It's -- I appreciate the Tribunal
20 can take a more relaxed view to hearsay, but
21 that's our objection.

22 THE CHAIR: Thank you. Mr. Kitchen?
23

24 SUBMISSIONS BY CNSL J. KITCHEN:

25
26 CNSL J. KITCHEN: Necessary for explaining what
27 Mr. Neufeld is getting at here. Not his
28 intention, but how to objectively treat the
29 comments. He obviously is not saying the
30 teachers are groomers; they're interpreting it
31 that way. He's responding to that interpretation
32 which is -- which is central to the -- to the
33 legal analysis on -- on how to legally interpret
34 it. So it's necessary for him to refer to this
35 because he said here in writing -- he said
36 elsewhere in writing, and he's saying in his
37 testimony, "Why do I think this? Because of my
38 experience as a probation officer." So it's
39 necessary. It's probative for the same reason
40 that I just said as far as -- as far as the legal
41 test. That makes this probative. Okay?

42 Is it reliable? Because if it's not
43 reliable, we can't put it in. I get that. Is it
44 reliable? He spent 25 years as a probation
45 officer writing hundreds of reports for the court
46 that are accepted and relied upon. This is what
47 you do for a living. You know what you're doing.

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Barry Neufeld (for Respondent)

Submissions by Cnsl J. Kitchen

Reply submissions by Cnsl L. Waddell

1 You do -- you do it long enough to be good enough
2 at it to be able to do it for 27 years. It's
3 your job just like it would be the job of an ER
4 doctor or a nurse or anything elsewhere where we
5 would say, Okay. They're talking about their
6 field. They're talking about something they
7 experienced. That's within their understanding.
8 Not as experts. Not as experts, but just -- just
9 as witnesses. Okay? And they say, "Well,
10 patients told me this," which makes sense. I've
11 heard this all the time. "This is what patients
12 tell me." We say -- we -- we let it in often
13 enough because we say, Well, that's reliable.
14 There are indicia of reliability here. This
15 witness has no motivation to lie or make it up.
16 It's consistent with what they do. It's part of
17 their professional obligation. They regularly do
18 this when they make reports. Other people rely
19 on it and consider us reliable even though
20 there's no necessary -- there's no verification
21 for it. There's no recording of the conversation
22 that he's had with his people that he's a
23 probation officer over. It's reliable in this
24 case.

25 THE CHAIR: Okay. Thank you.

26 CNLSL J. KITCHEN: That's my submission.

27 THE CHAIR: Ms. Waddell, last word.

28
29 REPLY SUBMISSIONS BY CNLSL L. WADDELL:

30
31 CNLSL L. WADDELL: Sure. I have no difficulty if the
32 witness wants to say he believes this thing
33 because of his experience as a probation officer,
34 but he's providing some very specific -- he's
35 saying these people told me a very specific
36 thing. It's -- the hearsay itself is
37 extraordinarily old. It has zero reliability.
38 There's no way to test it and on that basis, we
39 submit that it shouldn't be permitted.

40 THE CHAIR: All right. Thank you. We would not or
41 could not rely on Mr. Neufeld's evidence to
42 conclude that for the truth of -- to conclude
43 that sex offenders have said that this makes it
44 easier to be a predator. The most we could take
45 from this is that this is what Mr. Neufeld thinks
46 and is the basis for why he's writing these
47 things, not that it's true. So -- and I agree

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Barry Neufeld (for Respondent)
In chief by Cnsl J. Kitchen

1 that it's highly potentially prejudicial. In any
2 event, I think we've heard that answer. I don't
3 think -- it's not useful to spend a lot of time
4 about suggesting that we should be taking the
5 truth of what sex offenders told Mr. Neufeld in
6 his career as a probationary officer as true.
7 That's not anything we would make a finding
8 about. So you can go on to your next question,
9 Mr. Kitchen. I'm not going to strike that or
10 anything, but it's not something we would rely on
11 for its truth.
12

13 EXAMINATION IN CHIEF BY CNSL J. KITCHEN, continuing:
14

15 Q Mr. Neufeld, do you think this should be
16 interpreted as you suggesting that trans or queer
17 teachers are grooming kids because they're --
18 they're -- they're sex offenders or they're
19 pedophiles or they're groomers or they're --
20 et cetera?

21 A No. They should not take it to mean that I am
22 thinking that the teachers themselves are
23 grooming kids -- molesting kids. But they are
24 inadvertently grooming them and making them more
25 vulnerable to the advances of minor attracted
26 persons.

27 Q You have the word "unintended" in here, and you
28 have -- you have -- you have it a number -- a
29 number of other places where, you know, look,
30 I -- I care about these people. I'm -- I'm --
31 they have nothing to hear -- fear from me,
32 et cetera. And I asked the teachers if they
33 intended to believe you, and usually -- I don't
34 know if always, but usually the -- the answer
35 generally was, Well, no, I don't believe him
36 because, you know, a guy who says some of the
37 stuff he said -- you know, I don't believe him
38 when he says that he doesn't hate me or I don't
39 need to fear from him. What do you make of that,
40 at least sometimes, the unwillingness to take you
41 at your word?

42 A It's the same resistance I'm getting from this
43 Tribunal in discrediting the professional
44 experience that initially -- as I said, the red
45 flags started going off all over the place.
46 Doesn't matter what I say. People will twist it.
47 And instead Glen Hansman said that I shouldn't be

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Barry Neufeld (for Respondent)
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1 around children. Many of the public have taken
2 that to mean that I'm a child molester myself,
3 and that's a hard insult to live with. It's a
4 hard insult to live with that I devoted my life,
5 27 years of it, to protecting children from abuse
6 and have it be dismissed by this Tribunal who
7 dismiss it all as hearsay. It's because truth
8 doesn't matter in this Tribunal. The only thing
9 that matters here is ideology.

10 Q Did you ever say anything about how trans or
11 queer teachers shouldn't be around kids?

12 A Never.

13 Q Sorry. I'm just going through it. I'm trying to
14 only bring you to posts that you haven't already
15 spoken to.

16 Let's go to this one:

17
18 I have never seen such hatred unleashed
19 due to this -- the diversion --

20
21 I think you meant to say "diversity."

22
23 -- inclusion and equity. One student
24 in one of our schools told me that I
25 was such a horrible person my mother
26 should have aborted me with a coat
27 hanger.

28
29 We won't talk about that. It's -- it's hearsay.
30 Where are they learning all this hatred from?
31 What did you mean by -- well, tell us who the
32 "they" is. I think -- I think it's students, but
33 you tell us who you're talking about. And why --
34 why did you say this? Where are they learning
35 all this hatred from?

36 A I saved most of the negative email communications
37 in Facebook messenger reports. They're there. I
38 haven't gone back and reviewed them, but I just
39 could not get over -- over -- over, and a lot of
40 them were -- a lot of it was coming from some
41 students. I really don't think very many came
42 from teachers because I think they were more
43 careful to not -- not to insult me. But this --
44 this program is supposed to create harmony and --
45 and equity and inclusion, and yet it stirred up a
46 lot of hate and why -- why does it stir up so
47 much hate? My motive was not to do away with gay

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1 or trans kids. I was trying to prevent their
2 abuse. And -- and -- and the -- the sentence --
3 original sentence has now been defined as anybody
4 who is white and heterosexual. That's a quote
5 from Robin DiAngelo, and, unfortunately, I don't
6 have the reference for it, but -- and it's -- the
7 whole gender ideology is based on critical
8 theory, critical race theory, queer theory. I've
9 studied it all.

10 Q You say next:

11
12 Another reason this makes it sound like
13 a religion is that if you're into the
14 ideology, then realize something's
15 wrong, and you want to get out, you get
16 treated like a heretic, and they go
17 after you. In the old days, we used to
18 burn heretics at the stake.
19

20 What are you talking about here?

21 A Well, the Tribunal does not want to hear from
22 the two detransitioners, and they would make that
23 very, very clear. When they were part of the
24 trans community, they were accepted. When they
25 tried to get out -- and -- and I've -- I've --
26 I've witnessed that myself. The hatred that's --
27 that's hurled at -- at people who try to
28 detransition is -- is awful. And just because
29 they realize they made a mistake and they want to
30 get out, why all the hatred? Why do they get so
31 much support and encouragement when they just
32 come out as trans and start to -- start the
33 transition and yet when they try to get out,
34 there's no support. No counselling.

35 CNSL L. WADDELL: This is all --

36 A Nothing available.

37 CNSL L. WADDELL: Sorry. This is all -- all hearsay.

38 A I know. And it's hearsay. You don't like to
39 hear it.

40 THE CHAIR: Mr. Neufeld, just a moment. Go ahead,
41 Ms. Waddell.

42 CNSL L. WADDELL: So Mr. Neufeld is, again, providing
43 testimony about what he thinks the experience of
44 other people is. He may be right; he may be
45 wrong. But they're also not just any people.
46 They are witnesses that the Tribunal has
47 expressly said don't have evidence to give that

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Barry Neufeld (for Respondent)
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1 is relevant to this -- the legal issues in this
2 dispute which makes the hearsay concern all the
3 more acute.

4 THE CHAIR: Thank you. Mr. Kitchen, briefly.

5 CNSL J. KITCHEN: This is observations, not what he's
6 been told. Therefore it's his direct
7 acknowledge. It's not hearsay which means he can
8 talk about it. He can't quote them. He can't
9 say this detransitioner told me this. I get
10 that. That's hearsay. But it's not hearsay for
11 him to speak to his direct observations. Now,
12 going back to the issue we had earlier is we --
13 we can't mischaracterize his observations of
14 people as hearsay because it's not. It's his
15 direct knowledge. It's his observations.

16 THE CHAIR: Ms. Waddell?

17 CNSL L. WADDELL: Perhaps you're able to ask the
18 witness questions to ground it. I have read --
19 maybe he's personally read something. That's --
20 that's fine. You know, the truth of its contents
21 is still going to be hearsay, in my submission,
22 but there's no foundation been laid for any
23 direct knowledge here. It's -- it's just being
24 wholesale introduced as truth of its contents
25 about these peoples' experience, which is not
26 only hearsay, but it's also not relevant to this
27 proceeding.

28 THE CHAIR: Thank you. Well, we have ruled on the --

29 CNSL J. KITCHEN: Um --

30 THE CHAIR: Admissibility. Oh, Mr. Kitchen, sorry,
31 we're just going to do the three-part process.
32 We've ruled on the admissibility of --

33 CNSL J. KITCHEN: No, I -- sorry. I got booted out,
34 and so I --

35 THE CHAIR: Oh, okay.

36 CNSL J. KITCHEN: -- missed the last seven seconds.

37 THE CHAIR: All right. Did you hear all of
38 Ms. Waddell's last reply?

39 CNSL L. WADDELL: No, I didn't, I'm sorry. I -- I
40 don't know if it was -- maybe it was just nothing
41 important. I don't know.

42 THE CHAIR: The gist of it was that there hasn't been
43 a foundation laid for Mr. Neufeld's direct
44 knowledge on this subject.

45 CNSL J. KITCHEN: Okay. I heard that.

46 THE CHAIR: Right. Okay. So I agree that it's
47 hearsay if Mr. Neufeld's going to be testifying

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1 about the experience of other people beyond what
2 he's observed, and particularly when they're
3 people that we've already ruled have experiences
4 that aren't relevant to any of the legal issues
5 in the proceeding. It's hard to see any
6 probative value of that. I've kind of lost the
7 thread of where we're at in this -- in this
8 publication that you've brought us to,
9 Mr. Kitchen. So what I'm just going to suggest
10 is maybe you could ask another question. I just
11 don't -- I'm with your friend in terms of it's
12 not useful to hear a lot of kind of information
13 about other people's experiences that aren't here
14 and that aren't really at issue in the complaint
15 and which we don't know the extent to which
16 Mr. Neufeld's relying on his personal
17 observations to draw his conclusions about. So
18 if we could come back into the publication, that
19 would -- that would help me know where we're at
20 and what we're talking about.

21 CNSL J. KITCHEN: Sure.

22
23 EXAMINATION IN CHIEF BY CNSL J. KITCHEN, continuing:

24
25 Q Barry, how many detransitioners do you personally
26 know?

27 A Four.

28 Q What have you -- what have you observed in their
29 life that relates to what you said here about the
30 ideology and treated like a heretic, et cetera?

31 A Well, a lot of what I understand about them is
32 based on what they told me, but I can't use that.
33 That's hearsay. Tribunal's not interested in
34 that. The only thing I could say is that they
35 appeared to act optimistic and hopeful and based
36 on what they told me I was surprised that they
37 felt so optimistic and hopeful.

38 Q What did you understand them to be optimistic and
39 hopeful about?

40 A Their future.

41 Q Their future as what?

42 A Their future prospects in life. And all four of
43 them were women who had tried to live as men and
44 then decided to go back to being a woman.

45 Q Here you say "counsel culture." Did you mean to
46 say cancel culture?

47 A I guess so. Where -- oh, yeah, counsel culture.

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Barry Neufeld (for Respondent)
Proceedings

1 Q You say --

2 A Um.

3 Q -- "Cancel culture is --"

4 A Hold it -- hold it.

5 Q " -- definitely going strong." Yep.

6 A That's a transcript. I didn't make that spelling
7 mistake. Whoever transcribed it did it.

8 Q Okay. That's -- that's -- that's a fair point.

9 I think we all know what you meant. Cancel
10 culture is definitely going strong. What do you
11 mean by that? What's cancel culture? What do
12 you believe it is?

13 A Well, the -- the culture of -- of cancelling
14 people being happy in their own skins is being
15 can -- cancelled because the only time we
16 celebrate is when somebody tries to change who
17 they are on the outside. But if -- if somebody
18 realizes that's a mistake, they get roast --
19 roasted on social media. So roasting
20 detransitioners on social media is a way of -- of
21 cancelling our traditional culture where
22 everybody was happy with being either a man or a
23 woman.

24 CNSL J. KITCHEN: Chair, you wanted me to stop at
25 4:20. Well, it's 4:19, and if I keep going, I'm
26 sure to go past 4:20.

27 THE CHAIR: All right. Thank you. Can you give us a
28 sense of where we've made it to in your direct.

29 CNSL J. KITCHEN: I think it's fair to say 75 percent.
30 So my original estimate was a day and a half or
31 maybe a little more. I would say a day and a
32 half tops at this point. So -- so I would say
33 another morning. Another morning would be
34 sufficient. Maybe I wouldn't take the whole
35 morning. But another -- another half day at
36 most, maybe a little less. And I would make best
37 efforts to make it less. I've -- I haven't --
38 and I hope you've noticed he -- he made -- he
39 made an enormous amount of posts that the
40 complainants have complained about. I have not
41 gone through them in an exhaustive fashion that I
42 could have because what I've done is -- is
43 anytime that I've -- you know, because obviously
44 I've highlighted a lot of these posts. Any time
45 that I've come to a post where I think he's
46 already talked about it, I've -- I've not asked
47 him about it because I -- you know, because it

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Barry Neufeld (for Respondent)
Proceedings

1 would be a little bit redundant and repetitive,
2 and then we would make this process longer. So I
3 hope you appreciate my efforts to -- to go
4 through as fast as possible. It certainly comes
5 at no surprise to me that I've been with this
6 witness for a day, and I'm only 75 percent in. I
7 think that -- I think it just makes sense given
8 the volume of the material.

9 THE CHAIR: Okay. Thank you. I do appreciate the
10 efforts not to be duplicative, and I know
11 sometimes that becomes an extra challenge when we
12 have a break in the middle of testimony because
13 it's not as fresh in our minds what we've already
14 talked about. So I trust you're -- you're on top
15 of that for when we come back.

16 So were you able to talk at all about dates
17 or not yet? It sounds like we're looking for two
18 days.

19 CNSL L. WADDELL: We'd exchanged some emails. I'm
20 just trying to make sure I'm looking at the most
21 recent one. So I'm not seeing in this email --
22 oh, you're not available in December. Okay. So
23 right now as between the -- all three of us, and
24 by that I'm including Ms. Khan, we have --

25 UNIDENTIFIED SPEAKER: Sorry. I didn't actually
26 [indiscernible].

27 CNSL L. WADDELL: Okay. Sorry. Our bad. Our bad.
28 Okay. So what I'll start with -- and then we can
29 of course -- we'll, of course, consult Ms. Khan,
30 but as between my friend and I, we did not have
31 availability in December. I currently have no
32 availability in January, but I can say one of the
33 things I have booked for January is a two-week
34 hearing. There's some possibility in the next
35 week to ten days that it may resolve. If that
36 occurs, then that would open up the middle two
37 weeks of January for me. And then we both have
38 availability in February from the 24th to the
39 28th. And have we looked at --

40 CNSL J. KITCHEN: That was -- that was as far as we
41 got, but my March -- my March -- literally the
42 17th of March is the only day I'm not available
43 in that month.

44 CNSL L. WADDELL: Okay. And I haven't -- I don't
45 think I look at March. So I can look at that --
46 just a second here.

47 THE CHAIR: Well, why don't we start with the February

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Barry Neufeld (for Respondent)
Proceedings

1 24th to 28th. Let's see --
2 CNSL L. WADDELL: Sure.
3 THE CHAIR: Ms. Khan, how does that look for you as
4 we're all checking our calendars here too?
5 CNSL S. KHAN: Looks great. Thank you.
6 THE CHAIR: Okay. Good for you. Yeah. Okay. That
7 week is -- we can do that week. So any
8 preference as to days of the week? Actually I
9 think the whole week looks good. We could just
10 do the 24th, 25th?
11 CNSL L. WADDELL: Sure. Is the witness -- is your
12 client okay with that week as well, Mr. Kitchen?
13 CNSL J. KITCHEN: Yeah. Any issue with the 24th,
14 25th, Barry?
15 A No.
16 CNSL J. KITCHEN: Okay.
17 THE CHAIR: All right. So we'll come back to finish
18 Mr. Neufeld's evidence the 24th, 25th. Obviously
19 that changes all of your -- all of our other
20 plans for closing submissions and oral
21 submissions. So we'll cancel the March 4th date
22 for oral submissions, and I'll just ask you to
23 work out -- again, if you could, a revised
24 schedule for closing submissions. I don't think
25 we need to do that now necessarily. Let's come
26 back to, though, the process for resolving the
27 Commissioner's -- the objection about the
28 Commissioner's material. It will make sense to
29 do a written process for submissions on that.
30 And just -- do either of you -- and here I'm
31 talking to Ms. Khan and Mr. Kitchen -- take a
32 position on the order of submissions? Ms. Khan,
33 since you're seeking to have them admitted, it
34 may make sense for you to go first and then
35 Mr. Kitchen can give his objection or maybe
36 because it's an objection, he should go first.
37 I -- I -- I don't have a strong view. Ms. Khan,
38 do you have a view?
39 CNSL S. KHAN: I do, yes. Mr. Kitchen and I met to
40 discuss, and we agreed that -- that we would go
41 first -- the Commissioner would go first followed
42 by him providing response, and then we didn't
43 actually agree specifically on a reply for us,
44 but I think that would be appropriate.
45 THE CHAIR: All right.
46 CNSL S. KHAN: And I don't think he would object.
47 THE CHAIR: All right. Yes? And --

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Barry Neufeld (for Respondent)
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1 CNSL J. KITCHEN: Yeah. That's --

2 THE CHAIR: I'm not -- I'm assuming that the
3 complainants aren't making submissions in this
4 process, but if that -- if you're seeking to make
5 submissions, you can correct me.

6 CNSL L. WADDELL: I think that actually kind of got
7 lost in the mix of all the things that we were
8 thinking about this week. So -- so I don't
9 actually have an answer for you at this exact
10 moment in time. But I can -- I can confer with
11 my friends if we do and -- and discuss with them
12 when it -- it would be appropriate for us to do
13 so.

14 THE CHAIR: All right. Can we -- would you like to
15 set a schedule for those submissions now or would
16 you rather work it out offline and come back to
17 us?

18 CNSL S. KHAN: Well, we had -- Mr. Kitchen and I had
19 worked out a schedule, but because it doesn't
20 include the B.C. Teachers' Federation, perhaps
21 what we should do is just take it offline and --
22 and discuss it and send those dates back in to
23 you. Would that make sense? I'm pretty sure
24 we'll be able to come up with an agreement.

25 THE CHAIR: All right. Excellent.

26 CNSL L. WADDELL: I don't want --

27 THE CHAIR: Yeah.

28 CNSL L. WADDELL: If we -- I will say if we do decide
29 that we have something to say, I don't want for
30 our need to do that to mess up your schedule. So
31 I -- I think you two if you've got a schedule
32 that you've agreed upon that you should just tell
33 the Tribunal what it is, and we will -- if we
34 have anything to say, we'll -- we'll find a way
35 to do that in a way that doesn't disrupt your --
36 your schedule. That's my suggestion.

37 CNSL S. KHAN: Sure.

38 CNSL L. WADDELL: If you'd rather than do something
39 else, that's fine.

40 CNSL S. KHAN: And our schedule was fairly -- you
41 know, relatively compressed because -- just in
42 case the hearing was rescheduled quickly. So
43 the -- the schedule that we came up with is for
44 the Commissioner to provide submissions to
45 Mr. Kitchen and the parties by December 24th and
46 Mr. Kitchen to respond by January 10th, and then
47 I was thinking us to reply by January 17th. So

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Barry Neufeld (for Respondent)
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1 that's certainly -- it is relatively compressed.
2 So if -- you know, if -- if it makes sense to add
3 a bit more time, that would be great. However,
4 we can -- we're -- we're -- we're okay to go with
5 the schedule that as proposed if that makes the
6 most sense to the Tribunal.

7 THE CHAIR: All right. Thank you. I think the
8 schedule -- the schedule looks good. It will
9 give us a chance to make the decision before
10 you're all in your closing -- a good time to make
11 that before you're all in your closing
12 submissions so that you know what you're dealing
13 with. So that schedule works out just fine.
14 Thank you for all your work behind the scenes on
15 that.

16 CNSL J. KITCHEN: My --

17 THE CHAIR: Go ahead, Mr. Kitchen.

18 CNSL J. KITCHEN: My only caveat to that is if my
19 friend were to want to make submissions in
20 support of the Commissioner's position --

21 CNSL L. WADDELL: You would need the ability to
22 respond.

23 CNSL J. KITCHEN: Yeah.

24 CNSL L. WADDELL: Yeah, no, I -- I totally -- I expect
25 that, and --

26 CNSL J. KITCHEN: Yeah.

27 CNSL L. WADDELL: Yeah. And I notice -- I was
28 thinking about the December 24th date just as she
29 said that, but we don't even know if we're going
30 to have anything to say yet. So it may be a
31 nonissue, and we'll solve that. I fully expect
32 that our submissions would be in advance of yours
33 if we did have something to say so that you can
34 respond. If that -- if that addresses your
35 concern.

36 CNSL J. KITCHEN: Yep, it does.

37 THE CHAIR: Okay. And I do have one other question
38 about the closing submissions which is that there
39 was some mention of the AGBC particular --
40 possibly participating. Can anyone tell me
41 anything about that.

42 CNSL L. WADDELL: Yes. I think the AG -- well, I -- I
43 think the AGBC is not sure if they want to
44 participate or not. So I don't know with
45 certainty whether they do, but I can reach out to
46 their counsel and find out if they know if they
47 want to participate or not. I -- I doubt they

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Barry Neufeld (for Respondent)
Proceedings

1 would insert themselves in our scheduling, but --
2 but I don't know.

3 THE CHAIR: Okay. It would be good to know. It's not
4 urgent obviously.

5 CNSL L. WADDELL: Okay.

6 THE CHAIR: But I'm -- maybe it's just my curiosity
7 about whether they're going to be making
8 submissions and about what. So certainly if
9 you -- when you get that information if you could
10 let us know.

11 CNSL L. WADDELL: Yeah.

12 THE CHAIR: Thank you. And then I just want to,
13 before we adjourn for the day, make sure we're
14 all on the same page with regard to the exhibits.
15 I did have one question about a document. In the
16 first tab of the publications book, which is that
17 very first post with the meme and the first
18 comments that kicked it all off, there's a link
19 at the bottom of the post after the comment about
20 Russia and Paraguay, and I'm just wondering
21 whether the link is anywhere -- the content of
22 the link is anywhere in the record.

23 CNSL L. WADDELL: It's certainly not in the record
24 that is -- it's certainly not in the books or any
25 of the -- so you do have some video links, but
26 those are just for the videos that are -- of
27 which you also have transcripts. It may be in
28 the disclosure. I'm not sure about that off the
29 top of my head, but I can find out.

30 THE CHAIR: Okay. If we could -- if you could look
31 into that before we get back. It seems to me
32 potentially, maybe, an important piece of context
33 to understand if he's linking to something
34 following -- immediately following these
35 statements to know what it links to. So if
36 you're able to find that --

37 CNSL L. WADDELL: Sure.

38 THE CHAIR: -- and bring it forward, that would be
39 appreciated.

40 CNSL L. WADDELL: Yeah.

41 THE CHAIR: And so I just want to review where we're
42 at in the exhibits. So the Complainant's Book of
43 Documents re -- okay. So I'm just going to read
44 through what we have as exhibits, and then I'm
45 going to -- we're going to talk about the stuff
46 that's outstanding. So Exhibit 1 is Red: A
47 Crayon's Story. Exhibit 2 is Gender Unicorn

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Barry Neufeld (for Respondent)
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1 Graphic. Exhibit 3 is Dr. Saewyc's materials,
2 which is the Book of Documents re Expert
3 Evidence. Exhibit 4 is Mrs. Dyck's article in
4 the Chilliwack Progress. Exhibit 5 is a
5 transcript of the Chilliwack's School District
6 Board Meeting -- oh, the video, sorry, of the
7 meeting.

8 CNSL J. KITCHEN: Video, yeah.

9 THE CHAIR: Exhibit 6 is the Provincial Collective
10 Agreement. And then that's all the -- everything
11 that's been admitted, but I think we can now
12 admit the Complainant's Book of Documents re
13 Publications, if I'm not mistaken. Or there were
14 still some -- we hadn't resolved 43 and 44, I
15 think -- maybe we still had issues with and maybe
16 29, 30. Has everything -- are there outstanding
17 disputes on the Publications and Statements book,
18 I'm asking.

19 CNSL L. WADDELL: I'm going to fathom a guess, and
20 Mr. Kitchen can correct me if I'm wrong, but that
21 probably he and I both need to go away and -- and
22 just confirm what we think has been dealt with
23 and what has not because I'm -- I'm certainly not
24 capable of just saying that off the top of my
25 head, and I -- I imagine my friend's in the same
26 boat.

27 THE CHAIR: All right. That's fine.

28 CNSL J. KITCHEN: Yeah, I agree with that.

29 THE CHAIR: Okay. Well, then --

30 CNSL L. WADDELL: Perhaps -- would it -- would it be
31 helpful if the -- if the two of us conferred and
32 then wrote, like, an email to the Tribunal just
33 saying, Here's the stuff we know that's been
34 dealt with. Here's the stuff we know is still
35 disputed, and if there's a gray area where we
36 disagree, we can lay that out to you so that you
37 have a sense of what -- where we are?

38 THE CHAIR: Yeah. That would be helpful. Thank you.

39 CNSL L. WADDELL: Okay.

40 THE CHAIR: And it's not particularly urgent, but
41 before we reconvene. That will help us to save
42 some time in finally marking the exhibits after
43 we're done with all of the evidence. So, yes,
44 thank you for that as well.

45 CNSL L. WADDELL: Okay.

46 THE CHAIR: And I think that's everything on my list
47 before we take this break. Anything else from

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1 the parties that you'd like to address? No. All
2 right. Well, then, in that case we have some
3 submissions -- you have some submissions you're
4 going to be working on, and then we're back
5 February 24th and 25th to finish Mr. Neufeld's
6 evidence. I want to thank everyone very much for
7 all your work over these last couple of weeks. I
8 know it's been a long couple of weeks, and
9 everyone's been working really hard, and we do
10 acknowledge and appreciate that. So I hope you
11 all have a wonderful weekend with your families
12 or whatever you're doing and we'll see you back
13 in February. Thanks very much. Bye.

14
15 (WITNESS STOOD DOWN)

16
17 (VIDEOCONFERENCE CONCLUDES) [4:34:21]

18
19 (PROCEEDINGS ADJOURNED TO FEBRUARY 25TH, 2025, AT
20 9:30 A.M.) [4:34:21]
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1 REPORTER'S CERTIFICATE

2
3 I certify that the proceedings from timestamp
4 9:30:43 to timestamp 4:34:21 inclusive are a true
5 and accurate transcript of these proceedings
6 recorded on a sound recording apparatus,
7 transcribed to the best of my skill and ability
8 in accordance with applicable standards.
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12 Victoria Ross
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14 Victoria Ross
15 Court Reporter
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**IN THE MATTER OF THE *HUMAN RIGHTS CODE*,
RSBC 1996, C. 2010 (as amended)**

**AND IN THE MATTER of a complaint before
The British Columbia Human Rights Tribunal**

BETWEEN:

British Columbia Teachers' Federation obo Chilliwack
Teachers' Association

COMPLAINANT

AND:

Barry Neufeld

RESPONDENT

AND:

B.C.'s Human Rights Commissioner

INTERVENOR

**PROCEEDINGS AT B.C. HUMAN RIGHTS TRIBUNAL HEARING
(VOLUME XI)**

ORIGINAL

THERE IS A PUBLICATION BAN IN EFFECT PROHIBITING THE
PUBLICATION OF ANY INFORMATION THAT COULD IDENTIFY THE
TEACHERS WHO TESTIFIED, OR MAY HAVE TESTIFIED, IN
CONNECTION WITH THIS COMPLAINT: CHILLIWACK TEACHERS'
ASSOCIATION V. NEUFELD (NO. 2), 2024 BCHRT 180 [CTA
(NO. 2)]; AMENDED BY LETTER DATED FEBRUARY 25, 2025.

**IN THE MATTER OF THE *HUMAN RIGHTS CODE*,
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RESPONDENT

AND:

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INTERVENOR

**PROCEEDINGS AT B.C. HUMAN RIGHTS TRIBUNAL HEARING
(VOLUME XI)**

ORIGINAL

Tribunal Members:	Devyn Cousineau, Robin Dean, Laila Said Alam
Counsel for the Complainant:	Lindsay Waddell, Alanna Tom, Stefanie Quelch, Chris Fenje
Counsel for the Respondent:	James S.M. Kitchen
Counsel for BC's Human Rights Commissioner:	Sarah Khan, Maria Sokolova

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By videoconference
February 24, 2025

(VIDEOCONFERENCE COMMENCES) [9:34:11]

THE CHAIR: Good morning, everyone. It's February 24th now 2025, and I'm recalling the case of *British Columbia Teachers' Federation on behalf of Chilliwack Teachers' Federation [sic] and Barry Neufeld*, CS-001372.

I'll just start by greeting all of you who are familiar faces now. I can see complainant's counsel Ms. Waddell and Ms. Tom and Ms. Quelch. And I see a pair of hands there. Is there someone else with you?

CNSL L. WADDELL: Sorry. I'm not into the routine of unmuting. Chris Fenje is joining us again, articulated student.

THE CHAIR: Okay. Thank you. Good morning. Mr. Kitchen, I can see you there, and I think you can hear us now. Good morning.

CNSL J. KITCHEN: Good morning.

THE CHAIR: I do not see Mr. Neufeld yet, but I'll let you know when I do. I see Mr. Reid Clark there, and I see Ms. Khan for the commissioner's office. Good morning. We also have two case managers with us from the Human Rights Tribunal; that's William Gruber and Heidi Fraser-Kruk. I've asked them to turn their cameras on just for this introductory portion so that you can see them. They're just observing today for onboarding purposes. They just started at the Tribunal. So they can -- they're going to turn their cameras off now and just observe.

We also have with us a number of members of the public, and Member Dean is cross-referencing everyone's phone numbers with the people who have been permitted to join us and for whom you've been given notice that they'll be attending.

So I'll start off the proceeding today by reminding everyone that the proceeding is subject to a publication ban. We just, a few minutes before we started, received the complainant's application to amend the publication ban, so we'll come to that in a moment, but for now I'll confirm that no person may publish the names of teachers who testify or may testify for the

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1 complainants in connection with this complaint.

2 So we do have a couple of preliminary issues
3 to get to, but before we, do, Mr. Kitchen, did
4 you want us to wait for Mr. Neufeld? Are we
5 expecting him now?

6 CNSL J. KITCHEN: I'm expecting him, but we don't need
7 to wait for him, especially since, you know,
8 right now we're just dealing with preliminary
9 matters.

10 THE CHAIR: Okay. Well, then, in that case, thank you
11 for your letter dated February 7th which has
12 addressed our outstanding questions regarding
13 exhibits and schedule for closing submissions.
14 All that looks good, and we'll come back to it at
15 the end of the hearing.

16 We have two applications before us from the
17 complainants, so we might -- I think we should
18 start there. Let's start with the application to
19 amend the order to limit publication. That came
20 in a few moments ago. Mr. Kitchen, have you
21 received it?

22 CNSL J. KITCHEN: Presumably.

23 THE CHAIR: Okay. Do you want a moment to see it? I
24 can -- I can --

25 CNSL J. KITCHEN: Well --

26 THE CHAIR: -- explain it to you.

27 CNSL J. KITCHEN: Yeah. Yeah. I don't need to take
28 time to read it here while we're all sitting
29 here. Yeah, no, it's lengthy. I wouldn't -- I
30 wouldn't be able to get through it in any event.

31 THE CHAIR: All right. So the gist of it is, I
32 understand, that the complainants are asking that
33 the order to limit publication be amended to
34 add -- ph, let me let in Mr. Neufeld here.

35

36 BARRY NEUFELD, a witness,
37 recalled.

38

39 THE CHAIR: Good morning, Mr. Neufeld. We've just
40 begun. Are you there? I just see an empty
41 chair.

42 CNSL J. KITCHEN: I'm -- I'm sure he's around.

43 THE CHAIR: Okay.

44 CNSL J. KITCHEN: I've spoken with him this morning,
45 so he's there. He's just --

46 THE CHAIR: Okay. All right. Well, I'll carry on.
47 So the application -- the gist of the application

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1 to amend the order limiting publication, which we
2 won't resolve until you've had a chance to review
3 it, but is that the complainants are seeking to
4 add the phrase to the order "prohibiting the
5 publication of any information that could
6 identify the teachers." So it's to expand the
7 order to capture identifying information.

8 Now, complainant's counsel, this is your
9 application, so -- and I understand you perceived
10 some urgency to have this in order before the
11 hearing started again, so I -- I -- I'm
12 interested in how you propose to deal with this;
13 if we need to stand down to give Mr. Kitchen time
14 to review or if you had some other idea in mind
15 here.

16 CNSL L. WADDELL: Thank you, Chair. We would like to
17 have it addressed if at all possible before we
18 resume the hearing. I appreciate that my friend
19 has not yet had a chance to review it. Most of
20 the law and the basis is, of course, the same as
21 was for the initial application and then the
22 subsequent application -- the first application
23 to amend the scope of the ban, so that -- that
24 won't be anything new, but what has been added
25 is -- is some of the factual backdrop that
26 occurred during the hearing itself.

27 So we can do one of two things -- obviously
28 we'll do whatever the Tribunal asks, but we could
29 break now so that my friend can have a read of
30 that application, and then we can return and
31 argue it. If it's more helpful to him to have us
32 argue it, at least our part now, so that he can
33 sort of hear the summary of what's in writing and
34 then take a break so that he can review that with
35 the benefit of -- of oral argument in hand and
36 come back and -- and make any arguments he -- he
37 sees fit on behalf of Mr. Neufeld, we can proceed
38 that way.

39 And I -- I also will say that we did seek
40 his position last week on -- late last week on
41 the application, and we didn't hear back, so it
42 may perhaps -- it's not opposed, but if it's not
43 opposed, then that makes life a little bit
44 easier, but if it is opposed, then we suggest
45 proceeding in one of the two ways I've -- I've
46 just indicated.

47 THE CHAIR: Thank you. Mr. Kitchen?

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1 CNSL J. KITCHEN: Chair, if -- yeah. And I -- I -- I
2 was in trial all of last week and the week
3 before. I had a two-week trial that I didn't
4 think was going to go two weeks, but it did, so
5 I -- I -- I missed that altogether, and I
6 apologize. If you had of sent it to me over the
7 weekend, I probably would have got it, but...

8 I -- I'm not going to oppose it, generally
9 speaking. In fact, I would have thought that
10 this was part of the original ban. As far as I'm
11 concerned this is redundant because you don't --
12 you don't put a ban on names without identifying
13 details attached to it, and I'm familiar with
14 that. But the devil's in the details and so
15 there may be something in there that I -- you
16 know, as far as -- as far as implementing the --
17 the -- the general ban, I might have some issue
18 with.

19 So to my friend's point, what I think we
20 should do is -- is let me read it because her
21 oral argument may not be necessary, and then I
22 won't put her through that for no reason. And I
23 think maybe I can come back and I can say, you
24 know, "Here's what I consent to and here's what I
25 have a concern about," and then she can -- she
26 can speak to that in her submissions and I can
27 respond and then we can have a decision. And
28 I -- and I may not have any issue at all; I
29 just -- I -- I -- I have to review it just --
30 just to see how she wants to operationalize or
31 implement the general rule of banning identifying
32 details which I generally agree with.

33 So -- and I -- I can't imagine me needing
34 more than 15 minutes so would that be all right?
35 I think -- I just -- I don't want to -- I don't
36 want to say 10 and then I'm not quite done
37 reading it. It looks like it's a few pages long,
38 so if I could have 15 minutes, that should be all
39 I need.

40 THE CHAIR: All right. Well, let's, then, stand down
41 for 15 minutes. We'll just turn off our video
42 and camera and come back in 15 minutes. Thank
43 you.

44 CNSL J. KITCHEN: Okay. Thank you.

45
46 (WITNESS STOOD DOWN)
47

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(PROCEEDINGS ADJOURNED) [9:43:47]

(PROCEEDINGS RECONVENED) [9:59:15]

BARRY NEUFELD, a witness,
recalled.

THE CHAIR: All right, everyone, come on back when
you're ready. Mr. Kitchen, was that enough time?

CNSL J. KITCHEN: It was. I -- I -- I am going to
have some comments. I think that I should give
them first just because I -- I don't think my
friend's going to need to defend her whole
application and, in fact, maybe very little of
it.

THE CHAIR: Okay. Sorry. Just before you do that,
during the break we've kind of gone through -- I
just have one more issue to deal with before we
get into that regarding the members of the public
who have connected to the call. There's quite a
few phone numbers who are connected that we don't
recognize and don't have a record of on the
tribunal end of things and so I just want to
address the members of the public for a moment,
and then we'll come back to the application
before us.

So under the Tribunal's public-access
policy, if you want to observe a tribunal
hearing, you're required to make your request to
the Tribunal, and this is important because in
the request you're also required to agree to the
terms for listening in on a tribunal proceeding.

So we have a number of phone numbers here
where, according to our records, we don't have a
signed request to observe the hearing and so the
way that we're going propose to manage that is
that I will read out the -- the last four digits
of the phone numbers that we don't have a record
of; we're going to disconnect you. If you want
to request access to the hearing, then you can
email the Tribunal and fill out the form, and
I've let the case manager know there may be some
requests coming in today, and we'll deal with
them as quickly as we reasonably can, accepting
that the case manager has other work to do as
well. So I'm going to read out phone numbers --

CNSL J. KITCHEN: Chair --

THE CHAIR: Yes.

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1 CNSL J. KITCHEN: -- can I please comment on that?

2 THE CHAIR: Go ahead.

3 CNSL J. KITCHEN: You know, I'm not looking to make a
4 big issue of this, but certainly it is the
5 respondent's position that removing somebody from
6 what should be a public hearing is unlawful, it
7 is in violation of the open court principle. I
8 don't think it's the best way to handle this as
9 far as maintaining respect for the -- for the
10 Tribunal's processes and procedures and -- and --
11 and position as a tribunal.

12 This suggestion that I'm going to make is
13 informed by my experience with tribunals across
14 the country, human rights tribunals. What I have
15 seen done in the past is when we have people
16 present, the Tribunal Chair reads out whatever it
17 might be that -- that they want the observers to
18 agree to and ask them to agree. Now, I'll grant
19 that this is usually done with them being able to
20 be seen on the screen. I've never been in a
21 hearing like this where the observers cannot be
22 seen and cannot see the hearing, and that, in
23 itself, is a problem, but I'll leave that alone.
24 But that's what I would suggest you do to -- to
25 try to honour the open court principle and the
26 respondent's charter right to have his hearing
27 public as well, that's another concern, is to
28 give these -- these people an opportunity to
29 listen to you read the agreement and have them
30 agree to it here on the record. And you can ask
31 them for their name; I think -- I think that's
32 fine. And if they don't want to give their name,
33 then -- then perhaps maybe then you can -- you
34 can -- you can boot them out.

35 But I think -- I think that's what you
36 should be doing. I think to remove people who
37 are here exercising their -- their charter right
38 to be here in -- in accordance with the open
39 court principle, which you are obligated to
40 follow, and in accordance with the respondent's
41 right to have people here to observe this
42 hearing, I think that is what you should do, and
43 if you do anything less than that, that you --
44 you are acting unlawfully. And I don't say that
45 with disrespect or to threaten you or -- or to
46 cause you trouble; I just think that -- that is
47 an honest and reasonable position and somebody

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1 needs to say it and it's my job to say it.

2 THE CHAIR: Thank you. Well, in this instance this is
3 not -- the panel has not made up this process.
4 This is the Tribunal's policy and institutional
5 policy regarding how it admits members of the
6 public to its online proceedings. And I
7 appreciate the feedback that there may be a
8 better way of doing it, but it's not open to us,
9 or if it is, I'm not inclined to be amending the
10 policy in this instance. Members of the
11 public --

12 CNSL J. KITCHEN: Just -- just to be clear, it's the
13 policy that I am -- I am --

14 THE CHAIR: No, I understand, Mr. Kitchen. I
15 understand the objection, and we've heard it
16 before, but members of the public are able to
17 observe this proceeding in accordance with the
18 Tribunal's policy which requires you simply fill
19 out a form and send it to the Tribunal. I've
20 instructed the case manager to look on those
21 outside the timeline that we would normally
22 expect. And -- and then once you've filled out
23 the form, you'll be granted access.

24 I'm -- given -- we have -- one, two, three,
25 four, five, six -- seven people or seven numbers
26 that don't appear to have done this and so I
27 don't want to spend a lot of hearing time trying
28 to go through them one by one and get it all
29 sorted out, so I am going to disconnect them and
30 just redirect them to join the hearing according
31 to the Tribunal's policy and have access in the
32 way that a number of other people have been able
33 to gain access to the tribunal.

34 So I'm going to read out the phone numbers.
35 If there's a mistake or -- or something like
36 that, you can also email the Tribunal, and the
37 case manager will sort it out.

38 So the first phone number on the list that
39 we don't have a record of ends in the digits
40 3-1-0-3. So 3-1-0-3, you can make your request
41 if you want to observe later in the day. You're
42 being removed. The next one is 5-6-5-2. The
43 last digits are 5-6-5-2. We don't have a record
44 your request. 6-3-4-6. 6-3-4-6. 1-7-2-4.
45 1-7-2-4. 9-8-5-0 is the next one. And then
46 5-6-5-7. And the last one is 1726.

47 All right. And so for those members of the

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Submissions by Cnsl J. Kitchen

1 public who are with us, I'll just remind you that
2 we will expect you to do your best to come --
3 join the hearing after -- at the beginning time,
4 after a break and so on and -- and if you can't,
5 I'll let you in so long as it's not disruptive.
6 And just so that you know, whenever we let in a
7 member of the public, we have an audio message
8 that plays over top of whoever may be talking, so
9 at certain points in the hearing it can be quite
10 disruptive to let people in because then we can't
11 hear what's being said. So we're doing our best
12 to balance a smooth proceeding that we can manage
13 and understand and also ensuring access to the
14 proceeding.

15 All right. So with that, let's come back to
16 the application to limit publication or to expand
17 the order to limit publication. Go ahead,
18 Mr. Kitchen, with your remarks.
19

20 SUBMISSIONS BY CNSL J. KITCHEN:
21

22 CNSL J. KITCHEN: So my friend is seeking an order to
23 prohibit the publication of identifying details
24 of the teacher witnesses who -- whose names have
25 already been prohibited from being published.
26 The respondent does not oppose that. That --
27 that's -- that's fine. Again, I would have
28 thought that went without saying. I -- that
29 should be -- that should have been part of the
30 original order.

31 You know, to be -- to be clear, we, of
32 course, don't condone or accept the -- the
33 original order, but, I mean, that ship has
34 sailed, so I'm not going to go into that. But
35 just -- so that -- that's fine. That's --
36 that -- that should be part and parcel. That
37 amendment makes sense.

38 And I don't know that I'm -- I'm fully or
39 properly reading the additional relief that my
40 friend is seeking, but she -- she -- a couple
41 times in her submission -- or her application she
42 says, "The tribunal should refer to teacher
43 witnesses -- the three teacher witnesses
44 identifying their -- their sexual identity
45 [verbatim]," which is fine. The respondent takes
46 no position on that.

47 But then she says, "But opposes the -- the

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Barry Neufeld (for Respondent)
Submissions by Cnsl J. Kitchen

1 publication of any other identifying
2 information," and it's not clear what exactly
3 that means and how -- 'cause presumably that's
4 something different than -- than -- or something
5 additional to ordering that, you know, nobody in
6 the public can publish any identifying details,
7 which is fine. My -- my concern about that is --
8 is that's pretty sweeping. It's not fully
9 defined, but it's -- it's -- it's pretty
10 sweeping, and there are some things that I don't
11 think tend to identify the teacher witnesses.
12 And, of course, that depends on whose definition
13 we're using. It's a little bit subjective,
14 right, but I do think may be important to the
15 decision, right.

16 So, you know, if Teacher B or Teacher A --
17 and, I mean, I'm kind of forgetting -- getting
18 mixed up a little bit, but -- because both of
19 them, I think, are still teachers. I think it's
20 Teacher C who's not anymore.

21 If -- if they -- whether they taught at a
22 high school or middle school, for example,
23 that's -- that may be relevant to -- to the
24 decision, and I -- I don't think that should be,
25 you know, sort struck or -- or -- or
26 sacrificed [verbatim] such that it can't be in the
27 reasons for decision.

28 For example, we have some evidence that one
29 of the teachers was a neighbour to Barry Neufeld.
30 Again, so we obviously aren't going to publish
31 the name of the school they worked at. We're not
32 going to publish her address when she lived
33 beside Barry. We're not going to publish Barry's
34 address because that would also be a problem.
35 So -- so I -- I have no issue with -- with --
36 with the whole goal of this which is to not
37 identify these people. No issue with that. I
38 mean, other than the fact that I originally
39 disagreed with it. I have no issue with that.

40 My concern is that if -- if -- if -- if we
41 don't define that or if we're not careful with
42 that, then we may get to a spot where, in the
43 decision, you're not able to actually say, in so
44 far as it's relevant, "Teacher B lived beside
45 Barry Neufeld at one point in time, and, you
46 know, Barry says that she said this, and she said
47 that Barry said that, and we find this." Or, you

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Submissions by Cnsl A. Tom

1 know, "The -- the Teacher B worked at a middle
2 school." "Teacher A worked at a high school."
3 Those kinds of details need to be -- need to --
4 need to remain, and I don't think it's fair to
5 say that they would tend to identify, right.
6 Real addresses, real names of schools, addresses
7 of the schools, these things -- these things may
8 identify. Reasonably so may identify. But to
9 simply identify that -- that a teacher was a
10 neighbour of Barry or that she worked at a middle
11 school, I don't think that that tends to
12 identify, and -- and we can't just not be able to
13 refer to those. We -- we have to have some
14 bearings of who we're talking about, what their
15 evidence was, why it matters to the case. We
16 need to retain that as much as we can and --
17 and -- and not leave that out even though we
18 could theoretically say that that's a
19 potentially-identifying detail. That's --
20 that's -- that's -- that's my concern.

21 So we can probably come to some agreement on
22 that. I -- I -- I don't oppose it in -- in
23 theory; just -- just if it's implemented to an
24 extreme degree such that you can't put in reasons
25 for decision certain things that are going to
26 matter to the case, then I have a problem.
27 THE CHAIR: Thank you. Complainant's counsel, I'll
28 let you respond to that.
29

30 SUBMISSIONS BY CNSL A. TOM:

31
32 CNSL A. TOM: Sure. Yeah, no, that -- that makes
33 sense. I think that, you know, identifying the
34 teachers as high school teachers or middle
35 teachers is fine. I think that similarly
36 identifying one of the teachers as having been a
37 neighbour of Mr. Neufeld is also fine and
38 relevant if we extract the time frame of when
39 they were a neighbour. You know, say "for a
40 number of years while Mr. Neufeld was a trustee"
41 to prevent that sort of connection, especially if
42 we are allowing publication of the fact that they
43 are a middle school and if that makes -- that's
44 sufficient framing for you.

45 The -- the specific carve out, I guess, of
46 the sexual orientation and gender identity was
47 just to make it clear that we do think it's

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1 important to locate each of these teacher
2 witnesses within the class rather than just
3 identifying them as class members, and so that's
4 just to say that, you know, while that might be
5 considered identifying information in other
6 circumstances, this is relevant information
7 that -- absent any other specific identifying
8 information is -- would not tend to identify
9 them. So it's just to make it clear that we --
10 we do want those teacher witnesses to have their
11 preferred identification identified within --
12 within the LGBTQ+ class.

13 THE CHAIR: Thank you. So as I understand the
14 amendment to the publication ban, it would extend
15 to information including the names of schools
16 where teachers worked, the specific grade, which
17 I can't foresee would be relevant aside from the
18 fact that they're in maybe elementary or primary
19 or high school or middle school or whatever.
20 Kind of a general sense of the grade.

21 Obviously the Tribunal would never publish
22 addresses or information that could lead someone
23 to -- to your door.

24 But getting beyond those types of things --
25 and I'm not trying to be exhaustive, but I think
26 we all appreciate that, you know, the Tribunal
27 will be publishing some information, obviously,
28 about teachers in a small school district, so we
29 can't promise perfect -- perfect -- perfect
30 protection, but -- but given the consent that we
31 have to the order, and I think -- I'm hoping
32 we're at kind of a shared understanding of what
33 that order entails in terms of names of schools,
34 specific grades, addresses, or, you know,
35 information that could really single out any of
36 the teacher witnesses -- if we're on a shared
37 understanding of that, then I think the amendment
38 makes sense. And, as Mr. Kitchen says, I think
39 we all understood that that would be how we would
40 apply the publication ban, but this needs to be
41 clarified for members of the public and people
42 who may also be expected to comply with it.

43 So, Mr. Kitchen, does that -- does that
44 satisfy your concern about understanding the
45 scope of the proposed the amendment?

46 CNSL J. KITCHEN: Yes.

47 THE CHAIR: Okay. In that case we'll grant the

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1 application to amend the order. I'm confirm this
2 in a letter after our proceeding today. And I
3 confirm for those of us on the call and listening
4 in that the publication ban in this case now
5 extends as follows: No person may publish the
6 names of any -- the names of or any information
7 that could identify the teachers who will or may
8 testify for the complainants in connection with
9 this complaint, and the Tribunal will redact the
10 names and any information that could identify the
11 teachers who testify for the complainants and any
12 of the materials it may make available to the
13 public under Rule 510.

14 As I said, we'll follow this up in a letter
15 so that we're all -- we all have a clear record
16 of -- of what I've just talked about. But I
17 think that resolves that matter for now.

18 The next preliminary issue we want to just
19 address, I think, briefly is we've received the
20 complainant's costs application. I don't -- I --
21 I don't expect we're going to deal with that
22 right now; I just wanted to make sure that we
23 have a process in place to receive submissions
24 from the respondents and for the Tribunal to make
25 its decision. And on this point ordinarily --
26 and -- and I think maybe what we had expected was
27 that we would deal with the costs application
28 when we make our final decision, but I know the
29 complainant's counsel obviously has taken the
30 time to file this before the hearing, so I want
31 to hear from you if you were asking for it to be
32 decided before the final submissions or on some
33 other basis.

34 CNSL L. WADDELL: Thank you. No, we were not
35 expecting that it would be resolved now, and we
36 do think it's appropriate to address after the
37 conclusion or at the conclusion of the hearing.

38 We filed the application now so that
39 Mr. Neufeld and his counsel have notice of our
40 position with respect to costs and can
41 therefore -- to the extent that he may have
42 things to say in response, because it relates to
43 his conduct, they can cover that in direct
44 because I -- I'll be covering it in cross, some
45 of it. So that -- that was sort of our -- our
46 primary purpose was procedural fairness, if you
47 will; to provide notice, give Mr. Neufeld the

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1 chance, while he's in the hot seat, to give any
2 evidence he has in response to what we've put
3 forward.

4 THE CHAIR: Thank you. And so, Mr. Kitchen, it sounds
5 like it may make the most sense for you to
6 respond on the costs application when you file
7 your closing submissions on the -- on the
8 complaint. Is that all right with you?

9 CNSL J. KITCHEN: I was going to suggest that, yeah.

10 THE CHAIR: Yeah.

11 CNSL J. KITCHEN: Yeah, that's -- that was where I
12 wanted to go with that.

13 THE CHAIR: Okay. Great. So we'll deal with that in
14 the course of your closing submissions, and we'll
15 make a decision on costs in our final decision,
16 but I appreciate the notice so that if we need to
17 hear evidence about the issues in the
18 application, we can.

19 All right. The next preliminary issue on my
20 agenda is just to thank you for sending in the
21 article which was linked at the bottom of the
22 Facebook post at Tab 1 of the complainant's book
23 of documents about publications and statements.
24 The article is called "Parents Defeat Gender
25 Ideology in Paraguay," dated October 19th, 2017.
26 Mr. Kitchen, did you receive that as well?

