

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

Afternoon 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 afternoon. Okay. Mr. Rath, do you have

24 any more questions on qualification?

25

26 MR. RATH:

I do, just a very quick one.

27

28 **DAVID NORMAN REDMAN, Previously Affirmed, Examined by Mr. Rath**
29 **(Qualification)**

30

31 Q Working with the Government of Alberta, can you advise the Court if you were engaged
32 in preparing reports or writing documents to justify -- to justify emergency management
33 decisions that were made?

34 A Yes, constantly. In each of the times that we've produced plans we always had to write
35 the full documentation about why we had written the plan that we had, all the pieces
36 and components of the plan and we always presented that either to the appropriate
37 Ministers and at time ultimately to the Premier. So, yes, we produced documentation
38 which we provided to show why we had developed the plan the way we had or why we
39 had taken action the way we had.

40

41 Q So, in other words, you have experience in drafting -- drafting reports with regard to

1 justification for infringements on the rights of citizens of Alberta in the context of a
2 given emergency, correct?

3 A Correct. One thing that we never did to the best of my knowledge was to ever violate a
4 *Charter* right during the five years I was in EMA, but we certainly would advise the
5 Premier if there was an option to do that and then our recommendation.
6

7 Q All right. Thank you.
8

9 MR. RATH: And with regard to my friend's consent to the
10 qualification of this witness and the Court having found that this witness is amply qualified
11 as an expert in emergency management, those are my questions, My Lady. Thank you.
12

13 THE COURT: Okay. Thank you Mr. Rath.
14

15 **Ruling (Qualification)**
16

17 THE COURT: I find the witness so qualified. So Ms. LeClair,
18 cross-examination?
19

20 MS. LECLAIR: Thank you Justice Romaine.
21

22 **The Witness Cross-examined by Ms. LeClair**
23

24 Q Thanks for you time today, Mr. Redman, I don't have any questions for you, but I just
25 want to start with, did you review both your January 2021 report and your July 2021
26 report in preparing for today?

27 A My expert report from January and my surrebuttal from August.
28

29 Q Perfect.

30 A Yes, I did.
31

32 Q Perfect and if I call them your primary expert report and your surrebuttal report, you'll
33 understand what I mean?

34 A Yes, ma'am.
35

36 Q Excellent. Do you have copies of these in front of you today?

37 A Yes.
38

39 Q I'm just going to point to them, and I just think it will be easier if you've got them.

40 A I do.
41

1 Q Wonderful. And so, you understand having been qualified as an expert that you have a
2 duty to the Court to provide fair and impartial evidence, right?

3 A Yes, ma'am.

4

5 Q And you understand this duty supersedes any duty you have to the party whose retained
6 you?

7 A Oh absolutely.

8

9 Q Wonderful. So, you were the Executive Director of Emergency Management Alberta
10 from January 2004 until December 2005, right?

11 A Correct.

12

13 Q And you were responsible for leading the emergency management activities for the
14 Government of Alberta during this time?

15 A Yes, ma'am.

16

17 Q So it's fair to describe your role as management then, right?

18 A Okay. That's an interesting way, yes, I was -- if you mean, yes, I was management, but
19 I was also a doer.

20

21 Q Right, but you made the decisions about how to respond, right?

22 A I coordinated the Government's response to a pandemic -- so -- not to a pandemic, to an
23 action. It's very important to understand, there's a subject matter agency, which is
24 responsible for the specific hazard, fire, flood, SRB for a fire, flood forecasting section
25 for a flood. What emergency management is responsible for is for coordinating the
26 response of the whole team and on a routine basis, during an emergency, collecting all
27 the information from all of the agencies and every 12 hours producing a report to the
28 Premier.

29

30 The Premier is in charge, not the emergency management agency and then whatever
31 the direction is from the Premier's office, or in the case of a large scale emergency, to
32 the task force, the emergency management agency then coordinates the distribution of
33 the action and then assists those agencies, if they don't have planning officers who are
34 experienced in the operation planning process, we would provide assistance to them to
35 run their planning process and bring the information back.

36

37 EMA -- AEMA is a coordinating agency across all of government. So, was I in charge
38 of a response? I was in charge of coordinating a response and advising the Premier, the
39 Premier was the person in/charge of the response.

40

41 Q Okay. But it's fair to say you were in charge of coordinating that response then, right?

- 1 A Yes, ma'am, I was in charge of coordinating the response.
2
- 3 Q So you were responsible for coordinating Alberta's response when a train derailed in
4 Wabamun in August of 2005, right?
- 5 A No. the way emergency management in Alberta works is AEMA ensures that everyone
6 of the 314 municipalities in Alberta develops and has an emergency management plan.
7 If that community is capable of responding to the emergency, the Mayor/Reeve of that
8 community is in charge and the EMO, every one of the 314 communities in Alberta
9 must appoint an emergency management officer who coordinates the response of that
10 community. So, unless that community felt overwhelmed, they have the right under the
11 *Emergency Management Act* to declare a state of local emergency. If they didn't, clearly
12 it was within their capabilities. If they did declare a state of local emergency, then would
13 then -- even without a declaration, they could ask us for additional resources and we
14 would coordinate through all the different agencies, the appropriate assistance.
15
- 16 Q But your evidence is that as the head of EMA, which is now AEMA, you were
17 responsible for coordinating Alberta's emergency responses were you not?
- 18 A I was responsible for ensuring that the community was trained to carry out their roles
19 and if the community was not able to respond fully to them coordinate the response as
20 directed by the Premier in their support.
21
- 22 Q And if --
- 23 A There's a real critical difference there.
24
- 25 Q But, I'm asking you, sir, you were in charge at EMA on August 3rd, 2005, correct?
- 26 A Yes, ma'am.
27
- 28 Q And that when a freight train derailed in Wabamun, correct?
- 29 A Yes, ma'am.
30
- 31 Q And this emergency response was considered by many to be deficient in many areas,
32 isn't that right?
- 33 A Ma'am, I believe that would be a characterization of some people who looked at it in
34 terms of the length of time it took. Now, who was responsible for that Wabamun spill
35 and who didn't respond in time was a multi-layered report that came out afterwards,
36 certainly the rail company not disclosing what the products were that were in the cars,
37 certainly the response of the community at the time, certainly provincial response, if it
38 had been requested and I -- I don't recall the exact findings of the whole report. I do
39 know that overall, it was considered a failure to respond on many levels.
40
- 41 Q And it was EMA's failure to respond that led to the recreation and reorganization of

1 EMA as the Alberta Emergency Management Association, right?

2 A Absolutely incorrect. I was part of the team that organized the reorganization in the
3 EMA and in fact it was an expansion and development of the capabilities. Perhaps you
4 are unaware under the cuts that occurred in the 1990s, Emergency Management Alberta
5 was previously called Disaster Services Alberta. It had a staff of over 114 in 1993.
6 When I joined EMA, it had a staff of 17, subject to the cuts. When I became the head
7 of EMA, my Deputy Minister at the time did a complete review of what were the
8 responsibilities and an expansion occurred. We were up to about 26 after
9 counterterrorism and that reorganization assigned an additional about 20 staff and the
10 organization grew to be capable of doing even more and it's even larger today. That
11 report happened coincidentally with a complete restructuring and a reassignment of
12 expanded responsibilities to EMA.

13
14 Q Okay. So, you don't have any medical experience, do you Mr. Redman?

15 A No, I absolutely do not.

16
17 Q And you don't have --

18 A I don't have any experience in rail, I don't have experience in infectious diseases in
19 cattle, but I have worked with those experts in those to bring those knowledges together.

20
21 Q Okay. But you don't hold any formal education in virology, correct?

22 A Absolutely not.

23
24 Q And you have no formal education or training in epidemiology?

25 A No, ma'am.

26
27 Q And you've never been to medical school, right?

28 A Absolutely.

29
30 Q So you aren't qualified to practice medicine in any jurisdiction?

31 A No.

32
33 Q Okay. So now I want to take you to your report, we'll just go to your first report from
34 January and at paragraph 5 of your report here, I'll just wait for you to get to it, sir.

35 A Okay. The goals?

36
37 Q Yes, so you set out four goals identified by the Alberta Pandemic Influenza Plan from
38 2014 and the goals are; controlling the spread of the disease and reducing illness and
39 death, mitigating societal disruptions through ensuring continuity and recovery of
40 critical services, minimizing adverse economic impacts and support an efficient and
41 effective use of resources during response and recovery; right?

1 A Correct. You didn't read all of the first goal but ...

2

3 Q I just tried to summarize them, is that a fair summary, sir?

4 A Yes, it's a fair summary.

5

6 Q Okay. So, in your opinion at paragraph 10, you say: (as read)

7

8 The focus on COVID-19 case counts led to a flawed response as it
9 only deals with one of the objectives of those identified goals.

10

11 So, in your opinion, what goal did Alberta's response focussed on?

12 A It focussed on the controlling the spread of the influenza and reducing illness, but it
13 didn't even focus completely -- and that's why I asked if you would read the whole,
14 cause it says, "by providing access to appropriate prevention measures, care and
15 treatment."

16

17 So, I don't believe that we addressed the other three, but that's the one, in particular, and
18 the reason I say we failed at it, is the number one prevention measure that we should
19 have been looking at, as defined by that goal and I put it to you that this plan isn't my
20 plan, those aren't my goals, that's the Government of Alberta's plan that I lifted those
21 from. The number one area we knew in February and March of 2020, that 95 percent
22 of the deaths worldwide had happened in seniors over the age of 60 with severe multiple
23 comorbidities.

24

25 The response led by the Government of Alberta in March and April of 2020, did not
26 address a focussed protection for those seniors, in particular, in long term care homes
27 where over 81 percent of the deaths in Canada happened in the first wave and where 73
28 percent of the deaths have occurred subsequently. A focussed protection, not just for
29 long term care homes, but also for seniors with severe comorbidities living at-large.

30

31 So, if we had actually followed goal number one and offered methodologies for
32 protection for our seniors, we probably could have reduced even the number of deaths
33 in that area and yet we didn't. At the same time, we used non-pharmaceutical
34 interventions which didn't address the other three goals and in fact were assumed to
35 have no negative outcomes. We knew then they would have negative outcomes. The
36 2019 non-pharmaceutical interventions WHO document clearly indicated what the
37 negative outcomes of using them were for and that's why they considered them to be
38 used as a last resort.

39

40 For instance, the closure of business which happened with the Declaration was known
41 to have severe negative outcomes. It was also known not to stop the spread significantly

1 of the disease and yet it was used as a first resort when in that WHO document it says
2 only to be used as a last resort in an extremely severe pandemic. So that's what I said
3 what I said in paragraph -- wherever we are.

4
5 Q Ten.

6 A Ten.

7
8 Q Okay. So, in your opinion, the response only focussed on let's say the first half of that
9 first goal set out in the Pandemic Influenza Plan, right?

10 A I believe that the failure to actually (INDISCERNIBLE) --

11
12 Q Okay. Mr. Redman, I appreciate --

13 Q -- which assessment of the hazard is what caused the entire. When the goal of --

14
15 Q Mr. Redman, I asked you a question and it doesn't seem like you understood that
16 question, sir. I'm just trying to understand if you're saying that, in your opinion,
17 Alberta's response focussed primarily on that first part of that first goal, sir?

18 A I would say that it focussed on the second part of that first goal, care and treatment.

19
20 Q Okay. Okay.

21
22 MR. RATH: My Lady, I'd like to enter an objection at this
23 point. Again, it seems my friend is following the same practice of Mr. Parker and that is in
24 not letting the witness answer the questions that were put to him. Mr. Redman is attempting
25 to answer questions on very difficult issues, and it seems that if Alberta doesn't like the
26 answer they are getting, they feel fit to interrupt him and disrupt his train of thought. He's
27 here as an expert, we'd like to hear what he says, and I'd ask my friend to stop interrupting
28 while he's providing answers. That's my objection. Thank you.

29
30 THE COURT: Thank you, Mr. Rath. Ms. LeClair?

31
32 MS. LECLAIR: My response is simply that I was trying to get a
33 simple response from Mr. Redman, and it was quite detailed. Mr. Redman has lots of
34 expertise and he is providing a lot of detail, but when there's a simple question, I should be
35 entitled to a simply answer.

36
37 THE COURT: Okay. I agree that in the circumstances and Mr.
38 Redman did not seem to be addressing the question asked by Ms. LeClair. I agree, Mr.
39 Rath that we should be very, very careful not to cut off the witness in the midst of his
40 answer. But in this case, it was apparent that Mr. Redman was perhaps not focussing on
41 the question.

1
2 So go ahead, Ms. LeClair.

3
4 A My apologies.

5
6 THE COURT: Yes.

7
8 MS. LECLAIR: Thank you, Justice Romaine.

9
10 Q MS. LECLAIR: Okay. So, Mr. Redman, so in your opinion, the
11 response failed to address the goal of minimizing the adverse economic impacts,
12 correct?

13 A Yes, ma'am.

14
15 Q And so throughout your report, I think mention that the Canada Emergency Response
16 Benefit, known as CERB, what other programs did you consider in reaching the
17 conclusion Alberta failed to address the goal of minimizing economic impacts?

18 A There were numerous programs and numerous actions, in terms of borrowing. I would
19 -- I would say what emergency management does is it looks at the overarching evidence
20 and one of the things that we're clear, particularly in the first wave, is that 8.9 million
21 Canadians across Canada out of a workforce of 20.1 million, were at home on CERB.
22 That's a massive impact and a destruction of our economic potential in our country.

23
24 In addition, that's just one of the programs. There was also programs that provided
25 employers to make back portions of wages while they restricted the number of
26 employees or sent their employees home. When you have almost half your workforce
27 unemployed in the first wave with no demonstrable justification for the use of the
28 closure of those businesses, I put it to you, that yes, I believe that that was a completely
29 inappropriate use.

30
31 But as well, the facts in evidence at the time were very clear in terms of the -- the entire
32 program was aimed at justifying use of lockdowns when they actually had not been
33 justified.

34
35 Q So did you consider the impact of the small and medium enterprise relaunch grant,
36 which allowed organizations to receive up to \$20,000 in funding from the government?

37 A No, ma'am, I did not, but I would put it to you that there have been reports after reports
38 after reports, using the terms, if you want to consider them by waves, in the first and
39 second wave that have shown that we have devastated small business.

40
41 Q Did you consider the availability of the emergency isolation support, which is a

1 payment of \$625 to Albertans who couldn't safely self-isolate in their home?

2 A That I don't believe has anything to do with business, if that's the question.

3

4 Q Well, in my -- well I'm not going to argue with you. So, the answer is no, sir?

5 A No.

6

7 Q What about the WCB premium deferral for small and medium businesses that allowed
8 private sector employers to defer WCB premiums for a year, did you consider that?

9 A So, if you're intention to say that we allow business to accumulate and grow debt and
10 to offer ways for them to barely survive, I think we will be seeing the results of that in
11 more loss of our businesses in the future. So, yes, I did consider many of those aspects
12 and what I saw was just an attempt by government to justify the use of non-
13 pharmaceutical interventions.

14

15 Q So you say you considered these, but these are not mentioned in your report, right?

16 A No, ma'am, because I considered them part of the overarching evidence that were
17 included in the reports that are summarized in some of the references in terms of the
18 destruction of small business in our Province.

19

20 Q So, in your opinion, Alberta's response failed to address the goal of mitigating societal
21 disruptions then, right?

22 A Yes, ma'am.

23

24 Q And in coming to this opinion, did you consider the funding to Caregivers Alberta that
25 provided \$3 million of funding to non-profits organizations that supported a few million
26 of Albertans that are caregivers?

27 A Ma'am, I believe that the societal disruption and in particular, those words, applies to
28 the increase spousal abuse, the increase in child abuse, the fact that Albertans don't trust
29 each other. That we now have fear in our society that forces people to say that their
30 children have to be masked and stay at home. That societal disruption, ma'am, and
31 putting small pockets of money into small programs has not overcome the wall of fear
32 that has been created by the use of non-pharmaceutical interventions that will cost our
33 societal disruption for two generations, until the children that are in our schools pass
34 through life. We know the disruption that we have done to our society and trying to put
35 a small price tag on overcoming tiny elements of it hasn't change a thing in the last 23
36 months. The societal disruption of our entire Province and county is evident every
37 single day.

38

39 Q So if I list to you more programs that address societal harms, you're going to tell me
40 you didn't consider them, isn't that right?

41 A I considered their lack of effectiveness, yes, ma'am.

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41

Q Okay. So, then I just want to take you to your surrebuttal opinion, that's the second one.

A Okay.

Q And the bottom of page 5.

A Sorry, just a second. Bottom of page 5?

Q Yes, please.

A Okay.

Q So, you state there that in your opinion the quote: "Proverbial goalposts have been constantly changing under this Government's response", right?

A Correct.

Q In your experience as information about a hazard unfolds, does the response to a hazard change?

A It certainly can, but if there had been a written plan that was developed appropriate, the options would have been presented in the plan with why there may be a shift and what the triggers would've been to do it. What we saw in Alberta was no production of a written plan ever issued to the public or even an oral one. The entire response shifting on a constant basis, based on the use of fear. The whole focus of the discussions that I put in that report and the whole lines that go, you know, first we're going to flatten the curve, then we're going to plank the curve, then you're going to kill your grandparents, then all people are at equal risk; is simply untrue. But those were the goalposts that were constantly used to justify the inappropriate use of non-pharmaceutical interventions.

Q Okay. But flexibility in responding to disasters and hazards, that's important, right?

A Yes, ma'am, of course it is and that's why you write it right into the plan and if there are options that you don't use in the plan, the whole purpose of the development of the plan is to have all of those options available if you need them. The process of developing the plan is what gives you that flexibility and allows you to tell the public that you have that flexibility and may be forced to use it.

Q Okay. Next, I want to take you to page 12 of your report, which is a series of statistics. I just want to look at these together.

A Okay. Yes, ma'am.

Q You don't have any degrees in statistics, do you?

A Absolutely not, but I can read evidence.

1 Q Your CV doesn't list any formal training in biostatistics, does it?

2 A No, ma'am.

3
4 Q And you have no training in interpreting and comparing statistics, do you?

