

Action No.: 2001-14300
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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

H E A R I N G
(Excerpt)

Calgary, Alberta
February 24, 2022

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TABLE OF CONTENTS

Description	Page
February 24, 2022	1
Afternoon Session	
DEBORAH GORDON , Sworn, Cross-examined by Mr. Rath	2
The Witness Cross-examined by Mr. Grey	14
Certificate of Record	31
Certificate of Transcript	32

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

2
3
4 February 24, 2022

Afternoon 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 L. B. Grey, QC (remote appearance)

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

10
11 N. Parker (remote appearance)

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

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 B. LeClair (remote appearance)

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

18
19
20 M. Palmer

Court Clerk

21
22
23 THE COURT:
24 to proceed with the next witness?

Okay. Good afternoon, everyone. Are we ready

25
26 MR. PARKER:

Thank you, Justice Romaine. Yes, Deborah
Gordon is in the waiting room, if we could let her in.

27
28
29 THE COURT:

Okay. Thank you.

30
31 THE COURT CLERK:

I think I got the right person.

32
33 THE COURT:

Oh, okay. Ms. Gordon, are you with us?

34
35 MS. GORDON:

Hello?

36
37 MR. PARKER:

There she is.

38
39 THE COURT:

Okay. Do we have her on screen, madam clerk?

40 Yeah. Okay. Okay. And I understand, Mr. Rath, you are going to be conducting the cross-
41 examination; is that correct?

1
2 MR. RATH: I'm leading off. My friend Mr. Grey has
3 questions as well, so --

4
5 THE COURT: Yes.

6
7 MR. RATH: -- I'll be starting and Mr. Grey will be finishing,
8 as we've been doing.

9
10 THE COURT: Okay. Thank you. So, madam clerk, would you
11 swear the witness, please.

12
13 **DEBORAH GORDON, Sworn, Cross-examined by Mr. Rath**

14
15 THE COURT: Okay. Mr. Rath, whenever you're ready.

16
17 Q MR. RATH: Good afternoon, Ms. Gordon.

18 A Hello.

19
20 Q Ms. Gordon, with regard to your training and qualifications, do you have any
21 epidemiological expertise?

22 A No, I do not.

23
24 Q And are you trained as a psychologist?

25 A No, I am not.

26
27 Q A psychiatrist?

28 A No, I am not.

29
30 Q A immunologist?

31 A No, I am not.

32
33 Q A virologist?

34 A No, I am not.

35
36 Q And did you have any special training with regard to crisis management, emergency
37 management?

38 A I have taken our organizational incident command system training.

39
40 Q But no training specifically with regard to provincial scale emergencies and emergency
41 management?

1 A I have worked under our, as I mentioned, organizational training for emergency
2 management response and incident command and I have been the incident commander
3 in numerous Alberta emergencies.

4
5 Q But those would be localized emergencies, wouldn't you agree?

6 A Correct.

7
8 Q Right. And no -- so you have no specialized training or expertise with regard to
9 provincial scale emergencies; is that fair?

10 A I have participated in numerous provincial emergencies in this province, including
11 forest fires and floods, et cetera, in the past.

12
13 Q Right. But previous to COVID, no provincial scale pandemics or epidemics; correct?

14 A No. There has not been a provincial pandemic in my lifetime, until this one.

15
16 Q Not even the flu pandemic of 2009?

17 A I did participate in the H1N1 situation in the province, yes. At that point in time I was
18 working in one of our hospital sites.

19
20 Q And when you say working in one of the hospital sites, you were working there as a
21 nurse or in what capacity?

22 A I was working there as a chief operating officer.

23
24 Q For the -- for -- for that individual hospital; correct?

25 A Correct.

26
27 Q Okay. And just for the record and by way of background, at that time was the hospital
28 that you were operating at or near capacity as a result of the H1N1 outbreak?

29 A I don't have statistics about the actual occupancy rates in that hospital at that point in
30 time. The flu season puts pressure on hospitals and certainly did during the H1N1.

31
32 Q Right. But from -- from your best recollection, and I'm not asking you for -- from
33 statistics, but you stated on the record that you were the chief operating officer of an
34 Alberta hospital during the H1N1 epidemic. Was your hospital strained or at or near
35 capacity as a result of -- of that flu outbreak?

36 A At the time of that flu outbreak, our hospital had increased capacity to deal with the flu
37 cases that we were experiencing at the time.

38
39 Q So had increased capacity, so in other words the flu outbreak at that time, exceeded the
40 original or existing capacity in your hospital and additional capacity had to be created;
41 is that fair?

1 A We'd have to go back and check the numbers, but we would have been planning for
2 increased flu cases at the time.

3
4 Q Right. So it does happen from time to time in Alberta that we have -- that we have
5 respiratory outbreaks and exceed hospital capacity; that's fair, isn't it?

6 A It does. I would say that the flu outbreaks that we have experienced were nothing like
7 what we have seen with this respiratory virus. In fact, the numbers of cases that we
8 have seen, the flu cases have been much reduced compared to anything that we have
9 seen during this pandemic.

10
11 Q But during the flu epidemic, at least at the hospital you were working at, the number of
12 cases that were being referred to your hospital exceeded your original capacity and
13 capacity at your hospital had to be increased; correct?

14 A Yes. By --

15
16 Q Sorry --

17 A -- (INDISCERNIBLE) number of beds.

18
19 Q Okay. Thank you. Now, in paragraph 23 of your affidavit, if we could go there, you
20 make reference to -- you said: (as read)

21
22 March 2020 reference was also made to modelling created by the
23 World Health Organization Collaborating Centre for Infectious
24 Disease which indicated that countries with a similar aggressive
25 and early approach to containment as the UK projected a peak of
26 COVID-19 closer to the summer. A copy of the WHO March
27 2020 report is attached and marked as Exhibit D.

28
29 Do you see that paragraph?

30 A Yes, I do.

31
32 Q With regard to the modelling referred to in that document, do you -- do you have any
33 knowledge as to who created that modelling or who made that modelling?

34 A No, I do not.

35
36 Q And could you advise for the record what that article's role was in the development of
37 or influence to COVID-19 modelling or COVID-19 policies in Alberta?

38 A Well, as I mentioned in the previous paragraphs in -- in my affidavit, it was one of many
39 inputs that we used at the time based on the limited information that was available that
40 allowed us to determine that the potential for an influx of COVID-19 cases in Alberta
41 was likely and that we needed to be ready to respond.

1
2 Q Okay. And throughout the period of the pandemic, so let's say from March of 2020 to
3 June of 2021, how much additional money was put into the Alberta health system by
4 the Government of Alberta to respond to the pandemic?

