



NATIONAL CITIZENS INQUIRY

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Shawn Buckley

Our first witness will probably help us with that. David, do we have James Kitchen yet? So, James, can you hear me?

James Kitchen

I can.

Shawn Buckley

Okay, so first of all I'll ask if you would state your full name for the record, spelling your first and last name.

James Kitchen

Sure. James Kitchen. That's J-A-M-E-S. Kitchen is K-I-T-C-H-E-N.

Shawn Buckley

And James, do you promise to tell the truth, the whole truth, and nothing but the truth today?

James Kitchen

I certainly do.

Shawn Buckley

Now, for those of you who don't know you, you are a lawyer. You practice in the area of Charter rights, you practice administrative law, you practice criminal law, and you've been involved in many constitutional challenges at the Justice Center concerning COVID issues.

James Kitchen

That's right.

Shawn Buckley

You're here to speak to us about a number of things, and I'm just going to let you launch in.

James Kitchen

That's great, thank you.

Hello everyone. I appreciate this opportunity to do this. I hope that I'll have a lot of information that's maybe not quite been heard the way I'm going to say it—from a person who's in my situation, because most lawyers are quite scared to speak as candidly as I have and as you've just heard.

What I want to cover today briefly is my analysis on why the courts failed to uphold and protect your rights. Not so much how—we know that, I think—but why. And then I also want to talk briefly about what I call the regulatory capture of the health professional regulatory boards, but really all professional regulatory boards.

So let's launch in. Why did the courts do what they did?

First you need to understand at a basic level that our system is set up intentionally to divide power, not to have it coalesced around one person or one small body. Inevitably, we know from history, as soon as you do that you get tyranny. You no longer have freedom, you don't have respect for individual rights, you don't have the rule of law. You have arbitrary despotism.

We have generally the legislative, executive, and the judicial. The courts, our judiciary, are the third branch of government; that's by design. These three powers are separated.

Usually, the executive is limited by what the legislative will allow them to do. Of course, if they step out of bounds, the people can say, "This is wrong, this is not lawful. Courts, please tell them it's not lawful and protect our rights." For a long time, that functioned pretty well in Canada compared to the rest of the world historically.

But what you had in March 2020 is of course: the legislative and the judicial shut down. So you have all the power that are normally spread across these three coalesced into one: the executive. So you have all these cabinet orders, and of course they delegate a lot of their authority to the health ministers and the regional health authority leaders like Deena Hinshaw, et cetera, all across the country.

Now you have health ministers and the small groups of people in their office and the Deena Hinshaws of the country running around basically ruling as petty tyrants. And you don't really have any accountability and oversight. So whether these people had good intentions to begin with or not—of course that may be doubted—naturally, power corrupts. So what happens is you have these people going around and they're just tyrannizing everybody who doesn't agree with them.

Okay, so the judicial branch is supposed to do something about that.

Well, first of all, they shut down for the first two or three months. I don't know how many people remember that but that was immediately concerning for me and, as cynical as I tend to be, really quite shocking. They literally shut down, were no longer ruling on cases. But when they fired back up around June of 2020, it quickly became obvious that they did not see their role as holding government accountable and upholding rights. They saw their role as enabling government to continue to act in this arbitrary, repressive way because: "for the greater good," "we're all in this together," et cetera, et cetera.

So why?

Well, the first thing I want to try to explain to you to help regular Canadians understand—I've been doing this for years all through COVID and even before: you have to understand who judges are and how they get to their position. They're just regular people, insofar as lawyers are regular people, if you can believe that. We tend to be mostly regular people. Judges are just promoted lawyers. They're regular people who care about their professional reputations, their social reputations, and their physical safety.

What I observed— At least for me in the cases that I had in front of the judges that I was in front of,

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and also, my colleagues and what they told me about the judges that they were in front of, I saw these very human realities really coming through. I saw judges who were scared, who were afraid. For their personal safety. And, I perceived at least, for their reputation, professionally and socially as well. There's obviously some speculation on my part there, but that I think played a role.

But specifically, the personal fear, the personal safety issues, perhaps surprised me a little bit because I would have thought and hoped that, as a judge in this country, you would recognize that there might be some sacrifice and some risk. There might actually be some difficult things you have to do to uphold this duty that you have. You're not merely enjoying a job that you can't be fired from, and that you're going to earn north of \$300,000 at every year no matter what. You do actually have a duty to serve the country. And that may actually involve occasionally some risk and some sacrifice on your part to do that.

It really seems like judges in our country do not have that perspective. They do not see themselves in that role. I think that played in, because I saw judges really quite concerned about their own personal safety. Just the fear and the way that they looked at me, and the comments that they made, and the comments they made to my colleagues in court. And just the way they wore their masks and the way they got really upset if anybody in the courtroom didn't.

If anybody even knows about me, I've of course never worn a mask and never will. I decided in July 2020 I'd rather give up my law licence than wear a mask. I deliberated about that decision. That took a lot of consideration. My wife and I sat down and thought about that beforehand, so I wouldn't just succumb later on.

And I was challenged every time I went into court, which wasn't very often. Physically, I got challenged. I was publicly challenged at the Coates trial. I was challenged at a trial for some pastors in Edmonton that were charged \$80,000 for not letting a health inspector in. "Why aren't you wearing a mask?" I'm sure you've heard this over and over again: It was almost as if the judges didn't know about the law, or weren't aware of the human rights

protections, or couldn't fathom that somebody's not wearing a mask because of their religious beliefs, which is my reason.

There seemed to be a real, real reluctance, a real hesitancy to respect that. I don't think it was just rooted in the normal typical political reasons for not liking it, but actual personal fear. Of course, that raises the question: Why are the judges so afraid personally? Well, obviously, a lot of them are older. You can understand that. No matter what you believe about this, they are the more at-risk population. So there is that factor. We have to keep that in mind.

I think it also goes to show that judges are generally consumers of mainstream information, which is part of the reason why they seem to be so impervious to inconvenient or minority facts and information and opinions and perspectives. Because they have been inoculated by mainstream information, because these are the worlds they live in. Do judges get up and read the *Western Standard* in the morning? No. Unfortunately, I'd be very surprised if any of them did. They probably get up and read CBC, and that's just part of the problem.

That goes into my second point about who the courts are and why they did what they did. You have to understand: There's a lack of a conversation in this nation, I think, about this issue. You have to understand that judges are appointed. Why are they appointed and who are they appointed by? Well, they're appointed by politicians, and it's a political process. Do judges have to meet a test for merit? Well, of course they do. And certainly, from my perspective, most judges I get in front of—they're pretty competent. They might have prejudices and biases and political views and ideologies, but they're pretty competent. I don't usually encounter incompetent judges.

So it's not that people are being appointed to the bench merely because of their political views. But there are lots of meritorious lawyers you can pick from to go on the bench, to go on the courts. Who are you going to pick as a politician? Well inevitably, whether you mean to or not, you're going to lean towards the judges who you know or you suspect share your political views and ideologies. I don't just mean donating to the political party. Obviously, we've heard about the judges that have donated tens of thousands of dollars to the Liberal party. That's a very partisan allegiance. I'm talking about a deeper, more philosophical ideological allegiance.

If you're a lawyer who has supported the People's Party or maybe the Conservative Party or whatever—

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pick your alternative freedom, right-leaning party—you support that party probably because you hold conservative views about individual liberty, limited government, that market forces are good, socialism and Marxism are bad. These are your underlying political views.

