2nd Day Elena Jeffreys Cross Examination

LEIGH HOWARD
And thank you, Dr. Jefferys, for making yourself available for a second day. It's much appreciated by us. And as the member said, if you could just focus on my question, and Dr. Gang, if there's any clarification,

ELENA JEFFREYS
Yep, that sounds great. Thank you.

LEIGH HOWARD
Okay. So, what we can gather from your report, and it's surely beyond doubt, that there are lesbians who disagree on particular issues that affect them.

ELENA JEFFREYS
Yes.

LEIGH HOWARD
Yeah, that's correct. And one of those issues is the definition of sex.

ELENA JEFFREYS
Yeah. Look, I would say that that's a kind of splinter disagreement among a small group, but, yeah, it's not characteristic of the types of disagreements that have been brought within the lesbian community, and there have been many. But, yes, I accept that for sure.

LEIGH HOWARD
So, the answer to my question, Dr. Jefferys, is yes.

ELENA JEFFREYS
I accept that, yes.

LEIGH HOWARD
That's just the answer. Yeah, another issue that's been discussed and debated over the decades is that sex work. That's a disagreement?

ELENA JEFFREYS
Yes. And again, I would say that's a kind of splinter disagreement. But yes, I accept that.

STEWART FENWICK
Yep. What was that point?

LEIGH HOWARD
Disagreements between the lesbian in lesbian politics, one of them is sex work.

STEWART FENWICK
Over the notion of sex work.

LEIGH HOWARD
Well, I can keep, I'll keep exploring it. Yep. Yep. So, just simply put, and we don't need complex answers, but it's fair to say that some feminists, lesbians, and lesbian feminists strongly support the practice of sex work.

ELENA JEFFREYS
Yes.

LEIGH HOWARD
And there are some feminists, lesbians, and lesbian feminists who oppose the practice of sex work.

ELENA JEFFREYS
Correct.

LEIGH HOWARD
And those particular feminists, lesbians, and lesbian feminists would argue that sex work is a result of an existing patriarchal order.

ELENA JEFFREYS
I accept that, yes. That's, that is the view of some academics, yes.

LEIGH HOWARD
And that is not your view?

ELENA JEFFREYS
That is not my view, no.

LEIGH HOWARD
Obviously.

ELENA JEFFREYS
I don't share that view. I have a different view.

LEIGH HOWARD
Yep. You're quite antagonistic about that. How do you relate to that line of thought?

ELENA JEFFREYS
I'm not, it's not an antagonism. It's a, it's a difference. I see, I understand that capitalism is a structure that we live in. And unfortunately, under capitalism, when work comes into question, everybody who is at work deserves the same human rights and access to industrial protections. And on that basis, as we live in a capitalist society, my lesbian feminist position is that to extend human rights and industrial protections and the ability to work to all workers, including sex workers. I don't see the patriarchy as the foundational source of society. I understand that differently.

LEIGH HOWARD
Yeah. And is this part of your subset of Option A that would be, would you disagree?

ELENA JEFFREYS
Correct. Yes. And I would, as I've described in my expert report, it is a difference of opinion about, you know, the sources of oppression against women. And subset A definitely subscribe to the view that the patriarchy is the source of that oppression. And I have to say they've got many convincing arguments, you know. There are many views within subset A that I agree with. Yeah.

LEIGH HOWARD
And you said yesterday that the Lesbian Action Group is a subset of option A?

ELENA JEFFREYS

Correct.

LEIGH HOWARD
Is that evidence?

ELENA JEFFREYS
Yeah.

LEIGH HOWARD
And a review of your articles makes it very clear that you are interested in upholding your view of sex work in Australia?

ELENA JEFFREYS
I'm interested in furthering the industrial rights and security and human rights protections, that's correct, of other institutions to extend that protection into the realm of sex work. That's correct, yeah.

LEIGH HOWARD
And you didn't, well, and you're interested, of course, to ensure that this, your line of thought gains public acceptance?

ELENA JEFFREYS
Yeah. I mean, it already has public, I mean, you know, there's varying degrees of public acceptance. Okay. Just ask. No, I need to caveat that. It's about convincing the mainstream institutions that they should accept that.

LEIGH HOWARD
And you're interested to ensure that people who have a different view of sex work do not gain public acceptance?

ELENA JEFFREYS
Well, within the legislative review structures, there are submissions processes and everybody can put in a submission. I'll argue my points and different people will argue their different points. So, I'm not for censoring other people's views, but it is a discussion.

LEIGH HOWARD
Except when they're in public. That's when you want to censure people.

ELENA JEFFREYS
Say that again.

LEIGH HOWARD
That's when you want to censure people, when they exercise their rights in public?

ELENA JEFFREYS
No, that's not correct.

LEIGH HOWARD
You gave evidence yesterday that politics can't be done. In public or in private. You disagree with that proposition?

ELENA JEFFREYS
Sorry. What I disagreed with yesterday was your proposition that in order to politically organize, you must do it in public. And that is a false proposition and that's not me saying that. That is the

scholarly body of knowledge of political science. The public realm is not the only space where political influence is exercised. And that's; and you can take that up with the Westminster system, if you like. That's not my view. That is common knowledge.

LEIGH HOWARD
Now, your Scarlet Alliance is an advocacy body for sex workers, isn't it?

ELENA JEFFREYS
Yes. It's a not-for-profit registered charity, membership-based structure. And sex workers are members.

LEIGH HOWARD
And at paragraph 1 of your declaration, you say, 'I recognize I have an overriding duty to provide impartial assistance to the tribunal. That is relevant to my area of knowledge and expertise. I do not have any undeclared conflicts of interest.' Yes, you didn't think of declaring your, your conflicts of interest vis-à-vis your views on sex work and option A, lesbianism?