5 A I would say, yes, because if the statistics you're talking about are these ones that are
6 presented by the Government of Canada, 'cause they're what's on this table and they
7 show the number of people that are hospitalized and admitted to ICU, I think any
8 layperson can read those and that's why they were produced by the Government of
9 Canada.

10
11 Q But when you compared these statistics, you didn't run any analyses did you? Did you
12 correct for variables?

13 A I looked at them for the face value of what the Government of Canada was presenting
14 and I would point out, the Government of Alberta does the same and the entire point of
15 that shows the types of things that we're talking about; that hospitals being
16 overwhelmed in emergency management would be trying to a surge capacity, which is
17 for people, infrastructure, equipment and supplies. That surge capacity should be able
18 to deal with whatever comes in each form of the variants as they progress.

19
20 Part of the problem in deciding the size of the surge capacity is understanding who is
21 most at-risk. In this case, most at-risk was our seniors, people over the age of 60, with
22 severe and multiple comorbidities.

23
24 Q Okay. But Mr. Redman --

25 A What this evidence proves time and again that the largest loading for COVID patients,
26 let's be clear, there's lots of other people that needed that hospital system, but to focus
27 only on COVID patients drove a whole bunch of these decisions. But what this
28 evidence -- this statistics as you like to call it shows, is that our hospitals were primarily
29 loaded with the seniors that we had abandoned by not doing focussed protection and
30 that 65 percent of the loading of our hospitals to this day, I might add, is in seniors over
31 the age of 60 with multiple and severe comorbidities, that there is as of yet, still no
32 proper focussed protection program for that is publicly announced.

33
34 Q Okay. So, Mr. Redman, I don't know if you didn't understand my question here. But I
35 asked whether you had run any analysis or corrected for any variables when you looked
36 at these statistics?

37 A No, ma'am, I look at the result --

38
39 Q So you look at the raw numbers?

40 A Yes, ma'am.

41

1 Q Okay. So, traffic collision, those are not contagious illnesses, are they?

2 A Okay. So, we're obviously on the wrong pages -- I'm on the wrong page.

3
4 Q Page 12, you talk about traffic collision fatalities, right at the top --

5 A I'm definitely, sorry --

6
7 Q So my question is, Mr. Redman, traffic collisions are not contagious illnesses, are they?

8 A Absolutely not.

9
10 Q And you talk about heart disease on this page, heart disease is not a contagious illness,
11 is it?

12 A And so, ma'am, why did I provide those examples?

13
14 Q Mr. Redman, the question I asked is, whether or not, it is a contagious illness?

15 A No, absolutely not.

16
17 Q Okay. Thank you, Mr. Redman. Is it fair to say that one of the criticisms across your
18 report is that the Government failed to adhere to or at least follow the general outline
19 of the Alberta Pandemic Influenza Plan from 2014?

20 A My criticism is, is that the Government of Alberta never developed a plan. That they
21 ignored their existing plan is a part of that criticism, but the majority of the criticism is
22 directed at the fact that we didn't assign the right aim; we never established a cross-
23 society governance task force and we did not develop a plan that would address all of
24 the issues on the impact of the use of any of the options on all of society. Our aim
25 constantly and it's repeated every night on the news to this day, is to protect the medical
26 system, it is not what public health should be, which is to protect all of society.

27
28 Q Okay. Sorry, Mr. Redman, at the beginning of that you we didn't develop a -- and I
29 thought you said aid, but I don't know what that means, I don't know if it's an
30 abbreviation at the beginning of your response, do you remember what you said there?

31 A Sorry, that we did not develop a comprehensive plan.

32
33 Q I might have misheard, sorry, I just thought you may have used an abbreviation and I
34 didn't know what it meant.

35 A No, no.

36
37 Q Okay. So, if I call this plan the APIT, you know what I mean, right?

38 A Yes, ma'am.

39
40 Q And one of the issues you had with Mr. Long's response report was the notion that in
41 Mr. Long's opinion the APIT contemplated the pandemic response being led by health

1 professionals, right?

2 A Absolutely, 'cause that's not what that plan says.

3

4 Q So, you've read APIT, yes?

5 A Yes, ma'am.

6

7 Q And you say you oversaw the preparation of the 2005 version of APIT and you say that
8 forms the basis for the 2014 version, right?

9 A In my opinion, I believe that a significant portion of what we wrote in 2005 and
10 remember it wasn't completed when I retired at Christmas of that year. The majority of
11 the concepts made it forward into the 2014, yes.

12

13 Q So then you're pretty familiar with its contents, yeah?

14 A Yes, ma'am.

15

16 Q Perfect. Mr. Trofimuk, if I can get you to bring up the document please, what I'm going
17 to show you here, Mr. Redman, is the Pandemic Influenza Plan from --

18 A Then can I put away the surrebuttal?

19

20 Q You can, yes.

21 A Okay.

22

23 Q So can you see this one okay on your screen?

24 A I can.

25

26 Q And this is the APIP you are familiar with right?

27 A Yes, ma'am.

28

29 Q And you tried to attach this as an exhibit to I think your expert report from January
30 2021, right?

31 A Undoubtedly, I don't recall exactly, but probably.

32

33 Q I can take you there, it's paragraph 4 of your expert report if you want to confirm.

34 A I believe you.

35

36 Q Okay. So, Mr. Trofimuk, if you can take us to page 18 of this PDF, Mr. Redman, can
37 you read us that header there, that number 2?

38 A Alberta's Response to Pandemic Influenza.

39

40 Q Great and Mr. Trofimuk, if you can just scroll down to the next page on page 19, I'd
41 like to stop at the header that says, Provincial. Okay. Mr. Redman can you read me

1 those first two sentences under Alberta Health?

2 A (as read)

3
4 The role of Alberta Health is to lead and coordinate the Provincial
5 pandemic influenza health planning response and recovery. Alberta
6 Health's responsibilities specific response and recovery are ...

7
8 Q Perfect. Okay. And then can you read me those first two bullet points, sir?

9 A (as read)

10
11 Assess and communicate pandemic influence severity and impact to
12 Alberta stakeholders.

13
14 Exercise the legislative authority applies to both Minister and CMOH
15 under the *Public Health Act* and the Communicable Disease
16 Regulation to protect the health of Albertans.

17
18 Q Okay.

19
20 MS. LECLAIR: And Justice Romaine, I think we should mark
21 this one as an Exhibit for Identification. I did ask my office to get you a binder and I think
22 it was delivered this morning; did you receive that this morning?

23
24 THE COURT: Yes, I have received it. Thank you, Ms. LeClair.
25 I have it here.

26
27 MS. LECLAIR: And my friends received this document last night
28 as well. So, I think we're all on the same page document-wise.

29
30 THE COURT: Yes, so for identification? It appears that Mr.
31 Redman is familiar with this document, is that the case, Mr. Redman?

32
33 A Yes, Ma'am.

34
35 MR. RATH: We questioned him on it, as well, My Lady, we'd
36 have no objection.

37
38 THE COURT: Okay. Okay, to it being marked as an exhibit -- I
39 full exhibit, not just for identification, I do not know why it would be only marked for
40 identification, is my question.

41

1 MR. RATH: We have no objection.

2

3 MS. LECLAIR: If my friend has no objection to it being marked
4 as a full exhibit, then it can be marked as a full exhibit.

5

6 THE COURT: Okay. We will mark it as -- well okay in the
7 marking -- but I am just thinking the number, we have not marked any exhibits yet, but this
8 is the second witness. Let's just start at Exhibit 1. Yes, Exhibit 1.

9

10 **EXHIBIT 1 - Alberta's Pandemic Influenza Plan Dated March 2014**

11

12 MS. LECLAIR: Thanks Justice Romaine.

13

14 Q MS. LECLAIR: So, Mr. Redman, when you say in your
15 surrebuttal report that the APIP didn't contemplate a pandemic response being led by
16 Alberta Health, you can see from the beginning of that introduction there that that's
17 incorrect, right?

18 A No, ma'am, actually I don't. May I ask you to go back to page 11 of the plan?

19

20 Q Well, sir, but I'm asking right here, you read into the record Mr. Redman, that the role
21 of Alberta Health is to lead and coordinate the Provincial pandemic influenza health
22 planning response and recovery; you would agree that it says response in there, Mr.
23 Redman?

24 A I would agree those words is what's at that point of the plan, but I do not -- I think you
25 have missed the very overarching portions of the plan that are previous to that.

26

27 MR. RATH: My Lady, I was trying to enter an objection with
28 regard to the manner in which my friend was questioning the witness. Mr. Redman was
29 attempting to answer her on the basis of the document as a whole. And I believe it is unfair
30 to the witness for her to take him to a single sentence on a single page in a document of
31 this nature, without allowing him to provide evidence with regard to the document as a
32 whole, which he was attempting to do when she was attempting to interrupt him and cut-
33 off his evidence.

34

35 THE COURT: Okay. The question was, do you agree that the
36 reference on page 19 indicates that the role of Alberta Health is to lead and coordinate the
37 Provincial pandemic influenza. Mr. Redman's answer no and he was about to refer us to
38 page 11. I am going to allow him to continue with his answer.

39

40 A So, first of all, all hazard specific plans, if I can take you to the top of page 10, all hazard
41 specific plans and this is a hazard specific plan, fall under the *Emergency Management*

1 *Act's* responsibility and if you read a the very top of the page: (as read)

2
3 The Alberta Emergency Plan outlines the responsibilities of each
4 government department for all emergencies.
5

6 I would point out that this plan needs to read in conjunction with the Alberta Emergency
7 Plan, which is the overarching plan over all hazard specific plans. But even more
8 importantly in this plan on page 11, if we could go to page 11, General Assumptions,
9 it's in the middle of the page, I would read into evidence all five bullets under General
10 Assumptions: (as read)

- 11
- 12 1. The effects of and response to a pandemic influenza are not
13 limited to the health sector. A whole of society approach
14 will be used in mitigating the effects of a pandemic
15 influenza including public and private sectors,
16 communities, families and individuals.
17
 - 18 2. Pandemic planning is aligned with an all hazards approach
19 to emergency management.
20
 - 21 3. Alberta Health, AHS and AEMA, as well as other
22 stakeholders will use existing pandemic emergency
23 response plans during the pandemic.
24
 - 25 4. Increased absenteeism is expected. Schools, workplaces
26 and health systems are likely to experience workforce
27 shortages. [Nothing there about closing them just that
28 people will get sick]
29
 - 30 5. An antivirus will be effective against the pandemic virus.
31

32 But the first three bullets there imply that all of society needs to be looked at and if
33 Alberta Health had looked at all of society, if the Premier had established a task force
34 that looked at all of society, not just protection of the medical sector, but protection of
35 Albertans in all sectors, we would've have had an extremely different response.
36

37 Q MS. LECLAIR: So, sir, I appreciate your perspective on this, but
38 nonetheless the pandemic -- the APIP says that Alberta Health will be the lead agency
39 and that's what's on page 19, correct?

40 A Yes, ma'am, that's what that part of the plan says.
41

1 Q Okay. Thank you. And so when you say that APIP didn't contemplate the CMOH
2 exercising legislative authority so making orders, you can see that APIP contemplates
3 both the Minister and the CMOH exercising legislative authority, right?

4 A Yes, I do.

5

6 Q Okay.

7 A Do I believe it was correct? That's what my statement is, it is incorrect.

8

9 Q Right, I understand you disagree with it, but APIP contemplates it. When you say in
10 your expert report that there's no need to announce how many people have tested
11 positive for COVID, you can see here that part of Alberta Health's responses --
12 responsibilities here involve communicating the severity and impact in Alberta to
13 stakeholders, right?

14 A Yes ma'am, I do see that, but if you look at the NPI document, you'll see that a number
15 of the steps to develop that are not recommend. For instance, contact tracing is not
16 recommended for a virus of this type because it's known that it will be completely
17 overwhelmed very early by this type of virus. And so if the intent -- remember this plan
18 is a generic plan, not tailored to this specific virus, it was the overarching generic plan.
19 And so each of the tasks that are in here, should have been considered in that planning
20 process, running the operational planning process. And under tasks given and tasks
21 implied, the tasks given are the four goals, some of these would move up into tasks
22 implied and there would be teams who would develop whether each of these tasks is
23 appropriate for this specific virus and would be used only if the cost versus benefit was
24 appropriate.

25

26 Q Okay.

27 A This is a complete list of all possible actions written before the actual virus presented
28 itself.

29

30 Q So you would agree that one of the options that was available was for Alberta Health
31 to communicate the pandemic influenza severity and impact in Alberta to stakeholders
32 though, right?

33 A Yes.

34

35 Q That's an option available?

36 A Yes, it is.

37

38 Q And you can see that APIP contemplates the declaration of a provincial public health
39 emergency if required, yes?

40 A Yes, I do see that.

41

1 Q Okay.

2 A But I disagree that it was the appropriate action and this is but one example of what
3 could have been done, in an unknown virus.

4

5 MS. LECLAIR: Those are all my questions for this witness,
6 Justice Romaine. Thank you Mr. Redman.

7

8 THE COURT: Okay. Anything arising, Mr. Rath?

9

10 MR. RATH: Yes, My Lady.

11

12 **The Witness Re-examined Mr. Rath**

13

14 Q Mr. Redman, my friend asked you, whether or not, you were qualified to practice
15 medicine and you answered, no, but do you consider yourself qualified to manage
16 medical emergencies in the Province of Alberta?

17 A Yes, sir, I am.

18

19 Q And specifically, do you consider yourself qualified to manage a respiratory virus
20 emergency in the Province of Alberta?

21 A Yes, sir, I am. I'm qualified to manage emergencies of all hazards.

22

23 MR. RATH: Those are our questions on redirect, Madam
24 Justice.

25

26 THE COURT: Okay. Thank you. Mr. Redman, thank you very
27 much for giving evidence in this hearing. You can now be excused.

28

29 A You're welcome.

30

31 (WITNESS STANDS DOWN)

32

33 THE COURT: Thank you.

34

35 MS. LECLAIR: Justice Romaine, I don't know if we're going to
36 continue with -- I know we have an outstanding issue. Mr. Long, Alberta's witness is
37 available, but I know my friend -- I know my colleague needs to make an opening
38 statement, so I'm not sure how the Court would like to address that. But Mr. Long, will not
39 be available after 3 PM for the rest of today, he could come back tomorrow.

40

41 MR. RATH: And Madam Justice, we'd like to conclude the

1 redirect of Dr. Bhattacharya and I believe he was standing by in that regard, as well.

2

3 THE COURT: Was he, okay. I am fine with Ms. LeClair -- Mr.
4 Parker are you content to continue on the redirect of Dr. Bhattacharya?

5

6 MR. PARKER: If that's where we need to go, I just -- I hear that
7 Mr. Long is not available after the next 71 minutes, I guess, which is --

8

9 MS. LECLAIR: Sorry, Mr. Parker, no, I maybe
10 miscommunicated that. He won't be available this afternoon after 3 PM, but he can come
11 in tomorrow morning, but then we are running out of availability for Mr. Long.

12

13 THE COURT: Okay.

14

15 MR. PARKER: And we had tentatively lined up Dr. Kindrachuk
16 for all day tomorrow, he was originally on the schedule supposed to be up first thing
17 Monday morning, so about two days behind schedule. How long -- we -- so yeah that's
18 where we're at. I think glad to move to the redirect and wrap it up then with Dr.
19 Bhattacharya and see where we get to probably.

20

21 THE COURT: Okay. Let's --

22

23 MR. GREY: Madam Justice, it's Leighton Grey, here.

24

25 THE COURT: Yes.

26

27 MR. GREY: I had indicated earlier and I understood the Court
28 had agreed that it would not be wise or preferable to proceed with completion of the redirect
29 of Dr. Bhattacharya prior to hearing your decision on the procedural issue that's pending.
30 Subject to your direction, I maintain that position. I think that speaking on behalf of my
31 clients, we really need to know where your -- where your head is at on that issue, because
32 obviously that's going to significantly impact not just Dr. Bhattacharya, but from our point
33 of view, the way the evidence is going to proceed from here on out.

34

35 So that would be -- I'd prefer not to, of course, I'm at the Court's disposal. I'd prefer not to
36 proceed to complete the redirect of Dr. Bhattacharya until that decision is known. That's
37 my submission on it.

38

39 THE COURT: I appreciate what you are saying, Mr. Grey, and
40 it also seems to me that we have another outstanding issue and that is what documents from
41 Mr. Parker's cross-examination are going to be exhibits before we move into the redirect

1 and so we will need some time to work that out, as well.

2

3 So maybe could I suggest that we -- Mr. Parker, you are certainly entitled to give an
4 opening statement, but I would not compel you to do so if everybody agrees that we can fit
5 Mr. Long in, just to use the time this afternoon. Is that an option?

6

7 MR. PARKER: Absolutely, I'm fine with that Justice Romaine.
8 Thank you.

9

10 THE COURT: Okay. Mr. Rath and Mr. Grey, does that meet
11 with your agreement?

12

13 MR. GREY: It certainly does from my point of view, Madam
14 Justice, and in fact what I'll say to -- I guess in speaking to Mr. Trofimuk who I have been
15 corresponding with about the exhibits, I certainly undertake to do my best to work through
16 that issue and see whether we can come to an agreement about which of those can be
17 marked. I'm certain that Mr. Trofimuk and I and perhaps Mr. Parker, as well, can work
18 towards an agreement on that issue, perhaps resolve, it outside of court time.

19

20 THE COURT: That would be (INDISCERNIBLE).

21

22 MR. RATH: And also a preliminary issue with regard to Mr.
23 Long. We have no objection to him proceeding as a lay witness in these proceedings, but
24 we still do have an outstanding issue, at least from my client's perspective, with regard to
25 whether he can be qualified as an expert, be the expert, given that he remains as a -- he
26 remains as an employee of the Government of Alberta. And in that regard we say that, you
27 know, he fails from the standard of impartiality because of there's a degree to which his
28 future career could be controlled by his employer.

29

30 THE COURT: Okay. Well, we will have to deal with that during
31 the qualification stage of Mr. Long, but shall we do that this afternoon?

