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IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE OF CALGARY

BETWEEN:

REBECCA MARIE INGRAM, HEIGHTS BAPTIST CHURCH, NORTHSIDE BAPTIST CHURCH, ERIN BLACKLAWS and TORRY TANNER

Applicants

and

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ALBERTA and THE CHIEF MEDICAL OFFICER OF HEALTH

Respondents

H E A R I N G
(Excerpt)

Calgary, Alberta
February 14, 2022

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THE COURT: Okay. Good afternoon. Are we ready to proceed, Mr. Parker?

MR. PARKER: I am.

THE COURT: Okay, and doctor, are you ready to proceed?

DR. BHATTACHARYA: Yes.

THE COURT: Okay. Thank you.

Go ahead, Mr. Parker.

JAY BHATTACHARYA, Previously Sworn, Cross-examined by Mr. Parker

MR. PARKER: Thank you, Justice Romaine.

Q Good afternoon, again, doctor.
A Good afternoon.

Q Do you acknowledge you are still under oath, sir?
A I do.

Q I just wanted to briefly talk about long term effects of having -- having caught the disease, COVID-19. Sir, is it your opinion that long term effects are very, very rare?
A I think that they're rare but the question of how rare is still under active investigation in the scientific community.

Q Sir, would you -- have you changed your opinion on that, then, since you gave evidence in Manitoba?
A I don't remember what I said in Manitoba exactly on that.

Q I have the note written down, "Very, very rare". I could take you to the page, if that would help, but I don't plan on doing that unless you want me to. Has your opinion changed at all since --
A No.

Q Okay. Doctor Kindrachuk states in his report that 15 to 30 percent of those recovered from SARS or MERS develop long-term complications, including pulmony -- pulmonary fibrosis. Have you considered the long-term effects of those two diseases in considering the likely long-term effects of -- of COVID-19?
A Both SARS and MERS have substantially higher infection fatality rates and cause much worse, more severe disease than is typical with SARS-CoV-2, the -- the virus that causes COVID-19. Because now -- well, there was already then but (INDISCERNIBLE) now but several clear studies with control groups that document that -- that the -- that the symptoms that are commonly attributed to long-term COVID disease, long-term -- long-term symptoms that persist after recovery from COVID are -- are rare and that, in fact, are in line roughly with the -- with a control group who has not had COVID, so -- and I -- I don't -- I -- I -- and I could go find the studies, if you'd like but I -- I think that the literature since then has made my conclusion then even stronger.

(PORTION OF PROCEEDINGS NOT RECORDED)

Q … spending time in the hospital and the ICU is a health consequence?
A I'm sorry, can you -- can you repeat that? I didn't -- I think I didn't catch the first part of that question, Mr. Parker.

Q Sorry, sir. I said spending -- someone spending time in the hospital and the ICU with COVID-19 is a health consequence. Right?
A Yes, for some -- some part of the population who get COVID, more likely for older people who get COVID or who get -- who get infected with SARS-CoV-2 than -- than younger people.

Q I don't see anywhere in your report where you've discussed the impact on healthcare professionals of having treated hundreds of patients, that is the impact on nurses, physicians, and other healthcare workers. You agree, that's not discussed in your report, sir?
A I guess I -- I'm -- I'm not sure I understand the question. You mean impacts in terms of on their mental health? I'm -- I'm not sure what you have in mind. I think it's --

Q Right, the impacts on their health from -- from treating the patients during this pandemic, exactly.
A No, I did not discuss the effects of their -- on their -- on their mental health. It's their job to do it. Vocation, really.

Q The actual death numbers from COVID are very high. It's a very serious disease for the elderly and those with chronic conditions. Would you accept, sir, that Canada now has over 35,000 deaths?
A I haven't looked at the latest numbers but I agree with the first part; it's a disease that is deadly to people who are older and who have some chronic conditions.

Q Do you accept that the US now has over 939,000 deaths?
A Yeah. I have not looked at the latest numbers but it is -- it is a substantial death toll, especially I think something along the order of 80 percent are people over 65, 40 percent of people living in nursing homes in the United States.

Q 5.8 million deaths worldwide. Do you agree with that?
A Again, I've not looked at the latest numbers but it is -- it is a substantial -- it's a very dangerous disease for people who are older and people who live in (INDISCERNIBLE) and have -- are vulnerable in that -- in those ways.

Q I just want to return to the evidence we talked about last week on counting COVID-19 deaths, hopefully quickly through this. You will agree that counting deaths can be for surveillance purposes or for death certificate purposes, and those are two different things?
A That's true.

Q And do you agree that Alberta Health …

(PORTION OF PROCEEDINGS NOT RECORDED)

I suggest to you, sir, that Alberta's …

(PORTION OF PROCEEDINGS NOT RECORDED)

Alberta Health uses the following definition from the Public Health Agency of Canada for COVID-19 deaths for surveillance purposes: a death resulting from a clinically compatible illness and a probable or confirmed COVID-19 case, unless there is a clear alternative cause of death identified, e.g. trauma, poisoning, drug overdose.

That is what Alberta Health uses according to Dr. Hinshaw. Would you agree that that is the same definition that the World Health Organization puts forward?

A I'd have to compare carefully. That doesn't strike me -- that -- that strikes me that there's some -- some differences that the World Health Organization suggests but I could be -- I could be mistaken in my recollection. I'd have to refresh my recollection.

Q Let's go to -- it's your report, sir. You've got in a couple of footnotes that - and I think it's the second last one - it's a StatsCan document and if we go to 2296 out of 2300, please, Mr. Trofimuk. and I think this should get us to the right place just to see if I've got that wrong or -- or if you've got it wrong, maybe, but …

(PORTION OF PROCEEDINGS NOT RECORDED)

Okay. Sorry, we're having documents freeze up again. We apologize. Just bear with us and we'll give that another go …

(PORTION OF PROCEEDINGS NOT RECORDED)

So it was just at the bottom of this page, sir, you'll see it on the screen now; definition of certification of death due to COVID-19 for surveillance purposes. And that's what I was suggesting is the WHO's, which is the same as what I understood I just read you that Alberta Health uses.

A Yeah, that's what that says and I think that, if I remember right of what you said, that it corresponds.

Q Okay. Thank you …

(PORTION OF PROCEEDINGS NOT RECORDED)

UNIDENTIFIED SPEAKER: Mr. Parker, you're -- you're -- you're muted again. Oh, maybe not.

(PORTION OF PROCEEDINGS NOT RECORDED)

MR. PARKER: There we go. Sorry. Problems with the new headset again, my apologies.

Q MR. PARKER: Dr. Bhattacharya, Alberta has filed a -- a report by its Chief Medical Examiner in these proceedings, Dr. Balachandra. Have you had an opportunity to review Dr. Balachandra's report, sir?

A Not that I recall.

Q Okay. I'm just going to take you to one page in it and ask if you agree with what he says there …

(PORTION OF PROCEEDINGS NOT RECORDED)

And if we could go to page …

(PORTION OF PROCEEDINGS NOT RECORDED)

Dr. Bhattacharya, the -- on the screen is the part of Dr. Balachandra's report I wanted to see if you would agree with and this is a summary of Dr. Balachandra's evidence on filling out a death certificate, and he's here using COVID-19 as an example and he says, in summary: (as read)

> If COVID-19 is primarily responsible for causing the death, then COVID-19 will be listed in part 1. If COVID-19 is not related to the primary cause of death but it still causally contributed to the death, i.e. the death would not have occurred but for COVID-19, then COVID-19 will be listed in part 2. If COVID-19 was present at the time of death but did not cause or did not causally contribute to the death, then COVID-19 will not be listed in the death certificate at all.