ELENA JEFFREYS
I can't, I don't see that as a conflict of interest. I am a recognized expert in my field. You know, I don't agree with a lot of things, but it doesn't mean that I have a conflict of interest by engaging with them. You know, as, as a lesbian, as a lesbian, as a lesbian, I've raised these views in lesbian feminist circles for some time. And as it happens, I'm now being called on to explain the history of that in this hearing, of which I'm doing. And rather than having a conflict of interest, I am very much the correct person to be doing this.

LEIGH HOWARD
It would have been nice, though, for you to explain your conflict of opinion and therefore interest to the tribunal. Do you accept that?

ELENA JEFFREYS
No, I don't accept that.

LEIGH HOWARD
All right. That's fine.

ELENA JEFFREYS
There are a lot of things, like I said, there's a lot of things about different groups within lesbian feminism that I agree with and some that I don't in all strands of lesbian feminism.

LEIGH HOWARD
All right. So, can we go to paragraph 43 of your expert? Yes. And I'll just deal with it. “I observed the **Left Women Speak rally in Melbourne, March 23** was led by a subset of option A lesbian feminists arguing against the recognition of trans women.”

ELENA JEFFREYS
Sorry. Yes.

ELENA JEFFREYS
Yep.

LEIGH HOWARD
You didn't attend this rally, did you?

ELENA JEFFREYS

No, I did not. I watched a lot of it on social media and then I watched some of the media afterwards as well.

LEIGH HOWARD
And it wasn't organised by a subset of option A, lesbian feminists, was it?

ELENA JEFFREYS
I believe it was. Yeah, I believe it was.

LEIGH HOWARD
It was. Well, Let Women Speak is its own organisation?

ELENA JEFFREYS
Correct. Yes. It's not a lesbian organisation?

ELENA JEFFREYS
Well, it's a proponent of the views of lesbian feminism. So, you know, whether or not the, I don't know the sexuality of the people who signed off on the rally permit, but it's a proponent of those views. Yeah.

LEIGH HOWARD
It's not, just to answer my question, please, it's not a lesbian organisation, is it?

ELENA JEFFREYS
I could not tell you if it's a lesbian organisation or not. I don't, haven't read the constitution.

LEIGH HOWARD
You're the expert the Commission's calling to speak about lesbian politics. Can you tell me whether Let Women Speak is a lesbian organisation or not? Is that the evidence?

ELENA JEFFREYS
That's right. I don't know if they are a lesbian organisation or not.

LEIGH HOWARD
Okay. Would you accept that it's open to all people who are interested in the interests of the female sex regardless of sexual orientation?

ELENA JEFFREYS
You tell me. If you're reading off some of their literature, I would accept that, yep.

LEIGH HOWARD
All right. Well, let's just keep going.

ELENA JEFFREYS
I accept whatever their literature self-describes, sure.

LEIGH HOWARD
And you didn't bother researching that literature before making the statement in the first sentence, did you?

ELENA JEFFREYS
Well, there are many members, oh, please, I need to describe.

LEIGH HOWARD

Can you please stop?

ELENA JEFFREYS
Yes, I did. Yes, I did research it all before I wrote that paragraph, yes.

LEIGH HOWARD
My clients have a right to….(can't hear)

STEWART FENWICK
Coughs

ELENA JEFFREYS
Are you willing to do that? Sorry, say that again. Can you repeat the question?

LEIGH HOWARD
You didn't bother to research. What Let Women Speak was before writing the first sentence?

ELENA JEFFREYS
I did research what Let Women Speak was about during the rally and after the rally and before I wrote that sentence. I did, actually.

LEIGH HOWARD
And you didn't research whether Let Women Speak was **led** by a subset of option A lesbian feminists? Did you?

ELENA JEFFREYS
I did not look at the constitution of Let Women Speak. No, you're correct, which I already stated.

(KK comments: Its not an association therefore there is no constitution)

LEIGH HOWARD (check this again)
Yep. So, the paragraph goes on. 'In my opinion, these lesbian feminist women are publicly denouncing their presence. In an interview with Neil Mitchell, Nina Vallon said the Nazi fascists were not invited. And she was sickened by their presence, but also said that she would have attended and spoken even if she'd known they were there. She then went on to say trans activists were really quite aggressive and quite unpleasant. I conclude this subset of option A has more in common with Nazi fascists than with the other strands of lesbian feminism.'

ELENA JEFFREYS
Correct. I stand by that, yes.

LEIGH HOWARD
So you stand by your conclusory statement?

ELENA JEFFREYS
I do, yes.

LEIGH HOWARD
And you've drawn that inference yourself on the basis of what you said in the other sentences.

ELENA JEFFREYS
Yes, and my research on the rally, my observation of the rally and, as I tried to explain earlier, but as you cut me off, on the multiple rallies around the globe, of which this rally in Melbourne was simply one of dozens, and my observation of the lesbian feminists who participated and spoke at

dozens of these rallies and attended, including Professor Sheila Jeffreys, who, you know, is an expert in this as well, and possibly people in that room that are sitting behind you, and the continued all-out of the rally, and I think that's what you're saying. So, you're saying that you're organising, knowing that Nazi fascists were going to be attending and not taking the political precautions to disassociate themselves from Nazi fascists, correct?

LEIGH HOWARD
No, that's incorrect. I asked, you form this view based on the sentences which I have had the opportunity to read and the Tribunal.

ELENA JEFFREYS

Yes.

LEIGH HOWARD
Your link between the Lesbian Action Group and Nazi fascists. You are now giving fresh evidence of other research that you have seemingly done.

