Decision issued: March 13, 2025

In the matter of a Discipline Hearing
under s. 38 of the *Health Professions Act,* RSBC 1996, c 183

BETWEEN:

BRITISH COLUMBIA COLLEGE OF NURSES AND MIDWIVES

(the "College")

AND

AMY EILEEN HAMM

(the "Respondent")

REASONS FOR DECISION ON VERDICT

Dates of Proceeding:	September 21 to 23, 2022, October 24 to 27, 2022, January 10 to 12, 2023, October 23 to 25, 2023, October 30 and 31, 2023, November 1 to 3, 2023, November 6 to 8, 2023, March 18 and 19, 2024
Panel:	Edna McLellan, Non-Practising R.N. (Chair) Sheila Cessford, Public Representative Jackie Murray, R.N.
Counsel for the Panel:	Angela R. Westmacott, K.C.
Counsel for the College:	Mr. Michael Seaborn Ms. barbara findlay, K.C. Mr. Brent Olthius, K.C.
Counsel for the Respondent	Ms. Lisa Bildy Ms. Karen Bastow

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A. Introduction

1. This Panel of the Discipline Committee (the "Panel") of the British Columbia College of Nurses and Midwives (the "College") was convened pursuant to s. 38 of the *Health Professions Act,* RSBC 1996, c 183 (the "Act") to conduct a hearing in relation to a citation issued to Amy Eileen Hamm, R.N. (the "Respondent") on April 1, 2022 and amended on June 28, 2022 (the "Citation"). Proper service of the Citation was admitted by counsel for the Respondent at the outset of the hearing.

2. The Citation alleges that, between approximately July 2018 and March 2021, the Respondent made discriminatory and derogatory statements regarding transgender people, while identifying herself as a nurse or nurse educator, across various online platforms including, but not limited to, podcasts, videos, published writings, and social media. This is alleged to be unprofessional conduct or a breach of the Act or College bylaws under s. 39(1) of the Act, as well as contrary to one or more of the following College Professional Standards: the *Responsibility and Accountability* Professional Standard, the *Client-Focused Provision of Service* Professional Standard, and the *Ethical Practice* Professional Standard. The specific online statements were not identified in the Citation. The College tendered investigation reports containing over 300 pages of online statements into evidence. At the Panel's request, the College subsequently identified the specific statements in issue in a separate binder (the "Extract") which was also put into evidence.

3. For the reasons set out below, the Panel finds that the allegation in the Citation that the Respondent engaged in unprofessional conduct is proven in respect of certain of the statements which she made which are reproduced in the Extract.

B. Burden and Standard of Proof

4. The College bears the burden of proving the allegations in the Citation. As this is a regulatory proceeding, the civil standard of proof applies. The College must prove the allegations on the balance of probabilities, recognizing that the evidence must be sufficiently clear, convincing and cogent to meet that test: *F.H. v. McDougall,* 2008 SCC 53, paras. 40 and 46.

C. Relevant Legislative Provisions and College Professional Standards

5. The term "unprofessional conduct" is defined in s. 26 of the Act to include "professional misconduct" which, in turn, is defined to include "conduct unbecoming a member of the health profession". Although the Act provides no guidance on the issue of "conduct unbecoming", the language reflects a legislative choice "not to draw hard boundaries around what might constitute" such conduct under the Act: *The College of Physicians and Surgeons of Saskatchewan v. Leontowicz,* 2023 SKCA 110, para. 66.

6. Of the three professional standards cited in the Citation (The *Responsibility and Accountability* Professional Standard, the *Client-Focused Provision of Service* Professional Standard, and the *Ethical Practice* Professional Standard), the College indicated that the following provisions are engaged in this case:

Standard 1: Professional Responsibility and Accountability

CLINICAL PRACTICE

1. Is accountable and takes responsibility for own nursing actions and professional conduct.

…

4. Takes action to promote the provision of safe, appropriate and ethical care to clients.

5. Advocate for and/or helps to develop policies and practices consistent with the standards of the profession.

…

8. Understand the role of the regulatory body and the relationship of the regulatory body to one's own practice.

Standard 3: Client-Focused Provision of Service

CLINICAL PRACTICE

....

7. Participates in changes that improve client care and nursing practice.

…

9. Understands and communicates the role of nursing in the health of clients.

Standard 4: Ethical Practice

CLINICAL PRACTICE

…

3. Demonstrates honesty and integrity.

…

7. Promotes and maintains respectful communication in all professional interactions.

…

12. Identifies ethical issues; consults with the appropriate person or body; takes action to resolve and evaluates the effectiveness of actions.

EDUCATION

…

3. Demonstrates honesty and integrity.

…

7. Promotes and maintains respectful communication in all professional interactions; educates others to do the same.

7. These specific professional standards were not tendered into evidence nor directly addressed by witnesses during the hearing.[1] Professional standards are not legal authorities nor documents of which the Panel can take judicial notice: *Council for Licensed Practical Nurses v. Walsh,* 2010 NLCA 11; *Kherani v. Alberta Dental Association,* 2025 ABCA 2. Professional standards of this nature generally require identification and elaboration in terms of their content and meaning, particularly as they contain broad, generalized statements. As these professional standards were not tendered into or directly addressed in evidence, the Panel declines to consider them.

D. Issues

8. There are two preliminary issues. The first relates to the College's submission regarding the interpretation of the Citation. The College submits that the allegation that the Respondent made statements which are "discriminatory and derogatory" to transgender persons should be read disjunctively - that is to say, a finding of unprofessional conduct should be made if the statements are found to be either "discriminatory" or "derogatory" or both. The Respondent did not take issue with this interpretation.

9. The Panel recognizes that the term "and" can be used conjunctively or disjunctively, and how it is to be interpreted depends on context: *Seck v. Canada (Procureur General)*, 2012 FCA 314, para. 47, cited in *The Owners, Strata Plan KAS 3549 v. 0738039 B.C. Ltd*., 2016 BCCA 370, para. 16. Part of the context in this case is the importance of clear and unequivocal wording in a citation. Citation allegations are foundational to outlining the case against a respondent and must make clear what the College intends to prove. Although the Citation did not identify the specific statements in issue, the Extract provided those particulars to the Respondent and she was able to respond to each of them, including whether they were discriminatory, derogatory or both. Given that the Respondent did not challenge the College's interpretation of the Citation or suggest that she did not have adequate notice of the case against her, and having regard to the breadth of the timeframe covered by the allegation, the Panel accepts that interpreting the allegation in a disjunctive manner is fair and reasonable in this case. The Panel will therefore proceed on the basis that the Citation alleges that, at various points between approximately July 2018 and March 2021, the Respondent made statements that were discriminatory, derogatory, or discriminatory and derogatory to transgender persons. Based on the language used in the Citation, the Panel recognizes it has no regulatory authority in relation to offensive or unprofessional statements that are not otherwise discriminatory and/or derogatory to transgender persons but, for clarity, it does not condone such statements.

[1] Dr. Elizabeth Saewyc, R.N. provided evidence about the Canadian Nurses Association *Code of Ethics for Registered Nurses* (the "CNA *Code of* Ethics") as a key guideline for ethical nursing practice and the College's Entry-Level Competencies updated in January 2021.

10. The second issue relates to the College's partial reliance on statements made by the Respondent during the hearing to prove that she made discriminatory and/or derogatory statements regarding transgender persons. The Panel is not prepared to rely on statements made by the Respondent during the hearing for that purpose. Making answer and defence to professional charges is not in itself unprofessional conduct, even if the defence is unsuccessful: *Alsaadi v. Alberta College of Pharmacy,* 2021 ABCA 313, para. 30. The only statements properly in issue in this hearing are those that were made by the Respondent within the timeframe set out in the Citation.

11. Certain other matters are not in dispute. The Respondent acknowledges she made the statements attributed to her which are identified in the Extract and that the "tweets" were made between approximately July 2018 and March 2021. It is common ground that the statements in question were made while the Respondent was "off-duty" rather than in the course of her employment and no concerns were identified with respect to her nursing practice.

12. Therefore, the only issues for determination are:

(a) whether the Respondent's off-duty statements made between approximately July 2018 and March 2021 are discriminatory and/or derogatory to transgender persons and whether she identified herself as a nurse or nurse educator in making them,

(b) whether there is a sufficient nexus between the Respondent's off-duty statements made within that timeframe and the profession of nursing, and

(c) if so, whether a finding that the off-duty statements constitute unprofessional conduct would unjustifiably infringe the Respondent's rights under s. 2(b) of the *Charter.*

13. Subsumed within the last issue is the Panel's obligation to consider *Charter* rights and values and exercise its discretion in a manner that proportionately balances the Respondent's section 2(b) *Charter* rights and values with the public purpose and objectives of the Act: *Doré v. Barreau du Québec*, 2012 SCC 12 ("*Doré*"); *Trinity Western University v. Law Society of British Columbia,* 2018 SCC 32 ("*TWU*"); *Law Society of British Columbia v. Harding,* 2022 BCCA 229 ("*Harding*"); *Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment)*, 2023 SCC 31 ("*CSF*").

E. Summary of the College's Evidence

14. The College called a staff lawyer and two expert witnesses to testify at the hearing.

Ms. Ohene-Asante's evidence

15. The College's first witness was Ms. Aisha Ohene-Asante. She is a staff lawyer with the College who assists with investigations. Ms. Ohene-Asante investigated two complaints filed against the Respondent in relation to her online statements about transgender persons. She initially conducted an open-source online search of statements made by the Respondent relating to transgender people and then retained Paladin Risk Solutions ("Paladin") to assist her. Paladin provided two reports to the College. The first was an interim report dated November 2, 2020, which summarized the results of open-source searches completed on October 30, 2020. The second was a final report dated December 17, 2020 which summarized the results of open-source searches completed on December 15, 2020. Ms. Ohene-Asante then prepared an investigation report for the Inquiry Committee which summarized the information gathered from the open-source searches.

16. Ms. Ohene-Asante acknowledged on cross-examination that she did not attach complete copies of the Paladin reports to her investigation report, nor did she search for, or request, surrounding "tweets" for context. She confirmed that the only person she interviewed was the Respondent's supervisor who also received a complaint regarding the online statements; she did not interview the complainants or the Respondent. Ms. Ohene-Asante confirmed she did not investigate whether there was harm from the online statements or consider communications received from members of the public who expressed support for those statements following the investigation.

Dr. Saewyc's evidence

17. The College's second witness was Dr Saewyc, the Director of the School of Nursing at the University of British Columbia ("UBC"). Dr. Saewyc founded the *Stigma and Resilience Among Vulnerable Youth Centre* which is a multidisciplinary research centre in the School of Nursing. She was the principal investigator of the first national Canadian Trans Youth Health Survey conducted from 2013 to 2014 on transgender and non-binary young people which was repeated five years later. Dr. Saewyc has served as an expert for the World Health Organization ("WHO") and government agencies on adolescent health. She is a member of the advisory board for Trans Care BC which provides guidance and services for transgender health care in British Columbia. Dr. Saewyc was qualified as an expert in the areas of nursing practice or nursing care of transgender people, specifically with respect to: (a) nursing education; (b) nursing standards, competencies, and guidelines; (c) the health and mental health issues typically faced by, and health outcomes of, transgender persons; and (d) the harms that transgender persons may experience in their interactions with health professions.

18. In her direct examination, Dr. Saewyc highlighted key passages of her expert report which was tendered into evidence. She explained the role of a nurse educator in providing education to nursing students pre-licensure, practising nurses such as those seeking certificates or working towards post-graduate degrees, and/or those transitioning to new practice areas. Dr. Saewyc testified that nurse educators in clinical settings are responsible for providing updates and

introducing new treatments and practices. Dr. Saewyc acknowledged that the Respondent may not have worked on continuing practice guidelines or protocols in her role as a nurse educator although such work is often part of the role.

19. Dr. Saewyc testified that transgender and non-binary people have contact with nurses in all areas of clinical care. While some of those points of care are not unique to transgender and non-binary people, Dr. Saewyc observed their experiences can be markedly different from the care experienced by cisgender individuals. The relatively unique points of care that transgender people may have with nursing focus on their specific health needs. For example, Dr. Saewyc explained that health care providers may assess and identify that a transgender person may be suffering from gender dysphoria, provide mental health counselling, or make referrals to treat mental health challenges that may arise from the stigma and discrimination they face. Dr. Saeywc observed that nurses may also provide endocrine care with hormone therapy and other medications to alter sex characteristics and treatment to delay the development of secondary sex characteristics through puberty blockers.

20. Dr. Saewyc addressed the potential harms that transgender persons may suffer in their interactions with health care providers. Given the pervasive nature of binary gendered assumptions in most health care settings, Dr. Saewyc testified that transgender and non-binary persons regularly encounter processes that challenge patient privacy and create obstacles to respectful patient-centered care. She explained that such patients may be misgendered which can lead to "intrusive questions, disbelief, mockery, disrespect, hostility, or even denial of care". When a transgender person seeks health care that is not directly related to their transgender identity, Dr. Saewyc noted that some health care providers may divert their attention from focusing on the presenting problem to the patient's medical history, hormone status, or even genitalia or step back from providing services because they feel that such patients require specialized care. Dr. Saewyc referenced accounts in which nurses and other health care providers believe that gender dysphoria is a mental illness or use coercive interactions to require patients to dress or express their gender identity in line with their sex assigned at birth.

21. Dr. Saewyc testified that such negative experiences tend to disrespect, humiliate, and/or discriminate against transgender patients, erode their trust in the health care system, and foster a reluctance to disclose their gender identity to health professionals. She referenced a Canadian Trans Youth Health Survey which revealed that approximately 50% of the 1,519 transgender youth surveyed had a primary health provider who was aware of their transgender identity and less than 20% of the youth surveyed felt comfortable talking to their provider about their transgender health needs. The survey revealed that virtually all youths who accessed walk-in clinics felt uncomfortable talking about their trans health needs with health care providers. She testified that 43% of the youth surveyed reported that, in the preceding year, they had missed needed physical health care and 71% had not accessed mental health care which they felt they needed. Dr. Saewyc explained that common reasons for not accessing required health care are fear of what "people will say or do" in the health care system and the impact of previous negative experiences. She testified that transgender people are at higher risk of stress-related health

issues such as anxiety, depression, suicidality, and potentially cardiovascular disease and cancer because of the stigma and discrimination they experience.

22. Dr. Saewyc addressed the current standards, competencies, and guidelines in nursing education relating to the treatment of, and interactions with, vulnerable and marginalized persons. She testified that basic and more advanced nursing textbooks address the treatment of such populations by referencing the ethical obligations around care. Dr. Saeywc explained that the focus is on guidance around nursing communication and ways to interact with people. She identified the CNA *Code of Ethics*, which is also referenced by the College's practice standards, as a key guideline for ethical practice. The CNA *Code of Ethics* outlines ethical responsibilities and values central to ethical nursing practice from "providing safe, compassionate, competent and ethical care" to "honouring dignity", "promoting justice", and "being accountable". The CNA *Code of Ethics* states that it is "important for all nurses to work toward adhering to the values in the *Code* at all times for persons receiving care – regardless of attributes such as age, race, gender, gender identity, gender expression, sexual orientation, disability, and others – in order to uphold the dignity of all". Dr. Saewyc noted that the ethical responsibility of "honouring dignity" requires nurses to recognize and respect the intrinsic worth of each person and to "relate to all persons receiving care with respect" and to "utilize practice standards, best practice guidelines, policies and research to minimize risk and maximize safety, well-being and/or dignity for persons receiving care". She observed that the ethical responsibility of "promoting justice" requires nurses to: (a) "uphold principles of justice by safeguarding human rights, equity and fairness and promoting the public good"; and (b) refrain from discrimination based on enumerated attributes, including "judging, labelling, stigmatizing and humiliating behaviours towards persons receiving care or toward other health-care providers, students and each other".

23. Dr. Saewyc noted that the CNA *Code of Ethics* also provides that ethical nursing practice "addresses broad aspects of social justice that are associated with health and well-being" which are "focused on improving systems and societal structures to create greater equity for all"; it provides that "(i)ndividually and collectively, nurses keep abreast of current issues and concerns and are strong advocates for fair policies and practices". She explained that the CNA *Code of Ethics* recommends "(r)ecognizing that vulnerable groups in society are systematically disadvantaged (which leads to diminished health and well-being) and advocating to improve their quality of life while taking action to overcome barriers to health care". Dr. Saewyc also highlighted the College's specific competencies for entry-level practice for registered nurses which address treatment of, and interactions with, vulnerable and marginalized populations, and require nurses to provide "safe, ethical, competent, compassionate, client-centered and evidence-informed nursing care across the lifespan in response to client needs" and advocate "for health equity for all, particularly for vulnerable and/or diverse clients and populations".

24. Dr. Saewyc testified that while there are fewer nursing standards, competencies and guidelines which expressly focus on care and treatment of transgender people, that is an issue

which has been addressed in most prominent nursing textbooks in the last five years.[2] Transgender people are identified as a marginalized and vulnerable group in most Canadian basic nursing textbooks; therefore, the principles and standards for providing care to marginalized groups apply equally to transgender patients. Dr. Saewyc also referred to a 2021 guideline published by the Registered Nurses Association of Ontario entitled *Promoting 2SLGBTQI+ Health Equity* which outlines best practices based on systematic reviews of existing research. The 2021 guideline recommends that health providers "use 2SLGBTQI+ inclusive language and a person-centered history taking approach and ensure privacy and confidentiality during interactions with all persons, to be inclusive of 2SLGBTQI+ people".

25. Dr. Saewyc described the harms that transgender persons may experience. She noted that nurses, as health professionals, hold a trusted status in Canadian society; she believes their opinions and statements wield significant influence in shaping public opinion and practice environments and the public's perception of the care they are likely to receive. She testified that when health professionals make statements denying the identity of transgender persons or discounting their experiences, it shows "profound disrespect for their personhood". Transgender persons may assume that those views are held by the profession at large, which may further reinforce concerns about receiving poor treatment in health care settings and discourage them from accessing care until they have an urgent need. Dr. Saewyc testified that statements denying the identity of transgender persons from a respected health professional can give tacit permission to others to react with prejudice towards a group which already faces discrimination and violence. She cited statistics from the BC Adolescent Health Survey of students aged 12 to 19 in which more than 60% of transgender girls, 70% of non-binary youth, and 82% of transgender boys reported experiencing bullying or sexual harassment in the preceding year. Dr. Saewyc reported the research from the Canadian Trans Youth Health Survey identified strong links between bullying and other forms of violence and higher probability of suicidal ideation and suicide attempts among transgender and non-binary young people.

26. In relation to the Respondent's statements which are at issue in this hearing, Dr. Saewyc observed:

> Some of the statements in the materials that were provided clearly challenge or deny the concepts or general definitions of gender and gender identity, even though these concepts and definitions are provided in standard nursing textbooks and professional literature. Other statements also discount the expressed identity of transgender people, especially transgender women, claiming they are not female, therefore they cannot be women, women cannot have penises, therefore they are men. Additional statements claim that providing gender-affirming care to transgender people and recognizing their gender identity harms the sex-based rights of women and children. …

[2] She cited references from Kozier, Erb, *et al, Fundamentals of Canadian Nursing: Concepts, Processes and Practice,* 4th Edition (2018), Potter and Perry's *Canadian Fundamentals of Nursing,* 6th Edition (2018), and Stamler, Yiu *et al, Community Health Nursing: A Canadian Perspective*, 5th Edition.

> … publicly denying someone's asserted gender identity or pronouns challenges their very existence as a trans person. In my opinion, most transgender people, upon hearing the statement that their gender identity is not real, and they should only be recognized as the sex they were assigned at birth, would feel that statement disrespects them and undermines their dignity. When such statements are made by a registered nurse, and that nurse further asserts that policies and practices that support transgender people's gender identity actually harm the rights of cisgender women and children, I think most transgender people would see the nurse as representing the nursing profession and health care, and interpret those statements to be a position of the nursing profession, or held by most nurses. If this is the perception, transgender people may reasonably fear discrimination and negative treatments in health care settings where the nurse is practicing, or health care settings overall.
>
> This is especially likely when many transgender people have already encountered previous negative experiences in health care. Such fears create a barrier to accessing needed health care; missing or delaying necessary health care can worsen health problems, and untreated health problems can result in chronic conditions, disability, or even premature death.

27. Dr. Saewyc acknowledged on cross-examination that cisgender women have also historically been marginalized in health care relative to cisgender men but noted that she was not limiting her observation to those whose sex is assigned female at birth. She agreed that there are also members of other groups in society, apart from the transgender community, who also face barriers in health care.

28. Dr. Saewyc was questioned about "intersectionality"- a term which she said was coined in the late 1980's but has been used in publications since at least 2010. She was also asked whether cisgender women are more likely to suffer domestic violence then women who are not involved with men. Dr. Saewyc emphasized that her expertise relates to adolescents where there are equal rates of dating violence between genders; however, she acknowledged that a proportion of cisgender women experience intimate partner violence from cisgender males, and that most individuals convicted of sexual offences appear to identify as cisgender male or as men.

29. Dr. Saewyc was asked about the percentage of transgender people in the general population. Noting there are limited population-based estimates, Dr. Saewyc testified the most recent estimate is that between .05% up to just under 1% of the population identify as transgender with another group of at least 1% that would identify as non-binary; she said that current gender does not match gender assigned at birth for approximately 2% of the population of young people (of which approximately 70% were assigned female at birth). Dr. Saewyc estimated that between just under 1% to approximately 1.7% to 2% of the population are intersex.

30. Dr. Saewyc confirmed she reviewed the College materials containing the Respondent's alleged statements and acknowledged there was nothing in those materials that referenced

complaints from patients who received care from Respondent in the downtown eastside of Vancouver ("DTES"), or that indicated she had refused to provide care to transgender people or used disrespectful terms or misgendered them.

31. Dr. Saewyc also acknowledged that individuals can self-identify as women who may not necessarily "pass" as females to outside observers by reference to cultural ideas of what women should look like. She accepted that misgendering may be accidental but noted that insisting that transgender women refrain from using the term "woman" to describe themselves and insisting they are men is a form of misgendering.

32. Dr. Saewyc did not agree with the proposition put to her on cross-examination that "men" and "women" are biological sex categories while "gender identity" is a different category. She explained that, in the health literature, there is a "fairly clear" understanding that "sex" usually refers to male, female, or intersex while "gender" refers to the terms "women" and "men", recognizing that these terms may have a connection to each other. She testified that "gender identity" is a concept developed in developmental psychology and pediatric development that explains how children and adolescents begin to understand their gendered bodies. Dr. Saewyc referred to the WHO definition of "gender" which references "the characteristics of women, men, girls and boys that are socially constructed" and which includes "norms, behaviours, and roles associated with being a woman, man, girl or boy, as well as relationships with others". According to this definition, gender "interacts with but is different from sex, which refers to the different biological and physiological characteristics of females, males and intersex people, such as chromosomes, hormones and reproductive organs".

33. When asked to provide examples of harm suffered by transgender people that she had personally observed, Dr. Saewyc stated that she could not do so because she has not practised in a hospital setting since 1999 or provided clinical care in a setting that included a large number of transgender people; however, she referenced the research and surveys that she has conducted involving qualitative interviews with transgender and non-binary young people and adults regarding their health care experiences, and the observations of other researchers and clinicians, some of which she acknowledged were anecdotal.

34. Dr. Saewyc was asked whether there were circumstances in which biological sex is relevant to the provision of health care. She agreed that it is important to know a patient's physiology in some areas of practice, recognizing that it may be appropriate to ask about hormone status or whether someone has specific body parts if such information is relevant and necessary to provide care. Dr. Saeywc indicated she was not sure when asked whether she supported keeping documentation of a patient's biological sex in medical records. She noted that if biological sex and gender markers are segregated in the medical record, the clinicians who receive only some of the information are not going to necessarily provide appropriate or respectful care.

35. Dr. Saewyc was questioned about "desistance" – a term which identifies people who have identified by a particular gender identity, or who are identifying as a gender not aligned with the

sex that they were assigned a birth, and who have decided not to continue with pursuing health care related to gender identity. She agreed that some older studies suggested there was a significant desistance rate among pre-pubescent children but observed those conclusions have been critiqued in later studies. While Dr. Saewyc confirmed that some children who identify pre-pubertally around gender incongruence change, she noted there are also some who do not develop gender dysphoria or gender identity awareness until they reach puberty. Dr. Saewyc indicated the statistics regarding desistance rates for adults vary widely. She was not aware of a single desistance rate or if one had been determined.

36. Dr. Saewyc was asked whether nurses have a duty to educate the community on acceptable terms when providing health care and making public statements. She responded that it would depend on the context. By way of example, Dr. Saewyc explained that when patients use terms that may be racially offensive in a health care setting, nurses should indicate why those terms are not used. She agreed that when communicating with members of immigrant communities, health care providers should ensure those patients understand the information being provided.

37. Dr. Saewyc was asked whether it was disrespectful for the Respondent to use the term "women" to exclude transgender females in her public statements. Dr. Saewyc responded that it was disrespectful to state that "women" only includes those whose sex is assigned female at birth and does not include transgender women. She noted that the Respondent did not clarify she was only speaking of "women" for a particular purpose in her statements, and conflated sex and gender when suggesting that transgender women cannot be women. Dr. Saewyc observed that the Respondent's statements use the term "woman", which is gender, to say it exclusively refers to sex, which is female.

38. In relation to gender affirming care for youth, Dr. Saewyc acknowledged that there are medical professionals who believe that cross-sexed hormones should not be prescribed to young teenagers because they are too young to provide consent. She testified that decisions regarding the timing of treatment should be based on an assessment of the individual as age is "a very rough proxy for development". She cautioned that she is not qualified to make determinations about appropriate ages for treatment as she is not a pediatric endocrinologist.

39. Dr. Saewyc agreed that there has been a shift in terms of those presenting for gender affirming care, with a larger portion being those assigned female at birth. She explained:

> A … it could be that there have always been a specific population of trans and nonbinary young people in the population, and they may not have been able to access care. They may not have been perceived to need that care in terms of the system creating barriers to that care disproportionate to their population. Or those who are assigned male at birth may have been brought to clinics at an earlier age or more frequently because families or the – the broader community considers a trans feminine identity to be a problematic one that needs to be altered. And so they came to the attention of clinical settings more frequently previously…

40. Dr. Saewyc was asked about the kind of care biological females receive at gender clinics. She explained that services may include assessment and health education, referrals to specialists for surgical services, and medications such as puberty blockers and cross-sex hormones. She acknowledged that surgical interventions and some medications cause changes which are not reversible. Dr. Saewyc did not agree that there is a debate about appropriate gender-affirming care for adolescents around the world. While acknowledging there are people who hold differing opinions, Dr. Saewyc observed:

> A In terms of the – the experts and care, I do not think there is as much of a debate as you're sounding or some of the materials you have provided would actually suggest. The standards of care that have been promulgated by WPATH, by the pediatric endocrinologists, and others have a really long process of evaluating existing research, conducting additional research and systematic reviews, and engaging with clinicians who have longstanding and deep knowledge of a variety of specific issues and coming to a specific consensus about that care.

41. Dr. Saewyc was referred to an article entitled, "Reconsidering Informed Consent for Trans-Identified Children, Adolescents and Youth" published in the *Journal of Sex and Marital Therapy* which posits that children cannot provide informed consent. She did not accept that this was an authoritative article, noting the journal is not one of the generally recognized journals regarding transgender health care for children and adolescents. Dr. Saeywc referenced the British Columbia *Infants Act* which requires clinicians to assess whether the young person can understand the risks and benefits of treatment in assessing whether they can provide consent.

42. Dr. Saewyc was asked whether she believes the higher rates of depression and suicidality observed in transgender youth are attributable to social stigma or a comorbid condition unrelated to gender. She testified that there are a variety of causes for depression and anxiety in adolescents but there is a strong connection between the stigma and discrimination experienced by transgender and non-binary young people and their disproportionate rates of depression and anxiety.

Dr. Bauer's evidence

43. The College's final witness was Dr. Greta Bauer, a full professor of Epidemiology and Biostatistics at the Schulich School of Medicine and Dentistry at Western University. Dr. Bauer is a member of Gender Sexuality and Women Studies, and the Sex and Gender Science Chair for the Canadian Institute of Health Information ("CIHI"). Dr. Bauer's research focuses on interdisciplinary epidemiological and mixed-methods research that examines social, mental and physical health impacts of social marginalization. She has led multiple research projects on transgender health and served as co-chair of the Research Committee of the Canadian Professional Association for Transgender Health. She is also a member of the World Professional Association for Transgender Health ("WPATH"). Dr. Bauer has published extensively on transgender health issues. She was qualified as an expert in epidemiology and applied

biostatistics to provide expert evidence on social marginalization and the evidence-based health and well-being of sexual and gender minority people, including the effect of social marginalization on that population's health and well-being, including: (a) the current scientific understanding regarding the components of, and relationship between, sex and gender and definitions of terms commonly used in this area; (b) the ways in which transgender people are marginalized in Canadian society, taking into account erasure, structural barriers, and interpersonal mistreatment, and how marginalization plays out in the health care setting and/or impacts the ability of transgender people to seek appropriate health care; (c) the evidence-based research regarding the use of gendered washrooms and other gendered spaces such as locker rooms, sports, and prison wards by transgender people both in relation to harms experienced by transgender people and harms experienced by cisgender people; and (d) how statements attributed to the Respondent (identified in the College's Extract) fit within the framework of sex and gender and whether they are likely to cause harm to transgender people.

44. Dr. Bauer highlighted key portions of her expert report in her direct examination. She first addressed the glossary of terms included in her report. She defined "cisgender" as a person whose gender identity matches the sex they were assigned at birth, "gender diverse" as capturing anyone falling outside the categories of cisgender women and girls and cisgender men and boys, "gender expression" as how one presents themselves socially, and "gender identity" as the gender that one knows themselves to be, whether as a man, a woman, both, neither, or something else. Dr. Bauer explained that the term "sex assigned at birth" is a starting place based on neonatal genital phenotype. She also described the current scientific understanding regarding the components of, and relationship between, sex and gender with reference to the following table she published ten years ago:

Table 1. Sex and gender multidimensionality at the individual level: A conceptual tool for epidemiologists

Dimension	**Description**	**Potential change over life course**
Chromosomal sex	Karyotype (XX, XY, XO, XXY); chimerism	No[a]
Sex assigned at birth	Recorded on initial birth record; generally genital phenotype	No
Hormonal milieu	Endogenous and exogenous sex steroids	Yes
Reproductive sex	Gametes	Yes
Organ-specific status	Presence of a sex-specific organ (e.g., uterine status)	Yes
Sexed physiology	Sexed physiological measures (e.g., lactation, semen production)	Yes

Intersex status	Reported presence of intersex conditions generally, or a specific condition	Yes
Pregnancy	Temporary pregnancy-specific anatomy (e.g., placenta) and physiology (e.g., transplacental microtransfusion)	Yes
	Gender	
Gender identity	Personally held sense of one's gender as man/boy, woman/girl, another cultural gender, trans, non-binary, etc.	Yes
Intersex identity	Personally held identification as intersex	Yes
Lived gender	Expressed gender, or how one presents oneself in day-to-day life	Yes
Gender role	Gendered social, ceremonial, or work roles, including men's, women's and other culturally specific roles	Yes
Metaperceived gender	Gender one knows others perceive or treat them as, including perception as gender minority	Yes
Masculinity and/or femininity	Social and historically situated norms regarding men/boys and girls/women	Yes
Internalized gender stigma	Internalized beliefs regarding one's own sex/gender (e.g., internalized cisnormativity,[b] internalized misogyny [c])	Yes
Enacted gender stigma/ discrimination	Personal experiences of sexism, transphobia, or homophobia	Yes
Gender ideology	Attitudes toward, or agreement with, a culture's gender norms	Yes
	Sex/gender	
Administrative sex/gender	Undifferentiated sex/gender indicator within administrative data	Yes
Undifferentiated survey item sex/gender	Survey item recorded by participant based on unclear distinction	Yes
Computer (AI)-classified sex/gender	Algorithmically assigned gender categories or probabilities	Yes

Researcher-perceived sex/gender	Survey item recorded by researcher based on appearance, name or voice	Yes
	Gender minority cross-classifications [d]	
Gender identity ≠ birth-labelled sex	Umbrella classification for all whose gender identity differs from sex assigned at birth	Yes
Lived gender ≠ birth-labelled sex	Umbrella classification for all whose lived gender differs from sex assigned at birth	Yes
	Sex- or gender-associated factors	
Biological, psychological, behavioral, interpersonal, and social factors [e]	Factors associated with sex/gender that are not themselves dimensions of sex or gender (e.g., gene expression, body weight, risk taking, age at sexual debut, structural sexism)	Yes

AI, artificial intelligence.

a. Two exceptions here are loss of Y chromosomes and some forms of microchimerism. Mosaic loss of Y chromosomes is common and increases with age. While twin-to-twin and maternal-fetal transfer in utero may result in sustained microchimerism, so too may microchimerisms produced later in the life course through fetal-maternal transfer, organ or bone marrow transplantation, or blood transfusion.

b. Internalization of idea that all dimensions of sex and gender should be concordant within oneself.

c. Internalized negativity toward one's own femaleness, women's roles, or femininity.

d. These represent broad cross-classifications; gender minority identities, roles, expression, metaperception, and internalization are included under Gender.

e. While sex/gender-associated factors are not dimensions of sex or gender per se, they may explain observed sex or gender differences. As biological, psychological/behavioral, and interpersonal or social causation may interact, the distinction between sex and gender in these associations is often not always clear; for example, body weight is a function of both sexed biology such as height and of social behaviors such as dieting and exercise.

45. Dr. Bauer testified that the prevailing understanding is that sex and gender are two separate and distinct multidimensional concepts which can be intertwined and may change over one's life course. She referenced the following definitions used by the Canadian Institutes of Health Research ("CIHR"):

> Sex refers to a set of biological attributes in humans and animals. It is primarily associated with physical and physiological features including chromosomes, gene expression, hormone levels and function, and reproductive/sexual anatomy. Sex is usually categorized as female or male but there is variation in the biological attributes that comprise sex and how those attributes are expressed.
>
> Gender refers to the socially constructed roles, behaviours, expressions and identities of girls, women, boys, men, and gender diverse people. It influences how people perceive

themselves and each other, how they act and interact, and with the distribution of power and resources in society. Gender is usually conceptualized as a binary (girl/woman and boy/man) yet there is considerable diversity in how individuals and groups understand, experience, and express it.