That's what the Chief Medical Examiner says. Do you agree with that statement, sir?

A Well, do I agree that he wrote it, yes. But do I agree that he -- that that's exactly the procedure followed in all cases, I don't know.

Q Fair enough. And I'm talking about obviously in Alberta and -- and you don't know if

that's the procedure followed in all cases.

A I mean, I'll tell you I've seen in other - not in Alberta, in particular, but in other jurisdictions, including where I live out of Santa Clara County that there have been audits of death certificates conducted by public health that have found a substantial fraction of the death certificate reporting causally linked to COVID-19 when -- when COVID-19 was, in fact, incidental, something around the order of 25 percent in -- in Santa Clara County in the audit that was conducted.

The same thing happened in Alameda County and other jurisdictions, so I think that maybe the distinction that you are bringing here is the important one, whether COVID-19 is used for surveillance purposes or for actually following the traditional procedure for assigning cause of death, that there seems to be a confusion about that, like very often it seems like one -- one in four in Santa Clara County, for instance, California, COVID-19 is listed as -- as the cause of death, as -- as counted as the cause of death where in fact it was just incidental. I suspect that's true in almost every jurisdiction in -- in -- that follow this -- these patterns, these -- these -- these definitions of cause of death.

Q You would agree, there doesn't seem to be any confusion in Dr. Balachandra's evidence that I just read to you?

A Well, he just -- he just cites a statement. I don't know if it's true or not.

Q No, but you don't have any contrary information other than your speculation based on what you've seen in other jurisdictions such as Santa Clara County, though. Right?

A That's true.

Q And he continues after this, the last sentence, "The same criteria is used for determining and recording all deaths in Alberta whether COVID-19 is a factor or not." Do you have any disagreement with that statement, sir?

A Not -- not to my knowledge, I wouldn't disagree, but I don't -- I don't have a -- I don't have a disagreement if that's what he stated. I don't -- I don't know for a fact that that's -- that's actually been followed in all cases in Alberta. I'm not aware of a -- of an audit that was done on death certificates in Alberta. And obviously, the ones that have been done in -- well, as I cited, in Alameda County and Santa Clara County here.

Q Thank you, sir. I wanted to move on to quick questions about the third wave in Alberta. You would agree that that third wave in Alberta, so in the spring into the early summer, perhaps, of 2021 was Alpha driven. Alpha was the main variant in that wave?

A That's my understanding, yes.

Q Would you agree that Alpha was at least 50 percent more contagious than the wild type,

or at least that's what the evidence was around summer of 2021?

A I -- I don't know how much more contagious it was. The -- the scientific literature on the contagiousness is -- is -- is a contentious one and there's considerable -- and -- and my -- my readings (INDISCERNIBLE) certainly to the extent that it was more contagious. I -- I think it's likely that it was more contagious but I don't know if it was 50 percent more or not.

Q And do you know whether, in the Alpha wave, there was a decrease in the overall age of those admitted to hospital and ICU compared to the earlier second wave under the wild type?

A I -- I'm sorry, one more time. I -- I missed the -- missed the question.

Q I'm suggesting to you, sir, that the age of those admitted to hospital and ICU decreased in the third wave compared to the second wave?

A I -- I've -- I have not seen the age distributions in regard to the second wave for hospitalizations.

Q Do you know if, compared to the second wave with the wild type, there was an increase in hospitalizations, ICU admissions, and in deaths due to Alpha?

A I -- I -- I think the -- the third wave in -- in Alberta and elsewhere infected different populations than were infected in the first two waves, and that the set of people that are admitted to hospital is a function not just of the -- the characteristics of the virus but also of the mitigation strategies that have been followed up to date. So the -- the places that shielded vulnerable people don't necessarily have a higher fraction of the -- of the -- of its admissions being younger people. That doesn't mean that it's -- it's necessarily a -- a good or bad policy. The question is how -- how effectively do you protect vulnerable people or vulnerable -- other vulnerable people and what are the harms in the mitigation policies, so that's always a question of balancing the harms in the mitigation versus the -- the -- the -- the -- the shielding that you get. I -- I don't -- I don't --

I -- I guess, in answer to your question, I don't -- I don't -- I didn't -- I -- I don't know that -- that -- that what -- I haven't seen -- I don't recall the data that you're talking about.

Q Thank you, sir. I want to move on briefly to discuss school-aged children and we've -- would you agree, sir, that the risk of transmission in children generally increases in age. That is, that those 12 to 16 would be generally more able to transmit the disease than younger children?

A Yes.

(PORTION OF PROCEEDINGS NOT RECORDED)

Q … just going to bring up the document and see if you've seen it before, sir. It's -- you'll see it's a CDC document called "COVID-19 Scientific Brief, SARS-CoV-2 Transmission". It's updated May 7th, 2021. I'm not sure if you can tell just from what's on your screen. I doubt you can. If you -- if you've seen that before, perhaps we'll scroll down.

A I don't remember seeing this but it's possible I have.

Q I believe it was put to you in the Manitoba proceeding but I appreciate that may not be of any particular help, but this is a document, obviously, from CDC dated -- updated at May 7th, 2021, so that's in the middle of Alberta's third wave. Excuse me.

If you go to the second place, please, Mr. Trofimuk, 203 …

(PORTION OF PROCEEDINGS NOT RECORDED)

And I just wanted to look at -- just go down a little further, the next -- yeah, there we go, "Transmission". That's the heading I wanted to cover. This -- this section of this document, Dr. Bhattacharya, is discussing transmission in advance of both the presence of infection: (as read)

> … infectious persons exhaling virus indoors for an extended time, more than 15 minutes and in some case hours, leading to virus concentrations in the air space sufficient to transmit infections to people more than six feet away, and in some cases to people who have passed through that space soon after the infectious person left.

And then they say: (as read)

> Per published reports, factors that increase the risk of SARS-CoV-2 infection under these circumstances include …

-- and the first one is, of course, "inadequate ventilation in enclosed spaces". The second is "increased exhalation of respiratory -- respiratory fluids if the person is engaged in physical exertion or raises their voice, e.g. exercise and shouting, singing". Sir, would you agree with that statement that increased exhalation is a factor that increases the risk of SARS-CoV-2 infection under the circumstances that I've read to you?

A I mean, I've seen case reports that suggest that singing -- singing can cause -- can -- can increase the amount of expression of the virus if you're -- if you happen to be -- to have it but I'll say that it seems to vary pretty widely on -- on -- on individual characteristics.

So, like for instance, people who are -- who are -- who have a loud singing voice will spread more than someone with a -- a -- a light -- lighter singing voice. The same thing with exercise and -- and -- and shouting. Those are -- those, I think, do corelate with expressing in the air but that the -- that it's -- it's a -- it's -- it's a complicated story, I think, from the literature I've read.

