

Rape Relief's Summary of Key Evidence by Issue

presented January 24-26, 2001

APPENDIX

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A. Rape Relief's political beliefs and way of work

(i) Basis of Unity

2. Rape Relief's Basis of Unity is a set of accrued agreements to ideas and practises (Lakeman, Dec. 21, p. 94, L. 17-18). It is detailed in Exhibits 27 to 31, which have been collectively approved (Lakeman, Dec. 21, p. 97, L. 35; Jan 8, p. 45 L. 41-p. 47, L. 12). As set out in Exhibit 30, Rape Relief means by women's oppression a social order in which men by birth rule women (females)." Rape Relief requires prospective collective members to demonstrate that they have actually thought through each of the agreements (the Basis of Unity, NAC and CASAC and international agreements) and that they do agree. (Lakeman, Dec. 20, p. 50, L. 30-41)

3. Rape Relief's "Basis of Unity" should not be confused with the four questions Rape Relief poses to potential volunteers, although in a sense they are part of it. (Lakeman, Dec. 20, p. 48, L. 28-37; p. 94, L. 18-20)

(ii) Manner of work

4. Fundamentally, Rape Relief is about concrete aid and political organizing (Lakeman, p. 70, L. 31-33). Rape Relief is a small, non-profit collective with a charitable tax number. In 1995, there were roughly a dozen collective members (Lakeman, Dec. 20, p. 79, L. 27-28). There are presently 28 collective members. (Lakeman, Dec. 20, p. 38, L. 39-40)

5. Rape Relief sees itself as a political force. Ms. Lakeman testified as follows:

We're trying to be used by women to prevent rape, to recover from rape, to escape rape and to create a political force that ends rape. So we want her to come to the house and show her around more than she needs to know, show her around the house, the other workers. We're trying to display both our politics and our ordinariness. (Dec. 19, p., 29, L. 6-12)

6. Rape Relief is a feminist service political group (Lakeman, Jan 8, p. 31, L. 24). Ms. Lakeman described the following as being the fundamentals of feminist process:

- (a) includes consciousness-raising;
- (b) includes democratic practice;
- (c) includes feminist ideology which would work at being open-ended not closed;
- (d) it would always locate the work within the wider women's movement;
- (e) it would always locate women's liberation within the human struggle for freedom;
- (f) historically, it has been non-violent;
- (g) it is extra-governmental;
- (h) it implies a very serious level of honesty; and
- (i) it is more consensual than voting democracy. (Dec. 21, p. 111, L. 23-42)

Rape Relief submits that the evidence demonstrates that it follows these fundamentals.

7. Crisis work and public education work are requirements of membership in the Rape Relief collective (Lakeman, Dec. 20, p. 56, L. 47-p. 57, L. 2). One reason the collective members are required to do crisis work is that it is very like what other people would call women's work, the care and nurturing of other human beings. Another reason is to refuse to divide work in a way that makes some work seem more impressive. This applies to all the collective's work, where experience in crisis work is considered for example to assist and inform the work of making financial decisions (Lakeman, Dec. 20, p. 34-p. 59, L. 20).

8. Rape Relief deals with all forms of male violence against women. Rape Relief was especially interested in overriding Social Services' delivery categories around incest, wife assault and rape. Rape Relief thought the political similarity was more important. The political similarity is that it's men who are attacking women and women as a group need to resist. (Lakeman, Dec. 20, p. 71, L. 23-32).

9. Ms. Lakeman testified about Rape Relief's political work as follows:

we just got invited to the new meetings around rebuilding the left. We participate in election campaigns. We participate as NGOs in international matters. We are more active now than we ever imagined we would be in law reform. We've always been active in trying to get policy changes at the city, province and federal level, and now the international level. (Dec. 20, p. 68, L. 3-13)

But we try to make gains for all women by the way we fight for each woman....

And then there's a reciprocal point which is that we try to do all the political lobbying and theorizing and allying work in a way that pays off for each caller. So we recently worked with the women in the Git (phonetic) case and that became an attempt to make real all our work around self-defence for women and the fact that the law doesn't deal with women's reality of defending themselves in violent situations. And we worked hard to make sure that women didn't sit in jail for defending yourself by killing your husband, a psychologist who worked for the RCMP and loaded her house with dynamite, but whom the prosecutor could not imagine as having defended herself legally. (Dec. 20, p. 69, L.

28-p. 69, L. 4)

10. Ms. Lakeman testified that women who identify that they are members of an oppressed group interpret the experience of being attacked more quickly and with less shattering of their world view, as follows:

One of the parts of the nature of sexual assault or the kind of violence we call violence against women is that it has the character of shattering your world view. Not every woman responds that way, but most women respond. And what I mean is that they all say things like, why do I keep thinking it's connected to the way that guy looked at me on the bus, meaning some other man entirely from the one who attacked her. Why do I think it's got -- it's connected to the way my father spoke to me when I was angry. ...

Sometimes they say -- sometimes they've suffered a very brutal attack and they'll say something like, somehow I feel it's connected to the embarrassment I felt when the principal told me my skirt was too short in high school. And they can't figure out why such a major event is linked to such a seemingly trivial event of abuse of power.... But sometimes the connection works the other way. The woman has been assaulted and hurt, but on the scale of things it's not a life-threatening attack, she would say -- but her feeling response is to feel utterly powerless as though her life were at risk. And she's conflicted and confused as to why she responds that way, and why she associates --...