46. Dr. Bauer explained that her table on multidimensionality is designed to assist researchers and policy-makers to understand the different dimensions of sex and gender that can impact health. When researchers look at data collected at one point in time, Dr. Bauer noted they should not make assumptions about that information being consistent over a person's life course. Dr. Bauer explained the prevailing understanding in the field of science is that biological sex and social gender are two functionally distinct things although there is interplay between them. When asked about the importance of gender identity, Dr. Bauer testified that it is a deeply held belief important to someone's well-being because it reflects how one sees themselves and how they expect others to see them.

47. Dr. Bauer described the marginalization of transgender people through a longstanding history of erasure, which encompasses the active or passive processes that exclude them from society and render them invisible. In health care processes, Dr. Bauer noted there is both lack of inclusion in institutional policies (e.g. where institutions do not have policies or programs that allow for the inclusion of transgender people such as medical records that do not have space for how people wish to be addressed and the use of segregated hospital rooms) and informational systems (e.g. textbooks, curricula). With institutional erasure, invisibility for transgender people is maintained when policies are not designed to recognize their existence. Dr. Bauer observed in her report that "(e)rasure creates or reinforces a range of structural barriers to trans inclusion in health care, such as policies that assume staff or patients are cisgender, laboratory results that are inappropriate to a patient's sexed hormonal milieu, as well as lack of knowledge among health care providers" which results in "a system in which trans people may not get their health care needs met, even if there were no blatantly intentional transphobic mistreatment". For example, Dr. Bauer referenced the difficulty facing a transgender person in completing an intake form asking their "sex", noting some would identify sex assigned at birth while others would use gender which would give rise to a mix of unclear information which could be a barrier to care. Dr. Bauer testified that the design of systems that exclude transgender persons, while not a deliberate policy to erase them, exists in part because of cis-normative assumptions. She noted, however, there have been changes to address those concerns such as adding fields to electronic medical records, education, policies around room assignments in hospitals, and explaining where transgender people fit into systems. She described "informational erasure" as the lack of collection of data on people or the assumption that such data does not exist even where it might or the assumption that it is not necessary.

48. Dr. Bauer testified that misgendering is treating someone differently or calling them a gender that differs from how they identify. She noted that it can be an isolated accidental misgendering if someone does not know how the other person identifies, or it could be harassment where the person repeatedly and intentionally engages in misgendering. In common

with Dr. Saewyc, Dr. Bauer believes that misgendering, and the potential for it, are factors that may discourage transgender persons from seeking health care.

49. Dr. Bauer testified that the ability of transgender people to receive health care is also adversely impacted by interpersonal discrimination, mistreatment, and harassment, and by the anticipation that discrimination may arise even for those who have not personally experienced it. She cited her own research which confirms that negative interactions in health care are common for transgender people. For those with a primary care doctor, an estimated 37.2% of transmasculine people and 38.1% of transfeminine people in Ontario reported trans-specific negative experiences in family and primary care settings, which included a refusal to discuss care or examine body parts, the termination of care, assertions that the patient was not "really transgender", or that the physician was not qualified to provide care. Dr. Bauer observed that denial of hormonal care by health care providers may also contribute to the use of non-prescribed hormones as patients take matters into their own hands. She observed that negative experiences in emergency rooms can be even more common given the fast-paced nature of care and lack of a long-standing provider patient relationship in that setting. Dr. Bauer cited statistics from her Ontario study in which 52% of transgender people using emergency services in that province had experienced at least one trans-specific negative treatment. Common experiences (greater than 10% of patients) included the use of hurtful or insulting language (32%), being told a provider does not know enough to provide care (31%), assumptions that the gender marker on a patient's identification is a mistake (27%), being belittled or ridiculed for being transgender (24%), having a provider refuse to discuss trans-related concerns (18%), being discouraged from exploring gender (14%), being told that one is not really transgender (13%), having a provider refuse to examine parts of one's body (12%), or refusing or ending care altogether (10%). An estimated 21% of transgender people overall in that study reported avoiding going to the emergency room in a medical emergency for fear of poor treatment.

50. Dr. Bauer was asked about the evidence-based research regarding use of gendered washrooms by transgender people and the associated harms for both transgender and cisgender people. Citing various studies, Dr. Bauer testified that there is significant evidence that transgender people avoid gendered spaces, and washrooms in particular, both in Canada and elsewhere and that the harms experienced in relation to use of washrooms falls into three main categories: (a) confrontation, harassment or violence; (b) avoidance of public washrooms; and (c) effects of avoidance beyond the obvious discomfort, including restriction of food and liquid intake, and urinary and kidney infections. Dr. Bauer observed that research in primarily cisgender samples shows that cisgender people have greater safety concerns regarding transgender women using women's washrooms than for transgender men using men's washrooms. She testified that "pathogen disgust" is the strongest predictor of support for restrictions on washroom use by transgender people, which she explained as "disgust-related purity concerns, rather than concerns regarding harm". Dr. Bauer was unable to find any research documenting actual harms inflicted on cisgender people by transgender people in washroom settings apart from fear of harm. She observed there is also significant evidence showing that transgender people avoid gendered locker rooms and sporting activities. She was unable to find any

quantitative study that looked at harm to cisgender people from the use of locker rooms by transgender persons.

51. Dr. Bauer testified that prison wards represent an extreme situation of gendered spaces as they are impossible to avoid or leave. While noting there is little data on this issue, Dr. Bauer referenced a recent U.S. study which indicated that LGBTQ prisoners were more often placed in restrictive housing, including isolation, ostensibly for their own safety, though such environments had a negative effect on their mental health and the need for protection resulted from the risk of physical and sexual assault particularly for transgender women when housed in men's prisons. She concluded that harms related to gendered spaces for transgender and non-binary people include: (a) lack of access to the physical and mental health benefits of sports and gyms; (b) the resulting attention and targeting, including assault, from denial of use of gyms and sports; and (c) harms in the context of incarceration by genital sex, particularly for transgender women. Dr. Bauer was unable to find any research documenting harms inflicted on cisgender people based on the use of these gendered spaces by transgender people.

52. Dr. Bauer was asked to address the phenomenon of Rapid Onset Gender Dysphoria ("ROGD"). She explained that Dr. Lisa Littman had conducted a survey of parents recruited from websites who reported they had a transgender adolescent or young adult child (up to age 27). No adolescents or young adults were interviewed in the study. The parents perceived that their child, who had suddenly announced they were transgender, were sometimes spending considerable time online and had friends who came out as transgender. Dr. Littman used this study to generate her hypothesis. Dr. Bauer testified that ROGD is not a clinical diagnosis; rather, it is a hypothesis based on a pure contagion model that vulnerable adolescents are exposed to ideas from their friends, particularly those online, and will decide they are transgender with the implication that they will later regret that decision and de-transition. Dr. Bauer conducted her own study to determine whether there was evidence of a mixed-patient population. She could not find support for the ROGD hypothesis but acknowledged this area requires more research. Dr. Bauer concluded that the Littman study did not necessarily indicate a second different pathway and still fit within the framework of what is understood about gender dysphoria.

53. Dr. Bauer was also asked to explain "desistance". She indicated this term is sometimes used to refer to people who identify as transgender or non-binary who revert to their cisgender identity. She indicated that it is an area that is currently being studied as there has been much discussion that confuses desistance with other life events. Dr. Bauer suggested that pathways for stopping and starting gender affirming care are not clear-cut as some people wait until their parents have died or their children have moved out; she maintains that the term confuses what might be very different steps along one's life course with respect to their gender identity and medical care. Dr. Bauer noted that there are studies which demonstrate most individuals who have gender dysphoria at a young age will become cisgender at an older age. While true for pre-pubertal children (primarily boys), Dr. Bauer testified that many of the subjects of these studies do not meet the criteria for gender identification disorder as set out in the Diagnostic and Statistical Manual 5 ("DSM 5") and that the statistics are different for adolescents at or after puberty. Dr. Bauer has not seen research indicating that there are increasing cases of desistance.

54. Dr. Bauer was asked to address the Position Statement published by the Canadian Women's Sex-Based Rights organization ("caWsbar") on its website (www.cawsbar.ca/position-statement)[3] which asserts in part that:

1. Sex – as distinct from gender – is a material, biological reality;
2. There are only two sexes – female and male;
3. Disorders of Sexual Development… exist, but people with DSD are either female or male;
4. Humans cannot change their sex; scientific evidence demonstrates that the sex chromosomes within our DNA are present in every one of our cells and are immutable;
5. Gender identity and expression, which have yet to be defined in Canadian law, are culturally-based, stereotypical degrees of "masculinity" and "femininity"…
6. All Canadians are free to express and present themselves as they wish; however, the concept of "gender identity and expression" does not negate the material, biological reality of women and girls;
7. Women's and girl's sex-based rights to bodily privacy, dignity, fairness and security are enshrined in the Canadian Charter of Rights and Freedoms, in which sex is a protected characteristic;
8. Canadian women's sex-based Charter protections are based upon the fact that females have historically been – and still are – disadvantaged and vulnerable due to their distinct biological reality;
9. Therefore, women's and girl's sex-based Charter rights must be strongly asserted and preserved in public policy, and must take precedence over any concept of gender;
10. The inclusion of males in the definition of "woman" under federal and provincial Human Rights legislation (i.e., gender self-identification) is regressive, unfair and perilous for Canadian women and girls.

55. Dr. Bauer testified that the caWsbar Position Statement reflects a simplified understanding of sex and gender that does not align with current medical or biological understanding. She generally agrees with the statement that sex is distinct from gender as a material biological reality but disagrees with the claims that there are only two sexes, that humans cannot change their sex, and that sex chromosomes are immutable. When asked whether it is harmful to insist that there are only two sexes, Dr. Bauer responded:

> Well, it's wrong in the sense that these arguments are usually based on chromosomal sex, and within both cisgendered and transgendered people, that doesn't necessarily align with hormonal sex. There's chromosomal sex; there's hormonal sex; there's sex organs and physiology. And so I think insisting that there are two sexes implies that all of these dimensions all fit into the male category or they all fit into the female category within individuals. So, as such, there's no possibility for trans existence.

[3] The Respondent is a founding member of caWsbar.

56. While Dr. Bauer acknowledged there is some general truth to the remaining caWsbar statements, she noted they are not completely accurate. Dr. Bauer reiterated that sex is multidimensional, and people may have a female characteristic for one dimension of sex and a male characteristic for another or be missing particular characteristics that are assumed to be biologically female or male. Dr. Bauer disagrees that people with disorders of sexual development are either female or male. She testified that sex chromosomes are not 100% immutable as a person can have different sex chromosomes if they receive a blood transfusion or bone marrow transplant and that they can change over the life course (e.g. the Y chromosomes deplete with aging for 40% of males by age 70).

57. Dr. Bauer was asked about the views of Dr. Marcus Evans, a former psychiatrist with the Tavistock Clinic, a National Health Services gender clinic in England. Dr. Evans asserts that claims that children will kill themselves if not permitted to transition do not align with his clinical experience, or with any robust data or studies. Dr. Bauer observed in the context of international research, including her own, that studies of older transgender adolescents and adults have consistently reported that 35% to 40% of the study participants report they have attempted suicide in the past. Dr. Bauer indicated her own work with transgender people indicated that, in the past year, 35% had seriously considered suicide and 11% had attempted it. Dr. Bauer explained that the ideation or serious consideration of suicide is separated from suicide attempts in Canada. She testified that the highest risk point for suicidal ideation or suicide attempts in the Ontario group she studied in the last year was the group planning to medically transition or access gender-affirming care but who had not yet begun.

58. Dr. Bauer testified that most people seeking gender affirming care will use hormones but not necessarily at all time points and that surgery can look very different depending on how the gender dysphoria is manifested in a patient's body and what is important to them. She was asked about a study indicating that 60% to 90% of gender-dysphoric teens will grow out of their dysphoria. Dr. Bauer explained that percentage does not relate to teenagers but rather to pre-pubertal children and is based on studies that include children who do not meet the clinical criteria for gender dysphoria or the previous diagnostic categories such as gender identity disorder as set out in the DSM 5. Dr. Bauer noted that many of the children in that group will grow up to be cisgender, gay men, lesbian, or bisexual which differs from the subset of adolescents who present at clinics for gender-affirming care.

59. Dr. Bauer was asked about the statements made by J.K. Rowling regarding gender identity and the billboard that the Respondent and another individual rented to express support for those statements. Dr. Bauer observed that J.K. Rowling's statements tend to portray transgender women as a risk to other people and position them as potential predators. Dr. Bauer explained that the term "woman" in common language is generally understood as a social identity category rather than a biological reality. Contrary to J.K. Rowling's view, Dr. Bauer denies that gender identity ideology is something that impacts the rights of women and girls.

60. Dr. Bauer referenced some of the statements attributed to the Respondent which she believes would harm transgender people. For example, in one article, the Respondent states, "I don't think it's possible for women to defend their legal rights, or even the definition of womanhood if anybody can say they're a woman and it will be so". Dr. Bauer expressed concern that it sounds frivolous to say that someone can say they are a woman and have it be so which is not how gender identity works. She questioned how one can support transgender rights but not accept the right of transgender people to safely participate in or use gendered spaces. Dr. Bauer testified, for example, that it has been documented that transgender women experience high levels of violence and must be able to access support services from rape crisis centers. She rejects the Respondent's stated concern that cisgender men will abuse the ability to self-identify to harm women, referring to it as a hypothetical undocumented risk; she does not accept that such a risk could outweigh the "very real safety needs" of transgender persons. Dr. Bauer testified that the Respondent's statements imply that transgender women as an entire class pose a risk to cisgender women rather than hold individual people accountable for their actions, and that such assumptions are harmful.

61. Dr. Bauer also addressed the harms associated with repeated misgendering, which she explained is often used to harass and delegitimize transgender people. She was asked about statements made by the Respondent in a series of tweets indicating that "there's a vast untapped outrage market for trans activists in medical textbooks" who get away with "inserting a lot of this crap into nursing education, precisely because nursing is far less rigorous than medicine and contains large amounts of social science content", that there was "already… an infiltration of this stuff" when she studied nursing a decade ago, and that she had to take a whole class on intersectionality which was "bogus". Dr. Bauer testified that tweets of this nature are harmful to transgender persons in terms of anticipated discrimination – the avoidance of a situation because of the expectation of receiving poor treatment in health care settings. She also addressed the Respondent's criticisms of the BC Centre for Disease Control Language Guide ("Language Guide"). Dr. Bauer noted the importance of defining terms in relation to people in the queer and transgender communities to ensure health care workers can speak the same language. She noted the Language Guide is not prescriptive; it simply provides a resource around sex, gender, sexual orientation, race and ethnicity and other categories of diversity and provides alternative language that does not make assumptions about people. Dr. Bauer does not accept that the Language Guide recommendations contribute to harm to cisgender women and girls; she believes it provides education to counter erasure of transgender people – to rebut the assumption that everyone is cisgender.

62. Dr. Bauer was asked whether the Language Guide mainly impacts women. She acknowledged that the Language Guide appears to be heavily centered on terminology for reproductive health. In relation to the recommendation in the Language Guide to use additive words (e.g. rather than referring to 'women' and 'mothers', referring to 'women and birthing people'), Dr. Bauer testified that is one way that people can be more inclusive. She acknowledged that desexing the language of female reproduction raises reasonable concerns that are worth exploring but stressed that her concern is inclusivity rather than desexing.

63. Dr. Bauer testified that transgender and non-binary people may be excluded from employment, housing, social services, and home care services, and be subject to physical and sexual violence, harassment, and social exclusion from organizations and public spaces. She indicated that they may also be exposed to messaging that they do not belong, are not welcome, and do not exist. Dr. Bauer testified that transphobia also includes ridiculing transgender people or indicating they are not normal, predatory, or sick. She observed there are several ways in which transgender people are told as a group that they do not exist, including by insistence that the only thing that matters is the single most unchangeable aspect of sex with no room for diversity around that.

64. Dr. Bauer was asked what a gender journey looks like for a transgender person. She explained that people sometimes know their gender at a young age but the age at which someone can put language to it varies (which has been impacted by the internet). Dr. Bauer cited research from Trans PULSE Ontario which revealed that 59% of people were aware of their gender by age 10 and 80% by age 14; however, there is often a long wait before people start expressing their gender (such as until they are out of their parent's home, or their parents have passed). She explained that the trajectories can look very different for individuals both in terms of the social and biological aspects of gender and sex.

65. While Dr. Bauer confirmed that the number of adolescents presenting for gender-affirming care has increased dramatically, she observed that the number of those currently being referred into care is still much smaller than the number who, at age 14, know they are transgender and will grow up to be transgender adults requiring gender-affirming care. She attributed the increase to the ability to connect with information at a younger age and increased awareness and expansion of clinical treatment options. Dr. Bauer stressed, however, that it is still a tiny proportion of adolescents in Canada and in the United Kingdom who are referred to clinics.

66. During cross-examination, Dr. Bauer was questioned about the definitions in her glossary. Dr. Bauer explained that "agender" means without a gender or not subscribing to a personal gender identity and, in the context of research, combines categories of people who are outside of the gender binary. Dr. Bauer testified that "non-binary" is also a personal identity that some people hold but is sometimes used in research as an umbrella term for members of a group who do not identify with binary gender (which would include agender people). While some non-binary individuals identify as transgender, the term is also used as umbrella category for anyone whose gender identity differs from the sex they are assigned at birth. Dr. Bauer indicated she uses the broader category of "trans women" to include people who are assigned male at birth but may not personally identify as women because there are a range of gender identities whereas "trans feminine" is a broader category that reflects that everyone in the group identifies personally as a woman (and the same distinctions hold true for the categories of "trans men" and "trans masculine"). Dr. Bauer explained that the term "Two Spirit" was created decades ago by Indigenous people to communicate the idea that there are Indigenous genders that are different from men and women, and which are not necessarily conceptualized in the same way that "non-binary" may be conceptualized. Dr. Bauer indicated she uses "transphobia" as a broad term capturing anti-trans expression or actions, including gender-related discrimination, intentional

misgendering, hostility and violence directed at those whose gender identity expression differs or is believed to differ from their sex assigned at birth, interpersonal transphobia, and structural cisnormativity. Dr. Bauer explained that structural cisnormativity refers to systems that do not allow for the possibility of transgender existence or assume that all people are cisgender. Although a phobia is an irrational fear in medical contexts, Dr. Bauer confirmed she was using that term in its popular context as meaning transposed to negativity or hatred.

67. Dr. Bauer was cross-examined on the distinction between a "feeling" and "knowing" in the context of gender identity. She explained that a "feeling" can imply something more transient and superficial while one's gender identity is deeply held. When asked about "gender fluidity", Dr. Bauer testified that it may be how a person identifies or may be more pragmatic in terms of how they express themselves in different contexts. She disagreed that gender identity is a collection of cultural-based stereotypes regarding appropriate degrees of masculinity and femininity.

68. Dr. Bauer testified that she does not believe that using two rigid categories such as "male" and "female" defined by gametes is adequate. She testified that the concern is not about the common use of "male" and "female" but rather using those terms to say there is no space for another group of people to exist. She stressed the importance of considering the different dimensions of sex and gender from a health perspective. Dr. Bauer acknowledged it is not necessarily discriminatory to state there are two sexes recognizing that many people say that in common language but referred to the ways in which language is used to disallow the possibility of transgender existence.

69. Dr. Bauer disagreed with the proposition that people's statements regarding their gender identity do not constitute objective data. She testified that many things are collected from self-reports, such as experiences of pain through pain scales or patient-reported symptoms in relation to depression. Patient-reported outcome measures are also used to assess patient satisfaction with health care. Dr. Bauer concluded that there are "many, many things we measure that are self-report and many of them have been validated over periods of decades".

70. Dr. Bauer was asked about the use of intersectionality in her work. She explained that intersectionality is a feminist theory that came into academic work through legal studies of civil rights in the United States in the context of discrimination faced by Black women and through the study of social processes. Intersectionality recognizes that if researchers just focus on race, race ethnicity, or sex, they will miss the bigger picture of what is happening to groups experiencing discrimination. Dr. Bauer explained that intersectionality allows researchers to consider equity stratifiers (variables such as sex, gender, race ethnicity, and social class) and how groups are affected by a combination of these factors. In Dr. Bauer's view, intersectionality provides a way to design a study by ensuring that sufficient samples of people in different groups are analyzed and to analyze the heterogeneity of the differences within populations; it leads to more complex results that are more accurate for specific groups of people.

71. Dr. Bauer was asked whether transgender women are females. She explained that it depends on how one defines "'females", pointing out that many transgender women have gonadectomies and are using hormones and are formally female in terms of the "classic female milieux". From the perspective of gender identity, Dr. Bauer testified that people who identify as women are women. She believes that asserting there are only two sexes, that sex is defined chromosomally, and that nothing else is relevant denies the existence of transgender people.

72. Dr. Bauer was questioned about the statistics on transgender people who avoided public washrooms in the Trans PULSE Ontario and Trans PULSE Canada studies. She acknowledged that there are safety concerns when transgender men use men's washrooms. Dr. Bauer was asked about research showing harms that transgender people pose to women in washroom settings. She responded that there is "definitely fear" but she has not seen any research that documents experiences such as harassment or sexual assault by transgender persons or conduct of that nature.

73. Dr. Bauer was also questioned about the statistics regarding access to health care for transgender persons in the Trans PULSE Ontario study based on data that was collected more than 10 years ago. She acknowledged that since that study, there has been an expansion of additional options for surgical care for transgender people; she stated it is harder to say what has happened in terms of hormonal care which is often provided in a primary care context. She acknowledged that far more attention is now given to the needs of transgender people than at the time of her study.

74. Dr. Bauer was also questioned about harm to transgender women in prison settings and rape crisis shelters. When asked whether having transgender people in prisons poses a harm to cisgender prisoners, she said she was unable to find any Canadian research although there is some American research regarding the sexual victimization of incarcerated transgender women. Dr. Bauer acknowledged the concern that transgender women could face increased risk of violence in a men's prison. Dr. Bauer also confirmed her understanding, based on the Corrections Services Canada policies, that self-identification may be used as a basis for a male prisoner to transfer into a women's prison. Dr. Bauer stated that it would be important to create the safest system possible based on an overall assessment of the safety of cisgender men and women, and transgender and non-binary people; however, she is not supportive of the suggestion to place transgender persons in their own segregated prison system.

75. Dr. Bauer was cross-examined at length about ROGD. She confirmed there has been a dramatic increase in youth assigned female at birth identifying as transgender or non-binary in the last decade. She again noted that the Littman study was based on survey data from parents recruited from websites which hypothesized the increase in females identifying as transgender to social contagion. She described it as a hypothesis-generating analysis which caused considerable controversy, but one which is useful for identifying a future area of research. Dr. Bauer confirmed her team conducted another study on ROGD within a clinical population (based on data from the Trans Youth CAN! Report) which was published in the *Journal of Pediatrics* in 2022. Dr. Bauer explained the DSM 5 specifically addresses how the emergence of gender

dysphoria may be surprising to parents because adolescents often have this knowledge before disclosing it; it is therefore reasonable to assume that a parent's perception of timing may differ from the youth's perception. Part of Dr. Bauer's critique of the Littman study concerned the fact that it was based on parental perceptions of youth experience without data from the adolescents themselves. Dr. Bauer said they looked at some of the characteristics that Dr. Littman described along with the recency of gender knowledge to test whether there was support for two distinct populations coming into clinical care. Dr. Bauer stated that there is no evidence from patients establishing that the concept of ROGD exists but has asked other teams to analyze her data.

76. On cross-examination, Dr. Bauer confirmed that the WPATH standards of care are used in many countries but not universally. Dr. Bauer was also asked about the Dutch protocol which uses Tanner Stage 2. Dr. Bauer explained that puberty is considered to have five stages with Stage 1 as the first stage of the prepubescent, Tanner Stage 2 as an early stage in which perceptual changes have started to occur and stages ending at Stage 5 which is sexual development into an adult body. Counsel for the Respondent referred Dr. Bauer to various chapters in version 8 of the WPATH standards which use the term "gender affirming medical care". Dr. Bauer testified she uses that term in the context of the medical setting and sometimes psychological aspects of care, such as hormones and surgery customized to individual needs. She explained that the medications may include continuous contraception to alleviate menstruation, testosterone blockers, hormonal suppression, estrogen, testosterone, and progesterone. Dr. Bauer confirmed that surgery may include chest masculinization (the construction of a masculine chest including the removal of breasts) and phalloplasty which is the creation of a penis from other body tissue. She noted phalloplasty cannot be performed on a patient under the age of 18. Dr. Bauer testified that puberty blockers are not provided to prepubertal children – those are usually available at the earliest at Tanner Stage 2 of puberty but more commonly in practice at stages 3 and 4 of puberty. She indicated that the typical age of Tanner Stage 2 would be in the ballpark of ages 10 to 12 and up to 14 in some cases. When asked whether it is important to start gender affirming care as soon as possible, Dr. Bauer testified that it is a decision for a clinician and their patient and family as there are pros and cons which must be weighed. She agreed that Lupron, which is the brand name for a gonadotropin-releasing hormone agonist, is being used off label as a puberty blocker but observed that it has been used for decades in that way to suppress precocious puberty.

77. Dr. Bauer was unable to comment on whether children who start on puberty blockers are on a path of medicalization as she is in the process of analyzing the data. She stated that many of those who start on puberty blockers, particularly at young ages, are the ones who have known their gender for a long time. She observed that most of the youth in the adolescent clinics come in around 16 or 17 years old rather than at Tanner stage 2. Dr. Bauer agreed there is no minimum age at which a child may express they feel they are a different gender identity than their sex assigned at birth. She referenced her paper which involved individuals who stated they knew their gender as young as ages 2 to 4 years.

78. Dr. Bauer agreed that gender affirming care generally starts with the presumption that the child or adolescent knows their own gender identity but noted that such care can also include

an exploration of that issue. Dr. Bauer testified that it is possible for individuals to express gender diversity without accompanying gender dysphoria, which is classified as a mental health condition in the DSM 5. She also agreed it is possible that individuals who may describe themselves as transgender may not have gender dysphoria *per se*.

79. Counsel for the Respondent asked Dr. Bauer about the work of Dr. Ken Zucker who advocates for a wait and see approach (referred to as "watchful waiting") before putting children on puberty blockers. Dr. Bauer pointed out that Dr. Zucker, who is a psychologist rather than a physician, regularly referred patients for puberty blockers. Dr. Bauer was also referred to an academic commentary written by Dr. Susan Bradley, a former adolescent psychiatrist. Dr. Bradley's commentary referred to studies which confirmed that most children seen at the Child and Adolescent Psychiatry Clinic relinquished their desire to transition to the opposite sex and mainly self-identify as gay or lesbian. Dr. Bauer did not consider the commentary to be authoritative as Dr. Bradley has not been an active researcher in the field for some time. Dr. Bauer noted as well that this was an older study involving boys, of whom approximately one-third did not meet the clinical threshold for gender identity disorder. The boys were referred to the psychology clinic because their parents were concerned about their gender expression; however, that was not a group that was coming into a clinic seeking puberty blockers. Dr. Bauer disagreed with the proposition that children expressing gender confusion today go down a medicalization path at gender clinics. While there are children seeing psychologists because of gender concerns, Dr. Bauer observed that only a small portion who receive counselling are referred for puberty suppression. When asked whether one of the reasons for the high referral rate is greater acceptance of transgender individuals, Dr. Bauer pointed out it is still a very small number of patients who receive referrals. Dr. Bauer was asked if she was concerned that people on the pathway to gender affirming care might be there for the wrong reason, such as undiagnosed autism. Dr. Bauer said it was possible her study had missed people with undiagnosed autism spectrum disorder but confirmed that it was on their radar. She also expressed caution regarding the assumption that a person with autism who is transgender and needs access to gender affirming care is there for the wrong reason as they may have both conditions. Dr. Bauer was asked whether young women who are undiagnosed with autism may be put on a pathway to medicalization without a proper diagnosis; she responded that there may be people with undiagnosed autism but that would be true in any kind of care.

80. Dr. Bauer stated that most pre-pubertal young children will not end up as transgender adults. She acknowledged that most patients who receive puberty suppression or hormone treatment will become transgender adults but emphasized that is a different group. She confirmed there is usually no gender affirming medical care taking place for pre-pubertal children. Dr. Bauer noted that the group of children who declare themselves to be transgender and who are socially transitioning is much larger than the actual number of adolescents who attend clinics for an endocrine referral. She observed that the age at which they will go on cross-sex hormones will vary depending on several factors, including their age of puberty, the health care system they are in, the provider and clinic, and the adolescent and their family.

81. Dr. Bauer was asked about the side effects of puberty blockers and sex-crossed hormones. She explained that these drugs will largely stop or slow down growth (including bone density growth and skeletal development) and the development of secondary sex characteristics. The Respondent's counsel asked whether some children who receive puberty blockers may not fully develop sexual organs and have fertility concerns. Dr. Bauer acknowledged this would be true of a very small proportion who go on hormones right at Tanner Stage 2. It was put to Dr. Bauer that there are significant potential-long term and harmful side effects from gender affirming care; she responded they are often over-estimated as it is far from true that patients lose their fertility and the research on bone density profiles is looking promising. Dr. Bauer testified that there is a moderate amount of research on the long-term safety of hormone treatment that points to the safety of these medical treatments, which is why they are recommended as the standard of care by many medical organizations. However, Dr. Bauer also acknowledged it is important to have those discussions so that patients can make informed decisions.

82. Dr. Bauer was asked whether gender affirming care alleviates suicidal ideation. She testified there is a fair amount of research support for that proposition although not necessarily to the level of the base population. She acknowledged that suicidal ideation may occur at different periods of a person's life, including after they have received gender affirming care. Dr. Bauer was referred to the 2009-2010 Trans PULSE study which revealed that, for a small sub-group of youth aged 16 to 24 who were out to their parents, 4% of those adolescents with supportive parents had attempted suicide in the previous year. In contrast, 57% who did not have parents that were supportive of their gender identity and expression had attempted suicide in the preceding year. Dr. Bauer reiterated that there is a substantial amount of research evidence showing a "really strong relationship between gender affirming medical care for those who need it and reduction in suicide risk". Dr. Bauer confirmed that depression and anxiety are related to suicide risk but are also very entwined with gender dysphoria for most people.

83. Dr. Bauer was questioned about the condition of auto gynephilia. She described it as a controversial hypothesis suggesting there are two types of transgender women - one which involves a type of sexual fetishist to the extreme and one which involves a gay man to the extreme. Dr. Bauer indicated that auto gynephilia is a theory which is not generally accepted, as this typology does not resonate with many transgender women who find that neither of those descriptions matches their experience.

84. In redirect, Dr. Bauer was asked whether there is a risk in not treating young people who present with gender dysphoria and waiting until they become adults. She testified that gender dysphoria can be a "completely miserable, very absorbing kind of condition" and one of the points of providing care is to relieve some of that distress to allow patients to focus on school or other priorities in life. She also referred to the suicide risk which is demonstrative of the level of distress that people experience. Dr. Bauer observed that a lot of pain can be avoided if intervention occurs earlier in relation to preventing facial hair growth rather than trying to remove it later. She emphasized again that most of the younger group of gender diverse children will grow up to be cisgender or gay, lesbian, or bi-sexual, which differs from the clinical populations who are referred for medical care after puberty.

F. Summary of the Respondent's Evidence

85. The Respondent tendered the following expert evidence at the hearing.

Dr. Cantor's evidence

86. Dr. James Cantor is a clinical psychologist and sexual behaviour scientist who has researched and published extensively on the development of human sexuality, with a particular focus on atypical sexualities. Dr. Cantor formerly held various positions at the Centre for Addictions and Mental Health ("CAMH"), including Senior Scientist and Head of Research. He is currently the Director of the Toronto Sexuality Centre. Dr. Cantor has clinical experience in assessing and assisting individuals aged 16 years and older with gender dysphoria and medical transitioning. Dr. Cantor was qualified as an expert to address the scientific issues relating to gender dysphoria, including the assessment of research methodologies and proper application of studies in relation to gender dysphoria, the evidence-based research on use of gendered spaces by transgender persons, the current scientific understanding of the relationship between sex and gender, the impact of gender transition on mental health outcomes, the development of gender identity and the mental health conditions relating to gender dysphoria, and the clinical guidelines for treatment of persons with gender dysphoria.

87. Dr. Cantor testified that the protocols regarding gender dysphoria have changed dramatically in the years that he has provided clinical care. He explained the largest change occurred in 2012 with the introduction of version 7 of the WPATH guidelines which changed from a "gatekeeping model" to an "informed consent model". Under the gatekeeping model, clinicians ensured the patient did not have other mental health issues which required resolution and ruled out other possible explanations for what may be motivating the patient to transition. The gatekeeping procedures, such as requiring a person to live in their new life for a period of time and psychological and psychiatric assessments, would take months or years before a clinical decision was made on whether to approve a medical transition. In contrast, the informed consent model, which is based on whether a person is cognitively capable of believing the "pluses and minuses against undergoing a treatment versus not undergoing a treatment" is, in Dr. Cantor's view, a much lower standard because it does not require the patient to live in their new life nor does it require the kind of evidence that would demonstrate that the medical treatment is actually in their best interest. When asked whether the informed consent model applies to children, Dr. Cantor observed that it is "a bit more hit and miss" as the consent of parents is generally required although there is not yet a consistent policy.