ELENA JEFFREYS
No.

LEIGH HOWARD
OK.

ELENA JEFFREYS
It's OK that we're having this banter. It's OK. But I'm giving you the context of why I came to the confidence of writing this paragraph without necessarily submitting in my expert report the global picture. And I can do that with any of, I mean, I could, we could go on about the global picture in any of these paragraphs, and I'm more than happy to. I understand that UK and, you know, other Commonwealth law would be important, you know, how these things are playing out in New Zealand would be important. I understand that. But for the purpose of the expert report, just want to make it clear, I've stuck to local examples because we are talking about within the Australian jurisdiction.

STEWART FENWICK
I think the issue being raised, as I understand it, Doctor, is the link asserted based on certain observations in an expert report versus, I presume, the counterpoint being whether or not you actually have actual or imputed knowledge about the motivations of the applicants or their allies.

ELENA JEFFREYS
Well, it's to…

STEWART FENWICK
It's quite the contrary in an extreme ideology and a series of events. I think that's the point that's being put. Yeah. Probably, potentially fairly made. I'm interested in the context, but I'm just, I think the point's being made about, at a rather forensic sort of level, and it's relevant to the case for the applicant.

ELENA JEFFREYS
Because I think the issue here is whether or not a political strand of lesbian or and feminism would continue to host events that were also popular and attracting Nazi fascists? And I think that is, in my political science training and background, that is an extremely relevant question. Fascism in and of itself is totally fine with exclusion and discrimination on the basis of difference. And I think that's the issue we're talking about here, exclusion and discrimination on the basis of

difference. And I stand by my statement that subset of option A have more in common with that kind of Nazi fascist ideology than they do with other more inclusive strains of lesbian feminism, such as you would find in the peace movement, etc.

STEWART FENWICK
I'm sure the distinction is between different groups that may have, for some reason, found common cause, but they're motivated by potentially substantially different underpinning theoretical frameworks. Sorry, Mr. Howard, you probably need to.

ELENA JEFFREYS
Thank you. No, thank you.

LEIGH HOWARD
Dr. Jeffries, you have no basis at all to equate my client's interests with the interests of Nazi.

ELENA JEFFREYS
Well, I mean, I disagree, obviously, and I've explained this is my training. This is my understanding. I've been watching this space…

LEIGH HOWARD
You have not.

ELENA JEFFREYS
And, yeah.

LEIGH HOWARD
And you agree with me that the only rationale you have provided in your report is a paragraph 43. Sorry, what?

ELENA JEFFREYS
Only rationale?

LEIGH HOWARD
For what? Your conclusion is recorded at para 43. We've just had this discussion. That's your basis.

ELENA JEFFREYS
Sorry, I don't understand the question.

LEIGH HOWARD
I'm just confirming the contents of your report. We've just had a big discussion about things you've chosen not to include.

ELENA JEFFREYS
Yes. Oh, the international report. The international context, correct, I've chosen not to.

LEIGH HOWARD
Yeah. And you've chosen to assist us with what you say in para 43.

ELENA JEFFREYS
I have, correct.

LEIGH HOWARD
Can I take you to a further insinuation you've made?

ELENA JEFFREYS
Yes.

LEIGH HOWARD
At para 83, I'll read it out whilst you find it.

ELENA JEFFREYS
No worries.

LEIGH HOWARD
You've been told by informants that uniform fetish parties run by lesbians in the 1990s were accused of perpetuating racism by allowing Nazi costumes.

ELENA JEFFREYS
Correct, yes.

LEIGH HOWARD
Read that correctly?

ELENA JEFFREYS
Yes.

ELENA JEFFREYS
Now, by using the word informant, you've not used their name?

ELENA JEFFREYS
I have not, no.

LEIGH HOWARD
I can't test that. I can't call that person to seek an understanding of what they mean?

ELENA JEFFREYS
No, but I can inform you that the photo documentation has been recently reinvigorated and there was an exhibition recently in Sydney and in Melbourne of a Wicked Women retrospective, which included photos of the. Yes. I'm on demand squad, God Squad.

LEIGH HOWARD
It's not helpful to me or the tribunal. Tell us what else is out there in the report that you omitted. We just want to focus on what you've said.

ELENA JEFFREYS
Okay.

LEIGH HOWARD
Now is not the opportunity. Tell us other things that I can't test.

ELENA JEFFREYS
All right.

LEIGH HOWARD
I can't test anything in that paragraph because you've not told me the source.

ELENA JEFFREYS

Correct

LEIGH HOWARD
And whether it's true or not, and I don't really want you to tell me whether it's true or not, it was put in there by you to support your insidious insinuation that my clients are Nazis. That's why I put it in there.

ELENA JEFFREYS
Okay. I'm going to challenge that and say, no, this does not, that's not why. Actually, the fetish parties were run not by option A or a subset of option A. They were run by. Which are there. Within option C, which is a completely different group of lesbians, not the same people.

LEIGH HOWARD
It would have been helpful, wouldn't it, if you put that in paragraph 83.

ELENA JEFFREYS
Well, I accept. Yeah, I accept that. Yeah, I totally accept that. I could have expressed that better, sure.

LEIGH HOWARD
And you omitted that detail to get the insinuation that my clients are Nazis.

ELENA JEFFREYS
No, I did not.

LEIGH HOWARD
Yes, you did. Which is . They're not Nazis.

ELENA JEFFREYS
I'm not going to agree to disagree on that. They're not Nazis. What do you say to that? I didn't say they were Nazis. I'm saying that they have more in common with Nazi fascist ideology. Because of how Nazi fascism and white supremacy combined to have an active policy of discrimination and exclusion of people that didn't fit that norm. And the subset of option A has a similar approach. Instead of engagement or inclusion, they believe in an exclusionary approach. So, they have more in common with that.