5 A Sorry, could you repeat the dates?
6

7 Q Well, from March of 2020 to June of 2021, could you please tell me in billions of dollars
8 how many additional billions of dollars were put into the Alberta health care system to
9 respond to the pandemic?

10 A Not sure that I have an actual figure that I could give you in terms of additional dollars
11 that were put into the system. Certainly the government did provide additional dollars
12 to support the COVID-19 response and those dollars were provided on an annual basis
13 to the health system. I don't have an exact number.
14

15 Q All right. Can you provide a ballpark? Is it 1 billion, 2 billion, 3 billion, or is it less
16 than a billion?

17 A I would say that it was somewhere around -- between 1 and \$2 billion.
18

19 Q Right. And can you tell me how many new nurses were hired in that period?

20 A Again, I cannot provide you an actual number of new nurses that were provided. Again,
21 we were given support to provide -- to hire additional nurses as we needed to and
22 additional nurses were -- were hired for multiple different components of the pandemic
23 response and I would say, at minimum, a thousand additional nurses were hired. There
24 were -- there were potentially quite a few more than that number of nurses that were
25 hired, but I don't have an exact number.
26

27 Q Okay. What about doctors?

28 A I cannot provide a physician number.
29

30 Q Okay. So do you know from the start of the pandemic -- and I'm using March of 2020
31 as the start of the pandemic. Do you agree with that or would you say it's February or
32 -- or January of 2020? When would -- when would you, as somebody who was
33 involved, say that the pandemic started in Alberta?

34 A We saw the first case of COVID in Alberta in March of 2020.
35

36 Q Okay. Thank you. So you're -- you wouldn't quibble, then, with me if I suggested to
37 you that the pandemic started in March of 2020 then; is that fair?

38 A I believe the pandemic started before that. We saw the first case in March of 2020 in
39 Alberta.
40

41 Q Okay. Well, just -- but just so that we -- just so that we know for the record, when do

1 you say that the pandemic started, Ms. Gordon?

2 A Well, we were aware that there was some pandemic-like activity taking place as early
3 as -- as sort of the December, January timeframe in the world and started to prepare for
4 it in Alberta in that timeframe.

5
6 Q Okay. Good. So in December, January then, were you spooling up and looking to hire
7 more nurses and doctors for the province of Alberta?

8 A We were looking to increase our available resources. I can't specifically say that we
9 were hiring either nurses or doctors in the months of December and January.

10

11 Q Okay. And what about respiratory therapists?

12 A We did use additional respiratory therapists during our pandemic response.

13

14 Q And how many new respiratory therapists were hired between January of 2020 and June
15 of 2021, do you know?

16 A I'm sorry, I don't have a specific number for you.

17

18 Q But any sense of the magnitude? Was it 10, was it 100, was it 1000, do you know?

19 A I don't want to speculate or guess.

20

21 Q Okay. Now, in paragraph 31 of your affidavit, if we can just go there.

22 A Just one minute. Sorry.

23

24 Q That's fine. Just take your time.

25 A Yes.

26

27 Q You say that: (as read)

28

29 Other steps were taken to ensure availability of space and still
30 (phonetic) professionals to care for patients with COVID-19 that
31 included postponing scheduled tests and procedures while
32 ensuring urgent emergent and oncology surgeries continued and
33 then transferring patients who did not require acute care to other
34 care options such as long term care, supportive living or home
35 care.

36

37 One of the things that I just wanted to clarify for the record, because I know this has
38 been an issue in other jurisdictions, including New York, when you say "ensure
39 available of space and still professionals to care for patients with COVID" and when
40 you say " transferring patients who did not require acute care to other care options such
41 as long term care, supportive living or home care", in Alberta we didn't follow the

1 practice of New York by transferring COVID positive patients from hospital in the long
2 term care homes or nursing homes; is that correct? Or did we?

3 A Very -- in Alberta we were very careful to ensure that people who went back to their -
4 - to their home, which their long term care or supportive living option is, had been tested
5 for COVID-19 before they returned to that setting. If they did return with COVID, then
6 they were appropriately isolated, but we did not as a practice send or create COVID
7 positive environments for patients coming out of acute care and continuing care. We
8 did have numerous continuing care settings in Alberta that did have COVID outbreaks
9 and those patients were cared for in their home and looked after in their homes as long
10 as the appropriate care could be provided. If necessary, they were transferred to
11 hospital.

12
13 Q Well, when you say if -- if necessary, was there no consideration that if people were --
14 if people were tested positive or were positive for COVID in a long term care facility,
15 was there any thought to the fact that leaving them there may in fact infect more people,
16 given -- through their continued infectiousness?

17 A We had very strong outbreak protocols in place and very strong isolation and personal
18 protective equipment procedures in place and so we were able to appropriately isolate
19 people in their continuing care environment. If we couldn't, then we had processes,
20 policies in place to appropriately isolate those individuals to prevent the spread of
21 infection within those environments.

22
23 Q Right. And would you say that those procedures improved through the various waves,
24 that they weren't as good in wave 1 and became better wave 2, wave 3, et cetera, or --
25 or would you say that you had strong processes and policies in place through all the
26 waves?

27 A We were very unfortunate in Alberta that we had strong policies and procedures in place
28 when the pandemic began and we learned about the pandemic and the virus and its
29 transmissibility as the pandemic progressed and so we were able to continually improve
30 our processes throughout the pandemic. And, of course, ultimately getting vaccine to
31 the individuals living in those continuing care environments quickly, when vaccine
32 became available, certainly helped to further reduce the risk for those individuals.

33
34 Q Right. So is it your evidence then that you knew from the outset of the -- that you knew
35 from the outset of the pandemic that -- that long term care homes were going to be an
36 issue in the province of Alberta?

37 A No. We -- we were worried about long term care homes in the province in that we were
38 worried about vulnerable populations in general. We knew that people who were
39 elderly and people who were living in congregate settings could potentially be at risk
40 with a virus like this and so we were making plans for their safety right from the
41 beginning.

1
2 Q Right. So you knew right from the beginning that -- that long term care homes and
3 people in long term care homes were exceptionally vulnerable to COVID-19; that's fair,
4 isn't it?

5 A We did know that they were vulnerable and we did everything that we could to ensure
6 their safety.
7

8 Q Right. Now, in that regard, you'd agree with me, wouldn't you, that the bulk of the
9 deaths in Alberta even to this day have taken place in long term care homes?

10 A I'm sorry, I can't -- I can't provide you with death data. Death data is not something that
11 falls in my realm of responsibility. You'd need to speak to others about the death data.
12

13 Q Right. But you'd agree from the management role that you perform within AHS that -
14 - that, generally, long term care homes, whether it's deaths or outbreaks or infections or
15 whatever it is, have been especially hard hit through this pandemic in the province of
16 Alberta; is that fair?

