

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 15, 2022

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1 Proceedings taken in the Court of Queen's Bench of Alberta, Courthouse, Calgary, Alberta

2

3

4 February 15, 2022

Morning Session

5

6 The Honourable Justice Romaine

Court of Queen's Bench of Alberta

7

8 J.R.W. Rath (remote appearance)

For R. Ingram

9 L.B.U. Grey, QC (remote appearance)

Heights Baptist Church, Northside Baptist
Church, E. Blacklaws and T. Tanner

10

11 N. Parker (remote appearance)

For Her Majesty the Queen in Right of the
Province of Alberta and The Chief Medical
Officer of Health

12

13

14 B.M. LeClair (remote appearance)

For Her Majesty the Queen in Right of the
Province of Alberta and The Chief Medical
Officer of Health

15

16

17 N. Trofimuk (remote appearance)

For Her Majesty the Queen in Right of the
Province of Alberta and The Chief Medical
Officer of Health

18

19

20 M. Palmer

Court Clerk

21

22

23 THE COURT:

Good morning.

24

25 MR. RATH:

Morning.

26

27 THE COURT:

I am so used to saying please be seated, but I am
assuming you are seated anyway. Are we ready for submissions on the two issues that we
have identified, one being the scope of the hearing and the other being the admissibility of
the Johns Hopkins study?

28

29

30

31

32 MR. PARKER:

Respondents are ready to proceed, Justice

33

Romaine. Thank you.

34

35 THE COURT:

Okay. Go ahead then Mr. Parker.

36

37 MR. PARKER:

Now, I guess I was anticipating that you might
hear from my friends first on this, but I am fine to proceed first.

38

39

40 THE COURT:

Okay.

41

1 MR. GREY: May I just cut in? Sorry, Mr. Parker. My Lady,
2 are we speaking to the scope of the hearing issue first?

3
4 THE COURT: Yes, I think we should do that.

5
6 MR. GREY: Thank you. I just wanted to make sure, then I
7 think that is the correct way to approach it. Go ahead.

8
9 THE COURT: Okay. Well, so --

10
11 MR. PARKER: Sorry, Justice Romaine, my apologies.

12
13 THE COURT: -- no, no I thought perhaps you had worked out
14 between yourselves which one should start. Mr. Parker do you mind starting first or ...?

15
16 MR. PARKER: No, I don't I would be glad to do so --

17
18 THE COURT: Okay. Okay.

19
20 MR. PARKER: -- I think I will be really brief. I understand there
21 are two issues that you wish to hear argument on this morning, the scope of the hearing
22 and this January 20, '22 Johns Hopkins Study.

23
24 THE COURT: Yes.

25
26 **Submissions by Mr. Parker (Scope of Hearing)**

27
28 MR. PARKER: On the first my short response is that it is very
29 clear and should be very clear to all concerned that the impugned orders to which the
30 supplemental particulars relates and which were provided on June 9th, relate to orders in
31 the second and third wave only.

32
33 On the second question, the Johns Hopkins Study is not relevant to any issue in these
34 proceedings and should be omitted.

35
36 Going to a longer explanation now, the respondents' responses to these two issues. On the
37 first issue of the scope of the hearing, as I understand it, my friends relay on the
38 supplemental particulars that were demanded in this proceeding and ultimately provided
39 on June 9th and that were attached at the respondents' suggestion to the hearing -- oral
40 hearing order that was pronounced August 6 of last year by Justice Kirker, who is case
41 managing this matter.

1
2 As you would know that the Minister of Justice, pursuant to section 24 of the *Judicature*
3 *Act*, is entitled to particulars where a constitutional validity provision is brought into
4 question and the Minister intervenes as a right under that section.
5

6 No particulars have been provided past the third wave and none were demanded and this
7 is the first time the respondents have heard that this is an issue. It isn't an issue and it
8 shouldn't be an issue. This is, with respect, an opportunistic attempt to now seek to expand
9 this hearing beyond what was the case before Justice Kirker when she was case
10 management. And I mean what was reasonably understood to be the case and I had
11 expected that my friends shared the respondents' understanding that this matter was
12 covering the orders in the second and third wave.
13

14 Justice Kirker, as indicated, case managed this matter until her appointment to the Court of
15 Appeal last fall. It was very clear as we were going the case management that the Manitoba
16 proceeding and again we've talked about the great similarity between the reports of Dr.
17 Bhattacharya in Manitoba and Alberta, was to and did cover, only the second wave and
18 orders made in Manitoba during that wave. Obviously the Manitoba hearing being heard
19 in the middle of the third wave, it wouldn't have made sense to deal with third wave orders
20 in that matter.
21

22 Alberta was originally served with Dr. Bhattacharya's January -- his primary report, the
23 one containing 2300 pages and 165 footnotes, in around January 21 of last year. At that
24 time, my recollection is that my friends, counsel for some of the applicants at that time,
25 were demanding that Alberta provide its evidence in response, within one or two weeks of
26 being served with the 2300 page document. We took that the position that that was not a
27 reasonable time and that the process had to be set out, so that the issues in this matter could
28 be focused. the legal and evidentiary issues could be focussed and so we embarked on
29 argument before Justice Kirker as to the appropriate process to get this matter to a hearing.
30

31 MR. RATH: Madam Justice, I apologize, we are having issue
32 with the court microphone again, it sounds like my friend -- Mr. Parker is making argument
33 (INDISCERNIBLE) --
34

35 THE COURT: Okay. Madam clerk, would you please
36 (INDISCERNIBLE) --
37

38 MR. PARKER: Sorry, I'm not able to hear you. We can't hear you
39 now Justice Romaine, you are completely --

40 MR. RATH: You're on mute now, Justice Romaine --
41

1 MR. PARKER: Sorry, I couldn't hear you Justice Romaine --

2

3 THE COURT: Take me off mute please. Okay. Can you hear me
4 now?

5

6 MR. PARKER: I sure can. Thank you.

7

8 THE COURT: Okay, so the last thing we did to try to resolve
9 this is I will be mute during what you have to say, Mr. Parker, and then I will be unmuted
10 from time-to-time just as we get through the next steps. So I am muted now and go ahead.

11

12 MR. PARKER: Thank you. Going to the procedural order that
13 Justice Kirker put in place, this was pronounced March 12th, '21 and I think it's fair to say
14 that ultimately after considerable argument on the process issue we followed to get this
15 matter to a hearing, Justice Kirker accepted the respondents' position. And that position as
16 is set out in that order and as I've alluded to before, Justice Kirker had said that what we
17 should aim to do is bring a tight package before this Court. This isn't a public inquiry into
18 Alberta's response to this pandemic. It's not impugning every order that's ever been made,
19 it is impugning orders that applicants have standing or claim to have standing to attack and
20 it is impugning orders that were in place before the evidence was filed justifying or seeking
21 to justify any breaches of *Charter* rights resulting from those orders. And again, that
22 evidence of the respondents was filed on July 12th.

23

24 The hearing order put in place by Justice Kirker originally required the applicants to
25 provide particulars on February 26. Alberta was not satisfied with those particulars and
26 demanded further particulars which resulted in the supplemental particulars being provided
27 on June 9th. As we went through that hearing order, we had an application dealing with the
28 pleadings to strike out some of the pleadings and to propose amendments to those pleadings
29 which was heard, I believe, on April 21st and Alberta, the respondents, were largely
30 successful in that application.

31

32 The next application in this hearing order was June 1st, a full day was scheduled to deal
33 with preliminary evidence issues including an application to strike numerous affidavits of
34 the applicant and subsequent to that process, many of those affidavits were struck by order
35 and also by consent.

36

37 So, again, the point is to bring a tight package to the Court, in terms of the pleadings, the
38 legal issues. as defining the pleadings and also the evidence that is claimed to support the
39 legal issues, the evidence filed by the applicants. The hearing order then -- and again we
40 thank Justice Kirker for her assistance on this, the hearing order set out a tight timeline,
41 including a tight timeline for her to give decisions on these issues which she then did.

1 Having the pleadings now determined by the application and having dealt with the
2 evidence, the hearing order then sets out the timelines for the remaining evidence and again,
3 the hearing orders says if the decision on the application to strike was expected the week
4 of June 18th, then the respondents shall file affidavits and rebuttal reports on July 12th and
5 that was done.

6
7 And as you know, the respondents filed and served numerous affidavits to respond to Dr.
8 Bhattacharya, respond to any other evidence filed by my friends and certainly to seek to
9 justify as necessary any *Charter* breaches that may be found to have arisen as a result of
10 these orders. And that's important evidence, that is the evidence of Dr. Hinshaw, Deborah
11 Gordon and the other evidence filed by the respondents that will seek to justify any *Charter*
12 breaches.

13
14 Again, I understand that it's -- it is now -- as a result of the June 9th supplemental
15 particulars, as provided, it is -- it is the first paragraph of that order or those particulars,
16 again not a pleading, although it was attached to the oral hearing order that my friends rely
17 on to say that, in fact, this hearing that you're presiding over is addressing orders beyond
18 the third wave. Apparently some orders after June 30th, it would fall into what is described
19 as the fourth wave and then apparently also orders made after that into the fifth wave, I
20 understand up to two days before this hearing started, in spite of no particulars being
21 provided and in spite of the respondents having not filed any evidence past June 30th.

22
23 So, that is we would be seeking to justify orders not in place when we filed our evidence,
24 justifying the orders from the second and third wave, without having demanded or being
25 provided any particulars on those orders and with respect, that makes no sense. That's not
26 a helpful way to conduct constitutional litigation and it would result in -- if it was followed
27 - it would result in questionable decisions and it would result in the Minister of Justice
28 being forwarded to defend the constitutionality of these provisions without being given the
29 appropriate time to understand the case its facing and to marshal its evidence in response.

30
31 Now, as we were going through this process, the hearing scheduled process that I spoke
32 about, it became apparent to me that the respondents could move beyond defending the
33 orders in the second wave, that is those orders pre-Christmas and into the New Year of
34 2021. It became apparent the way the pandemic was unfolding and the way the hearing
35 schedule unfolding, that if we were filing our evidence on July 12th, we could cut it off on
36 June 30th, pretty close, I mean less than two weeks before the evidence is filed. But we
37 could appropriately file evidence up to June 30th, which then brought in the third wave and
38 it made sense from the Minister of Justice perspective to tell the Court, which we did, that
39 the respondents would be addressing not only the second wave orders, but the third wave
40 orders.

41

1 In other words, if you look at the evidence filed in this matter, it addresses those two periods
2 of time and it addresses the justifications, the actions taken during those two periods of
3 time.
4

5 This also, the timing of evidence made a good cut-off as it also cut-off the evidence
6 justifying the third wave orders on June 30th, which was the point that Alberta was moving
7 into its, 'Open for Summer' approach last summer. And the hearing, of course, was
8 supposed to start in the middle of -- or at the end of summer on September 20th, '21. So
9 I'm not sure what my friends were thinking on this argument would have been covered
10 beyond the third wave, in between June 30th and the start of the hearing date, but apparently
11 they understood that any orders made during that time -- and I'm not sure what orders were
12 made during that time off the top of my head, considering Alberta's 'Open for Summer'
13 approach, would have also been properly before this Court at the time of the original
14 hearing.
15

16 Now, we are told that the orders impugned, again not identified and no particulars, are up
17 to two days before the hearing starts. With respect, that is not the basis of Justice Kirker's
18 order, it doesn't make any sense evidentiary and it makes no sense for Alberta to justify
19 orders based on evidence it filed before those orders were actually put in place. For
20 example, Deborah Gordon's evidence deals with, in part, capacity issues in the hospital
21 system. It does so starting in the first wave because it has to explain what happened in the
22 first wave, what was done by AHS so it can provide context to the justification in the second
23 wave, that is how Alberta Health Services sought to deal with capacity issues in the second
24 and third wave. But, obviously, there's no evidence from Ms. Gordon about AHS's attempts
25 to address these issues during the fourth and fifth wave, because she couldn't give that
26 evidence because those waves hadn't happened when we filed the evidence on July 12th, it
27 was cut-off on June 30th.
28

29 Dr. Hinshaw's evidence is obviously of the same scope, it doesn't cover things that hadn't
30 happened yet. I expect the Court understands this and understands the importance of
31 particulars where the constitutionality of legislation is challenged and I expect the Court
32 understands the importance of the Minister of Justice being able to fully defend the
33 constitutionality provisions that are properly before the Court.
34

35 I would ask this Court, therefore, to clearly and forcefully reject this opportunist attempt
36 to expand the scope of this hearing on the very verge of trial or actually after the trial is
37 started. And again, I say this not wanting to go there, I don't think we should go there, but
38 should this Court disagree with the respondents then and find that the scope of this hearing
39 covers some unnamed orders through the fourth wave and indeed some unnamed order up
40 until two days before the hearing and the fifth wave; then I would fully expect I will be
41 making an adjournment request. One to demand particulars and two to marshal evidence,

1 that kind that you've already seen, but that covers the period of the fourth and fifth wave.

