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THE ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

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v.

JILL HORNICK
RACHAEL AITCHESON

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PROCEEDINGS AT COURT

BEFORE THE HONOURABLE MR. JUSTICE P. HYRN
On October 22, 2001, at Toronto.

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

Counsel for the Crown

K. Hart, Ms.

N. Zed, Ms.

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Counsel for the Defendant Hornick

F. Addario, Esq.

Counsel for the Defendant Aitcheson

V. Simpson, Ms.

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Order made by the Honourable Mr. Justice P. Hyrn for the
exclusion of witnesses with the exception of Detective Wilson.

THE ONTARIO COURT OF JUSTICE

T A B L E O F C O N T E N T S

<u>WITNESSES</u>	<u>Exam. in-Chief</u>	<u>Cr.- Exam.</u>	<u>Re- Exam.</u>
JANET ROWE	12	28	38
ANJULA GOGIA	42	50	56
REGAN McCLURE	58	72	89
RENEE RACINE	90	97	
JILL HORNICK	103	117	127

E X H I B I T S

<u>EXHIBIT NUMBER</u>	<u>ENTERED ON PAGE</u>
1. Tickets	31
2. Rules and Etiquette Pussy Palace	31
3. Information flyer	35
4. Document	105
5. Special occasion permit	118

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MS. ZED: Good morning, Your Honour.

THE COURT: Good morning.

MS. ZED: My name is Zed, Z-E-D, first initial N, and I'm a student at law here from the provincial prosecutor's office. My colleague here is Hart, H-A-R-T, first initial K, and we are here with respect to the Liquor Licensing offences. I believe that there's a Charter motion that Mr. Addario has filed, so we're here to argue that today, Your Honour.

THE COURT: Yes.

MS. ZED: So I just want to make sure that Your Honour has received the materials.

THE COURT: I've only received the defence materials.

MR. ADDARIO: Good morning, Your Honour, it's Frank Addario, I appear for Ms. Hornick on the summons or information before you.

THE COURT: Yes. And the response materials, I've just been handed a factum by the Clerk. Is there other materials?

MS. ZED: Yes, we did file a factum as well as a notice of response, and I just wanted to make sure that Your Honour has those materials.

THE COURT: Yes, I do.

MS. ZED: And we also have a case book put together.

THE COURT: Yes, thank you.

MS. ZED: And we'll just be referring to that later during submissions.

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THE COURT: Yes, and from the defence I have the notice of application, the applicant's factum and two books of authorities.

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MR. ADDARIO: That's right, and Your Honour, it seems that everyone has the authorities except my colleagues. I'm really embarrassed. For some reason it got served on the Crown's office Friday, but didn't manage to get to Ms. Zed and Ms. Hart, so I'll remedy that by lunch today. It's somewhere over in the Crown's office, not in their possession unfortunately, but they have the factum.

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THE COURT: Yes. Yes, you are ready to proceed?

MS. SIMPSON: That's correct.

MR. ADDARIO: We certainly are.

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MS. SIMPSON: Good morning, Your Honour. My name is Simpson, initial V and I appear for the other defendant in the Liquor Licence Act, Ms. Aitcheson.

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THE COURT: So you're appearing for Jill Hornick, and you're appearing for Rachael Aitcheson.

MS. SIMPSON: Yes, and I also ask to appear as her agent today.

THE COURT: Yes, and your client is here?

MR. ADDARIO: She is, Your Honour.

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THE COURT: Yes, has there been discussion as to how to proceed on the matters? Whether we're proceeding to trial, or whether we're proceeding on the application first?

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MR. ADDARIO: We're intending to proceed on the application first today, Your Honour, and it's entirely up to you whether you wish to have the charge read, or whether you simply wish to commence the application.

THE COURT: We'll have the charges read.

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CLERK OF THE COURT: Jill Hornick is charged that on or about the 15th day of September 2000 at the City of Toronto in the Toronto Region did commit the offence of permit holder commit disorderly conduct at 231 Mutual Street at 12:40 a.m. contrary to the Liquor Licence Act of Ontario Regulation CA9-91 Section 32.

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Further that Jill Hornick is charge that on or about the 15th day of September 2000 at the City of Toronto in the Toronto Region did commit the offence of permit holder commit disorderly conduct at 231 Mutual Street, Toronto at 12:45 a.m. contrary to the Liquor Licence Act of Ontario Regulation 389-91 Section 32.

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Further that Jill Hornick is charged that on or about the 15th day of September 2000 at the City of Toronto in the Toronto Region did commit the offence of fail to provide sufficient security to wit 231 Mutual Street, Toronto 12:10 a.m. contrary to the Liquor Licence Act of Ontario Regulation 389-91, Section 22.1.

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Further that Jill Hornick is charged that on or about the 15th day of September, 2000 at the City of Toronto in the Toronto Region did commit the offence of permit holder serve sell liquor outside the prescribed hours to wit 231 Mutual Street at 1:10 a.m. contrary to the Liquor Licence Act of Ontario Regulation 389-91, Section 24.5.

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Further that Jill Hornick is charged that on or about the 15th day of September 2000 in the City of Toronto in the Toronto Region did commit the offence of permit holder permit liquor to be removed from premises to wit 231 Mutual Street, Toronto at 12:12 a.m. contrary to the Liquor Licence Act Ontario Regulation 389-91, Section 26.2.

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Rachael Aitcheson is charged that on or about the 15th day of September 2000 at the City of Toronto at the Toronto Region did commit the offence of permit holder serve sell liquor outside the prescribed hours to wit 231 Mutual Street, Toronto at 1:10 a.m. contrary to the Liquor Licence Act Ontario Regulation 389-91 Section 24.5.

Further that Rachael Aitcheson is charged that on or about the 15th day of September 2000 at the City of Toronto in the Toronto Region did commit the offence of fail to provide

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sufficient security to wit 231 Mutual Street,
Toronto at 12:10 a.m. contrary to the Liquor
Licence Act Ontario Regulation 389-91 Section
22.1.

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Further that Rachael Aitcheson is charged that
on or about the 15th day of September 2000 at
the City of Toronto in the Toronto Region did
commit the offence of permit holder permit
liquor to be removed from premises to wit 231
Mutual Street, Toronto at 12:12 a.m. contrary
to the Liquor Licence Act Ontario Regulation
15 389-91 Section 26.2.

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Further that Rachael Aitcheson is charged that
on or about the 15th day of September 2000 at
the City of Toronto in the Toronto Region did
commit the offence of permit holder permit
disorderly conduct to wit 231 Mutual Street,
Toronto at 12:18 a.m. contrary to the Liquor
Licence Act Ontario Regulation 389-91 Section
32.

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Further that Rachael Aitcheson is charged that
on or about the 15th day of September 2000 at
the City of Toronto in the Toronto Region did
commit the offence of permit holder permit
disorderly conduct to wit 231 Mutual Street,
Toronto at 12:25 a.m. contrary to the Liquor
Licence Act Ontario Regulation 389-91 Section
30 32.

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And further that Rachael Aitcheson is charged that on or about the 15th day of September 2000 at the City of Toronto in the Toronto Region did commit the offence of permit holder permit disorderly conduct to wit 231 Mutual Street, Toronto at 12:40 a.m. contrary to the Liquor Licence Act Ontario Regulation 389-91 Section 32.

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THE COURT: What we're checking is that with respect to Jill Hornick, there are six counts on the docket, she's been arraigned on five. And the accused Aitcheson, she's been arraigned on six, and there are six on the docket.

MR. ADDARIO: Right. I have to confess I went on auto pilot there, Your Honour. I wasn't counting.

THE COURT: Should there be six?

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MR. ADDARIO: There should be six.

THE COURT: So perhaps we can just take out.

MR. ADDARIO: Well, I see Mr. Barnes is here.

THE COURT: Yes.

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... OTHER MATTER DISCUSSED ...

THE COURT: While the Clerk is looking for that one information, there are 12 counts on 12 different informations?

MR. ADDARIO: That's right, Your Honour.

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THE COURT: Is there any issue about proceeding on all -- the intent is to proceed on all matters together?

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MS. ZED: Yes, it is, Your Honour.

THE COURT: And is there any issue barring that, given that they're on separate informations?

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MR. ADDARIO: No, I don't think so Your Honour, you know, the alternative would be to hold two voir dires and then ask Your Honour to have the evidence apply. We're not trying to create additional work for anyone.

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THE COURT: No, if we can do it all as one, and if everyone wants to do that, that seems to me the best way of proceeding. As long as there's no procedural bar.

MR. ADDARIO: I know of none.

THE COURT: Under the Provincial Offences Act there's no issue?

MS. ZED: We know of none.

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THE COURT: And once we have the full arraignment, what's the procedure that's intended to be followed?

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MR. ADDARIO: Well it's my application, there's a warrantless search, but I'll accept the initial burden because it's my application, and I'll carry on from there. I might even outline it for Your Honour, but before I do, I wonder, I guess we can't do this without Madam Clerk here, but I'll be asking for an order excluding witnesses.

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THE COURT: Yes.

MS. ZED: We would be in agreement with that. The only thing that I wanted to canvass with

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Mr. Addario is if it would be okay if Detective Wilson, as our officer in charge sat in and during appropriate portions he could be excluded at those, whenever you deemed necessary.

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MR. ADDARIO: Yes, I think that's a fair request and we'll address it from time to time during the evidence of our witnesses. So that's the first matter, then the second matter would be whether or not Your Honour will permit Ms. Hornick to sit with me at counsel table.

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THE COURT: I have no issue.

MS. ZED: No objection.

THE COURT: Yes.

MR. ADDARIO: At least I don't think there's an issue about security.

THE COURT: Yes, anything else?

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MR. ADDARIO: No, that's it for those matters. After Your Honour makes the order I'm happy to outline our application if you wish, or whatever you wish to do.

THE COURT: Yes.

MR. ADDARIO: We're also happy to stand down.

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THE COURT: There will be an order excluding witnesses, except for the officer in charge, unless I'm otherwise addressed with respect to that issue when specific evidence is being heard, and I depend obviously on all counsel to have their witnesses outside the courtroom because I don't know who the witnesses are. So
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anyone in the courtroom that knows they're

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going to be a witness, please wait outside.
And the order means that you're not to discuss
your anticipated evidence before it's given and
not to discuss the evidence after it's been
given until the trial has been completed,
except as allowed by the Law Society rules for
counsel to discuss matters with their
witnesses. Yes, we have the last information
now, before the Court. There's been no
subpoena served on, from police files.

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MR. ADDARIO: On police headquarters, no.

THE COURT: Police headquarters.

MR. ADDARIO: Thank you. This is returnable in
March to get some disclosure that I was having
trouble tugging away, but it's old news, Your
Honour.

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CLERK OF THE COURT: Jill Hornick is charged
that on or about the 15th day of September 2000
at the City of Toronto in the Toronto Region
did commit the offence of permit holder permit
disorderly conduct to wit 231 Mutual Street,
Toronto at 12:18 a.m. contrary to the Liquor
Licence Act Ontario Regulation 389-91 Section
32.

THE COURT: Is it appropriate I take a plea at
this time?

MR. ADDARIO: Sure.

THE COURT: Yes.

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CLERK OF THE COURT: On behalf of Ms. Hornick.

MR. ADDARIO: Ms. Hornick pleads not guilty to
all charges.

CLERK OF THE COURT: And Ms. Aitcheson.

MS. SIMPSON: I'm instructed by Ms. Aitcheson to enter pleas of not guilty in her behalf to all charges.

... OTHER MATTER DISCUSSED ...

THE COURT: Yes.

MR. ADDARIO: Well, has Your Honour had an opportunity to see the notice -- review the notice of application?

THE COURT: Yes. Yes, I've read that and the factum and I started glancing through the cases.

MR. ADDARIO: All right. So there's not a great deal to tell you in addition to what's in the notice of application that won't become evident this morning. I'll be calling five witnesses who were present at the event. I will endeavour to discharge my burden to show that there was a reasonable expectation of privacy on behalf of the two applicants. In addition to that I will endeavour to discharge the burden in relation to Section 7 and show that there's a liberty interest engaged. I'll be asking either for the exclusion of all of the evidence that was gathered, as I indicated in the factum during the evening, which spans two calendar dates, or in the alternative for a stay of proceedings. And we will develop evidence in relation to both during the course

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of the application we'll be bringing. And I guess the other thing I could tell Your Honour is that as the facts respecting the offences are not engaged, we won't be litigating whether or not the Crown can ultimately prove any of the allegations which have been made against Ms. Hornick and Ms. Aitcheson. And I point that out to you because to the extent that you'll hear some evidence from Crown witnesses, we won't necessarily be litigating the accuracy of allegations made with respect to the conduct of proceedings which are said to support Liquor Licence Act charges in this case.

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THE COURT: So I take it from that, that if the matter proceeds to trial after the application, that you won't be admitting the evidence on the application on trial because your cross-examination won't cover what you would ordinarily cover on a trial?

MR. ADDARIO: Just so.

THE COURT: And with respect to the accused Aitcheson, your position on this application?

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MS. SIMPSON: Mr. Addario and I have been preparing the application together. He speaks for both of us with respect to the comments he's just made.

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THE COURT: And how is the labour divided up between the two counsels? One counsel calling the witnesses and examining in-chief, and what's the role of the other counsel?

MR. ADDARIO: Well, I imagine that I'll speak

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for myself only. I'll be examining four or five of our witnesses. I imagine Ms. Simpson will have some questions for some of them as they apply to her client.

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THE COURT: Yes, and just so we have it straight from the beginning, your examination is intended to be examination in-chief, or otherwise?

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MS. SIMPSON: It's intended to be cross-examination, of the witnesses called by Mr. Addario. I anticipate my questions for each of them will be very brief and related only to specific matters that deal with my client. I don't anticipate I'll be asking the witnesses called by Mr. Addario very many questions at all.

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THE COURT: Yes, any issue with respect to the position of counsel for Aitcheson as to their examination of witnesses?

MS. ZED: No, we don't take any issue.

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THE COURT: This may change as the application proceeds, are you intending to call witnesses? You're indicating at this point you intend to call five witnesses, and are you calling any witnesses?

MS. SIMPSON: No, I'm not.

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THE COURT: And do you know at this point roughly what your position is, and of course it's subject to change.

MS. ZED: Your Honour, we anticipate we'll call three witnesses.

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THE COURT: So the evidentiary portion of this application will likely take -- we have two days set aside?

MR. ADDARIO: We do, Your Honour.

THE COURT: And tomorrow evening is, there's a judges conference starting tomorrow evening through Friday, so it may be that tomorrow evening we'll go through the afternoon from two until what ordinarily would be the afternoon recess, perhaps stretching it to four and then break there, as opposed to going to 4:30 or quarter to five.

MR. ADDARIO: Sure.

THE COURT: So we'll have sufficient time, it's felt, to complete the matters?

MR. ADDARIO: We think so, Your Honour, unless Ms. Hart becomes loquacious over night.

MS. HART: I'll try my best not to, Your Honour.

THE COURT: Yes.

MR. ADDARIO: I'll just get my first witness.

THE COURT: Yes.

JANET ROWE: AFFIRMED.

EXAMINATION IN-CHIEF BY MR. ADDARIO:

Q. Good morning.

A. Good morning.

Q. Ms. Rowe, I understand that you work at an agency in Toronto called Voices of Positive Women?

A. Yes, I do.

Q. And that you're the executive, director?

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A. I am.

Q. All right. And prior to that you worked at the Rape Crisis Centre for four years as a volunteer coordinator and crisis line counsellor?

A. Yes, I did.

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Q. After that you worked at Nellie's Women's Shelter from 1985 to 1992?

A. Yes, I did.

Q. And then for two years after that you worked at the Aids Committee of Toronto as a counsellor, and a community development coordinator for women?

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A. Yes, I did. I actually worked there for nine years.

Q. Right, okay.

THE COURT: I'm sorry, I just missed that last comment.

THE WITNESS: I worked there for nine years.

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THE COURT: Nine years.

MR. ADDARIO: Q. I want to ask you about an event known colloquially as the Pussy Palace, do you know what that is?

A. Yes, I do.

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Q. And if I could just get you to take your mind back to September 14, 2000, was there a Pussy Palace event that evening?

A. Yes, there was.

Q. All right. Were you there?

A. Yes, I was.

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Q. What's your relationship to this event?