Why she associates what happened to her with the most graphic and horrible things she knows can happen to women in rape. It's the most fundamental disorientation especially for women who are not politicized. But even for those who are already feminists when they're attacked, the experience of being assaulted contradicts a thousand messages you've been given over your life and contradicts them in a very, very powerful way that will not be denied. (Dec. 20, p. 63, L. 45-p. 64, L. 33)

By politicized I mean to describe a mental process, a mental decision, by which women identify that they are an oppressed group, that they're entitled to collective protections fundamentally not just as a matter of human rights law. It's a fundamental matter of justice that we're entitled to group together and resist what's happening to us as a group.

I think once you've decided that, we've decided that, it's bearable to face much more of the data about the status of women in Canada and in the world, because you don't feel as though it's helpless and it's all about you, or it's static. And I believe that that politicization does -- it doesn't help you not get raped, but it does help you interpret the experience of being attacked more quickly and with less shattering of your world view. (Dec. 20, p. 69, L. 12-27)

(iii) Use of Life Experience

11. Rape Relief uses the tool of consciousness-raising based on life experience to

formulate and advance its political ideology. Ms. Lakeman testified about it this way:

...I can't imagine a day at Rape Relief, never mind a meeting, and at very last a counselling appointment in which you don't use the everyday currency of women's experience as the source of examples about oppression. ...I simply don't see how we would conduct a meeting or have an evaluation session or a meaningful support group or come to a new strategy or come to a new analysis without that. It's the most generous thing as -- as the facilitator in the group to offer up your life experiences, however resolved or unresolved they may be, to the other members of the group. And you don't flaunt them, but you do offer them up when - when that's the only way you can find to comfort someone or to encourage someone about what this is all about. ...

Now, not everybody's a mother, but I - I pretty much bet that there's - every woman's thought about it and worried about it and been sickened about it and hopeful about it and been worried about it since infancy, since early childhood, probably too much so. (Dec. 19, p. 15, L. 23-p. 16, L. 2)

She related a story from her childhood of a man masturbating in front of her, and says:

while I think that experience may have happened to a boy, I think his interpretation of it would have been quite different, his struggle with it would have been quite different. In any case, I'm absolutely sure that the sum total of those daily experiences is the very meat of consciousness raising. That's what we're discussing with each other. And we're discussing what we can make of it. What does that mean about the best for route(sic) for women? What does it mean about girls-only schools? What does it mean about a certain social policy? What does it mean about what records have to be protected. The records - there - there are so many more records kept on women than men, it was a barely comparable situation. And, yes, of course these things are raced and classed, but they're also gendered. (Dec. 19, p. 16, L. 15-31)

12. Ms. Lakeman testified that, in doing telephone crisis work and face-to-face counselling work, she "most often in most cases" discusses her personal experiences.

13. Rape Relief expects a volunteer's personal life history in connection with its screening for personal background (Lakeman, Dec. 20, p. 84, L. 19).

14. Ms. Rebick testified as an expert in political organizing in the Canadian women's movement. She testified that in the late 1960's and early 1970's, women got together in groups to talk about their lives in what were termed "consciousness raising groups." Men were excluded for three reasons. First, women, by meeting together, were able to identify common experience. Second, women got to know other women. Third, women might be more inclined to speak out.

15. Ms. Rebick also testified that consciousness raising groups and the concept of acting on common experience is at the centre of the women's movement, and reflects a

different philosophy of knowledge, of "common sense" not "experts."

16. Ms. Rebick also testified about caucuses of oppressed women within women's groups, for example, lesbian women and women of colour. The caucuses also reflect the principle of organizing by hearing from women about their experience as a method of discussion. The idea is of a group that faces a common oppression having a right to define who is in that group.

17. Rape Relief runs groups for women, but they are not simply therapy groups. They are "Support, Education and Action groups", the name demonstrating the political technique of working collectively to end rape (See evidence of McIntosh in cross). Ms. McIntosh testified that one of the most important things about grouping women was connecting them, and an important part was educating them relative to other women's experience, which can lead to viewing the violence as being not about them personally, "it's us", now determine what to do, to put the event in the larger context of women's oppression.

18. It is a central insight of feminism that the attributes of gender are socially constructed, and Rape Relief agrees with that. It is a central tenet of feminism that the actual and various lived experiences of women should be privileged as a source of information about our lives, and that is why the women's movement has organized with consciousness-raising groups (Lakeman, Jan. 8, p. 28, L. 18-21; p. 29, L. 11).

19. The Complainant's evidence also addresses the importance of lived experience. She testified that "a lot is made of this by people who have not lived my experience".

20. Dr. Ross demonstrates the importance of life experience in her own practices. She makes a point to invite a transgendered person to classrooms to speak of their life experience, and to supply students with various writings by trans allies and anti-trans theorists. She includes on her reading list the work of Jan Raymond in *The Transsexual Empire*, although she criticized that work on the basis that it did not include enough reference to actual transgendered life experience.

(iv) Reaction to Complaint

21. Rape Relief has been in serious discussion about the Complaint since it occurred (Lakeman, Dec. 20, p. 83, L. 14-18). Many, many books and papers have been circulated (Lakeman, Dec. 20, p. 92, L. 37-38). Rape Relief went to the public library, bookstores, and asked among other political people, other human rights activist, other sources like that. It has not been difficult to hear the point of view that Rape Relief should let in anyone who says they are a woman. Ms. Lakeman read "Finding Our Place," a paper Ms. Findlay was involved with (Dec. 21, p. 93, L. 27-32).