LEIGH HOWARD
All right. Well, your equation between Nazis and my client was made by other people observing the event. In particular, Mr. John Pesutto. Do you recall that?

ELENA JEFFREYS
No.

LEIGH HOWARD
So you don't. I thought you just gave evidence. When I asked you what you meant by observed, you gave evidence to the tribunal. Yes. You read about it before. Beforehand, during, and afterwards.

ELENA JEFFREYS
Yes, I did.

LEIGH HOWARD
You must have read that Mr. Pesutto, the leader of the Liberal Party in Victoria, like you, equated attendees of that rally to Nazis. Do you recall that?

ELENA JEFFREYS
No, I don't. I was on some closed lists, which was more kind of antifa, left-wing analysis. So, no. But that's interesting. But I didn't follow that.

LEIGH HOWARD
Sorry. Well, I'll inform you. Okay. So Mr. Pesutto was litigated.

ELENA JEFFREYS
Mm-hmm. He was sued for defamation.

LEIGH HOWARD
And this has been reported in his household knowledge within Victoria. Okay. He recently apologized. Are you aware of his apology?

ELENA JEFFREYS
No. No, I'm not. That's interesting.

LEIGH HOWARD
Well, I'll read his apology.

ELENA JEFFREYS
Okay. Please do.

LEIGH HOWARD
He says, it's never been my intention to convey that I believed Ms. Keane and Ms. Jones, being the two who sued him.

ELENA JEFFREYS
Yes.

LEIGH HOWARD
To be neo-Nazis.

ELENA JEFFREYS
Mm-hmm.

LEIGH HOWARD
Or that they were members of neo-Nazi groups. As far as my comments may have been misunderstood as conveying that, I believe this to be the case. Sorry, withdraw that. As far as my comments may have been misunderstood as conveying that, I believe this to be the case. I apologize for any…

ELENA JEFFREYS
Yeah, well, I mean, I would agree with that. I don't think that that group are neo-Nazis. What I'm saying is they have a similarity and more of a, more similar factors with Nazi fascism than they do with other sections of the lesbian feminist movement.

LEIGH HOWARD
Are you prepared to apologise to the Lesbian Action Group for associating them with Nazism?

ELENA JEFFREYS
I can't apologise for that. It's actually, it's actually an analytical logical fact that I've reached. Right. Yeah, I can't. Unless something in that logic is incorrect.

LEIGH HOWARD
Right.

ELENA JEFFREYS
Then, no.

LEIGH HOWARD
Look, Jeffrey's, and so the, you're just giving evidence about the, you know, campaign. I can't be sure that I have enough evidence to say that. I mean, if it's, if you look at the reference that you've drawn.

ELENA JEFFREYS
Yes.

LEIGH HOWARD
Can Dr. Geoffrey's be shown page five of Dr. Blake's affidavit?

ELENA JEFFREYS
Is this something that I already have in the attachment?

LEIGH HOWARD
Do you have Dr. Blake's affidavit? I don't know. And if it, if it's okay if the associate could zoom in. Yes. So, we can see the text of that. Okay. Dr Jefferys, this is a post in social media platform posted in May 2020.

ELENA JEFFREYS
Mm-hmm. 2020?

LEIGH HOWARD
Yes. Okay.

ELENA JEFFREYS
Yep.

LEIGH HOWARD
Now, just on the three stars, we see TERF, which we know what that means.

ELENA JEFFREYS
Yep.

LEIGH HOWARD
And SWERF.

ELENA JEFFREYS
Yep.

LEIGH HOWARD
Now, that stands for, doesn't it, Sex Worker Exclusionary Radical Feminist. Yes. Yep. And that is a term that's used to describe feminists who oppose sex work, sex work exclusion. Correct. Yes. Yep, yep, yep. Radical feminists. Yep. The debate we were discussing earlier about sex work interests being subject to different opinion. It's in feminism and lesbian feminism, correct? Sure. Yes, I accept that. Yep. Now, just read out what's to the right there.

ELENA JEFFREYS
Do you want to say what the other star says, or are we overlooking that?

LEIGH HOWARD
Tanky?

ELENA JEFFREYS
Tanky, yeah.

LEIGH HOWARD
Do you know what a tanky is?

ELENA JEFFREYS
Yeah, it means a communist.

LEIGH HOWARD
Yep. Okay. Well, so I don't think that's actually accurate, but we'll address the tribunal on that later.

ELENA JEFFREYS
There is intent that Tanky means communist.

That's a political fact, but sure, yeah.

LEIGH HOWARD
So, on the right, we say, or the poster says, already thinking of something that won't get me asked to leave, but just barely. I'm in a mega-liberal area, but still, I don't know if a sign, a printed picture of Lily holding a canister of Zyklon B offering showers to TERFs is okay. And then the lie is, I have a final solution to the TERF. Apparently, there is a European leader in the 1930s and 1940s who set up this elaborate system of ovens and showers with odorless gas. We can use this same system to deal with TERFs. I've read that correctly?

ELENA JEFFREYS
Yes.

LEIGH HOWARD
And you accept that this behaviour is in association with Nazism?

ELENA JEFFREYS
Yes, it is, yeah.

LEIGH HOWARD
It's directed towards TERFs and SWERFs?

ELENA JEFFREYS
It is, yep.

LEIGH HOWARD
Other questions?

STEWART FENWICK
Thanks, Mr Howard. Dr Gang.

ELENA JEFFREYS

Sorry, there's just a little bit of an audio lag. Sorry.

STEWART FENWICK
It was complete silence for some time.