17 A We had outbreaks in long term care, acute care, schools, all workplaces and so I would
18 say that, yes, continuing care did have a number of outbreaks, but I can't say that they
19 were the hardest hit.
20

21 Q But certainly you would agree with me that the -- that certainly as an example, given
22 that there's been virtually no deaths in people under the age of 30, that -- that, generally
23 speaking, the people in long term care homes were the most susceptible to the worst
24 outcomes from COVID, would you agree with that?

25 A No. Each is a risk factor for death with COVID, but there were people across all age
26 groups that died of COVID and continue to die of COVID.
27

28 Q But the numbers in the lower age group, let's say the 1 to 18 year old age group, are
29 completely insignificant when compared to the number of deaths in the over 70 age
30 cohort, would you agree with that?

31 A No. I don't think any death from COVID is insignificant.
32

33 Q Ms. Gordon, I understand that -- I'll -- I'll rephrase the question rather than providing
34 you with a subjective response. Would you agree that the -- the bulk of the deaths,
35 statistically, in Alberta have taken place in the over 70 age population?
36

37 MR. PARKER: I'm going to object. Ms. Gordon has already
38 indicated she is not the person to be answering death statistic questions. Thank you.
39

40 THE COURT: Thank you, Mr. Parker. Mr. Rath?
41

1 MR. RATH: My Lady, this is a woman that has a very senior
2 role within AHS in terms of managing NPIs, in terms of managing the response to this
3 outbreak. For her to suggest that she generally doesn't have an idea of the magnitude of
4 the deaths in long term care homes, frankly, is unbelievable and in that regard I would
5 suggest that she -- that she be directed to answer the question. And -- and I'm not asking
6 her for the specific number, I'm asking her from a management perspective whether she's
7 aware of the order of magnitude of where the deaths of occurring and we're -- instead, we're
8 dealing with these issues where we're dancing around the issue of subjective responses
9 such as every death is significant, et cetera, et cetera, as opposed to responding to the
10 questions. I think this is an appropriate question I'd like the witness to answer.

11
12 THE COURT: I have to disagree, Mr. Rath, I'm sorry. The
13 witness has made it clear that numbers of deaths do not fall within her area of responsibility.
14 She has answered your questions as you've put them, the last three or four questions, when
15 you've sought to obtain an answer from her and I won't allow the question.

16
17 MR. RATH: Thank you -- thank you, My Lady.

18
19 Q MR. RATH: Now, at paragraph 32 of your affidavit you speak
20 of intensive care unit capacity and additional steps with regard to ICU capacity, which
21 includes planning to add ICU beds, converting operating recovery rooms to ICU space,
22 converting procedure and treatment rooms to ICU space, and introducing new models
23 of care that would shorten time periods in the ICU. Would you agree that the -- the
24 majority of the patients taking up space in the ICUs were transferred to the ICUs from
25 long term care facilities?

26 A No. In fact, very few patients were transferred from long term care facilities to ICU.
27 Most of those patients, as I mentioned, were cared for in their homes.

28
29 Q So -- and would that be because those patients were simply allowed to die in the long
30 term care homes rather than being transferred to the hospitals?

31 A No. It was because in many cases those patients could be cared for in their homes or
32 had directives about their end of life care in place that we followed.

33
34 Q So in -- in other words, a number of them, if they had a DNR in place on their file --
35 file, they were simply allowed to die palliatively within the long term care home; is that
36 correct?

37 A They may have chosen to not choose ICU care as one of the measures that they
38 requested in end of life, in which case we would not have moved them to hospital for
39 intensive care.

40
41 Q All right. Thank you. And to your knowledge, where were the bulk of the ICU patients

1 stemming from? What age cohort were they coming from?

2 A We had, again, patients in ICU right across the -- the spectrum of ages. Certainly the
3 group that are 60 years of age and above were prevalent in the ICU population and there
4 were fewer children in ICU from COVID up until recently.

5

6 Q Thank you. Now, I'd like to refer you to Exhibit I of your affidavit.

7 A Yes.

8

9 Q This is a briefing note that you authored on the 3rd of June, 2020.

10 A Yes.

11

12 Q Where you recommended reducing the number of acute care beds from 1000 to 500
13 and --

14 A Yes.

15

16 Q -- reducing the number of ICU beds from 200 to 50.

17 A Correct.

18

19 Q In hindsight, was that -- do you consider that to be a good decision?

20 A Yes, I do consider it to be a good decision. This was coming out of wave 1 of COVID
21 in Alberta and it was a necessary step to allow healthcare professionals to rest and be
22 prepared for whatever COVID might bring next in the province. When we made the
23 decision to do this, we knew that we may very well have to ramp up capacity again in
24 future, which is exactly what ended up happening, but this was a prudent step in June
25 of 2020.

26

27 Q So that was simply an interim step?

28 A It was an interim step.

29

30 Q And then what -- what number of beds -- what was the number of acute care beds in the
31 province at peak, do you recall?

32 A In which wave, sir?

33

34 Q Well, let's deal with waves 1 through 3.

35 A So in wave 1, we had only world experience to rely upon and we had begun to see what
36 was happening in Wuhan, what had happened in Italy, we were seeing a bit of what was
37 happening in France and that led us to believe that the prudent thing to do in Alberta
38 would be to prepare for a large number of individuals with COVID-19, and so we
39 prepared the health system at that point in time for a mass casualty-type response to the
40 virus. The reason that the briefing note that you just asked me about was written was
41 that, when we came out of that wave in May of 2020, it seemed reasonable to scale

1 down that response for a period of time and allow staff and physicians a much deserved
2 break from preparing for that type of response while we prepared for what the virus
3 might bring in wave 2 and wave 3. Wave 2 of the virus in Alberta brought a significant
4 impact from COVID and required us to ramp the system back up. We had also learned
5 a fair bit about looking after patients who had this virus and we understood how difficult
6 it was to look after patients with COVID-19 and the number of resources that were
7 required to look after those patients. And so for both wave 2 and wave 3 we ramped
8 up to a total of 425 ICU beds in our plan in order to be prepared for whatever might
9 come our way and for in-patients that were not requiring ICU care, we had plans in
10 place for 2,250 hospital beds, however, our plans were only required to ramp up to just
11 under 2,000 beds to be able to respond to those two waves.

12
13 Q So that's wave 1 and wave 2. Now --

14 A No, that was wave 2 and wave 3.

15
16 Q Okay. Now, with regard to the gap between wave 2 and wave 3, as a result of that
17 reduction in surge capacity at the end of wave 1, was there any difficulty in ramping
18 back up for wave 2? Was there any lag time?