22. Rape Relief has also done the following (Lakeman, Dec. 21, p. 138, L. 20-p. 139, L.

16):

We have canvassed through our informal networks whether other women's groups have more advanced analyses than us on this question. We've looked in the women's bookstores and in women's newspapers and on the international Internet to see if we could find any leadership that might guide us. We've notified our membership and the -- you know, informally the national women's groups that we were in this struggle and that we were looking for information and opinion and help. We've made it clear that we're going to face financial pressure trying to defend this case that we're going to need help.

We've canvassed among feminist lawyers looking for people who might be willing to advise us and inform us and be part of the legal team, maybe even represent us at some point. We've checked the law locally and nationally and internationally to see where we're at. We've approached various levels of government for assistance to no avail. We were in search of Legal Aid money and consultation money and so on.

We had some hope that the Ministry of Women's Equality would involve itself. We've had to communicate with our Canada-wide allies after the initial media to clarify the division that was promoted in the media, misrepresentation of various peoples' positions....

We've asked for protective law reform to no avail. I think that it's (sic)....

We had Sheila Jeffries [as an invited speaker].

23. Rape Relief has made significant efforts to inform itself and accept debate on the issue which is the subject of the Complaint. It tried to seriously open-mindedly discuss its politics (Lakeman, Jan. 8, p. 23, L. 39-40) and made itself available for public criticism at a conference and on the internet. It has been in informal discussion with feminists across and beyond North America, read what books have been listed as feminist materials and periodicals on the subject An early important novel-like book called "Stoned Butch Blues" was circulated, and several short articles, including one about the Complainant, a bundle from a UBC student, a PhD thesis critical of Rape Relief's position, material from Sheila Jeffries, Jan Raymond's The Transsexual Empire, a book by Germaine Greer, the Zenith website, a local needs study that Ms. Findlay was involved with, a human rights site in Ontario, and national women's group policies (Lakeman, Jan. 8, p. 24, L. 4-p. 26, L. 26).

B. Experimental Nature of Using Transgendered Women as Service Providers even in other Settings

(i) WAVAW

24. Ms. Glattstein is the Executive Director of WAVAW. She testified that no transgendered women had worked as counsellors at WAVAW. While she testified that it

is WAVAW's policy to permit a transgendered woman to participate in the training like anyone else, in fact WAVAW has no experience in that regard.

25. In any event, Ms. Glattstein testified that WAVAW is a "lesbian, gay, transgendered friendly" organization, and it is therefore different from Rape Relief which has a distinctive political belief and method of work. WAVAW's inclusion of gays as well as lesbians means that there can be a male presence, through the presence of gay men. WAVAW included men in its Dec. 9, 2000 memorial of the Montreal massacre of women. People accessing WAVAW's services should not be surprised if they are served by a gay man or a transgendered person. Such an organization is distinct from Rape Relief, with its political belief that women's oppression is a social order in which men by birth rule women, that women should organize as peers, and that women who suffer male violence will be assisted by receiving peer counselling services.

26. WAVAW does not organize as a collective. Its organization is now partly hierarchical.

(ii) Peggy's Place

27. In considering the evidence relating to Peggy's Place, it is important to bear in mind the very significant distinctions between Peggy's Place and Rape Relief. Ms. Jones testified that Peggy's Place is a licensed commercial health care facility for individuals who are unable to manage their lives independently. It is not a peer counselling setting or a political organization. Ms. Jones testified that residents are selected following an assessment, in contrast to the Rape Relief callers, who may be seeking help for the first time.

28. Ms. Jones agreed that it looked like the Complainant had worked nine, 8 hour shifts at Peggy's Place. The position did not require any professional qualifications and Ms. Jones testified that it required two days of orientation, including training in the medication system. Ms. Jones did not work directly with the Complainant. In fact, it appears that Ms. Jones' only contact with the Complainant, apart from social contact like roller-blading, was the interview she gave to the Complainant prior to hiring her and remembering that the Complainant was at orientation.

29. Ms. Jones testified that she did not tolerate second guessing for hiring procedures. While she testified that she would have expected to hear right away if there were concerns about the Complainant, Rape Relief submits that her evidence on this issue is of very little assistance. Women who are either too polite or too frightened to complain will of course not complain. Women who are resident in a licensed commercial health care facility would be particularly unlikely to complain about someone who worked for nine shifts, particularly when the person to whom they would complain does not tolerate second guessing of her hiring procedures.

30. Ms. Friedman testified that she had trained the Complainant and was responsible

for her supervision. However, she did not testify that she had worked with the Complainant on any shifts. No service recipients testified about their experience with receiving services at Peggy's Place from the Complainant.

31. Rape Relief submits that information regarding the Complainant's participation for nine shifts at the psychiatric facility known as "Peggy's Place" is of little assistance in this case.

(iii) BWSS

32. The Complainant commenced BWSS volunteer training in the fall of 1996, finishing in early 1997 (Cross, p. 86, l. 25). She testified that she completed the training program and completed part but not all of the 100 hour practicum program (Cross, Feb. 20)

33. Ms. Freidman testified that she "resourced" the Complainant approximately three times, sitting in the room during crisis calls and giving information if there were difficult questions. She found the Complainant punctual, prepared, calm, well informed, listened carefully, and her abilities were probably superior to those of other participants.

34. The Complainant is of course a biased observer of her own performance. If someone were too polite or too afraid to tell her about their concerns, she would not know about them.