88. Dr. Cantor testified that version 7 of the WPATH guidelines removed the requirement for clinicians to consider specific criteria for each person who was considering transition. To illustrate, Dr. Cantor explained that if, under the previous standards, a doctor felt that six months was not a sufficient period for a patient to try cross-living before making a permanent decision, they had the authority to extend the period to one year. However, under version 7 of the WPATH guidelines, clinicians may raise or lower the period of cross-living or remove that requirement altogether. Dr. Cantor observed that "if a standard can be raised or lowered, it's not a standard

anymore. It's blanket permission for a doctor to do whatever the doctor wants, none of which has any basis whatsoever in science". Dr. Cantor testified that the informed consent model is used in the United States; however, European countries have started to reject the WPATH standards and now explicitly ban general practitioners from providing transition care. In those countries, medical transitioning is restricted to formal research for a "tiny subset of minors who have demonstrated symptoms since prepubescent childhood". Dr. Cantor referenced a peer reviewed study published in 2021 in the *International Journal of Transgenderism* which assessed WPATH and other clinical guidelines for gender transition and found that even the older WPATH guidelines were inadequate. The 2021 study rated version 7 as "do not recommend". He also noted that version 8 of the WPATH guidelines removed all age minimums for intervention which appeared to be an entirely unilateral decision that occurred outside whatever controls they had in place for authoring the rest of the document.

89. Dr. Cantor testified that clinicians and those working in gender clinics in Canada and the United States support the informed consent model over the gatekeeping model because they have a financial and intellectual conflict of interest. According to Dr. Cantor, whenever a medical specialty considers the possibilities for patient treatment, it is much more likely to endorse the participation of its own specialty. Dr. Cantor believes that clinicians who provide medical transitions are in a conflict when they recommend the guidelines for WPATH. He testified that the decision of whether medicalized transition is beneficial to patients cannot only be made by those whose incomes depend on the medicalized transition of minors. Dr. Cantor testified that WPATH uses "sketchy" language in stating that their ethical procedures are based on the WHO clinical guidelines and the Clinical Guidelines from the Institute of Medicine, a branch of the U.S. National Academies of Science. He points out that those guidelines recommend that those who have a conflict of interest should not have decision-making authority. Dr. Cantor noted that WPATH claims that no one involved in drafting the guidelines was in a conflict of interest; in his words, WPATH "pointed to a version of ethical documents, didn't follow it, but led everybody to believe that they did".

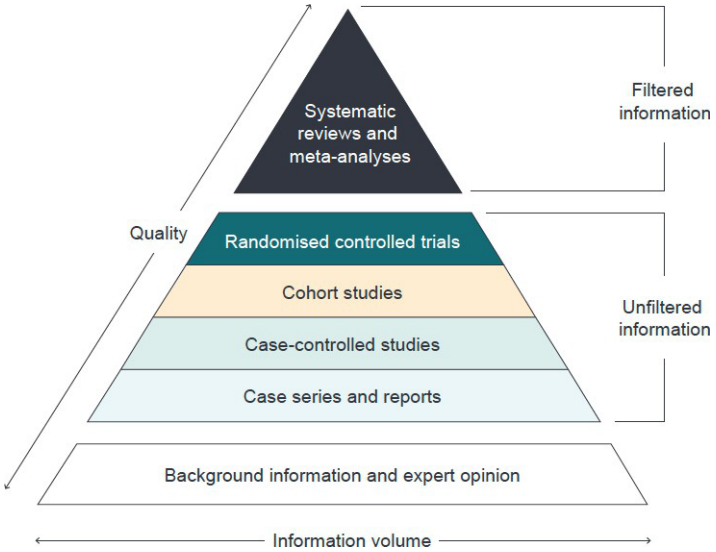
90. Dr. Cantor testified that, coincident with the 2012 changes to the WPATH guidelines and the advent of social media, there was a significant international change in the demographic, largely among youth experiencing gender dysphoria. Whereas the youth were formerly primarily biological males who often developed into young gay men or biological females who developed into young lesbian women, the predominant demographic change was that biological females started to attend clinics in early adolescence instead of the prepubertal stage; those biological females also presented with a "very different mental health profile" than prior groups. Dr. Cantor indicated that it could not be assumed that information collected about childhood onset types would necessarily pertain to adolescent onset patients.

91. Dr. Cantor described the demographic of adults as being primarily biological males experiencing a sexual interest pattern which he referred to as auto gynephilia – a condition in which men are sexually aroused by the image of themselves in female form. Although that sexual interest pattern had not changed, Dr. Cantor observed that, without the gatekeeping model, these individuals were self-identifying and were not the same as the group who were objectively

identified by clinicians as passing the gatekeeping process. Consequently, according to Dr. Cantor, this new group started to include people who, because of mental or physical health or other reasons, would have been filtered out under the former gatekeeping model. Dr. Cantor observed that the research establishes that almost all biological males who transition in adulthood (formerly called adult-onset gender dysphoria) have a sexual interest pattern that is more unusual than heterosexual or gay males; he stressed the importance of understanding the motivations for wanting to transition. He noted that the issue is complex as auto gynephilia is often one of several sexual atypical phenomena that these individuals may experience. This means that clinicians must consider whether these individuals are taking advantage of the option to transition based on auto gynephilia or some other sexual interest such as sexual masochism or exhibitionism (for example, an exhibitionist seeking to transition to take advantage of opportunities to be naked around females). Dr. Cantor testified that the transition process becomes subject to abuse without gatekeeping procedures as individuals can simply self-identify as transgender. Dr. Cantor believes that, in Canada and the United States, the term "transgender" is being redefined to "be anybody who says it is" and catches individuals who either are not transgender or require a different kind of intervention. He noted that while the resources for transgender persons have exploded, there is a legitimate question as to whether they are being directed to individuals with other mental health conditions.

92. Dr. Cantor outlined his experiences in designing and assessing research methodology in sexual behaviour-based sciences and his "direct experience with the fullest range of scientific methods". He argued that Drs. Saewyc and Bauer presented only one side of a complicated set of issues involving many objective unknowns. He suggested that much of the public debate around gender dysphoria issues are based on subjective perceptions of victimhood rather than objective facts. Dr. Cantor maintained there is no consensus about the clinical needs of people expressing gender dysphoria. He characterized the debate as one which is almost entirely between people who accept what is being reported at face value versus those who rely on objective evidence to support what the best social response should be. Dr. Cantor testified that people are making decisions based on appearance, optics and political posturing rather than on any objective assessment of verifiable truth. He believes the use of the best available science should be used in clinical decision-making, which is identified by the scientific rigour of research that produces the information, routinely represented by the "pyramid of evidence". Dr. Cantor explained that the highest quality of evidence comes from "systematic reviews" of all evidence whereas the lowest quality of evidence on the pyramid is the expert opinion of individual clinicians reflecting on their own anecdotal experiences. He argues that surveys of groups interested in a topic do not represent evidence of clinical outcomes and fall below the pyramid of evidence altogether as depicted by the diagram below:

Pyramid of Standards of Evidence



Source: OpenMD. Retrieved from https://openmd.com/guide/levels-of-evidence.

93. Dr. Cantor testified that the randomized controlled trial ("RTC") is at the top of the pyramid because it produces unambiguous results. He cautioned that when the evidence for a procedure is of low quality, greater caution is required in applying that information. Dr. Cantor observed in his report that the studies currently available regarding the outcomes of medicalized transition are of low quality. He noted that the effects of social transition have not been studied and no study has yet employed the procedures necessary for detecting which, if any, changes are attributable to transition, to placebo effects, or to the fact that clinical "gatekeeping" procedures permit only those people with greater mental health issues to undergo transition in the first place, creating a statistical illusion of improvement because the average of transitioned groups is higher than that of non-transitioned groups. Dr. Cantor testified that the studies, which are primarily surveys, supporting transition "on demand" provide evidence that can be interpreted in multiple ways.

94. According to Dr. Cantor, the highest level of evidence currently available for the medicalized transition of minors is the "cohort study", which he described as the tracking of a group of people with a specific issue over time to watch for differences. He explained that relative to a RTC, a cohort study produces ambiguous results. Dr. Cantor explained there are four conditions that can mimic clinical improvement that have nothing to do with the treatment itself: (a) maturation in which a person simply outgrows the problem; (b) regression in which a person seeking help comes in when they feel their worst and any perceived improvement may just be the fluctuation in how they feel; (c) confounds which refers to situations where a person is undergoing another treatment at the same time which makes it difficult to determine whether their mental health improved because of medicalized transition or the other treatment; and (d) attrition which refers to the situation where individuals doing the poorest drop out. According to Dr. Cantor, the cause of improvement cannot be determined without an RTC. While European

organizations have engaged in high level systematic reviews of transgender issues, Dr. Cantor testified that American professional associations have not and there is no consensus on whether access to gender transition on demand is necessarily going to improve outcomes for individuals.

95. Dr. Cantor noted that access to medical transition on demand may adversely affect gay men. He explained that studies on effeminate boys universally show that the large majority grow up to be gay men; however, transitioning them before they experience puberty deprives them of the opportunity to realize they are gay. He testified they are "being directed to medicalized transition, changing, interfering with, cutting off … objectively healthy functioning tissue that simply may not have been necessary by directing them to live as girls rather than gay men". He believes that the prepubescent children who are put in the most danger are the ones who would otherwise become gay men.

96. He also addressed the impact of current policies regarding medicalized transition on women. Dr. Cantor said that for adult-onset gender dysphoria, which arises almost exclusively in biological males, it is more difficult to determine what is motivating them to want to enter female spaces. He observed that a biological female attending a single sex male space does not come with the history or safety risks that are associated with a biological male attending a single sex female space. With self-identification and the absence of an objective gatekeeping assessment, Dr. Cantor believes it is difficult to identify those using female gendered spaces who have "ambiguous motivations" and may be sexually attracted to women.

97. Dr. Cantor maintained it has been well known for decades that there are two phenomena that lead a person to feel gender dysphoria: (a) the childhood onset type which is strongly related to homosexuality; and (b) the adult-onset type which is strongly related to auto gynephilia. However, since the onset of social media, Dr. Cantor claims that a third new phenomenon has begun to emerge. He referred to this new phenomenon as ROGD or "adolescent-onset gender dysphoria". He explained that ROGD applies predominantly to female youth and is called rapid onset because it starts before the age of 18 but not pre-puberty. Dr. Cantor observed that ROGD started at the same time as the explosion in mental health issues which teenagers started expressing in "the social media age"; he asserted that this suggests the "obvious hypothesis" that social media has been interfering with the social development of people at the most important social development period of their lives. He explained that individuals in the ROGD group have comorbid features which include anxiety, depression, and autism spectrum disorders, and many symptoms of personality disorders which all relate to difficulties in social functioning. He believes the obvious conclusion is that this group's problems relate to social functioning rather than gender identity *per se*.

98. As this ROGD group differs on every objective variable (i.e., sex, age of onset, and mental health patterns), Dr. Cantor testified it is not possible to conclude that their responses to treatment will be the same as those who fall within the childhood-onset or adult-onset groups. He is critical of those who cite evidence regarding the success of transition in adulthood to justify the transitioning of adolescents because, in his view, generalizations cannot be made from one group to the other. Dr. Cantor observed that while the incidence of childhood-onset and adult-

onset are very rare, the ROGD type is now very common and has overwhelmed the two traditional groups. He believes irrelevant information from the two traditional groups is being applied to the ROGD group to determine policies for providing medical transition to youth when the evidence indicates those youth are mistaking their social insecurities for gender dysphoria. Dr. Cantor testified that because the ROGD group is mostly comprised of females, rather than receiving the type of therapy that would help them develop into healthy secure adult females, they are instead encouraged to convert to males despite the negative health consequences. Dr. Cantor suggested there is no evidence that medical transitioning is the answer to the mental health issues of this group; it is giving them the wrong therapy and withholding far less dangerous therapy which they need.

99. Dr. Cantor also addressed his understanding of "sex" and "gender identity". He defined "sex" as an objective, biological reality which can be ascertained by chromosomal analysis or visual inspection, and "gender identity" as a subjective, social perception which cannot be falsified or verified. Dr. Cantor observed that "gender" relates to social interactions, social convention, and social expectation and is limited to self-reports which cannot be objectively verified. He explained that disorders of sexual development, which are extremely rare, refer to the many different medical disorders which result in the atypical combinations of sex, chromosomes, gonads and hormone levels. Dr. Cantor believes the existence of those disorders of sexual development are being misused to imply there are more than two sexes. Dr. Cantor testified the notion of "inner sense" which is used to describe gender identity is not something that scientific theory can rely on because there is no way to falsify a person's declaration of their gender identity. He contrasted this with depression which relies on self-report, but which can also be proven through double-blind placebo-controlled studies and brain scan studies. According to Dr. Cantor, "gender identity" has a long history of being defined and redefined in whatever way is useful to the rhetorical purposes of the moment.

100. In distinguishing between gender identity and sexual orientation, Dr. Cantor noted that there is brain scan evidence that sexual orientation has physical components. For example, he observed that gay men on average shift towards the female direction on the different brain parameters. He maintained that there are no indicators of gender identity based on brain scan evidence. He noted that sexual orientation refers primarily to one's private sexual behaviour and, as such, is an internal phenomenon. In contrast, Dr. Cantor pointed out that the expression of gender identity, which is a social facet, involves the participation of all others within the social space such as through sharing sex-segregated spaces.

101. Dr. Cantor referenced studies on adults who regretted their medicalized transition which they attributed to inadequate diagnosis and clinical failures. He indicated that such patients were instead suffering internalized homophobia, general identity problems, and social pressure difficulties. He believes that individuals now seeking to transition between the ages of 18 to 20 years of age, while technically adults, are childhood or adolescent onset cases characterized by disorders and difficulties with social functioning and that many of these cases represent a social contagion. Dr. Cantor testified that research from Dr. Littman demonstrated that when an

individual within a group indicates to others that they are gender dysphoric, there is a social clustering of that condition rather than a random distribution:

> … it was Dr. Littman who proposed that it was the social contagion now in the social media era that seems to be provoking or causing or influencing these cases of people referring to themselves as gender dysphoric. That phenomenon seems to be brand new, and as I keep repeating, started exactly when social media took hold and took over… as a primary influence of adolescent – of adolescents in the social media age.

102. For Dr. Cantor, this points to the need to use social and mental health intervention to help these adolescents. He acknowledged it is theoretically possible that a medical intervention might be appropriate for some of these adolescents; however, the data suggests the need to consider the less potentially harmful means of ameliorating their distress – medical interventions should be the method of last resort instead of fast-tracking individuals based on the view that medicalized transition will resolve their mental health difficulties – a proposition for which he believes there is no evidence.

103. Dr. Cantor also addressed the distinction between "suicide" and "suicidality", explaining that the former is self-inflicted death predominantly carried out by middle-aged men whereas suicidality refers to para-suicidal behaviour, which includes suicidal ideation, attempts, and fantasies rather than a genuine attempt to die. He indicated that suicidality is associated primarily with younger females who are suffering from one or more comorbid mental disorders; he described suicidality as an emotional manipulation used in an unhealthy social interaction to demand whatever it is the person is seeking. Dr. Cantor observed that much of the public discourse in relation to gender identity is taking such threats at face value and giving into such demands. For example, Dr. Cantor suggested that referring to medicalized treatment as "lifesaving" suggests if the person does not receive the treatment they desire, they will kill themselves, which is positively unsupported by the science.

104. Dr. Cantor testified that there is no evidence to suggest that individuals undergoing transition have reduced rates of suicide or suicidality; rather, the evidence indicates that the rates of suicidality in transgender populations remains extremely elevated even after transition. He indicated that the available research suggests decreases in suicidality are all subject to one of the four problems (i.e., maturation, regression to the mean, confounds, and attrition) and it is plausible that one or more of these factors explain why there seems to be improvement. He testified that levels of suicide and suicidality are elevated for people with gender dysphoria both before and after transition with no evidence to support that medicalized transition is the cure. Dr. Cantor believes that Drs. Bauer and Saeywc did not adequately address this issue in their reports because the youth who are reporting gender dysphoria are also reporting severe psychological problems, stresses including suicidality, depression, Asperger, autism spectrum disorders, and certain personality disorders. He specifically noted that persons suffering from borderline personality disorder will express an unstable identity and express suicidality. It is therefore easy to confuse unstable identity with gender identity issues. He further noted that borderline personality disorder is several times more common in biological females than

biological males and tends to emerge in adolescence. Dr. Cantor indicated that borderline personality disorder has the same sex ratio, the same sex group, and a largely overlapping set of characteristics with those reporting ROGD. He stressed that where there is a cluster of several complicated mental health issues, there are several possible explanations for the cause of the suicidality.

105. Dr. Cantor accepted that sexual minority stress is a legitimate hypothesis for individual people but noted there is no evidence that it is functioning specifically in relation to adolescent-onset gender dysphoria. Dr. Cantor testified that the most straightforward explanation in this social media age is that people who are susceptible to social influences are experiencing depression and anxiety that goes along with adolescence and gender dysphoria because they are socially uncomfortable. He pointed out that, "(t)hey all started at exactly the same time" and strongly correlate as kids who are more susceptible to unhealthy social input. He explained that suicidality co-occurs with, but is not caused by, gender dysphoria; they both arise from the same source which explains why they appear to be associated. He therefore advocates for psychotherapeutic treatment which is not associated with sterility or the lifelong need for medications, particularly in view of the ethical imperative to do the least harmful intervention first, leaving potentially harmful treatments as a last resort.

106. Dr. Cantor was critical of the College experts for combining lesbians and gay males with transgender individuals in their analysis which, in his view, undermined the validity of their studies. He pointed out that many studies and surveys on suicide and suicidality demonstrate the same type of problem of confounding by taking mixes of different people with different issues to conclude that gender dysphoria, or society's reaction to it, is driving these symptoms. He testified the evidence is more consistent with the conclusion that gender dysphoria is a side effect of other mental health issues. He believes individuals who would be most helped by confronting their anxieties are assisted in avoiding their underlying challenges. They are aided and abetted in an unhealthy thinking process when their discomfort is in fact being prolonged with a series of medical interventions which do not actually address the underlying problem.

107. Dr. Cantor testified that the terms "trauma" and "harm" in this area are often misused as exaggerated rhetorical devices. He explained that trauma refers to an experience of a dramatic physical event such as the death of someone close or a disaster. He explained "harm" is a much more general term which is often used in a manner that is indistinguishable from a "nuisance". Dr. Cantor stated that one of the symptoms of borderline personality disorder and related disorders is to engage in histrionic language describing every emotional experience in the most dramatic terms. A therapist must simultaneously be attuned to what objectively happened to a client and to compare it with the client's subjective description of their experience. Dr. Cantor believes this does not seem to be happening with issues relating to gender identity; rather, the client's subjective reports are being taken at face value because it has become unfashionable to ask detailed questions or to investigate the possibility the person is exaggerating their experiences. Dr. Cantor recommends that people with gender dysphoria learn the skills and strategies and benefits of rising above appearances and be true to themselves rather than to any set of expectations about where they belong.

108. Dr. Cantor described his own experiences in helping patients with gender dysphoria. He confirmed that some clients self-identify and have a "pretty solid idea of what they want" while others are unsure or are experimenting with different roles. Dr. Cantor explained there is also a large proportion of patients who think they know what they want but discover, after trying to live in another role, it is not what they thought it was or want to interact in different ways with different parts of their social environments. He believes there has been a revolution in terms of self-definition and exploration of gender identity since 1998 with people now coming in with what they have seen on social media or online or from interactions with activists and trying to fit themselves into those criteria. Dr. Cantor observed, "they kind of shifted from one set of what they think they're supposed to do, rather than seeing and experimenting and finding out what their personal best combinations are". He referred to terms defining gender identity being used, reused, invested, and redefined "according to fashion, expressions of rebelliousness or … interpretations of what they perceive to be subtle implications". Dr. Cantor testified it has become much less about using the terms or options to fit in with society and more about using them as opportunities to rebel against or demand behaviour from those around them. He does not believe there is a shared understanding of what all these terms mean as many of the definitions are almost contradictory or ambiguous "which gives maximum flexibility in either demanding or denying views of any particular term".

109. Dr. Cantor observed that "misgendering" sometimes just means a simple mistake using a pronoun or gender when someone has indicated a preference for different terminology. He noted that terminology can be weaponized to express, resist, or agree with a particular idea. He testified he has not seen transgender clients who were traumatized or suffering harm by misgendering in a clinical context. As a scientist and clinician, Dr. Cantor does not believe there is a reasonable probability that trauma or harm would be caused to transgender persons by using the word "woman" to solely refer to biological women. He testified there is "no good way to draw an objective distinction between something that one calls harmful versus something that one merely dislikes". Over the past ten years, Dr. Cantor said there has been "concept creep" in which terms started with trauma and then became harm and symbolic harm to the point that there is no objective way to be able to determine whether someone is describing an emotional danger or being hyperbolic. He claimed that "erasure" can be used to mean anything from not receiving sufficient attention to an accusation that a group or series of ideas is trying to be expunged. Dr. Cantor does not believe that the Respondent's expression of her opinions is sufficient to result in erasure of transgender or gender dysphoric persons; rather, he noted it is the expression of those views which is being subject to cancellation and erasure. He also noted the experiences of de-transitioners are also being overlooked or ignored.

110. Dr. Cantor maintains there is no reasonable or reliable way to predict that the Respondent's online comments would increase suicides or suicidality on the part of transgender or gender dysphoric persons, cause trauma to them, or deter them from accessing health care. Dr. Cantor disagreed with Drs. Saewyc and Bauer that the Respondent's statements would cause harm. He observed that the only opinions that have been subjected to meaningful science have been the attempts to predict suicide and suicidality which are both largely unpredictable. He

testified some of the Respondent's online statements are reasonably supported by science such as the assertion that definitions of sex are rooted in biological features.

111. Dr. Cantor further addressed his views regarding the impact of social media in terms of isolating people and displacing genuine social interactions; he believes social media creates artificial groups in which individuals surround themselves with those who agree with them and reinforce each other's views. He explained that people who have only been exposed to the social media age during adolescence do not appreciate the subtleties of social language and interactions. He believes the lack of diversity of views expressed through social media is harmful to transgender and gender dysphoric persons because it allows them "to escape challenging ideas and trying alternatives" rather than deal with them.

112. Dr. Cantor was also critical of Dr. Bauer's evidence concerning ROGD. He suggested that Dr. Bauer had played with that term by referring to *recent* rather than *rapid* onset gender dysphoria; he argued she failed to account for pubertal status (and consequently did not investigate the same subject as Dr. Littman). In his view, Dr. Bauer simply looked at how recent the onset was regardless of the person's pubertal status and obtained different results by changing the definition of who she was looking at. Dr. Cantor testified, "it's because Dr. Littman found significant patterns that we know that she used a valid definition, and it's because Dr. Bauer found no consistent patterns is what tells us she used an invalid definition". Dr. Cantor prefers the term "adolescent onset gender dysphoria" because the defining feature of that group is that they began experiencing gender dysphoria as adolescents after puberty. Dr. Cantor also identified other errors that he alleged Dr. Bauer had made, including misdescribing the age group studied by Dr. Littman. He suggested that Dr. Bauer had engaged in motivated reasoning to look for reasons to ignore the existing evidence which points consistently to the idea that youth with adolescent onset gender dysphoria are mislabeling their own experiences. He also disagreed with Dr. Bauer's evidence that age nine is early for puberty which was, in his view, an example of not knowing the actual science.

113. Dr. Cantor was similarly critical of Dr. Saewyc's evidence, noting that her report listed studies of "very, very low-quality evidence", consisting almost exclusively of surveys with only four publications that were peer-reviewed. He suggested that Dr. Saewyc merely recounted anecdotes which are not science.

114. On cross-examination, Dr. Cantor confirmed that sexual minority stress theory provides an explanation concerning the mental health profiles of gay men (i.e., whether there was something about the mental health profile that was inherent in being gay or whether it was a reaction to homophobia in their environment). He explained the theory offers an alternative explanation for the correlations looking at external stressors. Dr. Cantor noted it is not the only alternative theory but is one for which there is a "decent amount of evidence".

115. Dr. Cantor was also asked to describe the treatment path an adult patient assigned male at birth would follow at the CAMH clinic when he was there if they wished to transition. He indicated the patient would require a referral from a doctor or general psychiatrist and would be

given a long questionnaire. The patient would receive two appointments, one with a psychiatrist and one with a non-medical mental health provider such as a psychologist or psychology assistant, for clinical assessments. Reports would then be prepared for a case conference with the psychiatrist, intake coordinator, and others to discuss next steps. Dr. Cantor explained that to start the process of transition in the early 2000's, the patient would start by changing their name to an unambiguously female name so that demonstration of their identification would be an indication of their status. The first step for a patient free of predominant mental health issues would generally be to spend a minimum of one year living in their affirmed gender which he referred to as the "real life test" before they received medical interventions; however, there were often reasons why patients wanted to delay transitioning. If the patient had other mental health issues to address, the clinic would either provide treatment or find resources for them. Dr. Cantor acknowledged that a requirement of completing the "real life test" was to engage in work or study or volunteer work, or any combination, in their affirmed gender but noted that was decades before there were any claims about non-binary or fluid status. He testified there were very few options available after the completion of the "real life test" – the first step would be hormones with a referral to an endocrinologist and then embark on a process for approving and funding surgical reassignment.

116. Dr. Cantor was then asked whether the treatment path for a youth at Tanner Stage 2 seeking to transition would also start with an assessment by a mental health professional trained in the application of guidelines for transgender youth. He disagreed, pointing out that a 12-year-old, unlike an adult, is guessing at two different futures without any exposure or understanding of either of those futures. Dr. Cantor testified there is no first step under versions 7 or 8 of the WPATH guidelines:

> … First, the step is not a step, its an option. Because … the standards of both versions 7 and 8 make each of these steps optional – well, they're not steps anymore. The person who's in conflict of interest is going to get paid whatever amounts of money for engaging in the medical procedure is allowed to skip any of these by calling an exception. No criteria for deciding what an exception is, they just call it an exception. There is nothing to stop anybody from writing in the file, "My opinion is that this one is an exception."

117. Dr. Cantor acknowledged that WPATH describes a process in which a psychological assessment is done following which, if the child is assessed to be gender dysphoric, there will be a referral to an endocrinologist. He had no idea how often that is happening in the U.S. or Canada. He agreed that the usual process in relation to a youth assigned female at birth seeking to present as a male, who was assessed to have gender dysphoria, would be a referral to an endocrinologist who would typically prescribe Lupron to cause delayed puberty. He observed that the administration of cross-sex hormones after blocking puberty would cause permanent sterility. Dr. Cantor testified what is also absent from that description is the concept of keeping someone in their prepubertal body and mind until the age of 16 while their friends are well into mid-adolescence, noting most of those children would have otherwise turned into gay or lesbian adults. In Dr. Cantor's words, "we have a body of a 16-year-old with still a prepubescent mind

trying to estimate what life will be like if they're never able to experience penetrative sex. There's just no meaningful way… for informed – for any consent to be informed under those conditions".

118. Dr. Cantor was questioned about the demographics and numbers of transgender patients whom he assessed and supported in his practice. He confirmed he directly saw the fewest transgender patients between 2011 and 2017 as most of his contact was indirect through his students. He did not see transgender patients directly after 2011 but supervised students who did.

119. Dr. Cantor was asked whether the rise of social media on the one hand and the manifestation of transgender people on the other was a classic example of correlation requiring explanation. He confirmed in general that it was. He acknowledged it is theoretically possible there is some third variable that caused both the increase in transgender people and social media but he was not aware of anyone who had suggested or demonstrated that.

120. Dr. Cantor was also cross-examined on version 8 of the WPATH guidelines. He testified they are flawed because: (a) WPATH did not follow the ethical procedures they claimed to have followed; and (b) they declare themselves to be science and evidence-based when they are demonstrably not. Dr. Cantor was asked whether every Canadian medical psychological association involved in the provision of care to transgender and gender diverse people employ the WPATH standards of care. He responded the accurate answer does not fall along those lines and had not done a survey of all such organizations and would be surprised if anyone had in the "current atmosphere of cancellation culture".

Dr. Stock's evidence

121. Dr. Stock is a former Professor of Philosophy at the University of Sussex, United Kingdom, where she taught for 18 years. Dr. Stock has published scholarly philosophical works on imagination, fiction, sexual objectification, sexual orientation, and the importance of referring to human sex in language. Dr. Stock was qualified as an expert in the areas of the use of language relating to sex and gender, the meaning of transphobia, the risks of defining transphobia too broadly, the conflict of rights from a philosophical perspective between sex-based and gender-based categorizations, the impact of "self-identification" on women's rights and interests, whether sex-based language exposes transgender persons to serious harm, and the social value of sex-based speech.

122. Dr. Stock testified that "gender identity" in popular parlance means a private feeling that one is a particular sex which is not congruent with one's external bodily characteristics or the feeling of being born in the wrong body. She indicated, however, there has been an evolution of the concept of "gender identity" which is, in part, an elaboration of the feminist idea of gender, which was understood as the social meaning of biological sex. She observed that Dr. Bauer's description of gender identity as a "deep knowing of oneself" reflects an activist understanding of the concept that has emerged in the 21st century. Dr. Stock believes that this conception reflects a misunderstanding of what the word "know" really means because there is no

methodology to establish that what is known is true. In Dr. Stock's words, feeling something very strongly is different from knowing.

123. Dr. Stock addressed how gender identity differs from gender theory. She testified gender theory describes all the possible theories about gender. She indicated that gender identity theory claims that everyone has a gender identity, and that gender identity is more important than or trumps biological sex; it is one's gender identity rather than biological sex that makes someone a man or a woman. Dr. Stock explained there is usually an accompanying claim that biological sex itself is socially constructed rather than naturally occurring in the world. Dr. Stock defined biological sex as the way of distinguishing between two types of beings in a species pertaining to their contribution to sexual reproduction – the female of the species contributes the large gametes assuming everything is in working order and the male contributes the small motile gametes. She does not believe that critiquing gender ideology means one is against transgender people, noting trans activists are often not transgender, and the ideology is rejected by many transgender people. Being critical of gender ideology is not bigotry towards transgender people; rather, it is a critique of philosophical ideas which people are supposed to be able to discuss.

124. Dr. Stock described the term "TERF" as a "tendentious way of positioning your position in a rhetorically damaging light" which is applied to almost anyone who criticizes anything about this debate. In explaining the concept of "transphobia", Dr. Stock observed that phobias have historically involved an intense aversion to something involving fear or disgust; however, the concept of a phobia has expanded, unhelpfully in her view, to include less intense experiences. She believes "transphobia" has been defined by trans activists and lobby groups in a "very biased way". For example, LGBT organizations that Dr. Stock is familiar with define transphobia as a "fear or dislike or trans people, including failure to accept their gender identity". This definition indicates if one does not accept a person's claim about gender identity at face value, they are transphobic. Dr. Stock observed this makes the umbrella of transphobic discourse extremely wide. It follows that a broad definition of transphobia has a chilling effect on discussion and makes people frightened to say anything because they do not want to appear to be bigoted. Dr. Stock asserted that characterizing J.K. Rowling's comments as transphobic is completely unfair, noting it was a good example of shutting down discussion in a way that suits the aims of trans activists. Dr. Stock also confirmed that, in the debate about gender issues, it is not *prima facie* transphobic to use satire or mockery as they are established ways of making political points. While it may be offensive to some groups, Dr. Stock argued that offence is not harm which is a foundational notion to a liberal society. She observed it is often socially disapproved of for women to make jokes because they should be kinder than men and jokes can be perceived as cruel.

125. Dr. Stock testified the language around sex has not evolved or changed in recent years but there are pockets of activism and academia that have been vocal about using these words differently. In a scientific context, she explained that biological sex has remained unchanged; yet, in certain contexts, it is claimed that our former understanding of biological sex is regressive, and we should think of it as a spectrum which is more than two sexes or as a social construction, meaning that humans are in charge of the concepts. Dr. Stock described this as a radical claim

coming from a certain philosophical tradition in academia which she believes is wrong. Dr. Stock believes that change has come about partly because of the influence of philosophical ideas coming out of post-structuralism and post-modernism and the idea that everything is socially constructed.

126. Dr. Stock explained the impact of downgrading sex relative to gender identity has had huge repercussions because biological sex has not gone away. She testified women and others have lost the ability to refer freely to facts about themselves such as that humans are a sexually dimorphic species which means on average that males are larger and stronger than females, which is relevant to many areas of social life. She believes we have lost the ability to talk about sex in relation to matters such as maternity and sexual orientation. If one removes the capacity to discuss sex, then one cannot talk about sexism, misogyny, sex-based violence, fairness in sports, and sexual orientation. Dr. Stock cautioned we not only lose the ability to point out problems such as the harms to women, but there is also a chilling effect on children who are very confused by these issues. She believes that the ability to talk about sex is being strongly discouraged through draconian policies and laws to the point where it is pronounced to be transphobic to talk accurately about biology or sex.

127. Dr. Stock also addressed the question of harm in this context. She explained "harm" has traditionally meant something that causes dysfunction, usually associated with the experience of pain, suffering, or damage; however, as a result of "concept creep", the notion of "harm" has expanded in the last 20 years to include a much broader set of objects to the point that harm can be ascribed to relatively trivial matters such an offence and feelings of distress. Dr. Stock does not believe the use of sex-based language, as a general proposition, harms transgender persons. While it may engender feelings of distress, Dr. Stock does not consider that to be a serious harm but rather just part of being human. In her view, the strongest argument is that pointing out the sex of a transgender person may expose them to the threat of violence; however, even that claim requires empirical evidence. Dr. Stock observed that in many cases it is possible to see the transgender person's sex because humans are hard-wired as a sexually reproductive species to recognize the opposite sex.

128. Dr. Stock testified the phrase "trans person" in modern understanding means a person is transgender simply because their feelings are at odds with their physical body, and once someone is a transgender woman, they are also a woman, or once a transgender man, they are also a man. She noted the use of this term does not require the individual to have had surgery, taken drugs, or undergone any significant physical changes.