27 CNSL J. KITCHEN: That would have come from Alanna; is
28 that -- is that right?

29 THE CHAIR: Did you say "yes," Ms. Tom? Sorry. I
30 can't remember who sent the email.

31 CNSL A. TOM: Yes, I did, yes.

32 THE CHAIR: Okay.

33 CNSL L. WADDELL: Let us [indiscernible - audio cuts
34 out] if that would be helpful, Mr. Kitchen.

35 CNSL J. KITCHEN: I take it you said you're going to
36 resend it or...

37 CNSL L. WADDELL: Would you like -- would you like us
38 to?

39 CNSL J. KITCHEN: No. Okay. I got it. So just give
40 me a second here. Let me get this open.

41 I don't know where we left this last time
42 if -- if -- if I consented to this going on.

43 I -- I have a feeling I might have.

44 THE CHAIR: I don't think you've -- well, I'm not
45 holding you to anything before you've seen it,
46 and there's no urgency, but I -- I do want you to
47 review it and advise -- you know, it can be by

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1 the end of the hearing -- whether you're
2 consenting to -- to admitting it or, you know,
3 if -- complainant's counsel or you may ask
4 Mr. Neufeld about it in -- in his evidence.

5 So if you haven't had a chance to review it,
6 I expect you're not in a position to consent
7 right on this moment, and we can deal with it
8 over the course of the next two days.

9 CNSL J. KITCHEN: Ms. Waddell, you're -- you're going
10 to cross him on this? Is that the idea? Or are
11 we just putting it in the record?

12 THE CHAIR: I had asked for it to be sent because it's
13 the link to one of the first Facebook posts so to
14 give the full context of the post and understand
15 what the link was to. So I had asked for the
16 parties to produce that, and that was a response
17 to my request.

18 CNSL J. KITCHEN: Okay. So what I'm going to do is
19 I'm -- I'm just going to -- on -- on break here
20 at some point I'll -- I'll give this to Barry,
21 get his confirmation that this is, in fact, you
22 know, the -- the article in the link because if
23 it is, then it -- it -- you know, there's no
24 point in me objecting to it. It's -- if -- if --
25 if the complainant's want it in, it's -- it's
26 fair for it to go in. I just need to confirm
27 that it's -- it's -- it's the right thing because
28 if it is, then it's fine.

29 THE CHAIR: Thank you. Yes, you can -- we can deal
30 with that on a break.

31 All right. Those are all of the issues on
32 my agenda, but I'll check in with -- with each of
33 you to see whether I've missed something before
34 we continue with Mr. Neufeld. Complainant's
35 counsel, any other preliminary issues?

36 CNSL L. WADDELL: I don't think so, Madam Chair.

37 THE CHAIR: Okay. And Mr. Kitchen?

38 CNSL J. KITCHEN: I don't have any.

39 THE CHAIR: Okay. In that case we are -- the next
40 part of this process is we are going to continue
41 with Mr. Neufeld's testimony. When we last --
42 last left off, Mr. Kitchen, you said you were
43 about 75 percent done with your direct and you
44 thought you might need about an hour and a half.
45 Is that -- I mean, I'm not holding you to the --
46 to the minute, but is that -- has anything
47 changed since we left off?

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1 CNSL J. KITCHEN: No. I'll probably be more than an
2 hour and a half, but I -- my goal is to be done
3 by lunch, and I still think that's going to be
4 achievable.

5 THE CHAIR: Okay.

6 CNSL J. KITCHEN: What do we -- what's -- what's --
7 what's the intended lunch time? Is it 12:30? I
8 forget.

9 THE CHAIR: It's 12:30 with a break, I would say, at
10 11:15.

11 CNSL J. KITCHEN: Okay. I just have to adjust my
12 internal clock. My trial the last two weeks was
13 Ontario, so I'm used to going two hours ahead.
14 So it's 20 after 10. Okay. Yeah. Well, that's
15 two hours minus -- yeah, no, I -- I should be
16 done by lunch. That's my goal. I think we can
17 get there.

18 THE CHAIR: All right. Mr. Neufeld, when we were last
19 together, you swore an oath to tell the truth in
20 this proceeding, and I'm confirming that that
21 oath still applies to the testimony you're going
22 to give in the next couple of days and -- and so
23 do you understand that?

24 A Yes -- yes, I do.

25 THE CHAIR: Thank you. And so, as you know,
26 Mr. Kitchen's going to ask you questions this
27 morning, and then I expect we'll get started with
28 cross-examination in the afternoon. Go ahead,
29 Mr. Kitchen.

30 CNSL J. KITCHEN: Thank you.

31

32 EXAMINATION IN CHIEF BY CNSL J. KITCHEN, continuing:

33

34 Q Okay. Barry, first we'll -- we'll address the
35 costs application. And the evidence portion of
36 it, I mean. So the --

37 CNSL J. KITCHEN: And, Ms. Waddell, I'm basically just
38 going to summarize your position so I can ask
39 these questions, so I'm going to assume there's
40 no problem with that.

41 Q So the -- Barry, the complainants have brought an
42 application for costs on -- on -- on the basis of
43 a few things, and I'm going to run you through
44 them. The first one is that you recorded a
45 prehearing conference in April of 2022, and then
46 you -- and they say you posted it to YouTube, and
47 so they're saying that -- two things there.

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1 They're saying that you shouldn't have recorded
2 it; and, two, that you shouldn't have put it on
3 YouTube.

4 So let me ask you about the first thing of
5 that. Did you record the April -- the -- the
6 prehearing conference that occurred in April
7 2024, and why did you record it if you did?

8 A At the time I had no lawyer. I had no counsel.
9 I wanted a record of it so when I did have a
10 lawyer I could share with them the details of the
11 conference -- the conference call.

12 Q Okay. Okay. The YouTube thing, did that happen
13 and how and why and -- and what was your -- what
14 was your intention with all of that?

15 A I recorded it on my smartphone, but I couldn't
16 figure out how to get it transferred to my
17 computer. So the only way I could do -- do it
18 was by uploading to YouTube and then downloading
19 on my computer. Unfortunately I didn't delete
20 the YouTube version very quickly. There was no
21 title to the -- the video with no images. Nobody
22 would have had -- known what to look for. It was
23 not a breach of confidentiality. It was for my
24 own use and hopefully for the use of a lawyer
25 that I hoped to retain in the future.

26 Q Okay. What's your memory as to how long it was
27 up on YouTube?

28 A I would believe it was less than 24 hours.

29 Q Okay.

30 A And I thought when I uploaded it I uploaded it as
31 private.

32 Q Are you aware of anybody besides, apparently, the
33 complainants having become aware of that or
34 having listened to the recording?

35 A I'm not aware of anybody hearing it. There was
36 really nothing in the case conference call that
37 was -- would be of interest to any member of the
38 public or any party other than myself and the
39 lawyer that I hoped to retain.

40 Q What caused you to delete it roughly 24 hours
41 later?

42 A Well, it wasn't necessary, and I had it safely on
43 my laptop and so I just got rid of it off the
44 internet.

45 Q Okay. There was another prehearing conference in
46 May of 2024 that the complainants said you
47 recorded.

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1 Sorry?

2 THE CHAIR: That -- sorry. We're in downtown
3 Vancouver; that may have just been a truck.

4 CNSSL J. KITCHEN:

5 Q Okay. May 2024 you were -- you were at another
6 prehearing conference, and that the complainants
7 said you recorded that. Is that accurate? Did
8 you record that?

9 A Yes.

10 Q Okay. And, again, why did you record that one?

11 A Exactly the same reasons as for the first
12 recording; I needed a record that I could share
13 with a lawyer that I hoped to retain.

14 Q Okay. Okay. Now, they also -- and this is
15 jumping ahead a lot in time. This is coming to
16 events during the last time we were in the
17 hearing here in December. Well, I guess before
18 that as well.

19 But they -- they're concerned about
20 information that was published from -- I'm going
21 call it your -- your file, and what I mean by
22 that is -- is -- is the -- you know, the whole --
23 the whole file of this complaint in this
24 proceeding that you had up until, you know, the
25 summer or the fall or whatever at the point
26 that -- or roughly around the point that I came
27 in, and specifically obviously they're -- they're
28 concerned about as a result of that, apparently
29 some of the teachers -- I never saw this, but
30 apparently some of the teachers' names got -- got
31 published from this file that was yours that
32 somebody got ahold of. And the person who
33 published it was Pierre Barns.

34 So my questions about this are -- and so I'm
35 going to have a few. The -- the -- the whole
36 legal file of this proceeding, who did you share
37 that with and why?

38 A The -- the files in this case are massive. There
39 was over 600 files, so -- some of them having
40 hundreds of pages -- and about 400 emails. They
41 took up about six USB drives and -- which I
42 physically gave to Kari Simpson.

43 But when I was seeking for new legal
44 counsel -- I'm fairly computer-literate, but I'm
45 not that literate. I could not figure out how to
46 upload them to the internet, so to give the
47 lawyers background, I had to copy them onto USB

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1 drives and courier them. I couriered them to
2 Calgary, to Toronto, and I even had to courier
3 them to you as well.
4 And Pierre Barns said that he had a big
5 enough server that he could store them on his
6 server, and he lived closer to Kari Simpson than
7 I did, so he asked her for copies of my files,
8 because by this time you had been retained, and
9 she gave him the six USB drives, and he put them
10 on his server.
11 Q Okay. Now, were you -- did you -- did you
12 consent for Pierre to get a copy of these?
13 A I didn't see a reason --
14 Q Were you -- were you aware -- sorry. Go ahead.
15 A Yeah, I was aware that he had done it, and I
16 didn't object. I didn't give prior consent, but
17 I thought, "Good. Well, now if I -- if James
18 cook -- Kitchen goes rogue on me and I have to
19 find another lawyer, at least I will be able to
20 point him in the direction of where to find all
21 the background for this case."
22 Q Okay. Well, now -- now we kind of come to the
23 rub because there's some evidence that suggests
24 that Pierre published part of -- part of what he
25 has, so my question to you is this: Did you
26 instruct Pierre to publish -- publically publish
27 anything that was in that file?
28 A No, I didn't, and I didn't think he had done
29 anything other than just store it.
30 Q Okay.
31 A I think somebody from the CTA or the Tribunal
32 discovered it.
33 Q Okay. Did -- insofar as this is a different
34 question, did Pierre ask you if he could do that
35 or did he in any way let you know that he was
36 planning to do that? Did you have any knowledge
37 or awareness that he was going to do this?
38 A No.
39 Q Okay.
40 A I don't believe that he did anything. He just
41 stored them on his server, and somebody found out
42 about it.
43 Q Okay. What's your knowledge, if any, of whether
44 or not that information was removed from public
45 access?
46 A Well, when I found out that the document which
47 identified the names of the three witnesses was

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1 out there, I asked him to -- to please delete
2 that document so it would not be on the -- on the
3 server. I still had that document on my
4 computer, and three other law -- law firms had
5 that document on their computer, but it was no
6 longer on Pierre's server for the -- anybody to
7 get ahold of.

8 Q Okay. Okay. Well, thank you. I think those are
9 all my questions about that. If you've got
10 anything else to add, by all means, but I think
11 those are all my questions.

12 A No. I think that covers it.

13 Q Okay. Thank you.

14 Okay. Now I'm going deal with a couple of
15 documents that we want to apply to have in the
16 record. I'll share my screen here. Is that
17 working? Can you see -- can you see this PDF
18 document in front of you?

19 A Yes, I can.

20 Q Okay. What can you tell me about what this
21 document is?

22 A Well, there was a lot of talk that schools had to
23 implement SOGI 123, because it was mandated by
24 the Province, but in 2002 the Province decided to
25 lay all the responsibility on school boards
26 because there was some worry that there might be
27 some litigation or lawsuits regarding the -- the
28 unintended harms of SOGI 123, and they didn't
29 want people suing the Province, so they laid the
30 responsibility on individual school boards so if
31 anything went wrong they could only sue the
32 school board; they couldn't sue the Ministry of
33 Education. And -- 'cause it was the school
34 board's responsibility to approve all learning
35 resources.

36 Q The date on this document's July 1st, 2017. Does
37 that sound accurate to you?

38 A Yes.

39 Q Okay. Now, you just said "2002." Was that a
40 reference to this or something else?

41 A Well, it was updated on 2022.

42 Q Okay. Now -- okay. I understand. Now, was
43 this -- was this actually a change of policy or
44 was -- or, you know, was this how it had been
45 done and this was really just sort of putting it
46 down on paper?

47 A Well, when I was first a school trustee, learning

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1 resources was a real challenge, and every school
2 district had hard copies of learning resources,
3 and they tried to store them in a central
4 location. A lot of teachers said that they had
5 learning resources underneath their beds at home.

6 But as the internet became more available,
7 learning resources were much more widely
8 available, and teachers had in their union
9 contract that they could use any learning
10 resource that they wanted. So this policy is in
11 direct conflict with the union contract which
12 says that teachers could use their professional
13 discretion to use any learning resource they
14 want. So this particular policy doesn't really
15 have a lot of teeth.

16 Q Okay. It says here that:

17
18 The ministry no longer conducts
19 evaluation processes to recommend
20 learning resources. This
21 responsibility now rests with the
22 board. Board policies and procedures
23 should include a process for ensuring
24 the list of recommended learning
25 resources is up to date, aligned with
26 changes in curriculum. This would
27 include adding and removing resources
28 from the list.
29

30 You know, based on your experience, is -- is this
31 paragraph accurate or -- or what would you say to
32 this paragraph?

33 A That paragraph is accurate, but the amount of
34 time, labour, and work for each school board to
35 check every learning resource that's being --
36 floating around out there in the school district
37 is absolutely onerous. They'd have to have a
38 whole -- staff a whole office to be constantly
39 monitoring that. It would be cost prohibitive.
40 But they are responsible nevertheless.

41 CNSL J. KITCHEN: Okay. I'd like to have this entered
42 as an exhibit. I've -- I've discussed this with
43 my friend, and I think the safest thing to do is
44 just to put it in as an exhibit unless the
45 Tribunal directs otherwise.

46 This is a policy document. Arguably it is
47 there for a legislative authority and could

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1 simply -- could simply just be referred to in
2 argument; doesn't need to be made an exhibit.
3 But I think -- I think the safe thing --subject
4 to the Tribunal's view on this, the safe thing to
5 do is -- it to put it in as an exhibit. I
6 don't -- I don't think my friend has any
7 objections to it.

8 THE CHAIR: Thank you. Sorry, just before I get to
9 the objection, have you sent this into the
10 Tribunal, Mr. Kitchen, yet, or not yet?

11 CNSSL J. KITCHEN: No, but obviously I -- I -- I need
12 to. I was just waiting 'cause I -- I -- I didn't
13 have a clear position for my friend of consent
14 yet, so I was waiting on that.

15 THE CHAIR: All right. Go ahead, Ms. Waddell.

16 CNSSL L. WADDELL: Yeah, I -- I have no objection.
17 We -- we say it can go in as -- as an exhibit,
18 and the only thing I would note, which is not
19 necessarily about the document, per se, but just
20 to the extent, Mr. Kitchen, that there's any
21 importance around this business of the policy and
22 the -- the collective agreement being in
23 conflict, that wasn't something that -- that was
24 put to our witnesses, but that does not -- in my
25 view shouldn't impact whether this goes in, so
26 we're happy to have it go in as the next exhibit.

27 THE CHAIR: All right. Thank you. Well, we will hold
28 off on marking it until the Tribunal has a copy.
29 So just at some point during a break,
30 Mr. Kitchen, could you please send that through
31 the case manager, and then when we have that,
32 we'll -- we'll mark it and enter it into the
33 record.

34 CNSSL J. KITCHEN: Thank you.

35 THE CHAIR: Go ahead.

36 CNSSL J. KITCHEN:

37 Q Okay. Barry, next document is -- if I can get to
38 it -- this "British Columbia School Trustee
39 Association and the Role of Boards of Education
40 and Trustees in B.C." What can you tell me about
41 this document?

42 A When people are wondering if they should run for
43 school trustee, this is a resource that is
44 often -- they are often referred to. And even
45 when they pick up their nomination packages, this
46 document is available so that they understand
47 what a school trustee actually does. So it's --

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1 it's common knowledge for -- for anybody who
2 wants to be a trustee. And, of course, an
3 experienced trustee would -- would know this from
4 working with the board.

5 CNSL J. KITCHEN: Okay. I wasn't going to ask any --
6 any questions about the content, Ms. Waddell. I
7 think -- I think that safely identifies the
8 document but --

9 CNSL L. WADDELL: It does. That's fine.

10 CNSL J. KITCHEN: You're -- okay.

11 CNSL L. WADDELL: Yeah.

12 CNSL J. KITCHEN: Same thing, Chair. I -- I need to
13 email this in, obviously, but we'd like to have
14 this in as an exhibit.

15 THE CHAIR: All right. Thank you. We'll -- we'll
16 mark that when we get it.

17 CNSL J. KITCHEN: Thank you. Okay.

18 Q Okay, Barry, I'm going to pick up where we left
19 off in December with some of the -- some of your
20 publications. If I -- I can get there. Okay.
21 Share again.

22 All right. You can see that -- that
23 document there?

24 A Yes.

25 Q Okay.

26 THE CHAIR: Sorry, Mr. Kitchen, can you identify it in
27 the book for us so that we can --

28 CNSL J. KITCHEN: Yeah, I was just about to.

29 THE CHAIR: Okay. Perfect. Thank you.

30 CNSL J. KITCHEN:

31 Q So this is -- well, that's -- what tab are we at?

32 CNSL L. WADDELL: Is it Tab 21? Or you're moving
33 around now.

34 CNSL J. KITCHEN: Yeah, this is -- yes, there you go.

35 It's Tab 21. This was the first book you sent
36 me, and then I did a bunch of work on this one
37 and so I'm -- I'm still stuck using it. Tab 21.

38 Okay. So -- and this is in the publications
39 book, of course.

40 Q So, Barry, there's a post here that the
41 complainants have included, and you say:

42
43 It just dawned on me who is
44 perpetrating all this fear over the
45 dreaded coronavirus, why it is the
46 World Health Organization
47 [indiscernible - rapid speech] that

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claims easy access to abortion is a human right and that gender is not binary, our prepubescent children should be allowed to choose their gender, sterilize themselves, and pretend that they have successfully changed their gender to comply with what they feel they are.

And then you say:

Theresa Tam, Canadian head of public health, is suspected of Wikipedia of being transgender. This person who has spent a major portion of their life deceiving people as to who he, she truly is and now a major player in the corrupt World Health Organization. Why should we believe anything he, she says?

What are your comments about this post?

A Throughout the last seven years I've tried to focus all my criticism against an ideology, against learning resources, and I have made every attempt not to name any particular person, and on this issue I slipped up. I mentioned an actual individual. And although the argument makes sense to me, I -- I regret -- I -- I regret saying that about Dr. Theresa Tam.

Q Just to clarify, when you say you regret saying -- saying that about Theresa Tam, do you mean this -- this second half here where you're mentioning her?

A Yes.

Q Okay. And what about the first half where you are -- you haven't yet talked about her and you're talking about "children should be allowed to choose their gender, sterilize themselves, pretend that they've successfully changed their gender to comply with what they feel they are"? Do you still -- do you still stand by having said that?

A I certainly do.

Q Okay. Now I'm going to be at page 209. No -- well, this is in the original book, so I don't know if the page number is different. We need to

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1 figure out what tab we're in.

2 CNSL L. WADDELL: Do you know which -- that looked
3 like an interview transcript there; do you know
4 which one it was? Is it the Rebel News one or...

5 CNSL J. KITCHEN: No. Looks like it's the Laura Lynn
6 one so that's going to be, I think --

7 CNSL L. WADDELL: [Indiscernible - cross talk].

8 CNSL J. KITCHEN: Yeah. [Indiscernible - cross talk]
9 Tab 33.

10 CNSL L. WADDELL: Yeah.

11 CNSL J. KITCHEN:

12 Q Okay. So we're at Tab 33, page 209, but I don't
13 know if that's -- just go with Tab 33.

14 So we're partway into this interview with
15 Laura Lynn Tyler Thompson, Barry, and -- how do I
16 make this bigger -- and you say:

17
18 I care about -- I care about all kids.
19 I care about the autistic kids who are
20 so easily influenced by this ideology.
21 I care about kids who come from homes
22 where they're beaten and abused and
23 neglected and they have no hope. I
24 care about them.
25

26 Tell me what you -- what you were talking about
27 in this bit.

28 A Well, Dr. Cass' investigation into the Tavistock
29 said that autistic kids were greatly over
30 represented as kids who had been diagnosed as
31 gender dysphoric, and I -- I am aware of at least
32 three autistic children who have such rigid
33 thinking that they have a hard time making
34 friends, and by coming out as transgender --
35 at -- at first it looks like this is a way of
36 becoming popular and having friends, so they're
37 very, very prone to falsely identify as
38 transgender and to do the social transition, the
39 hormone blockers, and -- or puberty blockers and
40 then the hormone therapy and, ultimately, the
41 brutal surgery of changing their bodies.

42 Q What about the bit where you say, "I care about
43 kids who come from homes where they've -- where
44 they're beaten and abused and neglected and they
45 have no hope?"

46 A Another group of children who are attracted to
47 the transgender ideology are children who have

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1 been abused, neglected, and they also fall for
2 this ideology. And they may have other
3 psychiatric problems that are being unaddressed
4 probably because they're from homes where the
5 parents are not really paying much attention to
6 their kids' problems and so they go online, they
7 discover other young people who are happy with
8 their transgender identity, and they fall for it
9 when that's not really their problem. Their
10 problem is -- is post-traumatic stress, it's
11 feeling of constantly being victimized, and
12 they're looking for freedom and liberty and so
13 changing their gender seems to be the solution to
14 all their problems.

15 Q You go on to say -- and thank you for that. You
16 go on to say:

17
18 There's -- but there's another
19 announcement. I have a granddaughter,
20 14. She's bugging her mom for
21 hormones, so it's getting awful close
22 to home for me. I don't want that kid
23 to ruin her body.

24
25 Tell me about what's going on here and, you know,
26 if there's any update to this because this would
27 have been a few years ago.

28 A Well, the story has a happy ending. It's
29 actually -- my daughter-in-law remarried and had
30 a second family. My daughter-in-law at the time
31 had a heart condition and she needed a heart
32 transplant, and they told her she wasn't
33 qualified for a heart transplant because she was
34 on Methadone because in her younger days she had
35 been addicted to cocaine.

36 Her partner is very unmotivated. He spends
37 his time playing video games and smoking
38 marijuana.

39 Her 7-year-old daughter had spina bifida,
40 and they were constantly traipsing back and forth
41 to the children's hospital for all the treatments
42 that the -- the youngest daughter had, so of
43 course the 14-year-old daughter, dealing with
44 parental illness and playing second fiddle to the
45 physically-handicapped daughter, began to get
46 restless and spending all her time on social
47 media. She didn't have too -- too many friends.

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1 She thought she would be happier if she went on
2 hormones and became a guy, and my daughter-in-law
3 says, "Barry, what do I do?" And I said,
4 "Whatever you do, don't argue with her.
5 Procrastinate, procrastinate. Put it off. Stall
6 her. Tell her you'll make an appointment at a
7 gender clinic next week and -- because if you
8 argue with her, she'll tell her school teachers
9 and they might send in child protection and
10 remove the girl." So she did that. She got her
11 involved in extracurricular activities. And that
12 was three years ago. The girl has grown out of
13 her gender dysphoria. She's happy with being
14 a -- a young woman.

15 I just saw a recent picture of her in her --
16 her -- she's been invited to be a date of
17 somebody for a high school prom, and she's a
18 gorgeous-looking young woman now with all the
19 feminine curves. And her short boy butch cut is
20 now grown to a beautiful shoulder-length hair.
21 So we dodged that bullet, and she didn't ruin her
22 body and ruin her life.

23 I also purchased a book for my
24 daughter-in-law, Abigail Shrier's *Irreversible*
25 *Damage* and...

26 Q Okay. So we're in the same -- sorry. I'm going
27 to go back to sharing here. I just wanted to
28 make sure I had my right spot.

29 So we're in the same interview, so we're
30 still in Tab 33, and I'm going to kind of move on
31 to a new topic. I don't think we've covered this
32 yet. We've covered a lot of what we need to, but
33 I think this is a new area we haven't.

34 CNSL L. WADDELL: Sorry, before you ask the question,
35 can I just ask, because you're using the old book
36 and the page numbers are different, would you
37 mind, when you take him to things, maybe just
38 mention the time stamp that's nearby so that we
39 can all kind of find the equivalent page.

40 CNSL J. KITCHEN: Okay.

41 CNSL L. WADDELL: If you can remember that.

42 CNSL J. KITCHEN: The last time stamp was an hour and
43 7 minutes and 19 seconds to an hour and
44 13 minutes and 50 seconds. So the next time
45 stamp I'm at is 1:14:14 to 1:14:59. Tab 33.

46 Q Okay. Barry, you say here:

47

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1 James Lindsay, an atheist, believes
2 that gender ideology is a religion and
3 that it's -- we used the word before --
4 it's grooming kids to become sexual
5 deviants, and he says we've got a lot
6 of work to do to turn this thing
7 around.
8

9 And just before you answer, I'm going to go on.
10 We're at time stamp -- hold on. This is a
11 different interview. It's Tab 34. Well, sorry.
12 Let's -- let's -- let's just take care of the --
13 the James Lindsay thing.

14 What are you -- who's James Lindsay, and --
15 and what are you talking about here when you say
16 gender ideology is a religion?

17 A James Lindsay has become a very popular in-demand
18 podcaster publishing what he calls "new
19 discourses." He's very critical of diversity,
20 equity, inclusion, and he's very critical of the
21 new racial profiling. He's very critical of
22 gender ideology.

23 And I -- I began to see that gender ideology
24 has a lot of the markings of a religion. All of
25 the witnesses that the CTA brought forward were
26 asked what proof there is there's more than two
27 genders, and all them lowered their voice, and
28 they said, "Because I have met them." And it
29 wasn't a fact or something that could be proven
30 scientifically. It was obviously a faith belief
31 that they strongly held that there are more than
32 two genders, and if you don't agree with it, you
33 get brought up in front of the court of
34 inquisition which in Canada happens to be the
35 Human Rights Tribunal whose job it is to protect
36 this new religion and to declare anyone who
37 doesn't agree with it a heretic and punish them
38 appropriately.

39 Q Thank you. Okay. So now we're at the Rebel News
40 interview. I think that must be Tab 34. Yep.
41 Okay. And I'm going to be at time stamp -- I'm
42 going to start with time stamp 17:09 to 17:36.

43 Okay. So you comment again on religion, and
44 this is actually a slightly different comment
45 than you just gave here, so that's good. You
46 say:
47

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 Submissions by Cnsl L. Waddell

It just doesn't make sense. Another reason that makes it sound like a religion is that if you're into the ideology and then realize something's wrong and you want to get out, you get treated like a heretic and they go after you. In the old days we used to burn heretics at the stake. Now we roast them on social media.

You say, "Counsel [verbatim] culture is definitely going strong," but I think we all know what you mean is "cancel culture." Tell me what you're talking about there with the "If you realized there's something wrong and you want to get out, you get treated like a heretic." What were you talking about there?

A Well, the Tribunal refused to hear from two of my supporters who are detransitioners, and they have horrific tales of how they were persecuted when they realized they had made a wrong -- a bad mistake and tried to go back to their natal sex. They were harassed, abused, physically attacked by the trans activists, and all they wanted was peace. They never found peace when they tried to transition, but when they tried to go back to their normal self, their normal identity that they had at birth, they were treated horribly, and they were treated like heretics for not constantly beating the drum for the transgender ideology.

SUBMISSIONS BY CNSL L. WADDELL:

CNSL L. WADDELL: Sorry, I just want to note, James, that -- and I didn't -- I didn't want to interrupt the witness.

All of what Mr. Neufeld just said is -- is hearsay insofar as you might seek to have it in for the truth of its contents, but I don't have an issue with him saying that that's his understanding that informs -- you know, in answer to your question, "What were you talking about here?" He's saying that's -- that's the -- his understanding and that he was talking about that here, but we certainly object to the -- Mr. Neufeld providing evidence on behalf of

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1 witnesses who were excluded.

2 A Well, if they had been allowed to be present in
3 the hearing, it wouldn't be hearsay. It would be
4 right from the horse's mouth.

5 THE CHAIR: Thank you, Mr. Neufeld. Mr. Kitchen, did
6 you want to respond to that or are we on the same
7 page about the meaning we can take from this
8 testimony?
9

10 SUBMISSIONS BY CNSL J. KITCHEN:

11
12 CNSL J. KITCHEN: I'm fine with that. That was the --
13 the purpose of that was for him to -- to say
14 where he's -- where he's coming from on that;
15 where -- where he gets that. It wasn't to
16 establish that this really did happen to -- to
17 Kelly-Lynn (phonetic) or Faith (phonetic). So,
18 you know, I -- I think -- I think -- I think
19 we're in agreement with that. It can -- it can
20 stay in the record, and we don't need to worry
21 about the -- the -- the truth of its contents
22 insofar as it relates to the two witnesses and
23 what happened to them.

24 THE CHAIR: Thank you. Go ahead.
25

26 EXAMINATION IN CHIEF BY CNSL J. KITCHEN, continuing:
27

28 Q Okay. Barry, while we're here, just to stay on
29 this topic, you've already commented how -- how
30 you -- you consider it a form of religion, but
31 then you say:
32

33 Schools are supposed to be entirely
34 secular, but what they've done, they've
35 replaced love of neighbour with
36 diversity, inclusion, and equity.
37

38 Tell me what you're talking about there.
39 A Well, love of neighbour is a strong tenant of the
40 Christian faith which is being sidelined in
41 public education, and it's being replaced with
42 something with way less quality, and that's
43 diversity, inclusion, and equity.

44 I like to refer to the initials DIE, but
45 commonly it's used as DEI. And I believe
46 that's -- that's a false virtue, that's a false,
47 damaging ideology. Love of neighbour is far more

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Barry Neufeld (for Respondent)
 Submissions by Cnsl J. Kitchen
 In chief by Cnsl J. Kitchen

1 inclusive.
 2 Q Okay. And, lastly, this point here in the top of
 3 225, you say:
 4

5 I've never seen such hatred unleashed
 6 due to this division, inclusion, and
 7 equity. One student in one of our
 8 schools told me I was such a horrible
 9 person my mother should have aborted me
 10 with a coat hanger. Where are they
 11 learning all this hatred from? Another
 12 thing is original sin has now been
 13 redefined to be anyone who is white and
 14 heterosexual and mean we must repent of
 15 that.
 16

17 So there's two thoughts there. So the first one
 18 I want to deal with is the bit about hate and the
 19 student who told you that your mother should have
 20 aborted you with a coat hanger. What are you
 21 talking about there?

22 A I received hundreds of messages like that
 23 encouraging me to kill myself, accusing me of
 24 being a child molester, and it all stemmed from
 25 Glen Hansman's public announcement that Barry
 26 Neufeld should not be around children.

27 People didn't understand that his reason for
 28 saying that was that I might upset a few
 29 transgender children. They thought that he was
 30 referring to me being a child molester, and I put
 31 up with those insults for seven years. It's
 32 taken a lot of joy out of my life. Thanks,
 33 Hansman.

34 Q What about -- what about the hate bit, not just
 35 the -- not just the insults? But you -- you --
 36 you reference the hatred unleashed as a result of
 37 the DE -- DIE. What are you referring to there?

38 A DI -- DEI is supposed to make everyone feel
 39 welcome, but the only persons that they are
 40 actively making feel welcome are queer people.
 41 People who have a totally different approach to
 42 life. Anybody with traditional family values is
 43 treated with disdain. White people are treated
 44 with derision because they're supposedly
 45 privileged.

46 I went on a long trip the last few days, and
 47 I didn't see very many white people in what

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1 appeared to be very lucrative government jobs.
2 Everybody was -- was doing well. Diversity,
3 equity, and inclusion is creating anything but a
4 harmonious society in my opinion.
5 Q Okay. So I think we're at Tab 35 now. No. Yep.
6 Yep. 35. Okay. I'm going to make this a little
7 bit bigger here.

8 Okay. You say -- I'm just going to read
9 what -- what I got highlighted here because
10 otherwise it will take a while:

11
12 I've never used religious arguments
13 against gender ideology, but the ideas
14 are piling up so fast that I feel the
15 need to write a book.

16
17 Let's -- let's skip to this part:

18
19 People think it is a Christian virtue
20 to feel sorry for someone suffering
21 from gender dysphoria. Feeling sorry
22 for someone is not the same as love and
23 mercy; it is codependency. Speaking
24 the truth and love is merciful.
25 Furthermore, the early church fathers
26 agreed that while god created human
27 kind, male and female, the soul is
28 genderless. Our souls are non-binary.

29
30 And that's in quotes.

31
32 There is no way a man can be born in a
33 woman's body or vice versa.

34
35 Well, okay, so we've already covered that, but --
36 but the bit that I want to get into is the
37 talking about the Christian virtue and
38 codependency and mercy and love and speaking the
39 truth in love is merciful. What are you talking
40 about there?

41 A I'll give an example from my own family. My
42 oldest daughter suffers from delusions. She's
43 absolutely convinced that rogue CIA agents from
44 the -- are trying to assassinate her from
45 MKUltra, I tell her, "Honey, nobody's trying to
46 assassinate you. That's just all in your
47 imagination." She said, "Oh, Dad, you don't love

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1 me. You hate me because you don't believe in
2 me." I said, "I do love you, but I love you
3 enough to tell you when you're wrong. I love you
4 enough to tell you what is real, and -- and that
5 is the mark of love, not sympathizing with you
6 and saying 'Oh, you poor thing. I'll protect you
7 from MKUltra.'"

8 I just will not feed into her delusions, and
9 I believe that's what the trans activists are
10 forcing all of us to do; to feed into the
11 delusions of people who think that they're born
12 in the wrong body. Nobody's born in the wrong
13 body.

14 It's an ancient Christian doctrine that the
15 soul is genderless and we are -- our identity is
16 in the body that we're born with, and we put it
17 to use. The stronger male physique is supposed
18 to provide and protect; the softer feminine body
19 is supposed to nurture and care. And if you're
20 not happy with that, well, you're going to live a
21 life of misery.

22 Q Just give me a second. I'm just reviewing so
23 that I won't be too redundant here.

24 I think we covered that.

25 I don't -- I don't think we fully covered
26 this, so, okay, I'm going to be at page 238.
27 What is that? I think we're at Tab 41. Let me
28 confirm that.

29 Okay. Should be at Tab 41. This is a
30 RH Media interview with Barry Neufeld defending
31 children's rights in schools. Share this. I'll
32 give you a time stamp as well here.

33 Okay. Starting at time stamp 4:29 to 4:54.
34 Barry, you say here:

35
36 Usually gender-dysphoric children
37 historically have been only little boys
38 who wanted to be girls, but all of a
39 sudden we're seeing teenage girls in
40 their adolescence suddenly deciding
41 that they want to become boys. There
42 was an explosion of that.

43
44 And next time stamp, 4:55 to 5:54:

45
46 And they're bugging their parents for
47 hormone blockers and then puberty

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1 blockers, and they want hormones. And
2 if these girls were thriving, I might
3 be tempted to go along with it, but
4 they're not. They're miserable,
5 they're sullen, they're angry at the
6 world, and they're angry at teachers,
7 they're angry at parents.
8

9 Okay. Let's -- let's -- just that. That's --
10 that's what I want to ask you about. So this --
11 this bit about the teenage girls, what's going on
12 there?

13 A Well, adolescent psychiatry has always put up
14 with fads that come and go, and teenage girls are
15 more into discussing their feelings. And Lisa
16 Littman, as reported by Abigail Shrier, noted
17 that there were clusters of teenage girls that
18 were all of a sudden clammering to transition, so
19 there was an element of social contagion. They
20 had shown absolutely no sign of being gender
21 dysphoric until they got into their early teenage
22 years, and suddenly it was -- it was all a fad.

23 I've been around long enough that I
24 remember -- guess it was about 30 years ago there
25 was a fad of repressed memory that adults all of
26 a sudden would come up with these memories of
27 being molested by their relatives or step-fathers
28 years and years ago, and a lot of lives were
29 ruined until they realized that this was all a
30 phony scam and there was no such thing as
31 repressed memories that had been buried by
32 post-traumatic stress.

33 Another fad a few years ago was -- was girls
34 claiming that they had been taken to satanic
35 rituals where they had seen human sacrifice and
36 they had been raped and beaten and -- and I met
37 the psychiatrist who wrote the book *Michelle*
38 *Remembers*. It was all fake. But there was a lot
39 of therapists that lost their licenses because
40 they believed these girls' wild delusions and --
41 and it ruined many people's lives as a result.

42 And, once again, the -- the rapid onset
43 gender dysphoric girls, none of them seemed to be
44 very happy with their transition. They're
45 miserable. They hate their parents. They hate
46 their extended family. They have no family
47 connections. Their only connections is their

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1 fellow transitioning people.

2 And then they discover that while they might
3 pass as a boy when they wear boy's clothes and
4 act like boys, when they take their clothes off
5 and stand naked in front of the -- a mirror, it's
6 not a very pretty sight. And none of them will
7 enjoy sexual pleasure in their adult life. None
8 of them will be able to have the joy of giving
9 birth to a child. None of them will have the
10 tender joy of nursing a baby.

11 And people -- ten years after a
12 transition -- ten years after a teenager
13 transitions, long after they're out of public
14 school, suicide rates sky rocket.

15
16 SUBMISSIONS BY CNSL L. WADDELL:

17
18 CNSL L. WADDELL: James, I'm not going to keep -- I'm
19 not going to interrupt, but I'll just note all of
20 what Mr. Neufeld has just said is in the nature
21 of opinion or hearsay. I take it that these are
22 his beliefs and so if you intend to have his
23 testimony go in on that basis, that this is his
24 understanding -- I think that's your intention; I
25 don't think your intention is to establish the
26 truth of these things through Mr. Neufeld
27 himself, but I just wanted to put that on the
28 record.

29 THE CHAIR: Thank you. Mr. Kitchen --

30 A Thank you.

31 THE CHAIR: -- again -- again, are we on the same page
32 about the meaning we can make of this testimony
33 which is that these are Mr. Neufeld's beliefs and
34 understandings?

35
36 SUBMISSIONS BY CNSL J. KITCHEN:

37
38 CNSL J. KITCHEN: Yes. That's what matters. The only
39 reason I -- I hesitate with that -- because I
40 know there's going to be, potentially, a debate
41 here about striking things that Mr. Neufeld has
42 said, and I -- I -- I -- I'm -- I'm not asking
43 these -- these questions of him to try to elicit
44 opinion, expert or otherwise. Inadmissible
45 opinion, let's call it that. I'm not trying to
46 elicit inadmissible opinion.

47 So my friend says, you know, are -- are --

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Submissions by Cnsl J. Kitchen

1 are you eliciting it because it's his beliefs?
2 Yes, that's just it. The -- the purpose is not
3 to say, "Well, Barry Neufeld said this about
4 rapid gender -- rapid onset gender dysphoria, so
5 therefore it's true." That's not the purpose.
6 The purpose is he believes this, and that's
7 motivating him to say what he's saying.

8 So I -- I think we're on the same page that
9 it's -- it's admissible insofar as we're
10 establishing that he honestly believes this,
11 that -- that it isn't -- or at least this -- this
12 is what -- what the defendant's going to argue --
13 or respondent, sorry -- that he -- he honestly
14 believes this and -- and this honestly is his
15 motivation for what he's saying.

16 So that's -- that's the important points,
17 and -- and for that it needs to stay in the
18 record. It can't be struck merely because, you
19 know, it may be interpreted as opinion. We're
20 not preferring [verbatim] it as opinion.
21 We're -- we're preferring [verbatim] it as this
22 is what he says; this is what he honestly
23 believes; this is why he says these things.

24 So I think my friend are on the same page.
25 I'm not trying to -- to -- to -- to establish
26 the -- the truth of the content of what he's
27 saying; only the truth that he -- he truly
28 believes this and truly is the motivation for
29 what he's saying. To -- to me that's clear, but
30 at the same time I can -- I can see why
31 somebody's saying, "Well, that's -- that's not
32 clear and we should not have any of this
33 evidence." So I -- I think my friend and I are
34 on the same page. I -- I -- I think she knows
35 I'm not trying to get expert opinion in the back
36 door through my non-expert witness or anything
37 like that.

38 CNSL L. WADDELL: Yeah, I think we're on the same
39 page, so we're all good.

40 THE CHAIR: Thank you. So this evidence is admitted
41 for the purpose of establishing Mr. Neufeld's
42 beliefs and understandings but not for the truth
43 of these statements.

44 A What I should say was I went back to university
45 as a mature student and got my master's degree in
46 2010.

47 For the past seven years I have studied this

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1 issue extensively. I have read dozens of books
2 and reports and Dr. Hilary Cass's report, and I
3 self-identify as an expert in the area of gender
4 confusion, and my beliefs are not just based on
5 opinions; they're based on facts that I have read
6 in books. And when this is all over, I intend to
7 write a book citing all my sources.

8 THE CHAIR: Thank you. We're just at 11:15,
9 Mr. Kitchen. I don't know if this -- do you want
10 to finish up on this document or can we take a
11 break? You can let us know.

12 CNSL J. KITCHEN: No, I'm -- I'm going to move on.
13 The -- the last thing I'll say on this, because
14 it might come up in closing, is that we're --
15 we're -- we're -- we're not consent -- by saying
16 what I just said, we're not consenting or
17 conceding that these things are, in fact, not
18 true, which is -- I mean, this -- my friend's
19 going to argue that, and that's fine, of course
20 she is, but -- but, you know, in saying that I'm
21 not trying to establish what -- what she says is
22 inappropriate, because I agree with her, I'm not
23 saying that we're conceding that these things, in
24 fact, aren't true or -- or aren't real. Okay?
25 Just -- just -- just -- it's about -- when I
26 speak to that, it's about the purpose of the
27 evidence, not about whether or not it is, in
28 fact, false, you know, because, I mean, that
29 matters, right, because otherwise we could say,
30 "Well, he believes this, but he's crazy 'cause
31 all this is nonsense." We're not consenting to
32 that or agreeing with that so --

33 THE CHAIR: Understood. Yes --

34 CNSL J. KITCHEN: But, yes, I'm -- I'm -- I'm -- I'm
35 ready for a break.

36 THE CHAIR: All right. We're going to take a
37 15-minute break. During this break we will just
38 turn off our cameras and mics, and then we'll ask
39 you to come back in 15 minutes. Thanks very
40 much.

41
42 (WITNESS STOOD DOWN)

43
44 (PROCEEDINGS ADJOURNED FOR MORNING RECESS) [11:19:55]

45 (PROCEEDINGS RECONVENED) [11:36:40]

46
47 THE CHAIR: All right, everyone, come on back.

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1 All right. Looks like we're just waiting
2 for Mr. Neufeld to come back, and then we'll --
3 we'll continue.

4 CNSL J. KITCHEN: He's -- yeah. I just spoke to him.
5 He's taking some medication. I'm just -- I'm
6 just writing an email to the case manager with
7 those two documents.

8 THE CHAIR: Thank you.

9 CNSL J. KITCHEN: I can confirm that -- that article,
10 the Paraguay article, that is the right one, so
11 we're consenting to that.

12 THE CHAIR: All right. So let's --

13 UNIDENTIFIED SPEAKER: That's going to be Exhibit 7.

14 THE CHAIR: Exhibit 7 is the article called *Parents*
15 *defeat gender ideology in Paraguay*, dated
16 October 19th, 2017. It's two pages long. So
17 that's Exhibit 7.

18
19 (EXHIBIT MARKED)

20
21 CNSL J. KITCHEN: Okay. I've sent those two -- those
22 two documents in.

23 THE CHAIR: Thank you.

24 CNSL J. KITCHEN: Ms. Waddell, I -- I'm going to be
25 done before lunch unless something goes sideways,
26 so I'm just letting you know.

27 CNSL L. WADDELL: Thanks for that. So should we mark
28 those two documents, then, if the Tribunal's got
29 them?

30 THE CHAIR: I don't have them yet, so --

31 CNSL J. KITCHEN: Yeah.

32 THE CHAIR: -- I expect I'll have them by the time
33 we're done with direct, so we might be able to do
34 it before lunch or we'll do it right after.

35 CNSL J. KITCHEN: That's a good idea.

36 THE CHAIR: Thank you.

37
38 BARRY NEUFELD, a witness,
39 recalled.

40
41 THE CHAIR: Mr. Neufeld, are you ready to continue?
42 A Yes, I am.

43 THE CHAIR: All right. Go ahead.

44 CNSL J. KITCHEN: Thank you.

45
46 EXAMINATION IN CHIEF BY CNSL J. KITCHEN, continuing:
47

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Q Okay, Barry, we're almost done with your -- at least my questions about your publications. This one here, it's a little cut off, but it looks like it's your comment. You tell me if it's not. "While it is tragic" -- you say that:

While it is tragic that so many children were abused in residential schools years ago, there are probably more victims in our public schools in today's sexually-charged school environments.

Tell me what you meant by this.

A When I was in corrections, one of my first, guess you could say, clients was Robert Noyes. He was a school principal who was convicted of molesting over 100 children, and it went unabated for several years. Lots of attempts to cover up what he was doing.

And I know this will upset Reid Clark who's watching, but a career as a school teacher is really attractive to a minor-attracted persons, and it gives them unlimited access to children. And the actual numbers of children abused in residential schools is minor compared to the tens of thousands of children we have in public education now.

CNSL L. WADDELL: Okay. And I just want to note that this is all Mr. Neufeld's view, and it's not --

CNSL J. KITCHEN: Ms. Waddell, okay, at this point we're just interrupting the witness, and you're continuing to put this on the record, and I -- I've been understanding of it, but at -- at this point it's getting a little bit ridiculous. I think we all know where we're at with this, and -- and you may not like what he has to say and -- and you may enjoy interrupting, but I -- you know, at this point --

THE CHAIR: Okay --

CNSL J. KITCHEN: -- we need to stop. I'm -- I'm -- I'm -- I'm almost -- as -- as I just said, this is literally the last post I'm bringing him to.

THE CHAIR: All right. Well, just --

CNSL J. KITCHEN: Okay?

THE CHAIR: -- before we -- I want to hear what

Ms. Waddell had to say, and then maybe -- you've

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1 already responded to it, Mr. Kitchen, but I
2 didn't hear what she said. So go ahead,
3 Ms. Waddell.
4

5 SUBMISSIONS BY CNSL L. WADDELL:
6

7 CNSL L. WADDELL: This one is a little less connected
8 to -- to Mr. Neufeld's views. He is -- the
9 evidence that he just gave is, pure and simple,
10 opinion evidence, and it's pretty inflammatory
11 opinion evidence, and it's opinion evidence that,
12 if such evidence exists, it needs to come through
13 an expert.

14 So, you know, I don't think it's appropriate
15 for him to share. I don't hear, as I did with
16 the previous two, some connection to -- to his
17 views. He is stating this as a fact. If he
18 wants to reframe that, you know, "I feel that" or
19 "I believe that," that's fine, but that -- that's
20 our position.
21

22 SUBMISSIONS BY CNSL J. KITCHEN:
23

24 CNSL J. KITCHEN: The witness needs to be free to
25 answer the question. If you had've
26 answered [verbatim] the question in cross, he
27 would've said the same thing, and I doubt you
28 would've interrupted him then to say that you
29 didn't like that he didn't phrase it in a certain
30 way.

31 In fact, I expect you're going to cross him
32 on this, and you're not going to hear me
33 interrupt and say, "Oh, well, he can't say that
34 because it's opinion." Okay? So, you know, we
35 need to be fair to -- to both sides here.

36 You know, you -- you cast a wide net with
37 opinion. This isn't opinion. It's his views
38 based on his observations based on his personal
39 knowledge to which he can speak, to which he's
40 expected to speak, to which he'll speak in
41 cross-examination when you're questioning him.
42 So I -- I -- I -- I do take issue with the fact
43 that you're trying to curtail his evidence now
44 when it's in direct by calling it "opinion," but
45 I doubt that that would be the case when it was
46 your turn, so --
47

THE CHAIR: All right.

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1 CNSL J. KITCHEN: -- let's let him -- let's let him
2 say his piece, which you can call "opinion"
3 'til -- all you want, but it's -- it's -- it's
4 obviously based on his personal knowledge. It's
5 not like he is a bread maker and now he's
6 commenting about what's going on in the school
7 system. He was a trustee for decades, so I --
8 I -- I think it is fair for him to -- to say
9 what -- what his views are, and you -- you can
10 challenge him on it and say, "Well, that -- that
11 must not be true," and that's fine. He can
12 comment on that. But it's not like he's giving
13 some sort of expert -- expert opinion or trying
14 to or inappropriately saying, "Well this must be
15 true because I say it is." We've already been
16 down that path. So at this point we're just
17 wasting time, and you're interrupting the
18 witness.

19 THE CHAIR: Well, Mr. Kitchen, it's entirely
20 appropriate for counsel to object if they have an
21 objection, and our expectation, which we've been
22 over, is that when that happens we'll listen to
23 the objection, we'll hear both sides, and we'll
24 make a ruling on the objection. So insofar as
25 you're suggesting that counsel is behaving
26 inappropriately by raising these objections, I
27 have to respectfully disagree with that.

28 In terms of the issue at hand, I can tell
29 you that this evidence that we've just heard from
30 Mr. Neufeld about the situation in public schools
31 is only being admitted as his -- as his belief
32 and not for the truth of its contents because as
33 much as he may have experience, he's not an
34 expert in these areas, so that's not being
35 admitted for the truth. But we understand that
36 this is what Mr. Neufeld believes, it's why he
37 says he's saying this kind of thing, and it gives
38 context to the contents of these publications.

39 So you can continue, but I -- I will be
40 clear that this evidence is being taken in for
41 the purpose of understanding what Mr. Neufeld
42 thinks and why he's posting these things.

43 CNSL J. KITCHEN: Right. Just so you understand, your
44 abundance of clarity on that is precisely why, at
45 this point, I have -- I have to raise my concerns
46 with my friend's interruptions. They are
47 unwarranted in light of the fact that you have

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1 been so clear about what we're doing, and so,
2 yes, I do think at this point we're just
3 interrupting the witness without any -- any
4 purpose.

5 I mean, you -- that's fine. I get that you
6 disagree with that, but just so you understand,
7 like, that's -- you know, that's -- that's --
8 that's where I'm coming from is -- is my friend
9 knows darn well where you're at, and I know where
10 you're at, you know where you're at, everybody's
11 listenings [verbatim] knows where you're at, so
12 at that point it's just like, okay, well, why --
13 why is somebody -- why is counsel interrupting
14 the witness? That's -- that's -- that's my job
15 is to -- is to say, "Okay, at what point is
16 this -- is this -- cross the line, right, so --

17 THE CHAIR: Thank you. I have that point,
18 Mr. Kitchen. I have that point. Let's continue
19 with the questioning, please.

20
21 EXAMINATION IN CHIEF BY CNSL J. KITCHEN, continuing:

22
23 Q All right, Barry, let's start again. You say --
24 and -- and you can -- you can pick it up wherever
25 you want with what you were saying. You say:

26
27 While it is tragic so many children
28 were abused in residential schools
29 years ago, there are probably more
30 victims in our public schools today --
31 in today's sexually-charged school
32 environments.

33
34 You can pick up your answer wherever you like.
35 A Well, I know the -- the CTA counsel are trying to
36 portray me as a bigoted old man with outdated
37 ideas, but I am somewhat of an expert because I
38 was the lead probation officer in a group of
39 probation officers that supervised sex offenders
40 during my career. I have had several school
41 teachers who were convicted of sexually molesting
42 children that reported to me. And I -- I am
43 aware that anyone -- any career that involves
44 working with children attracts minor-attracted
45 persons. So I believe that my statements are
46 based not just on opinion but on my life
47 experience. And I believe that life experience

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1 is just as -- maybe more important than academic
2 credentials where you sat in a library and read
3 documents and wrote a thesis. I learned my stuff
4 through the school of hard knocks and real
5 experiences.

6 And, yes, it was -- it was terrible that
7 children were abused in residential schools,
8 but -- those were church-run schools, but they
9 didn't always hire church people. Not many
10 people would be interested in working in a
11 residential school way out in the middle of
12 nowhere; because when they were first built, they
13 were way out in the middle of nowhere, and it was
14 attractive to people back in the old country who
15 happened to have access to children, and that's
16 why it was so disastrous.

17 But the other thing that's -- mistake that's
18 being remade was that the government policy at
19 the time was that the government knew better than
20 Aboriginal parents how to raise their kids, that
21 we were bringing them into the 19th century and
22 this would benefit kids because the government
23 knew better than parents how to raise children.
24 Well, it's happening again. Unions are telling
25 their members that teachers and social workers
26 know better how to raise children than the
27 parents. The parents are bigoted and -- and
28 transphobic and they should not be trusted, and
29 if -- if the parents argue with the child would
30 wants to transition, the child should be put in a
31 foster home.

32 We know from experience that the government
33 makes horrible parents. Nobody knows a child
34 better than their mom or their dad.

35 And the other thing I noticed is that a
36 child's personality is often very, very different
37 at home than they are at school. A child who is
38 solemn and withdrawn at home might be the life of
39 the party at school or vice versa; child may be
40 shy and -- and timid at school, but at home
41 they're free to express themselves.

42 Teachers cannot say that they know children
43 better than their parents because they don't.
44 How do I know that? Well, when I was a probation
45 officer, I never wrote a report for the court
46 unless I made a home visit. I talked to the
47 school teachers, I got an impression of the child

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1 from the school teachers, but I didn't take that
2 on face value; I visited the home and see what
3 was going on at home, and it was often very, very
4 different personality that I saw in the children.
5 And that's all I have to say about that.

6 Q Thank you. Okay. Lastly I'm going to address
7 some comments from Teacher B. This is the
8 teacher who was your neighbour for a time. Let's
9 start here: Teacher B said that you went -- said
10 that you were -- well, okay, let's -- actually,
11 let's start here: Teacher B says that she was
12 your neighbour. I take it you would -- you would
13 agree with that?

14 A Right next door in a townhouse complex. We were
15 six inches apart.

16 Q Okay. So you shared a wall.

17 A Yeah.

18 Q Okay. And would you have to go outside to get to
19 her door? Like, her --

20 A Yes.

21 Q -- front door? Okay. Okay. Okay. So there's,
22 like, a row of townhouses and -- and -- and --

23 A Yeah.

24 Q Okay. Thank you. Okay. She says that you went
25 and knocked on her door and told her that you
26 would be -- that there would be protests at her
27 house. That's what she said. What do you have
28 to say to that?