You don't need to talk to me very long to understand that I'm a libertarian and that I think government is bad and individual rights are good and that human flourishing only happens in a context of maximum human individual rights and freedoms. So if you put me on the bench, do you think I'm going to walk around and throw around section 1 justifying what the government's going to do? Obviously not. You don't need to be a brain surgeon to figure that out. Is Trudeau ever going to appoint me to the bench? Well, of course not. Maxime Bernier might consider me, but Trudeau's not. Right? Of course not. It's not so much about

whether or not I'm a partisan Conservative and I'm at Poilievre's rallies. It's about the ideology.

You have to understand that most lawyers in this country—for a couple of decades now, and I'm a younger one but from what I've seen from older people—it's been now 10, 15, 20, 25 years that the legal profession as a whole in Canada has shifted to the left. People who view the world the way I do and the way Mr. Buckley does and the way some of the other lawyers you've heard from do, we're in a very small minority.

That plays out in a number of different ways. But one of them is that we are the pool of people that judges are chosen from. If a lot of judges, generally, are more left-wing than the general population of the country that they're representing then they're going to rule in a way that the rest of the country sometimes finds confusing. That's what we get.

Obviously, we've had conservative governments. But even they are limited in who they can choose to put on the bench, because most lawyers tend to lean left. And by "left," I just mean that they tend to take a lower view of individual rights and freedoms. They take a higher view of government intervention. They take a lower view of market forces. They generally don't believe that people are really good at governing themselves. They generally believe that government intervention is required, it's good, that government is benevolent. They believe in the rights of the collective and that individual rights are just sort of a nuisance that we tolerate when we can.

That's just their worldview. That's their ideology. So of course, they're going to impose that. They're invited to through section 1 of the Charter. Section 1 of the Charter takes rights away from the people, gives them to the judiciary, and says: "You can remake the country in your image and we trust you to do a good job of it."

This was the Charter's self-destruct button and it only took 40 years for it to be pushed. This is part of the reason why you have constitutions that don't have those self-destruct buttons that are still sort of hanging on for dear life, as in our southern neighbours, who for a quarter-millennia have had a pretty decently free society, historically speaking. Whereas, after 40 years, our major constitutional instrument for defending rights and freedoms has already been essentially destroyed. "Freedom of expression," 2(b) is maybe the last part of the Charter that has any meaning beyond words on a page. And that's because of the fact that we've given all this authority to mould the Charter over to these promoted lawyers.

So you have to understand the role of ideology in judges and the fact that a lot of them subscribe to a general left-wing ideology. It's been going that way for many decades now. If you were to go back to the '50s, '60s, '70s, '80s, you could find rulings from justices like Iacobucci and Major and go back to *Boucher v. the King*, which is a famous pre-Charter case, and you can see all these wonderful ideas about individualism and freedom and the rule of law and rights and limited government.

But that has died out and been replaced by the new decisions that we've had from the new Supreme Court justices and appellate court justices that have used section 1 to strike down our rights. And that's what happened over the course of COVID. And we know that. We know it was section 1. But why?

The last reason I'm going to point you to as to maybe why this happened: Knowing that judges are just regular people, they tend to have left-wing views and they are politically appointed partly because of their political views, what I saw is the role of chief justices.

Now we're getting into the inner workings of how the court works. What is the role of the Chief Justice? Well, oftentimes it can be their role—if they decide to exercise it a lot—to appoint which judges are going to sit on cases.

And this is typically a good thing, right? You need some sort of guidance in this at times. Ideally, you're going to have judges with appropriate experience sitting on cases that are complex and involve that kind of experience.

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What I saw is that the chief justices tended to directly intervene a lot, and in two ways.

One, they tended to take a lot of the COVID cases themselves. I saw this in BC with Justice Hinkson. I saw this in Manitoba with the primary Justice Center-led COVID-challenging case over there. I saw it when I was involved in the injunction about the international bridge between Windsor and Detroit. That was heard before the Chief Justice of the Ontario Superior Court. It was surprising to me the amount that chief justices involved themselves in these cases, took them themselves” “I'm going to take this case.” And of course, you look at all those chief justices' decisions and they're all pro-government. They're all against the people. They're all against the rights. They're all upholding the COVID narrative and the government's efforts to supposedly stop COVID. Universally.

But what I also saw almost across the board: the judges I saw that were sitting on COVID cases were recently-appointed Trudeau appointees. There's a couple of problems there. And it's not so much that they're Trudeau appointees per se, it's that there was a really strong trend. It's not like all the judges on our bench are recent Trudeau appointees. Obviously, there are lots of judges that were appointed by the Harper government. And we can go back into the Liberal governments from before that way back into the '90s and '80s, because some of our judges have been there for 20, 30 years. They were appointed when they were in their forties or fifties and they're still there, which is not necessarily a bad thing.

But that's just it. In my experience, between my cases and all the cases that I saw my colleagues do, we weren't getting the 70-year-old guys—well, men and women—that have been on the bench for 25 years and have sat on a whole bunch of Charter cases, and have kind of had mixed rulings, and were appointed before Trudeau's time. But those judges exist. We never encountered them. We never saw them. And it's hard to believe that that's mere coincidence or just merely numbers. It's hard to believe that a judge with the kind of experience to handle— That a really complex Charter case on COVID is actually being heard by a judge who's been on the bench for less than two years and has never heard that kind of case.

That's concerning. Why is that? Why is that judge being selected, presumably by the chief justice to sit on this case? It's definitely not the best-qualified judge to hear this case. These cases are obviously hugely important. Why are we constantly encountering the same type of judge over and over? How come we're never getting before a judge who might actually rule in our favour because he actually does hold different underlying ideological views about the rules of government and how far section 1 should be used or abused?

And that, I think, contributes to the “why.”

Why do we see so, so, so few decisions from our courts that in any way challenge the narrative or uphold the rule of law or the rights of individuals when it comes to the vaccine

mandates, when it comes to masks, when it comes to the general COVID restrictions, when it comes to all the tickets that people have gotten under these unconstitutional laws? And all these challenges based on section 2, which is free speech, freedom of religion; section 7, the right to life, liberty, security of the person; section 8, privacy.

Why are all these failing? I think part of it is because the judges who might actually take a different view of the law were either passively or directly prevented from sitting on any of these cases. There are a few judges left in the country I've read decisions from and I've thought to myself, "I'd like to see what he or she would have had to say about this if they had been the judge at first instance."

It's difficult because we don't talk about this. Lawyers are terrified to talk about this. I'll give you an example—and this, I'm going to talk about in my second part.

I criticized the courts in Alberta. They had a vaccine mandate for the courthouse. Lawyers and members of the public could not access certain parts of the courthouse if they were unvaccinated. People who were vaccinated had to demonstrate proof to access those areas, which is a problem as well: not just prohibiting the people who can't. This is injustice. It's tyranny. It's oppression. It's completely unbefitting of the court, who is supposed to think independently for itself.

I mean, if our courts are not thinking independently for themselves, if they're simply parroting what the government is saying, we obviously have a problem. They're obviously not functioning as the independent third branch of government. They're not doing their job.

So I criticized the courts publicly. I did it in an academic way.

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I did it strongly, of course. As anybody who knows the way I speak, I speak strongly. But I was not vulgar, I was not demeaning, I was not insulting, I did not swear. I was academic—strong but academic—about my criticism.

