

Fourth Session – Forty-Second Legislature
of the
Legislative Assembly of Manitoba
Standing Committee
on
Legislative Affairs

Chairperson
Mr. Andrew Micklefield
Constituency of Rossmere

Vol. LXXVI No. 4 - 6 p.m., Wednesday, November 2, 2022

ISSN 1708-668X

MANITOBA LEGISLATIVE ASSEMBLY
Forty-Second Legislature

Member	Constituency	Political Affiliation
AL TOMARE, Nello	Transcona	NDP
ASAGWARA, Uzoma	Union Station	NDP
BRAR, Diljeet	Burrows	NDP
BUSHIE, Ian	Keewatinook	NDP
CLARKE, Eileen, Hon.	Agassiz	PC
COX, Cathy	Kildonan-River East	PC
CULLEN, Cliff, Hon.	Spruce Woods	PC
DRIEDGER, Myrna, Hon.	Roblin	PC
EICHLER, Ralph	Lakeside	PC
EWASKO, Wayne, Hon.	Lac du Bonnet	PC
FONTAINE, Nahanni	St. Johns	NDP
FRIESEN, Cameron, Hon.	Morden-Winkler	PC
GERRARD, Jon, Hon.	River Heights	Lib.
GOERTZEN, Kelvin, Hon.	Steinbach	PC
GORDON, Audrey, Hon.	Southdale	PC
GUENTER, Josh	Borderland	PC
GUILLEMARD, Sarah, Hon.	Fort Richmond	PC
HELWER, Reg, Hon.	Brandon West	PC
ISLEIFSON, Len	Brandon East	PC
JOHNSON, Derek, Hon.	Interlake-Gimli	PC
JOHNSTON, Scott, Hon.	Assiniboia	PC
KHAN, Obby	Fort Whyte	PC
KINEW, Wab	Fort Rouge	NDP
LAGASSÉ, Bob	Dawson Trail	PC
LAGIMODIERE, Alan, Hon.	Selkirk	PC
LAMONT, Dougald	St. Boniface	Lib.
LAMOUREUX, Cindy	Tyndall Park	Lib.
LATHLIN, Amanda	The Pas-Kameesak	NDP
LINDSEY, Tom	Flin Flon	NDP
MALOWAY, Jim	Elmwood	NDP
MARCELINO, Malaya	Notre Dame	NDP
MARTIN, Shannon	McPhillips	PC
MICHALESKI, Brad	Dauphin	PC
MICKLEFIELD, Andrew	Rossmere	PC
MORLEY-LECOMTE, Janice	Seine River	PC
MOSES, Jamie	St. Vital	NDP
NAYLOR, Lisa	Wolseley	NDP
NESBITT, Greg, Hon.	Riding Mountain	PC
PEDERSEN, Blaine	Midland	PC
PIWNIUK, Doyle, Hon.	Turtle Mountain	PC
REDHEAD, Eric	Thompson	NDP
REYES, Jon, Hon.	Waverley	PC
SALA, Adrien	St. James	NDP
SANDHU, Mintu	The Maples	NDP
SCHULER, Ron	Springfield-Ritchot	PC
SMITH, Andrew, Hon.	Lagimodière	PC
SMITH, Bernadette	Point Douglas	NDP
SMOOK, Dennis	La Vérendrye	PC
SQUIRES, Rochelle, Hon.	Riel	PC
STEFANSON, Heather, Hon.	Tuxedo	PC
TEITSMA, James	Radisson	PC
WASYLIW, Mark	Fort Garry	NDP
WHARTON, Jeff, Hon.	Red River North	PC
WIEBE, Matt	Concordia	NDP
WISHART, Ian	Portage la Prairie	PC
WOWCHUK, Rick	Swan River	PC
<i>Vacant</i>	Kirkfield Park	

LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON LEGISLATIVE AFFAIRS

Wednesday, November 2, 2022

TIME – 6 p.m.

LOCATION – Winnipeg, Manitoba

**CHAIRPERSON – Mr. Andrew Micklefield
(Rossmere)**

**VICE-CHAIRPERSON – Mr. Rick Wowchuk
(Swan River)**

ATTENDANCE – 6 QUORUM – 4

Members of the committee present:

Hon. Ms. Gordon, Hon. Mr. Wharton

*Mr. Micklefield, Ms. Naylor,
Messrs. Redhead, Wowchuk*

Substitutions:

*Hon. Mr. Goertzen for Hon. Mr. Wharton at
7:35 p.m.*

APPEARING:

Mr. Dougald Lamont, MLA for St. Boniface

PUBLIC PRESENTERS:

*Shannon Hancock, private citizen
Julie Roginsky, Lift Our Voices
Marcel Williamson, private citizen
Karen Koslowsky-Jones, private citizen
Julie Macfarlane, Can't Buy My Silence
Sherri Thomson, private citizen
Jan Wong, private citizen
Pam Gordon, private citizen
Susan MacRae, private citizen
Kelly Donovan, private citizen
Jennifer Schulz, private citizen
Laura Fougere, private citizen
Aalya Ahmad, private citizen
Bridget Lontok, private citizen
Barbara Captijn, private citizen
Candide Allen, private citizen
Douglas Kuny, private citizen*

WRITTEN SUBMISSIONS:

Grant Driedger, Manitoba Law Reform Commission

MATTERS UNDER CONSIDERATION:

Bill 225–The Non-Disclosure Agreements Act

* * *

Clerk Assistant (Mr. Tim Abbott): Good evening, everybody. Will the Standing Committee on Legislative Affairs please come to order.

Before the committee can begin with proceedings, we need to elect a Chairperson.

Are they—any nominations?

Hon. Jeff Wharton (Minister of Environment, Climate and Parks): I nominate MLA Micklefield for Chair.

Clerk Assistant: Mr. Micklefield has been nominated as Chairperson.

Are there any other nominations?

Hearing none, Mr. Micklefield, please take the Chair.

Mr. Chairperson: Good evening. Will the Standing Committee on Legislative Affairs please come to order—we already read that part. Great, well, we're already in order. That's great.

Our next item of business is the election of a Vice-Chairperson.

Are there any nominations?

Mr. Wharton: I nominate MLA Wowchuk as Vice-Chair.

Mr. Chairperson: MLA Wowchuk has been nominated.

Are there any other nominations?

Hearing none, MLA Wowchuk is elected Vice-Chairperson.

This meeting has been called to consider Bill 225, The Non-Disclosure Agreements Act.

I'd just like to say before we get started that, due to the nature of this evening's proceedings, we have provided some Victim Services people, who I believe should be with us now. Could they identify themselves? Thank you so much for being here.

If, for whatever reason, anyone in the room would like to talk with somebody confidentially or take advantage of the services that are available, please do so. Catch their eye, you know, tap them on the arm,

whatever—however you'd like to do that. This is not just laws and legislation; we are human beings and we want to make sure that we're sensitive to that, too, this evening.

So, thank you for coming, and we take this seriously.

I would like to inform all in attendance of the provisions in our rules regarding the hour of adjournment. A standing committee meeting to consider a bill must not sit past midnight to hear public presentations or to consider clause-by-clause of a bill except by unanimous consent of the committee.

We have a number of presenters on the list before us indicating that they are from out of town.

Also, the committee clerk has received a request from Julie Roginsky—I hope I say the last name correctly—presenter No. 20 on the list before you—to be moved to earlier in the presentation queue, as she is in a different time zone.

With that in mind, what is the will of the committee?

Mr. Wharton: I would suggest that we allow out-of-town presenters who are in person in the room to present first, then invite Julie Roginsky to present to accommodate that, and then progress through the remaining presenters in the order listed before us.

Mr. Chairperson: Okay. So it's been suggested we allow out-of-town presenters who are in the—who are in person in the room to present first, and then to invite Julie Roginsky to present, and then to progress through the remaining presenters in the order listed before us.

Is that agreed? *[Agreed]*

I would now ask that anyone present in the committee room who registered as out of town, please make themselves known to the Chamber branch attendant at the back of the room; that's the back of the room. These names will then be provided for the clerk. We'll make sure we get the order right and don't have you sitting here 'til quarter to twelve, if we can do that.

Written submissions to Bill 225 have been received from the following people, and copies have been distributed to committee members: Grant Driedger, president of the Manitoba Law Reform Commission.

Does the committee agree to have these documents appear in the Hansard transcript of this meeting? *[Agreed]* Okay.

Prior to proceeding with public presentations, I'd like to advise members of the public regarding the process, which, if you don't know it, will seem really weird.

In accordance with our rules, a time limit of 10 minutes has been allotted for presentations, with another five minutes for questions from committee members. Questions shall not exceed 30 seconds in length, with no time limit for answers—at five minutes; that's a time limit, but—questions may be addressed to presenters in the following rotation: first the sponsor of the bill, and then a member from each recognized party.

If a presenter is not in attendance when their name is called, they will be dropped to the bottom of the list. If a presenter is not in attendance when their name is called a second time, they're removed from the presenters list.

I would also like to remind the members of the public who are observing the committee meeting to please not disturb the committee proceedings by applauding or commenting from the audience. Taking of photographs, as well as any audio or video recordings are not permitted from the public gallery. Please ensure your phones are in silent mode, and I'll just take that advice myself and just check here.

The proceedings of our meetings are recorded in order to provide a verbatim transcript, so here's the weird rule: each time someone wishes to speak, whether it be an MLA or a presenter, I first have to say your name. That is the signal for the Hansard recorder to turn the mics on and off. And then when they're typing it out, they know who's talking.

Thank you for your patience. We will now proceed with public presentations.

Bill 225—The Non-Disclosure Agreements Act

Mr. Chairperson: Ms. Shannon Hancock has indicated that she's from out of town, so we're going to call Shannon up first. I will now call on Ms. Shannon Hancock.

Welcome. Ms. Shannon Hancock, please go ahead.

Shannon Hancock (Private Citizen): Go ahead?

My name is Shannon Hancock, and I was born and raised in Manitoba. I began training to become a registered nurse in 1990, and was a member of the last graduating class of the Health Sciences Centre school

of nursing in 1993. I went on to complete a BN with distinction in 2006.

* (18:10)

I began my nursing career at Health Sciences Centre, and my experiences with workplace violence ran the gamut. Over the years, I was sexually, physically and psychologically harassed and assaulted. I personally knew two RNs employed at HSC who died by suicide not long after they graduated. One was a classmate; the other was a beloved family member.

I left HSC in 1999 following another critical incident, this time involving my father, a vulnerable in-patient released on a pass without notice to family. I was a nursing supervisor at HSC at the time, but was working my second job at Riverview Health Centre when I was noticed by the Winnipeg Police Service that he, too, had died by suicide and a critical incident.

Overwhelmed after years of professional and personal trauma and tragedy associated with my workplace, I left the province and worked for a time in BC.

In 2002, I was recruited back to Health Sciences Centre as a clinical resource nurse in neurosurgery. The environment was triggering and unhealthy and I eventually left permanently, working as a sexual assault nurse examiner, an HIV nurse at Nine Circles Community Health Centre and, in 2008, as a co-ordinator of a large tuberculosis program in Nunavut.

In April 2009, I was recruited back, by the WRHA this time, to work in public health tuberculosis services, a toxic workplace that, by July 2011, had been featured in Canadian Nurse magazine in an article entitled: Targeted, The impact of bullying and what needs to be done to eliminate it.

In 2012, 10 years ago, I made the first formal workplace health and safety complaint of my working life. I was 50 years old. Mine was not the first complaint in the workplace; it wouldn't be the last. That complaint triggered the end of my career.

WRHA's internal investigation process was negligent and discriminatory. The internal consultants, both of whom were much younger than I was, were neither impartial, qualified or experienced conducting complex investigations involving regulated health professionals.

In April 2013, after these investigation reports were released, I was walked into a meeting with HR. I had been assured by the Manitoba Nurses Union, my LRO and the labour relations director, Leona Barrett,

Kirsten Andersson, I wouldn't be fired. They couldn't fire me for being a pain in the ass. I was fired.

As we left the board room, while I was still in shock, Ms. Barrett noted that they wouldn't accept a settlement, even if they offered \$30,000. It was clear to me then that the parties were negotiating the terms of my termination without my knowledge or consent.

The union filed eight grievances, first grievances of my working life. The referral to arbitration was accepted by the honourable Martin Freedman in May 2013.

By the time the hearing began in August, there were seven lawyers involved. For a nursing arbitration hearing. Karen Clearwater, Vivian Rachlis, Denny Kells, Martin Freedman, David Shrom, Richard Deeley and David Bruni. I had nobody. There wasn't a registered nurse in the place. My panel of peers was three white men and lawyers.

Arbitration hearings went on for more than 10 days between August 2013 to 2014, and in that entire time, two witnesses testified. The employer filed two vexatious complaints to the College of Registered Nurses of Manitoba against me during arbitration. Lawyers didn't object, instead telling me that they would help me defend the complaints. I got \$3,000 from the union; the lawyers charged me double that to defend myself.

By the end of arbitration—actually, in January 2014, I received a letter from the Manitoba Ombudsman advising me that, while they would not disclose—investigate my disclosure under The Public Interest Disclosure Act—I told my employer, I told the union, I told the Ombudsman, I told everybody—while they wouldn't investigate, they assured me I was protected against reprisal retroactive to my disclosure in February 2013. And the assurances always came a little too late, because two months after my disclosure, I was fired.

While I was in arbitration, I was notified that my youngest brother, Trevor, was killed in a devastating motorcycle collision in Hamilton.

By July 2014, I was traumatized, grieving, black-listed by the WRHA—the employer for my profession in the Winnipeg health region. I had been dumped by counsel; they cited a conflict they hadn't mentioned before, threatened with abandonment by the union and withdrawal of the grievances by the bargaining agent and their counsel.

And after two complaints to my regulator during arbitration, I was coerced into signing an agreement, an NDA and one-sided release under duress.

In January 2015, I filed an application with the Manitoba Labour Board—again, the first in my life. I made it very clear that the reason I filed that complaint was to ensure what happened to me didn't ever happen again. It was dismissed.

Vivian Rachlis from Thompson Dorfman Sweatman repeatedly sent me threatening communication. Karen Clearwater was the senior lawyer in labour at the WRHA. By March 2015, I had been ambushed at my next employer, falsely accused, terminated, reported to the college. This all happened in two years. In the previous 20, I had no disciplinary history.

And twice I asked my lawyers, Tracey Epp from Pitblado and Gange Collins to please challenge the unconscionable agreement I was coerced into. I was a regulated nursing professional. You cannot silence, you cannot gag a regulated nursing professional working in a public health system.

When I asked these two firms for their legal opinion, they both withdrew legal services, leaving me on my own again.

On September 23rd, approximately—sorry, 2016, roughly six weeks after I reported health and safety issues in the WRHA home-care program to director Vikas Sethi, the WRHA filed a statement of claim against me, alleging I breached the 2014 NDA.

Mr. Sethi had consulted with several other regulated professionals, including two lawyers, Allister Gunson and Dan Ryall, and Kathleen Klassen, a CRNM registrant. In the six years since I was served with that lawsuit, the only names associated with the litigation are Law Society of Manitoba registrants Tim Lach, Karlee Blatz, Dan Ryall, and since 2019, Lynda Troup from Thompson Dorfman Sweatman. They refuse to identify an instructing client, just saying I am being sued by the WRHA.

Beginning in 2014 until my registration expired on December 31st, 2019, when I couldn't take any more, Shared Health—I was forced by firms advising the regulator, CRNM, WRHA, Shared Health, government, the Minister Gordon—because it's Thompson Dorfman Sweatman—I was forced to practice while muzzled. None of my legal advisors, to whom I paid tens of thousands of dollars, would challenge that NDA.

Nurses are the largest group of regulated professionals in the world. We are—well, they are; I'm not one anymore—are in critically short supply.

According to statistics from the Canadian Nurses Association, 91 per cent of nurses are female. Manitoba nurses are being discriminated against based on the fact that we live in Manitoba, based on protected characteristics: age, gender, sex, socioeconomic status. We are vulnerable to professional and financial exploitation based on geography. We're just the tip of the iceberg.

Much of this information's in the public domain. We've been filing it for years. Regulators in the Court of King's Bench, the Court of Appeal, the Manitoba Labour Board, the Ombudsman, the Auditor General, everybody says they don't have jurisdiction over professional regulators.

It's up to the media to start reporting, and to government to acknowledge and to resolve the abusive dominance and regulatory capture and collusion in health care. Threatening and silencing regulated nursing professionals and women threatens public health and safety, and they can't buy our silence.

With the brief time I have left, if I might, I received an email from Arthur—Professor Schafer from the University of Manitoba today that he would like me to read. Do I have a minute? I'll make it fast.

Mr. Chairperson: You have 36 seconds.

S. Hancock: Okay.

I'm not free to present this evening, but I'm agreeable to having you present to the committee on my behalf. The fundamental commitment of every health-care professional is to put the interest, health, safety of his or her patient first. Obligations to one's employers, one's colleagues, one's professional body all come after one's obligation to protect the best interests of one's patients.

It follows from this that when a nurse or other health-care professional encounters a situation that threatens the life and health of patients, he or she is morally obligated to take every step and an obligation to report the danger to appropriate authorities and, if necessary, to go public with his or her concerns.

For this reason the imposition of non-disclosure agreements on health-care professionals is inconsistent with and contrary to the fundamental commitment of health-care professionals described above. This point equally applies to SLAPP suits and other forms of reprisal taken or threatened against

health-care professionals who blow the whistle on wrongdoing in order to protect patient well-being.

* (18:20)

I urge the Manitoba Legislature to act in defence of patient safety by taking whatever steps are necessary to assure nurses and other health-care professionals, that when they act conscientiously to protect the life and health of their patients, they will not be subject to workplace harassment, discipline, dismissal or intimidating lawsuits.

Sincerely, Arthur Schafer, founding director, Centre for Professional and Applied Ethics, University of Manitoba.

Mr. Chairperson: Thank you for your comments. Did allow a few seconds at the end there. Wanted you to be—

Floor Comment: I appreciate that. I've been waiting for this for a long time.

Mr. Chairperson: Do members of the committee have questions for the presenter?

Mr. Dougald Lamont (St. Boniface): Yes, I just want to say thank you very much for your courage in speaking up. I know it's been a long and hard road.

The one thing I wanted to ask you to expand on was, you talked about blacklisting by the WRHA. Can you just expand on what that means and what that meant for you? *[interjection]*

Mr. Chairperson: Ms. Hancock, just for the recording, I need to acknowledge you. Ms. Hancock.

S. Hancock: My apologies.

There's a blacklist. And it's well known within all health regions: prairie health, Northern Health. It's a well-known—it's a poorly kept secret in human resources. And I knew it for a fact because after I was fired by the WRHA, it's a double-edge sword.

You have to mitigate your losses. Can't get a job. I applied to, I think, 40 different places in Winnipeg. I couldn't get a call back. And arbitration went on for a year, a year and a half. I can't find a job, which is part of the coercion, and so, you're finally so beaten down, you sign the NDA because you can't afford not to. You can't pay your mortgage.

So it is—plenty of people will come forward and attest to the blacklisting in the WRHA.

Ms. Lisa Naylor (Wolseley): Thank you, Ms. Hancock. I don't actually have a question. I just

want to thank you for your courage, for the things that you said tonight. I mean, it's incredibly courageous that you're here to share your story in this way, but I know how hard it must have been to be the first person to stand up in this room.

So, I just want to acknowledge that. Thank you for paving the way for other folks who are here tonight. And thank you for your resilience because you could have given up a long time ago. I mean, I can't believe you haven't and I'm glad you're here speaking about this.

Thank you.

Mr. Chairperson: Ms. Hancock, you're welcome to respond, but not obligated in—

S. Hancock: In 2020, I almost didn't survive. I almost wasn't here. In 2020, the—I wasn't registered anymore because I couldn't tolerate any more abuse from the College of Registered Nurses of Manitoba and their lawyers. It's ridiculous. Nurses are not regulated by nurses. They're regulated by lawyers.

But I—my brother, the last member of my family of origin died; I was informed on July 30th, 2020, that he died. Initially, it was an overdose in the Downtown Eastside of Vancouver and then it was—he had been assaulted prior so they don't know.

I had to go there alone and clean out his room, came back and within three weeks, the College of Registered Nurses of Manitoba and their lawyers, Fillmore Riley, referred me to discipline. I wasn't even a registrant. It was just part of the pattern of scorched-earth litigation.

And in September 2020, I couldn't take it anymore and I attempted suicide.

Nothing you say matters to that regulator and until both regulators—unless and until there is some accountability, people aren't just to leave the profession. Nurses are going to die.

Mr. Chairperson: Are there any other questions?

Hon. Jeff Wharton (Minister of Environment, Climate and Parks): Thank you, Ms. Hancock, for your extreme bravery. You're just an incredible person and listening to that story coming from a family with a sister that has been in the profession—nursing profession for over 34 years and struggles daily with some of those challenges that you just touched on really hits home.

And I thank you, thank you, thank you from the bottom of my heart for sharing this incredible, incredible story that needs action and will get action.

Thank you so much.

Mr. Chairperson: Ms. Hancock, if you'd like to say anything, you're welcome to, but don't have to.

S. Hancock: Thank you. Thank you, Dougald Lamont. Thank you, Julie Macfarlane. Thank you Can't Buy My Silence and Zelda Perkins and everybody—thank everybody here who came here to speak because they're terrified. I was terrified. But I am not going to be silent anymore.

Thank you very much for considering this critically important bill. It is saving lives.

Mr. Chairperson: We thank you for your presentation, and we will move to Julie Roginsky.

Julie is virtual, so we'll let the tech folks sort that out, and when I see you, Julie, I will recognize you and you will have 10 minutes to speak.

Julie, I do—I see you. Can you just say something? I want to make sure your mic is working. I don't believe that it is right now.

Julie Roginsky (Lift Our Voices): Yes, can you hear me?

Mr. Chairperson: Yes, I can hear you, Julie; please go ahead.

J. Roginsky: To members of the committee, hello from the United States. I very much appreciate the opportunity to speak to you today about the non-disclosure agreements bill.

My name is Julie Roginsky, and I'm the co-founder of Lift Our Voices, a US-based organization dedicated to eradicating silencing mechanisms in the workplace.

Like so many people who are—will be speaking about this bill tonight and, similarly to the courageous testimony that I just heard, my testimony's grounded in personal experience.

In 2017, I was working as a television host at Fox News when I became one of the first women to sue the network and its former chairman Roger Ailes for sexual harassment and retaliation.

A year later, Fox News and I settled my lawsuit. Part of the settlement included a non-disclosure agreement, which prevented me from ever discussing what

happened between me, Mr. Ailes or the other executives whom I had named in my suit.

I did not know and could not have known then what this would mean. In time, a Hollywood movie would be made about my story and the stories of the other courageous women who had come forward about Mr. Ailes, but I cannot tell you what I think of this movie or whether its portrayal of me is accurate because my non-disclosure agreement prevents me from sharing that with you.

Countless news stories have been written about my case, but I cannot speak to reporters about their accuracy because my non-disclosure agreement prevents me from discussing it with anyone.

Anyone who watches this movie or reads these stories can voice their opinion about what they think happened to me, but the only person who does not have the right to voice an opinion about what happened to me is me because my non-disclosure agreement prevents me from voicing it.

Sadly, this is not atypical. About a year after I filed my lawsuit, I received a phone call from a young woman who had volunteered on the campaign of Phil Murphy, who is now the governor of the state of New Jersey. I had worked on that campaign and had, earlier, signed an expansive non-disclosure agreement on the first day of my employment.

The young woman on the other end of the phone was in tremendous distress and calling me for help. She told me that she had been sexually assaulted by a senior campaign aide and she wanted advice on what she should do.

I tried to help her as best I could, but I could not tell her everything: that I had warned the governor a year earlier that he was presiding over a campaign where women felt unsafe; that the men in his inner circle were acting in ways that encouraged workplace toxicity; that the governor had ignored my entreaties for help; that I did not think and was not confident that she would receive any help from him in her case.

I could not tell her any of this because my NDA prevented me from disclosing any information whatsoever about the campaign, of any kind, at any time. I could not speak to her about her concerns. I could not even speak to my family or to clergy or to a therapist about what I knew. No one at any time whatsoever, was what my agreement said.

In fact, Governor Murphy was so concerned that I would help this young woman that his attorney sent

me repeated reminders about this NDA, warning me to keep my mouth shut. I cannot describe to you the pain of having to decide whether you should risk helping a sexual assault survivor and therefore risk being sued into oblivion for helping her. I cannot tell you the pain of being silenced and unable to share your trauma with anyone, especially with other survivors.