A. I'm one of the founding organizers of the event.

5 Q. Were was this event held?

A. At Club Toronto on Mutual Street.

Q. That's in Toronto, is it?

A. Yes, it is.

Q. And what is that place?

10 A. It's a bathhouse, typically a bathhouse for men. It's a bathhouse that's typically frequented by men, except on this evening.

Q. And was this event on September 14th the first Pussy Palace event?

A. No, it wasn't.

15 Q. When were the previous events, and how many were there?

A. There were three other, this was the fourth event. There were three other events. The first one was September 14th, 1998 and I believe the second one was in February of '99 and the third June of '99.

20 Q. And what did you do as a founding organizer of this event? In general, what was your role or what participation did you engage in?

25 A. Well as a founding organizer, I was really responsible for kind of locating the place that we could use and pulling the committee together, so we're responsible for organizing all aspects of the event.

Q. And I wonder if you could just tell His Honour, what is the Pussy Palace? What is it all about?

30 A. Well it's a bathhouse for women, and it really is a space for women to explore their sexuality in a safe environment.

THE COURT: I'm sorry, explore, is that the word you used?

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THE WITNESS: Yes.

THE COURT: Okay.

MR. ADDARIO: Q. When you were organizing, was there any discussion about the desirability or necessity of having an event like this for women in Toronto?

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A. Oh yeah, it was a very big part of the discussion. That was why we had the event, was that there aren't any opportunities for that. That this isn't part of our social conditioning as women, that we really aren't socialized to express or feel comfortable with our sexuality, so that was a really big piece of why we were doing this event.

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Q. Is there more than one bathhouse for men in the City of Toronto?

A. There are many bathhouses for men in the City of Toronto.

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Q. And have those existed for some period of time?

A. Many, many years, yes.

Q. All right. In contrast, prior to the first Pussy Palace event, had there been bathhouses for women in Toronto?

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A. No, that was the first event of its kind.

Q. Did that difference play any role in your decision to organize an event like this?

A. Sorry, can you repeat the question?

Q. The fact that there had been for many years as you say.

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A. Yes.

Q. Men's bathhouses, bathhouses for men?

A. Right.

5 Q. But not for women, was that relevant to your decision to organize this event?

A. It was hugely relevant. Women had been talking for years that they wanted to have a bathhouse for women, and we had never been able to do that, so it was certainly something that we wanted to make sure we could do.

10 Q. What kind of, pardon my naivete, but what kind of activities go on in a women's bathhouse?

A. There are many activities, but sex happens at a bathhouse.

Q. Sex?

15 A. Yeah. Sexual activities happen at a women's bathhouse.

Q. Were men invited to previous Pussy Palace events held by your committee?

A. No.

Q. What's your committee called by the way?

20 A. The Woman's Bathhouse Committee. Or the Toronto Women's Bathhouse Committee.

Q. Did men attend any of your previous events?

A. No.

25 Q. Did you as a founding organizer expect any men to attend at the Pussy Palace event on September 14th, 2000?

A. No.

30 Q. What time did you get there on September 14th?

A. About four o'clock.

Q. And what did you do after you arrived?

A. I helped set up to get ready for the

5 evening.

Q. And what was your role that evening?

A. That evening I had an early shift that evening, so I worked from six to nine handing out flyers to people in line.

Q. What kind of flyers were you handing out?

10 A. One was basically the rules and etiquette at the bathhouse, and the other was an informational flyer about what would be illegal or legal activities in a bathhouse.

THE COURT: I'm sorry, the first one was rules and etiquette of the bathhouse?

15 **THE WITNESS:** Yes.

THE COURT: And the second one?

THE WITNESS: Was an informational flyer about what would be considered legal or illegal activities.

20 **MR. ADDARIO:** Q. And why did you hand out those flyers?

A. Well I think for a couple of reasons. It was a pretty huge oversight on our part that we hadn't done that in the past and particularly given that the police had been frequenting the establishments on numerous occasions in the past couple of years. And we wanted to make sure that women had the information that they needed to make informed decisions.

Q. Can you describe in general terms the layout of the facility at Club Toronto?

A. When you come in the main entrance --

30 Q. Do you need water?

A. I do, actually.

5 Q. Just give Madam Clerk a moment, she'll help you out there.

A. Thank you. A little louder?.

Q. All right, just continue with your description of the layout of the facility at Club Toronto?

10 A. So when you come in the main door, you're on the main floor, main level, which is sort of a little bit below street level, and there's a pool off the main floor. Then there's a second floor with rooms and lockers, third floor with lockers --

THE COURT: Sorry, the second floor had which?

15 **THE WITNESS:** Had rooms and lockers. The third floor also has rooms and lockers, and the fourth floor has rooms.

MR. ADDARIO: Q. Did people show up?

A. Lots of people showed up.

Q. Were they women?

20 A. All women.

Q. And how were the women that showed up dressed that evening?

A. Partially clothed.

THE COURT: Sorry, partially?

THE WITNESS: Partially clothed.

25 **MR. ADDARIO:** Q. Now did people arrive partially clothed?

A. No, they didn't.

Q. Coming off the street partially clothed?

A. No.

30 Q. Okay. How did they get partially clothed?

A. They took their clothes off and changed into something else, and either put them in a locker, or a

5 room, but most women had their clothes bagged and checked into our coat check essentially.

Q. All right, I'll come back to where there clothes were in a moment. So women arrived fully dressed?

A. Yes.

Q. Came inside?

10 A. Yes.

Q. And changed somewhere on the premises of Club Toronto?

A. Yes, they did.

Q. After they entered the event?

15 A. Yes.

Q. And you say that not all of them were able to take their clothes upstairs to the top two floors. What was the reason for that?

A. There aren't enough lockers for everyone.

20 Q. And when you organized it, you anticipated that?

A. Oh yes.

Q. And so what did you do to give people someplace to put their clothes after they had taken them off?

A. There was a coat check and clothes were bagged in a green garbage bag and put in a locked room.

25 Q. On what floor was that locked room located?

A. The main floor.

Q. And where in the main floor in relation to the front entrance?

A. Right near the front entrance.

30 Q. And can you just give His Honour a rough idea of the percentage of guests who came who would have had

5 to use a bag to store their clothes that was later put on the first floor, as opposed to the third and fourth floor?

A. Oh, probably about 75 percent.

10 Q. So 75 percent of the women who came would have removed some or all of their clothes once they arrived and they'd gone into a bag which was then stored on the first floor. Is that correct?

A. Yes.

Q. And they'd be given some sort of receipt or check for that?

A. Mm-hmm.

15 Q. You have to say yes or no.

A. Yes.

Q. How were you dressed that evening?

A. I had a sheer black dress with bra and thong underneath it.

20 Q. By sheer, do you mean see through?

A. Yes.

Q. And was that something you put on once you arrived at the event?

A. Yes.

Q. You weren't wearing that on the streetcar?

25 A. I wasn't wearing that on the streetcar, no.

Q. Now at some point did you become aware of the arrival of police officers?

A. Yes, I did.

Q. And roughly what time was that?

30 A. Oh, somewhere around midnight I think. I'm not entirely sure.

Q. Later in the evening.

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A. Later in the evening, yes.

Q. And where were you when you saw the police arrive?

A. I was on the dance floor.

Q. And where is the dance floor in relation to the entrance?

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A. The dance floor's on the main floor right near the entrance. I was facing the entrance on the dance floor.

Q. What did you do when you saw -- sorry, how many police officers did you see initially?

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A. Oh, right off the bat, probably three, they were standing behind an organizer.

Q. Male or female?

THE COURT: Sorry, behind a which?

THE WITNESS: One of the organizers. There were I think about three police officers.

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MS. HART: Q. And were the police officers male or female?

A. They were all male.

Q. Were they in uniform or not?

A. No, they were not in uniform.

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Q. And what did you do when you saw these three male officers present in the building?

A. I went directly to the pool area to let women who were swimming in the pool, to let women know that there were male police officers on the premises and that they might want to get cover up.

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Q. Where did you go after that?

A. I then went up to the second floor. I went up to the second, third and fourth floor and then came

back down again.

5 Q. Did you get to those upper floors before
the police did?

A. No, I did not.

Q. How do you know that?

10 A. Because there were police present on the
floors by the time I got there.

Q. Male or female?

A. Male.

Q. Were there female guests of the Pussy
Palace event up there on the second, third and fourth floor?

A. Oh yes.

15 Q. How were they dressed when the police
officers were up there?

A. Various states of undress.

Q. How many rooms are up there between the
second and fourth floor?

20 A. I think there's about, between the second
and fourth, there's probably about 50 rooms in total.

Q. How many?

A. About 50 rooms in total.

Q. And could you give His Honour an idea, how
big are these rooms?

25 A. They're really tiny. They're big enough
for a bed and to walk around.

Q. And were all of the guests who were up
there when you were up there at the same time as the police,
in the rooms?

A. No.

30 Q. Where were they located?

A. Some were in the halls, some were just

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sort of hanging around. Some women were dancing -- not on the second floor, but there were women sort of hanging around. Some women went to rooms.

THE COURT: Some women went to where?

THE WITNESS: Went to rooms.

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MR. ADDARIO: Q. Where did you go next after you went to the second, third and fourth floor?

A. I came back downstairs and stood by the front doors, and then the police left.

Q. Did you go back up again?

A. I did.

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Q. Under what circumstances did you go back up?

A. When the police returned for a second time, I went back up following one particular police officer throughout the house.

Q. And where did he go?

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A. He went up to the third floor, spoke to somebody and then came back down to the second floor, and then left.

Q. And when you say he spoke to somebody, do you mean a guest of the Pussy Palace event?

A. No, a police officer.

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Q. He spoke to another police officer on the third floor?

A. Mm-hmm.

Q. Yes?

A. Yes.

30
Q. And were there women present on the third floor when you went up this second time?

A. Yes.

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Q. And how were they dressed?

A. Various states of undress.

Q. After the police arrived, if someone who was on the second, third or fourth floor wanted to get to the bags where the clothing was stored, what would they have to do?

10

A. They'd have to come down to the main floor to get the bags from the coat check and then take it to a washroom or somewhere else in the building to change.

Q. How long were the -- sorry, excuse me. Let me just back up. How many police officers, male police officers did you see that evening?

15

A. Five.

Q. And how long were one or more of these five male police officers on the premises that evening?

A. It seemed like a very long time, but probably about an hour, hour and a half, something like that.

20

Q. Were you there during the entire time that they were there?

A. Yes, I was.

Q. What was the apparent reaction of guests to being advised that male police officers were there?

A. They were frightened, intimidated.

25

Q. What specific reactions did you observe?

A. I saw women leave, women go to their rooms, and basically that's it.

Q. What was your response about having male police officers at the bathhouse?

30

A. I felt violated. I felt embarrassed, in part because of the way I was dressed, largely because of the way I was dressed, and I felt frightened, frightened for

5 myself and for the women attending the event.

MS. HART: I'm sorry, if you could ask the witness to repeat. I couldn't hear with the street, please.

A. I said I felt frightened for myself and for the women attending the event.

10 **MR. ADDARIO:** Q. Do you have an opinion, yes or no, as to whether women who are survivors of sexual violence were in attendance at any of the first three bathhouses held by your committee?

A. Yes.

15 Q. What's your opinion?

A. They were in attendance.

Q. Do you have an opinion, yes or no, as to whether women who are survivors of sexual violence were in attendance at the September 14, 15 bathhouse event?

A. Yes, I do.

20 Q. What's your opinion?

A. They were in attendance.

MR. ADDARIO: Those are my questions, Your Honour.

MS. SIMPSON: I have a few questions. I'll be very brief.

25 **EXAMINATION IN-CHIEF BY MS. SIMPSON:**

Q. Ms. Rowe, do you know my client, Rachael Aitcheson?

A. I do.

30 Q. And did you see her at Pussy Palace event on September 14th?

A. At some point in the evening?

5 Q. Can you place at all what time it was when you saw her?

A. No, I cannot.

Q. Do you recall if you saw her when she was working the security shift, or when she was simply attending as a patron?

10 A. I don't remember.

Q. Do you remember what she was wearing?

A. No, I don't.

MS. SIMPSON: Thank you very much.

CROSS EXAMINATION BY MS. HART:

15 Q. I just have a few questions for you in cross-examination. You testified that you were present for the entire time the police had attended the event on the night of September 15th, I believe, at the Pussy Palace?

A. Yes.

20 Q. And at the event, you testified that you were wearing a black sheer, or somewhat see through dress?

A. Yes.

Q. Is that correct? And under that you were wearing, I believe you said a bra and a thong?

A. Yes.

25 Q. So it was your testimony then that you could see through what you were wearing?

A. Absolutely, yes.

Q. And so you considered yourself to be somewhat nude, or partially nude?

A. Well, yes exposed certainly.

30 Q. Exposed, okay. And you also testified that you were, I believe you said embarrassed by the presence,

5 perhaps you also said intimidated by the presence of male officers at the Pussy Palace that night?

A. Yes.

Q. And at what point during the evening did you become aware of the fact that the police male officers were in fact in attendance?

10 A. When they first arrived.

Q. And how did you become aware of that?

A. I was standing on the dance floor looking at the door as they came in.

15 Q. And if I suggested to you that undercover female officers were in fact inside the premises that night before the arrival of the male officers, would you find that fact embarrassing?

A. No.

20 Q. So in retrospect, looking back, you wouldn't have been embarrassed by the presence of female officers, even though they were undercover?

A. Yes.

THE COURT: Just so we have the answer straight, so your position is you would not be embarrassed. Is that what you're saying?

25 **THE WITNESS:** No, I wouldn't have the same level of embarrassment, no.

MS. HART: Q. So it's the fact then that it was male officers in particular who observed you that is the source of your embarrassment?

A. Yes.

30 Q. And if I suggested to you that on that night in particular before the arrival of the male officers, there were other men in attendance at the Pussy Palace, would

5 that be true?

A. No.

Q. And so you didn't observe the presence of any, let's say transsexual men, in attendance that evening?

A. Yes.

10 Q. So you did observe the presence of transsexual men?

A. Yes.

Q. And they didn't cause you any source of embarrassment?

A. No.

15 MS. HART: Your Honour, permission to approach the witness?

THE COURT: Yes, you want to show her something?

MS. HART: Yes.

THE COURT: Yes.

20 MS. HART: Q. Do you recognize these papers?

A. Yes.

Q. And could you tell us what they are, please?

A. They're tickets.

Q. And they're tickets for what?

25 A. The Pussy Palace.

Q. And is it for the event in question?

A. I don't see the date on it. I guess it must be because it says 2000.

THE COURT: I'm sorry, I can't hear.

30 THE WITNESS: I guess it must be because it says 2000.

MS. HART: Thank you. Your Honour, I'd like to

5

enter this as an exhibit, pending authentication by a witness later to be called by the Crown.

THE COURT: Yes, any objection? Yes, exhibit -
- how many are there?

MS. HART: There are two.

10

THE COURT: We'll just mark it Exhibit 1, we can staple them together.

EXHIBIT NUMBER 1 : Tickets
- produced and marked.

15

MS. HART: Your Honour, if I might approach again for the purpose of another exhibit.

Q. Do you recognize this piece of paper?

A. Yes.

Q. And could you tell the Court what it is?

20

A. It's the Pussy Palace rules and etiquette.

Q. And is this a piece of paper that you earlier described that was given out to patrons?

A. Yes.

25

MS. HART: Thank you. Your Honour, again I'd ask that this be entered as an exhibit, subject to authentication by our witnesses.

EXHIBIT NUMBER 2 : Rules and Etiquette Pussy Palace

- produced and marked.

30

MS. HART: Your Honour, if I may leave this with the witness, I have a few questions about

it?

5
10
THE COURT: Yes, is there an issue as to authentication given the evidence of the witness? If she testifies, if I'm right on the evidence that she recognizes the tickets and that she recognizes that document, is there any issue?

MR. ADDARIO: There's no serious contest about that, no.

MS. SIMPSON: None whatsoever, thank you.

MS. HART: Your Honour, may I leave that with the witness?

15
THE COURT: Yes.

MS. HART: Thank you.

