

Christian Naggar et al v The Student Association at Durham College and UOIT

Jesse Cullen
on Friday, March 18, 2016

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Court File No. 94577/16.

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

CHRISTIAN NAGGAR, EMILIE HIBBS, JOSHUA HAVILAND,
CHRISTIAN BROWN, KATHLEEN HEPWORTH, ALEXANDRA BROWN
and KASSIA ALMEIDA

Applicants

- and -

THE STUDENT ASSOCIATION AT DURHAM COLLEGE AND UIOT
Respondents

--- This is the Cross-Examination of JESSE CULLEN,
upon his affidavit sworn March 10, 2016, taken at
the offices of Neeson Court Reporting Inc., 141
Adelaide Street West, Suite 1108, Toronto, Ontario,
M5H 3L5, on the 18th day of March 2016.

1 A P P E A R A N C E S :

2 Marty Moore, Esq., for the Applicants

3
4 Andrea Sanche, Esq., for the Respondents

5
6 Also Present: Christian Naggar

7
8 REPORTED BY: Lorraine Fedosoff, Court Reporter

I N D E X

WITNESS: JESSE CULLEN, Affirmed

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CROSS-EXAMINATION BY MR. MOORE..... 5

**The following list of undertakings, advisements
and refusals is meant as a guide only for the
assistance of counsel and no other purpose**

INDEX OF UNDERTAKINGS

The questions/requests undertaken are noted by U/T
and appear on the following pages: None

INDEX OF ADVISEMENTS

The questions/requests taken under advisement are
noted by U/A and appear on the following pages:
None

INDEX OF REFUSALS

The questions/requests refused are noted by R/F
and appear on the following pages: 10:7, 11:8,
13:22, 21:3, 23:21, 29:23, 30:24, 33:15, 34:15,
41:8, 50:4, 65:7, 82:11, 94:3

INDEX OF EXHIBITS

NUMBER/DESCRIPTION

PAGE NO.

(None Marked)

1 --- upon commencing at 9:05 a.m.

2 JESSE CULLEN: Affirmed

3 CROSS-EXAMINATION BY MR. MOORE:

4 1 Q. Good morning, Mr. Cullen.

5 A. Good morning.

6 2 Q. Could you state your name for the
7 record, please?

8 A. Yeah, it's Jesse Cullen,
9 J-E-S-S-E, C-U-L-L-E-N.

10 3 Q. Okay. And you have affirmed this
11 morning to tell the truth to the best of your
12 abilities?

13 A. I have.

14 4 Q. All right. And on March 10th you
15 swore an affidavit in this matter -- or affirmed an
16 affidavit in this matter, and at that time the
17 contents of that affidavit were true to the best of
18 your knowledge?

19 A. They were.

20 5 Q. So I'll be asking you some
21 questions on that affidavit today. I'll be
22 referring to Speak for the Weak, and you understand
23 what that means?

24 A. I do.

25 6 Q. And I'll also be referring to the

1 SA, which you understand will mean the Student
2 Association of Durham College and UIT [sic]?

3 A. Yes.

4 7 Q. Okay. Let's turn to your
5 affidavit at paragraph 7, and this paragraph
6 describes a relationship between UIT and Durham
7 College and the SA, and the third sentence in that
8 paragraph states:

9 "Neither Durham College nor UIT
10 has any control over the SA's
11 activities and internal dealings."
12 Did I read that correctly?

13 A. Yes.

14 8 Q. Okay. You are aware that the SA
15 has agreements with UIT and Durham College;
16 correct?

17 A. Yes.

18 9 Q. And you're aware that the SA has
19 obligations under those agreements with the UIT and
20 Durham College?

21 A. Yes.

22 10 Q. And that the SA, if it wishes to
23 continue receiving the funding from Durham College
24 and UIT, needs to comply with those obligations?

25 A. Yes.

1 11 Q. Okay. And I understand that the
2 SA consults with Durham College and UIT on various
3 matters as well?

4 A. Yes.

5 12 Q. And in regards to the particular
6 matter at issue, the SA consulted with both Durham
7 College and UIT concerning the application of Speak
8 for the Weak?

9 A. Yes.

10 13 Q. Did you consult personally there
11 with those representatives?

12 A. Yes.

13 14 Q. When did that happen?

14 A. That would have been shortly after
15 we received the escalation from the clubs and
16 societies department. So that would have been in
17 August, but I don't have the specific date offhand.

18 15 Q. Okay. And you met with a
19 representative of Durham College. Do you recall
20 the nature of that conversation, and what did you
21 ask them and what did they --

22 A. There -- I believe there was
23 actually several folks in the room from Durham
24 College and UIT. It was in our boardroom at the
25 student center.

1 I believe Allison Alexander-Hector --
2 or Hector-Alexander, who's the diversity inclusion
3 and transitions, I think, coordinator is her title
4 -- but I could be wrong -- was in the room; Meri
5 Kim Oliver was there, who's the VP of student
6 affairs; Olivia Petrie was there as well from the
7 UIT side for VP of student life, and I believe Brad
8 MacIsaac was there as well as the registrar for
9 UIT.

10 And sorry, do you -- can you please
11 repeat the second half of that question?

12 16 Q. No, that -- I appreciate that
13 answer, yeah. The second half of the question,
14 just asking what were you asking these individuals,
15 who I understand now included both UIT and Durham
16 College representatives in the same meeting;
17 correct?

18 A. Yes.

19 17 Q. Okay. So what did you ask them?

20 A. It was less about asking and more
21 about informing them that we had received this
22 application and wanted to get their perspective on,
23 you know, what the institutions allow in terms of,
24 you know, their policies and procedures, and we're
25 informing them that as the application, as we've

1 received it, our position was that we were seeking
2 not to ratify, but we wanted to ensure, as you've
3 mentioned it in our memorandum of understandings
4 with both schools and in the policies and
5 procedures of Durham College, that in making that
6 decision we weren't in violation of our agreements
7 with the institutions.

8 18 Q. Okay.

9 A. And they ensured us that our
10 decision was our decision and that we were not, in
11 fact, in violation.

12 19 Q. How long did that meeting last?

13 A. No more than 20 minutes, 15,
14 20 minutes.

15 20 Q. Okay. So Durham College assured
16 you that you were not in violation of any Durham
17 College policies in making a decision not to grant
18 the application of Speak for the Weak?

19 MS. SANCHE: Well, you're misstating
20 what the witness said --

21 MR. MOORE: Oh, sorry.

22 MS. SANCHE: -- but he can agree or
23 disagree with your misstatement.

24 BY MR. MOORE:

25 21 Q. Did Durham College indicate to the

1 SA at this meeting that the SA was not -- would not
2 be violating any Durham College policies by not
3 granting the application of Speak for the Weak?

4 MS. SANCHE: He already answered that.

5 MR. MOORE: He answered that for both.

6 So I'm confirming it for --

7 R/F MS. SANCHE: You don't need to confirm
8 it. He answered your question. Whether it was for
9 both or one in the answer, it was confirmed. He's
10 not going to repeat himself.

11 It's a refusal. If you believe the
12 record doesn't show that he answered it -- I
13 believe it does because I took notes -- then we can
14 deal with it on a motion.

15 MR. MOORE: Thank you, counsel.

16 BY MR. MOORE:

17 22 Q. Did Durham College indicate
18 whether they had any policies that applied to the
19 ratification process of a student group via SA?

20 A. No.

21 23 Q. Did UIT indicate that they had any
22 policies that applied?

23 A. No.

24 24 Q. If the SA refuses to recognize a
25 student club, that impacts the recognition that

1 a -- that the college or UIT will give that student
2 club as well; correct?

3 A. Sorry, can you repeat the
4 question?

5 MS. SANCHE: Well --

6 BY MR. MOORE:

7 25 Q. Sure. Let me direct you to --

8 R/F MS. SANCHE: -- it's a hypothetical,
9 and I'm not going to have you answer ifs or...

10 BY MR. MOORE:

11 26 Q. Let me look at your affidavit
12 here. At paragraph 7 you state:

13 "For example, in its
14 recognition of student organizations
15 policy, Durham College confirms that
16 no organization has the right to
17 exist or continue to exist without
18 the SA's express recognition."

19 Did I read that correctly?

20 A. Yes.

21 27 Q. So do I understand correctly that
22 without the SA's express recognition, Durham
23 College recognizes that that organization doesn't
24 have the right to continue to exist without that
25 express recognition?

1 A. Not exist as an SA club.

2 28 Q. Okay. Or not exist as a
3 recognized student organization?

4 A. Yeah, so a recognized student
5 organization is defined in Exhibit "D", which,
6 again, I don't have their policies memorized off by
7 hand, but they would recognize them as a student
8 organization as defined as by their policies, which
9 would be a student club or society.

10 29 Q. The SA has enacted a lot of its
11 own policies governing student clubs; correct?

12 A. Yes.

13 30 Q. And how does the SA enact those
14 policies?

15 A. So our by-laws dictate that the
16 executive committee initiates policy, and those
17 policies are approved by the board of directors.

18 31 Q. Okay. And in consulting, what
19 kind of consultation process do you go through in
20 determining whether your policies are appropriate
21 for the SA to enact?

22 A. What kind of consultation process?

23 32 Q. Yeah, does the SA executive just
24 consult with itself, or what kind of resources or
25 guidance does the SA --

1 A. So the executive committee is made
2 up of all elected representatives in addition to
3 having our general manager and operations manager
4 who sit on that committee.

5 So that committee as a whole is
6 responsible for initiating that -- any policy.
7 That consultation process could look any number of
8 ways depending on the issue or the type of policy
9 we were -- be -- would be to -- be initiating,
10 right.

11 So the executive committee is able to
12 call in, you know, other staff members within the
13 Student Association for that consultation process,
14 we're able to consult with stakeholders on campus,
15 be it Durham College or UIT or other campus
16 partners, and of course any research we may do on
17 --

18 33 Q. Okay.

19 A. -- a particular issue.

20 34 Q. What kind of documents and --
21 yeah, documents do you consult in making policies?

22 R/F MS. SANCHE: It's too broad a question,
23 counsel, and I want it to relate to the litigation
24 at issue. You can't ask him questions about their
25 garbage policy. It's irrelevant.

1 MR. MOORE: No, no, we're talking about

2 --

3 MS. SANCHE: You are not.

4 MR. MOORE: This is relating to the
5 litigation.

6 MS. SANCHE: Your question is not
7 related to the litigation. If you ask a question
8 related to the litigation he will answer it, but
9 I'm warning you that the rest of the day will be
10 comprised of my objecting to questions that are
11 overly broad.

12 MR. MOORE: Okay.

13 MS. SANCHE: He doesn't have to answer
14 how their policies work generally. If you want to
15 ask about policies relating to this litigation that
16 makes sense to me, but the rest of it is just --

17 MR. MOORE: I will --

18 MS. SANCHE: -- broad, overly broad.

19 MR. MOORE: -- take that into
20 consideration when phrasing these questions,
21 counsel. Thank you.

22 MS. SANCHES: Thank you.

23 BY MR. MOORE:

24 35 Q. In regards to enacting policies
25 that govern the recognition of campus clubs, does

1 the SA consult with its own internal documents and
2 what documents does it consult with in that case?

3 MS. SANCHE: This is again a general
4 question. Are there policies specifically that you
5 want him to discuss? Because you're talking about
6 general policies. If you can point out the
7 policies you're asking about?

8 MR. MOORE: I'm talking specifically
9 about policies relating to the recognition of
10 campus clubs.

11 MS. SANCHE: So which policies are
12 those? And we can discuss them and he can answer
13 questions on them.

14 BY MR. MOORE:

15 36 Q. You have, I believe, listed in
16 your affidavit campus club policies. You have the
17 campus clubs procedure here listed at Exhibit "I".
18 Do you know what process was used in enacting this
19 policy?

20 A. I was not on the executive at the
21 time of the enactment of this policy.

22 37 Q. Are you familiar with what process
23 was used?

24 A. I'm not.

25 38 Q. Okay. Have you or your current

1 executive team put forward any policies that relate
2 to campus clubs?

3 A. No.

4 39 Q. Or the funding of campus clubs?

5 A. No.

6 40 Q. Could I draw your attention to
7 what was marked as an exhibit in the affidavit --
8 in the questioning of Reina Rexhmataj yesterday?
9 It's a draft minutes.