32

33 MR. RATH: We have no problem in that regard, My Lady, I
34 just wanted to (INDISCERNIBLE) --

35

36 THE COURT: Yes, I had forgotten about that, thank you. Who
37 is going to lead the qualifications of Mr. Long? Mr. Parker --

38

39 MS. LECLAIR: I am Justice Romaine.

40

41 THE COURT: You are, Ms. LeClair?

1
2 MS. LECLAIR: Yes Ma'am.
3
4 THE COURT: Well, let's do you need a few minutes just to get
5 set up or are you prepared to get going.
6
7 MS. LECLAIR: If we could take our afternoon break now,
8 Ma'am, and then I can make sure that Mr. Long is logged in and ready to go.
9
10 THE COURT: Okay.
11
12 MR. GREY: Ms. LeClair, can I just ask a question? Are you
13 planning to proceed with Mr. Long before we hear Mr. Parker's -- or the respondent's
14 opening statement; is that the plan?
15
16 MS. LECLAIR: I think only so we can try and use this time, sir.
17
18 MR. GREY: Okay. Thank you. Just wanted to clarify.
19
20 THE COURT: Yes.
21
22 MR. GREY: Thank you.
23
24 THE COURT CLERK: And one more housekeeping matter, I've
25 provided each counsel with my email and if they can please forward me all exhibits and to
26 your assistant, as well, so there's no discrepancies, so that we can have that for the court
27 record.
28
29 THE COURT: Right. Thank you. Instead of 15 minutes, let's
30 take 20 minutes, because I want to check my email to see what has come in that might be
31 of relevance on this. Okay. Thank you.
32
33 (ADJOURNMENT)
34
35 THE COURT: Thank you, good afternoon again. Okay, Ms.
36 LeClair, are you ready to address Mr. Long's qualifications? Should we let him into the
37 room if he is not in?
38
39 MS. LECLAIR: I am, yes, My Lady, I do see that he is listed in
40 our attendees here --
41

- 1 THE COURT: Okay.
- 2
- 3 MS. LECLAIR: -- as Scott.Long, if madam clerk can help us out.
- 4
- 5 THE COURT: Okay, thank you.
- 6
- 7 MR. RATH: Madam Justice, as matter of forum, would you
8 like to hear our legal objections now to Mr. Long's qualifications or would you like to hear
9 them after? You know, our -- our -- our objections are -- are purely legal in -- nature and
10 are limited to -- you know, to the issue the Mr. Long was and is an active employee of the
11 Government of Alberta. So, perhaps it'd be best to do that without the witness present.
- 12
- 13 THE COURT: Ms. LeClair, what is your view on that?
- 14
- 15 MS. LECLAIR: Well, in -- in my submission, My Lady, the
16 objection I heard my friend raise just before the break is he's objection to Mr. Long's
17 impartiality on the basis that Mr. Long is an employee of the Government of Alberta. I
18 would raise the issue of the Supreme Court's decision in *White Burgess* which expressly
19 says that an employment relationship is not typically sufficient to exclude a witness -- an
20 expert witness on the basis of a lack of impartiality in -- especially in a case of the witness's
21 confirmation to the Court that he understands his duty.
- 22
- 23 So, it -- it's -- my plan was to take Mr. Long through his qualifications and get him to state
24 under oath that he confirms his obligation is to the Court, which I submit would address
25 most of Mr. Rath's concern and any lingering concerns could simply be addressed by
26 weight accorded to Mr. Long's opinion by the Court.
- 27
- 28 THE COURT: Okay, I think that makes more sense, Mr. Rath -
29 - I am sorry, let me take my mask off. I think that makes more sense, Mr. Rath, and you
30 have the onus of establishing that Mr. Long lacks independence and so you may have some
31 questions after Ms. -- Ms. LeClair takes Mr. Rath through his -- through his qualifications.
- 32
- 33 MR. RATH: Takes Mr. Long's --
- 34
- 35 THE COURT: I am sorry, I apologise. Mr. Long through his
36 qualifications, I apologise.
- 37
- 38 MR. RATH: I have law degree from the London School of
39 Economics in quite some time ago, not sure what it has to do --
- 40
- 41 THE COURT: Okay, no ones questioning your qualifications,

1 Mr. Rath. Okay, Ms. LeClair, go ahead.

2

3 MS. LECLAIR: I see Mr. Long has been added here. Can you turn
4 your camera on, Mr. Long and your microphone when you get settled?

5

6 **SCOTT LONG, Sworn, Examined by Ms. LeClair (Qualification)**

7

8 Q So, Mr. Long, I'm going to start today by asking you some questions. Can you please
9 confirm you have your expert report in front of your, sir?

10 A I do indeed.

11

12 Q Okay and schedule A of your expert report is titled summary of qualifications, is this a
13 fairly up to date and accurate summary?

14 A Yes.

15

16 Q Can you tell the Court about your educational background?

17 A I have a -- a bachelor's degree in military arts and applied sciences, which is really an
18 arts degree. A master's degree in defence studies and in terms of emergency
19 management, I'm a qualified business continuity planner, as well as ICS 100 -- incident
20 command system training 100, 200, 300, and 400.

21

22 Q And can you tell me about the incident command system courses?

23 A Incident command, well the incident command system is essentially the -- the -- the
24 common training and backbone of the emergency management system in --
25 internationally if you will, but certainly in North America. And each system --
26 correction, each level if you will, 100 being the lower level, 200, 300, 400. Each level
27 is an increment step in terms of experience, qualifications, and ability to be an incident
28 commander or to be an operational chief, or a logistics chief, or a chief planner at
29 different levels.

30

31 Incident -- ICS 100 -- incident command system 100 really is the introduction, it's the
32 basics. Incident command system 200 really starts to give you the qualifications then
33 to be a deputy commander of a plans team, an operational team or what have you. It's
34 300 and 400 where to start getting the -- what I would consider the command
35 responsibilities. And of course, each one of those courses comes along with various
36 levels of, you know, experience, time in position, time doing the job, et cetera.

37

38 Q And can you tell the Court a little bit about your military background, Mr. Long?

39 A Yes, I did -- I did 28 years -- 27 and a bit in the regular forces as a combat and arms
40 officer in the armoured core. Multiple tours to Bosnia and -- and Afghanistan. I have
41 commanded at every rank, level, retired as a lieutenant colonel, my last position in the

1 forces as a lieutenant colonel was a chief of operations for the Canadian 3 CDSG --
2 Canadian Support Group, which did all of the logistics -- high-level logistics planning
3 and coordination for the western part of Canada., for military operations or what have
4 you.

5
6 So, in 2014 -- or 2013 I was responsible for -- for ensuring, you know, high order
7 logistics to all of the forces that deployed to the south Alberta, as an example. To make
8 sure that the logistic chains, lines of operations were all in effect. In Afghanistan, I was
9 the crew and ops chief for Western Afghanistan, RC South they referred to it -- sorry,
10 not western but southern Afghanistan.

11
12 And some of the roles and responsibilities for that were the day-to-day deconfliction,
13 integration of all the multiple plans from the NATO forces. Coordination of airspace,
14 coordination of all of the -- evac incidents that occurred during that time period. I think
15 in terms of planning, we planned presential visits, senator visits from the US as well,
16 and I think the biggest thing of note would be we planned the election support for -- in
17 RC South in 2010.

18
19 I retired in 2014, joined the Alberta Emergency Management Agency, and because I
20 still have some of that green army stuff in my blood, in 2015 I joined the army again as
21 a reservist and I am currently the Deputy Commander of 41 Canadian Brigade Group,
22 which is Alberta's reserves.

23
24 Q And so, Mr. Long, you stated you joined the Alberta Emergency Management
25 Association in 2014. How long were you with the -- with AEMA?

26 A I was with the AEMA full-time until August of 2021. That lifestyle is -- is pretty taxing,
27 so I moved over to jobs, economy, and innovation and now I'm in agriculture, forestry,
28 and regional economics and I'm the Executive Director of -- for Rural Economic
29 Development in Alberta.

30
31 Q So, before you started with AEMA, did you have experience in disaster and emergency
32 management?

33 A Well, I think a lot of our nonformal qualifications under ICS, that came when I joined
34 the agency itself, but a lot of the skills that you learn and take in pride in through your
35 military career hold you in good stead. I did participate in some domestic operations,
36 and you know, it's the nature of the environment you're in sometimes in -- in
37 Afghanistan. In one area you could be fighting or engaged in fighting and in other area
38 you're actually engaged in flood relief and humanitarian relief efforts. So, those skills
39 are fairly transferable.

40
41 Q So, much of your experience comes from both your work experience and then you

1 stated you'd taken some additional courses, right?

2 A Additional courses and experience of course with AEMA. Since I joined, maybe it's
3 just my bad luck, we've had probably some of the most complex emergency
4 management issues. 2016 -- sorry, 2014 flooding and fires, 2015 flooding and fires,
5 2016 Fort McMurray, 2017 the Waterton lakes, 2019 northern Alberta -- northwest
6 Alberta fires, and of course the pandemic in 2020, and flooding in 2020.

7

8 Q Okay, so Mr. Long, do you understand your role as an expert, can you explain what you
9 understand about your role as an experience?

10 A Yeah, I provide my opinion based on knowledge, experience, understanding of the
11 events as I know within my realm of expertise with -- which in this case they would as
12 they apply to emergency management and planning to the best of my ability.

13

14 Q And do you acknowledge that your role is to provide a fair, unbiased and impartial
15 opinion on those matters?

16 A Absolutely.

17

18 Q And you understand your duty is to the Court, not to the party who has retained you to
19 provide this opinion?

20 A Absolutely.

21

22 MS. LECLAIR: So, those are all my questions for this witness,
23 Justice Romaine, so I would make the application subject to argument and I -- I think my
24 friend has some questions as well, that Mr. Long be qualified as an expert in emergency
25 management.

26

27 THE COURT: Thank you. Mr. Rath, do you have any questions
28 for Mr. Long?

29

30 MR. RATH: No, I don't, My Lady, I mean our -- our
31 submission has to do with the fact that this witness remains as an employee of the
32 Government of Alberta, and we would rely on the decisions in *Prairie Well Services Ltd.*
33 *v. Tundra Oil and Gas Ltd.* which states that to be credible -- an expert witness --

34

35 THE COURT: I am sorry, Mr. Rath, can I just stop you there. I
36 think that probably I understand that Mr. Long is not available after 3:00, so we will need
37 to deal with this and so I would like --

38

39 MS. LECLAIR: My apologies, My Lady --

40

41 THE COURT: Yes.

1
2 MS. LECLAIR: -- sorry to interrupt, I did speak to Mr. Long, and
3 he was able to push his -- his -- his commitments this afternoon, so he will be available and
4 with us for a little bit longer. So, I think in fairness to Mr. Rath, we can -- we can deal with
5 this now.

6
7 THE COURT: Okay, great, thank you. I am sorry, Mr. Rath, I
8 just thought we would let Mr. Long go but if he is still here, let us go through your
9 objections. Go ahead.

10
11 **Submissions by Mr. Rath (Qualification)**

12
13 MR. RATH: Okay, again we're reliant on the decision in -- in
14 -- in part in *Prairie Well Services Ltd. v. Tundra Oil and Gas Ltd.*, where the court at
15 paragraph 24 states:

16
17 There are two problems with Mr. Czyzewski's evidence. Firstly, Mr.
18 Czyzewski is not an independent expert witness. He is a senior
19 executive of Tundra, and his testimony, it must be said, simply
20 amounted to advocacy for his company. He is too connected to one
21 side of this litigation for his opinions to have much value in this
22 context.

23
24 And we would submit that the same remains true of Mr. Long. He's acknowledged that he
25 continues to serve as an employee of the Government of Alberta. You know, in that regard
26 the Court should take judicial notice of the fact that -- that this -- that -- you know, that this
27 is the case and that that level of independence cannot normally be expected of an employee
28 in this context.

29
30 Certainly, our position is that he can proceed as a lay witness and to provide direct evidence
31 with regard to things that he has done within the scope of his duties during the pandemic
32 that he can be cross-examined on, his affidavit with regard to -- with regard to things that
33 he has direct knowledge of. But our concern is that we have somebody whose future
34 promotion and future career with the Government of Alberta may in fact be tied to the
35 testimony that he provides in these proceedings, or at least the internal perception that he
36 would have.

37
38 We would note that we also rely on the case of *White Burgess*, the Supreme Court of
39 Canada. And the Supreme Court of Canada in that decision states that the independence of
40 the witness as an expert doesn't just to weight, it goes to admissibility and in this case we
41 would submit that Mr. Long's evidence as an expert is not admissible as expert testimony.

1 But certainly, you know, he's free to give testimony as a lay witness on behalf of the
2 Government of Alberta in terms of what he has done in his role within Alberta Management
3 Services. Those would be our submissions.
4

5 THE COURT: Thank you. Ms. LeClair?
6

7 **Submissions by Ms. LeClair (Qualification)**
8

9 MS. LECLAIR: So, I would say that as Mr. Rath referred to
10 White Burgess, the Supreme Court states that this threshold requirement of independence
11 and impartiality is not particularly onerous, and it will be quite rare that the proposed
12 expert's evidence would be ruled inadmissible for failing to meet it. Justice Abella goes on
13 to state:
14

15 In most cases, a mere employment relationship with the party calling
16 the evidence will be insufficient to do so.
17

18 So, I would submit what we have here is a mere employment relationship. Mr. Long
19 explains in his report -- a review of his report I -- I think indicates that Mr. Long's report is
20 a fair and balanced assessment and there's nothing contained within Mr. Long's expert
21 report that suggests the lack of independence or impartiality that would warrants its
22 exclusions, especially in the face of Mr. Long confirming and acknowledging under oath
23 that his obligation is to the Court to provide that information.
24

25 In *White Burgess*, the Supreme Court notes that anything less than clear unwillingness or
26 inability to that independent and impartial opinion should not lead to exclusion but be taken
27 into account in the overall weighing of costs and benefits in receiving of the evidence. And
28 in my submission this is something that the Court can address in -- I would say the Court
29 has found the expert evidence in this field to be useful as is evidenced by Mr. Redman's
30 qualification. And I would submit that Mr. Long's evidence here is very clearly fair and
31 balanced and there's nothing in the face of Mr. Long's -- there's nothing that shows a clear
32 unwillingness or inability to discharge his obligation to you, My Lady.
33

34 **Ruling (Qualification)**
35

36 THE COURT: Okay, thank you, Ms. LeClair. I agree and I also
37 note White Burgess has indicated that employment of the party calling a witness is not a
38 matter for disqualification in and of itself. I have read Mr. Long's evidence and I cannot
39 find that it is so tainted by bias or partiality so as to render it inadmissible. I have to ask
40 myself whether his lack of independence is a realistic concern and from reading his
41 evidence, from hearing him today and from hearing the cross-examination on his

1 independence, I am not able to conclude that he is unable to present his evidence
2 independently and I find he is qualified to give opinion evidence.

3

4 I do note that the applicants of course are free to argue that Mr. Long's evidence should be
5 given little weight if there are concerns about his independence after he is fully cross-
6 examined. Okay, so I guess then we are over to -- is it you, Mr. Rath, who is going to cross-
7 examination, Mr. Long?

8

9 MR. RATH: Thank you, My Lady. I believe my friend and I
10 would both have questions for him.

11

12 THE COURT: Okay.

13

14 MR. RATH: Ms. LeClair, do you want to go first, or do you
15 want me to go first? Either way.

16

17 MR. PARKER: Sorry about that. Go ahead, Mr. Rath --

18

19 MR. RATH: All right.

20

21 MR. PARKER: -- please proceed, thanks.

22

23 **The Witness Cross-examined by Mr. Rath**

24

25 Q Mr. Long, you've reviewed the testimony of -- of Mr. Redman in this matter, correct?

26 A Yes, I have.

27

28 Q All right and do you agree with his testimony that with regard to -- sorry, with regard
29 to the application on non-pharmaceutical interventions, that to the extent that non-
30 pharmaceutical interventions in a pandemic situation, that those interventions need to
31 be -- need to be justified in accordance with the *Charter of Rights and Freedoms*?

32 A Where --

33

34 Q (INDISCERNIBLE) go ahead.

35 A I'd agree with that part, respectfully I -- I am not an epidemiologist, not in an expert in,
36 you know, non-pharmaceutical interventions. So, you know, as -- as an emergency
37 management practitioner I can provide comment but not on that. I would have to differ
38 to the Chief Medical Officer or Health or Alberta Health colleagues.

39

40 Q Right but certainly as a -- as an emergency manager, you accept that part of the role of
41 emergency management is to document and justify and infringements to

1 constitutionally protected rights that come out of emergency management measures
2 undertaken by the government, correct?

3 A Well, what I would say again -- I'm not a lawyer, what I would say is that as an
4 emergency management practitioner one of our first objectives -- key objectives is
5 preservation of life. So, and we under -- you know, in -- in the performance of -- or in
6 the midst of emergencies or disasters, there are occasions where the preservation of life
7 do override the *Charter of Rights and Freedoms*, i.e. mandatory evacuations come to
8 mind, or restricting people from entering areas that are unsafe as an example.
9

10 But that is -- that is purely for the preservation of life. But yes, I do accept that there
11 would be requirements in -- in -- in very unique and trying circumstances where those
12 infringements could take place for the preservation of life.
13

14 Q All right, let's take -- let's take for example this idea that somehow or another the healthy
15 people should be locked up in their homes and that -- that somehow or other we should
16 be quarantining healthy people as a non-pharmaceutical interventions in the context of
17 -- of the pandemic. Do you agree that prior to -- that part of the role of emergency
18 management in Alberta is to provide advise to the Premier of Alberta as to whether or
19 not those measures are justifiable under the context of the *Oakes* test as an emergency
20 management measure?

21 A So, as an emergency management measure, you'll -- so if we're doing this a little bit
22 more in terms of a scenario, time and place. So, if we're talking about initial NPIs that
23 may have been put in place back in March when we knew very, very little about the
24 virus transmissibility, asymptomatic versus non-symptomatic, PPE supply chains, there
25 were a number of unknowns.
26

27 So, non-pharmaceutical interventions at that time were -- had been recommended up
28 through -- they probably take the governance model that we have in place, i.e., up
29 through our assistant deputy minister of public safety committees to the DM public
30 safety committees and they would be joint at that time between Alberta Emergency
31 Management Agency and Alberta Health with the Chief Medical Officer of Health. And
32 those recommendations would've been received by the emergency management cabinet
33 committee, which is chaired by the Premier. So, yes, those recommendations would've
34 gone up and did in fact go up and were approved at EMCC.
35

36 Q All right and were you the -- were you the -- I'm just looking for your title, the acting -
37 - the acting --

38 A No, I was not the acting managing director at the time, no, that was Mr. Shane
39 Schreiber. I was the executive director of operations at that time --
40

41 Q Right.

1 A -- so (INDISCERNIBLE) privy to the conversations but not running Alberta
2 Emergency Management Agency.

3
4 Q Right and where did Mr. Shane Schreiber go?