35. The Complainant did not call evidence of any service recipients who received services at BWSS from the Complainant. The only evidence apart from the Complainant's own observations regarding her performance at BWSS was Ms. Friedman's evidence of "approximately" three occasions of resourcing (and, as discussed below, up to nine sessions as a service recipient). Ms. Leavitt did not testify about working with the Complainant, and neither did Ms. Halcrow. While Ms. Edinger provided services to the Complainant and introduced her to a support group, Ms. Edinger's impression of the Complainant's performance as a service recipient in that group came from the Complainant, Ms. Friedman, and another facilitator whose name she could not remember. Essentially, Ms. Edinger's evidence added nothing to the evidence of the Complainant and Ms. Friedman about the Complainant's performance. Rape Relief submits that this is not sufficient evidence upon which to make an assessment about whether the Complainant was a suitable counsellor for BWSS.

36. Ms. Saini testified that BWSS could not reach a consensus about whether the Plaintiff could do one to one counselling. Ms. Leavitt testified that in early 1998 the Complainant asked whether she could come back, and Ms. Leavitt took the question to the staff, and because there was no official "no," she told the Complainant she was welcome back. Ms. Leavitt was aware there were mixed feelings.

37. There are significant distinctions between the BWSS service and Rape Relief

service, as follows:

(a) BWSS is fundamentally about counselling in cases of partner assault (Lakeman, Dec. 20, p. 70, L. 30-31 and Complainant, Cross, Feb 20), and not all the BWSS workers are in the collective (Lakeman, Dec. 20, p. 71, L. 35-41). This is in contrast to Rape Relief, which is fundamentally about concrete aid and political organizing, and where all the workers are in the collective once they have completed their training and a brief grace period. Ms. Saini testified that BWSS does not operate a transition house, while Rape Relief does operate a transition house for women suffering abuse and their children;

(b) BWSS is named and organized primarily to deal with wife assault (Lakeman, Dec. 20, p. 76, L. 39-43);

(c) Ms. Saini testified that BWSS provides a crisis telephone service, but only between the hours of 10 am to 5 pm Monday to Friday (except to 8 pm Wednesdays), in contrast to the 24-hour service provided by Rape Relief; and

(d) Ms. Saini testified that BWSS does not maintain continuity such that the individuals answering crisis calls meet with the caller for one-to-one counselling. Again, this is distinct from Rape Relief, where the face to face work is done by the individuals who answer the initial call, and there is no one-to-one counselling provided (Lakeman, direct, pp. 30-31).

38. Despite these significant differences, even for BWSS the issue of a transgendered service provider is very controversial. When first brought to the attention of the BWSS collective, as reflected in Exhibit 48 (as corrected to include the further paragraph), "BWSS does not have a policy regarding this [participation of transgendered people as counsellors] and we need to discuss this issue". Despite the recognition of the collective of the need for discussion, it appears that the collective did not discuss the issue again until the meetings commencing in the summer of 1997 (Exhibit 42). At that time, it was clearly controversial. The evidence about precisely how it was handled at BWSS is confused, but it is clear that the Complainant did not participate any further with BWSS and that BWSS does not have any further experience with transgendered persons as counsellors.

39. Rape Relief submits that information regarding the Complainant's participation as a trainee counsellor for three resourcing sessions and during her practicum at BWSS is of little assistance in this case.

(iv) Dr. Ross

40. Dr. Becki Ross agreed that there was no social scientific evidence of any sort about transgendered women providing services at women-only organizations. She is not aware of any situations, apart from the Complainant, regarding a transgendered woman

providing services in the context of a woman's group.

(v) Ms. Lakeman

41. Ms. Lakeman was not aware of any situation in which transgendered women were rape crisis counsellors in women's autonomous organizations, individual feminist organizations (Jan. 8, p. 31, L. 45-46; p. 40, L. 15-21)

(vi) Summary

42. Rape Relief submits that there is only very limited evidence about any transgendered women as either counsellors or rape crisis service providers. It demonstrates that this is at the experimental stage, and there is no satisfactory evidence about the impact on service recipients. The Complainant called very limited evidence about her work as a service provider in organizations with important differences from Rape Relief, being Peggy's Place and BWSS. The Complainant did not call the evidence of anyone who had received services from her. The evidence she called by individuals who supervised her in work as a trainee and a psychiatric facility worker was also very limited, relating to approximately three "resourcing" sessions at BWSS and at most nine shifts at Peggy's Place.

C. Experimental Nature of Including Transgendered Women in Gendered Counselling Settings relating to Sexual Assault/Beating

(i) Dr. Watson

43. Dr. Watson has not personally facilitated a women-only group which included both trans women and non-trans women (Jan 31, p. 38, L. 43-46). She has no knowledge of a transgendered person being involved in a group specifically for sexual assault (Jan. 31, p. 38 L. 47 - p. 39, L. 3).

(ii) The Complainant

44. As stated above, Rape Relief submits that the Complainant's evidence about her own performance as a participant in support groups can be given little weight. Of course, women who are too polite or too afraid to comment would not have made their concerns known to the Complainant. They would simply have been silenced, and perhaps decided either to go elsewhere for assistance, or not to seek assistance any further.