10 MS. SANCHE: Her Exhibit "A"?

11 MR. MOORE: Yeah, Exhibit "A".

12 MS. SANCHE: From the word -- is it
13 draft --

14 MR. MOORE: Draft -- it's an agenda, I
15 believe.

16 MS. SANCHE: January 15, 2016?

17 MR. MOORE: Yes.

18 MS. SANCHE: Okay. And I don't have
19 another copy.

20 MR. MOORE: I actually have one
21 somewhere.

22 MS. SANCHE: Do you want to look at
23 this one to ask your questions?

24 MR. MOORE: Thank you.

25 BY MR. MOORE:

1 41 Q. One of the policies in this
2 agenda, which I understand was put forward on
3 January 15th, 2016, is a policy entitled "The
4 Feminist Framework Policy".

5 Did you and your executive team approve
6 that feminist framework policy to be submitted to
7 the board?

8 A. Yeah, it was discussed among the
9 executive team and then it was forwarded to the
10 board for approval. It was actually written in
11 consultation with our student rights and advocacy
12 coordinator at the time.

13 42 Q. But all the board members approved
14 of this policy to send it to the -- or all the
15 executive members had to approve of this policy in
16 order for it to be sent to the board?

17 A. There's no formal approval process
18 because it's about initiating policy. So the
19 approval process lies at the board of directors
20 level.

21 43 Q. Okay. So it was simply discussed
22 in a meeting, then, with all the executive members
23 who had the opportunity to give input into this?

24 A. Absolutely.

25 44 Q. And you had the opportunity to

1 give input into --

2 A. Yes.

3 45 Q. -- this policy? In your role in
4 the executive did you consult with any documents of
5 the SA in considering this policy or putting --
6 giving input into this policy?

7 A. Could you be more specific?

8 46 Q. Did you consult with your SA
9 by-laws?

10 A. Yes.

11 47 Q. Did you consult with your SA
12 letters patent?

13 A. Yes.

14 48 Q. Did you consult with UIT
15 documents?

16 A. No.

17 49 Q. Did you consult with Durham
18 College documents?

19 A. No.

20 50 Q. Do you know if anyone else on the
21 SA executive consulted with Durham College
22 documents?

23 A. I don't know.

24 51 Q. Okay.

25 MS. SANCHE: Did you want to mark it as

1 an exhibit to this examination as well?

2 MR. MOORE: I feel it's fine if it's
3 marked in one unless you --

4 MS. SANCHE: No, no, I think we --
5 there's only -- there's few exhibits. I think
6 we'll be okay.

7 BY MR. MOORE:

8 52 Q. If I could turn to Exhibit "E" of
9 your affidavit, and then at page 6 of that Exhibit,
10 page 54 of the application record, at the bottom of
11 the page it states "Compliance with College Rules
12 and Policies". It states that:

13 "The Student Association
14 acknowledges and agrees that it
15 shall be bound by, comply with and
16 shall not enact any policies, rules
17 or by-laws that conflict with the
18 regulations, rules, policies and
19 by-laws of the College as may be
20 amended, revised or adopted in the
21 sole direction of the college from
22 time to time."

23 Are you aware or were you aware of that
24 particular provision?

25 A. Yes.

1 53 Q. And does the SA comply with that
2 particular condition -- provision?

3 A. Yes.

4 54 Q. At what point was the policy that
5 we were just discussing, the feminist framework
6 policy, going to be evaluated against the policies,
7 rules and by-laws of Durham College?

8 MS. SANCHE: Before we go on, counsel,
9 I don't -- I allowed you to ask questions on the
10 policy, but I don't understand its relevance to the
11 litigation.

12 So perhaps you can identify that before
13 we continue to discuss the feminist framework
14 policy or any other policy that has been proposed
15 in an agenda --

16 MR. MOORE: Yeah --

17 MS. SANCHE: -- that was subsequent to
18 the ratification denial of your client's proposed
19 organization.

20 MR. MOORE: Sure, counsel. I think it
21 speaks to the executive and their thoughts and
22 beliefs on this matter.

23 It also speaks to the application of
24 Speak for the Weak in the sense that this is an
25 organization that does want to have club status at

1 -- in the SA, and this is a policy that could
2 potentially impact that club status.

3 R/F MS. SANCHE: Well, there is a lot of
4 policies that could impact that -- impact club
5 status period, including, for instance, presumably
6 the anti-racism policy. But at the same time,
7 that's all prospective, and we're talking about an
8 event that occurred in August of 2015 when this
9 policy was not in existence. So I don't think I'm
10 going to allow any more questions on it for that
11 reason.

12 And as noted in the title and style of
13 cause, the Student Association is the respondent,
14 not the SA executive and not any individual
15 members. So I don't really see the relevance.
16 So I'm not going to allow any more questions. You
17 can ask them; I'll refuse them. You may want to
18 ask them to have them on the record, but we're not
19 going to continue to go down prospective paths
20 instead of retrospective paths.

21 MR. MOORE: I think the mindset of the
22 SA executive apart from any prospective
23 implications of these policies is relevant to this
24 action.

25 MS. SANCHE: Well, I disagree. But

1 more importantly, even if it were the case, it
2 wouldn't be relevant as of January 2016.

3 MR. MOORE: Well, let's continue on
4 here and we'll just work through this.

5 BY MR. MOORE:

6 55 Q. Let's turn to paragraph 14 of your
7 affidavit. You reference in this paragraph the
8 SA's statement of principles and, in particular,
9 you reference the goal -- I'm just reading here:

10 "Its goal is to work toward
11 building an environment free of
12 systemic societal oppression and
13 decolonization and to do all other
14 things that are incidental or
15 conducive to these purposes."

16 That is one of seven principles that
17 guide the SA; correct?

18 A. Correct.

19 56 Q. And those principles, the SA must
20 comply with all seven of those principles; correct?

21 A. Yes.

22 57 Q. And the SA can't comply with one
23 of those principles to the exclusion of the others
24 or any of the other principles?

25 A. My interpretation, they have to be

1 -- they all have to be met for us to fulfill our
2 mandate as an organization.

3 58 Q. Okay. Thank you. And then to
4 understand what the principles mean, systemic
5 societal oppression is a statements both in the
6 by-laws and within the letters patent of the SA.
7 So it's an important principle and it's referenced
8 throughout your affidavit.

9 When you refer to that principle in
10 your affidavit, what do you mean by "systemic
11 societal oppression"?

12 MS. SANCHE: Sorry, what Mr. Cullen
13 means?

14 MR. MOORE: Yes, obviously in his
15 capacity in which he's swearing this affidavit.

16 MS. SANCHE: So you want him to
17 interpret personally what societal oppression means
18 to him?

19 MR. MOORE: In his position as the
20 president of the SA.

21 R/F MS. SANCHE: Well, I don't think I'm
22 going to let him answer that.

23 BY MR. MOORE:

24 59 Q. Would you agree that there's
25 potentially different interpretations of what

1 systemic societal oppression could be?

2 A. No.

3 60 Q. There's only one interpretation of
4 what systemic societal oppression is?

5 A. There's different interpretations,
6 but I wouldn't agree that all of them are correct.

7 61 Q. Okay. So there's only one correct
8 interpretation of systemic societal oppression?

9 A. Yes.

10 62 Q. And that is the interpretation of
11 the SA executive?

12 A. No.

13 63 Q. Who determines what is that
14 correct interpretation of systemic societal
15 oppression?

16 A. Scholars, academics, marginalized
17 groups who experience oppression.

18 MS. SANCHE: Sorry, in what context,
19 counsel, do you mean?

20 MR. MOORE: In the context of how that
21 term applies to the matters in this case.

22 BY MR. MOORE:

23 64 Q. Does the SA seek to gain the
24 interpretation of the scholars, academics and
25 marginalized groups and apply that interpretation

1 of what systemic societal oppression is to create
2 the anti-oppression lens with which it views the
3 Speak for the Weak application?

4 A. Yes.

5 65 Q. Would you be able to point me to
6 who those scholars, academics and marginalized
7 groups are or how the SA gained their perspective?

8 A. So if you want me to kind of
9 recite a whole body of literature, I don't know if
10 that's --

11 MS. SANCHE: I don't think that's
12 relevant.

13 THE WITNESS: I don't think that's
14 possible at this moment in time. So maybe is there
15 a way to reframe that question so I can provide an
16 answer? Because I think --

17 BY MR. MOORE:

18 66 Q. Sure. How did the SA gain that
19 perspective? You can just -- don't have to cite
20 everything they did.

21 A. Right. So in particular, when we
22 hire folks who, as an example, work at Outreach
23 Services, right, who operate our women's centre,
24 food bank, sexual health resource centre, our LGBTQ
25 centre, we look for folks who have come from a

1 background. So anti-oppression actually is, in
2 part, part of the social worker mandate, right.

3 So my partner's actually a social
4 worker, and those who have been educated in that
5 practice and who have the background and
6 educational, you know, requirements necessary to
7 carry out our anti-oppression mandate are sought to
8 fulfill those roles within our organization to
9 ensure that we're, you know, abiding by our
10 mandate.

11 67 Q. Okay. So those people bring the
12 perspective with them given their backgrounds,
13 which you seek out, and that perspective is then
14 adopted by the SA executive in making its
15 decisions?

16 A. Yeah, that practice. I wouldn't
17 -- yeah, the practice is adopted.

18 68 Q. Okay. The practices, would those
19 be guidelines for safe space and those kind of --
20 is that what you're referring to by "practices"?

21 A. Sorry, I'm --

22 69 Q. Referencing the affidavit of
23 Rihanna -- or Reina, sorry --

24 A. Reina.

25 70 Q. -- which I assume you've read?

1 A. Yes.

2 71 Q. She mentions SA's commitment to
3 positive spaces. Is that what you reference by
4 practices, adopting practices?

5 MS. SANCHE: Well, you're asking him
6 about another person's affidavit. If you want him
7 to speak on it, you should put it in front of him
8 because I don't actually think that's what she
9 said.

10 BY MR. MOORE:

11 72 Q. Okay. To your knowledge, does the
12 SA have a positive space mandate?

13 A. Outreach Services does positive
14 space training with volunteers and staff in
15 addition to anti-oppression training.

16 MS. SANCHE: And counsel, I don't know
17 what you mean by "mandate". We have the statements
18 of principles. So there are -- they've been
19 discussed at length, the principles, and we can
20 look at them, and if there's an anti-space
21 principle, then that, I suppose, could make it a
22 mandate, but I don't quite understand what you mean
23 by "mandate" and I don't think it's fair to ask the
24 witness without explaining what that word means.

25 BY MR. MOORE:

1 73 Q. Okay. Let's turn to the affidavit
2 of Reina, which is tab 2 of the application record,
3 and then paragraph 2 and section -- subsection (b),
4 and it states:

5 "Within her responsibilities
6 are to ensure -- ensuring that all
7 activities and endorsements of the
8 board reflect the anti-oppressive
9 and positive space mandate of the
10 SA." [As read]

11 Would you agree that the SA has a
12 "positive space mandate"?

13 A. It's in the by-laws. So yes.

14 74 Q. Okay. And in regards to what you
15 mentioned about practices, is -- do the practices
16 that you reference include the practices that
17 ensure a positive space?

18 A. Yes.

19 75 Q. Does the SA enforce the
20 perspective of what systemic societal oppression is
21 on its recognized clubs and any clubs seeking to
22 become recognized clubs?

23 A. Define "enforce". What is -- what
24 do you mean by "enforce"?

25 76 Q. Does it require them to adopt the

1 SA's view of what systemic societal oppression is?

2 A. So all clubs go through -- and
3 this is actually something that our clubs
4 department implemented, you know, in the past
5 couple years through the leadership conference
6 every summer.

7 It has to go through an anti-oppression
8 workshop as part of the ratification process, and
9 so of course the SA cannot enforce anyone to adopt
10 any belief or value, but we do require as a
11 mandate, as part of the club training that takes
12 place, you know, in compliance with what our
13 by-laws state.

14 77 Q. Okay. So they all must take this
15 club training to get exposed to the SA's view of
16 what societal -- systemic societal oppression is,
17 but the SA will not enforce them to adopt that.

18 But in the club's own documents or
19 application in the club's own mandate, will the SA
20 require that that club's mandate reflect the SA's
21 commitment to ensure an environment free of
22 systemic societal oppression?

23 R/F MS. SANCHE: Counsel, that's not a
24 proper question. There are a lot of assumptions
25 built in there that are, I guess, supposed to be

1 repeating back what he said, but they aren't
2 accurate and I'm not going to have him answer it.