Sure enough, a lawyer who works at a bank in Ontario complained to the Law Society of Alberta, saying I was being uncivil and not upholding the respect for the administration of justice in the country.

Well, the Law Society, instead of doing its job to dismiss that complaint, decided to investigate the complaint and demand that I defend it and give a response to it, and that I had to meet with somebody, et cetera. This went on for over a year and I had to go through this process. It took me several hours of my time. And now, ultimately, that complaint has been dismissed, which I find interesting. I actually am surprised; I didn't expect it to be. I can only speculate as to why, but I suspect that if I was a complete nobody, a complete no-name lawyer, it might have gone differently.

So you can see from that example right there why this conversation is not happening. Because who's going to start it? It's going to have to be the lawyers. Are they really going to take that risk? I had to talk to my wife before I posted that. "Wife, I do this, the Law Society may take my licence. We're not going to be eating as well." Wife said, "That's okay. Go ahead. Your integrity matters more."

There are not a lot of people in that position—who are willing and able to make that sacrifice. Here's the problem: You shouldn't have to. You should be able to have this

conversation and criticize the courts and criticize these things without putting your licence on the line. I'm putting my licence on the line today to be here to speak with you. I know that. And I'm prepared to do that. But I shouldn't have to. And the reason that I am is the reason why this conversation isn't happening as much. And it's part of the reason how we got here in the first place. If we'd had this candid conversation for the last 20 years about who our judges are and what they believe and why they're ruling this way, we might not have been so ready to fall the way we did over the last three years.

And again, I point you to our neighbours to the south. When they are talking about who they're going to put on the bench, they have an open, rancorous conversation or debate—whatever you want to call it—about who that person is and why they're being appointed and whether or not they're good to be appointed there. Because they know: Americans, at least, more so than Canadians, understand that a lot of their rights and freedoms depend on the philosophical and political views of those nine promoted lawyers who sit in Washington. That's why they want Kavanaugh and not a judge who can't even tell you the definition of a woman. Because they know that one is going to do a whole lot better at upholding their rights and freedoms in the long run—the rights and freedoms of themselves and their children—than the judge who can't even define for you what a woman is.

We lack that conversation in Canada, which is part of the reason why we have got into this mess. I spent a lot of time on that. I'm going to spend a little bit less time on my next point because I want to leave a little bit of time for questions.

So, the courts are part of the reason all this tyranny and this abandonment of the rule of law happened. One of the other reasons—not the only, but one of them—is what I call the regulatory capture of professional regulatory colleges. The Law Society would fall into that category.

Now, just briefly, the whole idea of— You probably have not given any thought to these bodies prior to COVID. “Why do I care what the College of Pharmacy is or what it does?” “Why do I care what the College of Physicians and Surgeons is or what it does?” Well, you should care because it has a direct role in your life, and you've probably painfully experienced that over the last three years.

The idea of these colleges is that we want— At least as Canadians, we like all this over-regulation, so we want the professionals to be regulated to protect the public interest so they don't hurt us. Meanwhile ignoring that the market would probably do a better job of that, but that's a debate for another day. We say, “Okay, well, if we have direct government control, that might be bad. That might be too much power and control for governments. They might wield that power over professionals and then control them and then they can use that to control society more.” It's probably not a good idea to have direct government control of professionals, especially health professionals. And that's part of the reason why the bill in BC is such a bad idea.

So the idea is self-government. We delegate the power to regulate and control professionals to protect the public interest to the professionals themselves. And they will have legislative authority and they will have a body to do that and the professionals can elect people to these bodies to do that, so there will be some democracy behind it all.

And the idea is for independence from the government, right? Again, division of power, separation. We don't want to coalesce all the power over everything into one body, we'd get tyranny.

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These colleges are supposed to stand up to government when government goes too far, and say: “No, we have clients and patients to protect. You’re going too far. You shouldn’t be doing this. We’re the experts in this area, you’re not. And let us tell you, this is a bad idea.” Again, it could be law, it could be the pharmacist, it could be the physicians, it could be the accountants, whatever it is. They’re supposed to actually resist government or criticize government or engage in a dialogue with government to protect the people that they serve. Their job is to protect the public interest.

Of course, what that means has been lost in all of this. The colleges have interpreted this to mean “protect our agenda and protect the government.” But it was supposed to be “protect the people.” Right? Professionals are supposed to serve as a bulwark, to stand between the people that they serve and the government.

Instead, what happened is they did the opposite. And that enabled the government to continue to do what it did. It enabled the media to sway the masses to the government’s perspective, because the people weren’t hearing from the experts who were dissenting. Because there were plenty who were dissenting. There were plenty more who would have dissented but they were scared of censorship and discipline by the regulatory colleges.

So they didn’t speak up. And then the few who did speak up were in fact disciplined. And I’m sure you’ve heard some of these. I’ll just give you some examples that I went through:

Some of you may be aware of the mask case I have in Alberta, with the chiropractor there versus the College of Chiropractors of Alberta. He went through a lot. They tried to take his licence on an emergency basis, saying he was a harm to patients. They failed because I intervened. And then he went on this two-year long proceeding.

I called four expert witnesses about how masks don’t work and they’re harmful and they’re dangerous. And this body called the Discipline Tribunal—they have two public members and two chiropractors so that’s an interesting thing right there, the fact that it’s made-up half with members of the public, which can be a problem because it’s hard to grasp all the issues for public members. Unfortunately, a lot of the public members that get into those positions are the types that like to police and control the professionals and tend to have a view that the professionals that are there must be bad, must be doing something bad to the public.

Sure enough, the Tribunal ignored all the evidence, ignored my experts, gave a huge wrong decision about how everything the College did was good. And none of the evidence that Dr. Wall brought in—from Dr. Byron Bridle, for example, or Chris Schaefer, the occupational health and safety expert in Alberta—none of this evidence was any good or reliable. These people are wrong. Interesting, though, they didn’t even cite to the record to support their decision in the end. And they decided against him. And he now faces discipline, and all these other things that I’m going to be going through with him.

That’s just one example of how this works. Were there lots of chiropractors in Alberta who didn’t want to wear a mask or who in fact didn’t just didn’t get caught? Sure there was, but they didn’t want to go through what Dr. Wall went through. So they complied. They submitted. They bowed down. They covered their face, because they were scared of one of their patients snitching on them to the College. Because the College now has just become this bulldog for AHS, Alberta Health Services, instead of independently standing up for its

members and saying, “Masks don’t work, they’re harmful, we know that, we’re not going to comply with this.”

If you’re a chiropractic patient you know that most chiropractic patients are the types of people that would have been upset about this whole thing—wouldn’t have worn a mask, would have seen through the narrative, and would have wanted their chiropractors to stand up for them. They would have wanted the Chiropractic College to stand up for them. It didn’t.

I had some other cases of course, with physicians. The CPSA [College of Physicians & Surgeons of Alberta] went after a doctor because she was prescribing ivermectin. She literally saved three people’s lives just in the weeks leading up to this new prohibition—with ivermectin. Because we all know it works. So, what’s the College of Physicians and Surgeons of Alberta doing getting in there, aligning themselves with the likes of all these pharmaceutical companies who contributed to the loss of millions of lives over the last three years? Why are they coming in and implicitly supporting that position by professionally disciplining a doctor who’s prescribing ivermectin?

Maybe they disagree with the doctor. But should not the doctor have some clinical licence and some discretion to prescribe things? Most of you would say, “Yes, of course.” But no, the College comes in and says, “We’re going to discipline you if you don’t stop prescribing ivermectin.”