45. The Complainant testified that she had attended drop-in counselling at BWSS for about one year from May 1994 until June 1995 (cross, dec. 12, pp. 85-86, lines 37-9) and again for about six months, ending in March 1996 (lines 14-16). However, the only individual who testified having attended any of those sessions was Ms. Friedman, who testified that she had co-facilitated a drop-in support group for about two months, once a

week for two hours at a time. Accordingly, there appear to have been at most about nine occasions in which the Complainant was in attendance in a drop-in session.

D. Effect of socialization as female

46. Socialization may affect how well a person is paid and how valued their opinions are (Watson, Jan. 31, p. 50, L. 9-20). The Complainant testified that she found her opinions less valued when appearing as a woman than as a man. (Feb. 20, Cross).

47. An article in a newsletter put out by Vancouver General Hospital (which is at least ten years old) says that it is "current dogma that socialization is the major determinant of gender differentiation." (Exhibit 8).

48. Dr. Watson testified that it is now a more balanced view that socialization plays some role in expression of gender. Dr. Watson does not say that psychiatrists in general believe that there is no effect of rearing and family dynamics involved in expression of gender. (Watson, Jan. 31, p. 54, L. 28-40).

E. Women's fear and needs in sexual assault treatment and discussion settings

(i) Dr. Watson

49. Dr. Watson said that in her experience, it was not necessary for a counselling or therapy group to be composed entirely of women in order to deal successfully with questions of male violence. (Jan. 31, p. 39, L. 40-47). In her view, a male therapist can provide some assistance to a woman even on issues of male violence (Jan. 31, p. 40, L. 1-6). She is not aware of any standards that say that sexual assault survivors should be dealt with by members of the gender opposite to the gender of the assailant (Jan. 31, p. 69, L. 12-16).

50. However, Dr. Watson feels that in the initial stages of treatment of sexual assault by males that it is appropriate for it to be a women's-only group (Jan. 31, p. 51, L. 19-22). There is a commonality amongst women that provides a group adhesiveness that is useful in the initial stages of therapy (Jan. 31, p. 51, L. 44-46). Her goal would be to integrate into a mixed therapy group once the acute issues were dealt with (Jan. 31, p. 51, L. 35-36).

51. Dr. Watson believes that it would be "contra-indicated" to include a cross-dresser who identifies as male in a women's-only group addressing issues of sexual assault, although she did not think it would be contra-indicated to include a cross-dresser who identifies as female (Jan. 31, p. 57, L. 16-27).

52. Dr. Watson agreed that some women following sexual assault become frightened of men (Jan. 31., p. 40, L. 19-23; p. 43, L. 15-17). While she testified that, in her experience dealing with survivors of sexual assault in group settings, she did not often

encounter a generalized fear of men, her experience has not been in providing services in a women-only environment (Jan 31, p. 66, L. 15-19; p. 68, L. 8-13; and p. 72 L. 44 - p. 73 L. 1).

53. It is not therapeutic to have someone feeling uncomfortable in a group that's geared towards treatment of sexual abuse (Jan. 31, p. 42, L. 2-7).

54. As a general principle, some women are simply silenced by the presence of men, and when men are present, they'll choose not to speak (Watson, Jan. 31, p. 42, L. 13-20).

55. In a crisis setting, it's important to make the individual who suffered the trauma comfortable to the extent possible (Watson, Jan. 31, p. 43, L. 11-14).

56. Dr. Watson would ordinarily respect the preference of a patient who seeks to have a female therapist (Jan 31, p. 47, L. 10-14). It is helpful therapeutically in that it eliminates, perhaps, one issue of mistrust (Jan. 31, p. 47, L. 10-23).

57. The service for rape survivors at Women's Hospital is run by female physicians and female staff as much as possible (Watson, Jan. 31, p. 40, L. 24-27).

58. The emergency department at Vancouver General makes an effort to have the women victims of sexual assault treated by women professionals. (Jan 31, p. 45, L. 43-46)

59. Some women who have been sexually assaulted by men may experience what psychiatrists describe clinically as post-traumatic stress disorder (Watson, Jan. 31, p. 43, L. 24-27). Women suffering PTSD may re-experience the traumatic event and suffer intense psychological distress at exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event (Exhibit 17, Watson Jan. 31, p. 43, L. 28-46). In Dr. Watson's clinical experience, triggers have included the presence of a male figure (Jan 31, p. 43, L. 15-17).

60. There is some danger that a woman who has been sexually assaulted by a man may be frightened by an individual who has some male characteristics (Jan. 31, p. 44, L. 32-46, p. 45, L. 26-30). Women can associate with sexual characteristics of an individual and find that frightening, and there certainly can be mistrust of men (Jan 31, p. 44, L. 25-31). In some circumstances some women may find physical characteristics significant (Jan. 31, p. 46, L. 36-43).

61. Dr. Watson testified that she would expect it to be an issue in a counselling setting if an individual were trying to preserve secrecy about having undergone sexual reassignment surgery (Jan. 31, p. 62, L. 17-33).

(ii) Dr. Pacey

62. As stated in Rape Relief's January 26, 2001 Notes of Argument (paras. 15-18):

Dr. Pacey was qualified as a psychiatrist with expertise in the medical treatment of assault and sexual assault, and in peer counselling. In her opinion, one must appreciate the level of distress and absolute horror and fear that a woman experiences after a sexual assault, including an extraordinary vulnerability, and a feeling that the person's whole life is being turned upside down. Basic assumptions about personal safety, the safety of the world, and the safety of men, all get smashed by assault and particularly by rape. (Direct, p. 28, L. 30-40).