3 MR. MOORE: Okay. Let me --

4 MS. SANCHE: If you want to ask a
5 narrow question that's fine, but he didn't say that
6 they're exposing clubs to their views or anything
7 like that, and I don't think it's fair to restate
8 improperly what he said. So I'm refusing that.

9 MR. MOORE: I'm not seeking to restate
10 anything improperly, I'm sorry, but I was seeking
11 to restate what I understood. So how about I
12 clarify that before I move on to the question.

13 BY MR. MOORE:

14 78 Q. Does the SA provide the
15 individuals who attend this training with its
16 perspective of what systemic societal oppression
17 is?

18 MS. SANCHE: Mr. Cullen told you what
19 the SA does. It's part of their requirement for
20 ratification in align with their by-laws that clubs
21 go through a workshop.

22 MR. MOORE: Okay. So now I'm asking a
23 question about that workshop from his answer.

24 R/F MS. SANCHE: I think you're improperly
25 trying to suggest that it's indoctrination, and I

1 don't think that's proper. You want to ask, which
2 you did yesterday anyway, what occurs in the
3 workshop, et cetera.

4 MR. MOORE: That's --

5 MS. SANCHE: If he knows it he can
6 answer it, but this is -- he answered the question
7 already when you asked do you enforce the mandate,
8 and he explained what was done.

9 MR. MOORE: I'm assuming that's a
10 refusal for that question?

11 MS. SANCHE: Yes. Counsel, I'm
12 unwilling to continue to repeat and to have you ask
13 different ways the same question. So you can ask
14 it once, and when he answers it that's the answer.

15 MR. MOORE: I'm seeking to gain
16 clarification and understanding for the proper
17 determination of this application, counsel.

18 MS. SANCHE: I disagree with what
19 you're doing.

20 MR. MOORE: I understand that.

21 MS. SANCHE: So you can ask your next
22 question --

23 BY MR. MOORE:

24 79 Q. Does the SA --

25 MS. SANCHE: -- but he's not going to

1 answer that one. Sorry.

2 MR. MOORE: Yeah, sorry.

3 MS. SANCHE: No, no, it's my fault.

4 BY MR. MOORE:

5 80 Q. Does the SA require that campus
6 clubs within their renewal applications or initial
7 applications, does it require that those documents
8 respect the SA's perspective of what systemic
9 societal oppression is?

10 A. Do you mean they have to be
11 exclusively laid out in their application process?
12 Is that what you're saying?

13 81 Q. Yes, does any -- let me rephrase
14 that question. I think it was a little convoluted.

15 Does the SA require that a student
16 group's documents applying for -- or applying for
17 recognition or renewal of its club status, does the
18 SA require that those documents not conflict with
19 the SA's understanding of what systemic societal
20 oppression is?

21 A. Yes.

22 82 Q. And at paragraph 15 of your
23 affidavit you -- the last statement of that
24 paragraph, which I'll read:

25 "By anti-oppression, the SA

1 means the practice of challenging
2 all forms of oppression based on
3 race, gender, sexuality, class,
4 religion, immigration status,
5 country of origin, age, physical
6 ability and mental health status."

7 Did I read that correctly?

8 A. Yes.

9 83 Q. Is this a complete list of the
10 basis for all oppression?

11 A. It's not exhaustive, no.

12 84 Q. Okay. So there could be
13 oppression based on someone's physical appearance,
14 possibly?

15 R/F MS. SANCHE: I don't -- that's not for
16 him to answer, counsel. He said it's not an
17 exhaustive list.

18 BY MR. MOORE:

19 85 Q. Does the SA recognize any forms of
20 oppression which are not on that list?

21 MS. SANCHE: In -- with respect to
22 what?

23 MR. MOORE: With respect to its view of
24 what systemic societal oppression is and how that
25 definition is then enforced against campus clubs.

1 THE WITNESS: We would consider
2 something to be oppressive that changes or prevents
3 an individual considered a person under law and,
4 you know, the country of Canada to reach -- prevent
5 them from reaching their full capacity as a citizen
6 of the country through the experience of any one of
7 their identities.

8 BY MR. MOORE:

9 86 Q. Okay. Are you aware of what the
10 definition of a person under the law of Canada is?

11 A. I could not cite it offhand.

12 87 Q. Are you aware of whether an unborn
13 child is recognized as a person under the
14 definition of laws in Canada?

15 R/F MS. SANCHE: It's not relevant.

16 MR. MOORE: It's incredibly relevant,
17 counsel.

18 MS. SANCHE: No, it's not. You're
19 trying to make it relevant, but it's not. It is
20 irrelevant to whether your client's proposed club
21 was ratified what a person is defined as under the
22 law. Completely irrelevant.

23 MR. MOORE: The SA recognizes that
24 oppression exists in things that keep people from
25 gaining their full benefits of status as citizens

1 of Canada as recognized as humans under the law,
2 and this issue is dealing with a view on the status
3 of unborn life. So I don't know how that's not a
4 relevant question.

5 MS. SANCHE: Well, the issues in the
6 litigation is whether a campus club was improperly
7 ratified period, and it is completely irrelevant
8 whether the SA or the board or anybody else has any
9 views on any of those topics --

10 MR. MOORE: The views --

11 MS. SANCHE: -- and he's not answering
12 those questions.

13 MR. MOORE: Okay. The views of the SA,
14 which are relevant, is the view of the SA in
15 regards to systemic societal oppression, which has
16 been cited as the reason why this campus club is
17 not permitted to have campus club status. So those
18 are the views that I'm exploring on this
19 questioning.

20 MS. SANCHE: Well, we can go to the
21 reasons why the club was denied status, and I think
22 that you're mischaracterizing the statements about
23 oppression as well so...

24 MR. MOORE: I'm seeking to learn and
25 understand from Mr. Cullen's answers. If I'm

1 mischaracterizing things, I'm seeking to ask
2 questions on those and I'm being blocked as I'm
3 asking questions on what is the SA's view of
4 oppression.

5 MS. SANCHE: I'm refusing irrelevant
6 questions. It's irrelevant what the definition of
7 a person is under the law, and I'd also note that
8 Mr. Cullen is not a lawyer and not a legal expert.

9 MR. MOORE: Mr. Cullen raised the
10 definition of what a person is under the law in his
11 answer to what is oppression and what the SA seeks
12 to stop. I'm just simply following up what he
13 means by that and if he has understanding of what
14 that is.

15 MS. SANCHE: I think he gave you his
16 answer.

17 MR. MOORE: And I think it was a proper
18 question and I'd appreciate his answer.

19 MS. SANCHE: Well, then you can bring a
20 motion and force me to require him to answer, but I
21 think it's irrelevant.

22 And again, you can try to expand this
23 litigation, but it is not -- that is not a relevant
24 question based on your notice of application.

25 MR. MOORE: Well, counsel, I believe

1 we're entitled to explore the issues in this
2 application, which include the issues that are
3 brought up in the affidavits and the reasons for
4 the decisions.

5 MS. SANCHE: I've invited you to ask
6 questions on that issue. If you want to take him
7 to the reasons why -- he hasn't even discussed the
8 reasons why the application was denied, but you
9 haven't done that so I'm refusing it.

10 And as you know, the procedure, I'm
11 sure in this province, is if you don't like that it
12 was refused, you can bring a motion to force us to
13 answer the question and a court can decide if it
14 was a relevant question.

15 That's -- so you can continue to ask.
16 We don't have to keep discussing it, but that's my
17 position.

18 BY MR. MOORE:

19 88 Q. Let's move on, then, Mr. Cullen.
20 We'll look at paragraph 19 of your affidavit.

21 This references an unrecognized student
22 group. Are you aware that unrecognized student
23 groups -- actually, let's look at Exhibit "D" of
24 your affidavit before I look at this question.

25 Exhibit "D" of your affidavit in

1 section 4.3, this is Durham College's policy on the
2 recognition of student organizations, and in this
3 policy at 4.3 it states -- no, strike that. My
4 question's not correct there. I'm on the wrong
5 section.

6 I guess I'll just ask my question about
7 referencing this section because you're probably
8 more familiar with it than I am, but an
9 unrecognized student group is treated as a
10 community group for the purposes of room bookings
11 by Durham College; correct?

12 A. Correct.

13 89 Q. Okay. In paragraph 21 of your
14 affidavit you set out some information concerning
15 the funding of recognized campus clubs; correct?

16 A. Yes.

17 90 Q. And campus clubs can receive
18 amounts in funding in addition to that base \$750 a
19 year amount?

20 A. Yes.

21 91 Q. Are you aware of how much more
22 funding a campus club can receive?

23 A. There's no threshold. So there's
24 a pot of money and every year is budgeted in the
25 operating budget.

1 I believe -- again, this is my best
2 estimate -- around \$70,000, or so, that clubs and
3 societies can apply to, have access to, and those
4 funds are distributed based on the type of
5 application and the purposes that it will be used
6 for, et cetera, and that committee determines if
7 those are appropriate expenses.

8 92 Q. Okay. And that 70,000 includes
9 the \$750 a year?

10 A. No, that's in addition to the 750,
11 yeah.

12 93 Q. Okay. And so this is for the
13 purposes of special events and grants?

14 A. Right.

15 94 Q. Okay. Are you aware of how much a
16 single club is eligible to receive or has received?

17 A. I don't have those specific
18 numbers offhand, but they're never more than a few
19 thousand dollars at most.

20 95 Q. Okay. So perhaps \$5,000?

21 A. I couldn't, I couldn't say.

22 96 Q. At Exhibit "A" of Jesse
23 Cullen's -- or sorry, Christian Naggar's affidavit,
24 there is the application of Speak for the Weak.
25 I'm not exactly familiar with --

1 MS. SANCHE: Tab A; right?

2 MR. MOORE: Yeah, tab A.

3 BY MR. MOORE:

4 97 Q. And in an application for campus
5 club status a student group will describe itself in
6 the section of student group description; correct?

7 A. Yes.

8 98 Q. And so that is the place where
9 that club has the opportunity to present its
10 mandate to the SA?

11 A. Yes.

12 99 Q. In looking at the student group
13 description for Speak for the Weak, is there
14 something within that description that violates the
15 SA's policies?

16 A. So I think if you refer to "from
17 fertilization to natural death", in terms of
18 oppression, we know that women have been
19 historically an oppressed group globally not just
20 in Canadian society, and access to safe and legal
21 abortions is a fundamental, you know, human right
22 that women should have access to.

23 So any group that is making implication
24 that their mandate would be to restrict that right
25 or advocate for the restriction of that right would

1 be a form of oppression against women, and so that
2 would be in conflict with our by-laws.

3 100 Q. Okay. Now, I heard you say
4 restrictions on that right of access. Does that
5 mean if a group advocates for restrictions on
6 late-term abortions they are also violating the
7 SA's policy?

8 R/F MS. SANCHE: That's a hypothetical.
9 Don't answer it.

10 BY MR. MOORE:

11 101 Q. So if I understand you correctly,
12 any restrictions on that freedom of a woman to
13 terminate her pregnancy are viewed as a violation
14 of SA policy?

15 A. They conflict with our by-laws.

16 102 Q. Okay. And what part of your
17 by-laws do they conflict with?

18 A. Creating an environment free of
19 systemic societal oppression.

20 103 Q. Do they conflict also with
21 creating an environment free of decolonization?

22 A. Women's bodies have most
23 definitely been colonized, and abortion could
24 definitely be interpreted as the colonization of a
25 woman's body through state intervention, through

1 the criminalization of that abortion.

2 104 Q. In paragraph 39 of your affidavit
3 you mention a meeting to review the Speak for the
4 Weak package. When did this meeting occur?

5 A. Shortly after the package was
6 given to us. I don't know if there's a specific
7 date here in the affidavit, but it would have been
8 -- that would have been in August.

9 I believe the package was submitted on
10 August 19th, if I'm not mistaken. So it would have
11 been shortly thereafter.

12 105 Q. Okay. Was this meeting different
13 than the August 24th meeting referenced in the
14 minutes attached to the supplemental affidavit of
15 Reina?

16 A. To the best of my knowledge, I
17 believe that that was the same meeting. But again
18 -- yeah, I believe that was, that was the meeting.

19 106 Q. Now, you describe in your
20 paragraph 39 that this was an ad hoc basis, but the
21 meeting described there in August twenty -- in the
22 minutes for the August 24th meeting has got a
23 number of other matters as well. Would that
24 indicate they weren't the same meeting, or perhaps
25 they were the same meeting?