19 A We began to ramp up for wave 2 in early October and that was based on the viral activity
20 that we were seeing in the community. And it -- and we had been clear that it would
21 take us some time to ramp up that capacity and that was part of our ramp-up plan was
22 to add the capacity back in stages as it was required.

23
24 Q So would you agree that, as hard as that goes, you were always behind the curve in that
25 regard or -- it seems to me that this is a fairly large system that we're talking about.
26 Were the resources there as needed or were you constantly playing catch-up with regard
27 to adding back in these resources that you'd taken away in June?

28 A We were -- we were in a situation where we planned for the wave to come and we
29 adjusted the plans continually based on the Alberta experience of what we were seeing
30 in terms of cases that required hospitalization. So we were working hard to continually
31 balance the resources in the system to maintain care for as many patients in the system
32 who did not have COVID as we possibly could and also to ensure that the resources
33 were there and available to care for the patients who did have COVID.

34
35 Q Right. And -- and in that regard -- and, again, I'm not sure if that's an -- that's responsive
36 to my question, but my question was did you find yourself in a position where you're
37 constantly lagging behind COVID or was the plan and its execution sufficient to stay
38 ahead of hospital needs of -- of additional patients?

39
40 MR. PARKER:

Sorry, I'm --

41

1 Q MR. RATH: These are big systems that we're talking about. If
2 I can -- Ms. Gordon, so this isn't like an accelerator on a car, I take it? You don't -- you
3 don't have an instantaneous response to an input; correct? And these things take time
4 to bring in new resources and new beds; correct?

5 A We normally run 173 general systems ICU beds in the system so ramping that up to
6 425 in each of wave 2 and wave 3 did take some time and certainly did take some effort.
7

8 Q Right. And so -- and my only question was were you -- did you feel that you were
9 constantly ahead of the curve and that you generally had more resources than were
10 required or did you constantly seek to find yourself behind the curve with insufficient
11 resources and that you're constantly playing catch-up, that was my question.

12 A We found our system under pressure, trying to respond to the number of people who
13 had COVID and trying to care for all of the people who did not have COVID. This was
14 the kind of response from a health system, even as large as the health system in Alberta,
15 that was unprecedented in terms of demand.
16

17 Q Right. So, again, with regard to wave 2, is it fair to say then as a result of the decision
18 in June to reduce surge capacity, that through wave 2 and wave 3 that you were
19 constantly playing catch-up, trying --

20 A No.
21

22 Q -- to bring additional beds and --
23

24 MR. PARKER: And, sorry, I'm going to object. This is asked and
25 answered territory, Justice Romaine. Thank you.
26

27 THE COURT: Yes. Thank you. Mr. Rath?
28

29 MR. RATH: I'm simply trying to get a clear answer to the
30 question on the record, My Lady, that's all.
31

32 THE COURT: Okay. I'm sorry, you've asked that question at
33 least three times and it's been answered and let's move on.
34

35 MR. RATH: That's fine, My Lady. Thank you.
36

37 Q MR. RATH: Now, with respect to the management that you're
38 involved in in Alberta Health, what's the current ratio of management and
39 administrative staff to white -- to -- to frontline workers prior to COVID-19? Do you
40 know that?
41

- 1 MR. PARKER: Sorry, I'm going to object on relevance.
2
- 3 MR. RATH: My next question would establish the relevance.
4 I was going to -- I was going to ask the witness whether that in any way changed during
5 COVID-19.
6
- 7 THE COURT: Okay.
8
- 9 MR. RATH: That ratio.
10
- 11 THE COURT: Okay. I will allow the question. Ms. Gordon, do
12 you recall what the question was?
13
- 14 A I do.
15
- 16 MR. RATH: I could -- I could re-ask it.
17
- 18 Q MR. RATH: Prior to COVID-19, what was the ratio of
19 management and administrative staff to frontline workers prior -- prior to COVID-19?
20 A So when you first asked the question, you asked me about the ratio of management staff
21 to staff in Alberta Health and that is something I cannot answer. I can give you
22 information for Alberta Health Services.
23
- 24 Q Yes, please. That would be fine.
25 A So Alberta Health Services is the delivery organization of health services in Alberta.
26 We have the lowest administrative ratio in the -- in the country of Canada in terms of
27 management staff to frontline clinical staff. On average, each manager has an excess
28 of 30 frontline staff reporting to them.
29
- 30 Q Okay. And so how many -- do you know how many managers that you have for every
31 doctor within the AHS system?
32 A Doctors in the Alberta health system are privileged to work in Alberta Health Services
33 and so they are independent contractors and they seek privileges. There are very few
34 physicians in Alberta Health Services who are employees of the system. Those
35 employees of the system would have an individual to whom they report. And, I am
36 sorry, I do not -- I don't lead medical staff and so I do not have those statistics at my
37 fingertips.
38
- 39 Q That -- that's fine. Now, were you involved, Ms. Gordon, in providing advice with
40 regard to the application of non-pharmaceutical interventions in the province of
41 Alberta?

1 A I think I would need you to expand your question a little bit. I'm not sure I understand.

2

3 Q Well, did you provide any input into decisions with regard to any of the non-
4 pharmaceutical intervention measures imposed within the province of Alberta as a
5 response to the pandemic?

6 A Could you give me an example of what you mean by a non-pharmaceutical
7 intervention?

8

9 Q So you don't know what I'm referring to when I speak to non-pharmaceutical
10 interventions in the context of COVID-19 management?

11 A It's not a term that I am familiar with.

12

13 Q Okay. That's fine. So things like locking down or shutting down businesses in the
14 province of Alberta. Were you involved in providing advice in that regard?

15 A No. Those are -- that is not within my realm of responsibility.

16

17 Q And providing advice with regard to forcing children in school to wear masks, you
18 weren't involved in providing advice in that regard?

19 A Again, decisions about masking, et cetera, are not within my area of responsibility.

20

21 Q And decisions to close particular businesses like gyms or restaurants, you weren't
22 involved in those decisions?

23 A No. Those are not -- those are not Alberta Health Services decisions.

24

25 MR. RATH: All right. Well, I believe those are all my
26 questions, My Lady. Thank you.

27

28 THE COURT: Mr. Grey, do you have some questions?

29

30 MR. GREY: I do, Madam Justice.

31

32 THE COURT: Thank you.

33

34 **The Witness Cross-examined by Mr. Grey**

35

36 Q Good afternoon, Ms. Gordon.

37 A Hello.

38

39 Q Okay. Obviously, you can hear me okay?

40 A I can.

41

1 Q Excellent. All right. Ms. Gordon, I'd like to refer you, please, to Exhibit H in your
2 affidavit. This begins at -- yes, here it is -- at page 91 and --

3 A Yes.

4

5 Q -- if you could please -- Leslie, take us to page 98. That's fine. That page is fine right
6 there. So I heard you, Ms. Gordon, in response to Mr. Rath's questions state that you
7 could not comment upon the -- the death rate in Alberta as -- as it relates to demographic
8 criteria such as age. Was that what you said earlier?

