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COURT:	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE:	CALGARY
APPLICANTS:	REBECCA MARIE INGRAM, HEIGHTS BAPTIST CHURCH, NORTHSIDE BAPTIST CHURCH, ERIN BLACKLAWS and TORRY TANNER
RESPONDENTS:	HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ALBERTA and THE CHIEF MEDICAL OFFICER OF HEALTH

ENTERED

JUDICIAL CENTRE OF CALGARY
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**BRIEF OF LAW OF THE RESPONDENTS,
HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ALBERTA and
THE CHIEF MEDICAL OFFICER OF HEALTH**

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I. OVERVIEW

a. Background

1. On February 11, 2020, the World Health Organization announced an official name for the virus causing this pandemic: COVID-19.[1] Since its discovery, COVID-19 has taken the lives of over 2,300 Albertans.[2] In response to the COVID-19 pandemic, the Government of Alberta declared two states of public health emergency: first on March 17, 2020 and again on November 24, 2020.[3] The Chief Medical Officer of Health, Dr. Hinshaw, has issued dozens of orders pursuant to the broad authority conferred to her by the *Public Health Act*.[4]

b. Brief Summary

2. On December 7, 2020, the Applicants filed an Originating Application, challenging the constitutionality of a number of Alberta's COVID-19 measures. The Applicants also unsuccessfully sought an interlocutory injunction in December 2020.[5]

3. Through the Originating Application (and Supplementary Particulars dated June 9, 2021), the Applicants assert a number of *Charter*[6] infringements, including alleged infringements of ss. 2(a)-(d), 7 and 15. The Applicants also assert a number of infringements of the *Alberta Bill of Rights*.[7]

c. History

4. Following the procedure set out by the Case Management Justice,[8] Her Majesty the Queen in right of the Province of Alberta and the Chief Medical Officer of Health (collectively, Alberta) applied to strike a number of claims that Alberta argued had no reasonable prospect of success. The majority of these claims were struck by the Case

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[1] Affidavit of Dr. Deena Hinshaw, affirmed July 12, 2021 and filed July 12, 2021 at paras 1, 5 [Hinshaw Affidavit].
[2] Hinshaw Affidavit, *supra* note 1 at para 50.
[3] Affidavit of Scott Long, sworn July 16, 2021 and filed July 16, 2021 at para 25 [Long Affidavit].
[4] RSA 2000, c P-37 – **TAB 6**. See Appendix A for a list of the sections of the Chief Medical Officer of Health orders that are at issue in these proceedings.
[5] ***Ingram v Alberta (Chief Medical Officer of Health)***, 2020 ABQB 806 [Injunction Decision] – **TAB 36**.
[6] *Canadian Charter of Rights and Freedoms*, being Schedule B to the Canada Act 1982 (UK), 1982, c 11 [*Charter*] – **TAB 3**.
[7] RSA 2000, c A-14 – **TAB 1**.
[8] See Order of Madam Justice Kirker dated March 12, 2021 and filed March 16, 2021 [Procedural Order].

Management Justice on April 30, 2021.[9] The Applicants also sought to amend the Originating Application. Some amendments were permitted by the Case Management Justice, who ordered the Applicants to file and serve the Amended Originating Application.[10]

5. The Applicants also filed a number of affidavits that purported to support the claims set out in the Originating Application. Alberta applied to strike a number of these affidavits (or portions thereof) as frivolous, irrelevant, and improper.[11] In response to Alberta's application, the Applicants agreed to withdraw most of the affidavits.[12] The Case Management Justice also struck a number of portions of the remaining affidavits.[13]

II. THE RESTRICTIONS AT ISSUE

6. The Applicants challenge the constitutionality of the following categories of restrictions:

a. **Private Residence Restrictions**, which are composed of CMOH Order 02-2021, s. 3.

b. **Indoor Gathering Restrictions**, which are composed of CMOH Order 02-2021, ss. 14-16, 18, 23, and CMOH Order 26-2020, ss. 1-2.

c. **Outdoor Gathering Restrictions**, which are composed of CMOH Order 02-2021, ss. 13, 57, 69, and CMOH Order 26-2020, ss. 1-2.

d. **Isolation, Quarantine, and Visiting Restrictions**, which are composed of CMOH Order 05-2020, ss. 1-2, 7; CMOH Order 26-2020, ss. 1-2; CMOH Order 32-2020, s. 6[14]; CMOH Order 02-2021, s. 23; CMOH Order 09-

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[9] ***Ingram v Alberta (Chief Medical Officer of Health)***, 2021 ABQB 343 [Striking Decision] – **TAB 37**.

[10] See Order of Madam Justice Kirker filed June 22, 2021 [Amendment Order]. The Amended Originating Application is found at Schedule A of the Amendment Order (*ibid*). To date, the Applicants have failed to serve Alberta with a filed copy of the Amended Originating Application.

[11] See Alberta's Application to Strike filed March 5, 2021; Alberta's Memorandum of Argument in Support of the Application to Strike filed March 12, 2021.

[12] See Order of Madam Justice Kirker dated May 24, 2021 and filed June 1, 2021 [Consent Order re: Affidavits #1]; Order of Madam Justice Kirker dated June 1, 2021 and filed June 4, 2021 [Consent Order re: Affidavits #2].

[13] Order of Madam Justice Kirker dated June 1, 2021 filed June 15, 2021 [Order Striking Affidavits].

[14] There is no s.6 found in CMOH 32-2020.

2020, ss. 1, 3,5, 7-8; CMOH Order 14-2020, s. 1; CMOH Order 29-2020, s. 1; and CMOH Order 32-2020, ss. 1, 9.

e. **Business Closure Restrictions**, which are composed of[15] CMOH Order 02-2020, ss. 2-4; CMOH Order 07-2020, ss. 6, 12; CMOH Order 18-2020, ss. 3-4, 6-7; CMOH Order 19-2020, ss. 11-12, 14-15; CMOH Order 25-2020, s. 3; CMOH Order 34-2020, s. 3; CMOH Order 37-2020, ss. 3-4, 8-9, 15-16; CMOH Order 39-2020, ss. 6-13, 17-21, 23-25, 29-30; CMOH Order 42-2020, ss. 25-32, 34-36, 40-42; CMOH Order 43-2020; CMOH Order 44-2020; CMOH Order 01-2021, ss. 25-31; CMOH Order, ss. 02-2021, ss. 34-47, 54; CMOH Order 04-2021, ss. 31-46, 51-56; CMOH Order 05-2021, ss. 42-46, 51-56, 69-72, 78-79; CMOH Order 08-2021, ss. 34-45, 50-54, 69-73, 85-87; CMOH Order 09-2021; CMOH Order 10-2021, ss. 6.7-7.4, 8.5-8.7, 9.2-9.6; CMOH Order 17-2021, ss. 9-17; CMOH Order 14-2021, s. 3; CMOH Order 12-2021, ss. 5.1-5.4, 6.2, 6.5, 6.7-6.12, 8.5-8.7, 9.2-9.5, 10.3; CMOH Order 19-2021, ss. 5.1-5.1.4, 6.3-6.5, 6.1.2, 6.1.5, 6.1.7-6.1.12, 8.3, 8.1.4, 9.3-9.4, 9.1.2-9.1.4, 10.3-10.4, 10.1.3; CMOH Order 20-2021, ss. 5.1-5.6, 6.2, 6.5, 6.7-6.12, 6.1.4-6.1.6, 8.2, 8.4, 9.2-9.4, 10.3; CMOH Order 30-2021, ss. 4.1-4.4, 5.2, 5.5, 5.7-5.12, 8.3, 8.5; and CMOH Order 31-2021, ss. 4.2-4.3, 4.7-4.9, 4.11, 5.3, 6.2-6.6, 7.2, 7.4, 8.2, 8.4, 10.2, 11.2-11.5, 12.2, 12.7-12.10.

and,

f. **Primary or Secondary School Closure Restrictions**, which are composed of[16] CMOH Order 01-2020, ss. 1-4; CMOH Order 18-2020, ss. 6-9; and CMOH Order 19-2020, s. 14.

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[15] The Applicants, despite having provided particulars and further supplementary particulars, have failed to identify which orders or portions thereof compose the Business Closure Restrictions, notwithstanding that s. 24(3) of the *Judicature Act*, RSA 2000, c J-2 [not reproduced], requires parties challenging the constitutionality to provide reasonable particulars of the constitutional argument. Reasonable particulars surely include, at a minimum, the provisions being challenged; however, based on a review of all of the Chief Medical Officer of Health Orders, Alberta believes these portions are the most likely portions that the Applicants refer to.

[16] The Applicants, despite having provided particulars and further supplementary particulars, have failed to identify which orders or portions thereof compose the Primary or Secondary School Closure Restrictions, notwithstanding that s. 24(3) of the *Judicature Act*, *ibid* requires parties challenging the constitutionality to provide reasonable particulars of the constitutional

(collectively, the Restrictions).

III. THE APPLICANTS' CLAIMS

7. The Applicants collectively asserted the following infringements:

a. Section 2(a) of the *Charter*;

b. Section 2(b) of the *Charter*;

c. Section 2(c) of the *Charter*;

d. Section 2(d) of the *Charter*;

e. Section 7 of the *Charter*;

f. Section 15 of the *Charter*; and

g. Section 1 of the Alberta Bill of Rights.

8. Each of these alleged infringements will be addressed separately, setting out: (1) the legal test to determine an infringement; (2) which claimant or claimants are asserting the *Charter* (or other) infringement; (3) how each claimant is asserting their *Charter* (or other) right has been infringed and summarizing the evidence (or lack thereof) available to support the infringement.

a. Section 2(a) of the *Charter*

i. The Law

9. Section 2(a) of the *Charter* reads:

> 2. Everyone has the following fundamental freedoms:
>
> (a) freedom of conscience and religion.

10. The purpose of freedom of religion is to allow every individual to:

> … be free to hold and manifest whatever beliefs and opinions his or her conscience dictates, provided *inter alia* only that such manifestations do not injure his or her neighbours or their parallel rights to hold and manifest beliefs and opinions of their own.[17]

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argument. Reasonable particulars surely include, at a minimum, the provisions being challenged; however, based on a review of all of the Chief Medical Officer of Health Orders, Alberta believes these portions are the most likely portions that the Applicants refer to.

[17] ***R v Big M Drug Mart***, [1985] 1 SCR 295 at 346 [***Big M***] – **TAB 46**.

11. Section 2(a) protects:

> … the freedom to undertake practices and habour beliefs, having a nexus with religion, in which an individual demonstrates that he or she sincerely believes or is sincerely undertaking in order to connect with the divine as a function of his or her spiritual faith, irrespective of whether a particular practice or belief is required by official religious dogma or is in conformity with the position of religious officials.[18]

12. Accordingly, there must be positive evidence linking a practice with a sincerely held religious belief for that practice to earn *Charter* protection.

ii. The Claimants

13. The Applicants Torry Tanner, Erin Blacklaws, and Rebecca Ingram all assert an infringement of their s. 2(a) religious freedom rights. The Applicants Heights Baptist Church and Northside Baptist Church (collectively, the Applicant Churches) also assert infringements of their s. 2(a) *Charter* rights.

14. Although no jurisprudence exists expressly recognizing the rights of corporations (or non-natural persons) to hold s. 2(a) *Charter* rights, Alberta has not challenged the standing of the Applicant Churches to assert infringements of s. 2(a) *Charter* infringements. For the purposes of this Action, Alberta has conceded that the Applicant Churches may assert s. 2(a) *Charter* infringements.

iii. How the Claimants Assert Their Rights Were Violated and the Evidence to Substantiate Those Claims

1. Torry Tanner

15. Ms. Tanner asserts that the Private Residence Restrictions, Indoor Gathering Restrictions, and Outdoor Gathering Restrictions have infringed her s. 2(a) *Charter* rights. Ms. Tanner asserts these restrictions infringed her s. 2(a) *Charter* rights because they "prohibited her from having her children and extended family over to her house to celebrate Christmas, a religious celebration for her."[19]

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[18] ***Syndicat Northcrest v Amselem***, 2004 SCC 47 at para 46 [***Amselem***] – **TAB 74**.
[19] Supplementary Particulars at para 9.

16. Ms. Tanner's evidence can be found in an affidavit[20] and a supplemental affidavit.[21] Ms. Tanner states:

- "Christmas has and always will be a very important time of year for me and my family. Not only is Christmas a sacred time of year to me, when I recognize the birth of my Lord and Saviour Jesus Christ, but it is also when my family comes together from their respective homes to spend time with each other, to encourage one another, and create treasured memories."[22]
- "Christmas is the one time of year when my entire family gathers together to celebrate the birth of Jesus. This time of celebration has become a sacred tradition for our family where we can lean on each other for love, prayer and support."[23]

17. Ms. Tanner gives no evidence that gathering with her family is part of a deeply and sincerely held spiritual or religious belief. Ms. Tanner merely refers to Jesus Christ and asks this Court to assume, in the absence of any positive evidence, that gathering with family is a part of her religious convictions. Parts of the Tanner Affidavit actually undermine this suggestion: Ms. Tanner refers to a gingerbread house competition, talent show, and outdoor hockey games – activities which have absolutely no nexus with religion. There is no evidence found in the Tanner Affidavit that could support a conclusion that gathering with family is part of a sincerely and deeply held religious belief.

18. It is not enough for Ms. Tanner to use the words "Christmas" and refer to the birth of Jesus Christ, as if these words or phrases are sufficient to summon s. 2(a) *Charter* protections. Ms. Tanner, instead, must give evidence that the practice (gathering with family) forms a part of her deeply held religious belief or a spiritual conviction. A plain reading of Ms. Tanner's evidence demonstrates that she has failed to do so. Accordingly, Ms. Tanner's s. 2(a) claim should be dismissed.

2. Heights Baptist Church

19. The applicant Heights Baptist Church asserts the Private Residence Restrictions and Indoor Gathering Restrictions interfere with the church's freedom of religion. The

[20] Affidavit of Torry Tanner sworn December 10, 2020 and filed December 11, 2020 [Tanner Affidavit].
[21] Supplemental Affidavit of Torry Tanner sworn January 20, 2021 and filed January 21, 2020 [Tanner Supplemental Affidavit].
[22] Tanner Affidavit, *supra* note 20 at para 3.
[23] Tanner Affidavit, *supra* note 20 at para 4.

evidence of Heights Baptist Church is provided through its lead pastor, Patrick Schoenberger.[24]

20. Mr. Schoenberger states that the church and its congregants "believe that Scripture commands our whole congregation to meet together in person on a regular basis."[25] On the basis, Alberta agrees that Heights Baptist Church has demonstrated that the Indoor Gathering Restrictions are a *prima facie* infringement of the church's s. 2(a) *Charter* rights. The Schoenberger Affidavit demonstrates that gathering in person,[26] without masks,[27] in close contact with one another,[28] is part of Heights Baptist Church's sincerely and deeply held religious beliefs, and accordingly, this conduct would be captured and protected by s. 2(a) of the *Charter*, subject to the justification analysis to be conducted under s. 1 of the *Charter*.

21. Mr. Schoenberger also states that the church "and its members believe in using our homes to offer hospitality to one another"[29] and that this is the basis for the allegation that the Private Residence Restrictions violate Heights Baptist Church's s. 2(a) *Charter* rights. There is no evidence that Heights Baptist Church has a private residence of its own and, given that Heights Baptist Church is a religious corporation or organization (and not a natural person), it cannot have a private residence that would be subject to the Private Residence Restrictions. Accordingly, Heights Baptist Church does not have standing to assert these violations on behalf of others and this claim should be dismissed.

3. Northside Baptist Church

22. The applicant Northside Baptist Church asserts the Indoor Gathering Restrictions interfere with the church's freedom of religion. The evidence of Northside Baptist Church is provided through its lead pastor, David Adkins.[30]

23. Mr. Adkins states that the Church believes it must "gather physically for corporate worship on Sunday[s]"[31] and that corporate prayer and singing are essential elements of

[24] Affidavit of Patrick Schoenberger sworn December 8, 2020 and filed December 7, 2020 at para 1 [Schoenberger Affidavit].
[25] Schoenberger Affidavit, *supra* note 24 at para 4.
[26] Schoenberger Affidavit, *supra* note 24 at paras 4-6.
[27] Schoenberger Affidavit, *supra* note 24 at para 6.
[28] Schoenberger Affidavit, *supra* note 24 at para 10.
[29] Schoenberger Affidavit, *supra* note 24 at para 11.
[30] Affidavit of David Adkins sworn January 22, 2021 and filed January 22, 2021 at para 1 [Adkins Affidavit].
[31] Adkins Affidavit, *supra* note 30 at para 7.

the Church's in person gathering.[32] Mr. Adkins also states that the church and its congregants "believe in laying hands on people during times of prayer and commissioning"[33] and that wearing masks "symbolically covers up the image of God and hinders our ability to reflect his glory through something as simple as a smile."[34]

24. On this basis, Alberta agrees that the applicant Heights Baptist Church has demonstrated a *prima facie* infringement of the Church's s. 2(a) *Charter* right. The Adkins Affidavit demonstrates that it is part of the Church's deeply and sincerely held religious belief to gather in person,[35] without masks,[36] and without regard to the size of the gathering, and accordingly this conduct would be protected by s. 2(a) of the *Charter*, subject to the justification analysis to be conducted under s. 1 of the *Charter*.

4. Rebecca Ingram

25. The applicant Rebecca Ingram asserts that the Indoor Gathering Restrictions and the Private Residence Restrictions have violated her s. 2(a) *Charter* rights. Ms. Ingram's evidence can be found in an affidavit[37] and supplemental affidavit.[38] Portions of Ms. Ingram's affidavits were struck by the Case Management Justice.[39]

26. Ms. Ingram states that she is a Christian and "regularly attended First Alliance church but have had to cease because of the restrictions imposed by the orders of Dr. Hinshaw."[40] She also states that weddings and funerals are "[t]wo of the most sacred religious services"[41] and "are two of the most important sacrament milestones in Christianity."[42] Ms. Ingram, however, does not ever give evidence that she was *actually* prohibited from attending church services or that she was denied the ability to participate in either of the "important sacraments" she discusses. She merely suggests that Dr. Hinshaw's orders, which at no point prohibited church services in their entirety (only

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[32] Adkins Affidavit, *supra* note 30 at paras 8(c)-(d).
[33] Adkins Affidavit, *supra* note 30 at para 10.
[34] Adkins Affidavit, *supra* note 30 at para 11.
[35] Adkins Affidavit, *supra* note 30 at para 7.
[36] See e.g. Adkins Affidavit, *supra* note 30 at para 11.
[37] Affidavit of Rebecca Ingram sworn December 8, 2020 and filed December 7, 2020 [Ingram Affidavit].
[38] Supplemental Affidavit of Rebecca Ingram sworn January 22, 2021 and filed January 22, 2021 [Supplemental Ingram Affidavit].
[39] See Order Striking Affidavits, *supra* note 13 at paras 3-5; Consent Order re: Affidavits #2, *supra* note 12 at para 1.
[40] Ingram Affidavit, *supra* note 37 at para 14.
[41] Ingram Affidavit, *supra* note 37 at para 15.
[42] *Ibid*.

limited capacity), were why she didn't attend. Ms. Ingram asks this Court to speculate that because of the capacity limits, she could not attend. It is equally open to this Court to speculate that Ms. Ingram would have been able to attend services if she so desired given that between 10% and 15% of fire code capacity were always able to attend services.

27. Moreover, Ms. Ingram never provides evidence that attending church with the entirety of her congregation forms a part of her religious beliefs, unlike the Applicant Churches whose representatives attested to that very fact. The church services capacity limits (which formed part of the Indoor Gathering Restrictions) themselves therefore cannot be used to found a *prima facie* s. 2(a) *Charter* breach.

28. Furthermore, Ms. Ingram provides no evidence as to how her religious beliefs were infringed when she was "denied from fully celebrating Easter in 2020."[43] Ms. Ingram essentially relies on this Court's speculation that somehow Ms. Ingram's religious beliefs were infringed with respect to Easter 2020. There is no evidence available for this Court to determine whether such an infringement actually occurred. She does not even give evidence that celebrating with her extended family in her home forms a part of her sincerely held religious beliefs. Holiday traditions and celebrations are not protected by s. 2(a) of the *Charter*, unless there is evidence to demonstrate that the traditions form a part of a sincerely held religious belief. Ms. Ingram failed to provide any such evidence.

29. As such, Ms. Ingram's s. 2(a) *Charter* claims lack any factual foundation. Like the applicant Torry Tanner, Ms. Ingram merely recites the words "Christmas" and "Easter" in an attempt to demonstrate a *Charter* infringement. Ms. Ingram fails to demonstrate, in either the Ingram Affidavit or the Supplemental Ingram Affidavit, that she was prohibited from attending church services in violation of her sincerely held religious beliefs or that attending church services with the entirety of her congregation forms a part of her sincerely held religious belief. Rather than providing evidence, Ms. Ingram invites this Court to speculate that somehow the Indoor Gathering Restrictions (which never prohibited church services in their entirety) and Private Residence Restrictions infringed her religious beliefs. Mere speculation cannot form the basis of a *Charter* claim. Accordingly, Ms. Ingram's s. 2(a) *Charter* claims should be dismissed.

b. Section 2(b) of the *Charter*

i. The Law

30. Section 2(b) of the *Charter* states:

[43] Ingram Affidavit, *supra* note 37 at para 16.

> 2. Everyone has the following fundamental freedoms:
>
> > (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.[44]

31. The Supreme Court summarized the core values protected by s. 2(b) of the *Charter*:

> The core values which free expression promotes include self-fulfilment, participation in social and political decision making, and the communal exchange of ideas. Free speech protects human dignity and the right to think and reflect freely on one's circumstances and condition. It allows a person to speak not only for the sake of expression itself, but also to advocate change, attempting to persuade others in the hope of improving one's life and perhaps the wider social, political, and economic environment.[45]

32. In freedom of expression cases, the first stage is to define the activity in question. As the Supreme Court of Canada has explained, "[a]ctivity is expressive if it attempts to convey meaning."[46] Section 2(b) covers all expressive activity. Although freedom of expression is generally regarded as the right of the speaker, "meaningful expression assumes an audience."[47] The *Charter*, however, does not guarantee an audience.[48]

33. The second stage is to determine whether there has been a violation. The Supreme Court has distinguished between content-based restraints from restraints that have an incidental effect on limiting freedom of expression.[49] There are no content-based restraints found within any of the Restrictions. Accordingly, each individual claimant must demonstrate that the Restrictions impaired their right to engage in expressive

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[44] *Charter, supra* note 6, s 2(b) – **TAB 3**.
[45] ***RWDSU, Local 558 v Pepsi-Cola Canada Beverages (West) Ltd***, 2002 SCC 8 at para 32 [***Pepsi-Cola***] – **TAB 71**.
[46] ***Irwin Toy Ltd v Quebec (Attorney General)***, [1989] 1 SCR 927 at 968 – **TAB 38**.
[47] Robert J Sharpe & Kent Roach, *The Charter of Rights and Freedoms*, 6th ed (Toronto: 2017, Irwin Law) at 169 – **TAB 83**.
[48] See e.g. ***Ontario (Attorney General) v Dieleman*** (1994), 20 OR (3d) 229, 117 DLR (4th) 449 (Ct (Gen Div)) – **TAB 44**; ***Unifor Canada Local 594 v Consumers' Co-Operative Refineries Limited***, 2021 SKCA 34 – **TAB 78**.
[49] Sharpe & Roach, *supra* note 47 at 170 – **TAB 83**.

activity that promotes one of the principles underlying freedom of expression: political debate, the marketplace of ideas, or autonomy and self-fulfillment.[50]

ii. The Claimants

34. The applicants Torry Tanner, Heights Baptist Church, Northside Baptist Church, and Rebecca Ingram assert their s. 2(b) *Charter* rights to freedom of expression have been violated. None of these applicants assert there has been an infringement of freedom of thought, belief, or freedom of the press.

iii. How the Claimants Assert Their Rights Were Violated and the Evidence to Substantiate Those Claims

1. Torry Tanner

35. Ms. Tanner asserts that the Outdoor Gathering Restrictions have interfered with her s. 2(b) *Charter* rights. The only evidence in support of Ms. Tanner's alleged s. 2(b) infringement can be found in the Tanner Supplemental Affidavit.

36. In the Tanner Supplemental Affidavit, Ms. Tanner states that she was concerned about participating in peaceful protests, which she had contemplated participating in since March 2020.[51] Ms. Tanner states that she *did* attend at least one of those peaceful protests or rallies.[52] Ms. Tanner faced no consequences for attending such a protest. She gives no evidence that she received a ticket, sanction, censure, or was the subject of any prosecution. The only evidence that is capable of supporting Ms. Tanner's s. 2(b) *Charter* claim is that she was concerned about the police presence at a rally. Ms. Tanner provides no evidence that the police were intimidating or precluding expressive activity.

37. Ms. Tanner's evidence is that she wanted to attend one of these protests or rallies to express a political belief. Ms. Tanner's evidence therefore demonstrates that the Outdoor Gathering Restrictions had an (incidental) effect on Ms. Tanner's s. 2(b) *Charter* rights. But Ms. Tanner was not precluded from or sanctioned for expressing her views. Any infringement of Ms. Tanner's s. 2(b) *Charter* rights was trivial, inconsequential, and passing in nature. Trivial infringements of *Charter* rights will not be remedied by the courts.[53]

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[50] Sharpe and Roach, *supra* note 47 at 171 – **TAB 83**.
[51] Tanner Supplemental Affidavit, *supra* note 21 at para 1.
[52] Tanner Supplemental Affidavit, *supra* note 21 at paras 2-3.
[53] ***Director of Child and Family Services v AC et al***, 2008 MBCA 18, leave to SCC ref'd 32508 (24 April 2008) – **TAB 28**; ***Amselem***, *supra* note 18 at para 62 (where the Court, in the context

2. Heights Baptist Church

38. The applicant Heights Baptist Church asserts that the Private Residence Restrictions, Indoor Gathering Restrictions, and the Isolation, Quarantine and Visiting Restrictions infringe the Church's s. 2(b) *Charter* rights.

39. As set out in Part III.a.iii.2, Heights Baptist Church has no standing to assert violations on behalf of its members. It has not sought or received public interest standing. Heights Baptist Church gives no evidence that it has a private residence that would be subjected to the Private Residence Restrictions. Heights Baptist Church accordingly cannot assert that the Private Residence Restrictions are a violation of its s. 2(b) *Charter* rights and this claim should be dismissed.

40. In the same vein, Heights Baptist Church cannot assert that it, a non-natural person, was subject to the Isolation, Quarantine, and Visiting Restrictions. It does not have standing to assert violations on behalf of its congregants. The Church's claims that the Private Residence Restrictions and the Isolation, Quarantine, and Visiting Restrictions violate the Church's s. 2(b) *Charter* rights cannot succeed and should be dismissed.

41. With respect to the Indoor Gathering Restrictions, Heights Baptist Church asserts the masking requirements limits the congregants' ability to express themselves. Even if the masking requirement represents more than a trivial or insubstantial interference with the congregants' autonomy that would be protected by s. 2(b), Heights Baptist Church does not have the requisite standing to assert infringements on behalf of its congregants. Heights Baptist Church, the entity and the claimant in this action, was not the subject of any restrictions. As such, Heights Baptist Church's claims that the Church's s. 2(b) *Charter* rights were infringed should be dismissed.

3. Northside Baptist Church

42. Like Heights Baptist Church, Northside Baptist Church asserts its s. 2(b) *Charter* right to freedom of expression has been infringed by the masking requirement that accompanied the Indoor Gathering Restrictions.

43. Northside Baptist Church, the entity that is the claimant in this action, was not the subject of any compulsory masking requirement. Even if a masking requirement infringes an individual's s. 2(b) *Charter* right in a more than trivial or insubstantial way, Northside Baptist Church does not have the standing to assert such infringements. Northside Baptist Church as an entity was not the subject of any masking requirement – its congregants

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of an asserted infringement of religious freedom, notes claimants must demonstrate a "non-trivial" or "non-insubstantial" interference) – **TAB 74**.

were. Northside Baptist Church does not have and has not sought public interest standing. As such, Northside Baptist Church's claims that the Church's s. 2(b) *Charter* rights were infringed should be dismissed.

4. Rebecca Ingram

44. Ms. Ingram asserts that her, or her children's, s. 2(b) *Charter* rights were infringed by the Primary or Secondary School Closure Restrictions. Ms. Ingram's children are not parties to this action. They have no standing to assert *Charter* infringements in this action.

45. The Supplementary Particulars assert Ms. Ingram's children's rights to freedom of expression were infringed because they were "unable to obtain education in a manner beneficial to them, thus suffocating their freedom of expression."[54] This type of hyperbole in a pleading cannot support a claim. It may be sufficient to survive a striking application, but there is no evidence capable of supporting such an infringement.

46. Ms. Ingram's *only* evidence with respect to this alleged freedom of expression is that she is "extremely concerned about the psychological harm being done to [her] children."[55] This is not evidence. This is one woman's *speculation* about her children, who do not have standing in the underlying action.

47. Ms. Ingram provides no evidence about how her s. 2(b) *Charter* rights have been infringed. Ms. Ingram states she is unable to wear a mask. At no time was Ms. Ingram compelled to wear a mask. When the masking restrictions were first imposed,[56] an exemption was provided for those who were "unable to wear a mask due to a mental or physical concern or limitation."[57] Ms. Ingram's evidence is that she has such concerns, and thus she would have been able to rely on the exemption.[58] She was never compelled to wear a mask.

48. Ms. Ingram's claim that her children's freedom of expression must be dismissed as Ms. Ingram has no standing to assert infringements on behalf of her children, and moreover, she has led no evidence capable of supporting such a claim. Ms. Ingram's

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[54] Supplementary Particulars at para 21.
[55] Ingram Affidavit, *supra* note 37 at para 7.
[56] See CMOH Order 38-2020, Part 4.
[57] CMOH Order 38-2020, s 27(c).
[58] Later, the exemption policy was amended to require a medical exception letter. See CMOH Order 22-2021, ss 4.2-4.4. Ms. Ingram has provided no evidence with respect to the effect Order 22-2021 had on her, if any.

claim that her own s. 2(b) *Charter* right has been infringed must also fail for lack of evidence, and accordingly, should be dismissed by this Court.

c. Sections 2(c)-(d) of the *Charter*

i. The Law

49. Sections 2(c)-(d) of the *Charter* state:

> 2. Everyone has the following fundamental freedoms:
>
> (c) freedom of peaceful assembly; and
>
> (d) freedom of association.[59]

50. These *Charter* rights are most often considered in the labour relations context.

51. Section 2(c) of the *Charter* only protects the physical gathering together of persons.[60] It does not protect the object or purpose of the gathering.[61] There is some case law that suggests that measures regulating peaceful assembly for health and safety purposes do not infringe s. 2(c) of the *Charter*,[62] although other cases treat such measures as forming part of the justification analysis.[63]

52. Section 2(d) of the *Charter* is intended to recognize and protect the "profoundly social nature of human endeavours and to protect the individual from state-enforced isolation in the pursuit of his or her ends."[64] As Dickson CJ once noted, "[w]hat freedom of association seeks to protect is not association activities *qua* particular activities, but the freedom of individuals to interact with, support, and be supported by, their fellow humans."[65] While Dickson CJ was in dissent at the time of the ***Alberta Reference***, this view of s. 2(d) has since been adopted by the Supreme Court.[66] Freedom of association does not protect familial relationships. The desire to associate with family has no goal or

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[59] *Charter*, *supra* note 6, ss 2(c)-(d).
[60] ***Roach v Canada (Minister of State for Multiculturalism and Citizenship)***, [1994] 2 FCR 406 (CA) – **TAB 68**.
[61] ***R v Normore***, 2005 ABQB 75 – **TAB 58**.
[62] See e.g. ***Hussain v Toronto (City)***, 2016 ONSC 3504 at para 43 – **TAB 35**.
[63] See e.g. ***Batty v City of Toronto***, 2011 ONSC 6862 at paras 77-124 – **TAB 13**.
[64] ***Reference Re Public Service Employee Relations Act (Alta)***, [1987] 1 SCR 313 at 365 [***Alberta Reference***] – **TAB 65**.
[65] ***Alberta Reference***, *supra* note 64 at 366 – **TAB 65**.
[66] See ***Mounted Police Association of Ontario v Canada (Attorney General)***, 2015 SCC 1 at para 54 [***MPAO***] – **TAB 41**.

purpose like economic, political, social, or charitable purposes, and is not protected by s. 2(d) of the *Charter*.[67]

ii. The Claimants

53. All of the applicants assert infringements of ss. 2(c) and (d) of the *Charter*.

iii. How the Claimants Assert Their Rights Were Violated and the Evidence to Substantiate Those Claims

1. Torry Tanner

54. Ms. Tanner asserts that the Private Residence Restrictions, Indoor Gathering Restrictions, and Outdoor Gathering Restrictions interfere with her *Charter* rights to peacefully assemble and of association.