Q. I believe that on the first page of that list of rules there's a statement, and I'll just direct you to it.

20
THE COURT: Do you have an extra copy that I could work with by any chance, or photocopy of that? Thanks.

MS. HART: Q. There's a statement that speaks directly to the trans gender attendants, could you read that to the Court please?

25
A. "Trans women and Trans men are welcome at the Pussy Palace."

Q. And so it was your position and the position of the organizers of the event then that trans men were welcome at the event?

A. Yes.

30
Q. And this is a list that was given at the door, is that correct?

5 A. It is.

Q. Okay. And your statement I believe, or your testimony was that the presence of trans men was acceptable at this event?

A. Yes.

10 Q. And the presence of transsexual men at this event would not have made you feel uncomfortable?

A. No.

Q. And can I just ask you, are all transsexual men homosexual?

15 A. I wouldn't know that. No, I wouldn't know that. I don't know the answer to that question.

Q. Did you consume any alcoholic beverage that evening?

A. I think I had a beer.

20 Q. Okay. And did you observe anyone consuming alcohol on the first, second, third or fourth floor?

A. I don't know what people were drinking. People were drinking out of cups, so I wouldn't know what they were drinking.

Q. Did you observe a line-up at the bar?

A. Yes, I did.

25 Q. And before the event known as the Pussy Palace 2000, had you attended licensed premises such as clubs or bars before?

A. Had I attended.

Q. Yes.

A. In other locations?

Q. Other clubs or bars?

30 A. Yes.

Q. Licensed premises?

5 A. Yes.

Q. And have you ever been in attendance at a club or bar or some sort of licensed premise before when the police have entered for any reason?

A. No.

10 Q. Before this event, before this particular event, had you ever heard of the police raiding clubs?

A. Yes.

MS. HART: Again, if I may approach, Your Honour?

THE COURT: Yes.

15 MS. HART: Q. Do you recognize this piece of paper?

A. Yes.

Q. And could you tell the Court how you recognize this please?

20 A. This is one of the flyers that I handed out to women in the line. It's the information flyer regarding what the law is, or what we understood the law to be.

MS. HART: Again, Your Honour, I'd ask that this be entered as the next exhibit, subject to consent on authentication.

25 THE COURT: And again, with respect to this one, is there an issue with respect to authenticity?

MR. ADDARIO: None, Your Honour.

THE COURT: Yes. And do you have an extra copy of this as well?

30 MS. HART: Yes, Your Honour, in fact that is the original, you can keep that, and if it's

5 okay, I'll show the witness a photocopy.

THE COURT: Well I'd rather do it the other way, just so I can mark it up.

MS. HART: Okay, sure.

THE COURT: Thank you. And do defence have copies?

10 **MS. SIMPSON:** We have our own copies, Your Honour.

EXHIBIT NUMBER 3 : Information flyer
- produced and marked.

15 **MS. HART:** Q. And so you testified ---

THE COURT: I'm sorry. This is just a copy I can work with?

MS. HART: Yes, Your Honour.

THE COURT: Okay, thank you.

20 **MS. HART:** Q. If you could, could you please read out the first paragraph on top of that document?

A. "Over the last year Toronto's Police Force has been engaging in a campaign of targeted policing. They have raided men's sex bars and arrested people for indecent acts. They have often closed down these clubs on liquor licence violations."

25 Q. Okay, and this was a document that was given, we'll say by a door person, to the patrons when they entered the event?

A. Yes.

30 Q. And this document does take the position then, that gay clubs in particular are frequently raided by the police? Is that a fair summary to you of the first

5 paragraph?

A. Yes.

Q. And were you aware of the fact that the police have the right to enter a licensed establishment?

A. Yes.

10 Q. And that paper in particular seems to suggest that it was expected that the police could attend that evening?

A. No, I don't agree.

15 Q. Would you agree then that the general proposition that people who attend licensed places such as clubs, bars, whatever, are aware of the fact that police can enter at any time?

A. I would, yes.

Q. And I understand that also at the door towels were given to the patrons, is that correct?

A. Yes.

20 Q. Okay. And earlier in your testimony with Mr. Addario I believe it was your position that the women were unable to cover up simply because their clothes were in bags on the first floor, is that correct?

A. Mm-hmm.

25 Q. If I suggested to you that the women in fact did have towels, and if they wanted to, could at least cover themselves if they felt in any way embarrassed, would that be correct?

A. No, that wouldn't be correct, not necessarily.

30 Q. And why is that?

A. They may not have their towels with them. Some women may not have taken towels. Not every woman, if

5 they wanted a towel, they could come back and get a towel, so.

Q. And certainly in the back area or the shower area, you would expect that most women would take towels with them, wouldn't you?

A. You would think so.

10 Q. Okay, and if I could direct your attention, I believe you said that there were approximately 50 rooms on the third and fourth floors?

A. In total.

Q. And these were rooms where you could close the doors?

A. Yes.

15 **THE COURT:** I'm sorry, how long were you going to be, do you think? I just -- that I asked one of the accused to be brought up, because this way we could have this matter adjourned at this point and I could do the sentencing and then we'd have the morning recess and come back. Is that an appropriate time to that?

20 **MS. HART:** Your Honour, I have three more questions.

THE COURT: Okay.

MS. HART: Thank you.

25 **THE COURT:** I'm sorry, so your question was 50 rooms?

MS. HART: Q. There were approximately 50 rooms, I believe you testified?

A. In total, yes.

30 Q. And the rooms, you said they were small rooms, and you could close the doors, is that right?

A. Yes, you could, yes.

5 Q. And in those rooms you testified there were beds?

A. Yes.

Q. Was there women on the beds?

A. Yes.

10 Q. And I suggest to you that if the women were uncomfortable that the police were present they certainly would be able to use the linen to at least cover up, would they not?

A. If they had a room to go to. Most women didn't have a room to go to.

15 Q. But there were at least, approximately 50 rooms?

A. Yes.

Q. And at any time subsequent to this event, did you complain to the police about the police behaviour?

A. Did I complain to the police?

20 Q. Yes.

A. The committee complained to the police.

Q. Did you personally complain?

A. No, I did not, no.

MS. HART: Thank you, no more questions.

25 **RE-EXAMINATION BY MR. ADDARIO:**

Q. You were asked about your expectation or anticipation that the police might arrive. Do you recall those questions?

A. Mm-hmm.

Q. You have to say yes or no.

A. Yes, yes.

30 Q. And you were asked to read out a portion

5 of a document which has been made Exhibit 3, do you recall that?

A. Yes.

Q. And you were asked about your expectation that the police might arrive. Can I ask, did you turn your mind to the possibility the police might come?

10 A. Certainly we thought there was a possibility that the police might come, but we weren't, we were preparing for that possibility.

Q. And did you expect that if they came they would come with male officers?

A. No, we did not.

15 Q. You were asked a question about, arising from Exhibit 2, the Pussy Palace rules of etiquette respecting trans women and trans men. Do you recall that?

A. Yes.

20 Q. How would -- first of all, can you just tell by looking at someone how they identify?

A. No, you can't.

Q. And typically how do trans men identify?

A. As trans men. I'm not sure what -- typically trans men might identify as trans men, or basically as trans men.

25 Q. And why would they be welcome at this event?

A. Trans men are part of our community and previous, you know, to identifying as trans men, most likely or very often identified as lesbians, so most recently it's been a possibility for trans men to take on that identity.

30 Q. And how are they different from ordinary garden variety men?

5 A. They're not biologically born men, and I guess for the organizers what was really clear, was biologically born men who identify as heterosexual, or gay, were not welcomed at this event.

10 Q. You were asked about complaints. Now to your knowledge what -- you were asked, well have you complained personally and you said no, do you recall that?

A. Yes.

15 Q. All right. But you mentioned that the committee has complained?

A. Yes.

Q. And you're a member of the committee?

15 A. Yes, I am.

Q. And the committee complained on behalf of who?

20 A. On behalf of the women attending the event.

Q. And to whom did the committee complain?

20 A. The Police Services Board.

Q. Did the committee complain to anyone else?

25 A. I think we spoke to Bill Blair.

Q. Who's he?

25 A. He's the superintendent.

Q. With who?

25 A. The police.

Q. Oh he's a police superintendent?

25 A. Yes, he is.

30 Q. You complained on behalf of the women who attended the event to the Police Services Board, and to?

A. Bill Blair.

Q. Bill Blair, a superintendent with the

5 ... OTHER MATTER HEARD ...

MR. ADDARIO: My next witness would be Anjula Gogia.

ANJULA GOGIA: AFFIRMED.

10 EXAMINATION IN-CHIEF BY MR. ADDARIO:

Q. Now I understand that you live in Toronto and you're the manager of the Toronto Women's Bookstore?

A. The co-manager.

Q. Co-manager. Yes?

A. Yes.

15 Q. And I understand as well that you attended an event known as the Pussy Palace Bathhouse on September 14, 2000?

A. Yes.

20 Q. Had you ever been to a Pussy Palace event prior to September 2000?

A. I had, I had been two prior bathhouses prior to that.

Q. And you mentioned that they're bathhouses. What did you understand to be the purpose of these events?

25 A. Well it's a space for women to get together and have some fun. It's a safe space that is very rare most of the time. It's a chance for women to get together, have sex, be more free with themselves in a safe environment.

30 Q. And why would you need a separate space for that? Why wouldn't a bar or a restaurant or someone's house do?

A. Because a bar isn't safe. What was unique

A. Gogia - in-ch

5 about the bathhouse was that it was a women's bathhouse, and there is a safety when there is a women's only space like that. That doesn't exist in the rest of the world out there.

Q. On the previous occasions when you went, were there men in attendance at the event?

A. No.

10 Q. And on September 14, 2000, did you expect to see men at the event?

A. No.

Q. What time did you get there?

A. Between 10:30 and 11:00.

Q. And what did you do after you got there?

15 A. When I got there I went to see if there was a locker where I could go put my clothes and there wasn't, so I had to take my clothes off at the clothes check area and I left it in a bag and then I went into the dance area, stayed there for about ten minutes, perhaps, then I went into the hot tub area.

20 Q. And what were you wearing when you went into the hot tub area?

A. I had a robe that I had brought with me to wear, and it was a small loose fitting robe, and that's what I wore into the hot tub area.

25 Q. Could you describe that robe a little more?

A. It's a blue robe with sleeves that go just past my elbows. It's quite short and it's very open, there's no buttons, there's just a belt that ties it, so it is a very open robe.

30 Q. Is this something you would have worn on the street car?

A. Gogia - in-ch

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A. Definitely not.

Q. Something you would have worn outside the bathhouse?

A. No.

Q. Did you happen to notice how other women were clothed at this event?

10

A. Women were in various states of undress. There were some women who were completely naked. There were women who were wearing lingerie. There were woman who were wearing maybe just underwear or shorts. So most women were either completely undressed, or not wearing very many clothes at all.

15

Q. I understand there's more than one floor at this bathhouse?

A. Yes.

Q. Do you know what it's called, by the way, the building?

20

A. Club Toronto, I think.

Q. And do you know how many floors there are in Club Toronto?

A. Three?

Q. And in relation to where you walk in, where was the hot tub located?

25

A. Well when you walk in, there's a hallway, there's a clothes check and then there's a room that was used as a dance space, and then the hot tub is beyond that.

Q. So was it on the ground floor?

A. Yes.

30

Q. And this may seem a silly question, but how were the women dressed in the hot tub?

A. They were naked.

5 Q. What was the atmosphere of the event like after you arrived?

A. It was pretty jovial. This was an event that many women had been looking forward to for quite a number of months, so there was a very relaxed, a very happy atmosphere in the bathhouse. Women were having a lot of fun, they were talking with each other, flirting with each other, so there was a very relaxed happy atmosphere.

10 MR. ADDARIO: I wonder if I might see Exhibit 2, Madam Clerk. I'll just show you this document with something on both sides of it.

Q. Have you seen that before?

15 A. Yes. I saw this -- I have seen this before.

Q. When did you see it?

A. When I went into the bathhouse.

20 Q. All right. Have you had a chance to look at it since then?

A. No.

Q. All right. Do you want to just take a minute and look it over and refresh your memory about the contents? I just want to ask you a couple of questions?

A. Okay.

25 Q. Have you had a chance now?

A. Mm-hmm.

Q. You have to say yes or no?

A. Yes.

30 Q. All right. Do you see on the second page under Bathhouse Etiquette?

A. Yes.

Q. It says, "Go with an open mind. This

5 event is about having fun and exploring sexuality in a supportive, safe environment."

A. Yes.

Q. Is that consistent with your understanding of the objective and atmosphere of the event?

A. Yes.

10 Q. Over, back on the first page on the fourth line it says, "Trans women and Trans men are welcome at the Pussy Palace." Do you see that?

A. Yes.

Q. Why in your understanding were trans women welcome?

15 A. Because trans women are women who identify as women.

Q. Why in your understanding were trans men welcome?

20 A. Because trans men are people who have been part of the queer community for a very long time. They have lived as women for a number of years, and they're also part of the women's community and they have been part of the lesbian community as well.

Q. How, if at all, would they be different from say, a straight male, or a gay male?

25 A. Because they have lived as women for a very long time. Many have lived as lesbians within the lesbian community and the women's community, so there is a very definite difference.

Q. At some point did you become aware that police officers had arrived?

30

A. Yes.

Q. And when was that and where were you?

A. Gogia - in-ch

5 A. It was a few moments after I was -- got into the hot tub and so I was in the hot tub when I found out.

Q. And who told you?

A. Another patron who was there had mentioned it.

10 Q. Did you hear a general announcement over a public address system?

A. No.

Q. What did you do when you were advised while you were in the hot tub that the police had arrived?

A. I immediately got out of the hot tub and put my robe back on.

15 Q. And is this the same robe that you described for us earlier?

A. Yes.

Q. And where were your clothes?

A. They were in the clothes check area, which was at the front, so they weren't close by.

20 Q. Why didn't you go to get your clothes?

A. Because I didn't know where the police were. I was worried that they might be near the clothes check area, and also to put on my clothes, I would have to take off my robe to put my clothes on, so I would have to be completely naked to even put my clothes back on, and I didn't know if the police were there.

25 Q. All right. Did you know, based on what you'd been told by another patron, whether these police were male or female?

30 A. They said that they were male police officers.

Q. Did you see male police officers at some

5 point after that?

A. Yes.

Q. Where did you see them?

A. In the pool area.

Q. Had you looked in the pool area that evening?

10 A. For a moment.

Q. And how were people dressed or not dressed, as the case may be, in the pool area?

A. It was still warm, it was September, so there were a number of people swimming, so most of them were naked.

15 Q. And when you saw the police officer, was it one or more than one in the pool area?

A. There were two.

Q. And when you saw the police officers in the pool area where you could also see women swimming naked, were there still women in that area?

20 A. There were.

Q. What were the police officers doing?

A. They were speaking with a woman.

Q. Do you know where the police went, each of the officers who was there?

25 A. I don't know where all of them went.

Q. Do you know how many of them were there?

A. At least a few.

Q. I think a few probably means something different for everybody in the courtroom?

30 A. Three, four. I didn't see all of them.

Q. Do you know how long they were there?

A. An hour or more.

5 Q. Apart from seeing them in the pool area, where else did you see male police officers?

A. I believe I saw when I was walking up to the second floor, and on the stairwell.

10 Q. How did you feel about the presence of male police officers in the bathhouse?

A. It was very, very upsetting. It felt like my space had been violated. I was anxious. I was very upset. I wasn't wearing very many clothes, so I was very nervous and it was generally very, very upsetting for me.

15 Q. Well, why was it upsetting?

A. Because I had no idea men would be there, this was a women's bathhouse, and I went with the expectation of a safe environment, and I wouldn't have gone and I wouldn't have worn something that was so revealing if I knew men would be there. And seeing them there was very upsetting, because I was almost naked at that time.

20 Q. How did other women who were there appear to react to the male police presence?

A. They appeared to be upset.

25 Q. Are you describing one, or more than one of the other guests that were there?

A. Definitely most women appeared to be very upset. Women were talking about it. There was a sense of nervousness. From what women were saying there were a lot of women who were very upset by the presence of male officers there.

30 Q. Was this apparent to you without talking to individuals?

A. Yes, it was a general sense that was there, and women were talking about it as well.

A. Gogia - in-ch

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MR. ADDARIO: All right, those are my questions. Will you just stay there for a minute.