29 A That's a lie. Why would I go and tell her that?
30 I went to tell her out of good neighbourliness
31 that I was expecting the protests at my house,
32 not hers, and I wanted her to be aware that there
33 might be some disturbance in the neighbourhood.
34 And I just wanted to assure her that I had
35 nothing against her and that she had nothing to
36 worry about from me. That's exactly what I said
37 to her.

38 Q Okay. Did you say anything along the lines of
39 that you don't have a problem with her or her way
40 of life?

41 A I don't recall saying anything about her way of
42 life.

43 Q Okay. When you told her that there may be
44 protesters coming to protest your house
45 [verbatim], what was -- what was her reaction, if
46 any?

47 A It was if [verbatim] she didn't listen to me.

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1 She just said that I was a horrible person.
2 Q Okay. Did she say or do anything else after
3 that?
4 A Yes. She said that she -- she taught in a small,
5 rural school a long ways from Chilliwack and that
6 she had lots of transgender children.
7 I got to be careful not to identify the
8 school, but it was a tiny, tiny school, and how
9 she could have a lot of transgender children was
10 obviously an exaggeration.
11 Q Now, before you went over to knock on her door to
12 tell her this, did -- did you already at that
13 point know who she was?
14 A Oh, yes.
15 Q Okay.
16 A We'd had interactions back and forth.
17 Q Who learned who who was first? And what I mean
18 by that is were you the first to learn that she
19 was a teacher or was she the first to learn that
20 you were, you know, the famous Barry Neufeld, the
21 trustee? Who -- who learned about who first as
22 far as you know?
23 A Well, we knew that they were two women raising
24 three little kids, and I didn't know she was a
25 teacher, though.
26 Q Okay. Okay. Did you have any positive
27 interaction before she figured out who you were?
28 A Well, as she said, I used to shovel their snow
29 off their driveway. And, you know, I was already
30 in my late 60s when I was doing that, and they
31 were obviously a lot younger and more fit than I
32 was. And we put up Christmas lights together,
33 and I borrowed her ladder and maybe did a few
34 other neighbourly thing. I can't remember all of
35 them.
36 Q She said she had people knocking on her door
37 saying they were "looking for Barry." Do you
38 have any reaction to that?
39 A The only person who did that was Rob Bogunovic,
40 one of my witnesses. And I don't know why -- I
41 think -- I think the number on my unit had fallen
42 off or was hard to see. It was behind the light
43 or something, and he -- he just knocked on the
44 door by accident. He wasn't intending to
45 intimidate or frighten her at all.
46 Q She said that that was upsetting and she was
47 worried to open her front door.

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1 A Oh, bologna.

2 Q She said that after she figured out who you were
3 she didn't want to deal with interacting with you
4 and that she -- she avoided you. Does that sound
5 right?

6 A I don't recall seeing much of her after that, no.
7 But I -- actually, I never saw them outside very
8 often anyway.

9 Q Okay.

10 A Just -- their kids would be playing in the
11 backyard, and their backyard was separated from
12 me by just a fence.

13 Q Did you move out of that place at some point?

14 A I -- I moved away from that townhouse in December
15 of 2018.

16 Q And was there any particular reason, or were you
17 just selling and moving on?

18 A I was afraid of her. I had seen this article by
19 the newspaper reporter Paul Henderson saying that
20 he had talked to -- her name -- and that my -- I
21 was probably a drunk because my car -- my old car
22 had a lot of dents on it. And I was afraid that
23 she was feeding him information because he was
24 writing horrible articles about me.

25 Well, what really bothered me was all the
26 profanity that I kept hearing. I knew that they
27 were very, very angry people, and I didn't feel
28 safe living beside them.

29 CNSL J. KITCHEN: Okay. Well, thank you, Barry.

30 Those are all my questions.

31 THE CHAIR: Thank you. I imagine it probably makes
32 sense to take lunch a few minutes early and start
33 cross-examination after lunch.

34 Ms. Waddell, is that your preference, or
35 were you hoping to get started?

36 CNSL L. WADDELL: I'm -- I'm fine either way. So I'm
37 happy taking lunch now. That's okay.

38 THE CHAIR: All right. Well, let's -- let's take
39 until 1.

40 Just before we break, I can confirm that
41 we've received the two documents that we're going
42 to enter into the record, so why don't we just do
43 that quickly.

44 Okay. So we are now at Exhibit Number 8
45 will be the -- sorry. I'm just opening the
46 documents here.

47 CNSL L. WADDELL: The learning resources one?

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1 THE CHAIR: Yeah. The learning resources printout
2 from the government website which updated
3 March 31st, 2022. That's four pages.
4

5 (EXHIBIT MARKED)
6

7 THE CHAIR: And then Exhibit Number 9 will be the
8 document from the British Columbia School
9 Trustees Association called The Rule of Boards of
10 Education and Trustees in B.C., and that is four
11 pages.
12

13 (EXHIBIT MARKED)
14

15 THE CHAIR: All right. Anything else before we take a
16 one-hour break for lunch? No? All right. Then
17 let's come back at 1 o'clock. For this meeting I
18 will disconnect you from the -- the call, and
19 we'll rejoin after the break. Thank you.
20

21 (WITNESS STOOD DOWN)
22

23 (PROCEEDINGS ADJOURNED FOR NOON RECESS) [11:59:19]
24 (PROCEEDINGS RECONVENED) [1:04:12]
25

26 BARRY NEUFELD, a witness,
27 recalled.
28

29 THE CHAIR: All right. I'm just letting everyone come
30 in.

31 All right, everyone, welcome back. I'm just
32 going to briefly mute everyone. It's the easiest
33 way I have to mute everyone at once. So if
34 you're a speaker, you can unmute yourself when
35 it's your turn to speak.

36 Mr. Neufeld, I can see you're back. As you
37 know, the next part of this process is to begin
38 cross-examination. This means the lawyers for
39 the unions have questions for you. I'm sure
40 you've been well-prepared by your counsel and, of
41 course, you've watched the proceedings so far, so
42 you -- you probably know what to expect.
43 Essentially your -- your job as the witness is to
44 do your best to answer the questions.

45 It's important that only one person speak at
46 once, so I'll just ask that counsel ask their
47 question and then, Mr. Neufeld, you can give your

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1 answer, and you each sort of wait for the other
2 to stop talking before you start just so that the
3 record is clear.

4 I think we should plan to go until around
5 2:30 and then take a break. But certainly,
6 Mr. Neufeld, if you need any other breaks, you
7 can -- you can let us know.

8 Mr. Neufeld, do you have any questions about
9 this part of the process before we begin?

10 A No, I don't.

11 THE CHAIR: Okay. Thank you. Go ahead, Counsel, when
12 you're ready.

13 CNSL L. WADDELL: Madam Chair, I was just going to ask
14 if before the witness is formally placed in cross
15 if we could have a very quick -- either exclude
16 the witness or just have counsel and the panel in
17 a two-minute breakout.

18 THE CHAIR: Yes. Okay. Let -- we'll -- I think it
19 may be easier to just go into a breakout room for
20 a moment if I can remember how to do that. Just
21 give me a moment.

22 All right. I am assigning -- I'm sending
23 counsel to a room. I will be there in a moment.
24 Everyone else, please wait. We should just be a
25 few minutes, and then we'll be back.

26
27 (WITNESS STOOD DOWN)

28
29 THE CHAIR: All right. We are in a breakout room just
30 with counsel. Go ahead, Ms. Waddell.

31 CNSL L. WADDELL: Thank you very much. Over the lunch
32 hour -- and -- and I just wanted to do this
33 before I start cross in case my friend, A, wants
34 to speak to his client about it and/or, B, wants
35 to just extend direct a tiny bit to address it.

36 But over the lunch hour it came to our
37 attention that Mr. Neufeld, in fact, posted the
38 link to access the hearing this morning, which is
39 why you had a number of members of the public
40 present who you hadn't given access to.

41 So we will be adding that to our costs
42 application which is probably not a surprise to
43 Mr. Kitchen. And, Mr. Kitchen, you should have
44 it in your email now. We sent it to you right
45 before we resumed.

46 So if -- if my friend would like me to start
47 cross, I'm fine doing that, but he may want to,

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1 A, just look at the post and then see whether he
2 has any questions of his client about it because
3 I'm -- I'm probably going to cross on it. So I
4 just wanted to draw it to -- to his attention.
5 THE CHAIR: Thank you. Mr. Kitchen --
6 CNSL J. KITCHEN: Well, I don't --
7 THE CHAIR: -- do you have it there?
8 CNSL J. KITCHEN: I don't have anything from you yet.
9 CNSL L. WADDELL: It -- it'll be from Alanna.
10 Nothing?
11 CNSL J. KITCHEN: Right. Right. No, I -- yeah.
12 Well, okay, was there commentary in the post or
13 was it just -- just the link to the hearing?
14 Oh, there we go. It came through.
15 THE CHAIR: Did you send this to the Tribunal as well,
16 Ms. Tom, or not yet?
17 CNSL L. WADDELL: Not yet.
18 THE CHAIR: Okay.
19 CNSL L. WADDELL: I thought I would give it -- give it
20 to my friend first and then...
21 THE CHAIR: That's fine.
22 CNSL J. KITCHEN: Well, okay, let me ask you this: So
23 what I did this morning is I -- I basically
24 summarized the complainant's position on costs so
25 that I could cut to the chase and ask him
26 questions. Are you okay with me summarizing for
27 him that the complainants are seeking costs for
28 the fact that he posted the -- the link to the
29 hearing today? Is that fine?
30 CNSL L. WADDELL: Yeah, and then any -- any question
31 you have of him. I just wanted to make sure you
32 had an opportunity. So if you want to ask him
33 questions about this, I'm fine pretending that
34 direct didn't quite finish.
35 CNSL J. KITCHEN: Yeah, that's what I'll do.
36 CNSL L. WADDELL: Okay. And do you need a couple
37 minutes to chat to him or no? Okay.
38 CNSL J. KITCHEN: No. Well, I mean, I -- I don't
39 think he's going to be surprised, so...
40 So, yeah, that's fine. We'll do that, and
41 then -- and then we can go into cross.
42 THE CHAIR: All right. Thank you for that. I'm going
43 to try to close this breakout room, and then
44 we'll go back and Mr. Kitchen can ask some
45 questions.
46 CNSL L. WADDELL: Thank you.
47

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Barry Neufeld (for Respondent)
In chief by Cnsl J. Kitchen

1 BARRY NEUFELD, a witness,
2 recalled.

3
4 THE CHAIR: All right. We are coming back into the
5 hearing. I'll just wait until I see that counsel
6 is back.

7 All right. Thank you, everyone, for your
8 patience. Mr. Neufeld, are you there? Okay.
9 Thank you. While we were -- oh, I'll just make
10 sure he's got his ear phones on.

11 Can you hear me, Mr. Neufeld?

12 A Yes.

13 THE CHAIR: Okay. Thank you. While we were in the
14 breakout, something came up, and Mr. Kitchen is
15 going to ask you just a few questions about one
16 thing, and then we're going to begin the
17 cross-examination. So Mr. Kitchen just has a
18 couple questions for you.

19 Go ahead, Mr. Kitchen.

20
21 EXAMINATION IN CHIEF BY CNSL J. KITCHEN, continuing:

22
23 Q Okay. Barry, can you see that? Can you see this
24 white thing in front of you with a bunch of text?

25 A Yeah.

26 Q Okay. Do you recognize this? Is this your
27 posting?

28 A Yes.

29 Q Okay. So consistent with many things in this
30 proceeding, the -- the complainants have busied
31 themselves with monitoring your social media and
32 so they have -- they have pulled this up, and
33 apparently it's -- it must be from within the
34 last day or two or something like that because
35 it's in reference to today.

36 First of all, let me ask you where did you
37 get -- this is the -- this is the information to
38 access the hearing today. Where did you get this
39 information from?

40 A I got it from the B.C. Human Rights Tribunal
41 office.

42 Q Okay. The complainants have advised that they
43 will be seeking more costs against you on the
44 basis of inappropriate -- or misconduct,
45 inappropriate conduct, for having posted this, so
46 that's why I'm asking you these questions.

47 Now, it's not clear to me what -- where this

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Barry Neufeld (for Respondent)

In chief by Cnsl J. Kitchen

Cross-exam by Cnsl L. Waddell

1 post was. Do you -- do you know where you posted
2 this?

3 A It's a special Facebook page of RH Media:
4 Standing 4 Children.

5 Q Okay. Is that public or private or do you know?

6 A Private.

7 Q Private. Okay. If it's private, how did the
8 complainants get access to it? Do you know?

9 A There's probably a mole in their membership.

10 Q Why did you post this?

11 A Well, everybody was asking me "How can we watch
12 your tribunal," and I explained to them they
13 cannot watch, but they can dial in. I thought
14 this tribunal was open to the public, so I saw
15 nothing wrong with posting this.

16 Q Do you think it was inappropriate for you to
17 share with people how they could access this
18 hearing?

19 A No. How else are the public going to know how
20 they can watch what's going on in the B.C. Human
21 Rights Tribunal?

22 Q What would you say in response to the
23 complainants who are saying that it is -- I don't
24 know -- I don't know why they're saying it's
25 inappropriate; we're going to get that from them.
26 They haven't given us that yet, so I don't know
27 what they're going to say, but -- but this is our
28 last chance that we have to get any evidence from
29 you. What would you say in response to their
30 claim that this is inappropriate?

31 A Well, it's hypocritical for them to say that
32 because the Human Rights Tribunal is supposed to
33 be open to the public, and they're saying the
34 public should not know how to access the B.C.
35 Human Rights Tribunal.

36 CNSL J. KITCHEN: Okay. Those are my questions.

37 THE CHAIR: Thank you. I'm just catching up in my
38 notes.

39 All right. Now we'll move into -- into
40 cross-examination.

41 And so, Ms. Waddell, I think it's you who
42 might be asking the questions, so go ahead when
43 you're ready.

44 CNSL L. WADDELL: Thank you, Madam Chair.

45

46 CROSS-EXAMINATION BY CNSL L. WADDELL:

47

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 Q Okay. Mr. Neufeld, I'm going to start by going
2 back to some of your testimony from our last day
3 of hearing when we were all together before
4 Christmas. And, in particular, in your direct
5 testimony on that Friday you were asked if
6 trustees were actively involved in negotiating
7 collective agreement terms with -- with the
8 teachers union. Do you remember that?
9 A I believe so, yes.
10 Q Okay. And you said, "Not really." You said that
11 the collective agreement for school teachers is
12 largely done on a provincial basis by the B.C.
13 School Trustees Association. Do you remember
14 that?
15 A No. By the B.C. public education -- BCPC --
16 Q Okay. I think your point was that it's primarily
17 done at the provincial level; was that -- am I
18 right about that?
19 A That's right. Each board selects one of their
20 trustees to represent the board at that
21 provincial body, BCPC.
22 Q Okay. And would you agree with me, though, that
23 although they are terms of employment for
24 teachers in those -- the -- the provincial level
25 collective agreement, there are also terms of
26 employment for teachers that are bargained at
27 the -- I'll call it the local level between
28 individual school boards and locals of the BCTF
29 like the Chilliwack Teachers' Association?
30 A Yes, there's a few unique features of the
31 Chilliwack Teachers Association and the
32 Chilliwack Board of Education. Not very many
33 but --
34 Q Okay.
35 A -- usually upper management negotiates with the
36 union and the board just approves of upper
37 management's recommendations.
38 Q Yeah.
39 A They're not actively involved.
40 Q Right. But they are the party to that collective
41 agreement.
42 A That's correct.
43 Q Okay. Now, another thing in the -- from your
44 direct when we last got together, you -- you --
45 you were asked a bunch of questions about, you
46 know, the role of trustees, and you said that as
47 far as you were concerned, the board had one

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 employee which was the superintendant. Do you
2 remember that?
3 A Yes. That's a principle we all believe in.
4 Q Okay. And -- and I take it you were saying that
5 because the superintendant is the only real
6 direct report to the board. Is that right?
7 A Yes. Sometimes the assistant superintendants --
8 the superintendant delegates them to make reports
9 to the board, but it's -- 90 percent of the time
10 it's the superintendant only.
11 Q Okay. So I appreciate the reason why you gave
12 that answer, but would you agree with me that, in
13 fact, the board is the employer for all teachers
14 and personnel working in the school district?
15 A Some would say that, yes, we represent the
16 employer, but we only contacted the line workers
17 through the superintendant.
18 Q Yeah. And just to your point about "some would
19 say," I just want to be really clear; it's our
20 position that the board is the employer of all
21 teachers, support staff in the district. Do you
22 disagree with that position?
23 A That's the theory, but in practice the only
24 employee that we deal with is the superintendant.
25 Q Okay. If I can just get -- I'm going to get
26 Alanna to put some documents up on the screen,
27 and we'll start with the [indiscernible - audio
28 cuts out] collective agreement C-21.
29 Now, are you -- do you have any familiarity,
30 Mr. Neufeld, with the -- the local collective
31 agreement?
32 A No. I haven't been on the board now for a couple
33 of years, and I'm -- can't remember what the
34 particular issues were for the local agreement.
35 Q Okay. So I'll try and ask this in as efficient a
36 manner as possible bearing in mind that you're
37 not going to know all the ins and outs.
38 Would you have reason to disagree with me
39 that Article C-21 identifies the board, so the
40 board of trustees, as the entity that can hire
41 teachers or other professionals on a, you know,
42 part-time or full-time basis?
43 A Yes. But we delegate that power to the
44 superintendant.
45 Q Okay. And that's fair. I hear that you
46 delegate, but you'd agree that collective
47 agreement gives that power to the board; correct?

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 A Yes.

2 Q Okay. And Article C-22, do you have any reason
3 to disagree with me that that provision allows
4 the board -- or -- or curtails the board,
5 actually, in terms of how the board dismisses or
6 disciplines teachers?

7 A Yes, that's correct. The board generally follows
8 the recommendation of the superintendant.

9 Q Got it. All right. And the collective
10 agreement -- actually, it's C-22 there -- I
11 presume you understand, just in general terms,
12 that, like most collective agreements of this
13 nature, it's going to set out a process for
14 disciplining teachers?

15 A Yes. And as Article C-22 points out, the teacher
16 does have the opportunity to make an appeal to
17 the whole board.

18 Q Right. Okay. Good. You pretty much just asked
19 and answered my next question.

20 Okay. So I hear you've said that -- that
21 many of the things that the collective agreement
22 grants to the board you -- you delegate to the
23 superintendant, but you, it sounds like, agree
24 with me that it's the board that's the party to
25 the collective agreement, and insofar as the
26 collective agreement is concerned, it's the board
27 that is the employer of all teachers in the
28 district.

29 A Yes. We don't get very much involved in the
30 local collective agreement. The only time there
31 was some controversy and discussion was over the
32 school calendar, whether they have two-week
33 Easter break. That was the only issue that kept
34 coming up.

35 Q Got it. Okay. And now the -- would you agree
36 with me that the *School Act* also identifies the
37 board of trustees of any given district as the
38 employer of teachers working in that district?

39 A Yes.

40 Q Okay. Okay. And there are a few different --
41 you've mentioned the *School Act* a little bit.
42 Are you more familiar with the *School Act* than,
43 say, the collective agreement language?

44 A Yes, I am.

45 Q Okay. So I want to take you to Part 4 of the
46 *School Act*. I'll get Alanna to put it this up on
47 the screen because this is not intended as a

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Barry Neufeld (for Respondent)
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1 memory test.
2 Okay. So Part 4 generally addresses, among
3 other things, the requirements for who can hold
4 office as a trustee. Are you aware of that?
5 A Yes.
6 Q Okay. And Section 34 sets out the basis on which
7 someone may be disqualified from acting as a
8 trustee. Are you familiar with that?
9 A I am.
10 Q Okay. And one of those, Section 34(2), says that
11 an employee of the board is disqualified from
12 being nominated for, running for, or being
13 elected as a trustee of that same board. You're
14 familiar with that section?
15 A I'm familiar with that, and I'm uncomfortable
16 with it.
17 Q Okay. Well, we can talk about your comfort in a
18 moment. Would you agree with me that the rule or
19 that section makes sense from a
20 conflict-of-interest perspective?
21 A Yes, it does, because if the trustee happens to
22 be an employee in the school district, then they
23 are put in the position where they can vote on
24 approving their own raise.
25 Q Yeah.
26 A Which is a conflict of interest.
27 Q Okay. That makes sense. And -- and that -- it
28 makes sense from a conflict-of-interest
29 perspective even though each trustee carries only
30 one vote; correct?
31 A That's correct.
32 Q Okay. Now, the *School Act* also requires that
33 trustees, upon election, take an oath of office,
34 and I'm guessing, given your history, you've
35 probably taken this a few times. The oath itself
36 doesn't appear to be in the *School Act*. Do you
37 remember what, in general terms, that oath of
38 office contains?
39 A Well, due to my convictions I swore an
40 affirmation that I was there to improve the
41 academic achievement of students and that I would
42 abide by the majority decisions of the board.
43 Q Okay. And when you say, "Due to my convictions,"
44 I presume you were talking not about the -- the
45 last two things that you said but that you're
46 talking about swearing versus affirming. Is
47 that -- am I --

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 A That's correct --
2 Q -- understanding that?
3 A -- that's correct. My preference is affirming.
4 Q Okay.
5 A And I think that's on all school district
6 documents now anyway.
7 Q And what does affirming mean to you? That's the
8 promising to tell the truth without swearing on a
9 religious book. Is that right?
10 A That's correct.
11 Q Okay. Is that how you approach -- so in -- in
12 legal proceedings, as you know, you're often
13 given the choice of swearing or affirming an
14 affidavit, for example. You've just told us what
15 your approach is in the -- taking the oath of
16 office as a trustee is. Do you have a different
17 approach or preference where affidavits are
18 concerned, for example, or when you're asked to
19 testify in court?
20 A I try to be consistent that always the document
21 says "I do so solemnly affirm." I may have
22 inadvertently signed a document where it said
23 that I swore. But never, ever have I placed my
24 hand on a bible or a religious book, and I
25 believe that my obligation is to tell the truth,
26 nothing but the truth, so help me god.
27 Q Okay. So but the last part that you just
28 mentioned, that -- that is normally what we would
29 call an oath as opposed to an affirmation. With
30 the "god" we -- we call it swearing or an oath;
31 without we would usually call it an affirmation.
32 I just want to make sure I'm clear on which one
33 you prefer.
34 A Bringing in the word "god" does not imply that
35 it's an oath. The bible explicitly tells us not
36 to swear by any oath. Let your yay be nay --
37 yay -- and your nay be nay.
38 Q Okay. But just in terms of the example that you
39 just gave us, that -- that type of recitation
40 would be your preferred means of promising to
41 tell the truth.
42 A That's correct.
43 Q Okay. All right. Now --
44 A I should say that I had -- one affidavit I had
45 really difficult time getting affirmed. I --
46 Mr. Kitchen had sent me a blank document. I took
47 it to the Chilliwack court house. I said, "I've

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

got an affidavit here that they need me to affirm." He looked at it, and he says, "What's this?" I said, "It's an affidavit for the Human Rights Tribunal." He shoved it back at me. "Oh, well, I can't -- I can't deal with this because they're not a real court."

Q And --

A So I had -- I had to scrounge around to find a lawyer that would take my signature, and when I finally found one, I think I may have signed it without crossing out the oath and putting in affirm. But it was 5 o'clock on a Friday, and the Tribunal needed the affidavit right away.

Q Okay. That was the affidavit in -- in support of your motion to adjourn the hearing?

A That's correct.

Q Okay. All right. You ceased to be represented by Guild Yule in or around January or February of last year. Is that right?

A That's correct.

Q Okay. And am I correct that you have posted a number of times a bit of detail about the end of your relationship with that firm?

A Yes.

Q Okay. Now, have you -- okay. Let's -- let's actually go to some of those. So let's start with Exhibit B to the second affidavit.

So I'm going to have Alanna put a few different things up on the screen, Mr. Neufeld. If you need it enlarged or anything -- and I'm not -- I need things enlarged all the time, and I have a tough time seeing up here, so just let us know.

All right. So just for the record, this is Exhibit B to the second affidavit of -- of Belinda Lai. Do you recognize this document, Mr. Neufeld?

A Yes.

Q Okay. This is a newsletter that you drafted, among other things, about your lawyers pressing you to settle. Is that right?

A That's correct.

Q Okay. And I take it newsletters are not a once-off thing. This is something you publish with some regularity?

A Yes. Not on a fixed schedule but when there's something new developing.

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 Q Okay. And if we just scroll down a tiny bit
2 there -- and take your time to read it if you
3 need to, but would you agree with me that here
4 you -- you set out the terms of settlement that
5 were offered to you by the CTA and then you talk
6 about, you know, your lawyers pressing you to
7 accept those terms and the fact that they were
8 recommending that you settle? Do you agree with
9 me about that?

10 A That's correct.

11 Q Okay. All right. Now I'd like to go to
12 Belinda's Affidavit Number 3. Just going to take
13 me just a minute to find this one.

14 So now I'm going to take you to -- get the
15 exhibit number. This should be Exhibit J,
16 Alanna, and it's a number of pages in.

17 So this is, Mr. Neufeld, an application that
18 you filed with the Tribunal.

19 The page that I'm looking for, Alanna,
20 should say "6 of 7" at the bottom, and it's got
21 some handwriting on it. There we go.

22 Okay. Do you remember filing this general
23 application with the Tribunal, Mr. Neufeld?

24 A Yes.

25 Q Okay. And this was when you were unrepresented;
26 correct?

27 A That's correct.

28 Q Okay. And you say here:

29
30 I'm no longer represented by Guild Yule
31 as of January 30th. This was because
32 the B.C. School Protection Program
33 withdrew its coverage and ended its
34 retainer with David Bell of Guild Yule.
35 Mr. Bell told me that if he was going
36 to continue to defend me, he required a
37 retainer of \$150,000.

38
39 Do you remember putting that in your application?

40 A Yes, I do.

41 Q Okay. All right. Exhibit M, the same document,
42 Alanna.

43 Now, do you remember that you -- you filed a
44 couple of applications relating to your loss of
45 counsel in this matter?

46 A A couple of applications. No, I can't remember a
47 couple. I thought there was just one.

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 Q Okay. This is another application that you
2 delivered to the Tribunal. I take it that's your
3 handwriting there.

4 A Yes.

5 Q Okay. And this was an application seeking an
6 adjournment that you filed on May 13th, and here
7 you say, "My legal counsel withdrew" -- I think
8 that's a colon -- "Guild Yule LLP."
9

10 I have been searching for a new lawyer
11 to represent me. Before any new lawyer
12 will agree to represent me, they need
13 assurance that I have supplied them
14 with all documentation. I have
15 supplied them with over 500 electronic
16 documents, and they are still examining
17 them. I don't know if I have all
18 documentation.
19

20 Do you remember filling that out?

21 A Yes.

22 Q Okay. Now, I just want to cycle back for a
23 minute to your direct with Mr. Kitchen today.
24 You talked a little bit about -- you were asked
25 about Mr. Barns gaining access to or -- or being
26 provided with your file from your previous
27 counsel, among other things, and you talked about
28 providing -- sending materials to the various
29 lawyers you were trying to retain. Do you
30 remember that?

31 A That's correct.

32 Q Okay. Is that what you're talking about here,
33 this -- this reference to "I have supplied them
34 with over 500 electronic documents"?

35 A Yes.

36 Q Okay.

37 A After Guild Yule withdrew, the Human Rights
38 Tribunal and your office peppered me with many,
39 many more files, affidavits, applications,
40 documents, and I wasn't sure that I had all of
41 them. I knew that Guild Yule didn't have them
42 because they were no longer on record.

43 Q Okay. Now let's go to Exhibit EE in the same
44 document.

45 Okay. So this is -- looks to be an
46 interview between yourself and Emily Duggan on
47 August 15th, 2024. Do you remember doing an

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 interview with her online?
2 A Yes, I do.
3 Q Okay. And in that interview you say that your
4 lawyers, referring to your previous counsel, told
5 you what the CTA wanted in order to settle out of
6 court, that you spoke to your pastor about it and
7 said, "No, thank you, and you then said that your
8 lawyers told you that anything monetary the
9 insurer would cover but you responded -- you told
10 Emily Duggan that you responded by saying you
11 still didn't want that money to go to an
12 organization that abuses kids so you said "No."
13 And do you remember that aspect of the interview?
14 A Yes, I believe so.
15 Q Okay. And you -- you followed that by saying
16 your lawyers told you that was stupid and that
17 you were probably going to be found guilty of
18 hate speech. Do you remember saying that?
19 A Yes.
20 Q Okay. And then you said a couple of days later
21 the insurance company called you and said it
22 wasn't going to cover you because you've turned
23 down a reasonable settlement offer. Is that
24 right?
25 A That's correct.
26 Q Okay.
27 CNSL J. KITCHEN: Ms. Waddell, is there a question
28 coming?
29 CNSL L. WADDELL: I'm -- I'm asking him to affirm
30 what's happened in here, and, yes, I am going to
31 ask a question, but all of this has been in the
32 form of questioning. I've been asking him if he
33 recalls things and if he remembers them.
34 CNSL J. KITCHEN: Right, which is -- you know, I
35 understand that to be a tactic to get things in
36 the record, and, I mean, I'm not opposed to it
37 rigidly in the sense that if it's leading to a
38 question, but if we're just trying to read this
39 into the -- into the record and -- you know,
40 under the guise of, you know, "Did you write
41 this?" "Do you remember this," which obviously
42 he did, then, you know, at some point I have to
43 take an issue with that.
44 CNSL L. WADDELL: I'm just going to move on to my
45 question because I think it will solve your
46 problem.
47 Q Mr. Neufeld, who is Emily Duggan?

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Barry Neufeld (for Respondent)
 Cross-exam by Cnsl L. Waddell

1 A Emily Duggan is an activist parent in the
 2 Kootenays. She has an organization called "Moms
 3 Against the Norm," and she's been actively
 4 campaigning against the use of SOGI 123 in the
 5 public schools. She ran for school board trustee
 6 and unfortunately wasn't elected in her school
 7 district, which I forget the number, but it
 8 includes Castlegar.

9 Q Okay. And in terms of this interview -- and bear
 10 in mind I'm -- I'm not the best with technology,
 11 but is -- how -- had she used this interview or
 12 where did it go? It's posted on somewhere, I
 13 take it.

14 A I believe it was done by a Zoom-type of call like
 15 this. She recorded it, and I believe she
 16 publishes it on Rumble, not on YouTube.

17 Q Okay. All right. And I -- just a side note
 18 before we leave this particular document. On the
 19 last page there at -- at numbers -- they are sort
 20 of bulleted numbers here. 25 "ED" I presume
 21 stands for "Emily Duggan":

22
 23 Barry, how can the people help support
 24 you through all of this? Do you have a
 25 GoFundMe," et cetera, et cetera.

26
 27 And then across the bottom of the screen is
 28 wording that says, "You can help Barry
 29 financially by sending him an e-transfer to
 30 trustee-neufeld@gmail.com.

31 At the time that you did this interview, you
 32 weren't a trustee; correct?

33 A That's correct.

34 Q Okay. All right. Now, moving on, you have -- in
 35 addition to that interview and some of the posts
 36 that we've already gone to, you've also posted
 37 about some of your communications with your
 38 previous counsel before the two of you parted
 39 ways. Do you agree with that?

40 A Yes.

41 Q Okay. Going to give you a couple of examples.
 42 Before I do that, I'm going --

43 Can you email these two -- those two -- to
 44 James and the Tribunal.

45 CNSL J. KITCHEN: Ms. Waddell, it sounds like you're
 46 sending new documents my way.

47 CNSL L. WADDELL: Yeah. They're just public --

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Barry Neufeld (for Respondent)
Proceedings

1 they're publically available; a news article and
2 a page from your client's -- one of your client's
3 fundraising pages.
4 CNSL J. KITCHEN: Yes, but is there any reason why you
5 waited until now?
6 CNSL L. WADDELL: They are documents that I obtained
7 in preparation for cross-examination, and I only
8 looked at them this morning, so --
9 CNSL J. KITCHEN: Right --
10 CNSL L. WADDELL: -- that's why.
11 CNSL J. KITCHEN: -- and -- and this is now the third
12 or fourth time here in the last day or so that
13 you're sending me stuff at the last minute, and
14 you may have noticed that I tried to send you my
15 stuff at least with, you know, 20, 40, 60 minutes
16 notice. So at this point I'm getting a little
17 bit frustrated and concerned that we're -- we're
18 engaging in ambush here, and, you know, I don't
19 think that's appropriate, plus it's going to slow
20 things down, so I guess I could just ask, in all
21 courtesy, that if you're going to -- if you're
22 going to continue to bring new documents in that
23 you -- you send it to me when you have it instead
24 of waiting until the last minute.
25 CNSL L. WADDELL: Well, it's my view that for cross,
26 beyond the general rule that the obligation of
27 disclosure is ongoing for solicitor's brief
28 materials gathered in preparation of cross, those
29 are different than documents which are subject to
30 that ongoing duty of disclosure and that I'm
31 entitled to -- to pull and -- and use things at
32 the last minute. So these are in -- in that
33 nature. And -- and if you want to take a minute
34 to review them, I'm very happy to provide you
35 with that.
36 THE CHAIR: Let's let the documents come in and then,
37 Mr. Kitchen, we can take a couple minutes while
38 you take a look and see if you're asking for more
39 time to review them once we see what they are.
40 Please let me know once you have them,
41 Mr. Kitchen, and I've let the case manager know
42 that they should be coming in as well.
43 CNSL J. KITCHEN: I -- if -- if they're -- if they're
44 evidence of prior inconsistent statements, then
45 the idea is that they're supposed to be a
46 surprise, and so if that's what they are, then
47 I'm -- I'm with my friend on that. But if

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Barry Neufeld (for Respondent)
Proceedings

1 they're not of that nature, then I -- I question
2 whether it's appropriate to just be -- be
3 springing stuff like this. I -- I don't know
4 what they are. I guess we'll have to wait and
5 see but...

6 THE CHAIR: Let's see what they are, and then we
7 can -- we can see. And, if necessary, we can
8 exclude the witness if there's going to be an
9 objection. So we'll just wait for them to come
10 in, and then we'll see what to do.

11 Have you sent them, Ms. Tom? Are we just
12 waiting for them to...

13 CNSL A. TOM: They're three minutes away. Sorry.

14 THE CHAIR: Okay. Thank you.

15 CNSL J. KITCHEN: We know they reach me eventually.
16 It just takes a minute or so.

17 CNSL A. TOM: Yeah. It's the longest three minutes of
18 your life. Sorry.

19 Should be arriving.

20 CNSL J. KITCHEN: There we go. Well, we can -- we can
21 exclude the witness if that's what my friend
22 wants. I -- can I just have an -- is this -- is
23 this -- is this -- further to all the
24 publications he's made that you are alleging are
25 discriminatory, or is it for some other purpose?

26 CNSL L. WADDELL: It's for some other purpose. Why --
27 why don't we exclude the witness.

28 CNSL J. KITCHEN: Yeah.

29 THE CHAIR: Okay. Mr. Neufeld, are you still there?
30 I've lost your video. I don't know if anyone
31 else can see him still.

32 CNSL J. KITCHEN: I can't.

33 THE CHAIR: Did you say you can?

34 CNSL J. KITCHEN: No, I can't.

35 THE CHAIR: You can't. Okay. Yeah. He might have
36 just stepped away for a moment, I'm assuming.
37 Mr. Neufeld, you there? All right. We'll have
38 to wait until he's back so that I can properly
39 instruct him.

40 Okay. Mr. Neufeld, we're just going to
41 exclude you for a moment to address an objection.
42 I believe we're going to address an objection by
43 your counsel, so what I'm going to do is remove
44 you from the meeting and just ask that you
45 immediately click on the link to rejoin. We'll
46 let you in when the -- when the objection's been
47 addressed. Okay? Do you understand?

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Proceedings

1 A Yes.

2 THE CHAIR: All right. I'm going to remove you now.
3 Thank you.
4

5 (WITNESS STOOD DOWN)
6

7 CNSL J. KITCHEN: So is this to do with the cost
8 application?

9 CNSL L. WADDELL: Yes, to -- to some extent, and I'm
10 also laying a foundation here for waiver of
11 privilege. So your client has repeatedly posted
12 and talked about -- in many of these he does two
13 things: There's the posting of -- of
14 privilege -- information relating to settlement
15 talks that's privileged; that relates to the
16 costs application.

17 But he's also, in the course of many of
18 these, talked about communications with his
19 counsel, things they've told him, things about
20 their parting ways, and -- and all of that is
21 relevant to what I'm going to assert is waiver of
22 privilege over that file of David Bell's
23 (phonetic) that was in that OneDrive folder that
24 was publically available for so long.

25 CNSL J. KITCHEN: Okay. And does the purpose of that
26 relate to costs?

27 CNSL L. WADDELL: Some of it may. There are documents
28 in that folder that I may put to him in cross
29 as -- on the prior inconsistent statement fronts
30 in relation to his testimony. There may be --
31 there may be some things in there also related to
32 costs, but it's not limited only to costs.

33 CNSL J. KITCHEN: Okay. So there's -- there's
34 privileged, confidential communications between
35 him and his former counsel that you want to
36 question him about, and, of course, normally we
37 couldn't because of privilege and so you're
38 trying to establish that -- okay.

39 I'm going oppose that, but neither one of
40 us, of course -- well, I'm assuming you haven't
41 prepared any submissions on this because I
42 haven't seen any.

43 CNSL L. WADDELL: Correct. Well, we're getting a bit
44 ahead of ourselves --

45 CNSL J. KITCHEN: Right. Well, okay, yeah, no, I'm
46 just -- I'm just thinking. I guess we're just
47 going to have to wing our -- our -- okay. Well,

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Proceedings

1 now -- now I know where you're going and -- and
2 you know where I'm at, so I guess we'll just --
3 so --

4 CNSL L. WADDELL: James, yeah, why don't I just tell
5 you what I -- I thought I would do is I thought I
6 would finish up a segment here that, in my view,
7 is about laying a foundation for waiver of
8 privilege, and after that I intended to take him
9 to a privileged document. We can send that to
10 you now, or previously a document that one might
11 have considered privileged, and you can -- I
12 mean, that -- that one I don't think you're going
13 need it, per se, for our general arguments about
14 whether there's been a waiver of privilege. But
15 I think you probably want to let me get evidence
16 in on the foundation for -- for waiver and then
17 maybe we can -- you and I should even have a side
18 bar about what -- what we would prefer for
19 process in terms of dealing with your objection
20 once you have heard all, you know, the evidence
21 at least that we're going to say lays the
22 foundation, and maybe you and I can even agree on
23 a process and then propose it to the Tribunal.

24 CNSL J. KITCHEN: Yeah. Okay. So the purpose of
25 these documents is to -- is to say, "Okay, you
26 know, these are public access. You said this and
27 this and this. You know, what's going on here."
28 I mean, I'm -- I'm -- I'm fine with you putting
29 these documents to him and asking him questions
30 about that; that doesn't mean that I yet consent
31 to them going in as exhibits, but for public
32 access I think it's fair for you to -- to
33 question him about it, and we'll just see where
34 that goes.

35 CNSL L. WADDELL: Okay. Sounds good.

36 THE CHAIR: All right. So we'll let Mr. Neufeld back
37 in. Ms. Waddell is going to ask him questions
38 about these documents, and then we'll go from
39 there.

40 Now, I think in future what I'll try to
41 remember to do is maybe put him in the breakout
42 instead of removing him because he has not
43 reconnected.

44 So, Mr. Kitchen, understanding, of course,
45 he's under cross and can't talk to you about the
46 case, could you give him a call and just let
47 him -- ask him to please reconnect.

1304

Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 CNSL J. KITCHEN: Okay. So he's -- he's not connected
2 at all.

3 THE CHAIR: Correct.

4 CNSL J. KITCHEN: He's not -- he's not -- okay.

5 THE CHAIR: He's gone.

6 CNSL J. KITCHEN: Yeah. Just give me a second.

7 THE CHAIR: All right. Here he is.

8

9

BARRY NEUFELD, a witness,
recalled.

10

11

12 THE CHAIR: Thank you, Mr. Neufeld. We are going to
13 continue. Ms. Waddell is going to ask you some
14 questions about these documents. Go ahead,
15 Ms. Waddell.

16

16 CNSL L. WADDELL: Thank you.

17

18 CROSS-EXAMINATION BY CNSL L. WADDELL, continuing:

19

20 Q Okay. So before the break, Mr. Neufeld, I had
21 asked if -- if you posted about communications
22 with your previous legal counsel before the two
23 of you parted ways, and you said yes.

24 So I wanted to next take you to -- and I'll
25 ask you about it first before we put it up on the
26 screen, but do you remember giving an interview
27 to the Western Standard in -- in the summer of
28 2023? And just as a reference point, that was in
29 and around the time of the judicial review
30 hearing.

31 A I gave a lot of interviews. I don't remember
32 that particular one.

33 Q Okay. Maybe we'll put it up on the -- put the
34 article that -- that resulted from that up on the
35 screen and see if that helps jog your memory.

36 Okay. So this is a June 25th, 2023, article
37 in the Western Standard. I take it you had done
38 interviews with the Western Standard before; you
39 just couldn't tell us when that was?

40 A That's correct.

41 Q Okay. So if we go to page 2 here of this
42 article, just after halfway down if you -- first
43 half of the page you can see it's a lot about the
44 judicial review proceedings, what you asked the
45 B.C. Supreme Court to do, and then you've got a
46 paragraph about your previous counsel, Shauna
47 Gersbach, and then a couple of short paragraphs.

1305

Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 You've got, "Court proceedings lasted two
2 days. Neufeld said his legal representation was
3 enthusiastic." And here's a quote, presumably
4 from you:

5
6 Bell says he loves the case. It's all
7 about an important issue that people
8 are worked up over, the Charter of
9 Rights, free speech, and putting some
10 boundaries on the increasingly
11 totalitarian powers of the B.C. Human
12 Rights Tribunal, and every lawyer in
13 town wants to talk about Barry Neufeld.
14

15 Do you remember giving that quote?

16 A That's correct.

17 Q Okay. And do you agree with me there that
18 you're -- you're talking about the impression and
19 things that your counsel have communicated to you
20 about the case?

21 A Yes.

22 Q Okay. Now, you also do -- you have been
23 fundraising in various ways as your case has made
24 its way along. Is that right?

25 A That's correct.

26 Q Okay.

27 A Not -- I was not fundraising for this case
28 because I was indemnified, but my defamation suit
29 against Glen Hansman, my [indiscernible - audio
30 cuts out] with Peter Lang and his partner Carin
31 Bondar, we've had to raise money for that as
32 well.

33 Q Got it. So that's a good correction. In terms
34 of this case, am I correct that you -- you really
35 started fundraising after Guild Yule left the
36 scene? Is that right?

37 A Quite sometime afterwards, yes.

38 Q Okay.

39 A Didn't fundraise until I had assurances that I
40 had legal representation.

41 Q Okay. So there is a Rights and Freedoms
42 Fundraising Society. Can you tell us what that
43 is?

44 A Well, one of my strong supporters asked me if
45 anybody was helping me fundraise. I said, "No,
46 I'm just asking people to deposit money into my
47 personal account," and I said, "I'm trying to

1306

Barry Neufeld (for Respondent)
 Cross-exam by Cnsl L. Waddell

keep records of the donors, but I'm afraid I'm not staying on top of it." So he thought about that, and he decided that maybe they should form a society to help me fundraise, so five people got together, formed a society. They only had two clients -- three clients at first. Had Dr. John [sic] Hoffe who lost -- who was before the College of Physicians and Surgeons. They raised money for him, and he won that case. There's a case by Lynda di Armani who's suing the chair of the Chilliwack School Board. And there's me. And they've been very helpful in keeping track of my donations.

Q Okay. Now I'm going to put a document up on the screen here, and I think this is a page from the Rights and Freedoms Fundraising Society's website. Does this look familiar to you?

A Yes.

Q Okay. So I want to just go to the text here, and just starting at the beginning, you say:

Here is the saga of my six years of persecution by the Human Rights Tribunal. It was in October of 2017 that I made a public statement on Facebook.

Am -- am I right that you wrote most of this?

A Yes. The president of the society is an author, and I think he might have edited it somewhat, but most of the ideas, I think, are basically mine.

Q Okay. So in terms of the content, down at the bottom of that first page you see there, "In November of 2018." You talk a little bit about the first mediation process that took place via the tribunal.

A Yes.

Q You remember -- you remember writing about that?

A Yeah.

Q Okay. And then over the next page you give a bit more information about some of the discussions of that settlement meeting, proposal the Chair of the Tribunal made, and then at about just past halfway down the page you get, again, to the subject of the more recent settlement discussions and an offer the CTA put to you. Do you see that section there?

1307

Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 A Yes.

2 Q Okay. And you say there:

3

4 My lawyers argued that this was a
5 favourable offer as I risked being
6 found guilty of hate speech if the case
7 went to a full hearing --

8

9 A Okay. Where are you?

10 Q Oh, sorry, right below -- you see the three --
11 the bullet points with the 'X's?

12 Oh, why don't you go down further. Sorry,
13 Alanna. There we go. There we go. Four -- four
14 'X's there.

15 A Yes.

16 Q Okay. I was looking right below the four 'X's:

17

18 My lawyers argued that this was a
19 favourable offer as I risked being
20 found guilty of hate speech if the case
21 went to a full hearing. They also
22 reassured me that the indemnity
23 insurance would cover the 50,000
24 donation.

25

26 Do you remember putting that into the blurb to go
27 up on this website?

28 A Yes.

29 Q Okay. And, again, like one of your other posts,
30 the following paragraph you talk about
31 considering the offer and ultimately rejecting
32 it, and then the following paragraph you again
33 talk about getting a letter from the indemnity
34 insurance company telling you that because you'd
35 rejected the offer they would no longer be
36 covering your legal costs, and you began --

37 A That's correct.

38 Q Okay. And in terms of -- has this -- how do you
39 get the word out for this fundraising society to
40 gather donations?

41 CNSL J. KITCHEN: Hold on. How is that relevant?

42 CNSL L. WADDELL: Well, the extent to which -- the
43 extent to which this information is distributed
44 and made public is, I think, relevant to the
45 question of waiver of privilege.

46 CNSL J. KITCHEN: What information?

47 CNSL L. WADDELL: Information about what his lawyers

1308

Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 advised him with respect to his case, their
2 advice in relation to the settlement offer.
3 CNSL J. KITCHEN: Okay. So the settlement stuff.
4 Okay.
5 CNSL L. WADDELL: Mm-hmm.
6 CNSL J. KITCHEN: And you -- it's -- it's on the web
7 page.
8 CNSL L. WADDELL: Yeah. Let me ask it more
9 specifically and see if that resolves your
10 issue --
11 CNSL J. KITCHEN: Yeah --
12 CNSL L. WADDELL: -- Mr. Kitchen.
13 CNSL J. KITCHEN: -- because the issue is the -- the
14 donation stuff is just -- it's not -- it's not
15 relevant -- well, it would normally not be
16 relevant, and it's not relevant -- I -- it's not
17 relevant to where you're going which --
18 CNSL L. WADDELL: Yeah, I'm not worried about the
19 donation stuff.
20 CNSL J. KITCHEN: Okay.
21 CNSL L. WADDELL:
22 Q So if you know, Mr. Neufeld, does the Rights and
23 Freedoms Fundraising Society, do they -- do they
24 send out email blasts or newsletters?
25 A No, they don't. I do.
26 Q Okay. And -- and you then link to the page to
27 encourage people to go there and donate?
28 A Yes.
29 Q Okay. That's helpful. And, now, I've taken you
30 to a few different posts or publications where
31 you've talked about --
32 THE CHAIR: Oh, Mr. Neufeld is showing something up at
33 the screen. Sorry. Was that something you were
34 wanting --
35 A Might be helpful, but it was awfully dark. Let
36 me see if I can get more light on it.
37 THE CHAIR: He's holding something up to the screen.
38 Okay. It looks like a small business card
39 with a QR code on it that says "Support Barry
40 Neufeld"?
41 A That's correct.
42 THE CHAIR: Okay. Thank you.
43 CNSL L. WADDELL:
44 Q That's one of the ways that you -- you direct
45 people to this page?
46 A Yes.
47 Q Okay. Now, I've taken you to a few different

1309

Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 places where you talk about the offer that the
2 CTA made to your counsel, and you'd agree with me
3 that you didn't ask the CTA's permission to
4 publish any of that information; correct?

5 A That's correct.

6 Q Okay.

7 A But I felt I had a moral duty to let my
8 supporters know that I had lost a free lawyer
9 because I refused to cave in and admit that I was
10 wrong because I do not believe I was wrong, and I
11 thought they needed to know the truth.

12 Q Okay. And you felt that that moral duty
13 superseded the agreement the Tribunal asks of
14 everybody participating in settlement talks that
15 they be kept confidential. Is that right?

16 A That's correct because I believe the Tribunal is
17 trying to try me in secret behind closed doors.
18 That's why they're making it so difficult for
19 people to phone in and hear what's going on.

20 Q And before we leave this document, I just wanted
21 to cycle back to -- we can put up that Rights and
22 Freedoms Fundraising Society page one more time.

23 If you go to the top. Is that top? There
24 we go. Okay.

25 Now, right above your photo, Mr. Neufeld --
26 well, before we get there, I presume that, given
27 your extensive experience as a probations officer
28 and working in corrections, that you understand
29 there are distinctions between the criminal law
30 and other types of law. Is that fair?

31 A That's correct.

32 Q Okay. And I -- I presume as well that you
33 understand that the word "charged" is used in
34 relation to offences under the Criminal Code.

35 A That's correct.

36 Q Okay. So just turning to the words that are
37 above your photo there, it says, "Time elapsed
38 since Barry Neufeld charged with hate crime:
39 Seven years, zero months, and 26 days," and then
40 a total number of days in brackets.

41 Now, you'd agree with me that you haven't
42 been charged with anything in a criminal sense;
43 correct?

44 A Just semantics. The complaint was that I'm
45 guilty of -- of hate crime. Not really much
46 difference whether you use "charged" or
47 "complained about." Accused of. I've been

1310

Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 accused of hate crime.
2 Q Okay. But you'd agree that "charged" is a little
3 bit more inflammatory than "accused," wouldn't
4 you?
5 A No, not really.
6 Q You don't think it might lead some folks to think
7 that you'd actually been criminally charged with
8 a hate crime?
9 A A lot of people do.
10 Q Right. And I'd suggest to you that that's, in
11 fact, because you used "Charged with a hate
12 crime" language which implies a criminal charge
13 rather than something else; correct?
14 A Oh, I think the general public came to that
15 conclusion long before I started pointing out
16 that -- the difference between criminal court
17 proceedings and -- this isn't even civil court;
18 this is a Human Rights Tribunal.
19 Q And what do you think about the Human Rights
20 Tribunal, Mr. Neufeld?
21 A It's a kangaroo court. I know you've already
22 found me guilty. They claim to be preventing
23 hate against a marginalized group of children
24 when actually they are -- B.C. Human Rights
25 Tribunal has evolved into the most hateful
26 organization we have in our province.
27 Q All right. You can take that posting down now.
28 So I asked you about -- we -- we talked
29 about your moral -- what you said was sort of
30 your moral duty to -- to keep people apprised of
31 what was going on and that that superseded any
32 privacy or privilege around settlement
33 discussions that might apply there. Is it also
34 fair to say that -- that you haven't respected
35 and kept confidential your communications with
36 your previous counsel?
37 A For the most part I have kept it all
38 confidential. I should say that most of my
39 supporters are not wealthy people. The donations
40 come usually between 20 and 50 bucks each, lots
41 of them. And I believe that Guild Yule did the
42 best they could under the circumstances. But it
43 was Christmas of '23 when I discovered that the
44 Guild Yule law firm was also representing Wallace
45 Wong and, sorry, but that to me is a serious
46 conflict of interest, and I told them that I
47 consider -- consider -- considerable conflict of

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Barry Neufeld (for Respondent)
Proceedings

1 interest. They were very defensive, and the
2 good, trusting relationship --
3 CNSL J. KITCHEN: Hang on -- hang on.
4 A -- they had up until that point --
5 CNSL J. KITCHEN: Barry --
6 A -- was over.
7 CNSL J. KITCHEN: -- I'm going to -- I'm going to stop
8 you there. So here's the problem: My -- my
9 friend is trying to elicit privileged
10 information --
11 CNSL L. WADDELL: Hang on, sorry --
12 CNSL J. KITCHEN: -- which is -- which is -- which is
13 still privileged because you haven't yet -- I --
14 I -- look, I just -- I just dealt with this in
15 the trial I was in, okay, and -- and I understand
16 that that wasn't necessarily your question, so
17 you weren't necessarily trying inappropriately to
18 elicit privileged information, but that's --
19 that's -- that's -- that's what we're getting.
20 And -- and I was in your spot here a -- a few
21 days ago.
22 CNSL L. WADDELL: Yeah, and if -- and if you want to
23 object, that's fine, you can object, but then I
24 would ask that we excuse the witness to actually
25 make arguments about it.
26 CNSL J. KITCHEN: Sure. Okay. Yeah, we can do that.
27 That's fine.
28 THE CHAIR: All right. So we have an objection, and I
29 gather -- because the question wasn't eliciting
30 the privileged information, but the answer
31 started to talk about communications with
32 counsel, so, Ms. Waddell, I gather you're going
33 to be arguing that Mr. Neufeld should be
34 permitted to complete his answer. Is that what
35 we're going to go and have submissions about?
36 Yes. Okay.
37 So I'm going to try something different
38 here, Mr. Neufeld. I need to exclude you for a
39 moment, but I'm going to try and put you in a
40 breakout room rather than disconnect you from the
41 meeting so that then I can bring you back in when
42 it's time.
43 What I forgot to say earlier, and which I'll
44 start to say as we take any break, is to advise
45 you, Mr. Neufeld, that you are under
46 cross-examination and so for so long as you're
47 under cross-examination, you're not allowed to

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Submissions by Cnsl J. Kitchen

1 talk about your evidence with anyone; that
2 includes Mr. Kitchen, that includes any -- anyone
3 else in your life. It includes members of the
4 public who may be observing.

5 And I should also say that anyone who's on
6 the -- who's observing the hearing is not
7 permitted to be in communication with Mr. Neufeld
8 about the subject of these arguments that we have
9 in his absence. So I think that probably would
10 have been clear, but I want to make sure that
11 that's -- that's on the record.