55. Ms. Tanner provides evidence that she could not host her children and extended family at Christmas due to the Private Residence Restrictions and the Indoor Gathering Restrictions.[68] This is sufficient evidence to demonstrate a *prima facie* infringement of Ms. Tanner's ss. 2(c) and (d) *Charter* rights, subject to any justification analysis to be conducted pursuant to s. 1 of the *Charter*.

56. With respect to the Outdoor Gathering Restrictions, Ms. Tanner's claims should be dismissed for the same reasons her claims with respect to an infringement of her s. 2(b) *Charter* rights should be dismissed: any infringement of Ms. Tanner's rights to peacefully assemble and to associate with like-minded individuals at protests or rallies was a trivial, insubstantial, and passing infringement as Ms. Tanner's evidence is that she participated in the rallies and faced no consequences for having done so.[69]

2. Heights Baptist Church

57. Heights Baptist Church asserts its s. 2(c) and (d) *Charter* rights were infringed by the Private Residence Restrictions, Indoor Gathering Restrictions, and the Isolation, Quarantine and Visiting Restrictions.

58. As set out in Part III.a.iii.2, Heights Baptist Church does not have standing to assert infringements on behalf of its congregants. Accordingly, Heights Baptist Church's claims that the Private Residence Restrictions and Isolation, Quarantine and Visiting

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[67] See ***Catholic Children's Aid Society of Metropolitan Toronto v S(T)*** (1989), 69 OR (2d) 189 (CA) – **TAB 23**.
[68] Tanner Affidavit, *supra* note 20 at para 2.
[69] Tanner Supplemental Affidavit, *supra* note 21 at paras 3-4.

Restrictions violates its congregants' rights must be dismissed due to lack of standing to assert such claims.

59. With respect to the Indoor Gathering Restrictions, Heights Baptist Church, through its lead pastor, gives evidence that the number of congregants that could attend a service was limited by the Restrictions. This is sufficient to demonstrate a *prima facie* infringement of s. 2(c) and (d) *Charter* rights, subject to any justification analysis conducted under s. 1 of the *Charter*.

3. Northside Baptist Church

60. Northside Baptist Church asserts its s. 2(c) and (d) *Charter* rights were infringed by the Indoor Gathering Restrictions. Northside Baptist Church's lead pastor gives evidence that the number of congregants that could attend a service were limited by the Indoor Gathering Restrictions. This is sufficient to demonstrate a *prima facie* infringement of its ss. 2(c) and (d) *Charter* rights, subject to any justification analysis conducted under s. 1 of the *Charter*.

4. Erin Blacklaws

61. Mr. Blacklaws asserts his ss. 2(c) and (d) *Charter* rights were infringed by the Indoor Gathering Restrictions and the Isolation, Quarantine and Visiting Restrictions. The entirety of the evidence pertaining to Mr. Blacklaws claims is found in an affidavit.[70]

62. Mr. Blacklaws gives evidence that his elderly father tested positive for COVID-19.[71] Mr. Blacklaws was prevented from seeing his father due to the Isolation, Quarantine and Visiting Restrictions and the Indoor Gathering Restrictions. This is sufficient to demonstrate a *prima facie* infringement of Mr. Blacklaws ss. 2(c) and (d) *Charter* rights, subject to any justification analysis conducted under s. 1 of the *Charter*.

5. Rebecca Ingram

63. Ms. Ingram asserts her ss. 2(c) and (d) *Charter* rights were infringed by the Indoor Gathering Restrictions, Outdoor Gathering Restrictions, and Primary or Secondary School Closure Restrictions. She also asserts that the Outdoor Gathering Restrictions and Primary or Secondary School Closure Restrictions infringed her children's ss. 2(c) and (d) *Charter* rights. As set out in Part III.b.iii.4, Ms. Ingram's children are not parties to this action and she does not have standing to assert *Charter* violations on their behalf.

[70] Affidavit of Erin Blacklaws sworn January 22, 2021 and filed January 22, 2021 [Blacklaws Affidavit].
[71] Blacklaws Affidavit, *ibid* at paras 9, 12.

Any claims with respect to alleged infringement of the children's *Charter* rights must be dismissed for lack of standing.

64. With respect to Ms. Ingram's claims, Ms. Ingram gives evidence that she could not host Christmas or other holiday events or celebrate with her mother on her birthday[72] due to the Indoor Gathering Restrictions and the Outdoor Gathering Restrictions. This is sufficient to demonstrate a *prima facie* infringement of Ms. Ingram's ss. 2(c) and (d) *Charter* rights, subject to any justification analysis conducted under s. 1 of the *Charter*.

65. Ms. Ingram also asserts that the Primary or Secondary School Closure Restrictions interfere with her ss. 2(c) and (d) *Charter* rights. Ms. Ingram provides no evidence with respect to these claims. Ms. Ingram has school age children, but as noted above, they are not claimants in this action and she has no standing to assert alleged infringements on their behalf. Ms. Ingram's claims that the Primary or Secondary School Closure Restrictions infringe her ss. 2(c) and (d) *Charter* rights must be dismissed.

d. Section 7 of the *Charter*

i. The Law

66. Section 7 of the *Charter* states:

> Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.[73]

67. None of the applicants in these proceedings assert a violation of a "right to life" under s. 7 of the *Charter*. As such, Alberta will only address issues of liberty and security of the person under s. 7.

1. The Scope of s. 7

68. The established scope of s. 7 protections provides a useful gatekeeping function in these proceedings.

69. Section 7 rights only apply to natural persons – not corporations.[74] Therefore, the Applicant Churches have no standing to bring any s. 7 claim.[75] Corporations can rely

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[72] Ingram Affidavit, *supra* note 37 at para 10.
[73] *Charter*, *supra* note 6, s 7.
[74] See generally, Peter W Hogg, *Constitutional Law of Canada*, 5th ed (Toronto: Thomson Reuters, 2007) (loose-leaf updated 2019, release 1) at p 47-5 – **TAB 82**.
[75] Indeed, the Applicant Churches have abandoned any claims that the Applicant Churches' s. 7 rights were violated by way of the Restrictions. See Consent Order re: Affidavits #1, *supra* note 12 at para 2.

upon s. 7 in order to defend against charges, but they have no free-standing right to challenge legislation under s. 7.[76]

70. The guarantee found in s. 7 also does not apply to economic[77] or property interests,[78] nor does it protect the ability to generate business revenue by one's chosen means.[79] There can be no (successful) argument that the direct or incidental effects of the Restrictions on any business violates s. 7 of the *Charter*.

71. Furthermore, there is no positive obligation upon government to ensure that each person enjoys, life, liberty, and security of the person.[80] Again, any claims that Alberta is required, by way of s. 7 of the *Charter*, to provide any economic or other supports to the Applicants cannot succeed. Where a government elects to provide a financial benefit that is not otherwise required by law, legislative limitations on the scope of the benefit do not violate s. 7.[81] Governments also do not create obligations when they extend benefits and such benefits can be reduced or removed without violating s. 7.[82]

72. Additionally, the Ontario Court of Appeal has a firmed a decision that concluded s. 7 does not encompass the choice of an individual to voluntarily assume the risk of contracting an infectious disease without state interference.[83] There is clear, persuasive precedent establishing that individuals do not have a s. 7 right to engage in behavior that increases the risk that they might contract an infectious disease that puts others at risk and burdens the public health care system.

2. Liberty

73. Liberty under s. 7 includes physical liberty. Alberta acknowledges that some of the Restrictions have restricted the movements of Albertans (e.g. the locations that they can visit, the number of individuals that can attend events, physical distancing from other individuals, etc.). However, as set out in Part III.d.i.4 below, such restrictions are clearly

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[76] ***Big M***, *supra* note 17 – **TAB 46.**
[77] Hogg, *supra* note 74 at pp 47-11 to 47-12 – **TAB 82**.
[78] Hogg, *supra* note 74 at pp 47-18 to 47-19 – **TAB 82**.
[79] ***Siemens v Manitoba (Attorney General)***, 2003 SCC 3 at para 46 [***Siemens***] – **TAB 72**.
[80] ***Gosselin v Quebec (Attorney General)***, 2002 SCC 84 at paras 80-81 [***Gosselin***] – **TAB 33**.
[81] ***Flora v General Manager, Ontario Health Insurance Plan***, 2008 ONCA 538 at para 108 [***Flora***] – **TAB 31**.
[82] ***Tanudjaja v Attorney General (Canada)(Application)***, 2013 ONSC 5410 at para 38 [***Tanudjaja***] – **TAB 75**, aff'd 2014 ONCA 852, leave to SCC refused, 36283 (25 June 2015) – **TAB 76.**
[83] ***Doe v Canada (Attorney General)***, 79 OR (3d) 586 at paras 158-159 [***Doe***] – **TAB 29**, aff'd 2007 ONCA 11 – **TAB 30**.

in accordance with the principles of fundamental justice. As such, there has been no infringement of the guarantee to physical liberty as set out in s. 7 of the *Charter*.

74. The s. 7 liberty protection is also engaged where state compulsions, prohibitions, or intrusions affect important and fundamental life choices.[84] Section 7 does not guarantee individuals unconstrained freedom. The narrow[85] sphere of personal autonomy protected by s. 7 does not encompass any and all decisions that individuals might make in conducting their affairs.[86] In an organized society, individual freedoms must be subject to numerous constraints for the common good. The state has the right to impose many types of restraints on individual behaviour, and not all limitations will attract *Charter* scrutiny.[87]

75. Section 7 of the *Charter* only protects matters that can properly be characterized as so fundamentally or inherently personal that, by their very nature, they implicate basic choices going to the core of what it means to enjoy individual dignity and independence.[88] The Supreme Court has firmly rejected the notion that s. 7 protects all activities that an individual *claims* are fundamental life choices. An individual's perspective is not necessarily determinative. For example, s. 7 does not protect lifestyles based around the consumption of marijuana, certain sporting activities, gambling, unhealthy food choices, engaging in a certain profession, or even choosing the location of one's residence, no matter how important a person asserts these activities to be.[89]

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[84] ***Blencoe v British Columbia (Human Rights Commission)***, 2000 SCC 44 at para 49 [***Blencoe***] – **TAB 14**.
[85] ***Godbout v Longueil (City)***, [1997] 3 SCR 844 at para 64 [***Godbout***] – **TAB 32**.
[86] *Ibid* at para 66. See also ***Blencoe***, *supra* note 84 at paras 49-54 – **TAB 14**; ***R v Malmo-Levine***, [2003] 3 SCR 571 at para 85 [***Malmo-Levine***] – **TAB 55**; ***B(R) v Children's Aid Society of Metropolitan Toronto***, [1995] 1 SCR 315 at 368 [***Children's Aid***] – **TAB 12**; ***R v Clay***, 2003 SCC 75 at para 31 [***Clay***] – **TAB 50**.
[87] ***Children's Aid***, *supra* note 86 at 368 – **TAB 12**.
[88] ***Godbout***, *supra* note 85 at para 66 – **TAB 32**. See note 86, above for additional case law.
[89] ***Malmo-Levine***, *supra* note 86 at para 86 – **TAB 55**; ***Clay***, *supra* note 86 at paras 32-33 – **TAB 50**; ***Reference re ss 193 and 195.1(1)(c) of the Criminal Code (Man)***, [1990] 1 SCR 1123 at 1179 [***Prostitution Reference***] – **TAB 66**; ***R v SA***, 2014 ABCA 191 at para 154, leave to appeal to the SCC refused, 36050 (December 11, 2014) – **TAB 61**; ***R v Schmidt***, 2014 ONCA 188 at para 40 – **TAB 62**; ***Siemens***, *supra* note 79 at paras 45-46 – **TAB 72**; ***British Columbia Teachers' Federation v Vancouver School District No 39***, 2003 BCCA 100 at paras 205-210 – **TAB 15**. It is also noteworthy that, to this day, the Supreme Court has refused to enshrine the right to choose the location of one's residence as a right guaranteed under section 7, despite the minority judgement in ***Godbout***, *supra* note 85 – **TAB 32**: see ***Alberta (Aboriginal Affairs and Northern Development) v Cunningham***, 2011 SCC 37 at para 93 – **TAB 8**.

76. With the exception of parental rights, which are discussed below, the sphere of autonomy protected by s. 7 only covers fundamental choices that are not already protected under ss. 2, 3, and 6 of the *Charter*.[90] For example, an individual cannot assert that a governmental prohibition on public demonstrations violates both their expressive rights under s. 2 and their liberty rights under s. 7 – such a claim is entirely subsumed under s. 2.

77. With respect to parental rights, the Supreme Court has held that s. 7 protects the right of parents to make important decisions that affect the child because it is presumed that parents have an interest in fostering the growth of their own child, and are more likely to appreciate the best interests of their children than the state.[91] This may include decisions such as where the child will live, the school they will attend, and possibly the indoctrination of religious and other values. On this basis then, a parent may be able to claim that state imposed restrictions upon a child's religious activities also violate parental rights under both s. 2(a) and s. 7.[92]

78. But, it is important to note that these parental rights are not absolute. Children's *Charter* rights exist independently of their parents. There is no case law that supports the notion that *every* limitation on a child's *Charter* right would engage parental rights under s. 7. Indeed, any argument in this respect would necessarily have to disregard the Supreme Court's comments that s. 7 goes to protect an individual's inherently personal choices. It would be nonsensical if a parent could assert an infringement of their parental rights under s. 7 for matters that don't relate to the types of inherently personal choices generally protected by s. 7 or the fundamental freedoms enshrined in the *Charter*. Additionally, as set out in ***Children's Aid***, the state can justifiably intervene if it is necessary to safeguard the child's autonomy or health[93] and to promote the best interests of the child.[94] As such, it is clear that any s. 7 right that extends to parents the right to make decisions regarding inherently personal matters for their children is not absolute.

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[90] See ***Canada (Attorney General) v Whaling***, 2014 SCC 20 at para 76 – **TAB 19**; ***R v Chouhan***, 2020 ONCA 40 at paras 130, 136 – **TAB 48**, aff'd 2021 SCC 26 – **TAB 49**. See also Hogg, *supra* note 74 at p 47-12 – **TAB 82**.
[91] ***Children's Aid***, *supra* note 86 at 370-71 – **TAB 12**.
[92] See ***Children's Aid***, *supra* note 86 (where a 4 member majority of the Supreme Court found that a Jehovah's Witness parent could refuse a blood transfusion for their child under both ss. 2(a) and s. 7 of the *Charter*) – **TAB 12**.
[93] ***Children's Aid***, *supra* note 86 at 372 – **TAB 12**.
[94] ***Chamberlain v Surrey School District No 36***, 2002 SCC 86 at para 108 – **TAB 24**.

79. While liberty under s. 7 *may* conceivably include a parental right to have input into a child's education, there is no case law that supports any proposition that the content of a child's education would have to be delivered in a specific manner (i.e. in class, as opposed to online), nor can there be any reasonable suggestion that the delivery of education rises to the level of inherently personal choices protected by s. 7. There is no basis in law for any of the Applicants' claims in this respect and they should be dismissed.

3. Security of the Person

80. Security of the person is engaged where state compulsions, prohibitions, or intrusions affect an individual's bodily integrity or causes *serious* psychological stress.[95]

81. For a restriction of security of the person to be made out, the impugned state action must have a serious and profound effect on a person's psychological integrity. The effects of the state interference must be assessed objectively, with a view to their impact on the psychological integrity of a person of reasonable sensibility.[96] The right to security of the person does not protect the individual from the ordinary stresses and anxieties that a person of reasonable sensibility would suffer as a result of government action.[97]

82. Moreover, not every violation of s. 2 of the *Charter* will amount to a restriction of security of the person.[98] As Lamer CJ explained:

> If [section 7 of the *Charter*] were interpreted with such broad sweep, countless government initiatives could be challenged on the ground that they infringe the right to security of the person, massively expanding the scope of judicial review, and, in the process, trivializing what it means for a right to be constitutionally protected. Nor will every violation of a fundamental freedom guaranteed in s. 2 of the *Charter* amount to a restriction of security of the person. I do not believe it can be seriously argued that a law prohibiting certain kinds of commercial expression in violation of s. 2(b), for example, will necessarily result in a violation of the psychological integrity of the person. This is not to say, though, that there will never

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[95] ***Blencoe***, *supra* note 84 at paras 55-57 – **TAB 14**.
[96] ***Blencoe***, *supra* note 84 at para 60 – **TAB 14**.
[97] ***New Brunswick (Minister of Health and Community Services) v G(J)***, [1999] 3 SCR 46 at para 59 [***G(J)***] – **TAB 42**.
[98] *Ibid*.

> be cases where a violation of s. 2 will also deprive an individual of security of the person.[99]

83. Through ***Bedford***, the Supreme Court has established a "sufficient causal connection" standard for determining whether legislation or the conduct of state actors engages security of the person.[100] This standard:

- does not require that the impugned government action or law be the only or the dominant cause of the prejudice suffered by the claimant.
- is satisfied by a reasonable inference, drawn on a balance of probabilities.
- is sensitive to the context of the particular case and requires a real (not a speculative) link.[101]

84. The claimant bears the burden of establishing the causal connection.[102]

85. It must be noted that the Supreme Court has never found that the mere enactment of legislation that causes a person to be distressed can engage s. 7. Some form of compulsion, prohibition, or state interference is always required.[103] This prevents "constitutionalization" of non-constitutional issues. For example, if an individual is distressed by perceived gaps in provincial animal protection legislation, this distress alone cannot ground a s. 7 challenge to the legislation. Indeed, such an approach would lead to absurd constitutional results.

86. This principle also applies in these proceedings. As discussed above, s. 7 does not protect economic rights generally, or the right to generate revenue from a specific business. Therefore, in the absence of any pre-existing economic rights, state action that causes "economic anxiety" cannot engage security of the person. A claim of psychological harm cannot be used to bootstrap a s. 7 claim where no s. 7 *Charter* right previously existed. This would effectively provide a "backdoor" to *Charter* protected

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[99] *Ibid*.
[100] ***Canada (Attorney General) v Bedford***, 2013 SCC 72 at para 76 [***Bedford***] – **TAB 20**.
[101] ***Bedford***, *ibid* at paras 76, 78.
[102] *Ibid*.
[103] See e.g. ***Chaoulii v Quebec (Attorney General)***, 2005 SCC 35 – **TAB 25**; ***Carter v Canada (Attorney General)***, 2015 SCC 5 [***Carter***] – **TAB 22**; ***Canada (Attorney General) v PHS Community Services Society***, 2011 SCC 44 – **TAB 18**; ***R v Morgentaler***, [1988] 1 SCR 30 – **TAB 57**; ***Godbout***, *supra* note 85 – **TAB 32**; ***Canada (Prime Minister) v Khadr***, 2010 SCC 3 – **TAB 21**.

economic and business rights. Such an approach would essentially constitutionalize everything.

87. The Supreme Court has been clear that not every state action that interferes with a parent-child relationship will restrict a parent's security of the person.[104] While a parent may suffer stress or anxiety as a result of state action, security of the person is not engaged where the state does not make pronouncements as to the parent's fitness or parental status, does not usurp the parental role, pry into the intimacies of the parent-child relationship, or generally interfere with the psychological integrity of a parent in their capacity as a parent.[105]

4. Principles of Fundamental Justice

88. Section 7 of the *Charter*, unlike many other sections, has a built in "limiting" provision. This section guarantees that a person's right to life, liberty, and security of the person will not be deprived, *except in accordance with the principles of fundamental justice*.

89. The "principles of fundamental justice" is a technical legal concept. A three step test has been established to determine whether a legal principle rises to the level of a "fundamental principle":

a. The principle must be a legal principle.

b. There must be significant societal consensus that the principle is a fundamental building block of the justice system.

c. The principle must be capable of being identified with sufficient precision to yield a manageable standard.[106]

90. Several principles of fundamental justice have been identified by the Courts and have been routinely applied in s. 7 litigation: arbitrariness, overbreadth, and gross disproportionality.[107]

91. A law is arbitrary where it limits s. 7 rights in a manner that has no rational connection to its purpose.[108] The question of arbitrariness is whether, as a matter of logic,

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[104] ***G(J)***, *supra* note 97 at para 63 – **TAB 42**.
[105] ***G(J)***, *supra* note 97 at para 64 – **TAB 42**.
[106] See ***Malmo-Levine***, *supra* note 86 at para 113 – **TAB 55**.
[107] See ***Bedford***, *supra* note 100 at paras X-Y (for discussion of arbitrariness, overbreadth, and gross disproportionality) – **TAB 20**.
[108] ***Carter***, *supra* note 103 at para 83 – **TAB 22**.

there is a rational connection between the Restrictions and the purpose underlying them.[109] There is clearly a rational connection between limiting or restricting gatherings and reducing or slowing the spread of COVID-19. The Applicants appear to suggest the Restrictions are arbitrary with respect to limiting gatherings or the number of bodies in places of worship, while allowing gatherings (to some extent) in retail stores because there is a high survival rate for those with COVID-19. They, effectively, are comparing the impugned Restrictions and declaring the distinctions arbitrary, when the actual issue is whether the Restrictions have any nexus with the purpose of preventing the spread of COVID-19. It is clear that the Restrictions are not arbitrary in this respect, so this submission must fail.

92. A law is overbroad where it prohibits some activities that have no rational connection to its purpose.[110] In the present case, this means that any specific order is overbroad if it prohibits some activities which bear no relation to the purpose of reducing or slowing the spread of COVID-19 within any specific social context (i.e., churches, bars, retails stores, outdoor gatherings, gyms, etc.) given what was known about transmission of the virus. Fundamentally, as long as the Restrictions reduce or slow the spread of COVID-19 in any specific social context, those Restrictions are not overbroad.

93. In this respect then, the Applicants have fundamentally misconstrued the concept of "overbreadth". The issue with respect to overbreadth is not whether the Restrictions could be less impairing or stringent. That is a question of "minimal impairment" under s. 1 of the ***Oakes*** test. The only question with respect to overbreadth is whether the prohibitions under any specific Order did not reduce or slow the spread of COVID 19. The Applicants do not deny that the Orders do not reduce or slow the spread of the virus – they only argue that the restrictions are too stringent. This has nothing to do with the concept of overbreadth. On this basis then, the Applicants' position implicitly concedes that the Orders are not overbroad.

94. A law is grossly disproportionate where its effects are so disproportionate to its purposes that they cannot be rationally supported.[111] The gross disproportionality analysis only considers the effects on the individual and does not consider any benefit to society.

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[109] ***Bedford***, *supra* note 100 at para 111 – **TAB 20**; ***Malmo-Levine***, *supra* note 86 at para 135 – **TAB 55**.
[110] ***Bedford***, *supra* note 100 at paras 112-13 – **TAB 20**; ***Clay***, *supra* note 86 at paras 37-40 – **TAB 50**; ***Carter***, *supra* note 103 at para 83 – **TAB 22**.
[111] ***Bedford***, *supra* note 100 at para 120 – **TAB 20**; ***Malmo-Levine***, *supra* note 86 at para 169 – **TAB 55**.

The impact (or benefits) of the measures on society or the public at large are issues to be considered under s. 1 of the *Charter*. The rule against gross disproportionality only applies in extreme cases where the seriousness of the deprivation is totally out of sync with the objective of the measure.[112] The standard is high: the law's object and its impact may be incommensurate without reaching the standard for *gross* disproportionality.[113]

95. The Supreme Court of Canada has consistently held that the "legislature is not required to provide scientific proof based on concrete evidence of the problem it seeks to address in every case" and that in the absence of "determinative scientific evidence" it is appropriate for the court to rely "on logic, reason and some social science evidence" to determine whether there is "a reasoned apprehension of that harm."[114]

96. Provided there is evidence of a "reasoned apprehension of harm," and the legislative response is not grossly disproportionate, it is up to the legislature and not the Court to determine the appropriate course of action.[115]

ii. The Claimants

97. The applicants Torry Tanner, Erin Blacklaws, and Rebecca Ingram assert their s. 7 liberty and security of the person *Charter* rights were infringed. None of the Applicants have asserted an infringement of the right to life.

iii. How the Claimants Assert Their Rights Were Violated and the Evidence to Substantiate Those Claims

1. Torry Tanner

98. Ms. Tanner asserts that the Private Residence Restrictions, Indoor Gathering Restrictions, and Outdoor Gathering Restrictions prevented her family from gathering for a religious celebration of Christmas, which interfered with her core lifestyle choices and relationships. Further, Ms. Tanner claims the Restrictions have impacted her mental state.[116]

99. Per discussion above, where an individual advances simultaneous claims under s. 7 and s. 2 of the *Charter*, the s. 7 liberty claims with respect to Ms. Tanner's preferred

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[112] ***Bedford***, *supra* note 100 at para 120 – **TAB 20**.
[113] ***Bedford***, *supra* note 100 at para 120 – **TAB 20**; ***Suresh v Canada (Minister of Citizenship and Immigration)***, 2002 SCC 1 at para 47 – **TAB 73**.
[114] See ***Harper v Canada (Attorney General)***, 2004 SCC 33 at paras 77-78 [***Harper***] – **TAB 34**.
[115] See e.g. ***Cochrane v Ontario (Attorney General)***, 2008 ONCA 718 [***Cochrane***] – **TAB 27**.
[116] Supplementary Particulars at para 9.

religious celebration would be subsumed under s. 2. These liberty claims should be dealt with under the applicable s. 2 analysis.

100. Any restrictions upon Ms. Tanner's physical liberty due to gathering restrictions were not arbitrary, overbroad, or grossly disproportionate given what was (and is) known about the transmission of the virus, the need to prevent spread of COVID-19, and the necessity of avoiding severe outcomes in terms of mortality and morbidity resulting from COVID-19.[117]

101. With respect to security of the person, Ms. Tanner attests:

- "What I am afraid of – far more than COVID 19 – is a world without freedom - a world where the government controls nearly everything."[118]
- "I would never have thought that the government of Alberta would issue orders attempting to cancel Christmas. Even less did I think it would be possible for the government to do such a thing."[119]
- "I feel I am living in a nightmare I cannot wake up from. I feel like I do not recognize anymore the society in which I live."[120]
- "This is extremely sad and disheartening."[121]

102. These claims under s. 7 must be assessed objectively with a view to the impact on the psychological integrity of a person of reasonable sensibility.[122]

103. Ms. Tanner's claim that she fears a world without freedom more than COVID-19 is an abstract fear that cannot ground a s. 7 *Charter* claim. It is also not an objectively reasonable fear. The fact that Ms. Tanner can challenge the constitutionality of laws in a democratic system where the judiciary is entirely separate and independent from government demonstrates that the government does not control "nearly everything" and any fears she attests to having are not grounded in reality.

104. Furthermore, the Government of Alberta did not cancel Christmas. Ms. Tanner's claim is not objectively true. It is hyperbole in the clearest sense. A person of reasonable

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[117] See the summary of Alberta's evidence, which includes evidence on how COVID-19 spreads and is transmitted, in Part IV.c, below.
[118] Tanner Supplemental Affidavit, *supra* note 21 at para 6.
[119] Tanner Affidavit, *supra* note 20 at para 6.
[120] Tanner Affidavit, *supra* note 20 at para 7.
[121] Tanner Affidavit, *supra* note 20 at para 5.
[122] ***G(J)***, *supra* note 97 at para 60 – **TAB 42**.

sensibility is not likely to view pandemic restrictions as a "living nightmare" and the end of society as they know it. Being "extremely sad" and "disheartened" is not the profound effect upon a person's psychological integrity required to ground a s. 7 claim.[123]

105. As a result, Ms. Tanner's claims that the Restrictions have infringed her s. 7 *Charter* rights must be dismissed.

2. Erin Blacklaws

106. Mr. Blacklaws asserts that the Indoor Gathering Restrictions interfere with his liberty and security interests as protected by s. 7 of the *Charter* because he could not hold a funeral for his father that would physically accommodate all of this father's friends.[124] Mr. Blacklaws also asserts that the Isolation, Quarantine, and Visiting Restrictions interfered with his liberty and security interests because he could not be with his father at the end of his life to say goodbye.[125]

107. The majority of the statements found in the Blacklaws Affidavit are irrelevant because they concern the actions of nurses and doctors at the University of Alberta Hospital. Mr. Blacklaws asserts that the Restrictions prevented him from holding a funeral that would accommodate all of his father's friends, and accordingly that violates his s. 7 *Charter* rights. The law does not support such a conclusion. Not only was Mr. Blacklaws never absolutely precluded from hosting a funeral (only hosting a funeral with a large number of people in person, it was always open for Mr. Blacklaws to host a small funeral or a funeral providing remote access), but Mr. Blacklaws' s. 7 claims also must fail for the same reasons that Ms. Tanner's and Ms. Ingram's claims fail: he has asserted s. 2(c) and (d) infringements, which would subsume Mr. Blacklaws s. 7 claims.

108. Mr. Blacklaws also cannot advance a s. 7 claim on behalf of those individuals that could not attend the funeral service. He has no standing to allege *Charter* infringements for individuals not parties to this action. Even if the Indoor Gathering Restrictions that limited funeral attendance infringed Mr. Blacklaws' s. 7 *Charter* rights, the Restrictions were not arbitrary, overbroad, or grossly disproportionate given what was (and is) known about the transmission of the virus and the need to stop the spread of COVID-19. Mr. Blacklaws s. 7 *Charter* claims should be dismissed.

[123] *Ibid* at para 60.
[124] Supplementary Particulars at para 17.
[125] Supplementary Particulars at para 18.

3. Rebecca Ingram

109. Ms. Ingram claims the Indoor Gathering Restrictions, the Outdoor Gathering Restrictions, the Primary or Secondary School Closure Restrictions, and the Business Closure Restrictions interfere with her liberty and security of the person interests protected by s. 7 of the *Charter*. She also claims the Indoor Gathering Restrictions, the Outdoor Gathering Restrictions, and the Primary or Secondary School Closure Restrictions interfere with her children's liberty and security interests.

110. Ms. Ingram asserts that the Indoor Gathering Restrictions have interfered with her s. 7 rights because she was prevented from attending church services and hasn't been able to celebrate Christmas or Easter in her preferred way. [126] She further (erroneously) asserts that both the Indoor Gathering Restrictions and the Outdoor Gathering Restrictions have "forbidden"[127] socialization with friends and family, which she claims has a profound impact on her "core lifestyle choices and fundamental relationships."[128] As noted above in Part III.d.i.2, where Ms. Ingram is simultaneously asserting s. 7 and s. 2 claims on her own behalf, the s. 7 claims are subsumed under the s. 2 analysis.

111. Ms. Ingram also claims the Business Closure Restrictions have infringed her s. 7 rights to liberty and security of the person because the Restrictions "infringe on her ability to make 'core lifestyle choices' in which manner she choses [sic] to run her business."[129] Ms. Ingram's assertion that her business is a core lifestyle choice does not make it so. The Supreme Court has confirmed that the right to engage in a certain profession is not covered by s. 7.[130] A *temporary* closure of Ms. Ingram's business during a global pandemic cannot be protected by s. 7 of the *Charter*. This claim is entirely without merit must be dismissed.