EXAMINATION IN-CHIEF BY MS. SIMPSON:

10

Q. Do you know my client, Rachael Aitcheson?

A. Yes.

Q. Did you see her at the Pussy House event on September 14th and 15th?

A. Yes.

Q. Do you know what time it was that you saw her?

15

A. It was later on in the evening. It must have been at least 11:30, but I don't quite remember the time.

Q. So before or after police arrived?

A. After.

Q. And do you remember what she was wearing?

20

A. No, I don't recall.

Q. Do you recall what area of the bathhouse it was that you saw her?

A. On the second floor.

MS. SIMPSON: Thank you very much, those are my questions.

25

CROSS EXAMINATION BY MS. ZED:

Q. I just want to, just to start off, before September 14th, had you ever attended a liquor licence establishment?

30

A. Yes.

Q. So you'd agree with me that it's not uncommon for there to be security posted outside other bars,

5 or other premises where there would be liquor served, there'd be security posted outside, would you agree with that, usually?

A. Yes, but it depends. At bars there are bouncers.

10 Q. Right, okay, and usually those people are checking ID's and do you agree with that?

A. Yes.

Q. And do you agree that usually they're keeping track of how many people are coming in and out of the bar, that kind of thing?

A. Yes.

15 Q. And the reason that these people, the security guards, are doing all these things, checking ID's and counting people, is because they don't want to be charged with any liquor licence offences?

A. I don't know.

20 Q. When you attended this event September 14th, do you recall receiving any handouts just when you were entering the event?

A. I do.

25 **MS. ZED:** And I just wanted to refer to, I believe it's Exhibit Number 2, just show the witness Exhibit Number 2.

CLERK OF THE COURT: I think she already has it.

MS. ZED: Oh, she does. Oh, I'm sorry, Exhibit Number 3.

30 Q. And could you please read the first paragraph?

A. "Over the last year Toronto's Police Force

5 has been engaging in a campaign of targeted policing. They have raided men's sex bars and arrested people for indecent acts. They have often closed down these clubs on liquor licence violations."

Q. Okay, and further down there is a section entitled What's Illegal, do you agree?

10 A. Yes.

Q. And further down there's another section entitled If the Police come?

A. Yes.

Q. You do agree that you received this document?

15 A. Yes.

Q. Upon entering. And did you read these?

A. Briefly, yes.

Q. So having read this document, it's not unreasonable to say that at least it was in your mind that police could be attending this event?

20 A. I had been to two previous bathhouses, and there was nothing illegal going on at those, and when I came to this event and when I was there, there was nothing illegal that I saw, so I did not expect police officers to arrive.

Q. But having just read a list entitled If the Police come, are you saying that you didn't think that the police would come?

A. That is correct. If I thought the police would come, I would not be wearing a robe that was very revealing. I did not think ---

30 Q. Well, was it a possibility?

A. It was a very, very remote, remote possibility. If it had been any, sort of a real possibility,

5 I wouldn't have come, or I would have worn more clothes.

Q. You saw the police?

A. Yes.

Q. That night, correct?

A. Yes.

10 Q. And did you witness the police officers' behaviour towards other patrons?

A. Very briefly.

Q. Were the police abusive in any way that you saw?

A. Define abusive.

15 Q. Were they being rude, or raising their voices?

A. Being rude, yes.

Q. Can you give some examples?

A. Well I think the fact that there were male police officers there was rude.

20 Q. But was their behaviour in what they were saying or doing?

A. I didn't actually hear a conversation, but their body language, their stance was rude, yes.

Q. In what way?

25 A. They were standing surrounded -- they were surrounded by women who were absolutely naked, and for me their presence, and also their body language which was very stern, very closed, was rude to me.

Q. Did they at any point raise their voices?

30 **THE COURT:** Sorry, I just missed that. Their body language, they were?

THE WITNESS: Well the way that they were standing it was, I mean you have to define even

what rude is, but I felt it was rude.

5 MS. ZED: Q. At no point did they raise their voices, did they?

A. I wasn't close enough to hear if they did.

Q. So you didn't hear any loud voices, did you?

10 A. Coming from the police officers?

Q. That's right.

A. No.

Q. And you mentioned that the police haven't attended any previous events in your community, is that correct?

15 A. I haven't been to every single event in my community, so I wouldn't know.

Q. No, but in the events that you have attended?

20 A. I've been to a lot of events, so to be honest, I can't recall. I go to demonstrations, I mean, what are events in the community?

Q. I guess in particular what I mean is like liquor licensed events, such as this event, the previous Pussy Palace?

25 A. They hadn't been to a previous, no.

Q. They hadn't. Are you aware that there are laws regulating the distribution of alcohol?

A. Yes.

Q. And previously you mentioned that one of the goals of this event was just to have a safe environment?

A. Yes.

30 Q. So the laws set out that we were just talking about, you'd agree with me that the purpose of these

5 types of laws are to protect the public?

A. Yes.

Q. So if you were aware that the organizers of the event were violating some parts of this Act, wouldn't that make you feel unsafe?

10 A. If I had felt there would be a violation I would not have gone.

Q. Okay, but the fact that there are violations, would that make you feel unsafe?

A. But I had been to previous events and had not seen any violations. That's why I went the second time and that's why I went the third time.

15 Q. Okay. The presence of violations at an event such as this, would that make you feel unsafe?

A. Violations of the liquor code violations?

Q. Violations ---

20 **MS. SIMPSON:** If I may, Your Honour, perhaps the witness would have a easier time answering the question if my friend was willing to specify what kind of violations she's speaking of. I think that might be fair to the witness.

25 **MS. ZED:** Q. Violations with respect to the Liquor Licence Act, such as security, capacity, such as where alcohol can be served, and just regulating those types of activities?

30 A. So can you explain the question again to me that would I have felt unsafe if I had -- I don't know how I would have felt. I can't speculate how I would have felt if they had been violated, because I had been there and they had not been violated so I can't say how I would have felt.

Q. Fair enough. Okay, I just have one last

5
thing. I just want to be totally clear on what exactly the source of your embarrassment was. If male transsexual officers had entered the premises would you still have felt violated?

10
A. Again, you're asking me to answer a question that I can't, I don't -- they did not enter, male officers entered. I did feel uncomfortable. If they were female officers, my comfort, I would have felt more safe. I go swimming every week to a gym, and it's a women only space and I'm often naked there, and it's very respected there that there's no male custodians that come in.

15
MS. ZED: Thank you, I have no more questions.

20
RE-EXAMINATION BY MR. ADDARIO:

Q. Well you were asked about turning your mind to what you agree was the remote possibility that the police might come after you'd seen that document that said If the Police come. Do you recall being asked that question and giving that answer?

A. Pardon me?

Q. Do you recall being asked about the document that says If the Police come?

A. But recall when?

25
Q. Five minutes ago?

A. Oh, just five minutes ago, yes.

Q. I swear I'm not trying to trick you. And do you recall that your attention was drawn to this portion that reads If the Police come?

A. Yes.

30
Q. All right. And do you recall that you agreed that if you turn your mind to it, that there was a

5 remote possibility the police might come?

A. Yes.

Q. Now let's just imagine that you had turned your mind to it, what gender of officer were you imagining might come?

A. Female, definitely.

10 Q. And why would you imagine female police officers?

A. Because it's a women's bathhouse. It was know that women would be there, that it's a women only space and that women are, for the most part, naked, or next to naked, so I would have thought that sending female police officers would have been the only thing that they would do because that's what would have been respectful and kept it safe for those of use who were there.

15 **MR. ADDARIO:** Those are my questions.

THE COURT: Thank you very much.

20 ... WITNESS RETIRES ...

... OTHER MATTER DISCUSSED ...

THE COURT: Why don't we have your next witness in at two o'clock, Mr. Addario?

25 **MR. ADDARIO:** All right. It's entirely up to Your Honour. Is that what you'd prefer?

THE COURT: Two o'clock.

MR. ADDARIO: All right.

30 ... OTHER MATTER HEARD ...

R E C E S S

UPON RESUMING:

REGAN McCLURE: SWORN.

EXAMINATION IN-CHIEF BY MR. ADDARIO:

Q. All right, now Ms. McClure, what you need to know about this courtroom is sometimes we get noise from the street, so you really have to keep your voice up, okay?

A. Okay.

Q. And if you just talk to the person over there in that corner, then everybody will be able to hear you including His Honour and the Court Reporter.

A. Okay.

Q. I understand that you live in Toronto, that you have a masters in community psychology from the University of Toronto, and that you're now working as a web developer in the non-profit sector?

A. That's right.

Q. And I understand as well that on September 14, 2000 you went to a bathhouse?

A. That's right.

Q. Called the Pussy Palace.

A. That's right.

Q. Had you been to a Pussy Palace bathhouse event prior to September 14th?

A. Yeah, I've been to all of them. I went to, there were three beforehand.

Q. And had you gone as a volunteer, or a

patron?

5

A. As a volunteer.

Q. And what, well we've heard a little bit already today about the origins of the bathhouse, what's your understanding of the reason for such an event?

10

A. Well why don't I tell you a bit about why I thought it was important to volunteer to make the bathhouse happen? When I first was coming out in the 1980's, the only lesbian bar in Toronto was called the Chez Moi and it was this nasty little dive, it was in the basement, and when you go there at any given amount of time, only about half the room is actually filled with women, with lesbians. Along the bar and other tables these businessmen from the area would come, businessmen from the area, it was on Hayden Street. They would come to make fun of you, to try and humiliate you, or just laugh at you. You were their freak show entertainment for the evening, and that was a really miserable way to try and explore my sexuality. So there aren't really a lot of alternatives for women to do that. And things are a bit different nowadays. Even when I was at the very first bathhouse, I volunteered to do that, I was working security outside the door, working people who were standing in line, and the women had come wearing their sexy clothes and ready to go to the bathhouse, and there were men from the community around, guys driving by in cars would brake, stare at the women, some guys would approach the women and try and chat them up, guys from the neighbourhood came up the street and took photos and were being pretty obnoxious. I spent ---

15

20

25

30

Q. Excuse me, took photos of women in line to go into the Pussy Palace?

A. Yes.

5 Q. Go ahead.

A. So I guess the bathhouse is just a different world, and that was the point. It was to try and create a place where you were sort of free from the prying eyes and a place where you could be more relaxed, you could have a more playful friendly secure environment as opposed to the world where you have freedoms and rights in theory, but you can't really practice them without being harassed.

10 Q. When you went to these prior events, did you see men there?

A. At the event, no.

15 Q. I'll just show you something here that's been marked as Exhibit 2 here, it's called Pussy Palace Rules. Have you seen this before?

A. Yes.

Q. And when's the last time you saw it?

A. At the last bathhouse.

20 Q. I wonder if you could just have a look at the second page of it under Bathhouse Etiquette. Do you see that first paragraph there. It says ---

A. "Go with an open mind."

25 Q. "Go with an open mind. This event is about having fun and exploring sexuality in a supportive safe environment." Is that consistent with your understanding of the rules of engagement, if you will?

A. Yes, that was the whole point of trying to organize it.

30 Q. And then turning back to the front page, the first paragraph reads, "All women are welcome at this event." Is that consistent with your understanding?

A. Yes.

5 Q. And then the next paragraph reads, "Trans women and Trans men are welcome at the Pussy Palace." Did you see that that evening?

A. Yes.

Q. Did you write this list of rules?

A. No, I didn't write it.

10 Q. Well, we'll just ask for your interpretation then. What's your understanding of why trans women would be invited or welcome there?

A. Well a trans woman is someone who started off biologically male, but they live as women, they often are taking hormones, they're transitioning through surgery and a variety of things, so they're women.

15 Q. How do they identify to your understanding?

A. Well they're female.

20 Q. And then trans men, why would they be welcome at the Pussy Palace?

A. Well those are people who are biologically female. See it's a very broad term. By some people's definitions I'm a transgendered man, because I'm not ---

Q. You?

25 A. Yes, both. Because I'm not feminine, then I'm rejecting my gender, therefore I could be considered a transgendered man, but biologically I'm female.

Q. How would a straight male be different from a trans male?

30 A. Well straight is sexual orientation, through gender orientation it's separated. I guess conceivably you could be a straight transgendered man.

THE COURT: I'm sorry, I can't hear you.

5
10
THE WITNESS: Oh. I guess you could conceivably be a straight transgendered man. I mean those are two separate things, sexual orientation and gender orientation are two different things. But a man, like a biological man who identifies as a man and lives as a man is a man, right? A transgendered man has a -- like there's a qualifier in that for a reason to suggest a unique experience of being female.

15
MR. ADDARIO: Q. And just to complete that then, so someone who identifies as a man, would they have been welcome under what you understood to be the rules of engagement of the Pussy Palace?

20
A. No, that's why it says all women are welcome. It's like, okay, if you boil the rules down to this, if you're biologically female, you're welcome. No one is going to say, you know, you are too big a butch bull dyke and you can't get in here because we don't like the way that you're presenting your gender, right? But if you're not biologically female, but you live as a woman, you identify as a woman, then in order to avoid discrimination, we're going to say, yes you're a woman and you can come in here.

25
Q. What time did you get there on September 15, 2000?

A. I first got there to drop off some supplies, some first aid stuff. I first got there around four or five before it had opened. And then I came back, I went home and out, I came back at around ten.

30
Q. And what did you do when you came back at ten o'clock?

A. I went in, I checked my clothes in the

5 duty room.

Q. What do you mean you checked your clothes?

10 A. Well, as volunteers we had a special room we could leave stuff in. It was actually a bit better deal than most people. Like most of the time you would sort of surrender your clothes. I don't know if surrender's the right word, but.

Q. Okay, I'll come to that in a minute, but what did you do with your clothing?

A. What did I do with my clothing? I went to the duty room and I left it there.

15 Q. And what did you replace it with?

A. A towel.

Q. Were you wearing anything else besides a towel?

A. No.

Q. Were there lockers at this bathhouse?

20 A. Yeah, there are some lockers on the second floor.

Q. And how many lockers were there, approximately?

A. Somewhere between 30 and 50.

Q. Were there rooms there?

25 A. Yep.

Q. Where, if you know, did women without rooms or lockers put their clothes?

30 A. You would have to check them in the bag check. Like, a bag check is you check your bag, but your clothes weren't very accessible, they were put into a great big garbage bag. You get a tag saying this matches up with the tag on the garbage bag and then all the bags were stashed

5 in a room.

Q. Can you just tell me by the way, the approximate number of women at this event?

A. There was about 300.

Q. How many would have had clothes stored in bags? Again approximately?

A. Approximately, a couple of hundred.

Q. Where were the bags?

A. The bags were kept in the room off the main lobby when you came in.

Q. Is that near the entrance?

A. Yes.

15 Q. Where were the lockers?

A. They're on the second floor.

Q. Is that an enclosed or open area?

A. It's an open space.

20 Q. What did you do after you got changed and stored your clothing?

A. I went to wander around. It was a pretty fun evening, like there was lots of stuff to do. We went to, had a massage, I got a souvenir portrait taken by Chloe. I watched people doing -- you could do like body painting and stuff, and then I went down and I did the Swedish thing, I went to you know, go sit in the sauna and then go jump in the pool, and go back and sit in the whirlpool and then go back and forth.

Q. Did you wear your towel in the whirlpool?

A. No, not while I was bathing.

30 Q. Can you just tell His Honour how other patrons who were there were dressed that evening?

A. Around the pool, there were some people

5
who were like me, were bathing naked. Some people wore their underwear. There was one women in the pool in her jeans and a t-shirt. People were dressed in a variety of ways, like I'd say 20 percent of the people were dressed like you would dress to go to a bar, like just regular street clothes.

THE COURT: I'm sorry, that was 20 percent?

10
THE WITNESS: That's just a guess. But when I was wandering around that's what I saw.

MR. ADDARIO: Q. And the other 80 percent?

A. Well there'd be I think there was another 20 percent like me, they were wearing towels, and then the majority of people were in something they thought was sort of
15
sexy, or like lingerie, or revealing clothing, or something like that.