5 A Mr. Schreiber, in the summer of -- bear with me, maybe it was in the fall of 2020 -- yes,
6 I believe it was in the fall of 2020, was moved over to Alberta Environment and Parks.

7
8 Q And why was he moved over to Alberta Environment and Parks; do you know?

9 A Well, again -- no, I'm not really privy to all the detail but I know that in my case and I
10 believe that may have been the case for Shane too, when you do this business at a very
11 high tempo, operationally you're on the -- on the phone 24/7 weekends and what -- it
12 takes a toll on you, so it's not necessarily a bad thing to move people on after they've
13 done it for a long time and Shane had been doing it for 10 years. So, that would be my
14 say, sir, but I -- I'm not privy to the exact details, no.

15
16 Q So, that isn't -- so your evidence is that in the middle of the pandemic, in essence he
17 moved over to Parks, and you took over from him?

18 A It wasn't in the middle of -- well yeah, sure, in the -- it was prior to the beginning of or
19 -- yeah, probably to the beginning of wave two and yes, I took over as the acting MD.

20
21 Q All right and then with regard to these plans that go up to the cabinet level. Within
22 Emergency -- Alberta Emergency Management, is there a cost-benefit analysis that's
23 done with regard to all of the measures that are being recommended to cabinet by
24 Emergency Management?

25 A So, I would just suggest that yes there are, we did not personally do them at AEMA
26 because under the public safety governance for us and our Alberta emergency plan,
27 Alberta Health is the lead for pandemics and the Alberta Health Emergency Operations
28 Centre was stood up and detail on those cost-benefit analysis versus, you know, a
29 multitude -- a myriad of factors, a lot of them medical or medical system in nature,
30 would the their purview along with what I what consider to be the cross ministry --
31 cross ministry strategic timing team, which is the Pandemic Response Plans Team.

32
33 That was another team setup of 30 subject matter experts from across government -- all
34 levels of -- sorry, at the ED level but all levels, all ministries withing government that
35 were looking at mid to long-term socioeconomic impacts. I think it's important to note
36 that while AEMA we did play a very, very active role. This all happened in March, sir,
37 and as you know or may not know March is the beginning of the hazard season.

38
39 So, while we had one foot in the pandemic door making sure that we were doing all of
40 our coordination to the best of our ability, the other foot was also looking towards the
41 other disasters. The pandemic is not the only thing in 2020, we had massive flooding

1 throughout the north of Alberta that impacted 27 communities and cost about 500
2 million in insurable losses. So, we -- we had to make sure we were ready for both.

3
4 Q Right, so these mid to long-term economic impacts, so 15 days to stop the spread, who
5 came up with that idea?

6 A 14 -- 14 days for -- I'm sorry 15 days to --

7
8 Q Back -- back to March of 2020 the slogan was 15 days to stop the spread, so we're going
9 to lock people down for 15 days to allegedly stop the spread. Who came up with that
10 bright idea?

11 A I couldn't tell you, sir --

12
13 Q Okay and --

14 A -- and I would refer to Alberta Health in terms of -- and I think it probably was a little
15 bit more complex than just the determination of 15 days, I don't know where it came
16 from.

17
18 Q Right but with regard to the initial -- the initial response to COVID-19 once the
19 pandemic had been declared, did you seek any reports dealing -- detailing cost-benefit
20 analysis of the proposed measures versus their impact on mid -- on mid to long-term
21 economic impacts?

22 A No, but I think that did happen and I did see some later on, but you have to remember
23 again, in March when the state -- provincial health emergency was declared there were
24 a lot of unknowns. Nobody knew what this virus was doing and how it was doing it. I
25 can refer to the Chinese doctor who was 34 years old that first found the virus in Wuhan,
26 was treating patients, he died of COVID.

27
28 So, you know, conflicting evidence and information coming in that it had only killed
29 elderly folks, not accurate -- not actually accurate at that point in time. And issues with
30 regards again, to transmissibility, symptomatic versus asymptomatic, spread, there
31 were a lot of unknown factors.

32
33 So, the decision to put NPIs, the non-pharmaceutical interventions in place early were,
34 in my opinion, reasonable and I will also say that it was not long after they went in
35 place that the Pandemic Response Plans Team, Alberta Health, and others in those areas
36 started to work on the mitigation strategies, to make those -- to -- and I think I related
37 to the cost-benefit analysis that you're talking about, to try and mitigate the impacts on
38 peoples' lives and economic livelihoods and social wellbeing as much as possible.

39
40 Everything from CERB benefits from the feds to grants for small businesses, PPE
41 being provided to non-health organisations like meatpacking plants et cetera. So, all of

1 that did happen by -- but not shortly within the first couple of weeks when the public
2 health emergency was declared.

3
4 Q Okay and let's -- let's back up for a second, there's a lot -- there's a lot in that answer to
5 unpack, Mr. Long. So --

6 A Sure.

7
8 Q -- you stated -- you made some sort of statement with regard to a Chinese doctor that
9 allegedly died of COVID. Are you -- are you -- are you a doctor, Mr. -- are you a doctor,
10 Mr. Long -- medical doctor?

11 A No, I'm not.

12
13 Q Right and -- and you obviously weren't that Chinese doctor's medical doctor, correct?

14 A No.

15
16 Q So, and you don't actually know whether that doctor in China died of COVID or not do
17 you, sir?

18 A No but that's the point, we don't. We did not know.

19
20 Q Right, so -- so in other words, you've got no direct evidence with regard to any doctor
21 in China having died of COVID at the age of 34 but you just thought that would be
22 helpful to your client's position and that's why you just offered and volunteered that
23 testimony, sir?

24 A (INDISCERNIBLE)

25
26 MS. LECLAIR: I'm going to object here simply on the basis of
27 Mr. Rath referring to his client, Mr. Long does not have a client here, Mr. Long has been
28 qualified as an expert and he's provided his opinion.

29
30 THE COURT: Okay.

31
32 A (INDISCERNIBLE)

33
34 THE COURT: Mr. Rath, I am sorry -- Mr. Long just --

35
36 MR. RATH: To the extent I misspoke I accept my friend's
37 objection.

38
39 THE COURT: I am sorry, Mr. Rath, do you have a response to
40 that?

41

1 MR. RATH: To the extent I misspoke I accept my friend's --

2

3 THE COURT: Right, okay.

4

5 MR. RATH: -- commentary rather than objection but -- but I
6 think the point is made.

7

8 Q MR. RATH: Mr. Long, do you accept that by just
9 volunteering evidence with regard to a Chinese doctor with regard to whom you have
10 no direct knowledge, you're simply tendering evidence with a purpose of supporting
11 your employer's position, rather than providing independent evidence to the Court?

12 A No what I -- what I provided is context based on again, the unknowns that were out
13 there in February/March time period.

14

15 Q Sir, you had indicated that the approach of the Alberta Government seemed to be that -
16 - that -- to bring in -- to bring in measures and then after the measures attempt to mitigate
17 them through various plans and programs. Is that your evidence as to how the Alberta
18 Government dealt with -- has been dealing with pandemic throughout? That you bring
19 in measures, you see how badly they hurt people and then attempt to mitigate them
20 afterwards with government programs, is that your evidence, sir?

21 A So, I can tell you from my experience when I was involved in the pandemic that the
22 initial response was to put in the non-pharmaceutical interventions while we gathered
23 the information required to start doing the mitigation measures. That happened early on
24 in wave one, all of those restrictions, those non-pharmaceutical interventions,
25 mitigation measures were put in place as quickly as possible based on evidence and
26 knowledge and experience that was gathered and within a few months -- 6 weeks I
27 believe those interventions were lifted.

28

29 That was wave one and I think you will find that for wave two and subsequent waves,
30 there was quite a bit of mitigation that was involved right at the beginning for every
31 one of the non-pharmaceutical interventions that were put in place. So, that
32 demonstrates that there was learning there but I -- I -- I cannot tell you the detail of how
33 they came to those for wave two, three, and four, I was not actively involved, but for
34 wave one I was.

35

36 Q Right and you'd say that with regard to waves two, three, and four, you have no direct
37 knowledge or expertise with regard to those waves, is that fair to say, sir?

38 A With regards to non-pharmaceutical interventions, I would say that's fair to say. I was
39 still very -- and we were still very actively involved in coordination from the perspective
40 of industry, non-governmental organisations, and PPE, we ran the personal protective
41 equipment taskforce was run AEMA throughout and still is. So, again we were still

1 involved but not actively involved in those medical or epidemiological -- epidemiology
2 decisions.

3
4 Q That's fine. Now, sir, you've indicated in your evidence that the approach seems to be
5 measures are brought in place and then after the measures are brought into -- in -- in
6 place, then attempts are made to mitigate the impact of these measures on the citizens
7 of Alberta. Now, in that regard are you aware of any cost-benefit analysis that was done
8 prior to these measures being brought into place and is there --

9 A (INDISCERNIBLE)

10
11 Q -- any reports detailing the, you know, cost-benefit analysis that was done with regard
12 to any of the measures that were brought in during the pandemic? Have you seen any
13 reports, sir?

14 A No, I have not seen cost-benefit analysis for anything prior to the non-pharmaceutical
15 interventions that were brought in for wave one. I -- I know that in January and February
16 there was a lot of planning that was ongoing. The Alberta Pandemic Influenza Plan was
17 -- was brought out, analysed by both AEMA, Alberta Health, Chief Medical Officer of
18 Health.

19
20 That is a plan -- a current plan in government designed for the pandemic that led the
21 initial actions of government for wave one. But there was no cost-benefit analysis and
22 I'm not quite sure -- can you -- can you give me an example of -- of what you mean by
23 a cost-benefit analysis?

24
25 Q You're the expert, sir, I was hoping you'd know but apparently you don't, so we'll just
26 move on. That's fine, thank you. Now, sir, and -- and I guess this is a very important
27 point, with regard to as an example, restrictions on businesses and the closure of -- of
28 certain businesses, can you testify as to whether you've seen any reports in advance of
29 those decisions to be made to close certain types of businesses, as to what the impact
30 would be on those individual businesses or the Alberta economy as a whole?

31 A No, I have not.

32
33 Q And are you aware to whether any such reports or advice was provided -- were
34 generated or provided to the Premier?

35 A I know that the -- the detail listing of -- or the recommendations on essential services
36 was a joint effort again, that went up through ADM public safety committee, DM public
37 safety committee, and to the emergency management cabinet committee and the
38 decision on what those essential services would be was made there and it is in line
39 largely with other jurisdictions across Canada in terms of what those were. But no, I
40 did not see any cost-benefit analysis.

41

1 Q Right and with regard to this characterisation of so-called essential services, don't --
2 would you agree with the statement, sir, that with regard to every individual that owns
3 and operates a business, that the revenue generated from that business to support that
4 person and their family is essential to that person?

5 A I -- yeah, I would agree with that, which is why the mitigation strategies were put in
6 place, their small business grants, CERB, gatherings -- restrictions on gatherings were
7 modified throughout in the earliest of days. But yes, I would agree with that, which is
8 why those mitigations -- mitigation measures were put in as quickly as possible based
9 on information and experience and knowledge that was gained to -- yeah, to -- to -- to
10 alleviate that -- those hardships on Albertans.

11
12 Q Right but you'd agree that this was -- your -- in essence the Government of Alberta was
13 making this up as you went along? That nobody in government, yourself included, had
14 any experience in imposing lockdown orders like this across the Alberta economy on a
15 wholesale basis previous to this -- to -- previous to this pandemic, is that not correct,
16 sir?

17 A Well, I would say that the Alberta Pandemic Influenza Plan talks to it but not the details
18 of it. It is a whole of society plan with all of the external and internal stakeholders you
19 would expect, and it was exercised in 2019 as part of emergency management annual
20 exercise, which is a whole government again exercise. And the issues of business
21 continuity planning and disruptions came up, issues of crisis communications, and
22 potential restrictions on -- on -- on -- on society in general did come up as part of that -
23 - that exercise. The results of which were all briefed up to the DM level.

24
25 So, the -- the plan talked to it but not in the specific detail that you -- that -- that -- not
26 in the specific detail that occurred if you will when we had to do this for real in the
27 March time period. And again, I make the point that in January and February, many
28 Albertans were still on vacation because they -- nobody knew the significance of how
29 much this was going to impact us -- on us in the early days. So, there you go.

30
31 Q Well, as far as that goes, Mr. Long, in the 2019 -- you referred to this 2019 exercise.
32 Was the Alberta Chamber of Commerce consulted with regard to the implement -- the
33 -- the degree to which an implementation of a province wide lockdown of businesses
34 would affect small business in the province?

35 A No, I'm not aware if they were or not.

36
37 Q Right and --

38 A I know they were as part of the actual implementation, the Chamber of Commerce, the
39 -- all of the industry players, we were in contact with them, not on a weekly basis, sir,
40 we were in contact with all of those entities on a daily basis. Trucking organizations,
41 meatpacking plants, all of the industry, Chamber of Commerce and that became -- our

1 Industry Relation became the Business Connect organization that was again ran by
2 Pandemic Response Plans Team in the earliest days and then that transitioned to Jobs,
3 Economy and Innovation.

4
5 At the same time with regards to communities we had daily communications with
6 communities on the measures in place, issues, mitigation measures that were being
7 planned or in place. And PPE, personal protective equipment requirements for
8 organizations that never had to use those before.

9
10 Q Right and in March of 2020, how many small businesses did you project were going to
11 be -- or did Alberta Emergency Management Services project were going to be
12 bankrupted by these measures?

13 A Again, none. Our key objective at that point in time was controlling the spread and
14 limiting the transmission to prevent deaths. That's what we were focussed on at that
15 earliest of days, sir.

16
17 Q Right, so in the earliest of days, a decision was made to leave large box stores like
18 Costco and Walmart and grocery stores open, but smaller businesses were shut across
19 the Province without any consideration of the number of bankruptcies that this was
20 going to cause amongst small business, is that correct, sir?

21 A No, that's -- that's not correct. The essential services list was put in place so that we
22 could make sure that Albertans got the essential services that were required. That
23 recommendation went up, the issue of small businesses, of course, that was forefront of
24 mind, which is why one of the first things they put in was again, not only for small
25 businesses, but individuals with CERBS -- with a CERB funds for individuals, as well,
26 as the small business grants and a myriad of other supports through different subsequent
27 ways, which I don't have the detail on. But, of course, it was forefront of mind, that's
28 why they put those additional measures in place.

29
30 Q Right, but there appears to be no consideration having to be given to not shutting those
31 businesses down and not bankrupting those business, is that fair, sir?

32 A At the earliest of days -- well from my perspective -- I can't -- I can't tell you what was
33 coming out Alberta Health, but, from our perspective no, because again, we -- the
34 unknown and the assumptions -- so if you look at again -- from this perspective,
35 preserving life, preventing transmission, you know, for us the key here was to try to
36 achieve those two objectives as quickly as possible. So the measures that were put in
37 place to protect lives were those non-pharmaceutical interventions that were done at the
38 earliest of days with the understanding that they would be temporary measures and
39 mitigation measures would be put in as quickly as possible.

40
41 Q Right and so what you're saying in essence, sir, is that the sole objective of these early

1 measures was to control the spread or eliminate transmission, is that fair, sir?

2 A Control spread, eliminate transmission, protect life and obviously some of the other
3 objectives that are in the APIP, the Alberta Pandemic Influenza Plan, which is --
4 mitigates societal impacts, protect the economy, those are there, as well. But these
5 things don't all happen at the same time based on the -- again based on the information,
6 the detail that was known at the time about the virus itself. Those other objectives were
7 all done at the earliest opportunity based on information and knowledge that was
8 garnered. But no, right out the gate, the immediate response were the non-
9 pharmaceutical interventions that I talked about, but they were not done out of hand,
10 they were done with a lot of thought, in my opinion. Certainly, from our perspective,
11 they were put in place with the knowledge that immediately there would be mitigation
12 measures put in place.

13
14 Q Right, but apparently -- now with regard to these measures -- sorry sir -- with these
15 measures that you're talking about, what thought was put into the impact that these
16 measures would have to the broader society, the society as a whole? It seems to me that
17 your evidence is that there wasn't a lot of thought to that and that all you were concerned
18 about was controlling the spread and eliminating transmission, is that fair, sir?

19 A So eliminating the spread and eliminating transmission, protecting lives, was forefront
20 of mind in earliest days. And again the pandemic -- if that was the case, then the
21 Pandemic Response Plans Team which was looking at all those mid to long terms, I
22 mean again, you can assumption the plan to death if you want at the earliest stage, based
23 on -- you know, those assumptions need to be based on something and we did not have
24 sufficient information on this virus in the earliest days to start doing some of the work
25 that you're talking about, in my opinion. But that work was done by the Pandemic
26 Response Plans Team that stood up, beginning in mid-March. Their planning horizon,
27 sir, was 3 months to 18 months and AEMA's planning horizon was essentially 30 days
28 to the 90 day mark.

29
30 So, you know, I think that it's unfair to say that the work was not done, but it was not
31 done all concurrently at the same time. It was done sequentially, again based on
32 knowledge, information, that was gathered. I can say again and I will say again that
33 preventing the spread, the transmission, protecting lives, was the number one objective
34 as of the 14th of March, when the public health emergency was declared. But all of
35 those other -- all that other work had to be done and was done.

36
37 Q Right and would agree, sir, that by and large with regard to the objectives of stopping
38 the spread and preventing transmission, that the Government of Alberta almost entirely
39 failed in its objectives?

40 A No I would not agree with that.

41

1 Q On what basis do you say that, sir, do you have any empirical evidence or proof that
2 any of the measures that were put in place actually reduced transmission or so-called
3 stop the spread given we're not at the fifth wave?