112. With respect to Ms. Ingram's children and her assertions of *Charter* violations on their behalf, they are not parties to this action. Ms. Ingram has no standing to assert claims with respect to her children. The claims that Ms. Ingram's children's s. 7 *Charter* rights have been allegedly violated must be dismissed for want of standing.

113. The only area within s. 7 where Ms. Ingram potentially has a claim is with respect to her parental rights, but, as noted above, not every restriction upon a child's *Charter*

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[126] Supplementary Particulars at para 19.
[127] Supplementary Particulars at para 20.
[128] *Ibid*.
[129] Supplementary Particulars at para 22.
[130] See ***Prostitution Reference***, *supra* note 89 at 1179 – **TAB 66**.

rights will engage parental rights under s. 7. The fundamental issue in every case is the best interests of the child.

114. It is clear that the Restrictions, which were instituted to reduce the spread of COVID-19 and reduce the morbidity and mortality associated with the COVID-19 pandemic, were in the best interests of Ms. Ingram's children. The Restrictions, at no time, prevented Ms. Ingram from taking her children to religious services. Capacity for worship services may have been reduced, but Ms. Ingram gives no evidence that it is a part of her religious beliefs that the entirety of the congregation must be together.[131] The Restrictions did not prevent Ms. Ingram from conveying, sharing, and educating her children with respect to her religious beliefs.

115. Moreover, the Restrictions never denied Ms. Ingram's children an education. There is no case law that would support a proposition that children have a *Charter* right to in-class learning, or a specific "mode" of learning. The Restrictions did not prevent Ms. Ingram from exercising with her children or teaching her children the value of education – the fact that her children could not attend gym class cannot reasonably be said to violate her s. 7 parental rights especially when Ms. Ingram, a gym owner, could still instill the importance or value of exercise in her children.

116. Finally, Ms. Ingram fails to give *any* evidence that the Restrictions have affected her psychological integrity in her capacity as a parent. The claims by Ms. Ingram that her parental rights as protected by s. 7 were infringed by the Restrictions are therefore either legally without merit or have no facts capable of supporting that conclusion. Accordingly, Ms. Ingram's s. 7 parental rights claims should be dismissed.

117. While Ms. Ingram asserts that "there is no legal doctrine that allows the state to instruct its citizens as to how, where, when or with whom they can enjoy their rights and freedoms,"[132] this position is undermined by the existence of the *Charter*. The *Charter* itself is the "legal doctrine" that provides rights to citizens while simultaneously enabling government to limit those rights where it is justifiable and necessary to do so. Accordingly, Ms. Ingram's s. 7 claims, with respect to herself (including her parental rights) and with respect to her children (for whom she has no standing to make these claims), must be dismissed.

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[131] This is in direct contrast to the evidence provided by the Applicant Churches through their representatives, who state that the whole of the congregation worshipping together is a fundamental or at least important part of their religious beliefs.
[132] Supplementary Particulars at para 20.

e. Section 15 of the *Charter*

i. The Law

118. Section 15(1) of the *Charter* states:

> Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.[133]

119. In ***Law v Canada (Minister of Employment and Immigration)***, the Supreme Court established the test for determining whether there is an infringement of s. 15:

> (A) whether a law imposes differential treatment between the claimant and others, in purpose or effect;
>
> (B) whether one or more enumerated or analogous grounds of discrimination are the basis for the differential treatment; and
>
> (C) whether the law in question has a purpose or effect that is discriminatory within the meaning of the equality guarantee.[134]

120. Section 15 of the *Charter* protects substantive equality. As noted by the Supreme Court, "the concept of equality does not necessarily mean identical treatment and that the formal 'like treatment' model of discrimination may in fact produce inequality."[135]

ii. The Claimants

121. The only claimant that asserts an infringement of s. 15 of the *Charter* is Ms. Ingram.

iii. How the Claimants Assert Their Rights Were Violated and the Evidence to Substantiate Those Claims

1. Rebecca Ingram

122. Ms. Ingram asserts that the Primary or Secondary School Closure Restrictions have interfered with her, or her children's, *Charter* rights to equality. As set out in Part III.b.iii.4, Ms. Ingram's children are not parties to this action. Ms. Ingram has no standing

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[133] *Charter*, *supra* note 6, s 15(1) – **TAB 3**.
[134] [1999] 1 SCR 497 at para 88(2) – **TAB 39.**
[135] ***R v Kapp***, 2008 SCC 41 at para 15 **– TAB 53**, citing ***Andrews v Law Society of British Columbia***, [1989] 1 SCR 143 **– TAB 10**.

to assert claims on behalf of her children. Her children, who may have been directly impacted by the Primary or Secondary School Closure Restrictions, could have been added as parties to make these claims. Ms. Ingram could have sought public interest standing to pursue claims of alleged infringements that do not directly affect her. Instead, Ms. Ingram has proceeded on her own behalf. Ms. Ingram's claims that her children's s. 15 *Charter* rights were infringed should be dismissed for want of standing.

123. Ms. Ingram appears to assert her s. 15 *Charter* rights were violated because she is "barred from making core lifestyle choices for her children."[136] This claim is dealt with under the s. 7 analysis, above. Ms. Ingram's only evidence with respect to these alleged s. 15 claims is that her children in "grades 7, 9 and 11 do not attend school due to the Government's interference in their education through the CMOH orders."[137] Ms. Ingram has failed to provide any evidence that could support a claim that her s. 15 *Charter* rights have been infringed by the Restrictions. Accordingly, her claims should be dismissed.

f. Section 1 of the *Alberta Bill of Rights*

i. The Law

124. Section 1 of the *Alberta Bill of Rights* states:

> It is hereby recognized and declared that in Alberta there exist without discrimination by reason of race, national origin, colour, religion, sexual orientation, sex, gender identity or gender expression, the following human rights and fundamental freedoms, namely:
>
> > (a) the right of the individual to liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law;
> >
> > (b) the right of the individual to equality before the law and the protection of the law;
> >
> > (c) freedom of religion;
> >
> > (d) freedom of speech;
> >
> > (e) freedom of assembly and association;

[136] Supplementary Particulars at para 21.
[137] Ingram Affidavit, *supra* note 37 at para 5.

> (f) freedom of the press;
>
> (g) the right of parents to make informed decisions respecting the education of their children.

125. As Professor Hogg explains, with the exception of ss. 1(a) (the right not to be deprived of property except by due process of the law) and (potentially) 1(g),[138] these protections have been entirely subsumed by the *Charter* freedoms.[139] He also opines that these duplicative sections are of no force and effect.[140]

126. It is trite law that the *Canadian Bill of Rights*[141] (and accordingly, the *Alberta Bill of Rights*) did not create new rights: it simply acknowledged and offered some protection to existing rights or freedoms.[142] The rights and freedoms that existed in the pre-*Charter* era were not absolute. As the Supreme Court explained in ***Robertson***:

> It is to be noted at the outset that the *Canadian Bill of Rights* is not concerned with "human rights and fundamental freedoms" in any abstract sense, but rather with such "rights and freedoms" as they existed in Canada immediately before the statute was enacted. (See also s. 5(1)). It is therefore the "religious freedom" then existing in this country that is safe-guarded by the provisions of s. 2. [143]

127. This was because:

> It is to be remembered that the human rights and fundamental freedoms recognized by the Courts of Canada before the enactment of the *Canadian Bill of Rights* and guaranteed by that statute were the rights and freedoms of men living together in an organized society subject to a rational, developed and civilized system of law which imposed limitations on the absolute liberty of the individual.[144]

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[138] Professor Hogg gives this opinion in respect of the *Canadian Bill of Rights*, which does not have a provision analogous to s. 1(g) found in the *Alberta Bill of Rights*.
[139] Hogg, *supra* note 74 at 35-2, 35-9 to 35-10. See also Hogg, *supra* note 74 at 34-8 – **TAB 82**. Section 1(g) may also be mostly subsumed by s. 7 of the *Charter* as it extends to parental rights.
[140] See Hogg, *supra* note 74 at 35-2 – **TAB 82**.
[141] SC 1960, c 44 – **TAB 2**.
[142] See ***R v Burnshine***, [1975] 1 SCR 693 at 705 **– TAB 47**.
[143] ***Robertson and Rosetanni v The Queen***, [1963] SCR 651 at 654 [***Robertson***] – **TAB 69.**
[144] ***Robertson***, *supra* note 143 at 656.

128. Ultimately, the majority concluded that "[h]istorically, such legislation has never been considered as an interference with the kind of 'freedom of religion' guaranteed by the *Canadian Bill of Rights*."[145]

129. The same analysis applies to determining whether there was a right upon enactment of the *Alberta Bill of Rights* for individuals to assemble or associate without regard to public health restrictions addressing communicable diseases or other public health emergences. There was not. For example, in response to the small pox endemic of the 1900s, regulations were enacted ordering the mandatory quarantine (and vaccination) of infected individuals.[146] Clearly, this would infringe upon the right to freely assemble and associate, demonstrating that even when such freedoms existed in a pre-*Charter* era, those freedoms were not absolute. The enactment of the *Alberta Bill of Rights* did not change this. It is not necessary to resort to the *Alberta Bill of Rights*' notwithstanding clause since no right to assemble or associate without regard to public health restrictions has ever existed in Alberta.

130. In ***Beauregard***, Dickson CJC, in considering an alleged infringement of the right to equality under s. 1(b), concluded that as long as legislation was enacted in pursuit of a valid legislative objective, there was no infringement of the *Canadian Bill of Rights*.[147] Building on ***Beauregard***, Le Dain J in ***Cornell*** reached a similar conclusion, noting:

> I think the most that is implicit in the cases is that there must be a federal objective that provides a reasonable justification for the particular inequality, in the sense that the inequality is not clearly arbitrary or capricious but finds some legitimate basis in the particular legislative policy.[148]

131. This "valid legislative objective" approach was followed by this Court in ***Marr***.[149] Most recently, Graesser J concluded that the rights and freedoms recognized in the *Alberta Bill of Rights* would be subject to a similar balancing act as would be conducted under s. 1 of the *Charter*.[150] While Graesser J's approach may be more generous than the approach outlined in ***Beauregard*** and ***Cornell***, in any event, it is clear that the rights and freedoms protected by the *Alberta Bill of Rights* are not absolute.

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[145] ***Robertson***, *supra* note 143 at 658.
[146] See *Regulations re smallpox*, 591-08, (1908) A Gaz 4, 16 at 10-11 – **TAB 7.**
[147] ***The Queen v Beauregard***, [1986] 2 SCR 56 at 90 – **TAB 77**.
[148] ***R v Cornell***, [1988] 1 SCR 461 at 58-59 – **TAB 51.**
[149] ***Marr v Alberta (Public Trustee)*** (1989), 63 DLR (4th) 500 (ABQB) – **TAB 40.**
[150] ***Peter v Public Health Appeal Board of Alberta***, 2019 ABQB 989 at para 86 – **TAB 45.**

132. If the correct test is "enacted in pursuit of a valid legislative objective" (as suggested by the Supreme Court), Alberta has demonstrated that there was at all times a pressing and substantial legislative objective, which would demonstrate the Restrictions were enacted in pursuit of a valid legislative objective.[151] If, as Graesser J suggests, the rights are subjected to the same balancing act that would be conducted pursuant to ***Oakes***, any infringement would be justifiable under that ***Oakes*** analysis.

133. As such, these claims by Ms. Ingram should be dismissed.

ii. The Claimants

134. Ms. Ingram is the only applicant who asserts her rights under the *Alberta Bill of Rights* have been infringed.

iii. How the Claimants Assert Their Rights Were Violated and the Evidence to Substantiate Those Claims

135. Ms. Ingram's *Alberta Bill of Rights* claims are entirely duplicative of her *Charter* claims. She asserts:

a. Her freedom of religion has been infringed;

b. Her freedom of assembly and association has been infringed; and

c. Her right to make informed decisions respecting her children's education.

136. Ms. Ingram's *Alberta Bill of Rights* claim that her freedom of religion has been infringed has been subsumed by Ms. Ingram's s. 2(a) *Charter* claim. Her freedom of assembly and association has been subsumed by the ss. 2(c)-(d) *Charter* claims. Section 7 of the *Charter* protects Ms. Ingram's parental rights as well. The only claim Ms. Ingram makes that is not completely subsumed by the *Charter* is the claim dealt with in Part V.a, below, which relates to Ms. Ingram's property. Accordingly, Ms. Ingram's claims should be dismissed.

IV. THE RESPONDENT'S POSITION

a. The Lack of Evidence

137. As set out in the preceding sections, Alberta takes the position that a number of the claims made by the Applicants are not borne out by the evidence before this Court. Specifically:

[151] See Part V.c, below.

138. The claims by Torry Tanner that her:

a. Section 2(a) *Charter* rights to freedom of religion were infringed by the Private Residence Restrictions, Indoor Gathering Restrictions, and Outdoor Gathering Restrictions. Ms. Tanner fails to provide any evidence linking her family traditions, none of which have any nexus with religious practices, to a sincerely held religious belief. Ms. Tanner's claims should be dismissed.

b. Section 2(b) *Charter* rights to freedom of expression were infringed by the Outdoor Gathering Restrictions. Any infringement of Ms. Tanner's s. 2(b) *Charter* rights was trivial, insubstantial, and passing in nature. Ms. Tanner was not precluded from expressing her views.

c. Section 2(c)-(d) *Charter* rights to freedom of peaceful assembly were infringed by the Outdoor Gathering Restrictions. Any infringement of Ms. Tanner's s. 2(c) and (d) *Charter* rights was trivial, insubstantial, and passing in nature.

d. Section 7 *Charter* rights to liberty and security of the person were infringed by the Private Residence Restrictions, Indoor Gathering Restrictions, and Outdoor Gathering Restrictions. As Ms. Tanner has advanced simultaneous claims under both ss. 2 and 7 of the *Charter*, Ms. Tanner's claims should be dealt with under s. 2 of the *Charter*. Moreover, Ms. Tanner's asserted fears are not objectively reasonable and her hyperbolic assessments cannot ground a s. 7 *Charter* claim.

139. The claims by Heights Baptist Church that its:

a. Section 2(a) *Charter* rights were infringed by the Private Residence Restrictions. Heights Baptist Church provides no evidence that it has a private residence which was subjected to the Private Residence Restrictions and it does not have the standing necessary to assert violations on behalf of its congregants.

b. Section 2(b) *Charter* rights were infringed by the Indoor Gathering Restrictions, Private Residence Restrictions and Isolation, Quarantine and Visiting Restrictions. Heights Baptist Church lacks the standing to assert any of these infringements. It provides no evidence that it has a private residence that it was subjected to the Private Residence Restrictions, nor

does it have the standing to assert violations on behalf of its congregants. Heights Baptist Church, as a non-human entity, was not subjected to the Isolation, Quarantine and Visiting Restrictions and does not have the standing to assert violations on behalf of its congregants. Finally, with respect to the Indoor Gathering Restrictions, if the masking requirement limited the congregants' ability to express themselves (by compelling the wearing of a mask), Heights Baptist Church does not have the standing to make claims on behalf of its congregants.

c. Sections 2(c)-(d) *Charter* rights were infringed by the Private Residence Restrictions and the Isolation, Quarantine and Visiting Restrictions. Heights Baptist Church does not have standing to assert infringements on behalf of its congregants.

140. The claims by Northside Baptist Church that its:

a. Section 2(b) *Charter* rights were infringed by the masking requirement that accompanied the Indoor Gathering Restrictions. Northside Baptist Church was not the subject of any compulsory masking requirement, only its congregants were and Northside Baptist Church does not have standing to assert violations on behalf of its congregants.

141. The claims by Erin Blacklaws that his:

a. Section 7 *Charter* rights were infringed by the Indoor Gathering Restrictions and the Isolation, Quarantine and Visiting Restrictions. Mr. Blacklaws' s. 7 *Charter* claims must fail because he has already asserted ss. 2(c) and (d) *Charter* claims, which would subsume his s. 7 claims;

and,

142. The claims by Rebecca Ingram that her:

a. Section 2(a) *Charter* rights were infringed by the Indoor Gathering Restrictions or the Private Residence Restrictions. Ms. Ingram gives no evidence that gathering in person or in large groups forms a part of her deeply held religious beliefs. She relies on the words "Christmas" and "Jesus Christ" as if these phrases are sufficient to summon s. 2(a) *Charter* protections, when what is actually required is positive evidence asserting that the prohibited activity has a nexus with Ms. Ingram's religion;

b. Section 2(b) *Charter* rights were infringed by the Primary or Secondary School Closure Restrictions or that Ms. Ingram's rights were some how infringed by the masking requirements. Ms. Ingram's evidence is that she is unable to wear a mask due to a medical condition (anxiety).[152] She was never compelled to wear a mask – exemptions were always available either on their own or with a note from a doctor. Ms. Ingram's evidence is that she has a condition that would have granted her an exemption – a failure to take advantage of that does not give Ms. Ingram recourse in the courts; and,

c. All of Ms. Ingram's claims that her children's *Charter* rights have been infringed. Ms. Ingram does not have standing to assert violations on behalf of non-parties to this action.

b. Alberta's Evidence

i. Dr. Deena Hinshaw

143. Dr. Hinshaw is and has been Alberta's Chief Medical Officer of Health for the duration of the COVID-19 pandemic.[153] She is also a respondent in this action. Dr. Hinshaw has been an active member of the College of Physicians and Surgeons of Alberta since 2006.[154] She is a Public Health and Preventative Medicine specialist, which means she uses "population health knowledge and skills"[155] to maintain and improve the health and well-being of the community, by "evaluating the health needs of a population and developing, implementing, and assessing programs to meet those needs."[156]

144. Dr. Hinshaw's responsibilities are also set out in s. 14 of the *Public Health Act*, which require[157] Dr. Hinshaw to:

> (a) … on behalf of the Minister, monitor the health of Albertans and make recommendations to the Minister and [Alberta Health Services (AHS)] on measures to protect and promote the health of the public and to prevent disease and injury,

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[152] Ingram Affidavit, *supra* note 37 at para 20.
[153] Hinshaw Affidavit, *supra* note 1 at para 39.
[154] Hinshaw Affidavit, *supra* note 1 at para 4. See also Hinshaw Affidavit, *supra* note 1, Exhibit A.
[155] Hinshaw Affidavit, *supra* note 1 at para 11.
[156] *Ibid.*
[157] Or permit, in the case of s. 14(d) of the *Public Health Act*, *supra* note 4 – **TAB 6**.

> (b) … act as a liaison between the Government and [AHS], medical officers of health and executive officers in the administration of this Act,
>
> (c) … monitor activities of [AHS], medical officers of health and executive officers in the administration of this Act, and
>
> (d) … give directions to regional health authorities, medical officers of health and executive officers in the exercise of their powers and the carrying out of their responsibilities under this Act.[158]

145. Dr. Hinshaw's specialist practice is founded on a common core of ethical principles, which guides her public health practice and decision-making.[159] These principles include social justice, attention to human rights and equity, evidence-informed policy and practice and addressing the underlying determinants of health. This approach places health promotion, health protection, population health surveillance, and the prevention of death, disease, injury and disability as the central tenets as part of the organized, comprehensive and multi-sectoral effort.[160]

146. Dr. Hinshaw also has also been granted authority by the legislature under s. 29 of the *Public Health Act* to address communicable disease outbreaks and assist in managing states of public health emergencies. Dr. Hinshaw only issues mandatory orders "as a last resort when other voluntary measures are not successful or not possible."[161] Dr. Hinshaw also has the responsibility of advising the Premier and Cabinet with respect to COVID-19.[162] Dr. Hinshaw is not directed by elected officials on what advice she gives. She states: "I have done my best throughout the pandemic to monitor the health of Albertans and provide advice and recommendations to protect their health based on the best evidence available."[163]

147. SARS-CoV-2, the virus that causes COVID-19, was first identified in the city of Wuhan, China in late 2019.[164] It was identified as a novel coronavirus, capable of

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[158] *Public Health Act*, *supra* note 4, s 14 – **TAB 6**.
[159] Hinshaw Affidavit, *supra* note 1 at para 18.
[160] Hinshaw Affidavit, *supra* note 1 at para 19. See also Hinshaw Affidavit, *supra* note 1, Exhibit E (for the ethical framework for responding to pandemic influenza in Alberta).
[161] Hinshaw Affidavit, *supra* note 1 at para 23.
[162] Hinshaw Affidavit, *supra* note 1 at paras 25-29.
[163] Hinshaw Affidavit, *supra* note 1 at para 28.
[164] Hinshaw Affidavit, *supra* note 1 at para 39.

infecting humans, by January 2020.[165] SARS-CoV-2 is transmissible by respiratory droplets that are produced when an infected person breathes, coughs, sneezes, talks or sings.[166] It can be spread through direct contact with an infected person or indirect contact with surfaces contaminated with the virus.[167]

148. Evidence shows that singing, talking loudly, shouting, along with activities that result in heavy breathing (like exercising), are higher risk activities for the spread of SARS-CoV-2.[168] High risk activities can also occur in high risk settings, such as indoor settings or settings where individuals remain for long periods of time.[169] Choirs performing indoors are a particular concern for the spread of the virus.[170]

149. From the time a person is infected until the person develops observable symptoms is called the incubation period. The incubation period can last 14 days, but longer in rare circumstances.[171] People infected with the virus can transmit it about 48 hours before symptoms are present and up to 10 days after (or longer if symptoms persist).[172] Even individuals who do not develop symptoms can transmit the virus to others.[173]

150. The most common symptoms of COVID-19 involve fever, cough, fatigue, shortness of breath, loss of appetite, and loss of smell and taste.[174] Many infected people experience only mild symptoms, but in some cases, these symptoms persist for many months after infection. Additionally, certain segments of the population suffer serious symptoms only treatable through hospitalization.[175] As of July 12, 2021, over 2,300 Albertans have died of COVID-19.[176]

151. COVID-19 disproportionately causes adverse health consequences, including death, in two segments of the population: (1) those with pre-existing medical conditions, and (2) those over the age of 65. People that fall into either (or both) of those groups are

[165] Hinshaw Affidavit, *supra* note 1 at para 40.
[166] Hinshaw Affidavit, *supra* note 1 at para 41.
[167] Hinshaw Affidavit, *supra* note 1 at para 42.
[168] Hinshaw Affidavit, *supra* note 1 at para 43.
[169] Hinshaw Affidavit, *supra* note 1 at para 44.
[170] *Ibid.*
[171] Hinshaw Affidavit, *supra* note 1 at para 46.
[172] *Ibid.*
[173] Hinshaw Affidavit, *supra* note 1 at para 48.
[174] Hinshaw Affidavit, *supra* note 1 at para 50.
[175] *Ibid.*
[176] *Ibid.*

more likely to be admitted to the ICU with COVID-19.[177] Pre-existing conditions that increase the risk of severe outcomes or death from COVID-19 include:

a. Lung disease;

b. Heart disease;

c. Hypertension (high blood pressure);

d. Diabetes;

e. Kidney disease;

f. Liver disease;

g. Dementia;

h. Stroke; and

i. Obesity (a BMI over 40).[178]

152. Immunocompromised people, including people with cancer, people taking medications that suppress the immune system (i.e. chemotherapy) are also at increased risk.[179] Although the risk of death is lower in children, COVID-19 continues to negatively impact young people.[180] As of July 6, 2021, the average age for COVID-19 cases in an ICU was 57.[181]

153. The rapid spread of SARS-CoV-2 and the COVID-19 disease has also been associated with a corresponding increase of hospitalizations, including ICU admissions, and death. Over the last 10 years combined, seasonal influenza resulted in 659 deaths, and significantly fewer hospital and ICU stays. COVID-19 has killed over 2,300.[182] COVID-19 has overrun the Alberta health care system twice in the last year. Seasonal influenza has never done so.[183]

154. The SARS-CoV-2 virus has also evolved, resulting in four global variants of concern, all of which have been identified in Alberta.[184] Variants of concern are those variants that spread more easily, decrease the efficacy of vaccines, or cause more serious

[177] Hinshaw Affidavit, *supra* note 1 at para 53.
[178] Hinshaw Affidavit, *supra* note 1 at para 55.
[179] *Ibid*.
[180] Hinshaw Affidavit, *supra* note 1 at para 59.
[181] Hinshaw Affidavit, *supra* note 1 at para 62.
[182] Hinshaw Affidavit, *supra* note 1 at paras 64-65.
[183] Hinshaw Affidavit, *supra* note 1 at para 65.
[184] Hinshaw Affidavit, *supra* note 1 at paras 71-72.

illness.[185] Reducing the transmission of the SARS-CoV-2 virus (or its variants) is a crucial aspect of the global strategy to reduce the risk of new variants arising.[186]

155. As Dr. Hinshaw explains, her decisions were not made in isolation:

> The policy cycle, in which Alberta's COVID-19 related public health measures were adopted and implemented in response to the pandemic occurred only after both legislative approval was granted by the enactment of the *Public Health Act* and by the involvement of government through the participation and decision-making of Cabinet Committees.[187]

156. Any suggestion by the Applicants that Dr. Hinshaw has operated as a rogue, "democratically unaccountable civil servant"[188] is factually incorrect.[189] Another factually incorrect assessment made by the Applicants is that Alberta did not weigh non-health related implications when responding to this pandemic.[190]

157. Dr. Hinshaw in her affidavit also explains the importance of "health equity" and its role in developing good public health policy. As Dr. Hinshaw notes, Alberta acknowledged and tried to remediate some of the concerns when groups did not have

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[185] Hinshaw Affidavit, *supra* note 1 at para 71.
[186] Hinshaw Affidavit, *supra* note 1 at para 74.
[187] Hinshaw Affidavit, *supra* note 1 at para 85.
[188] This phrase was used by the Applicants in oral argument in the Injunction Decision and was reproduced (and rejected) by Kirker J in her decision: Injunction Decision, *supra* note 5 at paras 68-69.
[189] See Hinshaw Affidavit, *supra* note 1 at para 166 (where Dr. Hinshaw explains that the orders made under s. 29 of the *Public Health Act* were "deemed necessary be elected decision makers to lessen the impact of the public health emergency.")
[190] Hinshaw Affidavit, *supra* note 1 at para 87; *contra* Expert Report of Dr. Jay Bhattacharya, dated July 30, 2021 [July Bhattacharya Report]. Dr. Bhattacharya opines in the July Bhattacharya Report that Alberta would have needed to do a formal analysis of the harms of non-pharmaceutical interventions and that the failure to do so "violates a basic principle of public health": July Bhattacharya Report (*ibid*) at 1. It is simply incorrect to suggest that the balance between public health principles and non-pharmaceutical interventions can be micro-assessed and analyzed like a mathematical formula. Moreover, Dr. Bhattacharya's analysis completely ignores the hospital and ICU numbers, which have driven much of the policy-making and issuance of the Chief Medical Officer of Health orders during the COVID-19 pandemic. Additionally, as Dr. Hinshaw notes, the suicide rate in Alberta was actually lower in 2020: Hinshaw Affidavit, *supra* note 1 at para 90. Any suggestion by the Applicants that suicides have "skyrocketed" is factually inaccurate. While the Applicants will surely refer to anecdotal evidence in support of that statement, anecdotal evidence cannot displace facts.

equitable access to prevent the exposure and transmission of SARS-CoV-2.[191] For example, for individuals experiencing homelessness, extra funding was provided to shelters to increase physical distance between cots.[192]

158. Restrictive measures used to control the widespread transmission of SARS-CoV-2 were a "last resort in the second and third waves when advice and voluntary guidance were not sufficient to stop rising case numbers and rising hospitalizations."[193] Alberta's approach to COVID-19 was generally a balanced approach that allowed people, when reasonably possible, to determine the risks they wanted to take as individuals.[194] Since March 2020, Alberta has implemented both voluntary and mandatory public health measures.[195] As Dr. Hinshaw notes:

> Alberta's objective, in common with all other Canadian jurisdictions, has always been to use the least restrictive measures required to prevent or limit the spread of the virus thereby minimizing the number of serious outcomes, in terms of both deaths (mortality) and illness (morbidity), while balancing the collateral effects of public health restrictions and minimizing the overall harm to society.[196]

159. As SARS-CoV-2 and COVID-19 are new threats, "best practices" and recommendations have necessarily changed throughout the pandemic.[197] One area where Dr. Hinshaw notes the change over time is with respect to symptomatic and pre-symptomatic transmission.[198] For instance, early evidence suggested asymptomatic and pre-symptomatic spread was occurring, so even without conclusive evidence, the potential for asymptomatic spread was recognized and accordingly, the response measures accounted for that.[199] The evidence now shows that 15-20% of people infected with COVID-19 do not develop symptoms.[200] A review of the available studies in September 2020 show that an asymptomatic transmission rate of between 40-45%.[201]

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[191] Hinshaw Affidavit, *supra* note 1 at paras 93-95.
[192] *Ibid.*
[193] Hinshaw Affidavit, *supra* note 1 at para 98.
[194] Hinshaw Affidavit, *supra* note 1 at para 97.
[195] Hinshaw Affidavit, *supra* note 1 at para 162.
[196] Hinshaw Affidavit, *supra* note 1 at para 163.
[197] Hinshaw Affidavit, *supra* note 1 at para 100.
[198] Hinshaw Affidavit, *supra* note 1 at para 102.
[199] Hinshaw Affidavit, *supra* note 1 at para 103.
[200] Hinshaw Affidavit, *supra* note 1 at para 104.
[201] *Ibid.*

Modelling by the CDC shows that an estimated 59% of transmission of COVID-19 came from people without symptoms (asymptomatic and pre-symptomatic transmission).[202]

160. The risk of SARS-CoV-2 transmission is dependent on many variables, including: location (indoor vs. outdoor), quality of ventilation, and activity.[203] There are no drug therapies to cure COVID-19 or prevent its spread. The only way, in the absence of treatments or vaccines, to prevent or reduce the spread of COVID-19 was through public health measures.[204] These measures included personal protective measures, like masking and handwashing, environmental measures, like cleaning and disinfecting surfaces, surveillance and response measures, like contact tracing, physical distancing measures, and international travel-related measures.[205]

161. Dr. Hinshaw also gives evidence about the necessity and value of polymerase chain reaction (PCR) testing. PCR testing has been used for many years to rapidly diagnose infectious diseases, including influenza, Zika virus, and Ebola.[206] While PCR tests do not specifically identify living, infectious viruses in an individual, it is a reliable surrogate indicator.[207] The PCR test used in Alberta is highly specific to SARS-CoV-2. It does not react to other viruses. False positives occur very rarely.[208] Dr. Hinshaw also describes the importance to Alberta's pandemic response of knowing that of every 100 people testing positive for COVID-19, just over 4 have been admitted to hospital and just under 1 has been admitted to ICU.[209]

162. Dr. Hinshaw also explains the Alberta Health Services (AHS)-led contact tracing efforts in Alberta. Contact tracing, identified by Dr. Hinshaw as one of the surveillance and response measures available,[210] has also been a helpful tool to reduce the spread of COVID-19.[211]

163. As Dr. Hinshaw explains, there has been significant community spread of COVID-19 over the last 19 months. Community spread, without a known source of

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[202] Hinshaw Affidavit, *supra* note 1 at para 106.
[203] Hinshaw Affidavit, *supra* note 1 at para 107.
[204] *Ibid.*
[205] Hinshaw Affidavit, *supra* note 1 at para 108.
[206] Hinshaw Affidavit, *supra* note 1 at paras 113-14.
[207] Hinshaw Affidavit, *supra* note 1 at para 115.
[208] Hinshaw Affidavit, *supra* note 1 at para 117.
[209] Hinshaw Affidavit, *supra* note 1 at para 113.
[210] See Hinshaw Affidavit, *supra* note 1 at para 108.
[211] Hinshaw Affidavit, *supra* note 1 at para 121.

infection, poses a serious threat to the community.[212] The efficacy of contact tracing is also reduced when the source of infection cannot be confirmed.[213] During peak of Alberta's second wave (December 2020), 78% of cases did not have an identifiable source.[214] 644 people died in December 2020.[215] Without widespread immunizations, restricting how people interact with others outside of their household is necessary to stop the spread.[216]

164. Another important part of Alberta's public health response to COVID-19 involves modelling to forecast likely health care scenarios.[217] As part of Alberta's approach, Alberta modelled two core scenarios: "Probable" and "Elevated."[218] The "Probable Scenario" involved modeling where for every case, it was presumed 1-2 more people would be infected. This is comparable to the moderate growth seen in the UK. In the "Elevated Scenario", it was assumed that for every case, 2 people would be infected. This predicted growth is akin to what was seen initially in the province of Hubei in China. An "Extreme Scenario" was also modelled, which assumed 3 or more people infected for every case. The "Extreme Scenario" showed what would have happened if Alberta did not undertake early and aggressive interactions.[219] Dr. Hinshaw explains that Ontario, during the first wave, was equivalent to Alberta's modelled "Elevated Scenario." Quebec, during the first wave, was equivalent to Alberta's "Extreme Scenario" with respect to its impact on the acute care system.[220]

165. Alberta's approach also prioritized the continuation of essential health care services, in part by relying on the modelling. Patients were triaged and some surgical procedures were cancelled.[221] Plans were made to increase ICU capacity.[222] Notwithstanding these increases, Alberta's main hospitals were operating at over 90% capacity for COVID-19 inpatient care during the second wave.[223] If Alberta's COVID-19 capacity had been significantly exceeded, it could have resulted in the rationing of care

[212] Hinshaw Affidavit, *supra* note 1 at para 124.
[213] *Ibid*.
[214] Hinshaw Affidavit, *supra* note 1 at para 125.
[215] See Hinshaw Affidavit, *supra* note 1, Exhibit L, Figure 16.
[216] Hinshaw Affidavit, *supra* note 1 at para 164.
[217] Hinshaw Affidavit, *supra* note 1 at para 127.
[218] Hinshaw Affidavit, *supra* note 1 at para 129.
[219] Hinshaw Affidavit, *supra* note 1 at para 130.
[220] Hinshaw Affidavit, *supra* note 1 at para 131.
[221] Hinshaw Affidavit, *supra* note 1 at paras 134-35.
[222] Hinshaw Affidavit, *supra* note 1 at para 135.
[223] Hinshaw Affidavit, *supra* note 1 at para 136.

for patients in need of critical supports. The public health measures put in place in December 2020 reduced hospital capacity and ICU admissions before such a grievous scenario arose.[224] During the third wave, the ICU was operating at a similar capacity.[225]

166. Dr. Hinshaw also gives evidence about the safe opening or certain activities and businesses. She explains that, "due to inadvertent deviations or intentional non-compliance,"[226] even though there are interventions that can be implemented in various sectors, "[a]s cases get a foothold and increase, these minor risks are compounded and disease rates start to grow (which can accelerate into exponential growth)."[227] As Dr. Hinshaw explains: "When disease is low we can allow more risk, but it quickly increases in risk when cases grow."[228]

167. Dr. Hinshaw also provides evidence about a number of specific sectors, including places of worship,[229] restaurants,[230] and physical activity venues.[231] From her evidence, it is clear that the risk of infection was balanced against other considerations.