Q. So that 80 percent, they were all wearing either towels alone, or what you call lingerie or revealing clothing?

A. Yes.

20
Q. And can I ask this, it may seem a silly question, but where on your body was the towel located?

A. I wrapped it around my waist.

Q. Was your chest area covered?

A. Sure, we're all girls.

25
Q. Excuse me?

A. We're all girls there.

Q. Was your chest area covered?

A. Covered, no.

Q. Did you see other women who were topless?

A. Yes.

30
Q. One or more than one?

A. More than one.

5

Q. Did you become aware at some point that the police had arrived at the event?

A. Yeah.

Q. And can you give me an approximate time of when you became aware of that?

10

A. Yeah, it was about quarter to one, I was in the pool, and Sarah on security came around and said, you know, there are male officers here. She came around the pool and I swam to the side and got up, and well, that's when I realized my towel was a bit small because I had to wrapped around, oh sorry, I got out of the pool, put my towel on, except this time it wasn't on my waist, I wrapped it around my chest.

15

Q. And how did that fit?

20

A. Not very well, it was a bit small. I didn't realize -- well it's more than enough to wrap it around your waist and walk around, but when I tried to wrap it around here, it came to basically just the top of my thighs.

Q. So could you say when you're trying to wrap it around below your armpit?

A. Yeah.

Q. It came just to the top of your thighs?

25

A. Yeah. So it felt a little bit skimpy.

Q. Is that how you felt at the time?

A. I was stunned.

Q. Before we get to that, I want to ask you, was there a general announcement made that the police had arrived?

30

A. No.

Q. You've told us what you did when you got out of the pool with the towel, did you see what other women

5 did?

A. Yeah, everybody -- everyone except the one woman floating in jeans and a t-shirt, everyone got out.

Q. Got out of the?

A. Pool.

10 Q. And to the extent that you saw it, where did they go, or what did they do?

A. Well we just stood there. There wasn't a big lapse in time, like Sarah came around to say you know, there are going to be men coming through, and I swam over to the side, got my towel on and there they were.

15 Q. You saw men on the pool deck?

A. Yeah, they were coming up through the doors from the main area, and they were coming through, basically up and then around the stairs, and then they continued on upstairs.

Q. Where were your clothes?

20 A. They were in the duty room, which I don't have a key to.

Q. And again, where's the duty room?

A. That's right by the front door.

Q. Did you think about going to get your clothes from the front check in area?

25 A. Oh, I thought about it, but it would be -- I couldn't have gone to get my clothes without running into more cops and into more men, so.

Q. And what would be the problem about that, you had a little towel on?

30 A. It's not really what I call suitable attire. I mean, like I had to hold it closed with both my hands, and I didn't want it to open up in a V down my side.

5
10
15
A. Oh, two hours, well give or take. Like that's pretty much where I stayed while the police were in the building. I would go and poke my head out to find out what was happening, but I really didn't feel I could make it -- I wanted to make it to my clothes, but I didn't feel that was really possible without running into them, so I would go out, see what was going on, duck back in. At one point I realized, this woman came running down the stairs who I guess hadn't -- she didn't know that the police officers, that the men were police officers. She came down and she's like, call security, call security, there's men going around and knocking on people's doors, what's going on. And I'm like, oh, they're cops, can't do anything about it, just calm down, relax. She was really upset.

20
Q. All right. Apart from what she may have told you, did you become aware of the apparent reaction of other guests at this event at the arrival of male police officers?

A. Oh yeah, people ...

25
Q. And what in your view, was the apparent reaction of others at the event at the arrival of male police officers?

30
A. I'd say mostly people were very angry, or afraid. Like I went and hid. It's just not something I normally do, but when she'd come down the stairs and she told me there were people knocking on doors, I thought, oh well I'm not even safe in this little room. I have to get my hands on some kind of clothes. So I borrowed some of Rachael's clothes, like I got, which is funny, because Rachael's a lot smaller than me, but I got one of those pullover windbreakers and a pair of her underwear, and I put them on, and then I

5
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Q. All right. Apart from what she may have told you, did you become aware of the apparent reaction of other guests at this event at the arrival of male police 20 officers?

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5 would go and see what was happening, and people were standing
in the hallway and I tried to calm them down because they were
like you know, we should go give them a piece of our mind.
You know, they shouldn't be in here, we should go and you
know, tell them, gang up on them and da, da, da, like no, just
10 try and calm down, you're going to make things worse, just
relax.

Q. Can I ask you this? What's the Bill 7
Award?

A. It's a scholarship fund for gay, lesbian,
bisexual students.

15 THE COURT: I'm sorry, what's it call?

THE WITNESS: Bill 7.

MR. ADDARIO: The Bill 7 Award.

THE COURT: And I'm sorry, what is it please?

THE WITNESS: It's a scholarship fund for gay,
lesbian, bisexual students.

20 MR. ADDARIO: Q. Is there any connection
between this event and the Bill 7 Award, to your knowledge?

A. Yeah. It was a fundraiser for the Bill 7
Award. We were on the liquor licence application as the
recipients of the fundraiser.

25 MR. ADDARIO: All right, those are my
questions.

EXAMINATION IN-CHIEF BY MS. SIMPSON:

Q. You said you arrived about four o'clock?

A. Four or five.

30 Q. Was Rachael there when you arrived?

A. Was she there when I arrived, I don't
think so.

5

Q. When is the first time ---

A. Oh no, sorry, she was, 'cause I remember I had to go to her place and pick up some t-shirts.

Q. What was Rachael doing when you first saw her there?

A. At four or five?

10

Q. Yes.

A. Setting up.

Q. Did you see her again during the course of that evening before you went into her room?

A. Oh yeah, I probably ran into her around eleven.

15

Q. Do you remember where in the bathhouse you ran into her?

A. I ran into her when she was coming down the stairs and I was I think in the whirlpool. We went and hung out for a while. We had a coffee and some sandwiches up on the second floor.

20

Q. Do you remember what Rachael was wearing?

A. No, sorry.

Q. And what time was it when you saw her again?

25

A. Well we hung out for a while, so that would be, I met her at eleven, maybe 45 minutes we wandered around, so quarter to twelve, and then I would have seen her next when I went to her room which would have been -- I got to her room just before one, 'cause the police officers arrived about quarter to. I got up to her room and I was talking to her about it and she was like no, no, it's one, hold on, I've got to close the bar, so she went to close the bar and came back with the cash box.

30

5 Q. After she closed the bar, you understood she was going to close the bar, she returned to the room?

A. Yeah.

Q. And did she stay there with you until the police had left?

10 A. I think so. I mean I left the room from time to time to see what was going on, so she may have done so too.

Q. And you said you borrowed some of Rachael's clothing?

A. Yes.

Q. Was she fully dressed then?

15 A. You know, I honestly don't remember what she was wearing. She would have her -- she had a room, so she would have access to her clothes.

MS. SIMPSON: Thanks very much, those are my questions.

20 **CROSS EXAMINATION BY MS. HART:**

Q. Good afternoon. You testified that you were present at the event at the Pussy Palace 2000 on September 15th, 2000?

A. Yes.

25 Q. And at that time you testified that you were partially nude, or nude at occasions. Sometimes you were wearing part of a towel, sometimes you were nude?

A. Yes.

30 Q. And you also testified that you were embarrassed by the presence of male officers who entered the Pussy Palace?

A. Yes.

5 Q. And at what point in the evening did you become aware of the fact that the police were in attendance?

A. About quarter to one.

Q. I'm sorry? Again, there's traffic, I'll just ask you to speak up.

A. It was about quarter to one.

10 Q. At about quarter to one. Okay, and how did you become aware of that?

A. Well Sarah came through telling people that male officers had arrived.

15 Q. So someone did alert you to the fact that the officers had arrived before you actually saw the presence of the officers?

A. Yes.

Q. And you did have some opportunity then to cover yourself up with the towel that you said you had with you at that time.

20 A. Yeah, I had about a good minute.

Q. And if I suggested to you that undercover female officers were present in the building that night and obviously would have had an opportunity to observe you, would you find that fact embarrassing?

A. No.

25 Q. So in retrospect you're not embarrassed by the fact that female officers were present and observed you that night?

A. No.

30 Q. And so it's your testimony then that it's the fact that male officers saw you that caused the embarrassment or discomfort you described?

A. Yes.

5

Q. And if I suggested to you that before the arrival of the male officers there were other men present in the building that night, would you agree with me?

A. No.

10

Q. But to the best of your knowledge were there any transsexual men or women in attendance that night?

A. Transsexual men or women?

Q. One or the other, or both?

A. Let's do one by one. So transsexual women, yeah, there were transsexual women there. I mean they are women, if you didn't ---

15

Q. Okay, and it was your testimony then that I believe you said that transsexual women are biologically male, but live as women.

A. Mm-hmm.

Q. Is that right, and then you said transsexual men are biologically female, but live as men?

20

A. Not necessarily.

Q. Not necessarily. Could you clarify that for me, please?

25

A. The concept of transsexual or transgender is like a social or political identity that's kind of still emerging frankly. That's what I mean when I say I could be identified as a transgendered man.

Q. Okay, then one of these groups I suggest to you is biologically male, and I understood you said that it was trans women that are biologically male. Is that correct?

A. Yeah.

30

Q. Okay, but it is ---

THE COURT: I'm sorry, what was the question again, please?

5

MS. HART: That one of the two groups were biologically male and I understood that she had said that it was transsexual women who are biologically male.

10

MR. ADDARIO: Actually I believe the evidence was that she said that trans women are born biologically male.

MS. HART: Yes, I'm sorry. Born biologically male.

A. Yes.

15

Q. Is that right? Okay, and so it's my understanding that although born biologically male, transsexual women live as women?

A. Yes.

Q. And then transsexual men who are born biologically female, live as men?

20

A. See this is where it gets a little more tricky. Like okay, if I walk down the street and people think I'm a man, because I look masculine, I mean am I living as a man? It's not so easy. The purpose of -- the presence of transgendered individuals at the Pussy Palace is fine as long as they are women. That's what it says, all women are welcome at this event. I mean there's still a number of court cases in process to figuring out what is the dividing line between people who are going through a process of transition in their gender that's emerging. The presence of transgendered men or women at the event, does not mean that men are welcome at the event. The committee is attempting to avoid discriminating against women.

25

30

Q. What I'm trying to get at, maybe I'm not being clear, I apologize, is that one of these two groups sort

5 of identified themselves more let's say with what's typically known as the male sex, or male attitude perhaps?

A. Like me, masculine.

Q. And for that group, or for the group who are born biologically male, but who live as women ---

A. Or born biologically male, but okay.

10 Q. Right, sorry, born biologically male and living as women ---

A. --- as women.

Q. --- you don't have any problem with them attending the event?

A. No.

15 Q. If I could just draw your attention, I believe you still have ---

A. Yes.

Q. --- Exhibit Number 2, which is a list of the rules.

A. Mm-hmm.

20 Q. Just draw your attention to the line that says, "This is a licensed event. Outside alcohol is not permitted. If you have brought alcohol with you please check it at the front desk." Do you see that line, it's seven, sort of bullets, down on the first page of the rules?

25 A. Yes.

Q. And when you read that, what was your understanding of a licensed event?

A. They had a special occasions permit to serve alcohol.

30 Q. And I believe that you did receive this list when you went in, is that correct?

A. Yes.

5 Q. Okay. And if I could ask you about five down from that bullet, there's a line, if I could direct your attention to it please that says, "Public sex is illegal. If you ant to have sex with someone, all rooms on the 4th floor are available for anyone to use."

A. Mm-hmm.

10 Q. Do you see that? Okay.

THE COURT: I'm sorry, what exhibit are you on now?

THE WITNESS: It's on the back.

MS. HART: Your Honour, it's on the back.

THE COURT: Oh, it's on the back.

15 **MS. HART:** And it's the second bullet from the top.

20 Q. That line, "Public sex is illegal" would you agree with me that it's reasonable from that line, it's a reasonable proposition that in fact it was acknowledged that parts of the Pussy Palace the event, were actually occurring in a public place?

A. I wouldn't know. I think, isn't the definition of public and private like a -- like that's a legal thing I don't necessarily understand. I mean the event is open to ---

25 Q. I'd like to draw your attention to -- I'm sorry.

A. I was going to say, it's not happening in a private residence.

30 **MS. HART:** I'd like to, if I could please, Your Honour, have the witness be given Exhibit Number 3. A moment's indulgence, Your Honour.

Q. I'd just like to draw your attention to

5 the caption, please that says, "What's Illegal?"

A. Mm-hmm.

Q. It right on the first page. And if you could just please read the first let's say, three lines, four lines after the caption, "What's Illegal?"

A. One, two, three, lap dancing?

10 Q. You could just start with, "You can be arrested for."

Q. Oh, "You can be arrested for: Public Nudity -- having your genitals exposed in a public area. You can be topless, but being bottomless in a public space is illegal.

15 Q. And the next line, please?

A. "Gross Indecency -- having sex in a public area."

Q. And further down, there's a line that starts, "Public areas" just about three down. If you could read that.

20 A. "Public areas include everywhere in the Pussy Palace except the private rooms."

Q. And a reasonable interpretation you would agree with me, would be that this is an acknowledgement that this was a public area?

25 A. Yes, that's sounds more like it.

Q. Did you consume any alcohol on the premises that evening?

A. No.

Q. Pardon me?

A. No.

30 Q. Did you observe the presence of alcohol on the first, second, third or fourth floors?

5 A. Yes, third or fourth, yes.

Q. And could you clarify for the Court, please, which floors you observed alcohol on?

10 A. Just going through, I saw someone drinking on the first floor, the bar was on the second floor, so I saw lots of alcohol there. The third, I wasn't really up on the third floor for very long. And the fourth floor, I don't remember really.

15 Q. And you've agreed with me that in general from the propositions that I put to you that were on Exhibit Number 3 entitled, "What's Illegal?" that a reasonable interpretation of this is that it was considered a public space?

A. Sure.

20 Q. And yet you testified that you observed women, and that you, yourself were naked in different areas of the club. Is that true?

A. Mm-hmm. Yeah, I'd interpreted the place, like when I was showering, I didn't think I should put my clothes on and take a shower.

Q. Of course not.

25 A. So I treated the space as a locker room, like I said. When I was outside, when I wasn't bathing, I was dressed in a towel. When I was bathing, I took my towel off to bath.

30 Q. Okay, did you have an opportunity to observe any areas other than the shower or bath area, let's say where it would be necessary to remove all your clothes, did you have the opportunity to observe other women who were not wearing any clothes, they were completely nude?

A. No, I didn't see anyone who was completely

nude.

5

Q. So the only ---

A. Outside of bathing.

Q. --- place then that there were women who were completely nude were in the bath and shower areas?

A. Yes.

10

Q. The pool, I'm sorry, is it the pool and shower area?

A. Yeah.

Q. But you do acknowledge that there in those areas, there were women who were completely nude.

A. Mm-hmm.

15

Q. Obviously when you're in the pool, I don't dispute that you're naked, but outside, sitting around the pool perhaps?

A. No. Like, this had been handed out. People were pretty clear about you shouldn't be -- well you can be topless obviously, but not without your bottoms on. So if anything I think people were a little bit confused by it, because I did see people in the pool, like in their underwear, or this one women who was completely dressed. So I think people interpreted it in different ways, but in terms of what I saw, no, people were completely naked when they were bathing, and everybody else had a towel on, or they were dressed.

20

25

Q. So in what you would consider the more public areas, let's say around the bar, or perhaps in the stairwells, at no time did you see women who were completely undressed?

30

A. Yeah.

Q. And you yourself, at no time in those

5 areas were completely undressed?

A. That's right.

Q. You also testified, I think, about things that you observed, the behaviours of women or their appearances, how they observed, once the police entered, that's correct?

10 A. Yes.

Q. Okay. And when you were describing their demeanour, I believe you said that they appeared upset, women appeared upset?

A. Mm-hmm.

15 Q. Okay. And after the entrance of the police, so we'll deal just with that right now, when you say they're upset, you didn't see women crying, did you?

A. Did I see women crying, no.

Q. And you didn't see women, you know, running to get away from the police, did you?

20 A. I ran to get away from the police.

Q. Okay, when you say you ran to get away from the police, that was for what purpose?

A. Because I had a little tiny towel on.

25 Q. I believe you testified that you were attempting to get away from the police and that you went to a room?

A. Rachael's room.

30 Q. Okay. Just wearing the towel. And I also believe you testified that you didn't want to have to walk up the stairs for example, because your towel was too short, and you couldn't cover yourself. Is that correct?