9 A Yeah. This is --

10

11 Q (INDISCERNIBLE).

12 A This page is (INDISCERNIBLE) --

13

14 Q Right.

15 A -- from the Alberta Government.

16

17 Q Right, but this -- this is an exhibit to your affidavit and so it's part of your evidence.
18 Do you understand that?

19 A Yes. It's part of -- it was a document that was used in an appendix in a plan that we
20 wrote, but this is --

21

22 Q All right.

23 A -- an Alberta Government document.

24

25 Q Right. Are you prepared to answer questions about this document which is an exhibit
26 to your affidavit sworn in this proceeding?

27 A Depends on the question. I'm not sure if I'll be able to provide you any more
28 information than is on this page. As I mentioned, this is an Alberta Government
29 document. I work for Alberta Health Services.

30

31 Q Okay. Well, let's look at the pages in front of you under the heading summary. Do
32 you see that?

33 A Yes, I do.

34

35 Q Okay. So it says: (as read)

36

37 The average age for COVID cases that die is 82 years.

38

39 You see that?

40 A I do.

41

1 Q Okay. It also says that: (as read)

2

3 The average age for COVID cases hospitalized with an ICU stay
4 is 60 years.

5

6 You see that?

7 A I do. It also provides ranges.

8

9 Q Right. I see that.

10 A Yeah.

11

12 Q And this is all -- this is all in evidence.

13 A Yeah.

14

15 Q So the average age for COVID cases hospitalized is 61 years?

16 A It was at the time, yes, in May of --

17

18 Q Right.

19 A -- 2020.

20

21 Q This is as of May 14th, 2020.

22 A Yeah. Right.

23

24 Q It says that at the top, top left corner: (as read)

25

26 The average age for COVID cases not hospitalized is 41 years.

27

28 Right?

29 A At the time, yes.

30

31 Q Yes. You don't need to --

32 A As per Alberta --

33

34 Q -- say that. We know what -- we know what time this was, Ms. Gordon. There's no
35 trickery here. The date is right there at the top. Okay?

36 A Yeah.

37

38 Q Okay. So if you could, please, just scroll up, Leslie, to the next page. All right. So
39 here, there's -- there's a graph and --

40 A Yes.

41

1 Q -- on the left side, it says hospitalizations, then the middle one is ICU admissions and
2 on the right are deaths. Now, to my eyes, it is very obvious that the risk of
3 hospitalization, ICU admissions and death goes -- increases with age. Do you agree?

4 A Yes. And I did mention that -- that age was a definite risk factor.
5

6 Q Okay. Great. Could you please slide down, Leslie? So here, we have further
7 breakdown. And I'd like you to look over under the heading of count where it says
8 deaths. You see that, Ms. Gordon?

9 A Yes.
10

11 Q Okay. So under 1 year, zero deaths; right?

12 A In -- in that timeframe, correct.
13

14 Q Right. That's the timeframe we're talking about and no other. It's not --

15 A Yeah.
16

17 Q -- necessary for you to keep saying that. Okay? One to 4 years, it says zero deaths;
18 correct?

19 A Yes.
20

21 Q Five to 9 years, zero deaths; correct?

22 A Yes. That's what I see.
23

24 Q Ten to 19 years, zero deaths; correct?

25 A Yes.
26

27 Q Twenty to 29 years, one death; correct?

28 A Yeah.
29

30 Q Thirty to 39 years, one death; correct?

31 A Yes.
32

33 Q Forty to 49 years, one death; correct?

34 A Yes.
35

36 Q Fifty to 69 years, two deaths; correct?

37 A Yes.
38

39 Q Sixty to 69 years, 10 deaths --

40 A Yes.
41

1 Q -- correct? Seventy to 79 years, 23 deaths --

2 A Yes.

3

4 Q -- correct? And then if you scroll up to the following page, Leslie, there's one more
5 category. Eighty-plus years, 83 deaths.

6 A Right.

7

8 Q Thank you. Those are my questions concerning that graph. You can take that down
9 please, Leslie. Thank you. Ms. Gordon, as -- as I read through your affidavit carefully,
10 it appears to go through something of a -- of a summary during a specific timeframe of
11 your involvement in the response to the COVID-19 pandemic in Alberta. Is that a fair
12 summary? Things that you did -- you were involved in?

13 A Yes.

14

15 Q Okay. And such as it is, it seems to describe a fairly logical pattern of steps that were
16 being taken. However, I'm going to suggest to you that things were not as -- as clear
17 and coherent as -- and as logical as they appear from your affidavit. Okay? So firstly,
18 we had some evidence previously in this hearing about Alberta's emergency plan or the
19 lack thereof or what that looked like. To your knowledge, was there any -- any formal
20 written emergency plan that you knew about that was guiding your decisions and your
21 involvement in Alberta's pandemic response?

22 A Well, we had never had a pandemic in Alberta before, so we did not have a specific
23 pandemic plan. We did rely -- and your colleagues spoke about the H1N1 plans and
24 we did look back at our H1N1 plans. We do have, as I mentioned, an emergency
25 management system within the organization that we use in all emergencies and we used
26 that system to respond to this pandemic. None of us had ever responded to a pandemic
27 like this.

28

29 Q Right. I understand that you hadn't responded to it, but it's not accurate to say we'd
30 never had a pandemic in Alberta. We had a -- the Hong Kong Flu in 1969 -- was a
31 worldwide pandemic. We also have the Spanish Flu pandemic, which is about 100
32 years ago, I understand about 1918. So we have had pandemics in Alberta
33 (INDISCERNIBLE) --

34

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

36

37 Q MR. GREY: -- right?

38

39 MR. PARKER: This is -- well, sorry. If that's the question, if she
40 knows the answer to that, I won't object, but --