2

3 Those are my submissions on the first issue, Justice Romaine. I'll pause to see if you have
4 any questions and then I'll move onto the second issue.

5

6 THE COURT: Just one question, I had reviewed the previous
7 orders and decisions last night and I was not clear. The schedule A, which is -- appears to
8 be attached to the April order. It was attached to the April order, it was part of the April
9 order, was it?

10

11 MR. PARKER: No, sorry, I don't have the April order, I believe
12 the April order may be the one dealing with the amendments to the originating application.

13

14 THE COURT: Yes -- yes -- sorry it was August, I think it was
15 finally filed, but --

16

17 MR. PARKER: Okay. I think -- are you talking about the oral
18 hearing order that had the particulars attached as schedule A?

19

20 THE COURT: Yes.

21

22 MR. PARKER: Okay and that was filed -- thank you -- that was
23 -- that was pronounced August 6 and filed August 9, I understand, and that is the oral
24 hearing order that sets out the process for this hearing that we're in the middle of. And as
25 it says in that -- let me just pause -- having identified the correct order, Justice Romaine,
26 what is your question on that order?

27

28 THE COURT: Sure, I just wanted to ensure that you have no
29 problem with the supplementary particulars that are listed in that schedule A and attached
30 to the oral hearing order.

31

32 MR. PARKER: We were content to proceed on these
33 supplemental particulars in this hearing on the basis that these cover the orders from the
34 second and third wave and where they talk about any subsequent manifestations up to the
35 end of the third wave.

36

37 THE COURT: Right.

38

39 MR. PARKER: So in other words, between these particulars and
40 the filing of evidence, you know, that's what that is referring to. Beyond that we're satisfied
41 for the purposes of this hearing that we have particular sufficient to be able to defend the

1 orders from the second and third wave.

2

3 THE COURT: Okay and the other question I wanted to ask you
4 was, do I understand that the plaintiffs did not file their amended originating application
5 until February, even though it was attached to the oral hearing order, is that correct?

6

7 MR. PARKER: I believe that's correct, I don't recall if the -- I
8 don't recall if the amended -- I can't -- I think it's amended amended originating application,
9 I'm not sure it was attached to the oral hearing order. I stand to be corrected on that. I think
10 it was just a supplemental particulars that were a schedule, but perhaps I've got that wrong.
11 I'm just looking through it now. I believe the amended pleadings were attached to an earlier
12 order and I believe you are correct that that was not filed until recently because we've
13 looked at it from time to time and seen that it wasn't filed, even though it was required to
14 be filed pursuant to the order. So I think that's correct, but again I don't think -- unless I'm
15 wrong that that was attached to the oral hearing order.

16

17 THE COURT: Okay. But the copy that I have of the amended
18 originating application filed February 8th, appears to have a schedule A supplementary
19 particulars dated June 9th, 2021 was that, in fact, attached? And maybe this is a question
20 for Mr. Rath, was that attached to the amended originating application and the second part
21 of that question is, has it been updated since June 9th, 2021? I did not see any evidence of
22 that.

23

24 MR. PARKER: I haven't seen any further particulars; those are
25 the last particulars we've heard of. I can't answer -- well I don't think we've served with
26 what was filed on February the 8th, so I --

27

28 THE COURT: Oh --

29

30 MR. PARKER: -- probably -- Ms. LeClair's shaking her head, so
31 I think that's correct. So I think we're going to have to turn that to Mr. Rath to see what
32 they filed. My recollection is, again top of my head, I thought we were -- I don't recall --
33 well anyway I don't think it was filed before then, so that would answer -- we don't know
34 -- because we haven't been served with what's filed. So that is a question for Mr. Rath,
35 Justice Romaine.

36

37 THE COURT: Okay. Thank you. Mr. Parker, rather than
38 continuing with the second issue, let's turn to Mr. Grey or Mr. Rath to make their response
39 submissions with respect to the scope of hearing.

40

41

1 **Submissions by Mr. Rath (Scope of Hearing)**

2

3 MR. RATH: My Lady, with regard to my friend's submissions
4 with regard to this matter, it has been clear from the outset of this matter in all of the
5 pleadings that have been filed on behalf of our client, that we have intentionally left open
6 the issue of what orders were going to be in place at the time of the hearing.

7

8 Because for the simple reason that my friends' clients control what orders are in place or
9 not in place up to the date of the hearing and obviously from my client's perspective, and
10 my client being a business owner whose attempting to operate a business, that was being
11 constantly shutdown and damaged by orders of Dr. Hinshaw, that she wished to make sure
12 that whatever -- whatever orders were in force at the date of the hearing, would be the
13 subject of the hearing and the subject of the court order. That's reflected continually
14 throughout these proceedings and throughout these pleadings and again were reflected in
15 the very last orders of Madam Justice Kirker that were, in fact, filed on August 9th, 2021
16 with regard to this matter.

17

18 Specifically, at the top of page 3 of the hearing order, where it states: (as read)

19

20 A declaration that the CMOH orders issued since March 20th, 2020
21 regarding business restrictions imposed due to COVID-19 are ultra
22 vires section 29 of the *Public Health Act* and are of no force and effect.

23

24 So that doesn't say as of whatever date, at the time people weren't using the jargon of first
25 wave, second wave, third wave, as my friend, Mr. Parker, seems to be indicating is now
26 the case, you know, having the full benefit of hindsight. Simply it was left open as to what
27 orders were going to be on the table at the time of hearing because the only person and the
28 only party that is in control over what orders are in place are, in fact, the respondents.

29

30 This is reflected in the -- further reflected in the hearing order in the supplemental
31 particulars at schedule A, at page 8 of those documents or that document which states: (as
32 read)

33

34 The following CMOH restrictions (and for greater clarity any
35 subsequent manifestations of the restrictions in any further CMOH
36 orders not specified below) are part of the definition of the impugned
37 Chief Medical Officer of Health orders.

38

39 So it's clear, from our perspective, that all subsequent orders were, in fact, to be before the
40 Court.

41

1 This was also reflected and my friend was on notice of our position as to what orders were
2 before the Court, if you look at our pre-trial reply factum which was forward to my friend,
3 Mr. Parker, on the 21st of September of 2021 and if you find that document and turn to
4 page 3 of that document, Madam Justice.

5
6 THE COURT: And I will find it, Mr. Rath, page 3?

7
8 MR. RATH: Yes, page 3.

9
10 THE COURT: I have it. Thank you.

11
12 MR. RATH: All right and on September 16th, 2021, the
13 CMOH promulgated CMOH order 42-2021 which was followed two days later by CMOH
14 order 43-2021. Both of these orders introduce in detail the Alberta Restrictions Exemption
15 Program which essentially is a coercive measure to indirectly impose vaccine mandates. It
16 is submitted that this coercive tactic is contrary to the World Medical Association
17 Declaration of Geneva which states that: (as read)

18
19 Physician's Pledge:

20
21 As a member of the medical profession: I solemnly pledge to dedicate
22 my life to the service of humanity, the health and well-being of my
23 patient will be my first consideration; and that I will respect the
24 autonomy and dignity of the patient.

25
26 And then we state, it is plainly obvious the result of the lack of planning and action of the
27 respondents that these coercive tactics are the only options the respondents have left
28 themselves. It further supports the COVID-19 public health care mismanagement crisis has
29 been self-inflicted by the respondents.

30
31 So, clearly, prior to the hearing in September, my friends were on notice that we were
32 intending to argue and impugn the September orders which, in effect, are the orders that
33 we have been living under, up to the date of this trial, which the Premier is now willy-nilly
34 rescinding on a willy-nilly basis, on a going forward basis as see everyday in the press.

35
36 So, our position is that it's been clear from the outset that my friend has known full well
37 what -- you know, what orders were at issue in these proceedings. Had they wished
38 additional proceedings prior to this hearing, they were free to ask for them, they chose not
39 to do it, so that my friend could not pop up and attempt to artificially limit the scope of
40 these hearings to, you know, some artificial date back in 2021.

41

1 In find it very interesting that my friend in his submissions talks about how he selected the
2 date as to what was going to be relevant and what was going to be before the Court and
3 that he selected the date of June 30th. The Crown selected the date of June 30th because
4 they didn't want the best summer open for summer orders or lack thereof, you know, before
5 the Court as part of the consideration of what was going on in these proceedings. Because
6 of course, that entire period of time, you know, buttresses our argument that none of these
7 orders from a section 1 basis are, in fact, based on science and are entirely based on political
8 considerations that have little or nothing to do with the section 1 analysis that is the role of
9 this Court in these proceedings.

10
11 We would further submit with regard to my friend's submissions with regard to evidence
12 and the need to reopen the evidence and provide further evidence, we would remind this
13 Court that with regard to the matters before this Court, section 1 is at issue here. The onus
14 under section 1 to justify orders and infringement of treaty -- I'm sorry not treaty rights I'm
15 lapsing into my former life here -- to justify lapses of connotationally protected rights, lies
16 always on the Crown in these instances.

17
18 So, my friend talking about the need to marshal evidence in this case, well one would've
19 hoped that before the respondents issues CMOH order 42-2021 and CMOH order 43-2021,
20 that they had already marshalled all of the evidence to justify those infringements and
21 restrictions of the constitutionally protected rights of the citizens of Alberta.

22
23 So my friend's submissions in this regard that somehow or other the Crown is being placed
24 in a disadvantageous position because of the fact that the Crown is now claiming, I would
25 submit without basis, that they did not know that the September CMOH orders were on the
26 table as set out in our reply factum, you know, are simply without merit. And that the
27 Crown, you know, is attempting to take procedural advantage of what -- you know what
28 amounts to clearly -- and I have no other explanation for it, you asked the question, I will
29 answer it, why it was that that order was filed or the amended pleadings wasn't filed until
30 February. It obviously fell between the cracks. There's no other explanation for it than that.

31
32 But that having been said, all of the amendments that were set out in that order were well
33 known to my friends. They were a matter of months of back and forth between our offices.
34 They're reflected in Madam Justice Kirker's order, which was live on pronouncement. So,
35 you know, the date of filing has little or nothing to do with the application of those
36 provisions because they were always going to be as set out in the order of Madam Justice
37 Kirker, which we have been following.

38
39 And again, with regard to, you know, my friend's submissions with regard to the *Judicature*
40 *Act*, we submit that those submissions are similarly without merit because my friend -- how
41 could my friend with a straight face tell this Court they don't have notice of the very orders

1 that they themselves are issuing. We have no control over what CMOH orders Dr. Hinshaw
2 issues from time to time. Only -- only my friend's clients have control over those orders.
3 They know full well what the orders are in advance and as well, with regard to those orders,
4 they have a constitutional obligation to, in advance of issuing orders that restrict the
5 constitutionally protected rights of citizens of this Province, to engage in a full blown -- a
6 full blown justificatory analysis under section 1 of the *Charter*, under the test in *R. v. Oakes*.
7 At which point would allow them to, in fact, obtain their own particulars with regard their
8 own orders and we would submit that the onus was on them and if there was any lack of
9 clarity to -- in Mr. Parker's mind from -- or there's some issue in Mr. Parker's mind with
10 regard to paragraph 10 of our pre-trial reply factum, it was for him to bring an application
11 long before now.

12
13 With regard to our submission in paragraph 10, the CMOH orders 42 and 43 of 2021 were
14 on the table and formed part of these proceedings and instead, you know, were content to
15 seek an adjournment so that Dr. Hinshaw could go on vacation and then wait for four
16 months until the eve of trial to now raise this as an issue to try to limit the scope of these
17 proceedings. And in that regard, My Lady, we would urge you not to allow Mr. Parker to
18 affect what amounts to an amendment of Justice Kirker's procedural orders at this late date
19 and this far removed from the date of the original hearing and obtain a procedural
20 advantage from an adjournment that was sought by the Crown with regard to the initial
21 hearing in September, you know, to push us out to where we are so that Mr. Parker can
22 now argue prejudice and attempt to narrow the scope of this hearing.

23
24 Now, with that -- those are our submissions on the procedural orders and the fact that we
25 say that the procedural orders -- oh I'm sorry -- we have one other submission to make on
26 behalf of Ms. Ingram.