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I had to defend on that.

I had another doctor who could not take the shot because of her religious beliefs. Sure, AHS went after her and didn’t want to employ her anymore. That’s one thing—that’s an employment issue. Then the College went after her and made it a matter of professional discipline that she didn’t take the shot. Even though her reason for not taking the shot is a protected ground in human rights legislation, and the human rights legislation is supposed to be above all other legislation, as our courts have been saying for the last 20 or 30 years. I had to defend her.

I had to defend multiple nurses in BC and Alberta who, because they said online somewhere, “Masks don’t work and you shouldn’t wear them and please don’t take the shot, it’s dangerous,” these Colleges wanted to take these nurses’ licences. And I had to defend them.

And I’m sure you’re aware of all the medical doctors across the country. There’s a whole bunch in British Columbia, Alberta, and Ontario that have either lost their licences or are facing that because they stood up to the narrative, because they actually challenged it. They actually did their job as professionals to give you the truth and defend you.

Yet what has happened? The regulatory colleges, who are supposed to lay off that and actually let professionals have their professional and clinical judgments, went after them and censored them and scared them by threatening to take away their licences, and then actually taking away their licences. Which means now they don’t have a livelihood, which means: How can they continue to do what they do?

Same thing here. How can I continue to serve you and serve the nation and the work that I do if my licence is taken? I’m not allowed to do it anymore first of all; so now you’ve lost me

from doing that. And you're probably not going to be able to hear much from me anymore because I'm going to have to go off and find a job to feed my family and I'm not going to have time to do this.

This is how it works in a practical way: If the government can control the professions, if the professionals are no longer independent, you've removed one of the few major bulwarks against tyranny. Right? The courts are one. Professionals and their regulatory bodies are one. And there are few others. And if you systematically remove all these, tyranny is the result. The abandonment of the rule of law is the result. And that's what we've got for the last three years.

I wasn't surprised, but I really wish these bodies had functioned the way they're supposed to, because, had they done that, it would have looked a lot different. And I encourage all of you to care a whole lot more about how these regulatory colleges work. They have public members on them that get appointed by government and they have professionals that are elected by the professionals to them. Increasingly now, what governments want to do is decrease the amounts of professionals that are elected by themselves into it and increase the number of public members appointed by the government.

That sounds good in theory, because "public members, public representation." Yeah, okay. But who's being appointed? Again, it's like the judge scenario: The people being appointed by the government are those personally and politically connected to the government, which means: they get in there, they're going to do what the government wants.

So it's not necessarily good to have more public representation on these professional bodies. What you actually want is almost entirely professional representation because at least then there's more hope that those professionals are actually—because there are some other professionals that support them and elected them—going to do their job to hold government accountable and stand up to them.

Before I finish, I'll just give you one example of that. That's what's going on now with the Law Society in Ontario. You may or may not have heard: Years ago, before COVID, we had this whole thing over there with the critical race theory ideology. Lawyers had to sign up to some Marxist ideology in order to continue to practice law and to do things in their firms and all this stuff. They had to sign this "statement of principles," and these "principles" were basically Marxist principles about race.

What happened is, this lawyer said, "No, we're not doing this." And my friend Lisa Bilty got together with a bunch of lawyers and they ran—I think it was 2018 or '19, around there. A bunch of them got elected to the Law Society as benchers and they were able to put a stop to some of that.

Now we're having another election again for the benchers in Ontario. And that's the main issue. Is the Law Society going to continue to be this woke arm of enforcement for government ideology or is it going to actually do its job to simply regulate lawyers in a limited way? That election is going to matter for the rights of Ontarians, let me tell you. Because the direct result of that is that lawyers like me, who actually defend the rights of the minorities who oppose the government tyranny, are on the chopping block if these bodies get too much power.

The Law Society of Alberta is having an election later this year. And the public should actually care and get involved and be aware of who is running. What may happen if we get a Law Society of Alberta that's completely woke,

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and completely censorious, and has gone way beyond its mandate and simply politically punishes all the people who criticize it or oppose it like I do? People's rights are going to suffer. And the public needs to start caring about this stuff and paying attention so we can somehow try to prevent COVID from happening again.

So that's everything I had to say in my initial presentation. That leaves a few minutes for questions, I hope. And I'm ready to answer those.

Shawn Buckley

James, before I turn you over to the commissioners, you've spoken about section 1. And I think you referred to it as the self-destruct button for the Charter. I'm wondering if you can also speak about the doctrine of mootness and how that has been used to affect COVID cases.

James Kitchen

Sure. The idea behind mootness is that the courts will say: "We don't want to waste our time on academic debates. There has to be a real practical issue. We don't want to just rule to make the law better. That's a waste of our resources." The problem with mootness is that judges have been overusing and abusing this to help government, and government knows this.

Everybody knows that the law moves pretty slow. If government puts in law A, it's going to take the lawyers two months at least to get together and mount a challenge to it and file it. At least—maybe more like four months. Then they've got to get to a hearing, which takes more months. So maybe within eight months we've filed our challenge and we're getting a hearing.

Well maybe six months after the law was in place, the government just yanks it out and says, "We're not doing that any more." Which, I guess is good, but the damage is done. What are you supposed to do about that? You've lost your job. You couldn't get your passport. You've been dragged out of Walmart. You were denied medical procedures. And now it's too late. The damage is done.

So, what happens now? The government says, "Well, it's moot now. The law's not in place anymore. It's a waste of time to go back and evaluate whether it's good or not—because what's the result? The law's not there; you can't strike it down even if you find that it's unconstitutional."

And the courts say "That's a really good point. You guys are fine. We're not going to rule on that. It's moot. It's academic. There's no practical value to the country if we actually rule on whether or not that law is unlawful."

I've seen that used over and over and over and over and over again through Justice Centre cases, through some private cases. I've had it come up a little bit in my cases, but I've seen it a lot in my colleagues' cases. It's a misuse or abuse of the law in my opinion. Of course, courts would disagree. They would say, "This is exactly what the law should be." What I would say is it shouldn't be, because the reality is you're giving government a free pass. They know darn well now that you can put a law in place and keep it in just long enough until finally there's a hearing on the challenge that the lawyers were able to get together.

And now they will yank it. But the damage has been done. And the government can keep putting in unconstitutional laws, yank them, then just put it another one.

This is part of this is a problem. It's not hard to figure out. You put in a law. You yank it before the hearing, then the judge says it's moot, and you just put it back in again. And then what? The same thing. The lawyers have to get together and get a hearing. The courts are enabling this. And I'd like to think that they know better because I don't think they're that stupid. This is yet another way that government is getting a free pass being able to do whatever it wants, which is not the rule of law. That is arbitrary rule. That is tyranny.

The whole idea of the Canadian justice system is to have the rule of law, have government actually follow the law, and have the courts hold them accountable. Well, that's not going to happen if every time the government passes a law, then yanks it just before a hearing, they are able to get away with it because the courts say it's moot. That's been a big problem all through COVID. It was a problem before, but it's been a big problem all through COVID.

Shawn Buckley

Thank you, James, and I will turn you over to the commissioners for questions.

Commissioner DiGregorio

Thank you so much for your testimony today. I have a few questions.

You spoke a little bit earlier in your presentation about the process of appointing judges and how there is a political element to it. I'm just wondering if you have any views or recommendations on how Canada could improve upon that process.