129. Dr. Stock was also asked to address self-identification in the context of the experience in the United Kingdom. She explained self-identification refers to the idea that "I decide who I am" and "what my identity is". Dr. Stock described a campaign undertaken by trans activists and LGBTQ lobby groups to change the law to permit anyone to obtain a gender recognition certificate by simply saying they have an incongruent gender identity without the requirement for medical gatekeeping. The current laws require signoff from doctors and the requirement to live in the opposite gender for two years. Dr. Stock noted, however, it is not necessary to have a

gender recognition certificate to access women-only spaces and resources because one's gender identity provides the basis for access. She rejects the claim that transgender women are literally women or female and that transgender men are literally men or male because biological sex cannot be changed. According to Dr. Stock, the suggestion that males can be females or vice versa is best understood as a fiction. She testified that people engage in fiction all the time and there is nothing wrong with it - it might be acceptable to go along with this fiction at times but people should not be compelled to go along with it because it is not strictly speaking true. Dr. Stock believes that people are confusing fiction for fact and children are learning their picture of the world from adults which can have negative effects for them because they need to understand "what biological sex is and how, for instance, a trans man is not the same as a man in a number of situations and may be at risk in ways that men are not". Dr. Stock believes it is important to retain the difference between fiction and fact particularly because of the pathway towards a medicalization of children who have confused identities – they are being channeled towards life-altering drugs and surgeries before they really understand the facts.

130. Dr. Stock also addressed de-transitioners whom she described as individuals who formerly held a strong conviction about their identity but subsequently determined they did not get their identity right. The existence of de-transitioners is, in Dr. Stock's view, difficult for fanatical trans activists who argue that gender identity is innate and permanent. In her words, de-transitioners "are an embarrassment to trans activists because they really are the counter example to all the dogma".

131. Dr. Stock does not accept Dr. Bauer's view that the source of concern about gender washroom restrictions stems from pathogen disgust. She pointed out it is not complicated to explain why people are worried about females being in places where they undress, sleep, or are otherwise vulnerable to sexual assault, and having policies and laws that say any male who identifies as a woman can enter those spaces. She testified that the concerns are also about fear and privacy and menstruation and women wanting a private space without males around. Dr. Stock questioned how anyone is supposed to know whether a cisgender man is just pretending to be a woman to enter those spaces if all that is required is a feeling. One cannot argue with a feeling once it is declared.

132. Dr. Stock noted the dialogue about the inclusion of transgender women has changed since self-identification policies have become more prevalent. She explained the original assumption for most people was that there were just a small number of people who had received full genital reconstruction, and most were happy enough to accommodate that small cohort; however, that changed because anyone with a feeling can now be a transgender woman. In Britain, they were told by lobby groups, "trans women are women. Get over it" and there could be no debate. She observed if you are going to "basically radically try and recategorize whole groups of people and say that they were women when previously nobody thought they were, there will be a change in the atmosphere around this discussion. People have got very angry about the way they have been shut down and we have not been allowed to discuss this properly".

133. Dr. Stock also provided a philosophical perspective on the conflict of rights between sex-based and gender-based concerns. She explained that a "right" is an entitlement or a freedom. A conflict arises when certain people assert it is a right for transgender women to use women-only spaces while feminists and gender critical people take the position it is not a right and the right at issue is to be free from violence. She observed it is necessary to work out whether the rights being asserted are in fact rights. She explained that claims about gender identity are often couched in the language of human rights which are considered essential for human functioning or flourishing. Activists will claim it is a human right to have one's gender identity affirmed and respected in all possible situations. The debate has become polarized because claims about gender identity are presented as absolute when they are not, in Dr Stock's view, human rights. Dr. Stock believes it is a human right to be free from violence and discrimination and the argument should focus on the best means to achieve that. While some people think the best means to protect transgender women from violence is to allow them into women-only spaces, Dr. Stock believes this puts women at risk because anyone can come into those spaces claiming to have the right gender identity. She argues a better way to resolve the issue would be to produce a third type of space. In any event, Dr. Stock testified the debate about these conflicts of rights is essential because the alternative would be to have special interest groups making exaggerated or extravagant claims about the nature of their rights which no one else would be able to discuss which would constitute an authoritarian illiberal situation.

134. Finally, Dr. Stock addressed the importance of freedom of expression in universities and the significant obstacles she faced in trying to discuss transphobia and gender identity issues in the academic context. As a professor, Dr. Stock faced protests and attempts to defame her character because of her views. She was subjected to threats, complaints, and the weaponizing of the university's internal complaints process. Dr. Stock testified there were people, including other academics, who were vocal, dogmatic, and falsely insisted that her views constituted hatred. She stated there is now more awareness in the United Kingdom of the consequences of these ideas as they are operationalized through policies, and a recognition that gender-critical beliefs are protected under the *Equality Act* which has allowed people to discuss issues with more confidence that they will not be prosecuted.

Dr. Blade's evidence

135. Dr. Linda Blade is a former professional athlete, professional coach, and kinesiologist, who has expertise in sexual dimorphism. In 2020, Dr. Blade co-authored a book entitled *Unsporting: How Transactivism and Science Denial are Destroying Sport.* Dr. Blade was accepted as an expert qualified to address ways in which females are impacted by the prioritization of gender over biological sex in sport and how gender ideology has become so prevalent in female sports.

136. Dr. Blade first addressed the impacts of having gender identity prioritized over biological sex in female sports. She explained that whether a human being is a male or female sets them on a trajectory that largely dictates their biomotor abilities, such as strength, speed, and endurance. She testified, for example, that males have a 15% advantage over females in running events, a 25% to 50% advantage in activities involving the upper body such as weightlifting and

pole vaulting, and up to a 160% advantage in boxing. This raises both fairness and safety concerns. Dr. Blade explained that even one male athlete who identifies as a woman on the rugby pitch will increase the chance of injury to female athletes by up to 30%. She also addressed the psychological impact for young girls who are forced to compete with young male athletes, whether at the prepubertal or post pubertal stage. She testified women are beginning to withdraw from sports which deprives them of the psychological and social benefits of being able to win in a fair environment. Dr. Blade suggested that coaches and sports officials may also start to withdraw because of fear regarding the legal implications that flow from the lack of clarity about the categories of sports that should be used.

137. Dr. Blade explained the principle that biological sex is at the root of sporting excellence is "foundational"; it is therefore necessary, rather than hateful, to use sex-based terms and language. In this context, Dr. Blade referred to the concept of stratification used to ensure maximum participation. The first division in sport is male or female. Within each division, there are categories or levels, such as age categories. Without stratification and different levels, children would never have a chance to compete with adults or professional athletes. As stratification leads to maximization of participation, those categories must be clearly delineated based on verifiable physical features and an understanding of the body's development process.

138. Finally, Dr. Blade gave evidence about how gender ideology has become prevalent in women's sports. She believes the idea of greater social acceptances has been misplaced in female sports and other areas where biological sex matters. Dr. Blade referenced the social appetite to consider the rights and privileges of minority groups which, in her view, led to an effort to "shoehorn" human bodies into categories in which they did not belong. Dr. Blade observed that many organizations, including the International Olympic Committee and the Canadian Centre for Athletes in Sport, wanted an easy and instant solution for including transgender people. While laudable, Dr. Blade said the speed with which these organizations addressed this issue, and the lack of consultation, caused many problems including categorical discrimination of women and girls. In Dr. Blade's words, it is "devastating because women and girls train really very hard to try to express their athletic ability and achieve success and, suddenly, they are confronted with something that's just completely not fair…".

Respondent's evidence

139. The Respondent also testified at the hearing. She explained that she has degrees in journalism and nursing. While working as a freelance journalist, the Respondent volunteered with the Elizabeth Fry Society in the DTES. Following her graduation from the UBC Nursing Program, the Respondent was offered a position as a registered nurse in psychiatry, an area she has continued to work in for the last 11 years. She practiced for five years in the B.C. Neuropsychiatry program, as well as the B.C. Mood Disorders and B.C. Psychosis programs, before moving to outreach nursing in the DTES where the patient population included transgender patients. The Respondent recounted one transgender woman on her roster whom she was always excited to see; she testified she always used that patient's preferred pronouns and followed workplace policies without question. She confirmed the only consideration in

treating a transgender patient would be whether there was anything about their biological sex that would have to be considered in providing care. While working in the DTES, the Respondent observed there were insufficient resources for women to escape male violence or prostitution, which motivated her to become more involved in advocating for women's sex-based rights. The Respondent confirmed she did not have any complaints or disciplinary issues arising out of her work in the DTES or otherwise apart from the current complaints regarding her off-duty statements. In relation to those statements, the Respondent was asked by her employer to indicate that her social media views are her personal views.

140. The Respondent moved into a leadership role after practicing in the DTES. She started her current position as an educator in the inpatient psychiatry department in a hospital, which she described as a frontline role, in 2016. The Respondent sometimes assists directly with patient care but does not take patient assignments. She is involved in hiring and onboarding new nurses, providing education and orientation for the unit, and providing education for existing staff who need support in their practice by either finding them resources or stepping in to coach them. The Respondent may also review proposed new hospital policies and provide feedback before becoming the conduit for their implementation on her unit. She maintained that her role differed from the role of a nurse educator described in Dr. Saewyc's report.

141. The Respondent indicated that she has continued to interact with transgender patients in her current role. She confirmed she always uses their preferred pronouns as required by workplace policies. She testified she has completed every Trans Care BC course available for providing care to transgender or gender non-conforming people, and has voluntarily completed diversity, equity, and inclusion training because she wants to learn and stay current; she has shared her training with her staff and encouraged them to attend courses as well. Although the Respondent does not agree with all of the information presented in the courses, she testified it does not impact her job or the care she provides to patients. She explained she has always kept her political views in her private life separate from her work life. The Respondent denied that she ever talked about politics at work and finds it distressing that, because of this hearing, she lost the ability to do that as people at work often approach her about this case. The Respondent said that when she is at work, there is a job to do, and she follows the policies of the organization regardless of whether she agrees with them. She testified that she limits her advocacy to her off-duty hours and said it would be devastating to lose a career she loves and has worked so hard at.

142. The Respondent gave evidence about her sex-based rights advocacy, which she described as the freedoms or entitlements that women have based on being biologically female. She explained that sex-based rights protect the privacy, dignity, and safety of women from male violence. The Respondent is concerned that enshrining "gender identity" into the federal *Human Rights Code*, which has resulted in self-identification policies being put in place almost everywhere in Canada, has created a clash with women's sex-based rights. She is concerned that "a male can just self-identify as a female and gain access to what were previously sex-segregated spaces" designed for women's privacy, dignity and safety, including rape shelters and women's prisons. The Respondent referenced examples of male prisoners who have self-identified as females being placed in women's prisons, including one who murdered a child and raped a

toddler and another who murdered a female nurse and raped her daughters. The Respondent finds it unacceptable that incarcerated women, who are the most vulnerable, marginalized population in Canada and disproportionately Indigenous, are "literally caged with rapists and pedophiles". She is extremely angry that people do not seem to care what is happening to these incarcerated women. She also described the campaigns undertaken by trans rights activists to shut down the Vancouver Rape Relief and Women's Shelter ("Vancouver Women's Shelter") which won the right to maintain their shelter as a sex-segregated space but which subsequently lost City of Vancouver funding as a result.

143. The Respondent disagreed with Dr. Bauer's evidence concerning self-identification. She testified that self-identification means that an individual need only make a statement about "an internal metaphysical claim that they have a gender identity and that then is to supersede biological reality". The Respondent maintains the issue is not about transgender people; rather, the issue is about having sex-segregated spaces that do not have "male bodies" because women and children have good reason to fear male violence. While expressing sympathy for transgender women who may be afraid to use male spaces, the Respondent does not believe it is incumbent upon women to accept males into their sex-segregated spaces to protect this "particular group of biological males from other biological males". She supports third spaces to address this issue. The Respondent is frustrated that women are no longer permitted to have their own sex-segregated spaces and are labelled as hateful transphobes. She believes that men's feelings have become more important than the safety of women and children.

144. The Respondent explained her understanding of gender identity as the "notion that humans have within them in their brain a gendered soul, or a gender identity" for which there is no proof as it is unfalsifiable. She does not believe that everyone has a gender identity. She rejects the suggestion that a person's adherence or non-adherence to stereotypes associated with males and females somehow reflects an internal gender identity or gender soul, referring to it as "anti-scientific, metaphysical nonsense". The Respondent asserts that a person cannot change their sex and there is no science to indicate they can. She supports the rights of adults to make decisions about their bodies and to live their lives appearing as the opposite sex; however, she believes that children cannot consent to making these decisions, and women's rights cannot be infringed in that process.

145. The Respondent is critical of gender ideology, as distinct from gender identity, as it relates to the movement of trans rights activists which push institutions to adopt "false and delusional beliefs about reality". She testified the movement has become extremely abusive towards women who speak out against it. She believes that many Canadian institutions have been overrun by a small percentage of fringe trans activists who promote the idea that everyone has a gender identity. While the Respondent does not want anyone to be subjected to discrimination, she maintains it is not inclusive to tell women not to talk about their concerns or assert their rights because they are hurting the feelings of people identifying as women.

146. The Respondent describes herself as a "feminist" and aligns with many of the values and principles underlying feminist movements. She testified she has read widely, including feminist

scholarship and works by trans activists and transgender people, to inform her views. The Respondent explained her motivation for becoming more involved in advocating for women's sex-based rights and gender issues. In approximately 2016, the Respondent noticed that women were being told to be quiet because it could be offensive to males who identify as women. During that time, Planned Parenthood Toronto had organized an event for trans women entitled "Overcoming the Cotton Ceiling". She found the reference to "cotton ceiling", meaning "lesbian's panties", to be abhorrent; it reminded her of the history of oppression that lesbians have faced. She found it shocking that when people tried to call this out, they would be labelled a trans-exclusionary radical feminist or TERF which is a slur towards women who speak out against gender ideology. The Respondent said that having children also changed her views as she wanted to ensure that her sons grew up in a world where they can enjoy the same freedoms that she had growing up when women were still entitled to their rights. The Respondent began speaking about these issues with friends and family and then joined online communities where gender issues were being discussed. She began writing about gender issues and planning events at which people from both sides of the debate were encouraged to attend. The Respondent recognized she could face backlash in her personal life when she published her first article on gender identity but wrote it under her own name because she believes people need to stand up for their beliefs to achieve progress. She described the events that she was involved in organizing and the threats made against her and others, which included threats of rape, statements that all TERFs deserved to die, the presence of a guillotine at one event suggesting that women's heads should be chopped off, and sexual harassment. The Respondent is fearful of her safety given the level of vitriol that people direct at her for just wanting to have a discussion; she has contacted the police about threatening emails and described an incident in which a photograph of her was shared online with the caption, "if you see this woman in Vancouver, go and punch her in the face". The threats, while horrific, have not deterred the Respondent from her advocacy because of her belief that it is right to protect women and children.

147. The Respondent explained the background concerning the "I 'heart' J.K. Rowling" billboard erected in Vancouver in September 2020. The background was a December 2019 tweet in which J.K. Rowling said, "Dress however you please. Call yourself whatever you like. Sleep with any consenting adult who'll have you. Live your best life in peace and security. But force women out of their jobs for stating that sex is real?" in response to a U.K. woman who had lost her job for sharing gender critical beliefs. The Respondent explained that J.K. Rowling then published an essay in June 2020, which explained why she had entered the debate about women's rights versus gender ideology. In that essay, the author said she would fight alongside transgender people for their rights not to be discriminated against but also for women's sex-based rights. A copy of J.K. Rowling's essay entitled "JK Rowling Writes about Her Reasons for Speaking out on Sex and Gender Issues" was tendered into evidence. The Respondent said she was approached by a friend about renting a billboard as had been done in the United Kingdom to support J.K. Rowling who had been exposed to threats of rape, violence and death because of her essay. The Respondent agreed it was a great idea to encourage public discussion, particularly as they had been unable to organize events because of the pandemic. She expected opposition to the billboard but hoped the public would read about why this was such a contentious issue. In response to calls for the billboard to be taken down, the Respondent and her friend wrote to

Pattison Outdoors, the company which owned the billboard, to explain they were inspired by J.K. Rowling who is not transphobic and, like her, were concerned about the impact of gender identity and ideology on the rights of women and girls. The billboard, which was taken down, received international media coverage. The Respondent was quoted in a CBC article regarding the billboard, stating, "I don't think it's possible for women to defend their legal rights or even the definition of womanhood if anybody can say that they are a woman and it will be so…" and that "(w)omen's rights are important and we need to stand up for them and it's not transphobic to do so…". She continues to stand by those comments. Shortly after the CBC article was published, the Respondent received more than 15,000 comments on Facebook, the vast majority of which were threatening and abusive; she also received hundreds of threatening messages every hour from strangers. Approximately one month after the billboard was taken down, the Respondent was notified of the College complaints from two members of the public, one who has remained anonymous, alleging that the billboard was transphobic and a danger to trans or gender diverse patients and claiming she was unworthy of having a nursing licence.

148. The Respondent confirmed she was also one of the co-founders of caWsbar, a non-partisan coalition of women across the country which focuses on women's sex-based rights and the protection of women and children. She explained that caWsbar was formed in the aftermath of, and in response to, the human rights case involving the estheticians who refused to wax the genitals of a transgender woman. The caWsbar members were outraged that a woman could be compelled to handle male genitalia. The caWsbar organization engages in letter writing campaigns to politicians and governments to raise awareness and encourage discussion amongst Canadians. The Respondent said this is important because few people are willing to talk about these issues because opponents will try to destroy their lives. She denied that caWsbar is trans exclusionary. The Respondent testified that she was not involved in drafting the caWsbar Position Statement but was on the steering committee which endorsed it. The Respondent testified she was not involved with the caWsbar Twitter[4] account or any of its publications or communications, and confirmed she only tweeted under her own name.

149. Currently, the Respondent engages in most of her advocacy through writing for publications and on Twitter because it is a place where she can share her views with a larger audience, and it is a platform that is open to contentious discussions. She denied joining Twitter to discriminate or harass transgender persons. The Respondent stated she has never wanted to discriminate against or harass anyone. At the time of the billboard incident, the Respondent testified she had less than 10,000 followers on Twitter but now has close to 40,000.

150. The Respondent was asked why she put her occupation in her biographical details on social media. She explained that the reference to her occupation was mainly in the writer's "bios" at the end of articles which did not serve any purpose other than being responsive when a publication requested a "small blurb about you". She testified, "(m)y intent behind ever mentioning that I was a nurse was not in any way to give credence to my views or my opinions

[4] Although the name of Twitter was later changed to "X", it will continue to be referred to as Twitter in these reasons.

on any matter, including the gender identity debate". She said that she never provided nursing or medical advice or opinions in any of the statements or commentary and no longer uses that wording for her biographical information.

151. The Respondent was asked to explain the content and context for some of her tweets and re-tweets in her direct examination; her evidence is referenced in Appendix A where her statements are analyzed. She acknowledged that one of her comments satirizing straight people who have taken up the trend of experimenting with their gender may be offensive to some and explained that it was not about transgender people and that she uses satire to capture people's attention. She indicated there was only one tweet concerning J.K. Rowling in which she identified herself as a nurse, but she was still not linking her beliefs to being a nurse. She testified she uses humour, particularly on Twitter, to engage people without intending to offend anyone but rather to start a dialogue. She explained she is very angry when she sees women in prisons locked up with rapists, children being harmed, or female athletes not being able to compete because males have been able to self-identify in female sports. She does not believe her comments are more offensive than women being caged with rapists and pedophiles, which, in her view, is far more egregious than using humour in tweets.

152. The Respondent was asked about the pervasiveness of binary gendered assumptions in health care settings and the experiences that non-binary people encounter that challenge their privacy and create obstacles to respectful patient-centered care. She testified that was not a concern that she had observed and emphasized the need to recognize a patient's biological sex to provide safe and ethical care. The Respondent stated that she has never observed transgender patients encountering privacy challenges, noting that there are no sex-segregated health units in Canada. She said she has never insisted on using the transgender person's current or former legal name rather than their preferred name in her practice; she has also never observed colleagues being disrespectful towards transgender people. The Respondent was asked about her understanding of the CNA *Code of Ethics* requirement to "keep abreast of current issues and concerns" and be "strong advocates for fair policies and practices". She said she tries to do that through her advocacy work for women and children. The Respondent stated that she agrees with and complies with the College's professional standards and other ethical principles for nursing.

153. The Respondent expressed criticism of the Language Guide in terms of the impact on the safety of women and children seeking health care. In her view, the Language Guide is prescriptive and is enforced. She believes it is dehumanizing and offensive for women seeking health care to be referred to either by their bodily functions or their body parts rather than being called women. She also referenced the possible impacts on immigrants with no or poor English fluency and Indigenous women.

154. The Respondent explained why she disagrees with the Citation allegations. She testified it would be a violation of her conscience to agree that she had done or said anything that was harmful or transphobic and she felt that there would be no way for her to keep speaking out because everyone now knows that she is a nurse. She reiterated that she cares deeply about

advocating for children and women, particularly Indigenous women who are disproportionately impacted by gender self-identification policies.

155. The Respondent acknowledged in cross-examination that she holds a special position of trust and influence as a member of a regulated health profession. She agreed that College standards require her to treat marginalized and vulnerable communities with respect, care and dignity, and that transgender people are a marginalized and vulnerable population. However, the Respondent disagreed with the evidence of the College's experts that transgender people avoid health care because of negative experiences or in anticipation of negative experiences in the health care system. In her 12 years of nursing, the Respondent testified that she has never observed an occasion in which a transgender person had a negative experience or expressed they might have a negative experience in accessing health care that was related to the way in which they identified. The Respondent said she has observed harms to cisgender women from transgender people but could not provide specifics because of confidentiality requirements. In terms of how women feel unsafe or devalued, the Respondent testified these are the sorts of harms "that women will very likely experience in hospital when they're referred to as breast feeders, pregnant people".

156. The Respondent confirmed she had put a rider on her tweets indicating that her views were not those of her employer. When College counsel asked the Respondent to confirm there would be nothing to prevent her from adding a rider to her social media profile indicating "these do not represent my views as a nurse", she responded she was not asked to do that. The Respondent confirmed she stopped including her status as a nurse in her posts and writing after she received the initial notice of the complaints from the College. She explained she is not an advocate for women and children because she is a nurse – it was simply a biographical detail that was included about her. The Respondent did not agree that identifying one's membership in a regulated profession in public writing indicates to the reader they are writing as a member of that profession, nor did she agree that she was creating a crossover between her professional and personal life when identifying herself as a nurse.

157. The Respondent was also taken to the caWsbar website which contains biographical information indicating she is a registered nurse. She testified she was not aware that the reference was on her bio on the webpage which has not been updated in years, and if she had been aware of it, she would have asked to have it removed. The Respondent confirmed she sets her own biographical description on her Twitter account and can change it any time. She was asked whether a member of the public clicking on one of her tweets would be sent to her profile screen. The Respondent indicated they would not and would have to click on her profile picture at the side of the Tweet to get directed to her page. The Respondent testified she did not state on her Twitter bio that she was a nurse or registered nurse in addition to being a registered nurse educator between July 2018 and March 2021 although she had in the past. She explained that she asked publishers to remove the reference to being a registered nurse educator in her older publications and her biographical description currently just states "Amy Hamm lives in New Westminster, B.C.". She said she stopped using the reference to being a nurse because it was clear from the Citation that was an issue, and she wanted to comply with what the College

wanted her to do. The Respondent confirmed the tweets which form the basis of the Citation allegations occurred in the period of July 2018 to March 2021.

158. When asked whether she disbelieves that gender identity is a real concept, the Respondent explained that she does not believe in mind-body dualism as the mind is the body although she recognizes that people may suffer from gender dysphoria. The Respondent believes the population of transgender people either have gender dysphoria as outlined in the DSM 5 or may be diagnosed as having the psychiatric disorder of auto gynephilia. She explained that, because of self-identification, transgender individuals may also include anyone who identifies as transgender. The Respondent disagreed that sexual orientation and gender identity are similar; she also disagreed with the suggestion that sexual orientation is also internal and unfalsifiable, pointing to Dr. Cantor's testimony that MRI studies show the ability to view someone's sexual orientation in the brain.

159. The Respondent was asked about her use of the term "trans activists". She explained she uses this term to refer to a large group of people, some of whom are transgender and some of whom are not, who promote gender ideology and the implementation of self-identification laws. College counsel asked the Respondent whether she agreed that unless there are third spaces for transgender women, they would be excluded from shelters and hostels based on their gender identity. The Respondent responded she did not want anyone to be excluded but wants people to use services based on their biological sex. She testified that transgender men, as biological females, would also be welcome in sex-segregated spaces for females. She simply advocates for people to use the spaces that correspond to their biological sex. The Respondent stated her issue is not with transgender persons but rather with gender self-identification policies that flow from gender identity being enshrined in law which allow males to simply state they are female to enter female spaces. The Respondent vehemently denied the suggestion that her position of restricting female spaces to biological females was based on the pathogen disgust reaction described by Dr. Bauer. The Respondent does not accept that it is a human right to use sex-segregated spaces when a person does not belong in that sex category; in her view, they are not being excluded as they have access to their own sex-segregated spaces or could be provided with a third space as a solution.

160. College counsel put to the Respondent that the centerpiece of her advocacy is to promote an understanding that transgender women, regardless of their body parts or legal gender, are male because there are only two sexes which cannot be changed. She responded that every human is either male or female which is not something that can be changed. The Respondent was asked whether the consequences of her advocacy would lead to transgender women being excluded from women's spaces such as change and locker rooms, washrooms, homeless shelters, rape shelters, and women's sports. The Respondent said she did not have an answer to such a hypothetical question but reiterated that women deserve to have sex-segregated spaces, and it is not incumbent upon them to accommodate a small group of males who are afraid of male violence.

G. Findings and Analysis

161. This case is fundamentally about language. The stark differences between the parties' positions demonstrate the importance of language to our mutual understanding of each other, the impact language can have on the rights and general well-being of marginalized and vulnerable groups, and the foundational democratic principle of freedom of expression. Much time was spent during the hearing addressing and debating the meaning of various terms, how those terms have evolved, and how their use may harm the transgender community. As a result, the Panel approached its task with heightened sensitivity to the language used in the Citation, the choice of words used by the witnesses, and the specific language used by the Respondent in the statements contained in the Extract. The Panel determined this technical approach was necessary to properly balance the College's ability to regulate its registrants to protect the public interest and the ability of its registrants to engage in civic society in their personal, off-duty capacity, regardless of the perceived merits or harms of the content of that engagement.

162. The expert evidence provided background context which informed the Panel's understanding of the issues. Those portions of the expert opinions which were not specific to the particular facts of this case were admissible as social fact evidence in relation to the *Charter* analysis in relation to the question of whether a finding that off-duty statements constitute unprofessional conduct would unjustifiably infringe the Respondent's rights under s. 2(b): *R. v. Spence,* 2005 SCC 71, para. 57. The Panel sets out its analysis and findings in relation to the expert evidence in this section and its analysis and findings in relation to the Respondent's specific statements in Appendix A.

163. In addition to expert evidence, the Respondent also tendered academic articles and commentaries and media articles into evidence for the purposes of cross-examining the College's experts. In some cases, the College's experts indicated they were either unfamiliar with the authors or did not accept that the articles or commentaries were authoritative. The College did not object to the admission of any of this material but indicated it would make submissions on weight. The Panel is not prepared to place weight on the academic articles or commentaries which were not accepted as authoritative by any of the expert witnesses[5] nor on opinions expressed in the media articles.[6] See: *R. v. Anderson* (1914), 16 DLR 203; *Ed Miller Sales & Rentals Ltd. v. Caterpillar Tractor Co.,* 1992 CanLii 6132.

164. The College's expert witnesses were not consistently asked to adopt the opinions expressed in the academic articles which were accepted as authoritative, either in whole or in part. While the Respondent was entitled to use those articles for cross-examination purposes, only limited portions of those articles which were accepted by the experts should be used. As the Court observed in *Cambie Surgeries Corporation v. British Columbia (Medical Services*

[5] Exhibit 5 (while Dr. Saewyc accepted the British Medical Journal is authoritative, she did not accept the editorial was as authoritative), Exhibits 6 to 9, Exhibit 12, and Exhibit 30.

[6] Exhibits 10 to 11 and 22 to 25.

Commission), 2016 BCSC 1739, where an entire article is admitted into evidence, it is "generally only for the point raised" in cross-examination; such articles have "limited evidentiary effect" when they are put into evidence and "not fully discussed or examined". That was indeed the case for many of the articles tendered by the Respondent. The Panel finds that those articles can only be used for the limited purpose of capturing points that were expressly adopted by an expert witness during the hearing, which then became the evidence of the expert themselves.

165. Turning to the expert evidence, the Panel accepts the prevailing understanding in the field of science that biological "sex" and social "gender" are two functionally distinct concepts although there is interplay between them, and they may change over one's life course. The Panel relies on the evidence of Drs. Saewyc and Bauer as well as the CIHI definitions which define "sex" as "a set of biological attributes in humans and animals… primarily associated with physical and physiological features including chromosomes, gene expression, hormone levels and function, and reproductive/sexual anatomy" and "gender" as "the socially constructed roles, behaviours, expressions and identities of girls, women, boys, men, and gender diverse people… which influences how people perceive themselves and each other, how they act and interact, and with the distribution of power and resources in society".

166. Dr. Cantor differentiated "sex" and "gender" based on verifiability. He testified that while "sex" is an "objective biological reality which can be ascertained by chromosomal analysis or visual inspection", there is no way to falsify a person's declaration of their gender identity – a claim reiterated by the Respondent during her testimony and central to her thesis that anyone can self-identify as a woman. Dr. Cantor also argued that "gender" has a long history of being defined and redefined in ways that are most useful "for the rhetorical purposes of the moment". The Panel finds that it is not helpful nor necessary to determine whether gender identity is objectively verifiable, nor does it accept the suggestion that it is defined in whatever way is most useful for rhetorical purposes as no research was cited to support that proposition.

167. Dr. Stock testified that Dr. Bauer's description of gender identity as a "deep knowing of oneself" reflects an activist understanding that has emerged in the 21st century; she maintains it reflects a misunderstanding of what the word "know" really means because there is no way to establish what is known is true. While Dr. Stock is considering this issue through a philosophical lens, the Panel accepts that "gender" is a deeply held belief which is critical to a person's well-being which reflects how they see themselves and how they expect others to see them. The Panel accepts as well that the term "sex" is usually categorized as "female or male" while "gender" is usually conceptualized as "girl/woman and boy/man" in the scientific literature.

168. The experts addressed the different categories of gender dysphoria based on age of onset. Dr. Bauer confirmed there has been a dramatic increase in the last decade of youth assigned female at birth identifying as transgender or non-binary. She referenced Dr. Littman's study which was based on survey data from parents recruited from websites which hypothesized that this increase was attributable to social contagion. Dr. Bauer described Dr. Littman's study as a controversial hypothesis-generating analysis which is useful for future research. She explained that the DSM 5 specifically addresses how the emergence of gender dysphoria may surprise

parents because adolescents often have this knowledge before disclosing it to their parents; she pointed out that it is reasonable to assume the parents' perceptions about timing differ from the perceptions of their children. As Dr. Littman's study was only based on the perceptions of parents, Dr. Bauer noted the need to gather data from the adolescents themselves. In 2022, Dr. Bauer's team published their own study regarding ROGD which found there was no evidence that supported the existence of ROGD although she has asked other teams to analyze her team's data.

169. Dr. Cantor distinguished between childhood onset gender dysphoria (which he states is strongly related to homosexuality), adult-onset gender dysphoria which is related to auto gynephilia (a type of sexual fetish), and ROGD which applies predominantly to female youth. As ROGD started with the advent of social media, Dr. Cantor suggests the "obvious hypothesis" that social media has been interfering with the social development and functioning of these female youth rather than issues concerning gender identity. Dr. Cantor relies on Dr. Littman's study in support of this hypothesis as it shows that when an individual within a group reports they are gender dysphoric, there is a social clustering of that condition. Dr. Cantor was critical of Dr. Bauer's evidence regarding ROGD, suggesting she improperly referred to "recent" rather than "rapid" onset gender dysphoria and failed to account for the pubertal status of the individuals in Dr. Littman's study. He suggested that Dr. Bauer engaged in motivated reasoning to look for reasons to ignore the existing evidence which consistently points to the idea that youth with adolescent onset gender dysphoria are mislabeling their own experiences.

170. Dr. Bauer and Dr. Cantor have starkly different views regarding ROGD and auto gynephilia. Dr. Bauer describes auto gynephilia as a controversial hypothesis which is not generally accepted and does not resonate with the experience of many transgender women. The Panel prefers Dr. Bauer's evidence. While Dr. Cantor was critical of the "low" quality of studies that Dr. Bauer (and Dr. Saewyc) cited based on the hierarchy in his pyramid of evidence, he did not cite any randomized control trials or other high level research to support his claim that auto gynephilia is a pathway to gender dysphoria or that female youth are suffering from issues with social functioning as a result of social media rather than gender dysphoria. The Panel asked Dr. Cantor whether he could point to any studies that demonstrate that social media has caused the phenomenon of ROGD. He replied that it would not be possible to provide causality without randomly assigning children to not have access to the media and then went on to observe:

> What we're limited to in that sense, the social sciences, well, essentially the logic that I was describing yesterday. When we have a correlation, there are three things that can explain it. X causes Y, Y causes X, or there's something else that causes. But the only one of those that really holds water, the only reasonable explanation that we have is that social media causes, not just gender dysphoria, this isn't that kind of a one-to-one, we have every mental health variable that's available to us. The number of teenagers… coming in with depression, anxieties … all of them at exactly the same time. All exactly when social media really took over the common experience of adolescence. So there remains… as is often the case in science, there eternally remains a possibility of there being some other large scale change in society that we haven't paid attention to yet. That

possibility is always there, but nobody's presented anything close to alternative explanation.

171. Dr. Cantor was critical of Dr. Bauer and Dr. Saewyc for their reliance on qualitative studies but conceded that it is not possible to have the randomized control trials that are necessary to establish causality. He also acknowledged that many questions concerning gender dysphoria start with qualitative research and that the methods for qualitative and quantitative research often go together. Ultimately, the Panel found Dr. Bauer's evidence to be more balanced. She clearly explained the limits of the data from the Littman study (which came from the perceptions of parents and not from the children themselves) and was quick to acknowledge that it is a hypothesis that warrants further research. In contrast, Dr. Cantor appeared to cite the Littman study as definitive evidence to support his views notwithstanding that it is not the type of study that would rate highly on his pyramid of evidence. Based on Dr. Bauer's evidence, the Panel accepts that auto gynephilia and ROGD are controversial hypotheses that are generally not accepted in the scientific community as pathways to gender dysphoria and require more research.