1 A. Right. There was some informal
2 conversations, obviously, prior to our formal
3 executive meeting about planning to bring this up
4 at the executive meeting and discussing our view on
5 the package and what kind of decision we were going
6 to make.

7 But again, this was, you know,
8 approaching almost a year ago. So to the best of
9 my recollection, we met on an ad hoc basis to
10 review the package, and then decided to discuss it
11 formally at an executive meeting.

12 107 Q. Okay. So at this ad hoc meeting
13 there was -- do you know which members of the SA
14 executive were in attendance?

15 A. To my recollection, there was all
16 of us.

17 108 Q. All six or --

18 A. There was -- at the time we had a
19 vacancy. So I believe there was five.

20 109 Q. Okay. And did you lead the
21 discussion at this meeting, Mr. Cullen?

22 A. It was a collaborative discussion.
23 There wasn't...

24 110 Q. And this was after Chantal James
25 had referred the Speak for the Weak's application

1 to all the members of the SA executive and had
2 flagged it for concern; correct?

3 A. Correct.

4 111 Q. And she had flagged for concern on
5 the basis that it was a pro-life club?

6 A. She said -- from my recollection,
7 she had mentioned that there were some concerns of
8 this, some -- there were some positives to this
9 club, some concerns that she may have had, and
10 wanted to escalate it to our attention.

11 112 Q. Was one of those concerns that it
12 was a pro-life club?

13 A. Without the e-mail in front of me,
14 I can't -- is that an exhibit here? Because I
15 don't -- I can't recite the e-mail specifically.

16 113 Q. Exhibit "D" to Reina's affidavit.

17 MS. SANCHE: Well, the e-mail says what
18 it says, counsel. So Mr. Cullen can repeat the
19 affidavit -- the e-mail to you, or we can all
20 believe that it says what it says.

21 MR. MOORE: Yeah, I just -- you asked
22 to reference it so...

23 MS. SANCHE: Well, because you were
24 asking him to state what someone else said, which
25 is improper.

1 THE WITNESS: I just want to make sure
2 whatever I say is accurate.

3 BY MR. MOORE:

4 114 Q. So at the discussion of this
5 application, you indicate that:

6 "We reviewed the Speak for the
7 Weak's" --

8 Let me start that question again.
9 Strike that. Paragraph 39 you state:

10 "We reviewed Speak for the
11 Weak's mandate and did research on
12 March for Life, which they proposed
13 to attend."

14 Did this occur at this meeting, both
15 the review and the research, or did that occur
16 independently of this meeting?

17 A. I think we met and then just
18 determined to do more research into the issue. I
19 think a few of us may have even been on our phones
20 briefly and then decided to come back and discuss
21 the matter further at an executive meeting.

22 115 Q. Okay. Were there any notes
23 concerning this review or research?

24 A. No.

25 116 Q. Was there any e-mails discussing

1 it?

2 A. Not to my knowledge.

3 117 Q. Do you know who did research on
4 this March for Life?

5 A. I personally reviewed their
6 website.

7 118 Q. Do you know if anyone else
8 reviewed their website?

9 A. I can't speak for someone else.

10 119 Q. And did you then communicate your
11 findings to the other members of the SA executive?

12 A. Yes.

13 120 Q. Orally?

14 A. Yes, at an executive meeting.

15 121 Q. And that would presumably be the
16 executive meeting on August 24th?

17 A. Yes.

18 122 Q. I don't see any reference to Speak
19 for the Weak's group description as a pro-life club
20 in paragraph 39, but at this ad hoc meeting was
21 their commitment to "human life from all fertilized
22 -- fertilization to natural death" also discussed?

23 A. Yes.

24 123 Q. It's just not included here in
25 paragraph 39. I don't know if it's... was it

1 discussed extensively, or was that sort of a side
2 issue?

3 A. I don't know if I can answer that
4 question accurately. The entire club ratification
5 package was discussed at length. Part of that
6 application process was that mandate.

7 124 Q. And another part of it was this
8 event, particular event?

9 A. Correct.

10 125 Q. Do you know how long this ad hoc
11 meeting went?

12 A. I don't.

13 126 Q. Okay. So you did research into
14 the views of the Campaign for Life, which I
15 understand is the organizer of the March for Life
16 event?

17 A. That's my understanding.

18 127 Q. Okay. And you did research into
19 the Campaign for Life's views?

20 A. Yes, and the folks they're
21 affiliated with and different groups they've been
22 affiliated with.

23 128 Q. Okay.

24 A. They're pretty open on their
25 website about who they're associated with.

1 129 Q. Yes. Is that a common practice to
2 -- for the SA to research the groups that campus
3 clubs are affiliated with or potential campus clubs
4 will be affiliated with?

5 A. Sorry?

6 130 Q. Does the SA look into affiliations
7 of any other campus clubs to evaluate if those
8 affiliated groups meet the SA mandate?

9 A. So the SA, like, elected
10 leadership mandates or delegates those
11 responsibilities to our campus clubs and societies
12 department, and then if there are issues that they
13 feel are, you know, beyond their scope or need
14 further clarification, they'll flag it to us.

15 So I don't micromanage our staff to the
16 extent to ask, you know, what research did you do
17 on all 160 clubs that get ratified, but I trust
18 their judgment as staff members that they'll flag
19 us issues that they believe that we need to look
20 further into.

21 131 Q. And the views of a group that a
22 campus club would associate with would be relevant
23 to that consideration?

24 A. Sorry, say that again?

25 132 Q. The views of a group that the

1 campus -- a ratified campus club associates with
2 are relevant. So you would expect and hope that
3 your staff would flag some of those views for you?

4 A. Yes.

5 MS. SANCHE: And counsel, just to
6 clarify, you're talking about during the
7 ratification process?

8 BY MR. MOORE:

9 133 Q. During the ratification process --

10 A. Right, right.

11 134 Q. -- and renewal process and even,
12 maybe, event approval process?

13 A. Yes.

14 135 Q. Okay. Did you have any
15 involvement with the application of the Catholic
16 Students Association for club status at -- within
17 the SA?

18 A. I personally did not have any
19 involvement in that ratification.

20 136 Q. Would it surprise you to learn
21 that the Catholic Students Association is
22 affiliated with the Catholic Church?

23 A. It would not surprise me
24 particularly as a recovering Catholic.

25 137 Q. Would the Catholic Church's views

1 relevant to same sex marriage be relevant in the
2 renewal application of the Catholic Students
3 Association?

4 R/F MS. SANCHE: Without having the
5 application in front of him, I'm not willing to
6 have him answer the question. We don't know what
7 their student group description or mandate is.

8 BY MR. MOORE:

9 138 Q. But we know they're affiliated in
10 some form with the Catholic Church; correct?

11 A. Yes.

12 139 Q. Did the Catholic Students
13 Association --

14 MS. SANCHE: Well, counsel, actually I
15 don't know if we know that. I don't know what
16 their mandate is, and I don't know if they indicate
17 that they are a group that gets together to talk
18 about their faith, or if they're a group that
19 advocates on the behalf of the Catholic Church, and
20 I think there's a difference and I don't think it's
21 fair to ask the witness that question without
22 putting their mandate before him, and he's not
23 going to answer questions on other clubs if he
24 doesn't have the information before him.

25 BY MR. MOORE:

1 140 Q. Are you familiar with the Catholic
2 Students Association?

3 A. Insofar as they exist, yeah.

4 141 Q. Did the SA ratify them or their
5 renewal application this year?

6 A. Yes. From my understanding,
7 they're a very active student club.

8 142 Q. And you were part of that SA group
9 that ratified them?

10 A. So the application for -- the
11 application was as a several different -- I don't
12 know when they ratified.

13 So for instance, you can ratify in the
14 summertime if you want to get a head start on your
15 planning for the year, but the campus clubs
16 department encourages that of returning students.

17 I'm not sure of the ratification date.
18 So I couldn't answer that question accurately, but
19 I'm the executive -- I'm a new president of the
20 year that they've been ratified --

21 143 Q. Okay.

22 A. -- whether or not that
23 ratification happened prior to my term or not.

24 144 Q. Thanks.

25 MR. MOORE: How are we doing? Do we

1 need a break?

2 THE WITNESS: I'm okay.

3 MS. SANCHE: I thought we'd go a couple
4 more minutes, but if it's -- tell me when it's a
5 good time to break when you're going to move to a
6 new section.

7 THE WITNESS: I'm a smoker. I'm not
8 going to say no to any breaks, but --

9 MS. SANCHE: That's on the record.
10 Don't --

11 MR. MOORE: Why don't we take a break
12 here.

13 --- Recess commenced at 10:02 a.m.

14 --- Upon resuming at 10:14 a.m.

15 BY MR. MOORE:

16 145 Q. Before the break, we were looking
17 at paragraph 39, and we'll just keep kind of moving
18 down this paragraph. The middle sentence here that
19 begins with "this hostility", it says:

20 "This hostility, moreover,
21 challenged the SA's obligation to
22 ensure the safety of its members."

23 I understand that you're referencing
24 what you state to be the outward prejudice against
25 the LGBT community by Campaign for Life, and I

1 wondered if you could explain how their views
2 challenged the safety of the SA members?

3 A. So number one, all clubs by
4 mandate have to be open to all students
5 irrespective of, you know, their affiliation.

6 So for instance, you referenced the
7 Catholic Student Association earlier. The Catholic
8 Student Association just can't -- their club can't
9 just be open to Catholic members of our SA. All
10 students have to be able to access and have a right
11 to be a member of that club if they so choose.

12 And so this hostility, as a first
13 point, would, by definition, you know, make it very
14 difficult for members of our campus community who
15 identify as LGBTQ+ to feel as though they could
16 actively and fully participate in the activities of
17 a club that is affiliated with organizations and
18 their affiliates who have actively campaigned
19 against, you know, their rights as persons.

20 And so, you know, that in and of itself
21 is problematic for us as an organization when we
22 have an obligation to represent all of our
23 students, and we have an equity mandate to ensure
24 those of our members who are marginalized or live
25 on the margins of society already through their

1 experiences of their identities would be very
2 difficult for them to feel safe in a place or
3 participate in an organization that, you know, was
4 affiliated with groups who are actively opposing
5 their existence and their identities.

6 146 Q. And when you reference "feeling
7 safe", are you referencing feeling comfortable with
8 that group, or are you referencing physical safety?

9 A. No, we're -- so in order to
10 understand oppression, we have to talk about --
11 like I know this is an abstract term, right. So
12 sometimes it's hard to drill down to what this
13 means.

14 We know that members of the LGBTQ
15 community, particularly trans individuals, are
16 disproportionately affected by violence, right. We
17 have a trans day of remembrance every year of our
18 Student Association to remember those in our
19 community who have lost their lives either to
20 suicide or violent acts against them, that have
21 been perpetrated against them.

22 We know that when we try -- when we
23 talk about our by-laws and creating an environment
24 free of systemic societal oppression, the
25 environment you help create also produces out of

1 that environment certain types of, you know,
2 behaviour, right.

3 And if we as an organization decide to
4 allocate our limited resources and funding to
5 organizations that have been known to actively
6 campaign against the rights of those individuals,
7 we feel this contributes to an atmosphere of, you
8 know, an unsafe place for them to be able to go to
9 school and learn and actively participate in campus
10 activities particularly when those individuals are
11 already facing not just discrimination, but they're
12 also, you know, disproportionately affected by
13 violent acts against them.

14 So it's a very real concern for folks
15 in our community who identify as LGBTQ+.

16 147 Q. Did you view, then, the funding of
17 Speak for the Weak as funding Campaign for Life?
18 The potential funding of Speak for the Weak as a
19 campus club, did you view that as funding Campaign
20 for Life?

21 A. No.

22 148 Q. Okay. Did you view Speak for the
23 Weak itself as a club creating an unsafe place for
24 students?

25 A. Through its affiliates and its

1 mandate, we felt that their mandate of Speak for
2 the Weak contributed to an environment that
3 increases the marginalization of certain members of
4 our community.

5 149 Q. You weren't worried that Speak for
6 the Weak members would do violent acts to
7 marginalized members of the community, were you?

8 A. I worry about all sorts of members
9 of our community committing violent acts against
10 individuals, not specifically Speak for the Weak.