A. That's just specifically to how short a towel it was. I mean I didn't want to be in an area where

5 there were five guys wandering around. The whole point of the bathhouse was that you didn't have to deal with that.

Q. But in fact you didn't have to walk up any stairs, did you? I mean to get to the room, I think that's where you were trying to get, you didn't have to walk up any stairs?

10 A. Actually yeah, you have to go up from the pool to the next floor and over.

Q. Okay, so then your testimony is the pool is on the main floor?

15 A. There's stairs between, there's the main floor, you go up a few steps, then there's the pool, you go up a few more steps, outside steps. Then you're on the second floor.

Q. You also testified that when you were in that room, you came in and out of the room, I guess to check to see if the police were there, that's correct?

A. Yeah.

20 Q. Okay. I suggest to you that if you were as embarrassed as you say you were, that you wouldn't have been walking in and out of that room. You would have stayed in that room until you knew that the police were gone. Is that a fair proposition?

25 A. No. I was going in and out of the room to find out what was going on, if the police were still there, and if I could get my bloody clothes.

Q. But wasn't it possible for you, let's say to send someone else out to check that. If you had nothing to cover up with, couldn't you have sent someone else out?

30 A. I guess, I didn't have the key though. I would have to find somebody who had the key to get my clothes.

5 Q. Okay, so my suggestion to you is you can't have been that embarrassed if you chose to go out rather than to send someone out?

10 A. No, I don't really follow that. I mean I can tell you what I was feeling. You know, I felt sick. I felt like a churning in my stomach that I thought I was going to throw up. My desire was to get the protection that I could get, either by staying in a room and knowing that that necessarily wasn't safety, because they could come knocking on the door, I really had to go and get some clothes. That was my priority.

15 Q. And if I suggested to you that if you stayed in the room, and let's say sat down and held the towel over you, no one would be able to see you that much?

20 A. It still doesn't mean that they're not going to come knocking on the door and take me out. I have no reason to believe that the police are not going to arrive at the door, and you have to let them in.

Q. And I believe it was your previous testimony that officers entered the pool area, is that correct?

A. Yeah.

25 Q. And I'm not sure if you said that it was officers, sort of in the plural sense, or just one officer?

A. There were two.

Q. Okay, and could you describe those officers for me please?

30 A. They were plain clothes. Let's see, I didn't see a badge, one of them had a pony tail?

THE COURT: I'm sorry? One had a?

THE WITNESS: Ponytail.

5
THE COURT: Ponytail.

THE WITNESS: I don't know, I was trying to hide behind someone else at the time, so I didn't get a really good look.

10
MS. HART: Q. Okay, and if I suggested to you that the officers in fact did not enter the pool area, but had to walk past the pool area to get to the stairs to inspect the second floor, how would you respond to that?

A. I think that's a really tight definition of pool area. I mean they had a clear view of everybody in the pool.

15
Q. But they did have to pass the pool area, did they not, to get to the second floor?

A. Did they have to go by the pool? No, there's another set of stairs they could take.

THE COURT: There is another set of stairs?

THE WITNESS: Yes.

20
MS. HART: Q. And where is the other set of stairs, please?

A. Well, when you go in the front door, there's a main sort of lobby area. The set of stairs they took went through the pool and then up. On the other side of the lobby there's an internal set of stairs they can go up.

25
Q. And when you say internal, what does that mean? Is there a door in front of them?

A. No, I mean they don't go outside like these other stairs that go through the pool area.

30
Q. Right, but is it a doored set of stairs, a doored entrance?

A. No.

Q. So is that visible from the front entrance

5 then, that second set of stairs?

A. Sure.

Q. Moving on to, I believe you talked about a corporation or company called Bill 7 Award?

A. Yes, it's a trust fund.

Q. In your testimony, okay.

10 MR. ADDARIO: Actually there was no reference to a corporation or company.

MS. HART: Q. An organization perhaps called Bill -- I don't want to ---

A. It's a trust fund.

15 Q. Okay, if you could define what is this Bill 7 Award to the Court please?

A. It's a charitable trust.

Q. It's a charitable trust, okay. And is it a registered charitable trust?

A. Yes.

20 Q. And you also testified, I believe that -- so the police came, and you entered Rachael's room, right, at some point to get away from the police?

A. Yes.

Q. At some point you said Rachael left to close the bar?

25 A. Yes.

Q. And I believe you said that was around one o'clock, is that correct?

A. I didn't have a watch on. I mean she did. She looked at her watch and said it's one, I have to go close the bar.

30 Q. Okay, so then if I suggested to you that the bar in fact was not closed down at one o'clock, would that

5 surprise you?

A. Well yeah, because she came back with the cash box.

Q. Okay, and do you know what time she came back with the cash box?

10 A. A few minutes after leaving to go close the bar.

Q. Okay, but you're not sure what time she left to go close the bar, you've already testified to that?

A. No, I don't have a watch.

15 Q. So you're not sure what time she then came back, although arguably it was just a few minutes between the two events, okay.

MS. HART: A moment's indulgence, Your Honour.

20 Q. If I could just draw your attention please, again to Exhibit Number 3, which I believe you have, which is sort of titled, "If you get arrested" or "What's Illegal?"

A. Mm-hmm

25 Q. And if I could just draw your attention to the first paragraph please, of that first page. It says, "Over the last year Toronto's Police Force has been engaging in a campaign of targeted policing." Do you see that paragraph?

A. Yes.

30 Q. The next line is, "They have raided men's sex bars and arrested people for indecent acts. They have often closed down these clubs on liquor licence violations." I suggest to you that this document takes the position that gay clubs in particular are frequently inspected by the police, is that correct? Is that a fair summary of it?

5 A. Of the document, yeah.

Q. And do you agree then with sort of my summary of that, or is it your position that in fact these clubs are frequently inspected by the police?

10 A. Clubs are inspected. Yeah, all summer there have been a number of visits by the police to clubs up and down Church Street. I mean I can't compare it to other clubs, because I don't go to other clubs.

Q. Then given that statement, would you not agree with me that it should have been sort of expected in your mind that the police might enter that the police might enter that night?

15 A. Yeah, but you see the term police is a gender neutral term, and gender neutral isn't what shows up at the door. Like if you asked me what do you think the odds are of female police officers attending that event, I would have said probably very high. Personally I thought there were undercover female officers at previous events. I had actually
20 told people on the committee that I thought female officers might be coming, because they'd been so active going up and down Church Street, and the event, the Pussy Palace, was becoming more and more high profile. If you asked me though, whether or not I would have expected male police officers to
25 show up at the event, no, not in a million years.

Q. You would agree with me though that that statement in general sort of lends credence to the proposition that police were expected?

30 A. I don't know. I don't know about that. I mean better safe than sorry. Like you have to understand there's never been a women's bathhouse, right, like this is the fourth one that's ever happened in the City of Toronto.

5 These similar flyers were handed out at all the other
bathhouses that had things like, this is a safe environment,
it doesn't mean they're expecting an unsafe environment.
They're trying to communicate to people what they can expect
when they attend the event, and what to be aware of, so I
10 imagine that lots of people had questions about what the
legality of bathhouses is and how it works, so I can't
necessary speak for the committee and say what was in their
mind when they composed it.

Q. How about what was in your mind?

A. In my mind? I found it quite useful
15 actually, because I had a lot questions about what kind of
public nudity is allowed, and what -- like what is the space,
like even the definition, well like I said, I don't know --
the public private, I know is a legal definition, I don't
necessarily understand how that works, so I found it a pretty
20 helpful document to figure out like okay, you know this is
like, I guess I figured out well it's like a change room, it's
a public space, but you know, it's only for women, and so I
can walk around in the towel and I feel very comfortable doing
that because I have a certain, well I have an expectation that
there won't be men at the event.

Q. Before the event that we're speaking of,
25 had you ever attended a licensed premises such as a club or a
bar before?

A. Yeah.

Q. Okay. And when you attended or any time,
30 sort of no matter how many times you've been, you've attended
at bars or clubs where alcohol is served, okay?

A. Mm-hmm.

Q. Had the police at any time entered for any

5 reason?

A. Yeah, I've seen them do a number of inspections.

Q. So this wasn't the first time you've seen the police enter a licensed premises for the purposes of an inspection?

10 A. That's right. It's the first time I had a towel on though.

MS. HART: A moment's indulgence, Your Honour.

Q. If I could just draw your attention back to what I believe is Exhibit Number 3, the document which says, "What's Illegal?"

15 A. Yes.

Q. You testified that you had been aware of the fact that men's, gay men's sex bars had been closed down during the summer?

20 A. I don't know if they were closed down. I know the police were very active. There were lots of reports in Xtra about you know, raids of the Barn, I think, and the Bijou, and some underwear parties that they were having. Things like that.

Q. Okay, so to the best of your knowledge then, do you know if any of the bars were closed down?

25 A. I don't know.

MS. HART: Thank you, those are my questions.

RE-EXAMINATION BY MR. ADDARIO:

30 Q. You were just asked a couple of questions about your having been in licensed premises and seeing police officers, do you recall that?

A. Yeah.

5

Q. Do you recall those questions?

A. More or less, yeah.

Q. And you replied that you had in fact seen police officers at bars before?

A. Of course.

10

Q. Earlier you likened this event to being a women's locker room. Do you recall that evidence?

A. Yeah.

Q. Now just dealing then with your expectations, would you expect to see men in a women's locker room?

15

A. No. And I've never seen the police in a women's locker room.

Q. Leave aside police, but have you ever seen men in a women's locker room?

A. Men in a women's locker room? No, of course not.

20

Q. Would you expect to see men in a women's locker room?

A. No, or a women's washroom, or any number of public environments that are set aside for women.

MR. ADDARIO: That's all I have, thanks.

25

A. Okay.

THE COURT: Thank you.

THE WITNESS: Thanks, do I?

THE COURT: You can just leave them.

... WITNESS RETIRES ...

30

RENEE RACINE: AFFIRMED.

EXAMINATION IN-CHIEF BY MR. ADDARIO:

5

Q. I understand you're a writer and you live in Toronto?

A. That's true.

Q. And you're working right now as a copywriter for an Internet site?

A. Yes.

10

Q. Did you attend an event known as the Pussy Palace on September 14, 2000?

A. I did.

Q. Just taking your mind back to that, if I could, had you previously been at a Pussy Palace event?

A. Yes, I had attended the one previous.

15

Q. And when was that?

A. That was Pride weekend of the year before.

Q. And for His Honour's benefit, Pride weekend is when?

A. Oh, June.

20

Q. And what -- we've heard some evidence that these are bathhouse events, is that consistent with your understanding?

A. Yes.

Q. And what was the nature of the event that was held on September 14th, 2000?

25

A. Well it's a social sexually charged event, where women go to be social with each other, to be open with their bodies, open in a group of other women.

Q. Were there men present at the first Pussy Palace event that you attended?

30

A. No, it's a women's only event.

Q. Did you expect men to be present at this event on September 14, 2000?

5 A. Certainly not.

Q. Why didn't you expect men to be present?

A. Well it's a women's only event.

Promotions and tickets all read that it's a women's only event. I don't think anybody would have gone with the expectation that there would be men present.

10 Q. What time did you get there on September 14th?

A. I arrived at 4:00 p.m. to have my orientation because I was working the security volunteer shift later that evening.

15 Q. Were you paid to do that?

A. Oh no, volunteer basis.

Q. And what did you do when you arrived?

A. I had my orientation with JP, was shown the space, discussed the rules, discussed the liquor rules as to where it was okay to drink and where it wasn't, and that was it.

20 Q. And what did you do after that?

A. I had a nap after that because my shift wasn't until 1:00 a.m. and I didn't think I could make it.

25 Q. Can you describe for His Honour, the atmosphere of the event?

A. Well, it's a social atmosphere. It's a central atmosphere. Women are for the most part not clothed as they would be outside. They're clothed as they would be expecting to be only in the company of women. Lingerie, nudity, that sort of thing.

30 Q. How were you clothed?

A. Myself, for the portion of the evening when I wasn't napping and before the security shift, I was

5 wearing a skirt and a bikini top.

Q. Is that something you would wear on the subway or on the street?

A. Certainly not, no.

Q. Did you see the police arrive, or someone identified to you as the police that evening?

10 A. What happened was as I arrived to check in for my shift, I was notified that the police had entered the building a few moments before that.

Q. And who told you that?

A. My co-security partner had her headset on just moments before I put mine on, so she got the word first.

15 Q. Okay, I'm sorry, could you just repeat that answer?

A. My co-security partner, Sarah, heard the word first. She had put her headset on just prior to my putting mind on.

20 Q. Was there a general announcement made over a public address system?

A. No, there wasn't. Sarah informed me that the police were in the building. Then once I had my headset on, I heard it through there.

Q. Who were wearing headsets?

25 A. Sarah and I, I believe members of the bathhouse committee, some people at the door.

Q. After you were advised that the police arrived, what did you do?

30 A. Sarah and I decided to split up and inform as many women as possible that there were male officers in the building because that's what we were being informed of over our headset. Not just that there were police present, but

5 that they were male, and we felt that women may want to know that, have a chance to cover up.

Q. And did you in fact do that?

A. Well, we certainly tried, but in fact, the police had entered, and there was no way that the two of us could have informed everybody in the building. Many women would have been shocked.

10 Q. Well wait, wait, let me just ask you this. Where did you go?

A. I went along the ground floor, which would be through the dancing area first.

15 Q. Were you ahead of the police?

A. No.

Q. How do you know that?

A. Well, because the police would have had to go down, and they went up. Because by the time we were up, they were already there.

20 Q. You saw that with your own eyes?

A. Yes.

Q. How were the women around you dressed as you observed them prior to informing them of the arrival of the male police officers?

25 A. Many were nude, especially in the public pool areas, and the bath areas. Some were topless, some were wearing lingerie. Generally they were dressed sensually.

Q. How did the women that you encountered apparently react to the presence of male police officers in the bathhouse?

30 A. They were visibly upset. The women who I had the chance to inform asked questions like, men, you mean men are here? It wasn't so much shock that they were police,

5 it was the fact that they were male. They were frightened. Those that had towels nearby got them around their bodies. Those who didn't put their arms in front of their chests. We asked them to be polite to the police when they came through and to just sit still.

10 Q. How thorough or extensive was your ability to notify the women present that male police officers were present in the bathhouse?

15 A. I'm very sorry to say that I wasn't able, there was no way I was able to inform everybody. I wish I had been. I think it would have saved a lot of women a lot of shock if I had been, but I wasn't.

15 Q. All right. Now what generally did you observe the male police officers do while they were there?

A. They toured the facility, walked through the hallways, the bath areas, the pool space, the dance space.

20 **THE COURT:** Sorry, they walked through where, please?

THE WITNESS: All areas of the house.

THE COURT: Can I just have that list again, I didn't get it.

25 **THE WITNESS:** Sure, through the dancing area, through the pool area, the bath area, the saunas, the locker areas, change rooms.

THE COURT: Thank you.

THE WITNESS: Okay.

30 **MR. ADDARIO:** Q. Did you see the police question or speak with anyone?

A. They -- one specific incident stands out in my mind. They were in a small room with two women. I wasn't able to hear the conversation, but they were in that

5 room for what seemed to me an overly long time.

Q. Just give us an estimate of how long it was?

A. Half an hour maybe.

Q. What floor was that on?

A. I believe that was on the third floor.

10 Q. And where were you standing in relation to the two police officers that you saw in a room with these women?

A. There were a group of women around the door. Everybody sort of had the feeling that ---

15 Q. Don't tell us what others said, I just want to know where you were standing?

A. Okay, well I couldn't stand right next to the door, because there were a group of women there, so I was not close enough to hear the conversation.

20 Q. Do you know in approximate terms how long the police were at the bathhouse?

A. Between an hour and an hour and a half.

Q. How did you feel about the presence of male police officers in the bathhouse?

25 A. Working as a volunteer for this event, I was there to ensure the safety and the enjoyment of the women who were present, and frankly I felt like I couldn't do my job because I wasn't allowed to inform women that men were entering the space. I felt violated on their behalf. I was clothed because I was on shift, but many women weren't and I know how I would feel if men entered a locker room and I was naked and I wasn't expecting it.