ELENA JEFFREYS
Okay, no worries. I can hear you. Thank you.

Daye Gang
I want to take you to your report, please, at paragraphs 2 to 9.

ELENA JEFFREYS
Yes.

DAYE GANG
Sorry, just getting there myself. And that section sets out the subheading information about my knowledge and qualifications. Is that right?

ELENA JEFFREYS
That's correct, yes.

DAYE GANG
So here, is it a fair description of paragraphs 2 to 9 to say that you've set out your lived experience as a lesbian? Correct, yes. Is there anything else that you'd like to add to the expertise that you claim for the purposes of this expert report?

ELENA JEFFREYS
Yes, I would. I'd like to add that, you know, the lesbian feminist circle in Australia is not a big circle. And so, there were, I just want to make it clear that I have interacted with, observed, and participated in these activities. Like, personally, over many years. And part of my training is understanding how groups interact with each other. And having been a participant in those groups is really important to why I'm an expert witness today. Yeah.

DAYE GANG
So when you say these activities personally over many years, approximately how long have you been talking?

ELENA JEFFREYS
So since 1994, I've attended, you know, hundreds of conferences and women's camps and social events and personally organized a lot of women-only lesbian feminist events and, you know, attended the various, like, peace camps and, you know, I've personally attended lectures and activities hosted by, for example, Professor Sheila Jeffries, like, more than a dozen, you know. She's met my parents, et cetera. So, you know, none of this is arm's length. This is, these are live discussions. Yeah.

DAYE GANG
And live discussions that in your personal and lived experience go to each of the options and each of the subsets that you have described in paragraphs 12 to 22?

ELENA JEFFREYS
Yeah, that's correct. And these discussions, I observed these discussions were live discussions when, right from the time I first came out in 1994. And so, the list of kind of controversies that are circular and ongoing within the lesbian feminist community is quite long. And the trans inclusion is one of many controversies. And I observed it was a live discussion in 1994, you know,

and many points during that. And I'll describe this point, you know, being at this hearing is another point of that in that long decades, decades-long history. Yes.

DAYE GANG
Can you please speak to the overlap between the two? Paragraphs two to nine, setting out your experience, your lived experience as an out lesbian attending these groups and your CV at pages 20 to 22.

ELENA JEFFREYS
Yes, And so, you know, essentially, and there's a lot of different ways that people think about practicing lesbian feminism, but as it happens, there are a lot of lesbians who, for choice of income, have opted into sex work due to certain views about capitalism and the patriarchy in many ways.

And so, there was a lot of people within my lesbian cohort in the 90s who were thinking about sex work or doing sex work. And so, the activities kind of run definitely parallel, health promotion, understandings of HIV.

You know, I've organised many over the years, many women-only events at things like ArtRage in Perth or Pride or Feast Festival in Adelaide or Mardi Gras in Sydney. And there has been a lot of crossover between lesbian feminist organising and sex worker organising. Yeah. And I don't know if it's going to help the tribunal to, like, fully understand that crossover, but I'll give another example.

So, my current partner, my wife, we got married when we were in Canada in 2004. And at that conference, which was a sex worker conference, you know, gay marriage had only just been permitted in Canada, and the first gay couple to be married under that law was two gay male activists who had campaigned for that law who were also sex workers and also at that conference. And so, this crossover between same-sex attracted legal rights and sex worker legal rights, it's not just a theoretical crossover. It's actually the same communities. We're talking about the same people.

DAYE GANG
I want to take you to paragraphs 12 to 22 of my report... How does my training and experience permit me to set out these options in these paragraphs?

ELENA JEFFREYS
And so, my training and experience is important.
what I've done by setting out these options, importantly, is I'm not like I'm not making a judgment call on any of these options. These are the kind of ways that lesbian feminism has coalesced over many years. And I would say again, the it's up until COVID, all of everything I'm talking about is about physical coalescing. So, conferences where people physically come together into the same room. Social events where people come together in the same room. Camps where people are all camping together at the same campground for a weekend or whatever. And so, its from those actual discussions that. Yeah, that I can that I can comment on this.

STEWART FENWICK
I think, doctor, I might just sort of. Cut to the chase a little bit. You know.

ELENA JEFFREYS
Please do.

STEWART FENWICK

The questions in cross-examination sought to highlight your personal professional advocacy experience in sex work. Yes. What you're telling me is that it's not exclusive to. It's not an exclusive domain in your experience crosses over with lesbian feminism, as you understand it in its diverse manifestations.

ELENA JEFFREYS
Yes. Yes. And true. Sorry. You go.

STEWART FENWICK
… So, the point being this theoretical framework. As I guess that one of the questions might be, have you deployed this theoretical framework? The Options approach in your academic writing. Or is it something you've it's a personal reflection and something you've now deployed in this paper. But is it? I guess that if it's a distinction at all, I guess very crudely, I'm saying, would you characterize yourself as a feminist scholar, a lesbian feminist scholar, or as an advocate for sex work? Or has this theoretical framework formed part of your published writing and thinking more broadly?

ELENA JEFFREYS
Yes. Yeah. Thank you for that question. And so maybe if I can speak directly to, and my PhD is open access and online. That's not technically published in a book, but it is, you know, it's an accepted work. It's hosted on the University of Queensland website. And I do discuss in that through the different chapters, literature reviews of how different political groupings can be grouped together and understood. And one of the approaches is about understanding how habitats such as conferences or social events or community centres, or libraries or protests or camps are a way to see how people come together in a voluntary way.

STEWART FENWICK
I understand that, but have you deployed the options approach? Just to take the specific example.

ELENA JEFFREYS
I have not deployed it. But other writers have deployed it in their work which I was very you know lucky to be exposed to extensively when I was doing research and writing and literature reading for my PhD, yeah.