168. She also discusses the risks of COVID-19 transmission by children and young people, noting that younger children as less likely to be infected, but that individuals under 18 are also more likely to have mild symptoms or be asymptomatic.[232] Alberta was able to safely reopen K-12 schools for in-person learning with reasonable precautions, with limited closures only when targeted measures became necessary.[233] Dr. Hinshaw explains that while outbreaks do occur in school settings, transmission in those settings tends to be lower than or at least similar to levels of community transmission.[234]

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[224] Hinshaw Affidavit, *supra* note 1 at paras 137-38. See also Hinshaw Affidavit, *supra* note 1 at para 209 (showing on December 14, 2020 that Alberta was two weeks from being in a critical capacity situation for hospital beds.). Following the implementation of the December 8, 2020 measures, daily cases began to drop. This trend continued through January and into February 2021: Hinshaw Affidavit, *supra* note 1 at para 211.
[225] *Ibid*. See also Hinshaw Affidavit, *supra* note 1 at paras 222-23 (including the graph on ICU occupancy).
[226] Hinshaw Affidavit, *supra* note 1 at para 140.
[227] *Ibid*.
[228] Hinshaw Affidavit, *supra* note 1 at para 141. See also Hinshaw Affidavit, *supra* note 1 at paras 212-24 (where Dr. Hinshaw discusses the easing and instituting of new restrictions in Alberta's third wave).
[229] Hinshaw Affidavit, *supra* note 1 at paras 142-43.
[230] Hinshaw Affidavit, *supra* note 1 at para 144.
[231] Hinshaw Affidavit, *supra* note 1 at paras 145-48.
[232] Hinshaw Affidavit, *supra* note 1 at paras 149-50.
[233] Hinshaw Affidavit, *supra* note 1 at para 150.
[234] Hinshaw Affidavit, *supra* note 1 at para 151.

However, she also cautions against lumping all "children" into one category noting teenagers are a much bigger risk to spread the virus than younger children given normal teenage behaviours such as kissing, and the sharing of food, water bottles or cigarettes.[235]

169. With the increasing availability of vaccines and as vaccine uptake increased, Dr. Hinshaw explains how Alberta's 3-Stage "Open for Summer" plan was able to function.[236] As is clear from Dr. Hinshaw's evidence, as vaccinations reduced the number of available hosts SARS-CoV-2, restrictions were eased, allowing more freedom. This is consistent with Alberta's balanced approach to COVID-19 seen throughout the pandemic. As cases decreased, less measures were necessary.[237] However, as Dr. Hinshaw also cautions sustained re-opening will require as many Albertans as possible to choose to be protected with 2 doses of vaccine during the summer to prevent future spread.[238]

ii. Dr. Kimberley Simmonds

170. Dr. Simmonds holds a PhD in epidemiology and worked in Alberta's Emergency Operations Centre as the lead for analytics and modelling for the COVID-19 response.[239] As Dr. Simmonds explains, the analytics team conducted risk assessments to inform COVID-19 policy decisions.[240]

171. Modelling was used as a tool to assess the impact of COVID-19.[241] The most common model that was used focuses on breaking the population up into three groups: susceptible, infected, and recovered. As Dr. Simmonds explains:

> At the start of an outbreak most of the population are susceptible and as the infections spreads through the population more people are infected and subsequently, they recover or die. The probability that a susceptible and an infectious individual meet and the infection is passed from the infected to the susceptible is the effective transmission rate (β). In some circumstances, a condition called endemic equilibrium

[235] Hinshaw Affidavit, *supra* note 1 at para 149.
[236] Hinshaw Affidavit, *supra* note 1 at paras 153-58.
[237] See e.g. Hinshaw Affidavit, *supra* note 1 at para 141; Hinshaw Affidavit, *supra* note 1 at paras 167-211 (where Dr. Hinshaw discusses the necessary progression of restrictions from summer 2020 until December 2020).
[238] Hinshaw Affidavit, *supra* note 1 at para 160.
[239] Affidavit of Kimberley Simmonds, affirmed July 11, 2021 and filed July 12, 2021 at paras 1, 3, 7 [Simmonds Affidavit].
[240] Simmonds Affidavit, *supra* note 239 at paras 14-15.
[241] Simmonds Affidavit, *supra* note 239 at para 16.

> occurs and the disease rate is maintained at some static rate. … Unfortunately, for respiratory diseases like COVID-19, this does not occur if anything upsets the equilibrium.[242]

172. In summer 2020, Dr. Simmonds explains that her modelling work focused on "the transmission dynamics of COVID-19 with the population back indoors in offices and schools in the fall."[243] The short term projections were targeted to focus on the impact of COVID-19 on the acute care system to ensure health care capacity was not exceeded.[244] Dr. Simmonds states: "the goal was to protect those who are most vulnerable, tailor public health measures to local needs and circumstances as much as possible."[245]

173. By September 2020, cases had increased from August, which resulted in an increase of COVID-19 hospitalizations.[246] Edmonton had a higher level of disease transmission than other areas of the province, so voluntary measures were implemented to minimize the risk of outbreaks and super-spreader events.[247]

174. By October, daily cases continued to increase, and following Thanksgiving, the "number of outbreaks rose steadily."[248] In November, Dr. Simmonds notes that hospitalizations rose rapidly as expected. She notes: "A key characteristic of COVID growth is that it can turn from manageable to exponential in a matter of days to weeks."[249] As the growth became exponential, a state of public health emergency was declared.[250] Dr. Simmonds' modelling predicted a short-term peak of hospitalizations in the last week of December. The actual ICU peak occurred on December 28, 2020, and the non-ICU hospitalizations peak occurred on December 30, 2020.

175. Dr. Simmonds also provides an overview of outbreaks in Alberta between March 1, 2020 and May 15, 2021 associated with places of worship (35 outbreaks with 704 directly associated cases), and sports and fitness facilities (33 outbreaks with 501 directly associated cases).[251]

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[242] Simmonds Affidavit, *supra* note 239 at para 17.
[243] Simmonds Affidavit, *supra* note 239 at para 18.
[244] *Ibid*.
[245] *Ibid*.
[246] Simmonds Affidavit, *supra* note 239 at para 19.
[247] *Ibid*.
[248] Simmonds Affidavit, *supra* note 239 at para 22. See also Simmonds Affidavit, *supra* note 239 at paras 20-22.
[249] Simmonds Affidavit, *supra* note 239 at para 23.
[250] *Ibid*.
[251] Simmonds Affidavit, *supra* note 239 at para 10 and Exhibit B.

iii. Deborah Gordon

176. Deborah Gordon is the Vice President and Chief Operating Officer, Clinical Operations of AHS.[252] She moved into this role on March 16, 2020 and is responsible for the "provision of patient focused, integrated and sustainable health services across AHS' clinical operations in Alberta."[253] Ms. Gordon led the development of an Acute Care Capacity Plan, which included obtaining COVID-19 projections, inventorying acute and intensive care bed capacity, and integrating this data into the Acute Care Capacity Plan.[254]

177. As Ms. Gordon explains, early in the pandemic, there was "little information to rely on to predict the impact the virus would have in Alberta"[255] but the potential for Alberta's health care system to become overwhelmed was identified.[256] The initial projects relied on observations from Wuhan, China, and were later informed by Italy and France.[257] Modelling created by the World Health Organization was also considered.[258]

178. Decisions made throughout the first wave (and subsequent COVID-19 waves) was focused on:

a. The AHS Early Warning System, which uses information on the number of inpatient beds and ICU beds occupied by COVID-19 patients and hospital admissions of COVID-19 patients;[259]

b. Acute Care Occupancy Rates for inpatient and ICU COVID beds, which indicated how many acute and intensive care beds were occupied by COVID-19 patients and how many beds (and where) remained available;[260]

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[252] Affidavit of Deborah Gordon, affirmed July 12, 2021, filed July 13, 2021 at para 1 [Gordon Affidavit].
[253] Gordon Affidavit, *supra* note 252 at para 5.
[254] Gordon Affidavit, *supra* note 252 at para 15.
[255] Gordon Affidavit, *supra* note 252 at para 20.
[256] *Ibid*.
[257] Gordon Affidavit, *supra* note 252 at para 21.
[258] Gordon Affidavit, *supra* note 252 at para 23.
[259] Gordon Affidavit, *supra* note 252 at para 25(a).
[260] Gordon Affidavit, *supra* note 252 at para 25(b).

c. The Alberta COVID-19 Surveillance Dashboard, developed by the AHS surveillance and reporting team in response to COVID-19, which uses a number of data sources;[261]

d. The testing positivity rate;[262] and

e. The Reproduction Number (the R value), which tracks the transmission of COVID-19 in real time.[263]

179. It was anticipated that AHS would reach maximum capacity for non-ICU hospitalizations when there were 15,000 active COVID-19 cases, and maximum capacity for ICU hospitalizations when there were 2,500 active COVD-19 cases.[264] As a result of these predictions, AHS took steps to proactively create acute care capacity, if needed.[265] To preserve non-ICU acute care capacity, all non-urgent scheduled surgical activity was postponed in mid-March 2020.[266] With respect to ICU capacity, plans were made to: add additional beds to ICU rooms, convert operating, recovery, procedure and treatment rooms to ICU spaces, and introducing new models of care to shorten time periods spent in the ICU.[267] By March 26, 2020, AHS confirmed that Alberta would not be able to procure additional ventilators until January 2021.[268]

180. Alberta hit its peak COVID-19 hospitalizations during the first wave on April 29, 2020 with 75 inpatient hospitalizations. The ICU peak was on May 1, 2020 with 22 COVID-19 patients in ICU.[269] Between the first and second waves, AHS and Ms. Gordon continued to plan,[270] while also managing outbreaks at the Misericordia Hospital (Edmonton) and Foothills Medical Centre (Calgary).[271]

181. In October 2020, with the increasing daily positive cases, AHS began to assess, evaluate, and increase the number of "surge beds" available.[272] By the end of November 2020, the number of COVID-related ICU cases were above the AHS Early Warning

[261] Gordon Affidavit, *supra* note 252 at paras 25(c)-(d).
[262] Gordon Affidavit, *supra* note 252 at para 25(e).
[263] Gordon Affidavit, *supra* note 252 at para 25(f).
[264] Gordon Affidavit, *supra* note 252 at para 27.
[265] Gordon Affidavit, *supra* note 252 at para 28.
[266] Gordon Affidavit, *supra* note 252 at para 29.
[267] Gordon Affidavit, *supra* note 252 at para 32.
[268] Gordon Affidavit, *supra* note 252 at para 36.
[269] Gordon Affidavit, *supra* note 252 at para 38.
[270] Gordon Affidavit, *supra* note 252 at paras 39-46.
[271] Gordon Affidavit, *supra* note 252 at para 44.
[272] Gordon Affidavit, *supra* note 252 at para 48.

System "high scenario, placing a significant strain on AHS' ability to meet the surge capacity requirements and to staff ICU beds as case numbers continued to rise."[273] To create inpatient bed capacity, which was necessary to avoid overwhelming the health care system,[274] AHS began:

a. Transferring patients out of acute care;

b. Using a whole health system approach to move patients within the province;

c. Opening new acute care and re-purposed spaces to respond to the rising number of COVID-19 cases requiring hospitalization;

d. Postponing schedule surgeries, tests, and procedures (when necessary) to limit the number of patients requiring hospital care and to allow for redeployment of staff to areas of need; and

e. Deploying temporary medical units, such as the Sprung structure in Calgary (which was set up during the first wave) and the mobile medical unit set up at the University of Alberta's Butterdome in Edmonton (which was set up during the second wave and in place until June 2021).[275]

182. As Ms. Gordon notes: "the demands of COVID-19 on ICUs during Wave 2 were also unprecedented."[276] In the five years preceding the second wave of COVID-19, the highest number of seasonal influenza ICU admissions was 31 patients. The second wave had 158 patients in the ICU, an increase of more than 500%.[277]

183. Ms. Gordon explains that even though Alberta's peaks (both hospitalizations and ICU beds) occurred in December 2020,[278] AHS failed to return to normal operational levels: "The impacts of COVID-19 continued to impact the planning and delivery of services on a daily basis through the decrease from the Wave 2 peak to the determination that Alberta was in Wave 3."[279]

184. Following the limitations observed in the second wave, Ms. Gordon observed it would be extremely difficult to increase ICU capacity beyond what was available in the

[273] Gordon Affidavit, *supra* note 252 at para 52.
[274] Gordon Affidavit, *supra* note 252 at para 55.
[275] *Ibid*.
[276] Gordon Affidavit, *supra* note 252 at para 59.
[277] *Ibid*.
[278] Gordon Affidavit, *supra* note 252 at para 63.
[279] Gordon Affidavit, *supra* note 252 at para 64.

second wave.[280] By mid-April, actual ICU cases were tracking above the AHS Early Warning System "high scenario."[281] During the third wave, number of ICU beds were increased to approximately 73% more than the usual, pre-pandemic ICU capacity.[282]

185. Ms. Gordon also oversaw options relating to contact tracing. The goal of contact tracing was to ensure connections and notifications were made within high priority populations within established time windows.[283] At the start of the COVID-19 pandemic, there was a contact tracing team completing up to 50 case investigations a day. By the second wave, contact tracers were able to complete up to 2,000 case investigations per day.[284] During the third wave, contact tracing took more time as AHS managed variants of concern, but ultimately the capacity of more than 2,000 case investigations per day was maintained.[285] Further planning was also in place to allow for contact tracing of up to 4,000 cases per day.[286]

iv. Patricia Wood

186. Ms. Wood is the senior mortality classification specialist with Statistics Canada.[287] Ms. Wood's evidence is in direct response to a factual inaccuracy contained in Dr. Bhattacharya's expert report.

187. Dr. Bhattacharya incorrectly asserts that Statistics Canada records COVID-19 deaths and influenza deaths differently, which results in an "artificially inflated"[288] death statistic for COVID-19.[289] In actuality, COVID-19 and influenza deaths are coded using the same international coding rules and guidelines.[290]

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[280] Gordon Affidavit, *supra* note 252 at para 66.
[281] Gordon Affidavit, *supra* note 252 at para 67.
[282] Gordon Affidavit, *supra* note 252 at para 72.
[283] Gordon Affidavit, *supra* note 252 at para 74.
[284] Gordon Affidavit, *supra* note 252 at para 75.
[285] Gordon Affidavit, *supra* note 252 at para 78.
[286] Gordon Affidavit, *supra* note 252 at para 79.
[287] Affidavit of Patricia Wood, affirmed on July 12, 2021 and filed on July 12, 2021 [Wood Affidavit].
[288] Dr. Bhattacharya Primary Expert Report, dated January 21, 2021 at 5-6 [January Bhattacharya Report].
[289] Wood Affidavit, *supra* note 287 at para 3.
[290] Wood Affidavit, *supra* note 287 at paras 3-4.

v. Darren Hedley

188. Mr. Hedley is the Senior Assistant Deputy Minister, Treasury Board Secretariat, Ministry of Treasury Board and Finance.[291] Mr. Hedley's affidavit lists a number of the financial, economic, and other supports that have been put in place by the Government of Alberta in an attempt to minimize some of the economic and financial effects of COVID-19, both to individuals and organizations.[292]

vi. Chris Shandro

189. Ms. Shandro is the Assistant Deputy Minister of the Agency Governance and Program Delivery Division of the Ministry of Jobs, Economy, and Innovation.[293] Ms. Shandro's responsibilities have included administering the Small and Medium Enterprise Relaunch Grant (SMERG), which has provided over $583 million to eligible applicants.[294] Ms. Shandro's evidence is yet another example of the Government of Alberta's attempts to minimize the economic and financial consequences of COVID-19, without undermining the health care system.

vii. Scott Long

190. Mr. Long was the Acting Managing Director of the Alberta Emergency Management Agency (AEMA) from October 2020 until May 2021.[295] AEMA is the lead agency for emergency management within the Government of Alberta.

191. As Mr. Long explains, AEMA has been the supporting agency throughout the COVID-19 pandemic. Alberta Health is primarily responsible for the COVID-19 pandemic.[296] Any emergency response plan must serve as a starting point to understand response activities, roles, and responsibilities.[297] Mr. Long's evidence is that Alberta Health and AEMA have consulted widely with other Canadian provinces to identify the best response options in the face of the COVID-19 pandemic.[298]

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[291] Affidavit of Darren Hedley, affirmed July 12, 2021 and filed July 12, 2021 at para 1 [Hedley Affidavit].
[292] See e.g. Hedley Affidavit, *supra* note 291, Exhibit A.
[293] Affidavit of Chris Shandro, affirmed July 8, 2021 and filed July 12, 2021 at para 1 [Shandro Affidavit].
[294] Shandro Affidavit, *supra* note 293 at para 4.
[295] Long Affidavit, *supra* note 3 at para 1.
[296] Long Affidavit, *supra* note 3 at paras 15-17.
[297] Long Affidavit, *supra* note 3 at para 20.
[298] Long Affidavit, *supra* note 3 at para 23.

192. As part of Alberta's emergency response to COVID-19, the *Emergency Management Act*[299] has been revised twice to ensure it meets the needs of the Government of Alberta to manage the secondary impacts of the pandemic.[300]

193. The Alberta Health Emergency Operations Centre (AHEOC) was also activated to lead the COVID-19 response.[301] The AHEOC was enhanced by loaning staff well-versed in emergency management roles from AEMA and other ministry staff, due to the overlap between COVID-19 and the annual hazard season.[302] Additionally, AEMA and the Ministry of Municipal Affairs have created the Pandemic Response Planning Team, to look at whole-of-society issues like business and economic impacts, and the PPE Task Force to supply non-healthcare sectors with masks, gloves, hand sanitizer, and face shields, to assist Alberta Health in managing the COVID-19 pandemic.[303]

c. Alberta's Expert Evidence

i. Dr. Jason Kindrachuk

194. Dr. Kindrachuk is an assistant professor and the Canada Research Chair in emerging viruses in the Department of Medical Microbiology & Infectious Diseases at the University of Manitoba.[304] Dr. Kindrachuk is currently a COVID-19 researcher, focusing on how the SARS-CoV-2 virus "manipulates human immune responses to cause severe disease in high-risk patient populations,"[305] investigating "repurposed drugs"[306] as SARS-CoV-2 treatments through kinome analysis, and identifying neurological and reproductive health complications in animal models with SARS-CoV-2 infections.[307] He has been researching SARS-CoV-2 since January 2020, following the identification of the virus as a novel coronavirus.[308]

195. Dr. Kindrachuk is providing an expert opinion on the spread of COVID-19, including by asymptomatic and pre-symptomatic individuals, and in high-risk

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[299] RSA 2000, c E-6.8 – **TAB 5**.
[300] Long Affidavit, *supra* note 3 at para 26.
[301] Long Affidavit, *supra* note 3 at para 27.
[302] Long Affidavit, *supra* note 3 at para 28.
[303] Long Affidavit, *supra* note 3 at para 32.
[304] Expert Report of Dr. Jason Kindrachuk dated July 8, 2021 and filed July 12, 2021 at para 1 [Kindrachuk Expert Report].
[305] Kindrachuk Expert Report, *supra* note 304 at 1.
[306] *Ibid*.
[307] *Ibid*.
[308] Kindrachuk Expert Report, *supra* note 304 at 3.

activities.[309] He also discusses the efficacy of masking and other non-pharmaceutical interventions,[310] variants of concern,[311] herd immunity and vaccinations,[312] and ongoing and future research.[313]. The Applicants have not objected to Dr. Kindrachuk's expertise.

196. SARS-CoV-2 is driven by respiratory droplets and aerosols. Respiratory droplets remain suspended for short periods of time and are transmitted over short distances depending on airflow. Small-particle aerosols can disperse quickly and remain airborne while traveling longer distances. Epidemiological data suggests that close contacts[314] are a major driver for SARS-CoV-2 spread. Recent studies also suggest that aerosol transmission can occur during prolonged exposure in enclosed settings with poor ventilation.[315] This is of particular importance given that these aerosol particles can accumulate in the air of enclosed spaces over time based on their physical characteristics, and thus increase the potential for infection beyond proximal contacts at 2 meters or less in distance away.[316]

197. Extensive investigation between "biological risk factors" and COVID-19 severity reveal that older age, race/ethnicity, gender and socioeconomic status are all associated with severe disease, ICU admission, and even death.[317] As Dr. Kindrachuk explains:

> While older age is convincingly linked to severe Covid-19, the outlined risks were not limited to those in high age groups. Factors strongly linked to severe disease in adults include cancer, chronic kidney disease, COPD, cardiovascular disease, obesity, pregnancy, sickle cell disease, smoking, organ transplantation and type 2 diabetes.[318]

198. In Alberta the total number of COVID-19 cases were the highest in individuals under the age of 19, with nearly 54,000 cases having been reported. This was followed by the 30-39, 20-29, and 40-49 age groups, while hospitalizations were highest in the group

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[309] Kindrachuk Expert Report, *supra* note 304 at 9-16.
[310] Kindrachuk Expert Report, *supra* note 304 at 16-17.
[311] Kindrachuk Expert Report, *supra* note 304 at 17-18.
[312] Kindrachuk Expert Report, *supra* note 304 at 18-21.
[313] Kindrachuk Expert Report, *supra* note 304 at 21-22.
[314] Which are defined as anyone who has shared an indoor space (or enclosed setting) with a case for a cumulative total of 15 minutes over a 24 hour period. See Kindrachuk Expert Report, *supra* note 304 at 7.
[315] See Kindrachuk Expert Report, *supra* note 304 at 7.
[316] Kindrachuk Expert Report, *supra* note 304 at 14, 16.
[317] Kindrachuk Expert Report, *supra* note 304 at 4.
[318] *Ibid*.

over 50 years old, with ICU admissions being the highest in the 60-69 year age group.[319] As Dr. Kindrachuk explains this means that younger age groups are susceptible to moderate or severe illness and risk of hospitalization or admission to intensive care.[320] COVID-19 is not simply a disease affecting the elderly.

199. COVID-19 can present with no symptoms (asymptomatic infections) to severe and fatal illness. The way symptoms present is variable. COVID-19 often presents with a broad spectrum of mild symptoms, like cough, fever, myalgia (muscle aches and pains), and headache. One third of individuals did not experience fever or cough as their symptoms and nearly half of infected people continued to work while experiencing some symptoms, some for several days.[321] The signs, symptoms and severity of the disease in adults over the age of 65 and those with health conditions may also be "atypical or subtle."[322] As the way COVID-19 symptoms present is wide-ranging and variable in both type and severity, then screening alone as a measure of case identification would likely lead to many missed cases of infection.[323]

200. While over the last 20 years, three coronaviruses[324] have emerged with significant public health consequences, what makes SARS-CoV-2 distinct is its high degree of community transmission. Because of the amount of community transmission, it has been important to establish the "infectious period" of those infected with the virus. This investigation has been driven by the viral load (amount of virus) present within a person's respiratory tract. Understanding the presence of viral load and the duration (kinetics) of virus within the respiratory tract are key to determining infectiousness and thus transmission in both the pre- and post-symptomatic periods.[325]

201. Viral loads vary between severe and non-severe infections, but they do not appear to be altered by age or sex as children have displayed similar viral loads at symptom onset as their adult counterparts.[326] There is also a growing appreciation that children can be infected and transmit SARS-CoV-2.[327]

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[319] Kindrachuk Expert Report, *supra* note 304 at 8.
[320] *Ibid.*
[321] Kindrachuk Expert Report, *supra* note 304 at 6.
[322] *Ibid.*
[323] Kindrachuk Expert Report, *supra* note 304 at 8-9.
[324] The SARS epidemic, the MERS epidemic, and the COVID-19 pandemic.
[325] Kindrachuk Expert Report, *supra* note 304 at 9.
[326] Kindrachuk Expert Report, *supra* note 304 at 13 (regarding the Chen PZ 2021 paper).
[327] Kindrachuk Expert Report, *supra* note 304 at 13-14. See also Kindrachuk Expert Report, *supra* note 304 at 12 (regarding the Chung et al. 2021 paper).

202. There has been considerable scientific study into the role of pre-symptomatic (before symptoms are displayed) and asymptomatic (when no symptoms are displayed through the infection) in the transmission of COVID-19. Prior assessments of respiratory tract viral loads suggested that peak viral loads (when a person has the most virus in their body) occurred either just prior to symptoms (pre-symptomatic phase) or coincident with symptom onset. However, a recently published systematic review, which considered data from nearly 80 studies, found that overall, the accumulated data across all studies suggests the highest risk of transmission falls from a few days prior to symptom onset to five days post-onset.[328] Thus people may be highly infectious for up to three days before they display symptoms, and before they may have any reason to realize they are infected and so to know to limit their contacts with others.[329]

203. Dr. Kindrachuk also reviews the growing number of investigations focussed on separating asymptomatic and pre-symptomatic infections in order to facilitate increased understanding of transmission risks throughout the infectious period.[330] One comprehensive systematic review focused on asymptomatic and pre-symptomatic infections determined 20% of infections were resulting from asymptomatic individuals, with the remaining 80% being infected by pre-symptomatic individuals. Thus, 1 in 5 infected individuals will remain truly asymptomatic throughout their COVID-19 infection.[331] Another systematic review showed asymptomatic infections ranged between 4-41%.[332] The authors of both reviews stated that a combination of nonpharmaceutical interventions will continue to be needed to curb transmission.[333]

204. With respect to the Madewell Study[334] that Dr. Bhattacharya claims answers the question of "how likely it is that an infected individual without symptoms (whether pre-symptomatic or purely asymptomatic) will spread the disease to close contacts," and that the Applicants claim shows that the risk of presymptomatic spread is "vanishingly

[328] Kindrachuk Expert Report, *supra* note 304 at 8, 10 (regarding the Cevik et al. 2021 paper).
[329] Kindrachuk Expert Report, *supra* note 304 at 13.
[330] Kindrachuk Expert Report, *supra* note 304 at 11-13.
[331] Kindrachuk Expert Report, *supra* note 304 at 11 (regarding the Buitrago-Garcia et al. 2020 paper).
[332] Kindrachuk Expert Report, *supra* note 304 at 11 (regarding the Byambasuren 2020 paper).
[333] *Ibid.*
[334] Kindrachuk Expert Report, *supra* note 304 at 8, 10

low,"[335] Dr. Kindrachuk, in rebuttal to Dr. Bhattachrya's primary expert report,[336] reviews the additional context provided by two of the authors of the Madewell Study.[337]

205. Dr. Kindrachuk explains that both authors noted: (1) their sub-analysis of asymptomatic/pre-symptomatic spread had much less data than the study's main meta-analysis did, which involved 54 studies, (2) their study was not able to separate out fully asymptomatic cases from pre-symptomatic cases, (3) that the study by Qiu et al. 2021 (the Qiu Study) did directly focus on separating these two groups, and (4) that the growing literature indicates that individuals can be similarly infectious during the pre-symptomatic and symptomatic phases, while fully asymptomatic individuals are less infectious to others.[338] Dr. Kindrachuk's own review of the comprehensive Qiu Study confirms it is in agreement with other investigations in showing that asymptomatic cases are lower risk for transmission than symptomatic cases, but rates of transmission between symptomatic and pre-symptomatic are similar.[339]

206. Dr. Kindrachuk also discusses a recent study that assessed household transmission from asymptomatic patients compared to those with symptoms using serology testing across 2,267 households from April to June 2020.[340] In this study, asymptomatic infections accounted for 14.5% of all household infections, leading the authors to state while asymptomatic individuals appears to be less than a third as likely to transmit, they are not inconsequential to disease spread given they were responsible for 1 out of 6 infections in this study.[341]

207. It is clear from Dr. Kindrachuk's opinion assessing the evidence to date, that while true asymptomatic transmission may occur less frequently than symptomatic transmission, there is a greater likelihood of transmission before symptom onset

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[335] See Pre-trial Factum of the Applicants Heights Baptist Church, Northside Baptist Church, Erin Blacklaws and Torry Tanner at para 15 (which refers to the "meta-analysis of 54 studies in the *Journal of American Medical Association Network Open*" that the Applicants rely on to claim "the authors concluded that household transmission of the disease from asymptomatic *and* "pre-symptomatic" patients occurred 0.7% of the time" at para 15). See also Pre-trial Factum of the Applicants Heights Baptist Church, Northside Baptist Church, Erin Blacklaws and Torry Tanner at para 11.
[336] January Bhattacharya Report, *supra* note 288 at 6-7.
[337] The authors of the Madewell Study are Drs. Natalie Dean and Zachary Madewell. See Kindrachuk Expert Report, *supra* note 304 at 12.
[338] Kindrachuk Expert Report, *supra* note 304 at 12.
[339] Kindrachuk Expert Report, *supra* note 304 at 13.
[340] Kindrachuk Expert Report, *supra* note 304 at 13 (regarding the Bi Q 2021 paper).
[341] *Ibid.*

(presymptomatic) than post-symptom onset."[342] This means that both asymptomatic and pre-symptomatic transmission present a significant risk because, and as people who have SARS-CoV-2 but are not displaying any symptoms can and do transmit the disease and infect others, relying on symptom checks alone would not be an effective way to control the spread of COVID-19 in group settings.[343]

208. Dr. Kindrachuk concludes:

> Taken together, there is strong scientific evidence for SARS-Co V-2 transmission to primarily occur from a few days prior to symptom onset up to -5 days post-onset. Direct assessments of viral loads and the kinetics of viral shedding, when virus is released from infected cells in the respiratory tract, are in agreement with this and contact tracing studies in household cohort studies provide direct evidence for asymptomatic and presymptomatic transmission of SARS-CoV-2. Further, additional epidemiological studies of SARS-CoV-2 suggest that similar patterns of asymptomatic and presymptomatic transmission likely occur within children as with adults.[344]

209. Additionally, there is scientific evidence that shows the spread of COVID-19 in religious settings – even when physical distancing is in effect.[345] In reaching this conclusion, Dr. Kindrachuk relied on a number of superspreader events, including a single symptomatic individual that infected 53 of 61 (and killed 2) attendees during one 2.5 hour choir practice.[346] The addition of a face mask during loud singing reduced particle emission rates to those of a normal "talking" level.[347] But it is Dr. Kindrachuk's opinion that emission of SARS-CoV-2 from infected individuals is positively correlated with vocal activities, with the risk of spread increasing based on the volume and exaggeration of vocalizations.[348]

210. Another recent study provided epidemiological evidence for airborne transmission among attendees at a religious service in the absence of close contact. In this study, 12

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[342] *Ibid.*
[343] Kindrachuk Expert Report, *supra* note 304 at 12.
[344] Kindrachuk Expert Report, *supra* note 304 at 14.
[345] *Ibid*. See also Kindrachuk Expert Report, *supra* note 304 at 8.
[346] Kindrachuk Expert Report, *supra* note 304 at 14 (regarding the Hamner et al. 2020 paper).
[347] Kindrachuk Expert Report, *supra* note 304 at 15 (regarding the Alsved M 2020 paper).
[348] Kindrachuk Expert Report, *supra* note 304 at 16.