27
28 The reason Ms. Ingram has been, from the outset, so concerned that all of the procedural
29 orders to date, up to the date of the hearing be caught by this order, is because of a concern
30 that Ms. Ingram has with regard to section 66.1 of the *Public Health Act*. Section 66.1 of
31 the *Public Health Act* renders it impossible for -- it's a limitation provision rendering it
32 impossible for citizens of this Province to sue for damages with regard to orders that have
33 been issued under the *Public Health Act*.

34
35 Now, our position throughout is that none of these orders have been issued through the
36 *Public Health Act* and all of the orders are ultra vires for one reason or another, but from
37 the outset it has been Ms. Ingram's concern that all of the orders up to the date of hearing
38 be caught by the hearing. It's why the pleadings have been, in fact, drafted the way that
39 they were and that the single procedural order sought from Madam Justice Kirker was
40 sought in the form that it was sought in, was to make sure that whatever is dealt with by
41 this Court, in fact, deals with all of the orders extant at the time of the hearing.

1
2 And that has been our position throughout. Our position, unlike Mr. Parker's has been
3 consistent throughout and we would submit that that's the position that should carry the
4 day.

5
6 Now, I'll move onto the Johns Hopkins -- the Johns Hopkins case.

7
8 THE COURT: No, no Mr. Rath, we will just deal with this issue
9 first and then we will deal with Johns Hopkins.

10
11 I want to take you to the procedural oral, the oral hearing order filed as a result of Justice
12 Kirker's decision, was filed on August 9 and I just want to take you to paragraph 1(a)(i) of
13 that order that says: (as read)

14
15 The type, nature of the application to be heard at the hearing is an
16 originating application for the following relief:

17
18 A declaration that all provisions of the Alberta Chief Medical
19 Officer of Health's orders as described in schedule A are of no
20 force and effect.

21
22 Then it goes on and (2), (3) and (4) and each one of those declarations are prescribed by
23 the phrase "as described in schedule A". Now, I do see that you have been relying on (vi)
24 which says: (as read)

25
26 A declaration that the CMOH orders issued since March 2020
27 regarding business restrictions imposed are ultra vires.

28
29 And it doesn't refer to schedule A, however, (b) on page 3 of that order says that:

30
31 The specific issues for which oral evidence is necessary at the hearing
32 are summarized in the supplementary particulars from June 9th, 2021
33 which are attached as schedule A.

34
35 And the attached schedule A leads off by saying: (as read)

36
37 The applicants believe this to be a complete listing of their *Charter*
38 claims but reserve the right to add, delete or modify any claims prior
39 to the final hearing of this matter in accordance with the procedural
40 order and will make every reasonable attempt to inform the
41 respondents of such amendments.

1
2 And I note that your amended originating motion that you filed in February attaches that
3 same schedule A, dated June 9th, 2021, does not specify any additional orders.
4

5 So, I ask you, how can I find that you have given adequate notice of orders that you plan
6 to impugn as being contrary to the *Charter* since that date? I am --
7

8 MR. RATH: No, fair --
9

10 THE COURT: Go ahead.
11

12 MR. RATH: -- I'll let you finish, My Lady, I'm sorry.
13

14 THE COURT: And another thing that concerns me is surely you
15 are not impugning every single order that has been made up-to-date, I am assuming that
16 some of them you are not saying are contrary to the *Charter* or affect your client's *Charter*
17 rights.
18

19 So, I think it is very important that we find out specifically which orders you think should
20 be included in the list, if I was to be inclined to expand the list. You mentioned two, 42-
21 2021, 43-2021; are they the only ones?
22

23 MR. RATH: Well, from our perspective, those are the most
24 important ones, My Lady, and that's why they're set out in our -- why they were set out in
25 our reply brief. Those would be -- those continue -- those orders put forward further
26 restrictions on businesses and in fact, set up the Alberta Business Exemption Program,
27 which we say is a coercive form of vaccine mandating program that our client takes issue
28 with.
29

30 Certainly, we also rely on the wording in the paragraphs that we put forward to you, My
31 Lady, as leaving the issue live before the Court and we say that if there was a need for
32 particularization with regard to these, my friend -- you know -- my friend, could've raised
33 the issue long before now, especially with regard to orders 42 and 43, which were clearly
34 set out in our reply factum, you know as at -- as at September of -- as at of September 16,
35 2021.
36

37 THE COURT: Okay.
38

39 MR. RATH: And we submit that that is specific notice with
40 regard to those two provisions that those provisions were at issue or those two orders.
41

1 THE COURT: When were they enacted Mr. Rath?

2
3 MR. RATH: On September 16th of 2021.

4
5 THE COURT: Okay. So you are suggesting that the scope of the
6 hearing should include those two orders, as well as what is in the June 2021 particulars?

7
8 MR. RATH: That's correct.

9
10 THE COURT: Okay. Mr. Grey?

11
12 **Submissions by Mr. Grey (Scope of Hearing)**

13
14 MR. GREY: Thank you, Madam Justice. I provided a letter to
15 the Court and I'm not going to go through all of that. This is -- a lot of this ground was
16 already covered by my friend, Mr. Rath.

17
18 What I do want to comment on, a couple of things that I think are important to consider.
19 First of all, this idea that the applicants are being opportunistic, in my submission, it's
20 coming at rather high for Mr. Parker. I was involved in all of the -- at least to my
21 knowledge, I was involved in all of the pre-trial conferencing that was done with Madam
22 Justice Kirker. And I can state as an Officer of the Court, with authority that there was
23 never any discussion about waves, that is an interpretation that Mr. Parker has fashioned
24 and created for the purposes of this hearing and for the purposes of what is a convenient
25 argument to him. There were no waves discussed. Nor was there any discussion or cut-off
26 date and there's a very good reason for that.

27
28 I submit that all of those -- all that conferencing took place in the midst of what was called
29 a pandemic and we did not know, Justice Kirker did not know, none of the lawyer knew,
30 nobody knew when that would end and what shape that would take. And so to say that
31 there's --

32
33 MR. TROFIMUK: Mr. Parker has frozen up and lost connection.

34
35 THE COURT: Oh okay.

36
37 MR. GREY: Thank you, Mr. Trofimuk.

38
39 MR. TROFIMUK: So we're going to try and deal with that. Thank
40 you.

41

1 MR. PARKER: Sorry, my apologies everyone. I am back. You
2 had frozen up and the sound went and you get that warning, apparently my colleague was
3 still able to hear and I asked him to reach out. My apologies.
4

5 THE COURT: Okay, I think Mr. Grey you were talking about
6 the no discussion of a cut-off date.
7

8 MR. GREY: Right.
9

10 THE COURT: Did you want re-start from there?
11

12 MR. GREY: Yes, thank you. There was never any discussion
13 of a cut-off date or limitation of anything of that nature in terms of challenging the orders.
14 In fact, at that time, when we were having the case management conferences, we had no
15 idea that there'd be a declaration of a COVID free summer which followed.
16

17 And this is evidenced in the fact that there isn't anything in the orders about a cut-off date
18 and what Mr. Parker is asking you to do is to place an ex post facto procedural restriction
19 on the applicants' ability to advance not only procedural rights, but to -- but which
20 essentially impact their ability to advance the cause as described in the action.
21

22 I submit that if that is to be done there would have to be something explicit in one of the
23 orders and by the respondent's own acknowledgement in their letter, the letter of Ms.
24 LeClair, it's not explicit. They refer to it as implied and that is what they're saying. And I
25 don't -- I think it's a very dangerous and would be a very dangerous and careless thing for
26 the Court to try to breathe into what was generated by Madam Justice Kirker, some sort of
27 implied cut-off date. That is not realistic, that does not reflect what actually occurred nor
28 were there any discussions along that line.
29

30 The other thing that's important to remember is, as I understand what the respondents are
31 saying, their main -- their position, their chief complaint surrounds prejudice due to lack of
32 notice and inordinate delay. Well, we all know, or at least, Mr. Rath and I know that it is
33 the Government of Alberta that has been the author of most -- of the delay in this matter,
34 as is set out very clearly in my letter. One of the things that I've always found peculiar is
35 that they needed six or seven months to produce their science, during a time when they
36 already had the Province locked down under whatever wave Mr. Parker wants to call it and
37 then when they did produce their science, their main expert is a man from Manitoba.
38

39 So, I submit, that in terms of prejudice and delay it's the applicants who have suffered that
40 much, much more than the respondents have.
41

1 In terms of the late service issue, Mr. Rath touched on this briefly but really, this is
2 misleading to the Court frankly. There's no prejudice to the respondents here, in fact, the
3 respondents are well aware that there had been a lot of correspondence going back and
4 forth about the wording of the amended originating application. And they were participants
5 and they contributed significantly to the wording of that and that was -- that became
6 something of a complicated process because we disagreed somewhat about what Justice
7 Kirker's order actually was, in terms of the one that struck certain arguments -- that took
8 certain arguments away from the applicant.
9

10 But in any event, the late filing of that has really been -- and any prejudice to the
11 respondents has been grossly exaggerated here to the point of hyperbole in my submission,
12 that the late filing of that document presented no degree of prejudice whatsoever to the
13 applicant.
14

15 Having said that -- having said that, My Lady, if you are persuaded that there's an issue
16 with late service or a lack of notice, or that there's prejudice to the respondent, I would
17 submit that the appropriate remedy is not to restrict the applicant's ability to challenge
18 certain orders, the appropriate remedy is what Mr. Parker referred to and that is an
19 adjournment. The appropriate remedy would be to have an adjournment so that we could
20 provide the notice that Mr. Parker talked about and proceed upon that basis. And I think,
21 given what we have faced under the COVID-19 pandemic and given that many of the
22 orders that are impugned and specified to be impugned in this application really have just
23 been refashioned, and reworked, and reinstated after -- after September of last year. I
24 think that it is appropriate in the circumstances to give, if you're not inclined to agree with
25 the position -- the main position taken by the applicants, that the most fair and just thing to
26 do would be to adjourn -- to grant an adjournment during which time the notice and
27 refinements of the application and further particulars could be provided to the respondents.
28 I'd submit to restrict the application in the way that Mr. Parker is suggesting would be
29 unduly harsh to the applicants and I submit would be procedurally unfair.
30

31 So, those are my submissions subject to your questions. Thank you.

32
33 THE COURT: Okay. Thank you.

34
35 Mr. Parker, do you wish to respond?
36

37 **Submissions by Mr. Parker (Scope of Hearing) (Reply)**
38

39 MR. PARKER: Briefly. I'd like to actually go to a letter from Mr.
40 Rath's office that he sent to your attention on October 5th. And, my apologies, I have
41 alluded to that I think last week when this issue first arose and said I had a look at that

- 1 letter, I thought they raised this with you, and so we hadn't filed it but I've got it in front of
2 me. My apologies, Justice Romaine, do you have a copy or are you able to --
3
- 4 THE COURT: I do not have it here. Well, wait a minute, I might
5 have it in a file back here.
6
- 7 MR. PARKER: It was dated October 5th, 2021, and it's from
8 Rath & Company and it's to you. Justice Romaine, we could just send a copy right now --
9
- 10 THE COURT: Sure.
11
- 12 MR. PARKER: -- just as we were sharing before. So, my friend
13 is going to do that.
14
- 15 THE COURT: Why do you not do that because --
16
- 17 MR. RATH: We have it up, Madam Justice. We can put it on
18 the screen if that would assist my friend.
19
- 20 THE COURT: Okay.
21
- 22 MR. PARKER: Mr. Rath, you're going to put that letter up on the
23 screen did you say?
24
- 25 MR. RATH: Yeah, we are. We're doing it right now.
26
- 27 MR. PARKER: Great. If you could go to page 2, please, the
28 paragraph beginning, "Further, given the fact." There we go. And so, can you -- can you
29 bold that up at all, Mr. Rath, so that we can see that paragraph, "Further, given the fact"?
30
- 31 MR. RATH: That's on page 1 of the letter, not page 2, Mr.
32 Parker, so I was confused by it.
33
- 34 MR. PARKER: I'm sorry for the confusion. You're absolutely
35 right.
36
- 37 So, I'll read it, Justice Romaine. I hope you can see it.
38
- 39 THE COURT: Okay.
40
- 41 MR. PARKER: It says, "Further," -- sorry.

1
2 THE COURT: Go ahead. Yes, now I can.

3
4 MR. PARKER: (as read)

5
6 Further, given the fact we have been subjected to what now appears
7 to be as a needless adjournment and given that new CMOH orders
8 have been issued, it is our position that they are also covered by the
9 originating application. We, therefore, kindly request leave of this
10 Court to file a new expert report and direct rebuttal to these new public
11 health measures. The restrictions exemption program which
12 constitutes a prima facie vaccination passport. We further seek leave
13 of this Honourable Court to file a further supplemental affidavit for
14 the appellant, Rebecca Marie Ingram.