11 And I'm not speaking to any one
12 individual who's a member of this club. I would
13 never speak to their intentions or their likelihood
14 of doing something or not doing something, but what
15 I am concerned with, as someone who studies society
16 as part of my program, is understanding the
17 conditions under which these types of instances are
18 more likely to occur whether that be perpetrated by
19 a member of that club explicitly or members of our
20 campus community that would be, you know, engaging
21 in that type of behaviour.

22 So no, I can't speak to any individual
23 member of Speak for the Weak at all. I couldn't
24 speak to their intentions or likelihood of
25 committing a violent act.

1 150 Q. Do you know if Speak for the Weak
2 had outward prejudice against the LGBTQ+ community?

3 A. I cannot speak to individual
4 members of Speak for the Weak or what their
5 personal values or beliefs are; however, we can
6 look at who the group is proposing in their
7 ratification package to affiliate with openly and
8 the mandate of those organizations, and we can draw
9 conclusions from that and make judgements and apply
10 our by-laws as we interpret them as democratically
11 elected representatives of students to ensure that
12 we're upholding our mandate as an organization.

13 151 Q. So in making those judgments and
14 applying those by-laws, did you make the judgment
15 that Speak for the Weak -- as the club, not the
16 individuals -- but Speak for the Weak as the club
17 had adopted a prejudice against the LGBTQ+
18 community?

19 A. Again, I can't speak for what
20 Speak for the Weak's club mandate was to -- whether
21 it was to marginalize or discriminate against LGBTQ
22 community, but their affiliations with folks who
23 do, who are well documented at having done so, was
24 problematic for us.

25 152 Q. And this affiliation with Campaign

1 for Life rose to the attention of the SA because
2 Speak for the Weak included it in the section of
3 the application entitled "Events and Activity
4 Ideas"; correct?

5 A. Correct.

6 THE WITNESS: Sorry, where's the
7 ratification package? Just so I'm making sure.
8 Yes, correct.

9 BY MR. MOORE:

10 153 Q. When a club is approved for campus
11 club status, the SA still has to approve of all its
12 events; correct?

13 A. Yes, so there's -- are you asking
14 what the event approval process is?

15 154 Q. Just --

16 MS. SANCHE: No, just listen to the
17 question. So maybe ask him again, counsel.

18 MR. MOORE: Yes.

19 BY MR. MOORE:

20 155 Q. So when a club is approved for
21 campus club status, the SA still has to approve of
22 all that club's events?

23 A. Yes.

24 156 Q. So an approval of a club's
25 application doesn't mean approval of all the

1 proposed events ideas that it includes in its
2 application, does it?

3 MS. SANCHE: Didn't you just ask that
4 question?

5 MR. MOORE: No, that -- this is a
6 different question.

7 BY MR. MOORE:

8 157 Q. This is whether the approval of a
9 club's application is also an approval of all the
10 club's events?

11 MS. SANCHE: You just asked that
12 question. He said that --

13 MR. MOORE: No, I didn't.

14 MS. SANCHE: -- to ratify it, they have
15 to -- it includes all of the events.

16 MR. MOORE: No, that's not what I
17 asked, counsel.

18 MS. SANCHE: No, I think you asked it
19 and he answered it. Ask it again. Maybe I'm
20 mishearing it.

21 MR. MOORE: Okay. I'll ask it again.
22 Could you repeat the question that I asked?

23 MS. SANCHE: The first time, or the
24 second time? Because --

25 MR. MOORE: I guess --

1 MS. SANCHE: -- say it twice.

2 (Simultaneous speakers - unclear)

3 MR. MOORE: I guess just the first
4 question.

5 THE COURT REPORTER: Do you mind if we
6 go off the record for a moment?

7 MR. MOORE: Sure.

8 -- OFF THE RECORD DISCUSSION --

9 BY MR. MOORE:

10 158 Q. Okay. Subsequent to a club's
11 approval by the SA, if that club presents -- if
12 that club decides to attend a certain event or
13 create an event, the SA must approve that event;
14 correct? Or the SA -- for that club to do that
15 event, the SA has to approve that event?

16 A. All events that clubs do must be
17 approved by the SA.

18 159 Q. Okay. And in regards to a club's
19 application for recognition, the events and
20 activities that are proposed under the event and
21 activities idea section of the application, the SA
22 can approve or disapprove of the events that are
23 listed in that section of the application? Can the
24 SA approve or disapprove of the events that are
25 listed in that section of the application?

1 A. I'm just trying to get at, like,
2 the crux of what's being asked here. So like are
3 we asking, like, why we ask for a list of
4 activities and events in the application process?

5 160 Q. No, I'm asking about the authority
6 of the SA. Can the SA approve of or disapprove of
7 the events listed in a club's application?

8 MS. SANCHE: I think that we've
9 established, I think today, that the SA can ratify
10 or not ratify, right. So I guess it's unclear what
11 you're asking specifically, counsel.

12 BY MR. MOORE:

13 161 Q. Okay. Let's try a different
14 approach to this. The SA can ratify or not ratify
15 a campus club?

16 A. Correct.

17 162 Q. And the SA can -- can the SA
18 ratify or not ratify separately the event
19 activities and ideas within that club's application
20 for ratification?

21 A. I think the same answer applies,
22 all events have to be approved by the SA, like
23 period.

24 163 Q. Okay.

25 A. And so all events have to go

1 through the same process irrespective, but that
2 only happens after ratification, right.

3 So I can't speak in hypothetical about,
4 like, what events we would or were not approved
5 that are listed or may not be listed in a
6 ratification package. All events have to approved
7 through a process, and that's how all events are
8 approved.

9 164 Q. Thank you. If a club applies for
10 club status, but one of its events is not approved,
11 one of its events cannot be approved by the SA
12 executive for any number of reasons in that club's
13 application, can that application still be approved
14 without the approval of that particular event
15 that's listed in the application?

16 A. Clubs can be approved or denied
17 ratification for a variety number of reasons,
18 right.

19 So there are -- hypothetically, like
20 again, we can only deal -- in this particular case,
21 right, we can only deal with what was given to us
22 in a ratification package. We make our decision
23 based on what was given to us in that ratification
24 package.

25 So I can't speculate on if they were

1 ratified and if any club was ratified what event
2 they may or may not do after ratification. We can
3 only make decisions based on the information the
4 club submits to us through the ratification package
5 and make our best judgement to apply the by-laws as
6 we interpret them to the best of our ability, and
7 that's what we did in this.

8 If we're kind of -- I know we're
9 alluding and speaking around it, but we're kind of
10 speaking to the fact that they've listed some
11 events in their ratification package. I'm assuming
12 they're trying to say that --

13 MS. SANCHE: Don't assume.

14 THE WITNESS: So I won't assume.

15 BY MR. MOORE:

16 165 Q. Okay. In paragraph 46 of your
17 affidavit you describe the March for Life -- or
18 sorry, the association with Campaign for Life as "a
19 fundamental part of its mandate"; is that correct?

20 A. Yes.

21 166 Q. And you determined that the
22 association of Campus [sic] for Life was a
23 fundamental part of its mandate based off of its
24 listing of the event in this application; correct?

25 A. In part.

1 167 Q. What was the other part?

2 A. Through conversations I believe we
3 had with the group in person and, you know, asking
4 questions about, you know, what you guys seek to do
5 with your -- with your club ratification upon
6 ratification.

7 It was, you know, made clear to us this
8 was probably going to be their, you know, big event
9 for the year.

10 168 Q. And in those conversations are you
11 specifically referring to conversations that
12 occurred on September 3rd, or conversations that
13 occurred at other times as well?

14 A. To the best of my knowledge was --
15 sorry, what was the date you cited?

16 169 Q. You reference there's two reasons
17 why you believe --

18 MS. SANCHE: He just asked for the
19 date, counsel.

20 THE WITNESS: Yeah, I just need the
21 date.

22 BY MR. MOORE:

23 170 Q. Oh, September 3rd.

24 A. Sorry, that was the meeting with
25 campus clubs and the executive --

1 171 Q. Yes.

2 A. Right. Yes, to the best of my
3 recollection.

4 172 Q. That was the only meeting that
5 you're referencing in regards to what we just
6 talked about?

7 R/F MS. SANCHE: He answered your question,
8 counsel.

9 MR. MOORE: There's some
10 miscommunication going on here, and so I'm trying
11 to --

12 MS. SANCHE: Well, I'm not having the
13 witness restate himself if -- this is going to be
14 an extremely long process if he has to continue to
15 restate his answers.

16 BY MR. MOORE:

17 173 Q. Did you ask Speak for the Weak to
18 remove their association with Campus [sic] Life
19 Coalition and not attend the March for Life event?

20 A. The conversation was about
21 ratification, and so based on the ratification
22 package we received, we said we were unable to
23 ratify with the ratification package that we
24 received.

25 174 Q. Did you indicate to Speak for the

1 Weak that if they didn't attend this event they
2 could -- their application for ratification could
3 move forward?

4 A. I'm -- I don't follow.

5 175 Q. Did you indicate that the
6 attending of this event was a key reason why their
7 application was being denied?

8 A. It was one of the reasons.

9 176 Q. Did you indicate to Speak for the
10 Weak that they could amend their application and
11 eliminate this particular event from their
12 application?

13 A. But I think the assumption built
14 into this question is that if they had removed this
15 event they'd be ratified, and I'm saying that
16 that's -- I can't speak to whether that would be or
17 would not be the case.

18 177 Q. Okay. Can you ignore that
19 assumption and just answer whether you told them
20 that they had a right to amend their application or
21 that they could amend their application and not
22 include this proposed event?

23 A. Every student on campus has a
24 right to submit ratification packages as they
25 already clearly understood to be the case because

1 we received the ratification package.

2 There's no policy or procedure in the
3 entire SA, which I'm sure you guys have -- you
4 know, have access to all of them as we can see the
5 package, that bars students from re-ratifying or
6 submitting new ratification packages. So they're
7 free -- any student's free to submit any
8 ratification package that they see fit.

9 178 Q. Do I understand correctly, then,
10 that the SA did not indicate to Speak for the Weak
11 specifically that they could amend and remove this
12 March for Life event and have their application
13 reconsidered?

14 A. That wasn't the point of what --
15 like that wasn't the reason we were meeting. We
16 were meeting about the ratification that was in
17 front of us, right.

18 If they submit another ratification
19 package, then we would deal with the facts and
20 information presented in that ratification package.

21 179 Q. Okay. And so --

22 A. So the meeting was -- the meetings
23 wasn't about trying to figure out, you know,
24 exactly what they need to do to be ratified in
25 terms of, like, a new ratification package. We

1 were dealing with the ratification package here
2 that was in front of us.

3 180 Q. I understand. I'm asking just a
4 specific question, I guess. I believe it's a yes
5 or no question.

6 Did the SA tell Speak for the Weak that
7 they could resubmit an application without the
8 March Life event in it?

9 A. Our policies and procedures tells
10 students they can submit ratifications for
11 anything.

12 181 Q. But at this event -- at this
13 meeting Speak for the Weak did not tell -- or the
14 SA did not tell Speak for the Weak specifically
15 that they could resubmit an application without the
16 March for Life event included?

17 A. So it's inferred that any student
18 can, through our policy and procedures, can submit
19 any ratification package, but there would be no
20 reason why we would say that if you take out this
21 event then you would be able to, you know, submit a
22 -- re-ratify under -- without that event included.
23 Because again, I feel like the question's a little
24 convoluted. Like...

25 182 Q. I -- sorry.

1 MS. SANCHE: Are you -- he can finish,
2 his answer, I think. Continue.

3 THE WITNESS: Yeah, I --

4 MS. SANCHE: If you have more to say,
5 sorry.

6 THE WITNESS: I'm just -- I'm getting
7 stuck on like -- the question, as I'm understanding
8 it, is that you're asking did you inform them that
9 they could resubmit a ratification package without
10 this specific event?

11 BY MR. MOORE:

12 183 Q. Yes, that is the question.

13 A. Right. And so no, that
14 information was not given.

15 184 Q. Okay.

16 A. Right?

17 185 Q. Thank you. You mentioned that you
18 had conversation with Speak for the Weak about
19 their affiliation with Campaign for Life and that
20 was part of the reason why you described that
21 affiliation as "a fundamental part of its mandate".

22 Was it simply the fact that they would
23 travel to the March for Life? Was that the issue,
24 or did -- yeah, I guess was that the issue, that
25 they would attend the March for Life and they said

1 that they must attend the March for Life, or what
2 was the conversation like with Speak for the Weak
3 concerning this affiliation?