"secondary case-patients"[349] were identified from among 508 attendees across 4 religious services where an infectious individual (the index patient) sang for 1 hour from a choir 3.5 meters above the congregation. As Dr. Kindrachuk explains:

> The authors [of the study] concluded that singing likely resulted in more dissemination of droplets and aerosols than talking, that limitations to ventilation may have allowed for the concentration of infectious virus in shared air, and lastly that the index patient was likely near the peak of infectiousness with symptom onset occurring around the exposure date. The index patient performed during his infectious period starting from 48 hours prior to symptom onset (initially malaise and headache).[350]

211. Dr. Kindrachuk also reviews a number of studies considering the efficacy of non-pharmaceutical interventions (NPIs), which Dr. Bhattacharya claims have no causal relationship to case growth and mortality.[351] Without medications and vaccines, NPIs are steps that communities and people can take to slow the spread of illness, including handwashing, good hygiene, face masks or other personal protective equipment, social distancing, restricting gatherings, and even stay-at-home orders or lockdowns.[352] Dr. Kindrachuk reviews the results of a number of studies that show face masks are associated with a significant reduction in transmission risk per contact and reduced infections.[353] Dr. Kindrachuk's opinion is that NPIs are "extremely effective in reducing the spread of SARS-CoV-2 in a population, especially when used in combination, and are indeed necessary to limit exponential spread."[354] However, he also explains it is important to consider the adherence and adoption of voluntary public health measures rather than relying just on mandatory measures.[355]

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[349] Kindrachuk Expert Report, *supra* note 304 at 10 (regarding the Katelaris et al. 2021 paper). Secondary-case patients are individuals who contracted COVID-19 from the primary or index source (i.e. the people infected by an infected individual).
[350] *Ibid*.
[351] See July Bhattacharya Report, *supra* note 190 at 8-11 (wherein Dr. Bhattacharya incorrectly opines that "[t]here is no established causal link between lockdown policies and COVID-19 case growth and mortality rate" at 8) [].
[352] Kindrachuk Expert Report, *supra* note 304 at 14.
[353] Kindrachuk Expert Report, *supra* note 304 at 17.
[354] Kindrachuk Expert Report, *supra* note 304 at 15.
[355] Kindrachuk Expert Report, *supra* note 304 at 16.

212. With respect to variants of concern, Dr. Kindrachuk notes that there is evidence to suggest that variants of concern may have emerged in chronically infected COVID-19 patients. There is strong evidence to suggest that prolonged infections, or infections in those with compromised immune systems, likely exert "selective pressures on SARS-CoV-2 resulting in a more extensive genetic change than found during typical infections."[356] As a result, Dr. Kindrachuk concludes that reducing community transmission (effectively reducing the number of infections in people who have compromised immune systems or will experience prolonged infection) reduces the potential for additional variants of concern to emerge that may better escape immune detection and notes that such variants could have detrimental impacts on global vaccination programs.[357] Dr. Kindrachuk also reviews how the variants of concern pushed the healthcare systems across many regions to the brink of hospital and ICU capacity, and sometimes beyond, during the third wave of the pandemic.[358]

213. Dr. Kindrachuk also explains why natural herd immunity is a seriously concerning, and ultimately not effective, strategy to combat COVID-19. One example is the resurgence of COVID-19 in Manaus, Brazil.[359] Manaus was "devastated"[360] by its first wave of COVId-19, experiencing 4.5-fold excess mortality.[361] It was suggested that between 44-66% of the population was infected by July 2020. By October 2020, this rate rose to 76%, which is well above the theoretical herd immunity threshold for COVID-19.[362] Nonetheless, virus transmission continued to surge.[363] In Dr. Kindrachuk's opinion:

> … reaching herd immunity without vaccines would require somewhere between 50-90% of the population to get infected. At Alberta's population of 4.4 million, this would equate to roughly 2.2 [to] 4 million people infected. Using a conservative death rate of 1% this would equate to 22,000-40,000 deaths.[364]

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[356] Kindrachuk Expert Report, *supra* note 304 at 16.
[357] *Ibid*.
[358] Kindrachuk Expert Report, *supra* note 304 at 19.
[359] Kindrachuk Expert Report, *supra* note 304 at 17.
[360] *Ibid*.
[361] Excess mortality refers to the number of deaths, over and above, what is expected from a particular crisis.
[362] Kindrachuk Expert Report, *supra* note 304 at 19.
[363] *Ibid*.
[364] Kindrachuk Expert Report, *supra* note 304 at 20.

214. The up to 40,000 deaths Dr. Kindrachuk describes also does not include the number of people who would likely die as patients would be unable to access the overwhelmed healthcare system.[365]

215. Dr. Kindrachuk notes there are a number of ongoing and future research topics that must continue to be investigated, notably research to further understand the factors underlying transmission, including the minimum infectious dose, virus concentrations, and viability in indoor and outdoor settings. He also discussed other areas of ongoing study, including long-term complications relating to extended fatigue, shortness of breath and the like after a COVID-19 infection,[366] along with reproductive health concerns, as some recent data has suggested severe COVID-19 can damage reproductive tissue in men,[367] and other evidence showing that infection late in pregnancy is associated with adverse birth outcomes.[368]

ii. Dr. Natalie Dean

216. Dr. Dean is a biostatistician and Assistant Professor with the Department of Biostatistics and Bioinformatics in the Rollins School of Public Health at Emory University.[369] She was the supervisor and co-author of the Madewell Study.[370] Dr. Dean's affidavit was provided in response to Dr. Bhattacharya's discussion of the Madewell Study in his surrebuttal report[371] in order to help inform the Court by providing Dr. Dean's knowledge of what the Madewell Study says about asymptomatic and pre-symptomatic transmission of the SARS-CoV-2 virus.[372]

217. Dr. Dean explains that while the Madewell Study's meta-analysis did use 54 studies to assess transmission of the SARS-CoV-2 virus using only household settings, the sub-analysis that actually studied the transmissibility of asymptomatic SARS-CoV-2 cases contained much less data. The Madewell Study's sub-analysis separated out symptomatic cases (27 studies) from those cases that were either asymptomatic or pre-

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[365] *Ibid*.
[366] Kindrachuk Expert Report, *supra* note 304 at 19.
[367] *Ibid*.
[368] *Ibid*.
[369] Affidavit of Dr. Natalie Exner Dean, filed August 27, 2021 at para 1 [Dean Affidavit].
[370] Dean Affidavit, *supra* note 369 at para 3.
[371] July Bhattacharya Report, *supra* note 190 at 6-7. The Dean Affidavit was filed pursuant to paragraph 1 of the Order of Justice Romaine, dated September 8, 2021, which allowed the Respondents to file further evidence in response to the July Bhattacharya Report, which raised new issues on surrebuttal.
[372] Dean Affidavit *supra* note 369 at paras 4-7.

symptomatic (4 studies), but the Madewell Study was not able to separate out in the 4 studies those that involved fully asymptomatic cases from those that were pre-symptomatic.[373]

218. However, Dr. Dean explains that the Qiu Study does directly address the problem of separating asymptomatic from pre-symptomatic cases.[374] The Qiu Study found that the range of transmission for asymptomatic cases was between 0% to 2.8% while the range for pre-symptomatic cases was from 0.7% to 31.8%. The Qiu Study also found that the highest transmission rates occurred between contacts living in the same household as the index case.[375]

219. Dr. Dean also notes that even if an asymptomatic person is far less infectious, if the person without symptoms has more contacts than the symptomatic person then any advantage against transmission may be lost.[376] She concludes by explaining that the state of knowledge on SARS-CoV-2 virus transmission has continued to grow since December 2020 when the Madewell Study noted that some studies report peak infectiousness at approximately the period of symptom onset, and that now there are many peer reviewed articles showing the pre-symptomatic period to be highly infectious.[377]

iii. Dr. Nathan Zelyas

220. Dr. Zelyas is a medical microbiologist with Alberta Precision Laboratories – Public Health Laboratory.[378] He is the Program Leader for Respiratory Viruses and Transplant Virology. He has been tendered as an expert in polymerase chain reaction (PCR) testing, the accuracy of PCR tests, the use of PCR tests to determine cases of COVID-19, and whether a positive PCR test means an individual is infected/contagious with COVID-19. The Applicants have not objected to Dr. Zelyas' expertise.

221. As Dr. Zelyas explains, the primary samples used to diagnose COVID-19 are from nasopharyngeal swabs, which is inserted deep into a patient's nose to reach the nasopharyngeal area.[379] Once a swab is collected, it is typically placed in a tube that contains a transport medium, which preserves the virus and inhibits the growth of

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[373] Dean Affidavit, *supra* note 369 at paras 8(a)-(e).
[374] Dean Affidavit, *supra* note 369 at paras 8(f)-(g).
[375] *Ibid*.
[376] Dean Affidavit, *supra* note 369 at para 8(h).
[377] Dean Affidavit, *supra* note 369 at para 8(i).
[378] Expert Report of Dr. Nathan Zelyas filed July 9, 2012 [Zelyas Expert Report].
[379] Zelyas Expert Report, *supra* note 378 at 1. As noted in the Zelyas Expert Report (*ibid*), throat swabs are also used.

bacteria and fungi. When the swab is inserted into the transport medium, the human material and virus collected on the swab disperse into the transport medium. The tube, including swab and transport medium, are then transported to a laboratory for process, where the paperwork is checked to ensure the sample matches the patient information.[380] The transport medium, which contains the human material and virus, is subjected to "nucleic acid extraction to break open the cells and virus to release and purify the nucleic acid encoding the SARS-CoV-2 genome."[381] This process frees the nucleic acid of the SARS-CoV-2 virus so it is available for detection using advanced laboratory techniques.[382]

222. Scientists were able to design specific tests to detect SARS-CoV-2 through the use of a method referred to as PCR. PCR takes advantage of the ability of DNA to be replicated numerous times in an exponential fashion based on a specific DNA sequence.[383] Because SARS-CoV-2 has an RNA genome (as opposed to a DNA template), an additional enzyme called "reverse transcriptase" is added to the reaction, which replicates the targeted region of the SARS-CoV-2 into the DNA template needed for PCR. This alternative form of PCR is referred to as reverse transcriptase-PCR or RT-PCR.[384] Real-time-RT-PCR (rRT-PCR) has become the accepted method for clinical diagnostic purposes, as it allows the amplification of the SARS-CoV-2 targeted DNA to be visualized on a computer.

223. During the rRT-PCR process, if the SARS-CoV-2 DNA is present, it approximately doubles in amount with each cycle. The number of cycles that is required to reach the threshold to determine whether a sample is positive or negative is known as the "cycle threshold" or CT value.[385] Generally, the higher the CT value, the lower the amount of the SARS-CoV-2 virus present in a sample, and the lower the CT value, the higher the amount of the SARS-CoV-2 virus present in a sample;[386] however, there are no Health Canada approved quantitative real-time PCR tests for COVID-19, meaning all approved tests only provide a binary (positive or negative) test result.[387]

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[380] *Ibid.*
[381] *Ibid.*
[382] *Ibid.*
[383] *Ibid.*
[384] Zelyas Expert Report, *supra* note 378 at 2.
[385] *Ibid.*
[386] See Zelyas Expert Report, *supra* note 378 at 3-4 for Dr. Zelyas' explanation on why the use of CT values to infer infectiousness can be problematic.
[387] Zelyas Expert Report, *supra* note 378 at 2.

224. Dr. Zelyas notes that broad sweeping generalizations which claim that CT values above a certain number are effectively false positives is a "common fallacy."[388] CT values are inherently variable based on a number of factors including stage of infection, type of sample collected, quality of sample, PCR test used, duration of PCR positivity following an infection, and the potential impact of emerging variants.[389] Indeed, CT values from the *same sample* have been found to vary by up to 14 CT values in different lab tests.[390] In other words, a single sample with a CT value of 29 could potentially produce a CT value as high as 43 or as low as 15 in another PCR test. This lack of consistency indicates that CT values are not generalizable between different tests,[391] and using a CT value cut-off to define infectiousness would risk misclassifying a large number of people as non-infectious, therefore contributing to the spread of COVID-19.[392]

225. In Dr. Zelyas' opinion, viral cultures are "untenable for use in a diagnostic laboratory."[393] This is because viral cultures, as a diagnostic modality, are relatively slow. Most nucleic acid testing (like PCR testing) takes between 1 and 6 hours to perform, whereas a culture may take three or more days to observe signs of viral infection. Cultures are also non-specific – the cyopathic (viral) effects observed could be from the SARS-CoV-2 virus or from a different respiratory virus, which means that a further test would need to be done to identify the specific virus. The likely test to confirm or identify the virus would be an rRT-PCR test.[394] Viral cultures also require specialized technical expertise that is not widely available anymore as viral cultures have fallen out of favor within the diagnostic community due to their lower sensitive and lengthy turnaround time.[395] Viral cultures are also not necessarily an adequate proxy of infectiousness because the cells used in viral cultures are not the same type of cells in which SARS-CoV-2 would typically reproduce.[396]

226. As is clear from a review of Dr. Zelyas' expert opinion, the use of PCR (or RT-PCR or rRT-PCR) testing is a scientific, highly accurate testing process[397] that has been

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[388] Zelyas Expert Report, *supra* note 378 at 3.
[389] Zelyas Expert Report, *supra* note 378 at 4
[390] *Ibid.*
[391] *Ibid.*
[392] *Ibid.*
[393] Zelyas Expert Report, *supra* note 378 at 2.
[394] Zelyas Expert Report, *supra* note 378 at 3.
[395] *Ibid.*
[396] *Ibid.*
[397] Zelyas Expert Report, *supra* note 378 at 3. As Dr. Zelyas explains, rRT-PCR testing has a sensitivity of between 80-98.3%, with a false positive rate of 0.08%.

instrumental in managing the COVID-19 pandemic. Dr. Zelyas' opinion demonstrates that PCR tests are accurate and, because of their speed and accessibility, they are the best tool to diagnose COVID-19.

iv. Dr. Thambirajah Balachandra

227. Dr. Balachandra is the Chief Medical Examiner in Alberta.[398] He has provided his expert opinion in response to the assertions contained in the report prepared by Dr. Martin Koebel. As Dr. Balachandra explains, "[c]ause of death is a medical opinion determined by a medical doctor based on medical findings or reasons for the death."[399] The Applicants have not objected to Dr. Balachandra's expertise.

228. As Dr. Balachandra explains, there are two parts to a death certificate: immediate cause of death and contributing causes.[400] An example of an immediate cause of death is a ruptured heart caused by a heart attack. Contributing causes of death are any other diseases that contributed to the death, but are not causally related to the disease that caused the death. A contributing cause of death in the case of a heart attack may be atherosclerotic coronary artery disease (the build up of cholesterol on the walls of arteries leading to the heart). Some diseases may be present at the time of death but did not contribute. They are not listed as contributing causes of death.[401]

229. Dr. Balachandra gives this helpful example regarding contributing causes of death: an elderly man with chronic obstructive pulmonary disease (COPD) is involved in a car accident, where he sustains rib fractures and is admitted to the ER. The man's breathing worsens and he dies.[402] In this example, according to Dr. Balachandra, a decision is required (based on a clinical judgment) as to whether the COPD or the fracture was the immediate cause of death (part 1 of a death certificate) and which was the contributing cause (part 2 of the death certificate).[403]

230. With respect to COVID-19, if a test confirms an individual has COVID-19 and his symptoms worsens, he would be admitted to the hospital.[404] Despite all of the tests and supportive treatments, that person may die. If so, there would be no doubt that this person

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[398] Expert Report of Thambirajah Balachandra dated July 7, 2021 and filed July 9, 2021 [Balachandra Expert Report].
[399] Balachandra Expert Report, *supra* note 398 at 1.
[400] *Ibid*.
[401] *Ibid*.
[402] *Ibid*.
[403] *Ibid*.
[404] Balachandra Expert Report, *supra* note 398 at 3.

died due to, or as a complication or consequence of, COVID-19. The clinician treating this patient would be correct to determine the cause of death as COVID-19. The clinician may also list the cause of death as Acute Respiratory Distress Syndrome due to COVID-19, pneumonia due to COVID-19, or COVID-19 pneumonia. If this patient were to die before a diagnosis of COVID-19 was made, the clinician would report the case to the Medical Examiner (ME), and would not give the cause of death. The ME would bring in the body, review the clinical notes, and request all results of tests ordered. If the test for COVID-19 was positive, and if there were no other concerns, the ME would list the cause of death as pneumonia due to COVID-19.[405] An autopsy would only be necessary in suspicious and unconfirmed cases. Therefore, Dr. Balachandra's expert opinion it is not "surprising"[406] with respect to the number of autopsies conducted in Alberta during the ongoing COVID-19 pandemic.

v. Scott Long

231. Mr. Long was the Acting Managing Director of AEMA from October 2020 until May 2021.[407] The admissibility of Mr. Long's expert report is at issue in this proceedings. The Applicants have indicated they intend to challenge admissibility on the grounds that Mr. Long is not impartial.

232. Expert evidence is generally only admissible when:

a. It is logically relevant to a material issue;

b. It is necessary to assist the trier of fact;

c. It is not otherwise excluded; and

d. The expert is properly qualified.[408]

233. If these first four elements of the expert evidence test are met, the Court moves to the second, "discretionary gatekeeping" stage.[409] The applicant Rebecca Ingram opposes the qualification of Mr. Long on the grounds that he is not independent and impartial. There are no concerns with respect to the other elements of the ***Mohan*** test.

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[405] *Ibid*.
[406] See the Expert Report of Dr. Koebel filed January 22, 2021 at Schedule B-2.
[407] Expert Report of Scott Long filed July 16, 2021 [Long Expert Report].
[408] ***R v Mohan***, [1994] 2 SCR 9 at 20-25 [***Mohan***] – **TAB 56.**
[409] ***White Burgess Langille Inman v Abbott and Haliburton Co***, 2015 SCC 23 at para 54 [***White Burgess***] – **TAB 80.**

234. Independence and impartiality are often satisfied when an expert, in taking his or her oath before the Court, recognizes and accepts his or her duty to the Court.[410] As the Supreme Court of Canada explained in ***White Burgess***:

> The expert's opinion must be impartial in the sense that it reflects an objective assessment of the questions at hand. It must be independent in the sense that it is the product of the expert's independent judgment, uninfluenced by who has retained him or her or the outcome of the litigation. It must be unbiased in the sense that it does not unfairly favour one party's position over another. The acid test is whether the expert's opinion would not change regardless of which party retained him or her.[411]

235. Generally, once an expert recognizes and confirms his or her duty *to the Court*, the threshold independence and impartiality will be assumed unless the opposing party can show a:

> … realistic concern that the expert's evidence should not be received because the expert is unable and/or unwilling to comply with that duty. If the opponent does so, the burden to establish on a balance of probabilities this aspect of the admissibility threshold remains on the party proposing to call the evidence. If this is not done, the evidence, or those parts of it that are tainted by a lack of independence or impartiality, should be excluded.[412]

236. It is rare that a proposed expert's evidence would be ruled inadmissible at this stage.[413] The mere appearance of bias is not enough to disqualify an expert.[414]

237. A cursory review of Mr. Long's report demonstrates that it does not display bias. Mr. Long's report is fair, noting what Mr. Long considers to be successes and what he opines to be considered shortcomings or areas for improvement. While Mr. Long was involved in the COVID-19 response, Mr. Long's evidence is that his and his department's role was and remains distinct from the response of the lead ministry

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[410] David M Paciocco, Palma Paciocco & Lee Stuesser, *The Law of Evidence*, 8th ed (Toronto: Irwin Law, 2020) at 259 – **TAB 81.**
[411] ***White Burgess***, *supra* note 409 at para 32 – **TAB 80.**
[412] ***White Burgess***, *supra* note 409 at para 48 – **TAB 80.**
[413] ***White Burgess***, *supra* note 409 at para 49 – **TAB 80.**
[414] Paciocco, Paciocco & Stuesser, *supra* note 410 at 263 – **TAB 81.**

(Health).[415] So long as Mr. Long confirms to the Court that he understands his duty is to provide his expert opinion to the Court and that his duty is *not* to Alberta, Mr. Long's expert report should be admitted.

238. In substance, Mr. Long disagrees with the "black and white" approach contained in the Expert Report of David Redman. In Mr. Long's opinion as an experienced emergency management professional, Alberta's COVID-19 response has been reasonable – not perfect.[416] In Mr. Long's opinion, it was not an error to declare a state of public health emergency, as opposed to a state of public emergency.[417] Mr. Long also does not believe that the "hardening" of long-term care facilities endorsed by Mr. Redman[418] was a viable approach because, in Mr. Long's opinion:

> For this approach to be successful, staff and residents would need to remain wholly isolated. The family members of those staff members would also need to remain isolated to ensure that COVID-19 was not contracted by a family member, spread to a staff member of a long-term care facility, and then spread within the long-term care facility. This approach would mean that neither staff (including their families) nor residents would have any freedoms for the duration of the COVID-19 pandemic.[419]

239. Mr. Long also believes that Mr. Redman's report fails to consider the impact of the COVID-19 variants that have gained worldwide attention.[420] Mr. Long's opinion is that variant spread can and should impact public health response measures.[421]

240. Mr. Long considers the COVID-19 response within Alberta to have been a "more moderate" approach, "with restrictions on individual freedoms being balanced against health, social, and economic concerns."[422] Mr. Long also notes that one of the primary considerations at the outset of the COVID-19 pandemic was the preservation of the integrity of the healthcare system.[423]

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[415] Long Affidavit, *supra* note 3 at para 15.
[416] Long Expert Report, *supra* note 407 at para 5.
[417] Long Expert Report, *supra* note 407 at paras 9-11.
[418] Exert Report of David Redman filed January 22, 2021.
[419] Long Expert Report, *supra* note 407 at para 13.
[420] Long Expert Report, *supra* note 407 at para 15.
[421] Long Expert Report, *supra* note 407 at para 17.
[422] Long Expert Report, *supra* note 407 at para 21.
[423] Long Expert Report, *supra* note 407 at para 23. See also Gordon Affidavit, *supra* note 252.

241. Mr. Long believes that, from an emergency management perspective, Alberta's response to the COVID-19 pandemic has been reasonable. He states:

> It is not a "failing" of Alberta's COVID-19 response that the response has not adhered to the letter of the [Alberta Pandemic Influenza Plan]. Disaster plans must be treated as a "starting point" when responding to emergency events. Rigid adherence to a pre-existing plan is not well-accepted by emergency management professionals and would ignore lessons being learned as an event unfolds along with nuances that the plan may not have foreseen.[424]

V. ARGUMENT

a. The *Alberta Bill of Rights* Claims

242. The Case Management Justice struck a number of the applicant Rebecca Ingram's claims as they related to s. 1(a) of the *Alberta Bill of Rights* because these claims had no reasonable prospect of success. The Case Management Justice did not strike, as she was not convinced "beyond a doubt,"[425] that s. 29 of the *Public Health Act* granted the Chief Medical Officer of Health the authority to issue the Business Closure Restrictions.

243. These claims should be dismissed, summarily or otherwise, as the Applicants claims cannot succeed. The Applicant's only argument that the deprivation of the property by Business Closure Restrictions is that she was denied due process of the law.

244. The *Alberta Bill of Rights* does not protect property absolutely. It only guarantees the right to "enjoyment of property, and the right not to be deprived thereof except by due process of the law."[426] As the Supreme Court of Canada confirmed in ***Authorson***, the only due process accorded any person (with respect to legislation that impacts property rights) is that the legislation received three readings.[427]

245. As the Case Management Justice observed, and indeed as the Applicants conceded:

> If the challenged business restrictions are found to be within the broad order-making authority delegated to the CMOH by the Alberta Legislature when, by due process of law, it enacted

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[424] Long Expert Report, *supra* note 407 at para 27.
[425] See Striking Decision, *supra* note 9 at para 19, citing ***Clark v Hunka***, 2017 ABCA 346 at para 20 – **TAB 26**.
[426] *Alberta Bill of Rights*, *supra* note 7, s 1(a) – **TAB 1**.
[427] ***Authorson v Canada (Attorney General)***, 2003 SCC 39 at para 37 – **TAB 11**.

> the *Public Health Act*, the Applicants acknowledge that there will be no basis to conclude that the CMOH Orders offend s. 1(a) of the *Alberta Bill of Rights*. But, I am not satisfied, on the basis of the material before me, that I can fairly reach that conclusion now. The question has not been considered before. Guided by the Supreme Court of Canada and the Alberta Court of Appeal to err on the side of generosity and permit novel, but arguable, actions to proceed, I find I must dismiss the Respondents' application to strike the claim that the CMOH Orders offend s. 1(a) of the *Alberta Bill of Rights*.[428]

246. Reviewing the scope of ss. 29 and 29(2.1) of the *Public Health Act*, it is clear that the broad delegation allows the Chief Medical Officer of Health to:

> (i) take whatever steps [she] considers necessary
>
> > (A) to suppress the disease in those who may already have been infected with it,
> >
> > (B) to protect those who have not already been exposed to the disease,
> >
> > (C) to break the chain of transmission and prevent spread of the disease, and
> >
> > (D) to remove the source of infection.[429]

247. As is clear from a review of Dr. Hinshaw's evidence, Dr. Hinshaw sincerely believed that such measures were necessary.[430] Not only were these measures necessary, in Dr. Hinshaw's professional opinion, they were also a "last resort"[431] and were made in

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[428] Striking Decision, *supra* note 9 at para 78.
[429] *Public Health Act*, *supra* note 4, s 29(2)(b)(i) – **TAB 6**.
[430] See e.g. Hinshaw Affidavit, *supra* note 1 at paras 100-101. Moreover, a cursory review of the Hinshaw Affidavit demonstrates that at all times Dr. Hinshaw was exercising her authority for a purpose contained in the *Public Health Act* – she acted to preserve lives. Ms. Ingram's implied argument that Dr. Hinshaw was acting with an improper purpose (see Pre-Trial Factum of Rebecca Ingram at para 43) must be dismissed. Ms. Ingram also argues that the well-established principles of statutory interpretation to not support the broad delegation of authority to the Chief Medical Officer of Health. A plain reading of the *Public Health Act* demonstrates that Ms. Ingram's argument is meritless. No extrinsic interpretive aides are necessary when the delegation to the Chief Medical Officer of Health by the *Public Health Act* has been clear and unequivocal.
[431] Hinshaw Affidavit, *supra* note 1 at para 98.

consultation with elected officials.[432] She was authorized by the *Public Health Act* to take whatever steps she believed were necessary to break the chain of transmission and to stop the spread of COVID-19. She was clearly acting within the scope of her delegated authority.

248. Given that Dr. Hinshaw was acting with the scope of delegated authority, and that, accordingly, the Business Closure Restrictions, fell within the scope of that delegated authority, there can be no suggestion that the applicant, Rebecca Ingram, was denied due process of law, if she was in fact deprived of enjoying her property. As a result, these claims should be dismissed.

b. The "Undemocratic" Argument

249. The Applicants (sans Ms. Ingram) argue that because the Chief Medical Officer of Health issued the orders, and the Chief Medical Officer of Health is not elected, the Chief Medical Officer of Health has thus made "undemocratic" laws,[433] apparently attempting to suggest that the ***Oakes*** analysis should not even be conducted.

250. This argument demonstrates a fundamental misunderstanding of the principle of parliamentary (and legislative) supremacy and moreover, such arguments were already essentially rejected by the Case Management Justice. If these Applicants were dissatisfied with that decision, they ought to have pursued an appeal.[434] As Kirker J noted:

> I accept the Respondents' argument that the law with respect to the Legislature's power to delegate subordinate law-making authority is settled, and that the law, as settled, applies to the delegation in issue in this case.
>
> To allow the claims challenging the delegation of order-making authority in ss. 29(2)(b)(i) and 29(2.1) (b) would be to ignore binding decisions of the Supreme Court of Canada that are determinative of the issue; something this Court cannot do.[435]

251. The Applicants argued that these sections, which delegated to the Chief Medical Officer of Health the authority to issue the orders, violated s. 92 of the *Constitution Act,*

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[432] Hinshaw Affidavit, *supra* note 1 at para 166.
[433] See Pre-Trial Factum of the Applicants Heights Baptist Church, Northside Baptist Church, Erin Blacklaws and Tory Tanner at para 76.
[434] These Applicants filed a Notice of Appeal on May 31, 2021, but discontinued the appeal on July 19, 2021.
[435] Striking Decision, *supra* note 9 at paras 26-27.