James Kitchen

One: You could actually have some judges elected. That's pretty radical but that does happen in some of the lower court levels in the U.S. They have a mixed system where most are appointed, but some are elected. I don't think that's a bad idea to introduce some of that.

Our country is very fractured. Albertans think very differently than the people who live in the GTA, generally, or in Ottawa.

[00:40:00]

I think a lot of Albertans or Saskatchewanians or Manitobans or British Columbians don't realize that the judges at the superior level—not at the provincial level, but the main level of court with inherent jurisdiction, I think it's called the King's Bench in Saskatchewan; it's called the King's Bench in Alberta—these judges rule on provincial cases all the time. But they are federally appointed. Every King's Bench judge in Saskatchewan is appointed by Trudeau in Ottawa, not appointed by the Premier of Saskatchewan. Provincial courts level are—so that's good—but not that level. It's the same with the Court of Appeal. Who promotes those judges to the Court of Appeal? Trudeau.

In Alberta, we had a judge come in brand new. She ruled in some COVID cases, ruled in favour of the government, and then she was promoted to the Court of Appeal. You can guess why. And Trudeau was the one who did that appointment.

So the judges who sit in the most important levels of court in each province are federally appointed. Maybe that should be changed. I suggest it should be. It should actually be the provincial government that appoints those judges who are in those courts in the province, who have jurisdiction over the province. And that way, at least hopefully, you have judges that reflect better the views and values of the people in those provinces, which helps protect those provinces from the tyranny of the federal government in Ottawa. So that's one recommendation.

My third recommendation is—obviously I don't have high hopes of this happening—but it would be nice to open up the conversation both at the cultural and at the political level, of: "let's talk about how judges are appointed and why they are appointed, and let's start being honest with ourselves."

Yes, there's a merit-based test and everybody we're talking about in Parliament about whom we're going to select has passed that merit-based test. What's the remaining selection criteria? Look, it's the judge's political views. It's: "We like this judge because we think they're going to bring the country in a better direction." Liberals think the country goes in a better direction when the government has more control. Conservatives think the country goes in a better direction when the individuals have more rights and freedoms.

Let's actually be honest and have that conversation and admit that. They do a little bit in the States. Obviously, there's still this charade that the judges just rule about law and they don't impart their political views on the cases, when we know that's all hogwash. In fact, it's a good thing it is because we want judges who say, "This is the Constitution, these are the rights, I'm going to uphold them, I'm not scared of the government." At least, if you're a guy like me, you want that. Let's be honest about it at the political level and have that conversation. I'd like to see that happen.

Right now, it's really oblique and it's really vague, what's really happening, and nobody's having an honest conversation about who's actually being appointed and why. I think we should just have that and be honest with ourselves and say, "If the judges are going to be appointed, not elected then let's talk about why." It's a merit-based test, but it clearly can't be only a merit-based test. Let's be honest, and let's have that part of our conversation when we decide if we're going to elect Trudeau or we're going to elect Poilievre.

We know Poilievre is going to put freedom-minded judges on the bench. We know Trudeau is going to put socialist judges on the bench. And maybe you want socialist judges. So you can vote for Trudeau, and that's part of your reasoning. Maybe you don't, so that's part of your reasoning. There were millions of Americans that held their noses and voted for Trump because they wanted Kavanaugh and Gorsuch on their bench to protect the rights of their children. We don't have that conversation in Canada at the political level or the cultural level, and I would like to see that change so we can be honest with ourselves.

Commissioner DiGregorio

So is one of the ways that that could be done through hearings for judicial appointments prior to judicial appointments?

James Kitchen

Yeah. They should be much more public than they are right now. Members of the public should be able to come in and in some limited way, even be able to ask questions, I think.

I think you can look at the American system of how they do it. Ask: How can we do this and maybe do it even better to have this be as transparent a process as possible?

Maybe not at the King's Bench level per se, but especially at the appellate level and at the Supreme Court of Canada level. These are the judges who are remaking the country in their own image and deciding how you and your children are going to live. So the public should have some input and there should be some grilling from the public about who these people are.

Why should judges from the King's Bench be appointed by Trudeau to the Court of Appeal without the public having any say in it and being told? "Hey, notice to the public: we're going to have a public hearing on whether John Smith is going to be promoted to the Court of Appeal. Come have your input. Come have your say." That should happen.

Commissioner DiGregorio

Thank you. My next question has to do with your discussion about the chief justices of the court and the discretion that they have to appoint particular judges to cases. And I'm just wondering if you have any thoughts or recommendations on how any perceived problems with that process could be addressed.

[00:45:00]

Whether there's something that could be done in the court rules themselves that talk about how cases are assigned, or if you have any thoughts whatsoever on that.

James Kitchen

That's really tough because the court does need to be independent in order to do its job. So, you don't want too much interference with that. At the end of the day, you do somewhat just have to rely on these judges really caring, actually perceiving what's good for the nation and caring about that enough to let things unfold. Or, maybe to say: "Look, I'm going to make sure that there's a balance of my lefty colleague here and my righty colleague here, and I'm going to give one case to him and one case to her and let them shake it out and then I'll let the Court of Appeal deal with it."

That's how it should happen. And it's difficult to say we can fix that by having more oversight or control, because that right there is going to challenge the independence of the courts, and we don't want that. We want the courts to be independent. The trouble was the lack of ideological independence over the last two or three years.

I think the way you really fix that is you start to have a more transparent process about who is being appointed to the bench. And hopefully, through that, you get a more balanced representation of the people of the country on the bench. We always talk about diversity of judges representing the country, but we only talk about it in this woke, superficial way of skin color and what genitals you have. That's ridiculous. Is that going to reflect the visual diversity of the country? Sure. Is it going to reflect the political or philosophical diversity of the country? No, it's not likely to.

The way you fix that ultimate downstream problem of the chief justices is at the source—by having a judiciary that actually philosophically represents the country. So you actually have judges who think the way I do alongside the Marxist judges who think government is great, and let's just rubber stamp everything so they can get on with making the world a

better place. And in that way, you actually have that philosophical debate amongst the court itself. And the public is watching that, and aware of that, and gets to have a say in each election on who they're going to elect and then whom that elected person is going to ultimately appoint to the Supreme Court of Canada, and how they're going to decide that.

Abortion is a perfect example in the States. We've got enough conservative judges, now the states have the say over abortion instead of the federal government. That process should be happening here, and it's not. I don't think the way to fix that is to come in and try to exert too much influence over the chief justices.

Commissioner DiGregorio

Thank you. I'm hearing you say that the way of dealing with it is right up front through the appointment process.

In terms of where the courts are at today: We had a witness in our last set of hearings in Winnipeg who was a former justice who, when I questioned him about what the courts could do to address the state of where they are and the decisions that they've made throughout COVID, he thought that a self-reflection exercise should be conducted within the courts themselves. I'm just wondering if you had any thoughts on that.

James Kitchen

I think that would be better than nothing. But I think that has its limitations. I don't know if the courts are even capable of that at this point. The number of small-c conservative judges, I would guess, are outnumbered 8 to 1. And their voices are not tolerated. The left-wing ideologies are not tolerant of different viewpoints. The right-wing ideologies are. They don't mind that. They disagree vehemently, but they tolerate the disagreement.

