

Action No.: 2001-14300
E-File Name: CVQ22INGRAMR
Appeal No.: _____

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

P R O C E E D I N G S

Calgary, Alberta
August 26, 2022

Transcript Management Services
Suite 1901-N, 601-5th Street SW
Calgary, Alberta T2P 5P7
Phone: (403) 297-7392
Email: TMS.Calgary@just.gov.ab.ca

This transcript may be subject to a publication ban or other restriction on use, prohibiting the publication or disclosure of the transcript or certain information in the transcript such as the identity of a party, witness, or victim. Persons who order or use transcripts are responsible to know and comply with all publication bans and restrictions. Misuse of the contents of a transcript may result in civil or criminal liability.

TABLE OF CONTENTS

Description		Page
August 26, 2022	Morning Session	1
Submissions by Ms. Johnson		2
Submissions by Mr. Rath		23
Submissions by Mr. Parker		24
Submissions by Mr. Rath (Reply)		41
Certificate of Record		47
Certificate of Transcript		48

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

2
3
4 August 26, 2022

Morning Session

5
6 The Honourable Justice Romaine

Court of Queen's Bench of Alberta

7
8 J. R. Rath (remote appearance)

For R. Ingram

9 N. L. Johnson (remote appearance)

For Heights Baptist Church and Northside
Baptist Church

10
11 N. Parker (remote appearance)

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

12
13
14 N. Trofimuk (remote appearance)

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

15
16
17 E. Kay

Court Clerk

18
19
20 THE COURT:

Good morning.

21
22 MR. PARKER:

Good morning.

23
24 THE COURT:

Are we --

25
26 MR. RATH:

Good morning, Madam Justice.

27
28 THE COURT:

Are we ready to proceed?

29
30 MS. JOHNSON:

Yes, Madam Justice.

31
32 THE COURT:

Who is going to lead off?

33
34 MS. JOHNSON:

Madam Justice, it's Natalie Johnson for the
35 applicants. I'll be starting off.

36
37 THE COURT:

Okay.

38
39 MR. RATH:

Madam Justice, this is Mr. Rath. So Ms. Johnson
40 will be making the -- the application and she -- I might have a few words to say at the end
41 of her presentation this morning, on behalf of Ms. Ingram, and then following my friend's

1 presentation, I'll be making my reply. But I'm not sure how long my friends will be. Just
2 for the convenience of (INDISCERNIBLE) between Ms. Johnson and myself
3 (INDISCERNIBLE) an hour (INDISCERNIBLE) scheduled for a full day. Just for your
4 own convenience (INDISCERNIBLE) depending on my friend (INDISCERNIBLE) I'm
5 doubtful that we (INDISCERNIBLE). Thank you.

6
7 THE COURT: Thank you.

8
9 THE COURT CLERK: And just before we get started, My Lady, I'm
10 having some issues with my FTR. I need one minute to just shut down and
11 (INDISCERNIBLE) with it.

12
13 THE COURT: Okay. Thank you. I don't know whether you
14 heard, but we have to shut down the FTR for a minute and restart it, so just give us a minute.
15 Thank you.

16
17 (ADJOURNMENT)

18
19 THE COURT CLERK: This is a test. This is a test. I believe we have it
20 back, My Lady.

21
22 THE COURT: Okay. Thank you. Can everybody hear me now?

23
24 MR. PARKER: I can hear you fine, Justice Romaine, that's Mr.
25 Parker for the respondents. And we'll estimate approximately an hour for our submissions
26 as well.

27
28 THE COURT: Okay. Thank you. Okay. Ms. Johnson.

29
30 **Submissions by Ms. Johnson**

31
32 MS. JOHNSON: Good morning, My Lady. We are here before
33 you today on an application arising out of a court ordered disclosure in a case that's before
34 this Court, *C.M. v Alberta*, and I'll be referring to that case as *C.M.*. That's a case with
35 respect to a challenge of the CMOH order 08-2022 in its entirety, related to removal of
36 restrictions, including public masking and school masking and the restrictions exemptions
37 program. The documents that were publicly made available in that case, in an AACRP,
38 was filed on July 12th, 2022, by order of Justice Dunlop, and we're asking that they be
39 admitted as evidence.

40
41 MR. RATH: Madam Justice, this is Mr. Rath. I don't want to

1 interrupt, but we're getting some sort of microphone noise again at our end that we were
2 going through the last time, I think. It's -- it's kind of a squeaking sound coming over the
3 audio and I don't know if it's going to interfere with the recording or not.

4
5 THE COURT CLERK: It's not -- there's nothing on the recording. I'm
6 not sure what it is. I've muted every microphone I can in this courtroom.

7
8 THE COURT: Okay. I don't --

9
10 MR. RATH: Thank you.

11
12 THE COURT: Perhaps, I don't like to do this, but if you mute
13 me and then I --

14
15 MR. RATH: It's -- whatever it was -- whatever it is, My Lady,
16 it's stopped now.

17
18 THE COURT: Oh.

19
20 MR. RATH: Oh, no, now it's started again.

21
22 THE COURT: Okay. Okay. Great. Thanks. Okay. Go ahead.

23
24 MS. JOHNSON: Okay. We are asking that the documents that
25 were produced in that action on July 12th, 2022 be admitted in this matter, that Dr. Hinshaw
26 return for re-cross-examination on issues arising from those documents, that prior to re-
27 cross-examination, Dr. Hinshaw provide the applicants with the data and scientific analysis
28 she relied on making her recommendations for the CMOH orders in this case, that Dr.
29 Hinshaw provide the applicants with her recommendations she made to Cabinet regarding
30 the CMOH orders in this case, and that she answer questions that counsel for Alberta
31 objected to on the basis of public interest immunity or Cabinet confidentiality.

32
33 We rely in this application on three affidavits. The first is the affidavit of Tracey Bradley,
34 which was sworn July 25th, 2022 and the affidavits of Leslie Doucette (phonetic), affirmed
35 August 10th, 2022 and August 24th, 2022. In the case of *C.M.* that's still before this Court,
36 they are challenging, as I said, the entirety of CMOH order 08-2022. On July 13th, 2022,
37 the applicants in this case became aware of those documents that were ordered disclosed
38 after a second interlocutory application before Justice Dunlop. After reviewing the
39 AACRP in that proceeding, we have serious concerns with the evidence of Alberta and the
40 evidence of Dr. Hinshaw in this case.

41

1 On July 25th, 2022, we notified the Court and the respondents of our intention to seek this
2 admission. It's notable that there were two separate interlocutory applications in *C.M.*
3 required for disclosure for Alberta to comply, and it's important we take a relevant 10,000
4 foot view of the facts in both cases. In *C.M.*, on February 19th, 2022, the applicants in that
5 case served a notice to obtain record of proceedings on Alberta, Dr. Hinshaw. In *Ingram*,
6 in this case, from April 4th to April 7th, 2022, Dr. Hinshaw gave evidence. Following Dr.
7 Hinshaw's oral evidence in this case and nearly 2 months after the request in *C.M.*, Alberta
8 complied -- or provided documents to the applicants in *C.M.* on April 14th, 2022, and it
9 was only after the closure of the evidence in this case that they provided those documents.
10

11 On May 17th, 2022 was the first of two interlocutory applications in *C.M.* and in that case,
12 the applicants were seeking to have some evidence admitted and at that time, Justice
13 Dunlop on his own motion, not the motion of the applicants, on his own motion required
14 Alberta to amend their certified record of proceedings because it was deficient and didn't
15 disclose all the documents that they had. So the order was by Justice Dunlop to file an
16 amended certificate by May 27th. On June 1st, Alberta filed in that proceeding. The
17 applicants in that case were not satisfied with the disclosure so then they brought their own
18 second -- the second interlocutory application and requested that Dr. Hinshaw's records --
19 and then again, on June 27th, 2022, Justice Dunlop ordered the disclosure of those
20 documents, and from the disclosure of those documents came the filed AACRP at issue in
21 this case, on July 12th.
22

23 The documents that we're looking at in this application are the entirety of the AACRP, and
24 portions of the data and scientific evidence contained within hyperlinks in those documents
25 of Alberta were available to Alberta as early as November 18th, 2020. We are seeking the
26 entirety of the AACRP, including an email, I'll refer to it as the email, on -- dated February
27 7th, 2022 from Scott Forner (phonetic), Acting Director of Health Evidence and Policy for
28 Alberta, Dr. Hinshaw and members of Alberta Health, which is at tab 8 of the AACRP; a
29 memo, which I'll refer to as the memo, dated February 7th, 2022 from the premier's office
30 to Premier Kenney with a copy to Dr. Hinshaw, which is at tab 6 of the AACRP; a
31 PowerPoint presentation (INDISCERNIBLE) 13 of the AACRP, which was prepared by
32 Dr. Hinshaw and presented to the Priorities Implementation Cabinet Committee, or the
33 PICC. Also, we are looking at the official record of decision of the PICC minutes, dated
34 February 8th, which is tab 14.
35

36 So this -- this case in *Ingram* and in *C.M.* is a *Charter* challenge of CMOH orders. In our
37 case, it's with respect to orders implemented in 2022 and to July 12th, 2021 -- or, sorry, it's
38 starting in 2020 to July 12th, 2021, the effectiveness and effects of non-pharmaceutical
39 interventions by the respondents upon the applicants essential to this action. Masking is a
40 form of non-pharmaceutical interventions that was the subject of CMOH orders and was
41 mandatory with fines that were very substantial for non-compliance. The applicants,

1 Northside Baptist Church and Heights Baptist Church, who are my clients, have provided
2 uncontested affidavit evidence that their *Charter* rights and freedoms have been breached
3 by, among other things, masking. Alberta did not cross-examine the applicants on this
4 issue and has admitted in their pretrial factum, which was filed September 14th, 2021, at
5 paragraphs 20 and 24, that masking violated their *Charter* rights.

6
7 As this is a *Charter* challenge, once a breach is proven by the applicants, the onus shifts to
8 Alberta, under a section 1 analysis. To appropriately discharge this onus, Alberta must
9 prove they used the least restrictive means necessary in breaching the applicants' *Charter*
10 rights and freedoms. Dr. Hinshaw's evidence in the proceeding came through two
11 affidavits and oral hearing, affidavits December 18th, 2020 and July 12th, 2021. She gave
12 evidence about masking in her affidavit and on her oral examination. So under cross-
13 examination, counsel for the applicants asked Dr. Hinshaw specifically about the harms to
14 children with respect to masking and Dr. Hinshaw testified on April 5th, 2022 there was
15 no evidence regarding serious health outcomes or adverse health outcomes from wearing
16 masks. When she was further asked by counsel, Mr. Rath --

17
18 THE COURT: Excuse me, Ms. Johnson. You know, we should
19 be --

20
21 MS. JOHNSON: Yeah.

22
23 THE COURT: -- very careful as to what she testified. If she
24 testified at that time and impliedly in the context of the fact of the specific impugned orders
25 that were before me in this hearing, she indicated that at that time, there was no evidence.

26
27 THE COURT CLERK: My Lady --

28
29 MS. JOHNSON: Correct. Yeah.

30
31 THE COURT CLERK: -- (INDISCERNIBLE) is not picking you up.

32
33 THE COURT: Oh.

34
35 THE COURT CLERK: Your microphone is actually right here.

36
37 THE COURT: Okay. I'm sorry, but madam clerk tells me I'm
38 too far from the microphone. Were you able to hear me?

39
40 MS. JOHNSON: Yes I was, My Lady.

41

1 THE COURT: Okay. Thank you.

2

3 MS. JOHNSON: Thank you. Yes, you are correct, My Lady. She
4 did say at that time there was no evidence regarding serious health outcomes and adverse
5 health outcomes from wearing masks, and during the time of the impugned orders in this
6 case, in that context, she was asked those questions. She said, when asked if there was any
7 information that was considered in that regard with respect to psychological or psychiatric
8 harm, Dr. Hinshaw responded: (as read)

9

10 The scientific advisory group would have looked at all published
11 evidence related to harm, so that would have included -- if there
12 had been publications related to harms and mental health, that
13 would have been included in that review.

14

15 She was asked again by Mr. Rath: (as read)

16

17 On that scientific advisory group, you had no psychologists or
18 psychiatrists, so you had no specialists in those fields providing
19 you input from that group; that's correct, yes?

20

21 And Ms. -- Dr. Hinshaw replied: (as read)

22

23 That's correct. And at the same time, that particular group is well
24 versed in the scientific method in reading evidence, and the scope
25 of that particular masking harms review was to look at any -- any
26 published literature that documented harms from wearing masks.