(PORTION OF PROCEEDINGS NOT RECORDED)

Q … but let's go on to the topic of religion. This is, I'm going to go back to Mr. -- Dr. Bhattacharya's primary report, please, Mr. Trofimuk, page 26. And, sir, when we get to this page, I believe - if I've got the right page - you were discussing guidelines that are set out, I believe by the CDC for conducting religious services during the pandemic. Yes, actually the bottom of 26, top of 27.

The top of 27, please, Mr. Trofimuk. Thank you.

And, sir, this is the part of your report I was referring to, if you want to just take a minute to refresh your memory if you need to.

A No, I remember this.

Q Okay. And so here, sir, as I understand it, you're saying here's some recommendations in the CDC guidance for conducting worship services during the pandemic. You note that, on the previous page, the Public Health Agency of Canada cites this document as an additional resource for community gathering spaces which include places of worship. The guidelines are set out there, there's nine of them. They include things such as wash hands, hygienic handwashing, wearing masks, six-foot social distancing.

My question is, if -- if the religious group is either not willing or says that they cannot follow these guidelines, would it be appropriate, in -- if -- if somebody is following the focussed protection approach in the Great Barrington Declaration to then mandate that some of these protections be put in place?

A No. I think the right thing to do is to work with the -- the -- the church or the -- or the mosque or the -- or the synagogue, see what they -- what constraints they face because I think that that kind of religious worship is an important part of life for Canadian people and so working with them to provide them resources so that they can do -- can conduct their services as -- as -- as consistently as possible within these guidelines, not mandated but -- but as -- as -- as -- as recommendations is the right approach. You build trust that way. You allow that kind of service to happen because it's important to them to have that service, while at the same time giving them resources so that they can adopt the -- the things that are most effective for them in terms of keeping -- keeping their community safe.

Q Thank you. I understand, Dr. Bhattacharya. If -- if, however, in spite of your best efforts working with the particular religious group, they are still unwilling to worship while following this guidance, would you agree that it might be appropriate - depending upon the -- the circumstances of transmission in the community - to put in place mandated restrictions that achieve the kind of safety that these guidelines are intended to?

A Yeah, I think, as we've discussed, Mr. Parker, I think that the -- reducing community spread simply in and of itself does not necessarily protect vulnerable people, so I don't think that the primary thing is to only look at whether these activities -- whether compliance with these guide -- guidelines is happening to -- in order to reduce community spread. The -- the key question is, what's the -- what's the values of the people that are conducting these services. Can you work with them and give them resources to help them meet as many of these -- these guidelines as possible to the extent that they can? And how are you protecting vulnerable people in the community at large and in the congregation? I -- I think those are the most important things to do in these kinds of situations.

I think the mandates build distrust in public health. I think that is the problem with -- with mandates just generally and very specifically during the COVID-19 epidemic. I mean, I think the fact that this court hearing is happening at all is evidence that it's built distrust and I think that has long running consequences to the health of the population. So, no, I don't agree that the mandates were necessary in this case.

Q You are aware that Alberta never closed churches during this pandemic?

A I -- I've seen some evidence that -- that there were -- there were what I would call violations of -- of -- of the right to worship during -- during the pandemic in -- in -- in places all -- all around Canada and also all around the United States, I should say.

Q So that's a yes, you are aware Alberta didn't close churches during the pandemic?

A I'm aware that they didn't close churches, yes.

Q They used capacity --

A But also there were restrictions on -- on religious worship.

Q There -- there were capacity restrictions in place for churches similar to other -- other locations. You would accept that?

A Yeah, I accept that there were capacity restrictions, yes.

Q I want to move on now to PCR testing briefly and I'm going to go to the expert report of Dr. Nathan Zelyas. Dr. Zelyas is a medical microbiologist with Alberta Precision

Laboratories where he is the programme leader for respiratory viruses and transplant virology. Have you had an opportunity to review -- yes, you did, I know you've reviewed Dr. Zelyas' report because you spoke to it in your surrebuttal report. I just want to take you to a page and an attachment, one of the references that is attached to Dr. Zelyas' report. It's the one that is up on the screen before you. It's number 13 to Dr. Zelyas' report and I can tell you, this is a document that is from the Canadian Public Health Laboratory Network. Not to confuse things, but it's identical to a document from the Government of Canada, as well, identical wording and in any event -- sorry, I say that because there's -- well, you know, I'll get to that when Dr. Zelyas is on the stand.

So if we can go to the third page of this document, Mr. Trofimuk, and you -- you did read Dr. Zelyas' report before you prepared your surrebuttal report. Right, Dr. Bhattacharya?

A I remember doing that but I don't have any specific memory of what he said at this moment.

Q I understand. Do you know if you read what I'm showing you now or -- or not?

A Let me look at it. I remember reading this but not specifically that it was exactly this wording or -- or this specific thing.

Q Well, this is part of his report so it may have been this but in any event, you understand that the Canadian Public Health Laboratory Network was recommending, as it says: (as read)

> High CT values are not yet proven to be able to declare someone non-infectious, only that they are less likely to be infectious. As a result, not recommended that CT values be routinely clinically reported. The SARS-CoV-2 RT-PCR results.

Do you see that, sir?

A Yes.

Q And -- and you understand, sir, that that's a recommendation of the Canadian Public Health Laboratory Network?

A Yeah, but I don't think that that's the right recommendation. I think the right thing, if you wanted to exclude people who were infectious -- non-infectious from quarantine would be to do two CTs, two -- two PCR tests, one 24 hours after the first. And if the number of cycles needed to detect the virus decreases, then -- then -- well, then, that means the virus is increasing in the person. If it -- if it stays the same or decreases, then that person is not actually replicating the virus, is not infectious, and there's a -- there

is literature which I cite that shows that about a certain threshold it's very, very unlikely that a patient is infectious if they have a high CT value, along with their -- with their -- that they're -- for a PCR positive test.

Q Yeah. I'm going to let Dr. Zelyas, the expert, speak to that so I won't get into two many questions anymore on this with you, but I was just noticing the next key point and recommendation from the Canadian Public Health Laboratory Network - and that's number 5 - and it says, "if a laboratory chooses to routinely report CT values, it is recommended that clear language regarding uncertainty and interpretation and which authorities may need to be consulted for decision-making be included in the report. And when you wrote your surrebuttal report, did you understand, sir, that that recommendation was being made by this -- this entity?

A I -- I did and I was disagreeing with the underlying public health logic behind it because you can't -- this -- this kind of recommendation is based on the idea that there is no harm to quarantining people who are not infectious, that -- that the -- in order to stay safe, in order to reduce the spread of the disease, it's okay to confine people or ask people to be confined who are -- who have -- who are PCR positive but not -- pose no infectious threat to others, or very little likely -- or very unlikely to pose infectious with respect to others. I don't agree that's right.

You have to consider both the harms and the benefits of a policy, not just simply just the potential benefits. If you follow step five here, essentially what you're saying is that it doesn't matter that many people will be confined or quarantined even though they're not infectious because they may -- that there's some small fraction of that population with a CT value of 45 or 40 or whatever that -- that it is that they might be infectious. I think the right thing is to consider both the costs and benefits, both harms and -- and benefits of a policy, not just simply the potential benefits.