15
16 So, that's an interesting letter and it certainly sounds inconsistent with what my friends are
17 telling you today. That's our submission.

18
19 I'm just going to briefly reply to a few other submissions. Firstly, from Mr. Rath, he replies
20 to -- first in his reply factum as having put us on notice. Factums are not pleadings and
21 raising new issues, particularly new issues challenging, new provisions for which
22 particulars have not been provided is not done through a reply factum.

23
24 As to the cut-off issue that my friend -- my learned friend, Mr. Grey, has raised, he has a
25 different recollection of our discussions and my submissions to Justice Kirker than do I,
26 but I will say the evidence had to be cut off at some point because we had a July 12th
27 rebuttal filing date which was put in place by the March order of Justice Kirker.

28
29 As to an adjournment, should you agree with the respondents but feel an adjournment is
30 the appropriate remedy, we'll be glad to respond to that should we have to, but the
31 respondents would be opposing it and I will go into reasons should it be necessary to do
32 so.

33
34 Again, those are my reply submissions on this first point, Justice Romaine, subject to any
35 questions you have.

36
37 THE COURT: Okay. Thank you. Mr. Parker, this letter, I have
38 not actually been able to put my hand on it in my correspondence file, did -- perhaps this
39 is for Mr. Rath, did you get a response from me on this letter?

40
41 MR. RATH: No. So -- but if I can quickly address a point.

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THE COURT: Yes?

MR. RATH: Regarding the paragraph my friend was reading, in the same manner that he was addressing questions to Dr. Bhattacharya about skipping key sentences, I note that my friend skipped the second sentence of that paragraph which states, "It is our position that they are also covered by the originating application." So, my friend was on notice not just in our reply factum but in a letter to the Court that we were maintaining even on October 5 that it was our position that the new orders were before the Court. And, as so, you know, we apparently may not -- we don't seem to have a reply from you to this letter on our file, we raised the issue then, my friend didn't respond to it or raise any issues with it and, you know, we submit that demonstrates what our understanding of the pleadings has been throughout and it now appears that my friend is quite happy to take a contrary position when he's known what our position has been all along and then he's done it on the eve of trial. Actually, during the trial. At which point I would submit that this -- to the extent that this issue needs to be dealt with by way of an adjournment as suggested by my friend -- my friends we would agree to.

THE COURT: Okay.

MR. RATH: As far as I'm concerned, we've been transparent throughout on this issue and as my friend, Mr. Parker, who's continually failed to respond or take action.

THE COURT: Okay.

MR. PARKER: Sorry, I did read that sentence, Mr. Rath. I read from the beginning of that paragraph. Sorry, you've moved it now so I can't see it. But, just to be clear, I read that to the Court in my submissions.

THE COURT: Okay. First of all, I am a little disturbed because I do not recall this letter and there was no response from me. So, Mr. Rath, would you please email it to me so I can look into what happened to it?

The second thing is, I want to make sure that the plaintiffs -- there are only two orders that the plaintiffs want to be able to have impugned and want to address during this hearing that Mr. Parker does not agree with and those two are the 42-2021; 43-2021, that were passed on September something 2021. Is that -- those are the two orders that we are having this disagreement over, is that it?

MR. PARKER: Yes, My Lady.

1
2 THE COURT: Okay. And so, Mr. Parker, you continue to
3 oppose including those two orders in the scope of the hearing, do you?
4

5 MR. PARKER: Yes, absolutely. I haven't had an opportunity to
6 go and look at those orders because they've just told me those are the ones, but you can see
7 from that letter they're seeking to bring in the restriction exemption program and I'm going
8 to suggest to you that that's going to require likely additional evidence that has been filed.
9 Not just in terms of timing, but of the nature of the evidence. That should be obvious. And,
10 again, as my friend said, apparently September 16th, four days before the original hearing
11 is supposed to start, is when the first of those orders was --
12

13 THE COURT: Right.
14

15 MR. PARKER: -- was put into force.
16

17 THE COURT: Okay. I would like to consider the submissions
18 you have made and make a decision on this obviously within a day or two, but given that
19 those -- that we are clear that those are the two additional orders then I think we can proceed
20 to deal with the Johns Hopkins issue; okay? So, Mr. --
21

22 MR. PARKER: You will hear from me first, Justice Romaine.
23 Thank you.
24

25 THE COURT: Okay.
26

27 **Submissions by Mr. Parker (Johns Hopkins Study)**
28

29 MR. PARKER: Thank you very much. Briefly on the Johns
30 Hopkins issue, and by the Johns Hopkins' issue I understand that it's the study that my
31 friends provided to me last week with an indication from Mr. Grey that he intends to cross-
32 examine Dr. Hinshaw on this document, it is called, "Studies in Applied Economics, A
33 Literature Review and Meta-Analysis of the Effects of Lockdowns on COVID-19
34 Mortality," it has the date of January 2022, and the authors are Jonas Herby, Lars Jonung,
35 and Steve Hanke. I understand that's the document my friends now want to put into
36 evidence.
37

38 I had raised relevance when this first came up, it might've been even on the first day of the
39 hearing, I said that again yesterday. My learned friend, Mr. Grey, questioned whether I
40 meant admissibility and weight and the answer to that is no, I mean relevance. It's not
41 relevant to anything in these -- in this hearing as defined by the pleadings. And to put it

1 another way, I'm not sure my learned friend and my friend think this is relevant. That is,
2 what are you supposed to do with this study? A new study on the effectiveness of NPI
3 released January 2022 and that we received from my friends in February 2022.
4

5 When I talk about this type of information, I'm talking about -- in the evidence already
6 from Dr. Bhattachrya and respondent's submission is that the only possible relevance of
7 this type of information is that it could, in theory, go to the issue of what the respondents
8 could've or should've known and informed themselves of at the time they were making
9 decisions relative to the CMOH orders. And so, on that basis, again, I say how is this study
10 released in the last two weeks relevant for anything before the Court and my answer is it's
11 not. And my friends have not suggested anything that I've heard as to how it is relevant.
12

13 A couple other points I want to address from my friends. I heard it from them yesterday
14 which is well Mr. Parker's put in documents or put documents to Dr. Bhattachrya with
15 dates on them that are after July 12th that we filed our evidence and after, in one case at
16 least the Savaris retraction, the date of this originally scheduled hearing. And my response
17 to those submissions should they make them are, first of all, they didn't object to these
18 documents and I say appropriately so being put to Dr. Bhattachrya. The Savaris retraction,
19 as I understood it, he said he knew about, I haven't looked at the transcript, I am eager to
20 do so, I believe he told me that he in fact told me about it, I had a different recollection and
21 that will be revealed by the transcript. But it's important that information's before the Court.
22 Now, whether the document has to be before the Court given that Dr. Bhattachrya
23 acknowledged that he was aware that Savaris is being retracted is perhaps less important,
24 although I see no prejudice in it. The Savaris study has clearly been an important part of
25 Dr. Bhattachrya's opinion. We went through the evidence that he filed in Manitoba where
26 he referred to it as perhaps the best peer-reviewed study on the subject. We notice how that
27 language changed a little bit to another study when the document was referred to in
28 evidence in Alberta. But what's important is that the Savaris study was important to Dr.
29 Bhattachrya's thesis and it's now being thoroughly rejected. That is, the editors have said
30 they no longer have faith in what it found and cannot stand by those findings and so took
31 the, in Dr. Bhattachrya's words, extraordinary step of retracting that article. That's
32 important evidence and it goes to Dr. Bhattachrya's credibility.
33

34 On that point, I was aware what was happening with Savaris, I was aware what was
35 happening in the Manitoba proceeding, I witnessed Manitoba put the editor's note to Dr.
36 Bhattachrya before it was retracted and I was told to keep an eye out on Savaris and I did,
37 and we saw that in December 14th it was indeed retracted by the editors. And I think it's,
38 with respect, bizarre if my friends are taking the position that this Court should not know
39 that one of the studies that their expert relies on has been retracted by the editors.
40

41 The second document I wish to refer to should my friends object to it is the Second

1 Madewell study. The date on that second Madewell study is August 27th, 2021. So, yes,
2 after the cut-off date, after the second wave and the third wave, before this hearing would've
3 been originally head, however. And, again, this goes to a very important issue in this
4 proceeding, or a potentially very important issue, and it goes to Dr. Bhattachrya's
5 credibility as well. When you read, as I did, Dr. Bhattachrya's primary report for the first
6 time, you might've had the same reaction I did on this point which is well isn't that
7 interesting, what he says about a symptomatic spread being very low and symptom checks
8 therefore being something that could be used in place of other measures that Alberta has
9 been taking. I wonder if it's true. And the conclusion that I submit anybody hearing this
10 evidence should come to is, no, his evidence on this is not true. It is not reflective of the
11 science that was reasonably aware to Alberta during the second and third wave on the
12 symptomatic and pre-symptomatic transmission of the virus. And just as an aside on that
13 point, I won't take you there, but you might want to make a note, you can look at Dr.
14 Hinshaw's affidavit, paragraphs 102 and 103, Exhibits T, U, and V, and also paragraph 48
15 and paragraph 104 in Exhibit U. This all deals with making public health decisions in the
16 absence of evidentiary certainty and the issue she points to as an example of that is this
17 very issue - the issue of symptomatic and pre-symptomatic transmission. And, again, she
18 refers to, when these exhibits I spoke to, 'T', 'U' and 'V', refers to some of the information
19 that Alberta was aware of during the relevant time. And, again, that's how I say perhaps a
20 study from the relevant time might be relevant but one well after the fact is not. This isn't
21 a case where a backseat quarterbacking and you get to look at this study and say, you know,
22 I think Hanke's right and Alberta got it wrong. Mr. Hanke isn't the judge and this isn't the
23 public inquiry.

24
25 Alberta's position throughout, as reflected in Dr. Hinshaw's evidence, is it's always had to
26 take account of the symptomatic and pre-symptomatic spread based on the science that it
27 was aware of throughout the pandemic. And so, this evidence on the Madewell study that
28 showed significantly higher numbers than the original Madewell study doesn't change
29 Alberta's approach or position, that is, it maintains its position that it was very reasonable
30 and indeed necessary based on the science to take into account the symptomatic and pre-
31 symptomatic spread in its public health decisions. But what it does do is complete the arc
32 of this part of Dr. Bhattachrya's evidence on symptomatic and pre-symptomatic spread.
33 Again, we'll see what the transcript says and I acknowledge that Dr. Bhattachrya was not
34 aware of the second Madewell study which, again, I say goes to his credibility. This is a
35 gentleman who has spoken to this issue in his report, has talked about how his own opinions
36 on this issue changed and how the original Madewell study cinched that change of opinion.
37 But he wasn't even aware of the second Madewell study.

38
39 And, again, I would ask why is it that the applicants, should they take this position, do not
40 want you to see this information? Is this not information that is relevant and important to
41 the Judge that you have to make on this?

1
2 To wrap up, the -- you will soon hear evidence from the respondents' witnesses put forth
3 to justify any breaches that you find from the orders during the third and second wave. That
4 is, they will speak to why the orders were put in place and that, the respondents say, is the
5 important evidence for you to consider on this hearing. With respect, you do not need
6 another study on NPI effects from either side, particularly one from well after the relevant
7 time.

8
9 If you do decide to admit that report into evidence, I can tell you that, I've already been
10 discussing it before it was raised by my friends, and it would not surprise you that there are
11 critiques of that study and I would of course, if that study is in evidence and if this Court
12 thinks it's relevant for some reason, be seeking to put in our own rebuttal evidence in
13 response. Again, my friend's evidence was filed in January, rebuttal evidence July 12th,
14 their surrebuttal evidence was filed on July 30th.

15
16 Justice Romaine, I think those are my submissions for now on the second issue subject to
17 any questions you have. Thank you.

18
19 THE COURT: Okay. Thank you.

20
21 Okay. Mr. Rath? Mr. Grey?

22
23 MR. RATH: Madam Justice --

24
25 THE COURT: Yes?

26
27 MR. RATH: -- or Mr. Grey, did you want to go first? It's up to
28 you, I'm fine either way.

29
30 MR. GREY: Do you mind if I do, Jeff?

31
32 MR. RATH: No, not at all. Not at all, sir.

33
34 MR. GREY: Thank you.

35
36 **Submissions by Mr. Grey (Johns Hopkins Study)**

37
38 MR. GREY: Mr. Parker -- Mr. Parker's submissions just now
39 went rather beyond the issue that I thought the Court asked him to speak to and so I'm
40 going to start in a different place, sort of at the end of what Mr. Parker was saying and then
41 come back to the issue of the Johns Hopkins study.