41

1 THE COURT: Okay. Go ahead. Go ahead, Mr. Grey. I think
2 you have not --
3
4 MR. GREY: I'm just saying --
5
6 THE COURT: -- yet got to a question. Or have you? Maybe I
7 -- okay.
8
9 MR. GREY: I'll clarify. I'll clarify and hopefully this will
10 assuage my friend's concern. The witness had said that we'd never had a pandemic in
11 Alberta. I'm confronting her with the fact that that's -- that's inaccurate. In fact, we
12 actually have had pandemics in Alberta. We've had worldwide pandemics, both in 1969
13 and 1918.
14
15 Q MR. GREY: Is that -- do -- do you understand that, Ms.
16 Gordon, or am I mistaken?
17
18 MR. PARKER: So I'm objecting.
19
20 THE COURT: Yes.
21
22 MR. PARKER: This is argumentative. Mr. Grey is giving
23 evidence.
24
25 MR. GREY: Well, actually, may I --
26
27 THE COURT: Yeah. Of course.
28
29 MR. GREY: -- may I respond?
30
31 THE COURT: Of course you may respond. Yeah.
32
33 MR. GREY: This is cross-examination. I'm not required to
34 put open-ended questions to this witness. I am permitted to put anything to this witness,
35 subject only to the bounds of relevance. If Mr. Parker is saying that -- that my question is
36 -- the -- the substance of my question is irrelevant, that's one thing, but I'm not required to
37 put questions to this witness that satisfy the form that Mr. Parker would like them to take.
38 That's -- that -- the -- if -- if that were the scope of cross-examination to which I'm
39 confined, then cross-examination would be a very blunt instrument indeed, and there would
40 have been many more objections to Mr. Parker's cross-examination of Dr. Bhattacharya.
41

1 THE COURT: Okay. Thank you, Mr. Grey. My concern with
2 the question is that it perhaps does not fully reflect what the witness had said. The witness
3 said that we have never had a pandemic like this in Alberta. And so to be fair to the witness,
4 you know, perhaps you could rephrase your question.
5

6 MR. GREY: Well, thank you for that, Madam Justice, because
7 I may have misheard her evidence.
8

9 THE COURT: Okay.
10

11 MR. GREY: I didn't hear her say that we've never had a
12 pandemic like this. I heard her say that we'd never had a pandemic. So I may be mistaken
13 in that. Perhaps I'll ask Ms. Gordon.
14

15 Q MR. GREY: Is -- is what Madam Justice said, is that -- was
16 that your evidence?

17 A Yes, it was.
18

19 Q That we've -- that we've never had a pandemic like this?

20 A Yes.
21

22 Q Okay. Thank you very much. That clarifies it for me. So, Ms. Gordon, I wanted to
23 take you through a bit of a -- my own -- my own summary of -- of what appeared to be
24 happening throughout this timeframe and I want to get -- get your comments on this.
25 So I want to take you to March the 20th of 2020. So this is 4 days after the World
26 Health Organization declared a worldwide pandemic. Alberta cities, including Calgary,
27 declared local states of emergency and locked down most non-essential businesses and
28 services and Alberta also declared provincial state of emergency and closed all schools.
29 Does that accord with your recollection?

30 A I can't speak to the specific dates, but I am aware that in March, the province of Alberta
31 did take several measures --
32

33 Q Right.

34 A -- to try and control the spread of the virus.
35

36 Q Right. So that -- that sounds like what's in your affidavit about let's say the beginning
37 part of -- of the pandemic in Alberta; right?

38 A Yeah. None of us really --
39

40 Q Okay.

41 A -- knew what to expect and people were being very cautious to try and manage people's

1 health and safety.

2

3 Q Right. Right. So -- so then moving forward to May 13th of 2020, Alberta entered a
4 stage 1 reopening plan allowing businesses like restaurants and retailers to reopen with
5 social distancing restrictions. Do you recall that phase -- phase?

6 A I do recall that in May, it seemed as though the first wave of the pandemic was subsiding
7 and there were some decisions made to loosen restrictions.

8

9 Q Right. And then moving forward to June the 12th of 2020, stage 2 was introduced
10 earlier than expected, allowing theatres, massage therapists and hair salons, as well as
11 libraries to open, and do you recall that?

12 A Well, again, I don't recall --

13

14 Q (INDISCERNIBLE) stage 2?

15 A -- the specifics of the date or the plan, because they were government plans, but the --

16

17 Q Right.

18 A -- timeframe sounds reasonable.

19

20 Q Right. So what I'm saying -- what I'm asking you is does that sound about right in
21 terms of the introduction of what was called at the time stage 2 reopening?

22 A Again, I can't comment on the specific dates, but the timeframe seems reasonable.

23

24 Q Okay. That's fair enough. Then moving forward, on August 4th of 2020, the province
25 mandates back to school masking for students -- older students. Do you recall that?

26 A Not specifically.

27

28 Q Okay.

29 A I do recall that there was at a time when those kind of things took place, but again, these
30 restrictions are set by Alberta Health and by government, not -- not by Alberta Health
31 Services. We respond --

32

33 Q Right.

34 A -- to those directions.

35

36 Q Okay. I understand that part. Then moving forward to October 26 of 2020, Alberta
37 introduced a limit of no more than 15 people for social gatherings. Do you recall that?

38 A Again, not specifically, but I --

39

40 Q Okay.

41 A -- do recall that by October, we were into wave 2 and starting to feel the pressures of

1 rising cases.

2

3 Q Right. And that's -- that's really covered pretty clearly in your affidavit evidence, that
4 there was an increase in cases and then the restrictions are -- were increasing. And I --
5 and I appreciate your evidence that you weren't part of the formation of those
6 restrictions; right?

7 A Correct.

8

9 Q Then November 24th in 2020, the province announced new and even tighter restrictions
10 banning gatherings, limited -- limiting attendances, numbers in churches and funerals
11 and closing Alberta schools. Do you recall that? Especially you must recall the closing
12 of Alberta schools. That was a big moment in November of 2020. Do you recall that?

13 A Yeah. I do recall that.

14

15 Q Okay. And then on November 20th, 2020, Mr. Kenney, the premier
16 (INDISCERNIBLE) Facebook post. He said: (as read)

17

18 We decided not to proceed with lockdown because of the profound
19 damage it would cause to Albertans, including causing a mental
20 health crisis and leading many to despair.

21

22 And he says: (as read)

23

24 We're not going to yield to political ideological approaches that
25 cause indiscriminate damage to people's lives and livelihoods.

26

27 Do you recall that?

28 A No, I don't.

29

30 Q Okay. In any case, on December the 8th of 2020, despite that announcement by Mr.
31 Kenney less than 2 weeks earlier, the province plunged into another just about full
32 lockdown where all indoor and outdoor social gatherings are banned and non-essential
33 businesses are forced to close, including restaurants. Do you recall that?

34 A Not specifically in terms of the date. Again, I do recall that we went through a series
35 of fluctuations in the restrictions over the course of the pandemic.

36

37 Q Right. And that's -- that's my point and -- and I could go on and go all the way through
38 what happened in the rest of 2021, but there was this constant fluctuation where it
39 appears from -- from the data and from the steps that you were taking and the province
40 was taking that really what was being done was simply responding to what the virus
41 was doing; is that fair?