1867,[436] along with the unwritten constitutional principles of democracy and the rule of law.[437] Justice Kirker dismissed those claims as they had no reasonable prospect of success.[438]

252. Now the Applicants try to argue that the delegation is undemocratic. It is trite law that the Legislature can delegate its authority.[439] Moreover, the Supreme Court has recently confirmed that not only can the Legislature delegate, it can delegate law-making authority to an individual to amend primary legislation.[440] It is not undemocratic for the democratically elected Legislature to exercise its law-making power to delegate parts of its authority. These arguments put forth by the Applicants are legally (and logically) without any merit. They must be dismissed.

c. Any Limitations are Reasonable and Justifiable

253. It is trite law that the guarantees contained in ss. 2, 7, and 15 of the *Charter* are, as set out by s. 1 of the *Charter* subject to "such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."[441] As the Supreme Court of Canada explained in ***JTI-Macdonald***:

> Most modern constitutions recognize that rights are not absolute and can be limited if this is necessary to achieve an important objective and if the limit is appropriate tailored, or proportionate.[442]

254. The test for determining whether such limits can be demonstrably justified was set out by the Supreme Court in the seminal case of ***Oakes***.[443] The ***Oakes*** test asks two questions:

a. Is there a legislative goal that is pressing and substantial?

b. Is there proportionality between the objective and the means used to achieve it? Proportionality is determined by considering three elements:

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[436] (UK) 30 & 31 Vict, c 3, reprinted in RSC 1985, Appendix II, No 5 – **TAB 4**.
[437] See Originating Application filed December 7, 2020, at paras 1(f)-(g). These claims were struck by the Case Management Justice: Striking Decision, *supra* note 9.
[438] Striking Decision, *supra* note 9 at para 102.
[439] See ***Hodge v The Queen*** (1883), 9 App Cas 117 [not reproduced].
[440] ***References re Greenhouse Gas Pollution Pricing Act***, 2021 SCC 11 at para 85 – **TAB 64.**
[441] *Charter*, *supra* note 6, s 1 – **TAB 3**.
[442] ***Canada (Attorney General) v JTI-Macdonald Corp***, 2007 SCC 30 at para 36 [***JTI-Macdonald***] – **TAB 17**.
[443] ***R v Oakes***, [1986] 1 SCR 103 [***Oakes***] – **TAB 60**.

i. Is the limit rationally connected to the objective?

ii. Is the limit minimally impairing, in that it impairs the right no more than reasonably necessary to accomplish the objective?

iii. Are the deleterious effects outweighed by the salutary effects?[444]

255. The ***Oakes*** test should not be applied mechanically; rather, it should be applied flexibly, having regard to the factual and social context of each case.[445]

i. The Objective is Pressing and Substantial

256. Pressing and substantial objectives are those objectives that are of significant importance and consistent with the principles integral to a free and democratic society.[446] The objective must be defined carefully and with precision.[447] An explanation of the measures is a different concept than the objective behind them.[448]

257. COVID-19 has killed over 2,300 Albertans.[449] It is a virus, spread by close contact with an infected person.[450] Faced with a pathogen that has the potential to infect people before symptoms show (if they ever show),[451] the Government of Alberta took steps to stop the spread. The pressing and substantial objective is clear: to preserve life by stopping the spread of COVID-19.

258. The preservation of life is surely one of the most pressing and substantial objectives. There is *significant* evidence that not only is COVID-19 a deadly disease that disproportionately affects our vulnerable and elderly populations,[452] but also that without intervention, Alberta's healthcare would have collapsed.[453] Moreover, COVID-19 is not

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[444] ***Oakes***, *ibid*; ***Carter***, *supra* note 103 – **TAB 22**; ***Alberta v Hutterian Brethren of Wilson Colony***, 2009 SCC 37 [***Hutterian Brethren***] – **TAB 9**.
[445] ***RJR-MacDonald Inc v Canada (Attorney General)***, [1995] 3 SCR 199 [***RJR-MacDonald***] – **TAB 67**; ***Ross v New Brunswick School Board No 15***, [1996] 1 SCR 825 [***Ross***] – **TAB 70**.
[446] ***Vriend v Alberta***, [1998] 1 SCR 493 at para 108 [***Vriend***] – **TAB 79**; ***Canada (Attorney General) v Hislop***, 2007 SCC 10 at para 44 [***Hislop***] – **TAB 16**.
[447] ***R v KRJ***, 2016 SCC 31 at para 63 – **TAB 54**.
[448] ***Vriend***, *supra* note 446 at para 114 – **TAB 79**.
[449] Hinshaw Affidavit, *supra* note 1 at para 50.
[450] Kindrachuk Expert Report, *supra* note 304.
[451] Kindrachuk Expert Report, *supra* note 304 at 8-16.
[452] See Hinshaw Affidavit, *supra* note 1 at paras 53; Kindrachuk Expert Report, *supra* note 304; Long Expert Report, *supra* note 3.
[453] The Gordon Affidavit, *supra* note 252 at paras 63-66, 72-73, discusses the difficulty in providing hospital services during the second and third waves of COVID-19. Ms. Gordon notes, with respect to the second wave: "COVID related ICU cases were tracking above the AHS

simply a disease that affects the elderly and infirm.[454] Dr. Kindrachuk explains that while hospitalizations are the highest among the population over age 50, younger age groups are still susceptible to moderate or severe illness.[455]

259. The evidence makes it abundantly clear that Alberta took steps to preserve life. As such, the Government of Alberta clearly had a pressing and substantial objective underscoring Dr. Hinshaw's issued Chief Medical Officer of Health orders and the Restrictions.

ii. The Limits are Rationally Connected to the Objective

260. The next part of the ***Oakes*** analysis asks this Court to consider whether the limits placed on the various *Charter* rights were rationally connected to the pressing and substantial objective. A cursory review of the evidence demonstrates the limits were rationally connected.

261. Dr. Kindrachuk explains and surveys a number of instances where substantial transmission occurred in religious settings.[456] He also explains how infectious individuals are, even before they show symptoms. Asymptomatic pre-symptomatic transmission of COVID-19 has not been inconsequential throughout this pandemic – hence why simple "symptom checks" would not have been sufficient to stop the spread and to save lives.[457]

262. COVID-19 is also spread through close contact.[458] The banning or restricting of gatherings is clearly rationally connected to stopping the spread.

263. Moreover, both Drs. Kindrachuk and Hinshaw explain why the "natural herd immunity" concept promulgated by the Great Barrington Declaration is not sustainable nor advisable.[459] Dr. Kindrachuk discusses in significant detail the city of Manaus in Brazil, which, after a devastating first wave of COVID, its people should have been well above the threshold for herd immunity – and yet infections continued.[460] He also

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[Early Warning System] high scenario, placing significant strain on AHS' ability to meet surge capacity requirements and to staff ICU beds as case numbers continued to rise": Gordon Affidavit, *supra* note 252 at para 52.

[454] See Hinshaw Affidavit, *supra* note 1 at paras 52-65.

[455] Kindrachuk Expert Report, *supra* note 304 at 8.

[456] Kindrachuk Expert Report, *supra* note 304 at 9-17.

[457] Kindrachuk Expert Report, *supra* note 304 at 14.

[458] Hinshaw Affidavit, *supra* note 1 at para 41.

[459] Kindrachuk Expert Report, *supra* note 304 at 9-17; Hinshaw Affidavit, *supra* note 1 at paras 225-238.

[460] Kindrachuk Expert Report, *supra* note 304 at 19-20.

discusses the effectiveness of NPIs in controlling the spread of COVID-19. Ms. Gordon explains how AHS was essentially running on fumes during the peaks of the second- and third-waves, running its ICUs and acute care facilities over capacity.[461] Dr. Hinshaw gives evidence regarding the Restrictions being a "last resort" after voluntary measures failed to get rising case counts under control.[462]

264. It is clear that the Restrictions are rationally connected to the goal of saving the lives of Albertans and protecting the public healthcare system. As such, this prong of the ***Oakes*** test has been satisfied.

iii. The Limits are Minimally Impairing

265. While the limit must impair the freedom "as little as possible,"[463] governments are not held to a standard of perfection.[464] The limitations must merely fall within a range of reasonable options to achieve the pressing and substantial objective.[465] In determining whether a legislative scheme is minimally impairing, the Court may also consider the laws or practices in other jurisdictions.[466]

266. As the Supreme Court has recognized, there are certain types of decisions where "there may be no obviously correct or obviously wrong solution, but a range of options each with its advantages and disadvantages. Governments act as they think proper within a range of reasonable alternatives."[467] In those cases, "governments have a large "margin of appreciation" within which to make choices."[468] It is not a standard of perfection, but rather, a standard that requires consideration of the context and the available options. In cases involving scientific evidence, that delineation becomes even less clear:

> If the legislature has made a reasonable assessment as to where the line is most properly drawn, especially if that assessment involves weighing conflicting scientific evidence and allocating scarce resources on this basis, it is not for the court

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[461] Gordon Affidavit, *supra* note 252 at paras 56-59, 64-73.
[462] Hinshaw Affidavit, *supra* note 1 at paras 29, 98.
[463] ***Oakes***, *supra* note 443 at 139 – **TAB 60**.
[464] ***R v Edwards Books and Art Ltd***, [1986] 2 SCR 713 at 794-95 (per La Forest) – **TAB 52**.
[465] ***R v Sharpe***, 2001 SCC 2 at para 96 [***Sharpe***] – **TAB 63**; ***RJR-MacDonald***, *supra* note 445 at para 160 – **TAB 67**.
[466] ***Carter***, *supra* note 103 at paras 103-104 – **TAB 22**.
[467] ***Newfoundland (Treasury Board) v NAPE***, 2004 SCC 66 at para 83 [***NAPE***] – **TAB 43**.
[468] ***NAPE***, *supra* note 467 at para 84 – **TAB 43**.

> to second guess. That would only be to substitute one estimate for another.[469]

267. The Supreme Court continued, noting:

> This Court will not, in the name of minimal impairment, take a restrictive approach to social science evidence and require legislatures to choose the least ambitious means to protect vulnerable groups. There must nevertheless be a sound evidentiary basis for the government's conclusions.[470]

268. When the Legislature is asked to mediate between claims of competing groups, it necessarily is required to:

> … strike a balance without the benefit of absolute certainty concerning how that balance is best struck. Vulnerable groups will claim the need for protection by the government whereas other groups and individuals will assert the government should not intrude.[471]

269. As is clear from considering the Restrictions, the content of them changed over time. It was not as if indoor gatherings were banned in perpetuity during the COVID-19 pandemic. Dr. Hinshaw's evidence is that, before the Restrictions were ordered, voluntary measures were encouraged.[472] When the voluntary measures did not do enough to stop the spread, the Government of Alberta had to step in to save the lives of vulnerable Albertans. Just as the Supreme Court predicted in ***Irwin Toy***, the Applicants in this case are the groups and individuals asserting that Alberta ought not to have intruded, notwithstanding the need to act to preserve lives and protect the health care system.

270. With respect to the Restrictions that have had an incidental effect on individuals' religious freedoms, there was never an outright prohibition on religious gatherings. The Applicants paint the Restrictions as if they were black and white: a tyrannical, rogue public servant closing churches. That was not the case. The evidence demonstrates that religious services, where higher risk activities take place, like singing and close contact, are at higher risk of spreading COVID-19.[473] The Restrictions aimed to reduce the number of people in any one higher risk setting by setting capacity limits and minimizing

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[469] ***Irwin Toy***, *supra* note 46 at 990 – **TAB 38**.
[470] ***Irwin Toy***, *supra* note 46 at 999 – **TAB 38**.
[471] ***Irwin Toy***, *supra* note 46 at 993 – **TAB 38.**
[472] Hinshaw Affidavit, *supra* note 1 at para 98.
[473] Kindrachuk Expert Report, *supra* note 304 at 10.

the risk of transmission during higher risk activities by mandating masks. Religious services have never been outright prohibited.

271. It appears the only minimally impairing option the Applicants would accept would have been doing nearly nothing and simply hoping for the best. That the Applicants would have preferred that option does not mean that the Restrictions were not minimally impairing.

iv. The Salutary Effects Outweigh the Deleterious Effects

272. In Alberta's view, the salutary effects are obvious. Dr. Kindrachuk explains that reaching natural herd immunity without vaccines would equate to *at least* 22,000 deaths.[474] Dr. Gordon explains just how close our hospitals have been throughout the waves of COVID-19 to being overwhelmed, and the steps AHS began taking to preserve the integrity of the healthcare system.[475]

273. The deleterious effects are also clear: individuals were deprived of the chance to socialize in person, gather in large groups, and for the Applicant Churches, they were deprived of gathering the entire congregation together as is part of their fundamental beliefs. But such effects were transitory. Gatherings have not been prohibited in perpetuity. They were limited during times of great stress and when COVID-19 cases raged out of control.

274. At no point did Alberta prevent the Applicant Churches from worshipping altogether – the Applicant Churches were asked to gather their congregants in smaller groups, to worship remotely, and to utilize masks, which the evidence shows is effective.[476] But even a simple mask mandate would have infringed the beliefs of the Applicant Churches.[477] Furthermore, Dr. Kindrachuk discusses a case study where a single infected individual, singing during religious services, infected 12 more.[478] It is clear that religious services are not exempt from spreading COVID-19.

275. Additionally, although there is no s. 7 *Charter* right to economic protections, there were a number of programs put in place to help minimize the economic effects. The

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[474] Kindrachuk Expert Report, *supra* note 304 at 20. This figure is assuming natural herd immunity even exists.
[475] See Gordon Affidavit, *supra* note 252 at paras 52-74.
[476] Kindrachuk Expert Report, *supra* note 304 at 10.
[477] See Schoenberger Affidavit, *supra* note 24 at para 6; Adkins Affidavit, *supra* note 30 at para 11.
[478] Kindrachuk Expert Report, *supra* note 304 at 10.

evidence of Mr. Hedley and Ms. Shandro is clear that even though there may have been no right to such supports, Alberta was cognizant of the strains that some of the COVID-19 policies could place on individuals.[479] Steps were taken to try to reduce the impact on individuals that were effected by the Restrictions.

276. Balancing the salutary and deleterious effects, it is clear that the loss of life would have been enormous, not even considering the number of non-COVID-19 deaths that could have occurred with a healthcare system that had no capacity to treat non-COVID-19 related afflictions. As Dr. Kindrachuk explains, 14% of the spread of COVID-19 is attributed to asymptomatic individuals.[480] It would not have been enough for Alberta to *just* mandate anyone displaying the symptoms of COVID-19 to stay home. Moreover, the evidence demonstrates that even in cases where people would go on to develop symptoms (and thus could theoretically stay home once they have noticed they have COVID-19 symptoms), pre-symptomatic transmission is also a significant factor that needs to be considered.[481] Even those individuals who tried their best may have inadvertently spread COVID-19, not realizing they were already infected.

277. The Restrictions, while they may have infringed upon some of the Applicants' *Charter* rights were minimally impairing and the salutary effects clearly outweighed any of the temporary deleterious effects. Accordingly, any infringements made out by the Applicants would be justifiable under s. 1 of the *Charter* and the Applicants' claims should be dismissed.

VI. CONCLUSION

278. The COVID-19 pandemic is unlike anything that most of society has ever lived through before, and hopefully it is unlike anything we ever live through again. Thousands of vulnerable Albertans succumbed to this deadly disease. Our hospitals and ICUs were, at times, on the brink of collapse.

279. The evidence clearly demonstrates that this deadly disease can spread even when people are not displaying symptoms. It is not as simple as asking those who are ill to stay home – a significant proportion of people may never show symptoms, or may not yet feel ill but still could pass on the virus. The evidence also demonstrates that COVID-19 is

[479] Shandro Affidavit, *supra* note 293; Hedley Affidavit, *supra* note 291.
[480] Kindrachuk Expert Report, *supra* note 304 at 13.
[481] Kindrachuk Expert Report, *supra* note 304 at 11.

more than just a disease that impacts the elderly and infirm. Even if it was, elderly and those with pre-existing conditions are human beings.

280. The Applicants appear to take the position that simply because someone is old or sick, the loss of life is less consequential. They suggest they ought not to have been subject to any restrictions because the inconvenience was too great. That is not how society operates and it is certainly not what is contemplated by s. 1 of the *Charter*.

281. To the extent that the Applicants have demonstrated any infringements of ss. 2(a)-(d) or s. 15 of the *Charter*, those infringements are demonstrably justified in a free and democratic society. The Restrictions have at all times been prescribed by law and the objective of reducing the spread of COVID-19 (and its associated morbidity and mortality) is clearly pressing and substantial.

282. The Restrictions and any limits they placed upon *Charter* rights were always rationally connected to goal of reducing the spread of COVID-19. There is substantial scientific evidence to support this rational connection. Any limitations imposed by the Restrictions were minimally impairing. In cases with conflicting scientific evidence, courts ought not to substitute their opinion of the science with the opinion of the legislature. Legislatures can (and must, in times of great urgency) act without absolute certainty. They are not held to a standard of perfection.

283. Notwithstanding the harms asserted by the Applicants, the salutary effects clearly outweigh the deleterious effects. Doing nothing, or doing as little as the Applicant suggest would have been appropriate, would have resulted in untold suffering. Dr. Kindrachuk predicted as many as 22,000 Albertans would have died. Such an outcome is not what is contemplated by s. 1 of the *Charter*. The fundamental freedoms recognized and affirmed by the *Charter* are not and have never been absolute.

284. We must, at times and especially during times of great urgency and strife, be willing to give a little to help others. That is the first ideal found within our *Charter*. That is the price of living in free and democratic society.

285. The claims by all of the Applicants must be dismissed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 14th day of September, 2021.

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ALBERTA and THE CHIEF MEDICAL OFFICER OF HEALTH

Per: _____

Brooklyn LeClair
Alberta Justice, Constitutional and Aboriginal Law

~~Per:~~ for _____

Nicholas Parker
Alberta Justice, Constitutional and Aboriginal Law

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APPENDIX A – LIST OF THE CMOH ORDERS CHALLENGED IN THIS ACTION

a. CMOH Order 01-2020

1. Effective immediately, all persons who are eligible to or are currently attending a school locations (students) in the Province of Alberta are prohibited from doing so.

2. All students are prohibited from attending any classes or programs offered at any school locations with the exception of education programs offered in a home environment by a parent or guardian to immediate family members only.

3. Students may attend a school location on the following conditions:

> (a) the student, or parent or guardian of the student, makes prior arrangements with school officials in advance of attending the school location for any purposes;
>
> (b) the school undertakes to ensure that proper public safety precautions and all applicable special measures are in place as may be specified by the medical officer of health;
>
> (c) the student, parent or guardian will comply with all directions from school officials and the medical officer of health.

4. For the purposes of this order, "school" is as defined in the Act and a school located on a First Nations reserve in Alberta. For greater certainty, this includes:

> (a) a school operating under the *Education Act*, and includes the physical location or place where the school provides a structured learning environment through which an education program is offered or provided;
>
> (b) a school located on a First Nations reserve in Alberta;
>
> (c) a place where an early childhood services program is offered or provided, and

(d) the premises where a child care program that is licensed under the *Child Care Licensing Act* is offered or provided.

b. CMOH Order 02-2020

2. Public recreational facilities and private entertainment facilities, including but not limited to, gyms, swimming pools, arenas, science centres, museums, art galleries, community centres, children's play centres, casinos, racing entertainment centres, and bingo halls.

3. Bars and nightclubs where minors are prohibited by law.

The above prohibitions do not apply, or apply with modifications set out below, to the following locations or places where the activities listed are taking place:

4. Albertans can attend restaurants, cafes, coffee shops, food courts and other food-serving facilities, including those with a minors-allowed liquor license. Such locations are limited to 50 per cent of their stated capacity, up to a maximum limit of 50 persons within a given location or place.

c. CMOH Order 05-2020

1. Any person who is a confirmed case of COVID-19 must be in isolation for a minimum of 10 days from the start of their symptoms, or until symptoms resolve, whichever is longer.

2. For the purposes of this Order, Isolation includes the following restrictions:

(a) remaining at home, and 2 metres distant from others at all times;

(b) not attending work, school, social events or any other public gatherings; and

(c) not taking public transportation.

7. Subject to section 8 of this Order, any person who is exhibiting any of the symptoms as set out below, which are not related to a pre-existing illness or health condition, must be in isolation for a minimum of 10 days from the start of their symptoms, or until the symptoms resolve whichever is longer:

(a) cough;

(b) fever;

(c) shortness of breath;

(d) runny nose; or

(e) sore throat.

d. CMOH Order 07-2020

6. The following types of non-essential places of business are no longer permitted to offer or provide services to the public at a location that is accessible to the public:

(a) any place of business offering or providing non-essential health services;

(b) any place of business offering or providing personal services;

(c) any place of business offering or providing wellness services, including but not limited to massage therapy services and reflexology services; and

(d) any retail store, including a retail store located in a shopping centre, or other similar place of business offering or providing only non-essential goods or services.

12. Restaurants, cafes, coffee shops, food courts and other food-serving facilities, including those with a minors-allowed liquor license can continue to offer or provide take-out, drive thru and food delivery services only. For greater certainty, no dine-in services are permitted to be offered or provided.

e. CMOH Order 09-2020

1. Effective immediately no visitors, except those identified in this order, are permitted to attend a health care facility in the Province of Alberta.

3. An operator or service provider of a health care facility shall ensure that the provisions of this Order and the guidelines attached as Appendix A to this Order are complied with.

5. An essential visitor of a resident may attend a health care facility only for the purposes of providing for the essential care needs of the resident that would otherwise be unmet.

7. For the purposes of this order, an "essential visitor" is, in relation to a resident of a health care facility, an individual who is over 18 years of age and is designated by the resident or the resident's alternate decision maker as their single essential visitor to:

> (a) provide care to meet the essential care needs of the resident that would otherwise be unmet; and
>
> (b) decide who among a dying resident's family/religious leader(s)/friends may attend a health care facility for the purposes of visiting a resident.

8. Only one individual may attend to a given resident at any time within a health care facility. For greater certainty, the essential visitor of a resident and a family/religious leader/friend may not attend the health care facility in which the resident is located at the same time.

f. CMOH Order 14-2020

1. Effective immediately, all operators of a health care facility, located in the Province of Alberta must comply with the visitation standards attached as Appendix A to this Order.

g. CMOH Order 18-2020

3. A person may attend a location where any business or entity is operating, except a business or entity that is listed or described in Appendix A. For greater certainty, any business or entity other than a business or entity listed or described in Appendix A is permitted to offer or provide goods and services to members of the public at a location that is accessible to the public.

4. An operator of a business or entity listed or described in Appendix A must ensure that the place of business or entity is closed to the public.

6. A student may attend any class or program offered at any school, except a school that is listed or described in Appendix A.

7. An operator of a school listed or described in Appendix A must ensure that the school is closed to the public.

8. For the purpose of this Order, "school" includes

(a) a school as defined in section 4 of Record of Decision – CMOH Order 01-2020;

(b) a place referred to in section 5 of Record of Decision – CMOH Order 01-2020; and

(c) an institution, program, training provider or entity referred to in section 6 of Record of Decision – CMOH Order 01-2020.

9. Despite section 7 of this Order, a person may attend a school listed or described in Appendix A for the purposes of receiving, offering or providing the following child care programs licensed under the *Child Care Licensing Act*:

(a) a "day care program" as defined in the *Child Care Licensing Regulation*;

(b) an "out of school care program" as defined in the *Child Care Licensing Regulation*;

(c) an "innovative child care program" as defined in the *Child Care Licensing Regulation*.

h. CMOH Order 19-2020

11. A person may attend a location where any business or entity is operating, except a business or entity that is listed or described in Appendix A. For greater certainty, any business or entity other than a business or entity listed or described in Appendix A is permitted to offer or provide goods and services to members of the public at a location that is accessible to the public.

12. An operator of a business or entity listed or described in Appendix A must ensure that the place of business or entity is closed to the public.

14. A student may attend any class or program offered at any school, except a school that is listed or described in Appendix A.

15. An operator of a school listed or described in Appendix A must ensure that the school is closed to the public.

i. CMOH Order 25-2020

3. An operator of an indoor children's play centre, an amusement park or a nightclub must ensure that their place of business or entity is closed to the public.

j. CMOH Order 26-2020

1. Effective immediately, all persons in the Province of Alberta must comply with the following requirements.

2(1). Subject to sections 2(2) and 2(3) of this Order, every person attending an indoor or an outdoor location must maintain a minimum of 2 metres distance from every other person.

2(2). Persons attending an indoor or an outdoor location who are all members of the same household or cohort group are excepted from the requirements in section 2(1) of this Order.

2(3). A person does not contravene section 2(1) of this Order if the person acts in compliance with any guidance established by Alberta Health, regarding physical distancing as set out in an applicable guidance document (which may be found at https://www.alberta.ca/biz-connect.aspx.)

k. CMOH Order 29-2020

1. All operators of a health care facility located in the Province of Alberta must comply with the requirements of this Order. For greater certainty, unless otherwise indicated in this Order, Appendix A to this Order represents the leading practices that Alberta Health expects operators of health care facilities to follow while carrying out the requirements of this Order.

l. CMOH Order 32-2020

1. Sections 9 and 10 of Record of Decision - CMOH Order 10-2020 are rescinded and the following are substituted:

> 9. All operators of a health care facility, located in the Province of Alberta, must
>
> > (a) comply with the operational and outbreak standards attached as Appendix A to this Order; and
> >
> > (b) use the applicable COVID-19 questionnaires for licensed supportive
> >
> > living, hospices and long-term care, attached as Appendix B to this Order, in accordance with the operational and outbreak standards.

m. CMOH Order 34-2020

3. An operator of an amusement park or nightclub must ensure that their place of business or entity is closed to the public.

n. CMOH Order 37-2020

3. Except as set out in sections 4 and 6 of Part 1 of this Order, a person is prohibited from attending and an operator of a business or entity is prohibited from providing or hosting an indoor group high-intensity or low intensity fitness activity or an indoor sport activity in the Calgary Metropolitan Region, Edmonton Metropolitan Region, City of Grande Prairie, City of Lethbridge, City of Fort McMurray and City of Red Deer, in the Province of Alberta.

4. Part 1 of this Order does not apply to a person attending or an operator of a business or entity, providing or hosting:

> (a) Subject to section 5 of Part 1 of this Order, an indoor group high-intensity or low intensity fitness activity or indoor sport activity if the activity is provided by an operator of a:

i. school as part of the education program or organized sports program at that school and where participation in those activities is limited to students attending that school;

ii. post-secondary institution as part of that institution's program of study or organized sports program where participation in those activities is limited to students attending that institution;

(b) an individual sport activity where participants can maintain a minimum of 2 metres distances from each other at all times;

(c) a sport activity as a member of or for a professional or semi-professional sports team or as a professional or semi-professional athlete;

(d) an indoor high-intensity or low-intensity fitness activity where the participants are all members of the same household who train together with or without an instructor or trainer; and

(e) an indoor group low-intensity fitness activity with five or fewer participants, inclusive of the instructor or trainer.

8. Except as set out in section 9 of Part 2 of this Order, a person is prohibited from attending and a person or operator of a business or entity is prohibited from providing or hosting a group performance activity in the Calgary Metropolitan Region, Edmonton Metropolitan Region, City of Grande Prairie, City of Lethbridge, City of Fort McMurray and City of Red Deer, in the Province of Alberta.

9. Part 2 of this Order does not apply to:

(a) a group performance activity provided by an operator of a:

i. school as part of the education program at that school or to students attending that school and enrolled in that education program;

ii. post-secondary institution as part of that institution's program of study or to students attending that post-secondary institution and enrolled in that program of study.

(b) a person attending or a person or operator of a business or entity providing or hosting a group performance activity as part of a professional group or as a professional performer.

(c) a person attending or a person or operator of a business or entity providing or hosting a group performance activity outdoors.

15. An operator of a business or entity with a Class A or C liquor licence, including but not limited to restaurants, bars, lounges, pubs, cafes, legions or private clubs:

(a) is prohibited from selling or serving liquor after 10 p.m. Mountain Standard Time, and

(b) must ensure that the place of business or entity is closed to the public or members for dine-in food and beverage services, after 11 p.m. Mountain Standard Time. For greater certainty, take-out and delivery food and beverage services are still permitted after 11 p.m. Mountain Standard Time.

16. An operator of a business or entity with a Gaming or Facility Licence or a Class B liquor licence, including but not limited to bowling alleys, casinos, bingo halls, pool halls and indoor recreation entertainment centers, is prohibited from selling or serving:

(a) liquor after 10 p.m. Mountain Standard Time, and

(b) food or beverages after 11 p.m. Mountain Standard Time.

o. CMOH Order 39-2020

6. A person may attend a location where any business or entity is operating, except a business or entity that is listed or described in sections 1 and 2 of Appendix A.

7. For greater certainty, any business or entity other than a business or entity listed or described in sections 1 and 2 of Appendix A is permitted to offer or provide goods and services to members of the public at a location that is accessible to the public.

8. Subject to section 9, an operator of a business or entity listed or described in sections 1 and 2 of Appendix A must ensure that the place of business or entity is closed to the public.

9. Section 8 of this Order does not prevent a place of business or entity listed or described in section 1 of Appendix A from being used:

(a) to provide health care services;

(b) to provide child care services;

(c) for elections purposes and related activities;

(d) to undertake jury selections;

(e) as a shelter for vulnerable persons;

(f) as a place of worship;

(g) as an indoor market.

11. An operator of an amusement park may be subject to further restrictions or prohibitions as determined by the Chief Medical Officer of Health.

12. An operator of a casino is prohibited from offering or providing entertainment in the form of table games to persons who attend the casino.

13. An operator of a business or entity listed or described in sections 5, 6, 7 and 8 of Appendix A must schedule an appointment with a person prior to the person attending the location where the business or entity is operating in order to provide the person with services.

17. An operator of a food-serving business or entity that offers or provides dine-in services, including but not limited to a restaurant, cafe, bar or pub, other than an operator of a business

or entity listed or described in section 3 of Appendix A, is prohibited from offering or providing any of the following entertainment or activities to persons who attend the food-serving business or entity:

(a) live performances of any kind including musical, comedic and theatrical performances;

(b) billiard, arcade, video or dart games;

(c) access to video lottery terminals.

18. An operator of a business or entity listed or described in section 3 of Appendix A is prohibited from offering or providing live performances of any kind, including musical, comedic and theatrical performances to persons who attend the place of business or entity.

19. An operator of a business or entity with a Class A or C liquor licence, including but not limited to restaurants, bars, lounges, pubs, cafes, legions or private clubs,

(a) is prohibited from selling or serving liquor after 10 p.m., and

(b) must ensure that the place of business or entity is closed to the public or members between the hours of 11 p.m. and 4 a.m..

20. An operator of a business or entity with a Gaming Licence or Facility Licence or a Class B liquor licence, including but not limited to bowling alleys, casinos, bingo halls, pool halls and indoor recreation entertainment centers, is prohibited from selling or serving

(a) liquor after 10 p.m., and

(b) food or beverages after 11 p.m..

21. For greater certainty, an operator of a food-serving business or entity, including but not limited to a restaurant, cafe, bar or pub, may provide food or beverages by take-out, delivery or drive-thru.

23. Subject to section 25 and 26 of this Order, all persons are prohibited from participating in an indoor group physical activity with persons who are not members of their household.

24. For greater certainty, group physical activity includes team sports, fitness classes, and training sessions.

25. Section 23 of this Order does not prevent a person from participating in an indoor physical activity under the guidance or instruction of one other person who is the person's coach or trainer.

29. Subject to section 31 and 32 of this Order, all persons are prohibited from participating in an indoor group performance activity with persons who are not members of their household.

30. For greater certainty, group performance activity includes singing, dancing, playing of wind instruments and performing live theatre.

p. CMOH Order 42-2020

25. A person may attend a location where any business or entity is operating, except a business or entity that is listed or described in sections 1, 2, 3, 4 and 5 of Appendix A.

26. For greater certainty, any business or entity other than a business or entity listed or described in sections 1, 2, 3, 4 and 5 of Appendix A is permitted to offer or provide goods and services to members of the public at a location that is accessible to the public.

27. Subject to section 28, an operator of a business or entity listed or described in sections 1, 2, 3, 4 and 5 of Appendix A must ensure that the place of business or entity is closed to the public.

28. Section 27 of this order does not prevent a place of business or entity listed or described in section 1 of Appendix A from being used:

(a) to provide health care services;

(b) to provide child care services;

(c) for elections purposes and related activities;

(d) to undertake jury selections;

(e) as a shelter for vulnerable persons;

(f) as a place of worship;

(g) as an indoor market;

(h) as a location for blood donation and collection activities;

(i) as a location for mutual support meetings;

(j) as a location for charitable activities including but not limited to food, clothing and toy collection and distribution.

29. An operator of a business or entity listed or described in section 6 of Appendix A must limit the number of members of the public that may attend the location where the business or entity is operating to the greater of

(a) 15% of the total operational occupant load as determined in accordance with the Alberta Fire Code and the fire authority having jurisdiction; or

(b) five persons.