172. Whatever the pathways to gender dysphoria are, the evidence is beyond clear that transgender people are a highly vulnerable and marginalized group that has been subjected to a long history of discrimination and exclusion from society. Dr. Bauer cited extensive research demonstrating the harms that transgender individuals face in society particularly in relation to the use of gendered spaces. She described three main types of harm experienced by transgender individuals in relation to the use of washrooms: (a) confrontation, harassment, or violence; (b) avoidance of public washrooms; and (c) the effects of avoidance beyond the obvious discomfort, including restriction of food and liquid intake and infections. Dr. Bauer suggested that "pathogen disgust" is the strongest predictor of support for restrictions on washroom use by transgender people – she described this as "disgust-related purity concerns rather than concerns regarding harm". Dr. Bauer testified she found no research documenting harms inflicted by transgender individuals on cisgender people in washroom settings, apart from the fear of harm. Dr. Stock did not accept Dr. Bauer's view that pathogen disgust is the source of support for washroom restrictions. She testified it is not complicated to explain why people are concerned about females being in a state of undress in places where they may be vulnerable to sexual assault. The Panel understands that there may be other reasons for supporting restrictions on gendered spaces; it noted that while Dr. Bauer identified "pathogen disgust" is the strongest predictor, she did not appear to foreclose other possibilities. Regardless of the reasons for promoting restrictions on gendered spaces, the Panel accepts that those restrictions have a discriminatory impact on transgender people.

173. Dr. Bauer also addressed prison wards which she described as an extreme form of gendered space. While there is little research on this issue, Dr. Bauer referenced an American study which indicated that LGBTQ prisoners were more often placed in restricted units ostensibly for their own safety notwithstanding the negative effect of isolation on their mental health. She referenced the harms that particularly transgender women face when they are incarcerated on the basis of their sex assigned at birth. Dr. Bauer referenced other areas of harm in society as

well, noting that restrictions on gendered facilities and activities deprive transgender individuals of access to the benefits of sports and result in targeting, including assault, relating to the denial of use of facilities. Dr. Bauer testified she was unable to find any research documenting harms inflicted on cisgender people based on the use of gendered spaces by the transgender community.

174. Dr. Bauer also described the active and passive processes that have excluded transgender people in relation to the health care system. She observed in her report that "(e)rasure creates or reinforces a range of structural barriers to trans inclusion in health care, such as policies that assume staff or patients are cisgender, laboratory results that are inappropriate to a patient's sexed hormonal milieu, as well as lack of knowledge among health care providers" which results in a "system in which trans people may not get their health care needs met, even if there were no blatantly intentional transphobic mistreatment". Dr. Bauer cited the example of an intake form requesting the patient's "sex", noting some transgender people would identify sex assigned at birth while others would use gender which would give rise to a mix of information which may be a barrier to care. She noted the design of institutional systems is not a deliberate policy to exclude transgender people but results from cis-normative assumptions. Dr. Bauer also referred to deliberate misgendering and other forms of interpersonal discrimination, mistreatment and harassment that may discourage transgender persons from seeking health care.

175. The Panel accepts that the experiences of transgender persons in the health care system may differ from the experiences of cisgender patients because of the pervasive nature of binary gendered assumptions. The Respondent testified she has never personally observed an occasion in which a transgender person had a negative experience or expressed they might have a negative experience in accessing health care in her years of nursing; however, that does not negate the experiences of transgender people who have experienced those harms which are documented in the studies cited by Drs. Saewyc and Bauer. Those harms include infringements of personal privacy based on irrelevant and intrusive questions, intentional misgendering, lack of attention to presenting complaints, and a reluctance to provide care based on a concern that more specialized care is required. Harms of this nature understandably erode trust in the health care system and, as reflected in the Canadian Trans Youth Health Survey, may foster a reluctance on the part of transgender individuals to disclose their gender identity to health professionals or access necessary health care.

176. The Panel finds that nurses, as integral members of the health care system, hold a trusted status in Canadian society – a fact which the Respondent herself acknowledged. Based on the evidence of Dr. Saewyc, the Panel accepts that one of the core ethical responsibilities that nurses have under the CNA *Code of Ethics* is to work toward adhering to the values in the *Code* at all times for persons receiving care regardless of attributes such as age, race, gender, gender identity, and gender expression and to uphold the dignity of and respect for each person. The Panel accepts that public statements and opinions expressed by nurses may be influential in shaping public opinions and perceptions regarding the delivery of health care and our health care system. When nurses make statements denying the identity or existence of transgender persons, or discount or denigrate their experiences, there is a risk that members of that highly vulnerable

community will assume those views are shared by at least some portion of the profession at large, further reinforcing concerns they will not receive proper treatment and/or discourage them from seeking health care. This cannot be reconciled with the fact that non-discrimination is a core value in our health care system generally and specifically in the nursing profession.

177. The Panel accepts the expert evidence of Drs. Saewyc and Bauer regarding the significant mental health challenges faced by transgender people. While acknowledging there are a variety of causes for depression and anxiety in adolescents, Dr. Saewyc noted there is a strong nexus between the stigma and discrimination experienced by transgender and non-binary young people and their disproportionate rates of depression and anxiety. She cited research from the Canadian Trans Youth Health Survey which identified a strong correlation between bullying and other forms of violence and a higher probability of suicidal ideation and suicide attempts among transgender and non-binary young people. Dr. Bauer testified that in the context of the international research, including her own, studies of older transgender adolescents and adults have consistently reported that 35% to 40% of study participants reported they had attempted suicide in the past. Dr. Bauer's own work revealed that 35% had considered suicide and 11% had attempted suicide in the previous year, with the highest risk group being those who were planning to medically transition or access gender-affirming care but had not yet done so. Dr. Bauer acknowledged that suicidal ideation may occur at different periods of one's life, including after receiving gender affirming care, but emphasized that there is substantial research demonstrating a strong relationship between such care and the reduction in suicide risk.

178. Dr. Cantor provided a contrasting view. He testified there is no evidence to suggest that individuals undergoing transition have reduced rates of suicide or suicidality. He maintained there are problems with the studies that suggest treatment decreases suicidality as those levels remain elevated for people with gender dysphoria both before and after transition. Dr. Cantor suggested the claims of harm and trauma presented by transgender people should not necessarily be taken at face value. He testified borderline personality disorder has the same sex ratio, the same sex group, and largely overlapping characteristics with those who report ROGD. He pointed out that one of the symptoms of borderline personality disorder and related disorders is the propensity to engage in histrionic language describing every emotional experience in the most dramatic terms. It was concerning to the Panel that Dr. Cantor appeared to dismiss the trauma and harm that transgender individuals report based on a connection, which he did not support with research, between ROGD and borderline personality disorder. Even on Dr. Cantor's evidence, ROGD is just one typology of gender dysphoria, and his theory would not account for the trauma reported by those in the childhood onset and adult onset types. Dr. Cantor acknowledges as well that rates of suicidality are elevated for transgender individuals. The Panel does not accept that Dr. Cantor has established a connection between borderline personality disorder and those who fall in the controversial ROGD group, nor has he established that the trauma and harm reported by members of the transgender community are not attributable, at least in part, to their gender dysphoria.

179. The experts disagree on whether gender affirming care reduces the risk of suicide and suicidality for transgender individuals but appear to agree that the rates of suicidality and suicide

are elevated for that community. While the evidence establishes that the transgender individuals experience a higher risk of suicide and suicidality, the Panel concludes that it is not necessary to make a finding regarding a connection between gender affirming care and the reduction of that risk for the purposes of determining whether the College has proven that the Respondent made statements which were discriminatory and/or derogatory to transgender persons while identifying herself as a nurse or nurse educator as alleged in the Citation.

180. There was also expert evidence regarding the WPATH standards of care. Dr. Saewyc explained that the development of the WPATH standards entailed a long process of evaluating existing research, conducting additional research and systematic reviews, engaging with clinicians with deep knowledge concerning various issues, and reaching a consensus about standards for gender affirming care. Dr. Bauer observed the WPATH standards of care are used in many countries although not universally. Dr. Cantor testified the WPATH standards have changed dramatically over the years with the most significant change occurring in 2012 when version 7 changed from a "gatekeeping model" to an "informed consent model". Under the gatekeeping model, Dr. Cantor explained that clinicians would ensure that a person did not have other mental health issues requiring resolution and rule out other possible explanations for motivating a patient's desire to transition. Dr. Cantor believes the "informed consent model" imports a far lower standard because it does not require the kind of evidence that would demonstrate that medical treatment is in the patient's best interest. Dr. Cantor argued that if a standard can be raised or lowered, it is no longer a standard – rather, it provides blanket permission for clinicians to do whatever they want without any basis in science. Dr. Cantor also argued that clinicians in Canada and the United States who support the informed consent model are in an intellectual and financial conflict of interest as those specialists are more likely to endorse the participation of their own specialties in providing care. Notwithstanding Dr. Cantor's critique of the WPATH standards, the Panel concluded that nothing turns on that evidence for the purposes of this hearing.

181. The experts also addressed the phenomenon of "desistance". Dr. Bauer testified that "desistance" is sometimes used to refer to people who identify as transgender or non-binary but revert to their cisgender identity. She noted it is an area that is currently being studied as there is much discussion which confuses desistance from the impact of other life events. Dr. Bauer explained the pathways for starting and stopping gender affirming care are not clearcut - some individuals wait until their parents have passed away or their children have moved out. She believes the term "desistance" confuses what might simply reflect different steps along one's life course with respect to their gender identity. Dr. Bauer acknowledged there are studies which demonstrate that most individuals suffering from gender dysphoria at a young age will become cisgender at an older age. While this is true for pre-pubertal children (primarily boys), Dr. Bauer explained that many of the subjects of those studies did not meet the criteria for gender identification disorder in DSM 5. Dr. Bauer testified that she has not seen research indicating the incidence of desistance is increasing.

182. Dr. Cantor referred to studies involving adults who regretted their medicalized transition, which they attributed to inadequate diagnosis and clinical failures. Dr. Cantor opined that these

individuals were not suffering from gender dysphoria but rather from internalized homophobia, general identity problems, and social pressures. He believes those individuals in the 18- to 20-year-old age group who are now seeking to transition are childhood or adolescent onset cases characterized by disorders and difficulties with social functioning, many of which reflect the social contagion described by Dr. Littman. Dr. Stock noted the existence of "de-transitioners" makes it difficult for trans activists to argue that gender identity is innate and permanent.

183. The evidence that some transgender individuals who undergo medical transitioning may regret doing so and later revert to their cisgender identity may form part of the social fact evidence for the *Charter* analysis but has no bearing on the question of whether the Respondent's statements are discriminatory and/or derogatory to transgender people.

184. The Panel accepts Dr. Stock's evidence that there is a distinction between gender identity and gender theory. Gender theory describes all possible theories about gender while gender identity theory asserts that every person has a gender identity which overrides biological sex. Dr. Stock testified that the impact of downgrading sex relative to gender identity has deprived women and others of the ability to refer freely to facts about themselves like humans being sexually dimorphic. She argues that if one removes the ability to discuss sex, one cannot talk about such matters as sexism, misogyny, sex-based violence, fairness in sports, and sexual orientation. She also denies that the use of sex-based language as a general proposition can harm transgender persons. While such language may engender feelings of distress, Dr. Stock does not consider that to be a serious harm – it is just part of being human. The Panel does not accept that sex-based language cannot cause serious harm; rather, whether it does so will depend on the content, tone and purpose of that language. The Panel also rejects Dr. Stock's view that feelings of distress are not sufficient to cause serious harm.

185. Dr. Blade gave evidence concerning her view that gender identity has been prioritized over biological sex in female sports. The Panel accepts Dr. Blade's evidence that a person's sex will largely determine their biomotor abilities and athletic performance and that it may be necessary to use sex-based terms and language in sports; however, the Panel concludes that it is not necessary to make a finding regarding the impact of gender identity in amateur and professional sports for the purposes of determining whether the allegation in the Citation has been proven.

I. Whether the Respondent's off-duty statements are discriminatory and/or derogatory to transgender persons and whether she identified herself as a nurse or nurse educator

186. The fundamental question for the Panel is whether the Respondent made statements which were discriminatory and/or derogatory to transgender persons. The College's investigation reports contained more than 300 pages of material downloaded from the Respondent's Twitter account and other online sources based on global searches of selected search terms. As some of the investigation material appeared to be of questionable relevance, the Panel asked the College to produce a list of the specific statements of concern which they did by producing the Extract.

Counsel for the College confirmed that the Extract contains the statements which "most directly relate to the allegation in the Citation". Thus, the Panel focused on whether each of the statements in the Extract highlighted by the College are discriminatory and/or derogatory to transgender persons and, if so, whether the Respondent identified herself as a nurse or nurse educator in making them.

187. The dates of the statements are not generally in issue as the Respondent acknowledges the tweets were made approximately between July 2018 to March 2021 and the publication dates of the other statements, with one exception in which the date is not identified, also fall within that timeframe.

188. The Respondent is identified as a nurse or nurse educator in some of the articles published online, as discussed below. It is not, however, apparent that the Respondent identified herself in that way in each of tweets contained in the Extract or in the media articles which include quotes from her. In relation to the tweets, the College initially sought to rely on a page included in the Extract as proof that the Respondent identified herself as a nurse educator which reads:

> Vancouver Rape Relief and Shelter will surely (and maddeningly) face continued backlash from trans activists determined to infiltrate or destroy women-only spaces. The women of VRR however, are clearly up to the task.
>
> *Amy Eileen Hamm is a writer and registered nurse educator in New Westminster, BC. You can find her on Twitter @preta_6.*
>
> **2.1 k**
> SHARES ***f*** **Share** **Tweet**

189. However, the College subsequently acknowledged this page was not from the Respondent's Twitter account after she testified that it was the final page of an article she wrote after the City of Vancouver pulled funding from the Vancouver Women's Shelter. The Panel accepts this is the final page of an online article which is reproduced at Tab 30 of the Extract. If the information on this page had been from the Respondent's Twitter account, it is reasonable to infer that it would not have included the address where she could be located on Twitter. This page therefore cannot be relied on to demonstrate that the Respondent identified herself as a nurse or nurse educator in each of the tweets. As a copy of the Respondent's Twitter profile/home page was not put into evidence, it is necessary to examine the tweets themselves and, where relevant, the immediate context in which they appear, to determine whether the Respondent identified herself as a nurse or nurse educator in each of them.

190. In some of the statements in the Extract, the Respondent is described as a "health-care worker" or references her nursing education. Where that occurred, the College urged the Panel to rely on the high-profile nature of the Respondent's publications and her frequent references to her status as a nursing professional to find the requisite nexus between those statements and the profession of nursing. At the same time, the College indicated that it was not seeking to stop

the Respondent from engaging in public speech – only speech with a nexus to the nursing profession. The Panel is not prepared to rely on the high-profile nature of the Respondent's writings or her frequent references to her status as a nursing professional as to do so would effectively prevent her from making any public statements because they would automatically have a sufficient nexus to the profession of nursing. The Panel's analysis regarding the nexus between the profession of nursing and the Extract statements is set out in more detail below and in Appendix A.

191. The more difficult question is whether the statements in the Extract are discriminatory and/or derogatory to transgender persons. Dictionary definitions provide a useful starting point. The online Merriam-Webster dictionary defines "derogatory" as "expressive of a low opinion" or "detracting from the character or standing of something".[7] In *Saskatchewan v. Whatcott,* 2013 SCC 11, the Court held that expression that "ridicules, belittles or otherwise affronts the dignity" of individuals is "derogatory". The online Merriam-Webster dictionary defines "discriminatory" as "applying or favouring discrimination in treatment" and "discrimination" in part as "prejudiced or prejudicial outlook, action or treatment" and "the act of making or perceiving a difference".

192. These terms were also considered in *Kempling v. BC College of Teachers,* 2005 BCCA 327 ("*Kempling* BCCA"). This case involved an appeal of a lower court decision upholding a discipline panel's finding that a teacher engaged in unprofessional conduct by publishing articles that were discriminatory towards homosexuals. The Court provided the following guidance on the meaning of discriminatory and derogatory statements:

> [29] Holmes J. found that Mr. Kempling's writings provided ample evidence that could reasonably support a finding that he had made and published discriminatory and derogatory statements against homosexuals. He based this conclusion on the fact that in his writings, Mr. Kempling consistently associated homosexuals with immorality, abnormality, perversion and promiscuity. Holmes J. concluded that such writings could in themselves be discriminatory and did not need to be directed against a particular individual.
>
> …
>
> [33] … A central tenet of democratic society is the belief that all people are equally deserving of respect, concern and consideration, and this belief flows from a recognition that each individual is inherently valuable. Statements critical of a person's way of life which denounce a particular lifestyle are not in themselves discriminatory. In my view, it is only when these statements are made in disregard of an individual's inherent dignity that they become so. To hold an individual in contempt or to judge them, in the words of Abella J.A… "based not on their actual individual capacities, but on stereotypical characteristics ascribed to them because they are attributed to a group of which the individuals are a member", is to treat that individual in a manner that is not consonant

[7] https://www.merriam-webster.com

with their inherent dignity. Statements and actions based on such judgments are the hallmark of discrimination.

…

[35] Mr. Kempling's statements about homosexuals are based on stereotypical notions about homosexuality and demonstrate a willingness to judge individuals on the basis of those stereotypes. …

193. Discriminatory statements were also the focus in *Oger v. Whatcott (No. 7),* 2019 BCHRT 58 which involved a human rights complaint regarding a flyer entitled "Transgenderism v. Truth in Vancouver-False Creek" that was allegedly discriminatory to transgender persons. Mr. Whatcott referred to Ms. Oger, who was seeking to run in a provincial election, in the flyer as a "biological male who has renamed himself … after he embraced a transvestite lifestyle" and referenced the immutable truth about our "god given gender". He described "transgenderism" as an "impossibility". The B.C. Human Rights Tribunal upheld Ms. Oger's human rights complaint, finding that it was discriminatory to deny the existence of transgender people:

[60] This is a significant time for trans and gender diverse people. Their long fight for equality is bearing some fruit, as society begins to adjust its traditionally static and binary understanding of gender, and its tolerance for people to identify and express their gender authentically…

[61] However, as this hearing made clear, the journey is far from over. Unlike other groups protected by the *Code,* transgender people often find their very existence the subject of public debate and condemnation. What flows from this existential denial is, naturally, a view that transpeople are less worthy of dignity, respect, and rights…

[62] And so, despite some gains, transgender people remain among the most marginalized in our society. Their lives are marked by "disadvantage, prejudice, stereotyping, and vulnerability"…

…

[120] … the proposition that we should continue to debate and deny the existence of transpeople is at the root of the prejudice and stereotypes that continue to oppress them. It rests on the persistent belief, held by people like Mr. Whatcott, that a person's genitals are the essential determinant of their sex and, therefore, gender.

194. The Respondent does not accept that these authorities and others relied upon by the College are applicable. She rejects the College's view that a regulator has a duty "to discipline a registrant for engaging in conduct that is discriminatory towards a marginalized population and contrary to the fundamental values of the nursing profession". According to the Respondent, "discrimination" should be defined more narrowly as a refusal to provide a service customarily available to the public in the human rights context. The Respondent contends that discrimination cannot be the basis for an allegation of unprofessional conduct "because there is no evidence or allegation that she failed to provide service to a transgender person in contravention of human

rights law, nor that she expressed any intention to do so". She argues there is no complainant participating in this case, no evidence of harm, and no evidence that she discriminated against anyone as contemplated by the *Human Rights Code* (the "*Code*"). As an act of "discrimination" or an expression of an "intention to discriminate" did not occur, the Respondent argues that the Panel must disregard any reference to that term in this proceeding and recognize that her comments "simply reflect one side of an important debate".[8]

195. The Panel does not accept that it must disregard the allegation that the Respondent's statements are discriminatory because the College has not established a contravention of the *Code.* It is correct to observe that s. 8 of the *Code* prohibits the denial of any accommodation, service or facility customarily available to the public or discrimination in relation to any such accommodation, service or facility on enumerated grounds (which include gender identity or expression) without a *bona fide* and reasonable justification. It is also correct to observe that the College has not alleged that the Respondent denied a "service" or discriminated in relation to a "service" in relation to transgender people. However, the Panel is not applying s. 8 of the *Code* in this disciplinary proceeding; that provision of the *Code* does not constrain the College from considering whether the Respondent engaged in unprofessional conduct by making discriminatory statements towards transgender people that had a nexus to the profession of nursing. This is evident in *Kempling BCCA* where the Court observed:

> [38] I do not accept the appellant's submissions that speech cannot constitute discrimination as a matter of law, and that conduct must be directed against a particular individual in order to constitute discrimination….
>
> [39] In any event, the question to be determined by the Panel was not whether the appellant's published writings would attract liability as a human rights violation. The question before the Panel was whether the making and publication of those statements in the circumstances and context in which it was done fell below acceptable standards of professional conduct. Because non-discrimination is a core value of the educational system, a finding that those writings were of a discriminatory and derogatory nature can properly form part of the basis of a determination of conduct unbecoming.

196. The Panel considers the *dicta* from the Court of Appeal and B.C. Human Rights Tribunal cases cited above to be relevant and persuasive. Those authorities establish that statements are "discriminatory" if they disparage or express negative judgments about individuals not on their individual merits or capacities but rather on stereotypical characteristics that are attributed to them because they belong to a group. Statements may be discriminatory even in the absence of an intent to discriminate. This means that the Respondent's intention in making the statements is irrelevant at this first stage of the analysis.

[8] The Respondent also suggests she is facing discrimination because licensing restrictions may be imposed on her based on her gender critical views; however, an allegation of discrimination by a respondent may only be pursued by way of a complaint under s. 14 of the *Code*.

197. The authorities also make clear that statements may be found to be "derogatory" if they are critical of, express a low opinion of, detract from the character or standing of, or otherwise lower the reputation of an individual or a group whether through ridicule, belittling, insults, or through some other means. These are the definitions of "discriminatory" and "derogatory" which the Panel applies to the statements in the Extract in Appendix A.

198. In terms of the expert evidence, Dr. Saewyc observed in her report that "(s)ome of the statements in the materials that were provided clearly challenge or deny the concepts or general definitions of gender and gender identity, even though these concepts and definitions are provided in standard nursing textbooks and professional literature" while other statements "also discount the expressed identity of transgender people, especially transgender women, claiming they are not female, therefore they cannot be women, women cannot have penises, therefore they are men". Dr. Saewyc did not identify which of the Respondent's statements she was commenting on nor was she asked to do so in her testimony.

199. Dr. Bauer's report referred to the College material which contained "statements based on a simplified understanding of sex and gender that is not in alignment with current medical or biological understanding". Dr. Bauer specifically addressed the caWsbar Position Statement and two tweets (one arguing against incorporation of trans content in nursing education and another claiming that it is "verboten to talk about the horrible side effects of Lupron" for children) in her expert report but did not individually address the other statements at issue. Dr. Bauer was asked about some of the Respondent's tweets and other specific statements in her direct examination and her evidence in relation to those statements is summarized below.

200. Dr. Cantor and Dr. Blade did not address the Respondent's specific statements in detail in their reports. Dr. Stock referred in her report to a "main group of statements of Ms. Hamm that are considered transphobic" which assert certain propositions such as "womanhood is a biological reality not a feeling; men can't become women, trans women are 'males' or 'biological males'…" but without reference to the specific statements in the Extract she was referring to.

201. The College, in its written closing submission, addressed the statements in more general terms, including under the heading, "Statements that deny or debate the existence of transgender individuals, hence embodying a narrative of erasure". Within this section, there is one reference to a statement contained in the Extract which does not elaborate on how it is discriminatory and/or derogatory or whether the requisite nexus to the nursing profession is present. Elsewhere in its submission, the College addressed some of the other specific statements contained in the Extract (e.g. paras. 55 to 84). Rather than addressing the nexus between the Respondent's position as a nurse or nurse educator and each her statements, the College included sections titled "(i)dentifying as a nurse while engaged in advocacy" and "(s)tatements about nursing education". In the first of these sections, the College referred only to an interview of the Respondent from September 2020. It was unclear what broader point the College intended the Panel to draw. In the latter section, the College highlighted tweets 4.23 and 4.24 which relate to the Respondent's nursing education but did not elaborate on how the statements themselves are discriminatory and/or derogatory to transgender people.

202. The Respondent also made broad general assertions about the statements rather than directly addressing each one of the statements contained in the Extract in her closing submission. The Respondent's closing submission indicated that a "closer review" of the evidence would be undertaken during oral submissions, but it was not. The context which the Respondent provided in her direct examination for some of the tweets is summarized in Appendix A.

203. The approaches taken by the parties leaves the Panel with limited assistance in identifying, in respect of each statement, whether and how the statement is discriminatory and/or derogatory to transgender persons. The Panel does not accept that it can categorize the Respondent's statements broadly and conclude they cumulatively are discriminatory and/or derogatory to transgender people and that the requisite nexus is present. To do so would be to disregard the factual context of each of the statements in issue and the existence of any reference to the Respondent's role as a nurse or nurse educator. These are not inconsequential matters – they form the foundation of the Panel's ability to make a finding of unprofessional conduct. It was for that reason that the Panel asked the College during oral closing argument to provide submissions on each of the specific statements at issue in the Extract.

204. After hearing the oral submissions from counsel, the Panel considered each of the statements contained in the Extract which are alleged to be discriminatory and/or derogatory and made while the Respondent identified herself as a nurse or nurse educator. As noted, the Panel's detailed findings in respect of each of those statements are contained in Appendix A. As outlined in Appendix A, the Panel finds that the Respondent's statements at Tab 4, pp. 74, 75, 78, 80, 83, 84, 86, 88, and 89, Tab 12, pp. 110 – 133, Tabs 21 and 22, Tab 28, pp. 257 – 261, Tab 30, pp. 276 – 278, Tab 32, pp. 288 – 289, and Tab S3, pp. 1 – 20 of the Extract contain statements that are discriminatory and/or derogatory to transgender persons. Critically, however, the Respondent did not identify herself as a nurse or nurse educator in making all of those statements.

205. Of the statements contained in the tabs identified above, the Respondent only identified herself as a nurse or nurse educator in the discriminatory and/or derogatory statements at Tab 4, p. 74 (duplicated at Tab 30), Tabs 21 – 22, Tab 24, Tab 28, and Tab S3 of the Extract. The Panel will therefore limit its consideration to this subset of statements for the purposes of determining whether they have a sufficient nexus to the nursing profession.

II. Whether there is a sufficient nexus between the Respondent's off-duty statements within that timeframe and the profession of nursing

206. The next issue is whether there is a sufficient nexus between the Respondent's statements made within the approximate timeframe identified in the Citation which are discriminatory and/or derogatory to transgender persons in which she identified herself as a nurse or nurse educator and the nursing profession. Off-duty conduct that does not have the necessary nexus with the profession cannot be regulated by the College: *Strom v. Saskatchewan Registered Nurses' Association,* 2020 SKCA 112 (C.A.) ("*Strom*"), para. 105.

207. The College relies on *Kempling v. The British Columbia College of Teachers*, 2004 BCSC 133 ("*Kempling* BCSC") and *Strom* for the proposition that regulators may discipline a professional for off-duty conduct. The College argues the finding in *Ross v. New Brunswick School District No. 15*, [1996] 1 SCR 825 ("*Ross*") that teachers hold a position of "trust and influence" is analogous to the position held by nurses – that is, nurses occupy a special position in society and are held to "high standards both on and off duty": *Ross*, para. 43. The College argues that nurses "are seen by the community to be the medium for the health care message and because of the community position they occupy, they are not able to 'choose which hat they will wear on what occasion'". Although the College accepts that the Respondent's off-duty statements may not "directly impact" her ability to practice nursing, it maintains that those statements "conflict with the values of the health care system".

208. The Respondent acknowledges that regulators such as the College have "some ability" to regulate the conduct of their members for certain off-duty conduct. She accepts that the framework set out in *Pearlman v. Manitoba Law Society Judicial Committee,* [1991] 2 SCR 869 ("*Pearlman*") and *Fountain v. British Columbia College of Teachers,* 2007 BCSC 830 ("*Fountain* 2007") applies. The Respondent frames the question to be asked as whether the impugned conduct is such that it would have "a sufficiently negative impact on the ability of the professional to carry out their professional duties or on the profession". The Respondent argues that the College must establish that her statements had a "material and negative impact to the profession so as to have a 'poisoning effect'". She maintains that such an impact cannot be based solely on considerations such as whether the statements are truthful, popular, undesirable, improper, blunt, upsetting, or critical without restraint, including those which reflect frustration or contain hyperbolic or colourful language. The Respondent cautions that regulatory action cannot be based on matters such as the Panel's disagreement with her views or their possible lack of congruence with mainstream opinion.

209. Although *Fountain* 2007 supports that direct evidence of impairment may not be required, the Respondent submits that more than a "mere conclusory statement" by the College is necessary to support a finding that her statements have created a poisoned environment in the profession. She disputes that the required nexus has been established in this case. The Respondent argues that her statements are unique insofar as they do not relate to nursing or treatment recommendations; rather, they are expressions of her opinions on gender identity ideology and policy. According to the Respondent, this makes this an "edge case" where the College's assertion of regulatory authority must be grounded in a clear and obvious nexus to the nursing profession.

210. The Respondent argues the College failed to prove that her statements have brought the profession of nursing into disrepute or that the public would give more credence to the speech of a nurse than another member of the public on non-medical issues. Relatedly, she argues the public may expect a nurse to have a basic understanding of biology and take a "dim view" of a nurse speaking about "female penises, or suggesting that men can give birth". The Respondent denies that she relied on her nursing background to suggest expertise or to advise the public to act. She argues that a reasonably informed member of the public would understand her

comments were intended to advocate for women and children in the face of the emergence of a concerning ideology.

211. The Respondent maintains that *Ross* is distinguishable because the speech in that case was of low value, lacked good faith, and did not involve a conflict of rights. In contrast to her situation, the Respondent points out that Mr. Ross was engaged with impressionable children. She also notes that the allegations did not arise in the context of a regulatory decision, which makes it of limited assistance to the Panel. Similarly, the Respondent argues that *Kempling* BCSC is distinguishable because it involved a teacher/counsellor who expressly linked his writing to his professional role and made it clear that his beliefs would inform his conduct at school.

212. The law is clear that regulators may discipline members of their profession for conduct that occurs outside the practice of their profession where there is a sufficient nexus: *Kempling* BCCA*; Klop v. College of Naturopathic Physicians of British Columbia,* 2022 BCSC 2085, leave to appeal denied 2023 BCCA 125. As the Court explained in *Strom*, off-duty conduct may be professional misconduct "if there is a sufficient nexus or relationship of the appropriate kind between the personal conduct and the profession to engage the regulator's obligation to promote and protect the public interest".

213. The issue of when it is appropriate to regulate off-duty conduct was considered at length in *Fountain* 2007 where Ross J. observed:

> [59] … the case law establishes that in appropriate circumstances it is permissible to draw an inference of direct impairment or of impairment in the wider sense in the absence of direct evidence. Relevant factors to be considered include:
>
> (a) the nature of the conduct at issue;
> (b) the nature of the position;
> (c) whether there is evidence of a pattern of conduct;
> (d) evidence of controversy surrounding the conduct;
> (e) evidence that the private conduct has been made public; and
> (f) evidence that the private conduct has been linked by the member to the professional status of the member.[9]

214. Ross J. observed that off-duty conduct may give rise to discipline when it has a negative impact on the teacher's ability to carry out his obligations as a teacher "or where the conduct has a negative impact on the school system, for example, where the activities conflict with core values of the education system": para. 51. Where direct impairment of the effective performance of a job is alleged, the general rule is that direct evidence is required although that rule is not absolute. Where, however, impairment in the broad sense is alleged, an inference of impairment may be drawn without direct evidence.

[9] In *Fountain* 2013, Maisonville J. noted that this list is not exhaustive.

215. Applying those factors in the present case, the nature of the Respondent's conduct involved engagement in social and political discourse which is a constitutionally protected right under s. 2(b) of the *Charter* and an important aspect of personal autonomy. The Panel accepts that the Respondent's motivation for making these statements was to advocate for the protection of sex-based rights for women and girls, to raise public awareness of the issues relating to gender ideology, and to stimulate public debate. The Respondent wrote online articles and a book review, participated in media interviews and podcasts, participated in organizing events involving women's sex-based rights, arranged to put up a billboard to support J.K. Rowling, and posted extensively on Twitter to promote her views regarding the impact of gender ideology on women's and girl's sex-based rights.

216. The Respondent used a variety of writing styles in her advocacy including sarcasm, mockery, insults, and hyperbole. The tone and content of many of the Respondent's statements are denigrating and insulting to transgender people. The Respondent's claim that trans activists are determined to "infiltrate and destroy women-only spaces" was clearly designed to sound the alarm that they pose a significant threat to women. The Respondent's claims that there is no ability for a person to become a woman if one is not born as a female, that "babies can be 'born in the wrong body" is a falsehood, that everyone "who believes in wrong bodies or innate genders" would "rather devastate a child", that a gender soul does not exist, and that gender identity ideology is akin to a Satanic Panic craze effectively deny the existence of transgender women and promote the type of erasure that Dr. Bauer described in her evidence.

217. The tone and content of the Respondent's statements also appeared to be designed to elicit outrage and condemnation of the transgender community. The controversial nature of the J.K. Rowling billboard prompted two members of the public to file complaints with the College. The Respondent acknowledged that her statements were intended to generate controversy to attract public attention. She explained in a YouTube interview that she and Mr. Elston chose the DTES for the "I 'heart' JK Rowling" billboard because they "wanted a high traffic location" with the "most car and foot traffic". The placement and content of the billboard had the intended effect. Following a CBC interview regarding the billboard, the Respondent received more than 15,000 comments on her Facebook, the majority of which she described as threatening and abusive.