27

28 On April 6th, 2022, Dr. Hinshaw was asked a question that -- following -- arose an
29 objection with respect to Cabinet confidentiality. The question was: (as read)

30

31 Can you tell us what recommendations you made to Cabinet that
32 were either ignored or where you were given instructions opposite
33 to your recommendations?

34

35 To support their objection, Alberta produced an unfiled certificate of a member of the
36 Executive Council, sworn on February 17th, 2022 by Acting Justice Minister Sonya
37 Savage. The respondents did not produce an affidavit in support of that objection.

38

39 On April 7th, 2022, three in-camera questions of Dr. Hinshaw were asked, following
40 submissions by counsel on Cabinet confidentiality. Dr. (INDISCERNIBLE) answers to
41 those questions was no, to all three. On April 26th, 2022, this Court ordered that Dr.

1 Hinshaw's answers and those questions form part of the hearing record.

2
3 With respect to the evidence in the AACRP, portions of the information, data and scientific
4 evidence have been available to Alberta since November 18th, 2020, when you go through
5 the hyperlinks to the sources that they're cited. The documents reveal numerous adverse
6 health outcomes and harms from masks, on numerous scientific studies pre-dating July
7 12th, 2021, including respiratory tract and skin microorganism self-contamination and the
8 detrimental effects of face masks on cognition, social interaction, emotional bonding and
9 emotional development of adults and children. The email from Scott Forner submits 22
10 studies to Dr. Hinshaw and, while in his summary he says it's a review of new evidence,
11 13 of the 22 studies are from June 8th -- prior to June 8th, 2021.

12
13 With respect to the memo that was provided to the premier, there are numerous hyperlinks
14 used that reference numerous studies available prior to July 12th, 2021. Alberta suggests
15 in its written argument in this application that the memo provided to the premier is
16 unreliable as it contains news articles and was not prepared by Dr. Hinshaw or the scientific
17 advisory group, yet this is the memo that Alberta criticizes here in this application, but it's
18 the same memo that the PICC relied on in February this year to rescind masking, and it is
19 the same memo that Alberta is currently defending before Justice Dunlop. It is
20 disingenuous for Alberta to minimize the importance and reliability of the memo in this
21 case, while relying on its importance and reliability in another. Alberta cannot
22 (INDISCERNIBLE) arguing contradictory things before this Court.

23
24 With respect to the PowerPoint presentation at tab 13 of the AACRP, it reveals that Dr.
25 Hinshaw provided Cabinet with three options. The first approach was a significant easing
26 of restrictions, the second approach was a longer easing and the third approach was to be
27 defined by members that the PICC chose. The PICC rejected the first option to
28 significantly ease restrictions on Albertans and directed the CMOH to implement the
29 second option to only moderately ease restrictions on Albertans. The PowerPoint also
30 included numerous political statements that are not founded in science, such as: (as read)

31
32 Masking is a physical and visual reminder of risk and potential for
33 transmission;

34
35 Endemic phase characterized by increased public tolerance of the
36 disease;

37
38 Alberta will be a leader in entering the endemic phase before other
39 Canadian jurisdictions;

40
41 Some Albertans may not be satisfied with the pacing of the

1 easings;

2
3 Public communications of easings were to be announced as a bold
4 but prudent approach and to be supported with advertising;

5
6 Indicators of the endemic phase, where the public is becoming
7 increasingly tolerant of the disease.
8

9 And, from appendix 1 at tab 12 of the AACRP, and it is unclear who authored this
10 document from the government, it states: (as read)

11
12 Mask requirements for schools were a divisive issue in some
13 communities, as increasing numbers of parents and students were
14 protesting mask mandates, including protests staged at schools.
15

16 Contrary to the respondents' written arguments --

17
18 THE COURT: Excuse me.

19
20 MS. JOHNSON: -- in this case --

21
22 THE COURT: Ms. Johnson, I'm sorry.

23
24 MS. JOHNSON: Yes, Ma'am.

25
26 THE COURT: You've characterized those all as political
27 statements. Are some of them not just statements of fact?
28

29 MS. JOHNSON: Yes, I would submit they are statements of fact,
30 but they're also not medically based, when Dr. Hinshaw is the CMOH providing medical
31 advice to Cabinet on what to do with Albertans. I submit that she is not a politician, and
32 she shouldn't be stating things that are not -- that are within the realm of the politicians to
33 decide.
34

35 THE COURT: Okay.

36
37 MS. JOHNSON: Contrary to the respondents' written argument,
38 the documents reveal relevant and material evidence in this case beyond the now issue of
39 school masking. It reveals medical and scientific evidence in the AACRP, addresses the
40 efficacy of masking regardless of one's age, it reveals that masks have adverse health
41 effects to both adults and children and, very importantly, it reveals the actual decision

1 making process of CMOH orders.

2
3 Masking is relevant to our case, as I've mentioned. My clients, the church, they are a
4 congregation of Christians who comprise Albertans of all ages, including school aged
5 children. Their uncontested evidence is that masking violates their section 2(a) *Charter*
6 rights. Wearing a mask violates their sincerely held religious beliefs in a way that is more
7 than trivial or insubstantial. Alberta has conceded that mandatory masking orders are
8 breaches of their *Charter* rights and the onus is now on Alberta to prove that those breaches
9 are justified by section 1, which is a central issue to the documents, and particularly the
10 PowerPoint and the PICC minutes of the AACRP.

11
12 With respect to reopening a case, the *Rules of Court*, in general, must be applied with
13 fairness and justice in the purpose and intention under rule 1.2:

14
15 ... to provide a means by which claims can be fairly and justly
16 resolved in or by a court process in a timely and cost-effective way
17 ...

18
19 To:

20
21 ... refrain from ... taking proceedings that do not further the
22 purpose or the intention of the rules ...

23
24 And:

25
26 ... the Court, when exercising a discretion to grant a remedy or
27 impose a sanction, will grant or impose a remedy or sanction
28 proportional to the reason for granting or imposing.

29
30 Rule 9.13 of the *Alberta Rules of Court* reads:

31
32 At any time before a judgment or order is entered, the Court may
33 vary the judgment or order, or on application, and if the Court is
34 satisfied there is good reason to do so, hear more evidence and
35 change or modify its judgment or order or reasons for it.

36
37 After a trial, but before the entry of an order, the Court has discretion to admit fresh
38 evidence. This discretion is so broad that it applies even after the Court issues a decision.
39 The Court has inherent jurisdiction to admit new evidence at any time, even if a judgment
40 has not been reached. To exercise this discretion, the Court must be satisfied that
41 reasonable diligence was exercised to discover the evidence. The leading case is from the

1 Supreme Court of Canada, which is at tab 2 of our materials, *671122 Ontario Ltd. v. Sagaz*
2 *Industries Canada Inc.* In considering new evidence, it referred to Lord Denning in *Ladd*
3 *v. Marshall*, at paragraph 63:

4
5 To justify the reception of fresh evidence, three conditions must
6 be fulfilled: it must be shown that the evidence could not have
7 been obtained with reasonable diligence for use at the trial; the
8 evidence must be such that, if given, it would probably have an
9 important influence on the result of the case, though it need not be
10 decisive; the evidence must be such as is presumably to be
11 believed, or in other words, it must be apparently credible, though
12 it need not be incontrovertible.

13
14 In this Court, Alberta Queen's Bench reviewed the test for adducing new evidence after
15 trial, in *Stone Sapphire Ltd. v. Transglobal Communications Group Inc.*, at tab 1 of our
16 materials. The test:

17
18 ... requires the original trier of fact to review the evidence
19 tendered and the circumstances, and to exercise his or her
20 discretion as to the admissibility ...

21
22 The Court went on to state:

23
24 The jurisdiction for a chambers judge or a trial judge to hear
25 further submissions or receive further evidence after the hearing,
26 and even after the issuance of the decision, but before the entry of
27 the formal Order of Judgment, is very broad. It is accurately
28 described as being “unfettered”.

29
30 And that's at paragraph 40 of that case.

31
32 The Alberta Court of Appeal in *Alberta v. B.M.*, which is tab 3 of our written materials,
33 Justice Côté reviewed the rules and said the rules governing admission of new evidence at
34 trial is similar to new evidence on (INDISCERNIBLE) Court of Appeal. And the test he -
35 - he circumscribed, at paragraph 12, is, firstly:

36
37 Could the evidence have been obtained earlier if due diligence had
38 been observed?

39
40 Is the evidence credible?
41

1 Would the evidence have been practically conclusive in producing
2 an opposite result to that earlier pronounced?

3
4 Is the evidence in its present form admissible under the ordinary
5 rules of evidence?

6
7 In reviewing that case, Court of Queen's Bench in *Aubin v Petrone*, which is tab 4 of our
8 materials, at paragraph 7, the Court considered the following additional factors:

9
10 The desirability of avoiding unnecessary and costly appeals;

11
12 The desirability of the appeal court having a fully developed
13 factual and legal record;

14
15 The need for finality and certainty in legal proceedings;

16
17 That errors to be corrected should be objectively demonstrable;

18
19 The rule is not a vehicle for reconsidering a judgment call; and

20
21 The threshold for a court to exercise its discretion should be high
22 to avoid applications that are in reality, a 'second kick at the can'.
23

24 This Court has inherent jurisdiction to determine the issues in this matter and to determine
25 whether there is a good reason to adduce this new evidence. While this is an unusual
26 power, in this case, it is our submission, these are exceptional circumstances that require
27 this Court to exercise its inherent jurisdiction to grant this application.
28

29 THE COURT: Ms. Johnson --

30
31 MS. JOHNSON: Alberta suggests --

32
33 THE COURT: (INDISCERNIBLE)

34
35 MS. JOHNSON: Yes, Ma'am.

36
37 THE COURT: You've gone through the case law with respect to
38 fresh evidence and thank you for that. How could the applicant satisfy the condition that
39 the evidence could not have been obtained with reasonable diligence? I'm talking about
40 the articles that were hyperlinked to the memo.
41

1 MS. JOHNSON:

2 Our submission with respect to that is, it's the
3 context with which we attempted at the cross-examination to put those questions to Dr.
4 Hinshaw. Give me one moment, My Lady. When questions were provided -- or, asked of
5 Dr. Hinshaw, they were rejected repeatedly by respondents' counsel and the issue was
6 attempted to be canvassed with her. The other thing that is concerning to us is that those
7 documents were not even in her mind or provided to Cabinet when she was making the
8 orders in this case. Her evidence is there was no -- they -- they did a review of everything
9 at that time, the scientific advisory group did, and there was no evidence. So if that's her
10 evidence, then she's not providing that to Cabinet as well, which goes to all of her orders.

11 With respect to Alberta's assertion that evidence cannot be admitted because there is no
12 decision yet, pursuant to the purpose and intentions of the *Rules of Court*, the court process
13 must be done in a timely fashion and cost-effective way, without drawing out the litigation
14 process. Taken to its logical conclusion, Alberta's assertion would have the applicants sit
15 on this information and wait until your decision is rendered and then seek leave of the Court
16 to apply to have this evidence admitted, and this argument flies in the face of the purpose
17 of the *Rules of Court*.

18
19 Alberta suggests that if the AACRP is admitted, the memo and the emails should not be,
20 as the applicants did not exercise due diligence in their discovery. Alberta's conduct in
21 *C.M.* and this case are relevant with respect to that. In *C.M.*, Alberta did not produce a
22 proper certified record of proceedings in the first instance and, in fact, Justice Dunlop on
23 his own motion ordered Alberta to do it. The conduct of Alberta in *C.M.* required the
24 applicants to bring another interlocutory application to compel production of the records.
25 Alberta's conduct in *C.M.*, when taken in the context of this case, are concerning to the
26 applicants. When one compares the timelines and conduct, questions are raised. It reveals
27 Alberta waited until it was most advantageous in both cases to fulfill its legal obligation.
28 They didn't provide any documents in *C.M.* until Dr. Hinshaw had provided her oral
29 evidence here because then the evidence was done and -- and they delayed, even though
30 they were served in February with a notice to comply.