4 A Well, well I mean you could -- empirical proof -- whether there's empirical proof or
5 not, but in -- at the end of May all of those restrictions -- sorry -- in April mitigation
6 measures were put in for just about everyone of those restrictions that were put in place
7 again. I think that's key. There wasn't a complete lockdown and people were not -- they
8 were social distancing, PPE, personal protective equipment was provided to key
9 organizations. The most vulnerable Albertans, whether it be a long term care facilities
10 or homeless shelters and you know, at the end of the day, in May, all of those restrictions
11 were lifted based on criteria established by Alberta Health, based on science, I would
12 imagine, not mine, that indicated it was safe to do so.

13
14 And you know it's no secret that was linked to hospitalization numbers and ICU and
15 the 'R' factor. So I mean that was the reality and the -- the restrictions were lifted by
16 end of May, early June. So (INDISCERNIBLE) --

17
18 Q Do you know, sir, how many businesses were bankrupted by these measures in 2020?

19 A No sir, I do not -- I do not personally. I know that that work was done, but I don't -- I
20 don't know, not personally.

21
22 Q Are you aware as to whether or not, this was generated in the form of reports that were
23 provided to the Chief Medical Officer of Health?

24 A I am not aware of that, no.

25
26 Q Okay. So you think this work was done and you think it may have been provided to
27 somebody, but you're not sure where?

28 A No at that point in time, again I'll go back to what I said -- mentioned earlier, I -- my
29 focus shifted because Alberta Health Emergency Operations Centre, the Chief Medical
30 Officer of Health, the Pandemic Response Plans Team, which is the cross-ministry
31 (INDISCERNIBLE) society, look at the provincial emergency social services team
32 were all up and running and active and we had coordinated all of that. We were now
33 dealing with saving Albertans and the economy with regards to floods. So that was my
34 focus at that point in time and that would've been April, throughout May.

35
36 Q Right so April through May, Emergency Services Alberta almost entirely delegated its
37 role in the pandemic then what to the Chief Medical Officer of Health, or where did
38 your involvement get moved to?

39 A We still -- we were the provincial social services organization works for AEMA, the
40 personal protective equipment task force is AEMA, the coordination of calls with
41 communities was through AEMA, the Pandemic Response Plans Team was an entity

1 under the Deputy Minister of Municipal Affairs, linked in and coordinating with
2 AEMA. So I think it's fair to say that our organization, which is not the biggest in
3 government, was working hard on doing and fulfilling our coordination features -- or
4 responsibilities, sorry, from the pandemic, as well as from the natural disasters which
5 were expected and did occur the hazard season.
6

7 But to answer your question, as the wave one ended, the PRPT did fold up and was
8 absorbed into the Alberta Health emergency operations centre. They were co-located
9 throughout and again, they were looking at societal socioeconomic impacts, you know,
10 mid to long term. So that work continued, but under Alberta Health emergency
11 operations centre, not under the Chief Medical Officer of Health, but under AHEOC.
12

13 Q Okay. Now, but you say this work continued, but you said -- is it your evidence that
14 you'd routinely see these reports or did you see any of these reports that indicated that
15 this work was ongoing?

16 A So we provide the account and operating picture report from the provincial operations
17 centre, as well as the executive summary. Part of our job in the government is to provide
18 situational awareness to decisionmakers at all levels of government. So I did see and I
19 was privy to reporting that was coming in on the -- the work that was being done, but I
20 was not privy, sir, to the detail behind the work. Those reports are -- are high level
21 snapshots if you will about the ongoing work. I know the work was happening but I
22 don't have detail on the -- the detailed nuggets, if you will.
23

24 Q Right, so you weren't privy to any reports that indicated how many bankruptcies would
25 be projected from any particular measure then, is that your evidence?

26 A That is true, personally I did not, but I know the JEI, with the Business Connect Team
27 were engaged with stakeholders and industry and small business roundtables talking
28 about and dealing with that, but I do not have -- I personally did not see anything
29 indicative of the number of bankruptcies, no I did not see it.
30

31 Q And you're not -- you'll agree see that you're not an economist?

32 A I am not an economist, no sir.
33

34 Q Okay. So you would have no expertise or knowledge with regard to how many
35 bankruptcies or how many foreclosures could be caused by people losing their jobs or
36 alternatively losing their business as a result of these so-called NPIs?

37 A No, that's correct.
38

39 Q And you're not a social worker or psychologist, sir, is that fair?

40 A No, I am not, but our organization -- so as part of a whole society approach to
41 emergency management, which is what we do and we've been doing for the last number

1 of decades, certainly the last decade, all of these events that happen, including the
2 pandemic they are complex, they impact all across sectors of society. So we deal with
3 non-governmental organizations that as a matter of course and with industry folks as a
4 matter of course, with regards to emergency management activities. But, yes, the detail
5 work that was being done by the Pandemic Response Plan Team as part of Alberta
6 Health EOC, towards the end of wave one, I did not see.

7
8 Q Okay. And did you see any reports projecting how many suicides would be caused by
9 these measures?

10 A I did see a -- a -- mental wellness reports did come in and noted that in 2020 that the
11 number did not -- of suicides did not increase of 2019, if memory serves me correctly,
12 but yes I did see information coming in from Alberta Health on that.

13
14 Q But you have no -- you have no knowledge or expertise with regard to how many of the
15 suicides that did occur in 2020 or 2021, occurred because of -- directly because of these
16 measures, as opposed to some broader societal number, you know, just being averaged
17 out, on a year-to-year basis, correct?

18 A No, sir, it's not my lane and I do not, no I do not.

19
20 Q Right and the same would be true of drug overdoses or alcohol related deaths as a result
21 of all of the money that was pumped into the system through CERB, is that correct?

22 A Yeah, that would be correct, yes, that's correct. Those -- those tragedies occurred prior
23 to 2020, but yeah, they -- I don't have that detail.

24
25 Q Right, but as the Director of -- Acting Director of Emergency Management Services,
26 you'd acknowledge, sir, that during your tenure that there has been a marked increase
27 or during your tenure onwards, there's been a marked increase of drug overdoses and
28 alcohol related deaths, is that fair?

29 A Again, from -- so I know that the impacts of disasters can impact on mental health and
30 that we do coordinate, as part of our disaster response, mental wellness support. I can
31 talk to that, but no I do not have the details on your question, sir. Again, as an emergency
32 management practitioner, no, I do not have those details.

33
34 Q And did you see any -- any reports or any studies or any cost benefit analysis that was
35 done with regard to the degree to which the lockdown measures could have been
36 contributing to increases in alcohol and drug related deaths, prior to these measures
37 being implemented?

38 A No I did not. As you said, I'm not a social worker or an economists, or an
39 epidemiologist, but I'm sure that those folks would probably be doing that work, not
40 me.

41

1 Q Right and just within the context of (INDISCERNIBLE) --

2

3 THE COURT: Mr. Rath, you broke up in that question, I think
4 you will have to repeat it.

5

6 MR. RATH: Oh okay, thank you, My Lady, I appreciate that,
7 got to love technology.

8

9 Q MR. RATH: Mr. Long, is it fair to say that none of those -- of
10 those issues, including alcohol and drug related deaths arising from the NPIs, were
11 considered in the preparation of your expert report?

12 A No, again, no -- no they were not. My expert report was related to my expertise in terms
13 of planning and in terms of the emergency management actions for wave one. So no, I
14 did not factor those in.

15

16 Q Okay and to the extent that Mr. Redman did factor those things in, to the extent that his
17 evidence is at odds with your evidence, do you then agree that your evidence in no way
18 undercuts or contradicts anything said by Dr. or by Mr. Redman in this regard?

19

20 MS. LECLAIR: I'm going to make an objection here. I think Mr.
21 Rath is asking Mr. Long to make an assessment that is within your purview, Justice
22 Romaine.

23

24 THE COURT: Mr. Rath? I am sorry we are not hearing you.

25

26 MR. RATH: I'm sorry, I'll move closer to the microphone. My
27 question is actually completely appropriate and that throughout Mr. Long's expert report
28 he's continually criticizing Mr. Redman and attempting to undercut the evidence provide
29 by Mr. Redman. So I'm simply attempting to ascertain from this witness, whose provided
30 both affidavit evidence and expert report evidence, that's intended to undercut evidence
31 provided by Mr. Redman. So I think it's a completely appropriate question.

32

33 THE COURT: I have to disagree, Mr. Rath. I think you have
34 asked the question of Mr. Long, of whether or not he addressed those issues in his expert
35 report and you received the answer that he did not. I think then the question is, to what
36 extent Mr. Redman did and whether or not he -- to the extent that he addressed it, he had
37 sufficient authority or credibility to address those issues. So that is a matter for argument
38 and I am going to uphold the objection.

39

40 MR. RATH: Thank you, My Lady, I'll move on.

41

- 1 Q MR. RATH: Now, Mr. Long, you state in your report that "the
2 Swedish model is not an effective model". Now and then in that regard, sir, you attach
3 an article from the New York Times. Do you consider the New York Times to be an
4 authoritative source, sir?
- 5 A No, it's one source, there are many, many other sources that back-up that -- that
6 comment. The Swedish model which open -- the Chief Epidemiologist has now come
7 out widely in many, many sources and admitted was the wrong approach. They
8 provided no pharmaceutical or non-pharmaceutical interventions in the earliest days,
9 none at all. It was open and free which is why they had one of the highest death rates
10 in Europe and that is from the Chief Epidemiologist of Sweden who in 2021, did start
11 implementing restrictions.
- 12
- 13 Q Right.
- 14 A So maybe not, but no that is an example that is in many sources, sir.
- 15
- 16 Q Right and you're aware, sir, that over the course of its history the New York Times has
17 gotten any number of issues completely wrong, correct?
- 18 A Yeah, which is why there were many other sources that I looked at that information is
19 widely known, sir, so if this about the New York Times, I take your point that
20 sometimes they're wrong. But its widely known in many, many forums and admitted
21 by the Chief Epidemiologist.
- 22
- 23 Q And, sir, you understand of course with Sweden that no attempts whatsoever were made
24 in Sweden to lockdown or isolate long term care homes in Sweden at the outset of the
25 pandemic, you understand that sir?
- 26 A I believe that was the case, there were some -- they all have infectious protocol that they
27 put in place.
- 28
- 29 Q But your understanding is, that Sweden didn't have any very early on and that
30 contributed to the death rate in Sweden, is that your evidence, do you understand that?
- 31 A No, I don't have the detail on Sweden's response with regards to long term care facilities,
32 no.
- 33
- 34 Q Right, so when you say the Swedish model is not an effective model, you don't actually
35 -- you don't actually know per se, that's just an argument that you put in your paper
36 without having direct expertise, is that fair, sir?
- 37 A No, I think -- I think that the end results speak and the end results of non-pharmaceutical
38 interventions, not using any, resulted in extremely high death rates, not just in long term
39 care home, but throughout Swedish society. As whether it resulted in a loss -- and again
40 this is not my interpretation, this is coming from the Chief Epidemiologist himself from
41 Sweden and from the Swedish government who did use NPIs as of -- in 2021. The fact

1 is, that folks lost -- the Swedish society lost faith in some of the government response,
2 so people weren't sending their kids to school, people were not going out and in some
3 cases, small businesses were closing down.
4

5 Q Sir, in fairness, your report states the Redman report endorses the response used in
6 Sweden, which focused on protection of senior population or resulted in minimal
7 restrictions placed on the majority of the population. In fairness, sir, wouldn't you agree
8 that Mr. Redman's report calls for focussed protection of senior citizens in Alberta and
9 he was not advocating for zero protection for senior citizens in the Province of Alberta?

10 A So, Mr. Redman's report as it applies to the Swedish model I read that -- my
11 interpretation was that he advocated for no restrictions at all, not required and I'm
12 unaware again of what the Swedish government did with regards to long term care
13 facilities and the most vulnerable. I know in Alberta, that based on the information that
14 was known at the time, a lack of non-pharmaceutical interventions were put in place
15 with regards to the long term care facilities, infectious protocols that were longstanding
16 were implemented, one work policy was put in place, one location work policy was put
17 in place, PPE was provided, cleaning material was provided. Unfortunately, the virus
18 obviously has a say in this and - but there were a lot of measures that were put in place
19 to protect long term care facilities in Alberta and Albertans.
20

21 Q All right. Mr. Redman (sic) did you actually read -- Mr. Redman -- I'm sorry -- Mr.
22 Long, did you actually read Mr. Redman's report?

23 A Of course.
24

25 Q And you're not aware that Mr. Redman was advocating focused protection of senior
26 citizens in this Province in this report?

27 A From the report, yeah he talked about -- and it made sense, that you would put additional
28 measures on those most vulnerable, who were anticipated to be most vulnerable. But
29 again, I would go back to what I said earlier, who was most vulnerable? We were not
30 quite sure on transmissibility of the virus, the potency of the virus, there were a lot of
31 unknowns, but clearly, there was concerted effort to protect those most vulnerable
32 Albertans in long term care facilities, in homeless shelters, in domestic abuse shelters;
33 they were all provide with personal protective equipment, cleaning supplies, advice,
34 guidance and the NPIs were also put in place in terms of social distancing to afford
35 those protections. So, yes, I believe that we did do that. We certainly factored that in,
36 sir.
37

38 Q Right, so you seem to be saying two different things, sir. On one hand you didn't know
39 what was going on at the beginning of the pandemic and then on the other, you seem to
40 be indicating that you knew that our senior population was most vulnerable, which was
41 it, sir?

1 A So, it's both. We -- there were -- I didn't say we didn't know what was going on, I said
2 there were significant unknowns back in January, February, March, which there were,
3 you know, in terms of the virus transmissibility again, how it moved, how it spread,
4 asymptomatic versus non-symptomatic. I'm sure you're aware yourself that masks
5 work, masks don't work, there was a lot of uncertainty at the beginning of it. But what
6 was clear is that it had adverse effects or the significant impacts on folks that had
7 comorbidities and the elderly. That we took as a -- we made the assumption that was a
8 fact and that's why we focussed a lot of efforts again on protection of the most
9 vulnerable of populations in Alberta.

10
11 Q Right, so you knew that at the outset, that the people that were the most affected by this
12 virus were, in fact, the elderly, correct?

13 A We didn't know it, but that's what the reporting coming in was, so it was an assumption,
14 yes, absolutely, yes.

15
16 Q And it was an assumption based on reporting that was coming in from other countries
17 like Italy and China, correct?

18 A Many other countries and from the health community again, I'm not an epidemiologist,
19 they are, so based on what they said, that's what we started making -- started making
20 our plans from, yes.

21
22 Q Right, so at the outset you knew that the elderly were the most vulnerable, why were
23 decision taken within the Alberta government to lockdown the healthy and people who
24 were not as vulnerable to the virus, sir?

25 A Again, we were not sure on the details of the virus, in terms of transmissibility,
26 asymptomatic, what have you, so the decision was made by -- the recommendations
27 went up, the decisions were made by the political leaders of the Province, that we would
28 take a cautious approach initially with regards to lockdowns. Not only that,
29 transmissibility, people were going around, you could be totally asymptomatic and you
30 could be spreading it to those vulnerable populations. So, some of those NPIs about
31 restricting social gatherings, social distancing, certainly I think made sense, were
32 reasonable and probably saved lives in the earliest parts. And again, the mitigation
33 strategies were put in place as quickly as possible to limit the impacts on society and
34 on people.

35
36 Q But, again, sir, when you say things like probably saved lives, you have no -- you have
37 no idea that they did, correct? You're not an immunologist, you're not a virologist,
38 admittedly you're not a doctor, so when you say things like that you would agree that a
39 statement like, "probably saved lives" is well outside the scope of your expertise,
40 correct?

41 A That's why I said probably. I would hope they saved lives, how's that?

- 1
- 2 Q Right, but you don't know, as a matter of fact, and you know, you're well outside your
- 3 lane when you continually say things like that?
- 4 A Well, again I know that the -- the results of the planning effort and the NPIs that were
- 5 put in place speak for themselves, within six weeks they all started coming off and that
- 6 was based on the fact that the ICU rates and the hospitalizations and the 'R' factor were
- 7 all dropping. I, again am not an epidemiologist, but those were the criteria that were
- 8 established, so it seemed to work.
- 9
- 10 Q Right, but again, we're not in the fifth wave, correct, sir, and you would agree with me
- 11 that throughout we've seen waves peak and then they crash and then there doesn't seem
- 12 to be any correlation between what the virus is doing at any particular public health
- 13 measures, correct?
- 14 A Well, that is why you would also -- I agree partially -- I also say that every wave, those
- 15 NPIs or those restrictions that you're talking about, have been radically different. The
- 16 mitigation measures put in place are different because our knowledge and the
- 17 experience that we've gained with regards to the virus and the measures that have been
- 18 put in place have changed. Schools opened up for wave two. The long term care
- 19 facilities were not closed. The response has changed, modified and gotten better, as our
- 20 knowledge and experience has gotten better throughout. I would say that.
- 21
- 22 Q And wouldn't you agree, sir, that in some instances, the Government of Alberta has
- 23 waited until waves started declining to bring in new restrictive public health measures
- 24 in order for the government to take credit for their lockdown measures or restrictions
- 25 on society, in the context of declining COVID cases or declining hospitalizations?
- 26 A No, I -- no I would not, in fact, I would say for waves two and waves three, they waited
- 27 too long. Certainly for wave two they waited too long to start putting in some of those
- 28 restrictive measures.
- 29
- 30 Q What measures are you referring to, sir?
- 31 A The NPIs.
- 32
- 33 Q Which ones specifically, sir?
- 34 A The closure of the small business, social gatherings in terms of the size of -- limiting
- 35 the size of social gatherings, not closing small business, but limiting the size of social
- 36 gathering, was one. Another one was with regards to nightclubs and putting a time limit
- 37 on serving alcohol and what have you. Again, this is me speaking for me, I believe that
- 38 the restrictions could have been put in place earlier when the ICU numbers and the
- 39 hospitalization rates and the transmission rates started to skyrocket. That was wave two.
- 40
- 41 Q One of the things that Mr. Redman brought up was a failure on the part of the Alberta

1 Government to have adequate surge capacity in place, I'm sorry, I was just chuckling
2 because my friend was passing me a note that was almost contemporaneous to what
3 was coming out of my mouth -- so I apologize. So April of 2020, do you recall Premier
4 Kenny advising the public that Alberta had the capacity to create approximately 1100
5 ICU beds?