* (18:30)

This is what NDAs do; they isolate. They prevent survivors from sharing their experiences or warning others about an abuser in their midst. They protect predators by covering up toxic behaviour. This is not the kind of society any of us wants to live in, either on my side of the border or on yours.

On behalf of survivors everywhere, I respectfully ask you to support the non-disclosure agreement and I thank you so much for your time today.

Mr. Chairperson: Thank you for your presentation.

Do members of the committee have questions for the presenter?

Mr. Lamont: Yes, thank you very much, Ms. Roginsky.

The one thing—I happened to look at your Twitter feed, and you mentioned—one of the things in the most recent tweets was to say that there are a bunch of places that have been, you know, they make nice noises, they say nice things, but now they're backsliding.

If you're allowed to, can you talk a little bit about that? That basically, I mean, there was a moment where people are congratulatory but then now it's—they're sort of—as—reverting to the mean. *[interjection]*

Mr. Chairperson: Sorry, Ms. Roginsky. I have to recognize you. It's a quirk of the rules here.

So, Ms. Roginsky, please go ahead.

J. Roginsky: Yes, I think in the United States and all over the world, we had a big explosion of #MeToo cases coming forward about five years ago, as a result of the Harvey Weinstein allegations and some of the allegations, including my own, about other prominent men in the public sphere. And a lot of organizations, as a result, put a lot of diversity, equity and inclusion programs into place in order to support the #MeToo movement, which I think is a—fantastic.

But, unfortunately, it is my belief that if you continue to silence survivors through the use of non-disclosure agreements, you will never be able to have

real diversity and real inclusion in the workplace because, unfortunately, if you cannot come forward about toxicity that happens to you, if you are not able to share your experiences with your co-workers, you will eventually be forced to leave your job, either voluntarily or because, as the woman who testified earlier said, because eventually you're pushed out.

And that is why we have a dearth of women, people of colour and others—at least in this country—rising through the ranks in the workplace, because companies that truly care and organizations that truly care about enfranchising them, truly care about promoting them, don't prevent them from coming forward to discuss workplace toxicity and don't prevent them from being able to help others who've experienced workplace toxicity.

They certainly don't protect predators at the expense of survivors, which is what NDAs do. Because if you can't complain or discuss with anybody what happened to you, because you are bound by a silencing mechanism, you will be forced to leave, because you may not be able to take it any more or you'll just be pushed out, because you're not acquiescing to the harassment or the retaliation or the discrimination. That person will get to stay and keep his job. And that's not how it should be.

And I thank you for that question. It's an important one, so, thank you.

Mr. Chairperson: Are there any other questions?

Ms. Naylor: Thank you, Ms. Roginsky.

I just—I don't have a question. I want to thank you for sharing what you could of your story tonight.

It's really horrifying when women and others aren't able to even tell a therapist or a family member about important and serious events in their life or help that they may need. So, it was really important for us to hear that experience from you, and I thank you for being here tonight.

Mr. Chairperson: Ms. Roginsky, if you wish to respond, you may do so.

Ms. Roginsky?

J. Roginsky: Yes, the only thing I'd like to respond to is it's very nice sitting on this side of the border to see how—to see committee in a legislature. We don't get to see much of that on our side of the border.

So, I thank you for having the opportunity to not only to hear my testimony, but also for the way you're presenting your work today. So, thank you very much.

Mr. Chairperson: We have about a minute left. Are there any other questions?

Seeing none, Ms. Roginsky, we thank you for your presentation, and we will now move. I'm just going to consult about the next presenter.

We're going to start at the top of our list and work our way down.

Just to reiterate, if somebody's not available when I call your name, not to worry. We'll just put that name to the bottom of the list and call the person again when we reach the end. So, there's a second chance if somebody does miss or steps out or whatever the case may be.

So, first then—or, I suppose third, we're calling Marcel Williamson. Is Marcel Williamson here?

Welcome, Marcel. Do you have any materials for the committee?

Marcel Williamson (Private Citizen): Yes.

Mr. Chairperson: Okay, we're going to get those circulated. *[interjection]* Okay, we can work with that.

Marcel, you have the floor for 10 minutes, please go ahead.

Floor Comment: Just hang on.

Mr. Chairperson: No, I'll start the clock when you start talking, so.

For the sake of Hansard, Marcel Williamson.

M. Williamson: First off, I would like to thank the committee for being here tonight, and to hear my support for Bill 225.

My name is Marcel Williamson. I am 46 years of age. I am of Cree and Ojibwe descent. I was raised in Winnipeg, Manitoba, by both my parents, who are residential school survivors. But they've provided me with great care and love throughout my life. I love them both dearly.

I have 23 experience in IT. I held many IT jobs with Industry Canada, EDS Canada, '99 Pan-American Games organizing society and IT manager for the 2002 Indigenous games held in Winnipeg, Manitoba. I have a college background in IT operations and support, and I'm currently working on my second diploma in IT cloud and cybersecurity.

My last position was with the Digital Health, formerly Manitoba eHealth, that started on January 17th, 2006, until March the 2nd, 2021, when I was terminated in retaliation for reporting workplace abuse

at Digital Health. My last years at Digital Health ended up being a terrible and traumatizing workplace experience.

I started to experience racism as far back as 2008, during the residential school apology. As Canadians were beginning to learn about the horrors from these residential schools, my supervisor at the time made the comment, I wish I could receive money for being spanked.

I reported several racist incidents in the workplace between 2014 and 2016 to my new supervisor. Some of the incidents included evening staff mocking and mimicking Indigenous peoples' accents and how they talk, during their AA meetings on Thursday nights from the N-R-H-A, staff were using the term Indians in a derogatory manner.

I followed the WRHA reporting process. Spring 2016, I reported these experiences to my ICT director. Digital Health acknowledged the racism and initiated a cultural class. I truly thought at this point I had the support of management. Instead, the following abuse continued from 2017 to 2020, and are formalized in my formal complaint in 2020 with a police report incident number.

In January of 2017, about 4:30 p.m. I was sucker punched hard to the back of my head. I fell off my chair and fell to the ground from the blow. That person is still employed with Digital Health.

* (18:40)

In 2018, staff members video recorded two Indigenous persons initiated in sex in a high-rise stairwell that was adjacent to our workplace view. This was shared among staff, with hateful comments about Indigenous people.

In 2019, I was kicked by the supervisor in his office before discussing my vacation.

In 2019, I was in the supervisor's office when he began to threaten me by swearing in my face. His words were, you don't tell us what the—it's a swear word—eff to do, we tell you what the eff to do.

Twenty-nineteen, 2020, the supervisor's favourite comment was asking me if I was on the warpath, or he would walk around the office and say out loud that he was on the warpath. He eventually said in—it and I—into staff meetings, as well.

Overall, the supervisor and staff humiliated, dehumanized and embarrassed me.

I was reaching out to Shared Health executive in the summer of 2017 to 2020. No action taken.

Digital Health workplace abuse triggered a conflict investigation, followed by a formal complaint in 2020. In the conflict investigation on September 14th, 2020, I requested an apology and essay on Indigenous culture to be written by the supervisor. However, I did not receive any of these items from management at all. The reason was HR had inadequate notes and did not remember the essay on Indigenous culture.

So, I escalated the conflict investigation to a formal complaint on October 5th, 2020, which outlined the years of abuse by Digital Health. I submitted a police report number for the assaults, historical data for the years of abuse, audio evidence to show how I was being suppressed by my management.

In the conflict investigation, Shared Health HR confirmed she knew that the supervisor had a pattern of racist behaviour towards me and Indigenous people. She decided not to share this information to the formal investigators. In the end, all these items were ignored by the formal investigators.

The supervisor was found in breach of Digital Health's IT-ICT's Respectful Workplace policy 300, 100, 102 on one occurrence. The supervisor is still working with Digital Health.

Overall, 13 Manitoba government personnel were contacted during my employment and were negligent in providing me duty of care, and I believe this is the entire health-care system, which includes: four human resources from Shared Health; four Shared Health executives, which consisted of the CIO of Digital Health, the CEO of Shared Health, COO of HSC and the provincial lead of Indigenous Health; one ICT director; two ICT supervisors; the deputy minister of Health, who was also the interim Shared Health board of director at the time; and one workplace safety health officer.

In 2019, the government updated its Respectful Workplace policy. This new policy was supposed to be a new step towards a no-wrong-door approach. However, I went through 13 doors, and none were the right door.

Other policy points that I would like to make note of: The new policy notes those found guilty of harassment could be suspended without pay, demoted or terminated; requires a supervisor who receives an allegation to immediately report it to human resource officials; stress that no employee could face reprisal for making a good faith complaint.

Obviously, these abuses were not reported immediately, as the supervisor was found in breach and both respondents are still employed at Digital Health, and I was terminated three months after substantiating a good faith complaint.

I was terminated on March the 2nd, 2021. I was offered \$40,000, then \$60,000, and then \$80,000, with 5 K in manner-of-dismissal damages. I have not signed any release papers which include a non-disclosure agreement and have yet to receive proper compensation in recognition of these horrible experiences.

So, today, I ask your government to support Bill 225. NDAs have been used to prevent people from publicly discussing toxic workplace conditions. In my case, this is especially contradictory to the WRHA-TRC Calls to Action found on the WRHA website; the 18 to 24 commitments on the Shared Health website—valuing all voices, be inclusive, be accountable; and the recent declaration, eliminate all forms of Indigenous-specific racism signing between MKO and the NRHA.

NDAs isolate victims, who are prohibited from sharing information about their situations and can hinder the healing process after an assault or other forms of abuse. Because the allegations are not made public, the agreements protect the perpetrators of these abuses, leaving them free to continue their behaviour.

One problematic trend is this idea of using NDAs in almost all incidents. For example, using NDAs to prevent women or men from speaking out about alleged history of inappropriate or abusive behaviour.

Limiting NDAs is a good first step, but much more needs to be done. NDAs are not the main enabler of persistent, unethical behaviour in workplaces, they are merely a symptom of a much larger problem. NDAs that silence victims of persistent, unethical behaviour need to be banned, but uncovering and halting persistent, unethical behaviour in workplaces requires much more.

Our Province should be a-paying attention around when we minimize—when we normalize and when we do not act on violence. This is a public safety issue. I think former premier Pallister said it best in 2019 regarding the updated Manitoba respectful workplace policies: Employees need to feel respected and heard and not fear reprisal or an impact on their careers, he said. There's been a culture where there's—was at least a perception that people in senior positions were untouchable, said Pallister. There was a culture of concealment, and it is over.

Thank you. Miigwech. Merci.

Mr. Chairperson: Thank you for your presentation.

The floor is open for questions. Are there any questions?

Mr. Lamont: Thank you so much, Mr. Williamson. Thank you for your courage and for your incredibly thorough description.

I just want to ask, you talked about an escalation. There's a point when there was simply a question of somebody writing a letter.

Can you just tell—expand a little bit about that, that somebody has to write a letter of apology, and how that went sideways?

M. Williamson: Okay. Yes, there was another racist incident with the supervisor at that time.

And there was a conflict investigation initiated by the ICT director—not me, for that fact. And so, the—we did have a meeting on September 14th, 2020, and at that meeting was a discussion of resolution. And two items were to be given to me: an apology and the essay on Indigenous culture by the supervisor.

Unfortunately for—you'll see in some of that documentation I gave you—on the last pages, it'll show you the HR forgetting to take notes, she mentions in her email there. And that she simply forgot. And so, to me, that kind of mishandled the conflict investigation, and therefore I escalated that.

Ms. Naylor: I want to thank you, Mr. Williamson, for your courage and your ability to tell your story here tonight.

I also just wanted to ask you to clarify one point to make sure I understood it properly.

Did I hear you say that you refused to sign the NDA that you were asked to sign, and that you also have not been paid out any of the money that was promised to you? [*interjection*]

Mr. Chairperson: Sorry, Mr. Williamson, I just have to acknowledge you for the Hansard afterwards.

Mr. Williamson, go ahead.

M. Williamson: Certainly.

So, part of the—to be properly compensated, the NDA is part of that agreement. And so, when I was negotiating with Shared Health, they simply denied anything was wrong in the workplace in their letter to me. And so, they proceeded to offer me a little bit

more money at that time, but not really what I was asking for.

So, I received another offer, which I didn't ask for, from Shared Health, for \$80,000 and to sign that agreement, but I have not because they are denying that anything was wrong in the workplace.

Mr. Chairperson: Are there any other questions?

Seeing none, Mr. Williamson, thank you for your presentation. We are sincerely grateful.

I will now call Karen Koslowsky-Jones.

Karen, do you have any printed materials you wish to distribute?

Karen Koslowsky-Jones (Private Citizen): Yes, and I passed it to the individual at the back of the room—

Mr. Chairperson: Great, we'll make sure that those get to the members here.

So, you have 10 minutes, and then there'll be a five-minute question period afterwards.

So, Ms. Koslowsky-Jones, go ahead.

K. Koslowsky-Jones: Thank you for this opportunity.

My name is Karen Koslowsky-Jones, and I'm speaking on the NDA act, Bill 225.

I will provide a brief summary of what occurred to me over an extended period of time. My story entails many issues and complexities which arose largely due to my silence obtained by my employer, both formally and informally. My silence damaged me both personally and professionally, even though I was able to maintain decades of very good-to-excellent performance evaluations.

* (18:50)

My story entails one of sexual harassment, reprisals, and bullying. In the years 1992 and 1993, my supervisor sexually harassed me. Although the executive management team were aware of what was happening, they took no action.

In mid-1993, given continuing incidents of harassment, my employer had no option but to bring in an external investigator. Over a course of three and a half months, a full investigation was conducted and many employees were interviewed. The evidence found in the investigation led my employer to fire the harasser, and given the volume of evidence found, the union did not pursue a grievance on his behalf.

In 1994, I was promoted to a supervisory position and reported to a director, a good friend of the harasser. This director, having a strong alliance with the harasser and other males in what was referred to as the boys' club, made my employment situation difficult to the point a mediator was brought in.

During mediation, the director expressed that he and others did not want to work with me, given my complaint of harassment. The fact that this department had numerous individuals who were sympathetic to the harasser compelled me to take a transfer to an alternate department in an alternate role as a rehabilitation counsellor; there were no alliances against me in this department.

I continued in the capacity of counsellor for five years, out of range of the boys' club. Work again became enjoyable. Six years later, in 2000, there was a reorganization which allowed for the promotion of numerous individuals affiliated or in the boys' club—I dislike using this term as it sounds cliché, but it accurately describes the makeup of many who were promoted to leadership roles.

Given this reorganization, I was once again in a position where I was under the thumb of numerous individuals who were either in, or aligned with, my dissenters. In my new role as an analyst, I was again marginalized, with this marginalization growing into blatant acts of bullying. The number of individuals who actively harassed me also increased, as they wanted favour with various members of the management team. I felt like I was a receiver in a football game where I was tackled and the opposing team piled on.

I endured years of disrespect and bullying. Through actions taken by various organizational leaders, the marginalization and bullying became blatant to the point the union president intervened and reported to senior management that he had never seen a staff member as bullied as I had been.

Individuals on the leadership team who were aware of my situation did not respond. Being a union member, I could not be fired without just cause. Consequently, various individuals spent an inordinate amount of time trying to set me up in attempts to have me fired.

The following is a small sampling of accusations made against me: I was falsely accused by a manager and director of being biased in my reviews of the case-worker; I was falsely accused by two directors and one manager of spying on their work after I developed and received permission to implement a tool to track

industry sector trends, a function of our department; I was falsely accused of insubordination. Even though these accusations were proven to be baseless, they flew around the organization. The whisper campaign against me continued unabated.

In 2012, I learned that a director wrote a case study while taking a class at the University of Winnipeg. This director was the same individual who, in mediation, stated that he did not want to work with me due to my sexual harassment complaint. His case study contravened FIPPA legislation as well as internal confidentiality agreements. I could be identified in the case study.

The director assigned malicious intent for me bringing a sexual harassment case against his friend, even though the investigation that numerous other staff members could also pursue harassment complaints against this individual.

This director knowingly lied about various aspects of my employment situation and personhood. He went on to state that because of my complaint, his friend was fired and that he found his firing to be unjust. The director chose not to consider that his friend's actions were why he was fired.

What was most damaging was that this case study was printed in an academic journal and posted onto the Internet years before it was brought to my attention. The discovery of this case study only confirmed what I knew was being said behind the scenes throughout the years. This director characterized me as a troublemaker. His actions not only embarrassed and intimidated me, but his actions served to derail my career due to him being in a position of power.

Through all of this, I remained silent due to the inevitable backlash, which I had and would continue to experience. I did not get a viable response from senior management when this issue was brought to their attention. As such, in 2013, I filed a complaint with the Human Rights Commission. I cited the toxic work environment perpetuated by this director and others. Several organized—organizational leaders went into damage control mode and sought to once again silence me by undermining my credibility.

In December 2013, the commission forwarded me a copy of a letter my employer sent to them four months earlier. The author's name was redacted. The letter painted me as a problematic employee. However, my performance evaluations would not support this assertion. I had no choice but to respond, given

the blatant disinformation by supplied by the legal team to the commission.

I will highlight a few of their most offensive claims.

The legal team stated that the director who wrote the case study personally apologized to me. This is not true; I never received an apology from him.

The legal team stated that the timing of my complaint, at a time when this director was soon to be promoted to executive director, was for the purpose of causing embarrassment to the company, to the executive director or to both. This assertion is utter nonsense. At the time I filed my complaint, I had no idea this director was in the process of being promoted. If he or my employer were embarrassed, it was solely due to the director's actions, not by me trying to stand up for myself when I was publicly lied about.

The legal team stated that I had long-standing animosity towards this individual. This is patently false and, in fact, the opposite is true. This director orchestrated numerous situations over the years for the purpose of damaging my reputation and negatively affecting my career, in addition to publicly writing falsehoods about me years after the harassment case. The animosity referred to by the legal team was orchestrated and driven by the director.

In January 2014, I received a phone call from the investigator at the commission, who advised me not to write any more letters. When I asked if I did something wrong, he said, don't write any more letters. The call was terminated.

Given the investigator's demeanour, I did not feel my complaint would be dealt with seriously. I was correct in this belief. The investigator did not fairly review the documentation I had supplied. He focused on the harassment case, which occurred in the early 1990s, and was briefly referenced in my complaint for context but had little to do with my complaint of working in a poisoned environment since that time. The investigator did not seek any meaningful details or information about the more serious events that were in my complaint, nor did he interview any witnesses that would've confirmed the pattern of untoward behaviours directed at me, some serious, some not, but all disheartening.

The issue of the poisoned work environment in which I worked for years was not considered. In fact, the investigator personally amended The Human Rights Code to reflect that I could only be afforded protection under the code if the acts of reprisal came from the original offender and not other staff or

organizational leaders. This personal amendment was made even though The Human Rights Code addresses a poisoned environment to 'protect'—protect individuals from working under such conditions, regardless of who the offender is.

I remained with my employer until I retired in 2018. On my last day of employment, the union president hugged me and stated that what management had done was almost criminal. On management's side, there were no well wishes, which was not surprising. I had been silenced by them through the many years, both formally and informally, through various means, ranging from a signing of confidentiality agreements to marginalization to bullying.

Non-disclosure agreements, unless used for the purpose of protecting intellectual property, often hurt the party who needs the most protection. In my case, the forced silence put upon me only served to empower those who chose to malign me, damaging me both personally and professionally. For that I have no recourse.

However, it is my hope that my story and other stories may shed light on the need to reform Bill 225.

Thank you.

Mr. Chairperson: Thank you for your comments, Ms. Koslowky-Jones. We are very appreciative.

We'll now have some questions, and I see that Mr. Lamont has a question.

Mr. Lamont: Thank you very much for sharing your story.

The question I wanted to ask about—or, if you can expand on it, when you said that you only had a complaint, essentially that you only had a case, is it—with the Human Rights Commission—if the person—if somebody else is retaliating on someone else's behalf, it doesn't matter, that that's what's—that—so that there—you have no case if someone else is retaliating against—on someone else's behalf.

If you could just—

* (19:00)

Mr. Chairperson: Ms. Koslowsky-Jones, go ahead.

K. Koslowsky-Jones: Yes, the investigator wrote in his decision that the retaliation, reprisal, bullying could only happen from the original harasser. Which is quite ridiculous, because the original harasser was fired in 1993. Since he was fired, with brief periods of being in different departments where I had no

dissenters of me, the bullying was—it was constant. It was almost every day.

It became so blatant and so obvious, my job allowed me the ability to do my job over the computer, so I put forward a work-at-home agreement. So, I came in for two days a week, into the office for meetings and such things, and then three days at home. So technology was very good to me for that. And that was my way to try and cope with everything that was going on.

But, yes, lots of people did lots of things, and the human rights investigator ruled that it doesn't apply.

Ms. Naylor: Thank you, Ms. Koslowsky-Jones [*phonetic*].

I wanted to—well first of all I want to thank you for sharing your story with us and—it sounds like it's been a pretty painful number of years and you've endured a lot.

I'm just—I wasn't clear on one piece, which was, were—did you ever sign, or were you ever asked to sign an NDA? And if not—I didn't get the impression you were, so I'm just wondering if you can link that a little bit to the situation.

K. Koslowsky-Jones: Every year, employees are asked to sign agreements where we're not to discuss anything outside of the walls of the workers comp—outside the walls of my employer.

Mr. Chairperson: Are there any other questions?

Mr. Wharton: Just a comment.

Again, thank you Ms. Koslowsky-Jones for sharing your story with us; 26 years of courage and strength, it's just unbelievable. And thank you so much for being able to share it with us today, it's greatly appreciated, I know. Thank you.

Ms. Naylor: Sorry, I do have another question, because I'm just processing your answer to me.

So, your workplace situation requires every employee to sign basically a non-disclosure agreement about everything that happens related to your workplace on an annual basis? [*interjection*]

Mr. Chairperson: Ms. Koslowsky-Jones, sorry, it's—sorry. This is on me; we'll—I'll give you an extra few seconds here. We have to do this for the guys who type this all out.

Ms. Naylor, continuing your question, please go ahead.

Ms. Naylor: I'll just finish what I'm saying so you have the chance to answer.

So, what I'm hearing is that this is an expectation in the workplace, so would be quite broad and cover all kinds of issues. So, really, no one in the workplace, whether they consented to an NDA or not, if they made any kind of complaint in the workplace, would not be able to talk about that anywhere.

K. Koslowsky-Jones: I don't recall the exact wording of the agreement everyone has to sign, but my experience is if I ever raised—even started to raise—bullying or poisoned work environment, I was shut down very fast. So, I was silenced, like I say, formally and informally.

Back in 1993, I may have signed a non-disclosure agreement specific to the original harassment case. For a while I thought I didn't, but I think I did, and I honestly no longer recall.

Mr. Chairperson: We have 30 seconds, are there any further questions?

Ms. Koslowsky-Jones, thank you for presenting. We're very grateful. We appreciate your time. Thank you for coming tonight.

I will now call Julie Macfarlane. Is Julie Macfarlane here? I'm told Julie is online. So I'll ask the tech people to get that ready.

Hi, Julie, can we just test your mic, please.

Julie Macfarlane (Can't Buy My Silence): Can you hear me okay?

Mr. Chairperson: Yes, I can.

Julie, you have 10 minutes, and after that there will be five minutes of questions. So, you have the floor, Julie, please go ahead. Julie Macfarlane.

J. Macfarlane: My name's Julie Macfarlane. I was formerly, for 40 years, a professor of law, most recently at the University of Windsor and before that, in the UK and also in Hong Kong.

I am the co-founder with Zelda Perkins of the campaign that you've heard about, Can't Buy My Silence, which is campaigning for an end to the use of NDAs in anything other than intellectual property circumstances.

So, let me first of all say that what you've enabled here, by having people come and speak about their experiences in a way that they are protected legally by privilege, is really, really important and meaningful.

And I, like you, I'm sure, really amazed at the courage of the people that you're hearing from. I think you do appreciate just how much courage it takes to speak up and I hope you realize that for every one of these brave people who is speaking to you today, there are hundreds and hundreds who are not able to be that brave.

So, my own experience with NDAs is as follows: I am a survivor of clerical sexual abuse. As a young person, I was sexually abused by an Anglican Church minister, and I knew when I went into settlement discussions, because I sued the Anglican Church 40 years later, that I would be asked to sign a non-disclosure agreement. And I said immediately, before the discussions even began, that I wasn't going to sign one. And, in fact, part of my settlement agreement, and this is documented elsewhere, describes how I negotiated with the Anglican Church, as part of my own settlement, not to force NDAs on other people.