1
2 Either myself or Mr. Parker are operating under a profound ignorance of what the law of
3 evidence is and how documents become evidence through the course of cross-examination.
4 We do not consent to the admission of any of the documents that were shown to the witness
5 during cross-examination as full exhibits. That position has been made clear more than
6 once on the record and we are entitled to require the Court to enter into a voir dire on
7 admissibility in each case. We will put the respondent to the strict proof of establishing an
8 exception to the hearsay rule in each case as is our right. We will also object to the
9 respondent being given the opportunity to adduce these documents ex post facto. The
10 proper procedure that I understand was to have the witness be asked to adopt each hearsay
11 statement in real time in each case. This was simply not done, nor was the witness properly
12 questioned in order to satisfy the test for adoption of any hearsay statements. Providing
13 counsel the opportunity to circle back and do it after concluding its cross-examination is,
14 in my experience, quite unprecedented, it's highly prejudicial to the applicants, and is --
15 would be very concerning to us. Several of the documents shown to the witness such as the
16 second Madewell study that my friend has conjured up are expert opinions that were not
17 disclosed to opposing counsel in advance. These, in particular, cannot be entered into
18 evidence or even marked for identification without proper qualification and exposure of
19 that expert to cross-examination.

20
21 Mr. Parker talks about the lack of opportunity that the respondent has had to address the
22 Johns Hopkins study. Well, what opportunity have the applicants had on this second
23 Madewell study? Any attempt to enter the reports like that at this stage, in my submission,
24 is in clear and blatant violation of the specific terms of the procedural order which require
25 the parties to disclose all expert evidence to be relied upon well in advance. This is nothing
26 less than a backdoor attempt by Mr. Parker to get the Madewell study before the Court for
27 the truth of its contents.

28
29 So, Mr. Parker is making submissions to the Court now in answer to you as though the
30 documents that he showed to the witness are in evidence. To my mind, they most certainly
31 and clearly are not. Those inquiries are not. Simply, it's true that we did not object to him
32 showing that to the witness but the idea, the notion, that simply showing a document to a
33 witness in cross-examination then magically transforms hearsay into relevant, admissible
34 evidence, is profoundly absurd and is inconsistent with the entire of body of evidence on
35 cross-examination in the history of common law. And, more importantly, as has been
36 clearly stated by the Court of Appeal. The Court of Appeal of this province, for many years,
37 going back to a case called *R. v. Nand*, has said that a witness for the purposes of cross-
38 examination can be shown almost anything for the purposes of impeachment subject only
39 to the bounds of relevance. That's a very broad spectrum. And I was operating under that
40 understanding, that Mr. Parker was showing these documents to the witness for -- to the
41 witness for the purposes of impeachment. And I asked him not once, but if not twice to

1 confirm what his intention was, what he intended to do with the documents. Well, I found
2 out last night when I received what can only be described as a document dump referring to
3 every single document that was shown to the witness during cross-examination as exhibits.
4 I state again, for the record, they are not.

5
6 So, I say this, concerning the documents that were shown to the witness, that Mr. Parker
7 proposes to -- Mr. Parker, please don't put your hand up, this is not a 9th grade classroom;
8 okay? Please? Thank you.

9
10 Madam Justice, if Mr. Parker wants to put these documents into evidence, we are going to
11 have to go through a voir dire in each case. Some of the documents that seem to be
12 obviously admissible, for example, some of the reports that Dr. Bhattacharya had authored
13 that were put forth and presented in the Manitoba case, certainly those, although they're
14 still hearsay, they may be admissible, but my question would be why do they have to be
15 submitted at this stage of the proceedings? Those can be clearly submitted as -- in the
16 course of Mr. Parker's argument. Those don't have to be made exhibits in this proceeding
17 and, therefore, that evidence -- that is not necessary to be admitted here. And, of course,
18 that's one of the considerations you have to make in assessing whether hearsay evidence is
19 admissible.

20
21 Coming to the study that I'm talking about, and Mr. Parker asked the question, well, why
22 do we want to show -- why do we want to refer to the Johns Hopkins study? At this point,
23 at this point and I mean that particularly, I'm not asking that the Johns Hopkins study would
24 be admitted into evidence for the truth of its contents. That would be, and it could be, an
25 application that would come. That's not the submission right now. Right now, what we
26 want to do is have the opportunity to show that that -- we'll have the same opportunity that
27 Mr. Parker with the Madewell study and that is to show the document to the witness and
28 ask them to comment upon it in the context of answering questions about an area of
29 questioning that Mr. Parker covered again and again and again and again to the point of
30 redundancy. And that is -- what is the impact of NPIs and lockdowns? What is the propriety
31 of them? That's the basis of the Johns Hopkins study.

32
33 Now, speaking particularly about the Johns Hopkins study, my friend has made much of
34 the idea that this is somehow a retrospective. And without revealing any of the contents of
35 the study itself, My Lady, I'm going to be very careful not to do that, but at page 14 it talks
36 about what is covered under the study and this is very, very important. That my friend is
37 trying to make this out as though it's a brand-new study and it's retrospective, but in fact
38 34 studies were considered eligible for review, out of these 34 studies 22 were peer-
39 reviewed and 12 were working papers. The studied analysed lockdowns during the first
40 wave using my friend's own words. He likes to talk about waves. The first wave. Most of
41 the studies, 29, used data collected before September 1st, 2020. That's a significant date

1 given what my friend has said today in the context of these applications. And ten used data
2 collected before the 1st of May of 2020. Only one study uses data from 2021. All studies
3 are cross-sectional ranging across jurisdictions. Geographically, 14 studies over countries
4 worldwide, four cover European countries, 13 cover United States, two cover Europe and
5 United States, and one covers regions in Italy. Seven studies analysed the effect of SIPOs
6 which we talked of, Mr. Parker questioned Dr. Bhattachrya about at length, ten analysed
7 the effect of stricter lockdowns, 16 studies analysed specific NIPs independently, and one
8 study analysed other measures other than lockdown.
9

10 In the meta-analysis, there's included 24 studies in which are derived the relative effect of
11 lockdowns on COVID-19 mortality where mortality is measured as COVID-19 related
12 deaths per million. In practice, this means that the studies that were included estimated the
13 effect of lockdowns on mortality or the effect of lockdowns on mortality
14 (INDISCERNIBLE) while using the counterfactual estimate. The focus of the studies on
15 the effect of compulsory non-pharmaceutical interventions, or NPI, policies that restrict
16 internal movement, closed schools and businesses, and banned international travel among
17 others, the study does not look at the effect of voluntary behavioural changes such as
18 voluntary mask wearing, the effect of recommendations, for example, recommended mask
19 wearing or governmental services, voluntary mass testing and public information
20 campaigns but only on mandated NPIs. So, the question of why this is relevant should be
21 very clear. This is a meta-analysis of studies that actually, based on data, that would've
22 been available and was available to the Alberta government during the relevant time. This
23 is not a -- this is not a retrospective hindsight is 20/20 type of meta-analysis. It's not that at
24 all. Of course, if we do attempt to adduce the document into evidence, Mr. Parker will have
25 the ability to make submissions about that and that's something that you can rule on.
26

27 Again, at this point, we're not asking if the study is going to be adduced into evidence.
28 What we want to do, because it was raised in a cross-examination in the context of the
29 Savaris study and the line of questioning Mr. Parker had, at this point all we want to do is
30 go back on redirect and ask Dr. Bhattachrya about the findings of the study. That's all we're
31 asking for at this point. That does not mean that those answers or what is in the study itself
32 would become evidence before the Court for the truth of its contents. That's a separate
33 inquiry. But Mr. Parker's insistence that the Court cannot even -- must cover its ears and
34 cannot even hear what an authoritative scientific study really begs the question that Mr.
35 Parker asked. Well, what is it that he doesn't want you to hear? We're not particularly
36 concerned about the second Madewell study going into evidence. I can't speak for Mr.
37 Rath. But I can say that our main concern is to put before the Court the most authoritative
38 evidence so that it can discover the truth. That is what I understand my role to be here as
39 an officer of the Court. It's not about winning or losing; it's about discovering truth. That
40 is what the adversarial trial process is about. That's my understanding. And if I'm wrong, I
41 beg to be correct, My Lady.

1
2 What I see from Mr. Parker is it's some zero sum being about winning and losing. This --
3 this study is very important. It's very important to this case, it's very important that Dr.
4 Bhattacharya being questioned about it and be given an opportunity to talk about it,
5 especially given the vigorous, aggressive and sometimes insulting way that he was cross-
6 examined by Mr. Parker. So, it's my submission that for the limited purpose that we're
7 asking, and that is we're asking for the same courtesy, the same leave that Mr. Parker was
8 given to ask the witness about the Madewell study, we're asking for the same here, the
9 same ability to ask Dr. Bhattacharya about this Johns Hopkins study. So, those are my
10 submissions subject to your questions. Thank you, Madam Justice.

11
12 THE COURT: Okay. Thank you.

13
14 Okay. Mr. Parker, you wanted to respond?

15
16 MR. RATH: Madam Justice, I have some brief submissions as
17 well.

18
19 THE COURT: Oh, have you not -- okay, go ahead. I thought I
20 had called on you. Sorry, go ahead.

21
22 MR. RATH: I deferred to my friend. Thank you, My Lady.

23
24 **Submissions by Mr. Rath (Johns Hopkins Study)**

25
26 MR. RATH: For the record, I will -- our client adopts all of
27 my friend's very abled submissions with regard to this matter, but what we would simply
28 is with regard to the Hopkins study in particular we would note that with regard to the
29 publication dates, any of the publications listed in that meta-analysis, and that's all a meta-
30 analysis is, is a review of literature; right? That there's only one study in that entire meta-
31 analysis that was actually published in July of 2021 after the artificial cut-off date that my
32 friend keeps insisting applies to these procedures. So there is not a single study referred to
33 in that meta-analysis that was published after the September trial date of the initial hearing
34 that was scheduled and there's only one out of the 34 studies, and I'll refer to it specifically,
35 being Langeland, Andy, and Jose Marte, and Kyle Connif, the Effect of State Level
36 COVID-19 Stay-at-Home Orders on Death Rates which was published on the 15th of July,
37 2021. All of the other studies in that meta-analysis predated Mr. Parker's artificial cut-off
38 to this matter and, quite frankly, are properly put to Dr. Bhattacharya in redirect. And
39 certainly from our perspective, the study is not going away, we'll be -- I'm putting my friend
40 on notice, we will be putting it to Dr. Hinshaw in cross-examination because it is relevant
41 to this proceeding as to whether or not Dr. Hinshaw read any of the articles in that meta-

1 analysis while she was implementing lockdown orders that killed people in the Province
2 of Alberta as spoken to by Dr. Bhattachrya.

3
4 So, that is -- those are our submissions in this regard and at this point, you know, I'll look
5 forward to hearing from my friend, Mr. Parker, (INDISCERNIBLE) think he's got a proper
6 response. Thank you.

7
8 THE COURT: Mr. Parker?

9
10 **Submissions by Mr. Parker (Johns Hopkins Study) (Reply)**

11
12 MR. PARKER: Thank you, Justice Romaine. I think it's
13 important that we get your decision on these issues and soon. I'm going to be brief in
14 response.

15
16 So, we talked about exhibits, we've sent to my friend the documents that we've put to Dr.
17 Bhattachrya. We've said that those he had said he has seen before and he's able to identify
18 can go in as full exhibits. If he was not able to identify it, he hasn't seen it before, we said
19 they should be marked as identification at this point. As an example, we gave the online
20 CV, he was clearly familiar with that, he'd seen it before, there's no reason that can't be a
21 full exhibit, there's no reason to go into a voir dire on these with this expert, and there's no
22 reason to get him to adopt the contents of that document under any hearsay rule.

23
24 My friend -- learned friend, Mr. Grey, referred to Madewell number 2 as an expert report.
25 It is not an expert report, it is another study similar to the many studies that are footnoted
26 in Dr. Bhattachrya's report, 165 footnotes, many of them containing newspaper articles,
27 many of them containing studies. This falls in the same category, the only difference is he
28 hadn't seen Madewell number 2 before, quite surprising, but he hadn't and therefore it's not
29 going to go in as a full exhibit unless somebody else is able to identify it and speak to it.

30
31 My friends went through the Johns Hopkins study and said well it's retrospective back to
32 the first wave. They referred to shelter in place orders, Alberta had none; international
33 travel bans, not Alberta's jurisdiction; and they referred to the meta-study as containing
34 many studies and talked to the timing of those studies. If they want to pull out studies that
35 they say Alberta should've been aware of and acted differently as a result of, i.e., that
36 existed at the relevant time, then they may be able to put those to the witnesses. But
37 something that combines all those studies and comes to an opinion as a result and is way
38 after the fact shouldn't be allowed to be put to the witnesses.