STEWART FENWICK
with respect to lesbianism and lesbian feminism

ELENA JEFFREYS
not with respect to lesbianism and lesbian feminism

STEWART FENWICK
.. possible about it to the extent there's a challenge being made to your expertise about understanding the sector that was the question very specifically not generically about community organizations or institutions voluntary or otherwise in the way they'll be I think you've answered the question thanks

ELENA JEFFREYS
Can I offer I mean if something like a literature review of the different groupings within lesbian feminism by authors who have published and not my own material but other people's material to to demonstrate that in Australia the UK, Venezuela other countries that these groupings are recognized groupings they're not called options. A B or C. but you know these groupings are recognized groupings.

LEIGH HOWARD
I'm sorry I have to object can we please have a bit of fairness none of this arises out cross examination this isn't an opportunity to rewrite

STEWART FENWICK
all right I'm just pursuing your line of questioning and I'm not proposing to take

LEIGH HOWARD
thank you member

ELENA JEFFREYS
that's fine but I mean for example if you put a similar set of questions to any lesbian feminist academic in about a dozen countries that I can think of about how does lesbian feminism organise what kind of groupings are they would come up with that it would be the same

LEIGH HOWARD
object to this, this is so…Prejudicial, this is so prejudicial,

STEWART FENWICK
I'm just pursuing your line of questioning and it's I think it's only strengthening your..

LEIGH HOWARD
I'm learning for the first time about all this new material…
Dr. Jeffries was asked to describe feminism; she's done so in Paris 12-22 now I'm complete, I'm unable to test these propositions, this is expert evidence (?).

STEWART FENWICK
Thats why I'm asking the questions. Howard and you, you certainly will put late submissions to me; I have no doubt about the material anyway.

LEIGH HOWARD
Yes, well it's not the opportunity to rewrite the report;

STEWART FENWICK
You want me to stop asking questions. Or, you want me to? I'm trying to find out what's going on;

LEIGH HOWARD
re-examination is really about clarification, cross-examination.

STEWART FENWICK
Well, I could have waited till the end of all the examinations and started asking questions so I don't - if you think I'm inadvertently helping the respondent. I apologize, but I think questions at any point..

LEIGH HOWARD
No one's doing that in the witness examination we have procedurally fair processes and I just wanted to record the unfairness. because firstly it's not stated Paris 12-22; secondly my professor Jeffries wasn't cross-examined on it, nor was my Ms. Ann, they have both In chief, any given evidence about what they believe their movement's about, not a question asked wasn't put to them; nobody's put to them. I'm now learning in re-exam, when I don't have some new case about this now it's just not fair as your questions,

STEWART FENWICK
These are your questions Mr Howard It may not be the direction you're intending to take your

questions, I'm just taking the lead from you; I take your objection very clearly

LEIGH HOWARD
Thank you

STEWART FENWICK
absolutely I understand why you're saying it.

LEIGH HOWARD
Thank you, thank you, Member. Thanks, Doctor.

DAYE GANG
No worries. I'm not sure how it can be said that one can object to a question rather than ask. Probably for closing. Paragraphs 12 to 22, Dr. Jeffreys, why did you not choose to explicitly cite lesbian philosophy here?

ELENA JEFFREYS
It would be like so many books and so many, it's just so, there's just so much text to back it up. So, yeah, so, yeah, I'm sorry about that. I'm now regretting it. I could provide a very extensive bibliography, and I would have to say that half of that bibliography would be the works by Sheila Jeffreys. Like her own work is discussing these separations and these differences. So, yeah, I'm kind of surprised that it's coming across as so controversial personally, but that's okay. I understand.

And this is my first time being an expert witness of this nature. I often give evidence to parliamentary inquiries and such. And yeah, this probably reflects a bit more of the kind of submission and expert evidence I would give in that circle. So, yeah. I'd also say that a lot of this is oral history. And which is why I mentioned a lot from informants and why I drew attention to the different views about the Lesbian Space Project, for example. And I think it's important to recognise if the Lesbian Space Project hadn't fallen apart in when it did, then we probably wouldn't be having this meeting and challenge or discussion at all now, because there would have been a consensus built about what a lesbian space is and who is included.

And the group were ready to buy a building first in Sydney and then buy lesbian space locations around the country. You know, the fact that the Lesbian Space Project fell over when it did is characteristic of the inability of different groupings within lesbian feminism to come to a consensus understanding of who is included and who is excluded under the banner of the term lesbian.

So, I just want to put that in context. And even with something as important as the Lesbian Space Project falling over when it did, and I wasn't there, there are many different oral histories and versions that are some wildly different of what happened at that time. And none of it is documented. None of that is available in the literature, I would say. What happened with the Lesbian Space Project, I couldn't reference. Anything else?

STEWART FENWICK
Gang, have you got any other re-examination?

DAYE GANG
Dr. Jefferies, earlier you disagreed with me on the proposition that politics cannot be done in private. Can you please expand? Yes.

ELENA JEFFREYS
And so, it actually comes back a lot to the habitat theory, and the different groupings, and the

way that we understand political movements.

And that is that, from the literature, the broad amount of literature that I'm drawing on for this and for my political training, is that a common enemy, that is an experience of oppression from an external force, onto a community of people is what creates the commonality amongst that group to coalesce and become a group.

That is why groupings coalesce at conferences, at social events, at camps, protests, parties, is because there's a common interest and for the lesbian community that common interest is the way that lesbians are marginalized, oppressed, experience patriarchy, experience capitalism, experience discrimination and misogyny. That's what brings people together.