A couple of years after that, at my university, the University of Windsor, I heard from a number of students who came to me very afraid about an extremely predatory faculty member in my own faculty, who had, obviously, for many years been harassing students. And I was part of bringing that complaint forward with those students to the president of the university, who did all the right things. He suspended the faculty member, assigned an investigator and almost a year later, at the end of the investigation, terminated that faculty member for harassment of students.

About six months after that, I started to get phone calls from other university law schools in other countries asking me about this individual with whom I'd worked. I was not his reference but I had worked with him, and because I was known internationally, they came to me to ask me what had happened. And that was when the penny dropped for me and I realized that having apparently done the right thing, my university had then done the very wrong thing of giving him a non-disclosure agreement.

I now have a copy of that non-disclosure agreement, as well as the three-page letter of termination that outlines his absolutely appalling behaviour. And I also have a copy of the letter of recommendation they gave him because, of course, they didn't tell him—any of these schools—that he was terminated for harassment because they gave him a non-disclosure agreement.

So, I told the individuals who contacted me the truth about what had happened, and because the uni-

versity hid behind the NDA, he was able to successfully sue me for defamation in Trinidad. That's a whole other story but it was a very clear way of showing the harm and the impact that NDAs have.

I want to make it clear to you that, you know, having left the University of Windsor in disgust, when I realized what they were doing and working on this campaign now with my partner, Zelda Perkins, I have seen hundreds of NDAs. I'm a law professor, I'm a researcher and it is my natural approach to this to collect the empirical data. And I have seen hundreds of NDAs and I have talked and corresponded with hundreds of individuals who have been subject to NDAs.

They have three important characteristics that I hope everybody on the committee understands. One is that they are mutual. In other words, instead of simply being assured confidentiality for themselves, victims of harassment and abuse and other issues are told that in order for their matter to be kept confidential and not told to the world, they have to promise not to tell the world about the other side; about what the organization did to hide this or what the perpetrator did to them.

* (19:10)

And those NDAs are permanent; they are forever. This was why NDAs were created in the first place back in the tech boom of the 1980s: they were created to protect intellectual property. Now they're being used to protect people who have committed misconduct.

And you've heard already from some of the people who've testified about the extent to which NDAs gag victims from speaking. It is entirely typical, I can tell you from the hundreds of examples I have, for people to be told they cannot speak to their family, their friends, their colleagues, their priest or even a therapist.

So, this is a typical approach to NDAs and they are now used across all sectors. We see them in all sectors of employment. We see them being used in cases from sexual harassment through to consumer rights. We see them being used in cases very frequently.

And I was very, very encouraged to hear Marcel bravely tell his story, because we know that they are used very regularly to suppress complaints about racism and racial discrimination. I have many such examples, and I am very pleased that Marcel came and spoke about his experience today.

We also see them in consumer disputes. We see them in complaints that are made at care homes about negligent treatment of residents. We see them in construction disputes. We see them everywhere.

And many lawyers will now tell you they are a default in the settlement of any kind of civil matter, so what began very small has crept into something very, very big. And this is time to do something about it.

We also know that these NDAs have a 'disproportionate' impact on vulnerable people. They are used most frequently in areas of most precarious employment, where people feel like they have to accept whatever money they're being offered, as you heard from some of the people tonight, in order to make a settlement, and that includes an NDA.

We have data now that we have been gathering in the campaign that shows there is a disproportionate effect on women, but also on people of colour. So, for example, our data now shows that Black women are three times as likely as white women, their counterparts, to be asked to sign a non-disclosure agreement.

The other thing that they do—and this, I think, came through very strongly in some of the testimony you've already heard—is they chill the climate from making any kind of a complaint, because people increasingly anticipate that if they do complain, they will be asked to sign an NDA.

And at the moment, in our survey, we have almost 30 per cent of people saying that rather than make a formal complaint about abuse or harassment in their workplace, they chose not to because they knew they'd be asked to sign an NDA.

So, what's happening here—and Julie Roginsky referred to this—is that all of the stepping forward, all of the disclosure that the #MeToo movement encouraged, that the Black Lives Matter movement encouraged, where people have been told you should stand up, you should report this kind of wrongdoing, is now being concealed again by the use of non-disclosure agreements.

I entirely agree with some of your earlier speakers who pointed out there are many other things that need to be fixed about workplace complaints processes, and having worked as an employment mediator for 25 years, I am very much aware of that.

But the core problem here, as we saw with Hockey Canada, is that if somebody comes forward and makes a complaint and that complaint is made up, it's simply pushed right back under the rug again. And

we're never going to make any progress in really improving the health and the safety of our workplaces and protecting people who are vulnerable unless we're willing to stop silencing them.

We have been working, as I imagine many of you know, on trying to bring forward legislation in different provinces of Canada. The Manitoba bill, which is being brought forward by the Liberals, adopts a conditions approach, which says, only if these conditions are met can an NDA be enforceable. And they are exactly the conditions that I think any decent person would want.

Somebody has to know what they're signing and to understand it. And I hear all the time, as you did tonight, that people do not fully understand. They do not always have access to independent legal advice. They often feel coerced and duressed into this when all they really want is confidentiality to protect themselves, not to give that to the other side.

And I think that we have to recognize that this is as bad, if not worse, in unionized environments. We know that in unionized environments, from a recent study by the Canadian Labour Congress—

Mr. Chairperson: Ms. Macfarlane. I'm—my apologies. I'm obligated to interrupt you as the time has expired.

An Honourable Member: Leave.

Mr. Chairperson: There is request for leave that you complete, could you just indicate how long it would take for you to do so?

J. Macfarlane: I would say one minute more would be all I need. Thank you.

Mr. Chairperson: Is there leave for another minute? *[Agreed]* I'm seeing nods around the table.

Ms. Macfarlane, go ahead, you have another minute.

J. Macfarlane: In the course of speaking with people in Manitoba, we have, of course, been talking to some of your major institutions about how they feel about the use of NDAs. I have been speaking with the University of Manitoba, both with the administration there and with the student union.

There have actually been some very important steps taken at the University of Manitoba, which has historically used NDAs, to stop doing this, and there is a very clear commitment that I'm hearing that they do not want to go on using them in the future.

Similarly, I have spoken—and have permission to tell you—with the chair of the Human Rights Commission in Manitoba, who is very clearly of the view that any kind of public organization looking at human rights violations should not be using NDAs. And so, there is support from the commission, as well, for stopping doing this.

And I just hope that the Legislature will follow suit and make this something that will apply to all workplaces of Manitoba.

Thank you.

Mr. Chairperson: Ms. Macfarlane, thank you for your presentation. We're going to proceed with a few questions, we have five minutes for this section of the evening.

Mr. Lamont, please go ahead.

Mr. Lamont: Yes, thank you so much, Professor Macfarlane. It's much appreciated. I'm mean, I—look, I've say—I couldn't have done any of this without you, so I'll thank you for that.

The one thing I will ask, can you tell—just talk a little bit about Zelda Perkins and how you ended up—and the role she played in this and the role—because she—this is a—this is more than Canada; this is international.

J. Macfarlane: Sorry—so, I met Zelda Perkins a year and a half ago. Zelda was the first woman to break her NDA with Harvey Weinstein—the notorious Harvey Weinstein—and she has been working on trying to stop this happening to other people since 2017.

So when we met—and obviously, this was during lockdown. We were in different countries. She's in the UK, I'm here in Canada. And we spent about six months talking and working out how we could launch a global campaign and bringing together all the people we knew who would support us.

We set up a safe space for people to submit their testimonies, which could be anonymized so they would be able to talk about what had happened to them, and we began to work with sexual violence organizations who readily came in to work with us and to co-operate.

And in the last year—it's just been one year since the campaign Can't Buy My Silence formally launched—Zelda is bringing forward efforts to change legislation in the UK and, actually, most particularly—because as you are probably all aware, there isn't that much functioning government in the UK in the last

couple of months—most particularly, she has been working with the university sector, where we now have—backed by the minister of higher education—we now have almost 80 universities signed up to pledge to no longer use non-disclosure agreements.

So, Zelda and I operate this campaign together, but we also work with allies like Judy [*phonetic*] Roginsky and others in the United States. We've also worked—we're working with people in Victoria, where there's a task force on this issue, and we really are seeing—oh, and originally in Ireland, which was where the very first bill that we worked on was brought forward and is now proceeding with full government support.

So, I really hope that we will see the same thing in Manitoba, because this is an issue whose time has come.

Mr. Chairperson: Are there any other questions?

Mr. Wharton: Thank you again, Ms. Macfarlane, for sharing your story and, secondly, really giving, I'm sure, the table and the committee a real clear understanding of the effects of an NDA and how they can be extremely negative in situations that you've presented on this evening.

And I don't usually do this, but I—certainly, I'll thank my colleague from St. Boniface for introducing you to us, because you definitely—you've definitely educated us.

* (19:20)

So, we appreciate your time tonight. And, again, appreciate your story.

Thank you.

Ms. Naylor: Hello, thank you.

I also want to give my thanks for you speaking tonight, and to give us some of the history of the organization that you started and how that came to be. I'm looking forward to learning more about the work that you've done, and I really appreciate you taking the time to speak on the committee tonight.

Thank you.

Mr. Chairperson: Ms. Macfarlane, you have a minute and 20 to respond, if you would like to.

J. Macfarlane: I think I would like to say—I would just like to say this: you all know, obviously, that the first province in Canada to bring this to law is Prince Edward Island. And that happened in a remarkably

fast period, because, of course, Prince Edward Island has a very small legislature.

But I think that what happened in PEI is a really good example for everywhere else in Canada. There was a lot of conversation, there was a lot of consultation. And in the end, that legislation was passed unanimously. Because Prince Edward Island, tiny as it is, wanted to stand up and say, we won't be on the side of people who want to hide harassment, who want to hide predatory sexual conduct.

And in so many ways, members of the committee, this has all kinds of legal issues, which I'd be happy to explain some other time. But it really is as simple as that. If you want to ensure that people can come forward and report with confidence and feel protected and then not get told that they have to shut up and go away and be intimidated about that for the rest of their career, you need to pass this legislation. And I really do hope that you will do so.

And please reach out, if you have any other questions you would like to ask me.

Mr. Chairperson: Professor Macfarlane, thank you for your time. We are very appreciative.

We will now move on to Sherri Thomson. Is Sherri Thomson here?

I'm told Sherri is virtual. I'll ask the tech people to bring Sherri onto the screen. And I'm told we're just going to have a quick tech break here.

You know, we're going to take a quick bio break. That'll allow the tech people to do what they need to, and any of us to stretch our legs. If we can be back promptly, that'd be great.

The committee recessed at 7:22 p.m.

The committee resumed at 7:35 p.m.

Mr. Chairperson: Order, please.

Will the committee please come to order.

Committee Substitution

Mr. Chairperson: And, just before we proceed with the presentation from Sherri Thomson, I would like to inform the committee that under our rule 85(2), the following membership substitution has been made for this committee, effective immediately: Honourable Mr. Goertzen for Honourable Mr. Wharton.

Thank you.

* * *

Mr. Chairperson: We now proceed with the presentation from Sherri Thomson. Sherri, could you just test your mic, please, before I recognize you to speak? *[interjection]* Great, we can hear you.

Sherri, you have 10 minutes, after which there'll be five minutes of questions.

Sherri, you have the floor. Please go ahead.

Sherri Thomson (Private Citizen): I would like to begin by acknowledging that I'm speaking to you from the treaty lands of the Mississaugas of the Credit First Nation, known as the hamlet of Glen Williams in Ontario.

I'd like to thank the honourable members for their time on this bill, and a special thank you to those listening or watching online. Your attention and actions matter right now. Tell your friends to pay attention, too. The world is ready for great things, and I feel this act will help lead the way.

When I heard the sponsoring member, Mr. Lamont, use the term justice before family, based on his personal experience, I knew there was hope.

I was 14 years old when I ran away the first time. That makes it 43 years that my abusers have been attached to me through the law. For this reason, I am honoured to give testimony today in full support of Bill 225, The Non-Disclosure Agreements Act.

My name is Sherri Thomson, and I am being sued by my childhood abusers for telling. I hope to be human evidence to prove the damage a gag order causes is to everyone but the abuser.

I'm a first-generation Canadian woman with white skin and mostly controllable curls. There is no doubt these two simple traits made the difference for me in this pinball machine we call Canada's legal system. People need to understand the difference that my genetic traits made. They are why I got to make choices instead of only having options. If you don't know the difference, you're fortunate.

My childhood was difficult, but somehow I learned that I mattered; that I had a human, civil and legal right. I didn't know what right I had, but I had rights. I still believe it. That is why I am here today.

My story is of a middle child born in the Lower 'manland'—Mainland of British Columbia to an 18-year-old runaway from Ontario in the 1960s. From what I hear, it was a pretty happening place to be at that time. My earliest memories are all positive and

safe and fun, although they do not include my parents very often.

I remember so much community, love and fun and laughter, games and fishing, cooking an open fire; so many fabulous skills. My formative years were spent on the shores of British Columbia, and I am the strong, independent person I am because of it.

It was 1971; I was six years old. My parents announced they were splitting and I was shipped to Ontario, with my mother to follow, and siblings. We lived with my maternal grandparents for about a year while my mother worked couple of jobs to eventually acquire subsidized apartments.

While your statistics and survey gatherers can already sense where this is headed, in '71-73, I remember being super happy living with my grandparents. Lots of music with my aunts and uncles, board games, eating healthy food, local school, making new friends. I even started going to church voluntarily. I liked all the singing and glass windows. I'm not even Catholic; I just loved going.

My mother was working nights and I barely saw her. But I did hear she had a boyfriend. Turns out he was 11 years her junior. He had a fabulous car that looked really cool and was in the apprentice stage of a career plumbing.

This 18-year-old boy seemed rather keen to be caring for three children that my mother handed to him. He quickly became primary caregiver; making meals, setting rules, bedtime routines, et cetera. My mother abdicated her role as a parent of three children to an 18 year old she barely knew.

He turned out to be an abusive alcoholic, a drug-smoking fool, a condescending, misogynistic pig and a child molester to top it all off. We moved from subsidized apartments to a new house because of him, so that was all he had to do to earn his spot in our house.

Then, in '79 or '80, life as a typical teen: trying to get out of our single-working-parent-with-a-boyfriend's house. I call it typical because it is. My mother married this guy who we all pretended to be fabulous family unit. I babysat my brother, we had keys around our neck to get in after school. The story of a million others.

Then I watched a movie called *Something About Amelia*, and that changed my life. It was very bold show for its time, and I thank Ted Danson and Glenn Close for being strong enough to play such breakout characters for us abused kids.

* (19:40)

I was finally aware of what happened; it had a name. It was incest. Now I can deal with it.

I immediately disclosed it to my aunt, and she had my stepfather removed from the house the next morning. He was gone for about two weeks. During this time I felt safe and thought life was going to be great from thereon in.

Then my mom would start reminding me that we could not afford to stay in the house we just moved into if he did not come back. We would have to move back to the apartment, but it would be okay.

At the two-week mark, I was taken to a kangaroo court at my grandparents, where my stepfather had been staying for the last two weeks. He cried his apology and stated it would never happen again. I was taken to the basement where my mother came down shortly after and she wanted to know if it was okay if he came back.

I thought about it for a minute and I said it would be fine. I would be gone shortly anyway, and he would be there for the rest of her life. We agreed for locks on my bedroom and bathroom door, and he was not allowed to touch me sexually.

Needless to say, the abuse turns more physical instead of sexual and he would mock me. I started to run away, and he would find me and punch me out or kick me up the stairs of our house. I couldn't see my mom—I could see my mom reading her book, eating licorice, doing nothing. What I did not realize is this is how he started the narrative of selfish, uncaring, promiscuous, problem child for all my relatives and friends wondering what has happening to me.

I had enough at home but kept going to school. I loved school. I knew it was my ticket to better things.

One day, my grandfather was trying to find me so I told my student councillor of my abuse and that I was going to be returned to my home. He told me to return to class and he'll let me know what to do.

As I was leaving his office, I heard the page for my sister to come down to the office and I knew my sister would say I was lying and tell on me at home. I was in big trouble now. I knew my days at school were finished, so I left in the middle of grade 10 with honour level marks.

I was lucky enough to be able to enter—rent a room and work in a doughnut shop to make ends meet until,

within six months, I found a job in a dental office that led to a successful 30-year career in dentistry.

I meet the man of my dreams in 1984 and the next 38 years are the perfect tale of a solid family unit—well-adjusted children, not a lot of money, but enough to have an annual vacation and takeout on Saturdays. I was managing, but when I was 25 years old the triggers began. I continued to play the game of 'subservient' family member now that the rebel child had returned.

I agreed in order so that I could attend family events and keep peace with over 50 people. My daughter was now the age that my abuse had begun. How was I going to keep her safe? We still played pretend with my family, so change would require me to tell the abuse to my husband's family to stop the charade.

Everyone in my family knew about the abuse. They just all believed that it was over and I would be fine. Soon after this, I told my in-laws, and they immediately stated that I was never to take their grandchildren to that house again. And so it ended for me. All the show and lies were over, for now.

It's now the early '90s, and I gathered the strength to sue for the funds to pay for therapy. I eventually won \$30,000, and my abusers were ordered to attend a therapy session for me to say whatever I wished. My grandfather, sister and aunt wrote to the judge that they would not attend. This is a monumental time for me, and it's all over again. For now.

I returned to my suburban bubble to raise my beautiful children and my fabulous man I chose to share my life with. And that's it. I was finally free of them all. For now.

After 30 years of no contact, in October of 2016 a social media post alerted me that one of my childhood abusers had reinvented herself. She was running for municipal office in an affluent coastal community in British Columbia. The silence aimed through the gag order placed on me permitted them to attain positions of trust in a community thousands of miles from the truth. I panicked about having the secret and felt personally responsible to notify someone. She could not be making decisions for public matters. This woman sacrificed her daughter for her abusive husband and personal career gains.

There were two weeks until the election, so I had very little time. I packed up the documents that I knew would prove beyond a shadow of a doubt that my claims were true and sent it. The chief electoral officer

said there were no grounds to remove her name from the ballot, even with the documents in hand. She went on to win the election.

Within weeks, she was forced to announce her resignation based on an online petition by thousands of people that supported my decision to warn the community. Within a week of sending my documents as proof, I was served with a lawsuit from my claiming—lawsuit from my abusers claiming defamation and breach of an NDA. I just about fell over. How was this possible? I'm being sued for telling.

I arranged a lawyer in BC to file my defence and that's the last I heard until recently. The media attention was a lot in 2017, and I knew that my position was strong enough to stand on its merits. I was afraid that the focus would be lost to my childhood abuse instead of the role the legal system now played through the NDA process in my situation, so I stepped back and let the social justice campaigns that were coming out of the woodwork to do their stuff. I knew at this point there was no path for me, only a fight, because the only thing they want is my silence, and the only thing I'm not giving up is my voice.

As for damages, I do expect those eventually. It will be restitution and it will be ordered by a judge. I have yet to see a judge at any stage of this 47-year journey. My case has been intentionally kept on the sidelines. No one wants NDAs to see the light of day, but it is my hope today is a very bright light shining on it.

Finally, last October 2021st, I was contacted by a—

Mr. Chairperson: Ms. Thomson.

An Honourable Member: Leave.

Mr. Chairperson: Leave has been—leave is granted.

S. Thomson: Last—I—sorry, I just have a [*inaudible*]. Finally, I—last October, I was contacted by a super-human named Susan MacRae. She asked me about my case and if I had settled it. This began a relationship with a global campaign to end the misuse of non-disclosure agreements in assault.

Thank you so much to the honourable Lamont for bringing this bill forward and for reminding us all that democracy requires justice before family.

Thank you. Sherri Thomson.

Mr. Chairperson: Ms. Thomson, thank you for your presentation this evening. We are very grateful.

We do want to give opportunity for questions.

Mr. Lamont, please go ahead.

Mr. Lamont: Yes, thank you so much, Ms. Thomson.

It's very—it takes enormous courage for you to do what you've done, and I really appreciate it.

The one thing—can I just ask when about—when did—when were you required to sign an NDA? *[interjection]*

Mr. Chairperson: Ms. Thomson.

S. Thomson: Oh, yes, sorry. When I accepted the \$33,000 for therapy in 1995.

Ms. Naylor: Thank you so much for sharing your story. It's another incredible story of courage and resilience in the face of some very traumatic experiences.

I just, for further clarification on the NDA, how old were you when you signed the NDA?

And did you—you indicated you didn't have any recollection, or you were surprised. Is it something that wasn't thoroughly explained to you? Was it something that—it just—in the trauma of it all, was forgotten or that—you know, just in the interest of time, was forgotten? *[interjection]*

Mr. Chairperson: Ms. Thomson.

S. Thomson: Yes, I apologize. It was my only option. There was no justice in the '90s. There still is no justice.

I had the choice of going for the money—I mean, I was 25 years old, three children, we had a mortgage up to the eyeballs. I needed this \$30,000 to cover the therapy or we were going to sink as a family.

So, we originally asked for 60 or something ridiculous. We were nickelled and dined back to \$30,000 paid two—every two weeks in post-dated cheques. It was a joke, but—anyway.

So, at that point, I had to sign that NDA, but the judge left a lot of latitude for me in that judgment.

Mr. Chairperson: Minister Goertzen. And, as a reminder, you have 30 seconds to ask the question.

Hon. Kelvin Goertzen (Minister of Justice and Attorney General): I'll be quick.

Thank you, Mrs. Thomson, for your comments and presentation here today. I want to thank the other presenters who I wasn't able to hear prior to arriving. I'll certainly read the Hansard.

This was an important part to have this sort of testimony come before this committee today. As difficult as it is, it's very important, as deliberations are made on this matter.

So, I also do want to quickly say thank you to the Victim Services folks who are here tonight, as well, from my department.

Thank you.

Mr. Chairperson: Ms. Thomson, any closing remarks or response to any of the questions?

S. Thomson: Just, I guess, to say that I'm speaking for so many people when I say that this is not going away. I'm bound by a gag order, but I break it every day as I walk down the street. Let them come for me.

So, this is really a growing movement that must be dealt with because there is no pass. A path must be created. It's going to clog up really soon.

Mr. Chairperson: Ms. Thomson, we thank you—are there any further questions, I should ask.

* (19:50)

Seeing none, Ms. Thomson, we thank you for your presentation and for taking the time to be with us this evening.

S. Thomson: Thank you.

Mr. Chairperson: We will now move to Lisa Mizan.

Is Lisa here? Lisa Mizan?

It does not appear that Lisa is with us at the moment. We'll put her name to the bottom of the list and move to Jan Wong.

Is Jan Wong here?

I'm told that Ms. Wong is online. I'll ask the tech people—Jan, please could you turn on your video and unmute your microphone.

Jan, could you just test your mic for us, please.

Jan Wong (Private Citizen): Yes. I think I've unmuted it.

Mr. Chairperson: Yes, we can hear you.

Jan, you have 10 minutes, after which there will be five minutes for questions. The floor is yours. Please go ahead.

J. Wong: Good evening. My name is Jan Wong. I'm a journalist, a retired journalism professor and an author of six non-fiction bestsellers, including one about the impact of an NDA.

I live in Toronto, so why am I speaking to a committee of the Manitoba Legislature? Well, because NDAs affect all of us. And, in my case, NDAs have harmed me both professionally and personally.

As a journalist, I've worked for five newspapers, including the New York Times, the Wall Street Journal and the Globe and Mail. My work took me around the world and across Canada, including to Manitoba. I was also the Globe's China correspondent during the 1989 Tiananmen Square Massacre.

NDAs affect public discourse—freedom of the press and freedom of information. In short, they affect the health of our democracy, and I have a Manitoba example for you. I wrote a column at the Globe and Mail which people really liked, called Lunch With. I had a lot of fun with it, and my first lunch date was Peter Nygård. I'm sure I don't have to tell you that he was the Manitoba businessman who manufactured women's clothing.

But why would I start the lunch column with Peter Nygård? Well, because I'd heard about three sexual harassment complaints about Nygård, filed one year earlier in 1996 at the Manitoba Human Rights Commission.

When I asked Nygård during our lunch about the sexual harassment settlements and other unpleasant topics, he terminated the interview and he threatened to sue me. My nervous editors made me re-interview my sources and extract written promises from them that they would testify on the Globe's behalf if we got sued.

It took me six months to satisfy the Globe's lawyers. Everyone co-operated except, of course, the three women who had filed the harassment complaints. That incident shrank to a very few sentences in the column, and I could only report on Nygård's version of events.

Why? Because the three women had settled. The Human Rights Commission then did not proceed with a case, and the women all signed non-disclosure agreements. That was in 1997. Nygård was then 56, and today he's 80.