So, yeah—I guess I agree. I just struggle with whether or not that's going to actually help. I unfortunately take a fairly pessimistic view on this. I say, if this problem is going to be fixed at all, it's going to take a long time and a lot of hard work. It's going to take a lot of young people who actually believe in rights and freedoms to say, "I'm going to be a lawyer and I'm going to get involved in this system and maybe even someday I'll be a judge." And it's going to take a lot more lawyers to be more brave if they actually feel this way, and to speak up. And it's going to take years and years of systemic reform.

For years we have been putting left-wing judges on the bench. And that's culminating now, where we are. The law is dramatically different from what it was in the '80s and '90s when we actually had a free society and the Charter was working and we had judges upholding the rule of law.

It took 20, 25 years to get here. It's going to take probably just as long to get out. We're not going to fix it overnight, but we have to start having the conversations at the cultural and political level.

[00:50:00]

And hopefully then downstream we can start systemically fixing the problems on the bench by having more transparency, having people with varying viewpoints that are getting on the bench to reflect the views of Canadians. Not everybody in Canada is a socialist who thinks government is great; some people actually do believe rights and freedoms are good.

Let's reflect that instead of calling these people bad names and stacking the court with people that will keep shutting those people up.

I don't know if that self-reflection is going to be nearly enough. I guess it's a good start.

Commissioner DiGregorio

Thank you. I just have one more question, because I think the other commissioners have some as well. So, I'll restrict myself to one last question which has to do with the Charter itself.

We had a witness in Toronto, a law professor, who spoke to the need to amend the Charter. I think for some of the similar reasons that you were talking about, describing section 1 as a self-destruct button. I'm wondering what your thoughts are on whether or not Canada needs to amend the Charter.

James Kitchen

Well, absolutely. It's useless for its original purpose, which was to be a shield for the people against the government. It's been rendered useless. I think we'd probably be in a better spot if we got rid of it. There were a very few people who said in the '70s and early '80s, "The Charter will take away freedoms in the long run. It won't increase them."

If you go back to Supreme Court decisions prior to the Charter, they were strong on free speech and freedom of religion and all kinds of other areas when it comes to individual rights and freedoms. We didn't need the Charter. It only looked like it helped in the very beginning because of who the judges were that were interpreting it and applying it.

So, get rid of it! Amend it? Sure. Obviously, you want to get rid of section 1 and probably section 33, the notwithstanding clause. Chuck those two out. Maybe you'd have a workable document because now what you've done is you've taken away the discretion from the judiciary to remake the country in their own image. And now if there's a rights violation, the law is struck down or the government action is struck down. Period. Absolute rights.

That's what the American system is. Look how much better it is. Look how much longer it's lasted. There is no, "The government can do whatever it wants if the judge agrees with it" in the Constitution of the United States of America. It is "Government shall not do this." If the courts find a rights violation? That's it. Done.

It's not that, in Canada, the courts don't find rights violations. They do all the time. It's just part of the process. We find the rights violation and then we justify it in other sections. Get rid of section 1. It renders the whole Charter useless to the people.

Forty years is not a long time in the history of law. The fact that our Constitution has been rendered useless in 40 years is really quite pathetic. That should be obvious. I guess it's not obvious to the public but to legal scholars, it's obvious that that was a poor document if it only took 40 years for it to self-destruct.

Amend it, maybe—but I would say, "chuck the whole thing." The country was in better shape as far as rights and freedoms before it was instituted. Whatever you do—amend it, replace it, chuck it—the problem is giving all this power to the judges to remake the nation in their image. And then the governments appoint the judges so the governments can do it through the courts. And the whole system at a philosophical fundamental level is wrong,

and it's taken 40 years for that to be revealed. It needs to be fixed, whether it's through amendment or complete abandonment.

Commissioner DiGregorio

Thank you.

Commissioner Kaikkonen

Good morning, James. Thank you for your testimony.

I was thinking as you first started speaking about when Jesus came to a city and he wanted to bring peace, but their eyes were hid and he wept. And I thought: "Wow, is that where we are in our country?" But then I listened to you say, "We need a conversation." And that's what we're doing here. We're starting the conversation. We're bringing forward a conversation. We're looking at ways that we can contribute and offer hope again in this country.

I do have a couple of questions. We've seen a number of losses recently in the courts, for example, *Servatius* in B.C. As these cases are not being appealed, don't these rulings have a potential to be cited or even become precedent-setting in future litigation? And how do we counter that?

I believe in that particular case, that was a parent who brought forward her concerns. She didn't go through the administrative process, exhausting all the appeal processes through the administrative part of it. But then she loses in court. She has a good heart. She has her own motivations. So she walks away. And that precedent is set. And there is no one else that can step in and appeal in that particular case.

I'm just wondering what those lasting precedents are going to do in this country if we can't change the conversation?

[00:55:00]

James Kitchen

Well, they're very dangerous. It's always a conversation that I and my colleagues have, "How do we avoid setting more bad precedents?" There's almost a hesitation to litigate in this area because we don't want to just keep giving the courts cases that they can rule on to set bad precedents to support a further abandonment of rights down the road.

It's sort of a catch-22 because if you don't litigate, then you don't have the possibility of setting the good precedent, and if you litigate, you have the possibility of setting the bad one. What do you do?

The lower court decisions—non-appellate levels, first instance trial-level court decisions—their precedential value is limited because it doesn't bind even the same court. It doesn't have a lot of impact outside of the province that it's in, so its damage is limited insofar as that precedent is not in any way binding or even necessarily influential.

If you get to the court of appeal level, now you're making binding law. The Court of King's Bench in Saskatchewan has to follow what the Court of Appeal in Saskatchewan says. So if you appeal, you're potentially creating a worse precedent if the Court of Appeal is going to

uphold it. There's no easy way to fix this. All we can do is keep trying. As it takes years for these to go through the courts, a lot of these cases are at the appellate level now or on their way to the appellate level.

The courts of appeal in this country could turn this around if they wanted to. The courts of appeal in B.C. and Saskatchewan and Alberta and Ontario, and eventually the Supreme Court of Canada, could turn this around. I'm not really hopeful, even if the courts of appeal may do a good job somewhere. Of course, in our [Supreme] Court in Ottawa, there are only two people who really uphold the *Charter of Rights and Freedoms*: Justices Brown and Côté. I haven't seen from the other seven of them that they really have any kind of acceptable regard for what those rights actually mean and for the role that section 1 should play, if any.

So I'm not excited about what's going to happen when these COVID cases get to the Supreme Court of Canada, assuming at least some of them do. That's just how it works in the law. You have to take the risk of setting bad precedents in order to go after the law or the government action that is wrong.

I don't have a good answer for how we avoid the bad precedents. I just know that if we continue to set them as we have for the last two and a half, three years, the long-term bad consequence of that is that it's a big neon sign for the government, saying, "Yep, you can do whatever you want" five years from now, because you're going to be able to rely on all this COVID case law about how government can get away with anything under section 1.

That's why I say the problem is to deal with the law itself, to remove section 1 of the Charter altogether. That's the only way you can, in a wholesale manner, get rid of the precedents—to actually change the Constitution.

Commissioner Kaikkonen

And my second question is: Yesterday we heard testimony that those fined under COVID mandates were seeing their fines increased by the prosecutor when they got to court.

I'm just wondering what it will take to restore justice in this nation so that administrators apart from judges are not permitted to go above the law, as in this case—threatening to increase fines beyond the scope of the fine the police gave and what is considered acceptable by the legislature.

James Kitchen

It's my view that too many laws are a bad thing. Discretion is generally actually a good thing.