31
32 Further, the very first decision of Justice Dunlop in *C.M.* must be reviewed, and the
33 comments from Justice Dunlop in the rulings are very instructive. In the first case of *C.M.*,
34 at paragraph 19 to 21, Justice Dunlop notes that when Alberta filed their Form 9, in
35 compliance with rule 3.18, Dr. Hinshaw unilaterally removed paragraphs 1(b), 1(c), 1(d)
36 and 1(e). That is found at paragraph 21 of the first *C.M.* case. Justice Dunlop says, in
37 paragraph 22:

38
39 Nothing in the Rules authorizes parties to unilaterally modify
40 Forms 8 or 9. Furthermore, regardless of any modifications to
41 Form 9, the respondent remains obligated by r. 3.18 and r. 3.19 to

1 send to the Clerk the items ...

2
3 That were deleted.

4
5 Justice Dunlop further does not mince words, at paragraphs 28 and 29, about the disclosure
6 of Alberta. Justice Dunlop says, at paragraph 28 (sic):

7
8 That opening paragraph ...

9
10 Of Dr. Hinshaw's decision:

11
12 ... and those that immediately follow it, each of which starts with
13 the word "Whereas" can be seen as setting out Dr. Hinshaw's
14 reasons for the Decision, which is one of the things a respondent
15 is required to include in a Certified Record of Proceedings. Those
16 opening paragraphs also suggest that there would be a large
17 volume of material in Dr. Hinshaw's possession beyond a Power-
18 Point presentation and Cabinet minutes that would be evidence
19 and exhibits, or relevant to the Decision. Perhaps that material is
20 too voluminous or cumbersome to produce, but the Certified
21 Record of Proceedings does not say so. Instead, Dr. Hinshaw has
22 certified she has only three documents relevant to her Decision.
23 With respect, that is hard to believe.

24
25 It is extremely rare that the same (INDISCERNIBLE) with the same party, with the same
26 issues related to *Charter* breaches of citizens, would comment on the unbelievability of
27 Alberta's disclosure.

28
29 And in terms of the applicants' knowledge of the AACRP in this case, the applicants only
30 became aware of the memo email contained in the AACRP on July 13th, 2022, when it
31 was publicly made available. Once we were made aware, we used reasonable diligence to
32 obtain true copies of the documents with the hyperlinks active, and were unable to receive
33 true copies of the documents, even from the Court. We requested them on August 8th,
34 2022. They were -- the hyperlinks weren't working. We finally received them on August
35 15th from the Court. They weren't working, and we requested them of respondents' counsel
36 in this case and they provided them with active hyperlinks working.

37
38 As the documents in the AACRP are within the power and control of Alberta, only Alberta
39 knows if there are any other documents that were withheld from the applicants in this case,
40 based on the untested assertion of public interest immunity. Is the new evidence credible?
41 As far as I understand, this issue has not been contested. This evidence is credible. It was

1 -- it was disclosed pursuant to a court order by Justice Dunlop. Would the evidence have
2 been practically conclusive? With that -- respect to that point, while the evidence and
3 hearing in this proceeding have concluded, as far as the applicants are aware, the Court has
4 not come to a final ruling in this case. It is, therefore, difficult for us to assess how this
5 evidence would affect this Honourable Court's decision. Is the evidence admissible under
6 ordinary rules of evidence? The evidence in its present form is admissible.

7
8 The documents are not covered by Cabinet confidentiality, as they have -- that's already
9 the ruling of Justice Dunlop. The documents are not bound by any other limiting
10 evidentiary rules. None of this evidence is covered by Cabinet confidentiality because,
11 according to Justice Dunlop in the second *C.M.* case, they do not reveal any Cabinet
12 deliberations. Dr. Hinshaw is acting in accordance with her duties as Chief Medical Officer
13 of Health. Her evidence is not protected by the same considerations. Dr. Hinshaw is not
14 a politician and Dr. Hinshaw must discharge her duties ethically and professionally,
15 regardless of public disclosure. As in this case, in *C.M.*, Alberta argued public interest
16 immunity regarding Dr. Hinshaw's orders under the *Public Health Act*.

17
18 And Alberta did not produce an affidavit in that case or this case, and only submitted a
19 certificate signed by a Cabinet minister. In reviewing that certificate, Justice Dunlop
20 applied a Supreme Court decision of the Provincial Court Judges' Association of British
21 Columbia and in his ruling, his second ruling, at tab 6 of our materials, paragraph 5, he
22 states:

23
24 The Crown has the burden of proving that public interest immunity
25 applies and it should put in a detailed affidavit to support its claim:
26 Provincial Court Judges' at para 102. In this case the Crown did
27 not file an affidavit. The only evidence I have relevant to public
28 interest immunity is Minister Shandro's certificate and the
29 documents themselves. Minister Shandro has an obligation to "be
30 as helpful as possible in identifying the interest sought to be
31 protected".

32
33 Quoting from a case, *Carey*, at paragraph 40.

34
35 In *C.M.*, regarding Alberta's assertion of public interest immunity, they -- or, Justice
36 Dunlop, held at paragraph 10:

37
38 As to the materials prepared for Cabinet's consideration, there is
39 no evidence before me to support the conclusion that documents
40 provided by the Chief Medical Officer of Health to Cabinet must
41 be kept secret to ensure she will freely and honestly provide

1 information and recommendations in the future. On the contrary,
2 given her statutory powers and duties under the *Public Health Act*,
3 and her professional obligations as a physician, I would expect her
4 to be candid and complete, regardless of any potential future
5 public disclosure.

6
7 With respect to the collateral facts rule and the *Browne v. Dunn* rule, in our submission,
8 *Browne v. Dunn* does not apply. These were documents that Alberta had available to them.
9 At no time did we have these documents or sit on them or try to use them later on without
10 trying to put them to Dr. Hinshaw in cross-examination. We did question Dr. Hinshaw on
11 masking, so this is not a second kick at the can, splitting our case, reconsidering a judgment
12 call or trying out a new way of cross-examination. Dr. Hinshaw was asked questions and
13 gave answers. Those questions were repeatedly objected to (INDISCERNIBLE) by its
14 counsel and now, in light of what's been disclosed in the other court case, this has the
15 appearance of an attempt to hide relevant information from this Honourable Court. This is
16 not a case where the applicants did not attempt to canvass the issue. This is a case where
17 Dr. Hinshaw was lacking in candour with her answers. We did not have the context of the
18 memo which reveals that there were reams of evidence available to Alberta prior to the
19 imposition of the impugned orders. The hyperlinks to sources within the memo were
20 available to Alberta and were completely ignored by the scientific advisory group and Dr.
21 Hinshaw.

22
23 This contextual situation and evidence was not available to the applicants or this
24 Honourable Court either, at the time the objections were made, at the time the objections
25 were ruled upon or prior to this information being ordered released by Justice Dunlop. The
26 evidence that the applicants did not have prior to the order was contrary to Dr. Hinshaw's
27 evidence. By suggesting the applicants are taking a second kick at the can, splitting the
28 case, reconsidering a judgment call or testing out a new cross-examination technique is
29 simply the government attempting to blame the applicants for not discharging the
30 obligations under section 1 of the *Charter*. The onus and proof is on Alberta to show that
31 they used the least restrictive means necessary, and that onus and proof is always on the
32 government.

33
34 The rule of *Browne v. Dunn* was never intended to obviate the government of its obligations
35 under section 1 of the *Charter*, nor was the rule of *Browne v. Dunn* designed to shield the
36 government from a lack of candour with the Court, when prior to a decision being made,
37 evidence comes to light that unequivocally indicates that government witnesses or
38 government counsel have been less than candid with the Court. The rule of *Browne v.*
39 *Dunn* has no application here.

40
41 With respect to Dr. Hinshaw's professional obligations, the documents reveal that Dr.

1 Hinshaw imposed restrictions on Albertans, based on improper data and science. Further,
2 that the scientific advisory group that she stated she relied upon was not providing her the
3 information. Dr. Hinshaw's recommendations to Cabinet --

4
5 THE COURT: Excuse me, Ms. Johnson.

6
7 MS. JOHNSON: -- were three --

8
9 THE COURT: Where --

10
11 MS. JOHNSON: Yes, Ma'am.

12
13 THE COURT: Where is the evidence that SAG did not provide
14 Dr. Hinshaw with this information?

15
16 MS. JOHNSON: I would -- Madam Justice, I would take you back
17 to Dr. Hinshaw's own testimony, that she said that the scientific -- the scientific advisory
18 group reviewed all available evidence, and it was on April 5th, in a transcript of
19 proceedings. I'll direct you there.

20
21 THE COURT: Okay.

22
23 MS. JOHNSON: April 5th, the transcript of proceedings --

24
25 THE COURT: Yes. And I'm --

26
27 MS. JOHNSON: I have --

28
29 THE COURT: -- looking at --

30
31 MS. JOHNSON: -- it cited in -- page 88.

32
33 THE COURT: Yes.

34
35 MS. JOHNSON: And line -- if you start at line 31, that was the
36 beginning of the questioning from Mr. Rath.

37
38 THE COURT: I thought that probably this began at page 88,
39 lines 22 to 29.

40
41 MS. JOHNSON: Okay, My Lady.

1
2 THE COURT: Okay. And then Dr. Hinshaw clarified several
3 times that she did not recall specifically what SAG found, and she said that she would have
4 to look back at the reviews and the timeframe to say whether or not they provided a review
5 of evidence related to mental health. She said: (as read)

6
7 It's possible. Again, I simply don't recall. I'd have to go back and
8 check the list of evidence reviews to be able to answer that
9 question.

10
11 And then she again said, with respect to to the psychological harms caused to children as a
12 result of wearing masks, she said, "I would need to go back and read that review again to
13 be able to answer that question."

14
15 Okay. So and then you were going to read me something from the following page; is that
16 correct, or?

17
18 MS. JOHNSON: Yes, My Lady. So I'm referring to page 88, line
19 31.

20
21 THE COURT: Okay. Go ahead.

22
23 MS. JOHNSON: I'm just getting my bearings, My Lady. So when
24 Mr. Rath asked the question, I believe it's line 41: (as read)

25
26 Q Specifically, I'm talking about psychological harm and
27 psychiatric harm. Do you recall any specific information that
28 was considered in that regard?

29 A The scientific advisory group would have looked at all
30 published evidence related to harm, so that would have
31 included -- if there had been publications related to harms and
32 mental health, that would have been included in that review.

33
34 Q But, again, on that scientific advisory group, you had no
35 psychologists or psychiatrists, so you had no specialists in
36 those fields providing you input from that group; that's correct,
37 yes?

38 A That's correct. And at that time, that particular group is well
39 versed in the scientific method in reading evidence and their
40 scope of that particular masking harms review was to look at
41 any -- any published literature that documented harms from

1 wearing masks.

2
3 THE COURT: Yes. And I ask you to go back to page 89, lines
4 31 through 38. I'm not sure who was asking the question: (as read)

5
6 Q Do you recall any evidence reviews with regard to potential
7 psychological harm that occurred in elementary school
8 children that were being forced to wear masks?

9 A We did ask the scientific advisory group to review all available
10 evidence with respect to potential harms of maskings, and so
11 that review was done with all available published evidence at
12 that time and concluded that there, at that time, there was no
13 evidence regarding serious health outcomes or adverse health
14 outcomes from wearing masks.

15
16 So how does that support your submission that SAG wasn't doing its job?

17
18 MS. JOHNSON: Well, because, My Lady, we have no idea
19 whether that information was provided to Cabinet and what Cabinet was relying on. We
20 have no idea what Dr. Hinshaw told Cabinet with respect to recommendations of masking.
21 And what she has now said, in our -- in this hearing, in this court, is contrary to the AACRP,
22 when there was studies that were available and, in fact, the studies that were -- the studies
23 that were used to rescind the masking mandate in Alberta were studies that were available
24 during the relevant time and if -- and if the scientific advisory group -- if Dr. Hinshaw
25 testified in this court and she did not have any information from the scientific advisory
26 group, it's our submission they were not providing her the information or doing her -- their
27 job properly for -- to give her the proper advice.

28
29 THE COURT: I see that the answer is that they had reviewed all
30 of the available published evidence at that time and --

31
32 MS. JOHNSON: Yes.

33
34 THE COURT: -- came to the conclusion that there was no
35 evidence regarding serious health outcomes or adverse health outcomes from wearing
36 masks. So, you know, the SAG, of course has --

37
38 MS. JOHNSON: But, My Lady --

39
40 THE COURT: -- an obligation, you know, yes, you're right, the
41 SAG had a duty to collect scientific information. I can't say that it had a duty to accept all

1 scientific information as being equally credible or --

2
3 MS. JOHNSON: Okay.

4
5 THE COURT: -- without flaws. So all she is saying there is
6 there was a conclusion that there was no evidence regarding serious health outcomes or
7 adverse health outcomes from wearing masks.