In the ensuing quarter century, he assaulted multiple women and girls in the US, Canada and the Bahamas. Canadian and US authorities have accused him of sex trafficking and racketeering. Nygård denies all these accusations. He's now in a jail cell in Toronto, where a judge recently denied him bail. He's subject to a detention order in Manitoba. He's facing

six counts of sexual assault and three of forcible confinement in Toronto; more charges in Quebec. He faces extradition to the US once his court case finishes in Toronto.

And, again, I say: he denies all these accusations.

Now, imagine a world without NDAs, where the victims are not gagged. Imagine a quarter century ago if those three brave women who went to the Manitoba Human Rights Commission could have spoken freely to me.

This is the damage of NDAs. It gives free rein to predators. It creates more victims and more ruined lives.

And now, in the few minutes I have left, I'd like to unpack the personal impact of an NDA on myself.

In 2006, I fell sick with severe clinical depression after I reported a story and suffered death threats and racist attacks. My employer, The Globe and Mail, didn't believe I was sick despite detailed medical notes and reports from my family doctor, my psychiatrist and the psychiatrist hired by the insurer, Manulife. By the way, I have never been able to say Manulife's name in public after settling with them—after—six months after I settled with them.

They said that they would pay me the benefits that they had withheld, with the encouragement of my employer, but I could never again mention their name. So, I really appreciate the parliamentary privilege afforded by this committee.

From the very start, back in 2006, when I fell sick, The Globe and Mail wanted to get rid of me. It offered me two years' salary as a settlement, but I wouldn't take it because they wanted an NDA. As a journalist, and like any human being, I wanted to speak. I had to speak. I knew I would never recover from my clinical depression if I was gagged. I had to write about my experience with mental illness.

So, after months and months of mediation and arbitration—like Shannon Hancock, the first person to speak tonight, the nurse who spoke first—I contemplated suicide. But then, The Globe seemed to cave. I was free to tell my story. The memorandum of agreement I signed gave me the explicit right to tell my story, but at the bottom of the memorandum of agreement, the lawyers added an NDA.

Now, I was very sick and I was not allowed to have a lawyer in the room, so I didn't really get it. I thought, well, they said I could tell my story. So I'm going to sign it. It was a Kafkaesque document that

gave me the right to tell my story while simultaneously imposing an NDA on me forever.

It was also a one-sided NDA. It muzzled me, the little guy, with severe penalties if I broke it, but there were no penalties for the big guy. The Globe could violate the deal at will. The NDA was one-sided, designed only to muzzle the employee.

So, without any penalty for The Globe and Mail in this document, it reneged on its promise to let me tell my story. I had a contract with my long-time publisher, Doubleday Canada, which had previously published my first four books. The Globe and Mail intervened, interfered and Doubleday dropped my book. It was essentially finished. It was on its way to copy-edit. It was so sudden that Doubleday still owed me two author payments.

And get this: before Doubleday would send me the cheques, it wanted me to sign an NDA. But by then I was beginning to figure things out, and I told Doubleday I would not sign an NDA, and the longer they took to send me my money, the better my epilogue. So, they sent me the money.

Of course, that was the end of my relationship with Doubleday, which is part of Random House and Penguin. It's the biggest publishing conglomerate in Canada. And I have since published a book with a much smaller publisher in Atlantic Canada.

So, there's a direct financial impact of NDAs, but there was an even bigger financial penalty to come for me. I wrote this book. I'll just hold it up. I don't consider it a prop. This is the book, *Out of the Blue: A Memoir of Workplace Depression, Recovery, Redemption and, Yes, Happiness*.

I was very careful not to disclose the fact that I had received two years' severance. Of course, I mentioned the fact that we had settled—it's part of the story—and I wrote that I had received, quote, a big fat cheque.

Now, as a former business reporter, I know I disclosed nothing about the amount. If I asked five of you on the committee, write down on a piece of paper how much the big fat cheque was, I guarantee you, all five numbers would be different.

But after this book made The Globe and Mail's own bestseller list, its lawyers dragged me back into arbitration and then into court. I lost. I also made case law. No employee in Canadian history has ever had to pay back such a large sum to a former employer who had—please note—had already fired me.

How much did I have to pay? Two hundred and ten thousand dollars. The upside was I was finally free to tell the world all the details of the memorandum of agreement. But guess what? I haven't been able to write about it.

* (20:00)

With the help of my doctors, I recovered my clinical depression. I went on to a productive 10-year career as a journalism professor in Fredericton, New Brunswick. For 10 years, I've tried to write about this, and at the beginning of the pandemic I retired and I had nothing to do, and I still couldn't write about this.

And I tell you this to show you the immense psychological damage that an NDA causes. Even after I was free to talk, after I repaid The Globe every penny, I still didn't feel free. I had never before in my career faced writer's block, and it recently dawned on me I must be suffering some kind of PTSD.

In closing, I have to say that as a former China correspondent, there is something eerily, creepily familiar about this feeling of suffocation. In Beijing, I was under surveillance; every word I wrote, everything I said was monitored. And as I was preparing my remarks for you tonight, I realized that an NDA is like having the Chinese Communist Party controlling your speech for the rest of your life.

It isn't just predators like Peter Nygård or employers like The Globe and Mail or my insurer or the Manitoba nurses association or Fox News, even my small liberal arts university in Atlantic Canada required me to sign as a condition of employment a blanket non-disclosure.

I have just two more sentences. I know my time has run out. Is that all right? Can I just finish?

An Honourable Member: Leave.

Mr. Chairperson: Yes, leave has been granted.

Go ahead, Ms. Wong.

J. Wong: Thank you.

As Professor Macfarlane has noted, NDAs have invaded every sector of our life in Canada. They are spreading like COVID. This blight on our democracy can end with your help.

I urge you to pass Bill 225, and thank you for listening.

Mr. Chairperson: Ms. Wong, thank you for your presentation. We do sincerely appreciate it.

Time—we'll just have five minutes of questions now. No question is more than 30 seconds. Are there any questions?

Mr. Lamont, please go ahead.

Mr. Lamont: Yes, thank you very much, Ms. Wong. I appreciate your testimony.

I do find it—like, I'm speechless in some ways about your treatment by—I mean, The Globe and Mail is Canada's paper of record. Did they ever justify, could they ever explain their behaviour or why they wanted an NDA from you?

J. Wong: No, they didn't. I dealt with their lawyers, and there was management from the newsroom.

I think they said—well, I know the arbitrator mediator said, well, why would they pay you if you're just going to talk about it. And so, this is an important point I want to make to the committee.

When people are fired or they are abused or they are sexually assaulted or they are harassed, the payment is for the bad behaviour. As legislators, I hope that you will not allow any more to have payment for silence. They make these two elements sort of be the same thing and it's so important that they have to pay because they treated you badly.

I mean, I was clinically depressed and they fired me. So, there is a severance that they have to pay. I mean, maybe they were tired of me but I was a star reporter, but fine, as the employer, she said modestly, no.

But they have the right to fire you. They have to pay severance if there's no cause. There was no cause. But don't elide this with a gag order—a permanent, lifetime gag order. And I think it's very important to understand this is what we're trying to get across; that an NDA cannot be used, you know, cannot be tied up with a deal.

Mr. Chairperson: Thank you.

Any other questions?

Ms. Naylor: I just want to thank you wholeheartedly, Ms. Wong, for sharing your story with us tonight.

And I—there's something very important that I heard from you tonight that I'm just going to ask you to kind of reiterate again—or, share your thoughts on this again. But in hearing about that story that you tried to write—the Peter Nygård story—what I realized is that if that story could have been told, there's perhaps hundreds of women that may not have been

sexually assaulted or trafficked in the years since that—since you weren't able to tell that story.

Sorry, do you feel that that's true? Is there more—do you want to say about that?

J. Wong: Absolutely. You put your finger on it.

I felt very upset every time I saw what was happening with Peter Nygård because, you know, in the year that I wrote my lunch column about him—and I tried my best to get everything in. I tried. You know, Air Canada inflight magazine, enRoute, was saying, you know, he's one of Canada's top most eligible bachelors. That was what the media was doing before.

And then after I wrote my column, I was contacted by several journalists in the ensuing years who said, you know, we understand that you had this stuff on Peter Nygård. Can you share it? I was very happy to share it. But the problem was the NDAs. We couldn't get past the NDAs.

And so, I'd like the committee to consider how many predators there are out there in your neighbourhood, in—you know, where your children work, where your spouses work, who are not being held to account.

Basically, we want to be able to hold people to account. We don't want the rich and powerful to be able to muzzle their victims and continue as Harvey Weinstein did and as Peter Nygård has done, you know, blithely going on and doing it. I mean, Harvey Weinstein's really old now, too, and he's finally held to account, and Peter Nygård is 80.

I mean, really, we need to have a new law.

Mr. Chairperson: Minister Goertzen, you'd signalled a question.

Mr. Goertzen: Well, just to—again, thank you. So, I have look at the—I have to, sort of, look at the camera this—in this direction even you're behind me, so it's a little bit awkward.

But thank you for the comments and joining us from Toronto. It's a great part of what I think we've set up, virtually, as we can get perspectives from those who might not otherwise be able to be here without the virtual technology.

But your perspective was unique and probably not something that I'd considered from a journalist's perspective. So, I appreciate you sharing it here tonight.

Mr. Chairperson: Ms. Wong, if you wish to respond, I'll give you 30 seconds to do so.

J. Wong: Oh, that's so kind of you. I just want to thank you so much. You know, it's the first time I've ever done anything like this, really participated in democracy, and I have to say, I'm deeply moved by the presentations of the people that preceded me. And I'm also very impressed that the committee is sitting at night, you know, in—to hear us.

Thank you so much for your time and your concern and attention. I really appreciate it.

Mr. Chairperson: Ms. Wong, thank you for your presentation. We sincerely appreciate it. And the night is but young.

We will now call on Pam Gordon.

Pam, welcome. Is there anything printed that you wish to—no, circulate? Okay.

Pam, you have the floor. You have 10 minutes, after which there'll be five minutes of questions. So, welcome, and please go ahead.

Pam Gordon (Private Citizen): Good evening, standing committee. My name is Pam. I was a teacher until 2019 when I went off working, diagnosed with several health issues, including PTSD. This was the result of bullying by my principal, enduring isolation, having my human rights denied and my personal safety at risk.

I stand in front of you today in support of Bill 225 and agree that NDAs need to cease to exist in Manitoba, retroactive for all the people that were forced to sign them solely to protect the abuser.

I began work at a new school in September 2018 and, shortly after, the job demands and tasks began to grow. The administrator and other staff were aware that I suffer from severe allergies, including airborne traces of some of the products prior to school starting.

Despite this knowledge, nuts were put on the staff room table and leftover shellfish dinners were heated in the microwaves in the classrooms and staff room, even by the principal. It is important to note that I'd worked safely in schools in the Winnipeg area for many years prior to the division without incident.

The school had an allergy-aware policy, which stated that students are not supposed to bring in foods that have been listed as allergens to students or staff in the school. However, signage did not arrive until after my incident. Also, in spite of knowing of my severe allergies, the principal assigned me to classrooms used daily by students as lunchrooms.

I expressed concerns for my health and safety, but these were ignored. I asked if students could eat in one of the other rooms that were empty at lunch time, but my request was denied.

I completely understand that no workplace can 100 per cent guarantee that no allergen-containing products would be brought in. There was virtually no effort by the administration to protect me and, on November 9th, 2018, I went into anaphylactic shock at school and was taken away by ambulance.

* (20:10)

The administration even originally charged me a sick day for this incident. I was eventually reimbursed for the day after fighting for it. And it's important to know that I was actually there on a day off, it wasn't even my day to work.

On November 13th, 2018th, I submitted a note from my doctor confirming my reaction was caused by coming into contact with allergens in my classroom and requesting my room not be used as a lunch room. My administration denied this request, saying that she was not taking orders from a doctor as the doctor was not her boss.

On November 14th, 2018, I was told that I would have to submit a medical plan in the same format as it kept for students with allergies. My plan was to be put in the student URIS binder in a public place in the school where student records are kept. This goes against The Personal Health Information Act and therefore violated No. 4 of the MTS code of personal professional practice.

I was given a deadline to have my plan in, as I was being sent on a field trip where students and staff would be eating all together from three other schools. This was terrifying to me, as I now had no control over that, whatever anyone else was eating or packed for lunch.

My first medical plan by my doctor was rejected by my principal and my emergency contacts were scrutinized. It was humiliating to be treated like a child and have my personal health information available to anyone who wanted to look at it. It was easily accessible to student secretaries, too.

Worst off all, I was told that I was not to be in any lunchrooms, including, at times, the staff lunchroom—where the washrooms were—over the lunch hour. I felt like a complete pariah and continued to speak—seek out places to be at noon, but usually ended up in my

car, arranging to meet with a teacher to go over intake assessments or eating alone on a kindergarten chair.

On November 22nd, I was so stressed I contacted MTS and spoke with a union rep. She assured me my room change was a simple medical accommodation. The union rep coached me on what to say in a letter to the principal that was respectful.

On November 28th, I had leftovers that I needed to heat up to eat in my car, so I snuck into the staff room right at the start of the lunch to try to heat them before anyone else came in. I felt like a criminal just for being in our staff room.

Some other staff started to come in, so I was feeling very frazzled. When my food was ready, I put it in my cart and accidentally knocked over my basket and materials and everything fell to the floor. I just broke into tears and started sobbing. My nerves were just shot.

Someone told the principal, because she found me later to have a discussion. I told her I felt completely isolated and lost. The principal again said the doctor was not her boss and she was not changing rooms. She indicated that the assistant superintendent had been in the building the previous week to discuss the matter and that there was nothing that could be done this year—maybe next year they could make adjustments, but for now, it was up to me to keep myself safe.

At this point, the principal indicated to me if I didn't like it, I could go tattletale on her to the union.

I then waited 'til after the staff meeting and put the letter in the principal's mailbox requesting a room change under the grounds of a medical accommodation with a link to the Manitoba human rights.

The principal was furious at me for running to the union. I had the right to seek advice from MTS and should not have to fear retribution from my principal for doing so. This exchange with the principal was very disrespectful, inconsiderate and damaging to my dignity.

The principal requested that I meet with her at 9 o'clock the next day. That night, I googled how to tell if your boss is a bully, and that was an eye-opening moment for me. I found a 2015 article by Ronald E. Riggio, which outlined eight scenarios that your boss was a bully. All eight scenarios applied to the way the principal was treating me. It was at that moment I knew my health was suffering at the cost of my job.

On November 30th, I met the principal again and she requested—and it was—she—sorry, requested it was

awful. I have never felt so bullied in my life. She loudly expressed indignation that I put my request in writing and denied saying that she refused to move the lunchroom, in spite of that being witnessed by another teacher. She said that she would now move me into another teacher's room.

The principal then went on to indicate that she would be placing me on a form of supervision and expected to meet with me every two weeks at 9 o'clock. I believe that the principal's not acting with integrity in the comments she made to me in this meeting. I believe she was angry with me for trying to assert my rights and was now using her position of authority to punish and make me feel horrible.

In addition to my personal suffering, I carry the burden of the principal's inappropriate treatment of and behaviour towards my former colleagues.

The principal directed me to spy on a colleague during guided reading. The principal indicated that her former spies were not successful in staying in the room, so she instructed me to stay in the room at all costs. Knowing that this teacher and I had formed a friendship, the principal felt that she would not push me out of the room. However, this put me in a very awkward position, as we were indeed friends at the time.

The principal indicated that this teacher had in the past not used this guided reading time wisely, and furthermore felt she was the weakest teacher in the building.

To use her authority over me to engage me to act in this way violated my personal integrity. It would have been more appropriate for the principal to do her duty as the administrator, to put in place the supports she felt this teacher needed to improve.

Our comments and conversations by my principal that were unprofessional weighted on me heavily. I was told—told—what is said in these four walls stays in these four walls, do I make myself clear? I was also watched and told not to have any more parking lot conversations, when in reality I was merely talking with a colleague about our private lives in the parking lot.

This has had a profound effect on me professionally, emotionally, socially and financially. People became scared to associate with me, knowing that the principal was upset with me, and I became very isolated socially. That was my last day at this school, and I had to go on a medical leave due to anxiety caused

by her treatment of me. I was diagnosed with PTSD shortly after.

This continued when I was transferred to a new school in this division four months later, as they were forced to take me. They even introduced me as a helper, not a teacher, on some occasions, which was quite demeaning after working so hard to get my teaching degree.

Although the second principal did make an effort to address my allergies when I started by suggesting a place for me to eat—once at the new school, I was offered to eat with a student with allergies at lunch time—but I still felt isolated by this.

So, I ate in my car every day, partly because I was on steroids from another anaphylaxis I'd suffered at this new school, which made me so tired I could not function without a nap at lunch. I felt like a pariah again. This principal did note eating my car was not okay, though. The room I was in still had allergens in it and, as I was expected to travel from room to room, often ran into nuts and lots of shellfish.

The outside of this school did not have signage, my home base did not get signage, and I was constantly yelled at the lunch bell to go, go, go. The stress was awful.

At one interview for the following year, the principal ended up asking me about why I moved from my first school to the second school in one year. She continued to further question me about my allergies, and aggressively asking me about my URIS plan. My medical information is illegal to ask me, unless you are planning on offering me a contract. It is against my human rights.

She later indicated that she would not be able to accommodate me in their building, as they eat their lunches in their classrooms.

I eventually went on leave due to fear of another anaphylaxis shock, isolation and stress. I filed a grievance for the violation of my human rights, and the union suggested that I file a code complaint against the principal for the bullying and abuse that I endured.

For those that don't know, the teachers and the principals are in the same union, so when trying to settle this matter I was forced to drop the code complaint and end the human rights grievance by accepting a small settlement. I then had to sign an NDA to ensure that I never exposed the principal or division.

I ended up with PTSD, and the principal is still working. I was also forced to sign this NDA under

duress. I had no independent counsel protect my rights. I wondered how many educators like myself have been forced to sign NDAs.

Mr. Chairperson: Ms. Gordon, I'm sorry to interrupt. I'm obligated by the rules—

An Honourable Member: Leave.

Mr. Chairperson: Leave has been granted.

Ms. Gordon, please continue.

P. Gordon: Being told we could talk freely today was both freeing and frightening. Since agreeing to speak tonight, I have had my vivid nightmares return and have had daily migraines. Those of us living with PTSD understand how just talking about or reliving those events can be a trigger.

That is why tonight I can only share some of my events and feelings I had. The NDA has isolated me as a victim, and I will avoid social gatherings and I cannot explain to—what I went through in that division because of the NDA. Thus, ties were cut with all teachers and friends in that division.

I suffer sleep issues. The quiet, dark nights are the worst for me as I relive those dreadful events. I hear and see everything as if I were back in that exact moment in time. Being silenced by the NDA and not being able to share what I am experiencing is like being trapped in a bottle without air.

For me and all those silenced under NDAs, please support Bill 225 and end NDAs in Manitoba retroactive, and allow the victims to begin their healing journey and allow more people to speak freely about what is happening in our schools. Because we all have the right to work, right to air we can breathe, the right to feel respected and right not to feel isolated, and the right to earn a pension, the right to support our families, the right to stand up to injustice in the workplace and the right to enjoy our human rights.

Are children with allergies safe in our schools? How many educators suffer anxiety, panic attacks or, worse yet, PTSD?

* (20:20)

I leave you with this one thing: a student asked me, what would have happened to my sibling if they had been at school today in your lunchroom? They knew that we shared the same allergy. And I only replaced the one word, I replaced sibling, because I didn't want to identify the family.

Mr. Chairperson: Ms. Gordon, thank you for your presentation.

We will proceed with five minutes of questions. No question is longer than 30 seconds but the answers, you can take your time up to that five minutes.

Mr. Lamont: I just want to thank you. I want to thank you so much for showing the courage you've had today to speak up and let you know that we support you. Thank you so much.

You shouldn't have gone through this, and I certainly hope that now that you've spoken, told your story, that you'll be able to connect with some of those people you're isolated from and get the support you need, and we'll be here to provide it, too.

Thank you.

Mr. Chairperson: Ms. Gordon if you wish to respond you may, you don't have to.

P. Gordon: I think, for me, the one thing that was a real eye-opener was looking at the things when it said eight ways to tell if your boss is a bully, and looking at that sheet and seeing on there that all eight things were there.

She was such a bully and it wasn't just to me, and it had been a repeated pattern, and the targets were women and women who needed the money. So, for those of you who don't know me, I support my family. My husband is sick, so they knew that I needed the money.

Ms. Naylor: Thank you very much, Ms. Gordon, for sharing your story tonight.

I know, like the speakers before you, it's taken a lot of courage and I—you're one of the several speakers tonight that's really illuminated, you know, how much NDAs are being used in some of our most cherished public institutions. It's not just the big, bad corporate kind of image that many of us carry.

So, thank you for that.

And I just—I really want to encourage you to care for yourself today. I know that—you know, I can tell that a lot of those feelings are really fresh and present for you right now and that's a big cost to you to be here tonight, so please do get the support you need when you go tonight.

Mr. Chairperson: Ms. Gordon if you wish to respond you may, there's no obligation.

P. Gordon: I think I'm lucky that I had a very supportive doctor and she was very good.

I think I was shocked that I was being charged sick day being taken away in an ambulance on a day that I wasn't even supposed to be there, and having to fight for it back—like, things like that were just mind blowing to me, like—and fighting for—I worked in two separate rooms in the school. Make one of them a lunchroom, not both of them. And there were a couple other rooms that you could've switched to a lunchroom and it would've been a simple accommodation.

And the truth of the matter is, what about our kids? That was one of my big things; what about our kids that can't speak for themselves?

Or what about, like, I went into anaphylactic shock and then I went away in an ambulance, and as I was in the ambulance I went into a second—I can't remember what the term is called, but I went into a second round of anaphylactic shock in the ambulance as I was being transported to the hospital.

Now, what if that had been a child? Would they have survived that second—I think because I was an adult I had a better shot. But what about a child?

So, the reason—part of the reason I'm speaking out is because a child doesn't have that opportunity, and how many families don't know that when they're sending their kids to school, some of the schools do a great job and some of the schools need some work still.

Mr. Goertzen: Yes, thank you, Ms. Gordon, and maybe similar to Ms. Naylor's comments, I hope that today was the ability to speak—I hope it ends up being more helpful than hurtful. I could tell the emotion that you brought to this, and I hope in some ways, the ability to speak tonight is helpful in the long run.

I want to thank you, though, because I mean, I've heard, now, three testimonies, and I think maybe all of us came with some sense of what the stories might be, but they've all been uniquely different that I've heard; one regarding a family situation, another from a journalist and yours regarding an—the education system, where there's a strong union and ability to grieve and that didn't quite work for you in the way that you were hoping.

So, I appreciate you sharing that story because it's—there's three very different experiences that I think are helpful.

Mr. Chairperson: Ms. Gordon, if you wish to respond, you're welcome to do so.

P. Gordon: I do, because I got into education to be a teacher and I took the code of ethics as a teacher very

strongly. So, when problems arose, I was stunned and I followed the code, which I actually brought here tonight. I followed it to a tee. I followed every step on that code.

And so, I never once suspected that it would go this way and I never expected to be asked to spy on a colleague.

My husband, at the time, was going through to be a principal and, I mean, I don't know how many times he came home from university and we discussed if there's a problem with a teacher, you see what supports you can put in place for the teacher. You don't ask a colleague to spy on them; that's not what you do. You help them. You help them. You see where they need support.

But you would never go around saying she's the worst teacher in the building and make comments about other staff, and you certainly do not spy on your staff members out a window in the parking lot or make comments or threaten them in your office. Like, I would never have thought I would be threatened in a school, and if something happens in a school the taxpayers should know; they're paying our salary.

All—anything that happens in a school should be—the taxpayers should know.

Mr. Chairperson: Ms. Gordon, I'm afraid we're over time, but I thank you for your presentation. We are sincerely grateful for you coming here and sharing with us this evening.

We will now call Krista Smith. Is Krista Smith here? Or online?

Just while we check that, I just want to remind all in attendance that we have two Victim Services professionals at the bill committee this evening. Perhaps you could identify yourselves. If—that is, if those individuals are helpful or beneficial to anybody, please do take, you know, make contact with them and at no cost to you. They're happy to assist, if that is helpful.

Is Krista Smith here? It appears that Krista Smith is not here. We'll call Krista at the end of the evening.

Douglas—I hope I say it right—Kuny? Douglas Kuny. Is Douglas here?

It appears Douglas is not here. We will call Douglas at the end of the evening.

Susan MacRae—online perhaps? Is Susan available?

I believe Susan is available. I'll ask the tech people to queue Susan. And if you can hear me, Susan—hi, Susan. Could you just test your mic, please?

Susan MacRae (Private Citizen): Hi.