Q Thank you, Dr. Bhattacharya. I'm showing you another document now from Dr. Zelyas' report. This is document 15 from his report and this is a document entitled, "CT Values, What They Are and How They can be Used" from November 9th, 2020, published by APHL, and I want to go to -- let's go to page 143 out of 144, please, Mr. Trofimuk, and go down to the question, "Why don't labs report CT values on their reports for NAATS". And, sir, I want to ask you about this question and the answer. Do you understand that it would be a regulatory violation for labs to report CT values on their reports for NAATS?

A I mean, I don't know the regulation in Canada for whether your HR are or not allowed to report, that's what the document says. I'll say this, though, the regularization is a -- the regulation is policy choice. It doesn't have to be in place and that policy choice reflects the idea that there's no harms at all for declaring someone PCR positive with a high CT value. In fact, there are harms, harms that result in quarantining of people that

pose no threat whatsoever to the population at large of spreading the disease.

Q Thank you, Dr. Bhattacharya. I want to go on now just to briefly discuss Sweden and I've looked through the materials and I can tell you, in your evidence you've got some information about Sweden's population. It's 10.3 million and I got that from the -- the study that's in your evidence that compares Sweden and Finland schools during the first wave. Do you know what I'm talking about, sir?
A No.

Q Would you accept then, so I don't have to take you there, that it says in that document that Sweden's population is 10.3 million. Are you willing to accept that as --
A I'll take your word for it. I don't remember the specific numbers.

Q Sounds good. I can tell you that Dr. Kindrachuk has Alberta's population, in his report, as 4.4 million. Would you accept from me, sir, that it's closer to 4.46 million?
A I don't know the numbers off the top of my head.

Q Just for the purpose -- I'm wondering if you're willing to accept that for the purposes of this question in your evidence. You can say, no, and I'll move on. I'm just trying to get through some stuff.
A Sure.

Q The -- the -- what I'm getting to, sir, is that Alberta's population, and you can see it, 4.46 million over 10.3, it's 43 percent, so Alberta has 43 percent of Sweden's population is the first point. And we know that as of July 6th, '21, the time period that we cut Alberta's evidence off on last summer, that the number of deceased people in Alberta from COVID was 2307. I showed you that number earlier. Right? Do you remember that?
A Yes.

Q And I can tell you, and again I -- it's not in the evidence but I -- I was able to look up on the World -- World Health Organization site and determine what Sweden's death -- deaths from COVID were as of close to that date, one day before, July 5th, 2021, and would you accept, Sir, that the deaths in Sweden at that time from COVID were 14,675?
A I'd have to look it up but I'll accept that you say so.

Q And so the last thing I'd ask you to accept are my calculations on that, and that is that if you take the 2307 deaths in Alberta over the 1460 -- sorry, 14,675 I put to you for deaths in Sweden as of the same time, Alberta would have about 15.7 percent of the death in Sweden. Do you accept that, sir?
A I mean, I accept that you did the division correctly. I do think that if you are going to

compare places that you need to age adjust for the populations. So a population that has an older age structure, you're going to -- you're going to -- you going to expect to see higher deaths just simply by the fact that they have a higher fraction of the population that is vulnerable. So just comparing deaths by population alone is -- is -- is an epidemiological mistake. You need to at least age adjust.

The other thing I say is that Sweden, in the early days of the epidemic, didn't follow (INDISCERNIBLE) protection. Their -- their nursing homes, especially in Stockholm, were exposed to the virus. The question is of whether -- of how -- of what effect these policies had is a difficult and complicated one, as we discussed earlier, and requires more -- a more nuanced way to think about this. I mean, if you can talk about these things as -- as a -- as illustrative and not definitive.

Q Thank you for that, sir, and -- and I understand your point about age adjustment. And I mean, I -- I -- we hear often that Alberta -- or at least we used to hear often that Alberta was Canada's youngest province, perhaps it still is and perhaps that would impact, as expected, to raise our death rate up compared to other jurisdictions. You don't have any information, though, on the relative age difference between Sweden and Alberta's population. Right?

A I have not conducted a study of the age -- age adjusted mortality difference between Alberta and Sweden, no.

Q I mean, you know, if you've got 43 percent of the population but 15.7 percent of the death, it seems to me you'd have to be doing a whole lot of the age adjustment to get that anywhere else -- anywhere close to on a per capita basis the same number of deaths that they've had in Sweden. Right?

A You shouldn't -- you shouldn't have to -- you shouldn't -- you should never presume like that. So, for instance, if you do the same kind of comparison in California and Florida, Florida being one of the very oldest states in the country and California being one of the youngest, it moves Florida very far up the rankings above the -- how the -- above the -- the national average and very close to California in -- in the age adjusted death rate ranges whereas they're not close in just per capita death rate rankings. The age adjustment makes a big difference because age is such a -- such man important predictor, such a steep predictor of mortality and, as I said, if you don't do age adjustment you're -- you're essentially producing misleading information.

Q I -- I've looked at a number of statistics on -- well, as you know, we were discussing deaths per 100,000 in various States last week and just on your point there, I've looked at the numbers of statistics saying (INDISCERNIBLE) deaths per 100,000 for both California and Florida, and I understand your point, you know rough, and I decided not to put any of these before you but I -- maybe you'd agree with this. If you start out

roughly on an unadjusted basis - and, again, I've seen several different lists and -- and obviously they're not all the same - but you'll get Florida somewhere around up to 300 or even over 300 deaths per 100,000. California will be much closer to 200 deaths per 100,000. That said, when I've seen the age adjustment done, the gap does close considerably. Florida came down to around 242 and I think California moved up to 220 per 100,000, and so there's the type of closing of a gap that you would get by age adjustment between those States. Would you agree with that, sir?

A I -- I'd have -- they're not specific numbers. I've seen close -- it closer than that but I do agree with the direction.

Q Yeah. Okay. But in any event, and I -- I appreciate your point about I shouldn't presume the age of Sweden relative to Alberta but you don't have any information on the average age of Sweden. Correct?

A And you're the one who gave me the calculation. I didn't do that. I didn't do that so that --

Q Yeah, absolutely. Let's go to document 37, please, Mr. Trofimuk. And, sir, this is from the BMJ and it is published December 14th, 2020. And the heading is, in this news item, "COVID-19 Sweden considers tougher restrictions as ICU beds near capacity". Have you happened to see this news article before, sir?

A No.

Q And you'll see that it says: (as read)

> Health officials in Sweden have warned that intensive care units in and around Stockholm are under severe pressure and close to capacity for the first time during the pandemic.

And then if we move down to what I'll call the fifth paragraph, beginning, "The Swedish government changed its approach". Do you see that, sir?

A I do. I do, yes.

Q And it says that the Swedish government changed its approach to the pandemic last month, i.e. November of '20, when it introduced tougher restrictions on social interactions after cases started to rise. Do you have any information as to whether that is what happened in Sweden at that time?

A I do remember this incident, although I don't remember this particular -- this particular thing that you've put in front of me. The -- the -- this was done at the behest of the Swedish government over the -- the objections, I think, of the -- the Swedish Public Health Agency, which -- which recommended a -- which recommended a restructured -- restricted reductions in mass gatherings or reductions in gatherings. It didn't -- didn't

mandate, did not want to mandate it.

Q And the news piece continues: (as read)

> The soft approach the government had adopted based on recommendations and voluntary behaviour of citizens has shifted as cases of infection with SARS-CoV-2 have continued to surge, along with hospitalizations and deaths.