All these systems and all these laws and our Constitution and our whole societal structure are only as good as the people who live in the society and who fill these roles. It's only good insofar as there are enough individuals who are moral and ethical and actually understand to some degree what is good and right for people, for humanity, for society.

If people honestly believe that Marxism is the path to better human flourishing, it's going to impact their morals and ethics, and their morals and ethics are going to be corrupted by that corrupt ideology. But if they actually believe that individual rights and freedoms and the ability for people to live according to their own view of what's best, with as few

restrictions as possible, is the path to human flourishing, are they going to have the types of morals and ethics that are going to guide them to use their discretion in a good way?

So ultimately you fix that, I think, at the cultural and societal level. Not by just having more laws. This goes back fundamentally, philosophically, to the last 300 years. You can only have a society that is self-governed through limited government and limited laws and a lot of freedom in an open market if the people are generally somewhat moral and so therefore can actually govern themselves.

[01:00:00]

That's what the French philosopher and observer Alexis de Tocqueville observed in America. This American way of living free is only possible because the Americans are generally a fairly moral people and can actually engage in self-government.

That's who Canadians are going to have to be. And they're going to have to come to terms with the fact that historically, whether you like it or not, the most moral and therefore the most free societies have been informed by Judeo-Christian values and morals and beliefs. All the other tyrannical societies in history generally didn't have those views and values. And generally, the people could not govern themselves without chaos and violence, and so needed a strong arm of some sort of state or emperor or ruler over them in order to keep the chaos from destroying everything.

We have to go back to the philosophy of how to live in a society that is self-governing and is moral and is free. And recognize that, yes: If the people, each individual who's fulfilling these roles and exercising their discretion, don't have some sort of morality, if they don't have some sort of view that the world is a better place when people are free, then they're going to abuse their discretion. They're going to become corrupt in the way that they do things. And you're going to have less freedom—less equality, by the way, as well—and you're going to have abuse of power. You're going to have corruption.

Dissidents and minorities, like those who didn't want to take the shot or didn't want to wear the mask, didn't want to comply with everything, are going to suffer as second-class citizens. Because, inevitably, without morality what you're going to have is just mob rule, implemented through all these people exercising their discretion in a way that upholds that mob rule.

That's what we've seen, I don't think you can fix that through just putting in a better rule or a better law. You have to fix that at the human level. That is the only way to ultimately fix it.

Commissioner Kaikkonen

Thank you very much.

Commissioner Drysdale

Thank you very much. I've got some fairly basic questions, I think, and then I have some questions that will probably get us both in trouble.

The first one is: Are judges subject to the rulings of the Law Society, considering they are lawyers or promoted lawyers? They're not?

James Kitchen

They're not.

There is a body—I think it's called the Judicial Council—across the country that's made up of the chief justices and the associate chief justices. This body self-regulates judges. For example—if I'm getting my story right and so take this with a grain of salt—I seem to recall, when Trump was elected there was a judge— I forget where it was, I think somewhere out east. And as sort of a joke—he was an older guy, he thought he could still joke—he walked into the court one morning with some sort of Trump hat, MAGA hat, whatever. And everybody had their hair on fire about this.

Who is the body that deals with that? Well, it's the Judicial Council that deals with that. So again, you have a problem. If all the chief justices and associate chief justices who are politically appointed to those positions hold a particular view about what it means for judges to be professional, or acceptable in their conduct, those are the ones enforcing it. Obviously, judges are going to self-censor and they're going to be scared to speak out. And they're going to be scared to act or do in a certain way because they don't want to be sanctioned by the Judicial Council, which can sanction them just by telling them to smarten up.

Or this Council can actually recommend to the government to have this judge removed. That's extraordinarily rare in Canada, but that's actually the process for how a judge would get removed. The Judicial Council would recommend that Judge X is “out to lunch” and he needs to be removed by the government from his post. He's no longer fit to actually be a judge.

So that there's sort of an internal regulation amongst judges through this Judicial Council, and that right there is somewhat influenced by the government of the day, because the people who sit on that are appointed to their positions.

Commissioner Drysdale

Has the Judicial Council to your knowledge made similar types of restrictions on judges that you experienced with the Law Society yourself concerning the COVID narrative?

James Kitchen

Good question. I'd like to know that. I'm not aware of that. That's a really good question. I wish I knew. My guess is no, but I just don't know.

Commissioner Drysdale

We've heard a great deal of testimony in the last several weeks from people who talked about what Dr. Christian said was the fundamental basis of modern medicine, and that was informed consent.

We've had testimony that people who were given the shot—

[01:05:00]

and there's been a great deal of testimony on this from people who actually experienced this—were really told nothing before they got their shot. For instance, pregnant women weren't told that it wasn't tested on pregnant women.

I can go on about that, but again, I'm short for time here. My question comes down to this: Are you aware of any college of physicians and surgeons in Canada bringing a doctor or some other practitioner to task for not having fulfilled this most fundamental precept of medicine? And that is, allowing people to make an informed consent when so many have testified that they were not.

James Kitchen

No. I'd be shocked if a college of physicians and surgeons did that.

I currently have open a complaint from a member of the public against Dr. Deena Hinshaw—as a doctor, not as the Chief Medical Officer of Health, but as a doctor, because she is a regulated member of the College of Physicians & Surgeons of Alberta. A member of the public has complained about her partly along that basis: that she was recommending these shots for his children, his teenagers, and that recommendation was so unsupported scientifically that it does stray into unprofessional conduct. That complaint is before the College of Physicians & Surgeons of Alberta, so they're going to have to make a decision about that, that I will publicize.

I fully expect the College of Physicians & Surgeons to completely exonerate Deena Hinshaw and say that she did everything right, and that they're proud of her, and that there's no professional misconduct.

If they were acting independently, they would actually make a decision to have— Right now it's at the preliminary stages, because the complaint's already been dismissed and I've appealed the dismissal of it. So, we're not even getting into the actual hearing of it. But if this body was doing its job and saying, "We need to investigate this. We need to see the evidence. We need to have the scientists and the experts come forward. We need to have a full public hearing on this, we need to figure this out—" Me and my client both fully expect the College to not do that. We expect them to protect Dr. Deena Hinshaw. We expect them to protect any doctor who was complained about for not properly giving informed consent to the people that they administered the shot to, or recommended that the shot be administered to.

No, I expect the College to do the opposite: to continue to toe the party line, and to protect the COVID narrative and protect the government and protect the doctors that did that, and to continue to use all their enforcement efforts to censor the doctors who disagree with them and disagree with the government, disagree with the COVID narrative.

Again, that's the problem. These colleges are doing the opposite of what they should be doing.

Commissioner Drysdale

So that talks about one of the most fundamental beliefs held in our medical system.

I want to now ask you: Is it not a fundamental belief of our justice system that every party standing before the court is of equal stature and the law will be applied evenly regardless of who you are, whether you're Ken Drysdale or whether you're the Government of Canada?

James Kitchen

That's the ideal. We're not living up to it. It's the ideal that we have informed consent. We're not living up to it. It's the ideal that we accommodate Christians because religious beliefs are protected in the Human Rights Act, as much as we accommodate transgender people or black people, or whatever, but we're not.

We're not living up to those ideals. The laws are only as good as the people who choose to enforce them and live by them and try to implement them. It doesn't matter. The ideals are not being met because the people just don't care anymore to meet them.