Mr. Chairperson: We can hear you, Susan. You have 10 minutes to make your presentation, after which there will be five minutes of questions. I apologize in advance if I cut you off at the end. I'm trying to be fair to people here and please, though, you have 10 minutes and you also have our attention.

Susan, please go ahead.

S. MacRae: Great, thank you so much for letting me speak today on behalf of Bill 225, the non-disclosure agreement.

Before I begin, I would like to acknowledge that I am talking to you from the Squamish, Musqueam and Tsleil-Waututh territory.

My name is Susan MacRae and I am the daughter of Marie Blais [*phonetic*] and Kenneth—Ken MacRae and I was taught this acknowledgement by Dr. Jeanette Armstrong of the Okanagan Nation.

I also want to say that I'm speaking today in memory of my friends David [*phonetic*], Paul [*phonetic*] and Dylan [*phonetic*], who were very much in the same situation as me but did not survive to be able to tell their truth. And, secondly, this will be the second time in my life that I have been able to tell my truth. The first time was to my father and now the second time is to the government and to the legal system.

It is my opinion that I was abused in my family, but I've also been abused by the legal system.

* (20:30)

Before I begin, I'm just going to tell you my story. My story begins about 50 years ago, in 1972, at the age of six. I was sexually abused by my father in an alcoholic blackout. This is what makes alcoholism so dangerous. And so, I believe that he was in a blackout.

I won't go into any further details, but like most resilient children who grow up in alcoholic homes, at the time of my abuse I disappeared into the rose and horse on my wallpaper. So, a part of me disappeared into the wallpaper. And while I was there, I experienced a great deal of peace and protection. My body, however, was still on the bed. And so, I believe that is the beginning of something that we now classify as disassociation.

And so, that is the beginning of my story.

I—25 years ago, on November 1st, 1997, I signed my non-disclosure agreement. I had gone to court, I'd gone to therapy and I had gone—well, I didn't go to court, I never—I filed—I wanted to file a criminal case against my father. And I was told by the lawyer that in historical childhood sexual abuse cases, it's very difficult to prove because there is no evidence. And I can understand that, you know, because it's many years later, and, you know, you're only relying on first-person accounts from a child point of view.

I was told that I could go to the civil case, and I found that process extremely exhausting—excruciating, in fact. In many ways, going through that process is being totally exposed again, totally vulnerable. When you have to sign affidavits, you have to reveal a very difficult and sensitive area of your life.

But I still went through it, and like Sherri has said, very few people in the 1990s went to take their case to court. As a child, I did not believe I would get any justice, and even going through that process I didn't really feel that I was ever going to get justice. Basically the lawyer said that, and I also kind of knew, as well.

I was asked—I was offered a \$50,000 settlement, and I was told that both my mother and myself would have to sign a non-disclosure agreement. At the—I refused to have my mother sign the non-disclosure agreement because she was not a part of this.

I had one day to decide that by them—by my father's counsel. I refused, and I find that a little victory for myself at that time. I had to wait three weeks, and then they said, okay, we'll just want you to sign the release and non-disclosure agreement.

At that point I just wanted it to end. It was so, so difficult, and I couldn't go further. And also, I had no full idea what I was signing. So I did not know that it was going to be permanent.

My father died in 2015, and even though he is dead now, I am still held to that non-disclosure agreement. Because, four years ago, in November 2018, I filed a case because my father had died and I was left out of the obituary and I was left out of the estate. I wanted to see the will, which I'm supposed to see—that's my right as a biological child—and I needed, I wanted, to contest the will and the estate.

My NDA was not lifted in 2018. The excuse by the judge was that there was not enough evidence to prove psychological damage. After that, I went to 23 different lawyers in the Lower Mainland to find somebody who would take on the case. No one said

that they would because there was no law to cover it. And one good lawyer said that it would require a governance act for the NDA to be lifted.

As a result, my mother and I have spent three years writing letters to every MLA and any MP in Canada. She has only received four responses, two of them from Manitoba and one of them from Mr. Lamont, which I really appreciate.

Why is the NDA important? I believe that, in my case, that little child is still in the wallpaper, and I need to be able to speak to go through my process of healing. I feel that my fight for my NDA is a fight for myself, a fight for my spirit and a recognition that every child matters, which I really appreciate this and I feel a deep connection to that because it's about the rights of children, which still do not have protection or justice.

I also believe that the law does not recognize the spiritual and emotional needs of people who have been sexually abused in their homes. And that can only be healed through justice, through forgiveness.

I feel that this process will help me to eventually come to terms with my experience in my home with my father and, hopefully, someday to forgive him.

And truth. It's a bit—it really is about truth because truth is the only thing that can heal us. So, for myself, lifting the NDA will help me to become the person I was meant to be. And I think—you know, everyday I walk through downtown, people who I really identify with, who are walking there, but they're not there.

And that is a result of trauma, of being silenced, whether it's explicit in my case, or implicit. So, this is costing society a great deal, not just financially but spiritually, emotionally, mentally—the waste of human life because of childhood trauma.

In closing, I want to thank you for this opportunity to speak. I hope that you pass this NDA bill because it will be so meaningful to many different areas and sectors of society, including the family home, such as in my case.

And I want to thank you again, to the MLAs from Manitoba who responded to my mother's letters. She's been a real hero in this as well.

So, thank you.

Mr. Chairperson: Thank you, Susan, for your presentation.

We will now move to five minutes of questions.

Mr. Lamont: I just—I want to say thank you very, very much for speaking up and speaking out. I imagine this is incredibly difficult.

The one question, I guess, I have is that I'm—is that your—even though your father died, your NDA persists after his death.

Can you just talk about that for a moment?
[interjection]

Mr. Chairperson: Ms. MacRae.

S. MacRae: Okay, sorry.

When I asked the trustee of my father's estate to lift the NDA, as well, to be released because you can be released from NDAs—however, mine is a release and a non-disclosure agreement, and there's a fair amount of money in the trust.

So, my father put money in a trust. He was quite a wealthy man. He put trust so—it in a trust. So, that's a second part of my fight, is to receive my inheritance. The law has allowed my father to continue to abuse myself and my mother even after his death, and there is something deeply wrong with that in my opinion, that he's protected.

He had his issues. They should have been solved in his lifetime. They shouldn't be carried on after my father is dead.

Ms. Naylor: Thank you, Ms. MacRae. I really appreciate you being here and sharing your story.

I—the only question I had for you was the one that Mr. Lamont just asked you, so I don't have any further questions. I just want to thank you.

Mr. Chairperson: Are there any further questions?

Seeing none, Ms. MacRae, we thank you for your presentation and being with us this evening.

* (20:40)

I will now call Kelly Donovan. Is Kelly Donovan here? I believe that's a virtual presenter, I'm told Kelly is.

Kelly, could you turn your screen and microphone on please? Kelly, I can—oh, yes, we can see you. Could you just test your mic, please?

Kelly Donovan (Private Citizen): How is that? I was just added as a panellist.

Mr. Chairperson: Yes, we can hear you.

Kelly, you have 10 minutes to make your presentation, after which there will be a five-minute question

period. I apologize in advance if I interrupt you at the end.

If you do need some—moment of extra time, that may be afforded, but if you could aim for 10 minutes, that's how we're trying to do things.

But Kelly, you have the floor and our attention. Please go ahead.

K. Donovan: Well, up until 2017, I was a police officer with the Waterloo Regional Police Service. Starting in 2015, I began to witness subjective enforcement of our laws when criminal allegations, domestic in nature, were brought against a member of the police service. At times, they weren't even investigating.

I do not believe that police have the right under common-law discretion to choose when to and when not to charge or even investigate based on personal motive. It still did not sit well with me, and I wanted to do something about it. My union president told me that's just the way policing was, and that I would never be able to change it.

Our laws in Ontario actually prohibited me from complaining formally about what I perceived to be corrupt practices and inadequate policies. The only thing I could lawfully do at the time, which was in 2016, was speak at a police services board meeting, much like this hearing here today. I expressed to the board what I had witnessed, and why I believed that my chief of police, Mr. Bryan Larkin, was abusing his authority when making decisions involving criminal allegations brought against our own members.

Following this disclosure, the chief was allowed to put me under investigation for misconduct. I was removed from my position as a use-of-force instructor, and I was ordered to cease communicating with members of the board. I was gagged. After 14 months and several failed attempts to have an oversight body intervene in the retaliation I was facing, I chose to resign.

While negotiating my resignation, I made it clear that I would not agree to an NDA. I made it very clear that I would not sign a contract that prohibited me from speaking about my experiences. If they required the NDA, I would simply have remained employed, collecting my \$100,000-a-year salary with full benefits and pension. But they did agree.

I also required that a release be signed by them so that they could not harm me anymore. At this point, I

had researched how prevalent whistleblower retaliation was in policing, and I knew they had access to many retaliation tools.

Upon resignation, I travelled across Canada sharing my story to encourage lawmakers to enact whistleblower protection laws so that the next person who reports what they report what they believed to be unethical leadership does not face reprisal at the hands of the very person they are reporting. In 2018, I spoke at the Ontario legislature and, because of my testimony, police officers are now legally permitted to file complaints, and are even afforded protection from reprisal. I have made a difference.

Yet, I'm not safe. Despite my refusal to sign an NDA, and despite the release that was signed by the Waterloo Regional Police, only six months after my resignation the retaliation began again. Confidential details of my resignation agreement were exposed, and the service filed an appeal of my workplace injury claim for PTSD to have my benefits revoked. They wanted to take away whatever I had left, despite the legal contract they signed. This started a litigation battle that is now entering its fifth year.

The police service went on to file a contravention of settlement application against me, at the Ontario human rights tribunal, alleging that all of my public speaking is in violation of my resignation agreement. Yet, they acknowledge there is no NDA. As of August, 2021, which is over a year ago, the police service had spent over half a million dollars on their lawyer to try to achieve my silence, and they continue to spend.

We must stop the silencing of victims of harassment and discrimination. That is extremely important, and it is a wonderful first step, having all members of the Legislative Assembly agree on that priority. I hope that my story will provide insight into the misuse of NDAs, and the abuse of individuals who refuse to sign them. If you believe what happened to me was wrong, then it is imperative that Bill 225 be revised.

Telling a victim of harassment or discrimination that they can't talk about what happened to them for the sole intent of protecting the offender is wrong. What I feel is most important at this stage is that we all understand that NDAs are being used to cover up so much more: abuses of power, criminal acts and all forms of corrupt behaviour.

If the behaviour that is being buried in an NDA does not fit the definitions of harassment or discrimination, The Non-Disclosure Agreements Act

would not protect the complainant. To explain that further: in my case, what I initially alleged was that the police service was choosing when to and when not to investigate and charge their members accused of domestic abuse, depending on the officer.

I was immediately disciplined, taken out of my job and gagged. The police service hired a lawyer to say in her report that I was not harassed or discriminated against in the way I was treated following my disclosure. When I chose to resign, the police service did not want me to voice those allegations. Again, they wanted me to sign an NDA.

But I was not a victim; I was a witness to what I believed was corrupt behaviour. But they didn't want me to be able to talk about it. And I knew this was wrong, so I refused to sign the NDA.

It's my belief that even if I had signed the NDA, the proposed act would not protect me, since the best way to describe the way I was treated was retaliation, not harassment or discrimination. And the retaliation I faced was not for reporting harassment or discrimination. It was for reporting what I perceived to be corrupt practices.

I firmly believe that section 3(1) of the proposed act should read that if a provision of a non-disclosure agreement prohibits or restricts a complainant from disclosing information concerning a violation, or alleged violation or any federal or provincial act, the provision is invalid and unenforceable.

If you knew the types of offences alleged to have been committed by high-ranking public officers, who are now protected thanks to NDAs, you would support this recommendation. The Human Rights Code of Manitoba prohibits harassment, discrimination, as well as reprisal.

I feel at the very least, reprisal must be included in the act. But if we look at similar Canadian laws, we already protect employees in section 425.1 of the Criminal Code of Canada. Under section 425.1, if an employee witnesses or believes they witnessed an offence being committed by the employer, or an officer or employee of the employer, the employer cannot take any measure against the employee to try to stop them from providing information to a person whose duties include the enforcement of federal or provincial law, or with the intent to retaliate against the employee because they did provide information to law enforcement.

We understand the need to ensure that employees feel safe reporting alleged violations of law, but we

currently do nothing to stop those employers from having the employees sign an NDA to conceal the very same conduct. So, in a way, an NDA is already unlawful in Canada but, obviously, this law isn't helping Canadians.

Based on Criminal Code section 425.1, if an employer had an employee sign an NDA to conceal a violation of law, which would include the Human Rights Code—meaning harassment and discrimination—that could be seen as a criminal offence committed by the employer.

My resignation states—sorry, my resignation agreement states that I'm not able to file any complaints against the police service for what they did to me prior to my resignation. In my opinion, that violates the Criminal Code. It's time that Canadian lawmakers understand that it's the abusers themselves who have been empowered to silence their own victims.

This is why we need laws prohibiting NDAs, and this is why those laws must be robust. A person who witnesses someone in a powerful position of authority committing an egregious act is not really given a choice. They can either sign the NDA to protect the powerful person, or they will face a lifetime of retaliation.

That's because, without an NDA, the person can talk. And if they speak the truth, they can't be stopped. If their truth-telling threatens the powerful person, the powerful person will do just about anything to shut them up. That is the blunt reality.

And if you don't believe me, you can tune into my next Human Rights Tribunal of Ontario hearing to watch the retaliation in real time. It's not only the silencing of victims of harassment and discrimination that must be stopped. There are men and women across Canada who witness egregious abuses of power and criminal acts committed by public officers, whose only hope at escaping a lifetime of retaliation is to sign an NDA.

* (20:50)

I'm living proof of that. I've now faced retaliation by them longer than I was even employed by them, and they have spent over half a million dollars to try to achieve my silence.

To conclude, I applaud all members of the Legislative Assembly for their commitment to a higher ethical standard. You are leaps and bounds ahead

of other provinces in the country. I thank you on behalf of those who don't feel safe being here to speak, and I thank you on behalf of the next generation, who will be better protected as a result of this act.

Understanding that many very well-educated and experienced people worked on Bill 225 to get it to where it is today, I very humbly make my suggestion to you, based on my experience only. And my suggestion is to revise section 3, sub (1), to read that if a provision of a non-disclosure agreement prohibits or restricts a complainant from disclosing information concerning a violation or alleged violation of any federal or provincial act, the provision is invalid and unenforceable. This change would protect victims of harassment and discrimination, but also so many other men and women across Manitoba.

At the very least, I would suggest including reprisal along with harassment and discrimination.

Mr. Chairperson: Ms. Donovan, sorry, the rules require that I tell you the time has ended. *[interjection]* Leave has been requested; is there leave? *[Agreed]*

Please complete your presentation, you have—I'll give you two minutes to do so.

K. Donovan: Yes, I'll be very quick.

All I would do is I would define reprisal to be very broad, and include any conduct resulting from a person's attempts to follow any law.

And all I wanted to do was thank you for providing me the opportunity to speak, and I welcome any questions or comments that you have.

Mr. Chairperson: Thank you for your presentation, Ms. Donovan. We'll now have some questions.

I see three. We'll start with Mr. Lamont.

Mr. Lamont: Yes, I thank you very, very much, both for your courage and your integrity, and exactly what you've done. It's absolutely inspiring. And I would be more than happy to make—to strengthen the bill in any way we can to protect people against reprisals.

Whether we review it or whether—however that will proceed, I want to thank you very, very much, both for the public stand you've taken and the work you've done, and I hope we can honour your work.

Mr. Chairperson: Ms. Donovan, if you wish to respond you may do so.

K. Donovan: No, just to say thank you, mister—or, minister Lamont. Thank you very much.

Mr. Chairperson: Just to clarify, it is Mr. Lamont.

But—Ms. Naylor, please go ahead with your question.

Ms. Naylor: Thank you so much, Ms. Donovan.

You have again presented us, like as so many speakers have tonight, of, like, another way in which NDAs have been used to silence people who need to be able to speak. So, thank you for that. Thank you for your recommendations and it—you know, for drawing our attention to where there may be a gap or other gaps in this bill is the way that it's written so far. I think that's really important, really crucial for this committee process that allows us to hear that feedback.

And thank you so much for taking your time to tell your story here tonight.

Mr. Chairperson: Ms. Donovan, if you wish to respond, you may do so.

K. Donovan: Yes, if I may, because she reminded me of something.

I think what's important to keep in mind is that, you know, our system of laws have deterrents by way of punishment, you know. But when it comes to a lot of the acts that are suppressed in an NDA, just having a law prohibiting NDAs will create an entirely new culture of accountability.

So, it's not about us needing laws to punish the people causing these harms. Just knowing that this information cannot be suppressed forever in a legal agreement might be just enough to change behaviours within workplaces, within, you know, corporations, whatever it is. So, I think it's important, you know; you reminded me of that when you were talking about the purpose of it, was just that, you know, you're taking a huge step by implementing this legislation, but in doing so, you change the culture.

And everyone talks about how difficult it is to change workplace cultures. But just knowing that that's not a possibility anymore is huge, and protects people just with the mere risk of, you know, not being able to do that anymore.

People's behaviours will change, and that's why it's so important that this act pass.

Mr. Goertzen: I thank you, Ms. Donovan, for your presentation, sharing your experience and, most importantly, for sharing your suggestions.

And I would ask—and I know you're busy, and I can tell you're busy, but I can also tell you're probably

an advocate without—well, with—you probably get tired but you probably never cease. And there is going to be an opportunity to make some presentations and some suggestions to the Manitoba Law Reform Commission.

Their website is Manitobalawreformcommission.ca, manitobalawreform.ca, and they're undertaking investigation on non-disclosure agreements, and they're going to be putting out a consultation paper in the next few weeks. And I think that your advice in a consultation paper, or maybe as a designated stakeholder or expert, would be very valuable for them to hear.

So, I just wanted to leave that with you. And if you're able to reach out to them, I know they would appreciate it.

Mr. Chairperson: Ms. Donovan, if you would like to respond, you may.

K. Donovan: Yes, thank you very much.

I will definitely look into that.

Mr. Chairperson: Are there any other questions?

Hearing none, Ms. Donovan, we thank you for your presentation and your time this evening.

We will now move to Jennifer Schulz. Jennifer Schulz. Is Jennifer here or online?

Okay, we will move Jennifer's name to the bottom of the list and call it again at the end. Oh—my error, we will not move her name to the bottom of the list. Jennifer, I saw you briefly on the screen. Okay.

Hi, Jennifer, welcome. Can you just test your mic?

Jennifer Schulz (Private Citizen): Yes, can you hear me?

Mr. Chairperson: Yes, we can.

Jennifer, you have 10 minutes. You have our attention, and I will—I apologize, I will cut you off at the end of that 10 minutes. And members here have been offering leave to complete, but if you can do so in 10 minutes, that would be great, if possible.

You have 10 minutes, Jennifer. Please go ahead.

J. Schulz: Okay, thank you very much, everyone, and I won't need my full amount of time.

I feel very honoured to be in the presence of the people who have spoken before me. I do not have a personal story to share, so, you know, it's, I think, apropos that I'm later down on the list.

My name is Jennifer Schulz. I'm a law professor at the University of Manitoba. I'm also the associate dean of the faculty of law at the University of Manitoba. And the reason that I'm speaking to you today is because this is important stuff, as others—for example, Jan Wong—have said before me. It's a privilege to be a part of this democratic process.

I thank Dougald Lamont for the opportunity to be here, and I thank Julie Macfarlane, a former law professor at the faculty of law, University of Windsor. You already heard from her. She's the expert; she's got a lot more to say than I do. But I wanted to be supportive of her comments and others' comments and how they relate to what we might call cherished Manitoba institutions.

So, as I said, I work at the faculty of law at the University of Manitoba. And I, too, appreciate the privilege today. I'm going to talk to you about something that's not exactly on point but close.

A while back, the faculty of law at the University of Manitoba had a dean whose name was Jonathan Black-Branch, and he wound up stealing over a million dollars from the University of Manitoba and the faculty of law, and that's shocking news that should be out there for Manitobans to see. Some of you are parents and will have students at the University of Manitoba. That might be information you'd want to know.

But we don't know it, and the reason we don't know it is because the University of Manitoba central administration and its legal department told all of us at the law school that we weren't allowed to talk about it. And that was a really interesting thing, in light of the Canadian Charter of Rights and Freedoms and our freedom of expression.

We were told we should not talk. We were told that when Maggie Macintosh and others from the Winnipeg Free Press contacted us, we were supposed to provide no comment. When the CBC contacted us, we were not supposed to reply. And what happened was, despite the fact that Jonathan Black-Branch stole from the university, he was quietly let go. And the NDA problems are on the university's end because they promised not to talk about it, I think, because we haven't seen it anywhere.

And Jonathan Black-Branch left the city of Winnipeg, moved back to the United Kingdom and was offered a position at a different law school in the UK.

* (21:00)

And this is where the analogy to NDAs is really hit home for me. Lots of women who have suffered abuse. The natural thing, if someone's in your workplace and is harassing women, is for the women to get together, usually in a ladies room, and to say, watch out for him. You have to be careful to try to protect one another, to try to remain safe.

And so, I did that same thing. I contacted the university in the UK and I let them know that there was a proceeding in front of the Manitoba—sorry, the Law Society of Manitoba. Because while Jonathan Black-Branch was in Winnipeg, he obtained membership there, and there was a proceeding, and that he was under investigation for different fraud issues and things at the University of Manitoba. And, fortunately, that university dropped him as a candidate, and now he's disappeared. When we do searches for him, we can't find where Jonathan Black-Branch currently working.

And the University of Manitoba, the office of the president, the legal department—no one will talk about it. We've asked whether and how big his severance package was, even though he stole from the university; we don't know.

And the university, at the same time, was conducting a massive fundraising campaign, so they were asking all of us—as taxpayers—to donate to a university that didn't police its own and didn't ask for compensation from a law dean for the money that he'd taken.

So, this is a really different twist from what everyone's talked about, and obviously it's not nearly as heart-wrenching as what some of the people have discussed today. But I thought, because it was a local story—it's certainly less salacious than the Peter Nygård stuff, but it is local and it's close to home. And I'm heartened that Dr. Julie Macfarlane commented that she's hearing good things from the University of Manitoba now and what they're doing. That's wonderful to hear, because this is my workplace and where I expect to be for the rest of my career.

But there are things in its recent past that it hasn't done well. And this is, again, because of secrecy that an employer promised an employee who had committed wrongdoing.

And thank you very much.

Mr. Chairperson: We thank you for your presentation.

We will now have five minutes of questions, and I would remind all members that their questions cannot exceed 30 seconds, after which time I will need to enforce the rules and cut them off.

Mr. Lamont: Yes, no, thank you. Thank you very much, Ms. Schulz.

No, I am stunned, actually. I mean, I've heard lots of very surprising testimony. I'm—but could you just expand a bit, I mean, because this is one of the challenges with *[inaudible]* it happens—we're all end up paying for NDAs, because when it's hidden, either if it's the corporation, we're paying for it, but it's also, we're paying for it if it's at a public institution.

So, if you can just talk about, like, the cost, I mean—because that's money out of students, donors, government—everybody ends up paying for it.

J. Schulz: Yes. Certainly.

And you've hit it exactly right. So, again, no one really, I mean, people in the university do know the details. I don't know the exact details of how much money and what happened.

But we do know that our former dean, Jonathan Black-Branch, obtained two Ivy League degrees while he was dean of the University of Manitoba law school, where—that he funnelled the money to pay—one of them was from the—Brown University—I got an MBA there—and he funnelled that money away from University of Manitoba and law school coffers.

He did all kinds of not just business-class, but first-class flying, because he had gigs in Dubai, and so he did his flying, his hotels, all of that stuff. He had a corporation running out of the city of Oxford in England with all kinds of improprieties there. And then—and there was just sort of money funnelled out.

So, we think it's approximately a quarter of a million dollars a year, each year, for four years. But again, nobody's confirmed that to us. And when we speak to the university's central admin, they won't tell us, and they were told not to comment.

So, the only reason I'm here today is because Julie Macfarlane promised me that I had privilege to be in this setting, and so that's why I'm telling you.

But it's—that's the situation. So, I don't know the specifics, but I think that, you know, if Manitobans knew that kind of fraud was going on at what they tout as their big, main university, that's a big problem.

Ms. Naylor: Thank you so much for being here tonight, and for sharing that information with us.

Like my colleague, Mr. Lamont, I'm also stunned. I worked as a counsellor for almost 30 years before I was a politician, so the stories of abuse and harassment that we've heard tonight are very familiar to me. Very sad and tragic and familiar.