30 Q. Well, let me just ask you to clarify one thing you just mentioned. Why do you feel that you were

5 prevented from informing all the women who were there that male police officers were present?

A. Well, for one, we weren't given notice, so I couldn't go ahead and make sure that women didn't see the police before they heard it from me.

10 **MR. ADDARIO:** Thanks, those are my questions.

EXAMINATION IN CHIEF BY MS. SIMPSON:

Q. I just have two quick questions for you. Do you know Rachael Aitcheson?

A. Yes.

15 Q. And did you see her at the bathhouse that evening?

A. Yes, I did.

Q. Can you tell me when, approximately?

A. Well I would have seen her during orientation and throughout the evening.

20 **MS. SIMPSON:** Thanks very much.

A. Sure.

CROSS EXAMINATION BY MS. ZED:

Q. Hi.

A. Hi.

25 Q. Okay, I just have a few questions, I'll be fairly brief. You testified that you heard over the headset that the police were there, is that correct?

A. I first heard through Sarah, my partner.

Q. And then you put the headset on?

A. Yes.

30 Q. And heard the announcement over the headset?

5 A. Well, it wasn't an announcement so much as it was an ongoing flustered conversation between other people who were wearing headsets.

Q. Okay, but that's how you became, that's like kind of the secondary way that you became aware of the information that the police were present?

10 A. Yes.

Q. Okay. And you heard that the police were there before you even had a chance to observe that, correct?

A. Yes.

Q. And you testified that women were visibly upset by the presence of police officers?

15 A. Yes.

Q. I suggest to you that the women were not so upset that they were crying, were they?

A. I did not witness anybody crying, no.

Q. Okay. And there wasn't like a mass exodus from the door, was there?

20 A. Many women did want to leave. We requested that they stay put and answer questions if necessary.

Q. And you mentioned in your previous testimony that the police walked through all areas of the building, correct?

25 A. I would assume they walked through all areas. I witnessed them in certain areas.

Q. Okay, so you didn't actually see them in all the areas?

30 A. I saw them in the dancing areas, in the pool areas, in the bathing areas, in the locker areas.

THE COURT: Sorry dancing, pool, bathing?

5

THE WITNESS: Bathing, in the locker areas, and in the upper rooms and hallways.

MS. ZED: Q. You didn't at any time see police officers forcibly enter a room that, where the door was closed, did you?

A. No.

10

Q. And you didn't hear police officers yelling at any of the patrons or any of the guests?

A. No.

Q. And you didn't see the police officers being aggressive in any way towards any of the people?

15

A. Well, the scene where they are in the very small room with the two women for an extended amount of time, I think had a certain element of aggression to it.

Q. But you couldn't hear their conversation, could you?

20

A. I couldn't hear their conversation, but they were two very imposing men in a room with semi-clad women?

Q. And you mentioned though that there were many women around?

A. Yes.

25

Q. Okay, so it's fair to say that the women far outnumbered the men?

A. Not the women inside the room.

Q. But the door was open and there were women crowded around, isn't that right? I'm just trying to get a picture?

30

A. Outside the room. Yes.

Q. Okay. You mentioned in your testimony that you said you wouldn't expect males to be present in say,

5 a female locker room, correct?

A. Yes.

Q. But if there were an accident to happen in that locker room and emergency personnel had to come in, then it wouldn't surprise you if male emergency personnel, police officers, ambulance crew came in, isn't that correct?

10 A. If there were an emergency situation going on, if somebody were hurt, or there was a robbery taking place, certainly I would expect police, male or female to be there.

15 Q. Okay, and a part of that is because of it's a public place, so the owners of the establishment would have some kind of responsibility to at least have access to emergency personnel for those areas?

20 A. I think that in this case it just wasn't warranted to send men. I think it would have been fine if they had been female officers, but nobody was being hurt, there had been no call. I think it could have waited for female officers.

Q. Okay, I'd just like to draw your attention to Exhibit 3, I believe it's in front of you. It's entitled, "What's Illegal?"

A. Yes.

25 Q. If you could just read the first two bullets under that section?

A. Okay. "Public Nudity -- Having your genitals exposed in a public area. You can be topless, but being bottomless in a public space is illegal. Gross Indecency -- having sex in a public area."

30 Q. And further down the bullet that starts off public areas?

5 A. "Public areas include everywhere in the Pussy Palace except the private rooms."

Q. So having read that would you agree with me that Pussy Palace was predominantly a public area?

A. Well I believe there are probably more rooms than there are social spaces.

10 Q. Okay, at least part of it was public?

A. Sure, well not open to the public, public. Public in a way that a locker room is public.

Q. Okay. And according to this, legally public, just from the title?

A. Sure.

15 Q. Were you aware of the fact that there was a reporter present at this event?

A. I had heard a rumour of it, specifically when I was standing close to the room where the two officers were with the two women, there was a woman there who said she was a reporter.

20 Q. But you had no knowledge of this prior to?

A. No, no.

MS. ZED: Brief indulgence, Your Honour.

Q. Okay, I just wanted to, sorry, take your attention back to ---

25 A. Sure.

Q. --- the situation where you were describing in the small room where there were two police officers and they were speaking to, how many other women were in that room?

A. Two women.

30 Q. Two women. And the door was open, and there were other women crowded around, and because of that

5 crowd you couldn't hear what was being said?

A. Correct.

Q. Okay. So how many women around there would you say?

A. Possibly twenty.

10 Q. Okay. So I suggest to you that these women wouldn't have been grouped around the doorway where the police were if they were frightened of them?

A. I think that you have to understand that some women are frightened, and others are angry in the same situation. Women will react differently to a threat.

Q. Okay, so these women weren't frightened?

15 A. The women around the door were not frightened.

Q. These twenty women weren't frightened?

A. I would say the women inside the room were.

20 Q. Okay, but you can't really say either way, because you couldn't hear the conversation and ---

A. No, but I ---

Q. --- with twenty women standing in front of you, you probably couldn't see them very well, either.

25 A. Well in fact, I could see them very well and body language is fairly explicit.

Q. What do you mean body language? What was their body language?

30 A. Well in the same way as you asked me whether I had seen anybody crying, no I hadn't, but when a woman holds her arms over her breasts, and she doesn't move and she has an upset look on her face, that tells you a lot about her mental state.

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Q. Okay, so you could see all this with twenty women standing in front of you?

A. Yes, in fact I could. One woman inside the room was sitting on a sling which was raised. I could see her very clearly.

Q. I would suggest that if the women were embarrassed or frightened, the women who were standing in the doorway, that they would have just left and not been in the presence of the police officers. Would you agree with that?

A. The women who were standing in the doorway were not embarrassed or frightened.

MS. ZED: Thank you. I have no more questions.

THE COURT: Any re-examination?

MR. ADDARIO: No, I have none for this witness, thank you, Your Honour.

THE COURT: Thank you.

THE WITNESS: Thank you.

... WITNESS RETIRES ...

MR. ADDARIO: I have another witness. I don't know if you or Madam Reporter have any druthers about whether there's a recess or not.

THE COURT: Well we had a very short one this morning, because we had a class in here. So we'll take an afternoon recess.

R E C E S S

UPON RESUMING:

5 **JILL HORNICK: AFFIRMED.**

EXAMINATION IN-CHIEF BY MR. ADDARIO:

V O I R D I R E

Q. Ms. Hornick, I understand you live in Toronto?

A. Yes.

10 Q. All right. And you have a masters in women's studies from Ohio State University?

A. That's correct.

Q. And an incomplete Ph.D from NYU in women's studies?

A. American studies, but yes.

15 Q. And you're currently a professor of communications at George Brown College?

A. That's correct.

Q. And the program is Assaulted Women and Children Program?

20 **THE COURT:** Sorry, at where, professor of?

MR. ADDARIO: Communications. Why don't I let her tell you, Your Honour.

THE COURT: Yes.

25 **THE WITNESS:** Professor of Communications at George Brown College. It's inter-disciplinary studies, but primarily in the Assaulted Women and Children Counsellor and Advocate Program. We abbreviate that, it will be CCA.

THE COURT: Yes, thank you.

30 **MR. ADDARIO:** Q. And you've been teaching there for about four years?

A. Yes.

Q. Now did you attend the Pussy Palace event

5 on September 14, 2000?

A. I did.

Q. And what was your relationship to the event?

A. I was a volunteer in charge of security, the SOP, so the liquor licence, and cleaning crews.

10 Q. And what do you mean by SOP?

A. The special occasion permit that allowed the sale of beer at the event.

Q. Was anyone else named on the SOP?

A. Yes, Rachael Aitcheson.

15 Q. Was Rachael present at the event on September 14 and 15?

A. She was.

Q. Was there a designated beneficiary of the proceeds of the event?

A. The Bill 7 Award.

20 Q. And what's the Bill 7 Award?

A. It's a scholarship fund for lesbian, gay, bisexual and transgendered students for their educations.

Q. Let me just show you a document and ask you if you recognize it. What's that?

25 A. This is a flyer we had posted around the bar area just to thank our sponsors, people who had donated food, non-alcoholic beverages, things like coffee, sandwiches, pizza, that kind of thing. It also includes a description of the Bill 7 Award so that people would know where the money from the SOP was going.

30 **MR. ADDARIO:** If that might be the next exhibit, Your Honour.

5 EXHIBIT NUMBER 4 : Document
- produced and marked.

Q. All right, now had you been to previous
Pussy Palace bathhouse events?

A. Yes, I'd been to all of them.

10 Q. And how many were there previous to this?

A. There were three previous to this one.

Q. And what's your understanding of the
purpose, or theme, or objective of these bathhouse events?

15 A. They're primarily a space for women to be
able to explore their sexuality, free from men. It's a space
that's designed to be a safe space, to be a fun space to be a
pleasurable space, yeah.

Q. Does sexual activity take place in
bathhouses?

A. Yes.

20 Q. Oh. Had there been men in attendance at
previous bathhouse events?

A. No.

Q. Did you expect men to be present at this
bathhouse?

A. No, I did not.

25 Q. Did men come?

A. There were men who arrived at the door, at
the front door.

Q. Were they allowed in?

30 A. No, they were not allowed in. We turned
them away. We've had that experience at all four of the
bathhouses and men have always been denied entrance on the
basis that it was a women only space.

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Q. Were gay men welcome?

A. No.

Q. Why not?

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A. The men who were typically showing up were gay men. Because it's normally a gay male bathhouse, and they are biologically men, and they were told this is a women only night.

Q. What time did you arrive?

A. I arrived about four o'clock.

Q. And what did you do when you arrived?

15

A. We immediately began the set-up. We always canvass the space first, so we checked the fire exits, we make sure the extinguishers haven't expired, we make sure that we have our medical kit in order, that our headsets are in order. We talk to the committee members about what they're expecting. At that point Rachael was involved in ensuring that the food and the non-alcoholic beverages had also arrived, setting those up, getting everything ready. And then also ---

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Q. I'll just stop you, who's Rachael?

A. I'm sorry, Rachael Aitcheson, the other.

Q. Go ahead?

25

A. And then I briefed my security staff and my cleaning staff on their duties for the night.

Q. And you did that all between 5:00 and 6:30 p.m. you said?

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A. No, I'm sorry, I arrived around four, so between four and six all of these things take place. It's our fourth one, they run pretty smoothly.

Q. Can you just describe in general in terms of the layout of this building?

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A. The building itself is a little bit complicated. It's a four storey Victorian style house. There are private rooms on all four floors. The first floor is reserved for the coat check. What was earlier referred to as the duty room, which is where the volunteers for security and cleaning check in to store their gear, and their clothing as the case may be. Off of the first floor, there is an entrance out to the pool up some steps. There is a second entrance right next to that into the hot tub whirlpool area, and you can also go through to the washrooms. There's a set of either three or four stalls there. There is a small wall. Along the other end of that wall there's an entrance into the sauna, the steam room, and there's a set of steps that goes upstairs. On the second floor, there's another set of rooms, there's another washroom, an exit to the pool area, which is outside and down some steps, along with a small patio just above the pool area, and there's lockers, a large section of lockers on that room that's open. There's on the third floor, a similar kind of layout. There's a set of stairs going up to the third floor. If you're at the top of the stairs, you look to your left there's another bank of private rooms, you look to your right, there's a small room with some lockers in it and then there's additional private rooms, and if you go around the corner up to the fourth floor, there's more private rooms. Outside there's a black metal fire escape that goes down the whole building. To get in, you have to enter off the street, go down some steps. You face the cage window, where you would either buy your ticket or turn in your ticket. On your way in, you would have been checked by security for ID, any kinds of outside illegal substances, outside alcohol, anything like that. And then you're buzzed in to the main door. When you

5 go down to the main door, you'd be handed your towel, your flyers, that kind of thing. You go down, there's a large, what we're using as a dance area.

Q. How did the organizers of this event acquire the use of this bathhouse, did you buy the building?

10 A. No, we didn't buy it. I'm not on the organizing committee, I'm just a volunteer, so I wasn't privy to any of the negotiations with the bathhouse owner. It's been a longstanding relationship and series of continuing negotiations from the first one until the one in 2000.

15 Q. But what I really want to know was did you have any continuing interest in the building, or was it a one night only, or?

A. It's a one night only event. We have no continuing interest in the building.

Q. I see. And you rent from the customary owner?

20 A. I don't know if it's a rental, but I'm assuming so.

MR. ADDARIO: Can I see Exhibit 3, please?

Q. Have you seen this document before?

A. Yes.

Q. And did you see it on September 14, 2000?

25 A. Yes, I did.

Q. Did you write it?

A. No.

Q. Do you know whether the person or persons who wrote it got legal advice?

30 A. I don't know that?

Q. Do you know who wrote it?

A. No.

5 Q. All right. What was the -- what time did people start to arrive?

A. The line-up starts usually around 4:30, but the doors opened between 6:00 and 6:30.

Q. And what was the atmosphere of the event?

10 A. It was very positive. All of them have been very positive, and this one continued along that vein. People were happy, they seemed excited to be there, seemed excited to get in. It was a festive atmosphere as one would expect at an infrequent event that people are looking forward to.

15 Q. Who had ultimate authority to control admittance to the premises on this evening?

A. I did along with Rachael Aitcheson.

Q. Why?

20 A. Because we were in charge of security, and we were in charge of watching for ratty behaviour, drunkenness, that sort of thing, and also because we were checking ID's and things like that. Then we had ultimate authority finally to allow people in or out.

Q. And who had ultimate authority to direct someone to leave the premises on September 14, 2000?

25 A. That would also have been me and Rachael Aitcheson.

Q. Why?

30 A. Because since we were responsible for what I just said, for the SOP, and because the behaviour associated with that, we had ultimate authority to say yes or no, or to ask people to leave if that was necessary.

Q. How were you clothed?

A. I was in a t-shirt and a pair of pants.

5 Q. Did you see how other women present at the event were clothed?

A. Yes, I did.

Q. Can you describe that for His Honour?

10 A. Sure. Other women at the event were in a variety of different kind of clothing, ranging from being topless with towels, to lingerie sheer type materials, lots of very kind of sexy clothing, some women were fully clothed, they were definitely in the minority. Usually they looked like my staff at that point.

15 Q. Could I ask you this, if I walked in the front door in the middle of the event, would it be evident to me that the minority of women were fully clothed and the majority were in some other state of dress?

A. Absolutely.

Q. Would it be immediately evident?

20 A. Yes. Yeah, I was just thinking you wouldn't have gotten in.

Q. Well, assume I had a magic card to get me in.

A. Okay. Your magic card, yes.

25 Q. Now did you become aware at some point in the evening that the police had arrived?

A. Yes.

Q. And could you tell His Honour of the approximate time that you became aware of that?

30 A. The approximate time would have been 12:45. We were having a shift change with the security. One of my security staff put on -- one of my security volunteers, I should say, put on her headset, the two security that were roaming each had a headset, they were in contact with each

5 other, and as soon as she put it on the person at the door who also was wearing a headset explained to the security person that, she said I think, get JP, which is my nickname, the police are here. And they had been briefed ---

Q. Okay. What we want to know is what you've been told and how you were notified?

10 A. Okay, what I'd been told was the front door person said, "Get JP, the police have arrived."

Q. Was there a general announcement made over a public address system?

A. No, I don't even know if there's a PA system in Club Toronto.

15 Q. Once you were notified that the police were present, what did you do?

A. I started moving towards the front door, which I was quite near, because I assumed that's where they would be, and as soon as I turned around, I saw two officers right in front of me, and two slightly behind them, and I approached the first two men, and I said are you here to look at the liquor licence, for liquor licence inspection, and they indicated that they were, and I said okay. I introduced myself, I said I'll take you to where it is and show it to you, and I proceeded to lead them through the dance area.