39
40 We want to just -- there's a lot of people I understand watching this proceeding from time
41 to time and some of these comments today have crossed the line into offensive. I want to

1 be clear for anybody watching that the Minister of Justice does not win or lose
2 constitutional cases. It's not how it works. The Minister of Justice is responsible or
3 protecting the public interest and I take that seriously as the Minister of Justice's counsel
4 in this matter. That is, it's important that the public interest be protected and that means
5 that only relevant evidence should be put before this Court. The public interest, of course,
6 includes not only the applicants in this proceeding, not only people watching, but the entire
7 public of Alberta and they have the right to expect that constitutional litigation will be
8 conducted appropriately and relevant evidence will be put before the Court, and
9 evidence that is not relevant will not be.

10
11 Those are my submissions. Thank you for hearing from me, Justice Romaine. I appreciate
12 it.

13
14 THE COURT: Okay. Thank you.

15
16 MR. GREY: My Lady, may I just respond very briefly? Just
17 very briefly. And I'll say this to the Court, not to Mr. Parker. My role is to argue the hearsay
18 on behalf of my client. There's no need for Mr. Parker to take anything that I say personally.
19 I realize he's advocating on behalf of his client and at various times we get excited. We're
20 human beings. We advocate carefully and we try to do the best for our clients. I did not
21 mean to cause Mr. Parker any offence, I'm merely vigorously advocating on behalf of my
22 client.

23
24 Secondly, my friend referred to a study, that's not an expert report of course, it's quite
25 obvious to me and I expect this to the Court, that the authors of that study are experts. That
26 is precisely why Mr. Parker wants that study before the Court because the persons who
27 created that study are authoritative experts in that field and, therefore, their opinion, their
28 study and their conclusions drawn from the data that they've collected as scientific experts
29 is relevant and potentially persuasive to the Court. So, I think it's disingenuous to say that
30 the study is not an expert opinion. In fact, it's a substrata in the same way that a piece of
31 celery comes under the substrata of a vegetable. Thank you.

32
33 THE COURT: Okay. Thank you.

34
35 **Ruling (Johns Hopkins Study)**

36
37 THE COURT: What is relevant in determining the questions,
38 the issues before the Court is the evidence and the scientific knowledge that was before the
39 respondents when they made the impugned directions or restrictions. The issue is not
40 whether the respondents were wrong or unreasonable in light of later scientific knowledge
41 and opinion. But if the directions were unreasonable in light of what has been -- of what

1 was known about COVID-19 at the time the directives were announced. Recent studies do
2 not help me with that issue and I find that they are not relevant.

3
4 The Johns Hopkins study which was specifically an issue may have parts of it that were
5 available to the decision-makers at the time that the directives and restrictions were made
6 and for that purpose they may be relevant if they fall within the bounds of proper redirect.
7 But I am not going to allow the Johns Hopkins study to be put in.

8
9 This takes us to, I still have to decide on the scope of the hearing, but it was important for
10 me to determine the last restriction that the applicants seek to impugn and the date of that
11 restriction because that determines whether after the fact or hindsight studies will be
12 relevant in cross-examination or in redirect. So that means that right now the issue is
13 whether the two September directions should be included in the scope of the hearing. I will
14 have to make that decision and I plan to make it as quickly as possible. But I believe that
15 we can continue with the witnesses on the basis that we are possibly looking at decisions
16 that were made in September of 2021 but nothing after that.

17
18 With respect to the purported exhibits that Mr. Parker has now sent, I do not know, Mr.
19 Parker, whether you have sent them to me or not or just to the other parties, I would like
20 you to -- okay, I would like you to send them to me if you have not and we will have to
21 discuss whether they are admissible as exhibits or not at a different time.

22
23 Okay. It is now -- sorry, go ahead.

24
25 MR. RATH: I'll just quickly before the break, Madam Justice,
26 a housekeeping matter, I had my assistant, I was just communicating with her by text during
27 this proceeding --

28
29 THE COURT: Yes?

30
31 MR. RATH: -- go back to our computer (INDISCERNIBLE)
32 to see what had happened with the October 5th letter that was sent to your attention. My
33 assistant advises that that letter was in fact sent to both Angela Wright and
34 (INDISCERNIBLE) who we understood to be your assistants in October. So, the letter was
35 in fact forwarded to the Court.

36
37 THE COURT: Yes. I am sorry, I do not know why I did not get
38 it or did not respond to it, all I can say is that the court has been undergoing a lengthy period
39 of transitioning to a new technological system and that has created some issues for us. I
40 will certainly take a look at the letter, Mr. Rath. Thank you.

41

1 MR. RATH: It certainly does leave open some of the issues
2 that Mr. Parker was speaking to earlier and it certainly makes it clear that we do not want
3 anyone to believe that (INDISCERNIBLE) trying to deal with them in an upfront and
4 forthright manner.
5

6 THE COURT: Right. Okay. It is 11:00. Should we take -- what
7 do you want to do next? Should we deal with, who is the next witness, Mr. Robson (sic)?
8

9 MR. PARKER: I think we were doing -- my friends were doing
10 their redirect of Dr. Bhattachrya when we broke yesterday and after that we've got Mr.
11 Redman scheduled --
12

13 THE COURT: Mr. Redman.
14

15 MR. PARKER: -- and then Mr. Long.
16

17 THE COURT: Yes.
18

19 MR. PARKER: As long as you feel that it is appropriate to
20 proceed with this issue of the scope hanging over us then it seems to me that we can go to
21 continuing with Dr. Bhattachrya and then re-examination.
22

23 THE COURT: Mr. Grey? Mr. Rath?
24

25 MR. GREY: Madam Justice, I -- coming to what Mr. Parker
26 just said, I am a little bit concerned about carrying on under the presumption that your
27 decision is going to go a certain way. Obviously, your decision about the scope of the
28 hearing is going to impact the way that evidence is presented so I'm a little bit concerned
29 about proceeding under sort of a presumption that the applicants are restricted. So, I'm
30 conscious of court time but I really think that having your decision is very, very important
31 going forward. Now, obviously I'll accept your direction.
32

33 I will say with regard to Dr. Bhattachrya that of course he did not expect, and this is no
34 fault of the respondents, Mr. Bhattachrya as you can imagine is a very active professional
35 and he has another commitment today and I believe we're just getting into a conflict for
36 him, so I don't think he would be available directly to resume his redirect. So, if you decide
37 that you want to press on with the hearing of evidence, I would request that perhaps we
38 proceed with Mr. Redman and then come back to Dr. Bhattachrya later on in the day. That's
39 just a suggestion.
40

41 THE COURT: I think that makes sense, Mr. Parker. I think we

1 should continue, and I am not even sure whether we should continue with the redirect on
2 Dr. Bhattacharya until I make a decision on the scope. But I think that is not as much of an
3 issue with respect to Mr. Redman so let's start with Mr. Redman after the break; okay?
4

5 MR. GREY: Thank you.

6
7 MR. PARKER: Thank you.

8
9 THE COURT: Okay.
10

11 (ADJOURNMENT)
12

13 THE COURT: Okay, thank you. Are we ready? I believe it is
14 Ms. LeClair who is going to cross-examine Mr. Redman, is that correct?
15

16 MS. LECLAIR: Yes.
17

18 MR. RATH: Yeah, he has to be qualified, My Lady, and I was
19 intending to qualify him. He's waiting --
20

21 THE COURT: If you wish, go ahead, yes. Go ahead.
22

23 MR. RATH: I'm waiting for Mr. Redman to be let in by the
24 clerk, My Lady.
25

26 THE COURT: Yes, she is doing that right now. Thank you.
27

28 THE COURT CLERK: I believe I have let the correct person in, I'm
29 hoping.
30

31 THE COURT: Is Mr. Redman there?
32

33 MR. RATH: Mr. Redman, you need to turn on your mic off of
34 mute and you need to start your video, we can't see or here you. There we are.
35

36 MR. REDMAN: Last time I clicked it wouldn't --
37

38 **DAVID NORMAN REDMAN, Affirmed, Examined by Mr. Rath (Qualification)**
39

40 THE COURT: Thank you, Mr. Redman.
41

1 Q MR. RATH: Mr. Redman, for the record, you'll confirm that
2 you are the same David Redman that's provided an expert report and a surrebuttal report
3 in this matter?

4 A I can so affirm.

5

6 Q Okay and Mr. Redman, for the benefit of the Court, could you please advise the Court
7 -- we're seeking that's he's qualified as an expert in emergency management, as to your
8 background in emergency management?

9 A Sir, I joined the army in 1972 and one of the things that the army taught from the very
10 first day you joined was a process. We used to call it battle procedure when we were
11 lieutenants, it became an estimate of the situation as a captain and a major and it
12 ultimately became the operational planning process. And it was the process that you
13 used when you came in contact with the enemy, and I put it to you there can't be a
14 worse emergency than that.

15

16 The process ensured that you involved all the relative experts into your decision-making
17 process, and it followed a step-by-step process which saw you look at all the tasks you
18 were given, then a complete assessment of the factors, and then a breakdown, step-by-
19 step of what were the options open. And for each option open you had to assess
20 advantages and disadvantages, called a cost-benefit analysis by some in the civilian
21 world, in the army it was advantages-disadvantages.

22

23 Based on that, you selected the best options that caused the most advantages with the
24 least disadvantages and then you produced the plan. Now, at the tactical level as a
25 lieutenant, the plan was issued as verbal orders. But as you became a captain and a
26 major that turned into an actual written plan which was then issued to everybody, first
27 to had been involved in the process or who was going to be a stakeholder in the process.
28 And that was so important, and I did that all the way through my military career.

29

30 And I'll give you a couple of quick examples on why that was so essential. But first of
31 all, one of the key elements as an officer in the army was you never, ever used fear, you
32 always used the exact opposite, confidence. You built confidence, both in your soldiers,
33 but in everyone who was counting on your soldiers and the community at large. Fear is
34 a terrible weapon; it causes many unplanned consequences. And so, as an officer you
35 were taught to suppress fear immediately in every emergency and to build confidence.

36

37 I'll give you just a couple of examples in my military career where emergency
38 management and the principles behind that planning process, 'cause the two are
39 completely linked. Emergency management is based on the operational planning
40 process from the military. The first -- first example, I was selected to go to Europe to
41 close Canadian forces Europe Lahr.

1
2 It was a community of 18,000 Canadians, not just soldiers but all our families and our
3 children in schools and during that, we first arrived, we were given the task of writing
4 a written plan. And so, we followed that process that I've been taught as an as lieutenant
5 all the way through as a colonel and we developed a written plan in 3 months for the
6 complete closure of Canadian Forces Europe Lahr.

7
8 Bringing those people home, closing out 940 buildings, handing them back to the
9 German Federation with full ecological and environmental standard met while bringing
10 all of the division's equipment -- a full Canadian division's equipment home, considered
11 the largest logistics operation since World War Two.

12
13 Probably a better case was when I was posted as the commanding officer of the 1
14 Service Battalion here in -- in Alberta, and it was a 2-year posting and the first part of
15 it was to spend 6 months in the former Republic of Yugoslavia. I don't know if you
16 recall what was happening in Yugoslavia in 1995 but the country was in a brutal,
17 bloody, and horrible civil war.

18
19 I took my battalion into that conflict and 2 weeks after arrival received orders from
20 Ottawa to immediately disengage all Canadian forces in the former Republic of
21 Yugoslavia and to get them out, the orders from the Prime Minister's office were, as
22 quickly as possible.

23
24 I sat down with a full governance task force, all of the experts I needed, Canadian, as
25 well as our UN partners, as well as civilians from our ports, as well as people from
26 airheads, and we developed in 36 hours the full mission analysis and a conceptual
27 outline plan. I then reported back to NDHQ that I could break free 1000 soldier battalion
28 out of Croatia, 1000 soldier battalion out of Visoko just beside Sarajevo, 100 at most
29 scattered across all of the former republic that were in the middle of this war, plus 100
30 person headquarters out of Zagreb.

31
32 I told them we could break free by December the 23rd, there would not be Canadian
33 asset left in theatre. They were astonished because they had thought it was going to take
34 at least 6 months. We completed that task and were 10 days away from extracting the
35 last of my battalion 'cause we had moved everyone else out of that war conflict zone.