6 A Yes, I do remember that -- yes I do remember that.
7

8 Q And were 1100 ICU beds ever created, sir?

9 A The space was available if required, but I do not believe again -- I'll let Alberta Health
10 Care answer that, but those -- the 1100 I do know was based on worst case projections
11 and we never got anywhere near that. The time period you're talking about again, I do
12 not have the data in front of me or the stats, Alberta Health can speak to it, but we never
13 got anywhere near those projections. But I do know that the plans were place for
14 external facilities, the Butterdome and what have you, that planning was done by the
15 PRPP, so I'm aware of it, we never got near that, but Alberta Health can talk to that.
16

17 Q But notwithstanding the fact that there was adequate surge capacity and there was never
18 a need for that surge capacity to be utilized, the constitutionally protected rights of
19 citizens of this Province continued to be violated on an ongoing basis in the name of
20 public health; is that fair, sir?

21 A No I don't think that's fair because you're talking about hindsight and that's brilliant to
22 have now, but at the time, again there was a lot of unknowns, there were projections
23 that were out there, not just -- again unlike others I'm not an epidemiologist, but I would
24 tell you that when you plan, you always want to plan for the worst case scenario, not
25 the best case. And a lot of those actions were based on planning for the worst case
26 scenario which thankfully did not happen and we were able to -- in wave one, lift those
27 restrictions that were imposed as quickly as possible and to mitigate the restrictions that
28 were put in place as quickly as possible.
29

30 Q And you'd agree with me, sir, wouldn't you that in wave one there were no vaccines and
31 nobody had been vaccinated?

32 A Yes, absolutely correct.
33

34 Q So, notwithstanding the fact that we have a zero -- a zero vaccination rate in the
35 Province of Alberta, that that wave, in fact, dissipated within the Province with the
36 coming of the summer?

37 A I agree that that dissipated but not because of the fact that there were zero vaccines, but
38 because of the NPIs that were put in place, I think, and the fact that the summer, people
39 are outside more often and not as confined. So there were a number of other factors,
40 but there were no vaccines at that point in time, but I think that the reason that we did
41 get through wave one and those restrictions were lifted was because they were put in

1 place and the vast majority of Albertans new that they were required and accepted them
2 and followed them.

3

4 Q Right and again, you're not an immunologist, you're not a doctor, you're just providing
5 this as your personal opinion, not as your expert opinion, correct?

6 A Both, I would say, I'm not an epidemiologist no, absolutely not, but again the plan was
7 put in place and you track the plan to conclusion and the end state was that the numbers
8 came down and those restrictions that had been mitigated were (INDISCERNIBLE).

9

10 Q And you, in fact, heard of this referred to as a seasonal -- a seasonal respiratory virus,
11 haven't you, sir?

12 A No I'm not -- no I'm not an epidemiologist, like you said, but I do know that whether -
13 - and -- has it been reported by epidemiologists, does factor into the spread of it, yes, I
14 have heard that, but again not my expertise.

15

16 Q So and again, sir, with regard to any opinion that you offer as to what caused the virus
17 to decline, you have no expertise as to, whether or not, that decline could be attributed
18 to -- you know -- could be attributed to any of the measures that were implemented,
19 correct?

20 A As an emergency management expert and planning expert, no, I -- again that would be
21 the realm of epidemiologists for that, so I would agree with that, sir.

22

23 MR. RATH: All right. Madam Justice, I understand that we
24 took our afternoon break earlier to accommodate my friend, but at this point given
25 (INDISCERNIBLE) -- could we take a brief afternoon break?

26

27 THE COURT: Sure, but before we do, Ms. LeClair or Mr. Long,
28 are we okay to keep going to 5, has Mr. Long just put off his appointment has he?

29

30 MS. LECLAIR: I'll let Mr. Long speak to how late he can go
31 today.

32

33 THE COURT: Okay, Mr. Long?

34

35 A I -- yes, Your Honour.

36

37 THE COURT: You can go to 5? Okay. Great. Okay, we will
38 take a 15 minute break. Thank you.

39

40 MR. RATH: Thank you, My Lady

41

1 (WITNESS STANDS DOWN)

2

3 (ADJOURNMENT)

4

5 (WITNESS RE-TAKES THE STAND)

6

7 THE COURT: Okay. Mr. Long, Mr. Rath, are you ready to
8 proceed?

9

10 MR. RATH: Yes, My Lady. Thank you for the break, we
11 appreciate it.

12

13 THE COURT: Okay. Go ahead.

14

15 Q MR. RATH: All right. Mr. Long, I only have a couple more
16 questions for you and then I'm going to turn it over to my friend, Mr. Grey. But one of
17 the -- one of the questions I wanted to ask you concerns paragraph 10 of your -- of your
18 -- the document entitled "Expert Report of Scott Long", and it's at page C-2 is what I
19 have. It's within schedule C, the body of the report being paragraph 10.

20 A Yeah. 'C'.

21

22 Q Okay. And you state: (as read)

23

24 For instance, the Chief Medical Officer of Health has used the
25 authority granted her under the *Public Health Act* to make numerous
26 orders specific to the medical aspects of the COVID-19 response.

27

28 Are you aware, sir, that the orders that she's been promulgating are under section 29 of
29 the *Public Health Act*?

30 A I believe that's correct, yes.

31

32 Q And are you aware that section 29 of the *Public Health Act* doesn't appear to grant her
33 broad societal powers over the society as a whole and that the orders under section 29
34 are limited to orders pertaining to a person?

35

36 MS. LECLAIR: I'm going to object here on the basis that Mr.
37 Rath is asking Mr. Long to make a legal assessment which I would submit is not his role
38 here.

39

40 THE COURT: I agree. I agree.

41

- 1 MR. RATH: If I could respond to the objection first, My
2 Lady?
3
- 4 THE COURT: Well, okay, you can but it is pretty clear, Mr.
5 Rath. Go ahead.
6
- 7 MR. RATH: Well, it's the wording of the report, My Lady. For
8 instance, and this is the witness, he's opining on the degree to which the Chief Medical
9 Officer of Health has used the authority granted to her under the *Public Health Act*. If the
10 witness is willing to speculate that he's not a legal expert and is not actually providing
11 evidence that the Chief Medical Officer of Health is properly using her authority then I
12 don't need to ask the question. If my friend stipulates that, that's fine.
13
- 14 THE COURT: Okay.
15
- 16 MR. RATH: That's my response.
17
- 18 THE COURT: Okay. That is not the question you asked. You
19 asked him to give a legal opinion. But if you want to change your question to ask him
20 whether in that sentence of paragraph 10 at C-2 he was purporting to give a legal opinion,
21 please go ahead and do so.
22
- 23 Q MR. RATH: Were you purporting to give a legal opinion in
24 that paragraph, sir?
25 A No.
26
- 27 Q Okay.
28 A I'm not a lawyer.
29
- 30 Q And would it be fair to say that you don't know what authority the Chief Medical Officer
31 of Health has under the *Public Health Act*, is that fair, sir?
32 A I don't know the detail, no. That's correct.
33
- 34 MR. RATH: All right. Thank you. Those are all my questions
35 for this witness, Madam Justice. At this point, I'd like to turn it over to my friend, Mr. Grey.
36
- 37 THE COURT: Okay. Thank you.
38
- 39 Okay. Mr. Grey?
40
- 41 MR. GREY: Thank you, Madam Justice. I cannot promise I'm

1 going to be done by 5:00 but I'm going to do my level best to be economical in my
2 questioning and not to cover ground that's already been covered by Mr. Rath.

3
4 **The Witness Cross-examined by Mr. Grey**

5
6 Q Mr. Long, good afternoon, sir. Can you hear me okay?

7 A I can, sir. Thank you.

8
9 Q Okay. So as you probably guessed from the role I'm a lawyer, I'm one of the lawyers
10 for the applicants in this proceeding, my job is to ask you questions. I want to start off
11 by, sir, sincerely thanking you for your history of long military service to our country.
12 I'm grateful for that.

13 A Thank you.

14
15 Q Sir, I'd like to turn you -- do you have your opinion before you, sir? Do you have copies
16 of it? I know you've been referring to it.

17 A I do, yes.

18
19 Q Okay. The first thing I'd like to do, if I can refer you to schedule B which is a summary
20 of your opinion. Do you have that, sir?

21 A I'm looking. I'm not sure if I do.

22
23 Q It's -- I think it's page B-1.

24 A No, I'm afraid I don't seem to have B-1 with me.

25
26 THE COURT: Mr. Grey --

27
28 MR. GREY: There it is.

29
30 THE COURT: Yes.

31
32 A Apologies for that, yeah.

33
34 Q MR. GREY: That's okay. So, sir, you'll see at paragraph 2, see
35 paragraph 2 there?

36 A Yeah.

37
38 Q You make a statement that the process of developing a plan is more valuable than the
39 actual plan itself; right?

40 A Correct.

41

1 Q And you stand by that evidence?

2 A Yes.

3

4 Q Okay. And then in the last sentence of that paragraph you state, "It is unwise to rigidly
5 adhere to a plan."

6 A Yes. Agreed.

7

8 Q But you'd agree with me that it's even less wise to have no plan at all.

9 A I would agree if that was the case but we did have a plan. A very good plan.

10

11 Q Okay.

12 A The Alberta pandemic influenza plan.

13

14 Q Is that the -- is that the 2014 plan?

15 A That's the 2014 plan that was informed from the Alberta Health -- Alberta Health
16 Services experience during the H1N1 in 2009. The same plan that we all worked with
17 in 2019 when we did our emergency management exercise over four days. The plan
18 that we used -- sorry, started to examine in January and February in some detail to
19 ensure that it would be sufficient as the start point for Government actions with regards
20 to the pandemic.

21

22 Q Okay. Sir, so I just want to be clear about this, you're not saying that the plan that you
23 were following at the relevant time, the time we're talking about, we're talking about
24 the early part of 2020 when you were involved in this pandemic planning, you're not
25 saying that the 2014 plan is the one that you were following.

26 A No. I'm saying that the -- that the Alberta pandemic influenza plan was crafted in 2014
27 but had been used in 2019. There were improvements made on that and we did, yeah,
28 that is the document we started off with in March of 2020. The plan itself, if anyone
29 looks at it with planning expertise, is comprehensive, it's specifically designed to deal
30 with pandemics in a whole of society approach, it touches on the key objectives,
31 scenarios, triggers, crisis communications, external stakeholders, internal stakeholders.
32 So in terms of a plan to guide the initial Government actions, that is the plan we used,
33 sir.

34

35 Q Okay. My understanding, and perhaps this is incorrect, is that that was not the plan that
36 was followed and that in fact the whole thing was revamped and you started from
37 scratch. You're saying that's not -- that's not true?

38 A Yeah. From my recollection, sir --

39

40 Q Okay.

41 A -- Alberta Management Agency, Alberta Health, Alberta Health Services actually went

1 through the plan with some rigour. And we didn't do this in March, we did this in
2 January, early February based on, you know, what we anticipated was coming our way
3 and we were looking for gaps, if there were any gaps that existed in that plan, again, to
4 start our Government response.
5

6 Q Okay.

7 A And we were comfortable and that decision was, again, moved up through public safety
8 governance and the decision to use that plan was at EMCC.
9

10 Q Okay. Sir, this is the last question I have on this point before I move on.

11 A Yes, sir.
12

13 Q There's no -- there's no equivalent plan, there's no 2020 plan, that's equivalent to this
14 one that would be an updated written version that we can look at and we can reference
15 to see what Alberta's pandemic plan was at the beginning of the COVID-19 pandemic
16 circa February or March of 2020. There's no -- there's no written document that is in
17 existence somewhere in the (INDISCERNIBLE) of Government that has not been
18 produced to the public?

19 A Well -- so I would suggest that there were. It is not one comprehensive document but
20 they always -- as part of any plan, you get to the (INDISCERNIBLE) the start point if
21 you will, the plan itself is continuously under review based on information that comes
22 in, and as the information comes in and the plan is continuously looked at, revised,
23 revamped then changes can be made to it. I would suggest, sir, that it was, you know,
24 certainly from my perspective, we were comfortable to start with the APIP to guide the
25 initial Government actions. The pandemic response plans team which was looking at
26 the broader implications grabbed that plan and they did produce a PRPT plan that
27 looked at long-term socioeconomic actions based on the APIP. There were, again,
28 numerous public health orders that were issued that I think were based on clearly
29 changes to the status quo based on information that it can be. But to answer your
30 question specifically, there was no one comprehensive plan that was put together to
31 track all of the changes. And, you know, from our perspective, I find that a very difficult
32 thing to do in a very dynamic environment that's ever changing because essentially
33 we're talking about five or six people that are continuously writing, rewriting,
34 rechanging, rewriting, rechanging, and you're never staying ahead of it, from my
35 perspective. So there was -- as far as I'm aware to this day, there is no comprehensive
36 one document that captures it all but there are numerous documents in government that
37 are based on the APIP and changes to the APIP if that makes sense.
38

39 Q Fair enough. But to be clear, I wasn't asking you whether there was one catchall
40 document that covered everything, I asked you specifically whether there was a 2020
41 version which was let's say an equivalent document to the 2014 one and your answer

1 clearly to that is no. That's correct, sir. The answer is no.

2 A Well, for 2020 --

3

4 Q Sir, that answer is no.

5 A Is no for 2020.

6

7 Q You said no.

8 A No for 2020, yes.

9

10 Q Yes. Thank you. Sir, I'd like to refer you next to paragraph 5. This is at -- in the
11 overview, schedule C to your report. Schedule C-report in paragraph thereof.

12 A Yeah.

13

14 Q It's on the screen there, sir. Can you see it?

15 A Yeah. I've got that one, yeah.

16

17 Q Okay. So there, sir, it states: (as read)

18

19 My opinion, which is informed by my personal knowledge and the
20 other sources identified within this report is that Alberta's response to
21 the COVID-19 pandemic has been reasonable in the circumstances.

22

23 You stand by that evidence?

24 A Yes.

25

26 Q And the fact in your --

27 A Well, to qualify it, sir, for wave one where I was actively involved in it, yes.

28

29 Q Okay. But in answer to Mr. Rath's questions today, you expanded upon that. In fact,
30 you go on in paragraph 6, if you look at paragraph 6, sir, it's on the next page --

31 A Yeah.

32

33 Q you state that: (as read)

34

35 Alberta's approach favoured moderate restrictions to individuals,
36 moderate restrictions while instituting a number of supports to
37 minimize economic disruptions and ensuring the healthcare system
38 could continue to operate.

39

40 So you stand by that evidence, sir?

41 A Yes.

- 1
2 Q That's what you said in answer to Mr. Rath.
3 A Yes.
4
5 Q Also in answer to Mr. Rath you describe these -- these NPIs. You know what I'm talking
6 about when I say NPI?
7 A Non-pharmaceutical, yes.
8
9 Q Right. And we're using those terms interchangeably but you understand what we're
10 talking about clearly.
11 A The restrictions, yes.
12
13 Q Okay. You also said -- and you've also offered the opinion that these restrictions were
14 effective.
15 A Yes.
16
17 Q You've given that evidence.
18 A In my opinion, yes.
19
20 Q In your opinion that they were effective in reducing not only the spread of COVID-19
21 in Alberta, the transmission rate, but you also think that it reduced the death rate. That's
22 your opinion; correct?
23 A Yes.
24
25 Q And you've also expanded upon that and it's your opinion that there were also you called
26 mitigation strategies which were effective in reducing the negative impact of these
27 lockdown restrictions or NPIs upon the Alberta economy. That was your opinion as
28 well.
29 A Yes.
30
31 Q That's what you told Mr. Rath. Thank you. Sir, I'm going to refer you to a document
32 which is not in evidence. It's the Douglas Allen Simon Fraser report.
33
34 THE COURT: Report (INDISCERNIBLE), Mr. Grey?
35
36 MR. GREY: Yes. I'm just asking my assistant to bring it up,
37 Madam Justice.
38
39 THE COURT: Okay. Thank you.
40
41 Q MR. GREY: There it is. So, sir, this is a study that was

1 generated by Douglas Allen who's the economist at Simon Fraser University. It was
2 released in April of 2021 as you see there and it's entitled, "COVID Lockdown
3 Cost/Benefits: A Critical Assessment of the Literature." Do you see that, sir?

4 A Yeah.

5
6 Q Okay. If you could scroll that up please, Leslie, so we can see the full abstract? Sir, I'm
7 going to read this to you and then I'm going to seek a couple of follow-up questions;
8 okay? So the abstract states that:

9
10 An examination of over 80 COVID-19 studies reveals that many
11 relied on assumptions that were false and which tended to
12 overestimate the benefits and underestimate the costs of lockdown. As
13 a result, most of the early cost/benefit studies arrived at conclusions
14 that were refuted later by data and which rendered their cost/benefit
15 findings incorrect. Research done over the past six months has shown
16 that lockdowns have had, at best, a marginal effect on the number of
17 Covid-19 deaths. Generally speaking, the ineffectiveness of lockdown
18 stems from voluntary changes in behavior. Lockdown jurisdictions
19 were not able to prevent non-compliance, and non-lockdown
20 jurisdictions benefited from voluntary changes in behavior that
21 mimicked lockdowns. The limited effectiveness of lockdowns
22 explains why, after one year, the unconditional cumulative deaths per
23 million, and the pattern of daily deaths per million, is not negatively
24 correlated with the stringency of lockdown across countries. Using a
25 cost/benefit method proposed by Professor Bryan Caplan, and using
26 two extreme assumptions of lockdown effectiveness, the cost/benefit
27 ratio of lockdowns in Canada, in terms of life-years saved, is between
28 3.6–282. That is, it is possible that lockdown will go down as one of
29 the greatest peacetime policy failures in Canada's history.

30
31 Now, sir, you have stated that you are not an economist and you are not qualified to
32 provide an informed expert opinion on the impacts of lockdowns so here's my question,
33 on this issue of the effectiveness of lockdowns, you must, and you do defer, to the
34 opinion that's expressed here by Douglas Allen who is in fact an economist concerning
35 the effectiveness of lockdowns as described in this abstract.