4 MS. SANCHE: You're asking two
5 questions. Do you want him to tell you, which I
6 think he already did, what they discussed at the
7 September 3rd meeting, or are you asking him what
8 about their affiliation supported the decision not
9 to ratify? You're asking two questions in one. So
10 if you can ask one question at a time --

11 BY MR. MOORE:

12 186 Q. You indicated --

13 MS. SANCHE: -- then the witness will
14 answer.

15 MR. MOORE: Sorry.

16 MS. SANCHE: That's okay. I broke. Go
17 ahead.

18 BY MR. MOORE:

19 187 Q. You indicated that you had
20 conversation with Speak for the Weak. We didn't
21 explore what that conversation was like.

22 So I'm asking what did Speak for the
23 Weak indicate that their affiliation with Campaign
24 for Life would be?

25 A. Whatever's outlined in this

1 ratification package. So the conversation was
2 based on what was in the ratification package.

3 188 Q. So Speak for the Weak didn't
4 indicate that they were to have further connection
5 with Campaign for Life other than attending the
6 March for Life event?

7 A. No.

8 189 Q. In your research of the March for
9 Life event, what was -- what did you find was the
10 focus of the March for Life event?

11 A. So my understanding of the March
12 for Life event is that event specifically is an
13 anti-abortion rally in Canada, but the affiliates
14 through my research who are openly -- open to
15 endorse or affiliate with the rally are
16 organizations such as, like, The Institute for
17 Marriage in the Family, as an example.

18 I believe I'm -- that's the correct
19 name of the organization who, through that
20 research, you know, had been actively -- in fact,
21 they were active on the issue of same sex marriage
22 when that issue was being debated in Canada as
23 actively opposing the rights of the LGBTQ
24 community.

25 And so that was what, you know, as an

1 example, things we uncovered through, you know,
2 looking into what this march was about and who they
3 were affiliated with.

4 190 Q. Okay. But the march was not about
5 opposing same sex marriage?

6 A. I believe the march is explicitly
7 about -- from my understanding, is an anti-abortion
8 rally.

9 191 Q. You note that you attended the
10 meeting on September 3rd, but that at paragraph 42
11 you didn't keep any notes from that meeting.

12 Do you know if any of the other people
13 who attended on behalf of the SA kept notes from
14 that meeting or took notes at that meeting?

15 A. No.

16 192 Q. No, you don't know?

17 A. I don't believe that notes were
18 taken.

19 193 Q. Okay. And specifically, you don't
20 know if Darshika Selvasivan, the manager of
21 Outreach Services, took any notes from that
22 meeting?

23 A. Again, I don't believe she did.

24 194 Q. If those notes were taken, would
25 they be in the control of the SA?

1 A. No. Again, she doesn't -- she's
2 no longer with the organization. Those certainly
3 weren't transferred over to us when she left. So
4 again, I don't remember her taking any notes so...

5 195 Q. Okay. And this meeting on
6 September 3rd, you've indicated which members from
7 the SA attended. Do you remember which members
8 from Speak for the Weak attended?

9 MS. SANCHE: Counsel, I think it's in
10 his affidavit. Do you want him to repeat his
11 affidavit?

12 BY MR. MOORE:

13 196 Q. I'm asking you now, do you
14 remember if -- from the best of your recollection
15 today, do you have memory of what members Speak for
16 the Weak attended the meeting?

17 A. I believe it was Christian,
18 William and a woman. Her name starts with an "H",
19 but I forget her name.

20 197 Q. And you have reviewed the
21 supplemental affidavit that was filed yesterday,
22 which lists the minutes prepared -- lists notes
23 from that meeting prepared by Christian; correct?

24 A. I have.

25 198 Q. Do you recall how long the meeting

1 lasted?

2 A. I would estimate about half an
3 hour, 20 minutes to half an hour, or so. That's
4 just the best of my recollection.

5 199 Q. And your recollection that is
6 recorded here in your affidavit, was this provided
7 from notes that you took subsequent, or when did
8 you write down or had this recollection
9 transcribed?

10 A. How do you -- what do you mean?

11 200 Q. Your recollection of the September
12 hearing as you describe it, was that recorded for
13 the first time this year in 2016?

14 A. Yes.

15 201 Q. Was that recorded in March of
16 2016?

17 A. Yes.

18 202 Q. For the first time?

19 A. Yes.

20 203 Q. Did you consult with other members
21 of the SA in coming up with -- in setting out the
22 best recollection?

23 A. Yeah, I asked my colleagues if
24 they remembered exactly who was in the room.

25 204 Q. Did you ask them about the content

1 of the meeting, or did you just go from your own
2 personal memory of it?

3 A. Just went from my own personal
4 memory.

5 205 Q. And you would agree with me that
6 memories tend to fade over time?

7 A. Absolutely.

8 206 Q. And even subsequent events can
9 shade our memories, events that occurred between
10 the time we're trying to remember and the timework?

11 A. Certainly a possibility.

12 207 Q. And you have seen the supplemental
13 affidavit of Christian Naggar, which includes his
14 account of that meeting. Would you agree with his
15 account of that meeting generally?

16 MS. SANCHE: Do you want to reread it?

17 THE WITNESS: Yeah, you'll have to be
18 specific.

19 MS. SANCHE: The witness read it
20 yesterday. So maybe...

21 BY MR. MOORE:

22 208 Q. Would you agree, Mr. Cullen, that
23 you brought up that Speak for the Weak's position
24 on abortion was contrary to the SA's position on
25 abortion?

1 A. No, I said that the position on
2 abortion conflicts with our by-laws, the mandate to
3 create an environment free of systemic societal
4 oppression.

5 209 Q. Okay. So you would agree that you
6 stated -- you discussed the issue of abortion and
7 you brought it up with Speak for the Weak?

8 A. It was a conversation.

9 210 Q. So you wouldn't agree that you
10 brought it up?

11 A. It was part of the conversation to
12 do with the ratification, right, because it was a
13 fundamental part of their application. So that was
14 one of the, you know, many issues we discussed in
15 the meeting.

16 MS. SANCHE: Counsel, are you asking
17 specifically if he brought it up, or someone else
18 brought it up first?

19 BY MR. MOORE:

20 211 Q. Yeah, did you --

21 MS. SANCHE: Because I don't think it's
22 relevant who first mentioned anything.

23 BY MR. MOORE:

24 212 Q. Did you lead the discussion in
25 this meeting, Mr. Cullen?

1 A. No, actually.

2 213 Q. Who presided over the meeting if
3 there was anyone that presided over the --

4 A. There wasn't anyone that presided,
5 but we agreed -- like Darshika was our Outreach
6 manager at the time, and we had hired Darshika
7 specifically again because of her educational
8 background and the search (ph.) provision that she
9 was doing with our organization.

10 And so we -- there was no -- no one
11 presided over the meeting, but Darshika did a lot
12 of the talking in the meeting.

13 214 Q. More of the talking than you did?

14 A. I would say maybe equal.

15 215 Q. Okay. Do you normally in your
16 position as president preside over meetings that
17 the SA executive holds or hearings that the SA
18 executive holds? Is that part of your role in your
19 position as president?

20 MS. SANCHE: Counsel, those are very --
21 many and separate things. As you know, the
22 president of an organization often chairs meetings.
23 Are you speaking about a specific meeting? Because
24 if so, he can identify either whether he chaired
25 that meeting or what kinds of meetings he chaired.

1 BY MR. MOORE:

2 216 Q. Is it the standard practice in the
3 SA for the president to chair the meeting?

4 MS. SANCHE: What meeting?

5 MR. MOORE: The meetings of the
6 executive.

7 MS. SANCHE: Was this a meeting of the
8 executive?

9 THE WITNESS: Of the executive? I
10 chair the executive committee. This wasn't an
11 executive committee meeting, though.

12 BY MR. MOORE:

13 217 Q. This was not an executive
14 committee meeting?

15 A. No.

16 218 Q. Okay. You've described this
17 meeting as a hearing. Would this be described as
18 an executive committee hearing?

19 A. No, this would be an oral hearing
20 on a club ratification.

21 219 Q. Okay. And has the SA had more
22 than one of these kind of oral hearings?

23 A. I can't speak to -- the SA's
24 20-plus, 23 years old. Again, I've only been
25 around as president for, you know, about ten of

1 those months.

2 220 Q. Okay. So in that period of time,
3 has the SA had other meetings, oral hearings?

4 A. In terms of ratification, this was
5 the only oral hearing that we participated in this
6 year.

7 221 Q. So you can't recall who spoke
8 first or second in this meeting?

9 A. I can't, no.

10 222 Q. And you can't recall whether Speak
11 for the Weak brought up the issue of abortion or
12 whether the SA brought up the issue of abortion,
13 whether yourself or another member?

14 A. I don't.

15 MS. SANCHE: Counsel, you mean first
16 raised it? Is that what you're asking?

17 MR. MOORE: Yeah, brought up the issue
18 first.

19 MS. SANCHE: Okay.

20 BY MR. MOORE:

21 223 Q. In this meeting or in the process
22 of discussing this, was there concern about the
23 events that Speak for the Weak would have on
24 campus?

25 MS. SANCHE: Sorry, counsel, you said

1 in this meeting or in the process of discussing it.
2 I'm unclear of these two different things.

3 BY MR. MOORE:

4 224 Q. Did the SA have concerns about
5 Speak for the Weak's events on campus in addition
6 to Speak for the Weak's March for Life event?

7 MS. SANCHE: Are you referencing the
8 application package, those events?

9 MR. MOORE: Sure.

10 MS. SANCHE: I don't -- you know, I
11 frankly don't understand the question so I'm not
12 willing to have him answer it. Are you talking
13 about in the meeting did they discuss concerns
14 about other events, or are we leaving the meeting
15 at this point?

16 BY MR. MOORE:

17 225 Q. Let's zoom out and look at the
18 SA's concerns about Speak for the Weak's
19 application.

20 MS. SANCHE: So we're leaving the
21 meeting. Okay.

22 MR. MOORE: We're just zooming out.

23 BY MR. MOORE:

24 226 Q. So did the SA have concerns about
25 possible events that Speak for the Weak would have

1 on campus?

2 A. We had concerns about the mandate
3 of the club. So that could be any number of
4 things. That could be things that they post
5 online, they could be events they hold on campus,
6 that could be, you know, information that's
7 distributed, et cetera.

8 The crux of it is not about a specific
9 or any one event. The crux of it was the mandate
10 of the organization and conflicting with our
11 by-laws. So it could be any number of things,
12 right.

13 227 Q. Does a club's events dictate its
14 mandate according to the SA?

15 A. I think the mandate dictates the
16 events.

17 228 Q. Okay. So in a club's application
18 package is it the student group description that is
19 the mandate of the club?

20 A. I think holistically the
21 ratification package gives an idea to the SA what
22 the mandate is of the club, right. So you consider
23 lots of different things.

24 This is why we ask for things like what
25 are some of your events and activity ideas. If

1 someone says they're going to go to a KKK rally,
2 we're probably not going to ratify them, right.

3 Irrespective of what their club
4 description says, right, we would say sorry, can't
5 do that because it -- the whole package
6 holistically is taken into consideration when
7 ratifying.

8 229 Q. So then a club's events listed on
9 its application package do, to a certain extent,
10 dictate the SA's view of that club's mandate?

11 R/F MS. SANCHE: He answered that question.
12 He just said it.

13 MR. MOORE: Counsel, I'm not okay with
14 these objections. I think they're interfering with
15 the questioning process.

16 There was an answer given previously
17 that a club's mandate dictates its events, and now
18 I am hearing -- what I believe I am hearing -- that
19 the events actually can dictate the club's mandate
20 to a certain extent, and I am asking for
21 clarification on that point and I think that is
22 entirely proper in the scope of a question.

23 MS. SANCHE: I think you're asking the
24 same question in different ways, and I think he's
25 answered that question already. That's my

1 position.

2 MR. MOORE: Let's take a break.

3 --- Recess commenced at 10:52 a.m.

4 --- Upon resuming at 11:05 a.m.

5 BY MR. MOORE:

6 230 Q. Prior to the September 3rd
7 meeting, I understand from paragraph 10 of Reina
8 Rexhmataj's affidavit that the SA executive came to
9 establish four points that needed to be addressed.
10 Does paragraph 10 of the affidavit correctly
11 describe those points?

12 A. Yes.

13 231 Q. Okay. And the point number one
14 describes the mandate conflict with the mandate of
15 the SA.