Women who have been raped may suffer "Post-traumatic Stress Disorder" ("PTSD") (Exhibits 17 and 19). Women suffering from PTSD may display feelings of horror and fear and dread and lack of safety. Flashbacks related to the rape can return in the days and nights afterwards, which can go on for months (Direct, p. 29, L. 2-9). Women suffering PTSD may "persistently re-experience" the traumatic event in ways including suffering "intense psychological distress at exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event" (Exhibit 17). Dr. Pacey testified that for a lot of women the cues can be men in general (Direct, p. 30, L. 8-30). This can include having a severe reaction to even seeing a man, displaying extraordinary fear, calling out, shaking and huddling under a chair, something Dr. Pacey has witnessed (Direct, p. 30, L. 35-45). Some women may avoid all male company for prolonged periods of time (Direct, p. 35, L. 7-8).

Dr. Pacey testified that it is the experience of young girls and women that they are physically vulnerable, that oppression exists in this culture, and that they are often seen primarily as sexual beings, and the assault reminds her of that (Direct, p. 31, L. 31-p. 32, L. 8).

Dr. Pacey's evidence included written answers to some questions (Exhibit 16). She gave evidence about the therapeutic needs of individuals who grew up being treated as girls and women and who have experienced male violence. It was her evidence that most women live with the fear of male violence, and when it happens, therapeutic needs centre on dealing with the attack the woman has suffered. After the assault there is typically a profound sense of the world as unpredictable and dangerous and a profound mistrust of men. After sexual assault "the pseudo-sexual nature of the attack makes gender relevant: it is not the entire world which seems untrustworthy; it is primarily the male part of the world. All men are now on trial." Therapy needs to be safe, non-threatening, supportive and unambiguous, i.e. she needs no mixed or confusing messages from her counsellor. She generally needs a female therapist, especially in the period following the attack. There is significant danger that a male counsellor or someone who may still have some male characteristics though dressed as female will be disturbing to someone already extremely disturbed and afraid. In this situation the counsellor becomes an issue, when the woman needs her own feelings and situation to

be the issue.

(iii) Ms. xxx

63. As stated in Rape Relief's January 26, 2001 Notes of Argument (para. 19):

Ms. xxx, a 73 year old woman, testified about calling Rape Relief when her daughter, then 17, disclosed that she had been molested at the age of 8. Ms. xxx testified that Rape Relief had been a "lifeline," and that she revealed her own history of sexual and other abuse. She testified that she would not have told her story to a volunteer who she believed had grown up male. She said "I do not have to confide in someone I think is a man or might have been. I would feel uncomfortable." She testified that she would not have disclosed that information to the Complainant, and indicated that she could tell that the Complainant had lived as a man.

64. Rape Relief submits that Ms. xxx did not respond the same way to the Complainant as she did to Ms. Gilhooly. Ms. xxx testified that she would not have spoken to Ms. Nixon openly about her daughter's experience (Dec. 13, p. 3, L. 30-45; p. 11, L. 18). She testified that she wouldn't talk to the gentleman (Dec. 13, p. 11, L. 14). With respect to Ms. Gilhooly, she said "there might be a person, I might think, 'Ah, maybe I better talk to someone else'." Rape Relief submits that Ms. xxx's testimony, given in the context of testifying about traumatic and private events, demonstrates that she was equivocal about Ms. Gilhooly.

(iv) the Complainant

65. The Complainant testified about her fears of men, her concerns about attitudes arising from socialization, and her needs in obtaining support, as follows:

(a) She feared telling Mike that she was transgendered and says that it was a challenge to be dating only heterosexual men, saying the challenge would be whether they would be "understanding. And just all the things, you know, that - how, I guess, men, or we're all socialized growing up, and around homophobia, and what his reaction might be." (Dec. 11, p. 2, L. 14-22)

(b) She was afraid to go to a support group because "I had feelings about being transsexual or transgendered that I didn't want to affect any women in the group adversely. And, so that was the main reason, other than being shy and it's scary to go in front of a group of people." (Dec. 11, p. 17, L. 1-7)

(c) She found "telling your story is a really scary thing, especially in public." (Dec. 11, p. 18, L. 11-12).

(d) She said support group facilitators aren't "coming from a place of superiority. It's a place of equality and - and that's sort of how the healing begins. And, you know, they

offer guidance and support from personal experiences." (Dec. 11, p. 18, L. 31-36)

(e) In the Complainant's view, in her hope to do work in crisis counselling, if someone was uncomfortable talking to her they should be free to talk to someone else. (Dec. 12, p. 108, L. 25-31)

(f) She testified, with respect to the rejection from Rape Relief, "I understand why and around the safety issues, and I don't blame Rape Relief." (Dec. 11, p. 28, L. 43-45).

(g) She testified that some women may be frightened by men, and that she may have even been frightened by men, and that's why she said she thought it was acceptable to exclude men from peer counselling services (Dec. 12, p. 100, L. 38-47)

(h) She testified with respect to suffering abuse herself that "It's about violence and attitudes towards women in a society that he grew up with." (Dec. 12, p. 84, L. 21-22)

(i) She testified that "I know that, you know, the life experience issue and the oppression that many women in all these organizations face, and the necessity of women only space" (Dec. 12, p. 68, L. 9). Describing women-only space, she testified "the importance of having, you know, women only space is that women have a place that they can, you know, allows them the space that they need to sort of regain control of their lives and address the issues around equality" (Dec. 11, p. 42, L. 2-4)

(j) She testified that being told that being told to go to a service for transsexuals, if not her choice, would undermine her healing, and that part of healing was being able to make choices for oneself. (Feb. 20, Direct). Rape Relief submits that women who are not transsexuals, like Ms. xxx, should similarly not be required to go to a service which is not their choice and deprived of the right to make choices for themselves.