36
37 When the Prime Minister of Canada decided that we were going to re-join in the Former
38 Republic of Yugoslavia and we were going to join the NATO commitment, not the UN
39 commitment. Stopped, dropped, I got that call at 1:30 in the morning. By the end of that
40 day, we had a framework conceptual plan following that planning process that I've been
41 taught over and over and over in my life, and we received back in 1000 soldier

1 contingent over the next 4 weeks, establishing two bases in Bosnia and putting in place
2 all of the infrastructure they needed. So, not only a written plan but then the execution
3 of the plan in both cases.
4

5 When I left the army, I was lucky enough to be hired by Emergency Management
6 Alberta. My first job with Emergency Management Alberta was as the Director of
7 Community Programs here in Alberta. As the Director of Community Programs, it was
8 my responsibility to oversee the seven field officers that worked with the 314
9 communities in Alberta, the eight Metis settlements, and the 26 First Nations
10 communities.
11

12 And it was to ensure that each of those communities had a municipal emergency
13 management plan, that that plan was reviewed annually, and that the plan was exercised
14 at least once every 4 years. And that job, which I joined in October of 2000, was in my
15 mind probably the most ideal job in the world. I got to travel all over Alberta, meet the
16 mayors and reeves from every one of those communities because it's always the elected
17 officials that are in charge in an emergency. And to work with them and their chief
18 administrative officers who would be acting like me as their emergency management
19 agency coordinating in their community.
20

21 I worked with that for 9 months and then unfortunately the terrible events of September
22 11th happened. On that day, myself and the only other Director in Emergency
23 Management Alberta at the time, Pat Henneberry. We rushed immediately to the
24 operation centre, we opened the operation centre because on that day, you may not
25 recall, but 22 wide-bodied aircraft in Edmonton and 24 wide-bodied aircraft into
26 Calgary were diverted by the US Border Services that refused to let them into their
27 airspace.
28

29 Those planes were landed and what did Emergency Management do? It immediately
30 developed a plan and a concept of operations to receive all the passengers off those
31 aircraft with those two communities, Calgary and Edmonton. That there was no way
32 they could house and accommodate those people, so we had to build a plan that would
33 allow those people to be dispersed in all the surrounding communities. We did that
34 using those municipal emergency plans.
35

36 They opened their operations centre, we were able to find accommodation, locate the
37 people, but also record their exact location so that we could ultimately recall them in
38 carrying them onto their homes. Late that night while we were in the middle of that, I
39 received a phone call and I was told I was not to report back to the operations centre, I
40 was to go immediately home, get some rest because at 8:00 the next morning I was to
41 report to the task force on security.

1
2 The Premier of Alberta had formed the task force on security that night and I was to
3 show up at 8:00 in the morning as a plans writing expert, that was how I was introduced,
4 and I sat in the back of the room. I think they were the 26 smartest people in Alberta
5 sitting in that room and what they did from 8:00 'till 10:00 was mudball everything,
6 throwing it against the wall because the Premier had asked the question, What just
7 happened to Alberta? That was his question.
8

9 That group just mudballed everything they could think against huge whiteboards that
10 went all the way around the room. At 10:00 the group broke up and was told to take a
11 10-minute coffee break because in the words of the Deputy Minister of Energy, who
12 was the chair of the subtask force, he said, Okay, I think we know the problem, what
13 the heck are we going to do with all this information?
14

15 I asked him to stop and take a 20-minute break instead of a 10-minute break. I walked
16 up, I cleaned everything off the whiteboard, and I drew the ten activities that make up
17 all of life across the top of the board, emergency management ten activities, the standard
18 ten activities in any process. Down the side I wrote the orders of government,
19 international, national, provincial, municipal, first responders.
20

21 And then on a separate board I wrote the five chapters of an emergency management
22 plan, situation, mission, execution, service support, command and signals. When the
23 group came back, I went around the room and asked each of them for the most important
24 thing they had heard that morning and I went through all 26 of them. I would point out
25 to you that of those 26 people, only about a quarter -- half of them were government.
26

27 The Premier had invited all the heads of major industries into that room, as well as
28 municipal order of government and federal partners, so we had the full government's
29 task force required to respond to an emergency in the room. And what I did is I took
30 each piece of information they gave it to me, and I put it into that matrix that was on
31 the board, said that's a municipal responsibility, that's a provincial responsibility, that's
32 a federal responsibility.
33

34 When we were done, portions of the grid had been filled out and I drew a big circle
35 around the provincial order of government and straight over to the plan, I showed them
36 where every single piece of information on that board would fit into a written plan. At
37 the end of that 20-minute description, I was made the head of the writing team for the
38 Alberta Crisis Management Counterterrorism Plan.
39

40 All that experience from the army directly applied, but I point out again, the Premier
41 was in charge, he had built a governance task force and had made sure that there was

1 representation from every corner of our society in that room. Turned out that there was
2 a few little pieces missing, we invited them as we went through the process but by
3 November the 9th, we had a complete constructed framework plan which was presented
4 back to the task force, which was then adopted and ultimately signed by the Premier.
5

6 And I -- I point that out because that's really important that you have to have everyone
7 for a huge emergency like that in the room because then they're a part of the process,
8 they understand where they fit, that they also then can share that information with
9 everyone in the society normally done through the media. And you would think in
10 counterterrorism a written counterterrorism plan would be classified, we actually
11 presented the plan to the people of Alberta twice, once thorough the media and once
12 through the municipal order of government in a partially classified session for 2 days,
13 so you brief everyone.
14

15 But the most important thing that we did as we went through that process and because
16 of my past life, I was consciously aware that the *Charter of Rights and Freedoms* in our
17 country is a document that you can never break, even in time of war. I had seen what
18 happened in other countries in my 27-year career in the army, some pretty horrible
19 countries where authoritarian government trampled all over human rights.
20

21 So, as we were writing that counterterrorism plan, it was my personal aim to never deny
22 a *Charter* right or freedom because it has to be fully demonstratively justified if you do
23 before you do it and I could see no reason to do that except in very exceptional cases
24 and not without fully demonstrable justification that would meet the *Oakes* test.
25

26 I understood that completely as I went through that process and think about that, that's
27 for terrorism. I would just give you; how does that relate to a pandemic because I have
28 a few more things that I want to say, but in a -- in counterterrorism there are eight
29 normal attack methodologies. The acronym, CBRNE: chemical, biological,
30 radiological, nuclear, large-scale explosive, hostage taking, hijacking, and conventional
31 attack.
32

33 'B' biological, in a terrorist attack you would think that an enemy may intentionally
34 disperse a virus into our community to kill our community. And so, one of the protocols
35 we developed in that counterterrorism plan was for the intentional release of a virus
36 into our community. And the response to that is almost identical to a pandemic
37 influenza plan because you're going to have use all of society to respond.
38

39 Let me carry on. After -- during that process, I was called by the Government of Alberta
40 to brief the American Ambassador to Canada, Paul Cellucci. I briefed that individual
41 personally, I did it on two occasions, both classified and unclassified briefings. Because

1 of those briefings, he asked me through the government and ultimately arranged by the
2 Canadian Embassy to go to Washington, Dr. Carter.

3
4 I briefed both the House Majority and the House Minority leader and the Senate
5 Majority and the Senate Minority leader for appropriation for the new formed
6 Department of Homeland Security on what was emergency management in Alberta and
7 what was on critical infrastructure protection in Alberta. I also then briefed the heads
8 of the three new formed departments within Homeland Security and those were 2-hour
9 briefings, both classified and unclassified.

10
11 Because my background in emergency management applied to terrorism and the
12 process we followed, and they picked it all up. I also briefed Secretary Chertoff, the
13 newly appointed Secretary for Homeland Security. After --

14
15 Q Just to jump in Mr. Redman, and that would have included briefings with regard to
16 biological attacks and the spread of viruses et cetera, correct?

17 A It -- it covered the seven -- the eight protocols that we had developed. But I always went
18 back to the fact that you don't reinvent the wheel and -- and I'll get to the pandemic
19 plan, there was always a pandemic plan in our province, it was updated in 2005, I'm
20 coming there in just a second.

21
22 But I think it's equally important to note that emergency management covers all
23 emergencies, it's always called all hazards for a reason because you use the same
24 process no matter what type of emergency. The process is identical, you the form -- the
25 Premier is in charge, you form a governance task force which covers all areas of society.
26 You walk through the operational planning process; you produce a written plan, but in
27 that process, you go through all the options for each of the tasks you're given, weighing
28 advantages and disadvantages.

29
30 And when you get to the bottom of it, you have a written plan you give to the public
31 normally through the media, so all of the public sees your written plan for that
32 emergency. We then carried out -- I don't know if you remember but we had BSE. It
33 was a terrible tragedy for our province, it attacked our livestock industry, and we went
34 all through the BSE.

35
36 Canadian Food Inspection Agency was the lead agency, we supported them all the way
37 through it and came up with innovate solutions on how to get rid of thousands of
38 slaughtered animals that were supposedly BSE infected. And our aim was never to
39 destroy or water or to destroy or air and so we came up with the solution no one had
40 thought before. We rendered them into 50-gallon drums and over the next 3 years,
41 burned them in our class 4 waste disposal unit, nobody had ever thought of it. That's

1 by following a process, that's by bringing all the experts into the room.

2
3 We then unfortunately went through the worst floods in Alberta's history to date, there's
4 been worse since, in 2005. And I travelled personally with the Premier, understanding
5 the Premier is always the person who is the spokesperson for government. Not me, not
6 the person in charge of the flood forecasting division, the Premier. Travelled with him
7 all through that. Went to the Western Governors' Conference with him to brief on
8 emergency management in Alberta in 2004.

9
10 After that in 2005, in the summer of, the World Health Organisation issued for the first
11 time a consolidated document on the use of nonpharmaceutical interventions. It was so
12 changing and in terms of how people perceived pandemics and a response to a
13 pandemic, that the Deputy Minister of Health at the time, a lady named Paddy Meade,
14 convened a task force to rewrite Alberta's Pandemic Influenza Plan.

15
16 She asked me to co-chair it with her, she was the subject matter lead for the pandemic
17 as the Deputy Minister of Health. I sat with her and ran with ten deputy ministers for 2
18 days, the mission analysis, the first step in the operational planning process, defining
19 all the tasks that would be required. We then broke out into subgroups and went through
20 each portion of it, the medical portions, the societal portions, all the pieces and writ --
21 wrote, sorry, a new plan.

22
23 The purpose for that was again, to make sure all of society was involved. It wasn't
24 health, it was all of Alberta. I retired in December of 2005, that plan was subsequently
25 published and updated into the 2014 version, but it had been amended several times.
26 The law -- the regulation in Alberta says plans must be updated every 10 years, hazard
27 specific plans and the Alberta emergency plan.

28
29 I retired in -- in 2005 and did what I call limited consulting. The reason I retired was
30 personal and I needed time in my life to overcome some of the things that had happened
31 in my previous lives. But I would point out to you, that after that I was asked by the
32 State of Louisiana, 1 year after Katrina, I was asked personally by the Speaker of the
33 House of Representatives of the State of Louisiana to travel with him for a week and to
34 listen to briefings from every agency that had been involved in the response and the
35 recovery from Katrina. And at the end of each briefing to give him recommendations
36 based on his knowledge of my understanding of emergency management.

37
38 I worked National Resources Canada in critical infrastructure protection. I worked for
39 the Energy Council of North America, and I did work for the Canadian Standards
40 Association, writing for the first time a complete standardised document for mitigation,
41 which is one of the four functions of emergency management: mitigation, preparedness,

1 response, and recovery. We wrote for the first time ever a standard for mitigation for
2 our Country.

3
4 I was asked by the senior officials responsible for emergency management, a group
5 called SOREM, the acronym, who I had worked with for 5 years, which is the heads of
6 each of the EMOs in the provinces and territories of Canada, with no Federal
7 Government, just the 13 jurisdictions. After the report from the Senate Standing
8 Committee on emergency preparedness in Canada, which was extremely damning, I
9 was asked to write the P/T response, which I did, and I submitted to the Government of
10 Canada.

11
12 After that, I was asked to do five audits all across Canada for the Federal government,
13 federal -- all federal audits on federal agencies as the expert on emergency management.
14 And my assistance was to ensure that they framed the audit, they then conducted the
15 audit, and then all the findings were appropriately worded and distributed back to the
16 agencies as required.

17
18 I was also asked by Industry in 2008 to be their keynote speaker at conference on
19 emergency management and critical infrastructure protection because they were very
20 unhappy with where the Federal government had got to on emergency management and
21 I did that at a conference board of Canada presentation. So, that's my background in
22 terms of emergency management.