16 Does that point there describe the
17 conflict with the Speak for the Weak's pro-life
18 position with the SA's position? Is that what that
19 point is describing?

20 A. Correct.

21 232 Q. Okay. And point number two, as
22 well, is describing that same conflict between
23 Speak for the Weak's view on abortion and this SA's
24 view that a woman's -- of embracing a woman's legal
25 right to reproductive freedom?

1 A. Sorry, I know -- I think I know
2 what you're getting at, but can you just repeat
3 that again?

4 233 Q. Yeah, let me repeat that question,
5 then.

6 And point number two, as well,
7 references the SA's view that Speak for the Weak's
8 pro-life mandate did not align with the SA's,
9 embracing a woman's "legal right to reproductive
10 freedom"?

11 A. Correct.

12 234 Q. When we refer to "reproductive
13 freedom", we're referring to specifically -- or we
14 are referring to it to include the freedom to
15 terminate a pregnancy?

16 A. Correct.

17 235 Q. At any point in that pregnancy?

18 MS. SANCHE: Okay. Go ahead if you
19 know.

20 BY MR. MOORE:

21 236 Q. Is the SA embracing a woman's
22 legal right to --

23 A. Right. In Canada there's no
24 restrictions on when a woman can access abortion.

25 237 Q. And --

1 A. So that's what we support.

2 238 Q. Okay. So these two points by
3 themselves were sufficient for the SA to deny Speak
4 for the Weak's application, or not?

5 A. Again, like we determine our --
6 this is ratified based holistically on the club's
7 ratification.

8 So as you spoke about earlier about the
9 March for Life -- or Campaign for Life Coalition --
10 sorry, I forgot -- I forgot -- like the specific
11 names, but that, in concert with the activities
12 planned and the advocacy around anti-abortion
13 activities, were, you know, the reasons why we
14 didn't ratify.

15 239 Q. Okay. And if I can understand the
16 SA's position going into the September 3rd meeting
17 as set out here in paragraph 10, do I understand it
18 correctly that each one of these sub-points listed
19 in paragraph 10 had to be addressed and if one of
20 them wasn't addressed then that itself would be the
21 basis for the SA not to approve Speak for the
22 Weak's application?

23 A. Again, I can't speculate on what,
24 like, would have been in another ratification
25 package. We just know that these were the issues

1 we had with this ratification package. If there
2 was another one submitted, we'd have to deal with
3 it, like, as that ratification package.

4 So I don't want to speculate on, like,
5 what would have constituted a ratification or
6 wouldn't have or which one of these points were
7 more important than the other points. The reality
8 is we look at the ratification package holistically
9 and make a determination based on that.

10 240 Q. Was the meeting on September 3rd
11 seeking to determine whether Speak for the Weak
12 could address these concerns?

13 A. The meeting at the time was
14 requested by Speak for the Weak, I believe, and was
15 to meet with the SA staff and executives, and the
16 intention of that hearing was to orally present to
17 them our decision on the ratification package. So
18 that was the intention of that meeting.

19 241 Q. So it wasn't an attempt to get
20 Speak for the Weak to address the concerns? It
21 wasn't an attempt to get Speak for the Weak to
22 address those concerns?

23 A. The attempt was just to
24 communicate our concerns with the ratification
25 package. What they do with that concern is now up

1 to Speak for the Weak.

2 So if Speak for the Weak wants to
3 submit a new ratification package, that's up to
4 them. If they don't want to move forward because
5 they think that's fundamental to their mandate so
6 therefore changing their mandate would be -- again,
7 I can't speak to the mind of Speak for the Weak.

8 There's nothing that prevents any
9 student on campus from submitting any ratification
10 package. There's nothing that says that if you
11 submit one that's rejected you can't submit
12 another.

13 We were dealing with the ratifications
14 as presented, and if Speak for the Weak decided
15 that those issues were, you know, too fundamental
16 to their mandate to change to resubmit, then I
17 can't speak to their mind.

18 242 Q. Did the SA provide these four
19 points to Speak for the Weak before the
20 September 3rd meeting?

21 A. I can't remember, to the best of
22 my knowledge.

23 243 Q. We've discussed the March for Life
24 event. The other events listed on their
25 application, I would just like to go through them

1 and determine whether Speak -- whether the SA had
2 concerns with them as well.

3 Did the SA have concerns with the
4 information tables event as described at that --
5 you know, there underneath on Exhibit "A" in
6 Christian Naggar's affidavit?

7 A. There's nothing -- we have no
8 problem inherently with, like, static information
9 tables, but the information tables as it related to
10 its mandate to advocate against abortion was what
11 we had an issue with.

12 244 Q. So the specific information tables
13 that they intended to present which quote from
14 their event activities and ideas:

15 "Providing information on
16 pregnancy and parenting resources,
17 abortion alternatives, embryonic and
18 fetal development and various life
19 issues, abortion euthanasia, et
20 cetera, to the student body..."

21 in the context of this application, you
22 inferred into that that they would be supporting a
23 pro-life position and that was the problem?

24 A. Yeah, we inferred they'd be
25 supporting an anti-choice position.

1 245 Q. Did you have any conflict or
2 concerns with the baby showers described as:

3 "Collecting donations of baby
4 food, baby clothes, diapers,
5 formula, wipes, money, et cetera, to
6 give to pregnancy and parenting
7 support centres in UIT and Durham
8 College community"? [As read]

9 A. No.

10 246 Q. Did you have concerns about
11 speakers:

12 "Inviting speakers to UIT and
13 Durham College to give presentations
14 on various life issues (abortion
15 euthanasia, et cetera)"? [As read]

16 A. Yes.

17 247 Q. And what were your concerns about
18 that?

19 A. Same with concerns around the
20 information table as it relates to their mandate.

21 248 Q. And that's a little vague.

22 A. So their mandate was rejected on
23 the basis that it conflicts with our by-laws and
24 the principles and values of the Student
25 Association.

1 Those speakers who, you know, are
2 inferred to be coming in to speak on issues with
3 respect to their mandate would be an issue for us.

4 249 Q. Because of what they would be
5 speaking about and the views that they would be
6 speaking?

7 A. Because it would conflict with our
8 -- it would conflict with our by-laws.

9 250 Q. What they would speak about would
10 conflict, potentially?

11 A. The mandate of the club conflicts
12 with our by-laws and the events relating to that
13 mandate conflict with our by-laws. That's what our
14 problem was with it.

15 251 Q. And in regards to "fundraisers,
16 holding events, bake sales, movie nights, et
17 cetera, to raise money for Speak for the Weak" in
18 events and activities, did the SA have any problem
19 with those kind of activities in particular?

20 A. Again, there's nothing inherently
21 -- there's nothing that -- a bake sale doesn't
22 inherently conflict with our by-laws. It's the
23 proceeds of those activities would be used to
24 support the mandate of Speak for the Weak, which is
25 the reason for the denial of ratification that we

1 would have an issue with.

2 252 Q. Is the SA opposed to the
3 expression of views on campus that conflict with
4 your by-laws?

5 A. We're opposed to funding groups
6 and activities that conflict with our by-laws.

7 253 Q. But you don't have a problem with
8 the expression of views that conflict with those
9 by-laws on campus?

10 A. That's not -- again, that's not
11 for us to determine. Like I don't personally have
12 a problem with -- as an individual with people
13 freely associating and participating in whatever
14 activities they wish to participate in, but as my
15 role as president, I need to apply the by-laws to
16 our mandate as it relates to our mandate. So the
17 SA would not fund those activities.

18 But the SA, as an entity, has no
19 personal feeling towards individuals who decide to
20 or not to express certain views on campus. We're
21 just -- our mandate is to decide where we allocate
22 our limited resources.

23 254 Q. So the SA doesn't view it as
24 within its mandate to create spaces on campus -- or
25 let me ask this as a question.

1 Does the SA view within its mandate to
2 create spaces where students are free from opinions
3 -- from the expression of opinions they strongly
4 disagree with?

5 A. Sorry, I'm misunderstanding the
6 question.

7 255 Q. Does the SA view it as part of
8 their mandate to create spaces where students are
9 not exposed to opinions that make them feel unsafe?

10 A. No. Our mandate is to allocate
11 our resources and spaces to activities that comply
12 with our mandate as an organization. Like that's
13 our mandate. So I'm confused as to where you're
14 going with this question.

15 256 Q. So anyone that's receiving
16 resources from the Student Association, if that
17 person in the use of those resources is making
18 someone feel unsafe by expressing a view that that
19 person disagrees with, that would be something the
20 SA should take action on or would take action on in
21 regards to enforcing its mandate?

22 MS. SANCHE: Well, it's a hypothetical,
23 but I think he's answered your previous question
24 no, and then he stated what the SA's mandate is.

25 BY MR. MOORE:

1 257 Q. So with regards to groups or
2 individuals utilizing SA resources, those
3 individuals must not be -- if I understand the SA's
4 mandate correctly, must not be expressing views
5 that make other students feel unsafe; do I
6 understand that correctly?

7 MS. SANCHE: I don't quite understand
8 the relevance of the question in relation to the
9 application.

10 I mean, Speak for the Weak is not a
11 ratified group. So I don't think that they're
12 alleging that as a ratified group they were not
13 able to do something with funding.

14 So I'm not clear on why the
15 hypothetical about how the SA governs a ratified
16 group, which is something we could discuss in
17 reality relates to the application, sorry.

18 MR. MOORE: Yeah, I guess what I'm
19 trying to understand is the holistic determination
20 of this application did involve some consideration
21 of the expression of views contrary to the SA's
22 mandate.

23 BY MR. MOORE:

24 258 Q. I think we went over that in
25 concern that the speakers would potentially have

1 views that would be contrary to the SA's mandate;
2 is that a correct understanding?

3 R/F MS. SANCHE: I think that the
4 witness has stated his answers. I don't want to
5 repeat them.

6 MR. MOORE: Okay. Sure.

7 MS. SANCHE: So we have his answer.

8 MR. MOORE: Okay. So that's the
9 context of this question, and --

10 MS. SANCHE: I don't see the --

11 MR. MOORE: -- we understand that if
12 Speak for the Weak was a ratified club, the SA
13 would view that the hosting of those speakers at
14 events using SA resources would violate the SA
15 by-laws or policies. That's the question that I'm
16 asking.

17 MS. SANCHE: You weren't asking that
18 question.

19 MR. MOORE: But that's the question I'm
20 seeking to understand.

21 MS. SANCHE: He's already answered that
22 question. He answered how ratification was
23 determined, how they view the events in relation to
24 the mandate of a proposed club. He also answered
25 at the outset of our cross-examination that the SA

1 has to approve all events.

2 MR. MOORE: Mm-hmm.

3 MS. SANCHE: So I don't see this as a
4 new question, and I also don't see it as a relevant
5 question, again, considering Speak for the Weak has
6 not been ratified.

7 So it's theoretical as to what a club
8 that was ratified might or might not do and,
9 frankly, I think what you're trying to input into
10 this is questions about freedom of expression,
11 which, again, I don't quite understand the
12 relevance to a non-ratified club.

13 MR. MOORE: Counsel, I'm seeking to
14 explore past this application now. If a club was
15 ratified and its events were scrutinized by the SA
16 as a ratified club, that's what I'm seeking to
17 explore and I don't -- do you feel that that area
18 of exploration is not relevant, counsel?

19 MS. SANCHE: I think it's theoretical
20 and it's a hypothetical that you can't pose to the
21 witness, but, more importantly, I think he already
22 answered at the outset of the examination that
23 events have to be approved by the Student
24 Association period.

25 MR. MOORE: That's correct. And so

1 what we're seeking to do now is determine what that
2 approval evaluates.

3 MS. SANCHE: That's a different
4 question that you have not asked. You put to the
5 witness --

6 MR. MOORE: That's what I'm seeking to
7 get to.

8 MS. SANCHE: Well, you should get
9 there.

10 MR. MOORE: I agree.

11 BY MR. MOORE:

12 259 Q. So in the approval of events of
13 ratified clubs, does Speak for the Weak -- sorry,
14 scratch that.

15 In the approval of events -- in the
16 approval process of events for SA ratified clubs,
17 does Speak -- does the Student Association require
18 that those events not make students feel unsafe?

19 A. So as a general rule of thumb, I
20 think safety of students and staff and faculty and
21 administrators on campus is probably of the utmost
22 importance to everyone, not just the Student
23 Association, so if someone's safety is in
24 jeopardy, most definitely that's taken into
25 consideration when approving events.