(v) Ms. Gilhooly

66. Rape Relief submits that the evidence of Ms. Gilhooly demonstrates that woman can be frightened by the presence of a man, or someone that on first glance they perceive as a man, in a space they think will be women-only, like a washroom.

(vi) Dr. Ross

67. Dr. Ross' evidence recognized the importance of speaking to someone with a common life experience. In her view, transgendered women should have the right to obtain assistance from someone who experiences life as a transgendered woman. Rape Relief submits that non-transgendered women should not have lesser rights.

(vii) Summary

68. Rape Relief submits that the evidence on this issue can be summarized as follows:

(a) Both Dr. Pacey and Dr. Watson agree to the following:

(i) In a crisis setting, it's important to make the individual who suffered the trauma comfortable to the extent possible;

(ii) Some women following sexual assault become frightened of men;

(iii) Some women who have been sexually assaulted by men may experience post-traumatic stress disorder. They may re-experience the traumatic event and suffer intense psychological distress at exposure to cues that symbolize or resemble an aspect of the traumatic event. Triggers have included the presence of a male figure;

(iv) There is a danger that a woman who has been sexually assaulted by a man may be frightened by an individual who has some male characteristics. Women can associate with sexual characteristics of an individual and find that frightening, and there certainly can be mistrust of men. Some women may find physical characteristics significant;

(v) Some women are simply silenced by the presence of men, and when men are present, they'll choose not to speak;

(vi) During at least the initial stages of treatment of sexual assault by males, it is appropriate for a woman to participate in a women-only group;

(vii) It is not therapeutic to have someone feeling uncomfortable in a group that's geared towards treatment of sexual abuse.

69. Ms. xxx's testimony provided a concrete example of a woman who would simply be silenced by the presence of a person she believed had lived as a man.

70. Rape Relief submits that the real differences between the testimony of Dr. Pacey and Dr. Watson on the issue of harm relating to the presence of a man or a person with male characteristics is as follows:

(a) Dr. Pacey testified that for "a lot" of women, the cues triggering re-experience of the traumatic event can be men in general. In contrast, Dr. Watson "did not often" encounter patients expressing a generalized fear of men, but her experience has not been in providing services in a woman-only environment. Rape Relief submits that the simple explanation for the different experiences of the two psychiatrists is that women who have a fear of men in general will not seek services in the environments in which Dr. Watson works; and

(b) Dr. Watson spoke of therapy groups in terms of treating a common issue, rather

than on seeing an issue or event in the context of a political analysis, like the oppression of women, leading to political resistance. She was of the view that it was not necessary for a counselling or therapy group to be composed entirely of women in order to deal successfully with questions of male violence, and even in discussion of other groupings, like groups of transgendered people, she would focus on working on a common issue rather than on working with the material of life experience to make sense of a symptom of oppression. Such a view reflects a group entirely focussed on therapy from a medical perspective, rather than a group like Rape Relief's, with its "support, education and action" aspects and its resistance to sexist oppression.

F. Rape Relief inquiries regarding Complainant's life experience and that of other volunteers

71. Rape Relief submits that the evidence, summarized below, shows that the inquiries by Ms. Cormier to the Complainant on August 29, 1995 were triggered by the Complainant's physical appearance, but that the Complainant was asked to leave only after the Rape Relief collective members had confirmed that the Complainant had the life experience of having lived as a man.

72. As stated in Rape Relief's January 26, 2001 Notes of Argument (para. 31-35), the three Rape Relief collective members present (Danielle Cormier, Tracey McIntosh and Karen Sawatzky) all noticed the Complainant and thought that she had lived as a man. Ms. Cormier took the Complainant aside, and privately asked the Complainant how long she had lived as a woman.

73. Ms. Cormier's evidence included the following:

(a) Ms. Cormier tried to explain Rape Relief's position, and thinking out loud, said oh my, have I made a mistake, are you saying you have never been a man. Ms. Cormier attempted to clarify that Rape Relief organizes among women, responding to male violence against women, and the Complainant had the experience of being treated as a man in the world, and Ms. Cormier did not, so she did not consider the two of them to be peers.

(b) Ms. Cormier said that decision was not personal in any way. She said she did not know the Complainant or her experiences or what she had been through. Ms. Cormier said "I've never met you, you may be a great person, this is based on a political decision about how to organize as woman to eventually end violence by men against women."

(c) Ms. Cormier said this was not a personal attack on the Complainant, and there was no need for her to attack back. Ms. Cormier resorted to metaphors to try to explain the position. She said, I don't understand what it is like to be transgendered, but I know what it is like to be a woman and lesbian, and I've experienced discrimination numerous times myself. Lots of people in the world are discriminated against. We organize without men, understanding that groups of men experience discrimination. For example, gay

men face discrimination of the worst kind, but we don't organize with them. The Complainant became offended, not accepting the metaphor, but instead saying she was not a gay man.

74. Ms. Cormier also testified that she took the steps she did (to remove the Complainant from the support group) on the basis that, although the Complainant is a woman now, she has had the experience of being a man in the world, and that experience is different from how women are treated in the world, acknowledging that they are not yet equal, and given that, she did not consider that she and the Complainant were peers. She would not have said that the Complainant "is not one of us." She was saying that the Complainant has had an experience she will never have, to be treated as men are treated in this world.