1 A Well, my understanding of -- of the plan in Alberta was that we were experiencing a
2 situation in the province where we wanted to be sure that we had enough healthcare
3 capacity to look after people who were sick with the virus.

4
5 Q M-hm.

6 A That required different actions being taken at different points in time throughout the --

7
8 Q Okay.

9 A -- pandemic.

10
11 Q Right. And I believe one of those -- one of those steps involved making sure that there
12 were enough ventilators available; right?

13 A Very early on --

14
15 Q (INDISCERNIBLE).

16 A Very early on --

17
18 Q Yeah.

19 A -- in this pandemic, we -- we worked to make sure that we had a good number of
20 ventilators on hand.

21
22 Q Right. It was, though, subsequently discovered that these ventilators protocols that
23 were used in the early days of the pandemic were -- were too aggressive and that
24 physicians were too quick to place patients on mechanical ventilation and that in those
25 early days nearly 90 percent of patients on mechanical ventilation died. You know
26 anything about that?

27 A No, I do not. I -- that does not -- that does not fit with my understanding at all.

28
29 Q Okay. This is from a study actually that was done in New York City, but they had a
30 similar experience in the province of Quebec with nursing homes where ventilators --
31 they -- they discovered that the use of histamine blockers in conjunction with ventilators
32 contributed to improved survival of hospitalized COVID-19 patients.

33
34 So the reason why I mentioned the ventilators is that's an example -- I put it to you
35 that's an example of what my -- my friend Mr. Rath was saying to you about sort of
36 chasing after -- chasing after solutions and -- and how the province is really just trailing
37 behind what was happening and chasing after what the virus was doing as opposed to
38 having a coherent plan --

39 A Yeah. That's not --

40
41 Q -- (INDISCERNIBLE) transmission.

1 A I -- I have to respectfully disagree with you. We -- we planned at the very beginning
2 for as much ventilator capacity as we could have knowing that this was a respiratory
3 virus and seeing what was happening in other parts of the world.

4
5 Q There's earlier evidence in this proceeding that there was a 2014 emergency pandemic
6 plan or written plan. Have you seen that? Are you aware of that?

7 A For the province of Alberta?

8
9 Q Yes.

10 A Or for Alberta Health Services?

11
12 Q I believe it was for -- for the province of Alberta?

13 A So I am aware that the province of Alberta did have a pandemic plan. It was -- it's not
14 a plan that I -- again, I work for Alberta Health Services and so I don't have great
15 familiarity with that plan. I know that my colleagues in Alberta Health used pieces of
16 that plan for the pandemic response.

17
18 Q Okay. And I know I asked you about this before, but I wanted to be very clear about
19 this. You're not aware of a similar plan to that 2014 provincial plan, if we can call it
20 that, that was developed within Alberta Health Services to deal with the COVID-19
21 pandemic?

22 A Alberta Health Services developed the specific plan for the COVID-19 pandemic as we
23 -- as we prepared for the pandemic and as we went through the pandemic.

24
25 Q Okay. So --

26 A (INDISCERNIBLE) plan --

27
28 Q Sorry. Go ahead. Sorry. Go ahead.

29 A (INDISCERNIBLE) did have plans for a pandemic -- or for epidemics like H1N1 and
30 other things like that that we had experienced along the way, that those kinds of plans
31 were groundwork for us to lever our response to this particular virus and pandemic.

32
33 Q Okay, but I just want to be clear about this. You've actually seen these written plans
34 that you're speaking of? They were actually written plans or written down manual type
35 plans for how to deal with a pandemic that was developed --

36 A For how to deal with (INDISCERNIBLE) like H1N1 and other --

37
38 Q Yes.

39 A -- emergencies, yes.

40
41 Q Okay. And -- and these were provided to -- to you and -- and members of your team at

1 the outset of the COVID-19 pandemic or were they developed after in response to what
2 was happening with COVID-19?

3 A No. Those plans that I mentioned existed associated with those previous emergency
4 situations and they were able to be used as we developed specific plans for COVID-19.
5

6 Q Okay. I -- I didn't see any of those attached as exhibits to your -- to your affidavit. So
7 I -- I take it that -- that wasn't -- that wasn't made part of your evidence. It wasn't
8 decided that that was anything that was relevant to your evidence in this proceeding,
9 that is the existence of these plans.
10

11 MR. PARKER: Objection. The question put to the witness
12 whether something is relevant is an improper question.
13

14 MR. GREY: Okay.
15

16 THE COURT: Okay.
17

18 MR. GREY: That's fair.
19

20 THE COURT: Yeah.
21

22 MR. GREY: These -- may I proceed, Madam Justice?
23

24 THE COURT: Yes, of course.
25

26 MR. GREY: Thank you.
27

28 Q MR. GREY: Ms. Gordon, just to clarify that last question,
29 there's -- none of these plans that you just spoke of are part of your evidence in these
30 proceedings? They're not exhibits to your affidavit?

31 A No, they are not.
32

33 Q Okay. Thank you.
34

35 THE COURT: The noise of my -- okay.
36

37 MR. GREY: All right. Thank you, Ms. Gordon. Those are all my questions. Thank you
38 for your testimony here.
39

40 THE COURT: Thank you, Mr. Grey. Mr. Parker, anything
41 arising?

1
2 MR. PARKER: I don't think so. Just give me 1 minute, if I
3 might, Justice --
4
5 THE COURT: Sure.
6
7 MR. PARKER: -- Romaine? I just want to review my notes.
8
9 THE COURT: Of course.
10
11 MR. PARKER: Thank you, Justice Romaine. We have no
12 questions arising.
13
14 THE COURT: Okay. Thank you. Ms. Gordon, thank you very
15 much for your testimony today, and we can let you go now. Thank you.
16
17 A Thank you. Good bye.
18
19 THE COURT: Bye.
20
21 MR. PARKER: Goodbye, Ms. Gordon. Thank you.
22
23 A Bye.
24
25 (WITNESS STANDS DOWN)
26
27 THE COURT: Okay. So I guess that's it for witnesses until
28 April. Madam clerk mentioned to me during the break that she still has not received any
29 exhibits, you know, the agreed upon exhibits. Can you just bring us up-to-date on what's
30 happening there?
31
32 MR. PARKER: My -- just -- sorry. Just -- I don't mean to
33 interrupt my friends if they want to take the lead. I just asked Mr. Trofimuk to speak to
34 that, so he's ready to speak. We've been engaging in some communications. I'm just not
35 quite sure where we're there -- at, so I'll let (INDISCERNIBLE) --
36
37 MR. GREY: Yeah. We're fine to listen to --
38
39 THE COURT: Thank you.
40
41 MR. GREY: -- Mr. Trofimuk --