1 260 Q. And if an individual's physical
2 safety is not jeopardized but they're made to feel
3 uncomfortable at that event, is that a concern for
4 the SA in approving that event of a ratified club?

5 MS. SANCHE: Sorry, are you talking
6 about if after an event has happened someone feels
7 unsafe does that affect the retrospective approval
8 of that event?

9 MR. MOORE: No, if the SA believes that
10 an event will make others feel uncomfortable
11 attending that event.

12 THE WITNESS: Uncomfortable and safety
13 are two completely different concepts.

14 BY MR. MOORE:

15 261 Q. Okay. Let's look at the issue of
16 being made to feel uncomfortable.

17 Does the SA believe that in determining
18 whether a recognized campus club can have an event,
19 does the SA evaluate whether that event will make
20 students feel comfortable or not?

21 A. No.

22 262 Q. So if a student's club recognized
23 by the SA seeks to have an event that expresses
24 opinions that other students strongly disagree with
25 on campus, does the SA seek to determine -- does

1 the SA take that into account as to whether they'll
2 approve that event?

3 A. No.

4 263 Q. If the recognized campus club
5 seeks to have an event that expresses opinions that
6 the SA executive feels disagree with policies in
7 the by-laws of the SA, is that taken into account
8 in approving of that event?

9 A. If any event violates policies or
10 by-laws, that's definitely taken into consideration
11 in the approval process.

12 So we have -- for instance, we require
13 people off campus for an event. You have to have a
14 certificate of insurance from the venue you're
15 visiting, right. If there's no certificate of
16 insurance, that violates our policy, and the event
17 won't be approved.

18 So any policy that's violated through
19 the approval process is taken into consideration.

20 264 Q. And I'm discussing a particular
21 issue, of if an approved student group seeks to
22 have an event that expresses opinions that the SA
23 executive believes are contrary to the views of the
24 SA, including this view about systemic societal
25 oppression, is that taken into consideration in

1 whether the SA executive will approve that event?

2 A. So the SA doesn't have views. The
3 SA has policies and by-laws, right. So if those
4 policies and by-laws are violated, then those are
5 absolutely taken into consideration when viewing an
6 event approval, right.

7 So whether or not folks agree with the
8 by-laws expressed in our by-law document or in our
9 letters patent, they're still a by-law. So someone
10 can be elected as president of our organization who
11 fundamentally disagrees with the by-laws, but they
12 still have to follow those by-laws.

13 So it's not the opinions of the
14 executive. It's how you reasonably -- and you
15 know, as a lawyer, you'll understand. You know,
16 you have to reasonably, you know, apply an
17 interpretation to any set of policies or by-laws or
18 procedures to ensure that they're being complied
19 with.

20 That's what the executive is taxed with
21 doing, and that's how we make any judgment or any
22 decision in our organization.

23 265 Q. So you say the SA executive does
24 not have any views, it just seeks to enforce the
25 by-laws?

1 A. Every executive member has varying
2 views on a multitude of issues, but our job is to
3 interpret the by-laws as reasonably as we possibly
4 can to ensure that we're conforming to our mandate
5 as an organization as incorporated under the
6 Corporations Act.

7 266 Q. You would agree with me that the
8 SA executive has a view of the by-laws which it
9 interprets as an "anti-oppression lens"? Would you
10 agree with that?

11 A. The by-laws state that we have to
12 create an environment free of systemic societal
13 oppression and decolonization and all other things
14 incidental or conducive to those purposes. We
15 seek to ensure that by-law is followed.

16 267 Q. And in seeking to ensure that that
17 by-law is followed, do you agree or do you not
18 agree that the SA executive has adopted an
19 anti-oppressive lens?

20 A. The organization, by looking to
21 seek to create an environment free of systemic
22 societal oppression, is, by definition,
23 anti-oppressive.

24 So that's not the executive imposing
25 that interpretation of the by-laws. The by-laws

1 are quite prescriptive in adopting an
2 anti-oppressive lens that's -- to create an
3 environment free of oppression, you need to be
4 anti-oppressive. Like the opposite of oppression
5 is anti-oppression, right.

6 268 Q. So the by-laws have required that
7 the SA executive adopt an anti-oppressive lens;
8 correct?

9 MS. SANCHE: Counsel, just to be clear,
10 you said the SA. I guess you're asking him if that
11 also applies to the executive? I wasn't sure if
12 you were repeating these questions or --

13 MR. MOORE: Sorry, I'll repeat that.

14 BY MR. MOORE:

15 269 Q. So the by-laws have required that
16 the SA executive adopt an anti-oppressive lens?

17 A. That the SA as an organization
18 does, and the executives are officers of the
19 corporation.

20 270 Q. And that collectively they adopt
21 an anti-oppressive lens?

22 A. That the corporation adopts the
23 anti-oppressive lens.

24 271 Q. And if a student group has an
25 event that the SA executive feels does not adopt

1 that anti-oppressive lens, will that student group
2 be approved in the absence of adopting that
3 anti-oppressive lens?

4 A. So if a student group does
5 oppressive activities, right -- so I'll give you an
6 example.

7 We have an anime club, as an example.
8 There's nothing inherently oppressive or
9 anti-oppressive of the anime club, right. We don't
10 got to anime clubs and, like, look over their
11 shoulders and make sure that they're, you know,
12 being anti-oppressive in every single thing they
13 do.

14 But we know the mandate of their club
15 is A-political. There's no -- it's indifferent.
16 There's no oppressive or anti-oppressive mandate to
17 that club, right. So when a club or a ratification
18 package comes to our attention or an activity is
19 done on campus or a policy is implemented at the
20 SA, we ensure it doesn't create conditions for
21 which people can be oppressed, right.

22 And that is what an anti-oppressive
23 lens in a framework seeks to accomplish, is that
24 the policies you're seeking don't marginalize
25 people, that the mandate or activities you're

1 seeking to do don't marginalize or oppress people,
2 right. So I think that's what that by-law states.

3 272 Q. And the SA is the one that
4 determines whether an activity or event oppresses
5 people in its role within the -- the SA executive
6 within its role?

7 A. The SA doesn't exist in a bubble.
8 So there's like -- you know, any academic library
9 will be able to produce for you a massive body of
10 literature around what oppression is. I encourage
11 you to read it.

12 This isn't -- these are peer reviewed
13 academic journals. These are people who are
14 marginalized themselves. You know, there's a lot
15 -- there's a political sociological --
16 sociopolitical history of oppression that's, you
17 know, thousands of years old, right.

18 So this isn't like -- the SA didn't
19 just pop up out of the ground one day and decide
20 what was oppressive or not oppressive. We adopt --
21 the organization far before my time -- because I
22 was about eight years old when this -- when the SA
23 incorporated -- obviously had looked to the body of
24 literature to describe what, you know, oppression
25 is and adopt that as fundamental to do a mandate of

1 the organization.

2 So we are one organization in a host of
3 many civil society groups, academics, institutions,
4 organizations who adopt very similar
5 anti-oppression values.

6 273 Q. And in your role as SA executives,
7 it is your role to determine whether the events of
8 -- the proposed events of clubs, it's your final
9 responsibility to determine whether they are in
10 violation of that?

11 A. Absolutely, yeah.

12 MR. MOORE: Okay. Off the record.

13 -- OFF THE RECORD DISCUSSION --

14 BY MR. MOORE:

15 274 Q. Mr. Cullen, I have no further
16 questions today. I'm not going to close today, and
17 counsel and I have been discussing --

18 MS. SANCHE: Well, we discussed we have
19 to close, and then if there are further followup
20 questions we would discuss, but, in my opinion,
21 these examinations are closed as of today as the
22 crosses are done.

23 MR. MOORE: I didn't close yesterday,
24 I'm not going to close today, and subsequent --
25 subject to further discussions with Andrea, this --

1 these are all my questions for today.

2 MS. SANCHE: Can we go off the record?

3 -- OFF THE RECORD DISCUSSION --

4 MR. MOORE: Could you -- could we go on
5 the record by starting with reading --

6 THE COURT REPORTER: Okay, sure, one
7 moment.

8 MR. MOORE: -- what I said there?

9 THE COURT REPORTER: Counsel has asked
10 me to read back the last statement said to the
11 witness:

12 "Mr. Cullen, I have no further
13 questions"

14 He also stated:

15 "I'm not going to close today."

16 MS. SANCHE: Well, I'm objecting to
17 your refusal to close this cross-examination on the
18 basis that you have no reason to keep it open.
19 You're not adjourning the cross-examination to
20 another date, nor is there any reason why you
21 cannot finish your cross-examination today.

22 I refuse -- I think it's frankly
23 improper and improper conduct on an examination to
24 require that the witness stay under oath pending an
25 indeterminate return date.

1 You're not entitled by a court order
2 nor by the rules to continue to cross-examine the
3 witness, and I will, if necessary, have to bring a
4 motion closing this cross-examination in court,
5 which may jeopardize the timetable of this action
6 and the other action as well.

7 More importantly, there was no order of
8 Justice Archibald or any other judge that you be
9 permitted an indefinite time to cross-examine the
10 witness. There is a pending application to be
11 heard on April 28th, the witness is here to be
12 cross-examined, and you should complete your
13 examination today.

14 I have noted, as well, that you haven't
15 cited any rule that permits you to continue to
16 cross-examine when you were here today to finish
17 your cross-examination.

18 MR. MOORE: Thank you, counsel. And
19 just for the record, the decision being referenced
20 is a decision in the case of Ryerson that is --

21 MS. SANCHE: I didn't reference a
22 decision.

23 MR. MOORE: -- pending release at an
24 undetermined date. There has been an order in this
25 case consolidating with another matter against

1 UTMSU, and counsel in that matter and I did not
2 close our questionings pending the release of the
3 Ryerson decision, which, according to Justice
4 Archibald, is determinative of the matters in these
5 two cases, and for that reason the questioning is
6 not being closed today because of the possibility
7 of other matters being raised in that decision and
8 we will be discussing this matter further in the
9 days ahead.

10 MS. SANCHE: And in respect of the
11 pending decision of Ryerson, it is a legal
12 determination that may affect the legal
13 determination of the laws applicable in this case
14 and potentially in the University of Toronto case,
15 and it does not affect in any way the facts of
16 these matters, the facts that were stated in the
17 affidavits for which the witness is here today to
18 be cross-examined, and I do not agree that anything
19 that has occurred, including the hearing of these
20 matters one after another, in any way affects your
21 ability to complete your cross-examination today,
22 and there is nothing in that decision of Ryerson,
23 in my opinion, that would require you to re-examine
24 or to continue this cross-examination of the
25 witness.

1 There will be no further affidavits
2 filed unless we have an agreement, in which case an
3 entirely different outcome will occur, but as it
4 stands today, it's my position that you have to
5 complete your cross-examination and you have every
6 ability and every minute of the day the rest of the
7 day at your disposal to do so, and you're just
8 simply refusing to do so.

9 MR. MOORE: Thank you, counsel. I have
10 -- neither of us are aware of what will be in the
11 Ryerson decision, and I have consulted with local
12 Ontario counsel and have not been pointed to you --
13 or by you to any rule that requires me to close
14 today, and local Ontario counsel has not -- has
15 advised me that there is no such rule. So on that
16 basis and in good faith, I am not closing today.

17 MS. SANCHE: Well, I'll just take you
18 to the rules that require that you -- that there
19 not be improper conduct of an examination, for
20 instance, which is Rule 34.14 of the Rules of Civil
21 Procedure.

22 But frankly, it's your obligation to
23 cite a rule that allows you to continue any
24 cross-examination indefinitely and you cannot cite
25 one.

1 MR. MOORE: Seeing no further
2 discussion, this questioning is concluded for
3 today.
4 - Whereupon the proceedings adjourned at 12:11 p.m.
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REPORTER'S CERTIFICATE

I, LORRAINE FEDOSOFF, Shorthand
Court Reporter, certify;

That the foregoing proceedings were
taken before me at the time and place therein set
forth, at which time the witness was put under oath
by me;

That the testimony of the witness
and all objections made at the time of the
examination were recorded stenographically by me
and were thereafter transcribed;

That the foregoing is a true and
correct transcript of my shorthand notes so taken.

Dated this 29th day of March 2016



NEESON COURT REPORTING INC.

PER: LORRAINE FEDOSOFF, COURT REPORTER

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