And again, sir, do you accept that Sweden shifted its approach during this time, which would have been the phase -- wave two time in Alberta, to deal with surging hospital -- surging hospitalizations and deaths?

A I mean, I -- I -- I don't know about -- I don't know -- I don't have access to exactly the -- the -- the reasoning but I do accept that they changed their approach for a short period of time during this time.

Q Thank you, doctor. Those are my questions on Sweden. My last set of questions is on arms from the lockdown. Have you -- do you recall reading Dr. Hinshaw's affidavit when she talks about Alberta's suicide statistics during 2020?

A I don't -- I don't remember reading that, no.

Q Okay. Do you have any information on Alberta's suicide statistics in 2021?

A I -- from what I've seen, actual suicides, completed suicides did not go up during -- during this period. I don't know if I'm remembering specifically for Alberta but -- but Canada at large, but at the same time I've seen that suicidality has increased as -- as well as suicidal ideations and other -- other correlates of mental distress, like depression and anxiety, substance abuse.

Q I wanted to talk about opioid -- opioids now, sir, and ask you specifically about Florida. Do you know how Florida has fared over the last two years starting in 2020 in terms of its national -- sorry, nationally in the US, has it done well? Has it, on the opioid epidemic, do you know Florida has done?

A I don't -- I don't think any State has done well on the national -- nationally on the opioid epidemic. It's -- it's a catastrophic problem for the United States.

Q In other words, Florida has done no better than any other State that you're aware of on the -- on the --

A I -- I am not aware of a careful study of that --

Q Thank you.

A -- or a comparing of States.

Q Is it -- well, you talk about -- I -- I believe you talk about opioid -- let me start that again. One of the harms of the lockdowns that you point to is increasing deaths from drugs, including opioids. Right?
A That can be a harm from lockdown, yes, but there are other sources of that also increasing, not the only source, as I said.

Q Absolutely, and some of the other sources for that would be what, sir?
A I mean, I think unemployment can cause that. As I've mentioned, anxiety, despair. As I said earlier, there's also supply side issues. You know, the -- the entrance of the -- and the -- the openness of -- of States and borders to importing fentanyl and other -- other -- other drugs like that.

Q And do you know if the supply side issues have resulted in other drugs being cut with opioids that have resulted in overdose deaths?
A Yeah. Like, I've mentioned fentanyl already.

Q Yeah. Sir, would you agree, then, that Alberta, being a population of under four and a half million people, have limited ability to impact these various things that you're speaking of that have caused the increase in overdose deaths?
A I think the supply side factors are -- that's more of a national, a Canadian national issue, I would imagine but the -- but the -- the -- the demand side factors, there are things within the realm of public health that can -- that can be used. The availability of substance abuse, (INDISCERNIBLE) programmes, monitoring of -- of physician prescriptions of opioids, and also lockdowns. So lockdowns causing mental distress, unemployment, and other -- other things the correlate with an up -- uptick in -- in the use of opioids and other -- and -- and -- and other related substances.

MR. PALMER: Thank you for that, Dr. Bhattacharya.

Dr. Bhattacharya, those are the questions that the respondents have for you in this matter. I wanted to thank you very much for your time. I appreciate it, sir.

A Thank you, Mr. Parker.

THE COURT: Okay. Thank you.

Mr. Grey or Mr. Rath, do you have any questions arising?

MR. GREY: Madam Justice, it's Leighton Grey here. I think that both Mr. Rath and I do. We've only just discussed who would go first. It looks like

it's going to be me. I wonder if we could just take a -- a short break for about ten minutes so that I could get organized, please?

THE COURT: Sure. That is fine. We will do -- why do we not do the afternoon break of 15 minutes now and we will take it from there. Thank you.

MR. GREY: Thank you.

(WITNESS STANDS DOWN)

(ADJOURNMENT)

(WITNESS RE-TAKES THE STAND)

THE COURT: Okay, thank you. Okay, Mr. Grey, are you ready?

MR. GREY: Yes, I am, Madam Justice.

THE COURT: And Dr. Bhattacharya?

A Yeah, I'm here.

THE COURT: Thank you.

MR. GREY: Thank you.

The Witness Re-examined by Mr. Grey

Q Good afternoon, Dr. Bhattacharya.
A Good afternoon, Mr. Grey.

Q I expect you have had a long few days.
A Yes, sir.

Q I'm not going to keep you -- I'll keep you a bit longer, hopefully not too much longer. I'd like to begin my re-direct questions to you also where Mr. Parker had begun, and this is when he was going through the examination and discussion of some of your credentials and background.

Perhaps we -- could you please bring up schedule 'A', what Mr. Parker has called Dr.

Bhattacharya's primary report? This is Dr. Bhattacharya's CV, and of course Dr. Bhattacharya, you are quite familiar with this and you've given evidence about it?

A Yes.

Q Okay. There was a -- a -- a question from Mr. Parker about I believe it was in how many different countries you had studied, and how many different countries you had written about, and how many different countries your work had been published, and the answer was "Many, many" but this was not clarified, so I'd like to take a minute just to go through a few of these and have you help me clarify this question. If you look at number one --

And firstly, I should state that paragraph 'C' refers to peer reviewed articles, 141 in total. Do you see that, sir?

A Yes, sir.

Q Did I hear you correctly to say that since the time that this CV was produced a little over a year ago, that the number of peer reviewed articles that have been published is now up to 154?

A Yes, sir.

Q Okay.

A 155 at this time.

Q Thank you. At paragraph -- sorry, number 1 under scholarly publications appears to review to a Japanese (INDISCERNIBLE)?

A Yes. That was the first paper I ever published on -- it was on how the policy in Japan -- it was a (INDISCERNIBLE) policy in Japan.

Q Okay. So you've been published in Japan, and it looks as though similarly, number 3 was another Japanese study?

A Yes.

Q Obviously, there have been -- you've been published many times in the United States --

A Yes.

Q -- and you -- we see that going through. Looking at number 21, please. Dr. Bhattacharya, what was this -- what did this study concern, number 21, "Impact of Informal Caregiver Ability on Long-term Care Expenditures in OECD countries"?

A So the -- the question was about how developed countries, including in Europe and the Americas, are coping with the aging of the population, in particular how well they are

doing with respect to the -- their care in nursing home settings.

Q So I'm inclined --

MR. PARKER: Sorry. The objection is that I did not ask about this article and this is not proper re-direct.

THE COURT: Okay. I do recall - and Mr. Grey, I do not need you to respond to this - I do recall the questions about how many different countries that the doctor has published articles about, so I am going to give Mr. Grey a little bit of leeway on that.

I do point out, Mr. Grey, that you know, I have read the doctor's resume and I can certainly read all of these peer reviewed articles and determine for myself. I think there is no real question that Dr. Bhattacharya has published in a number of jurisdictions.

Mr. Parker, is that correct?

MR. PARKER: Yes.

THE COURT: Yeah, okay.

MR. PARKER: Thank you.

THE COURT: So, Mr. Grey, with that in mind perhaps you could be a little briefer on this issue.

MR. GREY: I can be very brief, My Lady. That was the issue. I thought there was some question about whether or not he'd been published in many, many countries. And as long as it appears that that issue has been conceded, in fact I think it's been demonstrated by Mr. Parker through the course of his cross-examination, so I'll leave the point entirely. Thank you.