23
24 I retired fully in 2013 and I put it to the Court that I am not looking for a job, I have
25 never been looking for job, I retired in 2013 full a reason, my own personal reasons,
26 and I will stay retired. But I have offered my assistance now for 2 years to any premier
27 in Canada, behind the scenes or with them for a couple of weeks to kickstart the proper
28 response to COVID-19. I'm -- I'm not here to make money, I've never a taken a cent
29 since 2013 and I won't. Sorry, I can't here you, Mr. Rath.

30
31 Q So, to be clear and for the record, Mr. Redman, you're providing your services as an
32 expert in this matter pro bono, correct?

33 A Absolutely, I've refused to take money for any portion of this. My aim is to protect my
34 grandchildren, I have six of them, and to get them back to having a life as a Canadian
35 as I knew it.

36
37 Q And sir, with regard to -- you say that you fully retired in 2013, I take it you kept up
38 with the professional literature on emergency --emergency managing -- management
39 since that time?

40 A I have, sir. As well, one of the things I didn't mention was part of the -- the task force
41 on security gave very specific directions, the first was to write that plan. The second

1 was that overarching tasks that took 2 years, which was a complete review of every
2 single piece of legislation in the Province of Alberta that had the word security in it.
3 That was a long and laborious task, but it was necessary because we wanted to make
4 sure that everything was aligned and that there was no conflict in powers.

5
6 So, we did that 2-year process, it was the Deputy Minister of Justice who was assigned
7 the task. I worked with an assistant deputy minister and when I wasn't writing the plan
8 and implementing the plan, about once a week we would get together or once every 2
9 weeks he would bring forward all the legislation that he'd found to date. I was asked to
10 be the spokesperson for the freedom of information commissioner after we had finished
11 going through that.

12
13 We completely rewrote had been the *Disaster Services Act* and turned it into the
14 *Emergency Management Act*, which stands today in Alberta. Which is where you will
15 find the powers of the Lieutenant Governor in Council, i.e., the Premier in times of
16 emergency.

17
18 As part of that process, there was only two acts that came into conflict in the entire
19 rewrite of all that legislation, the new *Emergency Management Act* and the *Public*
20 *Health Act*. The problem was is exactly the same, extraordinary powers were in both
21 acts and there should never be a conflict in legislation between conflicting powers.
22 That's what I was told by the lawyers at the time.

23
24 There was great debate about the powers in the *Public Health Act*, which had originated
25 because of the -- the Spanish Flu and had given powers to the newly created Medical
26 Officers of Health, they didn't exist during the Spanish Influenza, and those powers
27 allowed a bureaucrat to have the same powers as the Premier.

28
29 There was great discussion, I strongly recommended against having those powers
30 continue but was told by Health that those powers would only be used in localised
31 events, and they were very important for small events to react extremely quickly in
32 localised communities. And it was based on that argument that it was decided to simply
33 overlook those conflicting powers and carry on.

34
35 I'm sorry that I was not forceful at the time, but I probably wouldn't have been listened
36 to anyhow. That was the decision made by the task force and I reported to the task force
37 as the coordinating agent, and it was up to the Government of Alberta to make those
38 decisions.

39
40 Q Mr. Redman, with regard to the 2014 Alberta Pandemic Influenza Plan, can you please
41 advise the Court of the extent to which your work was incorporated in that plan, and

1 can you also comment so the Court understands your level of expertise in this regard,
2 as to your view of the role of NPIs in the -- in the management of a respiratory virus?

3 A Okay, so I got to break that one into parts. First of all, the plan itself, large portions of
4 what we had discussed in -- in 2005 are still in the plan and they're the overarching
5 guidance pieces that are at the front of the plan. Perhaps some of the detail in terms of
6 exact responsibilities and breakout responsibilities has changed, I don't have a -- I'm an
7 old man now, I don't have a memory that goes back to that kind of detail. I'm a senior
8 drawing a pension for a reason.
9

10 But -- but I believe that the overarching structure and frame of that plan is clear. But I
11 would like to caution, every plan that's written in advance of an emergency is there for
12 one reason, it's to make sure that ideas don't get lost, so you put all your ideas in that
13 plan. When that actual emergency happens, fire, flood, tornado, terrorism, pandemic,
14 you take the written plans, and you tailor them to the exact emergency that you're
15 actually dealing with.
16

17 So, in a pandemic influenza plan you will find all the concepts that are available for use
18 in that pandemic, but you then actually have to tailor it to the virus which is presented
19 to you with the attributes of the virus as it's presented to you. And then you do that
20 operational planning process, just because you got a written plan doesn't mean you
21 don't do the process because that plan is generic.
22

23 And so, you have a governance task force that covers all of society, reporting to the
24 Premier, with EMA as the coordinating -- or now AEMA as the coordinating agency,
25 and in all of those group of experts, one of them would be the Medical Officer of Health
26 but not all the others are doctors. The others are people from the energy sector, from
27 the livestock sector, from the agriculture sector, from the water supply sector, from the
28 municipal order of government and the federal order government to make sure your
29 plan is integrated.
30

31 You bring all the experts you acquire across all of the sectors of your economy and one
32 of them that has to be in the room is education, both higher education and grade school
33 education. Because you need to make sure that you have all the experts all the time in
34 the task force and that the plan covers all of those.
35

36 And you run that process to look at the exact hazard you've been presented with and
37 the characteristics of that hazard as you develop the options open, following the task --
38 the mission analysis, factor analysis, resulting in options, advantages, disadvantages,
39 now in the civilian world called cost-benefit analysis, so you never take an action that
40 causes more damage than what you're trying to prevent.
41

1 At the end, you need to give a written plan, it would look nothing like the Alberta
2 Pandemic Influenza Plan, it would be shorter because you would remove the pieces that
3 aren't required, and you would focus on the areas with annexes for each of the things.
4 Like long-term care homes, like -- like other sectors of the economy, like education,
5 like there would be annexes for each of those sectors that you had brought into the
6 room.

7
8 In terms of nonpharmaceutical interventions, NPIs, that document that was first
9 produced way back in -- in 2005, was updated regularly, it was done on -- almost on a
10 scheduled basis every 5 years. And the last copy of it was released in September of
11 2019, in other words, about 6 months before the declarations in Canada. And that
12 nonpharmaceutical interventions, it was called non -- nonpharmaceutical measures,
13 produced by who? By the best infectious disease doctors in the world and the people
14 who had lived through pandemics, had been refined and refined and refined.

15
16 There are 15 NPIs and they had listed each one in a 60-page document and had covered
17 whether they were recommended or not based on what you would have to call a grid.
18 And so, across the bottom, if you put speed of -- of transmission, and the up the other
19 side you put morbidity, death. So, an extremely deadly disease that is extremely
20 transmissible would be in the top right corner, down to the bottom left corner where
21 would find low transmissibility, low infection, normal sort of viruses.

22
23 Into that grid you then understand whether this a minor pandemic, moderate pandemic,
24 a severe pandemic, or an extraordinarily severe pandemic. This pandemic in that grid
25 ranks as a moderate, it's nowhere near the Spanish Flu which was up in the top corner,
26 and it's certainly nowhere near seasonal influenza down in the bottom corner.

27
28 But compared to Asian Influenza, I put it to you that this virus has killed 5.8 million
29 people worldwide, an absolute tragedy. But I put it to you that pneumonia, every single
30 year prior to this pandemic killed 2.54 million people worldwide. So, this pandemic,
31 this virus is like a very bad pneumonia season. Each year killing about 2.7 million
32 people when 2.54 million people are killed by pneumonia worldwide every year, and
33 people says it's underreported, so is pneumonia.

34
35 But it's important to understand on that grid that this is moderate pandemic, not severe
36 and not extreme. And because it's moderate, that NPI document, which is in the Alberta
37 Pandemic Influenza Plan, you will find those 15 NPIs actually in sections in the plan
38 but they list everything, and they're only used in certain cases on that grid. And so,
39 many of the nonpharmaceutical interventions that have been used are not effective in
40 stopping transmission in a pandemic like this but are extremely deadly in terms of
41 collateral damage.

1
2 And so, in the Alberta Pandemic Influenza Plan, there are sections that actually list and
3 write them out and there's 15 overall. Everything from wearing of masks, to -- to border
4 closures, to -- to isolation of sick individuals as opposed to isolation of exposed
5 individual, two completely different.

6
7 And in 60 pages, they explain the science to that date, September 2019, and they explain
8 whether they're recommended or not and why and they give warnings about the
9 consequences of their use. It's 60 pages document but was well-known, it -- it was the
10 standard practice for any and was involved in the writing of our pandemic influenza
11 plans here in Alberta and I'm sure across Canada.

12
13 Q Mr. Redman, for the assistance of the Court --

14
15 THE COURT: Mr. Rath?

16
17 Q MR. RATH: -- of the Alberta --

18
19 THE COURT: Mr. Rath --

20
21 MR. RATH: Yeah.

22
23 THE COURT: -- if you could just hold on a moment and I am
24 sorry to interrupt Mr. Redman. I believe that we are in the qualification stage, not in the
25 stage where Mr. Redman would give his opinion, but we seem to be slipping into that area.
26 So, I would like to pause and give Mr. Parker or Ms. LeClair an opportunity to comment.

27
28 MS. LECLAIR: You read my mind, Justice Romaine, I think we
29 have strayed far into direct examination which isn't occurring in this hearing --

30
31 THE COURT: Right.

32
33 MS. LECLAIR: -- the Crown takes no issue with the qualification
34 of Mr. Redman as an expert as Mr. Rath has proposed. So, subject to Mr. Rath's application,
35 we're prepared to move into cross-examination.

36
37 THE COURT: Okay, thank you, Ms. LeClair.

38
39 MR. RATH: With respect, I think it's important for the Court
40 to understand the breadth of Mr. Redman's knowledge and expertise and that's all I'm doing
41 is taking him through these issues so that the Court understands the degree to which he is

1 qualified as an expert in these matters. So, I'm -- he's happy to be of assistance to the Court
2 in that regard.

3

4 THE COURT: Well, I appreciate that Mr. Rath but as I say, I
5 think you have crossed into Mr. Redman's opinion. Certainly, you have given us lots of
6 information with respect to Mr. Redman's very impressive experience. I am not asking you
7 to stop but I am asking you to perhaps just restrain Mr. Redman's testimony in the direction
8 of his qualifications rather than his opinion.

9

10 MR. RATH: Certainly, I appreciate that.

11

12 THE COURT: Okay.

13

14 A Apologies.

15

16 THE COURT: No, that is fine, Mr. Redman. It is up to us to --

17

18 A I've never done this before; I don't hope to ever have to do this again.

19

20 Q MR. RATH: And -- and Mr. Redman, can you advise the
21 Court with -- with regard to these that you're talking about in the context of NPIs, so
22 what your experience would be in applying -- in -- in terms of balancing the *Oakes* test
23 alongside of the application of these NPIs and other information?

24

25 MS. LECLAIR: I'm going to object to this. I think what my friend
26 is asking Mr. Redman to do is opine on the law and that's not Mr. Redman's role here.

27

28 MR. RATH: Well, My -- My Lady, he told -- Mr. Redman in
29 terms of his qualifications state that -- that part of a qualification of an emergency manager
30 is to take all of these things into account. I'm just asking him from what his experience has
31 been in the past in terms of applying section 1 and the *Oakes* test to things that were within
32 the scope of the study so that the Court understand the full scope of his expertise.

33

34 THE COURT: Let us assume that Mr. Redman has experience
35 in the formulation of these plans where he considers *Charter* values. I think he has probably
36 already given that testimony, but I agree with Ms. LeClair, I think you are moving into a
37 legal opinion area which would not be admissible.

38

39 MR. RATH: All right, well My Lady, with that I note it's
40 12:07 -- or 12:08, perhaps this would be a good time for the lunch break, and I can quickly
41 review my notes to see if there's anything else that I need to bring out in terms of Mr.

1 Redman's qualification. But I have also heard what the Court says and what my friend has
2 said with regard to Mr. Redman's impressive qualifications and expertise, and I'll review
3 over the lunch hour whether any further -- where any further evidence is required in this
4 regard?
5

6 THE COURT: Okay, thank you, Mr. Rath. Mr. Redman, we will
7 take 1 hour lunch break, so to 1:06. Thank you.
8
9

10 _____
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12 PROCEEDINGS ADJOURNED UNTIL 1:06 PM
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3 I, Michelle Palmer, certify that the recording herein is the record of oral evidence of
4 proceedings held in the Court of Queen's Bench, held in courtroom 1702, at Calgary,
5 Alberta on the 15th day of February, 2022 and I was the court official in charge of the
6 sound recording machine during these proceedings.

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1 **Certificate of Transcript**

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I, Nicole Carpendale, certify that

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