75. Ms. Cormier came to the view that the shared political view in the collective was that, based in the inequality between men and women, women are acceptable as peer counsellors in rape crisis work only if they have the experience of being born and growing up as girls and women. Ms. Cormier was not sure how she would have reacted if the Complainant had said that she had lived her whole life dressing and acting as a girl. It is not clear how Rape Relief would have reacted if the Complainant had chosen to lie and denied her experience of being treated as a man.

76. The Complainant testified that Ms. Cormier said that women must be oppressed since birth to be a part of the group (Dec. 11, Direct, p. 25, L. 20-21 and Cross, Dec. 12, p. 96, L. 33-34). The Complainant agreed that it was possible that Ms. Cormier told her that the Complainant had the experience of being treated as a man, and so the decision was not personal (Cross, Dec. 12, p. 98, L. 27-30).

77. The evidence of Ms. McIntosh and Ms. Sawatzky, who were not present when the other testified or when Ms. Cormier testified, was substantially similar to the evidence of Ms. Cormier. All three of them referred to Rape Relief's political theory of organizing as peers who had experienced male oppression from birth, and to the Complainant being ineligible for the training because she had lived being treated as a man and was not a "peer" to women who had not. Ms. Sawatzky understood that the Complainant identified as a woman, but had experience as a man. Ms. Sawatzky told the Complainant that she appreciated her willingness to work against violence and it was not that they did not believe she was a caring person. Ms. Sawatzky testified that they explained that Rape Relief's position was not about genitals or equipment, but about the experience of growing up female, and conditioning generally.

G. Impossibility of Rape Relief determining applicant gender identity

78. In assessing a patient at the Gender Clinic, Dr. Watson does not simply ask whether the individual identifies as a woman. The assessment all told will take three to four hours. The patient is generally seen by more than one member of the professional team. Treatment at the clinic is an ongoing thing, and the extent to which the patient's

self-identification as male or female will be accepted medically may only become evident over time and often through therapy. In some instances, in response to acute stress, someone may seek a "transsexual solution," feeling that this might be the answer to their difficulties, when they do not in fact have a gender identity different from their body. It becomes clear over a period of time whether someone has a longstanding and persistent identification (Watson, Jan. 31, p. 56-57).

79. The majority of people don't struggle with their gender identity (Watson, Jan. 31, p. 61, L. 8-13)

80. Rape Relief submits that, even if Dr. Watson's concept of gender self-identification is accepted, determination of the gender identity would require significant medical resources and time, and clearly is not within the capacity of a small non-profit organization. Asking the individual how he or she self-identifies is not adequate even for the medical professionals at the Gender Clinic.

H. Women who are mistaken for men

81. The Complainant asserts that women from time to time can be mistaken for men. However, the only evidence in this regard relates to brief contact with strangers, such as in washrooms or on buses. Rape Relief submits that this trivializes the issues relating to the sexism in society and the oppression of women. There is no evidence about women being routinely mistaken for men in important respects, such as in securing good employment and prompt advancement, and in having their opinions valued. Women who are occasionally mistaken for men are not living with male privilege, the way an individual who has been treated as a boy and man has enjoyed male privilege.

82. Rape Relief submits that a woman, like Ms. xxx, silenced by someone they perceive as having lived as a man, could be honestly reassured that a person has always lived as a woman and has shared the life experience of female subordination. However, learning that the person has always identified as a female but has lived with male privilege would not provide that reassurance.

I. Other Peer Support Groups and Political Groups

83. The Gender Clinic runs group therapy sessions for transgendered people (Watson, Jan. 31, p. 47, L. 26-29).

84. Dr. Watson agrees that it is acceptable for transgendered people to work together in a group to discuss issues arising from their common life experience (Jan. 31, p. 49, L. 33-37).

85. NOW, the National Organization for (or of) Women, is a U.S. group which has men members, and sees part of its mandate as fighting for the liberation of gay men

(Lakeman, Dec. 21, p. 126, L. 22-24; Ross).

J. Sexual Reassignment Surgery

86. Dr. Watson testified that she would expect it to be an issue in a counselling setting if an individual were trying to preserve secrecy about having undergone sexual reassignment surgery (Jan. 31, p. 62, L. 17-33). Dr. Watson testified that it is not common for an individual who has undergone sexual reassignment surgery to fear that they would not be believed as a member of the target gender (Jan. 31, p. 60, L. 17-30).

87. Johns Hopkins is thought to be the first place in the United States to have done Sexual Reassignment Surgery. It no longer does that surgery, and there is no longer a clinic there (Watson, Jan. 31, p. 58, L. 35-44). The public reason for closing the clinic is that they felt that their outcomes were not as good as they wanted them to be, however, there is controversy and the general belief is that it was closed for other political reasons (Watson, Jan. 31, p. 59, L. 21-31).

88. John Money was the Director of the Johns Hopkins and involved in the John/Joan case (Watson, Jan. 31, p. 70 L. 24-p. 71 L. 8).

K. Rape Relief Employees

89. Rape Relief employees generally go through a public hiring, with an ad in the paper and interviews. Volunteering is not a prerequisite, and most volunteers do not become employees. Rape Relief has many times declined employment to an applicant who was a Rape Relief volunteer. (Lakeman, Dec. 20, p. 59, L. 32- p. 60, L. 33).