8
9 MS. JOHNSON: My Lady, I would submit, in that case, and that's
10 completely contradictory to what happened in the *C.M.* case, because the hyperlinks in the
11 memo and the email in the AACRP are linked to studies that were (INDISCERNIBLE)
12 orders in this case. Those studies are there, so they're using those studies to make the
13 decision in February to rescind masking. So I submit it is relevant and it does contradict
14 what Dr. Hinshaw believed the scientific advisory group was providing her information
15 on.

16
17 THE COURT: Well, you're talking about a different timeframe,
18 are you not?

19
20 MR. RATH: No.

21
22 MS. JOHNSON: No, My Lady. It's --

23
24 THE COURT: A different timeframe and a different directive or
25 order, that is not one of the orders that we're concerned with in this *Ingram* matter. It's --

26
27 MS. JOHNSON: You're correct, My Lady. We're not --

28
29 THE COURT: Yeah.

30
31 MS. JOHNSON: We are not challenging CMOH order 08-2022.
32 That's not the issue. The issue is the information that in -- that the record of decision of
33 Dr. Hinshaw to rescind the masking mandate and to implement CMOH order 08-2022
34 relied on information that was available to the scientific advisory group at the time of the
35 impugned orders in this case.

36
37 THE COURT: Hm.

38
39 MS. JOHNSON: Yes. The affidavit evidence we filed is replete -
40 - in fact, the affidavit on August 24th has almost 100 studies that were prior to July 12th,
41 2021, and those are hyperlinked in the documents of the AACRP that they used in February

1 to rescind the masking mandate.

2
3 THE COURT: Okay.

4
5 MS. JOHNSON: Getting back to -- yeah. Getting back to the -- so
6 it is our submission the scientific advisory group was not reliable. In the respondent's
7 argument in this application, they state there are 6,000 new papers a month being produced.
8 To suggest that there's scientific evidence and information that's so voluminous that Dr.
9 Hinshaw could not possibly have discovered one single study on the harms of masking to
10 rely upon is an unacceptable excuse.

11
12 There's no reason why Dr. Hinshaw could not find time to review scientific evidence.
13 That's her job. At the very least, the scientific advisory group should be providing her with
14 abstracts or summaries of scientific information, especially when it's admitted that they are
15 breaching the *Charter* rights and freedoms of Albertans.

16
17 I would also hope that Dr. Hinshaw would consider looking at other studies on her own
18 with respect to masking. So the assertion by Alberta about the 6,000 studies published a
19 month being too onerous on them to discharge that obligation to review, it contradicts Dr.
20 Hinshaw's own evidence that the scientific advisory group reviewed all studies available
21 at that time and that -- she could have qualified her answer if that's the case, Alberta's
22 argument now is there's too many studies.

23
24 She could have qualified her answer and said, There's simply too much information for me
25 to possibly review it all, but I tried. Or she could have had the memo that she had already
26 been provided in -- in February -- had the memo in mind when she provided her testimony
27 her with the numerous hyperlinks to studies that were relevant to the time of these
28 impugned orders, and she could have testified that due to new evidence that she discovered
29 in February 2022, she has questions about the degree to which the issues of masking harms
30 and efficacy were properly canvassed by the scientific advisory group.

31
32 It's our submission that when it was politically expedient for Alberta to rescind masking
33 restrictions for Albertans, they were able to find the justification to support their decision
34 very quickly while utilizing data that predates the CMOH orders in this case. To further
35 demonstrate the conflict Alberta is in right now and the decisions at issue in this case, in
36 *C.M.*, they're arguing the exact opposite position as they are here.

37
38 With respect to the section 1 issues, before ruling in favour of section 1 in this case, My
39 Lady, it is our submission we need to know Dr. Hinshaw's recommendations to Cabinet,
40 every recommendation she made and presented to Cabinet regarding every CMOH order
41 she enacted, because central to the PowerPoint and the PICC minutes is the fact --

1 unequivocal fact -- Alberta did not choose the least restrictive means. They were provided
2 with three options. They choose -- they were provided releasing restrictions fast or going
3 a moderate and they chose to do it moderately.

4
5 THE COURT: So, Ms. Johnson?

6
7 MS. JOHNSON: And we know --

8
9 THE COURT: Ms. Johnson, with respect --

10
11 MS. JOHNSON: Yes.

12
13 THE COURT: -- to one matter that occurred months after the
14 orders that your clients are impugning, months later, the health officer proposed three
15 options to Cabinet. However, with respect to the impugned orders that are before this
16 Court, she answered that at no time had the government imposed options that were more
17 serious than what she had recommended.

18
19 That's the issue before this Court in terms of the constitutional challenge, the breach of
20 constitutional rights and whether or not they are saved by the reasonable clause. So you're
21 saying because she did it once months afterwards, she must have been lying about whether
22 or not she did it before. That's your position?

23
24 MS. JOHNSON: No. That's not my position, My Lady. I'm not -
25 - I'm not saying that. What I am saying is there is doubt at this point because we do not
26 have a record of the recommendations she provided to Cabinet. We do not know what she
27 told Cabinet. I -- I would submit that Dr. Hinshaw -- I mean, I understand what your --
28 your concern is, but I -- I'm not saying that Dr. Hinshaw is lying. All I'm saying is we do
29 not know.

30
31 All of those questions were objected to based on public interest immunity, and the fact of
32 the matter is Dr. Hinshaw's not a politician. She is not a member of Cabinet. Her
33 recommendations to Cabinet do not reveal Cabinet deliberations and in this case, the
34 balance -- when you balance that out, the -- it -- it weighs in favour of releasing that
35 information. It doesn't even come under Cabinet interest immunity. So we need to know.

36
37 What's revealing in the documents in the Dunlop case is now we do know at least once the
38 Alberta government did choose a -- they did not choose the least restrictive means. They
39 were provided that opinion by the Chief Medical Officer of Health and she -- and then she
40 implemented the order that they told her to do. And that's a central issue to this case as
41 well, is who's making these orders? How are they made? There's a lot of lack of

1 transparency for the applicants in this case to actually determine -- I mean, if -- if that is
2 the evidence of Dr. Hinshaw that she never -- that they never chose a least restrictive, then
3 it should not be an issue that they could provide those recommendations.
4

5 We don't have a complete record and that's the -- that's the heart of this problem. We
6 don't have a complete record. And when we think of the intention of the rules of court,
7 My Lady, under rule 1.2, you need to have a full, complete factual record of this proceeding
8 so that the real issues can be decided in a -- in a cost-effective manner.
9

10 The other problem with Dr. Hinshaw's questions is her -- her in-camera questioning is it
11 makes it sounds like invariably every single time that she ever provided information to
12 Cabinet it was a single recommendation, one single recommendation, and invariably
13 Cabinet always followed that recommendation. Well, now we have evidence that didn't
14 happen in this case, in the *C.M.* case. And when Cabinet chose the middle option in *C.M.*,
15 they are not choosing the least restrictive means.
16

17 So we submit we need to afforded the -- the opportunity to cross-examine Dr. Hinshaw on
18 her recommendations for every CMOH order in this case and see if she presented them in
19 a different format than she did with the PowerPoint and the PICC -- the PICC minutes.
20 Further, as a medical professional, Dr. Hinshaw would not have or should not have
21 presented any recommendations to Cabinet she disagreed with. Therefore, to the extent to
22 which Cabinet did not select the least restrictive means every single time in an impugned
23 order in this case goes straight to the heart of the section 1 analysis that needs to be
24 conducted.
25

26 Dr. Hinshaw's testimony, we've covered this, at that time, when she says at that time she
27 was not aware of the numerous studies that were published that the government relied on
28 in February. And the context, as we've said, of those scientific studies is important because
29 Alberta submits that the memo is not reliable. Yet, it's the memo that the government used
30 in February to rescind restrictions that limited the rights and freedoms of Albertans.
31

32 Also, when Dr. Hinshaw testified in this case that there was no evidence of harms, the
33 Alberta government itself was able to come up with the harms in that memo to Premier
34 Kenney. So there is -- we submit there is incontrovertible evidence that the scientific
35 advisory group was not performing in the manner in which Dr. Hinshaw assumed they
36 were performing.
37

38 Further, to the extent to which the PICC itself had to perform its own masking research
39 demonstrates the degree to which Dr. Hinshaw and the scientific advisory group have failed
40 Albertans. And all of this calls into question the evidence that's been submitted and we
41 submit it behooves the Court to let Dr. Hinshaw come back in -- in all fairness to her to

1 answer questions of the issues that have arisen out of the AACRP and the Dunlop case.
2 And those are my submissions, My Lady.

3
4 THE COURT: Thank you. Mr. Rath?

5
6 **Submissions by Mr. Rath**

7
8 MR. RATH: Madam justice, on behalf -- on behalf of Ms.
9 Ingram, we adopt all of the submissions that have been made by my learned and very
10 capable friend Ms. Johnson. I just have couple very quick points to add to her submissions
11 that will respond to some of the questions that you're asking, My Lady.

12
13 And specifically, what I'd like to refer to is the context of this case and the context of Dr.
14 Hinshaw's testimony to this Court. Surprisingly to us at least, when Dr. -- Dr. Hinshaw
15 testified that she was not the actual decision maker in this case, that Cabinet was the actual
16 decision maker and that she was merely providing the recommendations -- so the real issue
17 here and what's been brought to light by the disclosure in the Dunlop case is the fact that
18 we do not know whether this information that Dr. Hinshaw was testifying to at -- you know,
19 that may or may not have been looked at by the scientific advisory group ever made its
20 way to Cabinet.

21
22 So we now have a situation as a result of the *C.M.* disclosures and Dr. Hinshaw's testimony
23 in this case where apparently Dr. Hinshaw abdicated -- not -- not fettered or delegated --
24 abdicated her statutory responsibility under section 29 to Cabinet without the applicants
25 having access to a complete record to know whether or not in conjunction of that abdication
26 there was a responsibility. There was also an abdication of the responsibility to pass on
27 whatever information the scientific advisory group or Dr. Hinshaw had in their possession
28 prior to the orders made in this case with regard to the harms of masking on children and
29 adults in this province.

30
31 And quite frankly, from what we're seeing in the *C.M.* case and from the testimony in this
32 case, from our perspective, the record indicates that it is not the least bit clear that Cabinet
33 obtained any information from the scientific advisory group or Dr. Hinshaw with regard to
34 the harms of masking or any other MPI because the government of Alberta has not provided
35 a complete record in this case as it was obligated to do under the rules of court. So those
36 are my submissions, subject to -- to any reply that I'll have to my friend. So I just wanted
37 to provide that context to the Court. Thank you.

38
39 THE COURT: Thank you. Okay. Thank you. Mr. Parker, do
40 you want to take a short break before you start or are you okay?

41

1 MR. PARKER: I'm good to go, Justice Romaine, unless you
2 would like to break.

3
4 THE COURT: No. No. Let's go then. Okay.

5
6 **Submissions by Mr. Parker**

7
8 MR. PARKER: Thank you. Justice Romaine, this application
9 makes very serious allegations based on one piece of the transcript, seven lines from the
10 transcript that my friend has reviewed a couple of times this morning. It deals with a
11 collateral issue that's set out at paragraph 26 of our brief in this matter and that evidence is
12 taken out of context, as we've argued in our brief.

13
14 For example, here are some of the very serious allegations that my friends' clients have
15 made. Paragraph 80 of their brief: "Alberta is hiding documents." Paragraph 91: (as read)

16
17 Dr. Hinshaw intentionally tried to psychologically manipulate
18 Albertans.

19
20 Paragraph 104: (as read)

21
22 Dr. Hinshaw was not candid with the Court and was evasive and
23 manipulating the information she provided.

24
25 Paragraph 105: (as read)

26
27 Dr. Hinshaw's recommendations were not for a bona fides medical
28 purpose.

29
30 Paragraph 113: (as read)

31
32 Dr. Hinshaw's answers to the three questions of this Court were
33 completely lacking in candour and demonstrably false.

34
35 Paragraph 124: "Dr. Hinshaw's answers were not truthful." Correspond that, just as an
36 aside, with Ms. Johnson's response to a question of yours today that she's not saying --
37 they're not saying Dr. Hinshaw was lying. Paragraph 125: (as read)

38
39 Dr. Hinshaw's responses in camera raise a concern on a prima
40 facie basis that she has committed perjury.