THE COURT: Okay.

Q MR. GREY: Dr. Bhattacharya, getting more sort of into the -- the meat of some of the questions that you were asked by my friend, he had put to you one journal or article, I believe it was, and put to you the question of whether or not lockdowns can be beneficial. Do you recall this discussion?

A Yes.

Q Okay. And I believe that you -- that this was not really sorted out. Could you distinguish and explain under what circumstances you would consider lockdowns to be a beneficial way of dealing with a -- a -- a pandemic situation?
A I think lockdowns should be a -- a -- an absolute last resort and main -- and -- and should be limited in time when there's -- there is no other options.

MR. PARKER: I'm going to object again --

THE COURT: Okay.

MR. PARKER: -- based on this not being proper re-direct. This is the substance of Mr. -- Dr. Bhattacharya's primary report and it's covered in detail in the surrebuttal report; that is the effects of lockdown, including beneficial or -- or otherwise. So it seems to me that this is not proper subject matter for re-direct again.

THE COURT: Okay. Mr. Grey, your response?

MR. GREY: Well, My Lady, it appears that Mr. Parker intends to object to virtually every area of questions in re-direct because he does not think it is a proper area for re-direct. My understanding of what I can re-direct upon is that I can go back and ask questions to clarify answers that were given by Dr. Bhattacharya that were covered under cross-examination. That's my understanding.

If I have to do that to Mr. Parker's understanding of the concept, I think it would proscribe my re-direct to the point where it would be non existent, so I've explained the -- the basis of my understanding of re-direct. If I'm incorrect in that, then I'm perfectly happy to be corrected and directed by the Court.

THE COURT: Okay. Mr. Parker, do you want to respond to that before I rule?

(PORTION OF PROCEEDINGS NOT RECORDED)

MR. GREY: I cannot hear, Mr. Parker. I'm sorry.

THE COURT: Yeah. No, I am sorry, Mr. Parker, we cannot hear you.

MR. PARKER: I'm so sorry, folks.

THE COURT: That is okay.

MR. PARKER: Can you hear me now?

THE COURT: Yes.

MR. PARKER: No disagreement on the law on re-direct. I agree with what my friend had said about that. We're just in disagreement as to whether this subject matter is appropriate re-direct.

THE COURT: Okay. I am going to allow the question. I am glad to hear that there is no disagreement between the two of you with respect to the proper use of re-direct but I certainly recall the line of questions and I think Mr. Grey is entitled to seek clarification.

So go ahead, Mr. Grey.

MR. GREY: Thank you, Madam Justice.

Q MR. GREY: Dr. Bhattacharya, just to go back and repeat the question, my friend had put to you in cross-examination the proposition that lockdowns, under certain circumstances, can be beneficial and so what I'm asking you to do is to clarify precisely, in your opinion, under what circumstances lockdowns would be inappropriate in a proper response to a pandemic situation?

A So I can imagine there would be epidemics or viruses or pathogens that are very, very short run in nature that the -- where, for instance, environmental conditions would mean that there would be a very short period when a population, a large population would be at risk almost in equal measure where a lockdown might be worthwhile. I think the burden of proof for that would be absolutely enormous and that does not apply in this case.

Here you have a virus that's transmitted via breathing, a virus that has this very steep age gradient in risk, and a lockdown policy that's been followed essentially for two -- two years, I don't believe - with enormous harm to the population in terms of -- of the health of the population - and has not been particularly effective in protecting the population even against the disease it's supposed to protect it against. We -- as -- as we talked about that study from Johns Hopkins where there was almost no difference in death caused by lockdowns from COVID, so I don't think that -- that this is a situation where a lockdown would be appropriate, but I could imagine there would be, at least in theory, situations where there might be but it would have to be short -- very short, and they would have to have characteristics very different from the ones we've faced.

Q So could you give us an example, a recent example of a -- a virus that -- where you would consider an appropriate measure would be lockdown --
A I can't think of any --

Q -- or any (INDISCERNIBLE)?

THE COURT: Sorry. Sorry, Mr. Grey. Mr. Grey, I think you are going beyond the principles of re-examination when you take that further.

MR. GREY: Okay.

THE COURT: I have not waited for Mr. Parker to object but I am sure he does not disagree.

Go ahead.

MR. GREY: Okay. Well, I'm going to anticipate Mr. Parker's objection to the next question but I'll go into it anyway and we'll work through it.

Q MR. GREY: Dr. Bhattacharya, you've just mentioned -- you have mentioned several times in answers to my friend a Johns Hopkins study. And by that --

MR. PARKER: I object, relevance? And we discussed this study earlier and the objection is relevance, then, and the same objection. This is a study that was --

Sorry, Justice Romaine, do you want to hear from me now?

THE COURT: Yes.

MR. PARKER: Okay.

THE COURT: Yes, go ahead.

MR. PARKER: This is a study that was -- this was the study that was released roughly two weeks ago and again we're dealing with orders from the second wave through to the third wave, so the fall of 2020 to June 30th of 2021 is when the evidence was cut off on. The -- the relevance of a study late last week, therefore, is not clear and we say it's not relevant. There's nothing that anybody during the second and third wave could have done with this information if they'd had it. It didn't exist at the time.

THE COURT: Mr. Grey, do you want to respond to that?

MR. GREY: Yes, I would. Firstly, the study was not released last week, it was released in January.

Secondly, the -- the objection that my friend has -- has offered would have excluded from evidence a number of pieces of evidence that he showed to the witness in cross-examination, most recently was just this morning when he produced the document that was data that was generated only a few days ago. There also have been a number of other studies that he put to this witness which were retrospective. I can specify them, if you would like.

THE COURT: No, Mr. Grey, I know what you are saying. However, at the time there were no objections to the admission of that information. I do have to --

MR. RATH: Madam --

THE COURT: Sorry. Go ahead --

MR. RATH: I'm sorry.

THE COURT: -- Mr. Parker.

MR. RATH: If I may, this is Mr. Rath. This is --

THE COURT: Oh, Mr. Rath, I am sorry. This is not -- this does not have to do with you on this objection so just Mr. Parker and Mr. --

MR. RATH: Well, that I'll be readmitting the study during my portion of the re-direct, My Lady, and this is -- this document is very important to our client and goes to my friend's continued false assertion that this matter has been cut off back in July of -- of 2021. I think (INDISCERNIBLE) during these proceedings in order to resolve that (INDISCERNIBLE).

THE COURT: Okay.

MR. GREY: And that's --

THE COURT: Given -- no, no, hold on.

MR. GREY: Madam Justice --

THE COURT: Hold on.

MR. GREY: Sorry.

THE COURT: Given your intention, Mr. Rath, you can address this objection. I am not sure that Mr. Grey was finished with what he had to say, though.

MR. GREY: I -- I wasn't, madam clerk -- Madam Justice, but --

THE COURT: Okay.

MR. GREY: -- I am listening -- I'm listening carefully to it. Do you want -- do you wish to hear from me?

THE COURT: Yeah, I do. Yeah, I'd like you to finish your response.

MR. GREY: Okay. The -- I think that there's an important question to be parsed out here between admissibility and weight. The -- the question, as you know, of admissibility is a very, very high standard and Mr. Parker -- Mr. Parker's objection, in my respectful view, does -- does not -- does not -- is not satisfied. If you'd like, what we could do is perhaps make some -- some submissions to you, release the witness, and deal with this in more particularity but the admissibility is basically on the basis of relevance.