12 So, Mr. Neufeld, I'm going to send you over
13 into this breakout room, and then I'll bring you
14 back over -- I'll bring you back in when we've
15 resolved the objection.

16 Sorry. This is just going to have to be a
17 moment as I figure this out.

18 A I hope this works because every time I've been
19 excluded I've had a hard time getting back in.

20 THE CHAIR: Yes, and I apologize for that. I'm
21 hopeful this will work. But I'm just having to
22 create a new room here. All right. I'm sending
23 you out, Mr. Neufeld. I'll bring you back in
24 when it's time.

25 A Okay.

26
27 (WITNESS STOOD DOWN)

28
29 THE CHAIR: All right. So this is your objection. Go
30 ahead, Mr. Kitchen.

31
32 SUBMISSIONS BY CNSL J. KITCHEN:

33
34 CNSL J. KITCHEN: I don't know if anything turns on
35 the bit about Wallace Wong or not. I don't
36 know -- I don't know if my friend intends to do
37 anything with that, so I think what's already
38 been said is probably harmless. But my approach
39 to this, my experience is -- with this has been
40 that witnesses rarely, if ever, realize when
41 they've crossed the line into privileged
42 communications with their counsel and they'll
43 just -- they'll just talk on and on about what
44 they've discussed with their lawyers. But -- but
45 all that is covered by solicitor/client
46 privilege. So what I've seen done is -- is --
47 is -- you know, as long as the questions aren't

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Submissions by Cnsl J. Kitchen

Submissions by Cnsl L. Waddell

1 explicitly trying to -- to say, you know, what
2 did you and your lawyer talk about, the questions
3 are fine. The problem is the -- the witness has
4 to be cautioned to say, "Look, you know, you
5 can't tell us the actual -- or you should not
6 tell us the actual content of what you and lawyer
7 said to each other because, you know, that's not
8 stuff we talk about on the record. That's
9 inadmissible evidence," right.

10 Now, my friend's going to try to establish
11 that it's admissible because waived [verbatim]
12 privilege, so that would be different, of course,
13 but as it is right now, it's inadmissible
14 evidence discussions he has with his -- with
15 his -- with his lawyer. So I think that's what
16 we have to do is bring him back and -- and advise
17 him that he's not to talk about discussions he's
18 had with his former lawyer and -- because that's
19 inadmissible. And if my friend's trying to get
20 that, then that's an inappropriate question, and
21 I'm going to -- I'm going to object to it.
22 And -- and that's -- so we don't -- in other
23 words so we don't have this problem again, right,
24 because it will keep coming up and up and up and
25 then that prejudices the respondent, it
26 prejudices me, and that's -- that's not
27 appropriate. So that's my -- that's my
28 objection. I'm objecting to the answer, not the
29 question. I will object to questions that
30 explicitly try to get that information, but ones
31 that accidentally do I won't object, but I will
32 have to object, of course, if he -- you know, cut
33 him off if he starts to talk about privileged
34 things in his answer like he just did because
35 it's -- it's privileged. It's inadmissible
36 evidence.

37 THE CHAIR: Thank you. Ms. Waddell?

38
39 SUBMISSIONS BY CNSL L. WADDELL:

40
41 CNSL L. WADDELL: Sure. Well, I think I already
42 acknowledged I wasn't trying to elicit the
43 information that came out, but I -- I disagree
44 that -- that it's -- it's appropriate or
45 necessary for the Tribunal or my friend to
46 interrupt the witness and remind him that he
47 ought not to be -- or that he could not talk

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Submissions by Cnsl L. Waddell

Reply submissions by Cnsl J. Kitchen

1 about this sort of stuff. That's the purpose of
2 preparing the witness. This is not an
3 unsophisticated litigant. Mr. Neufeld has
4 engaged in many, many different legal proceedings
5 and so my view, while I'm not particularly
6 interested in -- in the answer he's giving, I am
7 interested in him not being interrupted and so it
8 would be my position that he should just be
9 permitted to answer questions without a warning
10 from anybody.

11 And -- and I say that as well with the
12 thought that I think I've already laid --
13 although I'm far from done -- a good foundation
14 for waiver of solicitor and client privilege, and
15 his approach to those communications, I think, is
16 evidenced by the fact that he just launched right
17 into talking about that.

18 So that's my view on that -- that particular
19 subject, and I'll, you know, end where I started
20 which was I'm not looking for the content that
21 ultimately came out there, but it may well happen
22 because he has views, so.

23
24 REPLY SUBMISSIONS BY CNSL J. KITCHEN:

25
26 CNSL J. KITCHEN: Well, but, see, that's the problem,
27 right, you're -- you're asking the questions and
28 even if on -- on their face they're fine, you're
29 hoping he'll start talking about his discussion
30 with his lawyers so that you can use that to make
31 an argument that we should have waiver of
32 privilege, and that's inappropriate, right,
33 because then you're relying on in -- inadmissible
34 evidence to -- to -- to make argument, and you
35 can't do that. So I -- I am -- I am going to
36 object, and I am going to interrupt, and I am
37 going to stop him if he starts to talk about
38 communications with his -- with his counsel
39 because that's not admissible evidence.

40 Again, I -- you know, not that I'm trying to
41 say that, you know, the Tribunal should do what I
42 say based on what I'm talking about last week,
43 but I literally dealt with this last week. I
44 mean, a number of times I had to deal with this
45 problem because the witness who, you know, was
46 some corporate, you know, head cho [verbatim] --
47 head honcho and -- and therefore sophisticated,

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Submissions by Cnsl L. Waddell

Reply submissions by Cnsl J. Kitchen

1 to use your words, had no idea what she was doing
2 with talking about communications with lawyers.
3 So you can call Mr. Neufeld sophisticated all you
4 want; non-lawyers have -- have no grasp of this,
5 and -- and it can't be expected that he's going
6 to have any idea when he's -- when he's crossing
7 the line, not because he's an idiot but because
8 he's a regular person and regular people don't
9 know this no matter how sophisticated they are.

10 So that's just it. I think it's
11 inappropriate to hope that he continues to do
12 this so you can make your argument about -- about
13 waiver. So we got to -- we got to -- we got to
14 be careful about this because it's going to
15 prejudice the respondent and be procedurally
16 unfair.

17 THE CHAIR: All right. Thank you. I just need a
18 minute to talk to my co-panelists here. We're
19 just going to turn our cameras and mics off. It
20 won't be more than a minute. Thank you.

21 All right. Thank you. We're ready. Come
22 on back. I'll just wait for Mr. Kitchen to come
23 back. There you are.

24 All right. Thank you. I think in our view
25 until the complainants have established, if
26 they're able to establish, that Mr. Neufeld has
27 waived privilege, and we're not at that point
28 yet, it's appropriate to advise the witness that
29 he's not obliged to give us any information about
30 communications with his legal counsel. That's
31 what we would do in the ordinary course of this
32 matter -- of this issue arising. So we'll do
33 that now when Mr. Neufeld comes in, and then,
34 Ms. Waddell, you can go on to your next question.
35 Okay? Anything before I let him back in? No?
36 Okay. Let's see how this goes.

37
38 BARRY NEUFELD, a witness,
39 recalled.
40

41 THE CHAIR: Hi there, Mr. Neufeld. How did that work?
42 You're back right when we expected you to be.

43 Can you hear me? You're muted.

44 CNSL J. KITCHEN: Chair, you might --

45 THE CHAIR: There we go.

46 CNSL J. KITCHEN: Oh, there we go.

47 A There we go.

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 THE CHAIR: All right. Thank you. Mr. Neufeld, I
2 just want to tell you at that when you're
3 answering these questions from Ms. Waddell, you
4 are -- we are not asking you to tell us about the
5 private communications between you and your
6 previous lawyer. As you likely know, those
7 conversations that you have with your lawyers are
8 privilege and confidential. So you're not being
9 asked to talk about the conversations that you
10 have with the lawyer, any legal advice that you
11 were given by your lawyers. Okay?

12 So where we ran into the objection last time
13 was you started to talk about things that --
14 conversations with your lawyer, and I just want
15 to be clear with you and make sure that you
16 understand that that's not what Ms. Waddell is
17 asking about, and that's not information you're
18 required to give in this proceeding at this
19 stage.

20 Okay. Do you understand that?

21 A Yes.

22 THE CHAIR: Okay. Thank you. Ms. Waddell, go ahead.

23
24 CROSS-EXAMINATION BY CNSL L. WADDELL, continuing:
25

26 Q All right. Mr. Neufeld, when you parted ways
27 with your previous counsel, Guild Yule, I take it
28 they provided you with a copy of your file, and
29 by "your file" I mean their file for you. Is
30 that right?

31 A Yes. They gave me access -- limited --
32 time-limited access to their server for me to
33 download all the files they had on my case.

34 Q Okay. And I take it you understood that they
35 were providing you with, as you say, time-limited
36 access, but your complete file?

37 A They told me it was the complete file, but I did
38 notice one document was missing and had to get
39 back to them and ask them to send that one.

40 Q Okay. And I take it you understood that a
41 complete copy of your file would include things
42 like your correspondence with that firm.

43 A Yes.

44 Q Okay. And correspondence the firm engaged in on
45 your behalf?

46 A Pardon?

47 Q You understood that it would also include not

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 just correspondence between the firm and you but
2 any correspondence that firm engaged in on your
3 behalf?

4 A That's correct.

5 Q Okay. And I take it you understood that that
6 complete file would have included what we lawyers
7 would call, say, internal work product; you know,
8 memoranda, that sort of thing, that the lawyers
9 produced while working on your file?

10 A Yes.

11 Q Okay. And in addition to that that it would
12 include all the things that had been filed with
13 the Tribunal or -- or that they had received from
14 the complainant?

15 A Yes.

16 Q Okay. And, now, at that stage -- so this is end
17 of January 2024 -- applications to dismiss have
18 already taken place; correct?

19 A Yes, in the summer a year earlier.

20 Q Yeah, okay, and that's what made its way up to
21 the B.C. Supreme Court. And document
22 disclosure -- exchange between the parties took
23 place before the application to dismiss. Isn't
24 that right?

25 A That's right.

26 Q Okay. So now I want to just go back to
27 Mr. Barns' X post. Now, you indicated in your
28 direct with Mr. Kitchen that you understood that
29 Mr. Barns had posted a OneDrive folder containing
30 many of your file materials via his X.com
31 account. Is that right?

32 A I didn't know he posted it on his X account at
33 all, no.

34 Q Okay. At some point you became aware that he had
35 posted it on his X account, though, I take it.

36 A I just learned now.

37 Q Okay. Well, we'll return to that. So you said
38 in your direct that you were aware that Mr. Barns
39 had your file materials. Is that right?

40 A That's correct.

41 Q Okay. And that was -- am I correct that your
42 evidence was -- wasn't precise on this point, but
43 it sounded like you were saying he had those
44 materials --

45 THE CHAIR: Sorry to interrupt. I'm sorry to
46 interrupt. We just need a moment break. Just
47 one moment. Sorry. We're just going to turn our

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Barry Neufeld (for Respondent)
Proceedings

cameras and mics. We'll be right back. Just a moment.

(WITNESS STOOD DOWN)

(PROCEEDINGS ADJOURNED FOR RECESS) [2:33:31]

(PROCEEDINGS RECONVENED) [2:37:01]

THE CHAIR: We're back. Apologies again for the interruption, Ms. Waddell. Happy to let you -- once everyone's back -- continue with your question, or we can take the afternoon break.

CNSL L. WADDELL: I'm in the Tribunal's hands. I -- I don't have a ton more, at least on this sort of laying the foundation for privilege piece, so we can either take a short break now and then I can finish that up or I can proceed through. And I just think that once I'm done that, it might be helpful for my friend and I to have a chat just about process on -- on privilege objections.

THE CHAIR: All right. Well, then, let's just finish that up. We'll wait until Mr. Neufeld comes back.

CNSL L. WADDELL: Sure.

THE CHAIR: Mr. Neufeld are you there?
Mr. Neufeld?

CNSL J. KITCHEN: I can give him a call again if you want. My guess is that he probably just took a bio break.

THE CHAIR: I defer to you, Mr. Kitchen. If you think he may have -- may be more time -- oh, Mr. Neufeld, are back there?

CNSL J. KITCHEN: Yeah, I figured --

THE CHAIR: There we go.

CNSL J. KITCHEN: -- he'd be back. There we go.

BARRY NEUFELD, a witness,
recalled.

THE CHAIR: Okay. Yeah. That's fine. I'll let him get his ear phones back on there.

Thank you, Mr. Neufeld. Apologies for the abrupt break there. We are -- Ms. Waddell has a few more questions for you about this topic, and then we'll talk our afternoon 15-minute break. Is that -- are you okay to keep going for a few more minutes?

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Barry Neufeld (for Respondent)

Cross-exam by Cnsl L. Waddell

1 A That's okay. I took advantage for a bathroom
2 break.
3 THE CHAIR: Okay. Excellent. Go ahead, Ms. Waddell.
4 CNSL L. WADDELL: Thank you.
5
6

7 CROSS-EXAMINATION BY CNSL L. WADDELL, continuing:
8

9 Q Okay. So we were talking about -- I was asking
10 you about your earlier testimony. You said that
11 at some point you were aware that Mr. Barns had
12 your file materials or had been provided with
13 them. Is that right?

14 A Yes.

15 Q Okay. And that was sometime around when you were
16 searching for legal counsel before you found
17 Mr. Kitchen. Is that right?

18 A That's correct.

19 Q Okay. So we've got that application that I took
20 you to earlier where you talk about sending your
21 materials to potential legal counsel. That was
22 one of the -- your handwritten notes that we put
23 on the screen in front of you. You remember
24 that?

25 A Yes.

26 Q And that was in May of last year. Does that
27 sound like about when Mr. Barns would have had
28 your file materials?

29 A I'm not sure when he actually got them. I was
30 only aware that he had them when I had the
31 complaint that somebody had found that file with
32 the names of the CTA witnesses. That's when I
33 was aware that he had the whole file -- the --
34 the whole case on his server.

35 Q Okay. And just to go back to your direct, are
36 you saying you -- you did not know that Mr. Barns
37 had your materials before that?

38 A I knew he was going to try and get them.

39 Q Okay. And when did you know he was going to try
40 and get them?

41 A Well, when I complained to my supporters that I
42 had to pay a \$60 courier fee to send these USB
43 drives to Calgary and to Ontario.

44 Q Okay. And that was in and around May of 2024?

45 A Yes.

46 Q Okay. So fair to say that he likely obtained
47 them in and around that time?

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 A Yes.

2 Q Okay. And you didn't object to his obtaining
3 them, I take it from your direct testimony
4 earlier.

5 A No. I -- like I said, I'm fairly computer
6 literate, but I tried to upload them all to my
7 Google drive, and it was going to take 48 hours.
8 It was so slow. I could courier them faster than
9 I could upload them to the internet. And my
10 Google drive was -- I was concerned that it may
11 not be secure; it could be compromised.

12 Q Okay. And you knew, obviously, that Mr. Barns
13 wasn't your legal counsel; correct?

14 A That's right.

15 Q Okay. And you also knew, because you had a
16 different legal representative, that he wasn't
17 your legal representative either; right?

18 A No. He was working closely with Kari Simpson who
19 was my lay counsel at the time.

20 Q All right. So you said earlier, in response to
21 one of my questions, that you became aware that
22 he had posted the material when someone
23 complained. I presume that is the complaint that
24 we made on November 26th, not long after the
25 hearing started. Is that right?

26 A That's correct.

27 Q Okay. And I presume you know that after the
28 hearing on November 26th I called your current
29 counsel to tell him that we had found this
30 OneDrive that Mr. Barns had posted to X. I'm not
31 going to ask you what your -- I'm not going to
32 ask you about the details; I just want to get at
33 his awareness of things. So I'm not -- not
34 asking for any depth.

35 A The only thing I was aware of was that someone
36 from either the CTA or the Tribunal discovered
37 that the document naming the witnesses was out
38 there and available.

39 Q Okay. Were you aware that we indicated on
40 November 26th when I spoke to your counsel that
41 the folder contained materials that had names on
42 them that were protected by the publication ban?

43 A Yes.

44 Q Okay. Were you made aware that we had also
45 expressed concern that some of the materials in
46 the OneDrive were also protected by what we call
47 an "implied undertaking"?

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 A I didn't pay attention to that. I knew that
2 the -- we had to keep the names of the witnesses
3 confidential, which I think is unjust, but it's a
4 rule that you made. So I contacted Pierre and
5 asked him if he would just delete that file
6 alone, which he did promptly, and I had no other
7 concerns about the confidentiality of the many
8 other documents.

9 Q Okay. So I take it from that answer, and you
10 correct me if I'm wrong, but that you were aware
11 that we had other concerns about the confidential
12 nature of some of the documents, the implied
13 undertaking stuff, but that you ignored that and
14 focussed on the publication ban. Is that
15 accurate?

16 A That's the only one that I thought made sense.

17 Q Okay. And how did you communicate your
18 instructions to Mr. Barns?

19 A I phoned him.

20 Q Okay. And I presume you are aware that by the
21 following day or by later that night he had
22 removed the materials that referred to the names
23 of witnesses?

24 A Well, he's a man of his word, and he told me he'd
25 delete it right away, and I believed him.

26 Q Okay. So you didn't -- you didn't check it.

27 A No. I never checked his -- his drive. I haven't
28 been able to -- I haven't even thought of looking
29 at it.

30 Q Okay. So and, again, in and around this point in
31 time, were you aware that we had also identified
32 who your counsel -- that that folder contained
33 what appeared to be your previous counsel's file
34 which might contain privileged information?

35 A Yes. It had lots of stuff in there.

36 Q Okay. And that didn't concern you, I take it.

37 A No. As I said, my relationship with Guild Yule
38 was very positive up until Christmas of 2023. It
39 went downhill very fast because it was within a
40 month they put pressure on me to settle.

41 Q Now, are you aware that after Mr. Barns took the
42 publication-ban-protected material out of the
43 OneDrive he then posted links to the OneDrive
44 afresh in some other places like Facebook, for
45 example?

46 A No, I was not aware of that.

47 Q Okay. But you are aware at that point that the

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Barry Neufeld (for Respondent)

Cross-exam by Cnsl L. Waddell

1 OneDrive still contained the entire file from
2 your previous counsel.

3 A That's right.

4 Q Okay. And you weren't concerned about it at that
5 point?

6 A No, I wasn't. I have nothing to hide.

7 Q Okay. And you are aware, I take it, that I wrote
8 to your counsel on December 2nd, so I think that
9 was at the start of the weekend -- or second week
10 of the hearing -- to remind your counsel about
11 some of our concerns about the OneDrive?

12 A Yes.

13 Q Okay. And shortly after we sent that letter, it
14 was finally taken down. Are you aware of that?

15 A No, I'm not. I thought it was still up there.

16 Q Okay. Would it be okay with you if it was still
17 up there?

18 A Yes.

19 CNSL L. WADDELL: Okay. I think that's -- those are
20 the end of my questions on this particular
21 subject. If the Tribunal wants to take the
22 afternoon break, now is probably a good time, and
23 my friend and I can -- and I'd suggest cautioning
24 the witness each break -- and my friend and I
25 perhaps can have a chat during the break about
26 process for dealing with the objection.

27 THE CHAIR: All right. Do you need a few extra
28 minutes for that conversation, or do you want to
29 just keep the break to 15 minutes?

30 CNSL L. WADDELL: I wouldn't mind a few -- I don't
31 think our conversation needs to be exceedingly
32 long, but I'll definitely want a bio break in
33 addition to the conversation, so I wouldn't mind
34 an extra five. I don't know how you feel about
35 that, Mr. Kitchen.

36 CNSL J. KITCHEN: Yeah, can we make it -- can we make
37 it 22 and come back at 10 after?

38 THE CHAIR: Yeah. All right. We're going to take a
39 22-minute break. Everyone please come back at
40 3:10. For this break we'll just turn our cameras
41 and mics off.

42 Mr. Neufeld, before we go into this break,
43 and, as I've said, before we go into every break,
44 I'll remind you that you're under
45 cross-examination, and for so long as you're
46 under cross-examination, you're not allowed to
47 talk to anyone about your evidence; that includes

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Barry Neufeld (for Respondent)
Proceedings

1 Mr. Kitchen or anyone else who may be observing
2 the case. Do you understand that?

3 A Yes.

4 THE CHAIR: Okay. Thank you. We'll turn our
5 camera --

6 CNSL J. KITCHEN: Ms. --

7 THE CHAIR: Oh, yes?

8 CNSL J. KITCHEN: Ms. Waddell, are you going to call
9 me right away or wait a few minutes?

10 CNSL L. WADDELL: I'll wait a few minutes if that's
11 okay.

12 CNSL J. KITCHEN: Yeah, that's good. Thank you.

13 THE CHAIR: All right. We'll see you --

14 CNSL L. WADDELL: Try you in about five, and if you
15 don't pick up, you can just call me back.

16 CNSL J. KITCHEN: Okay.

17 THE CHAIR: All right. 3:10.

18

19 (WITNESS STOOD DOWN)

20

21 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS) [2:51:27]

22 (PROCEEDINGS RECONVENED) [3:13:44]

23

24 THE CHAIR: All right, everyone, come on back. All
25 right. As we're waiting for Mr. Neufeld to come
26 back -- oh, and there's Ms. Waddell. Did you
27 have a chance to have a conversation and is there
28 anything we need to address before we continue
29 with cross?

30 CNSL L. WADDELL: Sure. Yes. My friend and I have
31 had two conversations, and I'm going to take a
32 stab at describing where we're at. And I know
33 Mr. Kitchen will jump in and correct me if I've
34 got any of it wrong.

35 So I initially proposed that we try and
36 spend the afternoon and evening whipping together
37 submissions on this point, and I -- I understand
38 that my friend is -- is going to strenuously
39 object to any material from that file going in,
40 which it's his entitlement to do, and -- and my
41 thought was that we could try and get a decision
42 from the Tribunal in the morning and then
43 proceed.

44 My friend is of the view that that's just
45 not going to be enough time. It is, of course,
46 tight, so I'm not surprised by that.

47 And we -- we discussed, and he suggested,

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Barry Neufeld (for Respondent)
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1 doing sort of what I call a "hybrid model" where
2 I proceed with what I can tomorrow and then we
3 set a schedule to make written submissions on
4 this subject, and then once we have a decision
5 from the Tribunal, bring Mr. Neufeld back to
6 complete any portion that may be relevant having
7 that decision.

8 From -- from my perspective that's not a
9 good solution for me because I -- I do need a
10 decision in order to structure the rest of my
11 cross. It will make a difference in not just
12 what I ask, but some subjects will disappear
13 entirely; other subjects, you know, may touch
14 upon things that might otherwise be covered by
15 privilege and things that are not, and so I don't
16 want to break up those -- those chapters, if you
17 will.

18 So with -- with that -- those two thoughts
19 not things that we agree upon, what we did agree
20 was perhaps a good way to proceed would be to
21 press the pause button. I do have one more
22 question I -- I want to ask Mr. Neufeld before
23 we -- before we go on this subject, but press the
24 pause button, set as compressed a schedule for
25 written submissions as we can on the question of
26 waiver of privilege, get a decision from the
27 Tribunal, and then schedule a date or dates to
28 bring Mr. Neufeld back and finish the cross with
29 the Tribunal's answer on this question in mind,
30 which will have considerable bearing on -- on the
31 rest of the cross-examination.

32 We thought -- you know, obviously that would
33 have an impact on our schedule for written
34 submissions. We -- we didn't get into specific
35 dates, but we did identify that oral submissions
36 are quite a ways out and so there might still be
37 a way to maintain that date for all submissions
38 and just compress our written submission
39 deadline. But we didn't -- we didn't have time
40 to get into our respective schedules and whether
41 and how we could do that, but we just identified
42 that that's at least a possibility because there
43 is a bit of time.

44 So, anyway, that was -- that's what we
45 discussed.

46 Mr. Kitchen, do you want to correct or
47 clarify any of that?

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1 CNSL J. KITCHEN: No. That sounds good. I -- I don't
2 have in my calendar when the closing submissions
3 are, but I know they're in May. Can you remind
4 me? Do you have the top your head [verbatim]?

5 THE CHAIR: May 19th, I believe.

6 CNSL J. KITCHEN: May 19th.

7 THE CHAIR: Oh, sorry, May 21st. No, May 21st.

8 CNSL J. KITCHEN: 21st. 21st. It -- it seems like
9 there's quite a bit of room between written
10 closing and -- and then oral closing, so if we
11 push back the written closing, we should still be
12 able to keep that May day.

13 THE CHAIR: If I could just -- a couple of questions:
14 Ms. Waddell, I -- I understand your point about
15 wanting to kind of have the full landscape of
16 your cross before you go any further, but can you
17 give us a sense -- assuming you're going to be
18 able to ask all of your questions -- where are we
19 at in your cross and -- and how much time do
20 you -- you know, do you think you need and how
21 much time do you think you need on the
22 publications as opposed to, or maybe in addition
23 to, what we're talking about here?

24 CNSL L. WADDELL: Yeah. I -- I think I need just over
25 a day. So I don't -- I don't actually think
26 our -- our estimate for these two days is that
27 far off. Yeah, I would hesitate to say -- I'd be
28 a little nervous about saying that I could do it
29 all in one day. If I had the ability to do the
30 full -- the full-meal deal, as it were, I think
31 it would be a little over a day, but that's --
32 but I certainly think if I'm not going to be
33 permitted to deal with any of those materials,
34 I -- I think I could probably do it in a day.

35 THE CHAIR: And I take it from what you're saying that
36 there's not a portion of your cross that can be
37 kind of excised so that we could, say, for
38 example, at least use the time we have now and
39 then stand down for a ruling? There's nothing
40 that can be broken up and done with this time?

41 CNSL L. WADDELL: I -- I -- I spent the break thinking
42 about all the ones that could not. I do suspect
43 that there -- there are some sections that I
44 think I could -- not -- not big ones, but I do
45 think there are -- there's, like, a subject,
46 perhaps, or two that I could do tomorrow. I need
47 to think about -- I -- I would not want to do it

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Barry Neufeld (for Respondent)
Proceedings

1 this afternoon because I now need to rethink
2 whether I can do it in that fashion, but I
3 think -- I -- I think there is some -- like, I
4 don't know, maybe an hour or two that I could do
5 that would be -- would not muck up anything else
6 if the Tribunal wanted me to do that.

7 THE CHAIR: All right. So that I understand --

8 CNSL L. WADDELL: It's really -- yes. Sorry. Go
9 ahead.

10 THE CHAIR: Yeah. So that I understand, we have --
11 the parties are consenting to -- you know, and
12 subject to if we can use any of the time
13 tomorrow -- but are consenting to stand down
14 these next hearing dates, these next couple of
15 days, to make written submissions on the issue of
16 privilege, get a decision from the Tribunal, come
17 back for a day or a little bit more than a day
18 and complete cross-examination. And you haven't
19 talked about dates yet. And, I mean, there's
20 nothing much more for us to say.

21 So the only issues that we have to decide on
22 are the dates. And I'm mindful that
23 Mr. Neufeld's going to be under cross-examination
24 for this time, so those dates should hopefully be
25 sooner rather than later. The only issue is
26 dates and whether we can do anything with the
27 time we have tomorrow. Is that right?

28 CNSL L. WADDELL: And on -- sorry. I was just going
29 to say, Madam Chair, on the subject of -- of
30 dates and keeping Mr. Neufeld not suspended in
31 cross -- keeping him suspended in cross for as
32 little time as possible, I -- I will, of course,
33 find subjects that are clear and I can do
34 tomorrow if that's the Tribunal's direction. My
35 thinking about trying to get this done as quickly
36 as possible is that my time might be better spent
37 just getting submissions out. Like, spending my
38 day tomorrow getting those submissions done so
39 that I can get them to Mr. Kitchen as quickly as
40 possible and so that he can then respond as
41 quickly as possible to shorten that -- that break
42 time. But I am absolutely in the Tribunal's
43 hands and will do whatever it decides is most
44 appropriate.

45 THE CHAIR: All right. Mr. Kitchen, is there anything
46 else you wanted to add?

47 CNSL J. KITCHEN: I want a week, so -- to respond.

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Barry Neufeld (for Respondent)
Proceedings

1 So, I mean, I'm -- I'm not going to press my
2 friend; she can get her -- me her submissions
3 tomorrow or the next day, Thursday, Friday; I
4 mean, I don't care about that, but whenever she
5 gets them to me, I -- I -- I want -- I want a
6 week as in, you know, seven days. So if she gets
7 them to me the 26th, then -- then, you know, I
8 want until the 5th of March to respond. So --
9 which I think is fair. You know, a lot of times
10 we would require -- we would lend two weeks for
11 this type of thing, but this is a discreet issue,
12 so I think -- I think that's too long. One
13 week -- one week is fair. I got a very busy
14 schedule, and I didn't see this coming, so I need
15 a week to respond.

16 THE CHAIR: And then we're looking for, it sounds
17 like, a day and a half of hearing time. Right?
18 Yeah. Okay. And I would like to do this so that
19 we can maintain our March 21st oral argument
20 date, which I think --

21 CNSL J. KITCHEN: You may May 21st.

22 THE CHAIR: -- we can. Sorry. May 21st, which I
23 think we can, because you've got a month in
24 between reply and oral argument, so there's --
25 there's flexibility there.

26 CNSL J. KITCHEN: Yeah.

27 THE CHAIR: But what I'd like to then do, if we can,
28 is get those -- get the dates and the submission
29 schedule in the calendar so that we're moving as
30 quickly as we can.

31 Mr. Neufeld, are you -- are you there?

32 Okay. I don't know if he is, but we'll fill
33 him in when he gets here.

34 Can we look at our calendars, is everyone
35 ready to do that, and then maybe work backwards
36 from some -- I hear you saying you want a week
37 for your submissions, Mr. Kitchen, but maybe we
38 can then work backwards from when we can all get
39 together again.

40 I'm looking at the week of March 10th. Is
41 there any availability that week? And, Ms. Khan,
42 I -- I know you're here as well, so we'll make
43 sure you're available as well.

44 CNSL J. KITCHEN: That -- that week's good for me.

45 CNSL L. WADDELL: Yeah, it's clear in my calendar as
46 well.

47 THE CHAIR: Okay. Could we say March -- I'm just

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Barry Neufeld (for Respondent)
Proceedings

1 going to check with my co-panelists.

2 Okay. Can we say March 10 and 11? Okay.

3 Ms. Khan is nodding.

4 CNSL L. WADDELL: Yeah.

5

6

7

8

9

BARRY NEUFELD, a witness,
recalled.

10 THE CHAIR: Okay. Oh, Mr. Neufeld, you're back. Have
11 you been listening in so far, or are you just
12 coming back now?

13 A I just got connected now.

14 THE CHAIR: Okay.

15 A What's -- what are we doing on March the 10th?

16 THE CHAIR: Well, they're -- the lawyers need to make
17 some submissions about the admissibility of some
18 of the evidence and questions that Ms. Waddell
19 wants to ask you in cross-examination, and it
20 seems like the best way for them to do that is to
21 pause the hearing now and make written
22 submissions over the next couple of weeks about
23 this evidentiary point and then have you come
24 back to complete your cross-examination, and for
25 that we're looking at the dates of March 10th and
26 11th.

27 A Okay by me. We're dragging this on forever.

28 THE CHAIR: Okay. Mr. --

29 CNSL J. KITCHEN: So you're -- you're -- to confirm,
30 Barry, you're available March 10th and 11th?

31 A I'll be available.

32 CNSL J. KITCHEN: Okay. Good. Good. That works for
33 me, then, Chair.

34 THE CHAIR: Okay. Complainant's counsel, that's good
35 for you or that works?

36 CNSL L. WADDELL: Yeah, it is.

37 THE CHAIR: Okay. All right. So then we'll come back
38 March 10th and 11th. Let's make our schedule for
39 the written submissions --

40 CNSL L. WADDELL: And after we've done -- sorry, Madam
41 Chair. After we've done the schedule for written
42 submissions, can I -- can I ask one final
43 question before we officially break --

44 THE CHAIR: Yes.

45 CNSL L. WADDELL: -- the hearing?

46 THE CHAIR: Yes, absolutely. Ms. Waddell, if you can
47 have your submission in by the end of the day

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1 tomorrow, the 25th, is that feasible? 25th?
2 Tomorrow?

3 CNSL L. WADDELL: It is if I -- can we see how the
4 schedule fleshes out and if -- and I ask only
5 because my friend says he needs a week. If he's
6 going to get a week, I would really love to
7 deliver on the 26th, but I will make it happen
8 if -- if it needs to happen.

9 THE CHAIR: Well, here's the pressure: To get us in
10 on the 10th, which is what is going to be best
11 for us, and to give Mr. Kitchen a week, we can do
12 it on the 26th, but then he would have until
13 March 5th, and then you'd have to give your reply
14 the 6th so that we could have a day to make a
15 decision on the 7th so --

16 CNSL L. WADDELL: That would -- that would be fine.
17 I'm not worried about reply.

18 THE CHAIR: Okay. And let me just make sure we're all
19 available on the 7th.

20 All right. So then we're talking -- and,
21 Mr. Kitchen -- so the 26th, your reply would be
22 due March 5th -- sorry, response March 5th, reply
23 March 6th, decision March 7th.

24 And then, Ms. Waddell, you'll have to
25 prepare your cross over the weekend, I suppose.

26 CNSL L. WADDELL: Over the weekend. Yeah. That's
27 okay.

28 THE CHAIR: Okay. Mr. Kitchen, does that schedule --

29 CNSL J. KITCHEN: Yeah.

30 THE CHAIR: -- work for you?

31 CNSL J. KITCHEN: Yep.

32 THE CHAIR: All right. And then you'll have to, I
33 imagine, adjust the closing -- the schedule for
34 closing submissions. I'll let counsel do that.
35 I don't think we need to decide that now. You've
36 got, as I say, a month of wiggle room --

37 CNSL L. WADDELL: Yeah.

38 THE CHAIR: -- between reply and oral argument, so
39 I'll just put that back over in your court to
40 adjust that schedule.

41 CNSL L. WADDELL: Yeah.

42 THE CHAIR: All right. Ms. Waddell, you had something
43 else you wanted to address?

44 CNSL L. WADDELL: Oh, sorry. I just wanted to ask the
45 witness one more question before -- before we
46 take the break.

47 THE CHAIR: Yeah. Okay. Before we go back into that

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Barry Neufeld (for Respondent)
Proceedings

1 mode, anything else, Mr. Kitchen? We're all
2 clear what's happening next?

3 Yes, Mr. Kitchen?

4 CNSL J. KITCHEN: I -- I -- I may need to ask my
5 client for instructions. I mean, everything I've
6 done so far with Ms. Waddell I have done without
7 instructions, so, you know, I don't want -- I
8 don't want there to be anything untoward or
9 surprising if -- if we get back and -- and, you
10 know, Ms. Waddell happens to ask the question,
11 "Did you talk to Mr. Kitchen over the break" and
12 he says "Yes" and then there's a big hoopla.

13 So I'm not going to talk to him about his
14 evidence, but I may need to have a call with him
15 to get instructions about what position to take
16 and what to argue and how much to argue and all
17 that sort of privileged-type stuff.

18 So I just -- you know, I -- I need to put it
19 out there that that's going to happen and --
20 and -- but I understand my obligation and, you
21 know, Mr. Neufeld understands it, and I'll --
22 I'll caution him myself even as we start that
23 call, but just -- I mean, everybody needs to know
24 that call's going to have to happen.

25 THE CHAIR: Ms. Waddell?

26 CNSL L. WADDELL: So I -- I think I don't know enough
27 about -- and it may be that my friend doesn't
28 know enough, but -- about the specifics that he's
29 going to need to speak to Mr. Neufeld about.

30 My challenge here is that I gave notice of
31 my intention to do this in terms of relying on
32 documents from that file in December and so he
33 has had quite a bit of time to speak with his
34 client about position, for example, on this sort
35 of stuff.

36 So without hearing -- you know, the witness
37 is now under cross, and this is exactly why I
38 provided the costs application in advance is so
39 that, you know, there'd be some notice and
40 opportunity to ask Mr. Neufeld any questions in
41 direct that -- that my friend might have wanted
42 to.

43 So I'm a bit uncomfortable without more
44 information that would assure me that it's not
45 going to get into evidence that I intend to
46 elicit from the witness in cross, right.

47 THE CHAIR: Well, it may be easier to deal with this

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Barry Neufeld (for Respondent)
Proceedings

1 outside the hypothetical and so here's what I'll
2 propose, and you can tell me, Mr. Kitchen and
3 Ms. Waddell, if this is going to make sense, but
4 what I will propose is that, Mr. Kitchen, once
5 you have -- have the argument from Ms. Waddell
6 and you've identified what instructions, if any,
7 you think you need from your client, perhaps the
8 two of you could touch base and you could let her
9 know kind of the scope -- not, obviously, what
10 you're going to advise him but what you want to
11 talk to him about, and if she is content with
12 that then there's no issue, and if you need to
13 have a conference call with us, we can get on the
14 phone and figure out the instruction going
15 forward.

16 I just wonder whether that may be easier to
17 sort out once you know kind of what the -- what
18 the arguments are going to be and what you think
19 you need to talk to your client about.

20 CNSL J. KITCHEN: I don't think that's appropriate,
21 and, I mean, I can see that causing issues. I
22 mean, if -- if -- if you're going to direct me to
23 do that, that's what I'll do, but I can't -- I
24 can't consent to that. I don't think that's
25 appropriate or necessary.

26 CNSL L. WADDELL: Well, I think -- I mean, for what my
27 position is worth, the witness is under cross;
28 you're not entitled to talk to him.

29 CNSL J. KITCHEN: Well, he's my instructing client. I
30 mean, I'm not entitled to talk to him about his
31 evidence, I agree with that, but, I mean --

32 CNSL L. WADDELL: Yeah.

33 CNSL J. KITCHEN: -- getting instructions is -- you
34 know, it's a different matter.

35 CNSL L. WADDELL: But even then, as you probably know
36 from these hearings, the usual practice would be
37 if you need to talk to your client in the middle
38 of cross or between cross and redirect, you would
39 seek leave of the Tribunal, so -- and in seeking
40 leave, you'd -- you'd provide some specifics
41 about why it's necessary and what's going to be
42 covered. Not the content, per se, but the nature
43 of it.

44 CNSL J. KITCHEN: Well, I mean, that's just it; I
45 don't -- the -- the specifics -- I mean, I
46 can't -- I can't -- I can't entirely say what
47 they might be right now, so, I mean, I'm --

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Barry Neufeld (for Respondent)
Proceedings

1 I'm -- I can't bind myself on that.

2 You know, all -- all I can do is say that
3 it's not going to be about -- about his evidence;
4 i.e., what he said, what he should say, what
5 he -- what he's going to say, et cetera,
6 et cetera. It's just going to be, "Okay, here's
7 what we got, and -- and, you know, what position
8 do you want me to take, et cetera." I mean, I --
9 I have to -- I have to be able to get those
10 instructions. I mean, that's just -- you know,
11 that's how it works. Right? I mean, I've --
12 I've gone out on a limb by -- by having these
13 conversations with you without seeking
14 instructions right now 'cause, you know, that
15 would have been taken up more time and
16 potentially cause the problem we're having right
17 now.

18 So, you know, I -- I -- I -- yes, I will
19 subject myself to whatever the Tribunal directs;
20 I just -- I just -- my -- my initial position is
21 it's -- it's -- it's unnecessary but -- because
22 I -- I -- it's not that I -- it's not that I mind
23 subjecting myself to the Tribunal, but the
24 suggestion that I have to run it by you first I
25 think is just going to cause problems.

26 THE CHAIR: All right. Well, to be clear, I'm not
27 suggesting you have to run it by anyone, but I
28 understand both sides of the concern.

29 Ordinarily when we're heading into a break
30 like this our clear instructions are there's
31 really not to be any discussion about the case
32 between counsel and -- and the witness, even if
33 they are an instructing client, but we're in the
34 situation where there's going to be a contested
35 application and you're going to be taking
36 positions, Mr. Kitchen, that have a bearing on
37 Mr. Neufeld's interests and for that you need
38 instruction, so I -- I appreciate the concern,
39 and I'm not suggesting you need to get
40 Ms. Waddell's permission, but you've been very
41 effective in working cooperatively so far in, you
42 know, figuring out what needs to be objected to
43 or not.

44 So I guess if you want us to kind of talk
45 amongst ourselves and see if we can give you
46 reasonable instruction before we take this break,
47 we can do that, but I think we'll need a few

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Barry Neufeld (for Respondent)
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1 minutes as a panel. And if there's anything else
2 either of you want to say about what the
3 instructions should be, we can hear it, but
4 otherwise I would -- as I said, I think it may be
5 easier to talk about this when it's not
6 hypothetical and once Mr. Kitchen's had the
7 chance to see what he's tasked with responding
8 to.

9 But, Mr. Kitchen, you don't think that's
10 appropriate, so I'll come back to you. We can do
11 this today kind of prospectively, but we'll need
12 a few minutes, or we can do it once you've had a
13 chance to see Ms. Waddell's arguments.

14 CNSL J. KITCHEN: Okay. So just so I understand, so
15 the idea is I get Ms. Waddell's arguments and
16 then we have -- we have a whatever it is, you
17 know, 20-minute call between the Tribunal and
18 the -- and the -- and the counsel for the parties
19 to determine the scope of what I can go to
20 Mr. Neufeld with to seek instructions on. Is
21 that -- is that the proposal?

22 THE CHAIR: That's the proposal.

23 CNSL J. KITCHEN: Well, I mean, I guess that's
24 probably more productive than having you sort of
25 rule beforehand. So I -- I think -- I think I
26 kind of have to agree with that because that
27 sounds like it's just a better way to go than
28 having you come back with instructions now kind
29 of, you know, before we have an -- everything in
30 hand.

31 THE CHAIR: All right. Well, in that case, I'm
32 pulling up our calendars again.

33 CNSL J. KITCHEN: Yeah, so I guess we'll -- we'll have
34 to have a call Thursday morning, then, I guess.
35 The 27th. This Thursday.

36 THE CHAIR: Yeah. And I'm free after 11. Okay.
37 We're free after 11 that morning.

38 CNSL L. WADDELL: I have a conference call at 11, but
39 I think it only lasts an hour, so I am free --
40 other than from 11 to 12, I believe I am free on
41 the 27th.

42 CNSL J. KITCHEN: 12 works for me. I mean, B.C. time.

43 THE CHAIR: Why don't we -- maybe we should say 12:30
44 so that Ms. Waddell has a moment in between
45 calls.

46 CNSL L. WADDELL: Sure.

47 THE CHAIR: So 12:30, February 27th.

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 CNSL J. KITCHEN: 1 --

2 CNSL L. WADDELL: 1:30 for Mr. Kitchen, I guess.

3 THE CHAIR: 1:30 for Mr. Kitchen. We'll book it for
4 30 minutes. I don't want it to be a long thing,
5 but -- and if -- of course if -- if you're in
6 agreement, come to an agreement before then, then
7 you can just cancel, but we'll put that in the
8 calendar so that we can get that sorted out.

9 All right. Anything else before Ms. Waddell
10 asks her last couple of questions for the day?
11 No?

12 CNSL J. KITCHEN: Nothing from me.

13 THE CHAIR: Okay. All right. Mr. Neufeld, just a
14 couple more questions here, and then we'll break
15 for the day. Go ahead, Ms. Waddell.

16 CNSL L. WADDELL: Thanks.

17

18 CROSS-EXAMINATION BY CNSL L. WADDELL, continuing:

19

20 Q Mr. Neufeld, we -- we talked a fair bit or I
21 asked you a number of questions sort of about the
22 content of your previous counsel's file and, you
23 know, your -- your understanding about what it
24 contained and -- and one of those -- one, at part
25 of the contents, was your communications with
26 that firm. I presume you understand that
27 normally communications with your law firm or
28 your lawyer, Mr. Kitchen, would be privileged.
29 Is that right?

30 A Yes.

31 Q Okay. And I presume that you also understand,
32 and it's a different type of privilege, but for
33 the -- some of the other types of documents that
34 we've discussed that were in that file, I think I
35 called them "internal work products," so, you
36 know, memorandum, things that your -- your
37 lawyers do when they're working on your matter, I
38 presume you also understand that those are also
39 privileged things. "Privileged" meaning, you
40 know, you -- you don't have to show them to
41 anybody else?

42 A Yes.

43 CNSL L. WADDELL: Okay. All right. Those are --
44 that's -- those are my questions.

45 THE CHAIR: All right. Well, we are now going to
46 stand down. Tomorrow's hearing day is adjourned
47 until March 10th. We will send a letter today or

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1 tomorrow summarizing the next steps in this
2 process and updating the language of the
3 publication ban further to our discussion this
4 morning.

5 Mr. Neufeld, we're now going to be entering
6 in a couple weeks while you're under
7 cross-examination, and, as you know, you're --
8 you're not allowed to talk to anyone about your
9 evidence in this proceeding while you're under
10 cross-examination. That includes Mr. Kitchen.

11 As you've heard, we will be trying to
12 navigate how Mr. Kitchen may get instructions
13 from you while you're under cross-examination.
14 So we'll deal with that, and -- and we'll trust
15 that if he calls you and asks you questions
16 you're allowed to answer them. But we'll be
17 dealing with that. But otherwise you're not
18 allowed to talk to anyone about your evidence in
19 this proceeding while you're under
20 cross-examination. Do you understand that?
21 Okay. You're nodding. You're muted, but you're
22 nodding, and I -- I have it.

23 A Yes.

24 THE CHAIR: Okay. Thank you. All right. Anything
25 else before we adjourn for the day, for the week,
26 and the month? No? All right. We'll see you
27 on -- we'll see everyone on March 10th, and we'll
28 see counsel on Thursday. Thank you.

29
30 (WITNESS STOOD DOWN)

31
32 (VIDEOCONFERENCE CONCLUDES) [3:40:41]

33
34 (PROCEEDINGS ADJOURNED TO MARCH 10, 2025, AT
35 9:30 A.M.) [3:40:41]
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1 REPORTER'S CERTIFICATE

2
3 I certify that the proceedings from timestamp
4 9:34:11 to timestamp 3:40:41 inclusive are a true
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14 Victoria Ross
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**IN THE MATTER OF THE *HUMAN RIGHTS CODE*,
RSBC 1996, C. 2010 (as amended)**

**AND IN THE MATTER of a complaint before
The British Columbia Human Rights Tribunal**

BETWEEN:

British Columbia Teachers' Federation obo Chilliwack
Teachers' Association

COMPLAINANT

AND:

Barry Neufeld

RESPONDENT

AND:

B.C.'s Human Rights Commissioner

INTERVENOR

**PROCEEDINGS AT B.C. HUMAN RIGHTS TRIBUNAL HEARING
(VOLUME XII)**

ORIGINAL

THERE IS A PUBLICATION BAN IN EFFECT PROHIBITING THE
PUBLICATION OF ANY INFORMATION THAT COULD IDENTIFY THE
TEACHERS WHO TESTIFIED, OR MAY HAVE TESTIFIED, IN
CONNECTION WITH THIS COMPLAINT: CHILLIWACK TEACHERS'
ASSOCIATION V. NEUFELD (NO. 2), 2024 BCHRT 180 [CTA
(NO. 2)]; AMENDED BY LETTER DATED FEBRUARY 25, 2025.

File: CS-003172

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**PROCEEDINGS AT B.C. HUMAN RIGHTS TRIBUNAL HEARING
(VOLUME XII)**

ORIGINAL

Tribunal Members:	Devyn Cousineau, Robin Dean, Laila Said Alam
Counsel for the Complainant:	Lindsay Waddell, Alanna Tom, Stefanie Quelch, Chris Fenje
Counsel for the Respondent:	James S.M. Kitchen
Counsel for B.C.'s Human Rights Commissioner:	Sarah Khan, Maria Sokolova

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1337

Barry Neufeld (for Respondent)
Proceedings

By videoconference
March 10, 2025

(VIDEOCONFERENCE COMMENCES) [9:32:29]

BARRY NEUFELD, a witness,
recalled.

UNIDENTIFIED SPEAKER: So you should be able to --

THE CHAIR: Good morning, everyone. It's March 10th.

I am recalling the case of *BC Teachers' Federation on behalf of Chilliwack Teachers Association v. Barry Neufeld*, CS-001372. I am not sure we are all here -- oh, yeah. There we are. I can see counsel for the complainants there this -- good morning. Okay. And Mr. Clark is here. Good morning. I see Mr. Kitchen on the phone. Good morning. And Ms. Khan. We do not have Mr. Neufeld here yet. We have a number of members of the public and Member Dean is cross-referencing all of the phone numbers over here. So I will just wait until Mr. Kitchen is off the phone, and -- and then I will check in with the parties about any preliminary issues.

CNSL L. WADDELL: Log in using -- an individual's account -- is this -- have you blocked the feature that allows us to rename ourselves by any chance?

THE CHAIR: Have we locked that feature? I am not aware that we have locked it. Although --

CNSL L. WADDELL: Okay.

THE CHAIR: -- I think with Microsoft Teams it's a bit more involved to change the name, or at least I've found it to be, but I don't think we have done anything differently.

CNSL L. WADDELL: Okay. Thank you.

CNSL J. KITCHEN: Sorry about that, Chair. We were getting Mr. Neufeld connected.

THE CHAIR: All right. Is he joining us now?

CNSL J. KITCHEN: He should be. He had it open there when I hung up with him.

THE CHAIR: Okay. I will keep an eye out. Before he gets here, I will just confirm that the case manager has sent the parties our reasons on the issue of waiver of privilege this morning. Apologies that we couldn't get that out to you on Friday, but I trust you received the decision in

1338

Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 time to plan accordingly. Are there any other
2 preliminary issues we need to address before
3 Mr. Neufeld arrives and we continue with the
4 cross-examination? No? Ms. Waddell is shaking
5 her head. Nothing from Mr. Kitchen? Okay. All
6 right. Well, we will just wait for him to join,
7 and then we will get started when he does.

8 CNSL J. KITCHEN: There we go.

9 THE CHAIR: Good morning, Mr. Neufeld. You are on
10 mute.

11 A Good morning.

12 THE CHAIR: There you are. All right. Now that you
13 are up and connected, are you ready to continue
14 with your cross-examination?

15 A Yes, I am.

16 THE CHAIR: Okay. Thank you. I will remind you, of
17 course, that you are still under the oath you
18 took to tell the truth and that Ms. Waddell will
19 be asking you questions and to answer the
20 questions to the best of your ability. Go ahead,
21 Ms. Waddell.

22 A Yes.

23
24 CROSS-EXAMINATION BY CNSL L. WADDELL, continuing:
25

26 Q Thanks. And good morning, Mr. Neufeld. I just
27 want to do a couple of quick pieces of cleanup
28 from our -- when we were last together on the
29 24th. I put two documents to Mr. Neufeld. One
30 was, you will remember, Mr. Neufeld, a page from
31 the Rights and Freedoms Fundraising Society's
32 website. Do you remember that?

33 A Yes.

34 CNSL L. WADDELL: Okay. Could I have that marked as
35 an exhibit by the panel, please.

36 THE CHAIR: Yes -- okay. Go ahead.

37 UNIDENTIFIED SPEAKER: Yeah. It will be marked as
38 Exhibit 10.

39
40 (EXHIBIT MARKED)
41

42 CNSL L. WADDELL: Thank you. Thank you. And then I
43 also put a Western Standard article to
44 Mr. Neufeld. Could we have that marked as an
45 exhibit? It contains some quotes from him.

46 UNIDENTIFIED SPEAKER: Yeah. That's marked as
47 Exhibit 11.

1339

Barry Neufeld (for Respondent)

Cross-exam by Cnsl L. Waddell

1
2
3 (EXHIBIT MARKED)
4

5 CNSL L. WADDELL: Thank you.

6 Q Okay. So, Mr. Neufeld, you are aware, I imagine,
7 that, of course, we took a break from your
8 testimony to exchange submissions about whether
9 or not you waived privilege over your previous
10 counsel's file?

11 A Yes. You made an application to the Tribunal,
12 and they granted your request.

13 Q Okay. And I -- I am not going to ask much about
14 this, but I presume that your counsel sought
15 instructions from you during that break.

16 A Very briefly.

17 Q Okay. Were you provided with an opportunity to
18 review your counsel's submissions?

19 A No.

20 Q Okay. Were you aware that Mr. Barns swore an
21 affidavit in support of your submissions on that
22 application?

23 A No, I wasn't.

24 Q Okay. Have you communicated with Mr. Barns at
25 all since we were last in hearing on
26 February 24th?

27 A He sent me a message, but I didn't get back to
28 him.

29 Q Okay. And what did his message say?

30 A Well, that he supported me and he was sorry that
31 it had caused me more grief.

32 Q Okay. Was this an e-mail or a text?

33 A It was a text.

34 Q All right. Have you spoken to anyone about your
35 evidence either that you gave on the 24th or that
36 you might give today or tomorrow?

37 A No.

38 Q Okay. Now, in your direct you talked a little
39 bit about your work as a probations officer and a
40 corrections officer, and one of things I think
41 you said you did in your capacity, if I remember
42 correctly, more as a probation officer, was that
43 you reported to the court sometimes. Is that
44 right?

45 A At least on a weekly basis.

46 Q Okay. And -- and those would have been in the
47 context of criminal proceedings, I take it.

1340

Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 A Yes.

2 Q Okay.

3 A And also in family court, civil proceedings.

4 Q Okay. And just in terms of your court
5 experience, for those family proceedings and
6 those criminal proceedings where you are doing
7 this in the context of your work as a probation
8 officer, are you appearing in court to give those
9 reports, or is this sort of an in writing kind of
10 thing?

11 A Both. If there was a quick turnaround, I would
12 make an oral presentation, but sometimes the
13 judge would give me about four weeks to prepare a
14 written report.

15 Q Okay. And have you ever been involved in any
16 family law proceedings of your own not through
17 your work but outside of -- outside of your work?

18 CNSL J. KITCHEN: Objection.

19 A Yes.

20 THE CHAIR: Mr. -- sorry -- we -- you beat us,
21 Mr. Neufeld -- before we could resolve the
22 objection, Mr. Neufeld. Mr. Kitchen, do you want
23 to elaborate on the objection, or are we moving
24 on?