30. An operator of a business or entity listed or described in sections 7 and 8 of Appendix A must schedule an appointment with a person prior to the person attending the location where the business or entity is operating in order to provide the person with services.

31. Despite sections 25 and 27 of this Order,

(a) a member of the public may attend a food-serving business or entity that offers or provides dine-in services, including but not limited to a restaurant, café, bar or pub, only for the purposes of purchasing food or beverages to be consumed offsite; and

(b) an operator of a food-serving business or entity, including but not limited to a restaurant, café, bar or

pub, may operate only to the extent necessary to offer and provide members of the public food or beverages by take-out, delivery or drive-thru.

32. Despite sections 25 and 27 of this Order,

(a) a person who resides in a health care facility as defined in section 2 of Part 1 of Record of Decision – CMOH Order 10-2020 may attend a hair salon or similar business or entity operating within the health care facility in which they reside only for the purposes of having their hair washed and dried; and

(b) an operator of a hair salon or similar business or entity operating within a health care facility as defined in section 2 of Part 1 of Record of Decision – CMOH Order 10-2020 may operate only to the extent necessary to offer and provide hair washing and drying services to persons who resides in the health care facility where they operate.

34. Subject to section 36 and 37 of this Order, all persons are prohibited from participating in an indoor group physical activity with person who are not members of their household.

35. For greater certainty, group physical activity includes team sports, fitness classes, and training sessions.

36. Section 34 of this Order does not prevent a person from participating in an indoor physical activity under the guidance or instruction of one other person who is the person's coach or trainer.

40. Subject to section 42 and 43 of this Order, all persons are prohibited from participating in an indoor group performance activity with persons who are not members of their household.

41. For greater certainty, group performance activity includes singing, dancing, playing of wind instruments and performing live theatre.

42. Section 40 of this Order does not prevent a person from participating in an indoor performance activity under the guidance or instruction of one other person who is the person's coach or teacher.

q. CMOH Order 43-2020

Section 4 of Part 2 of Record of Decision - CMOH Order 42-2020 is amended by adding the following after subsection (i):

(j) to provide counselling services;

(k) for a visit between a person who is at the end of their life (last four to six weeks, as determined by that person's primary health care provider) and a family member, friend, faith leader or other person as long as no more than three visitors enter the private residence of the dying person at one time.

Section 28 of Part 6 of Record of Decision - CMOH Order 42-2020 is amended by adding the following after subsection (g):

(k) to provide counselling services.

r. CMOH Order 44-2020

Section 4 of Part 2 of Record of Decision – CMOH Order 42-2020 is amended by adding the following after subsection (i)

(j) to provide counselling services;

(k) for a visit between a person who is at the end of their life (last four to six weeks, as determined by that person's primary health care provided) and a family member, friend, faith leader or other person as long as no more than three visitors enter the private residence of the dying person at one time.

Section 28 of Part 6 of Record of Decision – CMOH Order 42-2020 is amended by adding the following after subsection (j):

(k) to provide counselling services.

Section 38 of Part 7 of Record of Decision – CMOH Order 42-2020 is rescinded and the following is substituted in its place:

38(1) Subject to section 39 of this Order, all persons are prohibited from participating in an outdoor group physical activity, including but not limited to games of hockey where:

(a) maintaining a minimum physical distance of 2 metres between all participants at all times is not possible;

(b) the outdoor group physical activity includes more than 10 persons.

(2) For greater clarity, a person may participate in an outdoor group physical activity consisting of less than 10 persons if a minimum physical distance of 2 metres between all participants is maintained at all times.

s. CMOH Order 01-2021

25. A person may attend a location where any business or entity is operating, except a business or entity that is listed or described in sections 1, 2 and 3 of the Appendix A.

26. For greater certainty, any business or entity other than a business or entity listed or described in sections 1, 2 and 3 of the Appendix A is permitted to offer or provide goods and services to members of the public at a location that is accessible to the public.

27. Subject to section 28, an operator of a business or entity listed or described in sections 1, 2 and 3 of the Appendix A must ensure that the place of business or entity is closed to the public.

28. Section 27 of this Order does not prevent a place of business or entity listed or described in section 1 of the Appendix A from being used:

(a) to provide health care services;

(b) to provide child care services;

(c) for elections purposes and related activities;

(d) to undertake jury selections and jury trials;

(e) as a shelter for vulnerable persons;

(f) as a place of worship;

(g) as an indoor market;

(h) as a location for blood donation and collection activities;

(i) as a location for mutal support meetings;

(j) as a location for charitable activities but not limited to food, clothing and toy collection and distributions;

(k) to provide counselling services.

29. An operator of a business or entity listed or described in section 4 of the Appendix A must limit the number of members of the public that may attend the location where the business or entity is operating to the greater of

(a) 15% of the total operation occupant load as determined in accordance with the Alberta Fire Code and the fire authority having jurisdiction; or

(b) five persons.

30. An operator of a business or entity listed or described in sections 5, 6, 7 and 8 of the Appendix A must schedule an appointment with a person prior to the person attending the location where the business or entity is operating in order to provide the person with services.

31. Despite sections 25 and 27 of this Order,

(a) a member of the public may attend a food-serving business or entity that offers or provides dine-in services, including but not limited to a restaurant, café, bar or pub, only for the purposes of purchasing food or beverages to be consumed offsite; and

(b) an operator of a food-serving business or entity, including but not limited to a restaurant, café, bar or pub, may operate only to the extent necessary to offer and provide members of the public food or beverages by take-out, delivery or drive-thru.

t. CMOH Order 02-2021

3. Subject to sections 4 and 5 of this Order, a person who resides in a private residence must not permit a person who does not normally reside in that residence to enter or remain in the residence.

13. Subject to section 15 of this Order, all persons are prohibited from attending a private social gathering at an outdoor private place or public place where 11 or more persons are in attendance at the private social gathering.

14. Despite anything in Part 2 of this Order, a private social gathering of 10 persons or less may occur at an indoor or outdoor public or private place for the purposes of a wedding ceremony.

15. Despite anything in Part 2 of this Order and section 13 of this Order, a private social gathering of 20 persons or less may occur at an indoor or outdoor public or private place for the purposes of a funeral service.

16. For greater certainty, a private social gathering as described in sections 14 and 15 of this Order does not permit a gathering for the purposes of a funeral or wedding reception.

18. A faith leader may conduct a worship service at a place of worship, if the number of persons who attend the worship service at the place of worship is limited to 15% of the total operational occupant load as determined in accordance with the Alberta Fire Code and the fire authority having jurisdiction.

23. For the purpose of Part 5 of this Order, a “face mask” means a medical or non-medical mask or other covering that covers a person’s nose, mouth and chin.

34. An operator of a food-serving business or entity that offers or provides dine-in services, including but not limited to a restaurant, café, bar or pub must limit the number of persons seated at the same table to a maximum of six persons.

35. A person who attends a food-serving business or entity that offers or provides dine-in services, including but not limited to a restaurant, café, bar or pub, where a person is served food and beverages while seated must provide the following contact

information to the operator or a designate prior to receiving any dine-in food or beverage services:

(a) their first and last name;

(b) their phone number; and

(c) the date and time the person attended the food serving business or entity.

36. An operator of a food-serving business or entity described in section 35 of this Order must retain the contact information provided by a person under section 35 of this Order for 28 days following the person's attendance at the food serving business or entity.

37. An operator of a food-serving business or entity that offers or provides dine-in services, including but not limited to a restaurant, café, bar or pub is prohibited from offering or providing any of the following entertainment or activities to persons who attend the food-serving business or entity:

(a) live performances of any kind including musical, comedic and theatrical performances;

(b) billard, arcade, video or dart games;

(c) access to video lottery terminals.

38. An operator of a business or entity with a Class A or C liquor licence, including but not limited to restaurants, bars, lounges, pubs, cafes, legions or private clubs is prohibited from

(a) serving liquor after 10 p.m., and

(b) providing dine-in food or beverage services or allowing persons to remain seated to consume food or beverages after 11 p.m.

39. An operator of a business or entity with a Gaming Licence or Facility Licence or a Class B liquor licence, including but not limited to bowling alleys, casinos, bingo halls, pool halls and indoor recreation entertainment centers is prohibited from

(a) serving liquor after 10 p.m., and

(b) providing dine-in food or beverage services or allowing persons to remain seated to consume food or beverages after 11 p.m.

40. Despite anything in Part 7 of this Order, an operator of a business or entity listed or described in section 3 of Appendix A that offers or provides dine-in food or beverage services may operate to the extent necessary to offer or provide dine-in food or beverage services.

41. For greater certainty, an operator of a food-serving business or entity, including but not limited to a restaurant, café, bar or pub, may provide food or beverages by take-out, delivery or drive-thru after 11 p.m.

42. Subject to section 43, an operator of a business or entity listed or described in sections 1, 2 and 3 of Appendix A must ensure that the place of business or entity is closed to the public.

43. Section 42 of this Order does not prevent a place of business or entity listed or described in sections 1, 2 and 3 of the Appendix A from being used:

(a) to provide health care services;

(b) to provide child care services;

(c) for elections purposes and related activities;

(d) to undertake jury selections and jury trials;

(e) as a shelter for vulnerable persons;

(f) as a place of workship;

(g) as an indoor market;

(h) as a location for blood donation and collection activities;

(i) as a location for mutual support meetings;

(j) as a location for charitable activities including but not limited to food, clothing and toy collection and distribution;

(k) to provide counselling services;

(m) to provide Federal Mediation and Conciliation services;

(n) as a location for professional or other certification activities, including but not limited to recertification training or exams;

(o) to provide a location for group physical activity to occur;

(p) as a location for the exclusive use of a person and any member of their household.

44. An operator of a business or entity listed or described in section 4 of Appendix A must limit the number of member of the public that may attend the location where the business or entity is operating to the greater of

(a) 15% of the total operation occupant load as determined in accordance with the Alberta Fire Code and the fire authority having jurisdiction; or

(b) five persons.

45. An operator of a business or entity listed or described in sections 5, 6, 7, 8 and 9 of Appendix A must schedule an appointment with a person prior to the person attending the location where the business or entity is operating in order to provide the person with services.

46. An operator of a business or entity described in section 9 of Appendix A must ensure that any indoor physical activity that occurs at the place of business or entity complies with the requirements in Part 8 of this Order.

47. All persons are prohibited from engaging in solo physical activity at a business or entity that is described in section 9 of Appendix A.

54. An operator of a business or entity described in section 9 of Appendix A must ensure:

(a) there is at least three metres distance between any groups of persons who are participating in physical activity as described in section 50 of this Order from any other groups of persons who are also participating in physical activity at the place of business or entity; and

(b) any groups of persons who are participating in physical activity as described in section 50 of this Order do not interact with any other groups of persons who are also participating in physical activity at the place of business or entity.

57. Subject to section 59 and 60 of this Order, all persons are prohibited from participating in an outdoor group physical activity, including but not limited to games of hockey, where:

(a) maintaining a minimum physical distance of two metres between all participants at all times is not possible;

(b) the outdoor group physical activity includes more than 10 persons.

69. Subject to section 70 and 71 of this Order, all persons are prohibited from participating in an outdoor group performance activity of more than 10 persons.

u. CMOH Order 04-2021

31. For the purposes of Part 6 of this Order,

(a) "Class A, B or C liquor licence" has the same meaning given to it under the *Gaming Liquor and Cannabis Regulation*, AR 143/96, under the *Gaming, Liquor and Cannabis Act*.

(b) "Gaming Licence" has the same meaning given to it under the *Gaming, Liquor and Cannabis Regulation*, AR 143/96, under the *Gaming, Liquor and Cannabis Act*.

(c) "Facility Licence" has the same meaning given to it under the *Gaming, Liquor and Cannabis Regulation*, AR 143/96, under the *Gaming, Liquor and Cannabis Act*.

32. Subject to section 33 of this Order, a person who attends a food-serving business or entity that offers or provides dine-in services, including but not limited to a restaurant, café, bar or pub, may eat or drink alone or with other persons who are members of their household.

33. A person who resides on their own and who attends a food-serving business or entity that offers or provides dine-in services, including but not limited to a restaurant, café, bar or pub, may eat or drink alone or with one or both of the two other persons with whom they regularly interact and who may attend at their private residence in accordance with section 5 of this Order.

34. An operator of a food-serving business or entity that offers or provides dine-in services, including but not limited to a restaurant, café, bar or pub must limit the number of persons seated at the same table to a maximum of six persons.

35. A person who attends a food-serving business or entity that offers or provides dine-in services, including but not limited to a restaurant, café, bar or pub, where a person is served food and beverages while seated must provide the following contact information to the operator or a designate prior to receiving any dine-in food or beverage services:

(a) their first and last name;

(b) their phone number; and

(c) the date and time the person attended the food serving business or entity.

36. An operator of a food-serving business or entity described in section 35 of this Order must retain the contact information provided by a person under section 35 of this Order for 28 days following the person's attendance at the food serving business or entity.

37. An operator of a food-serving business or entity that offers or provides dine-in services, including but not limited to a restaurant, café, bar or pub is prohibited from offering or providing any of the following entertainment or activities to persons who attend the food-serving business or entity:

(a) live performances of any kind including musical, comedic and theatrical performances;

(b) billiard, arcade, video or dart games;

(c) access to video lottery terminals.

38. An operator of a business or entity with a Class A or C liquor licence, including but not limited to restaurants, bars, lounges, pubs, cafes, legions or private clubs is prohibited from

(a) serving liquor after 10 p.m., and

(b) providing dine-in food or beverage services or allowing persons to remain seated to consume food or beverages after 11 p.m.

39. An operator of a business or entity with a Gaming Licence or Facility Licence or a Class B liquor licence, including but not limited to bowling alleys, casinos, bingo halls, pool halls and indoor recreation entertainment centers is prohibited from

(a) serving liquor after 10 p.m., and

(b) providing dine-in food or beverage services or allowing persons to remain seated to consume food or beverages after 11 p.m.

40. Despite anything in Part 7 of this Order, an operator of a business or entity listed or described in section 3 of Appendix A that offers or provided dine-in food or beverage services ma operate to the extent necessary to offer or provide dine-in food or beverage services.

41. For greater certainty, an operator of a food-serving business or entity, including but not limited to a restaurant, café, bar or pub, may provide food or beverages by take-out, delivery or drive-thru after 11 p.m.

42. Subject to section 43 of this Order, an operator of a business or entity listed or described in sections 1, 2 and 3 of Appendix A must ensure that the place of business or entity is closed to the public.

43. Section 42 of this Order does not prevent a place of business or entity listed or described in sections 1 and 3 of Appendix A from being used:

(a) to provide health care services;

(b) to provide child care services;

(c) for elections purposes and related activities;

(d) to undertake jury selections and jury trials;

(e) as a shelter for vulnerable persons;

(f) as a place of worship;

(g) as an indoor market;

(h) as a location for blood donation and collection activities to occur;

(i) as a location for mutual support meetings to occur;

(j) as a location for charitable activities including but not limited to food, clothing and toy collection and distribution to occur;

(k) to provide counselling services;

(l) to provide consular services;

(m) to provide Federal Mediation and Conciliation services;

(n) as a location for educational, professional or employment examination or certification activities, including but not limited to a location where recertification training or exams may occur;

(o) as a location for the exclusive use of a person and any member of their household;

(p) as a location for a wedding ceremony or funeral service to occur.

44. An operator of a business or entity listed or described in section 4 of Appendix A must limit the number of members of the public that may attend the location where the business or entity is operating to the greater of

(a) 15% of the total operational occupant load as determined in accordance with the Alberta Fire Code and the fire authority having jurisdiction; or

(b) five persons.

45. An operator of a business or entity listed or described in sections 5, 6, 7, 8 and 9 of Appendix A must schedule an appointment with a person prior to the person attending the location where the business or entity is operating in order to provide the person with services.

46. Despite anything in the Part of this Order, an operator of any business or entity may operate to the extent necessary to offer or provide a location for a physical activity to occur.

51. An operator of a business or entity described in section 9 of Appendix A must ensure that any physical activity that occurs at the place of business or entity complies with the requirements of Part 8 of this Order.

52. An operator of a business or entity described in section 9 of Appendix A must ensure there is at least three metres distance between any individual or any group of persons who are participating in physical activity from any other individual or any other group of persons who are also participating in physical activity at the place of business or entity.

53. An operator of a business or entity described in section 9 of Appendix A must ensure that any individual or any group of persons who are participating in physical activity do not interact with any other individual or any other group of persons who are also participating in physical activity at the place of business or entity.

54. Subject to section 59 of this Order, no person may attend an indoor location of a business or entity described in section 9 of Appendix A for the purposes of observing a physical activity.

55. No more than 10 persons may attend an outdoor location of a business or entity described in section 9 of Appendix A for the purposes of observing an outdoor physical activity.

56. A person attending an outdoor location of a business or entity described in section 9 of Appendix A for the purposes of observing outdoor physical activity must maintain a minimum physical distance of two metres from any other person observing the outdoor physical activity, unless the other person is a member of their household.

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42. Subject to section 43 of this Order, an operator of a business or entity listed or described in sections 1 and 2 of Appendix A must ensure that the place of business or entity is closed to the public.

43. Section 42 of this Order does not prevent a place of business or entity listed or described in section 2 of Appendix A from being used:

(a) to provide health care services;

(b) to provide child care services;

(c) for elections purposes and related activities;

(d) to undertake jury selections and jury trials;

(e) as a shelter for vulnerable persons;

(f) as a place of worship;

(g) as an indoor market;

(h) as a location for blood donation and collection activities to occur;

(i) as a location for mutual support meetings to occur;

(j) as a location for charitable activities including but not limited to food, clothing and toy collection and distribution to occur;

(k) to provide counselling services;

(l) to provide consular services;

(m) to provide Federal Mediation and Conciliation services;

(n) as a location for educational, professional or employment examination or certification activities, including but not limited to a location where recertification training or exams may occur;

(o) as a location for the exclusive use of a person and any member of their household;

(p) as a location for a wedding ceremony or funeral service to occur.

44. An operator of a business or entity listed or described in section 3 of Appendix A must limit the number of members of the public that may attend the location where the business or entity is operating to the greater of

(a) 25% of the total operational occupant load as determined in accordance with the Alberta Fire Code and the fire authority having jurisdiction; or

(b) five persons.

44.1 An operator of a business or entity listed or described in section 4 of Appendix A must limit the number of members of the public that may attend the location where the business or entity is operating to the greater of

(a) 15% of the total operational occupant load as determined in accordance with the Alberta Fire Code and the fire authority having jurisdiction; or

(b) five persons.

45. An operator of a business or entity listed or described in sections 5, 6, 7, 8, 9 and 10 of Appendix A must schedule an appointment with a person prior to the person attending the location where the business or entity is operating in order to provide the person with services.

45.1 An operator of a business or entity listed or described in section 10 of Appendix A may operate only to the extent necessary to

(a) offer or provide a location for a person to host a virtual event, or

(b) be used for a purpose listed in section 43 of this Order.

45.2 Subject to section 45.3 of this Order, no person may attend an indoor location of a business or entity that is listed or described in section 10 of Appendix A for the purposes of observing a virtual event/

45.3 A person may attend an indoor location of a business or entity listed or described in section 10 of Appendix A to observe a wedding ceremony or funeral service which is both an in-person wedding or funeral and a virtual event, if the number of persons in attendance

(a) at the wedding ceremony does not exceed 10 persons including any person providing production or technical support, and

(b) at the funeral service does not exceed 20 persons including any person providing production or technical support.

45.4 Subject to section 45.5 of this Order, a person who participates in a virtual event

(a) must wear a face mask while participating in the virtual event, and

(b) must maintain a minimum physical distance of three metres from any person participating in the virtual event.

45.5 A person who attends an indoor location of a business or entity listed or described in section 10 of Appendix A to observe a wedding ceremony or a funeral service which is both an in-person wedding or funeral and a virtual event must maintain a minimum physical distance of two metres from any

person participating in the virtual event, unless the other person is a member of their household.

45.6 A person may provide production or technical support, including but not limited to audiovisual or lighting support, for a virtual event.

45.7 Any person who provides production or technical support, including but not limited to audiovisual or lighting support, for a virtual event

> (c) must wear a face mask while providing production or technical support, and
>
> (d) must maintain a minimum physical distance of three metres from any person participating in the virtual event other than any person providing production or technical support.

46. Despite anything in this Part of this Order, an operator of any business or entity may operate to the extent necessary to offer or provide a location for a physical activity, performance activity or youth group recreational activity to occur.

51. An operator of a business or entity described in section 9 of Appendix A must ensure that any physical activity that occurs at the place of business or entity complies with the requirements in Part 8 of this Order.

52. An operator of a business or entity described in section 9 of Appendix A must ensure there is at least three metres distance between any individual or any group of persons who are participating in physical activity at the place of business or entity.

53. An operator of a business or entity described in section 9 of Appendix A must ensure that any individual or any group of persons who are participating in physical activity do not interact with any other individual or any other group of persons who are also participating in physical activity at the place of business or entity.

54. Subject to section 59 of this Order, no person may attend an indoor location of a business or entity described in section

9 of Appendix A for the purposes of observing a physical activity.

55. No more than 10 persons may attend an outdoor location of a business or entity described in section 9 of Appendix A for the purposes of observing an outdoor physical activity.

56. A person attending an outdoor location of a business or entity described in section 9 of Appendix A for the purposes of observing outdoor physical activity must maintain a minimum physical distance of two metres from any other person observing the outdoor physical activity, unless the other person is a member of their household.

69. An operator of a business or entity described in section 9 of Appendix A must ensure that any performance activity that occurs at the place of business or entity complies with the requirements in Part 9 of this Order.

70. For greater certainty, a performance activity includes but is not limited to, singing, playing a musical instrument, dancing, acting, and any rehearsal or theatrical performance.

71. An operator of a business or entity described in section 9 of Appendix A must ensure there is at least three metres distance between any individual or any group of persons who are participating in a performance activity from any other individual or any other group of persons who are also participating in a performance activity at the place of business or entity.

72. An operator of a business or entity described in section 9 of Appendix A must ensure that any individual or any group of persons who are participating in a performance activity do not interact with any other individual or any other group of persons who are also participating in a performance activity at the place of business or entity.

78. Except in accordance with this Part of this Order, all persons are prohibited from participating in a performance activity at a location where a business or entity that is described in section 9 of Appendix A is operating.

79. A person may participate in the following types of performance activity at a location where a business or entity that is described in section 9 of Appendix A is operating

(a) a solo performance activity, and

(b) a group performance activity.

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34. An operator of a food-serving business or entity that offers or provides dine-in services, including but not limited to a restaurant, café, bar or pub must limit the number of persons seated at the same table to a maximum of six persons.

35. A person who attends a food-serving business or entity that offers or provides dine-in services, including but not limited to a restaurant, café, bar or pub, where a person is served food and beverages while seated most provide the following contact information to the operator or a designate prior to receiving any dine-in food or beverage services:

(a) their first and last name;

(b) their phone number; and

(c) the date and time the person attended the food serving business or entity.

36. An operator of a food-serving business or entity described in section 35 of this Order must retain the contact information provided by a person under section 35 of this Order for 28 days following the person's attendance at the food serving business or entity.

37. An operator of a food-serving business or entity that offers or provides dine-in services, including but not limited to a restaurant, café, bar or pub is prohibited from offering or providing any of the following entertainment or activities to persons who attend the food-serving business or entity:

(a) live performances of any kind including musical, comedic and theatrical performances;

(b) billiard, arcade, video or dart games;

(c) access to lottery terminals.

38. An operator of a business or entity with a Class A or C liquor licence, including but not limited to restaurants, bars, lounges, pubs, cafes, legions or private clubs is prohibited from

(a) serving liquor after 10 p.m., and

(b) providing dine-in food or beverage services or allowing persons to remain seated to consume food or beverages after 11 p.m..

39. An operator of a business or entity with a Gaming Licence or Facility Licence or a Class B liquor licence, including but not limited to bowling alleys, casinos, bingo halls, pool halls and indoor recreation entertainment centres is prohibited from

(a) serving liquor after 10 p.m., and

(b) providing dine-in food or beverage services or allowing persons to remain seated to consume food or beverages after 11 p.m..

40. Despite anything in Part 7 of this Order, an operator of a business or entity listed or described in section 3 of Appendix A that offers or provides dine-in food or beverage services may operate to the extent necessary to offer or provide dine-in food or beverage services.

41. For greater certainty, an operator of a food-serving business or entity, including but not limited to a restaurant, café, bar or pub, may provide food or beverages by take-out, delivery or drive-thru after 11 p.m..

42. Subject to section 43, an operator of a business or entity listed or described in sections 1, 2 and 3 of Appendix A must ensure that the place of business or entity is closed to the public.

43. Section 42 of this Order does not prevent a place of business or entity listed or described in sections 1 and 3 of Appendix A rom being used:

(a) to provide health care services;

(b) to provide child care services;

(c) for elections purposes and related activities including voting and tabulating purposes;

(d) to undertake jury selections and jury trials;

(e) as a shelter for vulnerable persons;

(f) as a place of worship;

(g) as an indoor market;

(h) as a location for blood donation and collection activities;

(i) as a location for charitable activities including but not limited to food, clothing and toy collection and distribution;

(k) to provide counselling services;

(l) to provide consular services;

(m) to provide Federal Mediation and Conciliation services;

(n) as a location for educational professional or employment examination or certification activities, including but not limited to a location where recertification training or exams may occur;

(o) to provide a location for group physical activity, group performance activity and youth recreation activity to occur;

(p) as a location for the exclusive use of a person and any member of their household;

(q) as a location for a wedding ceremony or funeral service to occur.

44. An operator of a business or entity listed or described in section 4 of Appendix A must limit the number of members of the public that may attend the location where the business or entity is operating to the greater of

(a) 15% of the total operational occupant load as determined in accordance with the Alberta Fire Code and the fire authority having jurisdiction; or

(b) five persons.

45. An operator of a business or entity listed or described in sections 5, 6, 7, 8 and 9 of Appendix A must schedule an appointment with a person prior to the person attending the location where the business or entity is operating in order to provide the person with services.

50. An operator of a business or entity described in section 9 of Appendix A must ensure that any physical activity that occurs at the place of business or entity complies with the requirements in Part 8 of this Order.

51. An operator of a business or entity described in section 9 of Appendix A must ensure

(a) there is at least three metres distance between any person or any group of persons who are participating in physical activity from any other person or any other group of persons who are also participating in physical activity at the place of business or entity; and

(b) any group of persons who are participating in an indoor youth group physical activity as described in section 64 of this Order, occupy a separate playing surface (including arenas, fields, courts, pools and other similar areas) from any other group of persons who are also participating in an indoor youth group physical activity at the place of business or entity.

52. An operator of a business or entity described in section 9 of Appendix A must ensure that any person or any group of persons who are participating in physical activity do not interact with any other person or any other group of persons who are also participating in physical activity at the place of business or entity.

53. Subject to section 58 of this Order, no person may attend an indoor location of a business or entity described in section

9 of Appendix A for the purposes of observing a physical activity.

54. No more than 10 persons may attend an outdoor location of a business or entity described in section 9 of Appendix A for the purposes of observing an outdoor physical activity.

69. An operator of a business or entity described in section 9 of Appendix A must ensure that any performance activity that occurs at the place of business or entity complies with the requirements in Part 9 of this Order.

70. For greater certainty, a performance activity includes but is not limited to, singing, playing a musical instrument, dancing, acting, and any rehearsal or theatrical performance.

71. An operator of a business or entity described in section 9 of Appendix A must ensure

> (a) there is at least three metres between any person or any group of persons who are participating in a performance activity from any other person or any other group of persons who are also participating in a performance activity at the place of business or entity; and
>
> (b) any group of persons who are participating in an indoor youth group performance activity in this Part of the Order occupy a separate performance space from any other group of persons who are also participating in an indoor youth group performance activity at the place of business or entity.

72. An operator of a business or entity described in section 9 of Appendix A must ensure that any person or any group of persons who are participating in a performance activity do not interact with any other person or any other group of persons who are also participating in a performance activity at the place of business or entity.

73. Subject to section 74 of this Order, no persons may attend an indoor location of a business or entity described in section 9 of Appendix A for the purposes of observing an indoor performance activity.

85. An operator of a business or entity described in section 9 of Appendix A must ensure that any youth group recreational activity that occurs at the place of business or entity complies with the requirements in Part 9.1 of this Order.

86. An operator of a business or entity described in section 9 of Appendix A must ensure there is at least three metres distance between any group of persons who are participating in a youth group recreational activity from any other group of persons who are also participating in a youth group recreational activity at the place of business or entity.

87. An operator of a business or entity described in section 9 of Appendix A must ensure that any group of persons who are participating in an indoor youth group recreational activity, as described in this Part of this Order, occupy a separate recreational space from any other group of persons who are also participating in an indoor youth group recreational activity at the place of business or entity.

x. CMOH Order 09-2021

Effective April 8, 2021, the following sections of Record of Decision – CMOH Order 08-2021 are rescinded

Section 51(b);

Section 71(b); and

Section 87

y. CMOH Order 10-2021

6.7 An operator of a food-serving business or entity who provides outdoor food and beverage services must retain the contact information provided by a person under section 6.6 of this Order for 28 days following the person's attendance at the food-serving business or entity.

6.8 An operator of a food-serving business or entity that offers or provides outdoor food and beverage services is prohibited from offering or providing any of the following entertainment or activities to persons who attend the food-serving business or entity:

(a) live performances of any kind including musical, comedic and theatrical performances;

(b) billiard, arcade, video or dart games;

(c) access to video lottery terminals.

6.9 An operator of a business or entity with a Class A or C liquor licence, including but not limited to restaurants, bars, lounges, pubs, cafes, legions or private clubs is prohibited from

(a) serving liquor after 10 p.m., and

(b) providing outdoor food and beverage services or allowing persons to remain seated to consume food or beverages after 11 p.m..

6.10 An operator of a business or entity with a Gaming Licence or Facility Licence or a Class B liquor licence, including but not limited to bowling alleys, casinos, bingo halls, pool halls and indoor recreation entertainment centres is prohibited from

(a) serving liquor after 10 p.m., and

(b) providing outdoor food and beverage services or allowing persons to remain seated to consume food or beverages after 11 p.m.

6.11 Despite anything in Part 7 of this Order, an operator of a business or entity listed or described in section 3 of Appendix A that offers or provides outdoor food and beverage services may operate to the extent necessary to offer or provide outdoor food and beverage services.

6.12 For greater certainty, an operator of a food-serving business or entity may provide food or beverages by take-out, delivery or drive-thru at any time, including after 11 p.m.

7.1 Subject to section 7.2, an operator of a business or entity listed or described in sections 1, 2 and 3 of Appendix A must ensure that the place of business or entity is closed to the public.

7.2 Section 7.1 of this Order does not prevent a place of business or entity listed or described in sections 1 and 3 of Appendix A from being used:

(a) to provide health care services;

(b) to provide child care services;

(c) for elections purposes and related activities including voting and tabulating purposes;

(d) to undertake jury selections and jury trials;

(e) as a shelter for vulnerable persons;

(f) as a place of worship;

(g) as an indoor market;

(h) as a location for blood donation and collection activities;

(i) as a location for charitable activities including but not limited to food, clothing and toy collection and distribution;

(k) to provide counselling services;

(l) to provide consular services;

(m) to provide Federal Mediation and Conciliation services;

(n) as a location for educational professional or employment examination or certification activities, including but not limited to a location where recertification training or exams may occur;

(o) to provide a location for group physical activity, group performance activity and youth recreation activity to occur;

(p) as a location for the exclusive use of a person and any member of their household;

(q) as a location for a wedding ceremony or funeral service to occur.

7.3 An operator of a business or entity listed or described in section 4 of Appendix A must limit the number of members of the public that may attend the location where the business or entity is operating to the greater of

(a) 15% of the total operational occupant load as determined in accordance with the Alberta Fire Code and the fire authority having jurisdiction; or

(b) five persons.