41

1 The respondents Her Majesty the Queen in Right of Alberta and the Chief Medical Officer
2 of Health ask you to reject these baseless and inflammatory allegations and deny this
3 application in total.
4

5 I'm going to go to some context now. This is important. First of all, as this Court has said
6 more than once, including in its decision on public interest immunity at paragraph 28 --
7 that's 2022 ABQB 311 -- this is not a public inquiry. As argued in our closing argument,
8 what it is is an application brought by an originating application that was amended. It was
9 brought by five applicants, none of whom are children.
10

11 The five applicants are two churches, Northside Baptist Church, I'll refer to as NBC, and
12 Heights Baptist Church, I'll refer to as HBC. These are separate legal entities incorporated
13 under the *Societies Act* as religious societies. The other three applicants are individuals.
14 Torry Tanner, who alleges amongst other things that her 2(a) rights, freedom of religion
15 and conscience, were violated because she was prohibited from having her children and
16 extended family over to her house to celebrate over Christmas. Erin Blacklaws, who
17 alleges amongst other things that her section 2(c) and (d), association and assembly rights,
18 were infringed because she was prevented from seeing her father while he was in the
19 hospital with COVID. And Rebecca Ingram, a gym owner, who alleges amongst other
20 things that her section 2(a), freedom of religion rights, were violated because she had to
21 cease regular attendance at her church. Those are all set out in detail in our pretrial factum.
22

23 Further context, the matters in issue. As we say in paragraph 8 of our closing argument
24 after trial, the matters in issue are defined by the pleadings, the amended originating
25 application and the particulars mandated under section 24(3) of the *Judicature Act*.
26 Masking of children in schools is not an issue in this matter. There are no applicant
27 children. There is no evidence on masking in children other than in paragraph 7 of Ms.
28 Ingram's first affidavit, but Ms. Ingram does not challenge masking in schools. Again, see
29 the amended originating application and the particulars. What she attempts to challenge,
30 and what we've argued throughout she has no standing to do, is assert that the school
31 closures were discriminatory and violations of three of her children's *Charter* rights.
32

33 The issue raised here, the key impugned evidence -- and we've heard it several times today
34 and we set it out at paragraph 28 of our brief in this matter. That's the evidence from the
35 transcript of April 5th at page 88, lines 31 to 38. And again, that evidence, the question
36 related to harm -- potential psychological harm to elementary school children that were
37 being forced to wear masks. It's not an issue in this matter. This is the very definition of
38 a collateral fact.
39

40 Further context and in response to paragraphs 35 to 38 of the applicants' reply brief that
41 we received at the end of the day Wednesday, the only supplementary particulars with

1 respect to masking as a violation of HBC and NBC is at paragraph 13 and 16 of the
2 supplementary particulars. The applicants argue at paragraphs 35 to 38 of their reply brief
3 that masking is relevant to the applicants' case. They say that the applicants HBC and
4 NBC are a congregation of Christians who comprise Albertans of all ages, including school
5 aged children.

6
7 They say it is the uncontested evidence of the applicants HBC and NBC that masking
8 violates their section 2(a) *Charter* rights and then they say that -- at paragraph 38, that the
9 respondents have conceded that mandatory masking orders are a breach of their
10 congregants' *Charter* rights. That is incorrect. That is not the concession that is being
11 made. Again, HBC and NBC are separate legal entities. They are societies registered
12 under the *Societies Act*.

13
14 What Alberta has conceded is that the societies, HBC and NBC, had standing to assert that
15 their religious 2(a) rights were violated. This was mentioned throughout the respondents'
16 pretrial factum. For example, I will go to paragraph 13 and 14 of the respondents' pretrial
17 factum. Paragraph 13: (as read)

18
19 The applicants Torry Tanner, Erin Blacklaws and Rebecca Ingram
20 all assert an infringement of their section 2(a) religious freedom
21 rights. The applicants Heights Baptist Church and North Baptist
22 Church, collectively the applicant churches, also assert
23 infringements of their section 2(a) *Charter* rights.

24
25 Paragraph 14: (as read)

26
27 Although no jurisprudence exists expressly recognizing the rights
28 of corporations or non-natural persons to hold section 2(a) *Charter*
29 rights, Alberta has not challenged the standing of the applicant
30 churches to assert infringement of section 2(a) *Charter*. For the
31 purposes of this action, Alberta has conceded that the applicant
32 churches may assert section 2(a) *Charter* infringements.

33
34 Similarly, paragraphs 22 to 24 of the pretrial factum refer to the churches' 2(a) *Charter*
35 rights. Also see paragraph 58 in respect to section 2(c) and 2(d) rights and HBC not having
36 standing to assert infringements on behalf of its congregants. Similarly, see paragraphs
37 139 and 140 of the pretrial factum.

38
39 This position in Alberta's pretrial factum filed almost a year ago now would have come or
40 should have come as no surprise to the applicants as the respondents had previously stated
41 in its brief on standing filed May 7th, 2021, at paragraph 10: "For the purpose of this" --

1 excuse me: (as read)

2
3 For the purposes of this action, Alberta is not contesting the
4 standing of the applicant churches to assert section 2(a) *Charter*
5 violations.

6
7 That's the concession. However, if the applicants had wanted to assert -- assert violations
8 of individual congregant's rights, then they should have named congregants as applicants.
9 And if they wanted to assert violation of children's rights, vis-à-vis masking and freedom
10 of religion, then applicant children or an applicant child should exist, but they do not.

11
12 To summarize on this point, the actual issue in the impugned evidence of Dr. Hinshaw is
13 to do with masking harms of children in grade school. Just to be clear, that's grade 4 and
14 up, because Alberta never had masking for kindergarten through grade 3, and again, there
15 are no applicants or claimants making such a claim. There are no particulars in relation to
16 masking of children in schools and there's no evidence on that other than as mentioned in
17 paragraph 7 of Ms. Ingram's first affidavit.

18
19 The very recent attempt in the reply brief filed Wednesday of HBC and NBC to suggest
20 that they have -- that this is an issue because there are congregant -- members of their
21 congregation who are asserting these rights is incorrect for the reasons I've just reviewed,
22 and their allegation that Alberta conceded that there was a violation of the congregants'
23 rights is entirely wrong. And this was clearly done to try to get around the collateral fact
24 rule that has direct application to this matter.

25
26 Finally on this point, even if you -- you were to accept that the churches can assert their
27 congregants' rights re: masking without the need for any applicant congregants and the
28 sufficient particulars were provided pursuant to the *Judicature Act* 24(3) on this point, this
29 would still require evidence of an alleged infringement. And we raised this last year in the
30 respondents' reply brief in support of the application to strike affidavits that was filed on
31 May 28th, 2021.

32
33 This is in footnote 6 of that brief to the well-known Supreme Court decision of *Mackay v.*
34 *Manitoba*, 1989 2 SCR 357, at pages 361 to 362. The well-known paragraph reads as
35 follows:

36
37 *Charter* decisions should not and must not be made in a factual
38 vacuum. To attempt to do so would trivialize the *Charter* and
39 inevitably result in ill-considered opinions. The presentation of
40 facts is not, as stated by the respondent, a mere technicality; rather,
41 it is essential to a proper consideration of *Charter* issues. A

1 respondent cannot, by simply consenting to dispense with the
2 factual background, require or expect a court to deal with an issue
3 such as this in a factual void. *Charter* decisions cannot be based
4 upon the unsupported hypotheses of enthusiastic counsel.
5

6 The answer is that the wrongly impugned evidence of Dr. Hinshaw is on a collateral issue.
7 This is discussed at paragraph 57 and 58 of the respondents' brief in this application. It is
8 not relevant to any issue. It is solely asked to impeach the credibility. Her answer therefore
9 -- or the answer given is final unless there is a common law or statutory exception to the
10 collateral fact rule, and there is none. And that should be enough to end this application.
11

12 However, I want to go on and talk about the time period, an issue that was raised in some
13 of your questions to counsel for the applicants today. The time period in Ingram relates to
14 the orders made, specific orders made, for which particulars were provided in the second
15 and third waves.
16

17 Now, I know this was already covered in your -- what I have recalled in the closing
18 argument in this matter, the scope of hearing decision, that is 2022 ABQB 164, when the
19 applicants' attempt to extend the challenge beyond the third wave was rejected. However,
20 in preparing for this matter, I found an email that I couldn't find when we were arguing
21 this issue at trial, and that email was sent to my friends, including Mr. Grey and Mr. Rath
22 and their juniors at that time, Jocelyn Gerke and Martin Rejman. It was dated May 27th,
23 2021, 4 PM, and it said, in part: (as read)
24

25 Good -- good afternoon, counsel. We will be appearing before
26 Justice Kirker on June 1 to address the remaining disputed
27 affidavit evidence and we believe we should also have time on
28 June 1 to address with Justice Kirker any housekeeping matters the
29 parties wish to raise. Accordingly, the respondents intend to raise
30 the following for Justice Kirker's consideration and direction, one,
31 direction on the time period for which the respondents must justify
32 any alleged breaches. Given the filing deadline of July 12th for
33 rebuttal evidence, the respondents intend to lead evidence
34 justifying any breaches as of May 31, 2021.
35

36 I believe, and my apologies because I did not have it at trial, I believe that there is a
37 transcript from the June 1 appearance before Justice Kirker and, as of yesterday, we did
38 request it and I understand it is in the process of being prepared. I thought when we argued
39 this issue at trial that I had all the case management transcripts, but I expect I will receive
40 that Monday and I expect it may shine more light on this issue because it was my
41 recollection that this issue was raised before Justice Kirker. We will see what, if any, my

1 friends said about the proposed timeline of cutting off at May 31, 2021 and we will see
2 what Justice Kirker said about it. I appreciate that I don't have that to provide you today
3 but, given the ongoing consideration that you are giving from the trial, I would ask that we
4 be able to provide that transcript to you and to counsel should it reveal further information
5 on the time period specifically in question.
6

7 The context, of course, is important relevant to the time period because, as we say, whether
8 we cut off the time period in Ingram at the end of May or whether it extended into June
9 and went to the end of June, that's a very different time period and, therefore, a very
10 different context than that which was considered in *C.M.* in February of this year.
11

12 And just on that context, I refer you to, I won't take you there but I will give you the
13 references to, Dr. Hinshaw's affidavit filed July 12th, 2021 in this matter, paragraphs 156
14 to 160. She talks about Alberta's present situation and the plan to open up at the end of
15 June of 2021 and focuses on the steps that had to be overcome, which involve number of
16 vaccinations and whether hospitalizations were decreasing. Also see paragraph 2020 --
17 sorry, 224 of Dr. Hinshaw's affidavit on that point. Again, the point is a very different
18 context than was being considered in February of this year relative to vaccinations and
19 relative to hospitalizations, among other things.
20

21 Further on the context and the time period, I just want to specifically talk about the three
22 questions that you asked Dr. Hinshaw in-camera, and I had clarified on April 7th, at page
23 22 of the transcript, lines 32 to 37, and I said this, beginning at line 34: (as read)
24

25 Just two questions, really, which were, you used the phrase "ever"
26 and "anytime" in the questions, it would be related to the impugned
27 orders?
28

29 You answered "Yes". I believe in the reply argument of the applicants, they are -- they're
30 seemingly suggesting, Well, how did Dr. Hinshaw know that your questions to her were
31 restricted to the time period of the impugned orders? Well, Dr. Hinshaw's a party in this
32 matter, she's the chief medical officer of health, I think it was clear from the evidence that
33 she gave as set out in the transcript that she knew full well the relevant time period in
34 Ingram. There's nothing to suggest that she misled you in her answers, it's baseless and it's
35 offensive to suggest otherwise, and we ask you to say so.
36

37 Further context, section 1 and minimal impairment. My friends say repeatedly in their
38 argument, in this application, and again today, Ms. Johnson, that the -- that there needs to
39 be proof that Alberta chose the least restrictive measures, they underlined that in their
40 application materials. They continue to misstate the law on minimal impairment. We
41 reviewed the law on minimal impairment in our pretrial brief at paragraphs 265 through to

1 271 and, just in brief, paragraph 265: (as read)

2
3 The law is that the limitations must merely fall within a range of
4 reasonable options to achieve the pressing and substantial
5 objective.