25 CNSL J. KITCHEN: Well, I don't see that it's
26 relevant, you know, and some irrelevant things we
27 let go because it's not worth stopping about, but
28 this one sounds like it's going to be quite
29 personal and invasive, and I don't see any
30 purpose or basis behind it. I mean, he has
31 answered yes; so be that as it may, presumably
32 now that my friend has a yes, she wants to
33 continue to dig into it, and I don't see that
34 that's appropriate. It's not relevant.

35 THE CHAIR: Ms. Waddell?

36 CNSL L. WADDELL: I am not going to dig into it at
37 all. I am interested in Mr. Neufeld's experience
38 with legal proceedings; so I have no intention of
39 making it personal. I have one further question
40 on that subject which is about whether he had
41 legal counsel in those proceedings, and that's
42 it, which I don't think that's a personal
43 question.

44 THE CHAIR: All right. Go ahead.

45 CNSL J. KITCHEN: Well, it's -- it's completely
46 irrelevant. I mean, why is it relevant to
47 understand what Mr. Neufeld's experience with

1341

Barry Neufeld (for Respondent)

Cross-exam by Cnsl L. Waddell

1 legal proceedings are? That's not relevant.

2 THE CHAIR: Thank you, Mr. Kitchen. We are in
3 cross-examination; so counsel has a bit of
4 latitude here to ask questions and get there. If
5 we are spending undue time on this, we can --

6 CNSL J. KITCHEN: Okay. I'm --

7 THE CHAIR: -- we can exclude the witness and deal
8 with the relevance, but for now --

9 CNSL J. KITCHEN: I am familiar with the latitude of
10 cross-examination. We went through this when I
11 was in cross-examination, so I don't think
12 "latitude" means that we ask completely
13 irrelevant questions; so --

14 THE CHAIR: Thank you, Mr. Kitchen. Go ahead,
15 Ms. Waddell.

16 CNSL L. WADDELL:

17 Q So in the context of those family law
18 proceedings, Mr. Kitchen -- or -- sorry,
19 Mr. Kitchen -- Mr. Neufeld, did you have legal
20 counsel, or did you look after things yourself?

21 A Both.

22 Q Both. Okay. And you have some experience with
23 defamation proceedings; is that right?

24 A Yes.

25 Q Okay. You brought a defamation suit against
26 Mr. Hansman; correct?

27 A Correct.

28 Q Okay. And am I correct that you had legal
29 counsel in that from -- sort of from the get-go
30 all the way through to the Supreme Court of
31 Canada?

32 A Yes.

33 Q Okay. And you also filed a defamation suit
34 against a fellow trustee; is that right?

35 CNSL J. KITCHEN: Objection.

36 THE CHAIR: Go ahead, Mr. Kitchen.

37 CNSL J. KITCHEN: So, again, where is the relevance?

38 I mean, we talked about Mr. Hansman. He is a
39 part of this case. I think we covered that
40 already. That's not new, but now we are getting
41 into supposed other lawsuits that got nothing to
42 do with this case. Why? It's completely
43 irrelevant. Why are we wasting time on this?

44 THE CHAIR: Thank you, Mr. Kitchen. Ms. Waddell?

45 CNSL L. WADDELL: Why don't we exclude the witness so
46 that we can actually deal more fulsomely with
47 this?

1342

Submissions by Cnsl L. Waddell

1 THE CHAIR: All right. Mr. Neufeld, I am going to
2 again create a breakout room and put you in the
3 breakout room while we deal with the objection,
4 and then I will bring you back in when the
5 objection is resolved.

6 A Before I go to the breakout room, I have not sued
7 anyone else other than Glen Hansman for
8 defamation.

9 THE CHAIR: Okay. Let's see. Sorry. This just --
10 yeah. This just takes me a minute to set this
11 up. There we go.

12 All right. Mr. Neufeld, I will send you
13 into the breakout room now. And just obviously,
14 for so long as you are excluded from the
15 proceeding, I will remind you not to talk to
16 anyone about your evidence. So I am going to
17 open the breakout room now, and I will bring you
18 back when the objection is resolved. Thank you.

19
20 (WITNESS STOOD DOWN)

21
22 THE CHAIR: All right. Ms. Waddell, do you want to
23 respond on the relevance of this line of
24 questioning?

25
26 SUBMISSIONS BY CNSL L. WADDELL:

27
28 CNSL L. WADDELL: I will, but I am only going to
29 provide limited information. I think my friend
30 misapprehends the nature of cross-examination.
31 The -- this individual's experience -- as a
32 litigant is going to become relevant to some of
33 our arguments on the subject of cost. So I am
34 quite quickly just going through his litigation
35 experience. So broad latitude for relevance on
36 cross-examination. I have yet to waste any time.
37 I have been going for all of -- just over five
38 minutes now. So I am hopeful that these
39 interruptions aren't going to continue because if
40 they are, we are going to be here a very long
41 time.

42 In any event, the -- that's what I am going
43 to say about relevance. And in my submission,
44 there is simply no basis to suggest that this is
45 incredibly farfetched or irrelevant to these
46 proceedings. It's going to become relevant to
47 the question of costs and his conduct in this

1343

Submissions by Cnsl J. Kitchen

1 litigation.

2 THE CHAIR: Mr. Kitchen?

3

4 SUBMISSIONS BY CNSL J. KITCHEN:

5

6 CNSL J. KITCHEN: What I heard from my friend is it's
7 relevant because she says so, because it's going
8 to be relevant to costs. Well, I don't see how.
9 That's what I was waiting to hear, is an
10 explanation. Instead what I got was, you know,
11 basically a veiled insult which my friend likes
12 to put in the record, and that's fine. But I
13 didn't hear anything of substance. She went
14 through costs, I would say, already. I mean, I
15 guess it's fair for her to go back to it, but I
16 don't see what this has got to do with it; so --
17 and my friend's view of cross-examination seems
18 to be that of, you know, why should I be here? I
19 mean, she can just ask her questions, and my job
20 is just to sit here and stare at the screen,
21 which obviously it isn't. That's not her job
22 when I am on cross. So I don't think wide
23 latitude on cross means I just sit here and stare
24 at you two while she asks whatever the heck she
25 wants.

26 I don't want to object 85 times. I will if
27 I have to, but I don't want to. But if we are
28 going to start asking about court actions that
29 have nothing do with this one, I am going to
30 object, as would any reasonable counsel, until I
31 see what the relevance is. And if I was to do
32 the same thing, I would be facing the same
33 problem Ms. Waddell is. She hasn't established
34 the relevance of it. She hasn't said anything of
35 substance. It's relevant to cost because she
36 says it is. That's all I heard, and that doesn't
37 help me. So I don't know what to say other than,
38 until she can establish relevance, it's not
39 relevant to talk about somebody else's court
40 actions. So it's not a legitimate question.

41 THE CHAIR: All right. Thank you, Mr. Kitchen. As we
42 understand the relevance of this line of
43 questioning, it's related to the complainant's
44 application for costs and, in particular, as I
45 understand it, the arguments they are going to be
46 making about Mr. Neufeld's conduct in the course
47 of this proceeding and how that may be

1344

Submissions by Cnsl J. Kitchen

1 interpreted in light of his experience in other
2 legal proceedings and awareness of the legal
3 system. So for the purposes of this line of
4 questioning, we are satisfied that it's relevant.
5 And so -- and it's not kind of taking us far off
6 course. And so we are going to allow this line
7 of questioning, and we have your objection on the
8 relevance of questions related to the legal
9 proceedings. So I will just ask that you not
10 make the same objection again when we move on to
11 a new topic, and if you want to object about
12 relevance, of course you are free to do so.

13 CNSL J. KITCHEN: I will try not to, but I will make
14 one comment, okay, that when I wanted to question
15 about what I wanted to argue in my submissions at
16 the end, I did not meet -- I met much more
17 resistance than what you have just given now to
18 Ms. Waddell. She has said, I am going to argue
19 this; therefore, I can ask this. You said, Yeah.
20 Okay? That's exactly what I said in my
21 cross-examination questions about my theory of
22 the case with Mr. Neufeld, and I received a lot
23 of resistance to being able to do that, and so --
24 and I know we have been down this road, and I
25 don't imagine I am going to say any more than I
26 am going to say right now in the next two days.
27 I see a problem with that. I see an
28 inconsistency with that, that Ms. Waddell can
29 object. I can say this is to my line of
30 questioning and my theory of the case about free
31 speech or ideas or whatever, and I get stymied.
32 And then when we go the other way around, that
33 doesn't happen. And I have to note -- because
34 this is a different issue than we noted before
35 many months ago. I have to note the problem that
36 the respondent has with the inconsistency on
37 that. Thank you.

38 THE CHAIR: Thank you, Mr. Kitchen. I am not familiar
39 with what you are talking about, but I am going
40 to bring the witness back in, and we will
41 continue with the questions --

42 CNSL J. KITCHEN: Well, I can --

43 THE CHAIR: No, I don't -- no, I don't --

44 CNSL J. KITCHEN: [Indiscernible - crosstalk] --

45 THE CHAIR: -- want to hear more. Butt out,

46 Mr. Kitchen. I don't want to hear more about it.

47 CNSL J. KITCHEN: You just want to pretend you don't

1345

Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 understand what I am talking about, but that's
2 fine, I can make it more clear for you if you
3 want me to.

4 THE CHAIR: Mr. Kitchen, again, I have a problem with
5 your tone in this proceeding. All right? We are
6 here to deal with an evidentiary objection. The
7 way we do that is I hear from you, I hear from
8 responding counsel, I hear from you, I make a
9 ruling. The ruling is final. We move on. Okay?
10 In the course of this 10-minute objection, you
11 have accused opposing counsel of making veiled
12 insults, which, from where we are sitting, is not
13 an appropriate accusation. You have again
14 impugned the integrity of the proceeding in a
15 context where I don't want to spend more time
16 explaining why I disagree. And now again you
17 have insulted the panel or -- I don't know if
18 that was your intention, but it was certainly the
19 effect of suggesting that I am pretending not to
20 understand something, and I can assure you I am
21 not. So I regret that we have had to start out
22 so early in the day with this conversation, but I
23 am warning you to please reconsider the approach
24 here. Okay? I would like to bring Mr. Neufeld
25 back in so we can continue cross-examination, and
26 I am going to do that now.

27
28 BARRY NEUFELD, a witness,
29 recalled.

30
31 THE CHAIR: Thank you, Mr. Neufeld. You can unmute
32 your mic now. There you go. Go ahead,
33 Ms. Waddell.

34 CNSL L. WADDELL: Thanks.

35
36 CROSS-EXAMINATION BY CNSL L. WADDELL, continuing:

37
38 Q So, Mr. Neufeld, I think you corrected me before
39 we -- before you got booted out there so that we
40 could deal with the objection, and I thank you
41 for that. So your correction was that you have
42 only brought a defamation suit once because I
43 think I suggested that you brought a defamation
44 suit against a fellow trustee, but, in fact, it
45 was that trustee that brought a defamation suit
46 against you. Is that right?

47 A Yes.

1346

Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 Q Okay. And that matter was heard by the B.C.
2 Supreme Court and went up to the Court of Appeal
3 and was decided there; correct?

4 A Yes.

5 Q Okay. And my understanding is that you had legal
6 representation at both of those levels of court.
7 Is that right?

8 A Yes.

9 Q Okay. And then in the context of this
10 proceeding, this proceeding you were represented
11 early on before the Tribunal by separate counsel,
12 and they were the same counsel that represented
13 you when this matter -- the preliminary
14 application to dismiss went up to the B.C.
15 Supreme Court; is that right?

16 A Correct.

17 Q Do you have any other sort of experience in --
18 either in courts or before tribunals that I
19 haven't gone through there?

20 A No.

21 Q Okay. Now, before we took a break, we touched a
22 little bit on some of your posts, and I want to
23 just go back to some of those dealing with
24 information about settlement offers. You
25 understand, I take it, that settlement offers and
26 discussions about settlement are privileged and
27 confidential; is that right?

28 A Not really.

29 Q Okay. Maybe you can explain the "really" part to
30 me. So when you say "not really," I presume
31 there is sort of a qualification or a bit of an
32 explanation there. Perhaps you can give me
33 your view or understanding.

34 A Well, a settlement offer came after six years of
35 my being before the Human Rights Tribunal, and
36 many, many people have contributed to my
37 crowdfunding. They supported me because of what
38 I stood for, and I felt morally I could not make
39 a settlement offer when they had supported me in
40 my stand. I could not after six years all of a
41 sudden change my mind and apologize for what I
42 had done.

43 Q Okay. So that sounds like it's about why you
44 didn't accept the settlement offer. What I am
45 asking is if -- is -- I want to confirm that you
46 understand, notwithstanding the view you just
47 gave, that settlement offers are confidential and

1347

Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 privileged generally.
2 A I discussed the settlement offer confidentially
3 with very few trusted friends, including my
4 priest during confession, but once I had made my
5 decision to not accept the settlement offer, I
6 went public with it.
7 Q Presumably before you went -- and, sorry, by
8 "going public with it," you mean you posted about
9 it; correct?
10 A Yes.
11 Q Okay.
12 A I sent a newsletter.
13 Q All right. And that was the -- was that the
14 Shareaware newsletter that we went to the last
15 time we were in session in February?
16 A Shareaware? Just an e-mailed newsletter. It
17 went out by e-mail.
18 CNSL L. WADDELL: Alanna, can we just get up that
19 February 11th...
20 Q We are just going to put up a document on the
21 screen to make sure -- I just want to make sure
22 we're talking about the same thing, Mr. Neufeld.
23 And if this is not the newsletter that you are
24 talking about, you let me know. Are you able to
25 see that all right, Mr. Neufeld?
26 A Yes, I am.
27 Q Okay. Is that the newsletter that you are
28 talking about?
29 A Yes.
30 Q Okay. And I see that's dated February 11th,
31 2024. That's the edition of the newsletter that
32 you are referring to?
33 A Yes.
34 Q Now -- and am I right, though, that this is not
35 the first time -- that February 11th newsletter
36 was not the first time you had posted about
37 settlement discussions between the parties?
38 A I don't recall.
39 Q Okay. You don't recall your counsel specifically
40 instructing you not to publicly comment about
41 settlement discussions?
42 A They may have.
43 Q Okay. I would suggest to you that they did and
44 they, in fact, did so before that February 11,
45 2022, newsletter. Would you agree or disagree?
46 A We are talking about a very short timeline. I
47 think the settlement was offered to me around the

1348

Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 end of January. And when I refused the
2 settlement, the -- the insurance company cut me
3 off and said they were no longer going to pay for
4 my counsel; so I was without counsel.
5 Q All right. Now, the indemnity insurance company
6 was represented by a law firm called Carfra
7 Lawton; is that right?
8 A It was Safe Schools.
9 Q Yeah. Safe Schools or the Schools Protection
10 Plan is the insurer, but they were represented by
11 and communicated with you through a law firm
12 named Carfra Lawton. Do you remember that?
13 A Well, it was originally the B.C. Public School
14 Employers' Association that retained the lawyers
15 from Guild Yule as my counsel for this Tribunal.
16 Q So back to the insurer cutting you off, when they
17 wrote to you to give you one last chance to
18 reconsider the settlement offer, they, in fact,
19 raised the issue of your publicly posting about
20 settlement discussions, didn't they?
21 A They may have.
22 Q I am going to put a document up and ask you to --
23 ask if you recognize it. So, Mr. Neufeld, I know
24 that probably if the writing is as small for you
25 as it is for me, you might need it enlarged. You
26 just let us know if you need it made larger or
27 smaller. And take whatever time you need to read
28 it. And then I am going to ask you some
29 questions about it.
30 A Yes. I can see it.
31 Q Okay. We are just going to pause for a second
32 and send copies to the panel and to Mr. Kitchen.
33 Okay. All right. Mr. Neufeld, have you
34 seen this letter before?
35 A I believe so, yes.
36 Q Okay. So this is from Carfra Lawton to you.
37 It's dated January 30th, 2024. Do you see that
38 up at the top?
39 A Yes.
40 Q Okay. And this is the insurer. It starts out
41 saying, "I write further to my letter of
42 November 14th, 2023," explaining about authority
43 to instruct counsel where settlement is
44 concerned. It then goes over the offer that was
45 made. It points out that a number of provisions
46 in that offer would protect your reputation.
47 And then if you see down at the bottom of

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Barry Neufeld (for Respondent)

Cross-exam by Cnsl L. Waddell

1 the first page there on January 30th, the insurer
2 says:

3
4 You have engaged in the conduct including
5 recent social media posts disclosing terms
6 of this settlement offer. You were
7 specifically instructed not to do so.
8 Despite these actions, BCTF has continued to
9 extend the offer.

10
11 Would you agree with me, then, that sometime
12 before January 30th you posted about the
13 settlement offer?

14 A What is the date of this letter I am looking at?

15 Q January 30th.

16 A Well, I took this letter with a grain of salt
17 because this was not my personal lawyer and I
18 certainly did not think they were acting in my
19 best interest.

20 Q But you would agree with me that as of
21 January 30th you had posted and had been told not
22 to post about settlement privileged information;
23 correct?

24 A I suppose so.

25 Q Okay. And you would agree with me that you,
26 then, proceeded to post again on February 11th in
27 that newsletter that we just took you to;
28 correct?

29 A Yes.

30 Q And one question about this Carfra Lawton letter
31 before we leave it, if we go to the page 2, they
32 say this is your second notice pursuant to a
33 section of the insurance policy, asks for your
34 written consent for the proposed settlement, and
35 says, you know, if you don't do that, they will
36 no longer pay your legal fees, won't instruct
37 your legal counsel. But at the very -- and the
38 last sentence there says it will pay up to
39 \$50,000 to the extent that the Human Rights
40 Tribunal renders monetary judgment against you.
41 To the best of your knowledge, is that still the
42 case?

43 A I didn't believe them when they wrote that.

44 Q Have you received anything from them saying they
45 are no longer prepared to pay up to \$50,000 to
46 the extent the Human Rights Tribunal renders
47 judgment against you?

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 A I have not heard from them in over a year.
2 Q But have you heard anything which contradicts
3 that statement?
4 A No.
5 Q So in terms of -- you gave a bit of an
6 explanation or described your process about
7 rejecting a settlement offer and then deciding to
8 go public, as it were. Do I understand you
9 correctly that you did that essentially for your
10 supporters; is that right?
11 A That's correct. And the main reason was it
12 hinged on an apology, admitting that I was -- had
13 harmed someone, and as my priest told me, Who are
14 you apologizing to? I said, I don't know; they
15 won't give me the names of anybody who I have
16 harmed. And if I don't know who I am apologizing
17 to, there is nothing to apologize for.
18 Q And just -- I just want to connect that to the
19 reason for your posting. Is that connected
20 somehow to why you posted, why you continued to
21 post, despite advice not to do so and despite
22 knowing that what you were posting was protected
23 by settlement privilege?
24 A Yes.
25 Q And what is the connection? That's what I am
26 just trying to understand.
27 A Well, I didn't think it was a reasonable
28 settlement offer. It was basically bullying me
29 into admitting that I was wrong all along, and I
30 do not believe I am wrong. I believe there are
31 only two genders, male and female. I believe
32 that it is child abuse to transition a child from
33 a -- one gender to another. And I have not
34 changed that position; so there's nothing to
35 apologize for.
36 Q But you could have maintained all of that
37 position without actually posting about the
38 settlement offer; correct?
39 A Yes. But I wouldn't have been honest with my
40 supporters who had supported me for so many
41 years.
42 Q Okay. So posting was about providing information
43 to and providing something to your supporters?
44 A That's right. And my own personal integrity was
45 at stake.
46 Q Was it about galvanizing support for your case?
47 A It could be that.

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 Q Did you think it would mobilize people a bit?
2 A Thought so, and it did.
3 Q Okay. Now, in -- in terms of -- we -- at the
4 outset, I went over -- to get a sense of your
5 experience in different court proceedings. And I
6 take it you understand from your work in -- as a
7 probation officer that there are usually
8 restrictions on recording in courtrooms and court
9 proceedings; correct?
10 A Somewhat, yes.
11 Q Okay.
12 A Not allowed to bring a camera or a recording
13 device into a courtroom.
14 Q Okay. And then in the context of this
15 proceeding, you recall, I take it, that in March
16 of last year the complainant applied to -- for an
17 anonymization order and a publication ban with
18 respect to the identity of the complainant's
19 individual teacher witnesses. Do you remember
20 that?
21 A Yes.
22 Q Okay. And do you recall that the primary basis
23 the complainant gave for that application was
24 safety concern for those teacher witnesses?
25 A Yeah. That was their concern, but I thought it
26 was bogus.
27 Q Yeah. I didn't ask if you agreed. I just want
28 to make sure that you understood sort of the
29 basis for it.
30 A Yeah.
31 Q And do you recall that in terms of specifics of
32 the safety concern, that included concern about
33 online doxxing and harassment of individual
34 teachers?
35 A Nobody has been doxxed or harassed more than I
36 have. Those teachers have never been -- suffered
37 any of the abuse that I put up with for the last
38 seven years.
39 Q Okay. So I wasn't asking if you agreed. I am
40 not surprised that you don't, but I just want to
41 get an understanding of your knowledge about what
42 the complainant was saying when we brought that
43 application. I want to know if you understood
44 that the safety concerns that the complainant was
45 arguing supported that application included the
46 concern that teachers would be doxxed and
47 harassed. Do you remember that?

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 A Yes. Their victim mentality came to the fore,
2 and I didn't have a lot of sympathy for it.
3 Q Fair to say you don't have much sympathy now as
4 well?
5 A No. As I told, I asked my last -- my lawyer that
6 I was so afraid of my next-door neighbour that I
7 sold my home and moved away, and it shocked me to
8 find out that was the neighbour who became one of
9 your witnesses. Her cussing shocked me so much
10 that after I heard her cussing out her children,
11 I went immediately to the phone and called a real
12 estate agent and said, I need to get out of here.
13 Q All right. And after we delivered that
14 application to you --
15 A What application?
16 Q The application -- so back in March 2024, the
17 application that we brought for an anonymization
18 order and publication ban?
19 A After I had no legal counsel, you and the
20 Tribunal began to harass me and inundate me with
21 documents. I did my best to try and sort them
22 and file them, but I can't remember all of them.
23 I was overwhelmed.
24 Q But you did indicate earlier, like just a few
25 minutes ago, that you recall that we brought an
26 application for a publication ban and
27 anonymization order?
28 A I thought that was way back at the beginning of
29 the whole Tribunal case. I don't recall it
30 happening about a year ago.
31 Q Okay. Well, it -- I will tell you it happened in
32 March of 2024, and then after that the Tribunal
33 set a pre-hearing conference in April of 2024.
34 Do you remember that?
35 A No, I don't. I don't remember a conference until
36 July the 4th. I remember some telephone
37 discussions, but I don't remember any Tribunal
38 hearing in April.
39 Q No. That's fine. The telephone discussion is
40 actually that I -- that I am talking about. So
41 in April there was a -- what's called a
42 pre-hearing conference, and it was held by
43 telephone.
44 A That's right.
45 Q Are you --
46 A Yes.
47 Q Okay. And the Tribunal had a few things they

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 wanted to address on that call. One of them was
2 a request from you to adjourn the hearing; is
3 that right?
4 A Yeah.
5 Q Okay. And one of them was complainant's
6 application for the publication ban and
7 anonymization order. Do you remember that?
8 A I remember discussing postponing the hearing.
9 I -- memory fails me. I don't recall about the
10 anonymization ban.
11 Q Okay. So regardless of what you remember about
12 the actual content during that call, you recorded
13 that call; correct?
14 A I recorded it for my own private use and so I
15 could be able to share it if and when I ever
16 obtained legal counsel. I was trying to make
17 notes as the conversation went on. There was --
18 it was all happening so fast, and that's why I
19 felt I needed a record of it so I could go back
20 and review what was discussed in the conference
21 call.
22 Q Now, you were a bit late getting to that
23 pre-hearing call. You will remember my office
24 worked to try and get ahold of you. Were you
25 late because you were trying to set up the
26 technology to record the call?
27 A No. It was simple technology. I just -- I just
28 recorded it on my cell phone.
29 Q Okay. So you recorded the call, and you just
30 explained why. And then after the call you
31 posted it to your YouTube account; correct?
32 A Temporarily, yes. That was the only way I could
33 get it from my cell phone to my laptop. Once I
34 downloaded it off of YouTube, I -- I deleted it
35 on YouTube, but, unfortunately, you guys found
36 out about it in the two or three days it was --
37 and it was a private -- it was a private channel.
38 There was no description of it. I don't believe
39 anybody ever saw it other than you and your team.
40 Q But you don't know that nobody ever saw it, do
41 you?
42 A There were only two views when I deleted it.
43 Q Did you capture that in any way in a document?
44 A I don't know who viewed it.
45 Q But you did have over 100 followers or -- I
46 don't -- subscribers? Sorry. I am not up on the
47 YouTube lingo.

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 A Yes, about that, I suppose. But there was no
2 video. So it was -- it would be meaningless to
3 any member of the public what was going on.
4 Q All right. And so that was -- April 18th was the
5 call. Sometime after that, you posted it to
6 YouTube. We found out, and you will recall that
7 we wrote to you on April 24th, so about six days
8 later, to ask that you take it down immediately.
9 Do you remember that?
10 A I believe it was already taken down by the time
11 that you contacted me.
12 Q So let's put a document to you. Second
13 affidavit, Exhibit F. So I don't want to rush
14 you, Mr. Neufeld, so you just -- if you need us
15 to scroll down or need some time to read, you go
16 ahead. But this is a letter that I wrote to you
17 on April 24th. It's the first I wrote to you on
18 the subject of the recording asking that you take
19 it down immediately. Do you remember receiving
20 this?
21 A I remember that, yes.
22 Q Okay. And you did not, in fact, take it down on
23 April 24th after receiving that letter, did you?
24 A I thought it was already down when I received
25 that letter because I couldn't find it.
26 Q All right. Well, it was, when that letter was
27 written, already up. And then on April 25th --
28 do you recall that we served you with a cost
29 application?
30 A Yes.
31 Q And that was at -- a little before 2:00 p.m. on
32 the 25th, and it included a sworn affidavit that
33 as of noon on the 25th the recording was still
34 up. Does that timing sound right to you?
35 A I don't recall.
36 Q Okay. And it was only after you received that
37 cost application on the 25th that you took the
38 recording down; correct?
39 A I suppose so.
40 Q Okay. So can we just go quickly to the
41 April 25th e-mail, the other e-mail.
42 All right. Mr. Neufeld, so we just put
43 another document up on the screen here. This is
44 the e-mail by which we delivered the cost
45 application, and you will see it's about
46 1:46 p.m. on the 25th.
47 A Okay.

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 CNSL L. WADDELL: Okay. Could we have that marked as
2 an exhibit, please.

3 THE CHAIR: Yes. Do we have that?

4 UNIDENTIFIED SPEAKER: Is this under one of the
5 Belinda Lai affidavits?

6 CNSL L. WADDELL: I don't know that the e-mail itself
7 is.

8 UNIDENTIFIED SPEAKER: Okay. All right.

9 CNSL L. WADDELL: So you have the application and a
10 few other things but not the e-mail that provides
11 the timestamp.

12 UNIDENTIFIED SPEAKER: Okay. So --

13 CNSL L. WADDELL: In a subsequent -- there is a letter
14 on the record that sort of identifies -- from me
15 to Mr. Neufeld identifying the time -- some of
16 the approximate timelines, but not the sort of
17 originating evidence, if you will.

18 UNIDENTIFIED SPEAKER: Okay.

19 THE CHAIR: All right. Then can you send it into the
20 Tribunal during a break? And we will mark it
21 once we have it.

22 CNSL L. WADDELL: Thank you.

23 Q And then I would like to put another document up
24 here, Mr. Neufeld. This is going to be an e-mail
25 from you to Ms. Lai. So this is just -- just
26 take a look perhaps and tell us what this is,
27 Mr. Neufeld.

28 A Okay. Well, that was just to let you know that
29 it had been deleted.

30 Q Okay. And can you just tell me what the date and
31 time is on the e-mail?

32 A Thursday, April 25th.

33 Q You -- okay. What time?

34 A 3 o'clock in the afternoon.

35 Q Okay. So, Mr. Neufeld, was it just the threat of
36 a cost application that caused you to remove that
37 recording?

38 A No. I intended to delete it once I had it on my
39 laptop. And I remember after I got it on my
40 laptop I went back into my YouTube channel and I
41 couldn't seem to find it, mainly because it had
42 some kind of a -- probably a technical name. It
43 didn't say "recording of Tribunal" or
44 "conference" or anything. I didn't give it a
45 name, and -- but when I got threatened with
46 costs, I went back to -- I spent quite a bit of
47 time, went back to every single video that I had

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 on my YouTube channel until I found it and made
2 sure it was deleted. But once again there was no
3 description to it and it was -- it would be
4 meaningless to anyone else in the public.
5 Q All right. Now, at this point in time, do you
6 have -- so we're -- again, we're April 25th,
7 2024. Do you have quite a number of supporters
8 and people who are working around you to assist
9 you in self-representing and just generally
10 support your case?
11 A Yes. My witnesses and a few other supporters.
12 Q Okay. Now, after we served that cost
13 application, the Tribunal sent you a letter,
14 didn't it?
15 A It may have.
16 Q Okay.
17 A I will say that.
18 Q Okay. We will put it up on the screen. This is
19 the April 26th letter.
20 A As I said, once I didn't have a lawyer, the
21 Tribunal and your office began to inundate me
22 with applications, documents, letters.
23 Q Okay. So this letter, just take a minute to read
24 it, and tell us if it looks familiar to you.
25 A Yes, I believe I have seen it.
26 Q Okay. And do you recall that this letter said
27 you were not permitted to record pre-hearing
28 conferences or any Tribunal proceedings without
29 the permission of the Tribunal?
30 A I understand that's a rule of the Tribunal, but I
31 was unrepresented by counsel. I didn't know all
32 the rules that governed the Tribunal. I saw
33 nothing unethical or illegal about recording a
34 technical/legal conversation because I needed it
35 for my own purposes and also once I did have a
36 lawyer to share it with that lawyer.
37 Q Okay. But just focussing on this letter, not
38 necessarily your explanation for why you did or
39 did not record the April 18th conference, this
40 letter explains for you that you are not
41 permitted to record; correct?
42 A That's what the Tribunal says, that no party is
43 permitted to record telephone conferences.
44 Q Yes. Okay. And this letter also said you had to
45 delete the recording that you had made; correct?
46 A That's right.
47 Q Okay. And it said that you could not provide any

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 other person with a copy of the recording;
2 correct?
3 A I guess so.
4 Q And it said you couldn't upload or permit any
5 other person to upload the recording or make the
6 contents available through any other medium;
7 correct?
8 A Yes, I see that.
9 Q Okay. And you have told us that you removed the
10 recording from YouTube, but you didn't delete
11 your copy of the recording, did you?
12 A I don't believe so.
13 Q Okay. Despite the fact that the Tribunal asked
14 you to delete it?
15 A I do not believe the Tribunal has the authority
16 to tell me what I can have on my personal -- my
17 personal legal files on my laptop.
18 Q Okay. So fair to say you don't care that the
19 Tribunal wanted you to delete it?
20 A Well, I care, but I didn't believe they had the
21 legal authority to demand that I do that.
22 Q Did you file a judicial review of the Tribunal's
23 letter decision here?
24 A I didn't know that was an option. I didn't have
25 a lawyer at the time. I was getting bullied by
26 you and the Tribunal.
27 Q Did you -- so you didn't delete it, and you say
28 that that's because you didn't think the Tribunal
29 had any authority to make you delete it, and you
30 provided that recording -- that recording is in
31 the materials that you or your -- I will call
32 them your advisory group -- provided to
33 Mr. Barns, wasn't it?
34 A It wasn't my advisory group. On July the 4th,
35 Kari Simpson offered to be my lay counsel, and I
36 shared with her all the files that I had on the
37 case so far. She was the only one who had them.
38 Q Including -- including this recording; correct?
39 A I don't know. There were hundreds of files. I
40 had lost track of what was on there and what
41 wasn't on there.
42 Q Okay.
43 A It would take me a whole day just to read through
44 the titles of all the files.
45 Q Would it surprise you to learn, Mr. Neufeld, that
46 the recording made its way into the OneDrive
47 folder that was ultimately posted online by

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 Mr. Barns in October of 2024?
2 A Well, Mr. Barns got all the files from Kari
3 Simpson. He -- he could have gotten them from
4 me, but he got them from her because he lived
5 closer to her.
6 Q Right. And so it's not like you didn't want him
7 to have the materials or anything like that?
8 A I wanted the materials available, and by the time
9 he put them on his drive, Mr. James Kitchen was
10 acting for me, but I thought there might be need
11 for other lawyers to have access to it. So it
12 was more convenient for it to be on a central
13 drive than me couriering six USB drives all over
14 the place.
15 Q Who had access to this central drive that you are
16 talking about?
17 A I don't know.
18 Q So it contained your materials --
19 A I --
20 Q -- but you don't know who had access to it?
21 A No. I assumed -- I had assumed, of course, that
22 there would be a password on it, but that was
23 just an assumption.
24 Q Okay.
25 A I would not know how to access that drive myself.
26 Q All right. So just to cycle back to my question,
27 would it surprise you to learn that the recording
28 that the Tribunal asked you to delete and asked
29 you not to upload and not to share with anybody
30 else was in the OneDrive folder that Mr. Barns
31 posted in October of 2024?
32 A I am not surprised.
33 Q Do you still have the recording today,
34 Mr. Neufeld?
35 A I don't know. Probably take me a couple of hours
36 to find it in all the massive amount of files
37 there are in this case.
38 Q All right. So after all of this occurs -- and by
39 "all of this," I am talking about your recording
40 the April PHC -- our serving the cost
41 application, and the Tribunal writing that letter
42 to you that we just had up on the screen, the
43 Tribunal held another pre-hearing conference
44 again by phone in May. Do you remember that?
45 A Yes.
46 Q Okay. And do you remember that the purpose of
47 that PHC was to deal with our application to

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 limit publications so that publication ban and
2 anonymization order application?
3 A You know, there was so much technical legalese
4 that I remember that second phone conversation I
5 really couldn't make heads or tails of what you
6 were talking about. I didn't understand what
7 was -- the issues were.
8 Q Okay. But you attended that pre-hearing
9 conference; correct?
10 A Yes.
11 Q Okay. And at this point you had received the
12 Tribunal's letter of April 26th, so you know that
13 you are not permitted to record that -- any PHC;
14 correct?
15 A Yes.
16 Q Okay. And you recorded that call anyway, didn't
17 you?
18 A I was given independent advice that you cannot be
19 prevented from recording a phone call for your
20 own purposes, which is contrary to the rules of
21 the -- obviously to the rules of the Tribunal.
22 Q From whom did you get that independent legal
23 advice?
24 A I will just say a lawyer. None that you have
25 been -- heard of -- been in contact with.
26 Q Is it Mr. Jaffe?
27 A No.
28 Q All right. So you say you got some independent
29 legal advice. You recorded the call anyway,
30 despite the Tribunal's direction. And do you
31 remember that at the end of that call the
32 Tribunal asked you if you were recording?
33 A Yes.
34 Q Okay. And you said that you were; correct?
35 A I was honest.
36 Q And you were then asked whether you were asking
37 permission to record the call. Do you remember
38 that?
39 A No.
40 Q Okay. Well, we have in -- we've got affidavit
41 evidence tendered in this proceeding noting that
42 after admitting you were recording the Tribunal
43 member handling that called asked you whether you
44 were seeking permission to record the call. Do
45 you have any reason to doubt that's the case?
46 A I don't know.
47 Q Okay. And that affidavit evidence also notes

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 that your response was that no, you were not
2 seeking permission. Now, notwithstanding your
3 independent legal advice, you would agree with me
4 that in recording that May call you are breaching
5 the Tribunal's rules, orders, and directives?
6 A This whole hearing is about me breaching the
7 Tribunal's rules, orders, and directives.
8 Q Well, that doesn't answer my question. I am not
9 asking about the whole hearing. I am asking do
10 you agree, then, that in recording that May call,
11 you were breaching the Tribunal's rules, orders,
12 and directives --
13 A Yes.
14 Q -- which had been brought -- okay. And this was
15 the second time that you had done so; correct?
16 A Yes.
17 Q Okay. And then when the Tribunal confronted you
18 during that May call and you admitted that you
19 were recording, would you agree with me that they
20 actually offered you an opportunity to bring
21 yourself into compliance with those rules after
22 the fact, and this is the Tribunal asking you and
23 saying, well, are you asking for permission?
24 A Well, I knew the answer would be no, so of course
25 I wasn't asking for permission.
26 Q Well, I would suggest to you, Mr. Neufeld, that
27 because the Tribunal's directive to you in its
28 letter and the Tribunal's policy is that you
29 cannot record unless you have permission, when
30 the Tribunal member asked you after you had made
31 a recording "Are you seeking permission," they
32 were offering you an opportunity to save yourself
33 and ask for permission to potentially not be
34 breaching the Tribunal's rules, directives, and
35 orders again. Do you disagree with that
36 characterization?
37 A Yes, I do. Because the answer -- they would not
38 give me permission. I wasn't looking for
39 permission.
40 Q You were not looking for permission because you
41 didn't actually care to have the Tribunal's
42 permission even if they had granted it; correct?
43 A That's correct. As I said, from the point of
44 beginning of February until September, I didn't
45 have legal representation on this case, and I
46 believe that your law firm and the Tribunal were
47 doing everything to intimidate, bully, and harass

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 me with -- overwhelming me with rules, documents,
2 applications, just legalese discussions which
3 were over my head.

4 Q And so was it your view that the best way to
5 resist the conduct, which you described as
6 bullying, was to disregard the Tribunal's rules,
7 orders, directives?

8 A The best defence was to record everything so I
9 wouldn't forget so I would have something to fall
10 back on. As it turns out, those two discussions
11 that I recorded were -- nothing very substantial
12 was discussed anyway.

13 Q Would it be fair, Mr. Neufeld, to say that you
14 don't care what the Tribunal might direct you to
15 do just generally?

16 A I believe that there's a lot of injustice that is
17 perpetrated by the B.C. Human Rights Tribunal,
18 yes.

19 Q And when you say "yes" at the end, that was a yes
20 to my question?

21 A What was your question again?

22 Q Sure. I wanted to know if it was fair to say
23 that you don't much care what the Tribunal might
24 direct you to do just generally?

25 A I guess not.

26 Q And a question. Are you actually trying to
27 defend this complaint in the sense of -- to get a
28 decision in your favour?

29 A No. I am just doing what I believe is the right
30 thing to do.

31 Q And what is that?

32 A To protect children from a damaging ideology that
33 confuses them, that replaces traditional
34 religious faith with a new kind of religion that
35 puts the human being as their own God, their own
36 creator, with the help of modern technology to
37 re-create themselves. That, I think, is

38 damaging, and that's what I am standing against.

39 Q Okay. And just to cycle back to -- I asked you
40 if you were actually trying to defend this
41 proceeding in the sense of trying to get a
42 decision in your favour, and you said no, and
43 then you have articulated what you are trying to
44 do. Can you tell me how defending against this
45 complaint -- how you think defending against this
46 complaint does what you just articulated,
47 protects children by all of the things that you

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 were just talking about?

2 A You know, I -- I believe that a human rights
3 tribunal is the wrong place to be discussing
4 child and adolescent developmental psychology.
5 By framing it as a human right, it stops all
6 rational argument. It stops all rational
7 exploration of what is best practices and
8 silences people by saying that, Well, you can't
9 say that; that's hate speech. And by
10 characterizing my reasonable arguments as hate
11 speech, it tends to stop all discussion, all
12 exploration of what the real developmental issues
13 are that kids are facing, and I think it's doing
14 great harm to a lot of children, especially
15 autistic children and especially children who
16 have been abused and traumatized, physically and
17 sexually. That's the position that I come from.
18 Not a human rights assumption, but an assumption
19 on what is developmentally the best for children.

20 Q So I want to get at why you are -- just returning
21 because you have said you are not genuinely
22 trying to defend against the allegations against
23 you, and you have said what you hope to achieve,
24 which is protecting children. Am I -- is it the
25 case that this proceeding helps you protect
26 children because you can use it to galvanize
27 support for your movement?

28 A I am using this proceeding to speak out what I
29 believe is the truth, and I believe the truth can
30 withstand the attacks of misguided organizations
31 like the Chilliwack Teachers Association and the
32 B.C. Human Rights Tribunal. One of the most
33 hateful people in the province is sitting right
34 in on this hearing, and that is Reid Clark, the
35 president of the Chilliwack Teachers Association.
36 Glen Hansman is no longer the president of the
37 union. Ed Klettke is no longer president of the
38 B.C. -- of the Chilliwack Teachers Association,
39 but Reid Clark is keeping this hate mongering
40 alive by keeping this human rights complaint
41 dragging on for seven years. If I had been
42 charged with bloody murder, the criminal court
43 would have not much longer than two years to
44 bring their case to a close or it would be thrown
45 out for abuse of legal process. This seven-year
46 witch hunt is an abuse of everything that we hold
47 dear in Canada, and I am not backing down. Not

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Barry Neufeld (for Respondent)

Cross-exam by Cnsl L. Waddell

1 for you, not for this Tribunal, and not for the
2 Chilliwack Teachers Association.

3 Q And fair to say that it's your view that it's the
4 Chilliwack Teachers Association that has caused
5 this to drag out for so long?

6 A Along with the encouragement of Kasari Govender,
7 the B.C. human rights commissioner, who has been
8 egging them on.

9 Q So if you had your way, it would have been dealt
10 with much more quickly?

11 A If there was any justice in the world, it would
12 have been dropped a long time ago.

13 Q And so just to review, you applied to dismiss the
14 complaint; correct?

15 A Yes. That was --

16 Q Okay --

17 A That was an idea of my former lawyers from -- my
18 indemnity lawyers.

19 Q And that caused a fair bit of delay; correct?

20 A I guess so.

21 Q And you had a little bit of success with that
22 application and -- but not entirely successful.
23 Some things got narrowed a little bit?

24 A Well, they didn't get their application heard
25 until it had been five years old, and I was
26 absolutely appalled at the judge's decision. He
27 thought that to quash the application would be
28 premature. It was already five years old by the
29 time the judge -- the Supreme Court judge heard
30 that.

31 Q Yeah. So -- sorry. You're getting a little bit
32 ahead of me. I am still talking about the
33 initial application. So the first thing that you
34 do is you apply to the Tribunal to dismiss;
35 correct?

36 A Yes.

37 Q Okay. They render a decision, and you lose a bit
38 and you win a bit; correct?

39 A Mm-hmm.

40 Q Okay. And you could have -- you could have not
41 challenged that decision and just proceeded;
42 correct?

43 A I was following the advice of my then legal
44 counsel.

45 Q Okay. And so I gather, pursuant to your legal
46 counsel's advice, you then applied for judicial
47 review of that decision. Correct?

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 A That's right.
2 Q And that judicial review process took quite some
3 time, didn't it?
4 A I think it was only a day in court, and there was
5 four or five parties. There was Chilliwack
6 Teachers Association and several other
7 interveners gaining up on me.
8 Q But it took some time to get to a hearing; right?
9 A Yeah.
10 Q Yeah. So there were multiple sets of pleadings
11 filed because you and your counsel changed
12 positions; correct?
13 A I don't recall changing positions, but if you say
14 so.
15 Q Yeah. And the hearing had to be adjourned twice,
16 through probably nobody's fault, but as a result
17 of illness and the injury of your counsel;
18 correct? So that delayed getting it on for
19 hearing; correct?
20 A I think so, yes.
21 Q Okay. And then after a B.C. Supreme Court
22 judgment is rendered, it goes back down to the
23 Tribunal. You have an opportunity to resolve
24 things through settlement, and you declined that;
25 correct?
26 A Yes.
27 Q And that then -- as a result of that, you come to
28 be self-represented because the insurer is no
29 longer going to pay your counsel; correct?
30 A Yes.
31 Q All right. And so you then go through a period
32 of time where you are self-represented and you
33 eventually find counsel and he applies to adjourn
34 the start of the hearing; correct?
35 A It was about a three-week adjournment.
36 Q Yeah. But it had already been adjourned. It was
37 set to take place in the summer, and it had
38 already been adjourned at your request to allow
39 you some more time to find legal counsel;
40 correct?
41 A That's correct.
42 Q And then when we resumed the hearing on
43 February 24th, prior to that -- well, sorry.
44 Pardon me. When we were last in hearing, so
45 November and December of 2024, we put you and
46 your counsel on notice that our position is that
47 you have waived some privilege over some

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 materials. Do you remember that?
2 A No.
3 Q Okay. Well, we put your counsel on notice of our
4 position that you have waived privilege over your
5 previous counsel's file and that we reserve the
6 right to the cross-examine you on it. You are
7 not aware of that?
8 A No.
9 Q And neither you nor your counsel assert privilege
10 between that time and early December and
11 February 24th when we returned for hearing; is
12 that --
13 A Was this all -- there wasn't a hearing from the
14 Tribunal. Was this all litigation that was going
15 back and forth at that time?
16 Q Was this -- this is correspondence between the
17 complainant's counsel and your counsel. So I am
18 asking you to agree with me, and if you don't
19 know, you don't know; that's fine.
20 A I don't know. I don't.
21 Q Okay. So you don't know that nobody asserts
22 privilege on your behalf during January or
23 February, and then we come into hearing on
24 February 24th, and we take a break to deal with
25 your counsel wanting to assert privilege over
26 those documents?
27 A What year are you talking about?
28 Q This year. This year.
29 A My counsel? I didn't have counsel on
30 February 24th.
31 Q This year, 2025.
32 A Oh, yeah.
33 Q Yeah.
34 A Two weeks ago.
35 Q That's right.
36 A Okay.
37 Q And your counsel wanted a week to provide
38 submissions on this question, and then the
39 Tribunal issues a decision on waiver of
40 privilege.
41 A Yeah. That was last Friday.
42 Q Now --
43 A Last Friday.
44 Q That's right. And during that break you posted
45 on your website about the -- we will call it
46 adjournment of the proceedings so that counsel
47 could make these arguments; correct?

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Submissions by Cnsl L. Waddell

1 A Actually it was published on Rebel News.
2 Q But you published or included some information
3 about it on your website as well,
4 BarryNeufeld.com; correct?
5 A Actually I don't have control over that website.
6 Q Who does have control over that website,
7 Mr. Neufeld?
8 A A friend of mine.
9 Q Who is that friend?
10 A I prefer not to say.
11 Q Well, Mr. Neufeld, I am going to tell you that
12 some of things that are said on that website may
13 be problematic, and so I think it is relevant who
14 is responsible for that website which is in your
15 name.
16 CNSL J. KITCHEN: Well, we are going to object to it.
17 I don't see why it is. He prefers not to answer.
18 And unless there's -- unless there is a relevant
19 reason to compel him to answer, then I think you
20 can leave it at that.
21 CNSL L. WADDELL: Shall we exclude the witness again?
22 THE CHAIR: Yes. Mr. Neufeld, I am going to put you
23 back into the breakout room while we resolve this
24 objection.

25
26 (WITNESS STOOD DOWN)
27

28 THE CHAIR: All right. Go ahead, Ms. Waddell.
29

30 SUBMISSIONS BY CNSL L. WADDELL:
31

32 CNSL L. WADDELL: So Mr. -- Mr. Neufeld or whoever
33 runs that website -- but they are certainly doing
34 it under Mr. Neufeld's name -- has often
35 published about these proceedings, sometimes
36 appropriately, sometimes, I would argue,
37 inappropriately, and some of the things on there
38 may become relevant to our cost application. So
39 if Mr. Neufeld does not want to have things on
40 that website attributed to him, I do think it's
41 imperative that we know who, in fact, has
42 responsibility for that website and what -- to
43 what extent Mr. Neufeld himself has control over
44 it because it's certainly not billed as a website
45 that someone -- belongs to or is controlled by
46 someone else.

47 THE CHAIR: Mr. Kitchen?

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Submissions by Cnsl J. Kitchen

Reply submissions by Cnsl L. Waddell

Reply submissions by Cnsl J. Kitchen

1
2 SUBMISSIONS BY CNSL J. KITCHEN:
3

4 CNSL J. KITCHEN: I just don't -- right. But I don't
5 get how "the who" has anything to do with the
6 costs. I mean, the costs are not going to be
7 against that person; they are going to be against
8 Mr. Neufeld, at least to the -- and now we get
9 into the bit about, you know, you need to have a
10 discussion with him about how much he controls it
11 or influences it or not or what have you. So I
12 get that you get to explore that, but I don't see
13 how the who is relevant because what is that
14 going to change for the amount of cost? What is
15 that going to change for Mr. Neufeld's liability
16 in that -- you know, you are not going to involve
17 that person. You know, I see the connection to
18 cost and everything to do with Mr. Neufeld, but
19 nothing to do with who this person actually is.

20 THE CHAIR: All right. Just because I maybe should
21 have given you more of a chance, Mr. Kitchen, at
22 the outset to elaborate on your arguments, I want
23 to have Ms. Waddell respond to that, and then I
24 will come back to you one more time. Go ahead,
25 Ms. Waddell.

26 CNSL J. KITCHEN: That's fine.
27

28 REPLY SUBMISSIONS BY CNSL L. WADDELL:
29

30 CNSL L. WADDELL: Sure. I was just going to say I am
31 entitled to test the veracity of what Mr. Neufeld
32 is saying about him not having control, and that
33 requires me assessing whether he can actually
34 give me a specific name or not. So I do think
35 that it is necessary.
36

37 REPLY SUBMISSIONS BY CNSL J. KITCHEN:
38

39 CNSL J. KITCHEN: Well, it's fair to test the
40 veracity. I am with you on that. So I get where
41 you are going. I don't think that brings into --
42 I think it's a little bit of a stretch to suggest
43 that he is making this up and he is lying and
44 that this person doesn't exist. I think the
45 reason he doesn't want to tell you is because the
46 person does exist and he doesn't want to compel
47 the name; right? And for that matter, if it was

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Submissions by Cnsl J. Kitchen

Reply submissions by Cnsl L. Waddell

Reply submissions by Cnsl J. Kitchen

1 a matter of lying, I mean, he could just make up
2 a name. So I get the testing the veracity bit,
3 but I think to assume he is just lying and made
4 this person up is -- I think is a bit of a
5 stretch considering everything we have
6 experienced all these hearing days of
7 Mr. Neufeld. He is honest. He forgets at times,
8 but he is honest. So I don't think that is an
9 appropriate basis to compel the names. I think
10 the best thing we can do is assume that this
11 person is real. Okay? He hasn't made this
12 person up as some sort of fabrication, which
13 means if it's real, then to compel to answer, you
14 know, we produced a name that isn't actually
15 relevant. The name, the person, the identity is
16 not relevant. Testing his veracity is relevant,
17 but there's other ways, better ways to do that;
18 so I don't think we should be bringing the name
19 in.

20 THE CHAIR: Okay. Thank you. We just need a couple
21 of minutes to confer on this one. So we will
22 just turn our cameras and mics off and be right
23 back. Thank you.

24 CNSL J. KITCHEN: We should probably take a break
25 now --

26
27 (PROCEEDINGS ADJOURNED) [11:01:39]

28 (PROCEEDINGS RECONVENED) [11:03:58]

29
30 THE CHAIR: All right, everyone. Come on back. Thank
31 you for your patience. So in our view, we are
32 not persuaded at this point that it's necessary
33 to compel him to give the name of the person who
34 runs this website. Counsel can test the
35 relationship this person may have, if any, to
36 this proceeding through questions along that
37 line, and if it appears that the person may have
38 some involvement in this proceeding, that could
39 change our decision, but in the meantime we think
40 that counsel can get the information they need
41 about Mr. Neufeld's responsibility for his
42 website and the degree to which he may be
43 responsible for the information on it without
44 compelling him to disclose this person's name at
45 this point.

46 So we will let Mr. Neufeld back in, and
47 then, Ms. Waddell, I will leave it to you to

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 decide when the right time for a break is in the
2 next few minutes. Okay?

3
4 BARRY NEUFELD, a witness,
5 recalled.
6

7 THE CHAIR: Thank you, Mr. Neufeld. Go ahead,
8 Ms. Waddell.
9

10 CROSS-EXAMINATION BY CNSL L. WADDELL, continuing:
11

12 Q So, Mr. Neufeld, I just want to cycle back for a
13 minute. Your website aside, you said that it's
14 your view that the CTA and the Human Rights
15 Commissioner is responsible for causing this to
16 drag on for so long. Do you recall that?

17 A Yes.

18 Q Okay. And you maintain that view despite the
19 fact that you were the one that applied to
20 dismiss the complaint; is that right?

21 A Yes.

22 Q You say that despite the fact that you were the
23 party that decided to judicially review that
24 decision; correct?

25 A Yes.

26 Q And you say that despite the fact that it was
27 your counsel who -- I am not blaming them, but,
28 as a result of things that happened to them,
29 needed to adjourn at least twice the hearing of
30 that judicial review; correct?

31 A I only recall one adjournment, but if it was two,
32 I guess so.

33 Q Okay. And then back down before the Tribunal
34 here, it was you who asked for an adjournment to
35 provide additional time to seek legal counsel;
36 correct?

37 A Yes.

38 Q Okay. And then you found legal counsel and asked
39 for an adjournment to give him time to get up to
40 speed; correct?

41 A The adjournments that I asked for were very
42 reasonable, very short adjournments.

43 Q Yeah. I am not judging the amount of time but
44 just that was your application to adjourn to give
45 your counsel time to get up to speed; correct?

46 A Yes.

47 Q Okay. And this year during the hearing, we took

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 a break to deal with an issue that you and your
2 counsel had had notice of for two months;
3 correct?
4 A What issue?
5 Q Waiver of privilege.
6 A Oh, so you could hack into my files.
7 Q So the break that we took from February 24th to
8 today was, I would suggest to you, a product of
9 the fact that you and your counsel did not
10 address or assert privilege in January or
11 February. Do you agree or disagree?
12 A I have no opinion.
13 Q Okay. So every single one of those events that I
14 just put to you causing delay and the cost of
15 time were things that you initiated and chose to
16 do. Would you agree?
17 A If you say so.
18 Q So there is simply no veracity to your statement
19 that this proceeding has been elongated by the
20 CTA, is there?
21 A They have refused to abandon it despite the fact
22 that the rest of the world -- United States,
23 England, Finland, Sweden, France -- have all
24 abandoned this gender ideology, and the CTA is
25 still pushing forward trying to prove that I am a
26 hateful person because I believe there is only
27 male and female.
28 Q I see. So your view is they have delayed it by
29 actually pursuing the complaint as opposed to
30 abandoning it?
31 A That's correct.
32 Q And you have -- you have been the one that has
33 taken steps that have caused the complaint, given
34 that they won't give it up, to take seven years;
35 correct?
36 A Not just me.
37 Q Your counsel?
38 A That's -- it was five years before there was an
39 application to quash or eliminate the complaint,
40 and there's been more action in the last two
41 years, I guess.
42 CNSL L. WADDELL: All right. So to the panel, I am
43 happy to take a break now, if that works. I can
44 move on to another subject if that's preferred.
45 But I am in the panel's hands, and I know
46 Mr. Neufeld, you know, may wish to take a break
47 at some point too. So I am in everyone's hands

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 on timing.