36
37 MS. LECLAIR: I have an objection here.

38
39 THE COURT: Yes?

40
41 MS. LECLAIR: On the basis of my friend has put an article by an

1 economist to a witness who has said he's not an economist and is asking him to agree with
2 it. The expert doesn't have any expertise in economics, you could put any number of articles
3 to this witness and he can't provide his expertise to the Court on it. That's not what he's
4 been qualified to do.

5

6 THE COURT: Okay. Mr. Grey?

7

8 MR. GREY: May I respond?

9

10 THE COURT: Yes, of course.

11

12 MR. GREY: Thank you. I quite agree with my friend that this
13 witness is not qualified to offer the -- such an opinion, but the fact is he's done so. He's
14 done so under oath and he's done so in his sworn evidence. It's in his report. He has testified
15 that Alberta's restrictions were "minimal", that they were moderate, that they were
16 reasonable, that they were effective, that they were flexible, and even that the Province of
17 Alberta waited too long. Now, if my friend is prepared to put on the record that the Court
18 is to disregard all of this witness' opinions about the effectiveness of NPIs and that they are
19 to be given no weight then I'm satisfied with that and I will leave this line of questioning.
20 But if -- if it is the position of Alberta that the Court is to give weight to the very fulsome
21 and generous opinion that this witness has given about the effectiveness of Alberta's
22 lockdowns then I would submit that I must be permitted to pursue this line of questioning
23 further for the purposes of impeachment.

24

25 THE COURT: Okay. We are talking about, first of all, the
26 opinion given in paragraphs 5 and 6 of Mr. Long's expert report which is his opinion that
27 the response to the pandemic has been reasonable in the circumstances and that the
28 approach favoured moderate restrictions to individuals and that more stringent measures,
29 while being more effective, would not have been feasible in Alberta. That is his opinion in
30 his report. I do recall that he in answering questions from Mr. Rath offered an opinion and
31 he made it clear that that was his personal opinion. I took it as his personal opinion. So I
32 am not sure where we are. Are you asking whether the respondents are willing to concede
33 that Mr. Long's personal opinion about the effectiveness of the measures is only his
34 personal opinion? Is that what you are asking?

35

36 MR. GREY: That would be satisfactory because that would
37 essentially disqualify it in my respectful view but that's an issue for argument.

38

39 THE COURT: Disqualify him entirely?

40

41 MR. GREY: No, disqualify him for the purposes -- he's been

1 qualified as an expert. I have that correct; right?

2

3 THE COURT: Yes.

4

5 MR. GREY: So, really his personal opinions are prima facie
6 and fundamentally irrelevant. That's my point.

7

8 THE COURT: Well I know, and of course -- but the issue here
9 is that it was provoked by questions from Mr. Rath on cross-examination.

10

11 MR. GREY: Respectfully, Madam Justice, I beg to differ.
12 These opinions are expressed fully in his -- in his filed materials to which he's sworn and I
13 haven't even gotten into all of them. They are rife -- what he's filed is rife with this opinion.
14 If you look at paragraphs -- his comments about the Swedish model is really just another
15 extension of this opinion because he's offered a very fulsome opinion about Sweden and
16 how those measures failed. How Sweden's failure to impose NPIs affected their death rate.
17 So --

18

19 THE COURT: Well --

20

21 MR. GREY: -- these opinions that he's not qualified to give
22 are throughout his evidence and, in my submission respectfully, it was quite proper for Mr.
23 Rath to go into this and to expose the fact that this witness is not qualified to give that kind
24 of opinion. He is qualified to give an opinion, as I understand it, for the purposes of talking
25 about Alberta's emergency response. My difficulty and the reason why I'm pursuing this
26 questioning is he's gone well past and outside of the scope of his expertise and, as you say,
27 he's providing personal opinions and these must be given no weight. That's my point. So
28 my concern is this evidence is in his report and I think the respondents must be held
29 responsible for that because I presume that they wrote this material, but the problem is now
30 we're stuck with it, it's in evidence. And I want to be clear that where Mr. -- where this
31 witness has provided evidence within the scope of his expertise, I take no issue with that.
32 My main concern is that he's offered evidence outside the scope of his expertise and really
33 this line of questioning has exposed that. That's my point.

34

35 THE COURT: Well, okay. I am not clear, and perhaps you can
36 help me, Mr. Grey, is where in his report does Mr. Long give the opinion, the personal
37 opinion, that was given in response to a question from Mr. Rath that the measures were
38 effective?

39

40 MR. GREY: That was -- that was -- he stated that.

41

- 1 THE COURT: Yes. And where --
- 2
- 3 MR. GREY: He said that they were --
- 4
- 5 THE COURT: But where in his report does he give that? You
- 6 have told me that his report is rife with this.
- 7
- 8 MR. GREY: Look at paragraph 6 please, My Lady.
- 9
- 10 THE COURT: Six. Where we just looked? Yes.
- 11
- 12 MR. GREY: Yes. Paragraph 6, page C-2, the next to bottom
- 13 line says, "While more effective at controlling the spread." He says that these were
- 14 effective. In his evidence he said -- he said that they were effective. He said that the NPIs
- 15 that Alberta imposed worked, that they reduced transmission. He's already answered this
- 16 question in response to cross-examination. I set up this line of questioning earlier and I put
- 17 to him you have said this is your evidence, you said that they were effective, you said that
- 18 they worked in terms of reducing the transmission and the spread, you said that they were
- 19 effective at reducing the death rate. That is his evidence.
- 20
- 21 THE COURT: Exactly.
- 22
- 23 MR. GREY: I went to that before -- before I went to -- before
- 24 I went to the Allen report. So --
- 25
- 26 THE COURT: Okay. I think you are going to be making an
- 27 argument that -- I found Mr. Long to be qualified to give expert evidence, I told you that
- 28 you were welcome to argue that his evidence should be given little weight. We are still at
- 29 that position. I am not sure though, the objection is that you have put a single study dated
- 30 April 21st to Mr. Long and then told him, in effect, he must therefore admit that his opinion,
- 31 his personal opinion, was wrong. So maybe you can -- that is your objection, Ms. LeClair,
- 32 right?
- 33
- 34 MS. LECLAIR: Yes, My Lady. And to the extent that Mr. Long
- 35 provided opinion, I think I have a different set of notes than Mr. Grey does on this and
- 36 perhaps the transcript there but I seem to recall Mr. Long very regularly couching his
- 37 opinion in things like this was based on, you know, the reductions in 'X', 'Y', 'Z', which
- 38 didn't sound to me like that was his evidence and he had made those decisions in terms of
- 39 the reducing number of hospitalizations and such and so that was the basis on which he
- 40 concluded in his opinion from an emergency management perspective that these measures
- 41 were effective.

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THE COURT: Yes. Well, it just seems to me, I agree, Mr. Grey, unless you plan to put every single opinion in the relevant time for and against Mr. Long's opinion to him, I do not really see the utility of -- you can ask him, for instance, whether this study would cause him to change his personal opinion but you cannot suggest to him that he is -- you cannot suggest to him that he is compelled to change his opinion on the basis of this one study. Okay. So I think you can go ahead and ask him again if this one study would cause him to change his opinion. Go ahead.

MR. GREY: Very well.

Q MR. GREY: Sir, did you hear what Madam Justice just said? I'll use her wording. Based on the abstract that was read to you, you had some time to read it, having read that does that modify your opinion concerning the -- that you've given, your personal opinion, about the effectiveness of NPIs and lockdowns that were instituted by the Province of Alberta during this relevant timeframe that we're dealing with? Does that modify your opinion, sir?

A No. Based on the fact -- two facts if I can. One, is it's written in April of 2021 so a year after. So, hindsight again is part of that. When we started this in March, none of that information was widely known or what have you and I mentioned that before. The reality is when we started our planning process we had a lot of unknowns. If you asked me the details -- sorry, if we had the detail from April 2021 to start in March 2020, we may have made some different changes in regards to restrictions and how we did business but this was done, again, this document is from April 2021. Again, I will mention I've also read other documents that contradict this. There is -- this is an economist, sir, and as you well know, just like lawyers, there are many of them and they all have very different opinions. So I --

Q Right. But --

A -- I don't necessarily agree with what I read in the abstract that this is going to change my opinion. Maybe if I read more of it, but based on the abstract of what I read, no, sir.

Q Okay. Sir, this study was actually produced during your tenure that you described, you said that you were the acting managing director of AEMA from October 2020 to May 2021; right?

A Correct.

Q And so this report would've come out in April -- would've come out in April 2021, that was during your tenure?

A Correct.

1 Q Right. And so at that time, at the same timeframe when you're talking about hindsight,
2 really in -- between April and May of 2021 you were still in the process, as you've
3 described it, of learning; right? Learning and adapting these NPIs.

4 A Yes, that's correct.

5

6 Q (INDISCERNIBLE) approach.

7 A Absolutely. But what I also said was that by then, by the time wave two came around,
8 Alberta Emergency Management Agency was focusing in on pandemic personal
9 protective equipment as part of that taskforce, we were also doing the disaster recovery
10 programs for all of those folks who were impacted by spring flooding, and we had also
11 taken on the vaccine taskforce. Our role -- personnel from AEMA were all inventing
12 the vaccine taskforce role. The decisions and the plan review had already passed over
13 by that point in time to the Alberta Health Emergency Operations Centre and the
14 pandemic -- the PRPT - Pandemic Response Plans Team - looking at those long-term
15 pieces if you will which folded in to AHEOC. So, that was not my focus at that point
16 in time. We were still coordinating communications with communities, with Alberta
17 Health, but at this point in time they had significant amount of the responsibility for the
18 response at transition. The AHEOC and the pandemic response plans team which we're
19 looking at a (INDISCERNIBLE) govern piece. That, in my opinion, was the right place
20 for it. The AHEOC's composed of numerous experts not only in the medical piece but
21 also on ICS and (INDISCERNIBLE) structure, we had trained with them numerous
22 times, we had worked on developing online (INDISCERNIBLE) with them. So they
23 know their business and they were well positioned at that point in time.

24

25 Q All right, sir. So we've established that you have a personal opinion about the
26 effectiveness of NPIs and what I'll do is simply argue that as to weight down the line.
27 I'd like to turn you to --

28 A What I would say though, sir, if I can is that --

29

30 Q Sir, this is questioning. Let me ask the questions; okay?

31 A Okay.

32

33 Q Okay. You were going to talk about Sweden. You had talked about Sweden, do you
34 recall that in answer to Mr. Rath's questions?

35 A Absolutely.

36

37 Q Okay. And you were talking about the epidemiologists in Sweden.

38 A Chief -- the chief epidemiologist and his opinion.

39

40 Q Yeah. And you offered -- you offered an opinion or let's call it an abstract summary of
41 what that person had said about NPIs or lockdown measures there or the lack thereof.

1 A Yes. I mentioned --

2

3 Q Okay.

4 A -- from the sources I read, the chief epidemiologist for Sweden admitted that the
5 approach initially with regards to no restrictions was probably not the right approach.
6 And in 2021, Sweden did start implementing NPIs, limited targeted NPIs. And I did
7 mention as well --

8

9 Q Okay.

10 A -- the simple fact is that Sweden's death rate is the highest -- one of the highest in Europe
11 and certainly in consideration with its neighbouring states, Finland and Denmark, it was
12 a factor of ten times larger.

13

14 Q Well, sir, first of all, you're not qualified to give that opinion, are you? You're not an
15 expert on death rates and you're not quoting from a particular study. You're really not
16 qualified -- that's another personal --

17 A I'm quoting from sources I've read from -- I'm not --

18

19 Q Okay.

20 A -- that is open source information that I am quoting.

21

22 Q Okay. All right. Well, I'm going to put this to you --

23 A The death rate in Sweden is the death rate in Sweden, that's a fact. It's a simple fact.

24

25 Q Let's talk about it. So the person you're talking about is Dr. Anders --

26

27 THE COURT: Mr. Grey, I am sorry. You have been interrupting
28 Mr. Long and I would like Mr. Long have an opportunity to finish his last thought.

29

30 Go ahead, Mr. Long.

31

32 A That's fine, Your Honour. Carry on, Mr. Grey.

33

34 THE COURT: Okay. Go ahead, Mr. Grey.

35

36 MR. GREY: Thank you.

37

38 Q MR. GREY: The person you've been talking about is Dr.
39 Anders Tegnell, is that correct?

40 A Yes.

41

1 Q Okay. And you've been telling us some things that Dr. Tegnell has said about the
2 situation in Sweden; correct?

3 A That has been reported in open sources, yes, correct.
4

5 Q Okay. All right. I've also looked at some of Dr. Tegnell's public comments. I'm going
6 to put this to you, sir. He said this: (as read)
7

8 All in all, Sweden's COVID-19 results remain firmly in the middle of
9 the global pandemic without many of the harms caused by overly
10 zealous attempts to lock up citizens of all ages and health statues in
11 their homes.
12

13 What do you have to say about that, sir?

14 A (INDISCERNIBLE) --
15

16 Q That seems to contradict --

17 A -- for a population which is very similar to Alberta, 6 million, over 16,000 dead;
18 Denmark next door 1,500; Finland, less than -- I think is 3,000. So that's the simple
19 facts. There are lots of other reasons to consider in terms of demographics and what
20 have you, but again, the fact of the matter is their death rate was a factor of ten times
21 their neighbours and it's one of the highest ones in Europe. That's not an opinion, that
22 is a simple fact, sir. So --
23

24 Q Well --

25 A -- with regards to --
26

27 Q Sorry, sir.

28 A -- how they did it and what the chief epidemiologist says, I mean, he was the
29 mastermind for it and I'm sure that, you know, ultimately there may have been less pain
30 but I have also read in open sources that there were numerous lockdowns that did start
31 -- lockdowns is the wrong term. NPIs did start to be used widely in 2021.
32

33 Q Sir, are you aware that Sweden's current COVID death rate I understand is 151.91 per
34 100,000, it's worse than Germany which is at 139.92, but better than countries with
35 much harsher lockdown policies including United States, which is at 261.32, Italy at
36 235.84, UK at 229.49, and France at 191.83. That would seem to be inconsistent with
37 what you're saying about this massive death rate in Sweden, wouldn't it?

38 A No, not necessarily. I mean, if you want to use the US model, I think as we all know,
39 you certainly know, not all states are following any of those lockdowns. Some states
40 are very open. The death rate in the States, in the US, is exceptionally high in many,
41 many states because of following no lockdown or restrictions or NPIs, however you

1 want to refer to them. There are demographics, there are also cultural norms here as
2 well. But, again, I would suggest that the death rate in Sweden started off with NPIs
3 and their chief epidemiologist admitted that may have been a mistake off the mark, back
4 from social -- sorry, from media sources does have a very high death rate. Population
5 if you want, 6 million, the same as Alberta roughly and we're at, unfortunately,
6 tragically, over 30 -- close to 3,600 Albertans have died from COVID and they are at
7 almost 17,000.

8
9 Q Well, sir, just coming back to Sweden, were you aware that Sweden's COVID-19 death
10 toll actually fell to statistical zero, less than one death on average for two weeks between
11 mid-July to early August of last year?

12 A No, I wasn't aware of that but it's quite possible given the fact that, as Mr. Rath said, it's
13 seasonal so the summer does impact on it. And I would suggest that in Alberta we
14 probably had something similar. I don't have what the detail is.

15
16 Q Sir, we did have an expert in this field give evidence earlier in this proceeding, his name
17 was Dr. Jay Bhattacharya, and in the course of his evidence in answering questions by
18 Mr. Parker, the lawyer for Alberta, he cautioned against the direct comparison of death
19 rates country to country because, I believe as I recall his evidence, he said that there
20 were other adjustments that have to be made. For example, the age of the population
21 and other such factors. So you seem to be drawing a direct comparison between Sweden
22 and Canada here or in Alberta in terms of death rates. On this point, would you be
23 prepared to defer to what Dr. Bhattacharya said about this topic?

24 A Absolutely. I think if you recall moments ago I just said there a myriad of other factors.
25 The state of the hospital system, the demographics in terms of age, et cetera. Sweden's
26 got a fairly young population I believe but there are factors, absolutely. And the
27 comment with regards to Sweden was simply in response to the issue that was raised
28 by Mr. Redman. But you are right, sir, there are many other factors other than to be
29 considered in planning other than the death rate.

30
31 Q Well, Mr. Long, you've obviously taken a close look at Sweden which is understandable
32 given the role that you played for Alberta, did you also take a look at how Sweden's
33 economy fared during the relevant timeframe during the pandemic? A statistic I have,
34 I'll put this to you, sir, is that Sweden's economy contracted by only 2.9 percent in 2020
35 which is less than have the degree of decline suffered by the European Union as a whole
36 which is about 6 percent, or the UK, and most of the US and Canada including Alberta.
37 In other words, they suffered a far less economic contraction than we did here in
38 Alberta. Have you looked at those numbers? Does that sound right to you?

39 A I have looked at some of the other factors and, yes, I acknowledge that. But, again, if I
40 can go back to one of the principles for emergency management and one of the key
41 objectives under the APIP was preserving life. So, you know, I -- tragically there have

1 been a lot of deaths in Sweden and, yes, I acknowledge that the impacts on their
2 economy may not be as significant and tragically in Alberta we have had a lot of deaths
3 and there have been impacts on our economy. Yes, I agree.
4

5 Q Thank you, sir. Sir, I'd like to refer you next to paragraph 4 in your schedule B summary
6 of opinion.

7 A Schedule B, yeah.
8

9 Q Oh, I beg your pardon, sir. Schedule B, summary of opinion, yes. You have that before
10 you, sir?

11 A I do, yeah.
12

13 Q Okay. So at paragraph 1, if you scroll up there, please.

14 A Yeah.
15

16 Q So you say here: (as read)
17

18 It is factually inaccurate to categorize the COVID-19 pandemic as
19 simply a public emergency. A decision was made to use the *Public*
20 *Health Act* rather than the *Emergency Powers Act* so that the response
21 could be led and informed by medical professionals which is
22 contemplated in the Alberta Pandemic Influenza Plan.
23

24 See that, sir?

25 A Yes, sir.
26

27 Q Okay. So the point here is, I think, that you're making is that because this was a health
28 -- a health emergency, as you describe it, the lead for the pandemic response was handed
29 over to the medical professionals. Do I have that right?