Imagine how morally bankrupt you have to be as a person to say, "I'm going to fire you because you won't inject yourself with this experimental injection. The Government's mad at me and telling me I have to do this." You're clearly a coward. You clearly have no moral compass anymore.

We have hundreds of thousands of Canadians who are completely morally bankrupt. That's what they've done over the last three years: they've shouted at people who won't wear masks, and they've fired people who won't take a shot, and they've refused discrimination to religious people because they can't stand them. They've said: "You're not equal because you won't agree with our science, and you won't agree with the government, and you won't agree with the narrative, so you're not equal to us."

That's what the ideology of Marxism teaches. It actually teaches inequality in the name of equality.

So here we are. We're not living up to our ideals as a nation at all. I think it just goes to show that we've been a lot more like the whitewashed tombs that Jesus talked about when he was talking to the Pharisees. We've put on this show that we are nice and compassionate and caring and meanwhile, deep down, we're not. And when the crap hits the fan, like with COVID, it all comes out.

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We're exposed for the morally bankrupt, cruel, vicious people that we really are. We need to admit that and come to terms with that if we're ever going to get out of this and address our moral failings as a people.

I don't care how many laws you have or how good they are on paper. They're useless without some sort of cultural morality about what is good and evil, and what is bad and what is right, and individual rights and how they should actually be respected.

Commissioner Drysdale

You talked about the issue of mootness, but you didn't mention anything about the practicality of that. What I'm talking about is, I believe Brian Peckford launched some kind of challenge against what he said were Charter infringements and the government declared it moot.

What kind of consequences financially does that have for a plaintiff when the government declares something moot? And does that have a chilling effect on someone else who might want to bring a case forward?

James Kitchen

Well, it does, because it takes a lot of money. Somebody has to pay for this, or somebody has to take a huge cut in the income that they're earning as a lawyer in order to run these cases. They take hundreds of thousands of dollars, at least at market value, to bring these cases to the courts. Then all that money is down the drain because the court just said, "It's moot, we're not going to rule on it." So there's one financial consequence.

Part of the problem, and part of the reason that the Justice Center existed, part of the reason Liberty Coalition Canada exists—which is the organization I work with now—is because we recognize that ultimately, none of these cases about civil liberties are ever likely to come to the court because they cost a lot of money to bring. And who is going to come up with that kind of money? Even if they have it, are they willing to spend it on something like that?

The only way you can challenge the government in a lot of ways through these civil liberties challenges, these Charter challenges, is to crowd-fund and pull the funds, and to take the best cases, and to pay the lawyers a reasonable rate to run the cases all the way, and to finally get a ruling from the courts. Because the courts don't just roll around finding Charter cases—they're not supposed to, anyway. They have to be brought to them.

It takes a lot of resources to bring them. When the courts just dismiss them as moot: yeah, it's a waste of a lot of resources. You drain the resources for those challenges to continue to happen. There's only so many resources. Then there's the chilling effect: Why should I even bother challenging the law? The court has got the government's back, they're just going to rule it's moot or they're just going to justify it under section 1. Why should I even bother?

So yeah, there is that there is that chilling effect.

Then you have the reality that the court, if it wants to, can award costs against the applicants and say: "Look, you never should have brought this challenge. This law has already been taken out. It's moot. You should have withdrawn your challenge as soon as that happened. We shouldn't be here today. The government had to spend resources to defend your action. I'm going to award some costs against you. You're going to have to pay some of the government's costs." Sometimes that does and sometimes it does not happen in those types of cases. It's up to the court whether or not to award those costs.

So yeah, there's lots of costs and lots of chilling effects that result from the courts just constantly saying "it's moot" or "it's justified under section 1." Eventually the people just say, "We don't have any more money, we've spent it all and we've just given up because it's not worth it to continue to spend this and not get anywhere."

Commissioner Drysdale

You talked about, at the beginning of the pandemic, how the courts shut down. And we've heard from other witnesses recognizing the three different branches of government: the legislature, the administration and the judiciary.

I want to ask you about the fourth level of government, and that is the media. The media plays an incredibly important role in our democracy as the interface between all those three levels of government and the people. Their role is to report to the people what's going on, so the people can make an informed decision.

Can you comment on that aspect of what went on in the pandemic: the media's role in this whole thing?

James Kitchen

Well, only briefly. I litigate publicly, I do a lot of media work, so I'm familiar with the media. I see it as a tool to educate the public and hold the courts accountable and hold government accountable. And I use it to the best of my ability. Obviously, you don't see me on the CBC every day. You're going to see me on the *Western Standard* and *The Epoch Times*, et cetera.

So I guess I would just say two things. Obviously, the media is corrupt and biased: pro-COVID narrative, propping up the government.

[01:15:00]

Part of that is completely explained by the fact that a lot of these mainstream media outlets receive money from the government. It's obvious why that's a bad idea. You're an idiot about human nature if you can't see why that's a bad idea. That never should have been allowed. If there had been any litigation against that, the courts should have done their job to say, "No. That's an infringement of freedom of the press, freedom of expression." Because obviously the press is not going to be independent if it's receiving money from the government that it's trying to criticize.

So obviously, the media—terrible through the whole thing, and it's contributed dramatically to the whole thing.

But I guess again, I would go back to saying to the people. Stop being so gullible. Stop only watching mainstream sources. Seek out alternative news sources. Stop watching and listening to CBC or Global or CTV or whatever. Start reading the *Western Standard*. And don't just read, by the way, your favourite alternative news outlet. Read five of them. Get the different perspectives.

People don't realize how much power they do actually still have in the quasi-democracy that Canada still is. You know? Withdraw your market support for these mainstream organizations. Stop bemoaning the fact that the mainstream media is lying about everything, and make sure that you never participate in that by never consuming mainstream media and telling everybody else, "Hey, you probably should not consume mainstream media. Let's go consume a truthful alternative media. Let's consume different ones and compare them to see which one is the most truthful."

So part of it's the media's fault, part of it's the people's fault too, I think as well.

And I've heard repeatedly from people throughout the COVID thing that they've begun to wake up and realize when they started to consume some more alternative media sources. It sounds ridiculous to me, because I've never been roped in by mainstream media sources, because I've just always been that kind of guy. But for some people that's a big deal.

I had a number of people that came to me in 2020 when I was the crazy conspiracy theorist that they thought was awful, and said "Oh geez, you're right! One of the ways I realized that you were right is because of the BLM protests. I started to pay attention to what was going on there and the mainstream media's narrative about it, and the inconsistencies. Then I started watching some alternative news and getting some actual truth, and now I've changed my views on the whole thing."

I have heard that over and over and over again. So it can happen and it can be really good when it happens and that's what has to happen. People have to unplug from the CBC, Global News, whatever: stop caring about what they say or don't say and just start consuming alternative media or even producing the media themselves. We've seen a proliferation of alternative media sources over the last two or three years. That's a good thing. That's a source of hope right there that, because of the technology we have now, we can have these small independent journalists who can go out and give people the actual truth.

Commissioner Drysdale

Thank you very much.

Shawn Buckley

James, that's it for questions. On behalf of the National Citizens Inquiry. We sincerely thank you for participating today.

James Kitchen

Thank you. It's my honour.

[01:18:12]



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The evidence offered in this transcript is a true and faithful record of witness testimony given during the National Citizens Inquiry (NCI) hearings. The transcript was prepared by members of a team of volunteers using an "intelligent verbatim" transcription method.

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