2 THE CHAIR: Thank you. Let's take our morning break
3 now for 15 minutes. For this break I will just
4 keep our cameras and mics off, and then we can
5 come back.

6 Mr. Neufeld, I remind you you are under
7 cross-examination and can't talk to anyone about
8 your evidence during this time. So we will just
9 turn cameras and mics off and come back in
10 15 minutes, please. Thank you.

11 A 15 minutes, hey.

12
13 (WITNESS STOOD DOWN)

14
15 (PROCEEDINGS ADJOURNED FOR MORNING RECESS) [11:10:47]
16 (PROCEEDINGS RECONVENED) [11:27:27]
17

18 THE CHAIR: All right, everyone. Come on back.

19
20 BARRY NEUFELD, a witness,
21 recalled.

22
23 THE CHAIR: Hi, Mr. Neufeld. I can see you have
24 unmuted, but your video is not up for us yet.
25 Can you turn your camera back on, please. There
26 you are. Mr. Neufeld, are you ready to continue?

27 A Yes.

28 THE CHAIR: Go ahead, Ms. Waddell.

29 CNSL L. WADDELL: Thank you.

30
31 CROSS-EXAMINATION BY CNSL L. WADDELL, continuing:
32

33 Q Mr. Neufeld, I just wanted to go back to a
34 subject near our start when I was asking you
35 about your litigation experience in various
36 different cases or types of proceedings you have
37 been involved in, I asked you if there was any
38 others we hadn't covered, and you said no, but I
39 think there was one, and that is another
40 proceeding brought against you by a different
41 trustee, Mr. Lang; is that right?

42 A That's correct.

43 Q Okay. And you also had legal counsel in that
44 proceeding?

45 A Yes.

46 Q Okay. Okay. So your website, when did you --
47 when did it start?

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 A I don't know. Probably last summer sometime.
2 Q Okay. And the URL is BarryNeufeld.com; is that
3 right?
4 A Yes.
5 Q Would you agree that most of what is written on
6 it, although not all, is in the first person?
7 A I can't say that I recall. What -- as if I had
8 written it, you mean?
9 Q Yes.
10 A I haven't reviewed my website in a while.
11 Frankly, I don't remember.
12 Q When did you last review?
13 A Oh, I don't know. Couple months ago, a month
14 ago.
15 Q Okay.
16 A I --
17 Q Are you responsible for writing the content?
18 A No. No, I am not. They -- the webmaster gets
19 information from publicly available sources.
20 Q I presume, given that many things are written in
21 the first person, that you review some of the
22 content.
23 A No, I don't.
24 Q Okay. You obviously have a lot of trust in
25 whoever does.
26 A Yes.
27 Q Do multiple people manage the website?
28 A I don't know.
29 Q Do you even -- I am not asking for names here,
30 but do you even know who manages the website?
31 A I think so, yes.
32 Q Is it an organization?
33 A No.
34 Q So it's in your name, some things are written in
35 the first person, and you don't review what goes
36 up under your name; is that right?
37 A No.
38 Q And you don't know if it's multiple people who
39 are responsible for it?
40 A No, I don't.
41 Q Mr. Neufeld, is this really your case, or are you
42 just providing the face for a group of other
43 people who actually would like to utilize the
44 case to advance your views?
45 A Well, that's an interesting thought. It's my
46 case, but a lot of people figure that it's not
47 just about Barry Neufeld; it's about protecting

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Barry Neufeld (for Respondent)

Cross-exam by Cnsl L. Waddell

1 children from a dangerous ideology.
2 Q And -- okay. We are going to cycle back to that.
3 Now, after you recorded that April pre-hearing
4 conference and before the May pre-hearing
5 conference -- I am going back to that period of
6 time in the spring of last year that we were
7 talking about before -- the Tribunal issued an
8 interim publication ban. Do you remember that?
9 A Oh, they ban everything. I don't remember that
10 specifically, no, but I wouldn't be surprised.
11 Q Okay.
12 A Tribunal -- Tribunal is especially noted for its
13 secrecy. A lot of members of the public are very
14 unhappy at how difficult it is for them to listen
15 in. Tribunal is not following the principle of
16 open court.
17 Q And you are aware that -- you are aware that the
18 Tribunal has processes for accessing its
19 hearings; correct?
20 A Very complex processes, yes.
21 Q Yeah. That involves signing up essentially --
22 A Yeah.
23 Q -- so that -- yeah -- so that the Tribunal knows
24 who is attending. And I take it you don't like
25 process.
26 A Well, that's not a principle of open court. In
27 criminal court and civil court, anybody can walk
28 into the courtroom and listen to what is going
29 on; they don't have to put their name and e-mail
30 address and phone number and size of underwear
31 down to get admission to get into the hearing.
32 Q Sorry. The Tribunal's form includes the type of
33 underwear someone is wearing?
34 CNSL J. KITCHEN: Objection.
35 A That's right.
36 THE CHAIR: Okay.
37 CNSL J. KITCHEN: My friend might not like those
38 comments, and I don't necessarily blame her for
39 that, but I don't think it's fair to then, you
40 know, ask that type of question.
41 THE CHAIR: I think we can move on to the next one.
42 Go ahead, Ms. Waddell.
43 CNSL L. WADDELL:
44 Q All right. But, Mr. Neufeld, I just want to get
45 your views on that. You disagree with the
46 Tribunal's process for attending online hearings;
47 correct?

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 A Very strongly disagree.
2 Q Okay. But you are aware that they have a
3 process, even if it's one you disagree with?
4 A Yes.
5 Q And I just want to take you back in time. Do you
6 remember when we were trying to decide last year
7 whether the hearing should be in person or
8 online?
9 A I don't think there was much of a discussion. I
10 was considering having to rent an apartment in
11 Vancouver for the hearing because it's an
12 hour-and-a-half drive for me to get into the
13 Tribunal offices, and I was relieved when they
14 decided to make it online.
15 Q Okay. And despite your knowledge of the
16 Tribunal's process for registering to attend the
17 hearing, you publicly posted a link to the
18 hearing last week, didn't you?
19 A I wasn't sure if it was the correct one, but yes,
20 I posted a link.
21 Q Okay. And you knew you were not supposed to do
22 that at least --
23 A No --
24 Q -- in accordance with the Tribunal's process?
25 A -- I certainly didn't know I wasn't allowed to
26 invite people to listen in on my hearing.
27 Q So you missed the first day of hearing when the
28 Tribunal explained the process for registering to
29 attend; is that right?
30 A I don't recall them saying that I am not allowed
31 to invite people to attend my hearing.
32 Q All right. So back to the interim publication
33 ban. The Tribunal issued an interim publication
34 ban on April 29th, 2024, prohibiting the
35 publication of the names or identifying
36 information of the complainant's teacher
37 witnesses. I take it, from your earlier response
38 to my question, you don't specifically remember
39 that ban.
40 A I understood from the very beginning that if they
41 had any witnesses they were going to be kept
42 secret.
43 Q Okay. And on June 11th, 2024, the Tribunal
44 issued a full decision prohibiting the
45 publication of the names of individual teacher
46 witnesses. Do you remember that?
47 A June 2024?

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 Q Yeah.
2 A I don't -- like I said, I thought from the very
3 beginning they were going to keep their witnesses
4 secret. So I don't remember any additional
5 orders.
6 Q Okay.
7 A Didn't pay attention because I knew that they
8 wanted to keep them secret.
9 Q And you knew that that -- when you say "they
10 wanted to keep them secret," I presume you are
11 talking about the complainant. Correct?
12 A Complainant or the Tribunal, either one.
13 Q Okay. Do you remember at the end of June the
14 complainant delivered an unredacted list of
15 witnesses containing the names of the individual
16 teacher witnesses to you?
17 A Yes, I remember that.
18 Q And those names were protected by the publication
19 ban that the Tribunal had issued; correct?
20 A Yes.
21 Q Okay. And you were self-represented at this
22 time, were you not?
23 A I was.
24 Q Okay. And you provided this witness list to
25 other people, didn't you?
26 A No. It was just included in all my files, and
27 I -- like I said, I provided those files to Kari
28 Simpson, to a law firm -- two law firms in
29 Calgary, one in Toronto -- and eventually Pierre
30 Barns put all my files on his server which
31 included --
32 Q So this is -- yeah. And I think you testified
33 earlier that Mr. Barns was provided with all of
34 your materials in May of 2024. Is that right?
35 A No. It was more like October.
36 Q So you were incorrect when you testified earlier
37 in your direct and cross that he was provided
38 with your materials in May?
39 A I believe that he got those files after the
40 National Citizens Inquiry which was in late
41 October of this -- last year.
42 Q When you had already secured --
43 A Yeah.
44 Q When you had already secured legal counsel?
45 A Yes. I -- I had not distributed those files
46 anywhere prior to July the 4th, when at the last
47 minute Kari Simpson stepped forward and offered

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 to represent me. And it was sometime after that,
2 sometime later in the summer when I drove to her
3 house and delivered six USB drives with all the
4 files that I had collected except for my emails.
5 Q Sorry. Except for your --
6 A The e-mail correspondence between myself and my
7 lawyers.
8 Q Okay. So just so I am clear -- because this is
9 different than what you told us earlier.
10 Previously you testified that in the spring of
11 2024, in the course of your search for legal
12 counsel, you needed to have all those file
13 materials stored somewhere and that is why they
14 were provided to Mr. Barns. And you now say that
15 that's not the case, that, in fact, the materials
16 were provided to him in the late summer --
17 A In the spring -- the only way I could share those
18 files was to copy them to USB drives and courier
19 them at the cost of \$60 twice to Calgary and once
20 to back east and then finally to Mr. Kitchen in
21 late September. That was the only way I could
22 share those files. They were not on a server
23 until late October.
24 Q Well -- and I believe, if I understood your
25 earlier testimony correct, you -- you explained
26 the \$60 per USB as the reason why at that time
27 you provided those materials to Mr. Barns who
28 could keep them on his server so that you would
29 not have to --
30 A That's correct.
31 Q -- courier those USBs. So are we back to that
32 you provided him with the file materials in May
33 of 2024?
34 A No, I did not. He knew nothing about them in
35 May. And by the time he put it on his server,
36 Mr. Kitchen had access to all my files. It
37 probably wasn't necessary, but I think
38 Mr. Kitchen is staying loyally by my side, but,
39 you know, there might be a need for another
40 lawyer, who knows.
41 Q Okay. Just again I want to make sure I am clear.
42 So now you are saying that Mr. Barns was provided
43 with your materials after Mr. Kitchen came to be
44 your counsel of record?
45 A That's correct.
46 Q Okay. So they were not given to him as part of
47 your search for new counsel because you had

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 already secured counsel?
2 A That's right. I couriered my files to James
3 Kitchen.
4 Q Okay. So the witness list that was provided to
5 you in June 2024 which contained the names of
6 individuals who were protected by the publication
7 ban, you provided that to Mr. Barns even after
8 Mr. Kitchen had been retained; is that right?
9 A I didn't provide anything to Mr. Barns. He got
10 it all from Kari Simpson. He lives a lot closer
11 to her than to me and so he got the files from
12 Kari Simpson who is --
13 Q And when you --
14 A -- no longer involved in the case.
15 Q Yeah. And when you say he lived closer to her
16 than to you, what I take from that is that you
17 would have provided them to him yourself but
18 logistically that didn't make sense, so
19 Ms. Simpson provided them; is that right?
20 A It took several hours to copy all the files onto
21 USB drives. He would have had to come over to my
22 house and copy them onto USB drives or I would
23 have to take my laptop to his place for him to
24 transfer them to his drives. So it was just
25 simpler for him to get them from Kari Simpson.
26 Q Yeah. And I imagine -- did you discuss that and
27 figure out that that was the better way to get
28 the documents to him?
29 A I just said briefly he could get all the material
30 from Kari Simpson because she didn't need them
31 anymore. She was no longer involved.
32 Q Okay. So Ms. Simpson is no longer involved. You
33 now have legal counsel, and you tell Mr. Barns
34 that he can obtain your materials, including
35 materials which are protected by the publication
36 ban, from Ms. Simpson, based on what you just
37 said?
38 A Yes.
39 Q Okay. All right. So you effectively enabled him
40 or provided him with your materials even if you
41 weren't the person that handed them over; is that
42 right?
43 A That's correct.
44 Q And we now know that Mr. Barns posted those
45 materials online in late October of last year;
46 correct?
47 A I guess so, yeah. I didn't know that he had

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 posted them. I -- I thought it was just a
2 private server. I was actually surprised he
3 didn't password protect them, but...
4 Q Did you think the materials were going to be made
5 available to a smaller group, perhaps of your
6 supporters, as opposed to the general public?
7 A No. It was only in case I needed to contact
8 another lawyer to represent me.
9 Q All right. Now, over the course of this
10 proceeding, you received document disclosure from
11 the complainant on a number of occasions; is that
12 right?
13 A An awful lot of correspondence.
14 Q So -- and I will just clarify so that it might be
15 clear what I am saying. When I talk about
16 document disclosure, I am talking about -- the
17 Tribunal has a form that's called a "List of
18 Documents." So it's got a form at the front, and
19 then a whole bunch of documents listing the
20 documents that are in the possession of one
21 party, and you hand it over to the other party.
22 So that's what I am talking about when I talk
23 about document lists and document disclosure. Do
24 you remember that the parties each produced lists
25 a number of times in this proceeding?
26 A I think so, yes.
27 Q Okay. And some of the time we delivered lists to
28 the previous counsel when they were on the
29 record, and sometimes we produced lists to you
30 when you were self-represented; is that right?
31 A I guess so, yes.
32 Q Okay. For the ones that we produced to you,
33 those were also things that you facilitated
34 Mr. Barns getting; correct?
35 A Well, I put them in my B.C. Human Rights Tribunal
36 folder, and I had another folder for my indemnity
37 lawyers, and I would try to file them in the
38 appropriate place in either one of those two
39 folders. I stopped adding files to the indemnity
40 lawyers after they withdrew from the hearing.
41 And I was overwhelmed. There was over 600 files.
42 Some of them had hundreds of pages. I have no
43 idea when a lot of them came. I'm sorry. I
44 didn't have the time or emotional energy to keep
45 on track with everything you were inundating me
46 with.
47 Q Okay. And so you saved those types of things in

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 the folders as you have described, and then that
2 is part of the material that you delivered to --
3 or allowed Mr. Barns to have after Mr. Kitchen
4 was on the record; is that right?
5 A I provided them to Kari Simpson, and Mr. Barns
6 got them from Kari Simpson in late October.
7 Q Yes. And you direct -- you enabled Mr. Barns to
8 get them from Kari Simpson; correct?
9 A I just told him where they were.
10 Q All right. Mr. Neufeld, I am going to get
11 another document up for you in just a second. So
12 earlier, Mr. Neufeld, I was asking you about your
13 having posted a link to access the hearing. Is
14 this your post? And just take a moment to read
15 it if you need that.
16 A Yes.
17 Q And this you made on our first day of hearing
18 last week, February 24th?
19 A Yes, I guess so.
20 Q Okay. And the link that you used there, this was
21 not a link to sign up for the Human Rights
22 Tribunal process; this is the link that was
23 provided to you to access the Tribunal hearing?
24 A Well, I don't dial in by phone.
25 CNSL L. WADDELL: Can we get that marked as an
26 exhibit, please.
27 THE CHAIR: Do we have this one?
28 UNIDENTIFIED SPEAKER: We do not. So that's
29 Exhibit 12.
30 THE CHAIR: Okay. But do we have the document?
31 CNSL L. WADDELL: It's coming.
32 THE CHAIR: Okay.
33 UNIDENTIFIED SPEAKER: Okay. So we will deal with it
34 when it comes.
35 THE CHAIR: Yeah. So if you could send those over the
36 lunch, we will confirm once we have them.
37 CNSL L. WADDELL: All right.
38 Q Now, Mr. Neufeld, when this -- when you first
39 found out about this human rights complaint, you
40 first approached and got representation from the
41 Justice Centre for Constitutional Freedoms; is
42 that right?
43 A That's correct.
44 Q Okay.
45 A My liaison at the time was Mr. James Kitchen.
46 Q Okay. And when you say "liaison," I don't know a
47 lot about how they work, but was he sort of the

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 duty counsel that was assigned to you, if you
2 will?

3 A Yes.

4 Q All right. And do you remember whether that
5 was -- do you remember whether at that point the
6 complaint had been accepted for filing and was
7 sort of a matter of public record or had you only
8 heard about it?

9 A I don't recall those details. I had to have the
10 filed application, which I sent to the Justice
11 Centre for Constitutional Freedoms, and had a few
12 conversations with James Kitchen until he located
13 a Vancouver lawyer to help me with it.

14 Q Okay. So -- so he assisted initially and then
15 passed you onto someone else?

16 A That's correct.

17 Q Okay. And then after that -- so you had a
18 Vancouver lawyer in the interim. I presume you
19 are not talking about Guild Yule. Is that right?

20 A That's correct.

21 Q Okay.

22 A I don't think I ever really got to meet that
23 lawyer because shortly after that the B.C. Public
24 School Employers' Association stepped forward and
25 said that they would hire Vancouver lawyers to
26 represent me. So at that point the Justice
27 Centre for Constitutional Freedoms withdrew
28 because I had counsel.

29 Q So what I -- am I correct, then, that Mr. Kitchen
30 never actually got on the record with the
31 Tribunal when he was dealing with you there?
32 Okay.

33 A No, he didn't. No, he didn't.

34 Q Okay. After Guild Yule gets on the record, did
35 you have any communications with Mr. Kitchen, or
36 did that just drop off?

37 A That dropped off. I had not heard from him for
38 almost seven years when he suddenly appeared in
39 the middle of September of last fall.

40 Q Okay. And when did you -- so after Guild Yule
41 got off the -- sorry. After Guild Yule got off
42 the record in February of 2024, did you reach out
43 to Mr. Kitchen, or did he reach out to you?

44 A No. I -- I lost track of him. I hadn't heard
45 from him for six years. I tried other charitable
46 legal associations.

47 CNSL J. KITCHEN: Ms. Waddell, are you going to

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Submissions by Cnsl L. Waddell

1 continue with this?

2 CNSL L. WADDELL: I have only got one or two more
3 questions.

4 CNSL J. KITCHEN: Okay. Well, I appreciate that
5 you've pierced through privilege with Guild Yule,
6 but you haven't with me. And so I am wondering
7 what the relevance is and how this is
8 appropriate. I mean -- I'm just -- I am probably
9 going to object, but we will see what you have
10 got to ask.

11 CNSL L. WADDELL: Okay.

12 Q All right. So just to re-ask the question,
13 Mr. Neufeld, because I don't think you answered
14 it, I just wanted to know who reached out to
15 whom.

16 CNSL J. KITCHEN: Well, no. I --

17 CNSL L. WADDELL: Did you reach out --

18 CNSL J. KITCHEN: I am going to object -- I mean, you
19 have already gotten the answer, but I am -- I
20 would have objected to that, but he beat me to
21 it. I just -- I don't get it. It's not
22 relevant, and that is privileged because there is
23 solicitor-client privilege over Mr. Neufeld and
24 I. So I don't see how it's appropriate or
25 relevant to go there.

26 THE CHAIR: Ms. --

27 CNSL L. WADDELL: Can we excuse the witness.

28 THE CHAIR: Yes. Mr. Neufeld, I am going to put you
29 back in the breakout room until we resolve this
30 objection.

31

32 (WITNESS STOOD DOWN)

33

34 THE WITNESS: All right. Ms. Waddell, go ahead.

35

36 SUBMISSIONS BY CNSL L. WADDELL:

37

38 CNSL L. WADDELL: For some reason, interestingly, now
39 we are all getting the announcement, which I
40 think was just the panel before, but -- okay.

41 Mr. Neufeld swore an affidavit in these
42 proceedings in support of his application for an
43 adjournment and made some representations in that
44 affidavit and avoided certain other pieces of
45 information, and I am entitled to explore that
46 with him with a view to assessing the veracity of
47 the information that he provided in support of

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Submissions by Cnsl L. Waddell

1 that application, which, again, may go to costs,
2 and I only have one, maybe two more questions
3 about this. I am not interested in any
4 particulars or advice. I am just interested and
5 it is relevant when he actually made contact with
6 Mr. Kitchen and understood that he could provide
7 legal services as counsel.

8 THE CHAIR: And --

9 CNSL J. KITCHEN: Well, we got --

10 THE CHAIR: Sorry. Just let me ask a question. I
11 just want to ask for your position on the
12 privilege issue. Can you respond on the
13 privilege issue?

14 CNSL L. WADDELL: Well, Mr. Neufeld put his ability to
15 retain counsel and the timing of his retaining
16 counsel at issue when he swore an affidavit in
17 support of his adjournment application in the
18 fall of 2024, and, therefore, at least with -- on
19 this narrow issue, we say he's waived privilege
20 over that piece of information. So this is where
21 the various cases that Mr. Kitchen cited in his
22 assertion of privilege are actually relevant and
23 helpful because several of those actually covered
24 circumstances where an individual put their -- a
25 particular fact squarely before a decisionmaker,
26 and Mr. Neufeld did, and the Tribunal relied on
27 that, even though he never actually described
28 when he connected with Mr. Kitchen. And the
29 Tribunal has, on occasions before, having granted
30 an adjournment or some privilege to the litigant,
31 then in the course of the hearing it's comes to
32 light that, in fact, the facts on which the
33 evidence given in support of that were not
34 correct, not accurate, and that's been relevant
35 to costs.

36 So that's where I am going here, and that's
37 my position on privilege. So the only piece that
38 I would say he has waived privilege over by
39 making the assertions he did in that application
40 to adjourn are when he first had contact with
41 Mr. Kitchen about representation for this hearing
42 and when that was actually secured. Nothing
43 beyond that.

44 THE CHAIR: And I take it the affidavit that you are
45 referring to is the one filed in support of
46 Mr. Kitchen's application to adjourn. Is that
47 the one?

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Submissions by Cnsl J. Kitchen

1 CNSL J. KITCHEN: That's correct. That's correct.

2 THE CHAIR: Okay. Go ahead, Mr. Kitchen.

3
4 SUBMISSIONS BY CNSL J. KITCHEN:

5
6 CNSL J. KITCHEN: Well, I am going to take my friend's
7 word that she says there's cases that --
8 questioning on an affidavit in support of an
9 application to adjourn that has been granted is
10 permitted at the hearing. I don't have those
11 cases. Maybe they exist; maybe they don't. They
12 probably do because my friend is saying they do,
13 but I don't have them. It sounds a little
14 surprising to me, but -- so, you know, I
15 certainly would have said that this issue has
16 been decided. So we shouldn't be doing this now.
17 It's the wrong time to be doing it. My friend
18 has an opportunity to cross on that affidavit.
19 She didn't. And that's that. And there has been
20 a decision rendered. So if my friend thinks she
21 is entitled to do that, I think she needs to be
22 making submissions and be citing to these cases
23 and giving me notice and allowing me a chance to
24 respond, which none of that has happened.

25 That's issue one. I would say the issue has
26 been decided, and she had her opportunity and
27 didn't take it. Number 2, it's not relevant to
28 costs. I guess this is kind of Number 1 because
29 if it's not relevant, why are we allowing
30 questioning on it? I think 99 percent of
31 everything my friend has done so far today is on
32 her costs application, and its arguably been
33 mostly relevant to that, so -- but this isn't. I
34 don't see where this goes, where it's relevant to
35 costs. Hiring me in September, I don't see how
36 it's got anything to do with costs, which means
37 it's not relevant, which means we don't even need
38 to have this discussion. But if you decide it is
39 relevant, then my submission is, well, it's
40 already been decided and she had her opportunity
41 to cross and she didn't.

42 Then, thirdly, perhaps most importantly, is
43 the privilege issue. I don't see how you make --
44 it seems a little bit ridiculous to me to say,
45 Well, you need to make an application to adjourn
46 or else we are going ahead and your application
47 to adjourn is obviously going to be based on the

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Submissions by Cnsl J. Kitchen

1 fact that you just hired a new lawyer. What are
2 you going to say about that? You have no choice
3 but to say a few things about when you hired that
4 lawyer, when the lawyer came on and had access to
5 the file and all that. Otherwise, how can there
6 be -- how can there be any basis to grant an
7 adjournment on the basis that, you know, you
8 haven't had counsel and now you got a new lawyer
9 and the new lawyer needs to get ready and all
10 that? You, by necessity, are going to have to
11 talk about -- a little bit about when the lawyer
12 is hired; otherwise, the Tribunal is going to
13 say, Well, you know, we have no basis to grant
14 it. That doesn't mean that you have used
15 privilege as some sort of sword to gain some sort
16 of advantage. It's not an advantage. It's just
17 a reality. It's like, Well, I just hired new
18 counsel, and if I am going to have any chance of
19 my application to adjourn being granted on that
20 basis, I am going to have to say when I hired
21 counsel. I am -- I am not up to speed on all
22 those materials now because it's going back half
23 a year, but I do believe we provided some details
24 in good faith about when that was because it's
25 our obligation to do so. I think we put in there
26 the date that he retained me. Anyway, I forget
27 exactly what material was in there, but we
28 weren't trying to hide anything, as far as I can
29 recall. Nothing to hide except that -- and
30 having said that, except that when it comes to
31 communications between a lawyer and his client,
32 those are privileged, as we know, as we have been
33 through.

34 So this question of, well, when did you
35 contact -- I mean, you know, that's trying to get
36 around that and trying to pierce into
37 solicitor-client privileged communications, and
38 that's not appropriate, right? Even if it's
39 before there's a retainer agreement, right,
40 there's solicitor-client communications before a
41 retainer is signed about what the terms of the
42 retainer are going to be, what's the case, and
43 what's -- you know, the client is interviewing
44 the lawyer to see if he wants to hire him and
45 vice versa. All that is covered by the
46 privilege, and that's what my friend is trying to
47 get into or, you know -- which is, of course, by

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Submissions by Cnsl J. Kitchen

1 default, inadmissible unless you can establish
2 that the privilege should be waived, whether
3 it's -- for all the reasons we talked about in
4 our submissions; otherwise, it's inappropriate,
5 inadmissible evidence.

6 So the evidence is privileged, which means
7 it's inadmissible unless she can establish that
8 there is no privilege. It's already been
9 decided. But before we get to either of those,
10 we first have to establish its relevance to cost,
11 and I don't see how it is based on -- you know,
12 my friend has done the same thing where she
13 basically said, Well, it's going to be relevant
14 to cost. Like, she has made a conclusion without
15 giving me an explanation. What can I say in
16 response to that? I don't know where she is
17 going. It certainly doesn't seem to me like it
18 is in all fairness. Maybe it is, but she hasn't
19 explained that. And if you can't explain
20 something -- if you can't explain how something's
21 relevant, then it's not relevant. You can
22 conclude it is because you want to ask the
23 question; that doesn't mean it actually is
24 relevant. So for those three reasons, we
25 shouldn't be asking this question.

26 THE CHAIR: Thank you, Mr. Kitchen. I just want to
27 ask a question to kind of make sense of how two
28 of your arguments fit together. I understand,
29 you know, on the one hand, you're saying this has
30 already been decided; there was an opportunity to
31 cross on the affidavit, and Ms. Waddell did not
32 take that opportunity and we shouldn't be kind of
33 going back and doing that now. Is it your
34 position that had Ms. Waddell taken the
35 opportunity to cross-examine on the affidavit at
36 the time she still wouldn't have been able to
37 test Mr. Neufeld's evidence about the timing of
38 when he retained counsel, evidence in that
39 affidavit? Would you be taking the same position
40 about privilege then?

41 CNSL J. KITCHEN: Well, it's hard to say. I don't
42 have -- that's a hypothetical. I don't know what
43 the questions would have been. I don't know
44 where the line of questioning would have gone.

45 THE CHAIR: Well, let's just say it's just these
46 questions.

47 CNSL J. KITCHEN: I mean --

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Submissions by Cnsl J. Kitchen

1 THE CHAIR: I am just testing -- sorry. Just to come
2 to Ms. Waddell's argument that Mr. Neufeld gave
3 sworn evidence about the timing of his
4 communication with counsel, is it your position
5 that Ms. Waddell at no point would be able to ask
6 the question she is seeking to ask now which
7 tests the timing of when Mr. Neufeld contacted
8 you?

9 CNSL J. KITCHEN: Yeah. Yeah. I think theoretically
10 some questions would have been fair in that
11 context. It's hard for me to answer in the
12 abstract or, you know, as a hypothetical; right?
13 Like, if she had've said, you know, look,
14 September 17th or -- I don't know what it was,
15 but whatever. If she said, Well, look, you know,
16 it says here in your affidavit that you hired
17 Mr. Kitchen on whatever this date is; well, did
18 you really? You know, did you actually execute
19 the retainer a week earlier? Like, veracity
20 questions; right? To go back to the issue we had
21 earlier; right? She wanted -- my friend wanted
22 to ask questions about veracity. I mean, those
23 are almost always fair; right? If she wanted to
24 test the veracity of, you know, like, did you
25 really hire him on this date; were you guys lying
26 in the weeds and secretly -- you know, I suppose.
27 And maybe that's where she is going. It didn't
28 sound like that. Again, I don't have the details
29 in front of me. My friend's reviewed it because
30 she was planning on questioning on this. I
31 didn't review it. I didn't think we were going
32 to get questions about that affidavit.

33 So I guess you can test veracity of it. I
34 don't know what's attached as exhibits to that --
35 I don't know what the veracity of that is. I
36 can't remember. But those questions too, they
37 have to be, you know, within reason. They can't
38 become abusive. But, I mean, you know, at that
39 point too, you are also, I suppose, going into
40 questioning the veracity of counsel. I mean,
41 counsel prepares the affidavit. Are they really
42 going to lie or mislead about the date they have
43 been hired? I mean, that's a little bit --
44 that's borderline abusive, I think.

45 Anyways, I don't know what to say to your
46 question because I can't foreclose it completely,
47 but I can't give you a clear answer either

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Submissions by Cnsl J. Kitchen

1 because we didn't go through the
2 cross-examination. I don't know what the
3 questions would have been. You know --

4 THE CHAIR: All right. I'm --

5 CNSL J. KITCHEN: -- like --

6 THE CHAIR: I'm not trying to be hypothetical. I
7 think Ms. Waddell said she has a couple more
8 questions. The question that you objected to
9 was, you know, after Guild Yule got off the
10 record, you reached out to Mr. Kitchen and he was
11 asking about -- she was asking questions about
12 whether you had reached out to him or vice versa.
13 It may be helpful to actually see if --
14 Ms. Waddell, if you could either put on screen or
15 refer us to the affidavit that you are referring
16 to. I think that this is -- this is relevant to
17 understand what you are going to be asking
18 questions about and so that Mr. Kitchen can see
19 sort of what Mr. Neufeld has put at issue in a
20 sworn statement.

21 CNSL L. WADDELL: Sure. Can you give us a couple
22 minutes to get that up. Hang on.

23 THE CHAIR: Yeah.

24 CNSL L. WADDELL: Thanks.

25 CNSL J. KITCHEN: Okay. Be helpful to me at least if
26 we can scroll down.

27 THE CHAIR: Yeah. Just a second. We are trying to --

28 CNSL J. KITCHEN: There we go. Now we're in the --
29 all right.

30 THE CHAIR: And so, Ms. Waddell, am I understanding
31 correctly that you are testing the assertions in
32 paragraphs 4 and 5 here in terms of the timing of
33 when he retained counsel?

34 CNSL L. WADDELL: I wasn't actually going to test the
35 September 19th assertion, but rather when he
36 actually -- one of the two reached out to the
37 other and actually made contact. So I wasn't
38 going to test the -- that individual statement,
39 but rather the gap -- you know, he says, I made
40 all of these efforts, and then ultimately I
41 retained Mr. Kitchen on this date. But he
42 doesn't actually -- first of all, he does not
43 mention that he had any previous knowledge of or
44 relationship with Mr. Kitchen, which he did. And
45 so I would like to know when they first started
46 communicating about representation and when it
47 became apparent -- not when a retainer was

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1 signed, but when it became apparent that
2 Mr. Kitchen would be his counsel.

3 THE CHAIR: And just to understand the potential
4 relevance to a cost application -- well, let me
5 not try and understand it. Can you --

6 CNSL L. WADDELL: Sure.

7 THE CHAIR: Can you explain it to me.

8 CNSL L. WADDELL: So there are some gaps in this
9 affidavit. And if it turns out that the two of
10 them had, in fact, been communicating for several
11 months before Mr. Kitchen got on the record, I
12 would probably argue that this affidavit was
13 misleading in the sense that it did not
14 articulate that counsel had been contacted far
15 earlier and the *Wells* [phonetic] decision and --
16 I don't have another one off the top of my head,
17 but there are cases where the Tribunal has taken
18 that sort of misrepresentation in the sense of,
19 you know, there is a fact here that I've
20 deliberately withheld because I don't think it
21 will help me as a factor in deciding toward
22 costs. So that's the -- that's the piece.

23 CNSL J. KITCHEN: Well, I have some comments on that.

24 THE CHAIR: Okay. I am sure you do, Mr. Neufeld
25 [sic]. I will give you -- I'm sorry --
26 Mr. Kitchen.

27 CNSL J. KITCHEN: Yes.

28 THE CHAIR: I will give you a chance in a second. I
29 am just following up.

30 CNSL J. KITCHEN: Yeah, yeah.

31 THE CHAIR: And, Ms. Waddell, as I recall, the
32 significance of the misrepresentation in *Wells*
33 was to do with time limits or --

34 CNSL L. WADDELL: Yes.

35 THE CHAIR: -- sort of whether a complaint was going
36 ahead. The significance in this case is whether
37 or not the Tribunal was going to grant the
38 adjournment; is that right?

39 CNSL L. WADDELL: Yes. Yeah.

40 THE CHAIR: Okay. Go ahead, Mr. Kitchen.

41 CNSL J. KITCHEN: Well, that's not relevant to costs
42 because my friend hasn't said that she is seeking
43 costs to do with -- anything to do with the
44 adjournment. It's to do with posting stuff
45 online and recording calls and et cetera. I
46 mean, I have her cost application, and her
47 questions have been on point for the most part;

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Submissions by Cnsl J. Kitchen

1 so -- but this one isn't. This has got nothing
2 to do with her cost -- she hasn't applied for --
3 I don't see how she could apply for costs. Well,
4 you know, I think -- I think Mr. Neufeld lied in
5 his affidavit about the adjournment; so I am
6 seeking costs on that. Well, that would be
7 improper. That's not appropriate; right?

8 If my friend wants to question on that
9 basis -- okay? -- it's not relevant now. The
10 adjournment has been granted. Right? Now, let's
11 say she had a question, and the cross-examination
12 came out that he was untruthful in his affidavit,
13 well, then, maybe she could have sought basis --
14 could have -- obviously the adjournment probably
15 wouldn't have been granted. But then she could
16 have been, like, Okay, well, I am going to apply
17 for costs now because, you know, you have made
18 this adjournment application and sworn this
19 affidavit, and it wasn't -- it wasn't honest.
20 And so there should be costs for that. I could
21 see that making sense. This is all backwards.
22 It doesn't make sense. Right? She doesn't
23 question on the affidavit. She leaves it alone.
24 The adjournment's granted. And then six months
25 later she says, Well, I think there was -- there
26 was something shady here; so I am going to go in
27 and cross-examine on it and then make up a cost
28 application. None of that is appropriate. None
29 of that is permissible. Okay? It's just not
30 relevant to her actual cost application about the
31 actual issues we are dealing -- this is a fishing
32 expedition; right? And this is, you know -- this
33 is cross-examination. It's got nothing to do
34 with the actual hearing or her cost application.
35 It shouldn't be permitted.

36 So I think this goes back to your issue of,
37 well, you know, what if -- what if that would
38 have been permissible back then? I mean, on a
39 cross-examination on an affidavit, I mean, you
40 can make up any wild theory you want about how
41 that affidavit is wrong and cross on it. I think
42 that's probably fair in that context. I don't
43 think it's fair now when the issue has been
44 decided and she hasn't even give notice that
45 these are costs she's seeking. And this
46 cross-examination is not for this purpose.
47 That's just -- you know, there is layers of

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Submissions by Cnsl J. Kitchen

1 impermissibility and inappropriateness here with
2 this.

3 THE CHAIR: All right. So I just want to make sure we
4 kind of -- because I think, Mr. Kitchen, you have
5 kind of developed or articulated this theory more
6 as we have gone on, and we have better understood
7 the purpose of this evidence. I want to be sure
8 where we have landed with respect to the bulk
9 of -- the meat of your objection. And where I
10 understand the heart of your objection is that
11 this is not properly relevant to the cost
12 application as it's been filed by the
13 complainants, that the issue regarding the
14 adjournment has been decided, and if the
15 complainant's counsel wanted to cross-examination
16 on the affidavit, the time to do so was then and
17 it's not appropriate to do so now.

18 And then coming back to the privilege issue,
19 where I understand we have landed on the
20 privilege issue is that you have accepted that
21 there is some scope to -- again, leaving aside
22 sort of when this was -- when the proper time was
23 to ask these questions but assuming that it's --
24 the proper time is now to ask the question on the
25 affidavit, you are accepting that there is some
26 scope to ask questions about the assertions set
27 out in paragraph 4 of that affidavit about the
28 timing of when Mr. Neufeld understood that you
29 would be coming on to the case -- without, of
30 course, getting into advice or anything like
31 that, but just testing the evidence in
32 paragraph 4 about the timing. Am I understanding
33 correctly, or do you still say that's privilege,
34 those questions are barred by privilege?

35 CNSL J. KITCHEN: Not completely, no. Not completely.
36 Again, put ourselves in the proper timing for
37 this, you could come in with a theory and put it
38 to the witness that, you know, whatever -- you
39 know, whatever -- something different than what
40 is in the affidavit. I think you are talking
41 about paragraph 5. That's what I am a little bit
42 stuck on because that's the date of the hiring.
43 Paragraph 4 I think -- I don't have it in front
44 of me now. I think is mostly about the
45 intervening period and who he was reaching out
46 to.

47 THE CHAIR: I think they have said they were not

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Submissions by Cnsl J. Kitchen

1 challenging paragraph 5, the date of the
2 retainer. What they are talking about is
3 paragraph 4, and the timing of when Mr. Neufeld
4 understood he was going to have legal counsel.
5 CNSL J. KITCHEN: Right. Okay. I guess you could
6 infer that from paragraph 4. Yeah. You know,
7 not what was discussed, but I guess the timing,
8 the timing. Limited to the timing, yeah, I think
9 that's fair. I think it would have been fair if
10 she had of asked that question in
11 cross-examination on -- whatever it was -- the
12 third week of September. If she had crossed in
13 advance of that adjournment application to test
14 the veracity of what he was saying for the
15 purposes of the adjournment application, I think
16 that probably would have been fair. Not fair to
17 do it now.

18 And it sounds like we are not going to get
19 into the content of what him and I discussed. If
20 we went into that, that would be privileged
21 regardless of the timing. But if we are just
22 talking about when did you guys connect, yeah.
23 Yeah. Even then it's only relevant to the
24 adjournment application. It's not relevant to
25 the cost. That's just it. That's just it. It's
26 only relevant to an adjournment application.
27 Right? If you are making something up to get an
28 adjournment application; right? You are allowed
29 to test on that on an affidavit. It makes no
30 sense now. It's just totally prejudicial to the
31 respondent for no -- perhaps for no purpose.

32 THE CHAIR: Okay. Thank you. And -- sorry. I know
33 I -- this is -- we have belaboured this objection
34 beyond the lengths of the questions, but when you
35 say it's totally prejudicial to the respondent,
36 can you just explain briefly what you mean by
37 that.

38 CNSL J. KITCHEN: Well, I mean, one is the delay;
39 right? Like, we have no idea this is happening.
40 We are not thinking about this. You are going to
41 get -- you are going to get probably something
42 from Mr. Neufeld along the lines of "I can't
43 remember" or something -- or he says something
44 that is jaded by memory, right, like -- that's,
45 you know -- it's one of the reasons why you
46 wouldn't allow something like this normally
47 anyways. That's -- that's what I am referring

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1 to. It's just this lack of notice and the delay
2 in time and the, you know, coming out of left
3 field and the issue is already decided, and it
4 just -- it can only prejudice the respondent and
5 his memory and all of that. And even my memory.
6 I can't even remember exactly what was going on.
7 THE CHAIR: Okay. Thank you. We may just need a
8 moment here to confer. I am just going to turn
9 our videos and mics off. I don't think it will
10 be too long. Thank you.
11

12 (PROCEEDINGS ADJOURNED) [12:22:17]
13 (PROCEEDINGS RECONVENED) [12:24:02]
14

15 THE CHAIR: Thank you. Come on back. Mr. Kitchen,
16 are you there?

17 CNSL J. KITCHEN: My apologies.

18 THE CHAIR: That's okay. Thanks for your patience.
19 We are going to allow the questions on the basis
20 that it may be relevant to the application for
21 costs which we understand the complainant has
22 indicated they may amend to seek costs for
23 improper conduct throughout the course of the
24 proceeding. The Tribunal has found that giving
25 false or misleading evidence can be a basis for
26 an award of conduct and finding of improper
27 conduct. Although it's possible that, in theory,
28 complainant's counsel could have asked to
29 cross-examine on the affidavit at the time,
30 that's not typically part of the Tribunal's
31 practice on an application like that, and so we
32 are not persuaded that there is anything improper
33 about asking Mr. Neufeld about his sworn
34 statement at this time.

35 Regarding the privilege issue, we understand
36 that Mr. Kitchen doesn't argue that the questions
37 about the exact timing of when Mr. Neufeld
38 understood he would have legal representation
39 would be covered by privilege, but we agree with
40 Mr. Kitchen that anything beyond that would be
41 privileged and inadmissible and questions about
42 the substance of those conversations are not
43 appropriate.

44 So I understand, Ms. Waddell, you maybe only
45 have a couple more questions on this line. Maybe
46 we can finish those up and take the break. Okay.
47 I am going bring Mr. Kitchen -- Mr. Neufeld back

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Barry Neufeld (for Respondent)

Cross-exam by Cnsl L. Waddell

1 in. Sorry. I keep having a name issue.

2
3 BARRY NEUFELD, a witness,
4 recalled.

5
6 THE CHAIR: Hi, Mr. Neufeld. Come on back. Thank you
7 for your patience. We just have a few more
8 questions for you before we take the lunch break.
9 Go ahead, Ms. Waddell.

10
11 CROSS-EXAMINATION BY CNSL L. WADDELL, continuing:

12
13 Q Thank you. I am just going to have Ms. Tom put
14 some paragraphs from your affidavit up for you,
15 Mr. Neufeld. So you remember swearing an
16 affidavit in support of your counsel's
17 application to adjourn the hearing by about a
18 month?

19 A Yes.

20 Q Okay. I am going to scroll down. Okay. So if
21 you just look here, you will see that at
22 paragraph 4, you, you know, talk about your
23 efforts generally to secure counsel and who you
24 approached. And then at paragraph 5 you say that
25 on September 18th, 2024, you retained James
26 Kitchen. When did you and Mr. Kitchen first
27 connect about the possibility of your retaining
28 him?

29 A I don't know. It was a few days before that.

30 Q Okay. No more than a few days?

31 A No.

32 CNSL L. WADDELL: All right. Those are my questions
33 on that subject, Madam Chair. If the Tribunal
34 wishes to take the lunch break before I start
35 another subject, that's probably a good time.

36 THE CHAIR: All right. Thank you. Can you give us a
37 sense of where we are at in your cross,
38 Ms. Waddell?

39 CNSL L. WADDELL: I think I'm -- I think I am about
40 halfway done. So I would expect to wrap up
41 today. I will double-check that over the lunch
42 hour, and I can come back and confirm or if I
43 think I am wrong, but I do think that I should
44 finish up at or around the end of the day.

45 THE CHAIR: Great. Thank you. All right. We are
46 going to take -- we will take an hour and
47 five minutes for lunch. I will ask everyone to

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Barry Neufeld (for Respondent)
Proceedings

1 come back at 1:30.

2 Mr. Neufeld, again, you are under
3 cross-examination; so please do not talk to
4 anyone about your evidence during this break. If
5 you can hang on and allow me to remove you from
6 the hearing room, that will help us to control
7 the hearing room; so please don't hang up
8 yourself. I will disconnect you, and then we
9 will reconnect at 1:30. Thanks very much.

10
11 (WITNESS STOOD DOWN)

12
13 (PROCEEDINGS ADJOURNED FOR NOON RECESS) [12:29:00]
14 (PROCEEDINGS RECONVENED) [1:34:06]

15
16 BARRY NEUFELD, a witness,
17 recalled.

18
19 UNIDENTIFIED SPEAKER: They have been worn down by
20 pain --

21 THE CHAIR: Hi, everyone. Welcome back. Just before
22 we continue with the questions, we received some
23 documents from the complainant's counsel, as
24 promised, over the break, and so Member Alam is
25 just going to go over the exhibit numbering and
26 the record.

27 MEMBER SAID ALAM: Okay. Thank you. So we have the
28 Carfra Lawton letter from January 30th, 2024.
29 That's being entered as Exhibit 12.

30
31 (EXHIBIT MARKED)

32
33 MEMBER SAID ALAM: We have a screenshot of
34 Mr. Neufeld's post for RH Media Standing 4
35 Children on February 24th, 2025. That's going in
36 as Exhibit 13.

37
38 (EXHIBIT MARKED)

39
40 MEMBER SAID ALAM: We have an April 25th, 2024, e-mail
41 from Belinda Lai to Mr. Neufeld regarding the
42 cost application, and that's Exhibit 14.

43
44 (EXHIBIT MARKED)

45
46 MEMBER SAID ALAM: And then we have Mr. Neufeld's
47 e-mail from April 25th, 2024, to Belinda Lai, and

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Barry Neufeld (for Respondent)
Proceedings

1 that is Exhibit 15.

2
3 (EXHIBIT MARKED)

4
5 MEMBER SAID ALAM: Ms. Waddell, you had brought up the
6 February 1st, 2024, Coalition Newsletter 33. But
7 we have not received that one yet.

8 CNSL L. WADDELL: Sorry. The February 11th one?

9 MEMBER SAID ALAM: Yes. Sorry.

10 CNSL L. WADDELL: This is actually, I think, already
11 in the record.

12 MEMBER SAID ALAM: Okay.

13
14 (EXHIBIT MARKED)

15
16 CNSL L. WADDELL: Let me just remind myself of where
17 it is. It is attached to the second affidavit of
18 Belinda Lai as Exhibit A, Exhibits A and B.

19 MEMBER SAID ALAM: Okay. All right. So Belinda Lai's
20 affidavits haven't been put into the record yet.

21 CNSL L. WADDELL: Okay.

22 MEMBER SAID ALAM: Yeah.

23 CNSL L. WADDELL: Would you like to -- should we do
24 that now in terms of -- we'll be seeking to have
25 all -- I am trying to think of how many there are
26 now -- all of them entered into the record. I am
27 not accustomed to doing that with affidavits at a
28 hearing, but I am happy to if that's the way the
29 Tribunal wishes to proceed.

30 THE CHAIR: I think that may be the way to proceed if
31 you are intending on relying on them in your
32 final submissions. We don't have to do that now;
33 we can do that at the end of the proceedings so
34 as to not disrupt the flow of cross. But I think
35 if they were going to form part of the record
36 that we are relying on in our final decision,
37 then they should be entered as exhibits.

38 CNSL L. WADDELL: Fair.

39 THE CHAIR: And then -- and also to give Mr. Kitchen a
40 chance to review them and see if he has any
41 objection to that.

42 CNSL L. WADDELL: Yeah. And/or if he wishes to have
43 Mr. Neufeld's earlier affidavit in the record for
44 some reason.

45 THE CHAIR: Yes. All right.

46 CNSL J. KITCHEN: Could you --

47 THE CHAIR: Go ahead.

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 CNSL J. KITCHEN: Could I -- could you just -- this is
2 not urgent, but a list of those Belinda Lai
3 affidavits and their dates would be helpful for
4 me because I have sort of lost track of them and
5 I think at least some of them pre-date my
6 involvement in the file. So that would be
7 helpful to me, and then I can see which --
8 because I don't even know if I have all of them,
9 and then I can just picture if I have them. I
10 can't imagine objecting to them going in, but I
11 just -- I just need to have them, I guess, and
12 know how many there are and all that.

13 CNSL L. WADDELL: We can do that.

14 THE CHAIR: Thank you. All right. Mr. Neufeld, are
15 you there?

16 A Yes.

17 THE CHAIR: Okay. Thank you. I seem to have lost
18 video -- oh, there you are. Are you ready to
19 continue?

20 A Yes.

21 THE CHAIR: All right. Go ahead, Ms. Waddell, when
22 you are ready.

23 CNSL L. WADDELL: Thank you.

24
25 CROSS-EXAMINATION BY CNSL L. WADDELL, continuing:
26

27 Q Okay. Mr. Neufeld, I take it from your direct
28 evidence that you don't dispute that you actually
29 published or posted the various posts or
30 statements that are contained in the
31 Complainant's Book of Documents re Publications
32 and Statements. This is the book that -- your
33 counsel took you to the various posts in your
34 direct testimony.

35 A Yeah. It was a binder of about 500 pages.

36 Q Yes. Okay. And so you -- you're not saying,
37 Hey, I didn't publish those things; right? You
38 agree that they are yours and that they were, you
39 know, shared publicly?

40 A Yes. I was quite flattered that you kept
41 watching all my posts for six years.

42 Q Okay. And I presume that they were posted
43 publicly because you, you know -- you want to
44 share your views so that, you know, others are
45 exposed to them and might agree with them?

46 A Yeah. I have had a lot of positive feedback.
47 Not from this organization, of course, but from

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 the general public.
2 Q Okay. So -- and what I am going to do here, just
3 so that you know, I would like to -- I want to
4 dig in to some of your statements now, but I want
5 to try and do it in a time efficient way. You
6 have already been taken to pretty much almost
7 every single publication; so I am going to try
8 and do it without taking you to each individual
9 one. But I just want to flag that for you and
10 say if at some point you -- you know, you want to
11 see the publication I am talking about, you just
12 say the word, and we will put it up on the
13 screen. Okay? I am not trying to put something
14 past you. I am just trying to do it in a time
15 efficient way, and every time we go to a
16 document, it takes up a bit of time. So don't
17 hesitate to tell me if you are not sure that you
18 said the thing and could we put it up on the
19 screen. Okay?
20 A Okay.
21 Q So first, I just want to deal with the subject of
22 SOGI 123. And am I right that you consider
23 SOGI 123 to essentially be about telling kids
24 that it's okay to identify in -- as a gender
25 other than your biological sex assigned a birth?
26 Is that sort of the nutshell of your view about
27 what it is?
28 A Pretty well, yeah.
29 Q Okay. And is it fair for me to say that you
30 consider that messaging bad because you believe
31 that identifying as something other than your sex
32 assigned at birth is not right?
33 A Correct.
34 Q Okay. Now, in your posts do you recall or agree
35 that you described SOGI 123 as a weapon of
36 propaganda?
37 A Yes.
38 Q And you described it as an evil ideology?
39 A It's evil because of the confusion that it brings
40 on troubled kids.
41 Q Okay. So you agree that you described it in that
42 way, I guess.
43 A Yes.
44 Q And do you agree that you described it as
45 something that grooms children in preparation for
46 child predators?
47 A Yes. I should say that every few weeks I go to

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 my barber, and he grooms me, just like I believe
2 teachers groom children. But the barber is not
3 grooming me for his own purposes; it's so that I
4 would be more attractive to other people. And,
5 unfortunately, the SOGI 123 resource breaks down
6 children's boundaries, breaks down their
7 self-identity so that they can easily be
8 manipulated by minor attracted persons. Now,
9 those minor attracted persons may not even be in
10 the school system. They are out there in the
11 community somewhere, but it sets them for being
12 potentially abused.

13 Q This is your view; right?

14 A That's my view.

15 Q And you are not an expert witness in this
16 proceeding; correct? I understand you have got
17 some experience, but you're not an expert
18 witness; correct?

19 A I --

20 CNSL J. KITCHEN: Objection.

21 THE CHAIR: Yeah. Go ahead, Mr. Kitchen.

22 CNSL J. KITCHEN: I don't -- my friend has asked a lot
23 of throwaway questions, and I haven't objected --
24 okay? -- because I understand how this works, but
25 that's, like, asking Mr. Neufeld to confirm that
26 he has got a white beard. I mean, you know,
27 other than -- I don't know -- poking the witness
28 or enjoying some rhetoric, I don't know what the
29 point of it is. You know, we have never once
30 tried to pass Mr. Neufeld off as an expert, which
31 my friend well knows because she has made a big
32 deal about this. And I don't know what the -- I
33 don't know what her issue is with this, but he is
34 not an expert, and I don't think wasting yet more
35 time on confirming the obvious is appropriate on
36 cross-examination.

37 THE CHAIR: Okay. Thank you, Mr. Kitchen. I am just
38 going to let in two people while we deal with the
39 objection. I appreciate there is no dispute that
40 Mr. Neufeld is not an expert witness, but in my
41 view, this is not a circumstance that we need to
42 interrupt the flow of cross. If it starts to be
43 wasteful of our time, we will intervene, but I
44 think Ms. Waddell is entitled to ask that in part
45 of the flow of cross. I am just going to let in
46 two members of the public, and then continue on,
47 Ms. Waddell. Go ahead.

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 CNSL L. WADDELL: Okay. Sorry. I was just waiting
2 for confirmation that the folks had been let in.

3 Q Okay. So, Mr. Neufeld, I am just trying to get
4 at -- I know it's not your counsel's position
5 that you are being tendered as an expert, but I
6 just want to make sure that you understand that
7 you are testifying as a layperson. You
8 understand that?