And so that coming together necessarily, is not something that's generally done in the public sphere because the oppression is being experienced in the public sphere. Social movements and political movements, as observed all around the world, gain their foundation amongst commonalities that are drawn upon in spaces created by that community for that community. And by definition, when you're an oppressed group of people, those spaces are not public spaces. They are heavily mediated spaces with membership, with vetting, with rules, with safer spaces policies, with methods of resolving differences. And so, for example, I think it's interesting, the Pride Centre, for example, has come up in this discussion because, you know, obviously the Pride Centre said, you know, we don't allow events that exclude trans women from a women's only event. You know, the Pride Centre in this sense is not a public space. It's a community space and even separate to the Sex Discrimination Act.

It has made its own rules about what kind of events can happen there. And the grouping that makes those rules are the people who have come together with a common form of experiencing oppression. That is oppression because of being same-sex attracted. They've come together over many decades. They've formed the Pride Association or whatever it is, fundraised, got the building, got the funding, built the building, made the building, and they've made their rules about the building. And so it's not a – you could say it's public or maybe that you could hold public events there, but the space itself is a community-owned space. And so, yeah, anyway, I could go on. .

STEWART FENWICK
That's fine.

ELENA JEFFREYS
Yeah

STEWART FENWICK
Thank you.

ELENA JEFFREYS
I hope this is helpful, by the way.

STEWART FENWICK
I'll hesitate to ask Dr. Gang where this is going to feed into submissions. I'm not quite sure.

DAYE GANG
I'm reaching the end.

ELENA JEFFREYS
Is it okay if I just add again back on the Lesbian Space Projects?

STEWART FENWICK
Just give us a moment, we're about to .

DAYE GANG
You were cross-examined on the contents of your paragraph 43 on the Let Women Speak Rally. ... You said that you did research before, during and after the rally. Can you please speak to that research?

ELENA JEFFREYS
Yes. Well, out of my own personal interest, I was watching the different tours of the different speakers who have been going from the UK to North America, New Zealand and other places, and also just the history.

The history of where those speakers have come from and yes, so I have an understanding of what those groups stand for and were promoting. Also again, the lesbian community being a very small community, particularly the lesbian feminist community, seeing lots of familiar faces in the footage and the photos from those events all over the world. In fact, before that action took place. And then after that action took place, yeah, there was a lot of debrief about it in different political circles, particularly lesbian feminist circles. And I participated in those discussions and observed those discussions and also was thinking about it a lot myself. So yeah, I hope that's helpful to give the context that it's an important issue. It's important enough for me to take out of my private life at the time to follow it in great detail. And I continue to do so due to my interests as a member of the lesbian community.

DAYE GANG
By your report, are you insinuating that the lesbian action group are Nazis? No, I'm not. That would be an inaccurate statement.

DAYE GANG
Do you convey that you believe the applicants to be neo-Nazis? Or that they are members of neo-Nazi groups?

ELENA JEFFREYS
No, I do not. I know that they are not Nazis. And I know that they are not members of neo-Nazi groups. I know that, yeah. And I say that because if they were neo-Nazis or if they were members of Nazi groups, as a lesbian feminist deeply interested in this, I am sure that I would know if they were Nazis or if they were members of neo-Nazi groups.

DAYE GANG
That's the re-examination. Thank you.

LEIGH HOWARD
Thank you, members. And thank you to Dr. Jefferies as well.

STEWART FENWICK
Are you happy to let the witness go?

STEWART FENWICK
Well, that's the end of the witness. Yeah. I was just offering it. Thanks, Doctor. You can get on with your day.

ELENA JEFFREYS
Appreciate it. Thank you so much. I hope that's been helpful. Thanks so much. Bye-bye.

LEIGH HOWARD
The only thing is… what the Commission has to do with Professor Gerber's report. I'm hearing on one view they've written a submission saying they're not relying on it. They sent an email to the Tribunal last night trying to say that Professor Gerber has a new field of expertise.

STEWART FENWICK
I haven't seen that. Well, all I'm saying is — That's what I'm asking. I'm confused as to what the Commission ...

STEWART FENWICK
You did.

LEIGH HOWARD
Yeah, I think we hear from Dr Gung about what she proposes to do with Professor Gerber, and then after that, just so we know what...

STEWART FENWICK
Yeah, then we'll have a bit of a break.

DAYE GANG
My learned friends made some comprehensive submissions, so to make in response. Just let me read this.

STEWART FENWICK
I don't think we need to worry about that further proposal. All right. Thank you.

DAYE GANG
MS Livingstone: I have submissions to make on everything relating to Professor Gerber's report and proposed further evidence.

STEWART FENWICK
Sorry, I've just got another submission. Sorry, beg your pardon. I'm just catching up on something that came through at 10:15 as well as this.

LEIGH HOWARD
my instructor's provided it, but That's for closing. Don't need to worry about that.

STEWART FENWICK
So we're having submissions before the submissions? Are we having submissions about the Gerber matter and then we're having submissions? Is that what we're doing?

LEIGH HOWARD
I just need to know what the Commission is going to do. I just still don't know.

DAYE GANG
The Commission's position was that, quote, withdraw their reliance on the statements of the Special Rapporteur in their suffix at paragraph 26 and in the evidence of Carol Ann at 90 to 91, and exhibit CA8. Similarly, would the Commission not rely on its submissions and expert evidence?

STEWART FENWICK
Yeah.

DAYE GANG

And so it was a responsive position, given that the applicants have continued to rely on their submissions in relation to CEDAW, and given that the Tribunal has taken the Special Rapporteur's submissions on CEDAW under Section 33 1c, the Commission would like to exercise its procedural fairness rights by having its submissions on CEDAW heard. That includes the response, a written response, to the Special Rapporteur's submissions. We have already reserved that right, respectfully, in our correspondence from my instructor, dated the 30th of August.