218. The Respondent testified she did most of her advocacy through writing for publications and Twitter. She also disseminated her views through various other online platforms. The Respondent acknowledged using Twitter because it is a forum that is open to addressing contentious issues and can be used to share views with a larger audience. She had a significant following on Twitter. Although the Respondent had less than 10,000 followers at the time of the billboard, that number had grown to almost 40,000 by the time of this hearing. The Respondent said she did not join Twitter to discriminate or harass transgender persons; however, the fact remains that some of her statements were discriminatory and/or derogatory to members of that community.

219. The only statements of concern for the purposes of this stage of the analysis are those discriminatory and/or derogatory statements in which the Respondent identified herself as a nurse or nurse educator. By publicly linking her views regarding gender ideology with her status as a nurse or nurse educator, the Respondent expressed opinions and made claims that cannot be reconciled with the core values of the health care system. The Panel accepts that nurses are seen by the community in part as the medium for the fundamental values on which our health care system is based. Those values include equitable access to health care services and respect, dignity and equality for all patients and health care workers regardless of personal attributes.

220. The Respondent suggests it is necessary for the College to prove that the public would give more credence to the speech of a nurse than to other members of the public on the non-medical issues she wrote about. However, this argument presupposes that the Respondent was addressing matters unrelated to medical issues. The crux of the gender ideology debate is enmeshed in medical and scientific understanding of the nature of sex and gender which the Respondent addresses. For example, the Respondent's assertion that a person cannot become a woman if not born as a female or that babies cannot be born in the wrong body necessarily engages medical, scientific and ethical issues. Direct evidence is not necessary to demonstrate that the use of a professional title may lead the public to place more reliance on statements made by a professional such as a nurse. When a nurse uses their professional title or designation when speaking publicly about matters that have a medical or biological dimension, it is reasonable to infer that the public will be inclined to place more weight on their views. This stems from the fact that members of the public have less knowledge concerning medical matters than nurses and other health care professionals. The inequality of knowledge which creates the public's dependence on professionals which gives rise to the position of trust: *Pharmascience Inc. v. Binet*, 2006 SCC 48 ("*Pharmascience*"), para. 36.

221. Another contextual factor relates to the frequency of the behaviour. An isolated lapse of judgment will not usually support a finding of unprofessional conduct while a pattern of repetitive conduct is more likely to cross the line: *Groia v. Law Society of Upper Canada*, 2018 SCC 27 ("*Groia*"), paras. 98-99. It is clear on the evidence that the Respondent repeatedly posted statements online that were critical of the transgender community while linking them to her professional status. She identified herself as a nurse or nurse educator in the biographical description in the articles at Tab 4 and 35, the book review at Tab 28, the caWsbar statement, and one of the YouTube interviews. The Respondent argues that she did not rely on her nursing background to suggest that she had expertise in making these statements; rather, she listed her profession for no other purpose than to respond when a publication requested a "small blurb" about her and it was simply a "minor biographical detail". She testified that her intent "was not in any way to give credence to my views or my opinions on any matter, including the gender identity debate". Only the Respondent knows what her intention was; however, the Panel finds that it is reasonable to infer that the use of the title "nurse" or "nurse educator" in the Respondent's biographical description provided a degree of enhanced credibility and legitimacy to her views. The Panel finds that the Respondent created a sufficient nexus to bring her conduct under the College's regulatory purview by citing or otherwise identifying her professional status as a nurse or nurse educator.

222. The Respondent contends there is no evidence that her statements brought the nursing profession into disrepute and that a reasonably informed member of the public would understand that her comments were intended to advocate for the interests of women and children in the face of gender ideology. The short answer to that argument is that it is not necessary to make derogatory and/or discriminatory remarks about transgender persons to advocate for the rights of women and children. As Dr. Saewyc explained, "when health professionals express views that deny transgender persons' identities, or discount their experiences, or refuse to use the transgender person's pronouns, it shows profound disrespect for their personhood".

223. The Panel also does not accept the Respondent's argument that it must be established that the statements in question created a "poisoned environment" in the nursing profession. In *Ross,* La Forest J. observed that "where a 'poisoned' environment within the school system is traceable to the off-duty conduct of a teacher that is likely to produce a corresponding loss of confidence in the teacher and the system as a whole, then the off-duty conduct of the teacher is relevant": para. 45. While the Panel recognizes that evidence of a "poisoned environment" is a sufficient basis for finding a nexus, it is not a necessary element. *Kempling* BCCA establishes that direct evidence of impairment is not required to establish the adverse effects of discriminatory and/or derogatory statements directed at a historically marginalized and vulnerable group. As equitable patient access is a core value of the health care system, a finding that the Respondent identified herself as a nurse or nurse educator in making statements that were discriminatory and/or derogatory to transgender people can properly form the basis of a determination of unprofessional conduct: *Kempling* BCCA, para. 39.

224. On balance, the Panel finds that the contextual factors in this case support a finding that the off-duty conduct has a reasonable nexus to the practice of the nursing profession because the statements in question fundamentally conflict with core values of the health care system and the protection of the public.

III. Whether a finding that the off-duty statements constitute unprofessional conduct unjustifiably infringes the Respondent's rights under s. 2(b) of the *Charter*

225. A finding that the off-duty statements constitute unprofessional conduct would adversely impact the Respondent's freedom of expression under s. 2(b) of the *Charter.* An administrative decision which limits *Charter* protections "will only be reasonable if it reflects a proportionate balancing of the *Charter* protections at play with the decision-maker's statutory mandate": *Groia*, para. 111.

226. *Doré* sets out the general legal framework that must be applied by an administrative decision-maker when exercising a statutory discretion which engages *Charter* rights or values. Decision-makers must first consider the statutory objective or public interest that is at issue and then consider how the *Charter* right or value at issue will be best protected in view of the statutory objective. This proportionality exercise balances the severity of the interference with

the *Charter* protected right or value with the statutory objectives or public interest sought to be achieved.

227. At issue in *Doré* was a breach of a lawyer's ethical duty to be civil to other members of the profession, the public, and the judiciary. In dealing with the appropriate boundaries of civility, Justice Abella observed that the severity of conduct must be considered in light of the expressive rights guaranteed by the *Charter,* in particular the public benefit in ensuring the right of lawyers to express themselves about the justice system and judges. She noted that proper respect for expressive rights may involve disciplinary bodies tolerating a degree of discordant criticism and they must demonstrate they have given due regard to the importance of the expressive rights at issue, both in light of an individual lawyer's right to expression and the public's interest in open discussion. The Barreau was therefore required to balance the importance of open, and sometimes forceful, criticism of public institutions with the need to ensure civility in the profession. The Court concluded the Barreau's decision to impose discipline was a reasonable balance of the lawyer's expressive rights with the regulator's statutory objectives.

228. In *Loyola High School v. Quebec (Attorney General),* 2015 SCC 12 ("*Loyola*"), the Supreme Court cautioned that the proportionality exercise must be "robust". This point was again highlighted in *TWU* where the Court observed that the *Charter* protection must be "affected as little as reasonably possible" in light of the applicable statutory objectives: *TWU*, para. 80. In *CSF,* the Supreme Court of Canada reaffirmed the principle from *Doré* that administrative decision-makers have an obligation to consider *Charter* values relevant to their exercise of discretion if that discretion has the effect of limiting *Charter* rights or values.

229. Following *Doré, Loyola* and *TWU,* there have been many cases involving regulatory action arising from public comments made by those subject to regulatory oversight, including *Strom, Foo v. Law Society of British Columbia,* 2017 BCCA 151, *Zuk v. Alberta Dental Assn. and College,* 2018 ABCA 270, leave to appeal denied [2018] S.C.C.A. No. 439, *Peterson v. College of Psychologists of Ontario*, 2023 ONSC 4685 ("*Peterson*"), *Harding,* and *Lauzon v. Ontario (Justices of the Peace Review Council),* 2023 ONCA 425. In accordance with the Court's guidance, the Panel will proceed by first considering the statutory objective in issue in this case before turning to the proportionality analysis.

a. Statutory Objective

230. The College is entrusted with regulating the professions of nursing and midwifery in the public interest under s. 16 of the Act. The requirement to act in the public interest stems from the significant degree of "trust" which members of the public necessarily place in regulated nurses and midwives. The College protects the public by establishing educational and other requirements for licensure which ensure that only qualified individuals are licensed to practice and by developing, monitoring, and enforcing standards of practice and conduct to ensure competent and ethical practice. Discipline hearings fulfill an integral part of that regulatory function by setting and enforcing standards of conduct that relate to the practice and standing of the profession: *Groia,* para. 114; *Strom,* para. 51.

231. The Panel finds that the statutory objective in this case is to protect the public and the integrity and reputation of the nursing profession by setting and enforcing standards with respect to public speech by nurses who identify their professional status in that speech and by ensuring they uphold the values central to ethical nursing practice.

b. Proportionality Analysis

232. The second step of *Doré* requires the Panel to undertake a proportionality analysis to determine whether the proposed limitations on the Respondent's freedom of expression are proportional to the statutory objective of protecting the public interest. The Supreme Court of Canada has cautioned that "(i)t is difficult to imagine a guaranteed right more important to a democratic society than freedom of expression": *Edmonton Journal v. Alberta (Attorney General),* [1989] 2 SCR 1326, per Cory J. The expansive protection under s. 2(b) extends to "thoughts, opinions, beliefs" however unpopular, distasteful or contrary to the mainstream because of the value placed on the diversity of ideas and opinions in a free, pluralistic and democratic society: *Irwin Toy Ltd. v. Quebec (Attorney General),* [1989] 1 SCR 927.

233. The values which underpin s. 2(b) are expressive freedom, human dignity, autonomy, equality, and enhancement of democracy. The fundamental nature of this right, and its underlying values, must be recognized when considering whether a limitation on speech is justifiable. In *Strom,* the Court suggested the contextual factors to be considered in the proportionality analysis in relation to a s. 2(b) claim in this context may include:

(a) whether the speech was made while the nurse charged was on duty or was otherwise acting as a nurse;

(b) whether the nurse charged identified themselves as a registered nurse;

(c) the extent of the professional connection between the nurse charged and the nurses or institution the nurse charged has criticized;

(d) whether the speech related to services provided to the nurse charged or their family or friends;

(e) whether the speech was the result of emotional distress or mental health issues;

(f) the truth or fairness of any criticism levied by the nurse charged;

(g) the extent of the publication and the size and nature of the audience;

(h) whether the public expression by the nurse was intended to contribute to social or political discourse about an important issue; and

(i) the nature and scope of the damage to the profession and the public interest.

234. Some of these factors are not relevant in this case. There is, for example, no suggestion the Respondent's off-duty statements were attributable to mental distress (apart from frustration over gender identity theory and its impact on sex-based rights) or mental health issues nor do the facts give rise to a "professional connection" with an institution. The contextual factors which are relevant to this case are: (i) the off-duty statements were directed at a marginalized and vulnerable group; (ii) the statements were made off-duty and did not relate to nursing services; (iii) the extent, nature and purpose of the communications; (iv) the truth and/or fairness of the statements; (v) the nature and scope of the damage to the profession and public interest; and (vi) the impact of finding that the statements constitute unprofessional conduct. The Panel addresses each of these factors in the sections that follow.

i. The off-duty statements were directed at a marginalized and vulnerable group

235. The facts in this case are distinguishable from *Strom* because the statements in issue do not involve criticisms directed at the health care system or a particular institution. Instead, the Respondent's off-duty statements are squarely directed at members of a vulnerable and marginalized group in our society. In *Hansman v. Neufeld,* 2023 SCC 14, the Court observed:

> [84] The transgender community is undeniably a marginalized group in Canadian society. The history of transgender individuals in our country has been marked by discrimination and disadvantage. Although being transgender "implies no impairment in judgment, stability, reliability, or general social or vocational capabilities"…, transgender and other gender non-conforming individuals were largely viewed with suspicion and prejudice until the latter half of the 20th century.
>
> [85] Indeed, transgender people occupy a unique position of disadvantage in our society, given the long history in psychiatry "of conflating [transgender and other 2SLGBTQ+1] identities with mental illness" and even resorting to harmful "conversation therapy" to "resolve" gender dysphoria , and "recondition" the individual to reduce "cross-gender behaviour"… As the British Columbia Human Rights Tribunal has recognized, "[u]nlike other groups. …, transgender people often find their very existence the subject of public debate and condemnation" (*Oger v. Whatcott (No. 7),* 2019 BCHRT 55, 94 C.H.R.R. D/222, at para. 61). They are stereotyped as diseased or confused simply because their identity as transgender (*Nixon v. Vancouver Rape Relief Society (No. 2),* 2002 BCHRT 1, 42 C.H.R.R. D/20, at paras. 136 – 37.
>
> [86] Transgender people have faced discrimination in many facets of Canadian society. Statistics Canada has concluded that they are at increased risk of violence, and report higher rates of poor mental health, suicidal ideation, and substance abuse as a means to cope with abuse and violence they have experienced… Studies have concluded that they are disadvantaged relative to the general public in housing, employment, and healthcare… And despite encountering a higher incidence of justiciable legal problems,

> studies have also found that transgender people have traditionally faced greater access to justice barriers than the broader population, in part due to a lack of explicit human rights protections…

236. The fact that the Respondent's opinions are directed at a highly vulnerable community protected under s. 15 of the *Charter* necessarily bears on the proportionality analysis. In *R. v. Keegstra*, [1990] 3 SCR 697, Dickson C.J. reiterated his view that the *Oakes* analysis must be guided by the values and principles of a free and democratic society which embodies, among other ideals:

> … respect for the inherent dignity of the human person, commitment to social justice and equality, accommodation of a wide variety of beliefs, respect for cultural and group identity, and faith in social and political institutions which enhance the participation of individuals and groups in society. The underlying values and principles of a free and democratic society are the genesis of the rights and freedoms guaranteed by the *Charter* and the ultimate standard against which a limit on a right or freedom must be shown, despite its effect, to be reasonable and demonstrably justified (pp. 736-737).

237. The proportionality analysis under *Doré* is drawn from this balance achieved by *Oakes.* As such, the Panel considered that other provisions of the *Charter*, like section 15(1), are relevant to the analysis. Here, the Panel considered the Respondent's evidence that she was not seeking to discriminate against transgender persons but rather to advocate for the sex-based equality rights of cisgender women and girls. She presented her case as a "clash of rights". The Panel accepted the Respondent's evidence of her intentions but noted statements may be discriminatory and harmful in effect even if not intended to be so. The Panel also considered it possible to respectfully advocate for sex-based cisgender rights without making statements which denigrate and discriminate against transgender persons. Characterizing the off-duty statements as advocacy for sex-based equality rights of cisgender women does not negate the Panel's concern that discriminatory and/or derogatory statements targeting a protected historically disadvantaged and vulnerable group are far from the core values of s. 2(b) of the *Charter.*

ii. The statements were made off-duty and did not relate to nursing services but identified the Respondent as a nurse

238. The evidence is clear that the Respondent did not make the statements while on duty or otherwise acting as a nurse or nurse educator. The Respondent's statements also did not relate directly to the provision of nursing services or nursing education although some of the statements engaged medical and scientific considerations relating to the concepts of sex and gender.[10] The difficulty is that the Respondent identified herself as a nurse or nurse educator in making the off-duty statements. In doing so, the Respondent directly linked her opinions and

[10] While one of the Respondent's articles related to the Vancouver Women's Shelter, there is no evidence as to whether secondary nursing services were available at the shelter when her article was posted.

beliefs regarding gender identity theory and transgender people with her professional status as a nurse.

239. The Respondent testified that she did not intend to use her professional status to give "credence" to her views on any matter, including the gender identity debate. Rather, she suggested that the reference to "nurse" or "nurse educator" was simply an inconsequential biographical detail. In the Panel's view, the fact remains that when an individual expresses their views in a public forum in conjunction with the use of their professional status, those views are likely to be given greater weight and may influence public perception regarding the health care system and the care that members of vulnerable groups are likely to receive.

iii. The extent, nature and purpose of the publication and intended audience

240. The extent, nature and purpose of the publication and intended audience are significant contextual factors in this case. The Panel accepts that the Respondent's motivation in making the off-duty statements was to raise public awareness and promote public discourse regarding the impact of gender identity theory on sex-based equality rights of cisgender women and girls. The Panel accepts that the Respondent did not make these statements to actively incite fear and contempt towards transgender people.

241. Unlike Ms. Strom's action in posting statements criticizing the health care system on her Facebook page for a more limited audience,[11] the Respondent went to considerable lengths to disseminate her views as broadly as possible. The Respondent joined online communities specifically to engage in discussions about gender issues; she acknowledged that she engaged in most of her advocacy work by writing on Twitter and various online publications. The Respondent also acknowledged that she used Twitter because it enabled her to share her views with a larger audience.

242. Similarly, the Respondent acknowledged that the location of the "I heart JK Rowling" billboard was specifically chosen because it was a high traffic area designed to garner significant attention. In one of her YouTube interviews, the Respondent explained that she and Mr. Elston also posted photos of the billboard and shared them on Twitter which was when "the outrage started". The Respondent stated during the interview that the billboard "had the intended effect, because look at all the conversation that's going on". She testified that she received more than 15,000 Facebook comments in response to the billboard. The Respondent's actions in organizing the billboard, posting photographs of it on Twitter, and engaging in extensive freelance writing for online publications were all designed to raise public attention and disseminate her views widely.

[11] Ms. Strom claimed they were made more public inadvertently.

iv. The truth and/or fairness of the off-duty statements

243. The Panel recognizes the importance of considering the truth and/or fairness of the off-duty statements. In this regard, it was necessary for the Panel to consider the Respondent's argument that "gender critical speech" is "socially valuable" and "deserving of protection", relying on cases from the United Kingdom including *Miller v. The College of Policing and the Chief Constable of Humberside*, [2020] EWHC 225 (Admin) ("*Miller*")[12], *Alison Bailey v. Stonewall Equality Ltd. et al.*, Employment Tribunals, UK Case No. 2202172/2020 ("*Bailey*"), and *Forstater v. CGD Europe & Others (Religion or Belief Discrimination)*, Employment Appeals Tribunal, 0105_20_1006 (10 June 2021) ("*Forstater*") as well as other cases from Canada and the United States.

244. The claimants in the U.K. cases who held views similar to those expressed by the Respondent alleged that, in various ways, they had been unfairly adversely impacted for expressing them. For example, in *Miller*, a woman made a complaint to the Humberside Police about things the claimant, Mr. Miller, had written on Twitter. Like the Respondent, Mr. Miller preferred to use satire and sarcasm to raise awareness of his "gender critical" views. By way of example only, the tweets in issue in that case included the following (see, p. 10):

> "Dear @Twitter Given your rules on dead naming, could you please clarify who won gold at the 1976 Olympic men's decathlon, please?" [This tweet was explained to challenge Twitter's policy on using someone's name and identity prior to their gender transition relying on the circumstances of the individual in question]
>
> …
>
> "Ah yes; the troubled 40s when my rainbow wearing non binary 1920's gran was made to choose between having a lady vagina or a lady penis. It really was Sophie's Choice" [This tweet was explained to be a challenge to someone's comment that transgender people have suffered more than any generation in history]
>
> …
>
> "If we ask Holly and Jessica who murdered them, I imagine they wouldn't say 'A woman called Nicola'. #IanHuntleyIsAMan" [This tweet was explained to be a comment on a report that the Soham murderer was identifying as a woman called Nicola].[13]
>
> …

[12] For completeness, an appeal of this decision was allowed, in part: [2021] EWCA Civ 1926.

[13] Similarly, in *Forstater,* the claimant stated amongst other things on "Slack" – an online communication platform – "I don't think people should be compelled to play along with literal delusions like 'trans-women are women'" (see, p. 5).

245. The views expressed by the claimants in *Miller*, *Bailey* and *Forstater* are strikingly similar to those expressed by the Respondent in her off-duty statements. The question, then, is what impact these decisions can have on the Panel's decision given the disparate legal frameworks and unique circumstances in which they arise. The College asserts that the Panel would "risk being led into error if it placed reliance" on these cases given the "significantly different legal, constitutional and public policy landscapes" at play in the other jurisdictions. The College avers there is "abundant" Canadian jurisprudence that addresses a regulator's ability to regulate off duty speech and argues that those cases provide sufficient guidance such that the Panel does not need to "look further afield".

246. The Panel does not agree that these cases can be viewed as narrowly as the College suggests.[14] While the issues to be determined by the Panel are certainly discrete, as discussed above, the *Doré* proportionality analysis requires discipline panels to consider the "full panoply of contextual factors" – one of which is "the truth or fairness of any criticism levied by the nurse charged" and "whether the public expression by the nurse was intended to contribute to social or political discourse about an important issue" (Emphasis added): *Strom,* para. 151. The Panel accepts that the cases relied upon by the Respondent can assist it in understanding the broader political and social context for her comments and her intention in making them.[15] Read collectively, the cases suggest that "gender critical" beliefs may be protected by the UK *Equality Act,* 2010, c. 15 as "philosophical beliefs".[16] This is consistent with the Panel's acknowledgement that, subject to limited exceptions, all speech is protected under s. 2(b). There is no question the Respondent is entitled to hold her beliefs and to express them.

247. While protection of "gender critical" beliefs in the United Kingdom is broadly relevant to the Panel's mandate under *Doré* and the Respondent's arguments around competing rights, this does not resolve the question of the whether the *manifestation* of the Respondent's beliefs was discriminatory and/or derogatory and whether a limitation on her freedom of expression would be proportional. In considering this issue, the Panel is not concerned with the validity of the

[14] In other passages of its reply, the College suggests that the "main question" is whether the Respondent's statements were discriminatory, and the "framing" of the speech as political speech does not alter that main question (para. 10). While this may be technically accurate, it does not properly account for the Panel's obligation under the *Doré/Loyola* framework to consider the nature of the Respondent's speech.

[15] For clarity, this acknowledgment should not be construed as the Panel's acceptance that the Respondent's speech is "socially valuable" and "deserving of protection".

[16] Section 10 of the U.K. *Equality Act* protects "Religion or belief" and includes section 10(2): "Belief means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief". For completeness, the U.K. cases also comment on the European Convention of Human Rights (ECHR), Articles 9, 10 and 17 which are "Freedom of thought, conscience and religion", "Freedom of expression", and "Prohibition of abuse of rights", respectively. Articles 9 and 10 are close analogues to sections 2(a) and 2(b) of the *Charter*. Article 17 prohibits any activity or act "aimed at the destruction of any of the rights and freedoms" set out in the ECHR.

Respondent's beliefs. This approach is consistent with the U.K. decisions which distinguish between the right of an individual to *hold* "gender critical" beliefs (and to not be discriminated against because of them) and the limits on the *expression* of those beliefs. For example, in *Forstater*, the Employment Appeals Tribunal stated, in part, in the summary of its decision:

> … The Claimant's gender-critical beliefs, which were widely shared, and which did not seek to destroy the rights of trans persons[17], clearly did not fall into that category. The Claimant's belief, whilst offensive to some, and notwithstanding its potential to result in the harassment of trans persons in some circumstances, fell within the protection under Article 9(1), ECHR and therefore within s.10, EqA. However:
>
> …
>
> > b. This judgment does not mean that those with gender-critical beliefs can 'misgender' trans persons with impunity. The Claimant, like everyone else, will continue to be subject to the prohibitions on discrimination and harassment that apply to everyone else. Whether or not conduct in a given situation does amount to harassment or discrimination within the meaning of EqA will be for a tribunal to determine in a given case.

248. It is therefore still necessary to consider the manner in which the Respondent expressed her gender critical beliefs having regard to the "truth" and/or "fairness" of each of her off-duty statements in which she identified herself as a nurse or nurse educator.

249. At Tab 4 of the Extract, the Respondent refers to "(t)rans activists determined to infiltrate or destroy women-only spaces" in the context of an article expressing support for the Vancouver Women's Shelter following Vancouver City Council's decision to cancel funding because the shelter ceased providing services to transgender women. The suggestion that trans activists are seeking to "infiltrate or destroy" women-only spaces strongly connotes illegal, aggressive, and improper conduct and mischaracterizes transgender women seeking access to support services available to cisgender women in crisis situations as dangerous individuals. The Panel finds that the statement is not true nor is it fair to transgender women.

250. At Tabs 21 and 22 of the Extract, the Respondent associates herself with the caWsbar Position Statement which advocates for sex-based rights of cisgender women and girls. The organization's stated mission is to take action to protect sex-based spaces using its collective voices to demand that women's and girl's *Charter* rights be recognized and defended by various non-violent means such as increasing public awareness and education, increasing political pressure, and bringing legal challenges. The Panel accepts Dr. Bauer's evidence that there is limited truth to some of the statements while others are oversimplifications or simply untrue. The statement that sex is distinct from gender as a material biological reality is true but other claims such as there are only two sexes, humans cannot change their sex, and sex chromosomes

[17] This language of "destroy the rights of trans persons" arises from Article 17 of the ECHR. The Panel recognizes there is no equivalent provision in Canada, section 1 of the *Charter* being the closest reference.

are immutable are either oversimplifications or not true given that sex is multidimensional. Some of the statements are unfair to the extent they advocate for legal changes which would adversely impact the equality rights of transgender women; however, the Panel also recognizes that the Position Statement constitutes political speech advocating for sex-based equality rights of cisgender women and girls. As well, unlike some of the Respondent's other online statements, the Position Statement is drafted in less inflammatory terms without statements which are overtly derogatory to transgender people.

251. At Tab 24 of the Extract, the Respondent makes a series of statements regarding gender issues in her article entitled "On feeling like a woman". The Respondent states "there is no absconding" from female bodies, the feeling of being a woman does not exist, and there is no "incantation or initiation that can transcend bodily reality" without a female body. The Panel finds that these statements are untrue and unfair to transgender women as they deny the possibility that that an individual born into a male body can feel like a woman and effectively deny the existence of transgender women. The Panel does not accept that an article containing the Respondent's personal reflections on womanhood constitutes political speech, although it accepts that her musings contribute to social discourse about the meaning of being a woman.

252. At Tab 28 of the Extract, the Respondent makes further statements regarding gender issues in her book review entitled "Review: 'Love Lives Here – A Story of Thriving in a Transgender Family". The Respondent uses the vehicle of a book review to make several statements which are critical of and deny transgender existence. She refers to the "falsehood that babies can be 'born in the wrong body' or that humans can change their sex". She asserts that everyone "who believes in wrong bodies or innate genders" would rather devastate a child than acknowledge that men cannot become transgender women, that gender identity ideology is akin to a Satanic Panic craze, that lesbians do not have penises, that a gender soul does not exist, and that men cannot literally become women. Equating gender identity ideology to a Satanic Panic craze, suggesting that transgender people would rather harm children then acknowledge that men cannot become transgender women, and other statements denying the possibility of transgender existence are profoundly unfair and untrue. These statements, which appear to be designed to elicit fear, contempt and hostility towards the transgender community, particularly transgender women, lie far from the core values of s. 2(b) of the *Charter*.

253. At Tab S3 of the Extract, the Respondent makes several statements in the context of her YouTube interview entitled, "The Same Drugs Live with Amy Hamm on I heart JK Rowling". As the Respondent is asked in the interview about the background to the billboard, her comments must be considered in conjunction with the billboard itself and J.K. Rowling's essay. The Panel recognized the "I heart JK Rowling" message on the billboard was not one that, in isolation, would necessarily be recognized by members of the public who are not versed in gender identity issues as discriminatory or derogatory to transgender people. The message would lack context for anyone who is not conversant in the debate regarding gender identity theory and could be interpreted as support for the author's fictional work. However, the billboard message must be assessed from the perspective of a "reasonable person in the claimant's circumstances": *Gosselin v. Quebec (Attorney General),* 2002 SCC 84, para. 18. The Panel considered the billboard message

through the lens of a reasonable person in the transgender community who has read J.K. Rowling's essay. The Panel also read the essay. It recognizes that, from the perspective of a transgender person, the essay contains some references that could be interpreted as portraying them as a risk to cisgender women and girls and predatory. Such characterizations unquestionably elicit fear and hostility towards transgender people.

254. The billboard message, in conjunction with J.K. Rowling's essay, provide the background context for considering the Respondent's interview in which she asserts that a small minority of "really loud" activists have "taken control of the narrative and taken control of the institutions and are making everyone go along with gender identity ideology". The Respondent also asserts that feminine men should be protected on the basis of sex rather than gender, arguing there is no reason why they should have to be recognized literally or legally as women to have legal protections since protection from discrimination extends to sex. The Panel accepts that the billboard message would convey to a reasonable member of the transgender community that support is being expressed for the view that transgender women may pose a risk of harm to cisgender women and girls. Dr. Bauer's evidence compellingly refutes that claim. In any event, the views expressed by the Respondent in the YouTube interview go much further than expressing support for J.K. Rowling. The Respondent misrepresents the state of the law regarding protections based on gender identity by arguing that transgender women (whom she improperly refers to as feminine men) should be deprived of legal protection on the basis of gender identity. The Respondent claims that transgender individuals have taken control of institutions to make everyone go along with their gender identity ideology. The Panel finds that there is no truth to these statements, and they are profoundly unfair to members of the transgender community to the extent that they seek to deprive them of legal protections they are entitled to under human rights legislation and s. 15 of the *Charter.* These destructive statements which mischaracterize the state of the law and falsely assert that transgender individuals control our institutions lie far from the core of s. 2(b) values.

v. Nature and scope of damage to the profession and public interest

255. Finally, the Panel must consider the nature and scope of the damage to the profession and the public interest from the Respondent's off-duty statements in which she identified herself as a nurse or nurse educator. The Respondent's statements repeatedly challenge the existence of transgender women, conflate sex and gender, and advocate for the denial of legal protections for transgender women whom she describes as feminine men. The Panel has no hesitation in finding that these statements are disrespectful, hurtful, and harmful to the transgender community. As Dr. Saewyc testified, the experience of transgender people who have contact with nurses in all areas of clinical care can be markedly different from the care experienced by cisgender individuals. A nurse who makes public statements using their professional status which challenge the existence of transgender women and appear to be designed to elicit hostility, fear and contempt for members of the transgender community erodes the trust that members of that community have in the health care system and likely foster a reluctance or unwillingness to access health care for fear they will face further discrimination. This is borne out by the findings of the Canadian Trans Youth Survey which revealed that many youth chose not to access required

health care based on fear of what "people will say or do" in the health care system and the impact of previous negative experiences. This is unacceptable and inimical to the foundational values of our health care system.

256. The Respondent's derisive statements regarding transgender people (and particularly transgender women) are not only contrary to the foundational values of the health care system but also to the obligation of the nursing profession to treat individuals with respect and dignity and to facilitate and promote equitable access to health care services without regard to irrelevant personal attributes and characteristics. By identifying herself as a nurse or nurse educator while posting discriminatory and/or derogatory opinions regarding a vulnerable and historically disadvantaged group on various online platforms, the Respondent undermined the reputation and integrity of the nursing profession. A finding that the statements constitute unprofessional conduct would support the objectives of maintaining the reputation and integrity of the profession and promote trust in the profession of nursing.

vi. Impact of finding that the off-duty statements constitute unprofessional conduct

257. While individuals who join regulated professions do not lose their *Charter* rights, they must nevertheless comply with the rules of their regulatory body which may reasonably limit their right to free speech: *Peterson; Groia.* The Panel finds it is reasonable to limit a nurse's ability to make discriminatory and/or derogatory statements which target a marginalized and highly vulnerable group while self-identifying as a nurse or nurse educator. Statements of this nature which engage s. 15 of the *Charter* warrant less protection as they do not lie at the core of s. 2(b) values.

258. The Panel is satisfied that making a finding of unprofessional conduct would not impair the Respondent's freedom of expression more than is necessary to achieve the goals of protecting the public interest and maintaining the integrity and reputation of the nursing profession and public confidence in the health care system. The Respondent is free to disseminate her views to the public without identifying herself as a nurse or nurse educator or her affiliation with the College. Indeed, she testified that she did not use her professional title to give more credence to her views; rather, it was simply a biographical detail. The Respondent is, of course, also free to disseminate her views, while identifying herself as a nurse or nurse educator, provided she does so in a way that does not discriminate against or denigrate members of a vulnerable community or otherwise express herself in a way that reflects poorly on the profession as a whole.

259. On balance, the Panel finds there are no other reasonable options to give effect to the Respondent's freedom of expression while fulfilling the College's mandate to protect the public interest. The Panel would be abdicating its duty under s. 16(1) of the Act by failing to discipline unprofessional conduct which has a nexus to the profession of nursing, specifically where a nurse uses their professional status when expressing discriminatory and/or derogatory statements targeting vulnerable and marginalized members of the community. The Panel accepts that such

statements may adversely impact public perception of the health care system and the willingness of members of the transgender community to access health care.

c. Conclusion on balancing of factors

260. To summarize, the Respondent made discriminatory and/or derogatory statements which were directed at members of the transgender community. Although the statements did not directly concern health or nursing services, the Respondent identified herself as a nurse or nurse educator in making them. The statements are, for the most part, untruthful and unfair as they challenge the existence of transgender women, argue for less constitutional protection for transgender women, and are designed, in part, to elicit fear, contempt and outrage against members of the transgender community.

261. The discriminatory and/or derogatory statements which appear at Tabs 4, 24, 28 and S3 of the Extract may be intended to contribute to social discourse but they are not political speech and lie far from the core of s. 2(b) values. The Panel is satisfied that finding the off-duty statements identified in those tabs constitute unprofessional conduct would not unjustifiably infringe the Respondent's rights under s. 2(b) of the *Charter.*

262. The caWsbar Position Statement at Tab 22 contains some statements which are not true or oversimplifications of the science of sex and gender; however, the statements are not overtly derogatory or derisive in content or tone. The Panel accepts that Position Statement, as a whole, constitutes political speech. Not without some difficulty, the Panel concludes finding that the statements in the Position Statement constitute unprofessional conduct would unjustifiably infringe the Respondent's freedom of speech. It therefore declines to make that finding in relation to Tab 22.