20 Q. Now did you see any women while you were going through the dance area with the officers to locate the permit?

A. Yes, I did it was very crowded.

30 Q. And did you observe their apparent response to the arrival, or presence of police officers?

A. There was apparent shock on people's faces. It was quite unexpected from the looks of the people

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around me. They looked surprised. Some people made gestures to cover themselves, those people that were either topless or in something that was very revealing in terms of their breasts. And it was fairly easy to part people to get them out of the way because they were already backing up at the presence of.

10 Q. Now ultimately do you show the police where the special occasion permit is located?

A. All four of them followed me up to where the special occasion permit was located. At that point one of them remained with me, one of them ---

15 MR. ADDARIO: Your Honour, I just wonder if this might be an appropriate time for Detective Wilson to excuse himself. He's been here all day.

THE COURT: Yes, any issue with respect to that?

20 MS. HART: No objection.

THE COURT: Yes, please. Thank you.

... OFFICER WILSON LEAVES THE COURTROOM ...

25 MR. ADDARIO: Go ahead.

THE COURT: All four followed you to where the special occasion permit was.

THE WITNESS: That's correct, Your Honour.

THE COURT: Yes.

30 THE WITNESS: So as soon as we arrived there, one of the officers stayed with me. I observed another one going off a little bit down the hall, and the other two immediately headed up

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to the third floor area. The steps are very close together. It was clear to see them. I removed the special occasion permit from the wall where it was posted, and handed it to the officer along with the receipts from the beer store, and he reviewed them. I asked him if everything was okay, if there was anything I could do, and he said that everything looked in order. Do you want me to ---

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MR. ADDARIO: Q. Yes, tell us where you went next and what you did?

15

A. At that point one of the committee members approached me and said that the officer in charge wanted to see me, and so I immediately went downstairs. He was by the front desk at that point.

Q. Who was that?

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A. That was Detective Wilson, and he asked if there was somewhere quieter we could talk and I indicated the front entrance, which was just outside the buzz door because at that point it was a less trafficked area.

Q. Now did you, without detailing it for us, did you subsequently deal with the police for the remainder of the time while they were in the bathhouse?

25

A. No, I was talking with Detective Wilson the entire time, so I was dealing with one of the police.

Q. And were you with him for the duration of the time that the police were there?

A. Yes.

30

Q. And did you have an opportunity to see what was going on on the upper floors?

A. No, I did not.

5

Q. And ultimately Detective Wilson left?

A. Yes.

Q. And the other officers left with him?

A. Right.

10

Q. And you were subsequently notified that you were going to be charged for several Liquor Licence Act violations in relation to this event?

A. That night I was told it was a possibility. It was weeks later before I was actually charged.

15

Q. Now how did you feel about the presence of male police officers in the bathhouse that particular evening?

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A. I was very startled by the presence of male police officers. I wasn't expecting any police officers that night, and the fact that there were five men seemed a little strange to me. I would have thought that since everything clearly indicates a women only event, it's always been a women only event, that it was possible that they would have brought along female officers, at the very least just for a comfort level among the people inside, among the women inside. So I felt very frightened and a bit intimidated by it. And I felt very bad for the women that were participating inside, because I could only assume what I would have felt having attended previous bathhouses and been only partially clothed had I been inside.

25

MR. ADDARIO: Those are my questions. Would you stay there?

A. Sure.

30

EXAMINATION IN-CHIEF BY MS. SIMPSON:

Q. You've indicated in your evidence thus far

5 that Rachael Aitcheson was the other name on the special occasion permit?

A. That's right.

Q. And you obviously knew her?

A. Yes.

Q. You saw her upon your arrival ---

10 A. Yes.

Q. --- when you were setting up and doing the training?

A. That's correct.

Q. Did you see Rachael again later on in the evening?

15 A. I saw Rachael at several points throughout the evening, yes.

Q. Can you describe those for me?

20 A. Initially I saw her doing set up, and during the course of her shift. She was on an early shift, so she was also fully clothed at that point. At other points I saw Rachael wandering about the bathhouse enjoying herself because at that point she was a patron. And she was dressed alternatively, I saw her topless at several points during the course of the night, in a towel, and just a pair of shorts and a pair of boots at other point, yeah.

25 Q. Were you aware of her whereabouts at the time the police arrived?

A. No, I was not.

Q. Had you ever seen her leave?

A. No.

30 Q. Did you see her again after the police left?

A. Yes, I did.

5 Q. And where did you see her after the police left?

A. I saw her coming down the stairs after the police had left on the inside stairs from the second floor.

MS. SIMPSON: Thanks very much.

A. Sure.

10 **CROSS EXAMINATION BY MS. HART:**

Q. Good afternoon.

A. Good afternoon.

15 Q. I understand from your testimony that you were one of the organizers of the event, but not on the committee?

A. No, I'm a volunteer. The specific portion of the event that I organized was in relation to the special occasion permit, and the cleaning, so I'm not involved in any of the major decisions around the rest of the event.

20 Q. And I believe that you said that -- when you say you were involved in the special occasion permit, what do you mean by that?

A. I was the designate on the special occasion permit.

25 Q. And it's your position then that you were the designate in writing for the purposes of the special occasion permit?

A. Yes.

MS. HART: Your Honour, if I may approach the witness.

THE COURT: Yes.

30 MS. HART: Q. Do you recognize these pieces of paper?

5 A. Yes. This is the -- it looks like the special occasion permit.

Q. And that's the permit that we're referring to today? Take your time.

A. Okay. The permit that I had, that was posted was this permit and there was a reverse side.

10 Q. Okay.

A. So I would assume that the rest of the details are in reference to the permit itself.

MS. HART: Your Honour, I'd like to enter this as the next exhibit, please.

15 EXHIBIT NUMBER 5 : Special occasion permit
- produced and marked.

20 Q. And on the night in question, it was your testimony that when you became aware of the police presence, you went downstairs and identified yourself to the police as the person in charge of the event?

A. No.

Q. How would you have identified yourself?

25 A. I identified myself. I didn't have to come downstairs, I was right there. I indicated to the police that I was in charge of the SOP. I didn't identify myself as an organizer of the event.

Q. Okay, so you identified yourself as the designated person and responsible for the purposes of the SOP?

A. Right.

30 Q. You also testified that you had to lead the officers through the dance floor to get to the location of the SOP?

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A. That's correct.

Q. And so then it's reasonable to state that while you're leading the officers through they had the opportunity to observe what was going on, on that floor, is that also correct?

10

A. Sure.

Q. And when you were doing that, I believe you testified that all four of the officers were together?

A. Yes.

Q. And I suggest to you that there was alcohol being consumed at that time on the dance floor, or near the dance floor?

15

A. There might have been. I understood that this was licensed area.

Q. So I suggest to you that the officers observed this alcohol being present?

A. If it was present, I'm sure they did.

20

Q. I also suggest to you then that I believe you said you went to the second floor for the purposes of the SOP, right?

25

A. Yeah, the second floor distinction is a little bit tricky, because the first -- when you enter it's a sub-floor, so the layout is basis such that, I've heard throughout people referring to it as various floors. When I say the second floor, I just mean we went up a flight of steps but they had to come down a slight of steps to get in, so they came through the dance floor, they went up to the floor where the bar was.

30

Q. So I just want to establish that the bar was on a different floor, let's say than the dance floor?

A. Absolutely.

5 Q. Okay.

A. Yeah.

Q. And given the fact that you were the person responsible for the SOP, you were aware of the fact it was only the main floor that was licensed?

10 A. My understanding from conversations I had had with someone at the LCBO hotline was that the interior of the premises was licensed. I had called to double check that because of the language and because of the confusing layout of the space, so I called to make sure that we would be within the law, because I'm interested in running something around the SOP that's safe, that's legal, that doesn't end up with me standing here. And so when I called to check on that, I explained the layout of the space, I explained that there was an outside deck area, and they said as long as there's not a bar out there, and no one drinking out there, that this should be okay. I assumed based on that conversation, and apparently it's quite possible that seems to be wrong, since I am here, however to the best of my knowledge the interior of the space was licensed and I attempted to confirm that before I set up any kind of liquor serving space. 61

15 Q. Okay, but you read the licence before you signed it as the designate.

20 A. Yes, I did, yeah.

Q. And the licence specifically says that the main floor is the licensed area?

25 A. I believe it says main floor slash lounge. Now I also thought that this might be a typo. I mean main floor is main floor slash lounge, these were hard to figure out in terms of -- so that's why I called.

30 Q. Okay, so if you're saying that there's

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sort of a -- or it's hard to make the distinction between
let's say the main floor or the first floor and the second
floor, I suggest to you that there were also two other floors
were there not, what are arguably the third and fourth floor.
Is that also correct?

10
A. I agree with you completely, ma'am, I'm
just suggesting also to you that I did get outside
confirmation from who I thought was a representative of the
licensing agency since they were answering the phone help
line, who ---

THE COURT: Just -- it's a help line?

THE WITNESS: Yes, the LCBO hot line.

15
THE COURT: Hotline?

THE WITNESS: Yeah, it's hotline slash help
line. It's not like a victim services hotline.
So they, when I spoke to somebody there, they
suggested the interior should count, since the
SOP covered the premises. It was the exterior
20 that was the issue, and as a result of that I
had instructed my security at the briefing at
the beginning of the night, we posted signs on
all of the outside doors saying no alcohol
beyond this point, and they were also
25 specifically instructed to patrol that
perimeter to make sure that nobody was going
outside with alcohol, so we thought we were
keeping people contained within the licensed
area. That was our intention. If the SOP had
30 been -- the language around this had been a
little more clear, we would have kept people
even closer, or if the police had indicated to

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us that that was the area that they saw was the licensed area, I would have immediately instructed my staff to keep people within that area. Of course at that point it would have been moot because the SOP was over at one. But I would have complied in any way possible to keep it okay. We were trying to run a fun event, you know, it kind of put a damper on the evening.

10

MS. HART: Q. And you were aware of the fact then that the SOP did expire at 1:00 a.m.?

15

A. Yes.

Q. And did you state that to the police?

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A. When the police -- when Detective Wilson asked me that, I was incredibly flustered. I don't have extensive dealings with the police. My bartenders had been instructed as well. They both have Smart Serve training, the people that were on, and they had the SOP right next to them, and they'd been instructed to close the bar at one. So I had every confidence that the bar was being closed on time.

25

Q. And if I suggested to you that people were served alcohol after one o'clock, would you agree with that statement?

30

A. No, I would flatly deny that statement.

MR. ADDARIO: Could I just register this observation, Your Honour. There have been several questions in cross-examination of my witnesses respecting whether or not infractions took place under the Liquor Licence Act. I just want to re-state what I said this morning. We're not litigating that, I'm not taking that

5 on, and this of course reciprocally is not a
discovery proceeding for the Crown to enable
the Crown to discover defence witnesses with
respect to evidence they might give on a guilt
innocence issue when and if the trial
10 commences. I just want to make that
observation. I'm not going to object and slow
the proceedings down every time a question's
asked, but I want it noted on the record.

THE COURT: Yes, thank you.

15 **MS. HART:** Q. When you went downstairs to
speak with the police, at that point were you aware of whether
Ms. Aitcheson was present in the premises?

A. No, I did not. I wasn't aware of whether
she was present on the premises at that point or not.

20 Q. You also testified that when you went down
to meet the police that you were fully clothed, is that
correct?

A. Yes, yes.

Q. And so you, yourself didn't suffer any
form of embarrassment that the police could have seen you in a
state of undress, did you?

25 A. Not a state of undress, no. I did feel
kind of embarrassed.

Q. But the police didn't have the opportunity
to observe you let's say -- they hadn't actually entered the
floors or watched the premises, you met them at the door?

30 A. Yes, they did not see me undressed, if
that's the, yeah.

Q. And so it's not your position then that
you were embarrassed by the fact that they saw you in a state

5 of undress?

A. No, I was not embarrassed by my nudity, or lack thereof.

MS. HART: So I understand that -- a brief moment, Your Honour.

10 Q. Your testimony then was that you were startled by the presence of the officers?

A. Yes.

Q. And could you explain to the Court please, what you meant by startled?

15 A. I was surprised at any sort of police presence at the bathhouse to start with, but I was particularly surprised by the fact that there was suddenly four men inside the bathhouse, so I was startled in the sense that I was extremely surprised, not only by police presence, but yeah, by their gender, or actually sex would be I guess more accurate.

20 Q. And when you say that you were surprised, I put it to you that in fact it had been contemplated by organizers of the event that police presence was possible that evening?

25 A. I don't know about the organizers and I don't imagine that, I mean from my perspective based on just the fact that this was the fourth bathhouse, it had gotten a lot more public recognition, and it was getting increasing public recognition as word spread throughout the lesbian community in particular, that when things become more public there's always a chance that there's going to be more
30 problems, because of other circumstances within the gay and lesbian community among bathhouses being visited by police and things like that, I knew that it was a remote possibility,

5 Q. Okay, and I suggest to you that that statement recognizes that some of the areas in the premises in general were to be considered public areas?

A. Within the buzz door part. Like after you buzzed in with your ticket and all that.

10 Q. Sure, some of the areas were public space?

A. Okay.

Q. Is my suggestion?

A. Okay.

15 Q. And that it was acknowledged or it is acknowledged reasonably through this that some of the areas were considered a public space, certainly not all of them, but some of them?

A. Okay.

MS. HART: I have no further questions. Thank you.

20 **MR. ADDARIO:** If you could give me a moment, Your Honour.

RE-EXAMINATION BY MR. ADDARIO:

25 Q. You were asked a question which went something like this, I take it you were not aware when you spoke to the police if Rachael was there. Do you recall being asked that question?

A. Yes.

Q. And you agreed with the suggestion?

A. In the sense that I didn't see her leave.

30 Q. All right. And that would have been about what time?

A. That would have been during my questioning by Detective Wilson, so it would have been between five to

5 one, and 1:50.

Q. Did you later learn about Rachael's whereabouts?

A. Yes, I did.

Q. And where did you learn that Rachael had been?

10 A. That she was in a room that she had gotten.

Q. Did you see her in the bathhouse before the police came?

A. Yes.

15 Q. Did you see her in the bathhouse after the police left?

A. I did, yes.

20 Q. It was suggested to you that you weren't personally embarrassed by your nudity or state of dress and you agreed with that. Do you recall that question and that answer?

A. I certainly do.

Q. Accepting that you were not embarrassed by your own nudity or your state of dress, what was your reaction to the police presence?

25 A. I was embarrassed by the police presence. I felt intimidated by the police presence. I felt as a woman in a space that I considered safe, violated by the police presence, being that it was male police officers.

30 Q. It was suggested to you that you could reasonably expect the police to arrive based on certain events that preceded the evening, do you agree -- and you agreed with that, right?

A. I agreed that it was a possibility, yeah.

5 Q. Now do you agree, or disagree that you could reasonably expect male police officers to arrive prior to their arrival?

A. No, I don't think that you could have reasonably expected that. I think you could have reasonably expected female officers, if any.

10 MR. ADDARIO: That's all I have, thank you.

THE WITNESS: Is that it?

THE COURT: Thank you.

THE WITNESS: Thank you.

15 ... WITNESS RETIRES ...

THE COURT: Yes, those are your witnesses on the application?

20 MR. ADDARIO: Yes. Your Honour, those are my witnesses for today. If I call a witness tomorrow it will be a witness with very brief testimony, but I just have to think about that overnight.

THE COURT: Yes.

25 MR. ADDARIO: I understand there will be three police officers in addition.

MS. HART: Yes, Your Honour.

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THE COURT: Yes. Ten o'clock tomorrow morning.

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THIS IS TO CERTIFY THAT
THE FOREGOING IS A TRUE
AND ACCURATE TRANSCRIPT
OF MY RECORDINGS TO THE
BEST OF MY SKILL AND
ABILITY.

Theresa Morris
.....
THERESA MORRIS
OFFICIAL COURT REPORTER

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