6
7 Paragraph 266: (as read)

8
9 The Supreme Court has recognized there are certain types of
10 decisions where there may be no obviously correct or obviously
11 wrong solution, but a range of options, each with its advantages
12 and disadvantages. Governments act as they think proper within
13 a range of reasonable alternatives. In those cases, governments
14 have a large margin of appreciation within which to make choices.
15 It is not a standard of perfection but, rather, a standard that requires
16 consideration of the context and the available options. In cases
17 involving scientific evidence, that delineation becomes even less
18 clear. If the legislature has made a reasonable assessment as to
19 where the line is most properly drawn, especially if that
20 assessment involves weighing conflicting scientific evidence and
21 allocating scarce resources on this basis, it is not for the Court to
22 second guess. That would only be to substitute one estimate for
23 another.

24
25 Paragraph 267: (as read)

26
27 The Supreme Court noted, This Court will not, in the name of
28 minimal impairment, take a restrictive approach to social science
29 evidence and require legislatures to choose the least ambitious
30 means to protect vulnerable groups. There must nevertheless be a
31 sound evidentiary basis for the government's decision. We say, as
32 we've said in our closing argument, there is a sound evidentiary
33 basis for the restrictions that are impugned in this matter.

34
35 And, finally, from our pretrial factum, paragraph 268: (as read)

36
37 When the legislature is asked to mediate between claims of
38 competing groups, it necessarily is required to strike a balance
39 without the benefit of absolute certainty concerning how that
40 balance is best struck. Vulnerable groups will claim the need for
41 protection by the government, whereas other groups and

1 individuals will assert the government should not intrude. And, of
2 course, what is a reasonable range of alternatives may, in fact,
3 change over time. It may change from, for example, the fall of
4 2020, the spring of 2021, or the late winter of 2022. There's no
5 inconsistency as alleged by applicants between Alberta's position
6 in this matter, Ingram, and in the *C.M.* matter. In both, it has been
7 asserted that voluntary measures were used until no longer
8 sufficient and only at that time were mandatory restrictions
9 imposed.

10
11 Finally, on minimal impairment in the law, we also set out the law at paragraphs 345 to
12 348 of our closing argument and then I also recommend to you the review by Chief Justice
13 Joyal in the *Gateway* decision, 2021 MBQB 218, at paragraph 298 to 317 on minimal
14 impairment.

15
16 I'm going to move on to the collateral fact rule and the allegation of failure to disclose.
17 This is covered at paragraphs 51 to 54 of our application in this -- sorry, our brief in this
18 matter under the heading, Not a Statement of Claim. I -- I just wanted to make one
19 correction, however, to paragraph 45 of our brief. We have erroneously referred to, at the
20 beginning of paragraph 45, the August 6th, 2021 oral hearing order, this is under part (g),
21 oral hearing order evidentiary procedures, and we said the oral hearing order set deadlines
22 for the exchange of evidence by the parties in this action. That was incorrect. It was the
23 procedural order dated -- filed March 16th, 2021 that should have been referred to. That
24 was the order that set deadlines for the exchange of evidence in the Ingram matter by the
25 parties.

26
27 And that's important because -- or -- or it -- it might be important if this were not resolved
28 completely as we say it is by application of the collateral fact rule, but my friend has -- has
29 raised today throughout hyperlinks in various documents taking -- taking you to studies
30 that predate July of 2021 and, of course, this leads to the response, well, if they thought
31 that these studies were relevant to a matter in issue, then they could have been filed as part
32 of the 2,300 page primary report of Dr. Bhattacharya that was filed in January of 2021.
33 Again, Alberta, pursuant to the procedural order, filed its rebuttal evidence on July 12th,
34 2021 and again surrebuttal evidence pursuant to this order was filed on July 30th, 2021 by
35 the applicants, including another lengthy report from Dr. Bhattacharya. If the applicants
36 actually thought these studies on masking harms to children in schools was an issue, then
37 one would have expected them to file as part of the primary report, or at least the surrebuttal
38 report, argument -- or evidence, rather, and the studies. They did not and we suggest to
39 you that's because masking harms to children in grade school is not a relevant issue in
40 Ingram.

41

1 This, again, as I say, is an important point because, as stated at paragraph 54(a) of the
2 applicants' argument in this matter, in reference to the reasons of Justice Cote in *Alberta v.*
3 *B.M.*, that's at footnote 54 of my friends' argument, and that's 2009 ABCA 258, in respect
4 to fresh evidence, Justice Cote says:

5
6 Could the evidence have been obtained earlier if due diligence had
7 been observed? That the evidence was available to the applicant
8 but not looked for because it was hard to access and because other
9 matters pressed, is fatal.

10
11 And that answer applies to any studies that the applicants say Alberta should have put in
12 on harms of school masking. It also applies to the SAG reviews that are publicly available
13 online, but have not been put into evidence by the applicants.

14
15 I'm going to move on to some other issues now that I say it's not necessary for this Court
16 to address, given the clearly collateral issue that has been raised as to harms of masking of
17 children in grade school.

18
19 Sorry, I'm -- I'm just correcting -- I referred to footnote 54 of their brief and it was paragraph
20 54 that I should have been referring to when I talked about *Alberta v. B.M.*

21
22 Again, moving on to some points that I want to some points that I want to cover, as earlier
23 noted, given the very serious allegation made against the respondents and, in particular,
24 against Dr. Hinshaw, I will now review paragraphs 22 to 30 of the respondents' brief and
25 the allegation of -- sorry, and the subject of mischaracterization of Dr. Hinshaw's testimony
26 by the applicants beginning at paragraph 22.

27
28 The applicants argue at paragraph 15 that Dr. Hinshaw testified there was no evidence
29 regarding serious health outcomes or adverse outcomes from wearing a mask. That quote
30 misrepresents her testimony. On the transcript, both before and after the section quoted at
31 paragraph 15, Dr. Hinshaw clarified several times that she did not recall specifically what
32 SAG had found.

33
34 Paragraph 24 our brief, we set out a portion of the transcript where Mr. Rath had asked Dr.
35 Hinshaw to review materials overnight. I interjected and said that she would not do so
36 unless directed by you, Justice Romaine. You said to Mr. Rath: (as read)

37
38 This is not a questioning, this is a cross-examination. On what
39 basis do you wish me to direct Dr. Hinshaw to go back and look at
40 documents?
41

1 Mr. Rath responded, "Well, that's fair enough, My Lady. Withdrawn." And that's from
2 the April 5th transcript, page 89, lines 14 to 29.

3
4 Paragraph 25 of our brief, it is clear in the context of this section of questioning on this
5 particular point that, although Dr. Hinshaw did not recall at that time any specific sections
6 on psychological harms, she clarified that, in order to answer these questions, she would
7 have to go back and check the list of evidence reviews. She most certainly did not, as the
8 applicants imply, definitively say that there was no evidence.

9
10 As we say at paragraph 26, the key line that the applicants take issue with is from the
11 transcript on April 5th, page 88, lines 31 to 38, and, again, that deals with evidence on
12 potential psychological harms to elementary school children from being forced to wear
13 masks.

14
15 As we say at paragraph 27: (as read)

16
17 In addition to the context of Dr. Hinshaw needed to review the
18 evidence to properly answer the questions, it is clear there were
19 two additional qualifiers which the applicants have not
20 acknowledged. First, it was the Scientific Advisory Group who
21 concluded that there was no evidence regarding serious or adverse
22 health outcomes, and, second, it was "at this time."

23
24 Summarizing this point at paragraph 28 of our argument, nothing in the documents
25 disclosed in the AACRP and *C.M.* on July 12th suggest any impropriety on the part of Dr.
26 Hinshaw in her testimony in response to the line of questioning, which we summarize as
27 follows: (as read)

28
29 Dr. Hinshaw did not recall the specific evidence reviews done at
30 the time in relation to mental health harms of masking in schools.
31 She would have to go back and check the reviews to answer this
32 question. SAG was asked to review all the evidence with respect
33 to potential harms of masking. SAG concluded at that time there
34 was no evidence regarding serious health outcomes or adverse
35 health outcomes from wearing a mask. SAG was asked to look at
36 all the evidence and would have looked at evidence relating to
37 harm, including mental health, but Dr. Hinshaw would have to go
38 back and read the review again to be able to answer the question
39 of whether there was anything in the reviews on this. Nothing in
40 the AACRP impugns Dr. Hinshaw's credibility and nothing
41 suggests suggesting the documents would be proactively

1 conclusive in reversing the outcome of a judgment order that has
2 not yet even been made exists in those materials.

3
4 As we say at paragraph 30 of the argument: (as read)

5
6 The premier's staff memo, or the memo, as has been referred to,
7 does not disclose any serious contradiction with Dr. Hinshaw's
8 testimony in this matter.

9
10 Again, that memo is from February 2022. It was cc'd to Dr. Hinshaw, the memo is dated
11 February 7th, 2022, and the PICC meeting was the next day, February 8th, 2022: (as read)

12
13 There's nothing rising to serious health outcomes or adverse --
14 serious adverse health outcomes. There's minor redness, itching,
15 and there's muffled communication issues.

16
17 The applicants also seriously mischaracterize the AACRP documents. This is argued at
18 paragraphs 31 to 35 of our brief in this matter. Paragraph 32 states: (as read)

19
20 The applicants state that in the document, Dr. Hinshaw advised
21 Cabinet that masks are harmful and not efficacious.

22
23 This statement is not true. Nowhere in the AACRP documents does Dr. Hinshaw advise
24 Cabinet that masks are either harmful or not efficacious. Dr. Hinshaw consistently
25 reiterated throughout her testimony that masks are helpful in reducing the spread of
26 COVID-19 and nowhere in the AACRP documents does she state otherwise.

27
28 Paragraph 33: (as read)

29
30 Dr. Hinshaw also consistently stated that CMOH orders employed
31 the least restrictive means necessary and used voluntary measures
32 where possible and only resorted to mandatory measures where
33 voluntary were not sufficient. This is completely consistent with
34 the decision to make school masking voluntary, rather than
35 mandatory, in February 2022. It is not as alleged, the opposite
36 position, but it is, in fact, applying the exact same approach in a
37 different factual context, as discussed earlier.

38
39 Paragraph 34 of our brief: (as read)

40
41 The applicants' statement that the documents show that mask

1 wearing was not effective in reducing in school transmission is not
2 an accurate summary of the AACRP documents. The
3 (INDISCERNIBLE) email, for example, concludes in its summary
4 that masking in schools can contribute to reducing transmission.
5

6 The applicants have also made misrepresentations in their reply received at the end of the
7 day Wednesday. I'm going to go through a few of those now. Paragraph 12 of the
8 applicants' reply says that, "Alberta argues in *C.M.* that masks are not effective as an NPI
9 and masks are harmful." These are not true. As noted at paragraph 42 of the *C.M.* written
10 argument filed August 12th, 2022: (as read)

11
12 Alberta is not disputing that masks can be an effective tool against
13 the spread of COVID-19. Nobody is denying this fact, a fact
14 Alberta has advanced in other court actions arising from COVID-
15 19.
16

17 From paragraph 43 of Alberta's argument filed August 12th, 2022 in *C.M.*: (as read)

18
19 This application relates solely and entirely to the removal of mask
20 mandates. There is not one shred of evidence suggesting Alberta
21 discourage the use of masks by school-age children. The order
22 simply removed the requirement of masking in schools for
23 children and, in conjunction with the guidance letter, allowed
24 students guided by their parents to make the decision as to whether
25 or not to wear a mask themselves, returning Alberta to the pre-
26 pandemic status quo on this specific issue, while continuing other
27 protective measures. Nowhere in *C.M.* does Alberta argue that
28 masks are harmful or that masks are ineffective. Paragraph 12 of
29 the applicants' reply in this matter says Alberta relies heavily on
30 the memo to justify rescinding the mask mandate in *C.M.*
31 However, nowhere in the AACRP or *C.M.* arguments does Alberta
32 rely heavily on the memo. The memo was produced in the
33 AACRP because it is one of the documents that was before
34 Cabinet in relation to this issue, however, there is no evidence that
35 this memo played a significant role in the decision making process
36 or that it was heavily relied upon to justify the decision.
37

38 I'm just going to -- before I carry on with these mischaracterizations of what's being argued
39 by Alberta in *C.M.*, I just note a point here that there is no record of proceedings produced
40 in this matter and I understand in *C.M.* it's a live issue still whether the decision in question
41 is an administrative decision or whether, in fact, the orders are executive legislation. The

1 same issue comes through in the amended originating application in Ingram. The
2 applicants have argued both, that is that it's an administrative decision, alternatively, it is
3 akin to executive legislation. And I think it's fair to say that -- that what has been a settled
4 approach in Ingram is it's being treated by all parties quite correctly as executive legislation
5 for the reasons argued in our closing argument and, indeed, was accepted by Justice Kirker
6 in her decisions on certain pretrial matters as such, and so it's not an administrative decision
7 and there's no record of proceedings.