H. Determination and Order under s. 39(1) of the Act

263. The Panel makes an order that the Respondent has committed unprofessional conduct as alleged in the Citation by posting the online statements identified in relation to Tabs 4, 24, 28, and S3 of the Extract which are discriminatory and/or derogatory to transgender people and which identify her as a nurse or nurse educator.

I. Hearing on penalty, publication and costs

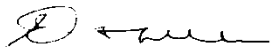
264. In view of the Panel's determination and order, a hearing will be scheduled to address penalty, publication, and costs.

II. Notice

265. By virtue of s. 40(1) of the Act, a respondent aggrieved or adversely affected by an order of the Discipline Committee under s. 39 of the Act may appeal the decision to the Supreme Court.

Under s. 40(2), an appeal must be commenced within 30 days after the date on which this order is delivered.

Dated for reference this 13th day of March, 2025.



Edna McLellan, Non-Practising R.N.,
Panel Chair

Sheila Cessford, Public Representative

Jackie Murray, R.N.

APPENDIX A - ANALYSIS OF STATEMENTS IN EXTRACT[18]

TABS 4 AND 30

1. Page 74 of Tab 4: This page contains the final paragraph of an online article which is reproduced in full at Tab 30 (pp. 276 – 278). The College maintains the statement "trans activists determined to infiltrate or destroy women-only spaces" at p. 74 is discriminatory because it suggests that transgender persons will destroy female spaces. The statement is made in the context of an article which addresses the Vancouver City Council's decision to rescind an annual grant to the Vancouver Women's Shelter because it refused to allow males who self-identify as women to access its services and shelter. The Respondent quotes from a Vancouver Women's Shelter member and former client who described how the rape relief services changed her life. The Respondent reports that the Vancouver Women's Shelter plans to host its annual fundraiser, noting that many prominent feminists and allies have publicly offered support. She concludes by observing the Vancouver Women's Shelter will "surely (and maddeningly) face continued backlash from trans activists determined to infiltrate or destroy women-only spaces. The women of VRR, however, are clearly up to the task".

During the hearing, the Respondent testified she is not speaking about transgender people generally when she refers to trans activists:

> A … sometimes I've said trans activists as well, which maybe as a side-note I would just mention I've been misinterpreted when I've said or criticized trans rights activists. I'm not speaking about trans people when I say that I'm speaking about the people that are activists for this cause, and who embrace gender ideology, and it's – you know, it's a movement that is infringing on the rights of women and pushing institutions to adopt what I believe are false and delusional beliefs about reality. And often this is a movement that has in my personal experience become extremely abusive towards women who speak out against it.

The Panel agrees with the College that the reference to trans activists infiltrating or destroying "women-only spaces" has a negative connotation of improper, illegal, aggressive, and destructive conduct. Although the statement is directed to "trans activists", who may or may not be transgender persons, and the Respondent sought to distinguish transgender activists from transgender people generally in her evidence, the Panel finds that a reasonable person would associate those comments with members of the transgender community. The comment is discriminatory and derisive as it suggests all transgender activists will act in an improper and aggressive manner in attempting to infiltrate or destroy "women-only spaces" and derogatory to the extent it is designed to lower the standing of transgender persons in the community and elicit outrage and contempt. The Respondent is identified as a "registered nurse educator" in the footer to the online article.

[18] All tab and page references are to the Extract.

2. Page 76: This page contains a tweet from the Respondent dated "Sept 2" in which she states, "(i)s there anything more embarrassing than straight people going by they/them, getting a dumb haircut, and calling themselves trans and queer?"[19] Dr. Bauer observed this tweet could cause humiliation to transgender people. The Respondent acknowledged the comment "could be offensive to some people" but noted it was not about transgender people; rather, she was satirizing the notion that some straight people have taken it upon themselves "to take up the trend of getting their hair cut and experimenting with their gender". The Respondent explained the tweet which focuses on people who view non-binary identities as a "trendy thing" was intended as a joke.

The Panel recognizes the tweet is focused on heterosexual people who hold themselves out in a more androgenous or non-binary way but finds that it indirectly disparages transgender people as well; however, the Respondent did not identify herself as a nurse or nurse educator in the tweet or in the immediately surrounding tweets.

3. Page 78: The Respondent retweeted a message that reads, "BREAKING: A federal court has blocked the Idaho law banning transgender student athletes. This is a victory for all women and girls in Idaho. Trans people belong in sports". In her retweet, the Respondent stated, "(y)ou spelled 'travesty' wrong". The Respondent testified the word "banned" was inaccurate because no "trans people have ever been banned from participating in sports". She explained she was suggesting "that rather than that being a victory, it's actually a travesty for girls because they would then be competing against biological males in their sports, which is both dangerous for biological females and… extremely unfair for female athletes".

The College interpreted the Respondent's retweet as a message that legal action permitting transgender women to participate in women's sports is a travesty and should not happen. Despite the Respondent's view that it is inaccurate to say that transgender people are banned from sports, the Panel agrees with the College's characterization. The subtext of this message is discriminatory because it suggests all transgender female athletes should be excluded from female sports regardless of their individual merits or circumstances. Although the Panel accepts that the act of "retweeting" is not qualitatively different from tweeting insofar as it may reflect an endorsement of the message, there is insufficient content or context to establish that the "retweet" is derogatory. The Respondent also did not identify herself as a nurse or nurse educator in the retweet or in the immediately surrounding tweets.

4. Page 80: On "Aug 13", the Respondent tweeted the following:

> 4.07 I started taking screenshots of the batshit stuff in this BCCDC 'language guide' for the pandemic. Quickly realized I would be making a 400 tweet thread. You just have to see this shit for yourself.
> *bccdc.ca/Health-Info-Si…*

[19] This same tweet also appears in Tab 12, p. 110, at 12:002.

> 4:08 If you're wondering then yes, yes there is an enormous section on trans people and pronouns … in this language guide for COVID-19. We live in truly stupid times.[20]
>
> 4:09 There are also pics of ?queer? people making out. Not a glory hole or mask in sight. Did they totally forget they were working on a COVID-19 document once they started writing up their scripture?

The Respondent testified that the Language Guide released during the pandemic contained a large section on correct pronouns and gender identity. She explained that the purpose of her tweet thread was to be "humorous and point out that it seems silly… that when we're talking about COVID-19 and a pandemic, why are we including so much about gender and pronouns" She said she wanted to make light of it.

The College submits that the thread of tweets suggests it is "stupid" for the Language Guide to provide pronoun policies for health care workers and contains comments derogatory to transgender people. The Panel recognizes that the tweets are directed at the BCCDC rather than transgender people; nevertheless, it finds that the tweet at 4:08 is discriminatory to the extent it suggests that the Language Guide should not provide guidance on use of pronouns for transgender persons when such individuals have a right to be addressed in a manner consistent with how they self-identify. There is insufficient evidence to establish that this unprofessional comment is derogatory to transgender persons because it is directed at the BCCDC. Although the tweet at 4:09 is derogatory, it does not appear to be directed at transgender persons. The Respondent also did not identify herself as a nurse or nurse educator in the thread or in the immediately surrounding tweets.

5. Page 83: On "July 31", the Respondent tweeted "(i)dentity-obsessed activists are convinced everyone else is using coded language with secret meanings (umm, they're not); meanwhile they say 'identifies as'… which is actually code for 'wants to be but is not'. The College submits the tweet characterizes people who fight for the rights of transgender people as fanatics. The Panel agrees this tweet is discriminatory to the extent it suggests that transgender persons cannot be the identity they feel, and derogatory to the extent that it suggests that activists are "obsessed" with their identities and convinced that everyone else is speaking in coded language. The subtext is one of lack of rationality and paranoia. It is clear from the context that the identity-obsessed "activists" that the Respondent is referring to are those who are transgender and a reasonable person would associate that term with transgender persons generally. However, the Respondent did not identify herself as a nurse or nurse educator in the tweet or in the immediately surrounding tweets.

[20] This same tweet also appears in Tab 12, p. 110, at 12:004.

6. Page 84: On “Jul 30”, the Respondent tweeted, “(i)t’s great that my Christian friends know that it’s f*cking obnoxious to go around proselytizing, and it would be even greater if the gender fanatics could take a hint and realize the same thing”. The College argues this tweet denigrates those who fight for the rights of transgender people by characterizing them as fanatics. Although the tweet is directed at “gender fanatics”, which is a term not necessarily restricted to transgender persons and may include others who support transgender rights, the Panel accepts that a reasonable person would associate this term with members of the transgender community.

The Panel finds that the tweet is derogatory and discriminatory to the extent it suggests that those who support transgender rights engage in obnoxious and unwanted “proselytizing”; however, the Respondent does not identify herself as a nurse or nurse educator in the tweet or in the immediately surrounding tweets.

7. Page 86: On “Jul 24”, the Respondent tweeted, “not a fetish: Penis people getting boners when they wear a dress & wig; penis people publicly insisting they have menstrual cycles; penis people posing in sexual photos with infants suckling their nipples. Fetish: Having debates”. The Panel agrees with the College that referring to transgender women as “penis people” is profoundly degrading to their identity and designed to convey a deep level of disgust and animus towards them. The statement is discriminatory because it associates transgender women with abnormal and perverse behaviour which the Respondent appears to generalize to the transgender community. These comments reflect a complete disregard for the dignity of transgender women. Although the Panel finds that the tweet is both discriminatory and derogatory to transgender women, the Respondent does not identify herself as a nurse or nurse educator in the tweet or in the immediately surrounding tweets.

8. Page 88: On “Jul 13”, the Respondent retweeted: “I’m a woman because of what I do with my dick is the most 2020 thing”. The College asserts the tweet is discriminatory and derogatory because describing a transgender woman as a man doing something with their “dick” denies the existence of transgender women. The Panel agrees with the College’s characterization of the tweet. Although the original tweet was not authored by the Respondent, it is reasonable to infer she retweeted it to convey her agreement with the sentiment expressed in it. The Panel finds the retweet is discriminatory and derogatory to transgender women. However, the Respondent did not identify herself as a nurse or nurse educator in retweeting the message or in the immediately surrounding tweets.

9. Page 89: This page contains a series of five tweets and retweets dated “Jul 11” in which the Respondent states:

> 4.21 Literally what happened to me about 4.5 years ago [in response to the following tweet]:
>
> catsies@ RealWumben – Jul 11

One consequence of people throwing the word “TERF” around is that thousands of women are saying…

What’s a TERF?
Why are they transphobic?!
Oh, they’re not transphobic.
Shit, they have a few good points.
Am I a TERF?
Researching gametes…

4.22 Just that the woman in question was myself.

4.23 I feel like there’s a vast untapped outrage market for trans activists in medical textbooks.

4.24 FYI the activists do get away with inserting a lot of this crap into nursing education, precisely because nursing education is far less rigorous than medicine & contains large amounts of social-science content.

4.24 I studied nursing a decade ago and already there was an infiltration of this stuff. For instance I had to take a whole class on intersectionality – and it was bogus.

The Respondent testified the tweets at 4.23 and 4.24 are satirical as they poke fun at the idea that none of this material was in medical or nursing textbooks when she attended nursing school and she was “kind of making a joke about how … in the last several years we’re basically rewriting reality about biological sex … so there’s an untapped market there for rewriting a lot of textbooks”. The Panel notes Dr. Bauer’s evidence that education has made health care systems more welcoming for transgender people and is part of “undoing the erasure”.

The Panel does not accept the tweets at 4.21 and 4.22 meet the threshold for being discriminatory or derogatory. They simply reflect that the Respondent also questioned what a TERF was several years ago. However, the tweet at 4.23 and both tweets at 4.24 are concerning because they state transgender activists are getting away with inserting “crap” into medical textbooks or nursing education. The Panel finds these comments are discriminatory and derogatory because they suggest that transgender persons are responsible for inserting improper information into medical textbooks and appear to argue against education on transgender issues in nursing education. Although the tweets are focused on transgender activists, that does not immunize them from review as reasonable people would associate the comments with members of the transgender community.

The next question is whether the Respondent identified herself as a nurse or nurse educator in the tweets. The Respondent indicated in the second tweet at 4.24 that she studied nursing a decade ago and her comments convey of a knowledge of nursing education; however, the Panel

is constrained by the language of the Citation which requires proof that the Respondent identified herself as a "nurse or nurse educator" while making the statements. An individual may attend nursing school but not become a nurse. While the Respondent's comments at 4.23 and 4.24 establish a nexus to nursing education, they do not directly identify her as a nurse or nurse educator. She is also not identified as a nurse or nurse educator in the immediately surrounding tweets.

TAB 5

Page 90: This page reproduces the following excerpt of a letter addressed to Pattison Outdoors concerning the "I [heart] JK Rowling" billboard and should be considered in conjunction with J.K. Rowling's letter:

> Attn: Pattison Outdoors
>
> We rented a Vancouver billboard from your company that states "I <3 JK Rowling". We did this because we were inspired by Rowling standing up for the rights of women, girls, and children.
>
> JK Rowling is not transphobic and neither are we. Like her, we are concerned about the impact of gender identity ideology on the rights of women and girls. We believe most Canadians recognize "woman" is a biological reality, rather than a feeling.
>
> Our billboard was vandalized on the first night, and we know that many are contacting Pattison Outdoors to have it removed.
>
> We ask that you stand with us, stand with women and stand up for free expression.
>
> Thank you,
> Chris Elston and Amy Hamm

There is also an accompanying tweet from the Respondent dated "Sept 12, 2020" which states "Please stand with us" with reference to this letter.

The Respondent provided context for the billboard and letter at the hearing. She testified that after J.K. Rowling received threats after publishing her essay, she (the Respondent) wanted the Canadian public to see what would happen if "such an innocuous statement, 'I 'heart' JK Rowling', was up publicly" and all the vitriol and abuse that was likely to result so that people could understand the issue more deeply and read the essay.

Dr. Bauer testified that the statement in the letter beginning "JK Rowling is not transphobic…" is one which "excludes trans people from categories of women or girls and defines woman as

biological realties". She observed that the harm to transgender people "comes from the concern over the impact on women and girls".

The Panel recognizes the statement that most Canadians recognize "woman" as a biological reality rather than a feeling reflects the Respondent's view of public opinion on this issue, which may or may not be correct. The Panel understands the concern that the use of the term "woman" in this context implicitly excludes transgender women. However, a finding that the use of the term "woman" in this narrow sense without more would set a low threshold for a finding of discrimination as it would capture a considerable amount of expression that is not otherwise discriminatory and/or derogatory to transgender women. The Panel believes that more is required than a reference to "woman" in this narrow sense to prove that a statement is discriminatory. The remainder of the letter and accompanying tweet do not contain discriminatory and/or derogatory statements to transgender persons. There is also no nexus to the nursing profession as the Respondent does not identify herself as a nurse or nurse educator in the letter or in the accompanying tweet.

TAB 6

Pages 91 to 94: These pages contain a copy of a CBC News article, entitled "I Love JK Rowling sign makes brief, controversial appearance in Vancouver" which was posted online on September 12, 2020. The article explains that the Respondent and Chris Elston paid Pattison Outdoors to put up the billboard which copied a similar sign in Edinburgh to support the famous author's claims "that having individuals self-identify their gender could pose a threat to women and children who are not transgender". The article contains two quotes attributed to the Respondent:

> I don't think it's possible for women to defend their legal rights or even the definition of womanhood if anybody can say that they are a woman and it will be so.
>
> Women's rights are important and we need to stand up for them and its not transphobic to do so.

This article notes that the Respondent and Chris Elston maintain "their message does not deny the rights of transgender people". The article also quotes other individuals who express opposition to the billboard, suggesting amongst other things that it was a "devious way to push a message of hate about gender identity" and "harass the community, targeting them because of who they are…".

Dr. Bauer testified the billboard would have been understood by people in the transgender community as "reiterating or agreeing with what J.K. Rowling was saying … and potentially also with some of what her supporters were saying". Dr. Bauer was asked specifically about the Respondent's statement that it is not possible for "women to defend their legal rights or even the definition of womanhood if anybody can say they're a woman and it will be so". Dr. Bauer observed that gender identity relates to identity for both transgender and cisgender people. She denies that we have a system where anyone can "say they are a woman and it will be so". She

testified that there must be safe participation in gendered spaces, noting that it is transphobic to say that transgender people should not be allowed to participate in public life in the ways that other people generally do. The College asserts the Respondent's statements are discriminatory as they support one segment of the population to self-identify but not another.

The Panel finds that the quotes and observations attributed to the Respondent regarding self-identification laws are concerning. The suggestion that women cannot defend their legal rights or the definition of womanhood if anyone can self-identify as a woman is critical of the right of transgender persons to express their identity authentically and transition to a sex that reflects their sense of identity. The Panel finds that the comments are discriminatory because they convey that transgender women should not be able to self-identify as women; however, the Respondent does not identify herself as a nurse or nurse educator in the quotes nor is she identified as such in the article.

Tab 7

Pages 95 to 98: These pages contain a copy of a *Georgia Straight* article entitled "Transphobia concerns prompt East Vancouver billboard supporting JK Rowling to be covered up" which was posted online on September 12, 2020. The article contains a photograph of the billboard being partially covered up as well as embedded tweets from J.K. Rowling and others, including one from the Respondent which states "Please stand with us" with reference to the letter to Pattison Outdoors. The article does not contain quotes from the Respondent, nor is she identified as a nurse or nurse educator in it. The Respondent's tweet "Please stand with us" is addressed above.

Tab 10

Pages 101 to 106: These pages contain a copy of an article entitled "Q & A: Why I bought an 'I Love JK Rowling' billboard in Vancouver" which was published online on October 19, 2020. The article contains a series of questions and answers from an interview of the Respondent during which she explains that she placed the billboard in Vancouver to show solidarity with J.K. Rowling who suffered "a lot of harassment and abuse after she came out as being critical of gender-identity ideology" and to "spur" conversations about the issue. When the interviewer suggests the billboard could be viewed as trying to generate attention from issues that relate to the well being and safety of transgender activists, the Respondent disagrees. She claims that she and others have made it clear they support equal rights for transgender persons and do not want them to suffer discrimination; rather, in her view, the issue is the way that "self-identification legislation impacts the rights of women and children". The Respondent defends J.K. Rowling, observing she "clearly states that trans people deserve protection, and that she's not suggesting that they are predatory people. She's suggesting that men – as a sex class – can take advantage of self-identification laws, and that is the crux of the issue". The Respondent observes that "transgender activists who are speaking about this issue are so loud and angry that people are afraid to say anything", which is why she is involved as she would like to start nuanced conversations that are "sorely lacking on this issue". The Respondent acknowledges that the billboard was not nuanced but described it as an opening to the conversation. The Respondent

was asked whether she believes there is a real substantive threat to women by cisgendered heterosexual predatory men abusing self-identification to gain access to female spaces, to which she responds:

> A. There have been allegations of female prisoners – who are arguably the most marginalized people in this country – being sexually assaulted by biological males who are housed with them in female prisons. We've seen Vancouver rape relief lose city grant funding because they don't admit biological males into their rape shelter. We've seen another rape shelter in Vancouver with an, I'm assuming a trans-identified person, posting sexual pictures of themselves talking about the other women and the rape shelter. And we've seen the way that women's sports have been impacted by self-identification as well. So yes, I do think there is a real threat.

In the interview, the Respondent described the threatening and hateful messages she received on Facebook and Twitter in response to the billboard; she noted that the billboard appears innocuous to people who are not aware of what is going on in the "gender wars" but observed they start questioning things when they see the "misogynistic backlash, and the level of vitriol that results from this small group of activists".

Dr. Bauer provided evidence regarding the self-identification laws which were discussed in this interview. She testified that she was not aware of any evidence that self-identification laws harm the rights of cisgender women and children. Dr. Bauer was asked whether the Respondent's statement indicating that J.K. Rowling is suggesting that "men – as a sex class – can take advantage of self-identification laws" is likely to cause or contribute to harm to transgender people. She responded this comment suggests that fear of that hypothetical, undocumented risk overrides the "very real safety needs" of transgender people that have been documented. Dr. Bauer observed that the statement alleging female prisoners are being sexually assaulted implies that "having trans women with cisgender women is itself a risk to cisgender women so that an entire class of people is in fact dangerous to cisgender women, rather than holding individual people accountable for their actions".

The Panel understands that the Respondent's answers in the interview reflect her personal views regarding the purpose and intended effect of the billboard. Although the Respondent is critical of what she describes as a "small group" of activists, which appears to refer to transgender activists, the Panel concluded that the answers she provided during the interview did not meet the threshold for establishing that she made discriminatory and derogatory statements. She was explaining her rationale for arranging to have the billboard erected and her underlying concerns regarding the risk that men, as a class, pose to women and girls.

The Respondent was identified as a "health-care worker" in the interview. The College argues this is sufficient to establish that the Respondent identified herself as a nurse because she referenced her position on caWsbar (and its website identifies her as a "registered nurse educator") and the term "health-care worker" creates a sufficient nexus to the health care system. The Panel is

concerned, however, that the Citation specifically alleges that the Respondent made statements "while identifying herself" as a "nurse or nurse educator". There is no evidence that the Respondent identified herself as a "nurse or nurse educator" during the interview. The Panel notes that the Respondent also did not reference the caWsbar website; she identified herself as one of the founders of Gender Identity YVR (GIDYVR) in the interview. Pages downloaded from the GIDYVR website were not put into evidence.

Tab 11

Page 107 contains a series of tweets from the Respondent which are primarily concerned with the COVID-19 pandemic. The College asserts the following tweets made on "Jun 7" and "March 24" respectively are discriminatory or derogatory to transgender persons:

> 11:01 I'm a woman & mother & nurse. I won't be told how to think or what to believe. I'm capable of looking at the evidence and figuring out the truth. *#IstandwithJKRowling*.
>
> 11:02 Quarantine day 9: Yeah. I'm a registered nurse and my maternity leave ends on April 7. But in all honesty I want to be home with my kids until the pandemic is over. I'm not feeling very brave or selfless. If I'm on the frontlines of this mess, its because I have to be.

The College relies on the Respondent's use of the hashtag expressing support for J.K. Rowling in the first tweet. The Panel finds that the use of a hashtag, without elaboration, is not sufficient to constitute a discriminatory or derogatory statement to transgender persons. The surrounding tweets are unrelated to the topic of gender identity.

Tab 12

Pages 110 to 133 contain a series of tweets from the Respondent which span the period October 19, 2018 to September 14, 2019[21]. The College flagged the following tweets:

> 12:005 Can you IMAGINE the shit storm that would ensue if a woman ever advocated for violence against trans identified males?

The first tweet is responsive to a tweet from another individual which states, "They are advocating for violence against women The dictionary (sic)" but is incomplete. That tweet also contains a link to a video. The College argues this tweet suggests that cisgender women are much less valued than "trans-identified males" and that the use of the phrase "trans-identified males" constitutes erasure of transgender women. The Panel agrees that the tweet is discriminatory and derogatory because it mislabels transgender women as "trans-identified males" which is, indeed,

[21] Two tweets are duplicates of tweets addressed above and will not be repeated.

the type of erasure described by Dr. Bauer. However, the Respondent does not identify herself as a nurse or nurse educator in the tweet or in the immediately surrounding tweets.

> 12:008 Before Maven of Munchausen had a trans kid making her blog relevant, she blogged about her child being sick with a rare autoimmune condition that often has no known cause and has been linked to Munchausens by Proxy. What a wild coincidence!
>
> 12:009 She specifically defended the free expression of so-called 'truscum' and drew the ire of local trans activists & woke politicians in our community. She held her ground and didn't lose her temper in the face of their attempted mobbing.

The College submits the tweet at 12:008 conveys the offensive idea that a mother who is blogging has a child who might have had Munchausens by Proxy but dismisses the fact that the child is now transgender. The Respondent testified she was referring to a book written by a transactivist who had, for many years, tried to become "famous as a mommy blogger and was very quickly catapulted into the public spotlight and fame with a blog post about how her minor child was, was becoming trans".

While the Respondent's comments appear to mock the mother who is blogging, they are not, in themselves, discriminatory and derogatory to transgender persons. The fact that the tweet is dismissive of the transgender child is not, in the Panel's view, sufficient to make it discriminatory and derogatory to transgender people. The Respondent also has not identified herself as a nurse or nurse educator in the tweet or in the immediately surrounding tweets.

> 12:011 She definitely was a lesbian rejected by her family; the bit I can't remember clearly is if she reconciled with her family after becoming a trans man.
>
> 12:012 Also there's an episode of Queer Eye where they do a makeover on a trans man who was rejected by religious American family when she came out as a lesbian. IRC the family accepted her as trans.

Dr. Bauer testified that these tweets exemplify statements that misgender transgender people and noted that repeated misgendering is harmful. While the Panel agrees that repeated deliberate misgendering is discriminatory and may, depending on the context, be derogatory, there is insufficient context from the tweets at 12:011 and 12:012 to indicate there was deliberate misgendering.

> 12:019 That SUCKS. I hope someone archived their peak trans threads. This sub was one of the places where I found sane, likeminded women when I was new to the gender wars. When I was wondering why I was getting called a TERF. This is a huge loss.

This is the Respondent's response to a tweet from another individual observing "(i)t's insane Reddit banned its Gender Critical subreddit. This widespread attempt to stifle discussion about the nature of sex and gender and gender identity is not going to work. You don't have to agree with GC positions to understand this". The College submits the characterization of the "gender war" between transgender and cisgender women is derogatory to transgender women. While the Panel agrees that the use of the phrase "gender wars" is unfortunate and inflammatory, it does not accept that using that phrase is necessarily discriminatory or derogatory to transgender women. The implication that people who are not "likeminded" on the issue of the gender debate are not "sane" is concerning but was made in the context of expressing disappointment regarding the cancellation of a subreddit which deprives individuals of a forum for discussion. On balance, the Panel finds that the tweet is not discriminatory or derogatory to transgender people. The Respondent also does not identify herself as a nurse or nurse educator in the tweet or in the immediately surrounding tweets.

> 12:022 Yes. And in my province the recommended evidence-based healthcare policy is to take seriously the safety concerns of trans ppl/allow them to choose their spaces while women get no such choice and are supposed to be educated on gender affirming policy if they dare pipe up.

This tweet is in response to a partially visible post which starts, "Why are transwomen's fears of male violence in bathrooms justified, but women's fears of male violence in bathrooms are not". Dr. Bauer provided evidence regarding the policy in question, the Language Guide, which she observed is not prescriptive and is simply a resource for issues regarding sex, gender, sexual orientation, race, ethnicity and other categories of diversity. The College submits the remark "… women… are supposed to be educated" disallows the concept of a search for the rights of transgender people and conveys they should not have equal rights.

The Respondent acknowledges the policy of taking the safety concerns of transgender people seriously; however, she is critical that the policy does not do the same for women. The Panel interpreted the tweet as a criticism that women, rather than transgender people, are not given equal rights. The Panel recognizes the Respondent uses the term "women" to exclude transgender women but finds that the context of this message is one that does not meet the threshold for a discriminatory or derogatory statement to transgender people. The Respondent also does not identify herself as a nurse or nurse educator in the tweet or in the immediately surrounding tweets.

> 12:023 A peak trans story from r/gendercritical.

The "story" which the Respondent is referring to is contained in a tweet which states, "The moment my doctor looked between me and my husband and politely asked which of us would be the 'pregnant person' when we were inquiring about family planning. It was the most dehumanizing thing that's ever been said to my face". The College submits that the tweet dismisses the use of language that considers the experiences of transgender people as dehumanizing. The Respondent explained that "peak trans story" refers to the sort of moment

"when you are exposed to something in gender identity ideology that struck you as so either absurd or offensive towards women or egregious in terms of the violation of women's rights and boundaries". The Respondent testified she agreed with the woman who shared the story, noting language like "'pregnant person", "uterus haver", "menstruator", and "all of these terms" are de-humanizing and offensive as they reduce women to their body parts or bodily functions "with the stated purpose of not offending biological males who identify as women".

Although the Respondent agrees it was ridiculous for the doctor to ask that question, the Panel finds that her statement "a peak trans story" does not meet the threshold for one that is discriminatory and/or derogatory to transgender people, and she does not identify herself as a nurse or nurse educator in it or in the immediately surrounding tweets.

> 12:025 Look no further if you want to know why trans activists are shrieking at people to not read JK's essay.

This is another tweet from the Respondent expressing support for J.K. Rowling. The reference to trans activists "shrieking" at people is derogatory to the extent it suggests transgender people communicate in a shrill and loud manner; however, the Respondent does not identify herself as a nurse or nurse educator in the tweet or in the immediately surrounding tweets.

> 12:026 Lastly, all clients in this facility will be educated on Trans and Gender Diverse people. I have "never" seen healthcare policy that has staff educating "other patients" about social justice issues. This is incredible.
>
> > [8] All clients will be provided with educational materials regarding Trans and Gender Diverse individuals. Curriculum regarding Trans and Gender Diverse topics is incorporated within the Health Living mandatory group.
>
> 12:027 Oh, here we go. If a bad person (woman no doubt) has an issue with feeling safe in the bathroom then staff must provide education on gender affirming care. Then staff will discuss as a group to further shame her. Only trans people are allowed to feel unsafe.
>
> > 2.2.1 In the event other clients report issues with the choice of which washrooms a Trans and Gender Diverse individual wishes to use, information regarding BCMHA's gender affirming care will be discussed with that concerned individual and/or may be discussed at upcoming residents' council meetings as necessary.
>
> 12:028 Trans persons must be able to choose the bathroom they deem safest or be given a single unit bathroom instead. Again, WHAT ABOUT WOMEN? Do we not deserve any consideration at all?

2.2 Washrooms

(i) Unit staff must provide Trans and Gender diverse identified clients the option of choosing which binary client washroom is the safest desired space for them (this is an individual, subjective choice that may vary between individuals). If a Trans or Gender Diverse individual decides that neither of the binary client washrooms provides appropriate safety, staff will provide the client with the choice of using the single unit washroom, if available.

These tweets refer to health care policy excerpts. The Respondent testified she was making the point in the tweet at 12:026 that it is unusual to give "clients or patients … education about trans and gender diverse individuals, and how essentially telling women how they are supposed to respond to other patients in the facility". The Respondent explained she had never seen a health care policy that tells staff to instruct other patients how to behave about social justice issues and felt it was insulting to women. The Respondent testified that the tweet at 12:028 was expressing concern that the policy disregards women's safety, privacy and dignity.

The College submits it is derogatory to transgender people to suggest that educating staff about social justice issues should not be done. It further points out that transgender people are entitled to be safe, not just comfortable, under human rights law.

The Panel observes that health care facilities have a responsibility to ensure respectful communications between, and the safety of, all individuals within their facilities. The subject matter of all three tweets concerns the Language Guide. The suggestion in the tweet at 12:026 that education on transgender issues should not be provided is discriminatory. The tweets at 12:027 and 12:028 express the Respondent's view that it is unfair that only transgender women are allowed to feel unsafe using washrooms. Though the Respondent refers to "women" in a way that implicitly excludes transgender women, for the reasons outlined above, the Panel finds that those two tweets fall short of constituting discriminatory or derogatory statements. The Respondent does not identify herself as a nurse or nurse educator in these tweets or in the immediately surrounding tweets.

12:029 This is chilling to care providers. It's called discriminatory to ask about gender history if it's irrelevant or invasive. Problem being that we know how trans activists function & that they think their bio sex is "always" irrelevant.

4. DEFINITIONS

Health care discrimination: To deny an individual a service or facility which is available to other people because of a personal characteristic such as gender identity, religion, race, etc. in a medical setting; this could include a refusal to acknowledge a person's gender identity, or the name and

pronouns that an individual use. Discrimination could also include asking irrelevant and invasive questions about gender history.

This tweet refers to the definition section of a specific health care policy. The College asserts this statement is derogatory to transgender people. The Respondent testified that this tweet refers to a publicly available Health Authority policy and her intent in criticizing aspects of it was to advocate for women who seem to have been disregarded in the policy.

It is clear to the Panel that the Respondent is sounding an alarm that, in her words, "(i)t's called discriminatory to ask about gender history if it's irrelevant or invasive". Leaving aside the definition merely states that asking such questions "could" constitute discrimination, the Respondent's statement that "we know how trans activists function & that they think their bio sex is 'always' irrelevant" is of greater concern. This broad claim, directed at transgender activists, which can reasonably be associated with transgender people, has all the hallmarks of a discriminatory statement – it reflects an attitude that perpetuates negative stereotypes about transgender people without regard to their individual merits or attributes, simply by virtue of being members of that community. The Panel finds the statement is also derogatory to transgender people because it assumes they will always unreasonably and irrationally maintain that their biological sex is irrelevant to medical care. However, the Respondent does not identify herself as a nurse or nurse educator in the tweet or in the immediately surrounding tweets.

12:030 Demands such as "avoid sex segregation and gender segregation", i.e. deprive women of their sex segregated spaces. If you give women their own space, you must establish how you plan to meet the needs of trans ppl. Why is it never the other way around? What about women?

(ii) Avoid sex-segregation and gender-segregation whenever possible. Provide clear rationale if any sex-segregation or gender-segregation is instituted (e.g. units, programming). Clearly establish how the needs of Trans, non-binary and Gender Diverse clients are met if any sex-segregation or gender-segregation is instituted.

This is another in the Respondent's series of tweets outlining her objection to the direction set out in a health care policy to avoid sex and gender-segregation and to ensure the needs of transgender and gender diverse individuals are met if such segregation is instituted. This tweet reiterates the Respondent's concern that cisgender women are not given the same consideration. The College submits this post suggests that transgender women should not be in the same space as cisgendered women. The Panel agrees. It is discriminatory and derogatory to suggest that transgender women should not be in the same spaces as cisgender women; however, the Respondent does not identify herself as a nurse or nurse educator in the tweet or in the immediately surrounding tweets.

12:036 Please take this opportunity to examine more of the claims made by Knox, McKinnon, and other trans activists. Please consider listening to the women who

> are speaking out about gender identity ideology and legislation. I'm going to plug @GIDYVR and @cawsbar here.