This is a whole different ball game hearing about how an NDA has—sorry I'm—I've got to talk faster—how an NDA has been used to protect an employee doing something wrong and costing millions of—

Mr. Chairperson: Ms. Naylor, unfortunately your time has expired to ask the question.

Ms. Schulz, you are welcome to respond if you wish.

J. Schulz: In response to Ms. Naylor, I don't know for sure if there is an NDA. I don't—have not seen—I must be very clear, I haven't seen any documents, I don't know what passed between them.

All I know is that if you're a dean and you're sort of disgraced at one institution, if you immediately move to another one, it seems to me that if anyone from that in—you know, institution called the U of M, clearly they weren't told anything bad about him.

So, that's why I assume that there's silence on it, but I have to be clear that I haven't seen an NDA.

Mr. Goertzen: Thank you for your presentation. I think we're all learning a little bit about parliamentary privilege tonight and the limits of which it can be tested.

What I really wanted to say was more about your last comments. And you've made a number of disclosures, but you also said that you believed that the faculty in the U of M are on a better path, and I hope that that's true. As a graduate of the U of M three times over and a graduate of Robson Hall, and I have a lot of respect for many of the people at the university still, who I learned under.

So, thank you very much for your presentation tonight.

Mr. Chairperson: Ms. Schulz, if you wish to respond, you may do so.

J. Schulz: Yes, if I may quickly respond.

I will say that, for those who might be worried, we have a new dean at the University of Manitoba law school. He's excellent, and he could be described as sort of the poster boy for integrity, which is great.

We have a new president at the University of Manitoba, as well, so I do really believe things are

moving in a much more positive direction, but I thought today was an opportunity to support the stories of people who have suffered much more than we have and to just give you this extra piece of information.

Thank you.

Mr. Chairperson: Ms. Schulz we thank you for your presentation.

We will now move to Laura Fougere—I hope that I say that name correctly, forgive me if I mispronounced. Laura, I think you are here in person—Fougere? My apologies for mispronouncing your name but Laura, you have 10 minutes.

Welcome and please share with us. You have 10 minutes to make your presentation.

Laura Fougere (Private Citizen): Okay, good evening.

My name is Laura Fougere and I was a health-care provider for 35 years. I started with the Manitoba home-care worker—as a Manitoba home-support worker in 1986, and I remember the home-care department being the envy of the country. And so, I want everybody to know that there was a time when we had great health care, and I—you know, maybe we can get back there.

I worked as a health-care aide for a while and found it very brutal, and it was very difficult to see the very poor care that residents get. For that reason I decided to become a nurse. Graduated of—with academic distinction from the St. Boniface School of Nursing.

Interestingly, there was a strike in 1991 or '92, around then, and I worked for a couple of years at St. Amant Centre and then for the next 22 years or so with the home-care department of the Winnipeg Regional Health Authority.

I wanted to get involved in union activity, but felt my kids were too young—I had three kids, I was—ended up being a single parent. But I noticed that a lot of my co-workers, by the sheer—this is about year 19 of being a nurse—a lot of my co-workers were complaining of harassment on my nursing unit, which was downtown.

And I was a union rep, but I decided that I would become involved with health and safety, given the stories I was hearing of just the effects of the harassment, people meeting to get—my nursing colleagues meeting and just stating that they needed to see their doctors. You know, like they—due to the harassment.

* (21:10)

And these were behaviours of, like, unreasonable expectations, people were leaving because of the harassment. People were going on sick leave. This is like—started around 2012, 2011 or so.

And what it was doing was, in fact, it ended up doubling our case load because half of our nursing unit ended up leaving—25 out of 50 nurses downtown, like over a couple-of-year period when we had two—well, one very well-known bullying harasser was transferred to our unit and just started doing her thing.

And patients were not getting good care because of the time restrictions. Like, we had—and plus, people were—hospital wards were closing and such. People were coming into home care with very much higher acuity than before.

So, you know, we could be seeing about—we could be seeing—required to see up to eight diabetics—and this is driving, too; we're driving—eight diabetics in a couple of hours, you know, who could be unstable and we had to make sure everybody was stable and safe before we left each visit.

I started bringing up these concerns and—received an excellent formal assessment, in 2013, was elected vice-president of my local, which is home care. And then—you know, didn't hear any—you know, didn't have any disciplinary issues for many, many years, like 17 years or something. No complaints against me.

I then began being accused of all sorts of things which I didn't do or which were very frivolous. Like, they weren't, you know, like real accusations. They were things like, oh, a patient complained about you. I was never given any evidence. I didn't even know exactly who they were talking about.

So, regularly, I would just be thrown all these accusations from my two supervisors and the HR department.

And by the way, everybody was promoted. Like, this is the story of promotion. There was a lot of people involved in the abuse of me and my colleagues and our patients, and everybody is still working and is still, you know—like, I don't know what they're doing now, but they did not deserve to get promoted.

So anyways, it just—the harassment campaign made me really ill. My doctor was excellent and brave in diagnosing me with major depression, anxiety and trauma and, in fact, ordered me to leave my job of 24 years—or, well, 35, including when I was not a nurse—which was, in retrospect, not the right thing to do. But I guess he was sort of thinking that I—if I went

to a different place I would be fine. But it's just now I know that there is no safe place for nurses who report, period.

So, anyways, I became really sick and what happened was, in February, they tried to get me—I was on sick leave. They tried to force me back to work and my doctor was very clear in implicating the WRHA staff in causing my illness. And I had never been psychologically ill before, you know, and I was also very physically well.

And also, you know, there was physical harm, too, because of the doubling of our workload, because we do a lot of home care and it's very archaic. We don't have proper equipment and so, we were doing a lot of lifting limbs and bodies and stuff like that.

And before I forget, I do want to mention that I received a lot of very specialized training. I worked with specialists, did worm-wound-care consults, I seconded to the Public Health to do immunizations—very proud of our H1N1 campaign to wipe out H1N1, or get it under control. And I just—when they get rid of nurses like me, and the other, all the other ones they got rid of, that's all the money and training and expertise that they also got rid of. And it's so bad for patients.

Anyways, fast forward. They tried to force me back to work. They made me—under the threat of dismissal, while I was ill and traumatized, so I tried to do this assessment and did really poorly. And—but they said no, there's nothing wrong with you; we don't believe your doctor's medical certificates. You know, we think you're fine.

And these are, like, totally unmedically qualified nurses who—it's illegal for them, actually, to even be saying this. But that's what they did. I know it was under the advice of WRHA lawyers, now that I know more.

So anyways, I filed a right to refuse unsafe work.

So anyways, everything just stalled. And, well, they did fire me. They fired me, made me hand in everything; and that was bad because there was a lot of emails and stuff. And my computer crashed, and they took away my Internet privileges and all that.

So then I—my human rights—I filed with the human rights—I filed with everybody. And I even, 'intersing', and spoke to Victim Services eventually. And, you know, like, I was just treated like garbage, basically, by everybody.

And so then, anyways, I ended up signing an NDA and it wasn't so much for the money. Oh, and all my—sorry, 30 seconds? All my income protection credits were denied.

And I ended up getting sued by the WRHA; convicted of breaching a contract even though my right to refuse was nowhere in the NDA or release, anywhere. Yes, so they ended up suing me and I could never get a job.

And that's the end of my nursing career, and I mourn it every day.

Mr. Chairperson: Thank you for your presentation.

We now have five minutes allotted for questions. Are there questions from the floor?

Mr. Lamont: Thank you. Thank you very much for speaking up and for coming here tonight. You have an important story to tell.

The one thing I wanted to ask is, you said that when it comes to nursing, there's nowhere to go to report. Can you just talk a but more about that? *[interjection]*

Mr. Chairperson: Ms. Fougere, I just have to say your name before you speak for the sake of Hansard. Go ahead.

L. Fougere: I mean, I went everywhere to report. And I was just punished more and more, so that's what I mean. I followed—I was a union rep, or a union vice-president, so I had training in the procedures and I was a very procedural-oriented person.

And so, I followed the steps and, you know, they just—I mean, they just fired me. So, I could not participate in the investigation, you know. They—the WRHA made false statements about when I filed the complaint. I mean, I lost my 24-year nursing career.

And if you look—oh, and the college, who have the same lawyers, Thompson Dorfman Sweatman, who repeatedly come up in the conversation as doing this to nurses, they were also the lawyers for my college. And they just kept defaming me.

So, there's no settlement. I mean, they just committed crimes after another. My licence was suspended for nursing for—oh, first it was I was mentally unfit. And then it was—you know, I was cleared.

* (21:20)

And then I was, you know, like—you know, then I was—and then before I was perfectly fine and, you know, my—the way my doctors redid—stated in my

certificates was that I was fine as long as I didn't work in that toxic environment. And, you know, like, he said wow, you're the fourth one. He met—he had four patients, alone, who were getting bullied by people in the WRHA.

So, I mean, please stop letting it happen. I mean, I'm totally broke. I had to become a dishwasher, and that's not good for patients. And have to try and find a lawyer, like, on a cook's wage or a server's wage. There's no legal representation. I paid into lots of insurance and didn't get any.

It—and it is fraud, exactly what she said. It's fraud. I paid for protection, we pay for protection and justice that we don't get.

Ms. Naylor: Thank you, Ms. Fougere, for sharing your story with us. I know that's the second story we've heard today of—with similar—and situation with the same employer.

I'm very sorry that you've experienced what you've experienced and it's still obviously—*[interjection]* Yes, it's obviously still something you're still going through. It's very immediate.

And so, I really appreciate you taking the time to come here and share your story with us tonight.

Mr. Goertzen: Similar to Ms. Naylor, you know, thank you for the comments, and I guess it's surprising to me—maybe it shouldn't be—in the sense that there's now two different stories that I've heard—and I may have missed a few at the beginning—where there's collective bargaining agreements in place.

And I think the assumption often is that where there's a labour-negotiated collective bargaining agreement, there's a lot more protection or a lot more abilities to grieve and that sort of thing. And maybe that assumption isn't entirely correct, so I appreciate you bringing that forward.

Mr. Chairperson: Ms. Fougere. Would you like to respond? You may if you wish.

L. Fougere: Yes, there's no protection for nurses.

I find protection kind of is arbitrary, you know, and when I was reporting the serious health and safety violations such as no access to white code buttons, I thought of the other work sectors in the community that do have access to call immediate help and do have partners to work with who can help.

But home-care nurses work alone in the dark and I just feel that it's going to stay that way until we start getting some respect.

Mr. Chairperson: Seeing no further questions, we thank you for your presentation and time this evening. Thank you for coming to the Manitoba Legislature.

I will now call Elisha Bonnis, Elisha are you here? Maybe online?

We do not think Elisha is here, unless, Elisha, you can get our attention quickly. We're not seeing Elisha. I'll move along, we'll put that name to the bottom of the list.

I hope I say this next name correctly: Aalya Ahmad. Aalya Ahmad, is that an online individual? It looks like Aalya is with us. Please, could you turn your camera and microphone on, Aalya?

Hello, Aalya, please can you just test your mic, and tell me if I've mispronounced your name? My apologies if that is the case.

Aalya Ahmad (Private Citizen): Not at all, you pronounced it quite well, thank you. Can you hear me?

Mr. Chairperson: Yes, wonderful.

Well, you have 10 minutes and you have our attention, Aalya. Please go ahead.

A. Ahmad: Thank you to the committee. I am joining you from Gatineau, Quebec, on unseeded Algonquin Anishinaabe territory, and I am honoured to join all the brave people who have come forward tonight. I am holding their stories, and I'm glad to share mine in support of Bill 225.

Before the treatment I will describe, I was a well-respected labour activist with a track history of significant union victories and a known public voice as well as an adjunct professor and educator. I can't call myself any of those things any longer.

This is my story of the use of a one-sided non-disparagement clause to cover up the actions of abusers and further abuse me. So, my understanding from speaking with Professor Macfarlane confirms my experience that such clauses are also silencing mechanisms similar to NDAs, and it's my hope that they will be covered by this proposed legislation. I hope my story will demonstrate the harm that they can do.

The context is that after many years of being bullied and harassed to the detriment of my mental health, with very little action in response to my repeatedly calling out bullying and toxicity in my workplace, I filed a human rights complaint against my former employer, the Canadian Union of Postal Workers, where I had worked since 2009.

As a staff person on their comms team, I was often praised by colleagues and union members for my work coaching postal workers to be effective public spokespeople, which is ironic considering my own experience of being silenced by the union leadership.

The moral injury that I suffered from having my rights as a worker violated by an organization that I firmly believed had to uphold rights is very real. I continue to live with a documented diagnosis of post-traumatic stress disorder from those years of bullying and harassment. What made this worse was that my disability was deliberately used against me to pressure me into signing a one-sided non-disparagement clause, thereby preventing me from speaking out about my mistreatment.

Following my public resignation in 2018, facing questions from their membership, CUPW leaders at first attempted to silence me with two notices of libel for speaking about bullying and harassment I had experienced. Still struggling with full-blown PTSD symptoms, I faced a steady barrage of reprisals from CUPW, including financial intimidation in the form of withholding benefits owed to me.

CUPW leaders received many medical letters from my doctors, and took full advantage of my vulnerable condition to wage a relentless campaign of ongoing bullying and character assassination, even though they knew the impact their actions were having on me.

I signed the one-sided non-disparagement clause in the spring of 2019, in the context of settling a grievance on sick leave that CUPW was withholding from me. These proceedings were exhausting and went on for many hours.

Traumatized by having to face my bullies at the grievance mediation, I had to take prescribed medication for PTSD symptoms to calm my system, which worked to sedate me and made it difficult for me to think clearly. I was also intimidated by their lawyers' invasive demands for my full medical history prior to the session.

CUPW leaders additionally intimidated me during these proceedings by implying there would be further financial reprisals against me if I did not settle. I was advised by my union rep that if I did not settle the sick leave grievance then and there, it would prolong my human rights complaint for years.

After many hours in this pressure cooker, I agreed to give up the sick leave I was owed in the interest of not further delaying my human rights complaint. I

thought giving up my sick leave would be worth it in order to buy myself some respite and allow me to proceed with what I cared about most: fighting my harassment and discrimination case at the Ontario Human Rights Tribunal.

Once I was worn down and had agreed to settle, CUPW started making additional demands that were not in any way related to the straightforward matter of a quantum of sick leave. It was clear they did not want me publicly speaking out. They demanded I agree to not post anything on social media. They wanted me to take down a GoFundMe that friends had created for my human rights complaint legal fees, because they said it disparaged them.

They had brought examples of my social media posts along. They were—I was under constant surveillance. They were very, very concerned with shutting me up. I told the arbitrator I would not consent to be gagged, and that my intention was to try to help other survivors and make things better for all union members by making it safer to share experience of abuse in our movement, and demand accountability from abusers.

However, I agreed eventually to temporarily refrain from engaging in any disparaging social media posts until my human rights complaint was resolved. I thought the truth would come out at that point, and I badly needed a break. That's what I thought I was getting when I signed the non-disparagement clause: some respite and an end to this campaign against me.

I thought I still had the freedom to speak the truth, and I was wrong. My union rep and I, in my exhausted, traumatized and sedated condition, failed to catch that this non-disparagement clause was only for me, not for CUPW leaders.

A few days later, while I was still recovering from the ordeal, I received a call from a concerned member who informed me that the national executive board of the CUPW had issued a lengthy statement about me to all of its locals and regional bodies across the country, and published it on social media.

* (21:30)

The statement falsely claimed that I had taken money from the union and refused to pay it back. It stated that I had been found to be a harasser.

And it's important to note that this refers to the means they originally used to drive me from the workplace in early 2017, with a weaponized investigation instigated by my abusers. It's important to note that the

report from that investigation was withheld from me for many years until my lawyer finally obtained it, and we were able to see that the investigator had noted I had never had the opportunity to tell my side.

So, CUPW leaders pressured me into signing a one-sided non-disparagement clause in the naive hope their hostilities would stop, then turned around and viciously and publicly smeared me in a way that did me further grave psychological harm; firstly, because the claims were so damaging and untrue; and secondly, because having signed the non-disparagement clause, I could not speak out to defend myself against their smear campaign without additional litigation.

It's very difficult for me to convey to this committee, and I feel for the people who've come before me and named it, what full-blown active PTSD feels like on and off for years, continually being activated and reactivated every time I had to deal with these aggressions. While this was going on, I was dissociating; I was suicidal. This character assassination was coming from a union that I had loved, believed in and served for years.

The statement confused many postal workers who respected my work and were upset that I resigned. They were being told now by their leaders I was a thief and harasser.

The smear campaign against me intensified up to the eve of the convention where my abusers were running for election. The former CUPW leader slandered me about anonymous student comments on my Rate My Professors page while I was in Winnipeg presenting a paper on the centennial of the general strike. It was completely overwhelming.

When a group of my friends and supporters tried to defend me by publishing facts that refuted the smear campaign, CUPW dragged me back to the arbitrator for breach of the non-disparagement clause. They ruled that my participation was a breach of my one-sided non-disparagement clause. The arbitrator held me responsible for the posts of others who were only trying to defend me by telling the truth.

It was not explained to me at the time of signing that under a non-disparagement clause, telling the truth and trying to defend a person from being publicly smeared is disparagement. In this way, CUPW leaders got what they could not have obtained under defamation law: the silence and discrediting of their target of harassment.

They used this ruling to attempt to further financially intimidate me by demanding that I pay them

hundreds of thousands of dollars because they claim they had to hire security for their national union convention because of me.

Besides the monetary damages, the psychological damage of the ongoing harassment and 'silencing' this clause has imposed on me is incalculable.

While this clause will eventually end with the resolution of my human rights complaint at the Ontario tribunal, I don't know when that will be. It's been years. I did not realize at the time of signing that the tribunal will take this long, regardless of whether or not I settled that sick leave grievance by signing away my rights and freedoms.

In the meantime, I continue to live with PTSD, constantly exacerbated by the silence that the non-disparagement clause has imposed on me and the knowledge that those who have bullied, harassed and discriminated against me are very far away from facing accountability for what they did to me, and that they continue to enjoy the cover that their silencing of me has afforded them, funded by the dues of their members.

That is why I have come forward today, to urge you to support this bill and to think about including non-disparagement clauses in there also.

Thank you so much for listening.

Mr. Chairperson: Aalya, thank you for your presentation. We're going to move right into five minutes of questions.

And I see Mr. Lamont has the first question.

Mr. Lamont: Well, I mean, I am so sorry for what you've gone through. Again, it's been shocking. I've been shocked to hear a lot of the testimony.

And can you just—I think one of the challenges here is that there's an assumption, I think, that for—that if somebody in labour who's in a union, that they're going to have a problem, it's going to be with their employer and not with their union.

So, can you just talk about that—the challenge you faced in having—in where you could find recourse, or?

A. Ahmad: Yes, absolutely and that's—I mean, that's part of the moral injury. You don't expect to be treated this way by an organization that champions workers' rights.

So, I'm triggered every time I hear about unions and particularly CUPW, talking about—they had masks during the pandemic that said be kind on them.

And all I could think of was what they did to me. It was, you know—and this is not rank and file postal workers who I don't believe in a second would support what their leadership has done to me. It's just that they didn't want their members knowing about it.

But I would say that, you know, as somebody who has worked in the labour movement for a very long time, that often union leaders will mirror their employers. And, you know, I saw some very awful things that Canada Post would do to the postal workers. And, unfortunately, that's what they learn, that's what they know, and when they have employees of their own that's how they'll treat them. They learn from the boss.

Ms. Naylor: Thank you very much, Ms. Ahmad, for sharing your story, for being here with us tonight. And, as was already spoken, I am very sorry for what you've gone through and that you're still actively going through this.

I also, you know, it's just, it's a reminder to us that there—this bill may need some work, that there's some additional clauses and ideas that need to be captured for it to—and I will be out of time now, but thank you for coming.

Mr. Goertzen: Thank you, Ms. Ahmad, for joining us from Quebec, which is, you know, it's a great sort of ability to have this virtual presentation and the ability to hear from people across Canada.

Question for you regarding—and I don't want to put words into your mouth, so I hope you can clarify maybe if I got the wrong impression. It almost sounded like you were saying that the type of harassment, or whatever word you want to use, that you've experienced within the labour movement was, maybe, systemic. Or were you indicating that it maybe was more something you experienced and maybe not everybody—or not—there wasn't as much of it as maybe it sounded like?

A. Ahmad: It's a known toxic workplace, or was when I was there for many years. It was named as such.

There were many grievances filed. They had under—they had promised to do something about the bullying that had been repeatedly named; they never did. They only did a course after I had already been driven from the workplace.

But, in addition to the toxicity of the workplace in general and the, you know, the viciousness of the internal politics of that workplace, I would also say

that, yes, there were structural issues—definitely sexism, definitely racism and, you know, definitely a lot of corruption.

Ms. Naylor: I just have one more point of clarification, I think, for some of my colleagues less familiar with labour.

I hear them talking about the labour movement, like all unions are included in your statements—just like we can't talk about one corporation where there's harassment and say that that happens in all the corporations.

So, can you just clarify? My understanding is that your employer was the union that represents postal workers, and that is where you experienced these issues. Is that correct?

A. Ahmad: That's where I experienced the worst of it.

I did see problematic things in other movements, but for union members and people who, you know, were sort of mission-oriented in the labour movement, there's a real chilling effect on trying to speak out and name these things, because you are then considered outside the circle of solidarity. Right? You're attacking unions.

So, I would say that it's maybe one of the last bastions of where it's really not okay to call out your sisters and brothers for abuses. And I'd like that to change.

Mr. Chairperson: Ms. Ahmad, we thank you for your presentation. We sincerely do appreciate it.

We are going to move along now to the next presenter on the list, Marie MacRae.

Marie MacRae. I believe that is an online presenter. Is Marie MacRae with us this evening?

I believe Marie is. Marie, if you could turn your camera and microphone on, please.

* (21:40)

Okay, we're just going to work through a little technical thing here.

Susan MacRae, also online, former presenter, I think has her hand up. Susan?

S. MacRae: Well, I just wanted to say my mother is online watching the proceedings, but she's indicated that she doesn't—she would like to participate, but she's 84 and sometimes she loses her words.

So, she will not be speaking this evening.

Mr. Chairperson: Thank you for that, Susan. And please pass our regards to your mother. We appreciate her desire to participate and respect her communication this evening. Thank you.

We will now move to Barbara Capjin [*phonetic*]. I hope I say that correctly; forgive me if that's not the case. Also, Barbara appears to be online. Is Barbara here? Barbara is online; we're just going to pull her in.

Barbara, if you could make sure your mic and camera are on. Barbara, I'm told that you are unmuted, but we do not yet have video, and video is required to make a presentation.

Hi, Barbara. Please, can you just say hello? We want to make sure your mic is working.

Barbara, I cannot hear you. If you can just check your audio settings. You're currently muted at your end, I think. Try again.

I cannot hear you, Barbara. I'm told you are unmuted. We can see you but not hear you. Okay.

Ms. Naylor: May I ask for leave that we come back to Barbara so that technicians can work with her on this and that we go to the next speaker and then come back?

Mr. Chairperson: Is there—it has been asked that we give leave to return to Barbara, giving her—we move to the next speaker and then allow Barbara to maybe sort through the tech issues.

Mr. Goertzen: Like clarification, because I maybe misunderstood. I understood we could hear her before but not see her, and now we can see her but not hear her or we could never?

Mr. Chairperson: I don't believe we could actually ever hear her; it just appeared that we could hear her.

It has been agreed. Barbara, we want to hear from you. We're going to give you—we're going to let someone else in ahead of you. Hopefully, you can figure out those tech issues. If you have a headset, that may help. Sometimes that is—okay, you don't.

We're going to go to our next person. Why don't you see if you can figure out whatever you can, and we will come back to you? Hopefully, it'll work better in about 15 minutes.

We're going to see if Bridget Lontok is online this evening. Bridget Lontok? I'm told Bridget is online. Bridget, if you could please turn on your camera and microphone.

Bridget Lontok (Private Citizen): Hi.

Mr. Chairperson: Bridget, I can see you, I can hear you. Welcome to the committee. You have 10 minutes to make your presentation.

The floor is yours, Bridget. Please go ahead.

B. Lontok: I had a negative personal experience with an NDA. I would like to share my experience as it pertains to the importance of the protections provided in Bill 225.

How my NDA has been interpreted and applied over the years has changed. At times it has been interpreted and applied strictly; most recently it has been interpreted and applied leniently. I rely on the lenient interpretation today to disclose to you without breaching my NDA.

Section 3(e) of the proposed act binds an NDA is invalid and unenforceable unless the agreement includes an opportunity for the complainant to waive by following a process set out in the agreement, the NDA. I tried resisting my NDA with every ounce of strength I had. It wasn't enough. I ended up having one.