8
9 Moving back to mischaracterization in the applicants' reply, paragraph 13: (as read)

10
11 Alberta suggesting the decision making process applied by PICC
12 in *C.M.* is weak and unreliable.

13
14 And paragraph 14: (as read)

15
16 *C.M.* reveals that the memo is how PICC made the decision to
17 rescind the mask mandate. Nothing in the AACRP suggests that
18 the memo is why PICC made the decision to rescind the mask
19 mandate. Tab 14 of the AACRP, the Cabinet minutes, suggest that
20 PICC considered the options in their PowerPoint at tab 13 and
21 shows option 2, page 1 of tab 14. There is no mention in the
22 minutes of the memo at all and no basis in the documents for the
23 applicants to make this statement. Alberta at no point suggest that
24 the decision making process applied by PICC in *C.M.* is weak. It
25 may be that the applicants have incorrectly assumed that, because
26 the memo was from the premier's office staff, that it somehow
27 represents the decision of PICC. This is not correct. It is a memo
28 put together by the premier's office staff and sent to the premier
29 and, as I indicated, cc'd to Dr. Hinshaw the day before the PICC
30 meeting.

31
32 Paragraph 15 of the applicants' reply in this matter: (as read)

33
34 When summarizing the scientific evidence from both the email
35 and the memo, Alberta states in the documents that the impact of
36 masking in schools was not supported by the evidence. This is not
37 an accurate summary of the evidence, nor is it something Alberta
38 has stated in the documents. The summary on the first page of the
39 email at tab 8 states, The evidence for protection from masks in
40 schools is less direct and it might be small but, taken together,
41 support the conclusion that face coverings in schools can

1 contribute as part of a host of measures to reduce transmission.
2 Tab 12, appendix 1, summarizing context of COVID-19 and
3 evidence relevant to masking in schools at the time of the decision,
4 states in its summary of the evidence at page 2, Analysis of
5 research literature indicated wearing masks can be effective in
6 contributing to reducing the transmission of COVID-19 in public
7 and community settings, however, the impact of masking in
8 schools was less clear, with mixed results from different studies.
9 It was difficult to determine the effect of removing or changing
10 one measure, e.g., masking, as many of the studies examining
11 COVID-19 incidents in schools had layered infection prevention
12 and control measures in place. However, the summary at appendix
13 1 of tab 12 did also note at page 3 that Alberta data looking at
14 schools that did or didn't have requirements for masks in the fall
15 of 2021, before provincial masking requirements were reinstated,
16 showed more outbreaks in schools without masking requirements
17 than in those with masking requirements. It is also worth noting
18 tab 7, COVID-19: COVID in Schools, which looked at what
19 actually happened in Alberta and found school boards without
20 mask mandates have three times more outbreaks in their schools
21 on average, page 1 of tab 7, although it is true that the summaries
22 note that wearing masks is effective in reducing transmission of
23 COVID-19 in public settings, but the impact of masking in schools
24 was less clear, tab 12, at page 2, or less direct, tab 8, summary, at
25 page 1, or has limitations that make the pool of evidence weak and
26 the benefits of masking unclear, tab 6, page 1. It is not accurate to
27 say, as the applicants do, that Alberta states in the documents that
28 the impact of masking in schools was not supported by the
29 evidence.

30
31 Paragraph 16 of the applicants' reply: (as read)

32
33 In further support of this, a hyperlink study published on May 21,
34 2021 and contained within the memo hyperlinks found that the
35 May 2021 study the applicants reference is actually not contained
36 within the memo hyperlinks. The applicants found this study
37 referenced in a Time Magazine article. They did not find it
38 discussed in or hyperlinked by the memo, see the affidavit of
39 Leslie Doucette (phonetic) at paragraph 11.

40
41 And then paragraph 17 of the applicants' reply: (as read)

1
2 Numerous scientific studies pre-dating July 12th, 2021 are cited in
3 the hyperlinks in the memo outlining harms related to self-
4 contamination with upper respiratory tract and skin
5 microorganisms. This statement at paragraph 17 is misleading as
6 well. In the section of the memo titled, Harmful Effects of Mask
7 Wearing on Children, page 3 of tab 6, there is only one hyperlink
8 to a scientific study pre-dating July 2021. Mask education, the
9 benefits and burdens of wearing face masks in school during the
10 current Corona pandemic is the study published August 11th,
11 2020. Notably, the first sentence of the article reads, Face masks
12 can prevent the spread of the virus SARS-CoV-2 in particular as
13 this spread can occur from people with no symptoms. All other
14 articles are post-June 2021.

15
16 Sorry, there's a second scientific article from -- yes: (as read)

17
18 All the other articles are post-June 2021. There is a second
19 scientific article from July 1, 2021.

20
21 Paragraph 40 of the applicants' reply: (as read)

22
23 The memo is the very same memo that PICC relied on to rescind
24 masking in 2022. It is also the very same memo that Alberta is
25 defending in *C.M.*. These statements are both false. As discussed
26 previously, there is no evidence in the Cabinet minutes or
27 anywhere that PICC relied on this memo at all to rescind masking,
28 nor is there any evidence that Alberta is defending this memo in
29 *C.M.*. It appears the applicants may misunderstand that this memo
30 was a document put together by the premier's office staff for
31 discussion purposes and perhaps they erroneously believe it is the
32 decision of PICC. It is not.

33
34 Paragraph 41 of the applicants' reply refers to the weight PICC put upon those studies and
35 states: (as read)

36
37 PICC reviewed those studies and believed they were persuasive,
38 reliable, and relevant to rescind restrictions. Again, this is an
39 allegation by the applicants that is completely false. Nowhere in
40 the AACRP does it say that PICC reviewed the studies and
41 believed they were persuasive, reliable, and relevant.

1
2 Paragraph 45 refers to the memo now revealing that reems of evidence was available to
3 Alberta prior to the imposition of the CMOH orders, and paragraph 46 of the applicants'
4 reply says: (as read)

5
6 All of this evidence was easily obtainable by the Government of
7 Alberta but, apparently, neither Dr. Hinshaw nor SAG had
8 proficient Google skills to uncover it. Alberta, again, agrees that
9 all of these scientific articles could have been discovered with a
10 Google search by the applicants. The applicants chose not to put
11 them in their expert report or to cross-examine Dr. Hinshaw on
12 them.

13
14 And, again, per paragraph 12 of the *Alberta v. B.M.* case, the decision of Justice Cote I
15 referred to earlier: (as read)

16
17 This is fatal to an application to introduce fresh evidence and the
18 applicants should not be entitled to try to rely on these studies after
19 the hearing has concluded.

20
21 Paragraph 55, finally, of the applicants' reply, they say: (as read)

22
23 It is difficult to believe Dr. Hinshaw could have forgotten the
24 memo. It is evidence that Dr. Hinshaw is engaging in an exercise
25 of hiding information from this Court. The memo was from 2022
26 and so not relevant. Dr. Hinshaw understood what was relevant to
27 this case when answering questions, including the relevant time
28 period, and would not have brought up a memo from outside the
29 relevant time period. There is no basis for the nefarious motive
30 suggested by the applicants.

31
32 Finally, I'm just going to go through the affidavit of Leslie Doucette that I believe we
33 received on Wednesday of this week, it was affirmed August 24th, 2022, and we have some
34 submissions in respect to the exhibits referred to in Ms. Doucette's affidavit.

35
36 MR. RATH: This is Mr. Rath. Can we take the morning break
37 right now for health reasons?

38
39 THE COURT: I'm sorry, Mr. Rath, did you say something?

40
41 MR. RATH: Oh, yes. Madam Justice, I note we've been at this

1 for 2 hours. If it pleases the Court, would we be able to take the morning break right now
2 for a health break?

3

4 MR. PARKER: I'm -- I'm -- this is my last point, I've got 10
5 minutes. I'm in your hands, Justice Romaine.

6

7 THE COURT: Well, okay, I don't want anybody to suffer. Let's
8 take 10 minutes. Okay? Thanks.

9

10 MR. RATH: Thank you.

11

12 (ADJOURNMENT)

13

14 THE COURT: Okay. Thank you.

15

16 Okay. Mr. Parker, back to you.

17

18 MR. PARKER: Thank you, Justice Romaine. I just wanted to
19 make a clarification, a correction, to submissions I made earlier. Mr. Trofimuk advised me
20 that I indicated that all that was conceded with respect to 2(a) was that the applicant
21 churches have standing and we're not opposing that. It was pointed out to me that we've
22 also, and this is correct, conceded a prima facie infringement of the church's 2(a) rights.
23 And so just to clarify what I said earlier about the concession on that point.

24

25 With that, I'm just going to move now to my final submissions in respect to the affidavit of
26 Ms. Doucette affirmed August 24th and some of the exhibits. First of all, Exhibit B is an
27 article from February 5th, 2022, while outside the relevant time period, it is not a scientific
28 article, it is a commentary in Time Magazine. Exhibit C is not cited in any AACRP
29 documents, it is a study mentioned in the Time Magazine article that is in Exhibit B. It
30 was also publicly available in April 2021 and the applicants could have found it if they
31 looked for it.

32

33 Exhibit D, not cited in any AACRP documents, it is a study mentioned in the Time
34 Magazine article. It was publicly available in May 2021. My same comments apply that
35 the applicants could have found it and submitted it. Exhibit E, the UK education summary,
36 is from January 2022, outside the relevant time period. Exhibit F, not cited in any AACRP
37 documents, it is a study mentioned in the UK education summary that is Exhibit B. It was
38 publicly available in September 2020.

39

40 Exhibit G, not cited in any AACRP documents, it is a study mentioned in Exhibit F, which
41 is a study mentioned in the UK education summary, and Exhibit G was publicly available

1 in June 2019, and when you hear that date, you will appreciate that it's not even related to
2 COVID-19. Exhibit H, UK health review, was published November 2021, outside the
3 relevant time period, not cited in the memo, it is a study cited in the UK education summary
4 that is Exhibit E. Exhibit I, the Camenettes (phonetic) article, was published January 28,
5 2022, outside the relevant time period. And Exhibit J, the Fetussi (phonetic) study, was
6 published November 3, 2021, outside the relevant time period, not cited in the memo, it's
7 the study cited in the Camenettes article that is Exhibit I.

8
9 With that, Justice Romaine, unless you have any questions for me, those -- those are the
10 submissions of the respondents on this application. Thank you.

11
12 THE COURT: Thank you. Thank you.

13
14 Ms. Johnson, anything in response?

15
16 MR. RATH: Madam Justice, my apology for that, that's Mr.
17 Rath speaking, we were having a little technical difficulty with -- with our mouse but,
18 anyway, we're fine now. We have approximately 15 or 20 minutes in reply, but I think we
19 would be a lot more efficient in providing our reply to the Court if we could take the lunch
20 break right now and provide it after lunch.

21
22 THE COURT: No, I'm sorry, let's continue, let's continue. If
23 you've got about 15 minutes, that'll take us to about 12:30, so, yes. Okay. Go ahead.

24
25 **Submissions by Mr. Rath (Reply)**

26
27 MR. RATH: All right. Thank you, My Lady. The first thing
28 that I'd like to address is my friend, Mr. Parker, taking such great issue with us pointing
29 out the statements made by Dr. Hinshaw being untruthful. In -- in fairness to us, and -- and
30 then to say it's somehow inconsistent with my friend, Ms. Johnson, saying that we're not
31 asserting that Dr. Hinshaw is a liar, those statements are not inconsistent. Her statement,
32 "There was no evidence of serious health outcomes from wearing masks during the relevant
33 period that these orders were made", is clearly on its face an untruthful statement because
34 there are reems -- there is reems of evidence that we have now seen that was available to
35 Cabinet that showed that there were serious -- there was evidence of serious health
36 outcomes from wearing masks that preexisted the orders in this case. So that statement on
37 its face, My Lady, is untruthful.