7.4 An operator of a business or entity listed or described in sections 5, 6, 7, 8 and 9 of Appendix A must schedule an appointment with a person prior to the person attending the location where the business or entity is operating in order to provide the person with services.

8.5 An operator of a business or entity described in section 9 of Appendix A must ensure that any physical activity that occurs at the place of business or entity complies with the requirements in Part 8 of this Order.

8.6 An operator of a business or entity described in section 9 of Appendix A must ensure there is at least three metres distance between any person or any group of persons who are participating in physical activity from any other person or any other group of persons who are also participating in physical activity at the place of business or entity.

8.7 An operator of a business or entity described in section 9 of Appendix A must ensure that any person or any group of persons who are participating in physical activity do not interact with any other person or any other group of persons who are also participating in physical activity at the place of business or entity.

9.2 An operator of a business or entity described in section 9 of Appendix A must ensure that any performance activity that occurs at the place of business or entity complies with the requirements in Part 9 of this Order.

9.3 For greater certainty, a performance activity includes but is not limited to singing, playing a musical instrument, dancing, acting, and any rehearsal or theatrical performance.

9.4 An operator of a business or entity described in section 9 of Appendix A must ensure there is at least three metres distance between any person or any group of persons who are participating in a performance activity from any other person or any other group of persons who are also participating in a performance activity at the place of business or entity.

9.5 An operator of a business or entity described in section 9 of Appendix A must ensure that any person or any group of persons who are participating in a performance activity do not interact with any other person or any other group of persons who are also participating in a performance activity at the place of business or entity.

9.6 Subject to section 9.7 of this Order, no persons may attend an indoor location or entity described in section 9 of Appendix A for the purposes of observing an indoor performance activity.

z. CMOH Order 17-2021

9. Subject to sections 10, 11 and 19, an operator of a business or entity listed or described in sections 2 or 3 of Appendix A of this Order must ensure that the place of business or entity is closed to the public.

10. Section 9 of this Order does not prevent a place of business or entity listed or described in sections 2 or 3 of Appendix A from being used

(a) to provide health care services;

(b) to provide child care services;

(c) for elections purposes and related activities including voting and tabulating purposes;

(d) to undertake jury selections and jury trials;

(e) as a shelter for vulnerable persons;

(f) as a place of worship;

(g) as an indoor market;

(h) as a location for blood donation and collection activities;

(i) as a location for charitable activities including but not limited to food, clothing and toy collection and distribution;

(k) to provide counselling services;

(l) to provide consular services;

(m) to provide Federal Mediation and Conciliation services;

(n) as a location for educational professional or employment examination or certification activities, including but not limited to a location where recertification training or exams may occur;

(o) to provide a location for group physical activity, group performance activity and youth recreation activity to occur;

(p) as a location for the exclusive use of a person and any member of their household;

(q) as a location for a wedding ceremony or funeral service to occur.

11. Despite sections 9 and 10 a hotel pool, hot tub, sauna or steam room may be used as a location for the exclusive use of a person and any member of their household.

12. No person may attend an indoor location of a business or entity described in section 2 or 3 of Appendix A for the purposes of participating in a physical activity.

13. An operator of a business or entity described in section 2 or 3 of Appendix A is prohibited from offering or providing services to or a location for persons to participate in indoor physical activity.

14. No person may attend an indoor location of a business or entity described in section 2 or 3 of Appendix A for the purposes of participating in a performance activity.

15. An operator of a business or entity described in section 2 or 3 of Appendix A is prohibited from offering or providing services to or a location for persons to participate in a performance activity.

16. No youth may attend an indoor location of a business or entity described in section 2 or 3 of Appendix A for the purposes of participating in a youth group recreational activity.

17. An operator of a business or entity described in section 2 or 3 of Appendix A is prohibited from offering or providing services to or a location for youth to participate in indoor youth group recreational activity.

aa. CMOH Order 14-2021

3. Despite Parts 5, 8, 9 and 10 of CMOH Order 12-2021, an operator of a business or entity described in section 9 of Appendix A in CMOH Order 12-2021 is prohibited from offering or providing a location for group indoor activities or the following services in an area listed at section 1 of Appendix A of this Order:

(a) indoor group physical activity to youths enrolled in grades seven through twelve at a school;

(b) indoor group performance activity to youths enrolled in grades seven through twelve in a school; and

(c) indoor youth group recreational activity to youths enrolled in grades seven through twelve at a school.

bb. CMOH Order 12-2021

5.1 Subject to section 5.2, an operator of a business or entity listed or described in sections 1, 2 and 3 of Appendix A must ensure that the place of business or entity is closed to the public.

5.2 Section 5.1 of this Order does not prevent a place of business or entity listed or described in sections 1 and 3 of Appendix A from being used:

(a) to provide health care services;

(b) to provide child care services;

(c) for elections purposes and related activities including voting and tabulating purposes;

(d) to undertake jury selections and jury trials;

(e) as a shelter for vulnerable persons;

(f) as a place of worship;

(g) as an indoor market;

(h) as a location for blood donation and collection activities;

(i) as a location for charitable activities including but not limited to food, clothing and toy collection and distribution;

(k) to provide counselling services;

(l) to provide consular services;

(m) to provide Federal Mediation and Conciliation services;

(n) as a location for educational professional or employment examination or certification activities, including but not limited to a location where recertification training or exams may occur;

(o) to provide a location for group physical activity, group performance activity and youth recreation activity to occur;

(p) as a location for the exclusive use of a person and any member of their household;

(q) as a location for a wedding ceremony or funeral service to occur.

5.3 An operator of a business or entity listed or described in section 4 of Appendix A must limit the number of members of the public that may attend the location where the business or entity is operating to the greater of:

(a) 15% of the total operational occupant load as determined in accordance with the Alberta Fire Code and the fire authority having jurisdiction; or

(b) five persons.

5.4 An operator of a business or entity listed or described in sections 5, 6, 7, 8 and 9 of Appendix A must schedule an appointment with a person prior to the person attending the location where the business or entity is operating in order to provide the person with services.

6.2 An operator of a food-serving business or entity is prohibited from offering or providing indoor food and beverage services.

6.5 An operator of a food-serving business or entity that offers or provides outdoor food and beverage services must

(a) limit the number of persons seated at the same table to a maximum of six persons; and

(b) require persons to remain seated while consuming food or beverages and must prohibit persons seated at a table from interacting with persons seated at a different table.

6.7 An operator of a food-serving business or entity who provides outdoor food and beverage services must retain the contact information provided by a person under section 6.6 of this Order for 28 days following the person's attendance at the food-serving business or entity.

6.8 An operator of a food-serving business or entity that offers or provides outdoor food and beverage services is prohibited from offering or providing any of the following entertainment

or activities to persons who attend the food-serving business or entity:

(a) live performances of any kind including musical, comedic and theatrical performances;

(b) billiard, arcade, video or dart games; or

(c) access to video lottery terminals.

6.9 An operator of a business or entity with a Class A or C liquor licence, including but not limited to restaurants, bars, lounges, pubs, cafes, legions or private clubs is prohibited from:

(a) serving liquor after 10 p.m., and

(b) providing outdoor food and beverage services or allowing persons to remain seated to consume food or beverages after 11 p.m.

6.10 An operator of a business or entity with a Gaming Licence or Facility Licence or a Class B liquor licence, including but not limited to bowling alleys, casinos, bingo halls, pool halls and indoor recreation entertainment centers is prohibited from:

(a) serving liquor after 10 p.m., and

(b) providing outdoor food and beverage services or allowing persons to remain seated to consume food or beverages after 11 p.m.

6.11 Despite anything in Part 5 of this Order, an operator of a business or entity listed or described in section 3 of Appendix A that offers or provides outdoor food and beverage services may operate to the extent necessary to offer or provide outdoor food and beverage services,

6.12 For greater certainty, an operator of a food-serving business or entity may provide food or beverages by take-out, delivery or drive-thru at any time, including after 11 p.m..

8.5 An operator of a business or entity described in section 9 of Appendix A must ensure that any physical activity that

occurs at the place of business or entity complies with the requirements in Part 8 and Part 11 of this Order.

8.6 An operator of a business or entity described in section 9 of Appendix A must ensure there is at least three metres distance between any person or any group of persons who are participating in physical activity from any other person or any other group of persons who are also participating in physical activity at the place of business or entity.

8.7 An operator of a business or entity described in section 9 of Appendix A must ensure that any person or any group of persons who are participating in physical activity do not interact with any other person or any other group of persons who are also participating in physical activity at the place of business or entity.

9.2 an operator of a business or entity described in section 9 of Appendix A must ensure that any performance activity that occurs at the place of business or entity complies with the requirements in Part 9 and Part 11 of this Order.

9.3 For greater certainty, a performance activity includes but is not limited to singing, playing a musical instrument, dancing, acting, and any rehearsal or theatrical performance.

9.4 An operator of a business or entity described in section 9 of Appendix A must ensure there is at least three metres distance between any person or any group of persons who are participating in a performance activity from any other person or any other group of persons who are also participating in a performance activity at the place of business or entity.

9.5 An operator of a business or entity described in section 9 of Appendix A must ensure that any person or any group of persons who are participating in a performance activity do not interact with any other person or any other group of persons who are also participating in a performance activity at the place of business or entity.

10.3 An operator of a business or entity described in section 9 of Appendix A must ensure that any youth group recreational activity that occurs at the place of business or entity complies with the requirements in Part 10 and Part 11 of this Order.

10.4 An operator of a business or entity described in section 9 of Appendix A must ensure there is at least three metres distance between any group of persons who are participating in youth group recreational activity from any other group of persons who are also participating in a youth group recreational activity at the place of business or entity.

cc. CMOH Order 19-2021

5.1 Subject to section 5.2, an operator of a business or entity listed or described in sections 1, 2, 3, 4 and 5 of Appendix A must ensure that the place of business or entity is closed to the public.

5.2 Despite section 5.1, an operator of a business or entity listed or described in section 5 of Appendix A that provides kinesiology or massage therapy may provide kinesiology or massage therapy by appointment only.

5.3 Section 5.1 of this Order does not prevent a place of business or entity listed or described in sections 1 and 3 of Appendix A from being used:

(a) to provide health care services;

(b) to provide child care services;

(c) for elections purposes and related activities including voting and tabulating purposes;

(d) to undertake jury selections and jury trials;

(e) as a shelter for vulnerable persons;

(f) as a place of worship;

(g) as an indoor market;

(h) as a location for blood donation and collection activities;

(i) as a location for mutual support meetings;

(j) as a location for charitable activities including but not limited to food, clothing and toy collection and distribution;

(k) to provide counselling services;

(l) to provide consular services;

(m) to provide Federal Mediation and Conciliation services;

(n) as a location for educational professional or employment examination or certification activities, including but not limited to a location where recertification training or exams may occur;

(o) as a location for a wedding ceremony or funeral service to occur.

5.4 An operator of a business or entity listed or described in section 7 of Appendix A must limit the number of members of the public that may attend the location where the business or entity is operating to the greater of:

(a) 10% of the total operational occupant load as determined in accordance with the Alberta Fire Code and the fire authority having jurisdiction; or

(b) five persons.

5.5 Despite section 5.4, in a shopping mall, the common areas of the shopping mall are not included when determining the total operational occupant load.

5.6 An operator of a business or entity listed or described in sections 8 and 9 of Appendix A must schedule an appointment with a person prior to the person attending the location where the business or entity is operating in order to provide the person with services.

5.7 This Part except sections 5.4 and 5.5 is effective at 11:59 p.m. on May 9, 2021. Section 5.4 and 5.5 are effective May 5, 2021.

5.1.1 Subject to section 5.1.2, an operator of a business or entity listed or described in sections 1, 2 and 3 of Appendix A must ensure that the place of business or entity is closed to the public.

5.1.2 Section 5.1.1 of this Order does not prevent a place of business or entity listed or described in sections 1 and 3 of Appendix A from being used:

(a) to provide health care services;

(b) to provide child care services;

(c) for elections purposes and related activities including voting and tabulating purposes;

(d) to undertake jury selections and jury trials;

(e) as a shelter for vulnerable persons;

(f) as a place of worship;

(g) as an indoor market;

(h) as a location for blood donation and collection activities;

(i) as a location for mutual support meetings;

(j) as a location for charitable activities including but not limited to food, clothing and toy collection and distribution;

(k) to provide counselling services;

(l) to provide consular services;

(m) to provide Federal Mediation and Conciliation services;

(n) as a location for educational, professional or employment examination or certification activities, including but not limited to a location where recertification training or exams may occur;

(o) to provide a location for group physical activity, group performance activity and youth recreational activity to occur; or

(p) as a location for a wedding ceremony or funeral service to occur.

5.1.3 Despite section 5.1.1 and 5.1.2, a hotel pool or hot tub may be used as a location for the exclusive use of a person and any member of their household.

5.1.4 This Part is effective May 5, 2021 and is rescinded on the coming into force of Part 5.

6.3 An operator of a food-serving business or entity is prohibited from offering or providing

(a) indoor food and beverage services; and

(b) outdoor food and beverage services.

6.4 For greater certainty, an operator of a food-serving business or entity may provide food or beverages by take-out, delivery or drive-thru at any time.

6.5 An operator of a food-serving business or entity that offers or provides food and beverage services is prohibited from offering or providing any of the following entertainment or activities to persons who attend the food-serving business or entity:

(a) live performances of any kind including musical, comedic and theatrical performances;

(b) billiard, arcade, video or dart games; or

(c) access to video lottery terminals.

6.1.2 An operator of a food-serving business or entity is prohibited from offering or providing indoor food and beverage services.

6.1.5 An operator of a food-serving business or entity that offers or provides outdoor food and beverage services must:

(a) limit the number of persons seated at the same table to a maximum of six persons for persons who are members of the same household and a maximum of three persons for persons who reside on their own; and

(b) require persons to remain seated while consuming food or beverages and must prohibit persons seated at a

table from interacting with persons seated at a different table.

6.1.7 An operator of a food-serving business or entity who provides outdoor food and beverage services must retain the contact information provided by a person under section 6.1.6 of this Order for 28 days following the person's attendance at the food-serving business or entity.

6.1.8 An operator of a food-serving business or entity that offers or provides outdoor food and beverage services is prohibited from offering or providing any of the following entertainment or activities to persons who attend the food-serving business or entity:

(a) live performances of any kind including musical, comedic and theatrical performances;

(b) billiard, arcade, video or dart games; or

(c) access to video lottery terminals.

6.1.9 An operator of a business or entity with a Class A or C liquor licence, including but not limited to restaurants, bars, lounges, pubs, cafes, legions or private clubs is prohibited from:

(a) serving liquor after 1o p.m., and

(b) providing outdoor food and beverage services or allowing persons to remain seated to consume food or beverages after 11p.m.

6.1.10 An operator of a business or entity with a Gaming Licence or Facility Licence or a Class B liquor licence, including but not limited to bowling alleys, casinos, bingo halls, pool halls and indoor recreation entertainment centers is prohibited from:

(a) serving liquor after 10 p.m., and

(b) providing outdoor food and beverage services or allowing persons to remain seated to consume food or beverages after 11 p.m.

6.1.11 Despite anything in Part 5.1 of this Order, an operator of a business or entity listed or described in section 3 of Appendix A that offers or provides outdoor food and beverage services may operate to the extent necessary to offer or provide outdoor food and beverage services.

6.1.12 For greater certainty, an operator of a food-serving business or entity may provide food or beverages by take-out, delivery or drive-thru at any time, including after 11 p.m..

8.3 An operator of a physical activity business or entity is prohibited from offering or providing indoor physical activity services.

8.1.4 An operator of a business or entity described in section 10 of Appendix A must ensure that any physical activity that occurs at the place of business or entity complies with the requirements in Part 8.1 of this Order.

9.3 An operator of a performance activity business or entity is prohibited from offering or providing indoor performance activity services.

9.4 For greater certainty, an operator of a performance activity business that solely provides indoor performance activity services must ensure that the place of business or entity is closed to the public.

9.1.2 An operator of a business or entity described in section 1, 2, 3 or 10 of Appendix A is prohibited from offering or providing services to or a location for persons to participate in an indoor performance activity.

9.1.3 An operator of a business or entity described in section 10 of Appendix A must ensure that any performance activity that occurs at the place of business or entity complies with the requirements in Part 9.1 of this Order.

9.1.4 For greater certainty, a performance activity includes but is not limited to, singing, playing a musical instrument, dancing, acting, and any rehearsal or theatrical performance.

10.3 An operator of a youth group recreational activity business or entity is prohibited from offering or providing indoor or outdoor youth group recreational activity services.

10.4 For greater certainty, an operator of a youth group recreational activity business that solely provides indoor or outdoor recreational activity services must ensure that the place of business or entity is closed to the public.

10.1.3 An operator of a business or entity described in section 1, 2, 3 or 10 of Appendix A is prohibited from offering or providing services to or a location for youth to participate in youth group recreational activity.

dd.CMOH Order 20-2021

5.1 Subject to section 5.2, an operator of a business or entity listed or described in sections 1, 2, 3 and 4 of Appendix A must ensure that the place of business or entity is closed to the public.

5.2 Section 5.1 of this Order does not prevent a place of business or entity listed or described in sections 1 and 3 of Appendix A from being used:

(a) to provide health care services;

(b) to provide child care services;

(c) for elections purposes and related activities including voting and tabulating purposes;

(d) to undertake jury selections and jury trials;

(e) as a shelter for vulnerable persons;

(f) as a place of worship;

(g) as an indoor market;

(h) as a location for blood donation and collection activities;

(i) as a location for mutual support meetings;

(j) as a location for charitable activities including but not limited to food, clothing and toy collection and distribution;

(k) to provide counselling services;

(l) to provide consular services;

(m) to provide Federal Mediation and Conciliation services

(n) as a location for educational, professional or employment examination or certification activities, including but not limited to a location where recertification training or exams may occur; or

(o) as a location for a wedding ceremony or funeral service to occur.

5.3 Despite sections 5.1 and 5.2, an outdoor hotel pool or hot tub may be used as a location for the exclusive use of a person and any member of their household.

5.4 An operator of a business or entity listed or described in section 5 of Appendix A must limi.t the number of members of the public that may attend the location where the business or entity is operating to the greater of:

(a) 15% of the total operational occupant load as determined in accordance with the Alberta Fire Code and the fire authority having jurisdiction; or

(b) five persons.

5.5 Despite section 5.4, in a shopping mall, the common areas of the shopping mall are not included when determining the total operational occupant load.

5.6 An operator of a business or entity listed or described in sections 6, 7, 8 and 9 of Appendix A must schedule an appointment with a person prior to the person attending the location where the business or entity is operating in order to provide the person with services.

6.2 An operator of a food-serving business or entity is prohibited from offering or providing indoor food and beverage services.

6.5 An operator of a food-serving business or entity that offers or provides outdoor food and beverage services must:

(a) limit the number of persons seated at the same table to a maximum of six persons for persons who are members of the same household and a maximum of three persons for persons who reside on their own; and

(b) require persons to remain seated while consuming food or beverages and must prohibit persons seated at a table from interacting with persons seated at a different table

6.7 An operator of a food-serving business or entity who provides outdoor food and beverage services must retain the contact information provided by a person under section 6.6 of this Order for 28 days following the person's attendance at the food-serving business or entity.

6.8 An operator of a food-serving business or entity that offers or provides outdoor food and beverage services is prohibited from offering or providing any of the following entertainment or activities to persons who attend the food-serving business or entity:

(a) live performances of any kind including musical, comedic and theatrical performances;

(b) billiard, arcade, video or dart games; or

(c) access to video lottery terminals.

6.9 An operator of a business or entity with a Class A or C liquor licence, including but not limited to restaurants, bars, lounges, pubs, cafes, legions or private clubs is prohibited from:

(a) serving liquor after 10 p.m., and

(b) providing outdoor food and beverage services or allowing persons to remain seated to consume food or beverages after 11p.m.

6.10 An operator of a business or entity with a Gaming Licence or Facility Licence or a Class B liquor licence, including but not limited to bowling alleys, casinos, bingo halls, pool halls and indoor recreation entertainment centers is prohibited from:

(a) serving liquor after 10 p.m., and

(b) providing outdoor food and beverage services or allowing persons to remain seated to consume food or beverages after 11 p.m.

6.11 Despite anything in Part 5 of this Order, an operator of a business or entity listed or described in section 3 of Appendix A that offers or provides outdoor food and beverage services may operate to the extent necessary to offer or provide outdoor food and beverage services.

6.12 For greater certainty, an operator of a food-serving business or entity may provide food or beverages by take-out, delivery or drive-thru at any time, including after 11 p.m..

6.1.4 An operator of a food-serving business or entity is prohibited from offering or providing

(a) indoor food and beverage services; and

(b) outdoor food and beverage services.

6.1.5 For greater certainty, an operator of a food-serving business or entity may provide food or beverages by take-out, delivery or drive-thru at any time.

6.1.6 An operator of a food-serving business or entity that offers or provides food and beverage services is prohibited from offering or providing any of the following entertainment or activities to persons who attend the food-serving business or entity:

(a) live performances of any kind including musical, comedic and theatrical performances;

(b) billiard, arcade, video or dart games; or

(c) access to video lottery terminals.

8.2 An operator of a business or entity described in section 1, 2, 3 or 4 of Appendix A is prohibited from offering or providing services to or a location for persons to participate in indoor physical activity.

8.4 An operator of a business or entity described in section 4 of Appendix A must ensure that any physical activity that occurs at the place of business or entity complies with the requirements in Part 8 of this Order.

9.2 An operator of a business or entity described in section 1, 2, 3 or 4 of Appendix A is prohibited from offering or providing services to or a location for persons to participate in an indoor performance activity.

9.3 An operator of a business or entity described in section 4 of Appendix A must ensure that any performance activity that occurs at the place of business or entity complies with the requirements in Part 9 of this Order.

9.4 For greater certainty, a performance activity includes but is not limited to, singing, playing a musical instrument, dancing, acting, and any rehearsal or theatrical performance.

10.3 An operator of a business or entity described in section 1, 2, 3 or 4 of Appendix A is prohibited from offering or providing services to or a location for youth to participate in youth group recreational activity.

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4.1 Subject to section 4.2 and section 4.5, an operator of a business or entity listed or described in sections 1, 2 and 3 of Appendix A must ensure that the place of business or entity is closed to the public.

4.2 Section 4.1 of this Order does not prevent a place of business or entity listed or described in sections 1 and 3 of Appendix A from being used:

(a) to provide health care services;

(b) to provide child care services;

(c) for elections purposes and related activities including voting and tabulating purposes;

(d) to undertake jury selections and jury trials;

(e) as a shelter for vulnerable persons;

(f) as a place of worship;

(g) as an indoor market;

(h) as a location for blood donation and collection activities;

(i) as a location for mutual support meetings;

(j) as a location for charitable activities including but not limited to food, clothing and toy collection and distribution;

(k) to provide counselling services;

(l) to provide consular services;

(m) to provide Federal Mediation and Conciliation services;

(n) as a location for educational, professional or employment examination or certification activities, including but not limited to a location where recertification training or exams may occur; or

(o) as a location for a wedding ceremony or funeral service to occur.

4.1 An operator of a business or entity listed or described in section 4 of Appendix A must limit the number of members of the public that may attend the location where the business or entity is operating to the greater of:

(a) 15% of the total operational occupant load as determined in accordance with the Alberta Fire Code and the fire authority having jurisdiction; or

(b) five persons.

4.2 An operator of a business or entity listed or described in sections 5, 6, 7 and 8 of Appendix A must schedule an appointment with a person prior to the person attending the location where the business or entity is operating in order to provide the person with services.

5.2 An operator of a food-serving business or entity is prohibited from offering or providing indoor food and beverage services.

5.5 An operator of a food-serving business or entity that offers or provides outdoor food and beverage services must:

(a) limit the number of persons seated at the same table to:

i. a maximum of four persons who are members of the same household; or,

ii. in accordance with section 2.3 of this Order, a maximum of three persons for persons who reside on their own;

(b) require persons to remain seated while consuming food or beverages and must prohibit persons seated at a table from interacting with persons seated at a different table.

5.7 An operator of a food-serving business or entity who provides outdoor food and beverage services must retain the contact information provided by a person under section 5.6 of this Order for 28 days following the person's attendance at the food-serving business or entity.

5.8 An operator of a food-serving business or entity that offers or provides outdoor food and beverage services is prohibited from offering or providing any of the following entertainment or activities to persons who attend the food-serving business or entity:

(a) live performances of any kind including musical, comedic and theatrical performances;

(b) billiard, arcade, video or dart games; or

(c) access to video lottery terminals.

5.9 An operator of a business or entity with a Class A or C liquor licence, including but not limited to restaurants, bars, lounges, pubs, cafes, legions or private clubs is prohibited from:

(a) serving liquor after 10 p.m., and

(b) providing outdoor food and beverage services or allowing persons to remain seated to consume food or beverages after 11p.m.

5.10 An operator of a business or entity with a Gaming Licence or Facility Licence or a Class B liquor licence, including but not limited to bowling alleys, casinos, bingo halls, pool halls and indoor recreation entertainment centers is prohibited from:

(a) serving liquor after 10 p.m., and

(b) providing outdoor food and beverage services or allowing persons to remain seated to consume food or beverages after 11 p.m.

5.11 Despite anything in Part 5 of this Order, an operator of a business or entity listed or described in section 3 of Appendix A that offers or provides outdoor food and beverage services may operate to the extent necessary to offer or provide outdoor food and beverage services.

5.12 For greater certainty, an operator of a food-serving business or entity may provide food or beverages by take-out, delivery or drive-thru at any time, including after 11 p.m..

8.3 An operator of a business or entity is prohibited from offering or providing services to or a location for persons to participate in an indoor physical, performance or recreational activity.

8.5 An operator of a business or entity described in section 9 of Appendix A must ensure that any person or any group of persons who are participating in a physical, performance or recreational or activity do not interact with any other person or any other group of persons who are also participating in a physical, performance or recreational activity at the place of business or entity.

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4.2 An operator of a business or entity must ensure that a person participating in a fitness activity maintains a distance of three metres from any other person while participating in

indoor fitness activity unless the other person is a member of their household or, if the person lives alone, the persons referred to in section 2.3 of this Order.

4.3 An operator of a business or entity must ensure that a person participating in a fitness activity maintains a distance of two metres from any other person while participating in an outdoor fitness activity unless the other person is a member of their household or, if the person lives alone, the persons referred to in section 2.3 of this Order.

4.7 An operator of a business or entity must ensure that a person participating in a performance activity maintains a distance of two metres from any other person unless the other person is a member of their household or, if the person lives alone, the persons referred to in section 2.3 of this Order, except during rehearsal or performance.

4.8 Any person who participates in a performance activity must maintain two metres physical distance, except during rehearsal or performance.

4.9 For greater certainty, the physical distancing requirements set out in this Part do not apply to a person participating in a performance or rehearsal where the business or entity manages the performance activity in a manner that complies with guidance the government of Alberta may post on-line, from time to time, on the government of Alberta website.

4.11 An operator of a business or entity must ensure that a person participating in a recreational activity, indoors or outdoors, maintains a distance of two metres from any other person, unless the other person is a member of their household, or if the person lives alone, the persons referred to in section 2.3 of this Order.

5.3 Businesses or entities that plan or host a public outdoor gathering must ensure:

> (a) the area in which the public outdoor gathering will occur is delineated;
>
> (b) that no more than one outdoor public gathering takes place at a venue or location at one time;

(c) a person in attendance maintains a minimum physical distance of two metres from any other person attending the public outdoor gathering unless the other person is a member of their household or, if the person lives alone, the persons referred to in section 2.3 of this Order;

(d) the public outdoor gathering does not have any indoor components apart from:

i. washrooms;

ii. medical or first aid facilities;

iii. concession stands or other food services businesses; iv. retail areas;

v. ticketing areas; and

(e) the outdoor public gathering complies with guidance the government of Alberta may post on-line, from time to time, on the government of Alberta website.

6.2 A business or entity must limit capacity of an indoor venue or retail venue to thirty-three percent of the total operational occupant load as determined in accordance with the Alberta Fire Code and the fire authority having jurisdiction.

6.3 The thirty-three percent capacity limit set out in section 6.2 does not include persons who are employees or contractors of the business or entity who may enter the indoor venue or retail venue for the purposes of repair or maintenance.

6.4 Despite section 6.2, indoor venues including gyms, fitness studios, dance studios, rinks, arenas or recreation centres, are not subject to the capacity limit of thirty-three percent of the total operational occupant load, when offering fitness activities, as defined in Part 4.

6.5 A business or entity must ensure that any person in the indoor venue or retail venue maintains a minimum physical distance of two metres from any other person unless the other person is a

(a) member of their household; or,

(b) for a person who resides on their own, the persons referred to in section 2.3 of this Order.

6.6 A business or entity must include an indoor seated venue if there is an audience to observe an activity.

7.2 A business or entity must limit capacity of an indoor seated venue to thirty-three percent of the total seating capacity of the indoor seated venue.

7.4 A business or entity must ensure a person attending the indoor seated venue:

(a) remains seated, except where necessary to use the washroom or access other amenities; and

(b) maintains a minimum physical distance of two metres from any other person, unless the other person is a member of their household, or, for a person who resides on their own, the persons referred to in section 2.3 of this Order.

8.2 A business or entity must limit capacity of an outdoor fixed seated venue to thirty-three percent of the total seating capacity of the outdoor fixed seated venue.

8.4 A business or entity must ensure a person attending the outdoor fixed seated venue:

(a) remains seated, except where necessary to use the washroom or access other amenities; and

(b) maintains a minimum physical distance of two metres from any other person, unless the other person is a member of their household, or, for a person who resides on their own, the persons referred to in section 2.3 of this Order.

10.2 An operator of a business or entity must close the following businesses or entities to the public:

(a) indoor amusement parks;

(b) indoor waterparks;

(c) night clubs; and

(d) any business or entity of a similar nature.

11.2 A business or entity operating an outdoor amusement park or outdoor waterpark with indoor attractions must close all indoor attractions.

11.3 For greater certainty, section 11.2 does not apply to

(a) washrooms and change rooms;

(b) food-serving business or entity;

(c) medical or first aid facilities;

(d) retail venue;

(e) ticketing areas;

(f) any business or entity that is otherwise able to operate indoors under this Order.

11.4 The thirty-three percent capacity limit set out in section 11.1 does not include persons who are employees or contractors of the business or entity operating the outdoor amusement park or outdoor waterpark who may enter the amusement park or waterpark for the purposes of repair or maintenance.

11.2 For greater certainty, the thirty-three percent capacity limit set out in section 11.1 includes any person who attends a business or entity set out in section 11.3.

12.2 An operator of a food-serving business or entity that offers or provides food and beverage services must:

(a) limit the number of persons seated at the same table to a maximum of six persons;

(b) require persons to remain seated while consuming food or beverages and prohibit persons seated at a table from interacting with persons seated at a different table.

12.7 An operator of a food-serving business or entity that offers or provides food and beverage services is prohibited from

offering or providing any of the following entertainment or activities to persons who attend the food-serving business or entity:

(a) live performances of any kind including musical, comedic and theatrical performances;

(b) billiard, arcade, video, or dart games, trivia contests.

12.8 An operator of a business or entity with a Class A or C liquor licence, including but not limited to restaurants, bars, lounges, pubs, cafes, legions or private clubs is prohibited from:

(a) serving liquor after 11 p.m., and

(b) providing food and beverage services or allowing persons to remain seated to consume food or beverages after 12 a.m..

12.9 An operator of a business or entity with a Gaming Licence or Facility Licence or a Class B liquor licence, including but not limited to bowling alleys, casinos, bingo halls, pool halls and indoor recreation entertainment centers is prohibited from:

(a) serving liquor after 11 p.m., and

(b) providing food and beverage services or allowing persons to remain seated to consume food or beverages after 12 a.m..

12.10 For greater certainty, an operator of a food-serving business or entity may provide food or beverages by take-out, delivery, or drive-thru at any time, including after 12 a.m..