I felt like it hurt me. I felt like it was a dirty, shame-filled ocean that I was drowning in. The day after the NDA was made, when I was home and when I felt safe, I asked to be released and I didn't want the money. I was not released.

I was distraught and traumatized. I went into a spiral and had a mental breakdown. I tried to break my way out of the NDA. I breached, I disclosed my breach and I asked to be freed. I thought that if I triggered the repayment provision before I even received the payment that I could prevent the flow of consideration and void the agreement.

I felt desperate to get out of the dirty, shame-filled ocean that I was drowning in. I couldn't breathe. I was screaming for help and no one could hear or see me. I successfully prevented the flow of consideration, but I am forever trapped in my NDA.

Section 4(c)(iii) of the proposed act: a provision of a non-disclosure agreement is invalid and unenforceable to the extent that it prohibits or restricts the complainant from communicating information concerning the harassment or discrimination to a physician, psychologist, registered social worker, et cetera.

Not long after I spiralled into a mental breakdown, I sought the help of a counsellor. I wanted to talk about the harassment, but also the extent I went to avoid the NDA and failed. That had been especially

traumatizing. Due to the NDA, I was turned away from counselling.

I went to my family doctor and asked if I was really prevented from going to counselling. She confirmed that if I had an NDA, I couldn't talk. I brought this to the attention of the responsible party and my former union. I was expecting them to help me, and they didn't.

In a legal proceeding that I had initiated to determine if the NDA was made under duress, which a tribunal eventually found that it was not, I brought a motion for an interim order that would allow me to go to counselling. In a October 9th, 2019, decision, it was decided that it was not within the decision maker's power to decide.

I was not okay. I was having flashbacks, persistent intrusive thoughts, anxiety and panic attacks. I'd gotten a rash from the stress. I was having nightmares, trouble sleeping. My social activities were negatively affected. My parenting was adversely affected. I tried to bury it all in keeping busy. I was doing well at work and at school until I wasn't. And I gained a lot of weight.

I asked the responsible party and I begged them to allow me receive the care I needed for my mental health. In a September 21st, 2020, letter, the responsible party's counsel informed me that its client interpreted the minutes to allow me to speak to a psychiatrist under certain conditions. I was livid. I didn't need a psychiatrist, I needed some autonomy, I needed a counsellor of my choosing. I wanted a psychologist or a registered social worker, and I asked the responsible party to reconsider. It declined.

I could not have gotten through all of this without my support system. It was at a time when my NDA was interpreted and applied strictly, when it was considered a breach of my NDA to have the support for people who knew what happened, even before the NDA was formed. I couldn't have it through without them.

Section 5 of the proposed act: a provision of a non-disclosure agreement is invalid and unenforceable to the extent that it prohibits the complainant from disclosing that they entered into a non-disclosure agreement, as long as they do not disclose the particulars of the harassment and they make the disclosure as part of providing information about their employment history for the purposes of obtaining new employment.

My NDA required me to submit a letter if I needed a reference when applying for a new job. This letter was an extension of my NDA. As soon as I received the employment letter I let the responsible party know that I would never use it and I returned it to them.

* (21:50)

I was summoned to a private labour arbitration for breaching my NDA. I wasn't a party; I was just a witness under subpoena. The responsible party and my former union were parties.

I was ordered not to break my NDA again, but in the event that I did, I was ordered to self report the breach. I was also ordered to use the employment letter. I had already returned the employment letter and no one ever gave it back to me. I couldn't use that letter even if I wanted to, even though I didn't.

A few months later, I was invited for an interview, but there was a big problem. I had to complete a reference authorization form. The form would require me to authorize the potential employer to not only contact my references, but also my former employers. It was bad enough preparing for a job interview with an NDA; this form made it worse.

On the day of my interview, I had a panic attack and I couldn't get out of the car. I cancelled the interview last minute. I was sad and angry about losing the opportunity, and I needed the opportunity, so I decided to try anyway.

I broke my NDA. I sent the interviewer an email explaining that I didn't want my former employer contacted because I had an NDA. I disclosed, without providing the details, that I had been a victim of sexual harassment. And, by the way, my allegations were substantiated in my settlement and in the workplace investigation.

Then I reported to the responsible party and my former union that I had breached my NDA, just as I had been ordered to do, and I stayed in my car and cried.

I got into a lot of trouble for that. In a May 9th, 2018, labour arbitration decision, it was found that I disobeyed the January 29th, 2018, interim order.

The NDA did nothing to protect me. It didn't make going through the process of reporting a healing process at the time or in the future. It made it difficult for me in job interviews still to this day. It negatively affected my ability to contribute to my household, the provincial and federal economy. It was bad for my

mental health. For a while there, I wasn't the best mom.

I'm still recovering. I am in counselling now, but I don't talk about my NDA or what happened at work, although I think it would be beneficial.

I can't imagine that my NDA helped anyone else at work. The whole reason that I reported what happened to me was because I didn't want it to happen to someone else.

I've since changed careers. I'm now a licensed paralegal in the province of Ontario. I had to disclose on my good character questionnaire that I disobeyed an order. My character was investigated as a result. At the beginning of the process, the responsible party still expected me to abide by the strictest interpretation of the NDA. By the end, it was confirmed that my NDA was lenient.

I was expected to have candour in the licensing process, but I felt threatened and was afraid. When I told people that I disobeyed an order and so my character was being investigated, everybody knew I was supposed to address the situation with candour, and when I didn't disclose the NDA or that something bad happened to me, I wondered if they thought I was a child abuser or something.

When my contract was considered lenient and I was finally able to tell people that the order that I broke was in relation to breaking my NDA, from my perspective, people seemed to be afraid and uncomfortable knowing that I even had an NDA, or they were in disbelief that a real victim could've gotten in trouble for that, or they were angry that I had to go through this.

I got the impression that most people didn't believe that there could be such a thing as a lenient NDA. It was just like when I tried to go to counselling. Other people made the NDA stricter for me with their own inceptions about what an NDA had to be.

I admit that I made mistakes and that I showed a disrespect for a decision-maker when I disobeyed orders, and therefore I showed respect–disrespect for the rule of law. I don't encourage other people to disobey orders.

With laws like Bill 225, I hope that no one in Manitoba will ever feel like they have to break and disobey orders related to their own NDAs. I believe in Canada's democracy and the rule of law. That is why I'm here today. I still have faith in the legal system,

and that's amazing. This is how I can help change the law.

I'm hopeful that, one day, a similar bill will be passed in Ontario, where I live. I'm hopeful that, one day, an NDA won't prevent another person from going to counselling or missing out on job opportunities and negatively affecting a person's career or personal life. But I'm hopeful that the fear of being forced into an NDA won't prevent people from coming forward and raising their complaints in the legal system. Manitoba, along with PEI, can be leaders in making these important changes.

Even though I'm confident that I have not breached my NDA to you folks today, I'm still very afraid. But I am more afraid that, without laws like Bill 225, that things won't get better.

Thank you for listening to me.

Mr. Chairperson: Ms. Lontok, we are very grateful for your presentation.

We're going to move to five minutes of questions.

Mr. Lamont: Yes, I just want to say thank you so much. And again, I'm so sorry.

But I think you've expressed something when you talk about the fear that people have, that that's something that people are living with. So, I want to say how brave you've been and that you deserve praise for that, for actually being willing to choose. I think you often did choose what was right, even though it was hard.

And so I just want to—if you—I want—I just want to show my appreciation for you for overcoming that fear and for appearing before us tonight.

Mr. Chairperson: Ms. Lontok, if you wish to respond, you have that option.

There are other questions, if you wish to hear those as well.

B. Lontok: Just move to the next question, please.

Ms. Naylor: Thank you very much for being here to share your experience with us tonight, as much as you were able to.

I don't actually have a question, I just really wanted to thank you and, you know, for—it feels like every speaker sheds light on a new aspect that needs to be considered and thought about around this bill and around the implications for people's lives.

So, thank you.

Mr. Chairperson: Minister Goertzen—oh, I'm sorry. I didn't give Ms. Lontok the opportunity to respond if she wanted to.

Did you want to respond to Ms. Naylor, Ms. Lontok? You don't have to, but you have that option.

B. Lontok: Yes.

Mr. Chairperson: There's another question if you just want to go to that.

B. Lontok: Yes.

I would like to just say that I think that it's really important, something that Jan Wong had mentioned earlier today, the keeping the portion separate for the harm done and for the NDA.

And when I think about section 3(1)(e) of the act that says an NDA has to include an out clause, I think it's really important, especially for someone who—I didn't want the NDA right away, so I never got the money, I never had to give it up. But someone who maybe has had an NDA for a year or two, they shouldn't have to—the escape clause shouldn't require them to give everything back.

There should be some kind of proportion there to keep that separate, because I'm afraid that people will still be trapped in their NDAs if there's an escape clause if they can't afford that escape clause. So, I think I just want to add that.

Mr. Chairperson: Thank you.

Mr. Goertzen: I'll echo the thanks that have been offered by other committee members tonight.

Very concerned about the comment you made—if I understood it correctly—that you weren't able to seek support—medical support because of your NDA, even though another medical professional themselves would be under some sort of responsibility not to disclose information.

So, that was a concerning revelation, but I thank you for sharing that.

Mr. Chairperson: Ms. Lontok, if you wish to respond, you do have a bit more than a minute left on the clock.

If you wish to respond, you're welcome to do so. And if not, that's okay as well.

B. Lontok: I would like to respond. Thank you.

I think that it's very important to recognize that a lot of people think that, if you have an NDA like that, you can just ask to be released or you can ask for an exception. But it really is depending on the other side

letting you out or letting you have an exception. And it doesn't always happen. And I think that that's why the exceptions that are in your bill are so very important.

And the public needs to be educated about the exceptions, because people have their own ideas about what an NDA is. So, even if someone has an exception, if people don't know about it, they might not believe the person that they actually are allowed to do something.

So, I think public education is very important.

Mr. Chairperson: Are there any further questions?

Seeing none, Ms. Lontok, we thank you for your presentation and for joining us this evening.

* (22:00)

We will now revert to Barbara Capjin [*phonetic*]. I hope I'm saying that name correctly. I just seek advice here on the status of Barbara's feed.

Barbara Captijn (Private Citizen): Hello. Can you hear me? Hello?

Mr. Chairperson: Barbara, I can hear you. I cannot see you.

We have got back-up plans if this doesn't work, but if you're able to turn your video on—your camera on. Yes, we can see you, and can you say something?

B. Captijn: Yes. Hello, can you hear me?

Mr. Chairperson: We can hear you.

Welcome to the committee, and you have 10 minutes to present, after which there'll be five minutes for questions.

You have the floor, Barbara. And how do I say your last name?

B. Captijn: Captijn.

Mr. Chairperson: Captijn. Okay, my apologies for mispronouncing that earlier.

B. Captijn: No problem.

Mr. Chairperson: Barbara, you have the floor. Please go ahead. You have 10 minutes to make your presentation.

B. Captijn: Thank you for your patience in getting me connected. And thank you very much for this opportunity to present to you on Bill 225, The Non-Disclosure Agreements Act.

My name is Barbara Captijn, and I live in Toronto. And I'm here today as a member of the public who's had experience with signing non-disclosure agreements on two occasions.

To me, section 5 of your bill regarding employment history is very important. As I understand it, this section renders an NDA unenforceable or invalid when it prohibits the complainant from disclosing why they left their previous employment.

As it stands now, without this bill, those who have had to leave their employment due to harassment have not been able to explain to a future employer why they left, for example, a high-paying senior position to move to a lower paying one, for example, at a smaller company.

These unexplainable gaps in someone's CV make it difficult for complainants to advance their employment. Some career trajectories are hindered by this lifelong, and it's wrong that the consequence of bad behaviour is borne by the victim of someone's wrongdoing and not the perpetrator through the use of an NDA.

This is a lifelong problem, as I mentioned, since most NDAs are unlimited in time and geography, so that if a complainant is applying for a job in another country 10 years after the conduct took place, they still have to be quiet about what happened to them and why they left their job. And this is very unfair.

And I think section 3(f) of your bill is also very important to limit the duration of NDAs. I would also say NDAs should be geographically limited as well, so that a person applying for a job in another province or another country can't be prevented from talking about why they left their previous job.

It's almost impossible to describe the reasons for taking a step backwards in one's career. I've had this experience, and it involves basically lying to a future employer to save the reputation of the harasser and the company they work for. This lets the wrongdoer off the hook and puts the burden, lifelong, on the victims to cover up for them.

I also think section 3(d) of your bill is very important. It says that, in order for an NDA to be valid and enforceable, the compliance must not, quote: adversely affect the health or safety of a third party or the public interest. Unquote.

That's a good clause because it means if a former boss has made a quid pro quo offer of advancement to

you or threats of reprisals for rejecting these advancements, it's not in the public interest for the victim to keep these quiet, as many of your previous presenters have shown, and it may adversely affect the health and safety of future employment candidates who may encounter the same behaviour from the same person.

There—one or two other issues I'd like to add to my previous comments, and that is that NDAs have been creeping into other areas of settlements, as well, not just harassment and discrimination complaints.

For example, in Ontario, through mediation programs, some new homebuilders are requiring buyers to keep quiet about construction defects in exchange for a measly settlement. Also within the past year, some new homebuilders are using NDAs to require homebuyers to be quiet about price escalations they've made after contracts have been signed and the purchase price has been agreed on.

These relatively new uses of NDAs prevent consumers from warning each other about, for example, a builder's performance, which may contravene the building code or the builder code of ethics, and it prevents consumers from reporting this to regulatory authorities who are responsible for disclosing 'accurate'—accurate builder performance records on the provincial register of home builders.

Getting legal advice is not the answer. Many victims can't afford the extra thousands of dollars to have an experienced lawyer review an NDA. Many companies who are eager to save their reputation and the reputation of the wrongdoer, who may be a top revenue producer for the company, they simply say to the complainants, take this or you get nothing.

The use of NDAs is not reined in—sorry, if the use of NDAs is not reined in by important acts such as your Bill 225, this problem will continue to grow and fester and have adverse affects on many areas of our society. These uses of NDAs, in my opinion and experience, are not in the public interest and don't protect the health and safety of employees and consumers.

I thank you very much for bringing your bill to the Manitoba Legislature. I hope, in future, that Ontario will do the same and follow your example.

Thank you very much for the opportunity to speak.

Mr. Chairperson: Thank you, Ms. Captijn, for your presentation. We will now move to five minutes of questions.

The floor is open for questions.

Mr. Lamont: Yes, thank you very much.

I mean, you've shed yet another—this is yet another facet of how NDAs are a problem in ways that are totally unexpected. But, fundamentally, I think by preventing people from speaking they prevent people from warning each other. I think this is one of the things that's the heart—at the heart of the problem.

If you could talk—can you talk just a bit more, if you—when you were talking about sort of a protecting a star performer or a chief revenue or—if you're able to, can you expand on that?

B. Captijn: My—excuse me—my experience is that a company will try to keep someone in their employ who's producing a lot of revenue for them. And if the person doing the harassing is a top producer, then my experience is that even the human resources people start to—you know, they circle the wagons to protect, you know, the goose who lays the golden egg, so to speak. And they've used some employees as expendable.

And usually what happens in these harassment situations is that the employee being harassed feels so much stress and pressure and is being ostracized by the boss and people who support him that the stress is so much that you have to leave.

And companies are reluctant to get rid of top—you know, their stars. Look at the Jian Ghomeshi case at—that we witnessed several years ago. If someone is a—and Harvey Weinstein, all of these people who were powerful, top producers in their industries, the board and the management are reluctant to get rid of them.

And that makes people who are the victims, makes them expendable, and they ultimately have to leave. Usually that's what happens. That's what happened in my case.

Ms. Naylor: Thank you very much, Ms. Captijn, for your—sharing your story, shedding light on yet further aspects of how NDAs are used and abused.

* (22:10)

And yes, just the clarity that you spoke with, like, explaining different facets of this was very helpful to me. So, thank you very much.

Mr. Chairperson: Ms. Captijn, you have the option to respond if you so choose, but you're not obligated to; there are other questions around the table.

B. Captijn: I'd just like to thank you for your courteous and professional manner in which you carry out

these committee hearings. I've made several deputations at committee in the legislature in Toronto, and I see the difference here in Manitoba.

I'm very grateful that you are respectful and professional. I really notice the difference, so thank you.

Mr. Chairperson: You're welcome. It's a great province, and we encourage all presenters from around Canada consider moving here.

Are there any other questions?

Seeing none, we thank you, Ms. Captijn, for your presentation.

And we will move along. The next presenter is Candide Allen. Am I saying that correctly? Candide, welcome. You've waited a while. *[interjection]* Well, thank you.

Well—*[interjection]* Candide, before we get started, I'm wondering if you can move that microphone so it's a few inches from your mouth, as close to your mouth as you're—as you can get it, because we want to hear what you have to say.

Candide Allen (Private Citizen): I probably don't need it.

Mr. Chairperson: Well, we want these guys to hear it so they can type it out later on.

So, Candide, you have 10 minutes, and then—you've heard this 21 times this evening—five minutes after that for questions. We don't have to take all five, and you don't have to take all 10, but that's how much you have.

So, we certainly welcome you here, and you have the floor for 10 minutes. Candide, please go ahead.

C. Allen: I've come here with a fair amount of experience from a nursing perspective. I've practised for over 50 years, and I've enjoyed my profession, practising it, very much.

I've run into my snags, and listening to all these stories has been very interesting for me because I can validate what these people are saying, what they've experienced and some of which, it's quite unbelievable. Man's inhumanity to man at times never ceases to amaze me.

And in my tender elder years here, I'm practising in Florida now; I've chosen to leave Canada for—you know, Siberia north—for Florida. I didn't enjoy the hurricane we just had. So, we—there's problems either side.

But let me go back. I feel like I'm knitting; I'm going to pick up stitches here. One presenter says they have a tremendous financial burden, and I can assure you that this is true. Not only are people precluded from working and feeling good about the work that they do, but they're precluded from earning a salary, and most of people, whether they're nurses or ITs or lawyers or whatever, they have obligations.

And it's very frightening for these folks. Having been in that position myself, I can verify that. It's no wonder they have issues, emotional, mental issues; and, actually, health issues, not just from an emotional point of view. These people tend to get sick more. So, this bill is extremely important.

But I'm going to stop for a moment because I want to speak to something else. I was thrilled when the whistle-blower bill came in. I spoke with Jon Gerrard because I felt very strongly about that and how that needed to protect people. I said to Jon, if this could happen to me, this could happen to anybody. And I've heard this throughout this meeting, with people saying, how could this happen to me?

So what I thought was, now they have the whistle-blower. You could tell your story and you won't be reprimanded for it; you won't be fired. You'll be protected.

It was a wonderful mouthful, but it had no teeth; it was 'indentuous;' it didn't work. It just plain didn't work. I skittled back to Jon Gerrard's office and said, What, what, how could this happen? And he was very nice. Everyone's very nice. But they tend to be 'indentuous.'

I hope this bill, being one more tool, will afford some teeth. I don't know where the penalty is for the wrongdoer. I don't know how to support my colleagues.

And being the oldest one in the room—I can assure you I think I am—I can tell you many of these people come to me, say, you've experienced some of this; what can you tell me? I don't mind sharing. I'm certainly not embarrassed. I've practised past the WRHA in Florida, in California and in Illinois without any repercussions or any shaming.

I just went through the—I went down to save my boat, to be honest with you, my sailboat, and ended up being seconded to rescue and recover people in Fort Myers, and it was basically an Armageddon. It was pretty horrendous. And they're not worried about who they're calling. They called Nurse, and we go. And I am practised, I am—I license, so I can certainly do it.

But this is the kind of thing when the nurse stood up here and said, you are losing us as nurses—this is what Manitoba's losing.

I remember my mother when I was young. She said, dear, in order to be successful in this world you, have to have three—one of three things: you have to have beauty, brains or money. She paused. Good thing we're smart, she said. That's the way, you know, you learn. You learn your values from your mother.

You go ahead and look at the law, hoping to pass bills that will support us, support each other; that we don't have to be embarrassed.

Again, I can really only speak to nursing because I don't know how to be the other things. But we have a difficult position; what I call it is the triangulation of responsibility. I am responsibility to this man who employs me. He's my employer; he pays my way. I have to do the things the way he wants me to do them unless they're wrong.

But next, I'm responsible to my college that tells me how to practise, what my scope is. Next, and I think most important, I'm responsible to myself. Ethically, I have to do what's right, and I know that—I'm never have a question about ethically.

So, these people are trying to do what's right, the people that are—all of them, not just the nurses, the lawyers, whoever—they're trying to do what's right and report what's wrong, and they're punished for it. And this is one of the things that sticks in these people's craw and literally makes them crazy, and they suffer.

I have been around for the nurses' deaths. They—for whatever reason, there are far too many suicides that I've seen, both men and women. They take this very hardly; it's their profession, it's their work, it's their support to their family. It's a humiliation. I must be an odd duck because I didn't feel any of that; I just said, I'll go elsewhere.

But I do think that—I support this bill. I hope you support this bill. I think the only thing necessary, you've heard it before, is: for evil to prevail is for good men to stand by and do nothing.

Please help this bill.

Thank you.

Mr. Chairperson: Ms. Allen, we thank you for your presentation.

We'll now commence five minutes of questions, and no question can exceed 30 seconds, though your

answers can be as long as they want, up to the five limit–five-minute time limit.

Mr. Lamont: Thank you very, very much. The one thing—and I think you zeroed in on, and you can talk about it more if you like, but on one of the biggest challenges is the fact that it's the people who care the most who are getting hurt the most, and the people who—because it's people who are trying to report and do the right thing, right, that they're motivated for all the right reasons. And they're—and part of what is so difficult is that they're being—exactly that, they're being punished for doing the right thing.

* (22:20)

And that is a large motivation for what this bill brings, but if you could just talk a bit more about that or expand on that. *[interjection]*

Mr. Chairperson: Ms. Allen, sorry, I just need to recognize you for—Ms. Allen, please go ahead.

C. Allen: We all have different personalities and different ways of being. Most people are very compliant and everyone wants to help. They enter whatever they do to do a good job and to be pleased with themselves and have others pleased with them. I mean, it's motherhood and apple pie there.

But some people are risk-takers and they'll say, that's not right. Other people will say, you know, look the other way, not—don't say anything, don't rock the boat. But when your mother's life is in danger, the boat needs to be rocked and people have to stand and say something.

Most of these people that I have had dealings with have had situational problems where they entered and said, follow or do something, or how do we do this, it's not in the book, let's try it. And these people are punished for that ingenuity, for the ability to think outside the box.

And I'm talking—not talking about lunatics. I'm just talking about people who are doing a good job. If you stand up and speak, you mostly will be punished—or if you question. They want herd mentality and some of us just aren't herdy.

Ms. Naylor: I don't have any questions, I just want to thank you very much for your testimony tonight and for being here.

Mr. Goertzen: I don't know if you'll be the last presenter or not because I think they call the roll again. There might be people who are there. But, as much I'd like to hear from other people, I think it would be

fitting if you were the last to present because you encapsulated things well and you did a very good job of taking information from other presenters and giving us a bit more of a 30,000-foot look on those sort of things.

And in baseball, we call it a closer. The closer comes in and finishes the game. Maybe in Florida you're watching baseball sometimes, too. I think you were a very good closer tonight, if you are, in fact, the last speaker.

So, thank you.

Mr. Chairperson: Ms. Allen, if you wish to respond, you may do so.

C. Allen: Well, just a quickie, a quick answer. I enjoy speaking, I've done a lot of it. I was—the Red Cross for Manitoba for many years. I've done many and splattered things, all kinds of different things and I do enjoy it.

I would do—I would pay for the privilege of having had my career. I just don't tell my employers that.

Mr. Chairperson: Ms. Allen—are there any further questions?

Seeing none, we thank you for your time and presentation, and for joining us here this evening.

We have reached the end of the this and so we will return now to those names which when called the first time were unavailable.

I will now call for a second and final time, Lisa Mizan. Is Lisa here or online? It appears Lisa is not here. Lisa will be struck from the list.

We will now call Krista Smith. Is Krista here, in person or online? It appears Krista is not here. Krista will be struck from the list.

Douglas Kuny, I hope I say that correctly. Is Douglas Kuny here, virtually or—I'm told Douglas is here virtually.

Please, could you put your camera and microphone on, Mr. Kuny?

Douglas Kuny (Private Citizen): Hello.

Mr. Chairperson: And could you put your video on, please, sir.

D. Kuny: Okay, we're trying to do that. Hello.

Mr. Chairperson: I can hear you but I can't see you.