30 A No.
31

32 Q No? Okay. Could you please clarify that?

33 A (INDISCERNIBLE) if you will.
34

35 Q Yeah. Thanks.

36 A What we have learned during emergency management activities over the last decade is
37 that it's not simply -- and I think it's with regards to the language, to classify this as a
38 public emergency I think downplays the significance of it. It's actually a whole of
39 society emergency that has to be dealt with. That is the language if you will, that's why
40 I say it was inaccurate just to refer to it as a public emergency. This is much more than
41 that. You can have a public emergency for an outbreak of measles in a school. So, I

1 thought that this was, in my opinion, not only my opinion but if you will in the
2 emergency management vernacular, most of these are widespread, complex, and
3 require a whole of society approach. The reason I mention the *Public Health Act* over
4 the *Emergency Management Act*, that is a typo, is quite simply because you wanted to
5 have the tool, legislative tool, and again, sir, I am not a lawyer, I would freely admit
6 that, but I do know that the conversations were had between AEMA and with Alberta
7 Health Services and (INDISCERNIBLE) and he wanted to start off the pandemic with
8 the most appropriate legislation providing the most appropriate powers available. And,
9 in this case, the *Public Health Act* was determined to be the most applicable tool to use
10 at the start of the pandemic. The *Emergency Management Act*, just like the *Public*
11 *Health Act* give very, very broad powers. In this case, under the *Emergency*
12 *Management Act*, that would be through the Minister of Municipal Affairs and to the
13 managing director of AEMA as opposed to the *Public Health Act* which in my mind
14 harnesses the power and the resources of the health system. So, my comment in that
15 paragraph refers to the legislative tool being used with the right powers to deal with a
16 whole of society disaster. Pandemic.

17
18 Q Okay. Thank you for that answer, sir. That does explain a couple of things for me. But
19 your -- what you say there, and if you don't want to depart from this you can, it says
20 that the response was being led by medical professionals and that is -- that is my
21 understanding of what occurred. After all, Dr. Hinshaw, Chief Medical Officer of
22 Health, she was essentially put in charge, she was the person who led the pandemic
23 response, isn't that so?

24 A Well, from my perspective it's, again, emergency management is a business of
25 professionals and it requires networks built on trust, it requires collaboration, and it
26 requires teamwork. So my medical professional comment there was actually referring
27 to the Alberta Health Emergency Operation Centre colleagues, not simply the -- not
28 specifically the CMOH. But definitely folks that had the emergency management
29 expertise, knowledge of how the system worked and how we all worked together. And,
30 of course, combined with the right medical expertise to harness it. So --

31
32 Q Okay.

33 A -- there you go.

34
35 Q I understand what you're saying, sir, that this was a team approach. But what I'm getting
36 at is obviously the subject of this application, what's being challenged, are orders, legal
37 orders, that were created by the Chief Medical Officer of Health; right? Not by the head
38 of the Alberta emergency response team; right? So clearly the medical people --

39 A Those --

40
41 Q Go ahead, sir.

1 A Those were not made by the Chief Medical Officer of Health sitting in her office in
2 isolation. Those --

3

4 Q I'm not suggesting that, sir.

5 A -- recommendations all were based on, you know, additional information coming in,
6 plans being reviewed, recommendations coming up through the CMOH informed, you
7 know, informed knowledge, and of course then they would go on up through the public
8 safety governance to be approved by, or disapproved, by EMCC. But I don't think it's
9 correct to say that it was just the Chief Medical Officer of Health. There were a lot of
10 folks working very, very hard and diligently to make sure that the information was there
11 for her to make informed judgments on what those should look like and
12 recommendations of.

13

14 Q Sir, I'm sure that that's true and I wasn't suggesting that she was acting sort of in a silo.
15 What I was putting to you though was that the Chief Medical Officer of Health, Dr.
16 Deena Hinshaw, was put in -- she was put in the lead. That's what I'm saying. She was
17 put at the head of let's call it the entire response team; is that fair?

18 A Well, again, no. The incident command structure, there is a -- there is an incident
19 commander that runs the Alberta Health EOC. He coordinates with Alberta Health
20 Services, incident commander daily so they're sort of colleagues, counterparts. The
21 Chief Medical Officer of Health is part of that trio if you will and -- but, again, she is
22 the Chief Medical Officer of Health dealing with medical officers of health throughout
23 the province and dealing with the regional pieces of -- so, you know, I mean, she is a
24 major player in it but, again, I don't think -- from what I saw, sir, at that time she was
25 not directing the incident commander, you know, to go one way or the other. The
26 incident commander was using all of the experts that were out there, the pandemic
27 response plans team, et cetera, the provincial (INDISCERNIBLE) social services team,
28 to feed the information in. The Alberta Health EOC team put all of that together,
29 collated it, and there were a lot of discussions then about what those recommendations
30 should look like. I'm aware of that process, I was not part of that process after a short
31 period of time, but I am aware that that was the process.

32

33 Q All right. So, sir, you don't necessarily agree with me that Dr. Hinshaw was put in the
34 lead but I expect you would agree with me, or I hope you would agree with me, that she
35 sort of became the Government's face of the pandemic in terms of dealing with the
36 public, where she was appearing in press conferences almost daily, weekly for a period
37 of time, so that -- the Alberta Public, she sort of became the face of Government or the
38 face of the response. Would you agree with me that far, sir?

39 A I absolutely agree with you.

40

41 Q Okay.

- 1 A And my comments were based on my own personal experience in Fort McMurray in
2 2016, you probably saw my mug on the TV --
3
- 4 Q I did. I did, sir.
- 5 A It was the same. In my opinion, again, not in my opinion, in terms of processes there is
6 somebody that's going to lead the crisis COMs, the communications piece, they are fed
7 by a significant team all of the information that they need to do that work which is really
8 a difficult job. But, yes, I agree that Dr. Deena Hinshaw, the Chief Medical Officer of
9 Health, was absolutely the face of the response and led the -- that portion of crisis
10 COMs.
11
- 12 Q Okay. Thank you, sir. I also agree with what you said and I like what you said about --
13 earlier about this being much more than just a health crisis. It became much more than
14 that. In fact, it wasn't just in health, we talked about education; right? The pandemic
15 impacted education; right?
- 16 A Yes.
17
- 18 Q Going to go through some of these. The education. Obviously we've talked about the
19 economy, impacts on the economy; right?
- 20 A Yes.
21
- 22 Q Churches. Capacity restrictions in churches. Impacts on business owners; right?
- 23 A Yes.
24
- 25 Q Entertainment, recreation, international relations it impacted, home security, even
26 internet security in terms of social media access and misinformation. Would you agree?
- 27 A Yes, there had been impacts. Absolutely.
28
- 29 Q Yeah. Yeah.
- 30 A I would say that they all, again, I would go back to mitigated impacts --
31
- 32 Q M-hm.
- 33 A -- was the intent and what was done in many, many cases. But I'd also say again that,
34 you know, again, the primary objective from the emergency management perspective
35 is saving and preserving lives. I would mention two comments to you now which, in
36 my opinion -- or two facts that don't justify but again is the reason why I thought the
37 response, and I still believe, the response is quite reasonable. We have COVID long-
38 haulers now, sir, we have paediatric COVID cases. So, you know, these measures were
39 put in place to try -- and we had the fourth wave, what do we have, the fifth variant
40 now, that is why these NPIs were envisioned and put in place in the first place so that
41 we could prevent, mitigate against those as much as possible because in my -- for my

1 emergency management experience, mitigation early on always provides you the best
2 results.

3
4 Q I appreciate that, sir, but -- sorry, go ahead.

5 A Plan for the worst case scenario, sir, and get the best results.

6
7 Q Right. I don't want to go down the rabbit hole of NPIs with you again, I think we've
8 covered that.

9 A Okay.

10
11 Q But I appreciate your comments. But just some other areas that were impacted - travel
12 and tourism; right? Transportation of goods and services, access to courts and justice,
13 delivery of government services, universities, administration of justice, media,
14 scientific research, even the military all impacted by this. So, here's my question to you,
15 sir, when I look at your credentials, which are impressive, your military service, your
16 longstanding history of dealing with disasters like the one you talked about in Fort
17 McMurray, I have to ask the question, I ask you the question, is it possible that the
18 Government of Alberta became obsessed with health and that really what, in terms of
19 being the leader of the pandemic response, that the pandemic response really needed a
20 person like you or Mr. Redman as opposed to a doctor like Dr. Hinshaw who really,
21 although somebody with obvious medical credentials, really has no understanding or
22 knowledge of public governance, would you agree with that assessment, sir?

23 A You know, again, hindsight is great. I would say you mentioned there have been
24 widespread impacts, many of them can be mitigated as possible and that mitigation
25 happened throughout. I would not want to put myself -- I would not want to second-
26 guess some of the decisions that were made that I am not privy to, that I don't have the
27 information to kind of -- sorry, to make aspirations of if you will. But I would say I
28 don't envy the folks that were making those very difficult decisions. They are hard
29 decisions, they were difficult decisions to be made to preserve life and, again, I would
30 say this, I thought that for the majority of the response and, again, I would focus that in
31 on the 2020 if you will, the majority of the response I thought was balanced and
32 reasonable. I say it again in wave two, I felt that we were late to the party, we could not
33 make decisions that needed to be made in a timely manner, in my opinion, and I would
34 leave it at that.

35
36 Q Thank you, sir. Sir, I just want to ask you a couple other questions and then I'm going
37 to leave you alone. From listening to and from your background it's perhaps
38 understandable you take this approach, I have the impression that you are of the view
39 that when there is a disaster, whether it's a derailed train or a flood or fires or a
40 pandemic, that Government, the State, must rush in and take control of the situation.
41 That's your world. You clearly -- that's your -- that's where you're coming from in terms

1 of emergency management. Would you agree with that?

2 A Depending on the situation because the emergency management system in Alberta
3 always starts off with the lowest level. It relies on individuals first and foremost to be
4 ready, be prepared, to do their part, to have emergency management kits if you will,
5 72-hour kits, then you jump up to the next level in the emergency management
6 paradigm and that is, you know, emergency first responders. Then you go to local
7 authority. So if a community -- train derailment is a perfect example. We have them all
8 the time in this province. CN goes in and deals with them relatively -- routinely, it's
9 amazing, but they can do that. They will be engaged with local authorities to make sure
10 that that is done appropriately and at the provincial level we may have information feeds
11 but we don't need to get engaged unless that train derailment that causes a fire that gets
12 into the community and they are overwhelmed or something to that effect. So, I think,
13 you know, the role -- the Province does have a role when it gets to a certain threshold
14 and certainly a pandemic would be that. A large significant -- multiple significant fires
15 impacting multiple communities resulting in 32,000 Albertans being evacuated, again,
16 something that overwhelms local authority's capacity to deal with it, the Province is
17 obliged and, you know, morally obligated to step in and assist. That is the emergency
18 management paradigm. And then above us is the federal level.

19
20 Q Right. So, I appreciate that answer, sir, and I like the way you put it, you said the role
21 of the Government is, you used the word "assist", to assist the community whether it's
22 -- whether it's a town or a city or an entire province, the role of the Government is to
23 assist the community but not to totally take over the entire management of a situation
24 like this. The -- ultimately, and let me put it to you this way, wouldn't you agree that
25 the Province of Alberta spent a lot of time and energy trying to get individual and
26 community buy-in to take steps, for example, things like handwashing, masking, all of
27 these things and that the reason why they did that is because they knew whatever they
28 mandated, what was going to make the difference, was the extent to which people would
29 do that at the individual family and community levels? Would you agree with that?

30 A So, the first -- I agree with that, absolutely, but I will go back to your comment on assist.
31 There are times where the Province has to take over and that is because communities -
32 - it doesn't matter what you've do, they've exhausted all their resources, and they have
33 finite resources. I'll give you two examples you're probably aware of, one is the south
34 Alberta floods where a provincial state of emergency was declared, and that impacted
35 10,000 households in Alberta. That's billions of dollars. And of course the Fort
36 McMurray wildfire where 90,000 Albertans and oilfield workers had to be evacuated
37 and massive damage to the community. That's two times where the province did have
38 to take over because it's widespread, complex, and beyond the ability of local authorities
39 to deal with on their own or within the expertise they had. I would say -- I would say
40 that from a planning perspective a pandemic will fall under that as well.

41

1 Q Thank you, sir. One final question, and this is in the way of an opinion, I mentioned to
2 you that Dr. Bhattacharya had given evidence in this proceeding and in the course of this
3 questioning he had offered the opinion, and of course he's a public health expert, but I
4 think this is still within the scope of your knowledge and expertise based on what
5 you've testified to, he said that one of the most concerning impacts of the pandemic is
6 a serious deterioration, even loss of trust by the public, in public health. Would you
7 agree with that assessment?

8 A I would agree that -- so is this my opinion?
9

10 Q Yes, sir, and I'm only asking for your opinion. It's within the scope of your knowledge.

11 A Sure. So my wife is a frontline healthcare worker so I think that public healthcare folks
12 are heroes for sure.
13

14 Q On that we agree.

15 A I would say that in my mind we are at the point, and we probably are slightly past the
16 point now where we -- because we've got the vaccines, double vaccines, the boosters
17 are there, and I do believe that we are at the point now of moving past COVID and
18 learning to live with it. I believe that we are there now. If you asked me that last year
19 prior to vaccines coming out, I would've said no, we are not there yet. I think that we
20 need to stay the course. I will also say the vast majority of Albertans at that time and
21 probably to this point in time still agree that we had to stay the course for the good of
22 all. Not just us, but to protect communities and societies. But I agree with, in my
23 opinion, we are at the point in time now where we can start -- where we have to start
24 dealing with the COVID pandemic as an endemic and that is based on simply where
25 we are and how far we've come with not only vaccines but knowledge and everything
26 else of how to deal with the virus. I think we are -- we are at that point in time. I never
27 heard the doctor's testimony so if he's talking about last year, I would disagree
28 vehemently. But if he's talking about certainly within the last month or so, then I think
29 we're there. Yes.
30

31 Q Right. And if we're going to get to the point that you're talking about, sir, you'd agree
32 with me public health -- or the public trust in not only public health officials like Dr.
33 Hinshaw but also emergency response teams led by people like yourself, that that public
34 trust is really, really important going forward.

35 A Absolutely public trust is critical. And, you know, Alberta -- Alberta is known to have
36 one of the best emergency management agencies tried and tested in the country. We
37 have provided assistance to BC for their fires and floods for the last three to four years.
38 So, yes, I agree that public trust is important. I also think that we still have, and I think
39 that our public health officials still enjoy the public trust, but as I said before maybe
40 poorly, we are at the point now where we need to start moving on and if we do not then
41 I am of the opinion that that public trust will start to become eroded.

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Q That's a very fair answer, sir. Thank you. I think that's a good place to end off. Thank you very much, Mr. Long.

A You're welcome, sir.

THE COURT: Okay. Thank you.

Ms. LeClair, do you have very much on redirect?

MS. LECLAIR: No, My Lady. I just actually have like two brief questions for Mr. Long here.

THE COURT: Okay. Mr. Long, are you okay to continue with that?

A Yes, Ma'am. Yes, Your Honour.

THE COURT: Okay.

The Witness Re-examined by Ms. LeClair

Q So, Mr. Long, Mr. Rath asked you a lot about cost benefit analysis before restrictions were put in place. Was it AEMA that was making the decisions to issue the restrictions?

A No.

Q Okay. And then we also talked a lot about Sweden and I don't want to get into detail about this, but can you tell me in your experience did Alberta's response consider other jurisdictions? What other jurisdictions were doing and not doing?

A Yes. I mean, we did jurisdictional scans throughout. I can tell you that the focus is obviously on Canada but in terms of how we handle the pandemic in relation to other provinces, other jurisdictions, very similar approach with public health officials leading with coordination functions being done by emergency management officials, internationally we did look at England and Spain and Italy because they had serious impacts early on. And, again, I would say that based on those jurisdictional scans very similar in terms of how we did response.

MS. LECLAIR: Those are all my questions for Mr. Long, Justice Romaine.

THE COURT: Okay. Thank you.

1 Thank you, Mr. Long, for your testimony in this hearing. We will be able to let you go
2 now.

3
4 A Okay. Thank you. Thank you, Your Honour.

5
6 THE COURT: Thank you.

7
8 A Have a great day.

9
10 THE COURT: Thank you.

11
12 Okay. Just with respect to tomorrow morning, I am going to be working on the scope
13 question and I hope to be able to give you answer tomorrow morning, perhaps subject to a
14 written endorsement to follow. I hope you have now all received the written endorsement
15 on the Mr. Peckford (phonetic) matter. So what would be the plan for tomorrow morning
16 for the next witness?

17
18 MR. RATH: You plan on giving us the scope ruling at 9:30
19 tomorrow morning, My Lady?

20
21 THE COURT: Yes. I am hoping to, yes. Probably just the
22 bottom line followed by a written endorsement. Okay. But what I am wondering is, after I
23 have done that, what would be appropriate for the next witness?

24
25 MR. PARKER: So we've got to finish with Dr. Bhattachrya's
26 redirect --

27
28 THE COURT: Right.

29
30 MR. PARKER: -- and then we have Dr. Jason Kindrachuk lined
31 up for tomorrow.

32
33 THE COURT: Okay.

34
35 MR. PARKER: He is not available I'm being told noon to 1 did
36 you say? Noon to 1, I believe that's -- noon to 1 our time. So Jason Kindrachuk is not
37 available from noon to 1, other than that we've got him scheduled for tomorrow.

38
39 THE COURT: So not Dr. Zelius (phonetic) tomorrow, Dr.
40 Kindrachuk. Okay.

41

1 MR. PARKER:

We had to move some around, yeah.

2

3 THE COURT:

Okay. Well, thank you. And 9:30 tomorrow.

4 Thank you.

5

6

7 PROCEEDINGS ADJOURNED UNTIL 9:30 AM, FEBRUARY 16, 2022

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5 on the 15th day of February, 2022, and that I was the court official in charge of the sound-
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1 **Certificate of Transcript**

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I, Nicole Carpendale, certify that

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