- 1
2 MR. RATH: Yeah. Go ahead (INDISCERNIBLE) --
3
4 MR. GREY: -- (INDISCERNIBLE) Mr. Rath.
5
6 MR. RATH: Thank you.
7
8 THE COURT: Okay. Okay. Mr. Trofimuk then. Go ahead.
9
10 MR. TROFIMUK: Thanks, Justice Romaine. So we've sent over a
11 list of them to our friends today and just waiting to hear back. I think we've probably
12 agreed on all of it, just let them speak to their thoughts on that.
13
14 THE COURT: Okay. Mr. Grey? Mr. Rath?
15
16 MR. GREY: Madam Justice, I -- I regret that I have not -- I
17 did not see Mr. Trofimuk's email yet. I'm certain that he sent it if he says he sent it. I had
18 sent over our proposal and they may have just sort of crossed in -- in the night. So what I
19 propose to do -- we could take a short break and come back or else you could leave it to us
20 to correspond on it and then -- I'll leave it in your hands what you'd like to do.
21
22 THE COURT: Yeah. No. No. I understand everyone has been
23 very busy with this going on. So I'll leave it to counsel. I just want to remind you all, of
24 course, that the clerk of the court needs copies of these so she can mark them properly as
25 exhibits. Madam clerk, is there anything else you want to say about that? Is there someone
26 that these should be directed to specifically, like yourself?
27
28 THE COURT CLERK: That would be me. If you are okay with stating
29 on the record right now that you have leave for me to enter them without it being officially
30 on the record, each individual, then that way that kind of covers my bases for exhibit control
31 on that. If counsel wants to speak to it on the record, then that would have to be
32 (INDISCERNIBLE).
33
34 THE COURT: Okay. I'll -- Mr. Grey, you're still --
35
36 MR. GREY: I think --
37
38 THE COURT: -- up.
39
40 MR. GREY: Yeah. I think -- and I -- and my friends may
41 correct me on this. I think following your ruling this morning, which clarified the one issue

1 that we were disagreeing about, I think we are in agreement about what are the exhibits. I
2 think the only lingering issue is the other one that we were directed to sort out, and that is
3 what is to be made of any evidence that the Court heard concerning questioning
4 surrounding the impugned reports. So that's something that I -- I have made a proposal to
5 my friends about and they'll probably need some time to consider, but unless my friends
6 correct me, I don't think there's disagreement about what the exhibits are at this point.
7 Does --

8
9 THE COURT: So --

10
11 MR. GREY: -- that sound right?

12
13 THE COURT: Yeah. So you're okay with the clerk just entering
14 them without having to be spoken to? Is that -- I guess that's just the issue there.

15
16 MR. GREY: I'm fine with that, but I'd be interested to hear
17 what my friends have to say. I would think -- I -- I don't want to speak for them, but I
18 would think they'd probably want some time to consider our proposal if they haven't -- or
19 unless they already --

20
21 THE COURT: All right.

22
23 MR. GREY: -- have. I don't know, but --

24
25 THE COURT: Oh, yeah. No. No. I mean, we don't have the
26 exhibits yet, Mr. Grey, so we --

27
28 MR. GREY: Okay.

29
30 THE COURT: -- certainly -- until you agree on them and send
31 them to the clerk, that they wouldn't be entered and --

32
33 MR. GREY: Okay.

34
35 THE COURT: -- it's just a mechanical issue, but certainly we
36 could -- if you wanted to speak to the entry of the exhibits on the record --

37
38 MR. GREY: Yeah.

39
40 THE COURT: -- then we could do that the first day of the
41 hearing --

- 1
2 MR. GREY: Yeah.
3
4 THE COURT: -- in April.
5
6 MR. GREY: Yeah. I -- I don't see any difficulty with those
7 exhibits. As I said, I think it's just the other issue of what use is to be made of the -- of --
8 of what you -- of what was brought out concerning the impugned reports in evidence.
9
10 THE COURT: Right.
11
12 MR. GREY: That's something we have not yet come to a
13 resolution on, but I'm sure counsel will work very hard to try and resolve that, and if we
14 can't, then we'll just rely on -- on Madam Justice to sort it out.
15
16 THE COURT: Okay. Okay. Mr. -- I'm sorry.
17
18 MR. PARKER: (INDISCERNIBLE).
19
20 THE COURT: Mr. Parker?
21
22 MR. PARKER: Thank you. I think -- just thank you for that, Mr.
23 Grey. I think that on the exhibits we have reached an agreement. We did add one extra
24 page to part of the transcript. It completed the answers to the portion of the Manitoba
25 transcripts, so just make sure you're comfortable with that. And then, yes, the other issue
26 I think our -- our proposals have passed, as it were, and we need a bit of time to look at
27 that, but we were thinking if we've got a few hours left here in the day schedule that we
28 could at this end look at your proposal and perhaps we could reach out within the hour and
29 see if we've got an agreement on this and -- and if so, we either come back to Justice
30 Romaine this afternoon or deal with it first thing back in April.
31
32 THE COURT: Okay. Why don't I suggest that you just let me
33 know by email to me directly whether you've come to an agreement on the exhibits,
34 number 1? And number 2, whether you would like to speak to the entry of the exhibits on
35 the record or whether you're okay with what madam clerk has suggested, which is that she
36 could just enter them?
37
38 THE COURT CLERK: Sorry. Perhaps to clarify that, maybe if I'm just
39 going to enter them, we can have a consent order --
40
41 THE COURT: Okay.

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THE COURT CLERK: -- so that I can complete the record fully by way of consent order (INDISCERNIBLE).

THE COURT: Okay. And I could give her a consent order to do that. And I don't think it's a big deal if you want to perhaps be less complicated, we could probably -- you could speak to the entry when we get back in April. Perhaps that's the best thing.

MR. PARKER: Okay.

THE COURT: Okay? Okay.

MR. PARKER: Sure. Thank you.

THE COURT: Okay. Thank you. And I will see you all in April. Thank you.

MR. PARKER: Thank you, Justice Romaine. Thank you, counsel.

PROCEEDINGS ADJOURNED

1 **Certificate of Record**

2
3 I, Michelle Palmer, certify that this recording is the record made of the evidence in the
4 proceedings in the Court of Queen’s Bench, held in courtroom 1702, at Calgary, Alberta, on
5 the 24th day of February, 2022, and that I was the court official in charge of the sound-
6 recording machine during the proceedings.
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1 **Certificate of Transcript**

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3 I, Michelle Hiebert, certify that

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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.

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15 Pro-to-type Word Processing

16 Order: TDS-1001582

17 Dated: March 2, 2022

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