38
39 There's a big issue, though, and there's a big difference and that's why the paragraph that
40 refers to using the 'P' word, or perjury, that on a prima facie basis, there's an untruthful
41 statement on the record, that's the statement, and in fairness to Dr. Hinshaw, she should be

1 given the opportunity to come and explain to the Court whether or not -- whether or not
2 she knew that there was evidence of serious health outcomes from wearing masks that was
3 available or that she saw that she did not admit to the Court or provide to Cabinet. That's
4 a very serious issue in this case.
5

6 The other thing that I'd like to point out in reply is that one of the things that this -- the
7 application that's before you today isn't just an application for this evidence to be admitted,
8 but it's also an application for the government to provide -- provide the written submissions
9 or whatever written record was provided by Dr. Hinshaw to Cabinet when all of the CMOH
10 orders in this case were made. Mr. Parker is correct, there was not a record filed in this
11 case, an application was not made to provide a form 9 record, but it's not because we were
12 of the view or that applicants' counsel agreed that what was at issue here was executive
13 legislation as opposed to administrative decisions, we were of the view that the onus was
14 on the government under section 1 to provide that evidence and that the government would,
15 in fact, provide that record as part of its obligation to satisfy its section 1 obligations in this
16 case.
17

18 And, again, keep in mind, satisfy its section 1 obligations in this case, when we were
19 labouring under the false apprehension that Dr. Hinshaw, and not Cabinet, was the decision
20 maker in this case. We didn't know until Dr. Hinshaw arrived in court and provided her
21 evidence on cross-examination that, in fact, it was Dr. Hinshaw and not PICC that, in fact,
22 was -- it was the party making the decisions that were impugned in this case. So, in that
23 regard, clearly, any of the documents, any of the evidence that was provided by Dr.
24 Hinshaw to PICC needs to be produced in this case for this Court to be comfortable that its
25 decision would provide a fair result.
26

27 The other thing that I found quite telling in my friend Mr. Parker's submissions is that he
28 stated that Dr. Hinshaw did not advise Cabinet at any time whether masks were harmful or
29 not. So we have this disconnect between the Scientific Advisory Group, potentially, you
30 know, maybe doing research on whether masks are harmful or not or obtaining evidence
31 on whether masks are harmful or not. Dr. Hinshaw may be -- be aware of whether masks
32 are harmful or not, but we now have the admission from Mr. Parker that whether masks
33 are harmful or not was not something that was ever advised to Cabinet by Dr. Hinshaw, so
34 we have a complete disconnect as to what was going on between the Scientific Advisory
35 Group and Dr. Hinshaw in this case, and I -- and I think that that's something that this Court
36 needs to have in mind in terms of our request that this Court exercise its discretion to order
37 that Dr. Hinshaw provide copies of whatever PowerPoint or whatever forms of memos or
38 documents that she provided to Cabinet throughout with regard to all of the impugned
39 orders in this case so that we can -- you know, we can see exactly where things -- where
40 things lie.
41

1 Now, the other thing I would like to point out is that, with regard to the *C.M.* case and my
2 friend's argument that all of this is somehow collateral because *C.M.* only applied to the
3 masking of school children, that statement that he made over and over again in his argument
4 is on its face completely incorrect. So -- and I will demonstrate that to you by taking you
5 to paragraph 1 of the memorandum of decision of Mr. Justice Dunlop, there are two of
6 them, so let me find the date of this one, so it's the first one dated the 19th of May 2022:
7 (as read)

8
9 (INDISCERNIBLE) which alleges numerous defects
10 (INDISCERNIBLE) ...

11
12 THE COURT: We can't hear you. We can't hear you, Mr. Rath.
13 After numerous defaults ...

14
15 MR. RATH: Can you hear me now, My Lady?

16
17 THE COURT: Yes, I can. Thank you.

18
19 MR. RATH: Okay. Thank you. I'm not sure what happened
20 there: (as read)

21
22 Alleges numerous defects in the decision of the Chief Medical
23 Officer of Health to change a requirement that people wear masks
24 in public places, including schools.

25
26 So the matter that's before the Court in *C.M.* in terms of the relevance to this proceeding is
27 not limited to school-age children. We can bring up the application -- or the order, sorry,
28 for the record, hang on, we can provide it on a -- in a shared format, but the order makes it
29 clear that the order being sought in that case went far beyond -- it'll be -- we'll share it with
30 you right now, My Lady, goes far beyond masking of school-age children and includes
31 masking requirements generally throughout society. So for Mr. Parker to allege that the
32 matters in *C.M.* were simply limited to school-age children is on its face simply incorrect.

33
34 The next thing that we would like to point out is that, in that context, the evidence that
35 we're seeking to have admitted in this case goes to -- and -- and the question of whether or
36 not the applicants should have done a Google search and found this evidence as opposed
37 to the respondents, in our view, wasn't relevant to include this in an affidavit of Dr.
38 Bhattacharya. What is relevant now with regard to that evidence is a matter of context,
39 and that context is that all of this was available to Cabinet, yet, Dr. -- Dr. Hinshaw appears
40 not to have provided it to Cabinet on the basis of her evidence that there was no evidence
41 of harm, and then Mr. Parker's submissions that Dr. Hinshaw never advised Cabinet that

1 there were any harms arising from wearing masks.

2
3 And, again, in that regard, it calls into question all of the decisions that were made by
4 Cabinet to impose the CMOH orders in this case because, ultimately, we do not know what
5 Dr. Hinshaw did or didn't tell them or share with them from the Scientific Advisory Group
6 and what is clear, thanks to Mr. Parker's admission and the evidence that we see from *C.M.*,
7 is that Cabinet, in making these decisions to impose these far reaching orders that restrict
8 the rights of citizens of Alberta, apparently was not provided any evidence of harms arising
9 from at least the masking portion of these orders and we need to know whether they were
10 provided any evidence of any harms with regard to any of the other measures, including
11 the -- including locking people up in their homes as a form of NPI, because if they weren't
12 provided any evidence of harms all the way through by Dr. Hinshaw with regard to masking
13 or anything else, how can they have made a balanced decision that -- that satisfies their
14 obligations under the *Oakes* test and under section 1? And I think that that's a very, very
15 crucial consideration for this Court to have in mind with regard to this application that we
16 see both the form of advice that was provided by Dr. Hinshaw to Cabinet and the actual
17 recommendations that were made in the form that they were provided.

18
19 Now, Mr. Parker tends to rely on case law that says, Oh, when we're dealing with scientific
20 articles and whatever and there's a range of options that are available, you know, the Court
21 shouldn't worry their -- you know -- you know, worry themselves over this and shouldn't
22 interfere in this and this all, you know -- you know, this is all outside the realm of anything
23 (INDISCERNIBLE), in any event, but the problem is we don't know what Cabinet was
24 considering and whether or not any of this information was even scientific. So, you know,
25 the advice of Dr. Hinshaw simply could have been, and we suggest this in our brief and we
26 didn't do it lightly, either, but, in essence, she is providing them a menu where they were
27 being asked a la carte to pick from options that she was provided. That's what we see in
28 -- in the -- you know, in the *C.M.* case.

29
30 So we don't know in the context of that a la carte menu being provided whether there was
31 any scientific evidence accompanying that a la carte menu or whether or not there was --
32 with regard to any of the NPIs that were being suggested, whether Cabinet was provided
33 any evidence of any harms arising from those NPIs being imposed. And we saw that in all
34 of the evidence-in-chief from Dr. Bhattacharya, we obviously cross-examined all of the
35 Crown's evidence on -- you know, witnesses on potential harms arising from NPIs, et
36 cetera, et cetera, but all of this took place in a very artificial circumstance where all of the
37 questions that were being asked by the -- of the Crown's witnesses and all of the evidence
38 that we provided through out expert witness was under the false assumption, or false belief,
39 that Dr. Hinshaw was actually the decision maker. So we did not find out until she came
40 in to this court and shockingly told us that she was not the decision maker, that she was
41 merely a recommender, and -- and, quite frankly, from the *C.M.* case, again, what we see,

1 the provider of an a la carte menu, that provided Cabinet with choices that they could make.

2
3 So this entire case was based on the fact that she was an administrative decision maker that
4 would make those decisions within normal administrative norms, within the context of the
5 *Charter of Rights and Freedoms*, and her obligations as a professional physician, and we
6 now find out that that was not the case, that, at the end of the day, Cabinet was the decision
7 maker and that Dr. Hinshaw, apparently in *C.M.*, was simply providing them a menu
8 without any advice whatsoever as to whether any of the menu items were harmful or not,
9 and, quite frankly, it's on that basis that we are seeking the order that the written advice
10 that was provided to Cabinet be provided and that Dr. Hinshaw be required to re-attend for
11 cross-examination so that we can determine whether or not, you know, the answers that
12 she provided during the -- during the hearing phase of this matter were correct.

13
14 And -- and, again, my friend makes a point that, you know, we suggested that her answers
15 to your questions were lacking in candor and, you know, the Court is -- you know, the
16 Court seems to be signaling, and my friend seems to be suggesting, that Dr. Hinshaw knew
17 when she was answering those questions that those questions were limited temporally or
18 limited in time to the time that the orders were, in fact, issued in this case.

19
20 But if you look at the third question you asked her, My Lady, you say quite clearly, Did
21 you ever at any time issue an order that Cabinet -- where Cabinet imposed greater
22 restrictions than were recommended? And she answers with a one word answer, No. Had
23 she been answering that question with the candor that one would expect, she should have
24 answered that questions, No, not within the period of time that these orders were issued,
25 however, you do need to know that, you know, later on, I was providing -- I was providing
26 advice to Cabinet on the basis of multiple menu options and Cabinet would often pick a
27 menu option that imposed greater restrictions than the least restrictive of the menu options
28 that I provided them. Instead, she provided evidence that led us to believe and had the
29 appearance of suggesting to the Court that she only ever provided one recommendation
30 and that Cabinet invariably followed her recommendation. That's a very different factual
31 matrix than what we now see as a result of the documents that are -- that have been released
32 in the *C.M.* case.

33
34 And, again, we're not -- you know, we are not suggesting at this time on the evidential
35 record before this Court that Dr. Hinshaw has committed perjury or has lied to this Court,
36 however, facially, on the face, some of her answers do, in fact, appear to be untruthful, not
37 true, or not factually correct, however you wish to characterize it, and, in fairness to her,
38 she should be given the opportunity to provide this Court the menus or recommendations
39 that she made in writing in Cabinet with regard to each of the impugned CMOH orders in
40 this case and then be given the opportunity to explain any inconsistencies between those
41 recommendations or menus and her evidence in this case.

1
2 So those are our submissions in this regard and we would like to thank the Court for its
3 time and attention.
4

5 THE COURT: Okay. Thank you.

6
7 MR. RATH: Those are my submissions.
8

9 THE COURT: Thank you. I will, of course, be very cognizant
10 of the allegations that have been made that Dr. Hinshaw gave untruthful, or inaccurate,
11 information. I'm going to be looking at the transcripts and her answers in whole on all of
12 these issues. They are serious allegations that have been made and everyone should have
13 no doubt that I will be looking at the record very carefully.
14

15 Okay. I hope to get an endorsement out on this issue some time next week or early the
16 following week. Thank you for your submissions.
17

18 MR. RATH: And -- and, Madam Justice, just quickly with --
19 with regard to our -- our submissions in this regard. Also, please keep in mind that those
20 submissions were made in the face of a -- of a justice of this court finding the certificate
21 filed by Dr. Hinshaw in the *C.M.* case to be unbelievable that there is only three documents
22 and then, after the fact and after an order being made on that justice's own motion, that
23 literally, you know, dozens of other documents were found to exist following Dr. Hinshaw
24 filing an affidavit that wasn't believable by this court. So please keep our submissions in
25 regard to all of this in -- in light of -- as through the lens of the findings of Justice Dunlop,
26 so, thank you.
27

28 THE COURT: Thank you. But I'm afraid I can't agree with how
29 you've characterized the findings of Justice Dunlop, but I will address that as well.
30 Thank you.
31

32 MR. PARKER: Thank you, Justice Romaine.
33
34

35
36 PROCEEDINGS ADJOURNED
37
38
39
40
41

1 **Certificate of Record**

2

3 I, Elena Kay, certify that this recording is the record made of the evidence in the proceedings
4 in Court of Queen's Bench, held in courtroom 1502, at Calgary, Alberta, on the 26th day of
5 August, 2022, and that I was the court official in charge of the sound-recording machine during
6 the proceedings.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36

37

38

39

40

41

1 **Certificate of Transcript**

2
3 I, Carla Novello, certify that

4
5 (a) I transcribed the record, which was recorded by a sound-recording machine, to the best of
6 my skill and ability and the foregoing pages are a complete and accurate transcript of the
7 contents of the record, and

8
9 (b) the Certificate of Record for these proceedings was included orally on the record and is
10 transcribed in this transcript.

11
12
13
14
15 Pro-to-type Word Processing

16 Order: TDS-1014431

17 Dated: September 1, 2022

18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41