It's very clear to me that this information is relevant and it -- it could be heard by the Court and given appropriate weight. The study itself is a metanalysis which relates to several different studies, some of which - many of which - Mr. Parker has referenced in the course of his cross-examination and it -- it provides information about the -- the propriety of lockdowns during -- during the first wave. And so it is directly relevant, that's not in issue. If the only objection is that the study is retrospective, then that would -- that would exclude all sorts of evidence that are still relevant.

I think the issue there, I think what Mr. Parker is talking about is the amount of weight to be given to the study given that it -- it -- it does, it is in some respects or at least in the form of its opinion is -- is -- is retrospective but that does -- that is not -- in my respectful view, that does not justify its total exclusion from -- from -- from this proceeding or that Mr.

Bhattacharya cannot be asked -- or Dr. Bhattacharya cannot be asked about it, but those are my submissions.

I can go into more detail but I'd like to hear from you about whether or not perhaps we should have an adjournment and so that myself and Mr. Rath can give you more detailed submissions. Those are a couple of suggestions I have if -- unless you're prepared to rule on it now --

THE COURT: Okay.

MR. GREY: -- but those are my submissions.

THE COURT: Okay. Mr. Rath?

MR. RATH: Thank you, My Lady. I'd like to note my -- my interjection this morning with regard to the February 11th document that my friend, Mr. Parker entered. And it was -- it wasn't for the purpose of objecting to the document because we do not object to Mr. Parker entering evidence up-to-date with regards to this hearing. That's been our position throughout.

Madam Justice Kirker's order filed on (INDISCERNIBLE) that the following (INDISCERNIBLE) --

THE COURT: I am sorry, Mr. Rath. Mr. Rath, you are breaking up, right after you said --

MR. RATH: Oh.

THE COURT: -- Madam Justice Kirker's order, then --

MR. RATH: Okay. It expressly states that all of the orders up to the date of the hearing are on the table. She states at paragraph 1 at page 8 of the hearing procedural order: (as read)

> The following CMOH restrictions (and for greater clarity) any subsequent (INDISCERNIBLE) of the restrictions in any future CMOH orders not specified below are --

THE COURT: Okay.

MR. RATH: -- (INDISCERNIBLE).

THE COURT: Okay, Mr. -- I am sorry, Mr. Rath, but I want to interrupt you, not because I am going to stop you from making submissions but Mr. Grey has suggested that I call an adjournment and give you and he an opportunity to make further submissions, and this certainly does relate to an issue that I asked for submissions on, on Friday, I believe. I have not had, of course, a chance to look at the submissions that have been coming in.

Mr. Parker, do you have any problem with an adjournment, with letting Dr. Bhattacharya go while we sort out this point?

MR. PARKER: No, I do not.

THE COURT: Okay.

MR. PARKER: And in my view -- in my view, My Lady, it would be entirely appropriate at this time, so thank you for asking.

THE COURT: Okay. Okay. And I am sorry to interrupt you but it is more difficult, of course, with the Webex.

Okay, Dr. Bhattacharya, I apologize, I really do. We can let you go now. I gather that we may be calling you back. Well, we will be calling you back for re-direct but thank you for your testimony today.

A Okay.

(WITNESS STANDS DOWN)

Discussion

THE COURT: Okay. Arrangements with respect to this, it is -- well, are we going to adjourn to tomorrow morning to -- for me to hear from you and submit? That will give me an opportunity to look at the written materials that you have submitted today that I have not had a chance to look at. Is that appropriate?

MR. RATH: Sure. Certainly from our perspective, that will be appropriate, My Lady.

THE COURT: Okay. Mr. Grey?

MR. GREY: I -- I would appreciate that, Madam Justice, I would like to hear from Mr. Parker about the -- the possibility of an agreement that you would review the contents of the Johns Hopkins study, not for the purposes of -- of course it wouldn't be in evidence but to -- in order to inform your decision about whether or not it is admissible relevant evidence. And I think it puts you in a very difficult position to make that ruling in a vacuum. Of course, you're the best person to decide that but if there's some agreement that we could have that -- that you can look at the study, make your ruling, and then if you decide to exclude it, just to disabuse your mind of it and confirm on the record that you shall give it no weight, I think that, to me, would be the most -- the most fair and reasonable mode of procedure and would give us the best decision.

But I -- I expect Mr. Parker -- I would like to hear from Mr. Parker on this point, whether he would agree to proceed upon that basis. Thank you.

THE COURT: Okay. Mr. Parker?

MR. PARKER: If you feel it would be helpful to your decision, I have no objection to that. That said, I would suggest that it's unnecessary for you to do that. This would be a complicated issue, as we talked about on the first day when my friends first raised the Johns Hopkins study. This was a study released approximately two weeks ago. The relevance, therefore, as to what it was supposed to tell those who were responsible for making these orders during the third and second wave is -- is unclear and, indeed, I would say there is no relevance, there can't be. The folks who were making those orders, who were informing themselves, could not have done so from this document. It didn't exist until months after the relevant time.

Thank you.

MR. RATH: And Madam Justice --

THE COURT: Yes?

MR. RATH: Madam Justice, if I may (INDISCERNIBLE). The document itself is a metanalysis and the degree to which it refers to papers that existed prior to Mr. Parker's imaginary cut-off date that he keeps referring to would be relevant regardless of your ruling in this regard and we would ask that you look at it. Thank you.

THE COURT: Okay. Thank you. I believe that the question of relevance, and therefore admissibility with respect to this document has to do with its timing of release. And for that reason, I would prefer not to see it until I hear your arguments. If, after that, I decide that there is a good reason for me to review it before I

make my ruling, I will ask for it. Okay? So --

MR. GREY: Thank you.

THE COURT: Okay, what -- when are you prepared to address this? Is that first thing tomorrow morning or have you all put in your written argument? I have not checked to see what materials I have received from you yet. Obviously, I have been in here with you, so is tomorrow morning sort of first thing satisfactory for you, Mr. Parker?

MR. PARKER: We haven't put in any written submissions on this and I don't think anyone has. We've put in written submissions just on the -- our -- our disagreement on -- on what period this -- the orders covered and that's what was submitted on.

On this point, we can have any submissions in by tomorrow, if -- if that's what the Court wants. Again, I don't think --

THE COURT: Well --

MR. PARKER: -- they would be very detailed, though.

THE COURT: It is up to you. I think it relates to the issue of, you know, what is the scope of this hearing in terms of the directives?

But Mr. Rath, Mr. Grey, are you satisfied that you do not need to put any written materials in?

MR. RATH: I -- I was of the view that the written materials that we submitted yesterday were in response to the germane issue with regard to the Hopkins study, which was my friend's letter dated February 11th, 2022, which both my friend Mr. -- Mr. Grey and I have responded to in writing, and those would be our written submissions I would advance.

THE COURT: Okay. Okay. And from what I am hearing, then, at 9:30 tomorrow morning I will hear oral submissions on this issue, after I have had a chance to review your submissions with respect to the scope of the hearing. Okay?

Good.

MR. GREY: Thank you, Madam Justice.