There is nothing in the content of this tweet which is discriminatory or derogatory to transgender people. The Respondent is asking readers to listen to women who are speaking out about gender identity ideology and legislation and referring them to the Twitter accounts of GIDYVR and caWsbar. The College maintains this tweet is discriminatory and derogatory because it incorporates material from those organizations. However, no evidence was tendered from the Twitter accounts of those two organizations – only two pages from the caWsbar website (addressed below). The Respondent testified she was not involved with the caWsbar Twitter account or its publications or communications. Without more context regarding the content of the GIDYVR and caWsbar Twitter accounts, the Panel finds there is insufficient evidence to establish that the tweet is discriminatory or derogatory to transgender people. The Respondent also does not identify herself as a nurse or nurse educator in the tweet or in the immediately surrounding tweets.

> 12:037 If it's verboten to talk about the horrible side effects of Lupron when we give it to CHILDREN for YEARS at a time, then why is it okay to talk about how awful it is for adults to take for mere months? The staff @Chatelaine have been indoctrinated by trans activism.

The Respondent explained at the hearing that this tweet concerns a *Chatelaine* article which discussed the use of Lupron for short periods of time and its harmful side effects for adults. She was questioning why "we're not allowed to speak about the horrible side effects" on children who receive it for years and accuses the *Chatelaine* magazine in a subsequent tweet of championing a "male-bodied trans activist who pushes an ideology that wants children to take Lupron to halt puberty".

The College submits the suggestion that anyone has been indoctrinated by trans activism is derogatory to transgender individuals as the term "indoctrinated" has a negative connotation that those advocating for transgender rights are exerting extreme viewpoints on others. The Panel accepts that, although the focus of this tweet is an alleged inconsistency in approach to discussing the side effects of Lupron on children and adults, it is discriminatory and derogatory to transgender individuals for the reason identified by the College. However, the Respondent has not identified herself as a nurse or nurse educator in the tweet or in the immediately surrounding tweets.

> 12:039 Our "side" is rightly outraged when activists contact children and say "I'll be your mom if your mom wont accept your trans identity" etc. etc. It is also not okay for us to engage with children. Ever.

The Respondent testified that it was deeply disturbing that some prominent figures in the trans activist movement were making videos or making comments online telling kids that if their parents "don't support your trans identity like you can contact me. I'll be your new mom" and

encouraging young children to have secret, private relationships with older adults which she considers to be an extreme violation of child safe-guarding principles but is "lauded as good and progressive in the name of trans activism".

The College submits this truncated tweet suggests that transgender children should not receive support from transgender individuals. The Panel interprets the Respondent's message to be that transgender activists should not intervene when parents refuse to accept that their children may have gender issues, and that it is never acceptable to engage directly with children. There is no question that the use of the phrase "(o)ur side" is polarizing but the content of the message is directed at a certain form of conduct; it does not suggest that all transgender people do this. The Panel finds the tweet is not discriminatory or derogatory to transgender persons generally. Regardless, the Respondent has not identified herself as a nurse or nurse educator in this tweet or in the immediately surrounding tweets.

> 12:049 Please don't give in to trans activists. There's no way to abscond from being female.

The College submits this tweet suggests that only cisgender women can be females. The Panel notes the Respondent does not explicitly reference "cisgender women". While the Respondent appears to suggest there is no way to escape from being female, the Panel finds there is insufficient context to determine that the statement is discriminatory and/or derogatory to transgender people without knowing what the Respondent was responding to. The Respondent also has not identified herself as a nurse or nurse educator in the tweet or in the immediately surrounding tweets.

> 12:053 Yea. I always had the heebie-jeebies over sex positive & sex work is work etc. Then as soon as I saw what was going on with trans activists I was like HELL NO BOYS.

The Respondent testified that the trans activism movement has taken up the mantra that "Trans women are women, sex work". She testified that she rejects the notion that sex work is some type of empowering choice that women can make as the sex trade is harmful to and preys on women. She finds it disturbing when people try to "sanitize" it.

The College asserts this tweet is derogatory to transgender people. As the context and meaning of the tweet is unclear, the Panel is unable to conclude that it is discriminatory and/or derogatory to transgender people. The Respondent is also not identified as a nurse or nurse educator in the tweet or in the immediately surrounding tweets.

> 12:060 Not being willing to concede "trans women are women" isn't some bitchy cunty hill to die on. It's the core of our fight to fight women's oppression – which is sex based – around the world. Its not orthodoxy, not dogma; its fact.

The Respondent testified she does not make these statements to be mean, cruel or discriminatory but rather because it is the basis on which the "fight to maintain women's sex-based rights and protections exist".

The College points out the Respondent's comments exclude transgender women from the category of "women". In the Panel's view, the interpretation of this tweet should be more nuanced. The Respondent is explaining the foundation of her position on the gender ideology debate – that women as a class are defined by sex. While the Panel agrees that the Respondent excludes transgender women from the category of women, the explanatory context of this particular tweet militates against a finding that it is discriminatory and/or derogatory to transgender people. The Respondent also does not identify herself as a nurse or nurse educator in this tweet or in the immediately surrounding tweets.

> 12:069 She pulled a "trans women are the most oppressed women" thing and I just can't. 🙁

The College asserts this statement is derogatory because the evidence establishes that transgender women are the most oppressed women. The Panel agrees the Respondent is rejecting the proposition that transgender women can be oppressed women. That message is both discriminatory and derogatory to transgender women; however, the Respondent does not identify herself as a nurse or nurse educator in making the tweet or in the immediately surrounding tweets.

> 12:086 Look, what the actual f*ck does it mean to "deny the existence" of a person? It's hard to take anyone seriously when they throw this nonsensical mantra around. Trans ppl exist and no one is denying it.

The College interprets this tweet as suggesting it is mind manipulation to say that transgender people do not exist because there are men with psychiatric conditions. While the Panel does not accept the tweet goes that far, it finds the suggestion that transgender people "throw" around "nonsensical mantra" about denying their existence to be discriminatory and derogatory. Dr. Bauer provided evidence about the longstanding history of erasure and marginalization that transgender people have been subject to from processes that exclude them from society. Although the statement is discriminatory and derogatory, the Respondent does not identify herself as a nurse or nurse educator in the tweet or in the immediately surrounding tweets.

> 12:094 Meghan Murphy is not anti trans. She's pro woman. Get it straight!

The College submits this tweet is derogatory because it does not include transgender women in the category of women. The Panel recognizes the use of the phrase "pro woman" implicitly excludes transgender women; however, there is insufficient context to establish that this comment is discriminatory and/or derogatory to transgender people. The Respondent also does not identify herself as a nurse or nurse educator in the tweet or in the immediately surrounding tweets.

> 12:103 No. Feminists are not saying trans people are predators @globalnews! The problem is gender ID legislation & men, as a class of people.
>
> Get it through your heads. You're either daft, or wilfully misleading the public

The tweet is in response to an excerpt of a Global News story only partially reproduced which states, "Conservative Christians, feminists unite to fight transgender rights in Au…. Both argue that trans women pose a risk to women and children in changing rooms, toilets, and rape shelters, in a microcosm of an … #globaclnews.ca". The College submits the Respondent's tweet contains exclusionary discriminatory arguments against transgender people. The focus of the tweet is on men as a class of people and the risk they pose, and the Respondent denies that feminists call transgender people predators. Although it is transgender people who seek to use gender identification legislation, the Panel finds that this tweet does not meet the threshold for being discriminatory and/or derogatory to transgender people. In any event, the Respondent does not identify herself as a nurse or nurse educator in the tweet or in the immediately surrounding tweets.

> 12:107 The trans activists in Vancouver are out of their god damn minds. They're hateful, vicious psychos.
>
> It's time for any of my woke friends who haven't yet ex-communicated me to open their eyes and stop the nonsense of pretending this isn't a sustained attack on women.

The College submits this tweet is derogatory as it portrays transgender women as dangerous to cisgender women. The focus of this tweet is on the actions of transgender activists in Vancouver who, according to the Respondent, have undertaken a campaign of aggression towards cisgender women. A reasonable person would associate the Respondent's statements regarding transgender activists being out of their minds with members of the transgender community. The statement they are not only out of their minds but also hateful, vicious psychopaths is clearly derogatory and discriminatory; however, the Respondent does not identify herself as a nurse or nurse educator in the tweet or in the immediately surrounding tweets.

> 12:146 Liberal feminism refuses to acknowledge it's entirely possible (and commonplace) to support trans people, want them to have equal rights and access to healthcare etc. while not believing it's possible to LITERALLY change one's sex.
>
> 12:147 From this, a mystical belief in a "gender soul" or the idea we can be born in the "wrong body" follows. Disagree? You're a bigot who "hates trans people" or seeks to "erase their existence".

> 12:148 It sounds like you're insinuating that a trans inclusive feminism is more likely to include those who would behave in this abusive and threatening fashion. I know you don't think that, but that's how your statement sounds.

The Respondent testified she does not believe in the metaphysical claim about gender identity or that people have a gender identity; she believe that gender dysphoria is a condition in the DSM 5. She testified that she is sympathetic to individuals who suffer from gender dysphoria and wants them to have equal rights.

The College submits these tweets are derogatory because they reflect the type of erasure that the Respondent writes about – a belief that it is not possible to be transgender. The Panel interprets these tweets as the Respondent's description of her understanding of liberal feminism as it relates to the issue of transgender rights and her observation that those who do not believe in the "gender soul" are bigots who hate transgender people. Nevertheless, the Panel agrees that the statements which discount a mystical belief in a gender soul are a form of discriminatory erasure as they deny the existence of transgender people. However, the Respondent does not identify herself as a nurse or nurse educator in this series of tweets or in the immediately surrounding tweets.

Tabs 21 and 22

Tab 21 reproduces a page from the caWsbar website which lists the ten founding members of that organization (https://www.cawsbar.ca). The page describes the Respondent as follows:

> **Amy Eileen Hamm** is the co-founder of #GIDYVR. She is a registered nurse educator, occasional writer and mom with two boys.

This page which lists the Respondent as a registered nurse educator and co-founder of caWsbar must be considered in conjunction with the Position Statement downloaded from the organization's website at Tab 22. As outlined above, the caWsbar Position Statement asserts, amongst other things, that: (a) sex – as distinct from gender – is a material, biological reality; (b) there are only two sexes – male and female; (c) humans cannot change their sex; (d) gender identity and expression are culturally-based, stereotypical degrees of "masculinity" and "femininity"; (e) the concept of "gender identity and expression" does not negate the material, biological reality of women and girls who have sex-based rights enshrined in the *Charter* which rights must prevail over any concept of gender, and (f) the inclusion of males in the definition of "woman" under human rights legislation is regressive, unfair and perilous for Canadian women and girls. The Position Statement demands that spaces and resources "previously used only by women and girls continue to be sex-segregated". The College contends that the views expressed in the Position Statement are discriminatory and derogatory to transgender people. The Respondent testified that she did not author the Position Statement but was on the steering committee which endorsed it. The Panel finds that the Respondent's endorsement by identifying herself as a founding member of the organization is sufficient to attribute the views set out in the Position Statement to her.

Dr. Bauer testified the Position Statement reflects a simplified understanding of sex and gender that does not align with current medical or biological understanding. She agrees that sex is distinct from gender as a material biological reality but disagrees with the claim that there are only two sexes and that humans cannot change their sex. She suggests that this claim denies the possibility of transgender existence; however, she acknowledged that there is some general truth to the remaining caWsbar statements.

The Panel understands that the statement that there are only two sexes – female and male – is an oversimplification that does not align with current medical or biological understanding. However, the Panel is also cognizant of the fact that most people, who do not have Dr. Bauer's expertise, would consider there to be only two sexes. Stating there are only two sexes is not, in itself, discriminatory or derogatory to transgender people as it does not preclude the possibility of a transgender person transitioning to the opposite sex; rather, it is those statements which foreclose the possibility that a person assigned male at birth can transition to the female sex, or vice versa, that constitute discriminatory exclusion and erasure. The Panel therefore finds that the statement that there are only two sexes, without more, does not meet the threshold for discrimination.

The Position Statement asserts that "Gender identity and expression, which have yet to be defined in Canadian law, are culturally-based, stereotypical degrees of "masculinity" and "femininity" (e.g., men like hockey, women like fashion) and that "gender identity and expression" do not negate the material, biological reality of women and girls. The Panel accepts Dr. Bauer's evidence that "gender identity" reflects a personally held sense of one's gender as a man/boy, woman/girl, another cultural gender, trans, non-binary, etc. As such, the Panel does not agree with caWsbar's definition of gender identity or the statement that it does not negate the biological reality of women and girls. The Panel finds that these statements are discriminatory towards transgender people as they fail to acknowledge the personally held sense of gender that transgender individuals have and excludes them from the possibility of being women and girls.

The Position Statement asserts that "women's and girls' sex-based *Charter* rights must be strongly asserted and preserved in public policy" and "must take precedence over any concept of gender". It is clear from the context of this statement that it intentionally excludes transgender women and girls which is discriminatory. The position that the *Charter* rights of biological women and girls should supersede the rights of transgender women and transgender girls is also discriminatory as it suggests that constitutional rights based on gender identity and expression have a subordinate status which is not the case.

The Position Statement asserts that the "inclusion of males in the definition of 'woman' under federal and provincial Human Rights legislation (i.e. gender self-identification) is regressive, unfair and perilous for Canadian women and girls". The Position Statement then asserts "(w)e will no longer stand by and watch the hard-won rights and protections of Canadian women and girls be eroded through a confusion of sex with 'gender identity or expression'" and demands that spaces and resources previously used only by women and girls continue to be sex-

segregated. All of these statements are discriminatory as they suggest that transgender women pose a risk to cisgender women and girls and should be denied access to sex-segregated spaces that cisgender women and girls have access to. These statements are based on stereotypical assumptions associated with a group without proper regard to the individual attributes and characteristics of transgender women and girls within that group. The Respondent identifies herself as a registered nurse educator in relation to these statements in the list of founding members at Tab 21.

Tab 24

Pages 221 to 225 contain a copy of an article entitled "On feeling like a woman" which was posted online on July 7, 2018. In the article, the Respondent explains what it feels like to be a "woman" by reference to her feelings and experiences at different stages of her life. She describes learning an "unshakeable, dysphoric shame" in wanting an androgynous body that she will never have, adding that she recognizes that "no variation in body type would be an escape from the female sex". She concludes the article by observing, "'Woman' is not a feeling. 'Woman' just is". The biographical footer at the end of the article identifies the Respondent as a "mom, a registered nurse educator, and a freelance writer".

Dr. Bauer testified that it was the manner in which the Respondent uses the term "woman" which is of concern:

> A When she uses the term "woman" and explicitly states that it does not include trans women but in fact asserts that it only includes women whose sex is assigned at birth – and she doesn't clarify that she's only talking about them for a particular purpose, but if she actually is saying "When I say 'women,' I don't mean these people as well," she's – in the things that I read, it was clear that she was conflating gender, being a woman, with sex assigned at birth or sex as a female, and – and, therefore, in saying that trans women cannot be women, she's sort of conflating sex and gender, and that's inaccurate, And –
> …
>
> A And because in repeated times and places, it said within the context of speech that seems – that would appear to be not just assertive, but also --- I'm not sure what the right word is. It's disrespectful. Or – or intentionally negative or mocking. Then it would seem to me that this is using the term intentionally disrespectfully.

On cross-examination, Dr. Bauer observed that a "random statement … might not have any weight or effect, but when something is repeated over and over in the context of somebody who is known to hold particular views it may be understood differently as well". Later in her cross-examination, Dr. Bauer provided elaboration:

> A So as a researcher I have tied Ms. Hamm's comments to some of the ways we measure transphobia in terms of disallowing the possibility of trans existence. That's connected to cisnormativity in terms of mockery, being made fun of, in terms of being told that trans people aren't normal ... we're not talking about individual things when we talk about transphobia, we're talking about the combination of things. And so we saw those things happening multiple times in the context of somebody who declares herself as a participant in the gender wars"

Dr. Bauer acknowledged that saying "there are only two sexes" is not inherently transphobic but there are other ways language is used to disallow the possibility of trans existence.

This article is an introspective piece that explains the Respondent's personal views of what it means to be a "woman". The clear message conveyed in the article is that there is no ability for a person to become a woman if one is not born as a female. The Respondent asserts there is no "absconding" from female bodies. She denies the possibility that an individual born as a male can feel like a woman or indeed that such a feeling can exist as, in her words, there is "no incantation or initiation that can transcend our bodily reality".

The Panel finds the statement that "there is no absconding" from female bodies, the claim that the feeling of being a woman does not exist, and that there is no "incantation or initiation that can transcend bodily reality" without a female body are discriminatory to transgender women because they deny the possibility that individuals born into male bodies can feel and identify as women. This is precisely the type of erasure of transgender women which Dr. Bauer identified. The biographical footer at the end of the article identifies the Respondent as a nurse educator.

Tab 25

Pages 226 to 231 contain a copy of an article entitled "#BlockedbyBCTF: British Columbia Teachers' Federation and its president are blocking those who dissent on gender identity" which is dated February 3, 2019. In the article, the Respondent expresses anger that the BC Teachers Federation ("BCTF") blocked her Twitter account, noting that she is not alone as hundreds of other Twitter users – including parents and at least one public school teacher – also claim to have been blocked from viewing the accounts of BCTF and its president. The Respondent observes that "(r)egardless of one's perspective on gender, women, teachers, parents, and the public at large should not support or take seriously a public teachers' union using software targeting women slurred by unknown social media users. Especially considering the way "TERF" has been weaponized". The Respondent argues that the "dominant narrative surrounding transgender issues in Canada is one-sided and dangerously specious" and maintains that conversations "about gender should be ongoing". She suggests the BCTF's claims that it is "committed to communicating with parents about our public education system" and that "all teachers understand how important communication between school and home is to help the students we all care so much about" ring false; she maintains that the organization is "only interested in communicating with those parents who are in total agreement with their professed ideologies".

The biographical footer at the end of the article identifies the Respondent as a "writer and registered nurse educator".

The Panel finds the article focuses on the importance of having the ability to debate gender issues in schools. While the Respondent is identified as a nurse educator in the footer to the article, the views expressed in it are political in nature and do not discriminate against or degrade transgender persons.

Tab 26

Pages 232 to 237 contain a copy of an article entitled "McCarthyist throwback: BC NDP vice president announces intent to compile list of Canadians allegedly associated with 'hate groups'" which was published online on March 7, 2019. The article contains political commentary regarding the dangers of creating "lists" to identify and track Canadian citizens allegedly connected to "hate groups". The Respondent notes the vice president of the NDP, who identifies as transgender, has referred to radical feminists as Nazis and holocaust deniers and targets those who disagree with, or even just question, queer theory or gender identity ideology. She notes that the vice president's online comments characterize feminists who are critical of gender identity ideology as "popular extremists", noting that the vice president questioned whether she was "in cahoots with the Heritage Foundation and the Culture Guard". The Respondent suggests that the vice president's proposed project may contravene the *Personal Information Protection Act,* noting that she had attempted to contact the Information and Privacy Commissioner for British Columbia to comment on the invitation extended to participate in the project. She discusses the experience with McCarthyism in the 1950's, suggesting identity politics – including gender identity – have arguably consumed the current culture in a similar way that fear mongering around "communism" did in that period. The Respondent expresses fear that the vice president's intention is to instill fear and silence open political discussion. The article identifies the Respondent as a "writer and registered nurse educator" in the biographical footer.

The Panel finds that this article also focuses on the importance of free speech and the risks of silencing debate. While the article identifies the Respondent as a "registered nurse educator", it does not contain statements that are discriminatory or derogatory to transgender people.

Tab 27

Pages 238 to 244 contain a copy of an article entitled "Trans activists continue to pressure VPL to exclude feminists from booking rooms". There is no indication of the date that it was published online although it addresses events that occurred in January 2019. The article addresses the dispute that arose after "(t)rans activists attempted to force" the Vancouver Public Library ("VPL") to cancel a January 2019 GIDYVR event over claims that its speakers are transphobic, incite discrimination, and engage in hate speech. The Respondent noted the event organizers, which included herself, were able to keep the booking with the assistance of the Justice Centre for Constitutional Freedoms. She described statements by an activist with the Coalition Against Trans Antagonism ("CATA") which claimed that the VPL had lied and gaslighted the LGBT2Q+

community by stating they work to "reduce discrimination and create a welcoming environment". After referring to the views of other organizations regarding VPL's policy for booking meeting rooms and facilities, the Respondent states:

> If a conclusion can be drawn from the 25 letters sent to the VPL about their policy, it is this: While the activists opposed to free expression of feminist theory and defence of women's sex-based rights are loud – and while some have ways to punish and humiliate institutions such as by banning them from important events – they do not represent the majority of Canadians. Most of us recognize the crucial role public libraries hold in supporting a free and democratic society where all people, with a diversity of political views, are allowed to share their ideas.
>
> My hope for the activists attempting to silence Vancouver's gender critical women is that their frustrated attempts to coerce and bully a public library into arbiter of "acceptable" speech will be an opportunity for learning and growth; that they will find in their failed efforts a way to build tolerance for diverse views and resiliency to withstand disagreement. I hope they will come to understand that to disagree is not to hate, and that, while feminist speech is powerful, it does not have the power to erase anyone's existence. And if you listen closely, it might even elevate your own.

The Respondent is identified in the biographical footer at the end of the article as a "writer and registered nurse educator in New Westminster".

The Panel finds the focus of this article is also on free speech. The Respondent describes the attempts by transgender activists to stop the VPL from renting space for a GIDYVR event but focuses on the need for public spaces to express a plurality of political viewpoints. The article describes the actions that were taken and viewpoints from multiple perspectives. While the article identifies the Respondent as a nurse educator, it does not contain statements which are discriminatory and/or derogatory to transgender persons.

Tab 28

Pages 257 to 261 contain a review of a book written by Amanda Jette Knox entitled "Review: 'Love Lives Here - A Story of Thriving in a Transgender Family" which was posted online on November 20, 2019. In that review, the Respondent claims that Knox is "preaching from the gender pulpit". She observes that Knox's "screed" normalizes "the falsehood that babies can be 'born in the wrong body', or that humans can change their sex" and "promotes the lie that sexual orientation is an attraction to 'gender", rather than sex". The Respondent states that everyone "who believes in wrong bodies or innate genders – would rather devastate a child, telling him his father is not, in fact, his father, but (surprise!) has been someone else all along, than accept that men can look and behave and dress as "feminine" as they would like, and still be men". The Respondent concludes if "you can get through Knox's book without reaching the conclusion that gender identity ideology is going to go down as something akin to the Satanic Panic craze, then I

must inform you that you've been had. Lesbians don't have penises, a gender soul doesn't exist, men cannot literally become women, and for the love of god, please leave children out of this". The Respondent is identified in the biographical footer at the end of the book review as a "writer and registered nurse educator".

The Panel finds the Respondent's statements regarding "the falsehood that babies can be 'born in the wrong body' or that humans can change their sex", that everyone "who believes in wrong bodies or innate genders" would rather devastate a child, that men cannot change, that gender identity ideology is akin to a "Satanic Panic craze", that lesbians do not have penises, that a gender soul does not exist, and that men cannot literally become women are discriminatory to transgender people because they effectively deny the existence of transgender people. As well, the Panel finds the statements that suggest that transgender people would rather harm a child than acknowledge that men cannot change, and that gender identity ideology is analogous to a Satanic craze are derogatory to transgender people. The Respondent is identified as a nurse educator in the biographical footer at the end of the article.

Tab 29

Pages 273 to 275 contain a copy of an article entitled "Women's Liberation Front holds sold-out event at Seattle Public Library despite bomb threat, interruptions, arrests" which was posted online on February 3, 2020. The article describes attempts made by a group of men to shut down an event at the Seattle Public Library ("SPL") organized by the Women's Liberation Front. The Respondent recounts that men shouted, "'Go back to Canada!' towards Canadian writer and speaker Meghan Murphy, and 'Trans rights are human rights! Trans women are women!'". She observed that approximately a dozen Seattle police officers had to move towards the disruptive men who refused to move. While the event continued, a protest "raged on" outside with approximately 200 protesters who could be heard shouting, "TERFs go home!" Some of those protesters shouted insults at women exiting the library at the end of the event. The Respondent states, "(p)ublic displays of anger, threatening behaviour, verbal abuse, and even violence directed at women wanting to meet and discuss their rights should astonish us all in 2020, in the West" but notes this conduct is "commonplace". The Respondent is identified in the biographical footer at the end of the article as a "writer and registered nurse educator".

The article recounts the protesters' actions at the Seattle Public Library event. The Respondent expresses concern regarding the displays of anger, threats, abuse, and violence directed at women who meet to discuss their rights. Although the reference to women is clearly intended to refer to cisgender women, the context is not sufficient to raise the statements to the threshold for discriminatory and/or derogatory statements to transgender people. The Respondent identifies herself as a "nurse educator" in the article.

Tab 31

Pages 284 to 285 contain a copy of an article entitled "Jessica Yaniv appears in Court, confronts Post Millennial reporter" which is dated January 13, 2020. In the article, the Respondent reports

that "(n)otorious trans activist Jessica Yaniv appeared in a British Columbia court today where she faced two counts of possession of a prohibited weapon violating the *Firearms Act*" and accused her (the Respondent) of taking photographs of her in the women's washroom. The Respondent explains that when she entered the women's washroom and noticed Yaniv was there, she quickly left. She said police responded to Yaniv's false claim by searching her phone only to discover that she had not taken any photographs. The Respondent stated that, "(h)e yelled at me that he was going to charge me with 'voyeurism'". She reports that the Court rejected Yaniv's application for a publication ban based on alleged "harassment".

The article focuses on what occurred at and outside a court hearing. The Respondent refers to Yaniv twice as "he". The Panel finds that it is reasonable to infer that the Respondent intentionally misgendered this transgender woman. Deliberate misgendering is discriminatory to transgender people as they have the right to have their identity recognized. However, the article does not identify the Respondent as a nurse or nurse educator. As well, the Panel noted the statement at the outset of the article cautioning that it "was published more than 1 year ago, information might not be accurate".

Tab 32

Pages 288 to 289 contain a copy of an article entitled "Who is feminism for? Probably not you" dated March 4, 2020. This article uses sarcasm and extreme examples to suggest what real "feminism" does not include, such as "prostate owners who can't get pregnant", "mothers who donate semen", "people who are terrorized by hairdressers asking what their genitals look like", "people who don't centre lady dick", and "ladies with hairy testicles". She suggests that the words "vagina; vulva; uterus; woman; mother; and biology" are "dog-whistles" for anti-feminist hate speech and states that everyone knows there is no such thing as a "mythical biological female".

The Panel finds that all of the statements referenced in the foregoing paragraph are discriminatory and derogatory to transgender people as they convey stereotypical and deeply offensive and disparaging mischaracterizations of transgender women. The demeaning language used by the Respondent appears to be calculated to evoke shock and a sense of disgust towards members of the transgender community. As well, the statement that "(e)veryone knows there's no such thing as the 'mythical biological female'" constitutes erasure of transgender women as it suggests that it is universally recognized that only biological females exist and thereby argues that a male assigned at birth cannot change their sex. However, the Respondent does not identify herself as a nurse or nurse educator in the article.

Tab 35

Pages 308 to 312 of the Extract contain a copy of an article entitled "I'm a Feminist Mother. But I don't need a 'Feminist Birth'", which was posted online on August 20, 2019. In this article, the Respondent describes her views regarding movements which are critical of the over-medicalization of the birthing process. She makes the case that, having worked as a registered nurse for almost a decade, she would rather have a medicalized birth with a physician at her side.

She explains that the best feminist response to the risks associated with pregnancy and childbirth is to demand improvement to existing medical models rather than to opt out in favour of a "feel-good" alternative. The Respondent refers to the "scientific fact that only female persons can become pregnant". She expresses skepticism about organizations that throw themselves "behind ideological trends", with reference to the Midwives Association of British Columbia website which states that it caters to "*all people* who are pregnant" (Emphasis in original). The Respondent observes this nod to transgender activists "may seem like a small, well-intentioned gesture" but "says a lot about the organization's priorities. Pregnancy and birth are female health issues, full stop".

Dr. Bauer testified that she does not believe that using two rigid categories such as "male" and "female" defined by gametes is adequate. She testified the concern is not about the common use of "male" and "female" but rather using those terms to say there is no space for another group of people to exist. She stressed the importance of considering the different dimensions of sex and gender from a health perspective. Dr. Bauer acknowledged it is not necessarily discriminatory to state there are two sexes recognizing that many people say that in common language but referred to the ways in which language is used to disallow the possibility of transgender existence.

This article is not focused on gender ideology or gender identity issues *per se*. The only passages of concern for this hearing are the Respondent's reference to the "scientific fact that only female persons can become pregnant" and the assertion that "(p)regnancy and birth are female health issues, full stop". The Panel recognizes the lack of nuance and inclusivity in the Respondent's language gives rise to the concern identified by Dr. Bauer above, specifically that certain use of the term "female" in the article leaves no space for another group of people who may identify differently to experience pregnancy and birth. However, Dr. Bauer also acknowledged the common usage of the terms "male" and "female" in a non-discriminatory manner. In the overall context of this article, the Panel finds those statements were not discriminatory and/or derogatory to transgender persons. The Respondent identifies herself as a nurse and registered nurse in the article.

Tab S3

Pages 1 to 20 contain a transcript of a YouTube interview of the Respondent. The interview, which is entitled "The Same Drugs Live with Amy Hamm on I heart JK Rowling", was conducted on September 14, 2020. The Respondent introduces herself at the outset of the interview as a nurse and a mom and as someone who has been involved in the "Gender Wars" for quite a few years. The Respondent explains, amongst other things, that J.K. Rowling lays out the concerns that gender critical feminists have and why such women are not transphobic. She is asked why the billboard focuses on J.K. Rowling. The Respondent explains that she was trying to draw attention to the issue as "a lot of people that don't know what going on" and that "for people who aren't really aware of Gender Wars, to see such an incredible backlash when something that is so innocuous as like I heart JK Rowling goes up, I think it will really turn a lot of heads and change a lot of minds". The Respondent states the billboard "had the intended effect, because look at all

the conversation that's going on… and starting a conversation about gender identity ideology". She notes that it was not until they posted photos of the billboard and shared it on Twitter that the "outrage started". When asked if people would not have necessarily construed the billboard as transphobic if it had not been posted on social media, the Respondent states in part:

> 8.43 AH … maybe what that reveals is that it really is just a small minority of activists in Vancouver that cause so much outrage if you could have it up for almost an entire working day. And how many I don't know how many 1000s of people drive down Hastings Street during business hours, but to not have any of those people feel outraged enough to take a picture or go on Twitter and say, Holy shit, this transphobic sign is up. I think shows that really, like we say quite frequently the people that have taken control of the narrative and have taken control of the institutions and are making everyone go along with gender identity ideology. It's a small minority of really loud activists.

The Respondent denies that feminine men need protection on the basis of gender:

> 8.64 AH … if you're a feminine man, you should be protected on the basis of your sex. I don't know why they're to me, there's no reason that you should have to be recognized literally as a woman or legally as a woman to have legal protections. It's I think our sex covers discrimination. It just kind of muddies the water to add gender. When you add gender it renders sex meaningless.

The Respondent states towards the end of the interview that "we know that most people know what a woman is" and most Canadians, if they are told what is going on, agree with them.

Dr. Bauer addressed the impact of the Respondent linking nursing to her involvement with the "gender wars". She explained that having someone "position themselves as a healthcare professional while demonstrating a really very, very deep involvement in work that opposes trans rights… would make people concerned that they are going to be treated fairly". Dr. Bauer also addressed the Respondent's comment that feminine men do not need protection based on gender. She observed the Respondent is referring to transgender women as feminine men and saying that people who "we are currently recognizing as women are in fact feminine men and that that should be protected under sex, which is interesting because if we were to look at femininity in cismen, the femininity is gender expression". Dr Bauer observed that referring to transgender women as feminine men is "disallowing the possibility of trans people existing. It's saying you're not who you say you are, you're a man. I'm going to define you as a man".

The College submits that the quote at line 8.64 is discriminatory because transgender people do not exist without gender identity based on the Respondent's view except as men with mental illnesses. As well, the College points out that each time the Respondent characterizes issues about women and girls, she only means "cisgender" women and girls which implicitly excludes or erases transgender women.

The Panel agrees that the statement at line 8.64 is discriminatory and derogatory to transgender women. The suggestion that there is no reason that a transgender woman should have to be recognized as a woman to have legal protections is effectively advocating for the denial of legal protections to transgender women based on gender, including the right to be recognized as the gender they identify as. This is contrary to the law which protects individuals based on gender identity and gender expression. The reference to the people who have "taken control of the narrative and have taken control of institutions" would reasonably be interpreted as people in the transgender community. The suggestion that they have taken over the narrative and taken over institutions to force everyone to accept their gender identity ideology is discriminatory and derogatory as they are critical of those transgender individuals. They are comments which appear to designed to adversely impact the public's perception of transgender people and lower their standing and reputation in the community. The Respondent identified herself as a nurse in the interview.

Tab S5

Pages 96 to 110 contain a transcript of a YouTube interview entitled, "The Same Drugs Interview – Amy Hamm and Meghan Murphy on #GIDYVR" which was conducted on "Sat. 3/19". The Respondent references struggling to understand "what is illogical about believing that or knowing that humans can't literally change their sex". The Respondent denies that scheduled events had incited discrimination or caused violence, noting that the speakers want "trans people to live lives that are free of harassment and discrimination" and would be "willing to stand up and fight alongside trans people" to make sure they do not suffer violence and discrimination. She observes that "(w)e're just talking about women's rights and putting up boundaries so that women maintain their rights".

The Panel finds the Respondent appears to conflate "gender" with "sex" in her comments during the interview. While it is correct to say that sex assigned at birth cannot change, the Respondent's use of the term "women's rights" in the context of this discussion deliberately excludes transgender women. This is the type of erasure that Dr. Bauer testified about. However, the Respondent did not identify herself as a nurse or nurse educator in the interview. The Respondent's statement that she "went to nursing school" is not sufficient to identify her as a nurse or nurse educator as alleged by the Citation.