9 A I understand that. But I hope my lawyer doesn't
10 think I am going rogue, but here is the point.
11 More than any publicly-elected school trustee in
12 B.C., I have more knowledge and acquaintance with
13 the behaviour patterns of people who victimize
14 children than any other school trustee in the
15 province of British Columbia. I was the
16 provincial lead of probation officers supervising
17 sex offenders, and I even taught courses at the
18 Justice Institute. I may not have a PhD, but I
19 got two decades of experience.

20 Q Okay. I take it from that, that while you have
21 experience, you understand that your opinions in
22 this proceeding are your own and that you have
23 not tendered expert evidence from anyone in this
24 proceeding.

25 A I understand that I do not meet the legal
26 definition of an expert witness because for that
27 you need to have written a thesis or something on
28 it, which I have not done, but I have a wealth of
29 life experience that informs my opinions.

30 Q Okay. And you also posted that SOGI 123 sets
31 children up for further abuse and victimization.
32 Do you remember that?

33 A I already agreed to that.

34 Q Okay. Well, this one was a bit different because
35 the previous one was -- your posts -- you talk
36 about three statements that talk about
37 grooming -- SOGI 123 grooming children in
38 preparation for child predators, and then it's a
39 different one that talks about setting children
40 up for further abuse and victimization. Would
41 you disagree that you said that?

42 A Yeah. They are basically saying the same thing,
43 slightly different.

44 Q Okay.

45 A I am not accusing school staff of doing that
46 abuse. I am saying that these kids are walking
47 out of school with their boundaries blurred,

1400

Barry Neufeld (for Respondent)

Cross-exam by Cnsl L. Waddell

1 their self-concept confused, and they could
2 easily be manipulated by minor attracted persons.
3 Q And you think that is so because of what school
4 staff is teaching them?
5 A Yes, I do.
6 Q So it is, in fact, school staff that you think
7 are responsible for placing children in this
8 position?
9 A Yeah. They were predisposing them to become
10 victims.
11 Q Okay. Now, you also posted that SOGI 123 is a
12 dangerous grooming ideology; is that right?
13 A That's the -- that's the effect it has. Now, it
14 may be an unintended effect, but that is the
15 effect it has on confused and troubled children.
16 Q Okay. And you've also said that SOGI 123 or
17 trans ideology is akin to what the Nazis or
18 Russians did turning teenagers against their
19 parents; is that right?
20 A That's correct.
21 Q Okay. And just so that we are clear, when you
22 use the word "trans ideology" you mean the mere
23 notion that someone can be a gender or identify
24 other than as the sex they were assigned at
25 birth?
26 A Trans ideology, gender ideology -- I guess the
27 two concepts are interchangeable.
28 Q Okay. And you also have said that because of
29 SOGI 123 there are probably more victims in
30 public schools today than there were in
31 residential schools; is that right?
32 A Well, there's a lot more children in public
33 schools nowadays than there ever were in
34 residential schools.
35 Q And by "victims," you mean victims of what?
36 Victims of being told it's okay to identify by a
37 different pronoun? Or do you mean victims of
38 sexual abuse, for example?
39 A Victims of sexual abuse.
40 Q All right. Okay. And you heard from various
41 witnesses on behalf of the complainants that --
42 all saying that SOGI 123 materials are not
43 mandatory, I take it.
44 A I heard them say that. I don't believe it.
45 Q Okay. Can you point us to some place in the SOGI
46 materials that says they are mandatory?
47 A No. But in at least my experience in Chilliwack,

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 there is a SOGI lead in every school that
2 encourages teachers to integrate the concepts of
3 SOGI into every subject matter including math; so
4 there's a strong drive to mix it in and integrate
5 it into all the curriculum.
6 Q And that's your perception based on the fact that
7 there's a SOGI lead?
8 A That's what the job description of SOGI leads is.
9 Q Okay. This job description of SOGI leads doesn't
10 say "to ensure that every teacher implements and
11 uses SOGI 123 materials," though, does it?
12 A I don't believe so.
13 Q Okay.
14 A But it's implied.
15 Q Can you point to any -- sorry. Go ahead.
16 A But it's implied.
17 Q Implied. Can you point to any document --
18 Ministry, District, SOGI -- that suggests that
19 those resource materials are mandatory for
20 teachers to use?
21 A I don't have access to all the documents. There
22 has been hundreds and hundreds of documents
23 issued on this topic.
24 Q Well, indeed you have suggested that you have
25 done a lot of reading on this topic; correct?
26 A I have, but I don't have those documents
27 available at my fingertips. If you are going to
28 mention the document, it has be to be produced on
29 the screen.
30 Q If it will help you, we can go through the book
31 of SOGI materials, but I will suggest to you --
32 and this will be much more time efficient -- that
33 there is nothing in those materials to suggest,
34 consistent with our witnesses' testimony, that
35 those materials are mandatory for teachers to
36 use. Would you agree with that?
37 A It's strongly encouraged to use but not
38 mandatory, I guess.
39 Q And "strongly encouraged," again, you say that
40 based on your impression?
41 A Yes.
42 Q Okay. We also heard that SOGI 123 includes
43 sample policies for districts to use as models.
44 Do you recall that testimony?
45 A Well, the three numbers refer to environment
46 policies, and then there's a whole section of
47 SOGI 123 that is designed to encourage schools to

1402

Barry Neufeld (for Respondent)

Cross-exam by Cnsl L. Waddell

1 create policy that includes diversity, equity,
2 and inclusion.

3 Q Do you think diversity, equity, and inclusion is
4 a good thing?

5 A No. It goes against the time honoured and
6 traditional virtue of loving your neighbour.

7 Q All right. Would it be fair to say that you are
8 pretty concerned about -- and feel free to
9 correct me on the language, but -- what you call
10 gender fluid ideology?

11 A Yeah, I am concerned about it. Trans ideology,
12 gender ideology.

13 Q And you think that generally that is not a good
14 ideology for society to embrace; is that fair?

15 A That is fair.

16 Q Your view is that everyone should simply accept
17 their -- to use, I think, your view -- God-given
18 sex at birth; correct?

19 A Yes. Their -- or what is now called your gender
20 assigned at birth.

21 Q Would it be fair to say that you view gender
22 fluid ideology as a threat to society?

23 A It's delusional. Anything that is delusional is
24 a threat to society.

25 Q But you don't -- that's not the only reason why
26 you view it as a threat to society; correct?

27 A Well, there is more reasons, but yeah, that's one
28 of the reasons.

29 Q Well, give me some of the other reasons perhaps.

30 A One of the things that predators do when they
31 start messing with children is they say, "This is
32 our little secret; now don't tell your mom or
33 dad." I am absolutely appalled at the union
34 policy that if a kid -- that they are keeping
35 secrets from parents. They are lying to parents
36 about -- kids use different pronouns at school.
37 They don't tell parents if the child is
38 cross-dressing at school, and they are taking
39 kids to -- for assessments, therapy without
40 letting their parents know. Parents -- nobody
41 knows a child better than the parents. And sure,
42 there is some ineffective parents out there, but
43 still, that being said, parents know their
44 children best.

45 Part of that is my experience of home
46 visits. Whenever I had to do an assessment for
47 the court, I would meet with the child in my

1403

Barry Neufeld (for Respondent)

Cross-exam by Cnsl L. Waddell

1 office, I would go talk to the teacher in the
2 classroom, and I would make a home visit. You
3 know, sometimes I found that kids had split
4 personalities. They were way different in school
5 than they were at home, and they were different
6 again when they were in my office. Teachers
7 think they know kids best. They don't. They
8 have kids for five hours a day, five times a
9 week, but the parents have known the children a
10 lot longer and know them a lot better than any
11 school teacher.

12 Q Do you feel like you know kids best, Mr. Neufeld?
13 A I believe I have a broader view of young people
14 than most members of the B.C. Teachers'
15 Federation, yes.

16 Q All right. So you -- you described gender fluid
17 ideology as a threat to society, and you gave one
18 reason, and then I asked you to give some of the
19 others. Do you agree with me that you have
20 described gender fluid ideology as an organized
21 and sinister attack on nuclear family values?

22 A Well, that's a stated value. They want to do
23 away with the heterosexual family as the norm,
24 the gold standard. Research has shown for many,
25 many years that a child who grows up in a home
26 with a father and a mother who love each other
27 perform far better than kids from other family
28 models.

29 Q And you haven't tendered any of that research
30 here in the course of this hearing to support
31 your defence, have you?

32 A No.

33 Q I would suggest to you that, in fact, that
34 research doesn't exist, at least not within the
35 tradition understanding of research.

36 A Oh, I think it's there. If necessary, I will dig
37 it out.

38 Q Well, I think this case was your chance to dig it
39 out, Mr. Neufeld. Now, have you also posted that
40 parents should take their children out of public
41 schools before activist teachers destroy young
42 bodies and families?

43 A Sure do.

44 Q Okay. And you have also posted that gender
45 ideology being present in schools today is akin
46 to Canada's history of residential schools?

47 A Well, the whole idea that teachers know better

1404

Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 than parents how to raise children is the same
2 mistake the government made 100 years ago when
3 they came up with the concept of residential
4 schools. The government makes a horrible parent.
5 Q All right. And you have stated that residential
6 school oppression is happening again 150 years
7 later, referring to the acceptance of what you
8 call gender fluid ideology in the school system;
9 isn't that right?
10 A Not just gender ideology. The whole idea that
11 teachers know better than parents what is best
12 for children, that's the same mistake that we are
13 making as the residential schools made.
14 Q But you don't, for example, suggest that, you
15 know, parents know better than teachers how to
16 educate children about the oppression of Black
17 people, for example? You don't suggest that
18 parents should be the ones to teach children
19 about Black History Month and different forms of
20 racial oppression in Canada, do you?
21 A Oh, you know, children learn a lot more from
22 their parents life example, how their parents
23 treat other races and minority peoples -- they
24 are going to learn more from that than learning
25 something taught as a curriculum in a school
26 classroom.
27 Q But you haven't made that your platform. You're
28 solely -- your only issue about where you say
29 parents are better suited has to do with the
30 inclusion of trans inclusiveness in schools;
31 correct?
32 A That's -- I tried to narrow my focus onto that
33 one issue, yes.
34 Q And you have said that the trans or gender fluid
35 movement poses a threat and that children may be
36 taken away from traditional families; correct?
37 A Well, I've definitely seen that happen, yes.
38 Q Okay.
39 A Our own Minister of Child and Family Development
40 instructed her social workers before the last
41 election that if parents do not support a child's
42 desire to transition, the social workers were
43 supposed to consider that an act of domestic
44 violence and remove the children and put them in
45 a foster home.
46 Q And I take it that comment you made, it's
47 directed at parents. Correct?

1405

Barry Neufeld (for Respondent)

Cross-exam by Cnsl L. Waddell

1 A Which comment?
2 Q Well, that --
3 A That I just said?
4 Q You know, that children may be taken away from
5 traditional families, that -- you are directing
6 that to parents, are you not?
7 A That's right.
8 Q Yeah. You want them to be afraid that their
9 children are going to be taken away; correct?
10 A Not afraid. Just do something about it.
11 Q Okay. And you have also said that transgenderism
12 is dangerous; correct?
13 A From what I have seen, yes.
14 Q And I hear that that's your observation, but I am
15 asking if you made that statement, and I take it
16 that you would agree that you made that
17 statement.
18 A I made some statement like that, yes.
19 Q And that transgenderism is a dangerous ideology?
20 A Yes.
21 Q And that's because you think transgenderism is
22 bad; correct?
23 A I feel sorry for people who don't feel
24 comfortable in their own bodies. I don't hate
25 them. They are not bad people. They are just
26 deluded.
27 Q Okay. I didn't ask you if you thought they were
28 bad people. I asked if you thought
29 transgenderism generally is bad.
30 A Yes. It's -- it -- it doesn't -- it's not a
31 philosophy that allows human beings to flourish.
32 Q And you would like other people to work with you
33 in trying to eliminate that, what you call,
34 philosophy; correct?
35 A That's correct.
36 Q And you have also posted that the trans agenda is
37 eugenics. Do you remember that?
38 A Well, if a person completely transitions, they
39 are sterile, and they can't produce. They have a
40 very high suicide rate, especially when they get
41 past college age. It's not a recipe for human
42 flourishing, that's for sure. It's reducing the
43 population, not being fruitful and multiplying.
44 Q But you agree that you had made that statement?
45 A Yes.
46 Q And just so that we are on the same page,
47 eugenics is generally understood to be beliefs

1406

Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 and practices that are aimed at improving or
2 changing the genetic composition of a particular
3 human population or race? You would agree with
4 that meaning for the word?
5 A Yeah. That was the motivation behind -- I think
6 her name was Margaret Sanger who established --
7 come on. The name of that -- the organization
8 that tried to prevent so many Black children from
9 being born. Parents -- Planned Parenthood.
10 Q And you would agree with me that eugenics is a
11 pretty negative and inflammatory term, I take it.
12 A Yes.
13 Q You have also published about or posted about
14 threats of transgender radicals. Does that sound
15 right?
16 A Yes.
17 Q Okay.
18 A I have been threatened by them.
19 Q Okay. You have talked about either the trans
20 lobby or LGBTQ2S+ lobby using Mafia and Bolshevik
21 techniques to convince the most powerful sectors
22 of society to acquiesce to demands? Does that
23 ring a bell?
24 A Certainly lots of news reports about that.
25 Q Okay. And what sort of Mafia and Bolshevik
26 techniques were you talking about there?
27 A I am talking about physical and property
28 violence. A friend of mine in Nanaimo, her car
29 was set on fire recently. There has been rallies
30 where trans activists have assaulted, physically
31 assaulted, some of my friends. And instead of
32 the police arresting the trans activists, they
33 locked up my friends like Chris Elston in jail
34 and took his sign away.
35 Q And you would agree with me that that's all
36 hearsay; correct? That's --
37 A No. That's --
38 Q -- stuff that people have told you?
39 A That's in the news. It's not hearsay.
40 Q But it's not -- you have not experienced these
41 things yourself. You are talking about other
42 people's experiences right now; correct?
43 A I have not suffered any physical abuse, but I
44 have endured horrific verbal abuse.
45 Q Yes. We are going to get to some of that. And
46 you have described transgenderism as an evil
47 ideology; is that right?

1407

Barry Neufeld (for Respondent)
 Cross-exam by Cnsl L. Waddell

1 A Well, the results of it certainly are evil.
 2 Q Okay. Now, I am sure this is probably already
 3 evident from some of -- some of the posts that we
 4 have gone over, but just a slightly different
 5 focus. You view the acceptance of what you would
 6 call a trans ideology or gender fluid ideology --
 7 you view that as a threat to children; correct?
 8 A Yes, to children and their families.
 9 Q So it's a threat to the fabric of society, then?
 10 A It is.
 11 Q Okay. And you have published that books pushing
 12 the gay and transgender lifestyle showing up in
 13 the school libraries is tantamount to child
 14 abuse; is that right?
 15 A Well, yes, some of it is nothing but porn.
 16 Unfortunately, the police can't identify it as
 17 child porn because they are cartoons and
 18 drawings; they are not actual photographs.
 19 Q But you haven't -- any of these books that you
 20 allege and assert are inappropriate, you haven't
 21 tendered any evidence of those in this case, have
 22 you?
 23 A No, but I could. I have got a book not far from
 24 my computer screen called *It's Perfectly Normal*.
 25 Q You also posted that normalizing the discussion
 26 of gender roles is grooming; is that right?
 27 A I think it was a little bit more specific --
 28 CNSL J. KITCHEN: Hold on.
 29 A -- than that.
 30 CNSL J. KITCHEN: I think with this one, to be fair,
 31 we got to put that in front of the witness
 32 because I -- that one doesn't seem familiar to
 33 me.
 34 CNSL L. WADDELL: Sure.
 35 CNSL J. KITCHEN: For the most part, your questions, I
 36 think, have paraphrased fairly accurately from my
 37 memory, but...
 38 CNSL L. WADDELL:
 39 Q Do you want to just take a read of that,
 40 Mr. Neufeld, and let me know if that refreshes
 41 your memory?
 42 A Yes.
 43 THE CHAIR: And, Ms. Waddell, can you help us with
 44 where we are at in the books.
 45 CNSL L. WADDELL: Sure. Thank you. We are in the
 46 Book of Documents re Publications and Statements
 47 at Tab 47 in the most recent book I sent out. As

1408

Barry Neufeld (for Respondent)

Cross-exam by Cnsl L. Waddell

1 you can see from the share screen, it would be
 2 page 298, but for you, Mr. Kitchen, because I
 3 think you are using a version with different page
 4 numbering but the tabs are the same, it will be
 5 Tab 47.

6 CNSL J. KITCHEN: Tab 47. Thank you. Yeah. I
 7 recognize this. Thank you.

8 CNSL L. WADDELL:

9 Q So in that post, you say:

10 By normalizing the discussion of gender
 11 roles and deviant sexual acts, they are
 12 desensitizing school children into
 13 discussing these private issues with adults
 14 other than their parents.
 15 other than their parents.

16 What -- what gender roles and deviant sexual acts
 17 are you talking about there, Mr. Neufeld?

18 A Cross-dressing, anal intercourse, fellatio,
 19 fisting. A lot of these -- golden showers. All
 20 these things are readily available to even young
 21 junior high school students, and these are things
 22 that kids don't need to know about. Little boys
 23 and girls, they just want to play and have fun,
 24 and to burden them with all this heavy duty
 25 sexual nonsense is not doing them any good. It
 26 has no socially redeeming value in it at all.

27 Q And just so that we are clear, you haven't
 28 yourself been in an elementary school library and
 29 stumbled upon a book that covers fisting, I take
 30 it.

31 A No, but --

32 Q Right. Thank you.

33 CNSL J. KITCHEN: Hold on. He wasn't done.

34 A My friend Pierre Barns has cataloged what books
 35 are available, and he has a huge website which
 36 shows what these books are portraying, and they
 37 are available in very many schools.

38 CNSL L. WADDELL:

39 Q Okay. And I am asking about your --

40 A It's right on the school's library --

41 THE CHAIR: Just a moment. Let him finish his answer.

42 Go ahead, Mr. Neufeld.

43 A There are proudly displayed on the school's
 44 collection of the library materials. I haven't
 45 seen them in libraries because I am such a
 46 dangerous person, I haven't been allowed to step
 47 dangerous person, I haven't been allowed to step

1409

Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 foot in a school for six years, seven years.
2 CNSL L. WADDELL:
3 Q And it sounds like you are a bit sore about the
4 fact that you think you have been identified as a
5 dangerous person. Is that right?
6 A Well, it's unfair because I spent a life, a
7 career, of helping special needs and children. I
8 devoted 27 years of my life to supporting public
9 education, and to get treated like this at the
10 end of my life is nothing short of horrific.
11 Q Not at all similar to teachers who are now being
12 accused of being groomers might feel?
13 A Well, if that's what they're doing, they have a
14 right to be called that, or they deserve to be
15 called that.
16 Q You --
17 A You know -- and I have said it before --
18 CNSL J. KITCHEN: Hold on.
19 A I have said it before. They may not be
20 intentionally doing this, but it is the
21 unintended consequence of what -- the resources
22 and the materials that they are using. They
23 think they are helping and being inclusive when
24 actually they are messing up kids' minds.
25 CNSL L. WADDELL:
26 Q All right. That's your view?
27 A Yes.
28 Q Correct? Okay.
29 Now, you have also said that people -- some
30 of your posts have said that people who encourage
31 children to transition are child abusers; is that
32 right?
33 A That's correct.
34 Q Okay. And you would include among those who
35 encourage children to transition, I presume,
36 medical professionals who work in that area.
37 A That's correct.
38 Q Okay. Teachers who encourage an inclusive
39 environment by using a child's pronouns of
40 choice, for example?
41 A Yes.
42 Q Teachers who are out at school to provide a
43 positive role model for children?
44 A Yes.
45 Q You have also posted that the suggestion that
46 children might consider rejecting their own
47 gender identity is child abuse; is that right?

1410

Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 A Yes.

2 Q And you inferred, without expressly saying so,
3 that it may be education problem -- or education
4 program rather developed -- modelled after one
5 developed by a pedophile, and that, in your post,
6 is Dr. Levin. Do you remember sort of inferring
7 that?

8 A Yes. He was the Deputy Minister of Education in
9 Ontario who brought in what they call "Wynne
10 sex-ed," and it was shortly after he was jailed
11 for being in possession of child porn.

12 Q And you have also in a post sought to draw a
13 connection between child exploitation -- those
14 were your words -- and what you call the
15 transgender craze. Do you remember that?

16 A I don't remember it. Can you show it to me?

17 Q Sure can. So this is a post of yours from
18 June 29th, 2021. For everybody else, it's at
19 Tab 20 -- 32, rather, of the Book of Documents re
20 Publications for Bates numbered page 186, if you
21 are looking at the most recent copy. And if
22 Alanna scrolls down there, the second paragraph
23 from the bottom, the one that begins with "child
24 trafficking" there. If you look at the last
25 sentence, you say:

26
27 It is no coincidence, in my opinion, that
28 there may be a connection between child
29 exploitation and the "transgender craze,"
30 which is spreading among young teenage girls
31 who had no prior evidence of gender
32 dysphoria.

33
34 Does that refresh your memory?

35 THE CHAIR: I think Mr. Neufeld may be frozen.
36 Mr. Neufeld, are you frozen? Well, that was -- I
37 guess that answers that in the non-answer. Just
38 give it another few seconds, and then I will
39 remove him, and he will have to reconnect.

40 CNSL J. KITCHEN: I thought he was studiously reading
41 that for a good 12 seconds or so before I
42 realized.

43 THE CHAIR: All right. He is disconnected. There we
44 go. We lost you there, Mr. Neufeld. We didn't
45 hear any -- any answer to the question.

46 CNSL L. WADDELL:

47 Q So did you hear the question, Mr. Neufeld? Do

1411

Barry Neufeld (for Respondent)

Cross-exam by Cnsl L. Waddell

1 you want me to repeat it?

2 CNSL J. KITCHEN: Well, hold on. There we go.

3 A Well, I asked you to show me a document because
4 you said I claimed something.

5 CNSL L. WADDELL:

6 Q Yeah. Are you able to see the document that
7 Ms. Tom has put up on the screen?

8 A Yes, I can.

9 Q Okay. So before you froze, I had taken you
10 down -- or at least I think it was before you
11 froze -- down toward the bottom, the
12 second-to-last paragraph there that begins with
13 "child trafficking."

14 A Yeah.

15 Q I was going to refer you to go to the end of that
16 paragraph. So three lines from the bottom, it
17 says:

18
19 It is no coincidence, in my opinion, that
20 there may be a connection between child
21 exploitation and the "transgender craze,"
22 which is spreading among young teenage
23 girls...

24
25 A Yes. I got that idea from Abigail Shrier's book
26 *Irreversible Damage*.

27 Q Okay. All right. So you published those. Now,
28 would I be right that you liken transgenderism,
29 to use your language, with illness or disease?

30 A It's a delusion. And there are a lot of mental
31 illnesses which are considered delusional, but
32 transgenderism is the only delusion that's
33 approached from a human rights perspective. And
34 that's why it's so hard to discuss the pros and
35 cons of gender ideology because say anything
36 against it and you are immediately labelled as
37 breaching someone's rights and you are silenced.

38 Q But do you think of it as an illness? Do you
39 think of it as a delusion?

40 A I don't necessarily believe illness and delusion
41 are the same thing. I think of illness more in
42 the -- used in the case of physical pain and
43 suffering. Delusions are disturbances of the
44 mind, and --

45 Q I think --

46 A -- I have problems with the term "mental
47 illness."

1412

Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 Q Okay. Your problems with the term "mental
2 illness" aside -- and I am guessing those don't
3 relate just to this subject matter. Are they
4 broader, your --

5 A Yeah, they're broader.

6 Q Okay. So if we just park your concerns with that
7 terminology, for you, would transgenderism --
8 again, using your language -- fall within the
9 umbrella of mental illness to you?

10 A Well, what people consider as mental illness,
11 yes.

12 Q Okay. Now, back to your point about -- you have
13 said it's a delusion and people are delusional.
14 You have published -- and I am guessing that this
15 is connected, but -- that transgenderism is what
16 you call a biologically absurd theory; is that
17 right?

18 A That's correct.

19 Q And you say it's biologically absurd because it's
20 not really a thing; is that right?

21 A It's not.

22 Q Okay. You think it's made up?

23 A It is because if a baby is born and the doctor
24 looks down and sees a penis and testicles and
25 said it's a boy, that's a biological fact. But
26 the gender ideology would say that's gender the
27 doctor assigned, but we got to wait until the kid
28 grows up to find out what real gender they really
29 are, and that -- that is the craziest delusion
30 that I have ever heard of, but it's common now.

31 Q All right. Now, just going back to my question
32 of you about mental illness. You have analogized
33 gender confusion with sexual addiction in some of
34 your posts and talks; correct?

35 A Well, I -- my first speech that I made in
36 Evergreen Hall back -- I think it was still 2017.
37 I did make the analogy with addiction and that
38 people who encourage others to embrace their
39 different gender ideology are enablers, and
40 enabling is a term used in addiction therapy
41 where some people unwittingly encourage a person
42 to continue in their self-destructive behaviour.

43 Q So you are analogizing or suggesting that people
44 who support those who are trans and/or, to use
45 your words again, enable their delusion by using
46 appropriate pronouns, that sort of thing -- you
47 think they are enabling essentially a mental

1413

Barry Neufeld (for Respondent)

Cross-exam by Cnsl L. Waddell

1 illness; is that right?

2 A They are enabling delusional thoughts, yes, and

3 encouraging ideas that are becoming increasingly

4 compulsive. The biggest problem that I see with

5 this. Sometimes these people have troubles, and

6 it has nothing do with their gender. They may

7 have something else -- other disease that is

8 affecting them, some other mental disorder. And

9 as soon as someone is labelled gender dysphoric,

10 they stop looking at all other -- they stop

11 exploring any other causes for the person's

12 distress, and they blame it all -- oh, you are

13 obviously transgender, and you will find peace

14 and happiness if you just switch your gender.

15 And therapists are afraid to do that now because

16 if they don't affirm a child's gender identity,

17 they get accused of conversion therapy. So

18 they -- out of fear, they just keep their mouth

19 shut because they could lose their licence if

20 they are accused of conversion therapy.

21 Q And just to confirm, you are not a therapist; so

22 this is just stuff you have read about; correct?

23 A It's stuff I read about, studied extensively, and

24 had a lifetime of experience with.

25 Q You have also posted that most kids who present

26 as gender dysphoric are actually on the autism

27 spectrum; is that right?

28 A A large proportion of them are, yes.

29 Q And this --

30 A And that was confirmed by Dr. Hilary Cass in her

31 investigation at the Tavistock clinic.

32 Q And does this sort of feed your view that being

33 transgender is not really a thing? It's either

34 an illness on its own, or it's actually another

35 mental illness in disguise. Is that sort of your

36 view?

37 A It could be. People who are truly gender

38 dysphoric are a very small portion of very young

39 boys, and it's through social media and social

40 contagion that, all of a sudden now, a lot of

41 them are teenage girls who never showed any sign

42 of gender confusion up until their teenage years,

43 and whole clusters of them are jumping on this

44 bandwagon because it's cool and it's trendy to be

45 trans. I don't believe they are genuinely

46 transgender; I believe they are attention-seeking

47 and they are not dealing with other issues in

1414

Barry Neufeld (for Respondent)

Cross-exam by Cnsl L. Waddell

1 their life that need attention to.

2 Q You have drawn an analogy between addiction

3 problems and dysfunctional behaviour -- sorry --

4 addiction problems and what you call

5 dysfunctional behaviour and thinking patterns

6 that you think SOGI perpetuates; is that right?

7 A Right. I used to be quite the fan of John

8 Bradshaw, and I did workshops on family systems

9 therapy and how you can be addicted to a lot of

10 things, not just alcohol. Some women are

11 addicted to vacuuming the house.

12 Q And you have suggested, back to your comment

13 about addiction, that the -- what you call the

14 sexual addiction of gender confusion should be

15 treated as one treats antisocial behaviour

16 problems, addiction, eating disorders -- that

17 sort of thing; correct?

18 A Yes. They certainly should look around for other

19 cause of the distress and not just immediately

20 stop looking once they have labelled it gender

21 confusion.

22 Q Okay. And you have suggested as well that being

23 trans may result in higher suicide rates; is that

24 right?

25 A It's definitely been proven in a Swedish study.

26 Ten years after the transition, the -- the

27 suicide rate was much higher than for the normal

28 population.

29 Q And you have also likened gender transition

30 surgery to abortion or medically assisted dying;

31 is that right?

32 A Yes. Doctors are supposed to do no harm. Their

33 job is to heal, not to modify bodies, and not to

34 stop normal biological processes.

35 Q All right. And you have expressed or published

36 statements that most children with gender

37 dysphoria will simply grow out of it; is that

38 right?

39 A Yes. That's been proven many times.

40 Q And that trans people are deceivers?

41 CNLS J. KITCHEN: Hold on. Where are you drawing that

42 from? That doesn't sound familiar to me. I

43 mean, if you are referring to recent --

44 CNLS L. WADDELL: Is -- that's fine.

45 CNLS J. KITCHEN: -- [indiscernible - cross talk] --

46 just put up the post and then we can confirm, but

47 that sounds like something else.

1415

Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 CNSL L. WADDELL: Well, why don't we see if the
2 witness needs assistance or not before you jump
3 in?

4 CNSL J. KITCHEN: Well, I mean, I don't think it's a
5 fair question. I don't recognize it. I have
6 recognized most of the questions you have asked,
7 so I haven't jumped in because I don't, you
8 know -- I do agree with the idea of not undue
9 interfering with the cross. I think most of what
10 you have asked is pretty fair. That one I don't
11 think it's fair, you know, and you said yourself
12 let's just put it up. And I haven't spoken up
13 because I appreciate the quickness of it, but
14 that one doesn't sound like it's fair.

15 CNSL L. WADDELL: I --

16 THE CHAIR: All right. Well, I think it's fair for --
17 let Mr. Neufeld answer. I think he is capable of
18 saying if he doesn't recognize that or doesn't
19 understand it or wants to see the document up.
20 So it's fair for him to answer that. Go ahead,
21 Mr. Neufeld.

22 A I don't -- I don't recognize it -- that
23 statement. Was that document that briefly showed
24 up the one you are referring to?

25 CNSL L. WADDELL:

26 Q Yeah. If you don't remember it -- and this was
27 sort of the piece I was giving you at the outset
28 of you just say the word and I will put something
29 up on the screen for you. So we can put it up
30 now since you've said you don't remember it. So
31 we will go to Tab 21.

32 So this is your post, Mr. Neufeld, about
33 Theresa Tam, who you suggest is transgender, and
34 on that basis say that "she has been deceiving
35 people as to who she/he truly is"?

36 A Well, one of the challenges for a cross-dressing
37 transgender person is to pass -- to pass as a
38 female or to pass as a male, and that's living a
39 life of deception, I believe. I thought we
40 already discussed this post. I think Mr. Kitchen
41 brought it up in direct examination. I have
42 tried to avoid mentioning specific people, and
43 this is one time when I -- I didn't keep to my
44 policy of attacking an ideology and a learning
45 resource and staying away from attacking
46 individual people.

47 Q Fair. And I do remember that testimony of yours,

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 but you would agree with me that here you are
2 essentially saying that a particular individual,
3 because they are trans or you think they are
4 trans, is a deceiver or is deceiving?
5 A Well, they spend so much of their time and energy
6 buying makeup and doing bodily modifications to
7 try and pass as something that they are not, and
8 that's deceptive.
9 Q Okay. So you would agree with me that what you
10 are saying here is that trans people are
11 deceivers?
12 A They spend a lot of their energy doing that, yes.
13 Q And you have -- I probably don't need to take you
14 to the post because you have said a number of
15 times in the course of your cross that it's your
16 view that trans people are delusional and as well
17 that, again, to use your word, transgenderism is
18 simply false. You published a statement to that
19 effect?
20 A Yes.
21 Q And that -- you have also published a statement
22 to the effect that -- to say that one's sex and
23 gender might not align is a lie?
24 A Right.
25 Q And you published another statement with the
26 quote "live not by lies" referring to the trans
27 people?
28 A It's a quote from Aleksandr Solzhenitsyn.
29 Q Okay. But you're referring there to trans
30 people, are you not?
31 A Yes.
32 Q Okay. You have published your view and
33 statements that there are only two sexes?
34 A Yes.
35 Q Yeah. You've said that the idea that gender is
36 on a spectrum and that you can change it is a
37 lie; is that right?
38 A That's correct.
39 Q And you have said the suggestion that children
40 might consider rejecting their own gender
41 identity is gaslighting; is that correct?
42 A That's right.
43 Q Okay.
44 A Gaslighting is trying to convince somebody that
45 there is something wrong with them when there's
46 nothing wrong with them.
47 Q Indeed. And you have -- although I know at times

1417

Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 you have said that you are coming from a place
2 that isn't just about your religious values, but
3 you have cited your religion and the Bible and
4 God to support your views, haven't you?
5 A On occasion, yes. I have tried to restrict
6 myself to scientific and logical arguments, but
7 all science and logic is based on
8 presuppositions. My presupposition is that God
9 created male and female, and he directed them to
10 be fruitful and multiply. That's the foundation
11 of my science.
12 Q Okay. And you recall a couple of posts, one of
13 which in which you say gender transition surgery
14 is a horrible practice that results when
15 physicians ignore God. Do you remember that one?
16 A Yes.
17 Q And you've said there will be no transgender
18 persons in the kingdom of God?
19 A I said what?
20 Q There will be no transgender persons in the
21 kingdom of God?
22 A That's correct.
23 Q Okay. And why is that?
24 A Because I believe in the resurrection. I believe
25 that after death our bodies go into the ground
26 and decay, and eventually they will be
27 resurrected and they will be genderless. They
28 won't be transgender. The -- all the body parts
29 will be back, and we will be -- have heavenly
30 bodies. That's my view for the future. That's
31 my hope for the future.
32 Q All right. And you have published that gay
33 couples should not be able to adopt children; is
34 that right?
35 CNSL J. KITCHEN: Hold on. That one needs to come up.
36 A Different topic.
37 CNSL J. KITCHEN: Yeah. Well, that's not fair. I
38 don't think that's accurate. I think it's close,
39 but there is an important difference there that
40 you have made from what the original statement
41 was.
42 CNSL L. WADDELL:
43 Q Mr. Neufeld, would you like me to put the
44 statement up?
45 A Okay.
46 Q All right. So here you are talking about the
47 American College of Pediatricians and noting that

1418

Barry Neufeld (for Respondent)

Cross-exam by Cnsl L. Waddell

1 they do not support gay couples being approved
2 for adopting children, and then you say you don't
3 either?

4 A I think I very -- clarified that point in my
5 speech at Evergreen Hall. I believe with all my
6 heart and soul that every child deserves to know
7 their mother and their father. And if two people
8 of the same sex are raising a child, whether it's
9 one of their biological offspring or an adopted
10 child, I still believe that child has a right to
11 know both their mom and their dad, and they have
12 a right to a female -- adult female role model
13 and a male role model, and that doesn't matter
14 whether it's two gay dads or two lesbian moms.
15 And I think that's very necessary for child --
16 for children to thrive. I commend gay couples
17 that they are willing to adopt very special needs
18 children that nobody else wants to adopt and --
19 but I was adopted, and I am glad I was not
20 adopted into a gay home. I had a strong male
21 role model and a strong female role model, and I
22 feel blessed for that.

23 Q So I just note, though, you said you thought you
24 clarified this post in something that you said
25 earlier at the Evergreen Hall speech. This is
26 quite a bit after that speech. So you disagree
27 with me that what you are saying here is that you
28 don't think that gay couples should be able to
29 adopt children?

30 A I think there should be severe -- some very
31 severe restrictions on it, and I don't think a
32 gay couple is the best option for a child that
33 needs adoption.

34 Q Okay.

35 THE CHAIR: Ms. Waddell, sorry to interrupt. What tab
36 was that document?

37 CNSL L. WADDELL: That document is at Tab 40,
38 page 234.

39 THE CHAIR: Thank you.

40 CNSL L. WADDELL: All right.

41 Q And before your Evergreen Hall speech and your
42 original post, you said that those who support
43 same sex parents or families are "radical
44 cultural nihilists." Do you remember that?

45 A No, I don't remember that.

46 Q Okay. Do you want us to put it up on the screen
47 for you?

1419

Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 A Was that my original Facebook post?

2 Q Yes. Would you like us to put it on the screen
3 for you?

4 A Yes.

5 Q Okay. So it's Tab 1. Down at the bottom there,
6 this is where you say:

7

8 I belong in a country like Russia or
9 Paraguay which recently had the guts to
10 stand up to these radical cultural
11 nihilists.

12

13 So being people who support same sex families
14 having children?

15 A When I'm referring to radical cultural nihilists,
16 I am referring back to children being taught that
17 heterosexual marriage is no longer the norm. I
18 still believe that mom, dad, and child is the
19 gold standard of family life. And I oppose the
20 basis of SOGI, which is that cisgender,
21 heterosexual marriage is not the only -- not the
22 best way to raise children. I believe it is the
23 best way.

24 Q But in terms of using the term "radical cultural
25 nihilists," that is -- you're basically saying
26 radical cultural people without values; correct?

27 A Well, different values. They may have some
28 values. They may have compassion, but I believe
29 it's a toxic form of compassion.

30 Q Okay. And just in terms of making all of these
31 posts, you know, some of them are made before
32 your re-election; many are made after your
33 re-election. And they are really about
34 galvanizing people and getting them moving on
35 this issue that you feel is so important; is that
36 fair?

37 A That's fair. And last weekend it was quite
38 galvanized. I was at the Conservative --
39 provincial Conservative annual general meeting.
40 There were about 800 delegates, and the motion
41 was made -- the Conservative government of B.C.
42 will do away with all SOGI learning resources,
43 programs, and literature. And that was passed by
44 a resounding majority of all the delegates
45 present. So seven years ago I seemed to be the
46 only voice in the wilderness, but there is
47 certainly a lot of support for my position now.

1420

Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 Q And that type of action that you are just
2 referring to that you witnessed in terms of a
3 commitment to do something, that's what you are
4 trying to achieve in making all of those posts;
5 correct?
6 A Yes.
7 Q All right. You have said in at least one post
8 that it is time for people to push back; is that
9 right?
10 A Yes.
11 Q You have encouraged people to get out and vote
12 for a particular trustee to prevent the evil
13 ideology from taking hold of children's minds?
14 Remember that?
15 A I don't recall naming any specific trustee, but I
16 certainly encouraged people to vote for trustees
17 that supported the ideal of a traditional
18 heterosexual marriage.
19 Q And do you remember one of your speeches, I think
20 where you talk about a lecture at synagogue on
21 anti-Semitism, and you talk about hearing someone
22 speaking there and talk about when you are faced
23 with a great evil, you have three choices: one,
24 pretend you don't notice; two, dissociate
25 yourself; and, three, you say, "stand up in the
26 face of evil; fight the darkness of falsehood
27 with the light of truth. I guess this is where I
28 am at." Do you recall that?
29 A Yes. That was a speech by Ben Shapiro in
30 Vancouver.
31 Q And you are inviting other people to stand up
32 with you and take action; correct?
33 A I am.
34 Q And you have also said:
35
36 Here is my prophesy to the church. If you
37 don't get off your duffs and push back
38 against this insidious new teaching, the day
39 is coming -- it may be here already -- when
40 the government will apprehended your
41 children and put them in homes.
42
43 Do you recall that?
44 A Yeah. The day is already here.
45 Q All right. That sounds like a call to action to
46 me. Is that fair?
47 A Yes.

1421

Barry Neufeld (for Respondent)

Cross-exam by Cnsl L. Waddell

1 Q You have also posted if you have kids in public
2 school, pull them out; is that right?

3 A That's correct.

4 Q Okay. And then in an interview with RH Media,
5 you were specifically asked about whether you had
6 any suggestions for parents who were still in the
7 public school system to help them protect their
8 parental rights and to advocate for kids in the
9 school system, and you said that first that you
10 commend parents who have the time and energy to
11 homeschool and stead. Do you remember that?

12 A That's correct.

13 Q And you encouraged people to get involved in
14 their parent advisory committees?

15 A Yes.

16 Q And to run for the office of school trustee?

17 A Yes.

18 Q Okay. And that was all specifically so that
19 those people could support your views; correct?

20 A Yes.

21 Q And you suggested as well that people should do
22 as Jordan Peterson says and take up their damn
23 cross and stumble up the hill. Do you recall
24 that?

25 A Yes.

26 Q Okay. And in that same piece, you analogized how
27 you should approach and treat transgender people
28 with how you should treat an anorexic person, for
29 example. Do you recall that?

30 A Yes.

31 CNSL L. WADDELL: Madam Chair, I think I am getting --
32 I think I am getting to my last topic, it's a bit
33 early, but I wonder if we could take the
34 afternoon break so that I could check my notes
35 and avoid the need to have to do that at the very
36 end.

37 THE CHAIR: Yes. I think that makes good sense. We
38 will take a 15-minute break now. We will just go
39 cameras and mics off for this one, and I will ask
40 you all to come back in 15 minutes, please.

41 Thank you.

42 CNSL L. WADDELL: Thank you.

43

44 (WITNESS STOOD DOWN)

45

46 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS) [2:52:17]

47 (PROCEEDINGS RECONVENED) [3:07:32]

1422

Barry Neufeld (for Respondent)

Cross-exam by Cnsl L. Waddell

1
2 THE CHAIR: All right, everyone. Come on back.
3

4 BARRY NEUFELD, a witness,
5 recalled.
6

7 THE CHAIR: All right. Mr. Neufeld, are you ready to
8 continue?

9 A Yes.

10 THE CHAIR: Go ahead, Ms. Waddell, when you are ready.

11 CNSL L. WADDELL: Thank you, Madam Chair.
12

13 CROSS-EXAMINATION BY CNSL L. WADDELL, continuing:
14

15 Q Mr. Neufeld, just a couple of quick questions
16 that I missed from some of the topics that we
17 have covered already. One, you have published a
18 statement to the effect that it's child abuse to
19 support the idea of transitioning. Do you
20 remember that?

21 A Yes.

22 Q Okay. And also the statement that people who
23 encourage children to transition are child
24 abusers?

25 A Yes. Because it does more harm than good.

26 Q Okay. Do you also recall suggesting that
27 transitioning may cause cancer?

28 A Puberty blockers certainly do, and so do the
29 hormone therapies.

30 Q Okay. All right. Now, you sat through the
31 witness of our -- evidence of our individual
32 teacher witnesses in November; correct?

33 A That's correct.

34 Q All right. And you heard what they had to say
35 about how your publications impacted them and
36 caused them in various different ways to be
37 afraid. Do you recall that?

38 A Yeah. Sorry. I had a pop-up all of a sudden.
39 Go away.

40 Q Let me know when you have resolved it.

41 A There. I got rid of it. Okay.

42 Q Okay. All good. So I had just asked if --
43 sorry -- I said and those individual teacher
44 witnesses testified about the impact your
45 publications and statements had on their sense of
46 safety and belonging in the schools and in the
47 community. Do you recall that?

1423

Barry Neufeld (for Respondent)

Cross-exam by Cnsl L. Waddell

1 A I recall that. I didn't have a lot of sympathy
2 for them.

3 Q Okay. Well, that was the piece I was going to go
4 over with you next is I took it from your
5 testimony that you felt or were of the view that
6 their fear was unreasonable. Is that fair?

7 A That is certainly correct.

8 Q Okay. I think at one point when your counsel was
9 asking you about -- when you were asked not to be
10 a school liaison, you said, you know, you were
11 experiencing a lot more shame and ridicule than
12 any of the teachers you had heard from giving
13 testimony.

14 A I certainly did.

15 Q Do you remember that?

16 A I certainly do.

17 Q Okay. And then when Teacher A was testifying,
18 you said -- or about Teacher A's testimony, you
19 said you had a hard time feeling sorry for the
20 troubles she's endured. Do you remember that?

21 A The trouble she described certainly didn't sound
22 very onerous.

23 Q Okay. And also when you were asked about
24 Teacher A and their evidence, you said, "I don't
25 know if she is a vegetarian. If so, if she ate a
26 meat sandwich, that might upset her too." Do you
27 remember that?

28 A Vaguely, yes.

29 Q Okay. And you said, "Try as I might, I couldn't
30 feel sorry for her." Do you recall that?

31 A Yeah.

32 Q Okay. And then in reference to Teacher C, you
33 were asked about Teacher C's feeling of being
34 targeted as a result of being transgender, and
35 you said you're sorry if -- you used the
36 incorrect pronoun, but -- if they think they are
37 being targeted. "I wasn't referring to teachers.
38 This person is a grownup and should be able to
39 deal with their feelings." Do you recall that?

40 A Yes.

41 Q And then when talking about the teacher who lived
42 next to you and your counsel asked you about the
43 fact that this individual indicated that she was
44 upset and worried to open their front door, and
45 you said, "Oh, baloney." Do you recall that?

46 A Yes, I do.

47 Q Okay.

1424

Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 A I went to her home specifically to tell her that
2 I was expecting protesters at my house. She
3 twisted her testimony to try and get the Tribunal
4 to believe that I was sending protesters to her
5 house. I had no such intention. My only purpose
6 for going to her door was to assure her she had
7 nothing to fear from me and that she might see
8 some activity outside my home, not her home.

9 Q And you heard, though, from the various witnesses
10 about their experience of homophobia or
11 transphobia in schools, online, in meetings,
12 whether you agree with their characterization.
13 You heard that they had experiences beyond this
14 one teacher's example of you coming to her door;
15 correct?

16 A That's correct. And I didn't believe them
17 because two of the teachers that testified
18 against me are the school lead for the gender --
19 straight gender alliances, GSA clubs in their
20 school. They are quite proud of their identity
21 of being queer, and I don't think they were
22 receiving a lot of harassment or condemnation.
23 The only condemnation -- the one girl, she
24 couldn't get somebody to take over her display
25 table during lunch hour. She thought that was a
26 sign of very nasty discrimination. It didn't
27 sound very convincing to me.

28 Q I hear it didn't sound convincing to you, and I
29 take it the rest of their testimony didn't sound
30 convincing either. I take it you also don't see
31 why any of the teacher witnesses would feel
32 threatened or concerned because some of your
33 supporters identified their school, et cetera,
34 and effectively identified them during the course
35 of the hearing.

36 A Well, that was inadvertent. They -- the one
37 that -- whose school was identified -- was very
38 public about offering kids candy to come to her
39 GSA club, and that had been on social media
40 sometime before that teacher testified in my
41 Tribunal.

42 Q So you can't -- you don't understand that that
43 would feel -- that would leave someone in
44 violation of a publication ban, for example, in
45 that manner -- would possibly cause someone to
46 feel unsafe; is that right?

47 A That's right. Because when that was published,

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 the person who published it did not know that
2 that teacher was going to be a witness in my
3 trial, in my Tribunal.
4 Q All right. Now, you became aware of SOGI 123,
5 you said, in or about August of 2017?
6 A Yes.
7 Q Okay. And then you first posted about it on
8 October 23rd, 2017?
9 A Yes.
10 Q Okay. And then you attended and spoke at a
11 Culture Guard event on November 21st?
12 A Yes.
13 Q And then you posted again on December 18th, 2017?
14 A What was that post about?
15 Q Sure. Let's put it up. It's Tab 4 in the Book
16 of Publications and Documents. And this is --
17 this a long one, Mr. Neufeld, so if you need some
18 time to have a scroll through it so you can
19 review it in full, that's fine. So you begin by
20 talking about -- so, again, this is Tab 4. You
21 begin by talking about a book or two books that
22 you have recently downloaded, and then down
23 toward the bottom of the first page there, you
24 start talking about your values as a Christian
25 and two different approaches that you see to
26 dealing with transgender persons?
27 A Yes.
28 Q On the second page, you continue to talk about
29 the different approaches, the pastoral approach
30 versus what you call the prophetic approach, and
31 here you see yourself as someone who embodies the
32 prophetic approach; correct?
33 A Yes.
34 Q Okay. And, in fact, in another one of your
35 posts -- I don't think it's this one. No, it is
36 this one. You later suggest that you yourself
37 have been thrown into the role of a Prophet;
38 correct?
39 A Yes.
40 Q Okay.
41 A No choosing it.
42 Q Okay. All right. So -- and do you remember that
43 Teacher A -- this was one of the -- one of the
44 publications that Teacher A remembered seeing?
45 A I don't remember all of Teacher A's testimony,
46 but --
47 Q Okay.

1426

Submissions by Cnsl L. Waddell

1 A -- if you say so.

2 Q Well -- yeah. So Teacher A indicated having seen
3 this and -- and then said that shortly after
4 seeing this particular post they saw a flyer in
5 the community about transgender people. Do you
6 remember that?

7 A I think so, yes.

8 Q Okay. And then when Teacher A was testifying, we
9 put up Tab 2 of the other book, so this is Tab 2
10 of the Complainant's Book of Documents re Various
11 Documents, and this was the flyer. It didn't get
12 entered into evidence, but I am going to get
13 Alanna to put it up.

14 Next page. All right. And Teacher B -- or,
15 sorry, Teacher A said that they saw it in a
16 friend's yard. And, Mr. Neufeld, have you ever
17 seen this flyer before?

18 CNSL J. KITCHEN: Objection.

19 THE CHAIR: All right. Just a moment. Shall we
20 exclude the witness, Ms. Waddell?

21 CNSL L. WADDELL: Sure.

22 THE CHAIR: Mr. Neufeld, I am just going to move you
23 into the breakout room, and we will resolve the
24 objection.

25

26 (WITNESS STOOD DOWN)

27

28 THE CHAIR: All right. Go ahead, Mr. Kitchen, with
29 your objection.

30

31 SUBMISSIONS BY CNSL J. KITCHEN:

32

33 CNSL J. KITCHEN: I just want to understand where my
34 friend -- if she is trying to get this in now
35 through Mr. Neufeld because she failed to get it
36 in before -- I mean, obviously it was excluded
37 once; so I had to object to any question about it
38 because I didn't know, you know, where we were
39 going and why we were questioning about a
40 document that has already been ruled
41 inadmissible.

42 THE CHAIR: Go ahead, Ms. Waddell.

43 CNSL J. KITCHEN: And I don't remember exactly what
44 that ruling was. I just recognize the document
45 as one that I objected to and didn't go in, and I
46 can't remember why or what was said about it or
47 what have you, but that's -- so maybe we can have

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 a look at that if need be, but, yeah, I need to
2 understand what's happening now and why this
3 might be okay.
4

5 SUBMISSIONS BY CNSL L. WADDELL:
6

7 CNSL L. WADDELL: Sure. So your argument,
8 Mr. Kitchen, when this -- when we put this to
9 Teacher A, you said, Okay. Teacher A didn't
10 personally receive it on their lawn, and there is
11 no evidence that it had anything to do with
12 Barry. And we, of course, had no way through
13 Teacher A to connect with Mr. Neufeld, so that
14 was sort of the basis and, you know, the fact
15 that it could be prejudicial. So that was sort
16 of the basis for your objection. And the
17 Tribunal said, Okay. We are not -- so we had the
18 timing when the witness saw it, and I believe the
19 panel's view was that it wasn't persuaded to
20 admit the document based on what we had then.
21 And I would like to explore with Mr. Neufeld -- I
22 think I can make a connection that will be
23 sufficient to get this document in on the record,
24 and I am entitled to explore that with him in
25 cross-examination.

26 CNSL J. KITCHEN: So basically you just want to see if
27 he recognizes it so you can get him to identify
28 it to get it put in? Is that fair?

29 CNSL L. WADDELL: Yes.

30 CNSL J. KITCHEN: All right. That's fine. It is what
31 it is.

32 THE CHAIR: Okay. Thank you. I will let Mr. Neufeld
33 back into the room now.
34

35 BARRY NEUFELD, a witness
36 recalled.
37

38 THE CHAIR: Thank you, Mr. Neufeld. Are you there?

39 A I am here.

40 THE CHAIR: Okay. Just waiting -- there you are. All
41 right. Go ahead, Ms. Waddell, with your
42 question.
43

44 CROSS-EXAMINATION BY CNSL L. WADDELL, continuing:
45

46 Q Okay. Mr. Neufeld, have you seen this -- oh, we
47 will put it back up. Hang on. All right. Have

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Barry Neufeld (for Respondent)
Submissions by Cnsl L. Waddell

1 you seen this document before?

2 A No. I have never seen the original document. I
3 saw a report about it, and I certainly don't
4 approve of it. It's rather harsh, and I had
5 nothing do with it. That's for sure.

6 Q Okay. And when you say you saw a report of it,
7 are you talking about the report in the
8 Chilliwack Progress or some other paper that
9 these had been delivered in some --

10 A Yes.

11 Q -- neighbourhoods?

12 A Yes. That was in the Chilliwack Progress, I
13 believe.

14 Q Okay. Are you, Mr. Neufeld, a member of the KKK?

15 A No.

16 Q Okay. Have you ever attended a meeting of the
17 KKK?

18 CNSL J. KITCHEN: Objection. That's enough. That
19 question itself is probably borderline abusive,
20 but so be it. He has given his answer to it. I
21 decided to let that one go, but no more. That's
22 abusive.

23 THE CHAIR: All right. Ms. Waddell, shall I exclude
24 the witness again while we resolve this
25 objection, or are you moving on? Yes, exclude
26 the witness?

27 CNSL L. WADDELL: No. Let's exclude the witness if we
28 could.

29 THE CHAIR: Okay. Mr. Barry Neufeld, I am going to
30 put you back in the breakout room while we
31 resolve this objection. Thank you.

32
33 (WITNESS STOOD DOWN)

34
35 THE CHAIR: Okay. Mr. Kitchen, go ahead with your
36 objection.