THE COURT: Okay. Thank you. But I do want -- before we go, I do want to address a matter of procedure and I think that the conversation that we are having right now illustrates, in part, what the problem is. You know, a Webex hearing has certain limitations, obviously, and I think what has happened with respect to this current issue illustrates one of them.

So for future witnesses, I would like the counsel who will be cross-examining a witness to prepare a binder of all the documents that he or she intends to present to that witness in the course of cross-examination, other than of course the report of the expert and any affidavits, et cetera. That binder of written materials could then be presented to or delivered to me and to other counsel at the time that the witness takes the stand, and I understand that there is some difficulties with that in that two counsel are in Calgary and one counsel -- well, and the respondents' counsel is in Edmonton but I am sure that you can find an agent who would be able to deliver these materials, and that would give -- that would allow me to better follow the cross-examination as it occurs while concentrating on the presentation of the witness and to be better prepared for argument and in drafting my decision, and I also think it would be fair and beneficial to opposing counsel and allow them to better prepare for their response.

So any comments on this proposal?

MR. RATH: I hesitate --

MR. PARKER: No, My Lady.

MR. GREY: Go ahead.

MR. RATH: I hesitate to raise this, My Lady, but as a practice, as counsel, I have always been one to seek whatever convenience the Court requires. However, in this case it's somewhat unfair from a procedural perspective. This order wasn't issued at the outset and we haven't had that benefit with regard to my friend, Mr. Parker's cross-examination of Dr. Bhattacharya, but in that regard we'll leave it in your hands, as we always are.

THE COURT: Okay. Thank you, Mr. Rath, although I do not see the connection there but, okay. Mr. Grey?

MR. GREY: No, I said previously, My Lady, that the process that you have set out makes imminent sense to me and I'll -- I'm certainly prepared to be bound by it.

THE COURT: Okay. Mr. Parker?

Thank you, Mr. Grey.

MR. PARKER: Yes, thank you for your direction, Madam Justice Romaine and - excuse me - we have nothing to add. We appreciate that.

THE COURT: Okay. And let me just ask you, then, when we are finished with Dr. Bhattacharya, who will be the next witness?

MR. GREY: I believe that will be Colonel Redman. Correct?

THE COURT: Still Mr. Redman?

MR. RATH: It would be, yes.

THE COURT: Okay.

MR. RATH: Yeah.

THE COURT: Okay. And then when were you intending that Dr. Hinshaw would be testifying?

MR. PARKER: So the -- the schedule actually was supposed to be -- and I will maybe bring in Ms. LeClair here, as necessary. We were hoping to wrap up Dr. Bhattacharya today, do Mr. Redman and Scott Long, and -- and Ms. LeClair, is Mr. Long available after today?

MS. LECLAIR: I haven't confirmed his availability for tomorrow. I can speak with him to find out. I know he was available this afternoon.

MR. PARKER: And --

MS. LECLAIR: He is leaving -- he's unavailable at the end of the week so I'm not quite sure when that begins.

MR. PARKER: Sure. And then so the plan was, if we stayed on the revised schedule, we would have our PCR expert up tomorrow, Dr. Zelyas. The -- the Chief Medical Examiner, where we still -- no, he's up -- okay. So tomorrow would be Dr. Zelyas and it would have been Dr. Kindrachuk in the afternoon and into the morning on

Wednesday. Then the CME Dr. Balachandra would have been up on Wednesday. Thursday, Friday were Dr. Hinshaw and we had also obtained Tuesday, Wednesday of next week for Dr. Hinshaw to give the full four days that my friends had said they required. And then after that, after Dr. Hinshaw was to be Deborah Gordon. Sorry, Kim -- and then Dr. Simmons and Deborah Gordon to close -- close up the evidence.

THE COURT: Okay. So are you suggesting that we can do Dr. Redman -- I am sorry, Mr. Redman, Mr. Long, and Dr. Zelyas starting tomorrow? Is that the plan?

MR. PARKER: It's going to be -- well, I don't know. I -- we -- I' not sure if -- well, I'm sure we can get Mr. Redman done tomorrow. If there's no way we can get anybody else today at this point, then we're going to have to start with those folks tomorrow. It'll be tight and we'll have to rethink the schedule again because we have already put people over and we're going to have to push them over a bit more. We -- we might be running up into some time crunches.

That said, we'd asked Mr. Grey and Mr. Rath whether they could give us any updates on estimates other than Dr. Hinshaw and they haven't, so we're assuming that the -- the time estimates that we agreed to a long time ago are still holding and, you know, it's -- it's getting pretty tight here. It is, what I'm saying, but we do have the four days with Dr. Hinshaw and maybe they won't need it all.

THE COURT: Okay. When you say if we cannot do anybody else today, are you suggesting that we could start Mr. Redman today?

MR. PARKER: It's fine with me. It's their witness. Ms. LeClair is doing the cross. I'm sure she's ready to go so no reason that I can see we can't, if that's okay with everybody else.

THE COURT: Mr. Rath and Mr. Grey, do you need the time to prepare for tomorrow's oral argument or let me know what -- you know, I am here but --

MR. GREY: I would prefer to finish with Dr. Bhattacharya would be my preference --

THE COURT: Yeah.

MR. GREY: -- Madam Justice, but Colonel Redman is Mr. Rath's witness, so it's really his -- his go, subject of course to your approval.

THE COURT: Okay. Mr. Rath?

MR. RATH: Well, in our -- in our view, we'd prefer to resolve this outstanding issue with regard to what the hearing encompasses as far as (INDISCERNIBLE) and it may actually inform our qualification on Mr. Redman.

THE COURT: Okay. Okay then, we will adjourn.

MR. GREY: But part of the issue there --

THE COURT: Sorry?

MR. GREY: Sorry, Madam Justice. Part of the issue there is that depending on what happens with the admissibility of the impugned report, that may be something that Colonel Redman is asked to refer to and examine it, so it is -- there is a sequential rationale to it. Sorry to interrupt you.

THE COURT: No. No, that is fine. Okay, that is fine, then. We will adjourn to 9:30 tomorrow. Okay. Thank you.

MR. GREY: Thank you.

MR. PARKER: And, sorry, Justice Romaine, the oral argument tomorrow, it's on -- is it on the scope of the hearing or is it on the relevance of this document, or which one are we dealing with?

THE COURT: Well, I think they are connected, Mr. Parker.

MR. PARKER: Sure.

THE COURT: So let us deal with both of those issues. Yeah. Okay.

MR. PARKER: Thank you so much.

THE COURT: Okay. Thanks.

MR. GREY: Thank you.

THE COURT: Thank you.

PROCEEDINGS ADJOURNED UNTIL 9:30 AM, FEBRUARY 15, 2022

Certificate of Record

I, Michelle Palmer, certify that this recording is the record made of the evidence in the proceedings in the Court of Queen's Bench, held in courtroom 1702, at Calgary, Alberta, on the 14th day of February, 2022, and that I was the court official in charge of the sound-recording machine during the proceedings.

Certificate of Transcript

I, Norma Lynn Gibbon, certify that

(a) I transcribed the record, which was recorded by a sound-recording machine, to the best of my skill and ability and the foregoing pages are a complete and accurate transcript of the contents of the record, and

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Norma Lynn Gibbon, Transcriber
Order Number: TDS-1000875
Dated: February 15, 2022