In relation to whether Professor Gerber's report is still relied upon, so that is a report that goes into the detail on how it says how CEDAW jurisprudence should apply, how international human rights law framework should apply, how ICCPR applies, and then sections on the harm that is done to – or Section 9 on the harm that is done – or impacts on trans women of inclusion and exclusion from public spaces. So that it is not a new head of expertise.

It is not new information. It is already in the report. I will come back to that head of expertise in just a moment. But in relation to CEDAW, the Commission's position has always been, since Tickle & Giggle was handed down, because of that – because of His Honour Justice Bromwich's finding that CEDAW – or for the moment, present applicable law upon the tribunal – is that CEDAW is not applicable as between two groups of women –trans women and cis women.

The Commission's position is that interpreting the SDA that recognises trans women, CEDAW does not apply to this matter. But, given that you have taken the procedural step of taking in the special raconteurs submissions and given that the applicants maintain their arguments based on CEDAW so to in fairness to the commission should the commission be heard about the same issues.

This brings me to…

STEWART FENWICK
Can I encourage you to slow down a little bit

DAYE GANG
yes of course, is there a part of submission that I should repeat

STEWART FENWICK
I think I've got enough

DAYE GANG
Given that you have taken the special rapporteur's submissions under Section 33.1c, you can also take Professor Gerber's report under 1c. You can also call her for questioning under 33.1c. She is available today. Yesterday, what the tribunal asked of Professor Sheila Jeffries was specific. This is to the best of my note-taking.

STEWART FENWICK
I didn't recognize the question in the email, but it's not a criticism.

DAYE GANG
Yes. So what the commission proposed to do in calling Professor Gerber is specifically about a question that you put to Professor Sheila Jeffries yesterday. I have the wording. To the best of my notes. So you said, jump directly to a point that arises from a key issue in the commission's decision. The applicants have taken issue with this.

STEWART FENWICK
This is about the civil rights risk.

DAYE GANG
Yes. Broadly an argument that there is definable harm that might be done to the excluded group by non-affirmation. Is that a phenomenon that you think is worthy of?

STEWART FENWICK
That was a point, really, just to put a counterpoint to what I was trying to understand is really sort of the root substance of the witnesses' sort of theoretical perspective and world view. I'm not sure, given there's also a mountain of submissions that are potentially available as a resource on that issue, I really don't think we need to look at that anymore.

DAYE GANG
It would be a matter of procedural fairness. Yes. Given that there has been evidence put in writing about the issue from both the applicant and the commission, and then there was oral evidence yesterday from the applicant, the commission seeks oral evidence or oral questioning on the issue from a commission witness.

STEWART FENWICK
Well, now you're putting it, you're saying you want to call her. That's what you just said.

DAYE GANG
It can be questioning based on the commission keeping her as a witness or based on the tribunal. Yes. So it would be a tribunal exercising sections 33 1C. The process is for the tribunal to decide.

STEWART FENWICK
You tell me if you want to ask questions about harm to the trans community. Oh, you want to ask that question, unless I tell you that I'm taking the material. Okay. Let's just cut to the chase. I'm keeping the material in.

DAYE GANG
Yes.

STEWART FENWICK
I'll hear a little bit more. Clearly. now or shortly about I don't intend to pursue any of these issues any further myself.

DAYE GANG
The Commission maintains that it would be a matter of procedural fairness to call Professor Gerber, specifically to put just that one question that came up in oral evidence, so that Professor Gerber can give oral evidence about the same question.

STEWART FENWICK
Are you saying the written material doesn't speak for itself? It’s evidence. I mean, as I said to Mr Howard yesterday, it doesn't speak for itself. We might need to speak to her about it, but I'm not sure that Mr Howard's indicated he's just not interested in examining the witness. I don't think particularly, because he objects to the whole approach. So, unless I'm wrong.

DAYE GANG
That's how I understood my learned friend as well.

LEIGH HOWARD
Maybe you want to hear my objection, because you seem to have ruled on it.

STEWART FENWICK
Well, I just think it's just easier putting it out there. I just can't see the point of being so litigious

about this, that you're telling me what I can and can't read, but I've fully accepted that weight is always—it happens in all areas of jurisdiction. Just for the benefit of everyone. Look, did you need to say anything else at the moment?

DAYE GANG
In relation to—do you need to hear submissions about the international law point and the interpretation thereof?

STEWART FENWICK
What else did you want to--does everything else you need to say follow from whether we're going to do this morning, just at the moment?

DAYE GANG
Just at the moment, if you don't want to hear from Professor Gerber, then we can go to closing, but perhaps with a break.

STEWART FENWICK
Perhaps we'll give Mr Howard an opportunity, if he wants to articulate this issue more clearly now. And if there's consequential issues around procedure or anything, I'll let him speak to me then.

LEIGH HOWARD
Remember, I did have an objection to run, but if you're minded to rule, that's fine.

We accept your decision.

STEWART FENWICK
Let's not call it a ruling. This is not the Bankruptcy Court.

LEIGH HOWARD
It's just I'm here to assist. What I can do in closing, is perhaps as a matter of weight, subsequent to your ruling, identify the seminal—you said it was inadmissible. ,

STEWART FENWICK
I'd like—because I've never heard—, I'm sorry. ,

LEIGH HOWARD
Yeah, well, it's actually quite an important authority for a number of issues, so I will be going to it. I'm happy to start my closing address now, or if Dr Gang wants a break, I'm more than happy to facilitate that as well.
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STEWART FENWICK
Yeah. All right. Let's take 15 minutes.