D. Kuny: And I—hello? So just—I'm trying to fix it.

Ms. Naylor: Can we ask for leave—oh, there we go.

D. Kuny: There, how's that?

Mr. Chairperson: Okay. Now, we can see you, but we cannot hear you—[*interjection*] All right, now we can hear you and we can see you.

D. Kuny: There we go. We are rolling now.

Mr. Chairperson: Okay, now I want to ask you a quick question: How do I pronounce your last name?

D. Kuny: It's Kuny.

Mr. Chairperson: I got it right. Okay, that's—

D. Kuny: Yes, you did. Yes.

Mr. Chairperson: Well, Mr. Kuny, thank you for joining us here. We recognize, at least, here in Manitoba—I'm not sure where you are—but it's not early in the evening here. We thank you for joining us. You have 10 minutes.

And I'm told you're in Winnipeg, so that's—we do appreciate you being here with us virtually, and you have the floor for 10 minutes, after which there'll be five minutes of questions.

So, please go ahead; make your presentation. You have our full attention. Thank you for joining us, Mr. Kuny. Please go ahead.

D. Kuny: Is the timer—oh, you're—okay, there's the timer. Okay.

I'm a 68-year-old French-Ukrainian male of large stature, as you can see. I'm six foot, 390 pounds. In the years 2001 to 2002, I achieved a practical nursing certificate from Assiniboine Community College.

As an LPN licensed by the College of Licenced Practical Nurses of Manitoba, the CLPNM, which is mandated through legislation through the Manitoba licensed practical nurses act by the Manitoba provincial government to regulate, through standards and practice, direction of LPNs in Manitoba. Provincial government of Manitoba mandates the CLPN to regulate LPNs.

I was employed then by Parkland regional health authority. I signed an employment agreement and a confidentiality agreement, which, as we know, is a PHIA agreement, The Personal Health Information Act. I was employed at the Swan River personal-care home.

Now, the rationale for PHIA, as we know, is nurses are supposed to be a trusted profession, with patient confidentiality of utmost importance.

Years 2008-2009, a nursing diploma from Red River College. As an RN, I was licensed through the College of Registered Nurses of Manitoba, CRNM, then another mandated Manitoba provincial government entity. The college, as we know, a bridge to nurses of Manitoba, emulates and is responsible for overseeing the practice of registered nurses in our province. It exists because a CRNM is mandated by provincial legislation through the regulatory health professional act, the RHPA, previously the registered nurses act.

At that time, then, I was employed with the Winnipeg Regional Health Authority, the WRHA, another entity mandated by the provincial government, governed by political power—party and power through the Health Minister and by the many acts and regulations of Parliament. I was—I signed an employment agreement as a home-care nurse, and again a PHIA agreement. Previously, for the WRHA, I was employed at Fisher River First Nation and Berens River First Nation.

Now, through this, I completed an actual nursing degree from Memorial University of Newfoundland in 2016. During the time, I was under unjust persecution from the CRNM and—at this time, even though I was deemed in my settlement agreement to be retired on August the 8th, 2013. My licence has been suspended by the CRNM since about 2012, and after my second CRNM disciplinary panel hearing which ended this removal of my licence by the CRNM in 2016.

As we know, the PHIA confidentiality agreement is different in context from an NDA. In 2011, I received a five-piece suspension filed with the CRNM by the WRHA. CRNM invest—and CRNM investigated it.

* (22:30)

Note, on the accusations from the WRHA and CRNM, because of the argument from myself, I produced enormous amounts of factual evidence that clearly show that I was unjustly and falsely blamed by the WRHA. CRNM never stated that the accusations were false, but the outcome of this investigation was that I was be—do an undertaking in which I take a course in behavioural management and have to write a paper.

Now, in 2013 I received a two-day suspension by the WRHA, which was filed with the CRNM; 2013, again I was terminated from employment by—from the WRHA, and the CRNM was notified.

The CRNM was clearly conveyed that arbitration was forthcoming in 2014, but the CRNM chose to investigate these accusations from the WRHA before that happened. Why? We don't know. The WRHA, due to their lack of wisdom, placed in my personnel file patient charts, occurrence reports, mood treatment forms, patient reports, pictures of which were all a breach of PHIA against the WRHA; but very helpful to me, on the accused, as the CRNM investigators would not access any documents to which the WRHA accused me of wrongdoing.

The accused used these very helpful—that's me, the accused—pieces of evidence to produce a package that clearly showed his innocence in the false and unfounded accusations from the WRHA to the CRNM.

Just before arbitration in December of 2014, the Manitoba Nurses Union, MNU, with the WRHA put together a settlement package for me, the accused. Daniel Kushneryk from the MNU, Jocelyn Grey [*phonetic*] from the WRHA, and myself, on December 4th, signed a memorandum of settlement where all non-disciplinary and disciplinary letters and accusations were rescinded by the WRHA against me, including the letter of termination, and I was deemed to have been retired as of August 8th, 2013.

The MNU made it very clear that just me, the accused, had got to accept the settlement, that the MNU would cease to be involved in the matter, and therefore, the accused would be by himself at arbitration. I demanded then that the C-N-R-N-M be sent a letter conveying the rescindment of all accusations against myself.

It was clearly stated by myself to the MNU that I would only agree to the settlement and to signing the release and confidentiality agreement, the NDA, through the WRHA and/or the MNU, that they would pressure CRNM to cease the unjust and unfair persecution against me.

Throughout the CRNM investigation phase and through the disciplinary panel hearing, what was seen was discriminatory and unjust. It would become—which myself, adamantly and continuously, expounded my innocence and the need for proper documentation and evidence, which I, due to my knowledge of the WRHA, knew that these documents existed.

On December 11th, 2014, a letter to Tracey Legary, CRNM manager of professional conduct, clearly detailed the rescindment of all disciplinary letters; was sent a letter—rescinded all of the disciplinary action.

Now, that—what happened at the disciplinary panel hearing on July 8th, Richard Deeley and counsel for the MNU, with Dan Kushneryk, who was to appear to testify, and Scott Hoepfner, who was WRHA counsel, detailed in the transcripts, pages 495 to 535, they both voiced adamantly that the NDA existed and that I would be in breach of the NDA.

The CRNM deposed that and demanded that there be disclosure and that they would listen to all the evidence at the disciplinary panel hearings. Now, again, a letter was sent to me by Scott Hoepfner of Thompson Dorenhoff [*phonetic*] Sweatman, who was the WRHA counsel, threatened me with—that I would be in breach if I disclosed anything.

I—as a result of—the CRNM continued with the investigation. What—the net result of all this was that there was never any harm done or court proceedings done against me—was the—with the NDA.

It gets a little bit better, because this went to the Court of Appeal, and the Court of Appeal ruled in favour of the CRNM, which also meant that the actions of the CRM were just in stating that the NDAs—could I have a little bit more time, please?

Mr. Chairperson: Mr. Kuny, yes, your time has come to an end.

Is there leave for Mr. Kuny to have—

An Honourable Member: Yes, why don't we add three more minutes to that.

Mr. Chairperson: Mr. Kuny, the committee has offered you three more minutes, so I'll just set the timer, I don't know if you can see that. But please go ahead, I'll make it three minutes.

D. Kuny: Oh, I totally do.

Okay, so—okay. So, then, during court—and even in the civil procedures that I'd launched against the WRHA—there was no direct feedback against me for exposing any information from the WRHA.

Now, this—the—as I mentioned, the Court of Appeal ruled that the CRNM acted properly with this, so it set definite precedent—it was in the court system—at a, well, everything is mandated by the provincial government that the C-N-R-M could, I guess, overrule the WRHA.

The outcome the whole thing too was—is—the ruling of the CRNM was that as the action against me was that I didn't I do a paper back in 2011—now—which was obsolete because I have this rescindment from the WRHA, but they took away my licence because I

didn't do a paper. And that was all. There was no harm done to any patient or anything like that.

Now, this matter, now, is before the Supreme Court of Canada. Now, I've been communicating with the Justice critic, Ms. Naomi [*phonetic*] Fontaine, and asked in many emails and telephone calls that, for the benefit—or, for the—it would be in the best interest of Manitoba people. And she's been a good advocate for Aboriginal 'justin' and rights in that they're in the system for Aboriginal—especially Aboriginal women.

But it seems that she's never returned my calls or whatever, and all I was asking for—and it would be her duty or, you know, in her—in best interests of the Manitoba people that she communicate with the Supreme Court and ask them to continue with the hearing just to get the degree of unjust and unfair—if it is so—with our Manitoba judicial system. I have—to date, I haven't heard anything from her.

Now, what did—what all of this is, is all of it revolves around NDAs, because if the Manitoba judicial system has problems and they just kind of let slide provincially mandated entities like the CRNM—and the WRHA doesn't do anything about it, like the whole thing has got to be looked into by you, yourselves, and—with the help of the [*inaudible*] also you, yourself, as legislators.

Mr. Chairperson: Mr. Kuny, your extended time now has expired. I'm going to have to cut you off there.

* (22:40)

There is a provision for five minutes of questions. I do want to ask the committee if there are any questions.

Mr. Lamont: Mr. Kuny, I just want to thank you very much for your testimony tonight. I appreciate it very much.

Mr. Chairperson: Ms. Naylor—Mr. Kuny, you're welcome to respond to Mr. Lamont's comment, if you would like to. You're not obligated, but you may if you so choose.

D. Kuny: Yes, I hope that—I had to go through this really quick but, I mean, the matter of a provincially mandated entity of, kind of, just stating or overruling another Manitoba provincial entity over these NDAs—I guess I've just been fortunate that, you know, was the gist of it and there was no repercussions.

But, I mean, the whole thing really needs to be looked at—into by people that sit in your building. And, you know, this is something—what is just and fair

as it, you know, relies—or falls back on these NDAs and everything that they mean.

So, I'd like to say Bill 225 moves in the right direction but, you know, legislators like yourselves need to be more involved.

Ms. Naylor: Thank you, Mr. Kuny, for sharing yet another perspective on the concerns with NDAs and the real life impact for folks with—through NDA agreements.

Thank you.

Mr. Chairperson: Mr. Kuny, if you wish to respond, you are free to do so.

D. Kuny: Yes, just—I mean, it's not fair and just of losing your licence, my career, my profession, my income over the fact that I didn't do a paper and just because somebody wanted to exert some power and authority at the CRNM.

And it's—you know, I say, now it's going next to the Supreme Court of Canada and hopefully, you know, the people of Manitoba will want to know if we are really dealing with a just and fair judiciary.

Mr. Chairperson: Are there any other questions?

Seeing none, Mr. Kuny, we thank you for your time and for presenting this evening.

We will now move to what I believe is the final name on the list of an individual who was unable to present earlier. Elisha—I hope I say the last name correctly—Boniss [*phonetic*], or Bonnis? Is Elisha with us? I'm told Elisha is not with us.

That ends the presentation portion of the evening. Just bear with us for one second while we get organized for the next part of the proceedings.

* * *

Mr. Chairperson: Having concluded presentations, we now move on to clause-by-clause consideration of the bill.

Does the bill's sponsor, the honourable member for St. Boniface (Mr. Lamont), have an opening statement?

Mr. Lamont: Yes, I do.

I won't say much. I just have to say that I don't think—there's very little that I can say that can add to what's already been said by the presenters, whose testimony—I was often shocked but it also shows the breadth of the impact of NDAs across society.

When we're talking about police, health care, corporations, unions, the media, universities, nursing, education—is that—and I know from speaking to other people that it's only the tip of the iceberg. I know that there are other people who had considered speaking today who were afraid. There are still people who are being pressured into signing NDAs, and they don't want to.

But the fact that we were able to do this here at committee—and I will express my gratitude to the Minister of Justice (Mr. Goertzen) and the government for having—and the opposition—that we had an opportunity to hear people at committee today because we, as legislators, have—our single most important right that we have is freedom of speech. It's right there in the parliamentary—the story of parliamentary privilege, and it is only because we could share that right with presenters today that they were able to tell these stories.

And I am shocked by these stories, as well, in part because they are all concealed from us. It's only the fact that we were actually able to sort of take the lid off about these things and hear these people who normally are isolated. They're fearful for coming forward—for very good reasons: because they have been retaliated against. They have real risks of financial loss, of having their lives and their careers ruined. And it has been happening. It happens over and over, in ways that we don't know about.

And it affects corporations, but it's also affecting—it's in the public sector where it's—we don't even know it. We literally—as legislators—will not be able to have access to this information because it's all being swept under the rug by an NDA.

And of the themes that I think about, one is about being a whistle-blower. And whistle-blowers are almost—often punished. They're being punished for doing something right. They're challenged—and often when we hear about these things, people are challenging authority, but not in a disrespectful way. They're actually doing their job and saying, look, we have to challenge authority because somebody's doing something wrong, whether it's Officer Donovan from Waterloo or whether it's individuals in Manitoba.

But I also want to—there was a thing—and I do recognize that there were some excellent, excellent suggestions today about considering non-disparagement clauses, considering expanding to prevent reprisals, which was Officer Donovan's request. There are people—there are other jurisdictions where it's been

made retroactive; I don't know if there's any possibility of that at all.

But I want to thank everybody who came forward and who spoke today, because it took enormous courage. There's an enormous—when people are coming forward and speaking through fear, they are doing it for a good reason—that they have, and they've experienced PTSD and had all that swept under the rug.

So, I do hope that we can have support for this bill, at least through to the next stage. I recognize that everybody's agreed that there are impacts, that there are ways it could be improved. I still think it could be—those could be improved later, but I also think that, from what we've heard tonight, it shows that there's a very compelling reason that these NDAs cannot—no longer be used in this fashion.

Because it's contrary to justice, it's contrary to freedom of speech, and it's contrary to—when I think about it, the most fundamental thing that we have as politicians is the freedom of speech and that privilege, and NDAs offer the absolute opposite of that. There's no public interest, and there's no justification in having them operate as they currently do.

So, with that, I'll turn it over to you, and I thank you for—everyone for your time and your patience, for staying around because it has been—I did not know what to expect. It was extremely intense and difficult, I know, for some of the presenters, so I thank them again for their courage, and I thank everybody here tonight for being part of it.

Mr. Chairperson: We thank the member.

Does any other member wish to make an opening statement on Bill 225?

Ms. Naylor: We've heard tonight that non-disclosure agreements are increasingly common across many types of workplaces and have been used against 'complainants' who have experienced workplace bullying, sexual harassment, sexual assault, racism, violence and discrimination at work and even in families and other non-work sexual assault cases.

We've heard tonight how NDAs have been used to protect perpetrators and predators and silence victims and survivors. And even, in some cases, they've been used to re-victimize people. It's also been used to silence whistle-blowers.

* (22:50)

People have not always fully understood the implications of the agreements or felt—have felt pressured or coerced to sign them, and we've heard that these documents can be lengthy and written in complicated legal language that people don't always understand what they're signing, or they're just desperate to get away, to receive, you know—or they need to receive financial compensation so they can pay their bills when they're losing their jobs.

In some cases, as we've heard, survivors don't recall what they've signed decades ago, but are still bound to keep their own personal story private and even hidden from loved ones, therapists, health-care or spiritual-care providers.

This can potentially lead to accidental contract violations in the future, and in not fully understanding the terms of the agreement, victims can break the terms without realizing it, resulting in piling on further extensive legal processes and fees.

In the mid-'80s, around the same time NDAs began, people started talking publicly about sexual abuse and sexual harassment at home and at work. I consider Anita Hill a heroine of mine for her courage in speaking out in 1991 against the workplace sexual harassment she experience from a Supreme Court justice.

Stories like Ms. Hill's and others led to many organizations implementing sexual harassment policies in the '80—or late-'80s and early '90s. I was involved in the implementation of those first policies in two different workplaces.

But what it seems is that as more victims have spoke out that the NDA became a tool to silence those voices. And not only silencing victims, as journalist Jan Wong showed us tonight, NDAs have allowed a predator like Peter Nygård and others to spend decades 'continualling' to sexually assault, harass and traffic many, many more women. NDAs stopped Nygård's victims in their tracks, but they allowed him to continue on.

Bill 225 opened the door for all the speakers who shared their stories tonight, and I thank my colleague for bringing this bill forward. I wanted to, again, thank each presenter for their courage and efforts tonight.

I hear from the feedback that we've had that the bill may need to be expanded to address the non-disparagement clause and to address protection for whistle-blowing. It—as one speaker said, it needs to have teeth, and we do need to get it right.

Earlier today, I heard the Minister of Justice (Mr. Goertzen) indicate that he and the Auditor General have sent this bill to the Law Reform Commission asking for their recommendations, and I heard that the testimony from tonight will also be shared with the Law Reform Commission, so I look forward to hearing the recommendation from the Law Reform Commission, as I know our whole team does.

And while it may take just a little more time to get this bill right, I believe that tonight signals a turning point in the use of NDAs in Manitoba, and I hope that we will be able to continue this path forward.

Mr. Chairperson: We thank the member.

Does any other member wish to make an opening statement?

Mr. Goertzen: Thank both of my colleagues for their statements, in particular the member for St. Boniface (Mr. Lamont) for spearheading this bill.

And we've had discussions about the importance of this committee tonight and when we agreed to call the committee, even though the—it's been referred—the issue's been referred to the Law Reform Commission, I wasn't entirely sure what the outcome of the presentations would be, but I must say, I'm impressed. Not impressed by what I've heard in terms of the content, because I think we all have some shock and concern about the different things that we heard, but very impressed that presenters were able to come forward, speak—often, speak very emotionally and to be able to do that in a way that provided us, I think, a lot of information.

We've also learned a little bit, as I mentioned earlier, about parliamentary privilege. And I have been the House leader either in opposition or in government for 15-or-so years. I actually didn't know until a couple days ago and this discussion was going on that parliamentary privilege extended to the presenters at a committee. So, that's very interesting, and it provided this committee hearing to be something entirely different, I think, and certainly more well informed.

The process, in term of the Law Reform Commission, as mentioned by my friend from the NDP, the Law Reform Commission deals with a number of different complex issues in law. They're not well known because a lot of the areas of law they deal with, like the liens act or different things in torts, aren't particularly interesting to folks other than lawyers because it's pretty detailed and it's pretty complex.

This is—I don't want to describe it as a complex area of law, but it is important that it's done right because there can be unintended consequences, and all of us have learned the challenges of unintended consequences in legislation when we pass it here in the Legislature and then trying to fix it after.

I'm heartened by the fact that the Law Reform Commission has indicated they'll be releasing a consultation paper relatively shortly and that they expect to have a report back in just a few months, which might not seem like rapid speed to some of us but certainly, in the Law Reform Commission world—not speaking poorly of the Law Reform Commission, but that is pretty fast for them. And they see the importance of it.

I did refer it there as the Minister of Justice. I don't know the last time an issue had been referred to the Law Reform Commission from an Attorney General. I'm—I don't remember it happening. And they seemed surprised by it, but not unhappily and not unpleasantly surprised. They were happy to get a referral and happy to do this work, which I know they're engaging in.

I'd committed already to provide the testimony tonight to the Law Reform Commission. That was one of the reasons I thought it was important. The Law Reform Commission did right today to say they will be monitoring these hearings and incorporating this testimony into their consideration. They also, I think, extended invitation for any, as I did tonight, to also provide consultation or comments of the consultation paper, if there's further things that individuals want to add.

And I committed at the beginning of this thing, not to have too much comment share because I don't want to—it can—I don't want to harm the hearings in any way by providing too much colour while there is an active process with the Law Reform Commission, other than to say this: I was particularly concerned to hear that individuals who had signed an NDA couldn't get medical support or counselling.

That particularly concerned me because an individual who has signed an NDA—all that trauma doesn't go away. And to not be able to get support for that trauma when those medical professionals themselves, I think, would generally be bound to confidentiality, was concerning to me.

So, that's as much colour as I'm going to put onto the record, to not do anything to jeopardize the Law

Reform Commission. But that point stuck to me particularly. It was of particular concern to me, because I think it traps people in a situation even more so than the NDA itself might.

But, with that said, I want to thank the member for St. Boniface (Mr. Lamont). I think it actually speaks to the best of our Assembly. You know, having people present from around the country is, yes, not—it's happened before, but it's happening a lot more that we're doing this virtually, and that's a unique thing.

But, I think that all members accorded themselves very well this evening, in terms of their questions and their diligence in listening to the presentations.

And I wish the public could see more of how we work together as opposed to just seeing question period, which is an entity unto itself, but I think it was—all legislators accorded themselves well tonight.

So, with that, I think we're willing to see the bill pass through the committee stage.

Mr. Chairperson: We thank the member.

Does any other member make—wish to make an opening statement on Bill 225? Seeing none, we will proceed.

During the consideration of a bill, the enacting clause and title are postponed until all other clauses have been considered in their proper order.

Clause 1—pass; clause 2—pass; clause 3—pass; clause 4—pass; clause 5—pass; clause 6—pass; clause 7—pass; clause 8—pass; clause 9—pass; clause 10—pass; clause 11—pass; clause 12—pass; clause 13—pass: enacting clause—pass; title—pass. Bill be reported.

The hour being 11 p.m., what is the will of the committee?

An Honourable Member: Rise.

Mr. Chairperson: Committee rise.

I want to thank everyone who's come out this evening and also the tech people who've done a great job. Behind me, at the back of the room, the support people who are here as well. Thank you, everybody.

Thank you, presenters. We appreciate your participation. Have a good night.

COMMITTEE ROSE AT: 11:01 p.m.

WRITTEN SUBMISSIONS

Re: Bill 225

I am writing to you on behalf of the Manitoba Law Reform Commission (the "Commission"), Manitoba's only independent law reform agency. The Commission is governed pursuant to The Law Reform Commission Act of Manitoba, and its members are appointed by Order in Council. The current membership of the Commission includes:

- Grant Driedger, President of the Commission and lawyer;
- Madam Justice Jennifer Pfuetzner, Manitoba Court of Appeal;
- Madam Justice Shawn Greenberg, Manitoba Court of King's Bench;
- Dr. Mary Shariff, Associate Professor, University of Manitoba, Faculty of Law;
- Dr. Laura Reimer, lay-person;
- Ms. Janesca Kydd, lawyer; and
- Mr. Marc Marion, lawyer.

The statutory mandate of the Commission, as established by its governing Act, is to:

inquire into and consider any matter relating to law in Manitoba with a view to making recommendations for the improvement, modernization and reform of law, including, without limiting the generality of the foregoing, (a) the removal of provisions of the law that are outdated or inconsistent; (b) the maintenance and improvement of the administration of justice; (c) the review of judicial and quasi-judicial procedures under any Act; (d) the development of new approaches to, and new concepts of law in keeping with and responsive to the changing needs of society and of individual members of society; and (e) any subject referred to it by the minister.

In June 2022, the Minister of Justice and Attorney General of Manitoba, the Honourable Kelvin Goertzen, approached the Commission and recommended that it undertake a review of the use of non-disclosure agreements ("NDAs") in the context of allegations of harassment and abuse.

Specifically Minister Goertzen requested that the Commission consider whether there is a need to reform the law on the use of NDAs in cases of harassment and abuse and, if so, what the available

options are for doing so. It was recommended that the Commission conduct a wide-scale review of Canadian and international jurisdictions, as well as consultation with relevant stakeholders. The Commission agreed to take on this project and its work is well underway.

The Commission will be releasing a consultation paper in the coming weeks in which it will solicit feedback from the public at large, as well as specific stakeholders with interest and expertise in areas related to the subject matter of NDAs. This consultation phase typically lasts eight weeks. Upon the completion of the consultation phase, the Commissioners will consider all of the feedback received, including submissions made to this Standing Committee, in its process of reviewing NDA use and will make recommendations on whether and how the law ought to be changed. The Commission will then produce a final report containing its recommendations which is then provided to the Minister of Justice and made available to the public.

Though early in its process the Commission has reviewed the draft legislation on a preliminary basis. Without having made any final recommendations we can say that the initial review has identified certain elements of Bill 225 that the Commission views with some degree of concern. The expectation of the Commission is that further review, including incorporating feedback from members of the Manitoba legal community who practice law in areas that would be impacted by the passage of legislation, may yield recommendations in regards to certain aspects of the proposed legislation.

We understand that this is a matter of high importance. Alongside the need for timely legislating is the importance of ensuring that the consequences of such legislation are known and intended. For that reason, we recommend that legislating on the use of NDAs in the context of harassment and abuse wait until the Commission has completed its thorough consideration.

It is anticipated that the Commission will have a final report issued in the first half of 2023.

Yours Truly,

Grant M. Driedger
President
Manitoba Law Reform Commission

The Legislative Assembly of Manitoba Debates and Proceedings
are also available on the Internet at the following address:

<http://www.manitoba.ca/legislature/hansard/hansard.html>