37
38 SUBMISSIONS BY CNSL J. KITCHEN:

39
40 CNSL J. KITCHEN: It's irrelevant, first of all, which
41 is fine. My friend has asked a few irrelevant
42 questions. That's fair. It's cross-examination.
43 That's how it goes. But when we get into the
44 abusive questions and it's irrelevant, we shut it
45 down. That's the right way to do it. It was
46 abusive to ask, first of all, since he had
47 already said he had nothing to do with the

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Submissions by Cnsl J. Kitchen

Submissions by Cnsl L. Waddell

1 document and he disapproved of it. It was
2 already borderline abusive to ask him if he was
3 part of the KKK. That's absurd and insulting
4 just to ask the question and, you know, just
5 designed to have rhetoric and emotion and all
6 that raised, but there is no legitimacy because
7 obviously he is not. And even if -- even if he
8 was, which obviously he is not. Who the hell is
9 anymore? But even if he was, it's got nothing to
10 do with this. And so here we are again. Now
11 she's asking if he has attended a KKK meeting. I
12 don't even know if those are legal. That's
13 absurd. That's ridiculous. It's abusive. It's
14 an abuse of the process. It's an abuse of the
15 witness. It's designed to try to provoke the
16 witness or insult the witness or make the witness
17 feel awful. It's got absolutely nothing to do
18 with this case. This flyer has nothing to do
19 with this case. It's a completely inappropriate
20 question.

21 THE CHAIR: Thank you. Ms. Waddell?

22
23 SUBMISSIONS BY CNSL L. WADDELL:

24
25 CNSL L. WADDELL: Okay. So it's our position that
26 this flyer does, in fact, have a tie to
27 Mr. Neufeld, though he may not have drafted it.
28 On December 18th he made a lengthy post quoting
29 from the Old Testament, a very long one, and just
30 three days later these were thrown onto lawns in
31 Chilliwack. And in Mr. Neufeld's previous
32 counsel's file is a document that we have just
33 e-mailed both to the Tribunal and to you,
34 Mr. Kitchen, in which his counsel -- and these
35 are his -- one of his counsel out here in B.C.
36 and one of his counsel back east are talking
37 about the various things that he has done since
38 the complaint was -- during the window of time
39 the complaint covers, and they note that "he did
40 not speak at Klu Klux." And it is our view that
41 clearly indicates he was intended to or invited
42 to speak at a Klu Klux Klan event of some kind
43 and that, we say, we are entitled to explore, and
44 it is a basis to connect him to this flyer, which
45 came out very shortly after one of his longest
46 and most religious posts.

47 So I will -- I do intend to explore this

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Submissions by Cnsl L. Waddell

Reply submissions by Cnsl J. Kitchen

1 with him. It's relevant whether he is -- I will
2 tell you what my next line of questioning is
3 going to be to save the objections. I am going
4 to ask him if he has ever attended a meeting, if
5 he has ever been invited to attend a meeting, and
6 then I will put this document to him, and ask him
7 if -- you know, what they are talking about,
8 essentially. So that's where I am going, and I
9 think it is completely relevant to the question
10 of why these witnesses which Mr. Kitchen and his
11 client have at length sought to minimize,
12 belittle, all but make fun of their fear as
13 though it were not a thing, and have -- helps to
14 appreciate the level of fear in Chilliwack at the
15 time as a result of things like this which we say
16 are connected to Mr. Neufeld. So that's my
17 submission on the relevance and a foreshadowing
18 of where I intend to go.

19 THE CHAIR: Okay. Mr. Kitchen?

20
21 REPLY SUBMISSIONS BY CNSL J. KITCHEN:

22
23 CNSL J. KITCHEN: Okay. Well, I think that's a
24 fantastical inference. "He did not speak at Klu
25 Klux." Well, I don't know what that heck that's
26 supposed to mean or what it's in reference to,
27 but I think it is an utterly unsupportable
28 inference from that bizarre statement all by
29 itself, and I don't see any context around it
30 relevant to that. I just got a long list of
31 one-liners. I don't think the inference is fair
32 at all. I think it's fantasy. It's fantastical.
33 He's already said, and I think in a way that's
34 pretty obvious to everybody listening that he's
35 candid and forthright. He has been surprised by
36 this document. He gave a very candid and
37 forthright answer that he doesn't know what it
38 is; he doesn't have anything to do with it; he
39 doesn't agree with it; it's harsh, et cetera.
40 That's it. Like, it's asked and answered. He
41 has already answered that he has got nothing to
42 do with it. And so now, on this fantastical
43 inference, we are going to start asking abusive
44 prejudicial questions about whether or not --
45 it's the equivalent of asking, you know, when did
46 you beat your wife or, you know, when did you --
47 you know, when did you tell a Black person they

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Reply submissions by Cnsl J. Kitchen

1 are not worthy to live -- these type of questions
2 that suggest, without any foundation whatsoever,
3 that he is some sort of a horrible person that
4 has done some sort of horrible things. Those
5 questions are abusive. You know, counsel do
6 those questions -- we all know why -- and then,
7 you know, they are told to move on because they
8 are not appropriate questions. That's exactly it
9 here. This document with this random statement
10 without any context does not provide a reasonable
11 evidentiary basis that he may have attended a KKK
12 event. That's ridiculous.

13 Now, my friend says that maybe there's a
14 connection because of the Deuteronomy quote,
15 which I didn't hear her say that Mr. Neufeld
16 quoted the same book and verse, and maybe that's
17 what she is saying. So if she's not saying that,
18 then I don't know what the connection is. So
19 what if he quotes Deuteronomy and somebody else
20 quotes something else different than Deuteronomy?
21 It's absolutely no connection. If you count both
22 Jews and Christians, we have, what, maybe 2.5,
23 3 billion people that read Deuteronomy that, you
24 know, are aware of some of the things in there
25 and might quote it or follow it or whatever --
26 paraphrase it. If she saying that it's the same
27 portions, well, so what? That just sounds like
28 religious stereotyping to me. That's like saying
29 because one Black man did this, another Black man
30 did that. Or one Muslim did this, another Muslim
31 did that. Right? That's not permissible. We
32 don't -- we don't paint people with a broad brush
33 and, say, Well, you know, one Jew did that, so
34 another Jew did that because they quoted the same
35 verses. That's just religious stereotyping,
36 religious discrimination, if you will. So I
37 don't think that helps my friend at all. I don't
38 think that's appropriate.

39 So I don't think -- I don't think she gets
40 there. She put the document to him. She was
41 given a clear answer. He has got nothing to do
42 with it. He asked him an abusive question about
43 whether or not he is a member of the KKK. He
44 said no. Now we are done. There is no
45 relevance. It's prejudicial. It's abusive. And
46 we need to move on.

47 THE CHAIR: All right. Thank you. We will need a

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

couple of minutes to confer about this. We are
just going to turn our cameras and mics off here.

(PROCEEDINGS ADJOURNED) [3:35:17]

(PROCEEDINGS RECONVENED) [3:43:02]

THE CHAIR: Thanks for your patience. Obviously this is a very delicate issue, and, Mr. Kitchen, we appreciate the sensitivity. And when we earlier discussed this document, we acknowledged the potential prejudicial effect of being associated with an organization as vile as the KKK. At the same time now, with the benefit of -- or now with this communication or notes of Mr. Neufeld's lawyer, we are not -- we don't agree that this is merely a fishing expedition. There is some basis in a document to suggest that Mr. Neufeld's posts may have been getting the attention and support of the KKK. And if that's -- if the complainants can prove that, that may be relevant to the issues of whether Mr. Neufeld's publications had a discriminatory effect on members of the class or exposed the class to detestation and vilification in their community, including, for example, through the flyer.

So with recognizing the sensitivity and the potential prejudice of being associated with this, we think it's -- we are -- we will allow Ms. Waddell to ask her questions about Mr. Neufeld's communications, if any, and invitation, if any, to speak at the Klu Klux Klan. And, of course, if he says there was none, then we move on. But I think they have established a basis for these questions and the potential relevance and probative value of the answers that has shifted the balance in terms of weighing it against the prejudicial effect. We will allow the questions. Okay? So we are going to get Mr. Neufeld back in now.

BARRY NEUFELD, a witness
recalled.

THE CHAIR: Thank you for your patience, Mr. Neufeld.
Are you there?

A Yes.

THE CHAIR: Are you ready to continue?

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Barry Neufeld (for Respondent)

Cross-exam by Cnsl L. Waddell

1 A Yes.

2 THE CHAIR: All right. Go ahead, Ms. Waddell. Oh, we
3 can't hear you.

4

5 CROSS-EXAMINATION BY CNSL L. WADDELL, continuing:

6

7 CNSL L. WADDELL: Sorry. I will try that unmuted now.

8 Q Mr. Neufeld, before we took the break, I asked
9 whether you had ever attend a KKK meeting, event,
10 or gathering.

11 A I've never heard of one, and I wouldn't go to it
12 if I knew about it.

13 Q Have you ever been invited to one or asked to
14 speak at an event?

15 A I don't think it even exists in Canada.

16 Q Okay. All right. I am going to put a document
17 up on your screen here. This is an e-mail from
18 your previous counsel's file. So this is an
19 e-mail in January of 2019 from one of your
20 counsel at Guild Yule to herself noting a
21 telephone conversation with P. Jaffe, which I
22 understand to have been your lawyer in Toronto.
23 And if you scroll down a little bit -- so I see
24 there at the top, it starts with:

25

26 We don't want them blabbing about the same
27 subject matter we are going to the Tribunal
28 on. Their reputation risky.

29

30 And then it says:

31

32 On the other hand, he did go to the event in
33 November of 2017. We are dealing with that
34 in the complaint. We have read the speech.

35

36 That sounds to me like the Culture Guard event
37 that you spoke at in November of 2017. Do you
38 think the same thing?

39 A I think that was the only speech I made that
40 month.

41 Q Okay.

42

43 It was pretty good. He had it reviewed by a
44 few people before he went to speak. It was
45 toned down and hacked down. Reinforced
46 ideology. Not against anybody.

47

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Barry Neufeld (for Respondent)
 Cross-exam by Cnsl L. Waddell

1 Then there is a bit about "in the civil case,"
 2 and then if you go to --

3
 4 The BCTF is not going to stop adding
 5 allegation [sic] --

6
 7 Which I think is allegations.

8
 9 Have to particularize while he keeps --
 10 don't speak at an event by homophobic. He
 11 has to find support. He did not speak at
 12 Klu Klux.

13
 14 And to me, Mr. Neufeld, it sounds, like, your
 15 counsel is sharing with your other counsel that
 16 you did not speak at a Klu Klux Klan event of
 17 some kind. Do you know what that is in reference
 18 to?

19 A I have no idea. I don't believe there is any Klu
 20 Klux Klan chapter anywhere in British Columbia.

21 Q Okay. So you think your counsel are just making
 22 this up?

23 A Well, I had been accused because of that phoney
 24 article in the newspaper. I don't believe that
 25 brochure was ever laid out in Chilliwack. I
 26 think that was a phoney news report generated by
 27 a very hostile news reporter that was determined
 28 to ruin my reputation and to imply that I had
 29 something to do with that, and you have fallen
 30 right into his trap.

31 Q But this doesn't say "Did not write flyer." This
 32 says "Did not speak at Klu Klux." You will agree
 33 with me that sounds like a speaking engagement;
 34 correct?

35 A I was never engaged to speak at any Klu Klux.
 36 There is no Klu Klux Klan in -- anywhere near
 37 Chilliwack.

38 Q How can you be so sure about that if you are not
 39 a member and you don't attend events and you
 40 don't know anything about them?

41 A I have never heard of it. There has never been a
 42 complaint.

43 CNSL J. KITCHEN: I think we have reached the end of
 44 the line on this. This is abusive. He has
 45 denied it. He has rejected it. My friend has no
 46 basis -- okay? -- other than some random comment
 47 in here that he has now said he doesn't know what

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Barry Neufeld (for Respondent)
Cross-exam by Cnsl L. Waddell

1 it is. It's abusive. My witness is not going to
2 continue to go through with this.

3 THE CHAIR: Ms. Waddell?

4 CNSL L. WADDELL: I have no further -- yeah. I have
5 no further questions; so I am happy to leave it
6 there.

7 THE CHAIR: Thank you.

8 CNSL L. WADDELL: All right.

9 Q Just returning for a moment -- if we can put that
10 e-mail back up one more time. Just going down a
11 little bit further, talking about document
12 production, getting back to Culture Guard, and
13 then a few lines down, "Culture Guard will hurt
14 our case." What are they talking -- do you know
15 what they are talking about there with "Culture
16 Guard will hurt our case"?

17 A I don't get this e-mail. It was from Shauna
18 Gersbach to Shauna Gersbach?

19 Q Yeah. And the subject line, just to help you
20 out, says "TSW P. Jaffe." "TSW" is usually
21 lawyer shorthand for telephone call with.

22 A Okay. So she had a phone call. And she made
23 notes.

24 Q That's what I -- you know, we don't have her
25 here, but that's how I take it. So do you have
26 any idea of what her note "Culture Guard will
27 hurt our case" means there?

28 A I have no idea.

29 CNSL L. WADDELL: Okay. All right. Those are my
30 questions of this witness in cross.

31 THE CHAIR: Thank you. Mr. Kitchen, do you need a
32 short break to consider whether you have any
33 questions in redirect?

34 CNSL J. KITCHEN: Yes, please. Just five minutes. I
35 will -- yeah, five minutes. I don't need anymore
36 than that.

37 THE CHAIR: All right. We will just turn our cameras
38 and mics -- and ask everyone to come back in
39 five. Thank you.

40

41 (WITNESS STOOD DOWN)

42

43 (PROCEEDINGS ADJOURNED) [3:52:29]

44 (PROCEEDINGS RECONVENED) [3:57:37]

45

46

47

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Barry Neufeld (for Respondent)
Submissions by Cnsl J. Kitchen
Submissions by Cnsl L. Waddell

1 BARRY NEUFELD, a witness,
2 recalled.

3
4 THE CHAIR: That was my timer. Right on time.

5 CNSL J. KITCHEN: Wow. Look at that.

6 CNSL L. WADDELL: Madam Chair, while we are just
7 waiting for the witness to come back --

8 CNSL J. KITCHEN: He's back.

9 CNSL L. WADDELL: -- I am going to ask -- I just
10 realized I overlooked it to mark that e-mail as
11 an exhibit. I appreciate that because we do not
12 have the author here my friend may have arguments
13 he wishes to make about its weight, but per the
14 waiver decision, in our view, it should go in,
15 and we can argue about any weight to ascribe to
16 it given that we have the author here in our
17 closing.

18 THE CHAIR: Mr. Kitchen, any objection to that?

19
20 SUBMISSIONS BY CNSL J. KITCHEN:

21
22 CNSL J. KITCHEN: That it's not relevant. We got, I
23 think, just a couple questions about it there,
24 the ones I objected to and then the Culture Guard
25 one, and his responses both were I don't know
26 what this is talking about. So there is no
27 relevance to the document. I mean, if you want
28 to decide that means it's still relevant and you
29 put no weight on it, so be it. But I don't -- I
30 don't think it passes the relevance threshold for
31 admissibility. Obviously, not weight, but even
32 admissibility, there has got to be some
33 relevance. So if his answers had've established
34 that relevance, it would go in as admissible, but
35 he didn't. He basically said, I don't know what
36 this is about. It's not admissible.

37 THE CHAIR: Ms. Waddell?

38
39 SUBMISSIONS BY CNSL L. WADDELL:

40
41 CNSL L. WADDELL: It's not necessary, in our view,
42 that Mr. Neufeld know exactly what this was
43 about. This is evidence of communication between
44 his counsel at the time. It's highly relevant,
45 we say, to what was going on, and at least what
46 his counsel understood he was doing, both with
47 respect to the Culture Guard speech and some

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Barry Neufeld (for Respondent)
Submissions by Cnsl J. Kitchen
Re-exam by Cnsl J. Kitchen

1 reference to speaking at a Klu Klux Klan event.
2 So in our submission, it's highly relevant.
3 Weight is certainly going to be a matter for
4 argument, given that Mr. Neufeld couldn't shed
5 light on the contents and we don't have the
6 author here, but the threshold before the
7 Tribunal is sufficiently low, we say, that this
8 is the sort of thing that should go in and which
9 we can make argument about.

10 CNSL J. KITCHEN: Chair, if I may, I won't make any
11 submissions, but I have to note that it's also
12 hearsay because it's one lawyer to another. So
13 it's a phone call. Like, anything that Paul
14 Jaffe said that she says he said -- you know,
15 potentially double hearsay, but it's at least
16 single hearsay. So that's another reason to keep
17 it out.

18 THE CHAIR: Thank you. Of course, as we have gone
19 over, the Tribunal has discretion to admit
20 evidence that's necessary and appropriate, but in
21 this case, in our view, this e-mail is not
22 something the Tribunal could reliably put any
23 weight on, given that neither -- that
24 Ms. Gersbach hasn't testified and Paul Jaffe, to
25 the extent he could talk about any of the
26 contents, hasn't testified. And Mr. Neufeld's
27 testimony is not helpful in terms of what we
28 might make of this. So given that it's not clear
29 to us the relevance of this or that we could
30 safely put any weight on it, our decision is not
31 to admit it.

32 CNSL L. WADDELL: Okay. And last thing, James, we
33 will have you shortly a link to all -- there is
34 six affidavits of Ms. Lye. You will get them
35 shortly to look at.

36 CNSL J. KITCHEN: Thank you.

37 THE CHAIR: Yes. We will have to do some cleaning up
38 of the record at the end. So we will come back
39 to that at the end, but go ahead, Mr. Kitchen.

40 CNSL J. KITCHEN: I just got the one question in
41 re-direct.

42
43 RE-EXAMINATION BY CNSL J. KITCHEN:

44
45 Q Barry, Ms. Waddell asked you some questions about
46 action. I forget her exact wording -- well,
47 other than the word "action" -- but she asked you

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Barry Neufeld (for Respondent)

Re-exam by Cnsl J. Kitchen

1 probably about three or four, maybe more, but at
2 least three or four questions about you looking
3 to other people to take action. Voting was
4 mentioned. I think maybe more broadly political
5 action was mentioned. Do you recall those
6 questions?

7 A Yes.

8 Q Okay. We never got around really to what that
9 was all about, but that's what I want to ask you.
10 You agreed that you -- with my friend when she
11 asked you about -- you know, you wanted people to
12 take action, vote for a certain trustee or
13 whatever -- action like that. Was the action
14 that you wanted people to take, was it to oppose
15 transgender beliefs, or was it to oppose
16 transgender people being able to participate in
17 society?

18 A Initially when I heard about SOGI 123, I realized
19 it was created by a group of unaccountable
20 activists, and there had been no input by medical
21 professionals, parent representatives, the wider
22 public, and I naively thought that it could be
23 tweaked to the point where it would be acceptable
24 to everybody. But the more I questioned the
25 wisdom of it, the louder the hatred got and the
26 more polarized the population got. And I
27 realized that this would not go away unless there
28 was a movement, a democratic movement, to vote
29 out this and to rewrite it from scratch. The
30 idea that -- of affirmation therapy to me was
31 anathema, and -- but, on the other hand, I have
32 nothing but compassion for people who, or
33 children who, are uncomfortable in their own
34 bodies. Adolescence is difficult for everybody,
35 and we all went through a rough time. But to add
36 this extra burden of wondering whether you should
37 transition and start cutting body parts off until
38 you are happy, that had to be removed from the
39 formula. But the more I opposed it, the more
40 polarized society got, the more polarized
41 everybody got, and so I got a bit aggressive with
42 calling for action to put a stop to this.

43 When I was first elected to the school board
44 in Chilliwack, British Columbia, I would say that
45 the board was kind of split between progressives
46 and conservatives, but we really believe in
47 consensus. If we had a contentious issue, we

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1 would rewrite the motion or rewrite the policy
2 until everybody could live with it. That has not
3 happened in this SOGI debacle. It's divided
4 society into warring camps, and the reason is is
5 because it's been connected to human rights
6 argument, and that makes people afraid to speak
7 out and -- and ask for a better solution to how
8 to solve this problem of dealing with gender
9 confused and children.

10 CNSL J. KITCHEN: Thank you. That's it for me on
11 re-direct.

12 THE CHAIR: Thank you. Mr. Neufeld, those are all of
13 the questions we have for you. Thank you very
14 much for your time and energy testifying at the
15 Tribunal.

16
17 (WITNESS EXCUSED)
18

19 THE CHAIR: I believe that concludes all of the
20 evidence from the parties in this complaint, or
21 at least -- sorry -- the testimony of the
22 parties' witnesses in the complaint. We do need
23 a clean up a few things on the documentary side
24 of it and confirm documents that have been
25 entered -- or rather not yet entered and we need
26 to enter it. But before we -- before I turn to
27 that, I know we are going to talk about the
28 Belinda Lye affidavits, and I believe you just
29 sent them over to Mr. Kitchen. Mr. Kitchen, do
30 you need time to just take a look at those and
31 see whether you have any objections?

32 CNSL J. KITCHEN: Yeah. I don't have anything yet.
33 You sent it to me by e-mail, hey, Ms. Waddell?

34 CNSL L. WADDELL: I suspect that she -- because there
35 is six of them, I suspect she is having to
36 actually make a link. So let me just -- I will
37 just go check on the progress of that. Just a
38 second.

39 CNSL J. KITCHEN: Okay.

40 CNSL L. WADDELL: She is just about done, and she will
41 have it out to everyone shortly.

42 THE CHAIR: All right. Maybe in the meantime we can
43 talk about the complainant's book of documents
44 and --

45 CNSL L. WADDELL: Which one? Publications?

46 THE CHAIR: Publications. Yeah. I am looking at
47 counsel's letter of February 7th, 2025, where you

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1 have said, with respect to exhibits in this book
2 of documents that remain disputed, only Tabs 29,
3 30, 43, and 44 remain disputed, and you expected
4 that 30, 43, and 44 would be addressed through
5 cross. So, Ms. Waddell, since these are your
6 documents, which of those remaining disputed tabs
7 are you seeking to have entered now?
8 CNSL L. WADDELL: Sorry. We are just reviewing our
9 notes to see what we have got and don't have.
10 Okay. So I think -- and Mr. Kitchen can advise
11 if he has different notes, but we have -- and I
12 didn't specifically take him to the documents,
13 but I put the content of the document to him.
14 Tab 44 and Tab 30, in our view, should go in by
15 virtue of his cross, but 29 and 43 were neither
16 put to him in cross nor the extra bit of direct
17 that Mr. Kitchen did on the 24th. Does that fit
18 with your records, Mr. Kitchen?
19 CNSL J. KITCHEN: So no 29 and 43, but you want 30 and
20 44 in; is that right?
21 CNSL L. WADDELL: That's right. So that was some of
22 the stuff that I put to him today.
23 CNSL J. KITCHEN: Well, my trouble with that is I
24 don't know what part of Tab 30 you put to him
25 because we never went to there. That's this
26 transcript of --
27 CNSL L. WADDELL: Well -- sorry --
28 CNSL J. KITCHEN: -- Neufeld, April 10th rally in
29 front of art galleries. Do I have that? No.
30 That's 31. Sorry. No.
31 CNSL L. WADDELL: Yeah. Sorry. Just to help you out,
32 Tab 30, it's just a single line, "If you have
33 kids in public school, pull them out," which I
34 put to him.
35 CNSL J. KITCHEN: It's the one post there with the
36 picture. All right. Yeah.
37 CNSL L. WADDELL: Yeah. It's pretty small.
38 CNSL J. KITCHEN: That's fine. I will -- okay. Yeah.
39 I will -- well, I suppose the trouble is that
40 I -- you established that he said it, which I
41 think was kind of already established. I
42 don't -- I guess, yeah, I will just argue weight.
43 That's fine. I will consent to that one.
44 THE CHAIR: Thank you. And then we are looking for
45 Tab 44.
46 CNSL J. KITCHEN: Okay. So now this one is...
47 CNSL L. WADDELL: This one is long, and let me find

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1 you the piece that I put to him.
2 CNSL J. KITCHEN: Thank you.
3 THE CHAIR: And I just note that Mr. Neufeld's video
4 is off. I trust we are okay to continue, or
5 should we be trying to wait for him?
6 CNSL J. KITCHEN: No. That's fine.
7 THE CHAIR: There you are. I just don't want to lose
8 you inadvertently, Mr. Neufeld.
9 CNSL J. KITCHEN: Ms. Waddell, you are just looking
10 for the portion you asked him about?
11 THE CHAIR: Yeah. There's two portions, and I am
12 going to -- because I think you have got
13 different page numbers, what I am going to try to
14 do is give you the timestamps.
15 CNSL J. KITCHEN: Okay. The problem is that, you
16 know, presumably you accurately quoted him, and
17 then you asked him about that, and he probably
18 said he agreed because I think he did to pretty
19 much every question, but we have the problem of
20 the fact that this is an American interview. So
21 I guess I have to hear from you as to why you
22 think it's admissible and, you know,
23 notwithstanding that, then I can respond to it
24 because that's the problem here. How is an
25 American interview admissible evidence?
26 CNSL L. WADDELL: Okay. So, James, the two pieces
27 that I put to him -- and then I will deal with
28 your comment about the U.S. publication. One is
29 at 16:36 to 17:04, and then the other comes
30 from --
31 CNSL J. KITCHEN: Hold on. 16:36. Yeah. Okay. Got
32 that.
33 CNSL L. WADDELL: Yeah. And then the other comes from
34 30:13 to 30 -- yeah. Yeah. It's below 30:13 and
35 30:31. Right below it says "Barry Neufeld"
36 there, and then there's "Books pushing, again,
37 transgender lifestyle, showing up in school
38 libraries," et cetera. So those are the two
39 pieces. And what I would just suggest on the --
40 certainly I think there's arguments to make on
41 your end that a U.S. publication may not fit.
42 You know, something he said to a U.S. media
43 outlet online may or may not be too far afield,
44 but I think that's a matter for argument rather
45 than a question of admissibility.
46 CNSL J. KITCHEN: No. That's just it. We have -- you
47 have to argue why it's admissible. It's

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1 presumptively inadmissible. It's published in a
2 different country. I mean, I am prepared to make
3 submissions. I haven't considered the issue. I
4 haven't seen anything from you, of course, yet.
5 So I don't know if this is the time and place to
6 do it, but it's certainly my position that it's
7 just not admissible presumptively because it's
8 published in a different country over which the
9 Tribunal obviously doesn't have jurisdiction;
10 so...

11 THE CHAIR: Just to jump in here, I am hoping one of
12 you can refresh my memory about the temporal
13 scope of allegations. And I apologize. I just
14 can't seem to put my finger on it. I know there
15 is a temporal scope and when -- I think it was
16 when Mr. Neufeld was not re-elected. Can you
17 remind me of when that was?

18 CNSL L. WADDELL: Yeah. I believe it cuts -- the
19 scope ends in November of 2022 -- November or
20 December of 2022, so shortly after -- not long
21 after this particular interview. This interview
22 would have been the month before the elections.

23 THE CHAIR: I see. Okay. And so, Mr. Kitchen, your
24 objection is that it's not clear whether an
25 interview given to an American media outlet may
26 fall within the Tribunal's jurisdiction under
27 Section 7? Is that the objection?

28 CNSL J. KITCHEN: Well, I think it's fairly clear that
29 it's not, and I guess I stand to be corrected on
30 that if there's case law that suggests otherwise,
31 but that's, without having seen that, certainly
32 my position. Presumptively, there's just no way
33 the Tribunal could have jurisdiction over
34 something that's published in the U.S. You know,
35 that's not to say -- I don't hear from my friend
36 that is some sort of the suggestion that it was
37 re-broadcast. I mean, if CBC is going to
38 broadcast an American interview, then okay.
39 Then, you know -- maybe then we may have some
40 problems, but it doesn't sound like that's the
41 case here. This is just simply an American
42 program published to American listeners, not
43 republished in Canada. There's just -- there's
44 no jurisdiction of the Tribunal over it. I don't
45 think that's -- I don't think that's contentious.
46 I know we did some jurisdiction -- I wasn't a
47 part of that -- but that wasn't to do with an

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Submissions by Cnsl L. Waddell

1 American issue. I think that was to do with
2 maybe a broader Canadian -- I don't even know
3 what that was about specifically, but I don't
4 think it was about American jurisdiction. So I
5 don't -- I just don't see any basis for it.
6 THE CHAIR: Okay. The difficulty I am having here is
7 just that I don't know what this is. So I can
8 see that it's an interview. Mr. Kitchen is
9 saying it's American. I don't know where it was.
10 Anyways, if I missed some of this in the
11 evidence, please explain or direct me to where
12 this is from. Or, Ms. Waddell, if you can tell
13 me what this is and Mr. Kitchen doesn't dispute
14 it, then we can move forward, but is this
15 something you say was published in B.C.?

16 CNSL L. WADDELL: I believe the witness posted a link
17 to this on his Facebook page.

18 CNSL J. KITCHEN: Well, that's just it. We have to
19 have that in the evidence, though.

20 THE CHAIR: Right. Can we find that?

21 CNSL L. WADDELL: Yeah. Just give us a second.

22 THE CHAIR: Okay.

23 CNSL J. KITCHEN: My knowledge of it only comes from a
24 brief internet search I just did now that goes to
25 a Facebook page from what looks to be, like, an
26 American podcaster kind of thing. That's it.
27 That's all I have because all I have from my
28 friend is this interview; so -- I will say unless
29 my friend can point to a Facebook post in the
30 record here that -- if she is just going to seek
31 to add the Facebook post as an exhibit now, you
32 know, it's too late to do that.

33 THE CHAIR: Yes. I understand we are looking for
34 something in the record.

35 CNSL L. WADDELL: Yeah. I don't think we have the --
36 and at least in the record we don't have his
37 Facebook post connecting to that.

38 THE CHAIR: All right. So it seems to me -- and,
39 Ms. Waddell, I will give you a chance to respond
40 to this, but it seems to me like we haven't
41 established in the evidence enough of a
42 foundation for what this is and how it connects
43 to statements made in B.C. I will give you a
44 chance to respond to that.

45
46 SUBMISSIONS BY CNSL L. WADDELL:
47

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Submissions by Cnsl L. Waddell

Submissions by Cnsl J. Kitchen

1 CNSL L. WADDELL: Sure. He has admitted that he said
2 the things. And regardless of where he said
3 them, if they were said on the internet, they are
4 available to British Columbians. So on that
5 basis, again, I take the position that his
6 admission that he made those statements publicly
7 is fine, and then we can simply argue about
8 whether having done so not specifically in --
9 with a -- you know, in a British Columbia
10 setting -- or a setting that is more limited to
11 British Columbia is relevant from a legal
12 perspective. That would be my -- you know,
13 he's -- the evidence that he said the things is
14 already in, and I think the question of whether
15 or not there is sufficient connection is really a
16 legal argument to make.

17 THE CHAIR: Okay. Thank you. Mr. Kitchen, do you
18 want to respond to that?
19

20 SUBMISSIONS BY CNSL J. KITCHEN:
21

22 CNSL J. KITCHEN: Well, the fact that it's available
23 to those in British Columbia who go mining for it
24 the way my friend has is besides the point. The
25 question is was it published in B.C.? There is
26 no evidence of that. My friend says that it has
27 been posted on Mr. Neufeld's Facebook, but we
28 don't have that evidence. So my friend's saying
29 it is is not good enough. Not that I am saying
30 she is making it up, but the point is that her
31 say so is not evidence. So if we don't have --
32 if we don't have evidence that he has published
33 it in B.C., then it wasn't published in B.C.;
34 right? So, I mean, obviously it goes without
35 saying that if you want to spend enough time on
36 the internet, you can find stuff that's published
37 not just in the U.S. but in Kazakhstan and Uganda
38 and Sri Lanka and all the rest of it. That --
39 just because it's available to somebody in B.C.
40 who goes looking for it, it's not legally
41 relevant. What is legally relevant is was it
42 published in B.C., and all we have is that it was
43 published somewhere enough for my friend to get a
44 transcript of it. That's not good enough. It
45 has got to be published in B.C. or else, you
46 know, we end up in a pretty strange situation
47 where if -- as long as somebody goes looking for

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Submissions by Cnsl J. Kitchen
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1 it and they find it, that's all that matters.

2 So, you know, I suppose there could be
3 written submissions on this, but, you know, in my
4 view, I don't think that would justify the cost
5 to either side because I don't see anything here
6 that Mr. Neufeld has said that is somehow
7 dramatically different than what he said
8 elsewhere. There is an enormous amount of
9 material. My friend is going to make her
10 arguments; I am going to make mine. So I -- you
11 know, I -- I don't think my friend is highly
12 prejudiced by this document not going in. That
13 doesn't mean the respondent should just agree.
14 That's just it. We have to follow the rules
15 of -- well, the rules of evidence, to some
16 degree. I understand that the official rules
17 don't fly, but the idea of letting documents in
18 just because, even though they are published in a
19 different country, which shouldn't be admissible,
20 that's a problem of principle. So I just don't
21 think it's worth -- I don't think it's
22 admissible, and I don't think it's worth us
23 arguing any further about it, given the context
24 of the case.

25 THE CHAIR: All right. We just need a few minutes to
26 confer on this one. But before I do that, I note
27 the time, and I just want to confirm whether you
28 are all okay to stay a few minutes past 4:30 to
29 finish the record and conclude today? Yeah?

30 Okay. So we are going to go off camera and
31 mic for a moment, and you can still be looking at
32 your notes. We are going -- our plan, just to
33 confirm, is to go through all the complainant's
34 books of documents, and I believe we have a
35 respondent's books of documents and a few
36 straggler documents, and then we will confirm
37 closing submission and so on. Okay? So we are
38 just going to go off camera for a moment and be
39 right back.

40
41 (PROCEEDINGS ADJOURNED) [4:28:50]

42 (PROCEEDINGS RECONVENED) [4:31:49]

43
44 THE CHAIR: Thank you. Come on back. Okay. Thank
45 you for your patience. We are not going to admit
46 Tab 44. Although we acknowledge that Mr. Neufeld
47 agreed to having said some of the statements in

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1 there, we also note that he has made statements
2 like that in many different fora and wasn't
3 specifically directed to answer questions about
4 whether -- about this particular interview and
5 confirm that he was involved and what it is and
6 its connection to this case. So in this
7 circumstance, we don't think that the document
8 has been sufficiently identified to be
9 admissible, to be given really any useful amount
10 of weight in the proceeding; so we are not
11 admitting Tab 44. And I think that deals with
12 all the documents in that book; is that right?
13 CNSL L. WADDELL: Yeah. I think so. We will remove
14 29 and 43 as well?
15 THE CHAIR: Yes.
16 CNSL J. KITCHEN: Yeah.
17 THE CHAIR: Yeah. Okay. So Member Alam is going to
18 mark that.
19 MEMBER SAID ALAM: Yeah. That will be Exhibit 17.
20 THE CHAIR: Exhibit 17 without -- sorry. Can you
21 confirm without --
22 MEMBER SAID ALAM: Sorry. Without Tabs 29, 43, and
23 44, and it's entered on consent.

24
25 (EXHIBIT MARKED)

26
27 THE CHAIR: Okay. Thank you. So should we go now to
28 the Complainant's Book of Various Documents? So
29 what have we got for that?
30 MEMBER SAID ALAM: So for this one I have that it is
31 on consent. That was Tab 7, 20, 21, 26, 27, 28,
32 and 33 to 51, and then Tabs 8, 17, 22, and 23
33 were all introduced by witnesses. So, again, the
34 tabs that are included are Tabs 7, 8, 17, 20, 21,
35 22, 23, 26, 27, 28, and 33 to 51.
36 CNSL J. KITCHEN: Those are the ones that are in, and
37 everything else is out. Is that -- do I have
38 that right?
39 MEMBER SAID ALAM: That's correct.
40 CNSL J. KITCHEN: So, for example, 1 to 6 would not be
41 in?
42 MEMBER SAID ALAM: That's correct.
43 CNSL J. KITCHEN: Okay.
44 MEMBER SAID ALAM: Okay.
45 THE CHAIR: We will just wait for them to confirm.
46 Complainant's counsel, is that matching your
47 records?

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1 CNSL L. WADDELL: It does.

2 THE CHAIR: Okay.

3
4 (EXHIBIT MARKED)

5
6 MEMBER SAID ALAM: Okay. And then is it my
7 understanding that all the videos were entered on
8 consent? Is that correct?

9 CNSL J. KITCHEN: Which --

10 CNSL L. WADDELL: The --

11 CNSL J. KITCHEN: The school board videos?

12 MEMBER SAID ALAM: Yes.

13 CNSL J. KITCHEN: The school board meeting videos?

14 MEMBER SAID ALAM: Yes.

15 CNSL J. KITCHEN: Yeah. Well, yeah. That's fine.

16 MEMBER SAID ALAM: All right. So that will be --

17 CNSL J. KITCHEN: Well, I mean, I am assuming they are
18 all ones of Mr. Neufeld when he was on the board.

19 I mean, I obviously haven't watched all of them,
20 but it looks like they are all of meetings when
21 he was on the board. So those are fair game.

22 MEMBER SAID ALAM: Okay. All right. So those videos
23 are Exhibit 19.

24 THE CHAIR: Hold on. Sorry. Just a moment. I am
25 going to mute myself for a moment.

26
27 (PROCEEDINGS ADJOURNED) [4:36:52]

28 (PROCEEDINGS RECONVENED) [4:38:29]

29
30 THE CHAIR: Sorry about that. Just needed to clarify
31 something about the videos and refreshing our
32 memory about the record because I understand that
33 the videos that we have are given numbers
34 corresponding with tabs in the book of documents
35 and we have ruled that Tabs 43 and 44 are not
36 admissible. So those videos, to be clear, are
37 not admissible. So what we have left are videos
38 corresponding with Tab -- and, again, please
39 correct me if I am wrong -- but Tab 3, Tab 7,
40 Tab 18, Tab 24, Tab 28, Tab 31, Tab 33, Tab 44 --
41 sorry -- 34, Tab 41, and Tab 45. All right. So
42 that's 10 videos.

43 CNSL J. KITCHEN: Sorry. The last two were 41 and 45?

44 THE CHAIR: Yeah. That's right.

45 UNIDENTIFIED SPEAKER: Can I just clarify -- what were
46 the first two?

47 THE CHAIR: Yeah. And -- sorry. I see another video

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1 here. Okay. The first -- so it's Tab 3,
2 Tab 7 -- and perhaps what we will do is after
3 today we will circulate our exhibit list and give
4 you a few days to pipe up if something doesn't
5 align with your records. Okay?

6 CNSL J. KITCHEN: That's a good idea.

7 THE CHAIR: All right. So those are the videos being
8 admitted. Okay?

9 MEMBER SAID ALAM: All right. As Exhibit 19.

10
11 (EXHIBIT MARKED)

12
13 MEMBER SAID ALAM: And then we have the Respondent's
14 Book of Documents Number 2, and that's Tab 2 that
15 was admitted by and identified by Teacher B.

16 THE CHAIR: So Respondent's Book of Documents just
17 Tab 2?

18 MEMBER SAID ALAM: Yeah. There's two books -- the
19 respondent has two books of document. So the
20 Respondent's Book of Documents Number 2, Tab 2,
21 is admitted as Exhibit 20.

22
23 (EXHIBIT MARKED)

24
25 MEMBER SAID ALAM: And then Respondent's Book of
26 Documents, Complainant's Proposed Expert Witness,
27 Tab 1 is admitted as Exhibit 21, and that was
28 identified by Dr. Saewyc.

29
30 (EXHIBIT MARKED)

31
32 MEMBER SAID ALAM: All right. And then there is loose
33 documents. So Belinda Lye Affidavits 1 through
34 6. Are these -- okay. And then the affidavit in
35 support of the respondent's request to adjourn.

36 THE CHAIR: Okay. So have you had a chance,
37 Mr. Kitchen, to look at the Belinda Lye
38 affidavits?

39 CNSL J. KITCHEN: Well, they are enormous. I didn't
40 realize that. And I can already see there's a
41 number of things that I would object to. So help
42 me understand why we would make these exhibits as
43 opposed to just -- and I agree with my friend's
44 comments. I am not -- I am not accustomed to
45 making the affidavits exhibits either. You know,
46 normally we would just -- we put in our books and
47 we -- you know, either they go in on consent or

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Submission by Cnsl L. Waddell

1 we ask the witnesses about them, but I just -- I
2 haven't seen these affidavits. I thought they
3 were -- I thought they were small,
4 straightforward things, but, I mean, I've looked
5 at a little bit already, and there's a whole
6 bunch of stuff in there that I would be concerned
7 about. So I -- the Tribunal may have to pull
8 from it what they need if there's, like, some
9 sort of -- some of the e-mails and letters back
10 and forth between the Tribunal -- between
11 Mr. Neufeld and the Tribunal in the summer of
12 2024. I mean, insofar as those are relevant to
13 your decision, I think you can pull from them,
14 but I can't -- I can't just consent to the
15 affidavits wholesale going in as exhibits. Even
16 just the first one, it looks like it has a whole
17 bunch of stuff that I would have to object to,
18 so...

19 THE CHAIR: All right. Thank you. The reason for
20 proposing to admit them as exhibits is just that
21 I understand that the complainants are intending
22 to rely on the affidavits in support of, I
23 imagine, their cost application and to have them
24 sort of form part of the record. And although
25 they are affidavits of a legal assistant, and I
26 think, for the most part, their contents are not
27 going to be controversial, it's still evidence in
28 the proceeding. So that's the reason for wanting
29 to mark them, but, you know, if the two of you
30 have a different view, I am open to it. But I
31 know that complainant's counsel has submitted
32 these applications in support of the cost
33 application, the waiver application -- maybe
34 other applications. I can't recall off the top
35 of my head, and I imagine we are going to be
36 called upon to rely on them in our final
37 submission, and I want to be clear the basis on
38 which we are doing that before we leave here
39 today.

40 So, Ms. Waddell, again, given that these are
41 your affidavits, over to you as to whether you
42 take a different view about their status in this
43 proceeding as evidence and forming part of the
44 hearing report.

45
46 SUBMISSIONS BY CNSL L. WADDELL:
47

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1 CNSL L. WADDELL: So we expected, having filed them
2 with the Tribunal, that absent of requests to
3 cross on them which we didn't receive they would
4 be considered evidence by the Tribunal, marked or
5 not marked.

6 CNSL J. KITCHEN: Yeah. I have to agree with that.

7 CNSL L. WADDELL: Well, I am not asking for your
8 agreement. I am articulating my position right
9 now, Mr. Kitchen.

10 CNSL J. KITCHEN: Well, I wasn't trying to be
11 difficult. I was trying to be --

12 CNSL L. WADDELL: They have been --

13 CNSL J. KITCHEN: -- helpful.

14 CNSL L. WADDELL: Mr. Kitchen has had them for quite
15 some time, very different lengths of time, and
16 some were sworn before -- if memory serves,
17 before he was actually counsel of record; so he
18 will not have received them at first instance,
19 but, ultimately, on receipt of Mr. Neufeld's
20 file, he would have received -- those would be
21 the very -- very early ones, but the rest of
22 them, you know, he received with our cost
23 application or with our application to -- for
24 anonymization or with our application to amend
25 the scope of the publication ban, for example.

26 So all of those, we say, are admissible
27 evidence in this proceeding. They don't speak to
28 particularly controversial things. This is the
29 usual practice. They set out who received what
30 and when, and Mr. Neufeld has had an opportunity
31 to, you know -- that's why we served the cost
32 application before he completed his testimony so
33 that he would have an opportunity to address
34 anything in there that might be -- might be
35 necessary if he disagreed with it. So in my
36 view, the time to object to any of it is passed,
37 and, yeah, we will be seeking to rely on them in
38 relation to costs.

39 THE CHAIR: All right. Well, then, Mr. Kitchen, if
40 you agree with Ms. Waddell that having filed them
41 with the Tribunal they are part of the evidence,
42 whether marked or not, then maybe what we have
43 here is a moot point, and we --

44 CNSL J. KITCHEN: Well, that's just it. I think it's
45 moot. I can't consent to the affidavits as
46 exhibits, but, I mean, you are free to do what
47 you do with them. They are affidavits. They are

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1 part of the evidentiary record, but -- you know,
2 so I think we are kind of -- yeah. I don't know
3 if this is getting us anywhere.

4 THE CHAIR: Okay. So we will move on from that. We
5 have affidavits. Anything else? Oh, and you
6 also asked about Mr. Neufeld's affidavit in the
7 adjournment application. And, again, I
8 appreciate this doesn't appear to be a familiar
9 practice to the two of you, but ordinarily, in my
10 practice anyway, if there is an affidavit we are
11 admitting, we mark that as an exhibit as well.

12 So I'm content, if you are both content, to
13 just leave Mr. Neufeld's affidavit as it is --
14 it's been filed in support of the adjournment
15 application -- or mark it as an exhibit. Any
16 strong views? No strong views. We will just
17 leave it as is. It's part of the adjournment
18 application, and you can rely on it.

19 Oh, right. And there was an outstanding
20 issue from Dr. Darrell Ferguson. There were --
21 there's reference to some notes and articles that
22 I think the complainant's counsel were going to
23 or someone was going to send in. Mr. Kitchen?

24 UNIDENTIFIED SPEAKER: Yeah. I think during his
25 evidence there were notes and articles around
26 him, and it was requested that he share those
27 with the Tribunal.

28 THE CHAIR: Probably with complainant's counsel. Has
29 that issue been resolved?

30 CNSL L. WADDELL: I don't think we have received
31 anything.

32 CNSL J. KITCHEN: So notes and articles from
33 Dr. Ferguson, you wanted them, and I had to send
34 them to you?

35 THE CHAIR: We don't want to make an issue where there
36 is none, but we just have this straggler here.
37 We want to make sure we have cleaned it up. So,
38 complainant's counsel, is there something you are
39 still waiting on, or has the moment passed?

40 CNSL L. WADDELL: I think the moment has passed. I
41 think we are happy to leave that.

42 THE CHAIR: Okay. All right. Anything else we have
43 missed in the documentary record? And, again, we
44 will send you our exhibit list and give you a
45 week or so to let us know if something doesn't
46 match with our records or if there's something
47 that we've missed. Anything? No?

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1 Okay. And I confirm that you have
2 coordinated to adjust your schedule for closing
3 submissions, and thank you for that. We have
4 complainant's submissions on April 9th,
5 Commissioner's submissions April 16th,
6 respondent's submissions May 7th, complainant's
7 reply May 14th, and oral argument on May 21st.
8 Right? All right. I think that's everything I
9 intend to wrap up. Just a moment.

10 Oh, right. We wanted to talk -- both of my
11 colleagues are reminding -- we wanted to talk to
12 you about the length of submissions. The
13 Tribunal doesn't have formal rules governing page
14 limits, but we want to strike the right balance
15 between getting the best possible submissions
16 from you and keeping it within a reasonable
17 length. And so, of course, we are interested in
18 your views on how long you expect your arguments
19 to be. And we would like to impose page limits,
20 but we want them to be reasonable with an
21 understanding that this is a -- there's lots of
22 issues in this case.

23 So, complainant's counsel, I will start with
24 you. Do you have a sense of how many pages you
25 want your argument to be?

26 CNSL L. WADDELL: I do not. I didn't anticipate and
27 turn my mind to this in advance of today. I
28 think the biggest -- one of the biggest
29 challenges to length will be summarizing the
30 evidence because of the length of time that we
31 have been in hearing. And then I -- you know,
32 for -- a good chunk of our submissions respecting
33 cost have already been made. There are a few
34 little things to add on, but if we can -- if the
35 submissions respecting costs that have already
36 been made are not counted in whatever page count,
37 that will help. I am not helping here. All I am
38 doing is droning on a little bit. I would really
39 like to actually think about it so that I don't
40 suggest something that you agree with, and I, you
41 know, after sleeping on it, realize it's wildly
42 inaccurate. I understand the Tribunal's desire
43 to manage page count, and I think there is
44 benefit to doing so, but I think there is equal
45 problems that arise from submissions that are too
46 long than submissions that are too superficial
47 and don't adequately dig into the issues the

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1 Tribunal will need to decide. So that is all I
2 am going to say for now. My apologies for not
3 being ready with a number to throw out there.
4 THE CHAIR: Thank you. And maybe I will say that what
5 we had discussed internally and want be
6 reasonable about is something in the range of
7 50 pages.

8 CNSL J. KITCHEN: That's exactly what I was thinking.

9 THE CHAIR: So -- and particularly -- and maybe with a
10 separate page allocation respecting costs. So if
11 you have done most of your costs submission
12 already, Ms. Waddell, then, you know, we can add
13 on -- I can't remember how long they were, but if
14 that's another 20 pages, then we can have --
15 Mr. Kitchen can have another 20 pages for that,
16 but that's what -- that's what we were thinking.
17 We can give you a chance to consider that, and
18 then, of course, Ms. Khan, I am coming to you in
19 a moment. So perhaps what I will suggest is that
20 I leave you with that and when we circulate the
21 exhibit sheet and you give your response on the
22 exhibit sheet, you can also let us know if you
23 think 50 pages will not be sufficient and propose
24 what you say would be a sufficient number of
25 pages.

26 CNSL L. WADDELL: Sure. And can I just ask one
27 question about that as I think about ways to
28 shorten the evidentiary part? Does the Tribunal
29 know or is it prepared to tell the parties
30 whether it expects to have a transcript made of
31 the evidence? And I ask only because if the
32 Tribunal is having a transcript produced, and we
33 contemplate doing the same, there is less need,
34 at least on my end, to regurgitate the evidence,
35 if you were. So, for example, if nobody has a
36 transcript, usually in describing something I am
37 inclined to really detail what the evidence was
38 so that you could compare it to your notes and
39 appreciate that it is, in fact, accurate. If we
40 are all working from a transcript, it's a bit
41 easier to do with just pinpoint references for
42 where things can be found as opposed to trying to
43 demonstrate that -- you know, what I gleaned from
44 something and have in my notes or Ms. Khan's
45 notes is, in fact, accurate. So that's something
46 that would be helpful to know as I think about
47 ways to -- a response to your 50 pages and ways

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1 to keep it lean.
2 THE CHAIR: The Tribunal will not be ordering a
3 transcript.
4 CNSL L. WADDELL: Okay.
5 THE CHAIR: If either of the parties want to do so,
6 you can, but, of course, you bear the costs of
7 doing that. If you want to cite to parts of the
8 evidence, then obviously the best way to do that
9 is to pinpoint the approximate time and date, and
10 we can cross-reference in our notes, and we have
11 access to the audio recording. So we listen as
12 necessary to the audio recordings.
13 CNSL J. KITCHEN: Who --
14 THE CHAIR: Yeah.
15 CNSL J. KITCHEN: Sorry. Well, I was just going to
16 ask Ms. Waddell -- is there any appetite to have
17 the parties go in together on getting a
18 transcript?
19 CNSL L. WADDELL: I don't have instructions yet on
20 that. I am happy to consider it, Mr. Kitchen,
21 and I would just note the one thing that -- and
22 there might be -- it might be that we can find a
23 court reporter in B.C. who takes a different
24 view, but usually they won't allow joint requests
25 because, of course, how they make their money
26 is -- --
27 CNSL J. KITCHEN: Yeah. I know.
28 CNSL L. WADDELL: -- producing copies. So --
29 CNSL J. KITCHEN: Well, and -- maybe it's unethical
30 for us to go in on it together. I don't know.
31 But I can't remember the last time I did that
32 because most people don't ever agree on that.
33 CNSL L. WADDELL: Yeah.
34 CNSL J. KITCHEN: But if we could in an ethical way,
35 without shorting them out of the money that they
36 gouge us for, if we could go in on that, that
37 would be something that our side would be
38 interested in.
39 CNSL L. WADDELL: Okay. So -- well, I can seek some
40 instructions on that, and we will get back to
41 you.
42 THE CHAIR: Okay. So we will leave this with you.
43 And then, Ms. Khan, circling back to you,
44 obviously your submissions will be shorter than
45 that of the parties. And so do you have -- is
46 there anything you want to say at this point
47 about page limits.

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1 CNSL S. KHAN: Yes. I mean, we are thinking it will
2 be 50 max, but likely less. So if you would be
3 amenable to a 50 page limit for us, that would be
4 great.

5 THE CHAIR: Okay. That seems quite reasonable. I
6 don't imagine there is any problem with that.
7 Thank you.

8 CNSL S. KHAN: Thank you.

9 THE CHAIR: All right. So we will set out proposed
10 page limits, exhibit sheet. You can get back to
11 us about those things.

12 If you are seeking transcripts, there is a
13 form to fill out on the Tribunal's website to
14 gain access to the audio recordings, and
15 obviously there is some time pressures for you
16 there.

17 CNSL J. KITCHEN: There is no cost to the audio; is
18 that right?

19 THE CHAIR: No cost to the audio. That's right.

20 CNSL J. KITCHEN: Okay. And is that pretty
21 instantaneous, that we -- if we request it, we
22 can get it within a few days?

23 THE CHAIR: Well, reasonably so. We are still at the
24 Human Rights Tribunal, so the case -- subject to
25 case manager ability to kind of get it over to
26 you, but a few days is certainly reasonable to
27 expect that. Yeah.

28 CNSL J. KITCHEN: Okay.

29 THE CHAIR: We just have to have the form come in, we
30 make an order, kind of circumscribing the use
31 that can be made of it. It won't be anything
32 very surprising, and then we release it to you, I
33 believe, maybe on a USB. We are working on being
34 able to provide it via link, but until we figure
35 that out, it's on a USB. So, Mr. Kitchen, there
36 may be a bit of a delay for you there if it has
37 to be couriered over to you. Okay?

38 CNSL J. KITCHEN: Yeah. I'd prefer a link, but if
39 that's how you guys do it, then that's okay.

40 THE CHAIR: We'd all prefer a link, unfortunately. We
41 are working on it.

42 All right. Anything else before we break?
43 No. Okay. Well, thank you all for your work
44 over these many days of evidence. It has been
45 challenging, but I appreciate that you have all
46 put in a lot of hard work, and same goes to your
47 clients and your witnesses. So I appreciate

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1 that. We will see you back on May 21st for oral
2 arguments, and then the work will be shifted over
3 to our plates. So thanks very much. Bye.
4 UNIDENTIFIED SPEAKER: Thank you.
5 CNSL L. WADDELL: Thank you.

6
7 (VIDEOCONFERENCE CONCLUDES) [4:58:16]

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9 (PROCEEDINGS ADJOURNED TO MAY 21ST, 2025) [4:58:16]

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15 REPORTER'S CERTIFICATE

16
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18 I certify that the proceedings from timestamp
19 [9:32:29] to timestamp [4:58:16] inclusive are a
20 true and accurate transcript of these proceedings
21 recorded on a sound recording apparatus,
22 transcribed to the best of my skill and ability
23 in accordance with applicable standards.
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